

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Senator Jay Costa, Senator :
Anthony H. Williams, Senator : **CASES CONSOLIDATED**
Vincent J. Hughes, Senator :
Steven J. Santarsiero and Senate :
Democratic Caucus, :
Petitioners :

v. :

Senator Jacob Corman III, Senate :
President Pro Tempore, Senator :
Cris Dush and Senate Secretary- :
Parliamentarian Megan Martin, :
Respondents : No. 310 M.D. 2021
Argued: December 15, 2021

Commonwealth of Pennsylvania, :
Pennsylvania Department of State, :
and Veronica Degraffenreid, Acting :
Secretary of the Commonwealth :
of Pennsylvania, :
Petitioners :

v. :

Senator Cris Dush, Senator Jake :
Corman, and The Pennsylvania :
State Senate Intergovernmental :
Operations Committee, :
Respondents : No. 322 M.D. 2021

Arthur Haywood :
Julie Haywood, :
Petitioners :

v. :

Veronica DeGraffenreid :
Acting Secretary of State :
Commonwealth of Pennsylvania, :
Respondent : No. 323 M.D. 2021

PER CURIAM

AMENDING ORDER

AND NOW, this 10th day of January, 2022, the Court’s memorandum and order in the above matter, which was filed January 10, 2022, is amended as follows:

On the Order, the reference to the day as being the “11th” is changed to “10th” so that it now provides: “AND NOW, this 10th day of January, 2022, the Applications for Summary Relief filed by the Senate Democrats, the Acting Secretary, the Haywoods, and Intervenors, and the Cross-Application for Summary Relief filed by the Senate Republicans, are **DENIED.**”

A corrected copy of the memorandum and order are attached.

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PER CURIAM

MEMORANDUM & ORDER

Before the Court for disposition are Applications for Summary Relief¹ filed by Petitioners, Senators Jay Costa, Anthony H. Williams, Vincent J. Hughes, Steven J. Santarsiero, and the Senate Democratic Caucus (collectively, Senate Democrats); the Commonwealth of Pennsylvania, the Pennsylvania Department of State, and the Acting Secretary of the Commonwealth, Veronica Degraffenreid (collectively, Acting Secretary); Arthur Haywood and Julie Haywood (collectively, the Haywoods); and the League of Women Voters of Pennsylvania, Common Cause Pennsylvania, Make the Road Pennsylvania and eight registered voters² (collectively, Intervenors), seeking an order to quash a *subpoena duces tecum* issued by the Pennsylvania State Senate Intergovernmental Operations Committee (Senate Committee) to Veronica Degraffenreid, Acting Secretary of the Commonwealth. Respondents, Senators Jake Corman and Cris Dush and the Senate Committee (collectively, Senate Republicans), filed a Cross-Application for Summary Relief requesting a judgment that the Acting Secretary has not presented a basis for quashing the *subpoena duces tecum*. All applications for summary relief are denied.

The Senate Committee's subpoena seeks the production of 17 categories of election-related materials in the possession of the Department of State, some of which include the names, addresses, dates of birth, driver's license numbers, and partial social security numbers of all registered voters in the Commonwealth.

¹ At any time after the filing of a petition for review in an appellate or original jurisdiction matter, the court may on application enter judgment if the right of the applicant thereto is clear. PA. R.A.P. 1532(b). "The court may grant a motion for summary relief if a party's right to judgment is clear and there are no material issues of fact in dispute." *Peake v. Commonwealth*, 132 A.3d 506, 516 n.13 (Pa. Cmwlth. 2015).

² The eight registered voters are Roberta Winters, Nichita Sandru, Kathy Foster-Sandru, Robin Roberts, Kierstyn Zolfo, Michael Zolfo, Phyllis Hilley, and Ben Bowens.

The petitioning parties assert various reasons why the subpoena, or portions thereof, should be quashed. The Acting Secretary seeks the broadest relief, *i.e.*, that the subpoena be quashed in its entirety because it was not issued to advance a legitimate legislative purpose, and an investigation to improve Pennsylvania's election laws falls outside the bounds of the Senate Committee's purview.

“The power to investigate is an essential corollary of the power to legislate.” *Commonwealth ex rel. Carcaci v. Brandamore*, 327 A.2d 1, 3 (Pa. 1974). “The scope of this power of inquiry extends to every proper subject of legislative action.” *Id.* A function of legislative committees is to make recommendations to the legislature for remedial legislation and other appropriate action. *Lunderstadt v. Pennsylvania House of Representatives Select Committee*, 519 A.2d 408, 410 (Pa. 1986) (plurality opinion). Our Supreme Court has stated:

The right to investigate in order to acquire factual knowledge concerning particular subjects which will, or may, aid the legislators in their efforts to determine if, or in what manner, they should exercise their powers, is an inherent right of a legislative body, ancillary to, but distinct from, such powers.

McGinley v. Scott, 164 A.2d 424, 429 (Pa. 1960). “Broad as it is, however, the legislature's investigative role, like any other governmental activity, is subject to the limitations placed by the Constitution on governmental encroachments on individual freedom and privacy.” *Brandamore*, 327 A.2d at 4.

The General Assembly's power of inquiry extends to every proper subject of legislative action, including potential amendments to the Pennsylvania Election Code.³ Accordingly, the Court cannot conclude that the Acting Secretary has established a clear legal right to quash the subpoena on the theory that it furthers

³ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§2600-3591.

no legitimate legislative purpose. To the extent she argues that the authority to investigate elections falls outside of the Senate Committee’s assigned subject matter, we decline the Acting Secretary’s invitation to interfere with internal Senate Rules and leave that matter to the legislature. *See Brandamore*, 327 A.2d at 4 (objections that committee’s investigation might overlap with the work of other committees and commissions were for the legislature not the court).

The Acting Secretary acknowledges that “some of the information that the [s]ubpoena demands is available to everyone on the Department[of State’s] website, or through a Right-to-Know [Law]^[4] request.” Acting Secretary’s Brief at 30. In addition, the Election Code specifically classifies many of the subpoenaed records as “open to public inspection,” including street lists (names and address of all registered electors), individual registered electors’ inquiries (name, address, date of birth, and voting history), and official voter registration applications. 25 Pa. C.S. §§1207, 1403-1404. Other laws may permit similar disclosure.⁵ If the public may access the information sought in the subpoena, there is no reason the records cannot be provided to the Senate Committee.

The Acting Secretary also raises questions of national security, maintaining that compliance with the subpoena could result in the release of “critical infrastructure information”⁶ about Pennsylvania’s election systems. Critical

⁴ Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101-67.3104.

⁵ Senate Republicans point to The Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. §§51-732, which requires the Department of State to permit “any committee of either branch of the General Assembly to inspect and examine the books, papers, records, and accounts, filed in the department, and to furnish such copies or abstracts therefrom, as may from time to time be required[.]” Section 802 of the Administrative Code, 71 P.S. §272(a).

⁶ Critical infrastructure information is

information not customarily in the public domain and related to the security of critical infrastructure or protected systems--

infrastructure information, she argues, is protected from disclosure by federal law, 6 U.S.C. §§671-674, and may only “be accessed in accordance with strict safeguarding and handling requirements” Acting Secretary’s Brief at 58. Senate Republicans rejoin that according to the Department of Homeland Security, the information requested by the subpoena can be provided by the Acting Secretary to other branches of Pennsylvania State government. Senate Republicans’ Brief at 97-98. They further argue that the Acting Secretary does not understand the difference between critical infrastructure information and protected critical infrastructure information, which are treated differently under the relevant federal statutes.

There is a substantial factual question surrounding the federal protection requirements and the capability of the Senate Committee’s contracted vendor, Envoy Sage, LLC, to protect the infrastructure information.⁷ This renders summary relief on this question inappropriate.

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

6 U.S.C. §671.

⁷ In their reply brief, Senate Republicans indicate that the Senate Committee recently contracted with Envoy Sage to aid the Committee in its use and review of the subpoenaed information. Senate Republicans’ Reply Brief at 9-10.

The petitioning parties also assert that the production of documents containing drivers' license numbers and partial social security numbers violates individual voters' rights to privacy guaranteed by Article I, Section 1 of the Pennsylvania Constitution.⁸ PA. CONST. art. I, §1. Some petitioners maintain the act of transferring these documents from the Department of State to the Senate Committee offends this constitutional right; others maintain the privacy right will be violated when the Senate Committee provides this information to its third-party vendor for analysis. The Senate Republicans assert that the Senate Committee, as a co-equal branch of government, is entitled to any and all information held by the Acting Secretary. The privacy interests of voters are not implicated where the government obtains this information, noting that the Department of State and the Pennsylvania Department of Transportation, two executive branch agencies, hold this information. They also assert that the Senate Committee can establish protocols to prevent this voter information from being shared with any unauthorized person.

The Court concludes that none of the parties have established a clear right to relief given the outstanding issues of material fact surrounding the issue of maintaining the privacy of voter information and infrastructure. For these reasons, the Court issues the following Order:

⁸ Article I, Section 1 sets forth the inherent rights of mankind: "All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." PA. CONST. art. I, §1. Our Supreme Court has held that the citizens of this Commonwealth, pursuant to Article I, Section 1 of the Pennsylvania Constitution, have a right to informational privacy, namely the right of an individual to control access to, and dissemination of, personal information about himself or herself. *Pennsylvania State Education Association v. Department of Community and Economic Development*, 148 A.3d 142 (Pa. 2016).

ORDER

AND NOW, this 10th day of January, 2022, the Applications for Summary Relief filed by the Senate Democrats, the Acting Secretary, the Haywoods, and Intervenors, and the Cross-Application for Summary Relief filed by the Senate Republicans, are **DENIED**.