

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

BETTE EAKIN, et al.,	:
Plaintiffs	:
	:
v.	: Civil Action No. 1:22-CV-340-SPB
	:
ADAMS COUNTY BOARD OF	:
ELECTIONS, et al.,	:
Defendants	:

DEFENDANT UNION COUNTY BOARD OF ELECTIONS’
MOTION TO BE EXCUSED FROM ACTIVE PARTICIPATION

AND NOW, comes Defendant, Union County Board of Elections, by and through their attorneys, McNerney, Page, Vanderlin & Hall, and who respectfully move this Honorable Court to be excused from active participation in case number 1:22-CV-340, including any obligation to file responsive pleadings and to attend hearings, conferences, and trial, and in support thereof, sets forth as follows:

1. On November 7, 2022, Plaintiffs filed a Complaint challenging the rejection of qualified voters’ mail-in and absentee ballots “due to an immaterial omission of a written date, or the entry of an incorrect date, on the outside of the ballot envelope.”¹ Plaintiffs’ Complaint contests the Pennsylvania Supreme Court Order directing County Board of Elections to refrain from counting mail-in and absentee ballots that were undated or incorrectly dated on the ballot envelope. *Ball v. Chapman*, No. 102 MM 2022, 2022 WL 16569702, at *1 (Pa. Nov. 1, 2022) (per curiam).

¹(Doc. 1, at 3, ¶ 2)

2. Movant, Union County Board of Elections, will not take a position on the merits of Plaintiffs' claims, and does not intend to file dispositive motions, offer exhibits, or call witnesses at trial.

3. Upon information and belief, Movant is named as a Defendant to ensure the uniform application of any injunctive relief in relation to Plaintiffs' Complaint.

4. Movant avers it will comply with all court orders and judgments deemed necessary and applicable.

5. Participation by Movant in the above-captioned matter will only serve to burden the litigation and cause the unnecessary expenditure of public resources to defend a matter that Movant does not intend to defend.

6. As such, Movant respectfully requests this Honorable Court to excuse it from participation in Case No. 1:22-CV-340, including any requirements to file responsive pleading, attend hearings and conferences, and, trial.

7. The relief sought by Movant will not prejudice the other parties nor deny a complete presentation of the merits of the underlying dispute.

8. Movant will comply with its discovery obligations, and if excused from active participation, will continue to respond or object to discovery requests pursuant to the applicable Federal Rules of Civil Procedure, and provide deposition and trial testimony, if necessary and compelled.

9. The discretionary power of the District Courts' to manage its cases also allows disinterested Defendants to be excused by District Courts from active participation and litigation.

10. Finally, Movant reserves the right to oppose any financial remedy sought by Plaintiffs against Movant even though Movant does not actively oppose the relief sought by Plaintiffs.

WHEREFORE, Defendant, Union County Board of Elections, respectfully moves this Honorable Court to be excused from active participation in Case No. 1:22-CV-340, including any obligation to file any responsive pleadings, attend hearings and conferences, and trial.

Counsel for Plaintiffs do not oppose the within Motion filed by Defendant, Union County Board of Elections.

Respectfully submitted,

MCNERNEY, PAGE, VANDERLIN & HALL

/s/Thomas A. Burkhart

Thomas A. Burkhart, Esquire

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Elections

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CERTIFICATE OF CONFERENCE

I hereby certify that on January 4, 2023, I conferred with counsel for Plaintiffs about the foregoing Motion and that Plaintiffs do not oppose the relief requested in said Motion.

MCNERNEY, PAGE, VANDERLIN & HALL

/s/Thomas A. Burkhart

Thomas A. Burkhart, Esquire

I.D. No. 308734

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.

MCNERNEY, PAGE, VANDERLIN & HALL

/s/Thomas A. Burkhart

Thomas A. Burkhart, Esquire

I.D. No. 308734