

ORDER

AND NOW, this _____ day of _____ 2023 upon consideration of the subject MOTION FOR RECONSIDERATION, it is hereby ORDERED that:

1. That given the aggregate error / discrepancy percentage and specifically the “residual vote rate” is 1.72% (and individually 9.09% for Mail-in ballots, and 1.00% for In-person ballots), that the Order to Dismiss subject consolidated petitions be reconsidered, and vacated, and new Order to Require a full recount of ALL 77 Fayette County precincts is GRANTED.
2. That a stay on certification of the May 16th, 2023, primary election in Fayette County until full election recount is completed, or other mutually agreeable remedy is reached, is GRANTED.
3. Petitions No. 1205, 1206, 1207, 1208, 1209, 1211 of 2023, G.D. which all use subject case description “IN RE: PETITION TO OPEN BALLOT BOX PURSUANT TO 25 PA.STAT. § 3261(a) AND TO RECANVASS VOTING MACHINES PURSUANT TO 25 PA.STAT. §3262(a) AND FOR A CORRECT ACCOUNT OF THE MAY 16, 2023, PRIMARY ELECTION FOR THE REPUBLICAN CANDIDATES FOR FAYETTE COUNTY COMMISSIONER” be consolidated for the purpose of this unified MOTION FOR RECONSIDERATION, and subsequent filings, is GRANTED.
4. That consolidated Petitions and MOTION FOR RECONSIDERATION be amended to add Pro Se Plaintiff Jon Marietta (“candidate”) and Pro Se Plaintiff Gregory Stenstrom (“authorized representative”), as qualified intervenors, with direct nexus to the original petitioners, and standing, to justly, expediently, and administratively resolve the remaining controversies, and / or prospective appellate trajectory of the consolidated Petitions, is GRANTED.
5. That Defendants, having already provided due and required notice, immediately provide all public records for the election, in accordance with Act 77.
6. That sanctions and legal expenses award of \$_____ to Plaintiff Marietta is GRANTED.

BY THE COURT

**IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION**

JON R. MARRIETTA JR.,
CANDIDATE FOR FAYETTE COUNTY
COMMISSIONER, PRO SE

and

GREGORY STENSTROM,
AUTHORIZED REPRESENTATIVE,
AS INTERVENORS FOR QUALIFIED
ELECTOR PETITIONERS, PRO SE

Plaintiffs,

v.

FAYETTE COUNTY, PA
and
**FAYETTE COUNTY, PA, BOARD OF
ELECTIONS**

Defendants.

**PRO SE MOTION FOR
RECONSIDERATION**

IN RE: PETITION TO OPEN BALLOT BOX
PURSUANT TO 25 PA.STAT. § 3261(a) AND
TO RECANVASS VOTING MACHINES
PURSUANT TO 25 PA.STAT. §3262(a) AND
FOR A CORRECT ACCOUNT OF THE MAY
16, 2023, PRIMARY ELECTION FOR THE
REPUBLICAN CANDIDATES FOR FAYETTE
COUNTY COMMISSIONER

**Consolidated Petitions No. 1205, 1206, 1207,
1208, 1209, 1211 of 2023, G.D**

CIVIL ACTION: ELECTION CASE

ORAL ARGUMENTS REQUESTED

JURY TRIAL REQUESTED

NOTICE TO PLEAD: To Defendants:
You are hereby notified to file a written response to
Plaintiffs within five (5) days from date of service hereof
or a judgement may be entered against you. /s/ Jon R.
Marietta, Jr. & Gregory Stenstrom

MOTION FOR RECONSIDERATION

Plaintiffs respectfully request the Honorable Court reconsider its Order to Dismiss subject consolidated petitions, and in support thereof avers as follows:

1. There was insufficient evidence to support a finding that the Plaintiffs (cum Petitioners) "failed to produce prima facie evidence," in that:
 - a. Defendants had 98 days to curate and prepare to provide the "Republican Candidates for Commissioner" primary ballots to Plaintiffs (cum Petitioners who only had several hours to tabulate, calculate, and prepare said "prima facie evidence" of forty-one (41) errors of 2,385 ballots provided for inspection by Defendants; (See Exhibit A)
 - b. Defendants' Solicitor, falsely testified there was only one (1) error in the reported total of 2,400 ballots for the six (6) selected precincts, with a corresponding 0.039% error rate, grossly misrepresenting the true error rate to the Honorable Court;

- c. Defendants reported 1,489 Republican, 1,057 Democrat, and 2,546 total ballots in their "official" tally for the six (6) selected precincts;
 - d. Defendants only provided 1,487 Republican ballots for recount for six (6) precincts, omitting providing two (2) Provisional ballots;
 - e. For the In-person election day voting recount, twenty-two (22) errors / discrepancies were found, out of 2,198 total votes cast for the four Republican candidates for Commissioner Grimm, Lohr, Dunn and Marietta) for an In-person error / discrepancy rate of 1.00% (percent);
 - f. For the Mail-in ballot voting recount, seventeen (17) errors / discrepancies were found, out of 187 total votes received by the four Republican candidates for Commissioner Grimm, Lohr, Dunn and Marietta) for a Mail-in Ballot error / discrepancy rate of 9.09% (percent);
 - g. The accuracy requirement for optical scan voting systems are required to achieve is a "residual vote rate" of no more than 0.5% for each contest on the ballot;
 - h. The aggregate optical scanner error rate for In-Person and Mail-in ballots derived from discrepancies, while only allowing for 2 errors for the Provision Ballots not provided by the Defendants ($22 + 17 + 2 \Rightarrow 41$), divided by the total number of votes counted for the "Republican Count Commissioner" primary election ($2,198 + 187 \Rightarrow 2,385$ possible cast votes, is $(41 / 2,385) * 100 \Rightarrow 1.72\%$ (percent);
 - i. Hence, the recount of the six precincts, for which the Defendants had 98 days to curate and prepare for, having revealed an error rate of 1.72%, exceeds the required 0.5% error rate, thus requiring a full recount for all seventy-seven (77) precincts;
 - j. Given the substantial error rate, and Defendants' 98-day curation and preparation time for only six (6) pre-selected precincts, it is reasonable to presume the balance of seventy-one (71) precincts may have a higher error rate;
 - k. The May 16th, 2023, Primary certification should therefore be delayed.
2. Plaintiffs submit this subject motion, and will file a Memorandum of Law, with citations and exhibits under separate cover, prior to requested Oral Arguments and/or Jury Trial, to respectfully and most expediently give notice to this Honorable Court, and Defendants, and provides the

abbreviated arguments and requested remedies below for immediate consideration of subject motion.

SUMMARY

3. Defendants failed to comply with this Honorable Courts August 9th, 2023, original order, and subsequent amending order of August 23rd, 2023, to provide all election result materials sufficient to satisfy Defendants' burden of production, for the Trier of Fact(s) to fully and properly adjudicate the subject matter(s), a fact that Plaintiffs submit would change the outcome and order, and further clarified in attached Memorandum of Law.
4. Subject motion seeks timely administrative remediation of this situation with subject motion, as a matter of justice, where even a timely, and expedited appeal would not serve the public good, or not infringe on the civil and statutory rights of Pro Se Plaintiff, and Candidate, Marietta.
5. Defendants had over ninety-eight (98) days since the May 16th, 2023, primary election, to curate, perfect, and meet their burden to produce election result materials for only six (6) precincts of seventy-seven (77), and objected, stalled, delayed, and denied Plaintiff Marietta (cum Petitioners) rights to view these public records as defined by Act 77, Section 1307-1309, refusing to even provide copies, and only reluctantly allowing Plaintiff Marietta to view an incomplete subset of MIB's through a glass window partition as County officials laboriously held each ballot up, one-by-one, taking the majority of working hours on August 21st and 22nd, 2023, and not permitting any photographs, as also allowed by law and most recent PA Office of Open Records (OOR) rulings.
6. Having had only several hours to tabulate the noncompliant and incomplete election materials provided by Defendants to Plaintiff Marietta, after 98-days to curate and prepare them, and with those results in the hands of former named Counsel Teufel, but not provided opportunity to be admitted at the August 22nd, 2023, hearing, and only Defendants' Solicitor's unsupported, and false, testimony that there was only "one" (1) error in a recount of six (6) precincts (which Defendant's gleefully announced to the news media), with said solicitor only obliquely admitting multiple "discrepancies," Plaintiffs remit that the Honorable Court correspondingly erred in its Order.
7. Further, Defendants' Solicitor openly admitted during hearings held by this Honorable Court that Defendants ran ALL ballots received on elections day through a single optical scanner / voting

machine without segregating them by precinct, having presumably loaded all seventy-seven (77) precinct Ballot Definition Documents ("BDD"s) which enable an optical scanner and voting machine software to read, tabulate and properly create a resulting Cast Vote Record ("CVR").

8. A CVR is the "official" election record and contains a tabulation of all votes, by precinct, and by candidate, assuming the machine(s) were properly uploaded with BDD's specific to each different election and precinct, with images of each ballot included in the CVR to facilitate rapid reconciliation by public Board of Election ("BOE") officials with precinct Return Sheets.
9. Whether unknowingly, or by design, the Defendant's "acquiescence" to permit Plaintiff (cum Petitioners) to visually "inspect" the subject physical ballots in the manner they did (contrary Act 77 1307-1309 and OOR orders that Defendants' Solicitor had a duty to know of) was hardly an equivalent to the Honorable Courts initial order to compel production of these public documents. Had Defendants complied with the original order, substantial time and expense could have been saved by Plaintiff Marietta, the Court, and most certainly have better served the public good. Should the Honorable Court rule favorably for the Plaintiffs, and reinstitute its original order to compel for recount and inspection of the balance of the 71 precincts, and permit photographs, as ordered by PA OOR, and allowed by other Counties in the Commonwealth of Pennsylvania, satisfactory resolution of the controversy at hand could be accomplished smartly, efficiently and with the speed to meet pending primary election preparations and deadlines.
10. Had this Honorable Court been made aware of the fact that the error / discrepancy rate was 1.72%, with a 9.09% error / discrepancy in Mail-in ballots, which is well in excess of statutory requirement requiring an automatic recount for all precincts for errors / discrepancies of 0.5%, and in full possession of all relevant facts, the Honorable Courts order citing that Plaintiff Marietta (the person of interest of the original Petitioners) "did not provide prima facie evidence" would not have occurred, hence this subject motion.
11. The burden of production, and burden of persuasion, required for this Honorable Court to perfect said burdens as admitted "evidence" rests with the public officials and government Defendants, not the Plaintiffs (cum Petitioners), in assuring the public that Defendants, as duly sworn public officials and servants, administer fair and honest elections on behalf of the People.
12. The "judicial climate" fomented by partisan parties in the sixty-seven (67) Counties of the Commonwealth of Pennsylvania, and our nation, that it is incumbent upon candidates, certified

poll watchers, authorized representatives and the American people to "prove" election "discrepancies" or election fraud at each end of the spectrum, has subverted our elections, and stifled objective adjudication of statutory and common election law(s).

13. Reconsideration by this Honorable Court, and granting of the attached proposed order, would serve the public good in realigning the requirement for burden of production and proof, and remedy said subversions of election law by (potentially) partisan public officials.

STANDING

14. Plaintiff Marietta is qualified intervenor, the person of interest for which petitioners originally filed subject petitions, and a harmed party, as Republican **Candidate** for Fayette County Commissioner.
15. Further, Plaintiff Marietta has been the sole named retainer and payer of formerly assigned named attorney and counsel, Gregory Teufel, for subject petitions, with legal fees of approx. \$30,000.00 expended to date.
16. Pro Se Plaintiff Marietta has been required to reluctantly discharge former attorney Teufel (on August 26th, 2023), having exhausted his financial resources to continue paying named attorney, with no other petitioner of potential intervenor with standing having come forward to finance a licensed attorney to represent Petitioners or Plaintiffs.
17. Pro Se Plaintiff Stenstrom is a qualified intervenor for Plaintiff Marietta's as his statutory **"authorized representative,"** a friend and advisor, and is one of the constitutional People of Pennsylvania, with special expertise in election law, forensics, and fraud, beyond that expected of lay persons iaw Pa.R.C.P.

AMENDED PETITION

18. As Pro Se Plaintiff, Mr. Stenstrom may offer argument and testimony congruent with Pa.R.P.C that is not expected to exceed basic knowledge of Pennsylvania statutory election law and Common Law, but if challenged by Defendants' counsel as to whether such testimony transcends into expert witness testimony, is prepared to proffer proof, with curriculum vitae, iaw Pa.R.P.C., at the requested hearing for the subject motion.
19. Plaintiffs respectfully request the Honorable Court to amend subject petition admitting them as

both qualified intervenors, and their appearance as Pro Se Plaintiff litigants, in order to meet strident laches requirements of Pennsylvania election law, meet pending election certification requirements, and recognize Plaintiffs as only persons remaining with standing and wherewithal to submit the subject motion and collateral filings, to fully adjudicate, and justly remediate subject petitions.

RELIEF REQUESTED

20. Defendants have employed a delaying strategy to exhaust Plaintiffs financial resources and frustrate the Honorable Court, knowing that impending deadlines to complete November 7th, 2023, primary election preparations must be weighed by the Honorable Court for the public good.
21. The Defendants' Solicitor false testimony that there was only one (1) error, weighed heavily on the Court's ruling and order.
22. Whether such delaying strategy was done knowingly, or unknowingly, the Defendants, as public officials, and their Solicitor, nevertheless, have a duty to know, and Plaintiff Marietta should be awarded sanctions as permitted by law, and with the discretion of the Honorable Court, to award legal expenses (currently approx. \$30,000, not including further expenses that may emanate should requested relief be granted), and not further chill other candidates, or the People of Pennsylvania, from asserting their statutory and common law rights regarding fair and honest elections, regardless of whether errors or discrepancies were within Defendants' control.
23. Plaintiff Marietta should also be awarded the \$50 per precinct (\$300) withheld by Defendants, having provided prima facie evidence of election result errors / discrepancies.
24. Plaintiff Marietta has expended substantial expense to serve the public good and trust as a County Commissioner, and further expended \$30,000 in legal fees to date to protect the People of Fayette Counties votes, and properly assert his statutory and common law rights to assure fair and honest elections.
25. Further time and expense could be spared by simply ordering that Plaintiff Marietta be included as a Republican candidate on the November primary ballot for election as County Commissioner, which remedy the Court may find some level of precedent in Marks v Stinson (citation), or may otherwise be agreed upon by Defendants during oral arguments as a satisfactory remedy.

26. Notwithstanding the prospective, proposed aforementioned remedy, Plaintiffs have no other option than to request this Honorable Court order a full recount of all precincts, as required by statutory election law.

Respectfully submitted:



JON R. MARIETTA JR.

Date: 28 AUG 2023

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724-880-4507



GREGORY STENSTROM

28 AUG 2023

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EXHIBIT A

	Registered Voters	Registered Republicans	Total Ballots Cast	Republican Election Day Ballots	Republican Mail In Ballots	Republican Provisional Ballots	Total Republican Cast Ballots	Total Election Day Votes for 4 Candidates	Total Mail in Votes for 4 Candidates	Reported Undervotes
Bullskin 1	2651	1551	896	540	52	0	592	873	98	209
Recounted				540	52	0	592	865	98	
Difference (ABS)				0	0	0	0	8	0	
Bullskin-3	904	493	301	170	10	0	180	258	17	85
Recounted				170	10	0	180	258	18	
Difference (ABS)				0	0	0	0	0	1	
Connellsville	1308	714	395	206	15	0	221	349	26	67
Recounted				206	15	0	221	346	15	
Difference (ABS)				0	0	0	0	3	11	
Dunbar	582	302	183	105	6	0	111	168	12	42
Recounted				105	6	0	111	165	11	
Difference (ABS)				0	0	0	0	3	1	
Georges	1462	667	454	175	19	2	196	272	34	82
Recounted				175	19	0	194	271	30	
Difference (ABS)				0	0	2	2	1	4	
South Connellsville	1059	573	317	180	9	0	189	300	15	63
Recounted				180	9	0	189	293	15	
Difference (ABS)				0	0	0	0	7	0	
Total Reported	7966	4300	2546	1376	111	2	1489	2220	202	548
Total Recounted			1487	1376	111	0	1487	2198	187	
Difference (Absolute)			1059	0	0	2	2	22	17	
Discrepancy Percentage				0.00%	0.00%	200.00%	0.13%	1.00%	9.09%	
Total Aggregated Recount Percentage (Total Election Day + Mail-In Discrepancies / Total Ballots Canvassed)									1.72%	

VERIFICATION

We, Jon R. Marietta, Jr. and Gregory Stenstrom state that we are Pro Se Plaintiffs in this matter and are authorized to make this Verification on its behalf. We hereby verify that the statements made in the foregoing MOTION FOR RECONSIDERATION are true and correct to the best of our knowledge, information, and belief. This verification is made subject to the penalties of 19 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



JON R. MARIETTA JR.

Date: 28 AUG 2023

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28 AUG 2023

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SELF REPRESENTATION (PRO SE)

COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA, CIVIL DIVISION:
ELECTION LAW

JON R. MARIETTA JR.

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**IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION**

CIVIL ACTION-LAW

Consolidated Petitions No. 1205, 1206, 1207, 1208, 1209, 1211 of 2023, G.D

MARIETTA, et al.
Plaintiffs,
v.
FAYETTE COUNTY, PA, et. al,
Defendants

CERTIFICATE (PROOF) OF SERVICE

Plaintiffs certify that they caused MOTION FOR RECONSIDERATION to be served on the following via U.S.P.S. Certified Mail, personal service, and/or email to:

Defendants, Fayette County, PA
c/o Board of Elections
Solicitor Sheryl Heid
61 East Main Street
Uniontown, PA 15401
(724) 430-1200

/S/ Jon R. Marietta, Jr., and Gregory Stenstrom

Dated: August 28th, 2023