

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

YORK

County

York County Prothonotary Civil E-Filed - 5 Mar 2024 12:13:28 PM

Case Number: 2024-SU-000643

For Prothonotary Use Only:

Docket No:

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

American Civil Liberties Union Foundation of Pennsylvania

Lead Defendant's Name:

York County Board of Elections

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits
(check one) ☐ outside arbitration limits

Is this a *Class Action Suit*? ☐ Yes ☒ No

Is this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Marian Schneider, American Civil Liberties Union Foundation of Pennsylvania

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute:
Discrimination
☐ Employment Dispute: Other

☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

☐ Zoning Board
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☒ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other:

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

EN LA CORTE DE ALEGATOS COMÚN DEL CONDADO DE YORK, PENNSYLVANIA

**American Civil Liberties Union Foundation of
Pennsylvania and Elizabeth Kurian**

Plaintiffs,

v.

York County Board of Elections

Defendant.

**CIVIL DIVISION
*DIVISIÓN CIVIL***

Case No. _____

NOTICE TO DEFEND

Pursuant to PA RCP No. 1018.1

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

A VISO PARA DEFENDER

Conforme a PA RCP Núm. 1018.1

USTED HA SIDO DEMANDADO/A EN LA CORTE. Si usted desea defender contra la demanda puestas en las siguientes páginas, usted tienen que tomar acción dentro veinte (20) días después que esta Demanda y Aviso es servido, con entrando por escrito una apariencia personalmente o por un abogado y archivando por escrito con la Corte sus defensas o objeciones a las demandas puestas en esta contra usted. Usted es advertido que si falla de hacerlo el caso puede proceder sin usted y un juzgamiento puede ser entrado contra usted por la Corte sin más aviso por cualquier dinero reclamado en la Demanda o por cualquier otro reclamo o alivio solicitado por Demandante. Usted puede perder dinero o propiedad o otros derechos importante para usted.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

*LAWYER REFERRAL SERVICE OF THE
YORK COUNTY BAR ASSOCIATION
YORK COUNTY BAR CENTER
137 EAST MARKET STREET
YORK, PENNSYLVANIA 17401
TELEPHONE: (717) 854-8755*

USTED DEBE LLEVAR ÉSTE PAPEL A SU ABOGADO ENSEGUIDA. SI USTED NO TIENE UN ABOGADO, VAYA O LLAME POR TELÉFONO LA OFICINA FIJADA AQUÍ ABAJO. ESTA OFICINA PUEDE PROVEERÉ CON INFORMACIÓN DE CÓMO CONSEGUIR UN ABOGADO

SI USTED NO PUEDE PAGARLE A UN ABOGADO, ÉSTA OFICINA PUEDE PROVEERÉ INFORMACIÓN ACERCA AGENCIAS QUE PUEDAN OFRECER SERVICIOS LEGAL A PERSONAS ELIGIBLE AQ UN HONORARIO REDUCIDO O GRATIS.

*SERVICIO DE REFERIDO A ABOGADO
COLEGIO DE ABOGADOS DEL
CONDADO DE YORK .
ABOGACÍA DEL CONDADO DE YORK
CALLE MARKET# 13 7 ESTE
YORK, PENNSYLVANIA 17401
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IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

**American Civil Liberties Union Foundation of
Pennsylvania and Elizabeth Kurian**

Plaintiff,

v.

York County Board of Elections

Defendant.

CIVIL DIVISION

Case No. _____

ACTION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs, the American Civil Liberties Union Foundation of Pennsylvania (“ACLU-PA”) and Elizabeth Kurian, by and through undersigned counsel, bring this Action for Declaratory and Injunctive Relief, against Defendant, the York County Board of Elections, and in support thereof avers as follows:

INTRODUCTION

1. Transparency around election administration is vital to ensure public trust in elections and strengthen our democracy. To promote confidence in the electoral system, the Election Code is replete with instances of opportunities for the public to observe the work of election administration, including the process leading to the announcement of final election results.

2. This action concerns the decision of the York County Board of Elections (the “Board”) to restrict access to the “Official Canvass and Computation of Votes” in violation of Section 1404(a) of the Pennsylvania Election Code of 1937, *as amended*, 25 P.S. § 3154(a), which requires that the Board, in connection with each election, “***publicly commence*** the computation and canvassing” of the votes cast in the county (emphasis added).

3. This process must take place at the Board’s “office or at some other convenient ***public place*** at the county seat” and shall “continue [in] the same” public manner “from day to day until completed.” *Id.* (emphasis added). The Board’s computation and certification of election returns is therefore a “***public***” process. *See also* Section 1404(c), 25 P.S. § 3154(c) (requiring the Board to “publicly account” for and “publicly announce” the election results).

4. In the days following the November 2023 municipal election, however, the Board denied access to a volunteer from a non-partisan organization who sought to attend and observe the official canvass.

5. Further, the Board has expressed an intent to continue denying non-partisan observers and members of the public from accessing the official canvass in future elections.

6. Accordingly, Plaintiffs bring this action against the Board to obtain a declaration affirming Plaintiffs’—and more generally the public’s—statutory right to observe the canvassing process, and to enjoin Defendants from committing clear violations of the Election Code.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this Complaint pursuant to 42 Pa. C.S. § 931(a), which provides that, with limited exceptions, “the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings.” 42 Pa. C.S. § 931(a).

8. Venue exists in this Court pursuant to Pennsylvania Rule of Civil Procedure 2103 because this action arose in York County and this is a suit against one or more political subdivisions located within York County. Pa.R.C.P. 2103.

PARTIES

9. Plaintiff ACLU-PA is a nonprofit, nonpartisan, membership organization that works to protect and expand the right to vote in Pennsylvania, which includes promoting transparency in election procedures.

10. Plaintiff Elizabeth Kurian is a 23-year-old registered voter and resident of York County, Pennsylvania, who volunteers with ACLU-PA. *See* March 4, 2024 Declaration of Elizabeth Kurian (“EK Decl.”)¹ at ¶¶ 2, 3, 4, 6.

11. Defendant York County Board of Elections, is a local government agency that oversees the conduct of all elections in York County, which includes a responsibility “to canvass and compute” the returns of all primaries and elections as provided by the Election Code. Section 302(k), 25 P.S. § 2642(k) (powers and duties of county boards).

¹ A true and correct copy of Elizabeth Kurian’s Declaration is attached hereto as Exhibit A.

BACKGROUND

The Election Code

12. “The vote may be the central act in our democratic form of government. To advance the goal of free and fair elections, the legislature enacted the Election Code, and it is often said that in the interest of preventing fraud, the terms of the Election Code must be strictly enforced.” *Dayhoff v. Weaver*, 808 A.2d 1002, 1006 (Pa. Commw. Ct. 2002).

13. Relevant here, Section 1404 of the Election Code prescribes a specific process for the official canvassing of election returns. *See* 25 P.S. § 3154. As defined under the Code, “[t]he word ‘canvass’ shall mean the gathering of ballots after the final pre-canvass meeting and the counting, computing and tallying of the votes reflected on the ballots.” Section 102(a.1) of the Election Code, 25 P.S. § 2602(a.1). The word “‘return’ when used in the [Election] Code . . . refers to a sheet showing the total individual votes cast for all candidates at that polling place or district.” *In re Gen. Election for Twp. Supervisor of Morris Twp., Washington Cnty.*, 620 A.2d 565, 568 (Pa. Commw. Ct. 1993).

14. The Election Code provision governing the procedure, titled “Computation of returns by county board; certification; issuance of certificates of election,” states the following:

The county board shall, at nine o’clock A. M. on the third day following the primary or election, *at its office or at some other convenient **public place** at the county seat*, of which due notice shall have been given as provided by section 1403, ***publicly** commence the computation and canvassing of the returns*, and continue the same from day to day until completed, in the manner hereinafter provided. Section 1404(a) of the Election Code, 25 P.S. § 3154(a).

15. Once the canvassing process is completed, the board must announce the official results in accordance with the procedures set forth in 25 P.S. § 3154(c). First, the board “shall . . . publicly account for all extra official ballots” that were printed in advance of the election.

Section 1404(c) of the Election Code, 25 P.S. § 3154(c) (citing Section 1007 of the Election Code, 25 P.S. § 2967).

16. Second, “[t]he general returns . . . from the various election districts shall then be read . . . slowly and audibly, by one of the clerks” who has “charge of the records of the county board,” identifying the total number of ballots “issued, spoiled and cancelled, and cast” within each voting district. *Id.* These returns “shall” be “publicly announce[d].” *Id.*

17. Third, in the event there are any “discrepancies,” the Code provides that “no further returns shall be read” until such inconsistency is “explained to the satisfaction of the county board.” Section 1404(c) of the Election Code, 25 P.S. § 3154(c).

18. Finally, “[a]fter the completion of the computation of votes,” the board submits the unofficial returns to the Secretary of the Commonwealth. Section 1404(f) of the Election Code, 25 P.S. § 3154(f). After a five-day period to allow for petitions to recount or recanvass, the board “shall certify the returns” and issue certificates of election to the successful candidate. *Id.*

19. As the foregoing statutory language makes clear, the entire canvassing process must be open to members of the public. Pennsylvania case law confirms the public nature of these proceedings. *See, e.g., Rinaldi v. Ferrett*, 941 A.2d 73, 75 (Pa. Commw. Ct. 2007) (“Three days after the election . . . as called for in Section 1404 of the Code, . . . employees at the County Voter Registration Office publicly computed and canvassed the election returns.”); *Appeal of Antonelli*, 174 A.2d 107, 110 (Pa. 1961) (“This is not an action between the candidates involved but a proceeding in which the public is involved, to canvass and compute the votes cast” in the election); *see also Petition to Open Ballot Box of Oneida Dist. in E. Union Twp.*, 103 A.2d 652, 653 (Pa. 1954) (“As required by Section 1404(a) of the Election Code . . . the Board of Elections

of Schuylkill County on November 6th publicly commenced its canvass and computation of the returns of the votes cast in the county”).

20. Because the canvassing process is an inherently “public[]” undertaking, members of the public have a statutory right to “witness[] the computation” of the ballots and “observe[]” the Board’s official announcement of the election results. *Rinaldi*, 941 A.2d at 75.

21. The Commonwealth Court has “stress[ed] the *public nature* of the Commonwealth’s election procedures, including the computation and canvassing of ballots” pursuant to Section 1404(a) of the Election Code, 25 P.S. § 3154(a). *In re: Petitions to Open Ballot Box Pursuant to 25 P.S. §3261(A)*, 295 A.3d 325, 339 (Pa. Commw. Ct. 2023) (emphasis added). Such public election procedures “provide the opportunity to obtain evidence of fraud or error” in the computation of votes cast “where it exists.” *Id.*

The Board’s Conduct

22. On Friday, November 10, 2023, Ms. Kurian—a volunteer with the ACLU-PA—went to the York County Board of Elections, located at 2401 Pleasant Valley Road in York, Pennsylvania. EK Decl. at ¶¶ 7, 8.

23. Ms. Kurian planned to attend the York County Board of Elections meeting scheduled for 9:00 a.m. that day, intending to observe the canvassing of election returns as permitted under Section 1404 of the Election Code, 25 P.S. § 3154. EK Decl. at ¶¶ 7, 8.

24. Upon arriving, Ms. Kurian spoke with Bryan Sheaffer, the Deputy Director at the York County elections office, and explained that she was looking for the canvass meeting. EK Decl. at ¶ 9.

25. Mr. Sheaffer explained that Ms. Kurian would need a “watcher’s certificate” to attend the official canvass. EK Decl. at ¶ 9. Watchers are permitted to observe the official

canvass on behalf of partisan entities. Section 417(b) of the Election Code, 25 P.S. § 2687(b) (a watcher’s certificate includes “the name of the candidate, party or political body [the watcher] represents”).

26. When Ms. Kurian explained that she was a volunteer with a nonpartisan organization and was only attempting to *observe* the proceedings, Mr. Sheaffer again explained that she would not be permitted to enter the room without a watcher’s certificate. EK Decl. at ¶¶ 9, 10.

27. Ms. Kurian was not permitted to attend the official canvass following the November 2023 municipal election on behalf of the ACLU-PA.

28. On January 11, 2024, the ACLU-PA sent a letter to the York County solicitor about Ms. Kurian’s experience. The ACLU-PA also requested confirmation that York County would be modifying its policy for the 2024 primary and general elections to guarantee that members of the public are permitted to attend and observe the official canvass, as required by Section 1404(a) of the Election Code, 25 P.S. § 3154(a).²

29. On February 9, 2024, Solicitor Jonelle Eshbach responded that the Election Code does not permit “[t]he general public . . . [to] simply appear and expect to observe the proceedings.”³ The Solicitor reiterated that “[a] Watcher’s certificate is required to observe the canvassing of the returns.”

30. The Election Code does allow political parties to appoint “watchers” to participate at “any computation and canvassing of returns.” Section 310(a) of the Election Code, 25 P.S. § 2650(a). But “watchers” must observe election proceedings on behalf of partisan entities. Section

² A true and correct copy of the ACLU-PA’s letter to the York County solicitor is attached hereto as Exhibit B.

³ A true and correct copy of York County’s response is attached hereto as Exhibit C.

417(b) of the Election Code, 25 P.S. § 2687(b) (“Each watcher shall be provided with a certificate from the county board of elections, stating . . . the name of the candidate, party or political body he represents”).

31. The special recognition the Election Code provides to political parties and candidates does not negate the clear statutory requirement that the canvassing process be “publicly” accessible. The Board is required to allow partisan attorneys and watchers, but not to the exclusion of the general public. Rather, the Election Code provides a floor not a ceiling for observation at the official canvass: attorneys and watchers are granted privileges to participate in election procedures, but those do not foreclose the public’s right to access and observe the proceedings.

32. Permitting the Board to continue conducting the official canvass of election results behind closed doors amounts to a violation of Section 1404 of the Election Code, 25 P.S. § 3154.

Count I
Declaratory Judgment – Violation of Election Code, 25 P.S. § 3154(a)

33. The averments of the preceding paragraphs are incorporated herein by reference.

34. Plaintiffs seeks a declaration by this Court of their rights and Defendants’ obligation under Section 1404 of the Election Code, 25 P.S. § 3154, to permit Plaintiffs to observe the canvassing process.

35. Specifically, Section 1404(a) states that the canvassing process “shall” be undertaken “publicly” at the Board’s “office or at some other convenient public place . . .” 25 P.S. § 3154(a). Section 1404(c) similarly states that the Board “shall . . . publicly account for all extra official ballots” and that a designated clerk “shall publicly announce” the official election

results within each voting district. 25 P.S. § 3154(c). An actual and justiciable controversy exists between Plaintiffs and Defendant concerning the matters alleged herein.

36. Declaratory relief by this Court will terminate some or all of the existing controversy between the parties.

37. Plaintiffs respectfully request the Court enter judgment declaring that Defendant's refusal to permit Plaintiffs and members of the public from accessing the official canvass amounts to a violation of Section 1404 of the Election Code. 25 P.S. § 3154(a).

Count II
Equitable Action Seeking Injunctive Relief

38. The averments of the preceding paragraphs are incorporated herein by reference.

39. The Plaintiffs seek injunctive relief enjoining the York County Board of Elections from denying Plaintiffs and members of the public access to the official canvass procedure at Section 1404(a) of the Election Code, 25 P.S. § 3154(a).

40. The Plaintiffs' right to relief is clear because the Election Code plainly requires the official canvass to be "publicly" undertaken at a "convenient public place." 25 P.S. § 3154(a).

41. Absent injunctive relief, Plaintiffs and members of the public at large will be irreparably harmed because they will be prevented from exercising their statutory right to observe the canvassing of Election returns.

42. The Board's continuing violation of the Election Code cannot be compensated by damages.

43. Greater injury will result to Plaintiffs and other affected individuals if the requested injunction is denied, than will be suffered by the Defendant if the requested injunctive relief is granted.

PRAYER FOR RELIEF

The only effective remedy to prevent Defendant from violating the Election Code in the future is to order Defendant to publicly canvass the ballots cast in the upcoming 2024 Primary and General Election, and to permit Plaintiffs and other members of the public to observe that process.

WHEREFORE, Plaintiffs request that this Honorable Court enter judgment in their favor and against Defendant and:

- a) Declare that Defendant violated Section 1404 of the Pennsylvania Election Code, 25 P.S. § 3154, by prohibiting Plaintiffs from attending and observing the Board's canvassing of ballots cast during the 2023 municipal election.
- b) Declare that Plaintiffs and members of the public are authorized to observe the Board's canvassing of ballots cast in all future primary and general elections under Section 1404(a) of the Election Code, 25 P.S. § 3154(a).
- c) Issue an injunction enjoining Defendants from excluding Plaintiffs and members of the public from observing the canvassing of ballots in violation of Section 1404(a) of the Election Code, 25 P.S. § 3154(a).
- d) Award Plaintiffs nominal damages and such further relief that this Honorable Court deems just and appropriate.

Respectfully submitted,

ACLU OF PENNSYLVANIA


By: 

Marian K. Schneider, Esq.
Stephen A. Loney, Esq.
Kate Steiker-Ginzberg, Esq.
Attorneys for Plaintiffs

VERIFICATION

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

Dated: 3/4/2024

DocuSigned by:

EB3BD4A12859424...

Elizabeth Kurian

VERIFICATION

I, Witold J. Walczak, hereby verify that the statements made in this Complaint are true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: Feb. 28, 2024



Witold J. Walczak
Legal Director, ACLU/F of Pennsylvania

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: March 5, 2024


Marian K. Schneider, Esq.

EXHIBIT

A

DECLARATION OF ELIZABETH S. KURIAN

Pursuant to 18 Pa.C.S. § 4904, I, Elizabeth Sherry Kurian hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 23 years old and am otherwise competent to testify.

3. I am a resident of York County. As a child, I lived with my family in Red Lion, Pennsylvania. When I started high school, my family moved to Dallastown, Pennsylvania, where we currently reside.

4. I have been a registered voter in York County since I became eligible to vote at the age of 18.

5. I am currently a full-time student studying psychology at Millersville University. Last semester, I studied at Harrisburg Area Community College.

6. I have been a volunteer with the York Chapter of the ACLU of Pennsylvania for about two years.

7. In my capacity as a volunteer with ACLU-PA, I attempted to attend the York County Board of Elections meeting scheduled for November 10, 2023, to observe the Official Canvass by the Board of Elections.

8. On November 10, 2023, I went to the elections office located at 2401 Pleasant Valley Road in York, Pennsylvania. I arrived at 9am, but the door to the building was locked, perhaps in observance of the Veterans Day

holiday. A security officer opened the door for me, and I explained that I was there to attend the York County Board of Elections meeting. I went through security and was directed to the meeting room.

9. In the hallway, I was approached by Bryan Sheaffer, who I later learned is the Deputy Director at the York County elections office. I told Mr. Sheaffer that I was looking for the Canvass meeting, and he explained that I would need a watcher's certificate to attend. He stated that this "wasn't really a meeting," but more a "final vote count" from the election.

10. I explained that I was volunteering with a non-partisan organization and that I was only there to observe the Canvass. Mr. Sheaffer insisted that without a watcher's certificate, I could not go into the room.

11. It is my understanding that watcher's certificates are only available to partisan representatives. As a non-partisan volunteer, I would not have been able to obtain a watcher's certificate. I was therefore unable to enter the room where the York County Board of Elections conducted the Official Canvass.

12. I would like to attend the official canvass in the future as a volunteer with ACLU-PA, either for the 2024 primary or general election.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4 of March, 2024 in Dallastown, Pennsylvania.

DocuSigned by:

EB3BDDA12859424...

Elizabeth Sherry Kurian

EXHIBIT B

January 11, 2024

Via email to dsullivan@yorkcountypa.gov



Deirdre Sullivan, Esq.
York County Assistant Solicitor
Administrative Center
28 East Market Street
York, PA 17401

RE: Official Canvass and Computation of Votes

Dear Ms. Sullivan:

Eastern Region Office
PO Box 60173
Philadelphia, PA 19102
215-592-1513 T
267-573-3054 F

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

Western Region Office
PO Box 23058
Pittsburgh, PA 15222
412-681-7736 T
412-345-1255 F

During the 2023 election cycle, the ACLU-PA learned that the York County Board of Elections refused to allow a volunteer from a nonpartisan organization to attend and observe the official canvass and computation of votes that took place following November's municipal election. This limitation on public access is concerning. The Pennsylvania Election Code requires that the canvass and computation of election results remain open to the public, including to individuals who are not affiliated with a candidate or political party. We request that York County remedy this situation and adopt a policy that complies with the Election Code in time for the 2024 primary and general elections.

On November 10, 2023, a longtime York County resident attempted to attend the official canvass that was scheduled to begin at 9 am. Upon arriving, Bryan Sheaffer, the Deputy Director of the York County elections office told her that she needed a "watcher's certificate" to attend the meeting. The volunteer explained that she was planning to attend the canvass on behalf of a nonpartisan organization and that she was not affiliated with any candidate or political party. The volunteer also explained that she was only there to observe and take notes on the proceedings. Mr. Sheaffer would not allow her into the room where the official canvass was taking place.

The York County Board of Elections' denial of a citizen's access to the official canvass violates 25 P.S. § 3154 of Pennsylvania's Election Code. That provision, which governs "Computation of returns by county board; certification; issuance of certificates of election," plainly requires that the official canvass take place in public view. Subsection (a) states as follows:

The county board shall, at nine o'clock A. M. on the third day following the primary or election, *at its office or at some other*

convenient public place at the county seat, of which due notice shall have been given as provided by section 1403, publicly commence the computation and canvassing of the returns, and continue the same from day to day until completed, in the manner hereinafter provided.

25 P.S. § 3154(a) (emphasis added). Moreover, subsection (c) requires election boards to “publicly account for” and “publicly announce” the election results. 25 P.S. § 3154(c). Consequently, the foregoing statutory language is clear that the entire canvassing process must be open to members of the public.

Pennsylvania case law confirms the public nature of these proceedings. *See, e.g., Rinaldi v. Ferrett*, 941 A.2d 73, 75 (Pa. Commw. Ct. 2007) (noting that employees of the election office, “as called for in Section 1404 . . . publicly computed and canvassed the election returns”); *Appeal of Antonelli*, 174 A.2d 107, 110 (Pa. 1961) (“This is not an action between the candidates involved but a proceeding in which the public is involved, to canvass and compute the votes cast” in the election); *see also Petition to Open Ballot Box of Oneida Dist. in E. Union Twp.*, 103 A.2d 652, 653 (Pa. 1954) (“As required by Section 1404(a) of the Election Code . . . the Board of Elections of Schuylkill County on November 6th publicly commenced its canvass and computation of the returns of the votes cast in the county”). Because the canvassing process is an inherently “public[]” undertaking, members of the public have a statutory right to “witness[] the computation” of the ballots and “observe[]” the Board’s official announcement of the election results. *Rinaldi*, 941 A.2d at 75.

Indeed, Pennsylvania courts have specifically cited the computation-and-canvassing procedure outlined in 25 P.S. § 3154(a) to highlight “the public nature of the Commonwealth’s election procedures” because they “provide the opportunity to obtain evidence of fraud or error . . . when it exists.” *See In re: Petitions to Open Ballot Box Pursuant to 25 P.S. §3261(A)*, 295 A.3d 325, 339 (Pa. Commw. Ct. 2023).

Political parties and candidates must be allowed to participate directly in the official canvass for reasons distinct from the general public, which is why the Election Code guarantees them watcher’s certificates and permits their attorneys to attend under certain circumstances. But the special recognition the Code gives to political parties and candidates does not negate the clear statutory requirement that the proceedings be “public,” meaning that members of the public, including those representing non-profit organizations, have a right to attend. Other Pennsylvania counties recognize this statutory obligation; York County should, too.

Please confirm that York County will be modifying its policy for the 2024 primary and general elections to ensure that members of the public will be allowed to attend and observe the official canvass procedures, as required by 25 P.S. § 3154(a). If we do not hear from you by **Friday, January 26, 2024**, we will take necessary and appropriate legal action to ensure York County complies with Pennsylvania's Election Code. If you have any questions, or wish to discuss this matter, please contact me at MSchneider@aclupa.org.

Very truly yours,

/s/ Marian K. Schneider

Marian K. Schneider

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Kate Steiker-Ginzberg

Voting Rights Legal Fellow

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cc: Julie Haertsch, York County Elections Director (via email to jvhaertsch@yorkcountypa.gov)

EXHIBIT C

OFFICIAL CANVASS and COMPUTATION OF VOTES

1 message

Eshbach, Jonelle <JEshbach@yorkcountypa.gov>

Fri, Feb 9, 2024 at 10:54 AM

To: "mschneider@aclupa.org" <mschneider@aclupa.org>, "sloney@aclupa.org" <sloney@aclupa.org>, "ksteiker-ginzberg@aclupa.org" <ksteiker-ginzberg@aclupa.org>, "Burford, Scott" <SBurford@yorkcountypa.gov>

Cc: "Haertsch, Julie V." <JVHaertsch@yorkcountypa.gov>, "Sheaffer, Bryan M." <BMSheaffer@yorkcountypa.gov>

Dear Attorneys Schneider, Loney and Steiker-Ginzberg:

Thank you for the extension of time necessary for me to become familiar with York County's voting procedures, so I may address the concerns set forth in your letter of January 11, 2024. After thoroughly reviewing the Election Code and our processes, it is my opinion that we are compliant with the law. A Watcher's certificate is required to observe the canvassing of the returns. Canvassing takes place in a county building where Watchers may observe the computation and canvassing of the returns. This is the public process. The number of Watchers that may be present is limited by the Election Code. The general public may not simply appear and expect to observe the proceedings. The space limitations and security risks of the latter scenario are just two potential problems that could result from such an interpretation. The Canvas is meticulously conducted and cannot be permitted to become a free-for-all. The results could be catastrophic.

York County places the highest priority on compliance with required voting procedures and ensuring a fair and accurate election. We continue to prepare and plan for the upcoming April primary, to achieve the correct tabulation of votes and to see that all voters in York County can have their voices heard.

Sincerely,

Jonelle Harter Eshbach

Solicitor of the County of York

York County Administrative Center

28 East Market Street

York, Pennsylvania 17401

717-771-9306

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