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**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION – LAW**

**IN RE: MOTION FOR INJUNCTIVE
RELIEF OF NORTHAMPTON COUNTY
REPUBLICAN COMMITTEE**

No.: C-48-CV-2020-6915

**PENNSYLVANIA RULE OF APPELLATE PROCEDURE
1925(a) STATEMENT**

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COURT OF COMMON PLEAS
CIVIL DIVISION
NORTHAMPTON COUNTY, PA

AND NOW, this 5th day of November, 2020, the court issues the following statement:

BACKGROUND

On November 3, 2020, the Northampton County Republican Committee presented on oral motion seeking an injunction against the Northampton County Board of Elections to prohibit the Board from disclosing the names and identifying information of voters whose mail-in ballots were cancelled during pre-canvassing on November 3, 2020. These ballots were deemed to be invalid for reasons ranging from missing a signature, to lacking the necessary privacy envelope. The Northampton County Board of Elections set aside certain ballots and provided the names and addresses associated with the affected ballots to both the Democratic and Republican Parties so that both parties would have the ability to contact these voters and direct them to the polls to vote by provisional ballot. The Northampton County Republican Committee argues that such disclosure is prohibited by

statute because it constitutes "results" pursuant to 25 Pa.C.S. §

3146.8(g)(1)(ii)(1.1):

The county board of elections shall meet no earlier than seven o'clock A.M. on election day to pre-canvass all ballots received prior to the meeting. A county board of elections shall provide at least forty-eight hours' notice of a pre-canvass meeting by publicly posting a notice of a pre-canvass meeting on its publicly accessible Internet website. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are pre-canvassed. No person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls.

Id. However, the County Board of Elections were told by Jonathan M. Marks, the Pennsylvania Deputy Secretary for Elections and Commissions, that such disclosure is valid:

The Department of State has been asked whether county board of elections can provide information to authorized representatives and representatives of political parties during the pre-canvass about voters whose absentee and mail-in ballots have been rejected. The Department issued provisional ballot guidance on October 21, 2020, that explains that voters whose completed absentee or mail-in ballots are rejected by the county board for reasons unrelated to voter qualifications may be issued a provisional ballot. To facilitate communication with these voters, the county boards of elections should provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected and should promptly update the SURE system.

E-mail from Jonathan M. Marks, Deputy Secretary for Elections and Commissions (Nov. 2, 2020, 8:38 P.M. EST). The Northampton County Republican Committee argues that that the Department of

State's guidance violated 25 Pa.C.S. § 3146.8(g)(1)(ii)(1.1) and that this information cannot be disclosed. In contrast, the Northampton County Board of Elections and the Northampton Democratic Party stated that these names and addresses did not constitute "results" under the statute, and that the information was public information. For the reasons set forth below, we deny the Northampton County Republican Committee's motion for injunctive relief.

DISCUSSION

A petitioner seeking a preliminary injunction must establish every one of the following prerequisites; if the petitioner fails to establish any one of them, there is no need to address the others. First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits. Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity. Sixth and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.

Duquesne Light Co. v. Longue Vue Club, 2013 PA Super 8, 63 A.3d 270, 275 (2013) (quoting *Kessler v. Broder*, 851 A.2d 944, 947 (Pa.Super.2004)). To qualify for injunctive relief, the Northampton County Republican Committee

must show both irreparable harm to itself and that there would be no substantial harm to other interested parties. Because the Northampton County Republican Committee has failed to show “that an injunction is necessary to prevent immediate and irreparable harm,” this Court will not address the other requirements. *Id.*

When an affected voter is notified that his/her mail-in ballot is deficient, the voter is able to cast a provisional ballot. Additionally, the Pennsylvania Department of State’s “Pennsylvania Provisional Voting Guidance” states that a voter may be issued a provisional ballot if a “[v]oter returned a completed absentee or mail-in ballot that was rejected by the county board of elections and the voter believes they are eligible to vote.” Pennsylvania Department of State, *Pennsylvania Provisional Voting Guidance*, Oct. 21, 2020 (discussing guidelines regarding provisional ballots under Act 77 of 2019). This guidance further supports the fact that provisional ballots may be used as method of curing deficient mail-in ballots. A provisional ballot records an individual’s vote while the county board of elections determines whether it can be counted. A provisional ballot may be challenged within seven days after the election, pursuant to 25 Pa.C.S. §3050(a.4)(4)(i)-(iv):

Within seven calendar days of the election, the county board of elections shall examine each provisional ballot envelope that is received to determine if the individual voting that ballot was entitled to vote at the election district in the election. One authorized representative of each candidate in an election and

one representative from each political party shall be permitted to remain in the room in which the determination is being made. Representatives shall be permitted to keep a list of those persons who cast a provisional ballot and shall be entitled to challenge any determination of the county board of elections with respect to the counting or partial counting of the ballot under this section. Upon challenge of any provisional ballot under this clause, the ballot envelope shall be marked "challenged" together with the reason for the challenge, and the provisional ballot shall be set aside pending final determination of the challenge according to the following procedure:

- (i) Provisional ballots marked "challenged" shall be placed unopened in a secure, safe and sealed container in the custody of the county board of elections until it shall fix a time and place for a formal hearing of all such challenges, and notice shall be given where possible to all provisional electors thus challenged and to every attorney, watcher or candidate who made the challenge.
- (ii) The time for the hearing shall not be later than seven days after the date of the challenge.
- (iii) On the day fixed for the hearing, the county board shall proceed without delay to hear the challenges and, in hearing the testimony, the county board shall not be bound by the Pennsylvania Rules of Evidence.
- (iv) The testimony presented shall be stenographically recorded and made part of the record of the hearing.

25 Pa.C.S. § 3050(a.4)(4)(i)-(iv).

Even assuming, *arguendo*, that the Northampton County Republican Committee is correct in its position that the Deputy Secretary for Elections and Commissions' position is wrong and that the statute prohibits the disclosure of this information, the Northampton County Republican Committee would not be harmed in any way by allowing these votes to be cast by provisional ballot because they can be challenged after the election on the ground that disclosure was prohibited under the statute. In contrast,

preventing these affected individuals from casting provisional ballots would constitute substantial and irreparable harm because those individuals who took a number of affirmative steps in an effort to vote in this election would have their votes invalidated without any real opportunity to cure its deficiencies. Although these affected votes may ultimately be invalidated, they have no chance of ever being valid if affected individuals are not given the opportunity to vote by provisional ballot. These voters would thereby be disenfranchised without any type of judicial review regarding the Northampton County Republican Committee's argument.

Notably, the record is devoid of any testimony regarding how this disclosure of information would cause the Northampton County Republican Committee immediate and irreparable harm. The petitioner failed to call a single witness or to produce any evidence supporting its oral motion for injunctive relief. *See Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1002-03 (2003) (finding sufficient grounds to deny preliminary injunction where there was "no concrete evidence of harm" where arguments "rested almost entirely on speculation and hypothesis"); *see also Allied Env'tl. Serv., Inc. v. Roth*, 222 A.3d 422, 429 (2019) (holding that "there must still be some evidence of an immediate and irreparable harm to justify the entry of a preliminary injunction."). As a result, its request for an injunction must fail.

The Northampton County Republican Committee has failed to show both that the denial of its injunction will cause it immediate and irreparable harm and that the injunction it seeks will not substantially harm other parties. Because the Northampton County Republican Committee fails to fulfill these two requirements, this Court need not address the merits of whether the disclosure of the information violates the statute and need not address the remaining four prerequisites for a preliminary injunction. See *Duquesne Light Co.*, 63 A.3d at 275 (2013) ("A petitioner seeking a preliminary injunction must establish every one of the following [six] prerequisites; if the petitioner fails to establish any one of them, there is no need to address the others.").

CONCLUSION

For the reasons set forth above, we respectfully suggest that the Northampton County Republican Committee's appeal lacks merit and should be dismissed.

BY THE COURT:


MICHAEL J. KOURY, JR.,
PRESIDENT JUDGE