

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARY BETH KUZNIK, JIM FERLO,
SALLIE W. BRADLEY, MERLE L.
KUZNIK, CLARE VAILL,
TIMOTHY KRUPAR, WILLIAM P.
KUZNIK, JEFFREY HAILS, JOHN W.
HETLER, CHARLENE MAE
HETLER and MATTHEW HETLER

No.

Plaintiffs,

v.

WESTMORELAND COUNTY
BOARD OF COMMISSIONERS and
WESTMORELAND COUNTY
BOARD OF ELECTIONS,

Defendants.

ACTION FOR DECLARATORY JUDGMENT
AND COMPLAINT IN EQUITY

1. Plaintiffs Mary Beth Kuznik, Sallie W. Bradley, Merle L. Kuznik, Claire Vaill, Timothy Krupar, William P. Kuznik, Jeffrey Hails and John W. Hetler, Charlene Mae Hetler and Matthew Hetler are all adult individuals, citizens, residents, taxpayers and voters who reside in Westmoreland County, Pennsylvania.

2. All Plaintiffs listed in the above paragraph assert standing to file this action as taxpayers and voters in Westmoreland County. See, *William Penn Parking Garage, Inc., v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (Pa. 1975).

3. Plaintiffs Mary Beth Kuznik, Jim Ferlo, Sallie W. Bradley, Merle L. Kuznik and Clare Vaill also assert standing to file this action as persons who have taken an oath to uphold the

Constitution of the Commonwealth of Pennsylvania. *See, Lawless v. Jubelirer*, 789 A.2d 820 (Pa. Cmwlth.), *aff'd*, 571 Pa. 79, 811 A.2d 974 (Pa. 2002).

4. Plaintiffs Mary Beth Kuznik, Merle L. Kuznik and Clare Vaill are Majority Inspector of Elections, Judge of Elections, and Minority Inspector of Elections, respectively, in Penn Township, Ward 4, Precinct 2. Plaintiff Jim Ferlo is a member of the Pennsylvania Senate representing the 38th Senatorial District, which includes parts of Westmoreland County. Plaintiff Sallie W. Bradley is a School Director in the Penn-Trafford School District.

5. Defendant Westmoreland County Board of Commissioners is the governing body of the County of Westmoreland, with offices situate at the Westmoreland County Courthouse, Greensburg, Westmoreland County, Pennsylvania.

6. Defendant Westmoreland County Board of Elections is the municipal government agency which is responsible for all matters related to the conduct of elections in Westmoreland County. **25 P.S. §§ 2641, et. seq.** The Board's responsibilities include, *inter alia*, seeking and receiving the assent of the electors of the county prior to the use of any "electronic voting" system at the polling places within Westmoreland County. **25 P.S. §§ 3031.2 through 3031.4.**

7. The membership of the Board of Elections consisted of the same three individuals who make up the Board of Commissioners at all times relevant to this Complaint.

8. Plaintiffs believe and thereby aver that on or about December 29, 2005, one or more Defendants voted to purchase approximately 750 touch-screen iVotronic voting machines (hereinafter "voting system") from Election Systems and Software Inc., by authorizing and directing the entrance into a contract with said company to do so.

9. The voting system being purchased by the Defendants is an "electronic voting" system, as defined by the Pennsylvania Election Code at **25 P.S. § 3031.1.**

10. The Plaintiffs believe, and thereby aver that the voting system purchased by the Defendants is intended for use at all elections and primaries to be conducted within the County of Westmoreland, and that the Defendants intend to use the voting system for that purpose beginning at the primary election scheduled to be held in May, 2006.

11. The Constitution of the Commonwealth of Pennsylvania, at Article VII, Section 6, states, in relevant part:

“...that the General Assembly shall by general law, permit the use of voting machines, or other mechanical devices for registering or recording and computing the vote, at all elections or primaries, in any county, city, borough, incorporated town or township of the Commonwealth, ***at the option of the electors of such county, city, borough, incorporated town or township***...under such regulations with reference thereto as the General Assembly may from time to time prescribe....” (emphasis added)

12. The Pennsylvania Election Code further provides for the mechanisms for implementation of the said Constitutional provision at ***25 P.S. §§ 3031.2*** through ***3031.4***.

13. Said statutory scheme requires that the Board of Elections of a county must submit a question to the voters at any primary or election asking “shall an electronic voting system be used at the polling places in the (county or municipality) of _____?”, and that such question be approved by the voters, prior to use of said electronic voting system by the board of elections and the county. *Id.*

14. Plaintiffs believe and thereby aver that to commit public funds to the purchase of electronic voting system machines, and/or to enter a contract to do so, evidences or otherwise shows an intent on the part of the Defendants to use said machines for their intended purpose.

15. Therefore, to commit public funds to the purchase of electronic voting system machines, and/or to enter a contract to do so, prior to approval of the same by the voters is in violation of the Constitution of the Commonwealth of Pennsylvania and the Pennsylvania Election Code.

16. The Plaintiffs are aggrieved by the action of the Defendants, and the Plaintiffs assert an interest in this matter which is substantial, direct and immediate, and which is both pecuniary and which affects their fundamental, Constitutionally protected voting rights.

17. The Plaintiffs have a pecuniary interest in that they seek to prevent waste and the illegal expenditure of public funds; that is, the Plaintiffs seek to prevent the expenditure large amounts of Federal and/or state funds and local tax dollars in an illegal and unconstitutional manner for the purchase of voting machines without the Constitutionally and statutorily required approval of the electors of Westmoreland County.

COUNT I
VIOLATION OF ARTICLE VII, SECTION 6 OF THE
CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA

18. The plaintiffs hereby incorporate paragraphs 1 through 17 inclusive, as if fully set forth herein.

19. As previously indicated, Article VII, Section 6 of the Pennsylvania Constitution requires that the use of voting machines, or other mechanical devices for registering or recording and computing votes shall be used “at the option of the electors of such county....”

20. Plaintiffs believe and thereby aver that the Defendants have not caused any such question to be presented to the electors of Westmoreland County, which would enable or otherwise authorize the Defendants to use an electronic voting method in general, or the iVotronic machine produced by Election Systems and Software Inc. in particular, at any primary or election.

21. The Defendant has nonetheless entered a contract for the purchase of said machines for use at primaries and elections to be conducted in Westmoreland County.

22. Unless the Defendants' action is enjoined, the Plaintiffs will suffer irreparable harm in they will have been deprived of their explicit right to vote for or against the approval of an electronic voting system for the County of Westmoreland.

23. Unless the Defendants' action is enjoined, the Plaintiffs will suffer irreparable harm in they will suffer a pecuniary loss in that their tax dollars will have been expended illegally for the purchase of an electronic voting system without the assent of the electors.

24. As set forth above, Plaintiffs have no adequate remedy at law.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court:

a) declare that the Constitution of the Commonwealth of Pennsylvania, at Article VII, Section 6, requires that, prior to the use of an electronic voting system or any particular voting machine, or other mechanical device used to register or record and compute votes, that said question must be put to the electors;

b) declare that no such question has been put to the electors of Westmoreland County;

c) declare that no question has been put to the electors of Westmoreland County to authorize the use of the iVotronic voting machine provided by Election Systems and Software Inc.;

d) declare that the Defendant's action to enter into a contract with Election Systems and Software, Inc., for the purchase of iVotronic voting machines is, therefore, in violation of the Pennsylvania Constitution at Article VII, Section 6;

e) declare that the Defendant's actions thereby interfere with the rights guaranteed the Plaintiffs and others similarly situated under Article VII, Section 6 of the Pennsylvania Constitution;

f) declare that the action to enter into said contract is thereby unconstitutional, illegal, void and without legal effect;

g) issue preliminary, and thereafter permanent injunctive relief enjoining Defendants from implementing the said contract and its provisions, and from using the iVotronic voting machine and any other electronic voting system at the polling places of Westmoreland County without the question first being put to the electors of the county as required by the Constitution.

h) grant such other relief as this Court may deem necessary and appropriate to protect Plaintiffs' Constitutional rights.

COUNT II
VIOLATION OF ARTICLE I, SECTION 5 OF THE
CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA

25. The plaintiffs hereby incorporate paragraphs 1 through 24 inclusive, as if fully set forth herein.

26. The Constitution of the Commonwealth of Pennsylvania, at Article I, Section 5, provides that: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

27. The Plaintiffs are guaranteed the right of suffrage on the question of the use of electronic voting machines by the Constitution of the Commonwealth of Pennsylvania at Article VII, Section 6.

28. Plaintiffs believe and thereby aver that the Defendants have not caused any such question to be presented to the electors of Westmoreland County, which would enable or otherwise

authorize the Defendants to use an electronic voting method in general, or the iVotronic machine produced by Election Systems and Software Inc. in particular, at any primary or election.

29. The actions of the Defendant, as previously described, interfere with and prevent the free exercise of the suffrage rights of the Plaintiffs on the question of whether the iVotronic voting machine shall be used at their polling places within Westmoreland County.

30. Unless the Defendants' action is enjoined, the Plaintiffs will suffer irreparable harm in they will have been deprived of their right of suffrage as guaranteed by the Constitution on the question of the approval of an electronic voting system for the County of Westmoreland.

31. Unless the Defendants' action is enjoined, the Plaintiffs will suffer irreparable harm in they will suffer a pecuniary loss in that their tax dollars will have been expended illegally for the purchase of an electronic voting system without the assent of the electors.

32. As set forth above, the Plaintiffs have no adequate remedy at law.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court:

a) declare that the Constitution of the Commonwealth of Pennsylvania, at Article I, Section 5, protects and guarantees the Plaintiffs the free exercise of the right of suffrage;

b) declare that the Plaintiffs have a right to the free exercise of the right of suffrage to vote on the question of the use of electronic voting machines and systems;

c) declare that no such question has been put to the electors of Westmoreland County;

d) declare that no question has been put to the electors of Westmoreland County to authorize the use of the iVotronic voting machine provided by Election Systems and Software Inc.;

e) declare that the Defendant's action to enter into a contract with Election Systems and Software, Inc., for the purchase of iVotronic voting machines without causing the question to be first put to the electors of Westmoreland County is, therefore, in violation of the Pennsylvania Constitution at Article I, Section 5;

f) declare that the action to enter into said contract is thereby unconstitutional, illegal, void and without legal effect;

g) issue preliminary, and thereafter permanent injunctive relief enjoining Defendants from implementing the said contract and its provisions, and from using the iVotronic voting machine and any other electronic voting system at the polling places of Westmoreland County without the question first being put to the electors of the county as required by the Constitution.

h) grant such other relief as this Court may deem necessary and appropriate to protect Plaintiffs' Constitutional rights.

COUNT III
**VIOLATION OF THE PENNSYLVANIA ELECTION CODE,
SPECIFICALLY 25 P.S. §§ 3031.2 through 3.031.4, INCLUSIVE**

33. The plaintiffs hereby incorporate paragraphs 1 through 32 inclusive, as if fully set forth herein.

34. The Pennsylvania Election Code provides that a county may, by a majority vote of its qualified registered electors voting at any primary or election, authorize and direct the use of an electronic voting system for registering or recording and computing the vote at all elections and primaries held at polling places in such county or municipality. **25 P.S. § 3031.2**

35. The Pennsylvania Election Code further provides for the procedure by which said question may be put to the voters at **25 P.S. § 3031.3**.

36. If a majority of the qualified registered electors voting on the question vote in favor of the adoption of an electronic voting system, then and only then is the county authorized to purchase, lease or otherwise procure the electronic voting system for use in the county. **25 P.S. § 3031.4**

37. Plaintiffs believe and thereby aver that the Defendants have not caused any such question to be presented to the electors of Westmoreland County, which would enable or otherwise authorize the Defendants to use an electronic voting method in general, or the iVotronic machine produced by Election Systems and Software Inc. in particular, at any primary or election.

38. Therefore, the action of the Defendants to enter into a contract for the purchase of said machines for use in primaries and elections in Westmoreland County is beyond the statutory authority granted to the Defendants by the Pennsylvania Election Code.

39. As set forth above, the Plaintiffs have no adequate remedy at law.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court:

a) declare that the Pennsylvania Election Code, at 25 P.S. §§ 3031.2 through 3.031.4 requires that, prior to the use of an electronic voting system or any particular voting machine, or other mechanical device used to register or record and compute votes, that said question must be put to the electors;

b) declare that no such question has been put to the electors of Westmoreland County;

c) declare that no question has been put to the electors of Westmoreland County to authorize the use of the iVotronic voting machine provided by Election Systems and Software Inc.;

d) declare that the Defendant's action to enter into a contract with Election Systems and Software, Inc., for the purchase of iVotronic voting machines is, therefore, in violation of the Pennsylvania Election Code at 25 P.S. §§ 3031.2 through 3.031.4;

e) declare that the action to enter into said contract is thereby unconstitutional, illegal, void and without legal effect;

f) issue preliminary, and thereafter permanent injunctive relief enjoining Defendants from implementing the said contract and its provisions, and from using the iVotronic voting machine and any other electronic voting system at the polling places of Westmoreland County without the question first being put to the electors of the county as required by the Pennsylvania Election Code.

h) grant such other relief as this Court may deem necessary and appropriate to protect Plaintiffs' statutory rights.

Respectfully submitted,

Charles A. Pascal, Jr., Esquire
Pa. I.D. #90872

123 Siberian Avenue
Leechburg, Pennsylvania 15656

Attorney for Plaintiffs