

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,

Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,

Respondent/Appellant,
and

DOMINION VOTING SYSTEMS, INC.,

Intervenors.

No.: 3 MAP 2022

No.: 277 MD 2021

**RESPONSE TO INTERVENOR DOMINION'S MOTION TO ENFORCE
SUPREME COURT'S ORDER AND FOR HEARING TO HOLD
PETITIONERS IN CONTEMPT**

THOMAS J CARROLL, Attorney for Petitioners / Appellees, responds to the Motion to Enforce Supreme Court's Order and for Hearing to Hold Petitioners in Contempt filed by Intervenor, Dominion Voting Systems, Inc. (Dominion), stating as follows.

Dominion seeks relief to enjoin "imminent dissemination of Dominion's confidential proprietary information" due to the Petitioners, Fulton County Board of Elections and Fulton County Board of Commissioners (Fulton County), vote on December 27, 2023, to "allow utilization of the February 19, 2021 Wake TSI Report, the September 15, 2022 Speckin Forensic Report...and evidence used to

form expert opinions to be utilized by clients of Stefanie Lambert with common interests.” See Dominion’s Motion, pp. 1-2 (quoting from the meeting minutes of Fulton County Board of Commissioners).

As Dominion admits in its filing, the Supreme Court’s April 19, 2023 order noted that “release of Dominion’s voting equipment and software implicates both Dominion’s proprietary concerns and election integrity in general, and the Court further ordered that “[a]ny effort to seek access to, or release of, the voting equipment must be directed to the Commonwealth Court...” *Id.* at p. 78. (Dominion’s Motion, p. 2). Dominion also notes that the Supreme Court Opinion specifically provided that “[Dominion’s Democracy Suite 5.5A Election Management System (“EMS”) [] is a term that covers all devices and software involved in running an election. Depending on context, we refer to it primarily as ` voting equipment.”]” (Dominion’s Motion, p. 2, fn. 1).

From this language, Dominion extrapolates that Fulton County’s vote means that it intends to disseminate, or permit third parties to “utilize” “evidence” that includes copies of Dominion's proprietary software without permission of the Court. (Dominion’s Motion, p. 2). Based on this extrapolation, Dominion seeks an order from this Court enforcing the Supreme Court’s April 19, 2023, order and to have it immediately enjoin the dissemination of such “evidence” to third parties, or any form of access to such “evidence” by any third parties. In addition,

Dominion requests that the Court hold an evidentiary hearing to determine whether Petitioners should again be held in contempt and sanctioned for their “violation” of the Supreme Court’s orders.

In the first instance, Dominion’s extrapolation overreaches. As Dominion is well aware, the Supreme Court’s April 19, 2023 order also ordered that custody of the Fulton County Dominion *voting machines and all related equipment*, which would include all related election equipment *and* software, be transferred to a neutral third party. As of January 19, 2024, that transfer of custody has occurred and Fulton County no longer has any possession of or control over the Fulton County Dominion voting machines and equipment. No further “inspections” or “tests” have taken place since the Speckin Forensics report was created. The only information concerning any such tests or inspections resulted from the Wake TSI report and the Speckin Forensics report, and are contained therein.

The Court never enjoined Petitioners from using, disseminating or otherwise sharing the reports and results with other counsel, including their own counsel in cases with Dominion, such as the breach of contract case now pending in federal court, part of which is on appeal. See, *Fulton County, et al. v. Dominion*, United States District Court, Middle District of Pennsylvania, Case No. 22-cv-001639, and *Fulton County, et al. v. Dominion*, Third Circuit Court of Appeals, Case No. 23-2969.

Secondly, and equally important, the vote by Fulton County did not and Fulton County never intended to violate any court orders from the Supreme Court of Pennsylvania going forward. However, in addition to the cases in which Fulton County is involved, and in which Dominion is involved, other pending cases involve Dominion and any judge in any court presiding over such case can allow (or order) the use of any evidence pertinent to claims and any defenses raised against or by Dominion, and indeed, any judge in any court can allow the use of any evidence pertinent to any claim regarding Dominion's claims regarding its voting machines and voting equipment, *and* software. The Court cannot enjoin Fulton County, or any other party or entity from joining in litigation in which Dominion is involved.

The language of a court order must be strictly construed against finding of contempt and sanctionable conduct. It must be broadly construed to allow leniency in application as it applies to conduct of parties. A court speaks through its written orders and its plain language must be interpreted and applied as written. If there is no language to interpret, then the Court's order cannot be morphed into mandatory action.

“[A] court speaks by its order, and effect must be given according to its terms, but not extended beyond its terms, and ordinarily an order will not be construed as going beyond the motion in pursuance of which it is given.” *Rodney v. Wise*, 347

Pa. Super. 537, 544 n.4, 500 A.2d 1187, 1190 (1985), citing 60 C.J.S. Motions & Orders § 64 (1969). See also: 56 Am.Jur.2d Motions, Rules & Orders § 29 (1971).

Moreover, the order itself is narrowly drawn and must be strictly construed and applied concerning any inquiries as to whether it was violated. A party may not be held in contempt of court for failing to obey an order that is *too vague or that cannot be enforced*. *Marian Shop v. Baird*, 448 Pa. Super. 52, 57, 670 A.2d 671, 674 (1996). Here, a plain reading of the Court's April order clearly demonstrates it intended to enjoin and prevent Fulton County from any further testing or examination of the Fulton County Voting Machines and voting equipment and, to that end, the Court ordered that said equipment be turned over to the custody of a third party, which it has.

Therefore, it is Petitioners' petition that use of the reports and evidence does not violate the Supreme Court's April 19, 2023 order because Fulton County's vote did not violate any proper reading of the terms of that order; and, for that reason, and also, because the vote to allow use of the reports and the data supporting the reports does not come within the scope of the original orders, there is no contempt to be found, and a hearing on the issue is just a useless waste of resources and another excuse to further obligate Petitioners and undersigned counsel to pay legal fees.

Respectfully submitted by:

/s/ Thomas J Carroll

Attorney ID: 53296

Attorney for Petitioners

LAW OFFICE OF THOMAS J CARROLL

224 King Street

Pottstown, PA, 19464

(610)419-6981

tom@thomasjcarrolllaw.com

Date: January 24, 2023

VERIFICATION

I, Thomas J. Carroll, Esquire, hereby verify that I represent Petitioners in this action and that the statements made in the foregoing Petitioners' Response to Intervenor Dominion Voting Systems, Inc.'s Emergency Application to Enforce Supreme Court Order and For Hearing to Hold Petitioners in Contempt are true correct to the best of my knowledge, information and belief. **The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. section 4904 relating to unsworn falsification to authorities.**



Date: 01/24/2024

