

IN THE COURT OF COMMON PLEAS OF VENANGO COUNTY, PENNSYLVANIA

IN RE: VENANGO COUNTY
ELECTION BOARD

CIV No. 219-2011

MOTION FOR RECONSIDERATION

Filed on behalf of:
**Specially Appointed Members of
The Board of Elections**

Counsel of Record for this Party:

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AND NOW, come the specially appointed Board of Elections, by and through their attorney, Charles A. Pascal, Jr., Esquire, special counsel to the Board of Elections, and files this Motion for Reconsideration, and states as follows:

1. This Honorable Court appointed Craig E. Adams, Martha H. Breene and Eleanora M. Miller as specially appointed members of the Board of Elections to act in that capacity for the 2011 election year.
2. On December 1, 2011, this Honorable Court issued an order terminating the appointments of the above named individuals, essentially causing the Board of Elections to now consist of the members of the Venango County Board of Commissioners, as per statute.
3. All members of the Venango County Board of Commissioners were candidates in the 2011 elections.
4. At the time of this Honorable Court's December 1, 2011 Order, the specially appointed members of the Board of Elections were continuing to conduct and direct an investigation related to the conduct of the Primary Election, which took place in May, 2011.
5. Specifically, the Board of Elections had caused a forensic audit to have been conducted on the computer system(s) used to conduct the May, 2011 Primary Election.

6. A report had been produced by David Eckhardt, Ph.D., of Carnegie Mellon University, detailing various findings from his forensic audit.

7. A copy of the report produced by Dr. Eckhardt is attached hereto as "Exhibit A."

8. As a result of the various findings in Dr. Eckhardt's report, the specially appointed Board of Elections was continuing its investigation into various issues which were raised by the forensic analysis of the computer system.

9. Specifically, but not limited to the following, the Board of Elections was particularly interested in the issues in the report related to the Unity Log File Anomaly, shown on page 16 of Dr. Eckhardt's report (which shows out of sequence logging of access to the Unity program, specifically access which occurred on July 9, 2011 at midnight), and also indications of remote access to the Unity, which is not permitted by law, regulation, and directive of the Pennsylvania Secretary of State.

10. It was the intention of the specially appointed members of the Board of Elections to investigate the circumstances, causes, and explanations for these findings by interviewing and causing depositions of various individuals to be conducted in order to find answers to these troubling questions, as well as to other issues raised by Dr. Eckhardt's report.

11. It is a duty of the Board of Elections, pursuant to *25 P.S. § 2642*, to, among other duties:

...(g) To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, **and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.**

...(i) **To investigate election frauds, irregularities and violations of this act, and to report all suspicious circumstances to the district attorney.**

(l) To publicly announce by posting at its office the results of primaries and elections for county, city, borough, township, ward, school district, poor district, election offices, and

party offices, if any; to provide the results to the Secretary of the Commonwealth; **and to issue certificates of election to the successful candidates for said offices.**

(n) To annually prepare and submit to the county commissioners or other appropriating authorities of the county an estimate of the cost of primaries and elections and of the expenses of the board for the ensuing fiscal year.

(Emphasis added)

12. The items listed in bold above are not yet completed by the specially appointed Board of Elections.

13. Specifically, the specially appointed Board of Elections was in the process of investigating possible “election frauds, irregularities and violations of this act (Election Code)” when this Honorable Court terminated their appointments.

14. In addition to possible violations of policy or best practices, violation of the Election Code is also being investigated by the specially appointed Board; specifically, but not limited to, possible violations of *25 P.S. §§ 3501, 3527, 3545, and 3549.*

14. Because the Board of Commissioners would, statutorily, assume the role of Board of Elections as a result of this Honorable Court’s Order, and because the members of the Board of Commissioners were candidates in the election which is being investigated, this creates a situation where the members of the Board of Elections would now be expected to investigate an election in which they were candidates.

15. The members of the specially appointed Board of Elections, therefore, seek reconsideration of this Honorable Court’s Order of December 1, 2011, in order to allow them to continue their work, as provided by the Election Code, and to continue and complete their investigation into those issues which were discovered and raised by the Eckhardt report.

16. The members of the specially appointed Board of Elections believes that it is necessary to continue their work in order to assure the voters of the County of Venango of the integrity of the election process in the county, and to assure that any possible violations of policy, protocol, best practices, or the law, or any directive of the Pennsylvania Secretary of State, are not repeated in future elections.

17. The functions which were being performed by the specially appointed Board of Elections at the time of the termination of their membership lie squarely within the statutory provisions of the Election Code relating to the conduct of the 2011 elections.

18. Therefore, the members of the specially appointed Board of Elections respectfully request that this Honorable Court vacate its Order of December 1, 2011, and allow the specially appointed Board of Elections to continue to serve until 11:59 p.m., December 31, 2011.

WHEREFORE, the members of the specially appointed Board of Elections respectfully request that this Honorable Court grant their Motion for Reconsideration, and vacate its Order of December 1, 2011.

Respectfully submitted,

Charles A. Pascal, Jr., Esquire
Special Counsel to the Board of Elections

VERIFICATION

I hereby verify that the statements of fact made in the foregoing Motion are true to the best of my information, knowledge and belief. I understand that false statements herein are made subject to 18 Pa.C.S. 4904 related to false statements to authorities.

Martha Breene

*On behalf of the specially appointed
Board of Elections*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion for Consideration was served on the following by the methods indicated on this, the 2nd day of December, 2011.

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BY FAX: 814-827-7515

Charles A. Pascal, Jr., Esquire