

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Mark Carroll, Jodi Diamond, :  
Matthew Dadich, Stephanie Leone, :  
Gloria Brazeli, Karen Elliot, :  
Wendy Willauer, and Leah Hoopes, :  
Appellants :  
 :  
v. : No. 1015 C.D. 2020  
 : Heard: October 16, 2020  
Delaware County Board of Elections :  
and its Administrative Arm Delaware :  
County Bureau of Elections :

**BEFORE: HONORABLE P. KEVIN BROBSON, Judge**

***OPINION NOT REPORTED***

**MEMORANDUM OPINION  
BY JUDGE BROBSON**

**FILED: October 16, 2020**

Presently before the Court is an Emergency Application for Injunction Pending Appeal (Emergency Application), filed by Appellants Mark Carroll, Jodi Diamond, Matthew Dadich, Stephanie Leone, Gloria Brazeli, Karen Elliot, Wendy Willauer, and Leah Hoopes pursuant to Pennsylvania Rule of Appellate Procedure 1732. Appellants are individual residents of Delaware County, Pennsylvania. Appellees are the Delaware County Board of Elections and the Delaware County Bureau of Elections (collectively Election Board). Appellants request this Court to grant emergency injunctive relief against the Election Board in connection with what Appellants characterize as the Election Board’s unlawful operation of a Mobile Voters Services Center (Mobile Unit) in Chester, Delaware County, Pennsylvania. Today, the Court conducted oral argument on the Emergency

Application by remote video conference (Cisco WebEx®). The Emergency Application is now ripe for disposition.

As background, Appellants filed a complaint and petition for injunction in the Court of Common Pleas of Delaware County (trial court). Appellants averred that the Election Board’s October 7, 2020 vote on the issue of whether to operate a mobile voting center at Subaru Park—Philadelphia Union Stadium between October 16-18, 2020, without giving any prior public notification and/or opportunity for public comment, was in direct violation of the Pennsylvania Sunshine Act (Sunshine Act), 65 Pa. C.S. §§ 701-716, and targeted just one portion of Delaware County without considering the needs of the Delaware County electorate as a whole in violation of the Free and Equal Elections clause of the Pennsylvania Constitution, Pa. Const. art. I, § 5.<sup>1</sup> The trial court conducted a hearing on October 15, 2020, and denied Appellants’ petition for preliminary injunction the same day, concluding:

This Court has examined thoroughly all September 3 and 17, 2020 minutes of the Delaware County Election Board Meetings, the affidavit of James Byrne, Esquire, the Legal Notice for the October 7, 2020, and

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<sup>1</sup> It appears to the Court that, although the gist of this action is based on the Sunshine Act, Appellants make reference to the Free and Equal Elections Clause in the context of the harm to Appellants and the general electorate of Delaware County. Appellants aver that if the Election Board’s operation of a Mobile Unit is “not enjoined, the right of the electorate of Delaware County to a fair and equitable election will be negatively impacted,” and the “Election Board has burdened voting rights through the disparate treatment of voters.” (Emergency Application ¶¶ 81, 83.) They further aver “[s]ponsoring and operating only a single [Mobile Unit] violates the voters’ rights under the First and Fourteenth Amendments to the United States Constitution by imposing burdens on their voting rights and does so arbitrarily and disproportionately based on a voter’s place of residence within the County.” (*Id.* ¶ 84.) Furthermore, limiting a Mobile Unit to a single location will significantly burden voters who want to avail themselves of the voter services provided by the Mobile Unit but who are not in proximity thereto. (*Id.* ¶ 85.) County voters without access to the single Mobile Unit deployed may be subject to voter suppression and a strong likelihood of disenfranchisement. (*Id.* ¶ 86.) Furthermore, Appellants aver that they “will suffer irreparable injury if injunctive relief is denied. Once registration applications are accepted, they later may be invalidated if this Court concludes that [the Election Board] was not authorized to place the mobile unit in the location chosen.” (*Id.* ¶ 62.)

reviewed arguments of able counsel for Petitioners and Respondent. This Court concludes that Petitioners have failed to establish a clear right to relief for a violation of the Sunshine Act, 65 Pa. C.S. § 701 *et seq.*

(Trial Court Order, Oct. 15, 2020, at 1.)

On October 16, 2020, Appellants appealed the denial of the petition for preliminary injunction to this Court and filed the subject Emergency Application. In the Emergency Application, Appellants request this Court to issue an injunction pending appeal, asserting: (1) that the trial court erred in failing to impose an injunction to preclude the Mobile Unit from collecting registration applications in circumstances where the official action undertaken by the Board of Elections is null and void because it failed to comport with the requirements of the Sunshine Act; and (2) that if this Court does not issue an injunction and the Election Board is permitted to accept registrations at the Mobile Unit, the validity of the registrations may be called into question. (Emergency Application ¶ 52.)

In *Tri-State Asphalt v. Department of Transportation*, 582 A.2d 55 (Pa. Cmwlth. 1990), *appeal denied*, 593 A.2d 429 (Pa. 1991), this Court announced the standards a party must satisfy to obtain an injunction pending appeal. Noting the highly extraordinary nature of the requested relief, this Court held that an applicant seeking an injunction pending review must satisfy not only the standard announced by our Supreme Court in *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), but also the stringent requirements for a preliminary injunction, particularly the requirements that greater injury would result from refusing the injunction than by granting it and that the plaintiff's right to relief is clear. *Tri-State Asphalt*, 582 A.2d at 60. Accordingly, for this Court to issue an injunction pending appeal, the applicant must prove each of the following criteria:

- (1) a likelihood of success on the merits of the appeal;
- (2) irreparable injury if the injunction is denied;

- (3) issuance of an injunction will not harm other interested parties;
- (4) issuance of an injunction will not adversely affect the public interest;
- (5) greater injury would result from refusing the injunction than from granting it; and
- (6) a clear right to relief.

*Id.* “Because the grant of a preliminary injunction is a harsh and extraordinary remedy, it is to be granted only when and if *each* [factor] has been fully and completely established.” *Pa. AFL-CIO by George v. Cmwlth.*, 683 A.2d 691, 694 (Pa. Cmwlth. 1996) (emphasis in original).

In terms of the first criteria, the merits question before the Court in this appeal is whether the trial court erred in refusing to grant preliminary injunctive relief. This Court’s standard of review in such matters is very narrow and “highly deferential” to the court whose order is challenged on appeal. *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1000 (Pa. 2003). In reviewing the order for an abuse of discretion, the Court does not look into the underlying merits of the parties’ dispute. Instead, the Court examines the record only to determine whether the court below had “any apparently reasonable grounds” for its decision. *Id.* “In ruling on a preliminary injunction request, a trial court has ‘apparently reasonable grounds’ for its denial of relief where it properly finds that any one of the [above] ‘essential prerequisites’ for a preliminary injunction is not satisfied.” *Id.* at 1001.

Here, the Court has examined the portions of the record the parties deemed most relevant to expedited review of the Emergency Application. Moreover, the Court has examined Sections 709 and 710.1(a) of the Sunshine Act, which Appellants claim the Election Board violated and on the basis of which Appellants wish to enjoin preliminarily the operation of the Mobile Unit. Based thereon, and upon consideration of the arguments of the parties, the Court concludes that the trial court had apparently reasonable grounds to be dubious of Appellants’ claims that the

Election Board violated Sections 709 and 710.1(a) of the Sunshine Act. The trial court's ruling in this regard was not palpably erroneous. *Summit Towne*, 828 A.2d at 1000. Accordingly, the Court will not disturb on appeal the trial court's conclusion that Appellants did not show a likelihood of success on the merits of their complaint and thus failed to establish an essential prerequisite for preliminary injunctive relief.



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P. KEVIN BROBSON, Judge

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**ORDER**

AND NOW, this 16<sup>th</sup> day of October, 2020, Appellants’ Emergency Application for Injunction Pending Appeal is DENIED for the reasons set forth in the accompanying Memorandum Opinion.

  
P. KEVIN BROBSON, Judge