

IN THE
United States District Court
Eastern District of Pennsylvania
CIVIL ACTION - ELECTION LAW

ROBERT MANCINI, PRO SE,
Authorized Representative
and
JOY SCHWARTZ, PRO SE
Candidate for Delaware County Council
and
GREGORY STENSTROM, PRO SE
Authorized Representative
and
LEAH HOOPES, PRO SE
Authorized Representative
Plaintiffs,

v.

DELAWARE COUNTY, PA,
and
**DELAWARE COUNTY BOARD OF
ELECTIONS**
Defendants.

Case No. _____

CIVIL ACTION: VIOLATION OF
FEDERAL ELECTION LAW

COMPLAINT / PETITION

INJUNCTION REQUESTED
DISCOVERY REQUESTED
ORAL ARGUMENTS REQUESTED
JURY TRIAL REQUESTED

COMPLAINT

Election machines used to process and tabulate votes in Delaware County, Pennsylvania, are not tested, certified, or operated in compliance with federal law. Defendants' recalcitrant, willful violations of 52 USC 21081(a)(5) "*ERROR RATES*" provide a critical vector for massive election fraud. Plaintiffs have hard, physical evidence, witness affidavits, court testimony, and admissions by public officials, that Defendants have, in fact, been committing election fraud with the help of uncertified election machines that enable that election fraud, depriving Plaintiffs, the People of Delaware County, and the Commonwealth of Pennsylvania, of their constitutional rights for honest and fair elections and requires immediate federal court intervention.

BASIS OF JURISDICTION

1. Federal question regarding 52 USC 21081(a)(5): “*Error Rates. The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission...*”
2. Violation of Federal Laws including the U.S. Constitution’s Fourteenth Amendment’s Equal Protection Clause, The Supremacy Clause (Article VI, Clause 2), the Civil Rights Act and supporting U.S. Supreme Court case law.
3. This Court also has jurisdiction over this action pursuant to 28 USC section 1331 as it presents federal questions under the American Public Administration (APA), Help America Vote Act (HAVA), and Federal Advisory Committee Act (FACA), which are significant components of federal legislation that have shaped the electoral process in the United States.
4. This Court has authority to issue declaratory and injunctive relief under 5 USC section 706.
5. “Erie Doctrine” objections do not apply as the present issue is solely a matter of federally mandated law, not a matter of diversity jurisdiction, procedural discretion, or impingement of State or local municipal rights.
6. While Defendants are at County level in the subject case, with their large population Delaware County, Pennsylvania’s refusal to comply with verification of election machines, logic and accuracy testing, recounts, recanvassing, and disclosure of public records, to ensure safe and honest elections substantially impacts electoral college outcomes for Pennsylvania and is, therefore, of critical national (federal) interest to the Republic.

STATEMENT OF CLAIM

7. According to 52 USC 21081(a)(5), a State shall adopt voting system guidelines and processes that are consistent with the requirements of section 21081 of this title.
8. According to *The Supremacy Clause of the U. S. Constitution*, a State shall not violate

Federal Laws.

9. The Tenth Amendment “*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*” In this case the Plaintiffs and People have been repeatedly denied their rights to address their grievances, challenge the unlawful means in which Defendants conducted elections and used election machines, or examine public election records that would confirm Defendants lawlessness.
10. Events giving rise to the subject complaint occurred in Delaware County, and Delaware County Court of Common Pleas (“Delaware CCP”) cases *Delaware County v Robert Mancini* (CV-2023-000307, CV-2023-001509, CV-2023-002153, CV-2023-002255); and *Robert Mancini v Delaware County* (CV-2023-008767); *Missino, Stenstrom, Hoopes et al v. Delaware County et al* (CV-2022-008091); *Schwartz, Stenstrom, Hoopes, Rumley v Delaware County et al* (258 MD 2023 (CommCt of Pennsylvania) and CV-2023-006012 (Delaware CCP)); and *Schwartz, Stenstrom, Hoopes, Rumley v Delaware County et al* (1497-1510 CD 2023 Commonwealth Court of Pennsylvania), and *Stenstrom v Delaware County* AP 2023-1326 (Consolidated appeal of Office of Open Records (“OOR”) Dkt. Nos. AP 2023-1327, AP 2023-1328, AP 2023-1329, AP 2023-1330, and AP 2023-1332).
11. In all of the above cases, for which the crux of Pro Se citizen Plaintiffs’ complaints were Defendants’ refusal to comply with federal and state laws requiring certification and testing of election machines, and conduct of elections, the Delaware County Court of Common Pleas reversed all PA Office of Open Records (“OOR”). Orders to release public election records; denied election recounts and examination of the ballot boxes; denied requests for litigation holds to preserve election records (which Defendants subsequently destroyed or spoliated), and have refused to hear, respond to, or adjudicate *Missino et al v Delaware County*, regarding election machine certification and logic and accuracy testing, and observable canvassing, for over **580 days**.
12. The Delaware County Court of Common Pleas has quashed or thwarted dozens of Delaware County citizen Plaintiffs’ (with standing) litigative attempts, since November 2020, to

remedy blatant violations of criminal law and election law that was admitted to by the Defendants, for which Plaintiffs have also provided hard physical evidence, and elicited sworn testimony from Defendants in hearings, of said unlawful acts and crimes by the Defendants.

13. Despite both Plaintiffs, and PA OOR orders, citing black letter federal and state statutes, and US Supreme Court case law as precedents, the Delaware County Court of Common Pleas has contrarily and repeatedly cited self-referential, local Delaware County Court of Common Pleas (“CCP”) rulings as prevailing precedents of law, to wit Judge Angelos’ order that:

“Pursuant to the coordinate jurisdiction doctrine, this Court applies the precedent established by the Honorable Barry C. Dozor, Judge of the Court of Common Pleas in Delaware County, in Joshua Moneghan v. The Delaware County, Delaware County CCP Docket CV-2022-005757 and the Honorable Kelly D. Eckel, Judge of the Court of Common Pleas of Delaware County in County of Delaware v. Patricia Bleasdale, Delaware County CCP Docket CV- 2022-009473 to the legal issue presented in these conducted proceedings.”

14. Specifically, the local Delaware County CCP has repeatedly affirmed that the Defendants’ bureaucratically appointed Delaware County Board of Elections, and the appointed “Director of Elections,” James Allen, have complete and utter, final authority in deciding whatever they please with regards to conforming to federal and state election laws and the release of public election records, and they have continuously violated those laws.
15. Plaintiffs’ attempts to address these issues in the Commonwealth Court of Pennsylvania, which has both original and appellate jurisdiction in matters of election law, have similarly been thwarted primarily through procedural, anonymous “per curiam” orders referring Plaintiffs back to the Delaware County CCP.
16. In the case of *Hoopes & Stenstrom v Secretary of the Commonwealth Boockvar et al* (876 & 877 CD 2022), which provides video, photo, audio, texts and emails substantiating massive election fraud as a result of Defendants’ criminal violations of election law, The

Commonwealth Court has allowed the case to languish unadjudicated for **958 days**.

17. Plaintiffs Stenstrom and Hoopes, as former co defendants with President Trump, in *Savage v Trump et al* (CV-2020-007523 Philadelphia CCP) successfully defended themselves Pro Se over an **860 day** discovery and pre-trial period during which not a single allegation of massive election fraud, in which uncertified and untested election machines were a key component, was able to be refuted.
18. Hence, it is a matter of both public and judicial record that the subject complaint before the Honorable Court is not a mere “technical” matter to be left to local courts, but of critical national interest that cannot be similarly allowed to be strategically delayed and languish unadjudicated with the November 2024 presidential election coming fast upon the nation.
19. Pro Se Plaintiffs come before the federal court in a state of exasperation and financial exhaustion having been repeatedly strategically mooted, and denied requested oral arguments, hearings, and jury trials to address their grievances, by the Commonwealth Court of Pennsylvania, Delaware County Court of Common Pleas, and Defendants, who have administratively, procedurally, and petulantly dismissed them, and insisted that they are above the laws of the Commonwealth of Pennsylvania, and the United States Constitution and the laws of the United States of America in violation of the public trust.
20. Plaintiffs request the Honorable Federal Courts’ intervention and oversight in ensuring Defendants comply with federal and state laws regarding required certification of election machines and logic and accuracy testing for the forthcoming November 2024 presidential election, and adjudication and accountability for the violations of law that have already resulted in massive election fraud in previous national elections.
21. Should the Honorable Federal Court hear and grant the requested relief that election machines cannot be used if they cannot be assured that election fraud can be averted in the forthcoming November 2024 election, there is a superior alternative. Hand counted tabulations at the precinct level were used successfully for over two hundred (200) years in the United States of America.

22. In summary, the Defendants contemptuous violations of federal and state election laws and refusal to test and verify election machines in accordance with law, while providing a criminally false attestation to the contrary, provides a continuing vector for MASSIVE election fraud, that Defendants have already, in fact, facilitated and committed in previous elections, and must be addressed by the Honorable Federal Court of the Eastern District of Pennsylvania.

FACTS

23. In regard to *Delaware County v Robert Mancini* (CV-2023-000307, CV-2023-001509, CV-2023-002153, CV-2023-002255), Plaintiff Mancini had successfully petitioned the Pennsylvania Office of Open Records (“PA OOR”) in cases AP 2022-2667, AP 2023-0133, AP 2023-0066, and AP 2023-0104, for public election records pertaining to the November 2022 national elections for the US Senate and gubernatorial election for the Commonwealth of Pennsylvania. (See Exhibits A, B, and C).

24. The records requested by Pro Se Plaintiff Mancini were specific to election machine certifications and logic and accuracy testing required to ensure honest and fair elections and access to these records was granted by the PA OOR.

25. Defendant Delaware County unsuccessfully appealed, or failed to file timely appeals, to the above PA OOR Orders, and subsequently entered into a one-year litigative dogfight in the Delaware County Court of Common Pleas to reverse the affirmed PA OOR Orders.

26. Images of the PA OOR dispositions of Plaintiff Mancini public records requests are included below for brevity, with the key element being that all were reversed by the Delaware County CCP.

Docket #	Issue Date	Title	Description	County	Status
2022-2667	12/13/2022	Robert Mancini v. Delaware County	Request sought records associated with machines used to count votes in the 2022 election. Records qualify as "other documents and records." Agency must provide responsive records subject to the access provisions in the Election Code. Granted.	Delaware	Reversed by Common Pleas

Docket #	Issue Date	Title	Description	County	Status
2023-0133	02/17/2023	Robert Mancini v. Delaware County	Request sought a numerical list of voters used to determine the number of voters who cast ballots in a specific precinct. The County argues only that the request needs to go through the Elections Office utilizing the Election Code. Granted subject to the Election Code.	Delaware	Reversed by Common Pleas

Docket #	Issue Date	Title	Description	County	Status
2023-0066	02/08/2023	Robert Mancini v. Delaware County	Requests sought ballot records for the 2022 election. Agency demonstrated that the records are subject to the provisions of the Election Code. Granted.	Delaware	Reversed by Common Pleas

Docket #	Issue Date	Title	Description	County	Status
2023-0104	02/08/2023	Robert Mancini v. Delaware County	Consolidated with 2023-0066.	Delaware	Reversed by Common Pleas

27. These cases plainly show in findings, admissions, and subsequent hearing transcripts that Defendants did not comply with 52 USC 21081(a)(5) *Error Rate* requirements, have done so on a continuing basis, and clearly intend to continue to not comply with law.

28. The approximate date and time of events giving rise to this complaint occurred in Delaware County which used electronic voting systems not compliant with 52 USC 21081(a)(5) in November 2020, May 2021, November 2021, May 2022, November 2022, May 2023, November 2023, April 2024, and indications show intent to do so again in November 2024.

29. On a witness stand on May 24, 2023, James P. Allen, Director of Elections for Delaware County (Hereinafter, “Allen”), admitted that Defendants did not do a secure-build validation, also known as “hash-testing.”

30. According to the Pennsylvania Department of State’s Certification for Use of Election Machines, jurisdictions must perform a secure-build validation (“hash testing”) as part of the electronic preparation activities and post-election canvassing.

31. Without secure-build validation/hash testing there is no guarantee that election machines software actually being used in the machines matches the software that was tested and approved by the Pennsylvania Department of State.

32. Without secure-build validation (“hash testing”) and post canvass activities, there is no way to prevent or know if anyone has tampered with the system, and / or modified election

results.

33. Failure to perform secure-build validation (“hash testing”) prevents Delaware County, Pennsylvania’s voting systems from having Election Assistance Commission (“EAC”) Certification.
34. Defendant Delaware County used Hart version 2.3.4 prior to February 16, 2023, and thereafter (and currently) uses Hart Verity Voting 2.7 Electronic Voters System (Hereinafter, “Hart”).
35. Without an EAC Certification, Defendant cannot use the Hart system in an election because the EAC never tested Delaware County’s Hart 2.3.4 and 2.7 for compliance with federal 52 21081(a)(5) statutes.
36. While Hart attested to accuracy, Defendants cannot use that attestation without independent accuracy testing (by Defendants), as it violates the Hart Master Agreement paragraph 12.1 which states that *“Customer acknowledges it has independently determined that the Products purchased under this agreement meet its requirements.”*
37. Secure-build validation/hash testing is a crucial component of Logic and Accuracy testing.
38. Defendants’ named agent and Director of Elections, Allen filed an attestation with the Pennsylvania Department of State via email on April 25, 2023, stating that the Logic and Accuracy testing was performed as required for the November 8, 2022, Federal Election (See Exhibit D).
39. During a May 24, 2023, hearing, when Delaware County Director of Elections Allen was asked by Pro Se Plaintiff Robert Mancini, *“Did Delaware County hash test the machines prior to the November 2022 election,”* to which Allen’s sworn testimony response was:
 - a. *“It’s not required. No.”*
40. Therefore, Defendants’ agent, James Allen, falsified the April 25, 2023, attestation he filed with the Pennsylvania Department of State in violation of 18 Pa. C.S. 4911.

41. The Hart Verity Voting System as used by Delaware County, Pennsylvania is not in compliance with 52 USC 21081(a)(5).

42. 52 USC 21081(a)(5) states that the voting systems “*shall comply with the error rate standard established under section 3.2.1 of the voters system standard issued by the Federal Election Commission (FEC) in effect on October 29th, 2002.*”

43. Section 3.2.1 “Accuracy Requirements” states the following:

“Voting system accuracy addresses the accuracy of data for each of the individually ballot positions that could be selected by a voter, including the positions that are not selected. For a voting system, accuracy is defined as the ability of the system to capture, record, store, consolidate and report the specific selections and absence of selections, made by the voter for each ballot position without error. Required accuracy is defined in terms of an error rate that for testing purposes represents the maximum number of errors allowed while processing a specified volume of data. This rate is set at a sufficiently stringent level such that the likelihood of voting system errors affecting the outcome of an election is exceptionally remote even in the closest of elections.

The error rate is defined using a convention that recognizes differences in how vote data is processed by different types of voting systems. *Paper-based and DRE systems have different processing steps. Some differences also exist between precinct count and central count systems. Therefore, the acceptable error rate applies separately and distinctly to each of the following functions:*

a. For all paper-based systems:

1) Scanning ballot positions on paper ballots to detect selections for individual candidates and contests;

2) Conversion of selections detected on paper ballots into digital data;

b. For all DRE systems:

1) *Recording the voter selections of candidates and contests into voting data storage; and*

2) *Independently from voting data storage, recording voter selections of candidates and contests into ballot image storage.*

c. *For precinct-count systems (paper-based and DRE):*

Consolidation of vote selection data from multiple precinct-based systems to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data; and

d. *For central-count systems (paper-based and DRE):*

Consolidation of vote selection data from multiple counting devices to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data.

For testing purposes, the acceptable error rate is defined using two parameters: the desired error rate to be achieved, and the maximum error rate that should be accepted by the test process.

For each processing function indicated above, the system shall achieve a target error rate of no more than one in 10,000,000 (ten million) ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 (five-hundred thousand) ballot positions.

44. The EAC that oversees all electronic voting systems was established by The Help America Act (HAVA).

45. On August 4, 2023, the EAC issued guidance on the requirement “*minimum ballot position*,” reaffirming and discussing the requirement for a minimum of 10,000,000 (ten million) ballot positions that must be read by the voting system and tabulated accurately.

46. Under Pennsylvania Law a ballot is defined in Pennsylvania Act 77 Section 1002, as

presented in the image below

Section 1002. Form of Official Primary Ballot.--(a) At primaries separate official ballots shall be prepared for each party which shall be in substantially the following form:

Official..... Primary Ballot.
(Name of Party)
.....District,.....Ward, City of.....,
County of....., State of Pennsylvania
.....Primary election held on the.....day of....., 19...

Make a cross (X) or check (✓) in the square to the right of each candidate for whom you wish to vote. If you desire to vote for a person whose name is not on the ballot, write[, print or paste] **or stamp** his name in the blank space provided for that purpose. Mark ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink in fountain pen or ball point pen. Use the same pencil or pen for all markings you place on the ballot.

President of the United States.
(Vote for one)

John Doe
Richard Roe
John Stiles

United States Senator.
(Vote for one)

John Doe
Richard Roe
John Stiles

Governor.
(Vote for one)

John Doe
Richard Roe
John Stiles

Representative in Congress.....District.
(Vote for one)

John Doe
Richard Roe
John Stiles

Delegates at Large to National Convention.
(Vote for.....)

John Doe
(Committed to Jeremiah Smith)
John Stiles
(Uncommitted)

Delegate to National Convention.....District.
(Vote for.....)

John Doe
(Committed to Jeremiah Smith)
John Stiles
(Uncommitted)

Senator in the General Assembly.....District.
(Vote for one)

John Doe
Richard Roe
John Stiles

Member of State Committee.
(Vote for one)

John Doe
Richard Roe
John Stiles

Party Committeemen.
(Vote for.....)

John Doe
Richard Roe
John Stiles

ACT 77 Section 1002 Ballot Definition

47. The balance of Pennsylvania Act 77 Section 1002 is as follows:

(b) On the back of each ballot shall be printed in prominent type the words "OFFICIAL PRIMARY BALLOT OFPARTY FOR" followed by the designation of the election district for which it is prepared, the date of the primary and the facsimile signatures of the members of the county board of elections. The names of candidates shall in all cases be arranged under the title of the office for which they are candidates and be printed thereunder in the order determined by the casting of lots as provided by this act. Under the title of such offices where more than one candidate is to be voted for, shall be printed "Vote for not more than" (the blank space to indicate the number of candidates to be voted for the particular office.) At the right of the name of each candidate there shall be a square of sufficient size for the convenient insertion of a cross (x) or check (^š) mark. There shall be left at the end of the list of candidates for each office (or under the title of the office itself in case there be no candidates who have filed nomination petitions therefor) as many blank spaces as there are persons to be voted for, for such office, in which space the elector may insert, **by writing or stamping**, the name of any person whose name is not printed on the ballot as a candidate for such office. Opposite or under the name of each candidate, except candidates for the office of President of the United States and candidates for delegate or alternate delegate to a National Party Convention, who is to be voted for by the electors of more than one county, shall be printed the name of the county in which such candidate resides; and opposite or under the name of each candidate except candidates for delegate or alternate delegate to a National Party Convention who is to be voted for by the electors of an entire county or any congressional, senatorial or representative district within the county, shall be printed the name of the city, borough, township or ward, as the case may be, in which such candidate resides.

48. Without secure-build validation/hash testing and post canvas activities, voting machine systems can be tampered with.
49. The Pennsylvania 25 P.S. Election Code § 1111 specifically states that the “custodian and deputy custodians of voting machines” are solely responsible for the certification of election machines and sworn attestation of certifications and testing that are provided to the state.
50. The Defendants (and other counties in Pennsylvania) (and the nation)), have created political officer “Directors of Elections” and like fictional roles with no statutory authority for the purpose of subverting and violating federal and state election laws, Pennsylvania Act 77, unilateral adjudication of open public records laws for election records, and unlawfully conduct election machine certifications, logic and accuracy testing, and unlawfully sign attestations for the state.
51. 25 P.S. § 1111(e) states “*No member of the county election board, nor custodian, nor other employe of the county election board, shall, in any way, prevent free access to and examination of all voting machines, which are to be used at the election, by any of the duly appointed representatives aforesaid; and the county election board and their employes shall afford to each such representative every facility for the examination of all registering counters, protective counters, and public counters of each and every voting machine.*”
52. Defendants’ selected Marianne Jackson as “Interim Director of Elections” to run the November 2020 federal election in Delaware County, Pennsylvania, for \$20,000 per month with full knowledge that Jackson had absolutely no experience in elections nor any other related experience. Jackson admitted as much, and stated her only experience in elections was as a voter.
53. Marianne Jackson’s role was administrative as evidenced by her not signing sworn attestation of certification and logic and accuracy testing in the November 2020 election.
54. Defendants then hired Director of Elections Allen shortly after the November 2020 elections, who was previously the public Communications Officer for elections in Cook County (Chicago), Illinois, who is now providing (or not providing) false attestations of

election machine certifications and logic and accuracy testing since.

55. Defendants hired James Savage (hereinafter “Savage”) for the statutory role of custodian of election machines shortly before the November 2020 elections. Savage was the former President of the Philadelphia US Steel Workers Union, Vice Chair of the Democrat Party, and a political activist who had openly advocated for President Trumps removal from office and imprisonment.
56. Savage did NOT conduct, or sign sworn attestation for, certification and testing of election machines, as required by statutory law.
57. On November 5th, 2020, Savage inserted dozens of USB v-cards uploading hundreds of thousands of votes into election tabulation servers two days after the election with no chain of custody, or auditable pedigree that those votes had emanated certified election machines (with secure-build validation/hash testing), with no way for the election management system (“EMS”) to electronically determine if they were authentic.
58. Subsequent litigative and OOR requests by Plaintiffs since November 2020 for canvassing, public records, recounts, have been unilaterally stifled and blocked by Defendants’ political officer Allen and either affirmed, or left unadjudicated, by the Delaware CCP and Commonwealth Court as described herein.
59. Contrary to 25 P.S. § 1111(e) (cited above), political officer Allen has prevented any meaningful observation of certification, secure-build validation/hash testing, and logic and accuracy testing for every election since November 2020. Allen unilaterally confined observers to pens at log distance from testing area, turned machine election screens from observers, prevented observers from bringing in phones or electronics, prevented photos, and prevented their use of binoculars. Allen’s edicts were enforced by over a dozen armed Sheriffs and municipal police officers who required observers to pass through metal detectors and be frisked, essentially limiting them to be isolated in a building with paper and pencil.
60. Hence, Defendants and its appointed Board of Elections has unlawfully delegated statutorily

reserved powers to a political bureaucratic body and political officer that does not answer to the People (or Plaintiffs), making it impossible to observe or redress grievances.

61. Secretary of the Department of Homeland Security ("DHS"), Jeh Johnson, stated that election machines and their storage are part of critical national infrastructure in an official DHS press release on January 16, 2017 (*On the Designation of Election Infrastructure as a Critical Infrastructure Subsector*).

(<https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical>)

62. States and Counties receive federal grant money for the security, protection, certification and testing of election machines.

63. Starting with the November of 2020 election and for subsequent elections, all attempts at election transparency under 25 PA.STAT. §§ 3261(a), § 3262(a), after electors suspected fraud or error, were thwarted by Allen, the Delaware County Board of Elections, and Delaware County Court of Common Pleas judges.

64. One of the means to validate election results and detect election fraud is 25 Pa. Stat. § 3154 *Computation of returns by county board; certification; issuance of certificates of election reconciliation of votes*, otherwise known as the "Return Board Report." The Return Board (cited 26 times in the election code) audits an election.

65. Since November of 2020, Defendants and their appointed Board of Elections and political officer Allen have failed to reconcile the vote for all elections, or provide required Return Board Reports and public records, which they were required to do, which further indicates malfeasance and a cover-up of election fraud.

66. The Return Board compares paper ballots to the machine results, and validates secure-build validation/hash testing, certification, and logic and accuracy testing was completed on election machines.

67. In response to Plaintiffs litigative and OOR requests for Return Board Reports, Defendants

attempted to pass a local county ordinance eliminating the statutorily required report, which was overturned, but Defendants and political officer Allen still adamantly refuse to provide reports. Plaintiffs are in possession of two “unofficial” Return Board reports which plainly stated they could not reconcile the November 2020 and November 2022 national elections.

68. In fact, Defendants have been unable to reconcile any election since November 2020, and continue to refuse to provide the statutorily required signed and sworn Return Board Reports to Plaintiffs or the public.

69. Instead, Defendants have conducted independent “Risk Limited Audits” of the election results, which merely run paper ballots through an election machine scanner, without meaningful observation allowed by the public, and without any audit of any other aspect of the election, or any other election machines or equipment as evidence of “safe and secure elections.”

70. According to Philip Stark, inventor of the Risk Limited Audit (“RLA”), and also Member of Advisory Board of the EAC, *“any machine that produces a cast vote record is not compatible with a risk limiting audit.”* (A Gentle Guide to Risk-Limited Audits, IEEE Security and Privacy, Special Issue on Electronic Voting, 2012)

<https://cloud.patriot.online/s/6zYqKiCWoqWms77>

71. The Hart Intercivic election machines used in Delaware County, and elsewhere in Pennsylvania, as well as Dominion and ES&S election machines used in the balance of counties in Pennsylvania all produce Cast Vote Records (“CVR’s”) for use in other election machine tabulation servers and are incompatible with RLA’s.

72. It is NOT incumbent on Plaintiffs to “prove” election fraud while being denied access to evidence that would show election fraud. It is the Defendant’s legal obligation to provide meaningful observation, recounts, ballot box contents (paper and digital), public election records, reconciliation reports, public hearings, adjudication of grievances, and trials by jury in the crucible of a courtroom – all of which they have adamantly refused to do.

73. Since voting systems being used in Delaware County, Pennsylvania lacked secure-build

validation/hash testing, and since Defendants' political officer Allen demonstrably proved he was willing to falsify sworn attestations and documents, and since video and photographic evidence of alleged fraud in Delaware County elections exists, and since the Delaware County Board of Elections have not reconciled elections, and since Delaware County Judges have blocked election transparency, the citizens of Delaware County have not had honest or auditable elections.

74. With no guarantee that their vote was counted accurately, or even counted at all, the citizens of Delaware County, Pennsylvania, have been deprived of their right to vote in violation of 42 U.S. Code § 1983 which states the following:

a. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

75. With no guarantee that their vote was counted equally with other citizens in the jurisdiction or in Federal elections with citizens of other States, the Plaintiffs' and citizens' of Delaware County, Constitutional Rights were violated under the Equal Protection Clause of the U.S. Constitution.

76. The Supreme Court of the United States has ruled that once a geographic unit from which a representative is elected is established, the Equal Protection Clause mandates that all who vote in the election must have an equal vote. *Gray v. Sanders*, 372 U.S. 368, 379 (1963)

77. Regarding Equal Protection and other rights, the Fourteenth Amendment, Section 1 of The United States Constitution states:

- a. *"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

78. Voting is a Constitutionally protected Fundamental Right. As Thurgood Marshall states in his 1972 majority Opinion, *"In decision after decision, this court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction."* *Dunn v. Blumstein*, 405 U.S. 330 (1972).

79. As Justice Rehnquist included in *Richardson v. Ramirez*, 418 U.S. 24 (1974), *"Because the right to vote is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government...voting is a 'fundamental' right."*

80. The U.S. The Constitution does not give state legislatures, or by extension those hired by the state, or counties, to run elections (like Defendants' political officer, James Allen), the exclusive power to regulate elections.

81. The Election Clause of the U.S. Constitution, Article 1, Section 4, Clause 1, states, *"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing (sic) Senators."*

82. Limiting the State's ability to Regulate Elections was a safeguard put in place by the Framers of the Constitution to prevent the type of election fraud that can occur when state actors fail to do secure-build validation/hash testing making it impossible to detect tampering with the votes.

83. At the Constitutional Convention, Gouvenor (sic) Morris of Pennsylvania stated, *"the States*

may make false returns and then make no provisions for new elections."

84. Alexander Hamilton expressed in the Federalist papers that, "*Nothing can be more evident than that an exclusive power of regulating elections for the national government, in the hands of the state legislatures, would leave the existence of the Union entirely at their mercy.*"
85. The U.S. Constitution expressly provides that federal law preempts state law governing elections. In terms of regulating congressional elections, the State's role "*terminates according to federal laws.*" *Buckman Co v. Plaintiffs Legal Comm.*, 531 U.S. 341, 347 (2001)
86. Defendant Delaware County, Pennsylvania and the Delaware County Pennsylvania Board of Elections have been running elections as if they are their own personal fiefdom in violation of The Supremacy Clause of the U.S. Constitution which establishes that the United States Constitution, Federal Laws, and treaties are the "*supreme law of the land.*"
87. Plaintiffs reported the violations of law described herein (and more) to the US Attorney for the Eastern District of Pennsylvania William McSwain, Pennsylvania Attorney General (no Governor) Josh Shapiro, and Delaware County District Attorney Frederick J. Stollsteimer in sworn affidavits, declarations, and testimony.
88. Plaintiff Stenstrom provided a disclosure with referral of criminal charges to the US House Judiciary Committee Chairman Jim Jordan on July 4th, 2023, with no response.
89. Defendants abrogated their statutory roles to conduct honest and fair elections and violated election and criminal law, leaving it to Plaintiffs to assert their statutory authority as "authorized representatives," "poll watchers," and "candidate" under 25 P.S. Election Law to assert their authority to make Defendants comply. ¹

¹ See Sullivan, *supra* note 56, at 1937–38 ("Writing in 1962, Norman Redlich argued that the closing phrase of the Tenth Amendment identified a collection of powers 'possessed by neither the federal government nor the states.'" (quoting Norman Redlich, Are There "Certain Rights . . . Retained by the People?", 37 N.Y.U. L. Rev. 787, 807 (1962))); cf. Akhil Reed Amar, Constitutional Redundancies and Clarifying Clauses, 33 Val. U. L. Rev. 1, 20 (1998) (arguing that although the last three words of the Tenth Amendment are redundant and may add only emphasis, "as

INJURIES

90. Plaintiffs have been stripped of their fundamental Constitutional and Civil Rights.
91. The US Attorney General, multiple public officials in the US Department of Justice, Pennsylvania Attorney General (no Governor) Josh Shapiro, and Delaware County District Attorney Frederick J. Stollsteimer obstructed investigations of election law violations reported to them by Plaintiffs, and harassed, defamed, and intimidated them, and defied the People of honest public service.
92. Plaintiffs have been subjected to harsh retaliation for trying to enforce their Constitutional and Civil Rights.
- a. Special agents for the State of Pennsylvania came to Plaintiffs Stenstrom and Hoopes homes, armed with guns, following the direct orders of then Pennsylvania State Attorney General Josh Shapiro (now Governor) for the sole purpose to harass and intimidate them from exposing massive election fraud that benefitted Shapiro.
 - b. Plaintiff Schwartz was deprived of knowing the true voter count in her election for Delaware County Commissioner and may have been deprived of that position and the salary she would have received from it.
 - c. For their efforts in exposing massive election fraud committed by Defendants, Pro Se Plaintiffs Stenstrom and Hoopes have been sued six times, unsuccessfully sanctioned seven (7) times, and are defendants in multiple lawsuits against them that are still in the trajectory of politically activist courts, in lawfare campaigns coordinated by local, state, and federal actors.
93. For trying to enforce their Constitutional and Civil Rights, Plaintiffs have had their reputations tarnished in an attempt to discredit them through defamation campaigns that were coordinated by Defendants with the Annenberg Public Policy Foundation at the

a matter of popular sovereignty, the amendment's last three words echo the Preamble's first three, reminding us that here, the People rule").

University of Pennsylvania, otherwise known as “Factcheck.org.”

94. In pursuance of their Constitutional and Civil Rights, against state actors who have spent four years blocking election transparency, Plaintiffs have sacrificed countless hours of their time and personal resources.
95. Without direct intervention and oversight by the Honorable Court, Defendants will continue defying federal and state election laws, which in the National Election of November 5, 2024, with Pennsylvania being a swing state with nineteen (19) electoral votes in the Electoral College, will have grave consequences for the citizens of every state in the Union.
96. Defendants, public officials, and law enforcement officers at every level of government failed to provide honest public service and left the sovereign People (and Plaintiffs) to fulfill their statutory roles and provide oversight of the elections at great personal expense to Plaintiffs, the theft of a nation, and installation of an illegitimate government.

RELIEF

97. Cease and Desist from using electronic voting systems in Delaware County, Pennsylvania and return to hand counted votes in county precincts under bi-partisan observation.
98. Federal intervention, review, and oversight, of precipitative cases named herein, that have been delayed, quashed, and strategically mooted.
99. Reversal of orders unlawfully denying Plaintiffs’ access to public election records, and clear definition of the manner in which they will be provided.
100. Criminal referrals to appropriate federal and state justice and law enforcement agencies.
101. Monetary Damages and other relief and compensation as may be appropriate.

Respectfully submitted,



Robert Mancini, PRO SE
4 Guernsey Lane
Media, PA, 19063
610-506-9827



Joy Schwartz, PRO SE
514 Lombardy Road
Drexel Hill, Pennsylvania 19026
jschwartzpro@gmail.com
610-622-1958



Gregory Stenstrom, PRO SE
1541 Farmers Lane,
Glen Mills, PA 19342
856-264-5495
gregorystenstrom@gmail.com



Leah Hoopes, PRO SE
241 Sulky Way
Chadds Ford, PA
leahfreedelcopa@protonmail.com
610-608-3548

Date: June 4th, 2024

VERIFICATION

We, the Plaintiffs herein and listed below, 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 COMPLAINT 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.

/S/ Robert Mancini, Joy Schwartz, Gregory Stenstrom, Leah Hoopes /S/

June 4th, 2024

SELF REPRESENTATION (PRO SE)

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

CASE No. _____

**COMPLAINT
AND INJUNCTION TO PREVENT DEFENDANTS FROM UNLAWFULLY USING VOTING
MACHINES**

MANCINI, et al.
Plaintiffs,
v.
DELAWARE COUNTY BOARD OF ELECTIONS,
PA, et. al,
Defendants

CERTIFICATE (PROOF) OF SERVICE

Plaintiffs certify that they caused the subject **COMPLAINT AND INJUNCTION TO PREVENT DEFENDANTS FROM UNLAWFULLY USING VOTING MACHINES** to be properly served on the following:

Defendants Delaware County and Delaware County Board of Elections
Solicitor for Defendants J. Manly Parks, Nick Centrella
Delaware County Government Center
201 West Front Street, Media, PA 19106

/S/ Rober Mancini, Joy Schwartz, Gregory Stenstrom, Leah Hoopes /S/

June 4th, 2024

EXHIBIT A



FINAL DETERMINATION

IN THE MATTER OF

**ROBERT MANCINI,
Requester**

v.

**DELAWARE COUNTY,
Respondent**

:
:
:
:
:
:
:
:
:
:
:

Docket No.: AP 2023-0133

FACTUAL BACKGROUND

On December 9, 2022, Robert Mancini (“Requester”) submitted a request (“Request”) to Delaware County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a “[n]umerical list of voters used to determine the number who cast ballots in election[] for Marple [Township] ward 7[,], precinct [sic] 3 for November 2022 election[.] On January 13, 2023, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the County denied the Request, arguing that the Pennsylvania Election Code (“Election Code”), 25 P.S. § 2648, provides the procedure to access these records.

On January 18, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Specifically, the Requester argues that because the Board of Elections is under the jurisdiction of the County, the requested records are public records pursuant to the County Records Manual. The OOR invited both parties to

supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On January 30, 2023, the County submitted a position statement arguing that the County could not process the Request because the Election Code required that requests be directed to the County Bureau of Elections. The County also submitted the sworn affidavits of Anne Coogan, Open Records Officer for the County, and James Allen, the County's Director of Election Operations. Included with the County's submission was an email from Jessica Mathis, Director, Bureau of Elections and Notaries at the Pennsylvania Department of State ("Department"), and an email from Jonathan Marks, Deputy Secretary for Elections and Commissions at the Department. Both emails provide guidance to county election officials regarding the interplay between the RTKL and the Election Code and specifically address Cast Vote Records, voted mail ballots and mail ballot outer envelopes.

On January 31, 2023,¹ the Requester submitted a position statement generally criticizing the County's handling of RTKL requests submitted by the Requester, while also referencing a matter currently pending with the Delaware County Court of Common Pleas docketed as CV-2023-000307, that the Requester refers to as "a RTK binding arbitration for election records." Additionally, on February 5, 2023, the Requester submitted a copy of an OOR final determination in the matter of *Mancini v. Delaware Cnty.*, OOR Dkt. AP 2022-2847, 2023 PA O.O.R.D. LEXIS 195, in which the OOR found that a request for records related to mail-in ballots is governed by the access provisions set forth in the Election Code, and as such, the County was required to make the requested records accessible in accordance with the Election Code.

¹ On January 30, 2023, the Requester submitted an email with the County's submissions included as attachments; however, the Requester did not include argument or evidence on his own behalf.

LEGAL ANALYSIS

The County is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the County is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

Here, the County argues that access to the requested records is governed by the Election Code. Section 2648 of the Election Code provides as follows:

The records of each county board of elections, general and duplicate returns, tally papers, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, accounts, contracts, reports and other documents and records in its custody, except the contents of ballot boxes and voting machines and records of assisted voters, shall be open to public inspection, except as herein provided, and may be inspected and copied by any qualified elector of the county during ordinary business hours, at any time when they are not necessarily being used by the board, or its employees have duties to perform thereto: Provided, however, that such public inspection thereof shall only be in the presence of a member or authorized employee of the county board, and shall be subject to proper regulation for safekeeping of the records and documents, and subject to the further provisions of this act: And provided further, That general and duplicate returns, tally papers, affidavits of voters and others, and all other papers required to be returned by the elections officers to the county board sealed, shall be open to public inspection only after the county board shall, in the course of the computation and canvassing of the returns, have broken such seals and finished for the time, their use of said papers in connection with such and canvassing.

25 P.S. § 2648.

The OOR has previously determined that access to voting records is governed by the Election Code. 25 P.S. § 2648. *See Shuppe v. Beaver Cnty.*, OOR Dkt. AP 2022-0037, 2022 PA O.O.R.D. LEXIS 709; *Taylor v. Westmoreland Cnty.*, OOR Dkt. AP 2022-0046, 2022 PA O.O.R.D. LEXIS 687; *Edwards v. Butler Cnty.*, OOR Dkt. AP 2021-2976, 2022 PA O.O.R.D. LEXIS 296; *Cornetti v. Butler Cnty.*, OOR Dkt. AP 2021-2891, 2022 PA O.O.R.D. LEXIS 146; *Jaquette v. Delaware Cnty.*, OOR Dkt. AP 2021-2808, 2022 PA O.O.R.D. LEXIS 25.

Section 3101.1 of the RTKL states that “[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply.” 65 P.S. § 67.3101.1. When examining matters where there is a conflict between the Election Code and the RTKL, the OOR has found that, while the Election Code makes many records in the custody of the Election Board subject to public inspection by qualified electors, 25 P.S. § 2648, it does not make these records unconditionally available to the public. *See, e.g., Obernier v. Crawford Cnty.*, OOR Dkt. AP 2017-2107, 2018 PA O.O.R.D. LEXIS 110 (noting that the Election Code “creates a separate process for obtaining these records and conditions public inspection and copying: 1) to qualified electors of the county, 2) during ordinary business hours, and 3) when the records are not being used by the elections board”); *Bloch v. Adams Cnty.*, OOR Dkt. AP 2018-2227, 2019 PA O.O.R.D. LEXIS 95. In addition, because the records are not unconditionally public under the Election Code, the OOR would be required to examine any exemptions from disclosure under the RTKL asserted by an agency when records of a county Elections Board are sought by a RTKL request. *See Pa. Dep’t of Labor & Indus. v. Heltzel*, 90 A.3d 823, 833 (Pa. Commw. Ct. 2014).

In this matter, the County has not raised any RTKL exemptions, but rather, argues that the Request is exclusively governed by the Election Code. Additionally, the Allen Affidavit provides

that “[t]he County Bureau of Elections stands ready to respond to a request for records from the Request[e]r within the requirements of the Pennsylvania Election Code.” *See* Allen Affidavit, ¶ 5. Accordingly, because the record sought in the Request is governed by the access provisions set forth in the Election Code, and the County is directed to provide access to the numerical list of voters for which the Requester is entitled as set forth in that law. *See Heltzel, supra*.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to make the requested records available for access in accordance with the Election Code. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Delaware County Court of Common Pleas. *See* 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.² This Final Determination shall be placed on the website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: February 17, 2023

/s/ Kathleen A. Higgins

Kathleen A. Higgins
Deputy Chief Counsel

Sent to: Robert Mancini (via email only);
Anne Coogan (via email only);
Jonathan Lichtenstein, Esq. (via email only)

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

EXHIBIT B



FINAL DETERMINATION

IN THE MATTER OF

**ROBERT MANCINI,
Requester**

v.

**DELAWARE COUNTY,
Respondent**

:
:
:
:
:
:
:

**Docket No.: AP 2023-0066
Consolidated appeal of OOR Dkts. AP
2023-0066 & 2023-0104**

FACTUAL BACKGROUND

On December 14, 2022 and December 27, 2022, Robert Mancini (“Requester”) submitted two requests (individually “Request”, collectively “Requests”) to Delaware County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “all image files sent to Vendor Fort Orange between June 01, 2022 and Nov 10, 2022 of Vote by Mail Absentee records. This should includes [sic] absentee/mail ballots and all related lists, applications, envelopes and files pertaining thereto” and “the official Ballot for Marple precincts [sic] 7-1, 7-2, and [sic] 7-3 for the Nov 8, 2022 Election.” On January 4, 2023, the County denied the December 27, 2022 Request, arguing that the Pennsylvania Election Code (“Election Code”), 25 P.S. § 2648, provides the procedure to access these records. On January 9, 2023, following a thirty-day extension, 65 P.S. § 67.902(b), the County also denied the December 14, 2022 Request under the Election Code.

On January 9, 2023, and January 13, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denials and stating grounds for disclosure.¹ Specifically, the Requester argues that because the Board of Elections is under the jurisdiction of the County, the County conducts the election, election officials are employees of the County, and the voting machines are County property, related records are County records. The Requester further asserts that the County Records Manual issued by the Pennsylvania Historical and Museum Commission (“Manual”) requires the retention of responsive records. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On January 27, 2023, the County submitted a position statement arguing that the County could not process the Request because the Election Code required that requests be directed to the County Bureau of Elections and the sworn affidavits of its Open Records Officer, Anne Coogan, and its Director of Election Operations, James Allen. Included with the County’s submission was an email from Jessica Mathis, Director, Bureau of Elections and Notaries at the Pennsylvania Department of State (“Department”), and an email from Jonathan Marks, Deputy Secretary for Elections and Commissions at the Department. Both emails provide guidance to county election officials regarding the interplay between the RTKL and the Election Code and specifically address Cast Vote Records (“CVRs”), voted mail ballots and mail ballot outer envelopes.

The same day, the Requester filed a response, quoting the County’s records retention manual and restating his belief that 25 P.S. § 2648 makes the responsive records public under the RTKL.

¹ The Requests were docketed as OOR Dkts. AP 2023-0066 and 2023-0104. Because these appeals involve the same agency, requester, and similar issues on appeal, the appeals are hereby consolidated into OOR Dkt. AP 2023-0066. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

LEGAL ANALYSIS

The County is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the County is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

Here, the County argues that access to the requested records is governed by the Election Code. Section 2648 of the Election Code provides as follows:

The records of each county board of elections, general and duplicate returns, tally papers, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, accounts, contracts, reports and other documents and records in its custody, except the contents of ballot boxes and voting machines and records of assisted voters, shall be open to public inspection, except as herein provided, and may be inspected and copied by any qualified elector of the county during ordinary business hours, at any time when they are not necessarily being used by the board, or its employees have duties to perform thereto: Provided, however, That such public inspection thereof shall only be in the presence of a member or authorized employe of the county board, and shall be subject to proper regulation for safekeeping of the records and documents, and subject to the further provisions of this act: And provided further, That general and duplicate returns, tally papers, affidavits of voters and others, and all other papers required to be returned by the elections officers to the county board sealed, shall be open to public inspection only after the county board shall, in the course of the computation and canvassing of the returns, have broken such seals and finished for the time, their use of said papers in connection with such and canvassing.

25 P.S. § 2648.

Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law. *See* 65 P.S. § 67.305. In many previous appeals before the OOR, it has been determined that access to voting records is governed by the Election Code. 25 P.S. § 2648. *See Shuppe v. Beaver Cnty.*, OOR Dkt. AP 2022-0037, 2022 PA O.O.R.D. LEXIS 709; *Taylor v. Westmoreland Cnty.*, OOR Dkt. AP 2022-0046, 2022 PA O.O.R.D. LEXIS 687; *Edwards v. Butler Cnty.*, OOR Dkt. AP 2021-2976, 2022 PA O.O.R.D. LEXIS 296; *Cornetti v. Butler Cnty.*, OOR Dkt. AP 2021-2891, 2022 PA O.O.R.D. LEXIS 146; *Jaquette v. Delaware Cnty.*, OOR Dkt. AP 2021-2808, 2022 PA O.O.R.D. LEXIS 25.

Regarding mail-in ballots, the Election Code states:

- (a) General rule.**—All official mail-in ballots, files, applications for ballots and envelopes on which the executed declarations appear, and all information and lists are designated and declared to be public records and shall be safely kept for a period of two years, except that no proof of identification shall be made public, nor shall information concerning a military elector be made public which is expressly forbidden by the Department of Defense because of military security.
- (b) Record.** For each election, the county board shall maintain a record of the following information, if applicable, for each elector who makes application for a mail-in ballot:

 - (1) The elector’s name and voter registration address.
 - (2) The date on which the elector’s application is received by the county board.
 - (3) The date on which the elector’s application is approved or rejected by the county board.
 - (4) The date on which the county board mails or delivers the mail-in ballot to the elector.
 - (5) The date on which the elector’s completed mail-in ballot is received by the county board.
- (c) Compilation.** The county board shall compile the records listed under subsection (b) and make the records publicly available upon request within 48 hours of the request.

25 P.S. § 3150.17.

Section 3101.1 of the RTKL states that “[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply.” 65 P.S. § 67.3101.1. When examining matters where there is a conflict between the Election Code and the RTKL, the OOR has found that, while the Election Code makes many records in the custody of the Election Board subject to public inspection by qualified electors, 25 P.S. § 2648, it does not make these records unconditionally available to the public. *See, e.g., Obernier v. Crawford Cnty.*, OOR Dkt. AP 2017-2107, 2018 PA O.O.R.D. LEXIS 110 (noting that the Election Code “creates a separate process for obtaining these records and conditions public inspection and copying: 1) to qualified electors of the county, 2) during ordinary business hours, and 3) when the records are not being used by the elections board”); *Bloch v. Adams Cnty.*, OOR Dkt. AP 2018-2227, 2019 PA O.O.R.D. LEXIS 95. In addition, because the records are not unconditionally public under the Election Code, the OOR would be required to examine any exemptions from disclosure under the RTKL asserted by an agency when records of a county Elections Board are sought by a RTKL request. *See Pa. Dep’t of Labor & Indus. v. Heltzel*, 90 A.3d 823, 833 (Pa. Commw. Ct. 2014).

In this matter, the County has not raised any RTKL exemptions, but rather, argues that the Request is exclusively governed by the Election Code. A reading of the plain language of the statute suggests that “[a]ll official mail-in ballots, files, applications for ballots and envelopes on which the executed declarations appear, and all information and lists are designated and declared to be public records....” 25 P.S. § 3150.17(a). Furthermore, all of “records of each county board of elections[,]” including official ballots, are subject to the Election Code. 25 P.S. § 2648. Therefore, based on the plain language of the statute, records related to mail-in ballots and certain other election documents are public under the Election Code. *See Previte v. Erie Cnty.*, OOR Dkt.

AP 2022-2191, 2022 PA O.O.R.D. LEXIS 2457, *appeal filed*, No. 12720-2022 (Erie Cnty. CCP Nov. 18, 2022); *Weaver v. Allegheny Cnty.*, OOR Dkt. AP 2022-1052, 2022 PA O.O.R.D. LEXIS 1323, *appeal filed*, SA-22-000342 (Allegheny Cnty. CCP Jun. 16, 2022) (granting the portion of a request seeking images of mail-in ballots).

The Requester, on appeal, conflates the issue of whether the records sought are *public records* and whether the records may be *accessed* under the RTKL. Under the RTKL, Section 67.302(a) provides that “[a] local agency or local agency shall provide public records in accordance with this act.” 65 P.S. § 67.302(a). Records in the possession of a local agency are presumed to be public records. However, this “presumption shall not apply if: (1) the record is exempt under section 67.708; (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other Federal or State law, regulation or judicial order or decree.” Further, Section 306 of the RTKL, entitled “Nature of document,” states: “Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.” 65 P.S. § 67.306. As noted above, because the Election Code makes records only conditionally public, they must be accessed through the Election Code.

The County does not argue that the records are not public records - it argues only that it cannot provide access to those public records in response to a RTKL request, noting that it has repeatedly directed the Requester to contact the County Bureau of Elections. Here, the governance of inspection and copying under the Election Code are beyond the OOR’s purview. *See Heltzel*, 90 A.3d at 831-33 (noting that the OOR is not in a position to enforce conditions on public access imposed by another law, and that there is a difference between statutes establishing the public *nature* of records and statutes that also proscribe a means of access). Accordingly, the request for

records related to mail-in ballots is governed by the access provisions set forth in the Election Code, and the County is directed to provide any access to the mail-in ballots to which the Requester is entitled as set forth in that law. *See Heltzel, supra.*

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to make the requested records available for access in accordance with the Election Code. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Delaware County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.² This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: February 8, 2023

/s/ Jordan Davis

Jordan C. Davis, Esq.
Senior Appeals Officer

Sent via email only to: Robert Mancini, Jonathan Lichtenstein, Esq. and Anne M. Coogan

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

EXHIBIT C



FINAL DETERMINATION

IN THE MATTER OF

**ROBERT MANCINI,
Requester**

v.

**DELAWARE COUNTY,
Respondent**

:
:
:
:
:
:
:
:
:
:

Docket No: AP 2022-2667

On November 14, 2022, Robert Mancini (“Requester”) submitted a request (“Request”) to Delaware County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[F]or the 2022 election, for the machines used to count the votes [in] Marple precinct 7-1, 7-2, 7-3 and the machine to count the mail in paper ballots for Marple 7-1, 7-2, & 7-3 the computer inventory records. Records documenting the assignment of a specific computer to [an] individual as well as the inventories of licensed software, may include address or mailbox assigned to the individual.

On November 21, 2022, the County denied the Request, stating that the Request must be made pursuant to the provisions of the Pennsylvania Election Code (“Election Code”). 25 P.S. §§ 2600 *et seq.* The County further stated to the extent the Election Code permits access, the records would be available from the Delaware County Bureau of Elections.

On November 28, 2022, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties

to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On December 7, 2022, the County submitted a position statement and a sworn affidavit made subject to 18 Pa.C.S. § 4904, from Anne Coogan, the Agency Open Records Officer (“AORO”) for the County. The Coogan Affidavit indicates the following:

3. In response to such request, I inquired of the County Solicitor’s Office as to whether this request was governed by the Pennsylvania Right to Know Law (the “RTKL”). After it had completed its legal review, I was advised by the County Solicitor’s Office that access to the requested records was pre-empted by [the] Pennsylvania Election Code.

5. By letter dated November 21, 2022, I informed Appellant of the denial of the request for records as pre-empted by the Pennsylvania Election Code and provide the contact information for the County Bureau of Elections.

Additionally, the County submitted two emails detailing procedures for the requests of a “Cast Vote Record (CVR),” voted mail ballots and mail ballot outer envelopes.

The Requester responded to the County’s submissions on December 7, 2022. Per the Requester, the Request did not contain a request for CVRs.

LEGAL ANALYSIS

The County is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the County is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435,

439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Request exclusively seeks records concerning the machines used to count votes utilized during the November 2022 election, including the assignment of an individual to the computers, machines and inventories of licensed software. The County does not dispute that any of the records sought are public or that the records do not exist, but instead states that the records must be accessed by writing to the County Board of Elections with the request. The Requester argues that the County conducts the election and the machines used in the election were paid for with Delaware County Taxpayer funds, and as such, the RTKL is an appropriate vehicle for the Request.

The Election Code states that:

The records of each county board of elections, general and duplicate returns, tally papers, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, accounts, contracts, reports and other documents and records in its custody, except the contents of ballot boxes and voting machines and records of assisted voters, shall be open to public inspection, except as herein provided and may be inspected and copied by any qualified elector of the county during ordinary business hours, at any time when they are not necessarily being used by the board, or its employes have duties to perform thereto: Provided, however, That such public inspection thereof shall only be in the presence of a member or authorized employe of the county board, and shall be subject to proper regulation for safekeeping of the records and documents, and subject to the further provisions of this act: And provided further, That general and duplicate returns, tally papers, affidavits of voters and others, and all other papers required to be returned by the elections officers to the county board sealed, shall be open to public inspection only after the county board shall, in the course of the computation and canvassing of the returns, have broken such seals and finished for the time, their use of said papers in connection with such and canvassing.

25 P.S. § 2648. The County has raised no argument on appeal that the responsive records are not public pursuant to Section 2648 of the Election Code.

The OOR concludes that the records sought are subject to Section 2648 of the Election Code. The Election Code controls all “records of each county board of elections,” including “other documents and records in its custody[.]” *Id.* The OOR has interpreted this catchall provision of the Election Code broadly, applying it to emails with the Pennsylvania Department of State about elections, procedures used by county agencies to train election workers and internal communications involving elections. *See Giancola v. Allegheny Cnty.*, OOR Dkt. AP 2022-1177, 2022 PA O.O.R.D. LEXIS 1602; *Snead v. City of Philadelphia*, OOR Dkt. AP 2021- 0160, 2021 PA O.O.R.D. LEXIS 426; *Gallagher v. Montgomery Cnty.*, OOR Dkt. AP 2021-2945, 2022 PA O.O.R.D. LEXIS 622. In this case, all the requested records concern machines used to count votes in the 2022 general election, and therefore qualify as “other documents and records” in the custody of the County’s Board of Elections.

When the RTKL conflicts with another state law, the other law’s provisions regarding access to records applies. *See* 65 P.S. § 67.3101.1 (“[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply”). When examining the conflict between the Election Code and the RTKL, the OOR has found that, while the Election Code makes many records in the custody of the Election Board subject to public inspection by qualified electors, 25 P.S. § 2648, it does not make these records unconditionally available to the public. *See Obernier v. Crawford Cnty.*, OOR Dkt. AP 2017-2107, 2018 PA O.O.R.D. LEXIS 110 (analyzing § 2648 of the Election Code and noting that it “creates a separate process for obtaining these records and conditions the public inspection and copying: 1) to qualified electors of the county, 2) during ordinary business hours, and 3) when the records are not being used by the elections board”); *see also Hall v. Butler Cnty.*, OOR Dkt. AP 2022-0508, 2022 PA O.O.R.D. LEXIS 1062; *Shepherd v. Phila. Office of City Commissioners*, OOR Dkt. AP 2021-

2929, 2022 PA O.O.R.D. LEXIS 694. In addition, because the records are not unconditionally public under the Election Code, the OOR must examine any exemptions from disclosure under the RTKL that are asserted by the agency when records of a County Elections Board are sought. *See Pa. Dep't of Labor & Indus. v. Heltzel*, 90 A.3d 823, 833 (Pa. Commw. Ct. 2014).

The County has asserted no exemptions in this case, but simply states that the records must be sought from the County Board of Elections directly and the records are to be provided according to the provisions of the Election Code. The Request does not contain any request for ballots, ballot envelopes or CVRs, which were the subject of the email attachments submitted by the County. The County has directed the Requester to submit a request to the County Board of Elections; however, the County has not demonstrated that a request to the County was not a sufficient request for records pursuant to the Election Code. Thus, the OOR directs the County to provide responsive records subject to the access provisions in the Election Code and according to any legal limitations thereof. *See Cornetti v. Butler Cnty.*, OOR Dkt. AP 2022-0364, 2022 PA O.O.R.D. LEXIS 807; *see also Shepherd v. Phila. Office of City Commissioners*, OOR Dkt. AP 2021-2929, 2022 PA O.O.R.D. LEXIS 694; *Churchwell v. Montgomery Cnty.*, OOR Dkt. AP 2021-1331, 2021 PA O.O.R.D. LEXIS 1383; 65 P.S. § 67.3101.1.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide the responsive records in accordance with the procedures and requirements of the Election Code. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Delaware County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per

Section 1303 of the RTKL; however, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.¹ 65 P.S. § 67.1303. This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: December 13, 2022

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Robert Mancini (via email only)
John Lichtenstein, Esq. (via email only)
Anne Coogan (via email only)

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

EXHIBIT D

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA DEPARTMENT OF STATE
CERTIFICATION OF LOGIC AND ACCURACY TESTING

COUNTY OF DELAWARE
ELECTION DATE 8 NOV 2022
NUMBER OF PRECINCTS PARTICIPATING IN ELECTION: 428
VOTING SYSTEM: HART INTERCIVIC VERITY 2.3.4

I do hereby certify that "County Name" County has completed the pre-election testing requirements for logic and accuracy testing of all its electronic voting system components on _____.

During the test process a predetermined test deck was prepared, ballots were marked and tabulated. The results were then compared to ensure that the actual results matched expected results.

The testing included the following:

Component	Number tested	Tested?
Ballot styles	428	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Ballot sets (absentee, mail-in, election day, provisional)	73,000	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Precinct scanners	428	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Central count scanners	1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Standard BMDs	428	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Hybrid BMDs		<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Election Management System		<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A



Signature of Chief Clerk
or Authorized Representative

James P. Allen

Name of Chief Clerk
or Authorized Representative

28 Oct 28

Date



Delaware County Bureau of Elections
Government Center Building
201 West Front Street, Media, PA 19063
DelcoElection@co.delaware.pa.us

