

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SENATOR JAY COSTA, SENATOR :
ANTHONY H. WILLIAMS, SENATOR : CASES
VINCENT J. HUGHES, SENATOR STEVEN : CONSOLIDATED
J. SANTARSIERO, AND SENATE :
DEMOCRATIC CAUCUS, :

Petitioners, : No. 310 MD 2021

vs. :

SENATOR JACOB CORMAN III, SENATE :
PRESIDENT PRO TEMPORE, SENATOR :
CRIS DUSH, AND SENATE SECRETARY- :
PARLIAMENTARIAN MEGAN MARTIN, :

Respondents. :

COMMONWEALTH OF PENNSYLVANIA, :
PENNSYLVANIA DEPARTMENT OF STATE :
And VERONICA DEGRAFFENREID, Acting :
Secretary of the Commonwealth of :
Pennsylvania, :

Petitioners, : No. 322 MD 2021

vs.
SENATOR CRIS DUSH, SENATOR JAKE
CORMAN, and THE PENNSYLVANIA
STATE SENATE INTERGOVERNMENTAL
OPERATIONS COMMITTEE,

Respondents.

ARTHURY HAYWOOD
JULIE HAYWOOD,

Petitioners,

vs.

VERONICA DEGRAFFENREID, ACTING
SECRETARY OF STATE,
COMMONWEALTH OF PENNSYLVANIA,

Respondents.

No. 323 MD 2021

**MOTION FOR SUMMARY RELIEF PURSUANT TO Pa.R.A.P. 1532(b)
FILED BY INTERVENOR-PETITIONERS
ROBERTA WINTERS, NICHITA SANDRU, KATHY FOSTER-SANDRU,
ROBIN ROBERTS, KIERSTYN ZOLFO, MICHAEL ZOLFO, PHYLLIS
HILLEY, BEN BOWENS, THE LEAGUE OF WOMEN VOTERS OF
PENNSYLVANIA, COMMON CAUSE PENNSYLVANIA
AND MAKE THE ROAD PENNSYLVANIA**

Roberta Winters, Nichita Sandru, Kathy Foster-Sandru, Robin Roberts,
Kierstyn Zolfo, Michael Zolfo, Phyllis Hilley, Ben Bowens, the League of Women
Voters of Pennsylvania, Common Cause Pennsylvania and Make the Road

Pennsylvania (collectively Intervenor-Petitioners¹) submit this Motion for Relief pursuant to Pa.R.A.P. 1532(b), and in compliance with the schedule outlined in the Joint Application to Modify Pleading Schedule and to Expedite Review, filed on October 6, 2021, and in support thereof, aver as follows:

1. On September 15, 2021, Senator Cris Dush, in his capacity as Chair of the Pennsylvania Senate Intergovernmental Operations Committee (“Committee”), issued a subpoena *duces tecum* to Veronica Degraffenreid, Acting Secretary of the Commonwealth (“Subpoena”), a true and correct copy of which is attached hereto as Exhibit A.

2. The Subpoena seeks personally-identifying information, including date of birth, driver’s license number and social security number, of every registered voter in the Commonwealth.

3. As of December 31, 2020, there were approximately nine million registered voters in the Commonwealth (The Administration of Voter Registration in Pennsylvania, 2020 Report to the General Assembly (Department of State, June 2021), attached hereto as Exhibit B).

¹ The Court has not yet ruled upon Intervenor-Petitioners’ Application for Leave to Intervene. Intervenor-Petitioners nevertheless file this Motion and Brief now to comply with the expedited schedule agreed upon by the Parties, and so as not to cause any delay in the expedited proceedings.

4. The Subpoena itself does not describe its purpose or the reasons why the Committee needs personally-identifying information of any particular set of voters, let alone all registered voters in the Commonwealth. At a September 15, 2021 Committee hearing, Senator Dush described the purpose as “to verify the identity” of voters. A true and correct copy of the transcript of the September 15, 2021, Hearing is attached hereto as Exhibit C.

5. Senator Dush stated that “questions” had been raised regarding voter identity, but has not provided any factual basis for those “questions.”

6. Prior to issuing its Subpoena, the Committee held a hearing on September 9, 2021. A true and correct copy of the transcript of the September 9, 2021, Hearing is attached hereto as Exhibit D. No evidence was presented at that hearing of any fake registrations, duplicate registrations or problems with voter identity.

7. Separately, the Committee has asserted that social security numbers and driver’s license numbers are “necessary to help identify any duplicate registrations, fake registrations, and any votes resulting from those ineligible registrations.” <https://paelectioninvestigation.com/>. (printout as of October 11, 2021, attached hereto as Exhibit E). See also <https://www.pasenategop.com/blog/intergovernmental-operations-committee->

[announces-new-election-integrity-investigation-website/](#) (printout as of October 11, 2021, attached hereto as Exhibit E-1, confirming this is the Committee's website).

8. The House State Government Committee, which typically oversees the Department of State and elections generally, held ten hearings and heard from 52 testifiers, as part of an investigation into Pennsylvania's election laws. On May 10, 2021, that committee issued a report with its findings. A true and correct copy of that report, A Comprehensive Review of Pennsylvania's Election Laws: How Pennsylvania Can Guarantee Rights and Integrity in Our Election System, is attached hereto as Exhibit F.

9. Separately, the Senate Special Committee on Election Integrity and Reform conducted its own investigation into the 2020 election, holding three public hearings and hosting an online survey. That committee published its report in June 2021 (Report on the Special Committee's Findings and Recommendations to the Senate and the Senate State Government Committee), a true and correct copy of which is attached hereto as Exhibit G.

10. A Joint State Government Commission, created by the General Assembly, conducted yet another investigation and issued a report in June 2021 (Election Law in Pennsylvania: Report of the Election Law Advisory Board for the

Fiscal Year 2020-2021). A true and correct copy of this report is attached hereto as Exhibit H.

11. The Reports of these Committees and Commissions do not reflect any findings of irregularities or anomalies in voter identity or eligibility during the 2020 election or 2021 primary.

12. Litigants made allegations of voting irregularities in numerous lawsuits both before and after the November 2020 election. Despite many lawsuits, no evidence of fake or duplicate registrations, or any issues with voter identity, was uncovered. Rather, the courts routinely dismissed such allegations for lack of evidence. A sampling of opinions are collectively attached hereto as Exhibit J.

13. Despite numerous hearings, investigations, reports and litigation, no evidence has been produced to provide a factual basis for the “questions” or “allegations” that supposedly form the basis for the Subpoena.

14. The records of nine million Pennsylvania voters contain highly sensitive personally-identifying information. The Committee has not explained how it would keep this information secure. To the contrary, it plans to maintain this information “like any other legal document.”

15. A true and correct copy of the Declaration of J. Alex Halderman is attached hereto as Exhibit I.

16. There are well-recognized standards for maintaining confidential, personally-identifying information for large numbers of people (Exhibit I, ¶¶25-27). Holding confidential information without complying with those standards creates tremendous risk (Exhibit I, ¶22). Yet, the Committee is unprepared, and likely unable, to comply with these governing standards, thus exposing voters' private information to further disclosure.

17. The Committee has not identified any mechanisms or protocols to protect against these risks. The Committee has not even determined who will have access to this protected information, but those with access will include at a minimum, Senator Dush, his staff, his legal counsel, Senate Republican legal counsel, possibly unidentified outside counsel, and multiple, unidentified third party vendors (Exhibit C, p. 20-21, 39:16-17).

18. The risk from disclosure of sensitive personally-identifying information is that thieves can create false accounts in individuals' names, access bank accounts or medical records, incur debt in a person's name, and cause other severe disruptions to an individual's life. An individual's name and address coupled with the last four digits of his or her Social Security number and/or

driver's license number is enough to allow criminals to pose as the individual and engage in various activities to enrich themselves at the expense of the individual. (Exhibit I, ¶18). For example, a criminal could use the name address, zip code and last 4 digits of your social security number to access credit card information and bank accounts. (Exhibit I, ¶19)

19. The constitutional right to privacy includes what is referred to as the "right of informational privacy," described as "the right of the individual to control access to, or the dissemination of, personal information about himself or herself." Personal information subject to constitutional protection includes the personally identifying information subpoenaed by the Committee.

20. Before any government entity discloses, or forces the disclosure of, any private, personal information, the Pennsylvania Constitution requires a balancing of whether the right of informational privacy outweighs the public's interest in disclosure. Given Pennsylvania's zealous protection of the right to privacy, to overcome voters' constitutional privacy rights, the Committee must demonstrate a compelling (or significant) interest, and the absence of any alternate reasonable method of lesser intrusiveness.

21. Pennsylvanians' have a reasonable expectation that social security numbers and driver's license numbers will be kept confidential and exempt from

disclosure requirements. A true and correct copy of the Commonwealth's Information Technology Policy (Pennsylvania Information Technology Policy No. ITP-SEC025 (March 19, 2010)) is attached hereto as Exhibit K. A true and correct copy of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of Appellate and Trial Courts is attached hereto as Exhibit L. A true and correct copy of the login page for PACFile for undersigned counsel is attached hereto as Exhibit M.

22. The Committee has failed to advance a coherent justification for its electoral review, much less why it needs all 9 million voters' driver's license and social security numbers. A general interest in examining whether the current law is working and whether changes can be made, cannot constitute a sufficient interest to override constitutional rights.

23. Similarly, the Committee has developed no facts that would provide any substantiation to the "questions" or "allegations" on which the Subpoena is based.

24. An allegation by itself does not justify intrusion of a single person's constitutional rights, let alone the constitutional rights of nine million Pennsylvania voters.

25. Allowing investigations into highly sensitive personal information based on nothing more than unsubstantiated allegations would set a dangerous precedent, and would undercut substantially well-recognized and highly valued individual liberties.

26. Because the Committee has no factual basis for its purported interest, and cannot establish that the subpoenaed information is necessary in any event, the Committee fails to meet its standard. The Committee cannot demonstrate ANY legitimate interest, let alone a compelling interest.

27. Even if there was a factual basis (rather than just “questions”) to believe that ineligible voters cast votes in certain voting precincts, the collection of personal information for every registered voter in the Commonwealth would be a grossly overbroad method of identifying those supposed voters, and would not be narrowly tailored, as it must be.

WHEREFORE, Intervenor-Petitioners request that the Court grant the relief requested in their Petition for Review.

Dated: October 13, 2021

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**Pro hac vice forthcoming*

Respectfully submitted,

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and Make the Road Pennsylvania*

CONFIDENTIAL DOCUMENTS CERTIFICATION

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/ Keith E. Whitson
Keith E. Whitson

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
PENNSYLVANIA DEPARTMENT OF STATE	:	
And VERONICA DEGRAFFENREID, Acting	:	
Secretary of the Commonwealth of	:	
Pennsylvania,	:	
	:	
Petitioners,	:	No. 322 MD 2021
	:	
Vs.	:	
	:	
SENATOR CRIS DUSH, SENATOR JAKE	:	
CORMAN, and THE PENNSYLVANIA	:	
STATE SENATE INTERGOVERNMENTAL	:	
OPERATIONS COMMITTEE,	:	
	:	
Respondents.	:	

ORDER OF COURT

This ____ day of October 2021, upon consideration of the Motion for Summary Relief filed by Roberta Winters, Nichita Sandru, Kathy Foster-Sandru, Robin Roberts, Kierstyn Zolfo, Michael Zolko, Phyllis Hilley, Ben Bowens, the League of Women Voters of Pennsylvania, Common Cause Pennsylvania and Make the Road Pennsylvania, and any responses thereto,

IT IS HEREBY ORDERED that said Motion is GRANTED. To the extent the Subpoena issued by the Pennsylvania Senate Intergovernmental Operations Committee purports to compel the disclosure of personally-identifying information, including social security numbers and driver’s license numbers, of

Pennsylvania voters, the Subpoena is invalid and unenforceable, and is hereby quashed. The Acting Secretary of State is hereby enjoined from disclosing such information in response to the Subpoena; and Respondents are enjoined from taking any further action to enforce the Subpoena or compel the disclosure of this protected information.

BY THE COURT:

_____ J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via PACFile, this 13th day of October, 2021, upon the following:

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