

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

---

IN RE: MATTER OF THE 2016 PRESIDENTIAL ELECTION :  
: No. 659 MD 2016

PETITION OF ONE HUNDRED (100) OR MORE UNNAMED REGISTERED VOTERS OF THE COMMONWEALTH OF PENNSYLVANIA

---

**SUPPLEMENTAL APPLICATION TO DISMISS BY PRESIDENT-ELECT TRUMP, VICE-PRESIDENT-ELECT-PENCE, THE REPUBLICAN PARTY OF PENNSYLVANIA, ALL PENNSYLVANIA ELECTORS OF PRESIDENT-ELECT DONALD J. TRUMP AND VICE-PRESIDENT-ELECT MICHAEL PENCE, AND DONALD J. TRUMP FOR PRESIDENT, INC.**

**This Court Lacks Jurisdiction over this Election Contest because Petitioners Failed to Comply with the Election Code’s Mandatory Requirements and, therefore, this Election Contest Must Be Dismissed with Prejudice**

It is well-recognized in Pennsylvania law that “[j]urisdiction to resolve election disputes is not of common law origin but is founded entirely upon statute and cannot be extended beyond the limits defined by the General Assembly.” *Rinaldi v. Ferrett*, 941 A.2d 73 (Pa. Commw. 2007) citing: *In Re Granting Malt Beverage Licenses*, 331 Pa. 536, 538, 1 A.2d 670, 671 (1938). See also *Gunnnett v. Trout*, 380 Pa. 504, 509, 112 A.2d 333, 336 (195); *Tartaglione v. Graham*, 132 Pa. Commw. 578, 573 A.2d 679, 680 n. 3 (Pa. Cmwlt.1990); *Reese v. Bd. Of*

*Elections of Lancaster County, 10 Pa. Commw. 448, 308 A.2d 154, 158 (Pa. Commw. 1973); See also: Bensalem Township Supervisor Election Contest, 26 Pa.D&C2d. 433 (1961).*

As stated in the Respondents' prior Application to Dismiss, this matter is an election contest, which the Petitioners assert they have brought pursuant to 25 P.S. §§ 3291 and 3351<sup>1</sup> challenging the election of the Electors of President and Vice-President of the United States in the General Election of November 8, 2016 (the "Election"), categorized as an election contest of the second class (the "Election Contest"). *Id.* Pursuant to the Election Code, at least one hundred electors must petition the court in order to commence such an Election Contest. 25 P.S. §3351.

Additionally, the Election Contest must be verified by affidavit of at least five of the petitioners. 25 P.S. §3456. The affidavits must comply with the following mandatory provisions and must state as follows:

“[s]uch affidavits shall be taken and subscribed before some person authorized by law to administer oaths, and shall set forth that they believe the facts stated therein are true, that according to the best of their knowledge and belief, the primary or election was illegal and the return thereof not correct, and that the petition to contest the same is made in good faith.”

25 P.S. §3457. The affidavits appended to the Election Contest (the "Affidavits"),

---

<sup>1</sup> Hereinafter all references to provisions of 25 P.S. §2600 *et. seq.* shall be to the "Election Code."

fail to comport with these mandatory statutory requirements. The Affidavits not only fail to state that the election was illegal and the return thereof is not correct, but also fail to state that the Election Contest is being filed in good faith.

These defects require dismissal of this contest. Take the case of *Morrison v. Shealer*, 282 Pa. 427, 128 A. 87 (1925), where the Supreme Court of Pennsylvania addressed a prior version of 25 P.S. §3251. That statute required petitioners to attach affidavits to the election contest petition which set forth that “they verily believe the facts stated therein are true, that according to the best of their knowledge and belief the election was undue or illegal, and the return thereof not correct, and that the petition to contest the same is made in good faith.” *Morrison, supra, at 428*. The affidavit requirements of the statute, it bears noting, were virtually identical to the requirements under current 25 P.S. §3457. The affidavits attached to the petition in *Morrison*, however, failed to state that the return was incorrect. Accordingly, the Supreme Court quashed the petition. *Id.*

The same result is appropriate here. The words of 25 P.S. §3457 regarding the required content of the Affidavits are clear and free from all ambiguity. Petitioners failed to include the statutorily-mandated language that the election was “illegal and the return thereof not correct,” and “filed in good faith,” thereby rendering the Election Contest fatally defective. *See: In Re Contest of 2003 General Election for the Office of Prothonotary of Washington County*, 578 Pa. 3,

849 A.2d 230 (2004) citing *LTV Steel Co., Inc. v. Workers' Compensation Appeal Bd. (Mozena)*, 562 Pa. 205, 754 A.2d 666, 674 (Pa. 2000) [stating that “[w]hen the words of a statute are clear and free from all ambiguity,” we may discern that intent based on the plain meaning of the words without looking any further. *1 Pa.C.S. §1921.*”] As a result, the Court lacks jurisdiction over this Election Contest, thus must dismiss the Election Contest in its entirety, with prejudice.

As a related matter, because the Affidavits do not comply with Pennsylvania law, they cannot be considered properly verified as required by the statute. *Rinaldi, supra; In re North Union Township Election*, 250 Pa. 98, 95 A. 421 (1915); *See also: In re Opening of Ballot Boxes*, 553 Pa. 207, 718 A.2d 774 (1998) [noting that for 80 years, under current and former versions of the Election Code, petitions not verified in accordance with statutory requirements cannot invoke jurisdiction of courts and must be dismissed.]; and *In Re Contest of 2003 General Election for the Office of Prothonotary of Washington County*, 578 Pa. 3, 849 A.2d 230 (2004) [holding that petition must be dismissed where elector makes a mistake in verifying the petition]. These defects in the Affidavits, moreover, are not amendable defects. *Opening of Ballot Box of the First Precinct of Bentleyville*, 143 Pa. Commw. 12, 598 A.2d 1341 (1991).

Finally, as the moving party, Petitioners must also establish they are registered voters who actually voted in the Election. 25 P.S. §3457. It has already

been established that the Petitioners' Affidavits are defective under the Election Code for failure to contain the mandatory statements as set forth above. For that reason then, Petitioners failed to produce evidence that they are registered voters who did in fact vote in the Election. For this reason too, the Court lacks jurisdiction over this matter.

### **CONCLUSION**

For the reasons set forth, this Court lacks jurisdiction over this matter, and dismissal of the Petition in its entirety, with prejudice is required.

Respectfully Submitted:

/s/ Lawrence J. Tabas

Lawrence J. Tabas, I.D. No. 27815  
OBERMAYER REBMANN MAXWELL & HIPPEL LLP  
Centre Square West  
1500 Market Street, Suite 3400  
Philadelphia, PA 19102  
Phone: 215-665-3158  
Email: lawrence.tabas@obermayer.com

/s/ Rebecca L. Warren

Rebecca L. Warren, I.D. No. 63669  
OBERMAYER REBMANN MAXWELL & HIPPEL LLP  
Centre Square West  
1500 Market Street, Suite 3400  
Philadelphia, PA 19102  
Phone: 717-221-1602  
Email: rebecca.warren@obermayer.com

/s/ Chad Readler\*

Chad A. Readler  
JONES DAY  
325 John H. McConnell Blvd., Suite 600  
Columbus, OH 43215  
Phone: 614-469-3939  
careadler@jonesday.com  
*\*pro hac vice*

/s/ David M. Morrell\*

David M. Morrell  
JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001  
Phone: (202) 879-3717 (direct)  
Email: dmorrell@jonesday.com  
*\*pro hac vice*

/s/ Donald F. McGahn II

Donald F. McGahn II I.D. No. 73796  
JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001  
Phone: (202) 879-3939(direct)  
Email: dmcgahn@jonesday.com

/s/ Matthew H. Haverstick

Matthew H. Haverstick I.D. No. 85072  
KLEINBARD LLC  
One Liberty Place, 46th Floor  
1650 Market Street  
Philadelphia, PA 19103  
Ph: (215) 568-2000  
Fax: (215) 568-0140  
Email: mhaverstick@kleinbard.com

*/s/ Jenna K. Shedd-Sawl* \_\_\_\_\_

Jenna K. Shedd-Sawl, I.D. No. 314263

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

Centre Square West

1500 Market Street, Suite 3400

Philadelphia, PA 19102

Phone: 215-665-3034

Email: [jenna.shedd@obermayer.com](mailto:jenna.shedd@obermayer.com)