

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, WHEATON, ILLINOIS

BOB GROGAN,)
)
Petitioner,)
v.)
)
WILLIAM “BILL” WHITE, as a candidate for)
Office of the DuPage County Auditor, JEAN)
KACZMAREK, as DuPage County Clerk)
constituting the Election Authority for DuPage)
County, for the General Election held on)
November 3, 2020,)
)
Respondents.)

Case No. 2020MR001094

VERIFIED ELECTION CONTEST PETITION

NOW COMES, Petitioner, BOB GROGAN (“Grogan”), individually and by and through his attorneys, Luetkehans, Brady, Garner & Armstrong, LLC, and pursuant to 10 ILCS 5/23-20 hereby complains against Respondents, WILLIAM “BILL” WHITE (“White”), as a candidate for the Office of the DuPage County Auditor and JEAN KACZMAREK (“Kaczmarek”), DuPage County Clerk, as follows:

1. Grogan was the Republican candidate for the Office of the DuPage County Auditor in the November 3, 2020 General Election (the “Election”).
2. White was the Democrat candidate for the Office of the DuPage County Auditor in the Election.
3. Grogan and White were the only candidates for the Office of DuPage County Auditor at the Election.
4. Kaczmarek is the DuPage County Clerk. As DuPage County Clerk, Kaczmarek was responsible for running the Election.

5. On November 24, 2020, Kaczmarek performed the official count of the ballots and rendered a final proclamation of the results for the Election, including the election for the Office of DuPage County Auditor. Kaczmarek as DuPage County Clerk is vested with the authority to proclaim the results of the Election for that office.

6. Grogan, a duly-qualified elector in DuPage County, voted in this Election and, as set forth more fully and specifically below, in good faith based on reasonable inquiry which continues, alleges that mistakes and fraud have been committed in the casting and counting of ballots for the Office of DuPage County Auditor at this Election.

7. On November 24, 2020, Kaczmarek proclaimed the following results of the canvass for the Election for the Office of DuPage County Auditor (the “Canvass Proclamation”):

Candidate	Total
William “Bill” White:	233,121
Bob Grogan:	233,046

8. The Canvass Proclamation declared that a total of 491,067 ballots were cast in the Election for DuPage County Auditor and that the two candidates are 75 votes apart.

9. As set forth more fully and specifically below, Kaczmarek’s count of the Election totals for the race for Office of DuPage County Auditor was performed in derogation of the DuPage County Clerk’s statutory duties in that it proclaims a result in which numerous invalid ballots were wrongly counted, numerous valid ballots were wrongly not counted, numerous duly-qualified voters in DuPage County were wrongly denied their right to vote in the Election, numerous individuals who were not qualified to vote wrongly voted, and election machines improperly influenced voters to cast their ballot for White.

10. On November 30, 2020, Grogan, along with a candidate for DuPage County Forest Preserve Commissioner, District 4, Tim Whelan, filed Petitions for Discovery Recounts pursuant to 10 ILCS 5/22-9.1.

11. Based on the facts alleged herein developed by observation using the discovery process under 10 ILCS 5/22-9.1 and by other investigations, a correct and lawful count of the votes which were properly cast and which should have been properly counted in DuPage County shows a result different from that and proclaimed by the DuPage County Clerk.

LACK OF ELECTION JUDGE’S INITIALS (ELECTION DAY)

12. In discovery proceedings, Petitioner and his representatives observed that Downers Grove Precincts 76, 118 and 130 had 436 ballots that did not contain an Election Judge’s initials as required under 10 ILCS 5/17-9 and 10 ILCS 5/19-8.

13. Of those 436 ballots missing the required Election Judge’s initials, 259 of those examined ballots contained votes cast for White, and 177 of those examined ballots contained votes cast for Grogan.

14. These 436 ballots must be declared as invalid and should not have been counted.

15. On this single issue, Grogan would pick up a net of 82 votes, which is in excess of the amount of votes separating Grogan and White according to the Canvass Proclamation.

LACK OF ELECTION JUDGE’S INITIALS (VOTE BY MAIL AND EARLY VOTING)

16. In the course of the discovery proceedings, Petitioner and his representatives examined 55,897 ballots that were cast in the Election for DuPage County Auditor via vote by mail, pre- and post-election, and early voting ballots, out of a total 192,129 ballots in these three (3) categories.

17. Of those 55,897 ballots, 240 of those ballots do not contain an Election Judge’s initials as required under 10 ILCS 5/17-9 and 10 ILCS 5/19-8.

18. Of those ballots observed to be missing the required Election Judge’s initials, 148 contained votes cast for White, and 92 contained votes cast for Grogan.

19. Being contrary to the requirements of the Election Code, these 240 ballots must be declared invalid and should not have been counted.

20. On this single issue, Grogan would pick up a net of 56 votes.

21. Extrapolating this sample to the entire ballots cast would show a proportional gain for Grogan of approximately 193 votes if a full recount occurred. Again, this is in excess of the 75-vote difference between the candidates.

POSTMARKS

22. In the discovery proceedings, Petitioner and his representatives observed the return envelopes for 12,659 vote-by-mail ballots that had been counted in the Election.

23. Of those 12,659 envelopes, five (5) were postmarked after the day of the Election and one (1) envelope had no processing stamp whatsoever.

24. The ballots contained in these six (6) envelopes were improperly counted by Kaczmarek, in derogation of the Election Code.

25. The 12,659 vote-by-mail ballot envelopes that were reviewed in the discovery proceedings constituted 7.5% of the total number of vote-by-mail ballots that were counted in the Election for DuPage County Auditor.

26. In the Election, White received a total of 107,350 vote-by-mail votes, and Grogan received 61,904 vote-by-mail votes.

27. Based on this number, a full hand recount, including an examination of all mail return envelopes would cause Grogan to net an additional 21 votes.

BALLOTS IMPROPERLY CAST AND COUNTED

28. On December 4, 2020, Grogan received from Andrew Janik of the County Clerk's Office, Election Division, nine (9) spreadsheets that included everyone who was registered to vote in the Election (the "Voter Registration List").

29. After removing those voters who are not listed as voting in the Election, the Voter Registration List reveals that 489,441 registered voters voted in the Election.

30. However, according to the Canvass Proclamation, the total number of ballots cast in the Election was 491,067.

31. Accordingly, it appears that 1,626 more ballots were counted than the total number of registered voters on the Voter Registration List who appear to have voted in the Election.

32. Grogan asked the County Clerk's Office for an explanation as to the discrepancy, but has received no definitive answer to date.

ELECTION VOTING MACHINES

33. Over 160,000 people voted on electronic voting machines.

34. Due to compliance with the Americans with Disability Act ("ADA"), if a voter did not cast his or her vote within approximately ten (10) seconds, the electronic machine went from highlighting the title of the office to highlighting the candidate who had the top ballot position, which in this Election was the Democrat candidate (including White), thus creating an unfair advantage for Democrat candidates with those voters who used these electronic voting machines.

35. Upon information and belief, no other county in Illinois had this particular problem with their ADA-compliant electronic voting machines.

36. On or about October 24, 2020, Grogan and the DuPage County Republican Chairman, James F. Zay, among others, demanded that the problem with the electronic voting machines be fixed immediately or that the electronic voting machines not be utilized in the Election.

37. However, the DuPage County Clerk's Office advised that they could not resolve the malfunction, but would instead issue stickers on the machine for future early voting and that the use of these electronic voting machines would be discouraged on the day of the Election.

38. However, it appears that certain polling places failed to discourage the use of the electronic voting machines and still had a relatively high usage of the electronic voting machines.

39. Even if the stickers placed on the machines were sufficient to solve the problem, which Grogan disputes, over 120,000 votes were cast before the stickers were placed on any of the electronic voting machines.

40. Accordingly, the electronic voting machines caused the Election to be fundamentally unfair and raise doubts as to whether voters were given a choice of free expression.

41. Grogan, was irreparably harmed by this electronic voting machine malfunction.

FAILURE TO SEGREGATE BALLOTS

42. During the course of the discovery proceedings, an examination of vote-by-mail envelopes from approximately 75 precincts occurred.

43. The County Clerk's Office failed to segregate those envelopes received on or before Election day, received after Election day or received in drop boxes on Election day.

44. Accordingly, Grogan was not provided the opportunity in the discovery proceedings to check for ineligible envelopes received after Election day that had no postmark.

45. This failure to segregate improperly limited the ability of Grogan to determine whether certain ballots should have been declared improperly cast because they could not be determined in the discovery proceedings whether votes were counted for ballots received after Election day which had no postmark.

46. Given the items identified in this Verified Election Petition, there is a reasonable likelihood that a recount under 10 ILCS 5/23-23.2 will change the results of the Election for DuPage County Auditor and show that Grogan was actually elected by the voters of DuPage County.

47. Investigation of this matter continues, and the results thereof will be used to amend this Complaint with additional facts and greater specificity from time-to-time during the pendency of this proceeding.

WHEREFORE, Petitioner, BOB GROGAN, respectfully requests that this Honorable Court:

- A. order a full recount of all the precincts in DuPage County to determine the validity of the proclamation issued by the DuPage County Clerk, JEAN KACZMAREK, including, but not limited to, the examination of relevant voting devices, optical ballots, provisional ballots, ballot applications, binder cards, affidavits, vote by mail documentation and all other materials utilized for the November 3, 2020 General Election;
- B. prohibit the destruction of any materials related to the November 3, 2020 General Election;
- C. declare the results proclaimed by the DuPage County Clerk, JEAN KACZMAREK, as invalid;
- D. enter an Order declaring Petitioner, BOB GROGAN, as the properly-elected person to the Office of DuPage County Auditor at the November 3, 2020 General Election;
- E. in the alternative, declare the November 3, 2020 General Election invalid as it relates to the Office of the DuPage County Auditor and hold a new election for the Office of the DuPage County Auditor at the consolidated election to be held on April 6, 2021; and
- F. enter an order granting any other relief this Court deems equitable and just.

By: /s/ Phillip A. Luetkehans
Phillip A. Luetkehans, One of the
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VERIFICATION

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and, as to such matters, the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.


BOB GROGAN

SUBSCRIBED and SWORN to before me

this 24 day of December, 2020.


Notary Public

