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*Attorneys for Plaintiffs*

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2037 Naudain Street	:	PHILADELPHIA COUNTY
Philadelphia, PA 19146, and	:	
	:	_____TERM, 2022
GREGORY MAZOL	:	
800 Admirals Way #1852	:	No.
Philadelphia, Pa 19146,	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	
THE PHILADELPHIA CITY	:	
COMMISSIONERS	:	
City Hall, Rm 142	:	
Philadelphia, PA 19107,	:	
	:	
LISA M. DEELEY, in her official capacity	:	
City Hall, Rm 142	:	
Philadelphia, PA 19107,	:	
	:	
OMAR SABIR, in his official capacity	:	
City Hall, Rm 142	:	
Philadelphia, PA 19107, and	:	
	:	
SETH BLUESTEIN, in his official capacity	:	
City Hall, Rm 142	:	
Philadelphia, PA 19107,	:	
Defendants.	:	

**NOTICE**

**You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other**

**claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.**

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

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Lawyer Referral  
and Information Service  
1101 Market St., 11th Floor  
Philadelphia, Pennsylvania 19107  
(215) 238-6333**

**AVISO**

**Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.**

**LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.**

**Asociacion De Licenciados  
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	:	
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Philadelphia, PA 19107,	:	
Defendants.	:	

**COMPLAINT**

Plaintiffs Elizabeth Elkin and Gregory Mazol, by and through their attorneys, Kleinbard LLC, file this Complaint against Defendants the Philadelphia City Commissioners, Lisa M. Deeley, Omar Sabir, and Seth Bluestein, in their

official capacities as City Commissioners and as members of the board of elections, and in support thereof aver as follows:

1. To protect against duplicate voting, the Election Code requires that a voter's mail-in/absentee status be marked in the district register (also known as the "poll book"). 25 P.S. § 3150.12b(a)(4). A voter must be marked in the poll book as a mail-in/absentee voter if a ballot has been sent to them, regardless of whether it has yet been returned. 25 P.S. § 3150.12b(a)(4). The poll book must also be separately marked if the voter's mail-in/absentee ballot has actually been received by the Defendants. 25 P.S. §§ 3146.6(b)(1), 3150.16(b)(1). This mark reflects the voter's "return"—Defendants' receipt of a completed, valid ballot from the voter. In other words, this second mark establishes that the voter has successfully voted by mail-in/absentee ballot.

2. Before a voter is allowed to cast a ballot in-person, an election worker is required to first check the poll book to determine if the voter has received or returned a mail-in/absentee ballot. If so, they cannot vote in person, or must vote provisionally, unless certain conditions are satisfied.

3. Poll Book Reconciliation is the process whereby, after the polls close, Defendants scan poll books into the Statewide Uniform Registry of Elections system to note who voted in-person, and then compare those results against mail-in/absentee ballots returned to the Defendants. Poll Book Reconciliation identifies duplicate votes that were not prevented at the check-in process.

4. This is an action seeking declaratory judgment that Defendants must instruct election workers in proper check-in procedures to prevent duplicate votes and must also continue to use Poll Book Reconciliation as part of their duties under the Election Code and the Free and Equal Elections Clause of the Pennsylvania Constitution to prevent, identify, and eliminate duplicate votes. It is filed in response to evidence, including Defendants' public comments, indicative of inadequate election worker training regarding check-in procedures and an intention to discontinue Poll Book Reconciliation for the 2022 General Election.

#### **I. PARTIES AND VENUE**

5. Plaintiff Elizabeth Elkin is a registered voter with an address at 2037 Naudin Street, Philadelphia, PA 19146. Plaintiff Elkin intends to vote in the upcoming General Election on November 8, 2022.

6. Plaintiff Elkin is an elected minority inspector of election in Philadelphia, 25 P.S. § 2671, which means she is an "election officer" under the Pennsylvania Constitution, Pa. Const. art. VII, § 11. In that capacity, she must take an oath to, among other things, "make a true and perfect return of the said election (or primary)[.]" 25 P.S. § 2678. Minority inspectors must sign off on the returns of an election or otherwise note their objections thereto if they refuse to sign. *See* 25 P.S. §§ 3065(a), 3067(b). The failure of a minority inspector to fulfill the duties assigned by the Election Code carries criminal sanctions. *See Com. v. Grear*, 76 A.2d 491 (Pa. Super. 1950); *see also* 25 P.S. §§ 3510, 3525, 3550. Plaintiff Elkin does not reasonably believe she can certify the election returns from her district without

knowing that the voters who appeared to vote at her district are not otherwise being permitted to vote as a mail-in/absentee elector.

7. Plaintiff Gregory Mazol is a registered voter having an address at 800 Admirals Way #1852, Philadelphia, PA 19146. Plaintiff Mazol intends to vote in the upcoming General Election on November 8, 2022.

8. Plaintiff Mazol has been appointed by a judge of the Court of Common Pleas of Philadelphia County to fill a vacant minority inspector of election position in Philadelphia, 25 P.S. § 2671, which means he is an “election officer” under the Pennsylvania Constitution. Pa. Const. art. VII, § 11. In that capacity, he must take an oath to, among other things, “make a true and perfect return of the said election (or primary)[.]” 25 P.S. § 2678. Minority inspectors must sign off on the returns of an election or otherwise note their objections thereto if they refuse to sign. *See* 25 P.S. §§ 3065(a), 3067(b). The failure of a minority inspector to fulfill the duties assigned by the Election Code carries criminal sanctions. *See Com. v. Grear*, 76 A.2d 491 (Pa. Super. 1950); *see also* 25 P.S. §§ 3510, 3525, 3550. Plaintiff Mazol does not reasonably believe he can certify the election returns from his district without knowing that the voters who appeared to vote at his district are not otherwise being permitted to vote as a mail-in/absentee elector.

9. Defendant Philadelphia City Commissioners serve as the county board of elections in Philadelphia. *See* 25 P.S. § 2641; Philadelphia Code § 2-112.

10. Defendant Commissioner Lisa M. Deeley is a member of the City Commissioners; she is a Defendant in her official capacity as a City Commissioner and a member of the board of elections.

11. Defendant Commissioner Omar Sabir is a member of the City Commissioners; he is a Defendant in his official capacity as a City Commissioner and a member of the board of elections.

12. Defendant Commissioner Seth Bluestein is a member of the City Commissioners; he is a Defendant in his official capacity as a City Commissioner and a member of the board of elections.

13. Venue is proper in this Court because a transaction or occurrence out of which the cause of action arose took place in Philadelphia County. *See* Pa.R.Civ.P. 1006(a)(1).

## **II. FACTUAL BACKGROUND**

### **A. Mail-in/Absentee Balloting**

14. Electors who appropriately and timely apply to vote as a mail-in or absentee elector are permitted to vote via a ballot sent by mail to the Defendants without the need to appear and vote in-person on election day.

15. Consistent with the Pennsylvania Constitution and the Election Code, however, such voters, like all voters in the state, can only vote once. They may not vote the ballot sent to them by mail and also vote in-person. Duplicate voting is unlawful and can be a criminal offense if done with the requisite state of mind. 25 P.S. § 3535.

16. In the event a person who has been sent a mail-in/absentee ballot attempts to vote in person only three things can happen.

17. One, if their return has been noted in the poll book, they cannot vote in person. *See* 25 P.S. §§ 3146.6(b)(1), 3150.16(b)(1).

18. Two, if their return has not been noted in the poll book and the voter tenders their mail-in/absentee ballot, the ballot can be spoiled, and the voter is then permitted to vote in person on a regular ballot. 25 P.S. §§ 3146.6(b)(3), 3150.16(b)(3).

19. Three, if their return has not been noted in the poll book and the voter does not tender their mail-in/absentee ballot, the voter can vote in person on a provisional ballot. 25 P.S. §§ 3146.6(b)(2), 3150.16(b)(2).

**B. Preventing and Identifying Duplicate Voting Through Voter Check-In and Poll Book Reconciliation**

20. To manage this process and to prevent and identify duplicate voting, Defendants presently use a paper poll book system.

21. This paper system is still in use even though Defendants previously announced they would transition to more reliable and accurate electronic poll books.

22. These paper books are printed well in advance of election day and are not updated in real time.

23. Because voters are still requesting and returning absentee/mail-in ballots after the books are printed, updates must be periodically printed and physically distributed to election workers.



24. The use of paper poll books, as opposed to electronic poll books, greatly increases the risk of duplicate voting because the information in those books becomes stale the moment it is sent to printers to be printed, well before election day and before all voters have returned or even applied for mail-in/absentee ballots.

25. For the 2022 General Election, the risk of stale information is even greater than normal because Philadelphia was delayed in mailing ballots, meaning it is very likely that more ballots will be returned after poll books are printed than if the ballots had been sent out on time.

26. Human error is an inherent risk in the voter check-in process, and the risk increases greatly with the use of paper poll books.

27. First, as discussed above, the information in the poll books might be stale. This risk is particularly acute in the upcoming election, since Philadelphia was delayed in sending out absentee mail-in ballots, meaning more such ballots than usual are likely to be received after the poll books have been printed and distributed.

28. Second, even if the poll books have been properly supplemented to account for the newly requested and received absentee/mail-in ballots, those supplemental poll books must be timely printed and distributed, and properly relied on by inspectors to be effective. And poll workers must physically check voters against the poll book and any available supplements before they are permitted vote. In short, there are multiple possible points of system failure.

29. Because of the foregoing, Defendants know, or should know that check-in procedures will not prevent all duplicate voting and that, without additional safeguards, duplicate votes are certain—or virtually certain—to infect the final tally.

30. Each of those unlawful duplicate votes, if not caught and discarded, violates both the Election Code and the Free and Equal Elections Clause; thus, not one can be lawfully permitted or ignored by Defendants without violating both statutory and organic Pennsylvania law.

31. Poll Book Reconciliation is the only process Defendants have identified as being capable of identifying and eliminating from the tally duplicate votes that have not been prevented at the check-in phase and ensure compliance with Pennsylvania law and the Pennsylvania Constitution. Indeed, as alleged herein, by using Poll Book Reconciliation in previous paper-based poll book elections, Defendants have identified and eliminated dozens of duplicate votes in Philadelphia.

32. Like the above procedures, Poll Book Reconciliation is not optional for the Defendants and is required by law.

33. For starters, if Defendants “neglect or refuse to perform” their duties vis-à-vis absentee and mail-in ballots or “shall permit an elector to cast the elector’s ballot at a polling place known that there has been issued to the elector an absentee ballot,” Defendants have committed a crime under 25 P.S. § 3553 of the Election Code.

34. Furthermore, Defendants are flatly prohibited under the Election Code from computing election returns if the total number of ballots cast exceeds the number of persons who voted. Indeed, the Election Code *mandates* that such a discrepancy “shall be investigated,” stating, in relevant part:

The county board, before computing the votes cast in any election district, shall compare said registration and enrollment figures with the certificates returned by the election officers showing the number of persons who voted in each district or the number of ballots cast. If, upon consideration by said return board of the returns before it from any election district and the certificates aforesaid, it shall appear that the total vote returned for any candidate or candidates for the same office or nomination or on any question exceeds the number of registered or enrolled electors in said election district or exceeds the total number of persons who voted in said election district or the total number of ballots cast therein ... in any such case, such excess shall be deemed a discrepancy and palpable error, and ***shall be investigated*** by the return board, and ***no votes shall be recorded*** from such district until such investigation shall be had[.]

25 P.S. § 3154(b) (emphasis added).

35. To drive home the core duty to get the vote tally correct, the General Assembly made it a crime for any person to “make a false return of the votes cast at any primary or election” or to “certify as correct a return of ballots in the ballot box which he knows to be fraudulent[.]” 25 P.S. § 3525. Further, the General Assembly made it a crime for a member of a board of elections to “wilfully [sic] neglect or refuse to perform his duty[.]” 25 P.S. § 3548; *see also* 25 P.S. § 3553.

36. Poll Book Reconciliation is also required by Defendants under various other provisions of the Election Code. Specifically, the Election Code imposes a mandatory duty on a county board of elections to:

- (a) ensure that elections are “honestly, efficiently, and uniformly conducted,” 25 P.S. § 2642(g);
- (b) investigate “election frauds, irregularities and violations of the” Election Code, 25 P.S. § 2642(i);
- (c) report “all suspicious activity to the district attorney,” 25 P.S. § 2642(i);
- (d) correct “errors” of any employee, 25 P.S. § 2647; and
- (e) compute election returns and, in doing so, report to the district attorney any “error or fraud” discovered. 25 P.S. § 3154(d)(3).

37. Experience has shown that in Philadelphia, as expected, the front-end process required by 25 P.S. §§ 3150.12b, 3146.6, and 3150.16 (relating to mail-in/absentee ballots) does not prevent all duplicate voting.

38. With Philadelphia’s ballot mailing delays and as the increasing prevalence and popularity of voting by mail only increases, the number of duplicate votes that will not be prevented by check-in procedures can only be expected to grow, risking greater and greater pollution of the final tally by duplicate votes.

39. Defendants have a legal duty not to willfully certify a polluted vote tally, which means they must implement reasonable processes and procedures to identify duplicate votes that have evaded front-end safeguards. Absent some other public explanation for how they will adequately fulfill their duty not to willfully certify a tally that includes duplicate votes, they are required to implement Poll

Book Reconciliation, which has been used—by Defendants themselves—to ensure they do not violate their duty of care in certifying an election.

40. In the past, Defendants have chosen to use Poll Book Reconciliation to satisfy their duty of care for good reason: Poll Book Reconciliation has identified and prevented illegal double voting.

41. For example, in the 2020 Primary Election, Defendants' Poll Book Reconciliation identified 40 instances of illegal double voting. *See* Exhibit A.

42. Additional double votes by mail-in/absentee electors were also found by Defendants using Poll Book Reconciliation in the 2020 General Election. *See* Exhibit A.

### **C. The Philadelphia Inquirer Article**

43. On October 18, 2022, the *Philadelphia Inquirer* published an article under the headline: *Catching double votes may be harder in Philly* (Exhibit A); a version of the article appeared online the day before.

44. The article states that Defendants are considering scaling back or eliminating Poll Book Reconciliation out of an unjustified concern that conducting it might somehow jeopardize certain funding authorized by Act 88 of 2022.

45. The article was the first time the public learned, or could have learned, that Defendants intended to scale back or eliminate Poll Book Reconciliation.

46. Act 88 provides certain grants to counties for the administration of elections. *See* 25 P.S. § 3260.2A.

47. To be eligible to receive funding under Act 88, counties must, *inter alia*, “begin canvassing mail-in ballots and absentee ballots at 8 p.m. on election day

and shall *continue without interruption* until each ballot has been canvassed.”

25 P.S. § 3260.2A (emphasis added).

48. The *Inquirer* article reports the Defendants fear they will lose Act 88 funding because they view Poll Book Reconciliation as an interruption of the canvassing process.

49. After the *Inquirer* story broke, at a public meeting on October 19, 2022, the Defendants received notice, via oral and written public comments, about the statutory and constitutional problems with eliminating Poll Book Reconciliation, including that Poll Book Reconciliation does not threaten Act 88 funding. See October 18, 2022 Letter (Exhibit B). Act 88 does not relieve Defendants of their obligation to prevent duplicate voting through Poll Book Reconciliation.

50. Still, to date, Defendants have refused to publicly confirm that they will fulfill their legal obligation to conduct Poll Book Reconciliation during the upcoming General Election. Unless this issue is promptly resolved, however, there is grave risk that the General Election will be polluted by duplicate votes that would otherwise be identified by Poll Book Reconciliation.

51. Finally, before filing this Complaint with the Court, in an effort to eliminate any uncertainty and controversy between the parties, Plaintiffs presented Defendants with a draft version of the pleading on October 25, 2022, asking them to advise if Defendants intended to proceed as planned, or if they would appropriately proceed with Poll Book Reconciliation as was done in recent elections.

52. As of the time of this filing, Defendants have not responded.

## COUNT I—DECLARATORY JUDGMENT REGARDING POLL BOOK TRAINING

53. Plaintiffs incorporate by reference the paragraphs above as if set forth in full herein.

54. Under the Declaratory Judgments Act (“DJA”), 42 Pa.C.S. §§ 7531-41, courts have the power to “declare rights, status, and other legal relations[.]” 42 Pa.C.S. § 7532.

55. The purpose of the DJA “is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.” 42 Pa.C.S. § 7541(a); *see also Bayada Nurses, Inc. v. Com., Dep’t of Labor & Industry*, 8 A.3d 866, 874 (Pa. 2010).

56. Relief under the statute requires a “real or actual controversy[.]” *See Bayada*, 8 A.3d at 874; *see also* 42 Pa.C.S. § 7537 (“The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding[.]”).

57. The Election Code permits only three outcomes for mail-in/absentee electors when they present themselves on election day: (1) they can be turned away, if their mail-in/absentee ballot has already been returned; (2) they can tender their ballot, have it spoiled, and vote by regular ballot; or (3) they can vote provisionally, if their status as a mail-in/absentee elector is reflected in the poll book. 25 P.S. §§ 3146.6(b)(1)-(3), 3150.16(b)(1)-(3); *see also* 25 P.S. § 3553.

58. The foregoing outcomes dictated by the Election Code require that the Defendants (1) appropriately generate the poll books, to reflect the elector's balloting status; and (2) appropriately train polling place personnel to prevent any voting not permitted by 25 P.S. § 3553, 25 P.S. § 3146.6(b)(1)-(3), or 25 P.S. § 3150.16(b)(1)-(3).

59. Upon information and belief, the Defendants are printing the poll books before election day, and thus they will not completely reflect the mail-in/absentee status of all electors and will not completely reflect all returns of mail-in/absentee ballots.

60. Upon further information and belief, Defendants intend to try to overcome this information deficiency in the poll books by printing supplements to the poll books to reflect updated mail-in/absentee elector information.

61. But this process of early printing and then generating separate, supplemental papers is the very process that invites double-votes by mail-in/absentee electors through polling place personnel errors—since now two documents need checked by polling place personnel—generating the very need for Poll Book Reconciliation.

62. Further, even if the poll books and supplements thereto were complete, if polling place personnel are not adequately trained on the three, and only three, outcomes permitted on election day for mail-in/absentee electors, then impermissible—and preventable—unlawful voting will still occur.



63. Upon information and belief, Defendants are not adequately training polling place personnel on the three outcomes permitted under the Election Code because if they were, Poll Book Reconciliation would not be needed at all.

64. Plaintiffs, Philadelphia voters, will be irreparably injured if Defendants are not required to properly and fully train polling place personnel, since a lack of training generates unlawful double votes, which will, in turn, unlawfully dilute Plaintiffs' votes.

65. Plaintiffs, both minority inspectors election, will also be irreparably injured if Defendants are not required to properly and fully train polling place personnel, since they will not be able to appropriately certify election returns.

66. Accordingly, there exists a clear legal dispute between Plaintiffs and Defendants.

67. Declaratory judgment from the Court would resolve the present legal controversy between the parties.

68. Plaintiffs are entitled to declaratory judgment to resolve the present legal dispute.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and grant the following relief:

- a. declare that Defendants have a duty to properly and fully train polling place personnel on the only three voting outcomes permitted for mail-in/absentee electors; and
- b. such other and further relief as this Court deems just and proper.

**COUNT II—DECLARATORY JUDGMENT REGARDING POLL BOOK  
RECONCILIATION UNDER THE ELECTIONS CODE**

69. Plaintiffs incorporate by reference the paragraphs above as if set forth in full herein.

70. Under the DJA, 42 Pa.C.S. §§ 7531-41, courts have the power to “declare rights, status, and other legal relations[.]” 42 Pa.C.S. § 7532.

71. Defendants have taken the position they can scale back or eliminate Poll Book Reconciliation.

72. Poll Book Reconciliation catches would-be unlawful double votes.

73. Double voting is a species of election fraud, *see In re Pa. Gen. Election for Snyder County Com’r*, 841 A.2d 593, 597 (Pa. Cmwlth. 2004) (providing “double voting” as an example of “fraud”), and is also a crime. 25 P.S. § 3535 (“repeat voting at elections”).

74. Poll Book Reconciliation is required by Defendants under various provisions of the Election Code and to prevent Defendants from willfully certifying a false election return.

75. If Defendants do not conduct Poll Book Reconciliation, the foregoing Elections Code provisions are violated because Defendants:

- (a) will not conduct an honest, efficient, and uniform election;
- (b) will not investigate known fraud and irregularities;
- (c) will not report fraud and irregularities to the district attorney;
- (d) will not correct errors of employees;

(e) will not appropriately compare registered voters with the number of votes cast; and

(f) will not appropriately compute election returns.

76. Based on public reports and present information, Defendants intend to violate the Elections Code by scaling back or eliminating Poll Book Reconciliation.

77. Plaintiffs, as Philadelphia voters, will be irreparably injured if Defendants are allowed to proceed as planned, since, among other things, Plaintiffs' votes will be unlawfully diluted.

78. Further, Plaintiffs, as minority inspectors, are separately injured in that they are not able to complete their duty to certify returns because they do not have sufficient information and assurances that electors at the polling place did not otherwise have a mail-in/absentee ballot counted by the Defendants.

79. Accordingly, there exists a clear legal dispute between Plaintiffs and Defendants.

80. Declaratory judgment from the Court would resolve the present legal controversy between the parties.

81. Plaintiffs are entitled to declaratory judgment to resolve the present legal dispute.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and grant the following relief:

a. declare that Defendants have a duty under the Election Code to conduct Poll Book Reconciliation;

- b. preliminarily and permanently enjoin the Defendants from scaling back or eliminating Poll Book Reconciliation; and
- c. such other and further relief as this Court deems just and proper.

**COUNT III—DECLARATORY JUDGMENT REGARDING POLL BOOK RECONCILIATION UNDER THE FREE AND EQUAL ELECTIONS CLAUSE**

82. Plaintiffs incorporate by reference the paragraphs above as if set forth in full herein.

83. Under the DJA, courts have the power to “declare rights, status, and other legal relations[.]” 42 Pa.C.S. § 7532.

84. The Free and Equal Elections Clause, Pa. Const. art. I, § 5, provides that “[e]lections shall be free and equal[.]”

85. Poll Book Reconciliation by Defendants is required under the Free and Equal Elections Clause because Defendants are required to ensure that “every voter has the same right as every other voter” and that “each voter under the law has the right to cast his ballot and have it honestly counted[.]” *League of Women Voters v. Com.*, 178 A.3d 737, 810 (Pa. 2018) (quoting *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914)).

86. If Defendants do not conduct Poll Book Reconciliation, Defendants will violate the Free and Equal Elections Clause because Philadelphia voters, like Plaintiffs, will have their votes unlawfully diluted by voters who unlawfully vote twice; furthermore, those double voters will have rights greater than lawful voters since they will have, necessarily, twice the impact as others and will have their second vote “dishonestly” counted by Defendants.

87. Based on public reports and present information, Defendants intend to violate the Free and Equal Elections Clause by scaling back or eliminating Poll Book Reconciliation.

88. Plaintiffs, as Philadelphia voters, will be irreparably injured if Defendants are allowed to proceed as planned, since, among other things, Plaintiffs' votes will be unlawfully diluted.

89. Further, Plaintiffs, as minority inspectors, are separately injured in that they are not able to complete their duty to certify returns because they do not have sufficient information and assurances that electors at the polling place did not otherwise have a mail-in/absentee ballot counted by the Defendants.

90. Accordingly, there exists a clear legal dispute between Plaintiffs and Defendants.

91. Declaratory judgment from the Court would resolve the present legal controversy between the parties.

92. Plaintiffs are entitled to declaratory judgment to resolve the present legal dispute.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and grant the following relief:

- a. declare that Defendants have a duty under the Free and Equal Elections Clause to conduct Poll Book Reconciliation;
- b. preliminarily and permanently enjoin the Defendants from scaling back or eliminating Poll Book Reconciliation; and

c. such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: October 27, 2022

/s/ Joshua J. Voss

Matthew H. Haverstick (No. 85072)

Joshua J. Voss (No. 306853)

Shohin H. Vance (No. 323551)

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*Attorneys for Plaintiffs*

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VERIFICATION

I, Elizabeth Elkin, hereby verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 10/27/22

Elizabeth Elkin  
Elizabeth Elkin

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**VERIFICATION**

I, Gregory Mazol, hereby verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 10/27/22

  
\_\_\_\_\_  
Gregory Mazol

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# Exhibit A

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# Catching double votes may be harder in Philly

**To retain “election integrity grants,” city commissioners may have to expose anew a vulnerability that was previously addressed.**

**By Jonathan Lai**  
Staff Writer

Philadelphia elections officials are poised to remove or significantly scale back a procedure meant to catch double votes.

Ironically, it’s because of rules Republicans imposed on “election integrity grants.”

Otherwise, the city risks losing millions of dollars.

The procedure, known as poll book reconciliation, compares mail ballots with poll books from Election Day. If a person is listed in the poll books as voting in person but the city also receives a mail ballot from the same voter, the mail ballot is rejected to ensure only one vote per person counts. The process caught dozens of accidental double votes in 2020, but none in the last three elections.

But poll book reconciliation

temporarily stops the vote count, sometimes for a day or more. And that appears to conflict with a new state law known as Act 88, which provides state election funding with conditions, including that counting “continue without interruption.”

Now local officials have to decide whether to risk millions of dollars by keeping the procedure in place to catch double votes — or expose anew a vulnerability that was addressed in previous elections.

The city commissioners, who run elections, won’t make a final decision until shortly before Election Day. But they appear likely to scale back poll book reconciliation rather

than risk giving the legislature an opening to claw back the \$5.4 million in funding.

“We are currently reviewing the impact of Act 88 on our procedures and will adjust accordingly,” Nick Custodio, deputy to commissioners chair Lisa Deeley, said in a statement.

**How poll book reconciliation helps Philly catch double votes**

Each voter is only allowed one vote; if you vote by mail, you can’t vote in person, and vice versa.

Poll books are the registry of

voters for each precinct, and in-person voters sign them when they check in. With the rise of mail voting, poll books also note whether a voter has already requested a mail ballot or submitted one. If you’ve already done so, a poll worker is supposed to stop you from casting a ballot in person.

But poll books are printed ahead of Election Day. Voters whose mail ballots are received after the books are printed are supposed to get a stamp by their name in the poll book that acts as a warning for poll workers. Those voters should only be allowed to use a provisional

→ SEE VOTES ON A8

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# Votes

→ CONTINUED FROM A1

ballot or vote on the machines if they hand over their mail ballot to be voided.

Mistakes can happen, though, which is where poll book reconciliation comes in. That's the process of scanning poll books into the voter registry known as the SURE system to note everyone who voted in person. If the poll book says you voted in person, your mail ballot is pulled out and rejected.

In the 2020 primary election, the reconciliation process identified 40 cases of double-voting. Officials also caught some double-votes in the general, but none in the last three elections. Officials believe those double votes are accidents, not intentional fraud — nervous or confused voters who try to vote in person just in case something goes wrong with their mail ballots.

## Why Act 88 is a problem for Philly's poll book reconciliation

Poll book reconciliation requires pausing the vote count.

When Philly starts counting ballots at 7 a.m. on Election Day, it's only counting those received before the poll books were printed — the ones the commissioners know for sure are marked in the poll books. This year, Custodio said, the cutoff for the books to be stamped is the Wednesday before the Nov. 8 Election Day.

After that initial batch, counting stops while workers scan poll books. Only after that does the process resume, with any double votes rejected.

The length of the stoppage varies; in the 2020 primary, the count paused for five days.

Since then, officials have made the process more efficient by doing things in batches, scanning the poll books for groups of precincts at a time. After an initial pause that in recent elections took a day or two, the poll book reconciliation and mail ballot vote count processes can run in parallel, one lagging a bit behind the other.

But that pause creates a problem for Philly.

As part of state budget negotiations this year, the Republican-controlled legislature passed legislation to ban the use of private money in running elections and instead provide state funding to



Workers counting Philadelphia mail ballots during the 2020 election. Alejandro A. Alvarez / Staff Photographer

counties. The move was meant to prevent the kind of private grants that counties received in 2020, which Republicans have criticized as improper and partisan. (Facebook founder Mark Zuckerberg, a target of conservative ire, helped finance the group behind the money, and large Democratic counties, who have the most voters and mail ballots, received the biggest grants.)

Act 88's "Election Integrity Grants" come with the requirement that the vote count begins at 7 a.m. on Election Day and "shall continue without interruption" until all ballots have been counted.

Forcing counties to count ballots around the clock was intended to speed things up, after Republicans criticized the long process

that has sometimes meant days-long waits for races to be called. Those delays have also given room for right-wing conspiracy theories about vote dumps and stolen elections. Elections officials' preferred solution, which they've advocated since 2020, is to be allowed to start processing or even counting ballots before Election Day.

### What happens next?

Custodio said the city is reviewing the law.

Barring some breakthrough, pausing the count for poll book reconciliation comes with the risk that the legislature will take back the \$5.4 million Philadelphia is receiving. The commissioners could move forward with the vote count and either significantly scale back the

reconciliation process or forego it altogether, knowing double votes could potentially slip through.

Few counties have used a similar process to catch double votes, and it's not clear whether any others will this time. And the lack of double votes in the last three elections may provide some confidence that voters are getting more familiar with mail ballots.

The commissioners had hoped to avoid the problem altogether through the use of electronic poll books, which could be updated much closer to Election Day and can afterward speed up the reconciliation process. That could mean not having to pause the vote count at all.

Officials wanted to roll out electronic poll books this election, and

had even begun training workers to use them, but they announced last month that they weren't ready to be used. (It was the second time the city had failed to roll out e-poll books, after scrapping its plans in 2019.)

If the technical issues get figured out for future elections, that could solve the problem. The legislature could also change the law, if it sees poll book reconciliation as valuable. For now, Custodio said, the decision about what to do this election will be made when the commissioners finalize the ballot-counting procedures. That vote is expected the Wednesday before Election Day.

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🐦 Elaijuh

# Exhibit B

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October 18, 2022

**VIA EMAIL**

Commissioner Lisa M. Deeley  
Commissioner Omar Sabir  
Commissioner Seth Bluestein  
PHILADELPHIA CITY COMMISSIONERS  
[phillyelection@phila.gov](mailto:phillyelection@phila.gov)

**RE: Public Comment on Act 88 Concerns**

Dear Commissioners:

On behalf of Restoring Integrity and Trust in Elections (RITE), I write regarding issues described in the *Philadelphia Inquirer* story of October 17, 2022, under the headline *Philly might scale back a process for catching double votes—because of GOP 'election integrity' rules*. Specifically, the article asserts that the Commissioners are planning to eliminate processes and procedures for preventing duplicate voting out of an unjustified concern that they somehow might jeopardize certain funding authorized by Act 88 of 2022. These protections must not be abandoned. And as this letter demonstrates, they cannot lawfully be abandoned. Auditing for double voting is required by law and is absolutely vital to election integrity. For example, in the 2020 Primary Election alone, Philadelphia identified 40 instances of illegal double voting. Cases like those and undoubtedly other cases would slip through the cracks were the plan identified in the article to be implemented. All systems that have been used in the past to prevent impermissible duplicate voting should remain in place and in full force. Indeed, the city should be looking for ways to strengthen them—not weaken them.

For the reasons explained below, the Commissioners cannot use Act 88 as a justification for jeopardizing election integrity. The tension between Act 88 and election integrity described in the *Inquirer* article is wholly illusory. And even if it were real, the City's obligation to protect election integrity must always win out over its desire for Act 88 funds.

*First*, the concern expressed in the article about delays to reconcile with the poll books is misplaced: if the City executes Election Code procedures correctly on the front end, then delays that might conceivably implicate Act 88 become unlikely to the vanishing point. To illuminate, under 25 P.S. § 3146.6(b) (concerning absentee ballots) and the companion provision at 25 P.S. § 3150.16(b) (concerning mail-in ballots), only three things can happen when a person who has been *sent* a mail-in ballot shows up at a polling station. One, if their return has been noted in the polling book, they cannot vote.



§ 3146.6(b)(1); § 3150.16(b)(1). Two, if their return has not been noted, they can tender their mail-in ballot, have it spoiled, and vote in person. Three, if their return has not been noted, they can cast a provisional vote. § 3146.6(b)(2)-(3); § 3150.16(b)(2)-(3). **No other options exist.**

Thus, provided the City Commissioners are providing each polling station before Election Day with the current information, as required by law, on who has been sent a mail-in/absentee ballot, the City would **never** need to stop the mail-in/absentee count to see if a given elector showed up to vote in person. This is the case precisely because an elector trying to vote by more than one method will either have been turned away or allowed to vote a provisional ballot that will be rejected in light of the receipt and counting of their mail-in/absentee ballot. *See* 25 P.S. § 3050(a.4)(5)(ii)(F); *see also In re Allegheny Cty. Provisional Ballots in the 2020 Gen. Election*, No. 1161 CD 2020, 2020 WL 6867946, at \*4 (Pa. Cmwlth. 2020). Stated as simply as possible, if the Commissioners generate poll books and later provide supplemental poll books immediately before Election Day with the most up-to-date information on who has requested a mail-in/absentee ballot, then the canvass of the mail-in/absentee ballots, 25 P.S. § 3260.2-A(J)(1)-(2) (Act 88), will proceed with all necessary speed because there will be fewer potential double-votes to identify, and they will be in the form of provisional ballots that were cast by mail-in/absentee electors.

Of course, for this system to work as intended to minimize and eliminate duplicate votes, poll workers must be adequately trained with respect to the proper check-in procedures for all voters who appear to vote on Election Day. This training must include instructing poll workers to carefully check the poll book and supplemental poll book for all voters checking-in, verifying their absentee voting status, and then determining whether the voter is permitted to vote a regular ballot (returns and spoils their mail ballot on election day), provisional ballot (has requested a mail ballot), or not permitted to vote again (has returned a mail ballot). We respectfully request that you confirm that the City has fulfilled its obligation in this regard, so that the voters of Philadelphia and the Commonwealth writ large can have maximum confidence that their election will not be tainted by the scourge of duplicate voting.

*Second*, even if the process described above were to breakdown, no conflict exists between the City's duty to canvass under Act 88 "without interruption" and its duty to prevent unlawful double voting. This is so because the process for detecting duplicate votes (auditing ballots against poll books) is activity squarely within the scope of what legally constitutes continuous canvassing. Far from being a "stoppage" in canvassing that might threaten Act 88 funds, such an audit is a necessary pre-condition to the canvassing referenced in Act 88. The audit is part of completing the review of mail-in/absentee ballots required by the Election Code, 25 P.S. § 3146.8 (describing procedure for

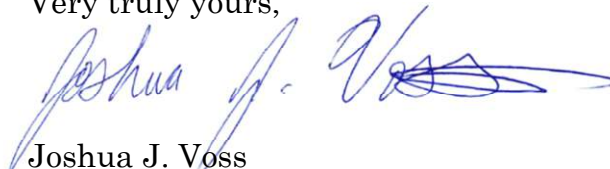


canvassing absentee and mail-in ballots), and Act 88. 25 P.S. § 3260.2-A(J)(1)-(2). Indeed, canvassing involves the process of “gathering ... ballots after the final pre-canvass meeting and the counting, computing and tallying of the votes reflected on the ballots.” 25 P.S. § 2602. Duplicate ballots are not “votes,” and to the extent they have been allowed to be mixed into the ballots gathered after the final pre-canvass, they must be weeded out before the votes can be properly counted, computed, and tallied. Thus, the process of auditing for and excluding improper ballots is both a duty imposed by the Election Code and incorporated by reference by Act 88 as a condition precedent to receiving the funds it authorizes. An interpretation of Act 88 that reads into it the result that millions of dollars are conditioned on fast but inaccurate tallies is “absurd,” and hence plainly not the interpretation the Legislature intended. 1 Pa.C.S. § 1922(1).

*Third*, above all else, the City Commissioners have an express statutory duty to “investigate election frauds,” 25 P.S. § 2642(i), of which duplicate voting is a well-established form. *See generally In re Pa. Gen. Election for Snyder County Com’r*, 841 A.2d 593, 597 (Pa. Cmwlth. 2004) (providing “double voting” as an example of “fraud”); *see also* 25 P.S. § 3548 (imposing statutory duty to enforce election law subject to criminal penalties). Thus, even if it is the case that fulfillment of your statutory duties to ensure election integrity results in a loss of funds under Act 88—an extremely dubious proposition—that is a sacrifice the Election Code and the Commonwealth of Pennsylvania require. *See* 25 P.S. § 2642(g) (imposing duty to “inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted”). Simply put, a desire to secure certain funds cannot justify rendering the City’s elections more vulnerable to a known species of fraud—double voting, which happened 40 times just two years ago. Doing so would not only violate the Election Code, but also the U.S. and Pennsylvania Constitutions by allowing unlawful vote dilution. Finally, seeking funds under Act 88 is optional, but eliminating fraud in your certified tallies is not.

I appreciate your attention to these concerns. We look forward to receiving prompt confirmation that Philadelphia will not abandon or scale back processes and procedures that have been in place prevent duplicate voting in the upcoming election.

Very truly yours,



Joshua J. Voss

cc: [Lisa.Deeley@phila.gov](mailto:Lisa.Deeley@phila.gov); [Omar.Sabir@phila.gov](mailto:Omar.Sabir@phila.gov); [Seth.Bluestein@phila.gov](mailto:Seth.Bluestein@phila.gov)

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*, which requires filing confidential information and documents differently than non-confidential information and documents.

Dated: October 27, 2022

/s/ Joshua J. Voss  
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