

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SEAN PARNELL, *et al*,

Civil Action No. 2:20-1570

Plaintiffs,

vs.

ALLEGHENY COUNTY BOARD OF
ELECTIONS, *et al*,

Judge J. Nicholas Ranjan

Defendants.

DEFENDANTS' STATUS REPORT AND PROPOSED ORDER OF COURT

The parties to this case met and conferred at 1:00 p.m. on Wednesday, October 21, 2020, via teleconference on the three (3) topics addressed in the Court's Order of October 20, 2020, entered at docket No. 11.

STATUS REPORT

I. TREATMENT OF INCORRECT ABSENTEE AND MAIL-IN BALLOTS

During the meet and confer teleconference, counsel of Defendants explained in thorough detail, the process by which the incorrect ballot issue is being addressed. That process is summarized in the Proposed Order of Court below which contemplates retaining the *status quo* with regard to incorrect ballot receipt, sorting and storage. Plaintiffs indicated that it is their position that no received ballots, whether returned by mail or at one of Defendants' satellite offices, should be scanned, sorted or otherwise touched prior to the commencement of the pre-canvass, i.e. 7 a.m. on November 3, other than for the purpose of placing them in the locked ballot room. This proposal would not preserve the *status quo* and would result in the delay of pre-canvass and canvass that would extend for multiple days and possibly over a week, thus creating uncertainty and concern over the results of all races on the ballot. To date, Defendants

have already received, scanned and sorted approximately 225,000 mail-in and absentee ballots and have mailed a total of approximately 380,000 ballots.

In addition, the scanning of documents into the state's SURE system is required to both notify voters that their ballots have been received and to insure any incorrect ballots that have been superseded by a corrected ballot are not included in the pre-canvass or canvass.

2. INSPECTION OF FACILITY

It is Defendants' position that the procedures outlined in the Proposed Order of Court below adequately address any security concerns that Plaintiffs may have. Plaintiffs indicate that the only area of the Elections Division Warehouse that they wished to view was the secure ballot room. In addition to the process outlined below, Defendants have offered to provide photographs from multiple angles to adequately depict that space. Plaintiffs have indicated that photographs would not be sufficient.

Furthermore, Defendants have an obligation to conduct a process that is fair to all candidates on the November 3 ballot. All candidates on the ballot below President and the state-wide row offices (Attorney General, Treasurer, Auditor General) are potentially affected by the issues raised in Count I of Plaintiffs' Complaint. In fact, to the extent any such effects exist, Plaintiffs' opponents are perhaps precisely as affected.

Any tour or inspection of the facility would require the cessation of ballot scanning and sorting so that all ballots could be secured during such a tour or inspection. Arranging facility tours or inspections for all candidates less than two weeks before the election, and ceasing the scanning and sorting activities during such times would delay the necessary work required to timely pre-canvass and canvass all ballots, and create an unreasonable hardship on Defendants.

3. OBSERVATION BY NON-PARTY INDIVIDUALS AT SATELLITE OFFICES

Defendants stated that they have no objection to requested observation, subject only to the conditions to which members of the public have been subject over the past two weekends when the satellite offices have been operating; specifically, wearing a mask, not interfering with any other members of the public, and remaining outside the areas where individuals' applications are being processed through the SURE system and where individuals may be completing ballots.

The satellite offices are public offices and have been treated as such at all times. Not one individual has been denied entry and no self-styled "observer" has been removed for any reason. There is no reason to believe that the requested observers would be any different.

Plaintiffs requested that the named observers receive a private tour of a satellite office prior to this weekend, but indicated that the granting of such a tour would have no effect on the claims pending before the Court; i.e. they would still insist on the issuance of poll-watcher certificates even if granted such a tour in advance.

Respectfully submitted,

/s/ Andrew F. Szefi

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/s/ George Janocsko

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PROPOSED ORDER OF COURT

I. TREATMENT OF INCORRECT ABSENTEE AND MAIL-IN BALLOTS

Defendants shall maintain their current practice of sorting, segregating and preserving ballots returned from individuals who received an erroneously issued ballot. The current practice of maintaining those ballots within a separately designated portion of the locked ballot room shall also be maintained.

With regard to the corrected ballots which are received, Defendants shall likewise maintain their current practice of sorting, segregating and preserving such ballots in the locked ballot room.

The practices described above shall remain in place until the commencement of the pre-canvass at the time designated the applicable provision of the Pennsylvania Election Code or until further Order of Court.

All ballots shall be preserved for the time period required by the Pennsylvania Election Code.

2. FACILITY INSPECTION

The procedures and practices set forth above adequately address any security concerns raised by Plaintiffs on the status conference call with the Court on October 20, 2020, provided, however, that Defendants shall also provide Plaintiffs with photographs of the locked ballot room sufficient to adequately depict the area.

3. OBSERVATION BY NON-PARTY INDIVIDUALS

Consistent with Defendants' current practice, the individuals identified in Plaintiffs' complaint as having requested poll-watcher certificates shall be permitted to observe the satellite offices within Allegheny County subject to the following:

- a. They shall follow all rules in place regarding mask-wearing and social distancing;
- b. They shall not interfere with any other member of the public;
- c. They shall remain outside of the areas designated for application processing and ballot completion; and
- d. They shall only be permitted in the satellite offices during stated and advertised hours of operation.

BY THE COURT,

The Honorable J. Nicholas Ranjan