

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA

In re General Election 2024

No. 2328 of 2024

EMERGENCY PETITION FOR WRIT OF MANDAMUS AND TO COMPEL
RETURN OF BALLOTS AND ELECTION DAY MATERIALS

AND NOW, comes Marybeth Kuznik, Director of the Fayette County Bureau of
Elections, who respectfully states the following:

1. The Fayette County Election Bureau is the department that is responsible for the creation of ballots, programming of election machines, designation of voting precincts, delivering of voting machines, vote tabulation, and other duties for the County of Fayette, Pennsylvania.
2. The 2024 general election is being held this 5th day of November, 2024.
3. The Washington Township Judge of Election, Vincent Manetta, reported that after the polls close today, he intends to remove the ballots from the ballot box and audit or hand count the votes cast for each presidential candidate.
4. Despite being instructed by the Election Director and the solicitor that he could not act outside of the statute by performing a hand audit or manual tabulation of the votes cast for each presidential candidate, Mr. Manetta indicated that it was still his intention to perform that count at the precinct.
5. At the close of the polls, the judges of election of the 77 Fayette County precincts are directed to perform the functions outlined in 25 P.S. Section 3031.13.
6. Section 3031.13 does not provide for a hand count of the ballots or any other manual tabulation of the ballots cast for a particular office by the judge of election

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at the precinct. Rather, Section 3031.13(f) states in part that the judge of elections shall cause the automated tabulating equipment to tabulate the ballots cast during the election and print out the tape showing the total number of votes cast for each candidate whose name appears on the ballot.

7. After each paper ballot is completed by a voter at the precinct, the voter inserts his/her ballot into the scanner at the precinct. After the close of the polling place, the judge of election deposits the voted ballots into a bag to be signed and sealed, and the judge returns the voted ballots, the compact flash memory card from the scanner and a copy of the tape to the Fayette County Election Bureau at 2 West Main Street, Uniontown, PA., along with other election day materials.

8. Additionally, if no court action is taken regarding this petition, the return of the ballots and election materials would be delayed by numerous hours.

9. It is incumbent on each judge of election, in Washington Township and in each precinct in Fayette County, to act within the duties authorized by the Pennsylvania election code and to follow the directives of the Fayette County Election Bureau.

10. At or before 3:30 p.m., Vincent Manetta, the Judge of Election of Washington Township, Fayette County, Pa and the solicitors for both the Republican and Democratic Committees were notified of the presentation of this motion to Judge Linda R. Cordaro at 5 p.m.

WHEREFORE, Marybeth Kuznik, the Director of the Fayette County Election Bureau respectfully requests that the court issue a mandamus to Vincent Manetta, as Judge of Election of Washington Township, with the other poll workers, to perform the

functions authorized by 25 P.S. Section 3031.13 of the Election Code, without a hand count or manual tabulation of the votes cast for any office.

In the alternative, if Vincent Manetta fails to comply, this Honorable Court hereby directs an officer of the Fayette County Sheriff's Department to escort a poll worker and the election materials from Washington Township precinct to the Fayette County Election Bureau promptly after the poll workers have performed the functions authorized by 25 P.S. Section 3031.13 of the Election Code, without a hand count or manual tabulation of the votes cast for any office.

The Sheriff's Department shall also similarly escort any other Fayette County precinct which is acting outside of the authority outlined in the statute.

Respectfully submitted,

By:


Marybeth Kuznik

Director, Fayette County Election Bureau

Date: November 5, 2024

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VERIFICATION

I verify that the statements made in the foregoing Petition are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsifications to authorities.


Marybeth Kuznik

DATE: November 5, 2024

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Pennsylvania Statutes Title 25 P.S. Elections & Electoral Districts § 3031.13. Post election procedures

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- (a) As soon as the polls have been closed and the last elector has voted in districts having an electronic voting system which employs paper ballots or ballot cards, and district tabulation is provided for, the number of such ballots issued to electors (at primary elections, the number issued to the electors of each party) and the number of ballots (at primaries the number of ballots of each party), if any, spoiled and returned by voters and cancelled, shall be announced to all present in the polling place and entered on the general returns of votes cast at such primary or election. The district election officers shall then compare the number of names marked as voting in the district register, "Voting Check List" and numbered lists of voters, shall announce the result, and shall enter on the general returns the number of electors who have voted, as shown by the "Voter's Check List." Any differences which exist shall be reconciled where possible, and where reconciliation is not possible such differences shall be noted on the general returns. The district register, the "Voting Check List" and the numbered lists of voters, together with all unused ballots, and all spoiled and cancelled ballots, and all rejected voters certificates shall then be placed in separate packages, containers or envelopes and sealed before the tabulation of any ballots.
- (b) If ballots are computed and tabulated in the election district, all write-in votes which have been properly cast and recorded on the voting device shall be counted and recorded on a standard form provided for this purpose. District totals cards or other appropriate data storage device may also be prepared by the district board of election reflecting the results of the voting in that district. Such cards and reporting forms of write-in vote tabulation shall be delivered to the county board of elections. In cases where central counting is utilized, write-in ballots may be recorded either at the election district or at the counting center.
- (c) In any case in which the write-in ballot is a separate entity from the ballot or ballot card, and the write-in ballot has been used, both sections shall be given a unique identifying number prior to their separation for tabulation.
- (d) In returning any votes cast for any person whose name is not printed on the official ballot, the election officers shall record any such names exactly as they were written or stamped.
- (e) If, as a result of an otherwise properly cast write-in vote, the voter has registered more votes for an office than he is entitled to vote for that office, the entire vote cast for that office shall be void and shall not be counted, and such write-in ballots shall be fastened to the write-in vote tabulation form and shall be delivered to the county board of elections.
- (f) In the event district tabulation of votes is provided for by the voting system, the district election officers shall, immediately upon the close of the polls, cause the automatic tabulating equipment to tabulate the ballots cast during the election and shall prepare duplicate records of the total number of voters whose ballots have been tabulated; the total number of votes cast for each candidate whose name appears on the ballot; the total number of write-in votes properly cast for each office on the ballot; and the total number of votes cast for or against any question appearing on the ballot. One such record shall be publicly posted at the district polling place. All votes so cast and tabulated in the district may also be recorded on a district totals card and all properly cast write-in votes may also be recorded on the district totals card, and the delivery of such district totals cards and reporting forms to the county board of elections shall be the responsibility of the judge of election. The minority inspector shall keep duplicate copies of all such reports and returns. At the close of the election and after the tabulation of all ballots, the automatic tabulating equipment or other component of the voting system which contains ballots shall be locked and sealed so that no further ballots may be deposited in or removed from any such equipment or component, and all components of the voting system, suitably packaged and secured for storage, shall be held for delivery to the county election board.
- (g) In the event district tabulation of votes is not provided for by the voting system, the Judge of Election shall prepare a report of the number of voters who have voted, as indicated by the "Voting Check List" and numbered lists of voters poll list. He shall also prepare a report of the number of spoiled ballots and the number of unused ballots. He shall deliver the original copy of this report to the county board of elections under seal. The judge of election inspector shall keep a duplicate copy of this report. The judge of election and minority inspector shall forthwith deliver the sealed transport carrier containing all voted ballot cards to the county board of elections or to such places as the county board may designate. The county board of elections may provide that the ballot container and reports may upon proper certification and signature instead be picked up at the polling places by two authorized election deputies of opposite parties.
- (h) All reports and returns shall be signed by all district election officers.

(i) In the event that district tabulation of votes is not provided for by the voting system, it shall be the responsibility of the county board of elections to make available to the public at the central tabulating center, the election results for each election district.

(j) By two o'clock A. M. on the day following the election, all of the following shall be returned to the county board:

(1) Envelopes.

(2) Supplies, including all uncast provisional ballots.

(3) Returns, including all provisional ballots and absentee ballots cast in the election district.

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IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA

In re General Election 2024 :
: :
: No. _____ of 2024

WRIT OF MANDAMUS AND ORDER

AND NOW, this _____ day of _____, 2024, upon consideration of the foregoing Petition, this Honorable Court hereby issues a writ of mandamus to Vincent Manetta, as Judge of Election of Washington Township, to perform the functions authorized by 25 P.S. Section 3031.13 of the Election Code along with the other poll workers, without a hand count or manual tabulation of the votes cast for any office.

In the alternative, if Vincent Manetta fails to comply, this Honorable Court hereby directs an officer of the Fayette County Sheriff's Department to escort a poll worker and the election materials from Washington Township precinct to the Fayette County Election Bureau promptly after the poll workers have performed the functions authorized by 25 P.S. Section 3031.13 of the Election Code, without a hand count or manual tabulation of the votes cast for any office.

The Sheriff's Department shall also similarly escort any other Fayette County precinct which is acting outside of the authority outlined in the statute.

BY THE COURT:

_____ J.

ATTEST:

Prothonotary