

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

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**Michael Meehan,
Republican Committee of Philadelphia, and
Pennsylvania Republican State Committee,**

Plaintiffs,

v.

**Philadelphia County Board of Commissioners,
acting as the
Philadelphia County Board of Elections,**

Defendants.

Civil No.:

COMPLAINT

Plaintiffs Michael Meehan, Republican Committee of Philadelphia and Pennsylvania State Republican Committee, through their undersigned counsel, hereby complain as follows:

THE PARTIES

1. Plaintiff Michael Meehan is an adult and a citizen of the Commonwealth of Pennsylvania. Mr. Meehan is a qualified elector registered to vote and resident in Philadelphia, Pennsylvania and is the General Counsel of the Republican City Committee.

2. Plaintiff Republican City Committee (“City Committee”) is a not for profit corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal place of business in Philadelphia, Pennsylvania. The City Committee is a political organization that coordinates Republican Party activities in the City of Philadelphia.
3. Plaintiff Pennsylvania Republican State Committee (“RSC”) is a not for profit corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal place of business in Harrisburg, Pennsylvania. The RSC is a political organization that coordinates Republican Party activities in the Commonwealth of Pennsylvania.
4. Defendant Philadelphia County Board of Commissioners, acting as the Philadelphia County Board of Elections (“the Board”) is the local government entity that conducts elections in Philadelphia County, and has its principal place of business in Philadelphia, Pennsylvania.

JURISDICTION AND VENUE

5. Jurisdiction lies in this Court in that the federal district courts have the inherent power to enforce their own orders, certain of which, as described below, are directly implicated in this matter. The Court also has jurisdiction under the Federal Civil Rights Act, 42 U.S.C. § 1983. *See* 28 U.S.C. § 1343(3).
6. This Court is an appropriate venue for this matter in that the Defendant is a resident of this judicial district, and all of the events giving rise to Plaintiffs’ claims occurred in this judicial district.

FACTUAL BACKGROUND

7. In *Marks v. Stinson*, 1994 U.S. District LEXIS 1586 (E.D. Pa.), aff'd 19 F.3d 873 (3d Cir. 1994), this Court found that the Board conspired with a Democrat candidate for the Pennsylvania State Senate to perpetrate a massive fraud involving absentee ballots in order to steal an election for the Pennsylvania State Senate and entered temporary and permanent injunctive relief in favor of the Plaintiffs which provided, in part:

8. The defendant County Board of Commissioners, acting as the Board of Elections, shall not employ discriminatory practices which involve applying the Election Code or any other law in a manner that favors or disfavors a candidate.

9. The County Board of Commissioners, acting as the Board of Elections, their agents, representatives and those acting in concert with them are further ordered to take all steps necessary within their department and within the office of the County Board of Elections to enforce the terms of this Order and to comply with the terms of the Election Code and other laws.

Order dated February 18, 1994.

8. Under the Pennsylvania Election Code (the "Code"), 25 P.S. §3146(c):

Not less than five days preceding the election, the chief clerk shall prepare a list for each election district showing the names and post office addresses of all voting residents thereof to whom official absentee ballots have been issued ... Upon written request, he shall furnish a copy of such list to any candidate or party county chairman.

9. The Code, 25 P.S. §3146.8(e), (f) further provides that watchers may challenge absentee ballots following the close of the polls on Election Day in the event that the persons receiving absentee ballots are not qualified to vote by absentee ballot under Pennsylvania law. Specifically, absentee ballots may be challenged where: (1) the absentee elector is not a qualified elector; (2) the absentee elector was within the county of residence on the day of the election while the polls were open, except when such elector is in military service or unable to vote because of illness or physical disability; and (3) the absentee

elector was able to appear at the polls even though the elector represented that the elector could not do so because of illness or physical disability. If absentee ballots are challenged, the envelopes in which they are cast remain sealed and a hearing is held within seven days of the election.

10. In the instant case, the Board – which is controlled by two Democrat Commissioners -- failed to post the list of persons receiving absentee ballots five days before the election and failed to provide a copy of such list to Michael Meehan, chairman of the City Committee, upon written and oral demand.
11. As a result of the Board’s failure to fulfill its statutory obligation, the City Committee, the RSC, and their watchers have been denied the statutory period to investigate the persons to whom absentee ballots have been issued in order to determine whether a challenge is warranted.
12. Based on a canvass of the list of absentee ballot applications, the applications have been filed overwhelmingly by Democrat, rather than Republican, electors. *See* Declaration of Michael Meehan, Exhibit “A” hereto.

COUNT I
PLAINTIFFS v. DEFENDANTS
REQUEST FOR INJUNCTIVE RELIEF

13. Plaintiffs incorporate by reference herein the above paragraphs of this Complaint as if fully set forth at length.
14. It is plain on the face of the Election Code that the Board is required to provide the list of persons who received absentee ballots five days before the election and, in addition, upon written demand of the party county chairman. 25 P.S. §3146(c). This did not occur. *See* Meehan Declaration.

15. Moreover, this Court's prior order described above provides that the County Board "shall not employ of discriminatory practices which involve applying the Election Code or any other law in a manner that favors or disfavors a candidate." Order, ¶8.
16. In addition, this Court's prior order requires the County Board "to enforce the terms of this Order and to comply with the terms of the Election Code and other laws." Order, ¶9.
17. The failure to provide the list discriminates against Republican candidates because the persons who most likely received absentee ballots are overwhelmingly registered Democrat and, thus, it is the Republican candidate, not Democrat candidate, who has the greater interest in investigating whom received such ballots and challenging such ballots. In addition, the failure to provide the list within the statutory time period constitutes a failure to comply with this Court's prior order and with the terms of the Election Code.
18. In order to obtain a preliminary injunction pursuant to Fed.R.Civ.P. 65, the moving party need simply demonstrate: (1) a reasonable probability of eventual success in the litigation and (2) that the movant will be irreparably injured pendente lite if relief is not granted.
19. In the instant case, Plaintiffs are likely to succeed on the merits because it is undisputable that the Board failed to comply with the statutory requirement that the list of persons who were provided absentee ballots be published five days before the election and a copy provided to Michael Meehan, pursuant to his written and oral demand.
20. Thus, the list should be provided immediately and the time period to challenge the ballots briefly extended.
21. Plaintiffs have established irreparable harm because they have been denied the statutory five day period to investigate persons who received absentee ballots and to determine

whether there are grounds to challenge these ballots. Plainly, the right to an honest election will be harmed if persons who are unqualified to vote by absentee ballot will be able to do so because the statutory time for investigation was not provided.

22. Defendants will suffer no harm if the preliminary injunction is issued because legal absentee ballots will be counted on Friday, November 5, just three days after the election. In fact, Defendants will benefit because the election will be conducted according to law.
23. There is a considerable public interest in having free and fair elections, which includes only the counting of legal ballots. *Reynolds v. Sims*, 377 U.S. 533 (1964). There is no public interest which would be adversely affected by the narrowly requested relief.
24. While Fed R. Civ. P. 65(c) generally requires the Court to impose security in an amount set at the discretion of the court, an exception to this general requirement exists when there is no possible harm to the adverse party. *Alexander v. Primerica*, 811 F. Supp. 1025, 1035 (D.N.J. 1993) (bond is required unless no risk of financial harm exists for the party to be enjoined (citations omitted)); see *Temple Univ. v. White*, 941 F.2d 201, 219 & 219 n. 26 (citing *International Controls v. Vesco*, 490 F.2d 1334, 1356 (2d Cir. 1974) *cert. denied* 417 U.S. 932 (1974) (other citations omitted) (“court may dispense with security where there has been no proof of likelihood of harm to the party enjoined”).
25. Alternatively, of course, the court may require nominal security. *Id.* at 220 n. 28 (citation omitted).
26. In the present case, Defendants will suffer no harm if the Preliminary Injunction is issued because all that will occur is that the election will be conducted according to the law, which permits a five day period to investigate persons who received absentee ballots. Accordingly, no security (or at most, nominal security) should be required.

27. For the foregoing reasons the Court should (1) require the County Board to immediately provide a list of electors who received absentee ballots and (2) prohibit the County Board from canvassing absentee ballots until Friday, November 5, 2004 when the provisional ballots are canvassed.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against the Defendants, and that the Court enter an Order granting them preliminary and permanent injunctive relief (1) requiring the County Board to immediately provide a list of electors who received absentee ballots and (2) prohibiting the County Board from canvassing absentee ballots until Friday, November 5, 2004 when the provisional ballots are canvassed, together with such other relief as the Court shall deem appropriate under the circumstances.

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