

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

PENNSYLVANIA STATE CONFERENCE OF)	
THE NAACP, et al.,)	Civil Action No. 1:22-cv-00339-SPB
)	
Plaintiffs,)	
)	
v.)	
)	
CHAPMAN, et al.,)	
)	
Defendants.)	

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT, FAYETTE COUNTY
BOARD OF ELECTIONS**

AND NOW, comes Defendant, Fayette County Board of Elections (“Defendant County”), by and through its counsel, John M. Purcell and Timothy J. Witt, and files the below Answer and Affirmative Defenses to Plaintiffs’ Amended Complaint for Declaratory and Injunctive Relief.

INTRODUCTION

1. Admitted in part; denied in part. It is admitted that Plaintiffs have brought this Complaint. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1. These allegations are, therefore, denied. Any implication that Defendant County is liable, or Plaintiffs are entitled to any relief against Defendant County is further denied.

2. Paragraph 2 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 2 are denied.

3. Paragraph 3 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 3 are denied.

4. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4. These allegations are, therefore, denied.

5. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5. These allegations are, therefore, denied.

6. Paragraph 6 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 6 are denied.

JURISDICTION AND VENUE

7. Paragraph 7 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 7 are denied.

8. Paragraph 8 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 8 are denied.

9. Paragraph 9 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 9 are denied.

10. Paragraph 10 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 10 are denied.

PARTIES

11. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11. These allegations are, therefore, denied. Any implication that Defendant County failed to properly count ballots is further denied.

12. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12. These allegations are, therefore, denied.

13. It is denied that Defendant County failed to properly count ballots. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 13. These allegations are, therefore, denied.

14. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14. These allegations are, therefore, denied. Any implication that Defendant County failed to properly count ballots is further denied.

15. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15. These allegations are, therefore, denied.

16. It is denied that Defendant County failed to properly count ballots. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 16. These allegations are, therefore, denied.

17. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17. These allegations are, therefore, denied.

18. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18. These allegations are, therefore, denied.

19. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19. These allegations are, therefore, denied.

20. It is denied that Defendant County failed to properly count ballots. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 20. These allegations are, therefore, denied.

21. It is denied that Defendant County failed to properly count ballots. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 21. These allegations are, therefore, denied.

22. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22. These allegations are, therefore, denied.

23. It is denied that Defendant County failed to properly count ballots. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 23. These allegations are, therefore, denied.

24. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24. These allegations are, therefore, denied.

25. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25. These allegations are, therefore, denied.

26. It is denied that Defendant County failed to properly count ballots. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26. These allegations are, therefore, denied.

27. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27. These allegations are, therefore, denied.

28. It is denied that Defendant County failed to properly count ballots. After a reasonable investigation, Defendant County is without knowledge or information sufficient to

form a belief as to the truth of the allegations of Paragraph 28. These allegations are, therefore, denied.

29. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29. These allegations are, therefore, denied. It is further denied that Defendant County failed to properly count ballots or that any action or omission of Defendant County resulted or will result in disenfranchisement of Jean Terrizzi.

30. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30. These allegations are, therefore, denied. It is further denied that Defendant County failed to properly count ballots or that any action or omission of Defendant County resulted or will result in disenfranchisement of Barry M. Seastead.

31. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31. These allegations are, therefore, denied. It is further denied that Defendant County failed to properly count ballots or that any action or omission of Defendant County resulted or will result in disenfranchisement of Marjorie Boyle.

32. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32. These allegations are, therefore, denied. It is further denied that Defendant County failed to properly count ballots or that any action or omission of Defendant County resulted or will result in disenfranchisement of Marlene G. Gutierrez.

33. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33. These allegations are, therefore, denied. It is further denied that Defendant County failed to properly count ballots or that any action or omission of Defendant County resulted or will result in disenfranchisement of Deborah Diehl.

34. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34. These allegations are, therefore, denied. It is further denied that Defendant County failed to properly count ballots or that any action or omission of Defendant County resulted or will result in disenfranchisement of Aynne Margaret Pleban Polinski.

35. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35. These allegations are, therefore, denied. It is further denied that Defendant County failed to properly count ballots or that any action or omission of Defendant County resulted or will result in disenfranchisement of Joel Bencan.

36. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36. These allegations are, therefore, denied. It is further denied that Defendant County failed to properly count ballots or that any action or omission of Defendant County resulted or will result in disenfranchisement of Laurence M. Smith.

37. The allegations in Paragraph 37 reference a written document that speaks for itself. Furthermore, the allegations in Paragraph 37 contain legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 37 are denied.

38. Paragraph 38 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 38 are denied.

FACTS

A. Pennsylvania's Mail Ballot Rules

39. Paragraph 39 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 39 are denied.

40. Paragraph 40 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 40 are denied.

41. Paragraph 41 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 41 are denied.

42. Paragraph 42 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 42 are denied.

43. Paragraph 43 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 43 are denied.

44. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 44. These allegations are, therefore, denied.

45. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 45. These allegations are, therefore, denied.

B. Litigation Over the Envelope-Date Requirement

46. Paragraph 46 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 46 are denied.

47. Paragraph 47 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 47 are denied.

i. In re Canvass

48. Paragraph 48 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 48 are denied. The allegations in Paragraph 48 also references a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

49. Paragraph 49 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 49 are denied. Paragraph 49 also references a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

ii. Migliori

50. Paragraph 50 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 50 are denied. Paragraph 50 also references a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

51. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 51. These allegations are, therefore, denied.

52. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 52. These allegations are, therefore, denied.

53. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 53. These allegations are, therefore, denied.

54. Paragraph 54 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 54 are denied. Paragraph 54 also references a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

55. Paragraph 55 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 55 are denied. Paragraph 55 also references a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

56. Admitted, upon information and belief.

57. Paragraph 57 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 57 are denied. Paragraph 57 also references a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

iii. McCormick and Berks County

58. Paragraph 58 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 58 are denied. Paragraph 58 also references a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

59. The allegations in Paragraph 59 reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

iv. Ball v. Chapman

60. Paragraph 60 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 60 are denied. Paragraph 60 also references a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

61. Paragraph 61 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 61 are denied. Paragraph 61 also references a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

62. The allegations in Paragraph 62 reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

63. The allegations in Paragraph 63 reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

64. The allegations in Paragraph 64 reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

C. Pennsylvania's 2022 Election

65. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65. These allegations are, therefore, denied.

66. It is admitted that the 2022 midterm election involved elections for the U.S. Senate, U.S. House of Representatives, and Pennsylvania House and Senate offices among other elections. It is further admitted that Defendant County segregated and preserved some mail-in ballots in accordance with orders issued by the Supreme Court of Pennsylvania. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 66, including those allegations in subparts a. through p. These allegations are, therefore, denied.

67. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67. These allegations are, therefore, denied.

68. It is admitted that Plaintiffs Polinski and Diehl failed to properly date their mail-in ballot and their ballots were therefore segregated and not counted in compliance with the explicit orders issued by the Supreme Court of Pennsylvania. It is denied that Defendant York County Board of Elections failed to properly count ballots. Any allegation or inference that York County Board of Elections acted improperly or in violation of law in performing its election obligations or procedures, including any notice and cure procedures, or that any actions of the York County Board of Elections resulted or will result in the disenfranchisement of Plaintiffs Polinski and Diehl is further denied. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 68. These allegations are, therefore, denied.

69. It is admitted that Plaintiff Gutierrez failed to properly date her mail-in ballot and her ballot was therefore segregated and not counted in compliance with the explicit orders issued by the Supreme Court of Pennsylvania. It is denied that Defendant York County Board of Elections failed to properly count ballots. Any allegation or inference that York County Board of Elections acted improperly or in violation of law in performing its election obligations or procedures, including any notice and cure procedures, or that any actions of the York County Board of Elections resulted or will result in the disenfranchisement of Plaintiff Gutierrez is further denied. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 69. These allegations are, therefore, denied.

70. Paragraph 70 contains legal conclusions to which no response is required. To the extent that the Court does not consider voter disenfranchisement a legal conclusion and a response is required, it is denied that any act or omission of Defendant County resulted or will result in the disenfranchisement of voters.

71. The allegations analyzing the *Migliori* litigation in Paragraph 71 are legal conclusions to which no response is required. To the extent a response is required, those allegations in Paragraph 71 are denied. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 71. These allegations are, therefore, denied.

72. The allegations analyzing the *Migliori* litigation in Paragraph 72 are legal conclusions to which no response is required. To the extent a response is required, those allegations in Paragraph 72 are denied. After a reasonable investigation, Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 72. These allegations are, therefore, denied.

73. Paragraph 73 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 73 are denied.

74. Paragraph 74 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 74 are denied.

CLAIM FOR RELIEF

Count I: Rejection of Ballots for Immaterial Paperwork Errors or Omissions in Violation of the Materiality Provisions of the Civil Rights Act (52 U.S.C. § 10101(a)(2)(B), 42 U.S.C. § 1983)

75. Paragraph 75 is an incorporation paragraph to which no response is required. Paragraphs 1 through 74 of this Answer are incorporated by reference herein as though fully set forth at length.

76. Paragraph 76 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 76 are denied.

77. Paragraph 77 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 77 are denied.

78. Paragraph 78 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 78 are denied.

79. Paragraph 79 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 79 are denied.

80. Paragraph 80 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 80 are denied.

81. Paragraph 81 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 81 are denied.

82. Paragraph 82 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 82 are denied.

Count II: Rejection of Certain Ballots for Immaterial Paperwork Errors or Omissions in Violation of the Fourteenth Amendment of the United States Constitution (42 U.S.C. § 1983)

83. Paragraph 83 is an incorporation paragraph to which no response is required. Paragraphs 1 through 82 of this Answer are incorporated by reference herein as though fully set forth at length.

84. Paragraph 84 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 84 are denied.

85. Paragraph 85 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 85 are denied.

86. Paragraph 86 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 86 are denied.

87. Paragraph 87 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 87 are denied.

88. Paragraph 88 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 88 are denied.

PRAYER FOR RELIEF

WHEREFORE, Defendant, Fayette County Board of Elections respectfully requests that this Honorable Court enter judgment in their favor and against Plaintiffs.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Plaintiffs' claims against Defendant County fails to state a claim upon which relief may be granted.

SECOND DEFENSE

This Court lacks jurisdiction over the subject matter of some or all of Plaintiffs' claims.

THIRD DEFENSE

Plaintiffs lack standing to pursue some or all of the claims against Defendant County.

FOURTH DEFENSE

Plaintiffs have failed to set forth a claim for any federal constitutional violations against Defendant County.

FIFTH DEFENSE

Plaintiffs are not entitled to recovery of any attorney's fees from Defendant County.

SIXTH DEFENSE

Defendant County acted in accordance with the United States Constitution.

SEVENTH DEFENSE

Defendant County acted in accordance with explicit orders issued the by the Supreme Court of Pennsylvania at all relevant times.

EIGHTH DEFENSE

At all times, Plaintiffs were provided reasonable and appropriate treatment by Defendant County in accordance with the applicable state and federal laws, including but not limited to the United States Constitution, the Constitution of the Commonwealth of Pennsylvania, and the Pennsylvania Election Code.

Date: January 5, 2023

Respectfully submitted,

By: /s/ John M. Purcell
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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing has been electronically filed through the Court's ECF system which will send notification of same to all counsel of record.

/s/ John M. Purcell

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