

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BETTE EAKIN, <i>et al.</i> ,	:	Civil Action
	:	
Plaintiffs,	:	
	:	Case No. <u>1:22-CV-00340-SPB</u>
vs.	:	
	:	
ADAMS COUNTY	:	
BOARD OF ELECTIONS, <i>et al.</i> ,	:	
	:	Judge Susan Paradise Baxter
Defendants.	:	

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

Defendant, Lycoming County Board of Elections, respectfully moves 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.

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. Movant Lycoming County Board of Elections will not take a position on the merits of the

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

Plaintiffs' claim. The Movant does not intend, for example, to file dispositive motions or to offer exhibits or call witnesses at trial.

2. The Movant was notified that it was named as defendant to assure the efficacy of any injunctive relief the Court might grant.

3. The Movant will comply with all court orders and judgments applicable to it, though excused from active participation. However, the expenditure of public resources in a matter that the Movant does not intend to actively defend is unnecessary, and its 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 Movant therefore respectfully requests the Court to excuse it 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 Movant does not seek to be excused from its discovery obligations. Though excused from active participation, the Movant will continue to respond or object to discovery requests as the Federal Rules of Civil Procedure

require. Likewise, the Movant 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. 1:18-cv-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 Movant reserves the right to oppose any financial remedy against the Movant in light of the fact it is agreeing not to actively oppose the relief sought by the Plaintiff.

WHEREFORE, Defendant Lycoming County Board of Elections respectfully moves 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.

Respectfully submitted,

McCORMICK LAW FIRM

By: /s/ J. David Smith

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CERTIFICATE OF CONCURRENCE

I hereby certify that I conferred with counsel for plaintiffs regarding the foregoing motion and was informed plaintiffs concur in defendant Lycoming County Board of Elections' motion and do not oppose the relief requested.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a true and correct copy of this document via the Court's CM/ECF system, pursuant to the Federal Rules of Civil Procedure.

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Dated: January 3, 2023