

responses to its discovery requests. This Court granted the stay “until further order of this court.”

At the time the stay was agreed to there was no threat of additional purchases of the devices whose compliance with the law was being challenged. Because of the Secretary’s decertification of a system wrongfully certified by him, that threat has materialized and Petitioners need to be able to turn to this court to resume proceedings in order to determine if interim protective relief is appropriate in order to maintain the status quo and prevent more harm from occurring during the pendency of the proceedings.

Petitioners acknowledge they will bear the burden of showing the need for the preliminary injunction.¹ But it is the Respondent who bears the heavy burden of continuing the stay or supersedeas which deprives a court of its ability to conduct its proceedings. The leading case on the standard for a stay is *Pennsylvania Public Utility Commission, Appellant, v. Process Gas Consumers Group*, 502 Pa. 545, 552 (1983), where the court said:

“the grant of a stay is warranted if:

1. The [movant] makes a strong showing that he is likely to prevail on the merits.
2. The [movant] has shown that without the requested relief, he will suffer irreparable injury.
3. The issuance of a stay will not substantially harm other interested parties in the proceedings.
4. The issuance of a stay will not adversely affect the public interest.”

See also, Gregg et al. v. Independence Blue Cross, et al., 2004 Phila. Ct. Com. Pl.

LEXIS 2, (Phila. C.P. 2004)(Shepard, J.)(applying *Process Gas* standard).

¹ The motion for preliminary injunction is accompanied by two declarations from eminent computer scientists expert in voting machine technology identifying the ways the Respondent’s certifications have failed to comply with Pennsylvania law: by certifying machines that do not have a permanent record, by certifying machines which are not independently auditable, by certifying machines which are not safe or reliable, and by using inadequate procedures to determine compliance with state law.

Respondent can not carry that burden which would prevent this court from conducting proceedings to determine the necessity of interim relief. Since the previous denial of a stay application and the decision of this Court that the Petitioners have alleged actionable violations of law by the Secretary based on the evidence asserted in the Petition, the evidence has grown stronger that the Secretary has not conducted adequate examinations to determine compliance with the law. In 2007, for the second time, the Secretary himself agreed that he was required to decertify machines which he had previously found complied with the law.² Moreover two states have closely examined four of the machines at issue here and found them unreliable and unsafe.

Respondent has the burden not only on the first prong of the test, but also on the other prongs, each of which he must demonstrate. On the second prong, there is no injury from going forward with the preliminary injunction hearing. Re-opening the case in no way prejudices the Secretary's ability to defend its interests. On the third prong, however, a stay will irreparably harm Petitioners' ability to protect their interest in having voting systems which meet the requirements of the Code and Constitution to protect their fundamental right to have their vote reliably and safely counted. As this Court noted, there is no after-the-fact protection possible. On the fourth prong the public interest in avoiding wasteful and duplicative expenditures calls for an immediate hearing so that the three counties can determine in a timely manner what voting systems are available. Voting systems which comply with the law and which are not being challenged are available; it is only because of the wrongful acts of the Secretary in certifying the

² The first time was in connection with the Unilect Patriot system which the Secretary decertified after serious undercounts of votes in three counties occurred in the November 2004 election, as set forth in the Complaint at paragraph 68.

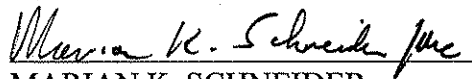
six systems being challenged here that the counties believe that they currently have these additional options available to them. It is in the public's interest to for this court to provide a hearing at which Petitioner's may present their evidence as to the failure of these systems to comply with the law and therefore the need to forestall additional purchases of them.

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Respectfully submitted,



MICHAEL CHURCHILL
Attorney I.D. No. 4661
Public Interest Law Center of Philadelphia
125 S. 9th Street, Suite 700
Philadelphia, PA 19107
Tel. 215-627-7100
Fax. 215-627-3183



MARIAN K. SCHNEIDER
Attorney I.D. No. 50337
Attorney-at-Law
295 E. Swedesford Road, #348
Tel. 610-644-1925
Fax. 610-722-0581

MARY E. KOHART
Attorney I.D. No. 37191
DRINKER BIDDLE & REATH LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
Tel. 215-988-7740

Attorneys for Banfield, et al.

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2008, I caused a true and correct copy of the foregoing Motion to Dissolve Voluntary Stay of Proceedings and for an Expedited Hearing & Memorandum in Support of Petitioners' Application to Dissolve Voluntary Stay of Proceeding to be served on the following:

VIA HAND DELIVERY

Mark Aronchick, Esquire
HANGLEY ARONCHICK SEGAL & PUDLIN
One Logan Square
18th & Cherry Streets, 27th Floor
Philadelphia, PA 19103-6933

Alan C. Pomer, Esquire
HANGLEY ARONCHICK SEGAL & PUDLIN
One Logan Square
18th & Cherry Streets, 27th Floor
Philadelphia, PA 19103-6933

VIA REGULAR MAIL

Barbara Adams, Esquire
General Counsel
Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17120

Gregory Dunlap, Esquire
Deputy General Counsel
Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17120

Dated: January 25, 2008



Michael Churchill