

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

BETTE EAKIN, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Civil Action No. 1:22-CV-340
)	
ADAMS COUNTY BOARD OF ELECTIONS, ET AL.,)	
)	
Defendants,)	

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS –
CLARION, SUSQUEHANNA, AND TIOGA COUNTY BOARDS OF ELECTIONS –
TO COMPLAINT**

AND NOW come Defendants, Clarion County Board of Elections, Susquehanna County Board of Elections, and Tioga County Board of Elections, by and through their attorneys, Christopher P. Furman, Benjamin E. Orsatti, and Gabriel Fera, P.C., and file the within Answer and Affirmative Defenses.

NATURE OF THE CASE

1. Paragraph 1 contains conclusions of law to which no response is required. To the extent a response may be required, said conclusions are denied.
2. Paragraph 2 contains conclusions of law to which no response is required and are therefore deemed denied. To the extent a response is required, the allegations in Paragraph 2 are denied. The allegations in Paragraph 2 also reference a written document that speaks for itself. Plaintiffs’ characterizations thereof are denied.
3. It is admitted that Defendant County Boards of Elections segregated and did not count ballots with a missing or incorrect date on the ballot envelope in the 2022 midterm election, in compliance with the explicit orders issued by the Supreme Court of Pennsylvania. After

reasonable investigation, Defendant Boards are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3. These allegations are therefore, denied.

4. The County Boards admit that a handwritten date on the outer return envelope is not relevant to determine whether individuals: (1) are at least eighteen years of age, (2) have been citizens of the United States for at least a month, (3) have resided in the Commonwealth for at least ninety days, (4) have resided in the districts they intend to vote in for at least thirty days, and (5) have not been confined for a felony within the last five years. The remaining allegations, being conclusions of law, are deemed denied.

5. Paragraph 5 contains conclusions of law to which no response is required. To the extent a response may be required, said conclusions are denied.

6. Paragraph 6 contains conclusions of law to which no response is required. To the extent a response may be required, said conclusions are denied.

JURISDICTION AND VENUE

7. It is admitted that Plaintiffs bring the within action. The remaining averments of Paragraph 7 are beyond the ken of Defendants after reasonable investigation and are therefore denied and strict proof thereof demanded at time of trial.

8. Paragraph 8 contains conclusions of law to which no response is required. To the extent a response may be required, said conclusions are denied, except that Defendants do not contest this Court's jurisdiction over the instant matter.

9. It is admitted that Defendants are government entities. The remaining averments of Paragraph 9, being conclusions of law, are denied as stated.

10. Defendants are without sufficient knowledge to form a belief about where a substantial part of the events that give rise to Plaintiffs' claims occurred or will occur, and therefore they are deemed denied. It is admitted that Plaintiffs bring the within action. The remaining averments of Paragraph 7 are beyond the ken of Defendants after reasonable investigation and are therefore denied and strict proof thereof demanded at time of trial.

11. Paragraph 11 contains conclusions of law for which no response is required, and said conclusions are therefore denied.

PARTIES

12. Paragraph 12 contains conclusions of law for which no response is required, and said conclusions are therefore denied.

13. The averments of Paragraph 13 are beyond the ken of Defendants after reasonable investigation and are therefore denied and strict proof thereof demanded at time of trial.

14. The averments of Paragraph 14 are beyond the ken of Defendants after reasonable investigation and are therefore denied and strict proof thereof demanded at time of trial.

15. The averments of Paragraph 15 are beyond the ken of Defendants after reasonable investigation and are therefore denied and strict proof thereof demanded at time of trial.

16. The averments of Paragraph 16 are beyond the ken of Defendants after reasonable investigation and are therefore denied and strict proof thereof demanded at time of trial.

17. Defendants admit that they are county boards of elections. It is denied that Defendant County Boards improperly enforced the Date Instruction. The remainder of Paragraph 17 contains legal conclusions to which no response is required. To the extent a response is required, the remaining averments of Paragraph 17 are denied.

STATEMENTS OF FACTS AND LAW

18. Paragraph 18 contains conclusions of law for which no response is required, and said conclusions are therefore denied.

19. Paragraph 19 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 19 are denied.

20. Paragraph 20 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 20 are denied.

21. Paragraph 21 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 21 are denied. The allegations in Paragraph 21 also reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

22. Paragraph 22 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 22 are denied. The allegations in Paragraph 22 also reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

23. Paragraph 23 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 23 are denied. The allegations in Paragraph 23 also reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

24. Paragraph 24 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 24 are denied. The allegations in Paragraph 24 also reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

25. Paragraph 25 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 25 are denied. The allegations in Paragraph 25 also reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

26. Paragraph 26 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 26 are denied. The allegations in Paragraph 26 also reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

27. Paragraph 27 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 27 are denied. The allegations in Paragraph 27 also reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

28. Paragraph 28 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 28 are denied. The allegations in Paragraph 28 also reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

29. Paragraph 29 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 29 are denied. The allegations in Paragraph 29 also reference a written document that speaks for itself. Plaintiffs' characterizations thereof are denied.

30. Paragraph 30 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 30 are denied. The allegations in Paragraph 30 also reference a written document that speaks for itself. Plaintiffs' characterizations

thereof are denied.

31. Paragraph 31 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 31 are denied. The allegations in Paragraph 31 also reference a written document that speaks for itself. Plaintiffs' characterizations thereof 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 is an incorporation paragraph to which no response is required. Paragraphs 1 through 31 of this Answer are incorporated by reference herein as though fully set forth at length.

33. Paragraph 33 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 33 are denied.

34. Paragraph 34 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 34 are denied.

35. Paragraph 35 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 35 are denied.

36. It is denied that Defendant Counties denied anyone the right to vote or acted improperly or in violation of the law in performing its election obligations and procedures. The remainder of Paragraph 36 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 36 are denied.

37. Paragraph 37 contains 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.

39. Paragraph 39 contains legal conclusions, including the references to “legitimate purpose” and “not timely”, to which no response is required. To the extent a response is required, the allegations in Paragraph 39 are denied. Any implication that Defendant Counties deprived anyone the right to vote or acted improperly or in violation of the law in performing its election obligations and procedures is expressly denied.

40. It is denied that Defendant Counties deprived anyone the right to vote or acted improperly or in violation of the law in performing its election obligations and procedures. The remainder of 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.

COUNT II

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

41. Paragraph 41 is an incorporation paragraph to which no response is required. Paragraphs 1 through 40 of this Answer are incorporated by reference herein as though fully set forth at length.

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. Paragraph 44 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 44 are denied.

45. Paragraph 45 contains legal conclusions to which no response is required. To the

extent a response is required, the allegations in Paragraph 45 are denied.

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. It is denied that Defendant Counties arbitrarily rejected any votes or otherwise acted improperly or in violation of the law in performing its election obligations and procedures. The remainder of 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.

PRAYER FOR RELIEF

WHEREFORE, Defendants, Clarion County Board of Elections, Susquehanna County Board of Elections, and Tioga County Board of Elections respectfully request that this Honorable Court enter judgment in their favor and against Plaintiffs.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

48. Plaintiffs' claims against Defendant Counties fail to state a claim upon which relief may be granted.

SECOND DEFENSE

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

THIRD DEFENSE

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

FOURTH DEFENSE

51. Plaintiffs have failed to set forth a claim for any Federal Constitutional violations

against Defendant Counties.

FIFTH DEFENSE

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

SIXTH DEFENSE

53. Defendant Counties acted in accordance with the United States Constitution.

SEVENTH DEFENSE

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

EIGHTH DEFENSE

55. At all times, Plaintiffs were provided reasonable and appropriate treatment by Defendant Counties 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.

GABRIEL FERA, P.C.

Date: January 17, 2023

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the within document has been electronically filed and served on all parties *via* the EM/CF system.

GABRIEL FERA, P.C.

Date: January 17, 2023

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