

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION**

BETTE EAKIN, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Civil Action No. 1:22-CV-340
)	
ADAMS COUNTY BOARD OF ELECTIONS, ET AL.,)	
)	
Defendants,)	

**MOTION TO BE EXCUSED FROM ACTIVE PARTICIPATION OF DEFENDANTS,
CLARION COUNTY BOARD OF ELECTIONS, SUSQUEHANNA COUNTY BOARD
OF ELECTIONS, AND TIOGA COUNTY BOARD OF ELECTIONS**

AND NOW come Defendants, Clarion County Board of Elections, Susquehanna County Board of Elections, and Tioga County Board of Elections, by and through their attorneys, Christopher P. Furman and Gabriel Fera, P.C., and files the within Motion to be excused from active participation in Case No. 1:22-CV-340, including any obligation to file responsive pleadings and to attend hearings, conferences, and trial

1. Plaintiffs challenge the rejection of qualified voters’ mail-in and absentee ballots for the 2022 General Election that were undated or incorrectly dated on the ballot envelope, pursuant to the Pennsylvania Supreme Court order¹ directing county boards of elections to refrain from counting such ballots. Movants, Clarion, Susquehanna, and Tioga County Boards of Elections will not take a position on the merits of the Plaintiffs’ claim. The Movants do not intend, for example, to file dispositive motions or to offer exhibits or call witnesses at trial.

¹ *Ball v. Chapman*, No. 102 MM 2022, 2022 WL 16569702, at *1 (Pa. Nov. 1, 2022) (per curiam).

2. The Movants were notified that they were named as defendants to assure the efficacy of any injunctive relief the Court might grant.

3. The Movants will comply with all court orders and judgments applicable to them, though excused from active participation. However, the expenditure of public resources in a matter that the Movants do not intend to actively defend is unnecessary, and their mandatory participation only encumbers the efficient management of this litigation.

4. For example, the complaint filed by Plaintiffs comprises 17 pages. The preparation of an answer alone by a defendant that is bound to follow whatever the law is determined to be will consume significant resources.

5. The Movants therefore respectfully request the Court to excuse them from active participation in Case No. 1:22-CV-340, including any obligation to file responsive pleadings and to attend hearings, conferences, and trial. The requested relief will neither cause prejudice to other parties nor deny the Court the benefit of a full, adversarial presentation of the merits of this dispute.

6. The Movants do not seek to be excused from their discovery obligations. Though excused from active participation, the Movants will continue to respond or object to discovery requests as the Federal Rules of Civil Procedure require. Likewise, the Movants will provide deposition and trial testimony if compelled in accordance with the Rules.

7. District courts “enjoy broad discretion in deciding how best to manage the cases before them.” *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1366 (11th Cir. 1997). Under this discretion, disinterested defendants have been excused by district courts from active participation in litigation. *See, e.g., The Belt Ry. Co. of Chi. v. Weglarz Hotel III, LLC*, No. 1:18cv-07361 (N.D. Ill. Mar. 12, 2019); *Patch of Land Lending, LLC v. Realty Capital Ventures, LLC*, No. 9:17-cv-80450-KAM (S.D. Fla. Oct. 12, 2017). In the case of *La Union Del Pueblo Entero*,

et al. v. Gregory W. Abbot, et al. (Lead Case No. 5:21-CV-00844-XR; Consolidated Case No. 1:21-CV-00786-XR), the United States District Court for the Western District of Texas, San Antonio Division, entered an Order dated April 11, 2022, granting similar relief as sought in this motion in response to a motion filed by the sought by the Counties of Hudspeth and Culberson, Texas in a Texas Election Code legal challenge case.

8. Importantly, the Movants reserve the right to oppose any financial remedy against the Movants in light of the fact they is agreeing not to actively oppose the relief sought by the Plaintiff.

WHEREFORE, Defendants, Clarion County Board of Elections, Susquehanna County Board of Elections, and Tioga County Board of Elections, respectfully move the Court to be excused from active participation in Case No. 1:22-CV-340, including any obligation to file responsive pleadings and to attend hearings, conferences, and trial.

Counsel for the adverse parties that filed this case against Clarion County Board of Elections, Susquehanna County Board of Elections, and Tioga County Board of Elections, were notified of Defendants' intent to present the within motion *via* voice mail on December 16, 2022 and January 3, 2023, and Plaintiff has not communicated any opposition thereto to date.

GABRIEL FERA, P.C.

Date: January 3, 2022

By: /s/ Christopher P. Furman, PA ID No. 92975
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Pittsburgh, PA 15233
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Counsel for Defendants,
Counties of Clarion, Susquehanna, and Tioga

CERTIFICATE OF CONFERENCE

I hereby certify that on December 16, 2022 and January 3, 2023, counsel for Plaintiff was notified of Defendants' intent to present the foregoing motion, and Plaintiff has not indicated any opposition thereto.

/s/ Christopher P. Furman
Christopher P. Furman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to be Excused from Active Participation was filed electronically and served via the Court's CM/ECF system, pursuant to the Federal Rules of Civil Procedure.

/s/ Christopher P. Furman
Christopher P. Furman

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