

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Docket No. 04-4439

Lynn E. Landes,
Plaintiff-Appellant, Pro Se

v.

MARGARET TARTAGLIONE,
in her official capacity as Chair of the City commissioners of Philadelphia;

PEDRO A. CORTES,
in his official capacity as Secretary of the Commonwealth of Pennsylvania;

ALBERTO GONZALES,
in his official capacity as the Attorney General of the United States,
Defendants-Appellees

**On Appeal from an Order of the United States District Court
for the Eastern District of Pennsylvania**

BRIEF OF APPELLANT

Lynn Landes
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In propria persona

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EXHIBITS

A – Email from Nelldean Monroe, Voting Rights Program Administrator for the U.S. Office of Personnel Management (OPM), November 21, 2002

B – Accuracy, Integrity, and Security in Computerized Vote-Tallying, Chapter 4, Some Recent Difficulties In Computerized Vote Tallying, by computer scientist Dr. Roy Saltman, August 1988

C – Black Box Voting, by author Bev Harris, Chapter 2, Can We Trust These Machines?, 2004

D – Pandora’s Black Box: Did It Really Count Your Vote? by Philip M. O’Halloran, November 1996

E – Level of Protection Debated, Elections Seen as an Invitation to Fraud Series, by William Trombley, Los Angeles Times, July 4, 1989

TABLE OF CITATIONS

Wesberry v. Sanders 376 U.S. 1; 1964

Reynolds v. Sims 377 U.S. 533; 1964

South Carolina v. Katzenbach, 383 U.S. 301(1966)

Allen v. Board of Elections 393 U.S. 544, 1969

Bush et. al v. Gore et. al (No.00-949), 2000

United States v. Mosley 238 U.S. 383; 1915

Detroit v. Board of Inspectors of Election, 139 Mich. 548; 102 N.W. 1029; 1905

Empire Voting Machine v. Harry W. Carroll et al., 78 Wash. 83; 138 P. 306; 1914

Roudebush v. Hartke, 405 U.S. 15; 1972

Tennessee v. Lane, No. 02-1667, 2004

Davidowitz et al. v. Philadelphia County et al. 324 Pa. 17; 1936

Weber v Kevin Shelley, Cal. Sec’y of State & Townsend, No.02-56726; 2004

McDonald v. Board of Election, 394 U.S. 802; 1969

Southwest Voter Registration Education Project, et al. v. Kevin Shelley, Cal. Sec’y of State, Case No. 03-56498

Reno, Attorney General of the United States, et al. v. American Civil Liberties Union, et al. No. 96–511 (1997)

Edmond A. TIRYAK v. Thomas P. JORDAN et al., No. 78-3816 (1979)

STATEMENTS

(1) Subject Matter & Appellate Jurisdiction

- A. This case is brought Article I § 2 of the U.S. Constitution, the First Amendment, the Fourteenth Amendment, and 42 U.S.C. §1983 - Civil action for deprivation of rights.
- B. This court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1343. Plaintiff’s action for declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202; and by Rules 57 and 65 of the Federal Rules of Civil Procedure.
- C. The Basis for the Court of Appeal’s Jurisdiction. When a motion for judgment is granted and judgment entered thereon, that judgment is clearly a final decision and hence appealable when it disposes of all claims against all parties. 28 U.S.C §1291.

(2) Issue

Did the Plaintiff-Appellant submit credible evidence of a violation of law against her constitutional right to vote and to have votes counted properly by Defendants-Appellees, under which the District Court is obligated to grant her standing?

(3) Case

Plaintiff-Appellant filed a complaint in U.S. District Court for the Eastern District of Pennsylvania against the use of any and all voting machines in elections for public office as a violation of the right to vote and to have votes counted properly. The District Court granted Defendant-Appellee's Motion to Dismiss on standing and Plaintiff timely appealed.

(4) Facts

A. For elections in the city and county of Philadelphia, the City Commissioners use DREs (direct recording electronics) push button computerized voting machines made by the Danaher Corporation (Delaware). Computerized ballot scanners, also from Danaher, are used to count absentee ballots. Hart Intercivic (Texas) provides the software for the ballot scanners.

B. Plaintiff-Appellant is a U.S. citizen, a resident, a registered voter, and a freelance journalist in the City and County of Philadelphia. She asserts that the use of voting machines is a violation of a qualified citizen's constitutional right to vote and to have votes counted properly. Plaintiff also asserts that her role as a journalist, a watchdog for democracy, is rendered moot in that use of voting machines make the voting process effectively unobservable and therefore denies her the opportunity to determine if vote fraud or system failure has occurred. Plaintiff asks the Court to declare unconstitutional: actions, laws, and regulations by the City and County of Philadelphia, the Commonwealth of Pennsylvania, and the U.S. Congress that allow or approve the use of voting machines in elections for public office, including, but not limited to: 25 P.S. § 3031.1 and 2 U.S.C. § 9, (R.S. Sec. 27 Feb. 14, 1899, ch. 154, 30 Stat. 836), and to enjoin the Philadelphia City Commissioners from using voting machines in elections for public office; to enjoin the Secretary of the Commonwealth from approving voting machines in elections for public office; and to order the U.S. Attorney General to enforce voting rights in the City and County of Philadelphia;

C. Defendants argued, and the District Court ruled, that Plaintiff does not meet the constitutional and prudential requirements for standing.

(5) Related Cases & Proceedings

Did Plaintiff-Appellant submit credible evidence of a violation of law against her constitutional right as a registered voter and journalist to vote and to have votes counted properly by Defendants-Appellees, under which the District Court is obligated to grant her standing?

Yes, plaintiff submitted credible evidence that her constitutional rights have been violated. *First*, Congress and the Courts set two strict standards for the voting process: A) voters qualified to vote shall be allowed to vote, and B) their votes shall be counted properly. *Second*, Congress also set standards for observing if those rights have been violated (42 U.S.C. §1973f - the role of the Federal Observer). The use of voting machines denies any party (Federal Observers, election officials, poll watchers, the press, or the public) the right to observe the voting process in a meaningful or effective way under 42 U.S.C. §1973f. *Third*, although voting machines has been promoted as a *convenience* for voters and election officials, the U.S. Supreme Court decided last year that convenience should not supersede a citizen's fundamental rights. (*Tennessee v. Lane, No. 02-1667(2004)*) The use of voting machines is a violation of Plaintiff's fundamental right to vote and to have votes counted in a manner that can be observed in a

meaningful or effective way. (Emphasis added by Plaintiff)

A. Voters qualified to vote shall be allowed to vote. The citizens' right to vote is guaranteed under Article I, § 2 of the U.S. Constitution (*Wesberry v. Sanders*, 376 U.S. 1, 1964), the Fourteenth Amendment, and other Amendments and federal laws.

The right to vote is given under the Constitution to all "qualified" citizens. (42 U.S.C. § 1971, *Reynolds v. Sims* 377 U.S. 533, 1964) Plaintiff is a qualified citizen; a voting machine is not. Yet, on Election Day Plaintiff must use a machine in order to vote.

Voting machines stand as a physical obstacle between the voter and the ballot in violation of 42 U.S.C. § 1973i(a) ***Failure or refusal to permit casting or tabulation of vote.*** The use of DREs, Internet voting, and lever machines constitutes "refusal to permit casting", as these machines do not allow the voters to directly mark or cast their ballots. The voters can make inputs to the machine, but it is the machine - not the voter - that produces the results (i.e., records the inputs and counts the votes). (Emphasis added by Plaintiff)

Voters have the constitutional right to vote free from obstacles such as literacy tests and other practices and devices that once were required by state legislatures and election officials as a prerequisite to voting. (*South Carolina v. Katzenbach*, 383 U.S. 301(1966) and *Allen v. State Board of Elections*, 393 U.S. 544 (1969) and 42 U.S.C. § 1973b) Plaintiff asserts that voting machines constitute just such an obstacle. A voting machine, such as a DRE, can be an unfamiliar and inhibiting “device”, unlike a pen or pencil. The use of voting machines is a “precondition” for voting in that citizens must be able to operate the machine in order to vote. These machines stand as a physical obstacle between the voter and their ballot.

In *United States v. Mosley* (238 U.S. 383, 1915), the Court decided, “*The right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box.*” Voting machines, such as the lever, touchscreens, full-face, and Internet voting, do not allow citizens to directly “put a ballot in a box” or directly cast a ballot at all. Instead, the machine performs that function.

What is a vote? In *Bush et. al v. Gore et. al* (No.00-949) the Supreme Court wrote, “A ‘legal vote,’ as determined by the (Florida) Supreme Court, is one in which there is a ‘clear indication of the intent of the voter’.” The Court accepted that definition as, “unobjectionable as an abstract proposition and a starting

principle.” The use of lever machines or DREs (touchscreens or push buttons) prevents the voter from directly creating or casting a “legal vote” as a “clear indication” of their intent. The same could be said of the output of a ballot scanner. Any result produced by a voting machine is direct evidence or a “clear indication” that the machine did something. However, it is circumstantial evidence, at best, of the voter’s intent. In that same vein, *“The terms 'vote' or 'voting' includes all action necessary to make a vote effective in any primary, special, or general election.”* (42 U.S.C. § 1973l (c)(1)). Voting machines prevent citizens from making their votes “effective” or to know if they voted at all.

What is a ballot? *“The (Michigan Supreme) Court concluded that a vote cast by use of a voting machine, where it was secret, a free choice of candidates given, and a correct record of the vote made, was a vote given by ballot.”* (City of Detroit v. Board of Inspectors of Election for the Fourth Election District of the Second Ward of the City of Detroit, 139 Mich. 548; 102 N.W. 1029; 1905) The same conclusion was reached in *Empire Voting Machine Company v. Harry W. Carroll et al.*, 78 Wash. 83; 138 P. 306; 1914, *“We do not deem it necessary to rehearse these discussions or to treat the question other than as a proposition settled by the great weight of authority; that is, that a vote registered by a machine is a vote by ballot.”* Plaintiff respectfully disagrees. She asserts that a machine-produced

record (or list) of all the citizens' votes, versus a paper ballot (i.e., the official record of one voter's votes), are not the same thing. Even if lever voting machines or DREs produced a ballot, there is no way or manner for poll watchers and others to discern if the ballot reflects the intent of the voter or the output of the machine.

Implicit in the Constitution is the right to a recount of 'intact' ballots. In *Roudebush v. Hartke*, 405 U.S. 15 (1972), the U.S. Supreme Court ruled, "... *one procedure necessary to guard against irregularity and error in the tabulation of votes is the availability of a recount. Despite the fact that a certificate of election may be issued to the leading candidate within 30 days after the election, the results are not final if a candidate's option to compel a recount is exercised.*" Contested elections are addressed in 1 U.S.C. § 5 and in 26 Am Jur 2nd § 444, "*In an election contest the ballots themselves constitute the highest and best evidence of the will of the electors, provided they have been duly preserved and protected from unauthorized tampering, and recourse may be had to the ballots themselves in order to determine how the electors actually voted. However, one who relies on overcoming the prima facie correctness of the official canvass by a resort to ballots must first show that the ballots as presented to the court are intact and genuine.*" Recounts are not possible using paperless voting technologies, such as DREs or lever machines. These machines only produce vote totals, not a complete

record of votes cast. In fact, these machines prevent the voter from creating a ballot at all (i.e., an official record of their votes), let alone an “intact” ballot.

B. Qualified citizens have the constitutional right to have their votes “counted properly”. (*Allen v. Board of Elections and Wesberry v. Sanders*, 42 U.S.C. § 1973l c(1)). Voters, either by themselves or through their representatives, such as the press, poll watchers, or Federal Observers, must have the opportunity to observe the voting process uninterrupted (i.e., from start to finish) in order to determine if votes are “counted properly”. That opportunity is denied when voting machines are used.

The use of voting machines constitutes a secret or concealed processing of the vote which is a “prohibited act” under..., and (d) *Falsification or concealment of material facts or giving of false statements in matters within jurisdiction of examiners or hearing officers; penalties. Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.* The use of

any and all voting machines constitutes "concealment of material facts" in that the functions these machines perform are inherently non-transparent and effectively unobservable. (Emphasis added by Plaintiff)

The federal standard for observing elections is described in the oversight function of Federal observers in U.S. Code, Title 42, Chapter 20, Subchapter I-A, § 1973f, *“Observers at elections; assignment; duties; reports: Whenever an examiner is serving under subchapters I-A to I-C of this title in any political subdivision, the Director of the Office of Personnel Management may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such **subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.**”* The use of voting machines conceals the voting process and therefore denies Federal Observers, poll watchers, the press, or the public the right or the opportunity to observe if "persons who are entitled to vote are being permitted to vote" or "whether votes cast by persons entitled to vote are being properly tabulated". (Emphasis added by Plaintiff)

This point was affirmed by Neldean Monroe, Voting Rights Program Administrator for the U.S. Office of Personnel Management (OPM) who addressed the issue of oversight of the voting process in a November 21, 2002 e-mail to Plaintiff. Her agency is responsible for recruiting and training Federal Observers who are sent by the Department of Justice (DOJ) to monitor elections. Monroe wrote, "*The only observance of the tallying of the votes is when DOJ specifically requests observers to do so. This rarely occurs, but when it does, it is most often during the day following the election when a County conducts a canvass of challenged or rejected ballots. In this case, Federal observers may observe the County representatives as they make determinations on whether to accept a challenged or rejected ballot. **Federal observers may also observe the counting of the ballots (or vote tallying) when paper ballots are used.***" (Exhibit A) In an earlier phone conversation with the Plaintiff, Ms. Monroe said that she could not train Federal Observers to observe if voting machines manipulate or switch votes because the functioning of the machines is inherently unobservable. (Emphasis added by Plaintiff)

In *Edmond A. Tiryak v. Thomas P. Jordan et al.*, No. 78-3816 (1979), the Court ruled, "*...the poll-watcher's function is to guard the integrity of the vote. No*

activity is more indelibly a public function than the holding of a political election.”

The roll of the poll watcher is to ensure the proper administration of the voting process is amply supported under federal law. That roll is reported in U.S.

Constitution: Annotations p.18, § 4. Elections, Clause 1. Congressional Power to Regulate, Federal Legislation Protecting Electoral Process, “*More recently,*

Congress has enacted, in 1957, 1960, 1964, 1965, 1968, 1970, 1975, 1980, and

1982, legislation to protect the right to vote in all elections, federal, state, and

local, through the assignment of federal registrars and poll watchers, suspension

of literacy and other tests, and the broad proscription of intimidation and reprisal,

whether with or without state action.”

There has been considerable discussion and claims made as to the accuracy of voting machines. Although qualified voters have the right under federal law to have ballots “properly counted”, Plaintiff could not find that the accuracy of the count enjoys the same legal protection under federal statutes or case law.

Does the lack of voting standards violate the Equal Protection Clause? Yes, the Supreme Court found in *Bush v. Gore*, “...*whether the use of standardless manual recounts violates the Equal Protection and Due Process Clauses. With respect to the equal protection question, we find a violation of the Equal Protection Clause.”*

The use of voting technology that does not produce ballots, not only represents a “standardless manual recount”, it represents no ability to recount ballots at all since no ballots exist, just lists of votes. In addition, full and fair enforcement of voting rights depends on the *opportunity* to detect vote fraud and system failure. The use of voting machines conceals the voting process, denies enforcement officials, poll watchers, the press and the public that opportunity, and is therefore a violation of the Equal Protection Clause. (Emphasis added by Plaintiff)

Although absentee voting has been promoted as a convenience for voters who can not or will not make it to the polls on Election Day, the U.S. Supreme Court has decided that convenience should not supersede a citizen’s fundamental rights.

Writing for the majority in *Tennessee v. Lane*, No. 02-1667(2004), Justice John Paul Stevens said, “...states may not justify infringement on fundamental rights by pointing to the administrative convenience or cost savings achieved by maintaining barriers to the enjoyment of those rights.” Conversely, in *Davidowitz et al. v. Philadelphia County et al.* 324 Pa. 17 (1936) the Court stated, “These (voting) machines expedite the count, are helpful in reducing the possibility of election frauds, and their employment should be encouraged.” Although no evidence supporting this allegation is evident in the case, this quote was used in 25 Am Jur 2nd § 96 and again in 2004 by the Ninth Circuit in *Weber v Kevin Shelley, Cal.*

Sec'y of State & Townsend, No.02-56726, Ninth Circuit (2004). In *Davidowitz v. Philadelphia*, the Court went on to say, “*They have been installed in the various counties at great expense and by vote of a majority of the electors thereof. A court, therefore, should not restrain their use unless a legislative or constitutional provision is clearly violated.*” Plaintiff agrees with the Supreme Court’s ruling in *Tennessee v. Lane* and asserts that such a violation has taken place.

Is the federal court the proper venue for Plaintiff? Yes, a state’s discretion and flexibility in establishing the time, place and manner of electing its federal representatives has only one limitation, the state system cannot directly conflict with federal election laws on the subject. (*McDonald v. Board of Election, 394 U.S. 802 (1969)*). Plaintiff argues that the use of voting machines denies effective public participation and meaningful oversight of the voting process and is therefore a violation of federal law. In addition, Plaintiff has the right to file a Complaint in federal court before other remedies are exhausted, under Title 42, Chapter 20, §1971(d) *Jurisdiction; exhaustion of other remedies* – “*The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by*

law.”

Recent litigation against states and counties over the issue of voting machines has been based on the citizens’ right to a voter-verified paper ballot or trail. (*Weber v Shelley*) However, voter verification of the output of a machine is not the same as the voter directly voting. For poll watchers, Federal Observers, or journalists, there is no effective opportunity to determine if a vote produced by a machine is a clear indication of the intent of the voter or the result of a machine which may be adding, subtracting, or switching votes either by accident or design. Whatever is produced by a machine is circumstantial evidence, not direct evidence, of what the voter intended.

Other lawsuits have claimed discrimination based on voting equipment usage, contending that some voting machines are more accurate than others. (*Southwest Voter Registration Education Project, et al. v. Kevin Shelley, Cal. Sec’y of State, Case No. 03-56498*) Plaintiff believes that these cases miss the point in law.

Whether voting machines offer privacy, independence, a paper ballot, speed, or better accuracy, does not make their use legal under the spirit and intent of the U.S. Constitution and federal law. Considerations of time, convenience, or cost should

not supersede the citizens' right to vote *directly* and to have votes counted *properly*. (Emphasis added by Plaintiff)

(6) Standard of Review

When a motion for summary judgment is granted and judgment entered thereon, that judgment is clearly a “final decision” and hence appealable when it disposes of all claims against all parties. (28 U.S.C §1291)

ARGUMENT

(1) Summary of Argument

Plaintiff-Appellant meets the constitutional requirements for standing: A) she suffered an injury, B) there exists a connection between the injury and the conduct complained of, and C) the injury would be remedied by a favorable decision. Plaintiff also meets the prudential component of standing: D) she is asserting her own rights, E) her claim is not abstract or a generalized grievance, and F) her complaint is protected by federal laws and the Constitution. Plaintiff has a fundamental right to vote and to have votes counted properly. The use of voting machines violates Plaintiff's rights as a citizen, a voter, and a journalist.

(2) Argument

A. The Plaintiff suffered an injury as a voter and a journalist. Her challenge is to the process. The use of voting machines is the harm. The use of voting machines denies voters the right to meaningful participation and effective public oversight of the voting process. It constitutes a “Deprivation of Civil Rights” under 42 U.S.C. §1983. In plain language, Plaintiff cannot see what is not there. She cannot determine if vote fraud or system failure occurred. This effectively negates (or makes moot) the oversight and inspection role of election officials, poll watchers, Federal Observers, and journalists. It is an oversight role has been clearly recognized by the federal and state government. Therefore, it does not follow that it is legal to render the oversight role meaningless through the use of voting machines. Lastly, the use of absentee voting conceals material facts in violation of 42 U.S.C. §1973i(d).

Defendants have argued Plaintiff must prove discrimination took place in order to invoke laws under 42 U.S.C. Chapter 20, Sub. I–A—Enforcement of Voting Rights. However, according to 42 U.S.C §1973a, Proceeding to enforce the right to vote *(2) as part of any final judgment if the court finds that violations of the **fourteenth or fifteenth amendment** justifying equitable relief have occurred in such State or subdivision.* (Emphasis added by Plaintiff) The

Fourteenth Amendment applies to all voters, whereas the Fifteenth Amendment places the emphasis on claims of discrimination in violation of civil rights.

Voting rights belong to all qualified voters. There is no place in federal law or the Constitution where it states that only certain classes of voters may enjoy federal enforcement of their right to vote.

The District Court ruled that Plaintiff, “...*fails to allege that she has ever voted in any prior election either by voting machine or by any means.*” That shocked Plaintiff as she answered this allegation in both of her responses to Defendants Cortes and Ashcroft’s Motion to Dismiss. The following is Plaintiff’s response to Defendant Cortes: “*In response, Plaintiff assumed that she voted in past elections, but has since realized that it was the voting machines that had the ‘final say’ (so to speak) in the marking, casting, and counting of her votes. As asserted in the Complaint, voting machines constitute an obstacle between the voter and the ballot, thereby denying the voter the right to create a clear indication (i.e., direct evidence) of their own intent. Plus, the machines processed her votes in a concealed manner (i.e., inside of a box), thereby preventing Plaintiff from observing the voting process. The result is that Plaintiff is no longer sure whether she has ever successfully voted. Plaintiff intends to vote in the upcoming election and to have her vote counted properly,*

which is the basis for Plaintiff filing the Complaint.”

The following is Plaintiff’s response to Defendant Ashcroft’s Motion: *“Plaintiff answered this in her last Response to Defendant Cortes’s Motion to Dismiss. She has voted using both voting machines and absentee ballots. She intends to vote properly in the upcoming election. That said, Plaintiff asserts that how she has voted in the past or plans to vote in the future is immaterial. Plaintiff has a right as a citizen of the United States to free and fair elections under the 14th Amendment. Voting is a right, not a requirement. There is no requirement to vote in order to sue under 42 U.S.C. §1983. In order to prove a deprivation of rights, it is sufficient to show that the voting process is not properly administered under the Constitution and federal law.”*

B. The use of voting machines connects the injury, deprivation of civil rights, to the conduct complained of; it denies Plaintiff, as a citizen and a journalist, a meaningful opportunity to directly participate in and effectively observe the voting process.

C. The Court ruled that if relief was granted (i.e., the use of voting machines was declared unconstitutional), Plaintiff had not proved that “the injury will be

remedied”. Plaintiff respectfully disagrees with the foundation of that argument. Clearly, if the use of voting machines was prohibited, the harm they inflict would cease; voting machines would not be able to conceal the voting process or act as an obstruction to it. That would completely satisfy Plaintiff’s request in this case. However, other harms also exist that cause a similar injury as voting machines. It is Plaintiff’s understanding that she could not ‘pile-on’ charges in one Complaint, which is why she filed two complaints; one against the use of voting machines and the other against the use of absentee voting (Docket No. 04-4421).

Plaintiff believes that the Australian paper ballot method (created in 1858 and introduced to America in the 1880’s) is the gold standard of voting; voters go to their local polling precinct on Election Day in order to mark their ballots privately, cast them publicly, and have them counted publicly under the watchful eyes of poll watchers, the press, and the public. Ninety-five percent of democratic nations, including most of Europe, use this method to vote.

D. Plaintiff is representing her own views. As a voter and a journalist, she is personally injured by the use of voting machines. Though third parties may be affected by the Court’s ruling on her Complaint, that is the case in any

litigation.

E. The Court ruled, “*The injuries Plaintiff asserts are not particularized, concrete, or imminent, but are abstract and hypothetical.*” The Court does not say, but Plaintiff theorizes, that the evidence the Court considers “concrete” would be proof of vote fraud or technical problems with the machines. Plaintiff respectfully disagrees. Requiring proof of harm when the use complained of (voting machines) precludes the gathering of such evidence constitutes a classic Catch-22. The Court ruled, “*...she (Plaintiff) does not assert that the voting machines in question have actually suffered from these issues in the past or that they will definitely malfunction or be tampered with during the upcoming election.*” Plaintiff did not attempt to single-out Danaher or Hart Intercivic. Plaintiff’s Complaint centered on the voting process, not proof of fraud. That said, Plaintiff did provide extensive documentation of voting machine irregularities, in general. Attached to this complaint are three of the many exhibits provided by Plaintiff. (Exhibits B, C, & D) Plaintiff has also gathered recent incident reports of voting machine irregularities and malfunctions in the 2004 presidential election involving the exact type of voting machine sold by Danaher to Philadelphia, but understands that under the rules she may not add new material to this case.

After the 2000 election debacle, the U.S. Congress had the opportunity to set standards to make voting secure. Instead, they made it worse through the passage of the Help America Vote Act (HAVA), which encouraged and provided funding for the purchase of voting machines that are easy to rig and impossible to safeguard. Democrats in Congress offered legislation that required election officials attach ballot-printers to paperless touchscreen machines. However, the Republican majority refused to support it. The legislation was fatally flawed, regardless. Dr. David Dill, one of the major promoters of printer attachments, admitted that if the machines malfunction or breakdown, which they often do, the printers would be of little use.

The Congressional Research Service (CRS) concluded in a November 4, 2003 report, *“Given the worsening threat environment for information technology and the findings of several studies and analysis discussed in this report, at least some current DREs clearly exhibit security vulnerabilities...The potential threats and vulnerabilities associated with DREs (touchscreen and push button) are substantially greater than those associated with punchcard or optical scan readers, both because DREs are more complex and because they have no independent records of the votes cast.”*

However, experts say that both mechanical and electronic voting machines are easy to rig and impossible to safeguard. Whoever has the keys to the warehouse where lever voting machines are stored has an open opportunity to rig the machines. With electronic voting machines, computer scientists have long warned that there is no meaningful security to these systems. There is an unlimited opportunity for a few people, particularly company insiders, to manipulate millions of votes. In the wake of the 2004 election, voting rights organizations again reported thousands of complaints of machines malfunctions and breakdowns. The technology sabotaged the voting process in surprising ways; the mere withholding of machines, as occurred at several Ohio polls, resulted in long lines and voter suppression. Journalists, academics, and statisticians are still studying data, while several organizations have formed and websites have popped up calling themselves such things as *StolenElection2004* and *VoterGate*.

The vulnerability of electronic voting machines has been long understood by the nation's leading voting rights enforcement official. In a July 4, 1989 article in the Los Angeles Times about electronic voting machines and vote fraud, Craig C. Donsanto, head of the U.S. Justice Department's election crimes

branch from 1970 to the present, said, “*If you did it right, no one would ever know.*” (Exhibit E) This begs the question, why has the Justice Department failed to act to protect the security of the voting process?

The District Court ruled that Plaintiff’s alleged injury amounts to a “generalized grievance” shared in substantially equal measure by all or a large class of citizens and is not sufficient to confer standing. Plaintiff respectfully disagrees. First, this does not fit the definition of a “grievance” but rather a violation of civil rights. Laws have been passed and policies implemented that allow the use of voting machines despite the fact that their use conceals the voting process in violation of federal law and the Constitution. Second, the fact that third parties or “a large class of citizens” hold the same rights and suffer the same violation as Plaintiff, does not constitute grounds to dismiss. The Court’s ruling appears to indicate that Plaintiff can only assert a violation of rights in court if she has been the only victim or one of a select class of victims. If that were the case, it would send a powerful signal to others, which would be, *if you are going to violate civil rights, make sure you victimize lots of people from various backgrounds.* (Emphasis added by Plaintiff)

The Court ruled, “*Such concern involve questions of wide public significance*

that are most appropriately addressed by the legislative branch.” Plaintiff respectfully disagrees. First, Plaintiff has the right to challenge acts of the legislative branch (*Reno v. American Civil Liberties Union, No. 96–511 (1997)*). Second, Plaintiff has the right to file a Complaint in federal court before other remedies are exhausted, under Title 42, Chapter 20, §1971(d). And lastly, the federal and state legislatures helped to cause the harm by passing laws that allowed for the use of voting machines. It does not follow that plaintiff should seek a remedy from those same parties. For example, if Plaintiff were the *only* person who filed a complaint in court challenging a city ordinance that denied *all* of its citizens access to its meetings (where business was conducted, issues debated, and votes cast), would it be legally sound for the Court to deny Plaintiff standing and direct her to seek a remedy from the very city council who passed the ordinance in the first place?

F. The Court ruled that Plaintiff’s injury must be protected under federal law and the Constitution. Plaintiff has complied with that requirement. She based her complaint on Article I § 2 of the U.S. Constitution, the First Amendment, the Fourteenth Amendment, and 42 U.S.C. §1983.

(3) Conclusion

Meaningful public participation, effective oversight, and full enforcement of voting rights are the keys to a functioning and transparent democracy. Election officials cannot legally administer the voting process anytime, anywhere, and in any manner they desire. Election officials must meet the two strict standards for voting set by Congress and the Courts; these are: 1) voters qualified to vote shall be allowed to vote, and 2) that their votes shall be counted properly. Congress set standards for observing if those rights have been violated (42 U.S.C. §1973f - the role of the Federal Observer). The use of voting machines denies Federal Observers, election officials, poll watchers, the press, or the public the right and opportunity to observe the voting process in a meaningful or effective way under 42 U.S.C. §1973f.

Voting is a right and a responsibility. Considerations of convenience should not supersede Plaintiff's right as a journalist to observe the process in a meaningful manner. Increasingly, our elections are a virtual experience - a remote and private enterprise that requires *concealment and trust* – rather than the public function our founders intended that demands *transparency and scrutiny*. Where will it end?

Although Americans have been using voting machines since the 1890's, the

longevity of any custom or practice does not confer legitimacy. Slavery in America lasted over 250 years. The use of voting machines is a potent weapon that can be used to manipulate election results and, consequently, control the government. (Emphasis added by Plaintiff)

The U.S. Congress, The Commonwealth of Pennsylvania, and The City of Philadelphia have passed legislation and adopted policies that unlawfully deny Plaintiff the most important right of citizenship, the right to vote and to have votes counted properly. The use of voting machines should be declared a violation of the U.S. Constitution and federal law. The Plaintiff is the proper person and federal court is the proper place to seek this remedy. Plaintiff respectfully requests her day in Court.

Lynn E. Landes, Pro Se

Dated this 29th Day of March, 2005

I am the Plaintiff-Appellant in the above action and I do hereby certify that the foregoing is true to the best of my knowledge.

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