

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

Betty Eakin, et al.,	:	
Plaintiffs	:	No. 1:22-cv-340
	:	
v.	:	
	:	
Adams County Board of Elections,	:	
Et al.	:	
Defendants	:	(electronically filed)
	:	

**DEFENDANTS PERRY COUNTY BOARD OF ELECTIONS AND FRANKLIN COUNTY BOARD OF ELECTIONS’ MOTION TO BE EXCUSED FROM ACTIVE PARTICIPATION**

AND NOW, comes Defendants Perry County Board of Elections and Franklin County Board of Elections, by and through their attorneys, Lavery Law, 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.”<sup>1</sup> 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 they ballot envelope. *Ball v. Chapman*, No. 102 MM 2022, 2022 WL 16569702, at \*1 (Pa. Nov. 1, 2022) (per curiam).

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<sup>1</sup> (Doc.1, at 3, ¶2)

2. Movants, Perry County Board of Elections and Franklin 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, Movants are named as Defendants to ensure the uniform application of any injunctive relief in relation to Plaintiffs' Complaint.

4. Movants aver they will comply with all court orders and judgments deemed necessary and applicable.

5. Participation by Movants 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 Movants do not intend to defend.

6. As such, Movants respectfully request this Honorable Court to excuse them 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 Movants will not prejudice the other parties nor deny a complete presentation of the merits of the underlying dispute.

8. Movants 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, Movants reserve the right to oppose any financial remedy sought by Plaintiffs against Movants even though Movants do not actively oppose the relief sought by Plaintiffs.

WHEREFORE, Defendants, Perry County Board of Elections and Franklin County Board of Elections, respectfully move 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 Defendants, Perry County Board of Elections and Franklin County Board of Elections.

Respectfully submitted,

Lavery Law

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Attys for Defendants Perry and Franklin  
County Board of Elections, only

DATE: January 6, 2023

By: /s Andrew W. Norfleet

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Attys for Defendant Perry and Franklin  
County Board of Elections, only

DATE: January 6, 2023

**CERTIFICATE OF CONFERENCE**

I hereby certify that on January 5, 2023, my staff conferred with counsel for Plaintiffs, Daniel Osher, Esquire, about the foregoing Motion and that Plaintiffs do not oppose the relief requested in said Motion.

LAVERY LAW

/s/Frank J. Lavery, Jr.

Frank J. Lavery, Jr., Esquire

I.D. No. 42370

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**CERTIFICATE OF SERVICE**

I, Aimee L. Paukovits, an employee with the law firm of Lavery Law, do hereby certify that on this 6<sup>th</sup> day of January, 2023, I served a true and correct copy of the foregoing Motion via the Court's ECF System on all counsel of record:

s/ Aimee L. Paukovits  
Legal Assistant to Frank J. Lavery, Jr.,  
Esquire and Andrew W. Norfleet, Esquire

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