

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

BETTE EAKIN, INES MASSELLA, FETTERMAN
FOR PA, DSCC, and DCCC,

Plaintiffs,

v.

ADAMS COUNTY and ALL REMAINING
PENNSYLVANIA COUNTY BOARDS OF ELECTIONS,

Defendants,

Civ. No. 22-340

**JOINT ANSWER OF DEFENDANTS ALLEGHENY, BUCKS, CHESTER,
MONTGOMERY, AND PHILADELPHIA COUNTY BOARDS OF ELECTIONS
TO PLAINTIFFS' COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Defendants Allegheny County Board of Elections, Bucks County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections, and Philadelphia County Board of Elections (collectively, "the County Boards"), by and through their attorneys, answer the Plaintiffs' Complaint (ECF No. 1) ("Complaint") and aver as follows:

PRELIMINARY STATEMENT

The County Boards are charged with administering elections in which the people of Commonwealth exercise the most fundamental of American rights, and the one that preserves all others: the right to vote. Congress sought to protect that right through the "materiality provision" of the Civil Rights Act, which prohibits states from disqualifying timely and eligible votes due to immaterial paperwork errors and omissions. 52 U.S.C. § 10101(a)(2)(B). This materiality provision was enacted to end

trivial prerequisites to voting that “served no purpose other than as a means to inducing voter-generated errors that could be used to justify” denying the right to vote. *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1173 (11th Cir. 2008).

The materiality provision prohibits the denial of the right to vote based solely on an elector’s failure to comply with a meaningless requirement to handwrite a date on the outer return envelope of their mail-in or absentee ballot. The County Boards do not rely on the handwritten date to determine a voter’s qualification or the timeliness of the ballot. And thus—in Allegheny, Bucks, Chester, Montgomery, and Philadelphia Counties—strict enforcement of the handwritten date requirement will have the practical effect of disenfranchising thousands of otherwise eligible electors who fail to include a “correct” date on the outer return envelope but cast timely ballots.

Elderly Pennsylvania residents are most likely to be disenfranchised by the handwritten date requirement, many of whom hold dear the right to vote and have been regular voters in Pennsylvania elections for decades. For instance, Philadelphia County’s and Montgomery County’s data from the 2022 election show that elderly voters were disproportionately overrepresented in the number of segregated and uncounted ballots. The Civil Rights Act was intended for situations like this one, where those who are unable to leave their homes for reasons related to health or age and have difficulty legibly writing the date will be disenfranchised based on an immaterial technicality.

In the 2022 election, the County Boards complied with an order from the Pennsylvania Supreme Court and segregated undated and incorrectly dated ballots. But the County Boards are of the view that doing so violates the materiality provision of the Civil Rights Act—a position they took before the Supreme Court of Pennsylvania. Consistent with that position, the County Boards urge this Court to declare that the denial of the right to vote because of the immaterial omission of a correct, handwritten date violates the Civil Rights Act.

NATURE OF THE CASE

1. The allegations in Paragraph 1 are legal conclusions and characterizations of federal law to which no response is required.

2. The allegations in Paragraph 2 refer to a written order from the Pennsylvania Supreme Court that speaks for itself, and all characterizations of it are denied.

3. The County Boards admit that they followed the Pennsylvania Supreme Court Order and therefore did not count ballots that were missing a date or had an incorrect date on the ballot envelope. The County Boards neither admit nor deny any allegations in Paragraph 3 that are directed toward the other sixty-two county boards of elections.

4. The County Boards admit that a handwritten date on the outer return envelope is not relevant to determine whether an individual (1) is at least eighteen years of age, (2) has been a citizen of the United States for at least a month, (3) has resided in the Commonwealth for at least ninety days, (4) has resided in the district

they intend to vote in for at least thirty days, and (5) has not been confined for a felony within the last five years.

5. The allegations in Paragraph 5 are legal conclusions to which no response is required.

6. The allegations in Paragraph 6 are legal conclusions to which no response is required. The County Boards agrees with Plaintiffs, however, that disqualifying otherwise eligible voters because the outer return envelope lacks a correct, handwritten date would violate the Materiality Provision of the Civil Rights Act.

JURISDICTION AND VENUE

7. The County Boards admit Plaintiffs' characterization of their Complaint.

8. The allegations in Paragraph 8 are legal conclusions to which no response is required. To the extent a response is required, the County Boards admit that this Court has subject matter jurisdiction over this federal civil rights action.

9. The allegations in Paragraph 9 are legal conclusions to which no response is required. To the extent a response is required, the County Boards admit that this Court has personal jurisdiction over them.

10. The County Boards do not dispute that this District is a proper venue.

11. The allegations in Paragraph 11 are legal conclusions to which no response is required.

PARTIES

12. The County Boards lack knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 12.

13. The County Boards lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 13.

14. The County Boards lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 14.

15. The County Boards lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 15.

16. The County Boards lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 16.

17. The County Boards admit that they are county boards of elections with jurisdiction over the conduct of primaries and elections in their respective counties. The County Boards further admit that they accept applications for mail ballots, mails the mail ballots to the voters, and receive the mail ballots that the voters return. The County Boards further admit that they are charged with combining the count of mail ballot votes with in-person votes, tabulating the results, and sending a certificate showing the total votes to Pennsylvania's Secretary of the Commonwealth. The County Boards further admit the Plaintiff's characterization of their Complaint. The County Boards neither admit nor deny allegations directed toward the other Defendants.

STATEMENT OF FACTS AND LAW

18. The allegations in Paragraph 18 are legal conclusions to which no response is required.

19. The County Boards admit that before 2019, only limited categories of qualified voters were permitted to vote by mail. The remaining allegations in Paragraph 19 characterize a state statute that speaks for itself, and all characterizations of it are denied.

20. The County Boards admit that the Election Code instructs voters casting mail ballots to (1) mark their ballots “on or before eight o’clock p.m. the day of the primary or election”; (2) use only “black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen”; (3) “fold the ballot, enclose and securely seal the same in the envelope on which it is printed, stamped or endorsed ‘official election ballot’”; (4) place their completed ballot in a blank, secrecy envelope; (5) place the secrecy envelope into a separate, outer envelope, “on which is printed the form of declaration of the elector”; and (6) “fill out, date and sign the declaration printed on such envelope” before returning it to the voter’s county board of elections.

21. The County Boards admit that the Date Instruction is immaterial to determining whether a voter is qualified to vote under Pennsylvania law. The County Boards further admit that the Pennsylvania Supreme Court issued a decision in *In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Elections*, 241 A.3d 1058 (Pa. 2020). That decision speaks for itself, and all characterizations of it are

denied. The remaining allegations in Paragraph 21 are legal conclusions to which no response is required.

22. The allegations in Paragraph 22 refer to the Pennsylvania Supreme Court's decision in *In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Elections*, 241 A.3d 1058 (Pa. 2020), which speaks for itself, and all characterizations of it are denied.

23. The allegations in Paragraph 23 refer to the Pennsylvania Supreme Court's decision in *In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Elections*, 241 A.3d 1058 (Pa. 2020), which speaks for itself, and all characterizations of it are denied.

24. The allegations in Paragraph 24 refer to the Pennsylvania Supreme Court's decision in *In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Elections*, 241 A.3d 1058 (Pa. 2020), which speaks for itself, and all characterizations of it are denied.

25. The allegations in Paragraph 25 refer to the Pennsylvania Supreme Court's decision in *In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Elections*, 241 A.3d 1058 (Pa. 2020), which speaks for itself, and all characterizations of it are denied.

26. The County Boards admit that the Third Circuit issued an opinion in *Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022), and the United States Supreme Court declined to stay that ruling in *Ritter v. Migliori*, 142 S. Ct. 1824 (2022). Those decisions speak for themselves, and all characterizations of them are denied.

27. The County Boards admit that the United States Supreme Court vacated the Third Circuit's decision as moot without commenting on the merits. That vacatur speaks for itself, and all characterizations of it are denied. The remaining allegations in Paragraph 27 are legal conclusions to which no response is required.

28. The County Boards admit that the President Judge of the Commonwealth Court of Pennsylvania issued a decision in *Chapman v. Berks Cnty. Bd. Of Elections*, 2022 WL 4100998 (Ps. Comm. Ct. Aug. 19, 2022), which speaks for itself, and all characterizations of it are denied.

29. The County Boards admit that a group of partisan petitioners brought a petition in the Supreme Court of Pennsylvania seeking to invalidate mail-in ballots with no handwritten date on the outer return envelope or with an inaccurate date on the outer return envelope.

30. The allegations in Paragraph 30 refer to a written order from the Pennsylvania Supreme Court that speaks for itself, and all characterizations of it are denied.

31. The allegations in Paragraph 31 refer to a supplemental written order from the Pennsylvania Supreme Court that speaks for itself, and all characterizations of it are denied.

CLAIMS FOR RELIEF

COUNT I

52 U.S.C. § 10101; 42 U.S.C. § 1983

VIOLATION OF SECTION 101 OF THE CIVIL RIGHTS ACT OF 1964

32. Paragraph 32 does not contain factual allegations to which a response is required.

33. The allegations in Paragraph 33 refer to a federal statute that speaks for itself, and all characterizations of it are denied.

34. The allegations in Paragraph 34 refer to a federal statute that speaks for itself, and all characterizations of it are denied.

35. The allegations in Paragraph 35 are legal conclusions to which no response is required.

36. The allegations in Paragraph 36 are legal conclusions to which no response is required.

37. The allegations in Paragraph 37 are legal conclusions to which no response is required.

38. The County Boards admit that the Date Instruction is immaterial to determining whether an elector is qualified to vote in Pennsylvania. The remaining allegations in Paragraph 38 are legal conclusions to which no response is required.

39. The County Boards admit that in the 2022 general election, they did not use a voter's handwritten date on the outer return envelope to verify whether a mail-in or absentee ballot was timely. The County Boards deny the remaining allegations in Paragraph 39.

40. The allegations in Paragraph 40 are legal conclusions to which no response is required. The County Boards agree that enforcement of the Date Instruction serves no legitimate purpose and will violate the Materiality Provision of the Civil Rights Act.

COUNT II
U.S. CONST. AMENDS. I, XIV; 42 U.S.C. § 1983
VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS

41. Paragraph 41 does not contain factual allegations to which a response is required.

42. The allegations in Paragraph 42 are legal conclusions to which no response is required.

43. The allegations in Paragraph 43 are legal conclusions to which no response is required.

44. The allegations in Paragraph 44 are legal conclusions to which no response is required. The allegations in Paragraph 44 also refer to written decisions from the Eleventh Circuit Court of Appeals, the Sixth Circuit Court of Appeals, and the District Court for the Middle District of Pennsylvania, each of which speaks for itself and all characterizations of which are denied.

45. The allegations in Paragraph 45 are legal conclusions to which no response is required. The allegations in Paragraph 45 also refer to a written decision from the Third Circuit Court of Appeals that speaks for itself, and all characterizations of it are denied.

46. The allegations in Paragraph 46 are legal conclusions to which no response is required. The allegations in Paragraph 46 also refer to written decisions

from the United States Supreme Court that speak for themselves, and all characterizations of those decisions are denied.

47. The allegations in Paragraph 47 are legal conclusions to which no response is required.

CONCLUSION

The Allegheny, Bucks, Chester, Montgomery, and Philadelphia County Boards of Elections respectfully submit that this Court should declare that rejecting timely returned mail-in and absentee ballots based solely on a missing or incorrect date next to the voter's signature on the outer return envelope violates the Materiality Provision of the Civil Rights Act.

January 6, 2023

/s/ George M. Janocsko

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CERTIFICATE OF CONSENT

I hereby certify that I have obtained the consent of the non-filing signatories to this Joint Answer—the above-listed counsel for Defendants the Allegheny, Bucks, Chester, and Montgomery County Boards of Elections.

Dated: January 6, 2023

By: /s/ Ilana H. Eisenstein

*Counsel for Defendant Philadelphia
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