

IN THE SUPREME COURT OF PENNSYLVANIA

**COUNTY OF FULTON, FULTON
COUNTY BOARD OF
ELECTIONS, STUART L. ULSH,**
in his official capacity as County
Commissioner of Fulton County
and in his capacity as a resident,
taxpayer and elector in Fulton
County, **and RANDY H. BUNCH,**
in his official capacity as County
Commissioner of Fulton County
and in his capacity as a resident,
taxpayer and elector of Fulton
County,

Petitioners/Appellees,

v.

**SECRETARY OF THE
COMMONWEALTH,**

Respondent/Appellant.

No.: 3 MAP 2022

BRIEF OF APPELLEES

**Filed on Behalf of
Petitioners/Appellees:**

**County of Fulton, Fulton
County Board of Elections,
Stuart L. Ulsh, and Randy H.
Bunch**

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I. Counterstatement of the Issues or Questions Presented.

1. Whether the Commonwealth Court abused its discretion in denying Respondent-Appellant's Emergency Application for an Order Prohibiting Spoliation of Key Evidence?

Suggested Answer: No.

2. Whether the Commonwealth Court abused its discretion in denying Respondent-Appellant's Renewed Emergency Application for an Order to Enjoin the Third-Party Inspection Currently Scheduled for January 14, 2022?

Suggested Answer: No.

II. Counterstatement of the Case.

The present matter relates to the IOC's request to examine Fulton County's voting machines, and Appellant's objections thereto. This is a significant departure from Appellees' underlying claims, as raised in their Amended Petition for Review. Appellees' underlying matter arises in direct response to Respondent-Appellant's decertification of the voting machines used by Fulton County and her unilateral issuance of Directive 1 of 2021. However, Appellees' legal challenge to the Secretary's authority has been hijacked by the present dispute.

On January 17, 2019, the Democracy Suite 5.5A voting system, owned by Dominion Voting Systems, Inc. ("Dominion"), was certified and approved for use in Pennsylvania by then-Secretary of the Commonwealth, Kathy Boockvar. R.48a.

In April of 2019, Fulton County entered into a contract with Dominion to lease two Democracy Suite 5.5A voting machines to be used by the County in the 2020 election. Following the 2020 General Election, Petitioner-Appellees retained Wake Technology Services, Inc. ("Wake TSI") as the County's Machine inspector under 25 P.S. § 2642(d), to "inspect systematically and thoroughly the conduct of primaries and elections," pursuant to 25 P.S. § 2642(g).

On July 8, 2021, several months after Wake TSI's inspection of Fulton County's voting machines, Respondent-Appellant issued its "Directive 1 of 2021," which prohibited county boards of elections from providing third-party access to "conduct an examination of state-certified electronic voting systems." R.279a.

On July 20, 2021, Respondent-Appellant addressed a letter to the Fulton County's Solicitor, James M. Stein, Esq., stating, in relevant part, as follows:

. . . under the authority granted to the Secretary of Commonwealth under Sections 1101-A through 1122-A of the Pennsylvania Election Code, I have no other choice but to decertify the use of Fulton County's leased Dominion Democracy Suite 5.5A voting system last used in the November 2020 election.

R. 285a.

On September 17, 2021, Petitioner-Appellees filed their Amended Petition for Review, raising four counts in Declaratory Judgment and a request for injunctive relief. R. 287a.

On October 18, 2021, Respondent-Appellant filed Preliminary Objections to Petitioner-Appellees' Amended Petition for Review, which are scheduled for argument in the Court below for March 10, 2022.

On December 10, 2021, Petitioner-Appellees received a request from Senator Cris Dush, acting as Chairman of the Pennsylvania Senate

Intergovernmental Operations Committee (hereinafter “IOC”), requesting “permission to collect the digital data from the election computers and hardware used by Fulton County, Pennsylvania in the November 2020 election.” R. 402a.

By letters dated December 16, 2021, informed Respondent and Dominion Voting Systems that Petitioner-Appellees would be providing access to Fulton County’s voting machines to the IOC in accordance with the provisions of Article 9, Section 5 of the Pennsylvania Constitution, which provides as follows:

A municipality by act of its governing body may, or upon being required by initiative and referendum in the area affected shall, cooperate or agree in the exercise of any function, power or responsibility with, or delegate or transfer any function, power or responsibility to, one or more other governmental units including other municipalities or districts, the Federal government, any other state or its governmental units, or any newly created governmental unit.

Pa. Const. art. IX, § 5; see *also* R. 409a.

The IOC’s inspection was originally scheduled to occur on Wednesday December 22, 2021 at 9:00 A.M. as a public meeting of the Fulton County Board of Elections. On December 17, 2021, Appellant filed her Emergency Application for an Order Prohibiting Spoliation of Key Evidence Scheduled to Occur on December 22, 2021, seeking to enjoin the IOC’s inspection.

On December 21, 2021, following oral argument on Appellant's Emergency Application, and "upon agreement of the parties," the IOC's December 22, 2021 inspection was postponed to January 10, 2022. In the interim, the parties were directed to negotiate an inspection protocol. R. 547a.

Subsequently, Appellant filed an Emergency Application to Reschedule the January 12, 2022 Inspection Due to the Unavailability of Respondent's Expert. R. 950a. On January 11, 2022, the Court postponed the IOC's inspection for a second time to Friday, January 14, 2022. The Court further directed the parties to continue their efforts to agree upon an inspection protocol. Further, the Court directed the parties to file a joint status report on such a protocol be filed with the Court on January 13, 2022. R. 1038a.

The parties timely filed their Joint Status Report, which report sets forth the two protocols proposed by the respective parties and the position statements of the parties relative to the protocol. R. 1072a.

On January 13, 2022, Appellant filed its Renewed Emergency Application for an Order to Enjoin the Third-Party Inspection Currently Scheduled for January 14, 2022, From Proceeding. R. 1157a.

On January 14, 2022, the Court issued its Memorandum Opinion and Order, “den[ying] the Application to Preserve Evidence and dismiss[ing] the Application to Enjoin Inspection as improvidently filed,” permitting the IOC’s inspection to proceed on January 14, 2022. R. 1218a.

Appellant subsequently filed its Notice of Appeal and accompanying Emergency Application to Stay Third-Party Inspection of Electronic Voting System on January 14, 2022. On January 14, 2022, this Court granted Appellant’s Application and stayed the Committee’s inspection on a temporary basis, pending consideration by the full Court. R. 1240a.

III. Summary of the Argument.

The Commonwealth Court did not abuse its discretion in denying the Appellant's Applications to Prevent Spoliation of Evidence. It is Appellant's burden to establish that the voting machines and/or the data contained thereon constitute evidence that Appellant intends to use in the underlying case. As stated by the Court below, "[t]he Secretary, as the party seeking the preservation order, bears the burden under this test. She has failed, however, to demonstrate a critical element of each of the three factors – that the data or state of the System subject to inspection constitutes evidence in this matter worthy of protection." R. 1221a. The Commonwealth Court's analysis of this issue was correct.

As noted by the Court below, Appellant's Application for Injunctive Relief is improper because it is not supported by an underlying pleading. R. 1222a. As set forth in Rule 1531 of the Pennsylvania Rules of Civil Procedure, "[i]n determining whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleadings or petition." Pa R.C.P. Rule 1531. Appellant sought injunctive relief after filing Preliminary Objections to Appellees' Amended Petition for Review. Additionally,

Appellant failed to satisfy the traditional requirements for the granting of a preliminary injunction in the Commonwealth of Pennsylvania.

IV. Argument.

A. The Commonwealth Court did not abuse its discretion in denying Appellant's Application for a preservation order.

As set forth by this Court, “[a]lthough Pennsylvania law does not permit an equity action for discovery, parties to pending and prospective suits, upon an appropriate showing, may be able to obtain injunctive relief to preserve evidence.” *Pyeritz v. Com.*, 32 A.3d 687, 694 (Pa. 2011); *citing Capricorn Power Co., Inc. v. Siemens Westinghouse Power Corp.*, 220 F.R.D. 429, 433-34 (W.D. Pa. 2004). The *Capricorn* case established a three-factor balancing test to be used when deciding a request to preserve evidence.

These factors are as follows:

- 1) the level of concern the court has for the continuing existence and maintenance of the integrity of the evidence in question in the absence of an order directing preservation of the evidence;
- 2) any irreparable harm likely to result to the party seeking the preservation of evidence absent an order directing preservation; and
- 3) the capability of an individual, entity, or party to maintain the evidence sought to be preserved, not only as to the evidence's original form, condition or contents, but also the physical, spatial, and financial burdens created by ordering evidence preservation.

Capricorn Power Co., Inc., 220 F.R.D. at 433-34.

As an initial matter, the Court below noted that the Appellant had failed to demonstrate that the data subject to the inspection below was evidence in this matter. Specifically, the Court stated, in relevant part, as follows:

[t]he Secretary, as the party seeking the preservation order, bears the burden under this test. She has failed, however, to demonstrate a critical element of each of the three factors – that the data or state of the System subject to inspection constitutes evidence in this matter worth of protection. The spoliation doctrine protects evidence, not information in general. The Secretary has not persuaded the Court that she, or Petitioners for that matter, will use any data obtained from the System as evidence in this proceeding.

R. 1221a.

First, it is Appellant's burden to establish that the voting machines and/or the data contained thereon constitute evidence that Appellant intends to use in the underlying case. As stated by the Court below, "[t]he Secretary, as the party seeking the preservation order, bears the burden under this test. She has failed, however, to demonstrate a critical element of each of the three factors – that the data or state of the System subject to inspection constitutes evidence in this matter worthy of protection." R. 1221a.

The Commonwealth Court's analysis of this issue was correct. The Appellees' underlying claims present questions of law unrelated to the state of the voting machines at issue in Fulton County. Appellees' claims concern the authority of the Appellant to decertify individual voting machines and the

ability of county boards of elections to provide for their own machine inspectors and to inspect the conduct of their elections as set forth in 25 P.S. § 2642.

The issues presented by Appellees' Amended Petition for Review are all issues of law:

1. Under the Election Code, did the Appellant have the authority to decertify Fulton County's voting machines?
2. Under the Election Code, was the Appellant legally required to conduct an inspection of the voting machines?
3. Under the Election Code, did Fulton County have the legal authority to conduct a post-election inspection and review of its voting machines?
4. Under the Election Code, did the Appellant have the legal authority to unilaterally issue Directive No. 1 which usurps the authority granted the Fulton County Board of Elections?

As the Commonwealth Court correctly held, Appellant failed to establish that the "data or state of the System subject to inspection constitutes evidence in this matter worthy of protection." R. 1221a. Such a determination is within the sound and reasoned discretion of the

Commonwealth Court. As such, the Commonwealth Court did not abuse its discretion in denying Appellant's Application for a Preservation Order.

Further, Appellant failed to establish that she would be irreparably harmed in the absence of a preservation order. Once again, the issues raised in Appellees' Amended Petition for Review are legal issues regarding Appellant's legal authority under the Election Code. These issues are separate and unrelated to any third-parties' efforts to inspect or review the data or state of Fulton County's election machines. The Appellant's attempt to join the two issues is an inappropriate attempt to conflate the issues pending before the Commonwealth Court.

Further, Appellees provided the Court with detailed protocol to protect against any potential spoilage of the election data on its voting machines. Under Appellees' protocol, the data contained on the voting machines would not be disturbed, modified, or altered in any way.

Further, the repeated postponement of the IOC's inspection has created significant financial burdens to Fulton County. Notwithstanding the desire of the Appellees to assist the IOC in their investigation in the spirit of Article IX, § 5 of the Pennsylvania Constitution, providing for intergovernmental cooperation, Appellees and the County of Fulton have incurred significant expenses in the several postponements of the IOC's

inspection. Each postponement of the inspection means that Appellees are required to spend additional funds to secure County employees for the inspection and to secure a space for the inspection to take place. Further, the present inspection by the IOC is unrelated to the Appellees' underlying claims, which are currently pending.

Accordingly, as the Appellant has failed to establish that the voting machines at issue constitute "evidence," and as Appellant has failed to meet the requirements for the obtaining of a protective order, the Commonwealth Court did not abuse its discretion in denying Appellant's Application for a Protective Order.

B. The Commonwealth Court did not abuse its discretion in denying Appellant's Application for Injunctive Relief.

As noted by the Court below, Appellant's Application for Injunctive Relief is improper because it is not supported by an underlying pleading. R. 1222a. As set forth in Rule 1531 of the Pennsylvania Rules of Civil Procedure, "[i]n determining whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleadings or petition." Pa R.C.P. Rule 1531. Appellant sought injunctive relief after filing Preliminary Objections to Appellees' Amended Petition for Review.

Additionally, Appellant failed to satisfy the traditional requirements for the granting of a preliminary injunction in the Commonwealth of Pennsylvania. To obtain a preliminary injunction in Pennsylvania, the moving party must establish the six essential prerequisites for obtaining injunctive relief. *Warehime v. Warehime*, 860 A.2d 41, 46 (Pa. 2004). These prerequisites are as follows:

(1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and (6) the preliminary injunction will not adversely affect the public interest.

SEIU Healthcare Pa. v. Commonwealth, 104 A.3d 495, 502 (Pa. 2014).

1. The injunction sought by the Appellant is not necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages.

Appellant failed to establish the first prerequisite, immediate and irreparable harm, for a preliminary injunction. Appellant asserts that the injunction is necessary to prevent Appellees from violating her Directive No. 1 of 2021. Appellant asserts that a violation of Directive No. 1 will result in

the compromise of critical election infrastructure. See Brief of Appellant, at *34. Such an assertion is without foundation and simply incorrect.

The voting machine at issue in Fulton County has already been accessed by two third-party entity, Wake TSI and Appellant's third-party vendor. In response, Appellant did not decertify the Democracy Suite 5.5A Voting System in the Commonwealth of Pennsylvania. Rather, she solely decertified one voting machine in Fulton County. The IOC's request is to access a voting machine that Appellant has already decertified. Appellant failed to produce any evidence that a third inspection or review of the voting machine would result in any immediate and irreparable harm.

Further, Appellant's request for injunctive relief relates to the purported risk of spoliation of evidence in Appellees' underlying action. As noted by the Court below,

[a] party that engages in spoliation faces numerous sanctions at the court's discretion, ranging from an inference that the evidence would have been adverse to the spoliator, to prohibiting other evidence offered by the spoliator, to striking portions of pleadings or complete dismissal. See *Schroeder v. Department of Transportation*, 710 A.2d 23, 27 (Pa. 1998); *King v. Pittsburgh Water & Sewer Authority*, 139 A.3d 336, 346 (Pa. Commw. 2016). These sanctions are applied in proportion to the severity of the spoliation, and Pennsylvania Courts have refined a standard that applies particularly to spoliation of electronically stored evidence. See *PTSI, Inc. v. Haley*, 71 A.3d 304, 316 (Pa. Super. 2013) (citing Pa. R. Civ. P. 4009.1 and explanatory comment to the 2012 amendment thereto, discussing proportionality standard for electronic spoliation).

R. 1220a.

As noted by the Court, Appellant has a variety of legal remedies to adequately address any issues related to the alleged spoliation of evidence.

2. Appellant has failed to establish that greater injury would result from refusing the injunction than from granting it.

Appellant failed to establish the second prerequisite to obtain injunctive relief in that the inspection as issue is to be performed by the IOC, a Committee within the Pennsylvania Senate. Further, as stated above, Directive 1 of 2021 does not apply to the voting machine at issue in Fulton County as such voting machine is no longer a state certified electronic voting machine contemplated by Directive 1 of 2021, and as such, Petitioner-Appellee's cooperation with the IOC does not violate the Directive. In balancing the above-cited interest of the Committee against the interest of the Appellant in enjoining the Committee's inspection, it becomes clear that greater harm will result from the granting of the injunction.

3. The injunction sought by Appellants will not properly restore the parties to their status quo as it existed immediately prior to the alleged wrongful conduct.

As to the third prerequisite for a preliminary injunction, a preliminary injunction would not restore the parties to their status as it existed immediately prior to the alleged wrongful conduct.

Appellant's assertion that Directive 1 of 2021 is the status quo in the present matter is incorrect. The status quo is the legal authority granted to county boards of election under the Election Code, which was usurped by Appellant's Directive No. 1. The state quo is not Directive No. 1 which Appellees are challenging in the Commonwealth Court.

Further, as set forth in *Ambrogi*, "[t]he purpose of a preliminary injunction is to prevent irreparable injury or gross injustice by preserving the status quo as it exists or as it previously existed before the acts complained of in the Complaint." See *Ambrogi v. Reber*, 932 A.2d 969, 974 (Pa. Super. 2007). The status quo in the present case, as it existed prior to the acts complained of in Appellees' Petition for Review, is that the County Boards of Elections possess the authority to appoint their own machine inspectors to inspect systematically the conduct of elections within the County. See 25 P.S. 2642 (d) & (g). Notwithstanding the true status quo in this matter, Appellant's assertion that the status quo prevents Appellees from granting access to third parties is factually incorrect as Directive 1 of 2021 no longer applies to the voting machine at issue in Fulton County.

On July 8, 2021, Appellant issued its Directive 1 of 2021, which Directive provided, in relevant part, as follows:

The following directive is effective immediately:

a. County Boards of Elections shall not provide physical, electronic, or internal access to third parties seeking to copy and/or conduct an examination of state-certified electronic voting systems, or any components of such systems. . .

b. If access described in Paragraph 3.a. occurs, those pieces of voting equipment will be considered no longer secure or reliable to use in subsequent elections. As a result, the Department of State will withdraw the certification or use authority for those pieces of the county voting system.

R. 279a.

By letter dated July 20, 2021, the Acting Secretary of the Commonwealth, Veronica Degraffenreid, sent a letter to the solicitor for the Fulton County Board of Elections, stating in relevant part, as follows:

As a result of the access granted to Wake TSI, Fulton County's certified system has been compromised and neither Fulton County; the vendor, Dominion Voting Systems; nor the Department of State can verify that the impacted components of Fulton County's leased voting system are safe to use in future elections.

Due to these actions and after careful consideration, under the authority granted to the Secretary of Commonwealth under Sections 1101-A through 1122-A of the Pennsylvania Election Code, I have no other choice but to decertify the use of Fulton County's leased Dominion Democracy Suite 5.5A voting system last used in the November 2020 election.

R. 285a.

As is made abundantly clear by Appellant's Directive 1 of 2021, such directive only applies to "state certified electronic voting systems," and requires that any state certified electronic voting machine that is accessed

by a third party to be decertified. In fact, this is precisely what occurred with Fulton County's voting machine following Wake TSI's inspection of the Dominion Democracy Suite 5.5A. As stated in the Secretary of the Commonwealth's July 20, 2021, letter to the Fulton County Board of Elections, Fulton County's Dominion Democracy Suite 5.5A voting machine last used in the November 2020 election has been decertified, pending resolution of the Petitioner-Appellees claims below. As such, the voting machine at issue in the present matter is not governed by Directive 1 of 2021 as such machine is not a "state certified electronic voting system," as of July 20, 2021.

Accordingly, Appellant has failed to satisfy the third prerequisite for obtaining injunctive relief as injunction sought by the Appellant would not return the parties to the status quo as it previously existed before the acts complained of in the Appellees' Amended Petition for Review.

4. Appellant is unlikely to prevail on the merits of the claims raised in Appellees' Amended Petition for Review.

Appellant has additionally failed to satisfy the fourth prerequisite as the Appellant is unlikely to prevail on the merits of her claim. While the Appellant has been granted the authority to generally provide for the security of voting systems in the Commonwealth of Pennsylvania, such authority is not

limitless, nor is it exclusive. Section 3031.5(c) of Pennsylvania's Election Code provides, in relevant part,

... if, upon the reexamination of any such system previously approved, it shall appear that the system so reexamined can no longer be used safely by voters at elections as provided in this act or does not meet the requirements hereinafter set forth, the approval of that system shall forthwith be revoked by the Secretary of the Commonwealth, and that system shall not thereafter be used or purchased for use in this Commonwealth.

25 P.S. § 3031.5(c).

Despite the clear language set forth in Section 3031.5, Appellant decertified Fulton County's voting machine without ever reexamining such a machine to determine whether the machine can be used safely by voters in the Commonwealth. Rather, Appellant simply learned of third-party access to the Petitioner-Appellees' voting machine and decided to decertify the machine based on this access alone, in violation of the clear direction provided to the Appellant by Section 3031.5.

Further, Section 2642 of Pennsylvania's Election Code grants the County Boards of Elections separate powers and duties from those set forth for the Secretary of the Commonwealth in Section 3031.5. Section 2642 sets forth the powers and duties of county boards and provides:

[t]he county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers

granted to them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

(c) To purchase, preserve, store, and maintain primary and election equipment of all kinds, including . . . voting machines.

(d) To appoint their own employees, voting machine custodians, and machine inspectors.

(f) To make and issue such rules, regulations, and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers, and electors.

(g) To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.

(i) To investigate election frauds, irregularities, and violations of this act, and to report all suspicious circumstances to the district attorney.

25 P.S. § 2642.

The duties of County Boards of Elections, as set forth in Section 2642, permit Appellees to do the precise thing that resulted in the decertification of their voting machine: appoint their own voting machine inspectors to inspect systematically and thoroughly the conduct of primaries and elections in Fulton County.

For these reasons, Appellant is unlikely to prevail on the merits of Appellees' underlying claims and has thus failed to satisfy the fourth prerequisite for obtaining a preliminary injunction.

5. The injunction sought by the Appellant is not reasonably suited to abate the alleged offending behavior.

In regard to the fifth prerequisite for a preliminary injunction, the injunction sought by the Appellant is not reasonably suited to abate the offending behavior. As detailed herein, nothing in Directive 1 of 2021 prohibits Appellees from granting third-party access to a voting machine that is not state certified. Accordingly, there is no offending behavior for the Appellant's request for injunctive relief to abate.

6. The injunction sought by the Appellant will adversely impact the public interest.

Lastly, the injunction sought by the Appellant will not serve the public interest. As an initial matter, as of July 20, 2021, Appellees' Democracy Suite 5.5A voting machine has been decertified for any future use in the elections of the Commonwealth of Pennsylvania, thus eliminating any purported concerns that an inspection of the machine will impact the security of an electronic voting machine to be used in an election.

Further, Envoy Sage, LLC has provided assurances that their inspection will not affect the integrity of the data contained on the voting machine. As set forth in the affidavit of Steven Lahr, President of Envoy Sage, "Envoy Sage, LLC utilizes a Tableau TX1 Hardware Write Block and a Tableau TD3 Hardware Write Block in obtaining data from a target drive.

These devices permit Envoy Sage to copy all of the data of a machine, bit by bit, to a destination drive, while preventing alteration of the original electronically stored data.” R. 539a. This was reflected in Envoy Sage’s Protocol Overview, which was attached to Appellees’ proposed inspection protocol. R. 1103a. Accordingly, as the voting machine at issue has been decertified for use in Pennsylvania’s elections and as Envoy Sage has provided assurances that any data contained on the machine will be preserved, the injunction sought by the Appellant will not serve the public interest.

As the Appellant has failed to establish the six prerequisites for obtaining a preliminary injunction, the Commonwealth Court did not abuse its discretion in denying Appellant’s Applications for Injunctive Relief.

V. Conclusion.

The Commonwealth Court did not abuse its discretion in denying Appellant’s Applications for Injunctive Relief and Application for a Preservation Order relative to the Intergovernmental Operations Committee’s planned January 14, 2022 Inspection of Fulton County’s voting machine.

Accordingly, Appellees respectfully request that this Honorable Court hold that the Commonwealth Court did not abuse its discretion in denying the

Appellant's Applications for Injunctive Relief and Preservation Order and
dismiss Appellant's appeal.

Respectfully Submitted,

Date: March 9, 2022

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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.

/s/ Thomas E. Breth
Thomas E. Breth

CERTIFICATE OF SERVICE

I certify that this filing was served via PACFile upon all counsel of record this 9th day of March, 2022.

/s/ Thomas E. Breth
Thomas E. Breth