

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

BETTE EAKIN, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civil Action No.: 1:22-cv-00340
)	
v.)	
)	Judge Susan P. Baxter
ADAMS COUNTY BOARD OF)	
ELECTIONS, <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANT WESTMORELAND COUNTY BOARD OF ELECTIONS
ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS’ AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

AND NOW, comes the Defendant, Westmoreland County Board of Elections, (hereinafter “Westmoreland”) and files the within Answer and Affirmative Defenses to Plaintiffs’ Amended Complaint for Declaratory and Injunctive Relief, more particularly as follows:

NATURE OF THE CASE

1. The allegations in Paragraph 1 are denied when the same sets forth conclusions of law and/or statements to which no response is required.
2. The allegations in Paragraph 2 are denied when the same sets forth conclusions of law and/or statements to which no response is required.
3. The allegations in Paragraph 3 are denied when Westmoreland is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Amended Complaint or the same constitute a conclusion of law requiring no further response thereto herein.

4. The allegations in Paragraph 4 set forth conclusions of law and/or statements to which no response is required. To the extent a further response is required, Westmoreland denies the allegations in Paragraph 4 of the Amended Complaint.

5. The allegations in Paragraph 5 are denied when the same constitute a conclusion of law and/or statements to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 5 of the Amended Complaint.

6. The allegations in Paragraph 6 are denied when the same constitute a conclusion of law and/or statements to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 6 of the Amended Complaint.

JURISDICTION AND VENUE

7. The allegations in Paragraph 7 set forth conclusions of law and/or statements to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 7 of the Amended Complaint.

8. The allegations in Paragraph 8 set forth conclusions of law and/or statements to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 8 of the Amended Complaint.

9. The allegations in Paragraph 9 set forth conclusions of law and/or statements to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 9 of the Amended Complaint.

10. The allegations in Paragraph 10 set forth conclusions of law and/or statements to which no response is required or Westmoreland is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Amended Complaint. To the extent a response is required, Westmoreland denies the allegations in Paragraph 10 of

the Amended Complaint.

11. The allegations in Paragraph 11 are denied when the same constitute a conclusion to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 11 of the Amended Complaint.

PARTIES

12. The allegations in Paragraph 12 are denied when Westmoreland is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Amended Complaint.

13. The allegations in Paragraph 13 are denied when the same constitute a conclusion of law or Westmoreland is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Amended Complaint.

14. The allegations in Paragraph 14 are denied when the same constitute a conclusion of law or Westmoreland is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Amended Complaint.

15. The allegations in Paragraph 15 are denied when the same constitute a conclusion of law or Westmoreland is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Amended Complaint.

16. The allegations in Paragraph 16 are denied when the same constitute a conclusion of law requiring no further response thereto herein.

STATEMENT OF FACTS AND LAW

17. The allegations in Paragraph 17 are conclusions of law and/or statements of what the law provides, to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 17 of the Amended Complaint.

18. The allegations in Paragraph 18 are conclusions of law and/or statements of what the law provides, to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 18 of the Amended Complaint

19. The allegations in Paragraph 19 are conclusions of law and/or statements of what the law provides, to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 19 of the Amended Complaint.

20. The allegations in Paragraph 20 are denied when the same constitute a conclusion of law or Westmoreland is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Amended Complaint. To the extent a response is required, Westmoreland denies the allegations in Paragraph 20 of the Amended Complaint.

21. The allegations in Paragraph 21 describe a prior Pennsylvania Supreme Court case which speaks for itself and/or are conclusions of law and/or statements of what the law provides, to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 21 of the Amended Complaint.

22. The allegations in Paragraph 22 describe a prior Pennsylvania Supreme Court case which speaks for itself and/or conclusions of law and/or statements of what the law provides, to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 22 of the Amended Complaint.

23. The allegations in Paragraph 23 describe a prior Pennsylvania Supreme Court case which speaks for itself and/or conclusions of law and/or statements of what the law provides, to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 23 of the Amended Complaint.

24. The allegations in Paragraph 24 describe a prior Pennsylvania Supreme Court case which speaks for itself and/or conclusions of law and/or statements of what the law provides, to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 24 of the Amended Complaint.

25. The allegations in Paragraph 25 set forth conclusions of law or describe a prior Supreme Court case which speak for itself and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 25 of the Amended Complaint.

26. The allegations in Paragraph 26 set forth conclusions of law or describe a now vacated Third Circuit opinion, which speaks for itself and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 26 of the Amended Complaint.

27. The allegations in Paragraph 27 describe a prior case which speaks for itself and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 27 of the Amended Complaint.

28. The allegations in Paragraph 28 set forth conclusions of law or describe prior legal proceedings, which speaks for itself and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 28 of the Amended Complaint.

29. The allegations in Paragraph 29 set forth a conclusion of law or describe past legal proceedings and a prior order of the Pennsylvania Supreme Court which speak for themselves and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 29 of the Amended Complaint.

30. The allegations in Paragraph 30 set forth a conclusion of law or describe past legal proceedings and a prior order of the Pennsylvania Supreme Court which speak for themselves and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 30 of the Amended Complaint.

31. The allegations in Paragraph 31 set forth a conclusion of law or describe past legal proceedings and a prior order of the Pennsylvania Supreme Court which speak for themselves and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 31 of the Amended Complaint.

COUNT I

32. The allegations in Paragraph 32 is an incorporation paragraph to which no response is required. Westmoreland incorporates by reference its answers in the preceding Paragraphs.

33. The allegations in Paragraph 33 set forth conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 33 of the Amended Complaint.

34. The allegations in Paragraph 34 set forth conclusions of law and/or statement of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 34 of the Amended Complaint.

35. The allegations in Paragraph 35 set forth conclusions of law and/or statement of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 35 of the Amended Complaint.

36. The allegations in Paragraph 36 set forth conclusions of law and/or statements of what the law provides to which no response is required. To the extent a response is required,

Westmoreland denies the allegations in Paragraph 36 of the Amended Complaint.

37. The allegations in Paragraph 37 set forth conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 37 of the Amended Complaint.

38. The allegations in Paragraph 38 state conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 38 of the Amended Complaint.

39. The allegations in Paragraph 39 state conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 39 of the Amended Complaint.

40. The allegations in Paragraph 40 state conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 40 of the Amended Complaint.

COUNT II

41. The allegations in Paragraph 41 is an incorporation paragraph to which no response is required. Westmoreland incorporates by reference its answers in the preceding paragraphs.

42. The allegations in Paragraph 42 state conclusions of law to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 42 of the Amended Complaint.

43. The allegations in Paragraph 43 state conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 43 of the Amended Complaint.

44. The allegations in Paragraph 44 state conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 44 of the Amended Complaint.

45. The allegations in Paragraph 45 state conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 45 of the Amended Complaint.

46. The allegations in Paragraph 46 state conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 46 of the Amended Complaint.

47. The allegations in Paragraph 47 state conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 47 of the Amended Complaint.

48. The allegations in Paragraph 48 state conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 48 of the Amended Complaint.

49. The allegations in Paragraph 49 state conclusions of law and/or statements of what the law provides and to which no response is required. To the extent a response is required, Westmoreland denies the allegations in Paragraph 49 of the Amended Complaint.

PRAYER FOR RELIEF

WHEREFORE, the Defendant, Westmoreland County Board of Elections, respectfully requests that this Honorable Court deny the relief request by Plaintiffs, enter judgment in favor of the Defendants and against the Plaintiffs and grant such other and further relief as the Honorable Court deems necessary and appropriate.

AFFIRMATIVE DEFENSES

While reserving the right to assert additional affirmative defenses that may arise during the pendency of this action, Westmoreland asserts the following affirmative defenses:

First Affirmative Defense

The Court lacks subject matter jurisdiction over this action.

Second Affirmative Defense

Plaintiffs lack standing.

Third Affirmative Defense

Plaintiffs' claims are barred by the applicable statutes of limitations.

Fourth Affirmative Defense

Plaintiffs' claims are barred by the equitable doctrines of laches, unclean hands, estoppel, and/or waiver.

Fifth Affirmative Defense

Plaintiffs' Amended Complaint fails to set forth a claim upon which relief can be granted.

Sixth Affirmative Defense

Plaintiffs' claims are moot.

Seventh Affirmative Defense

Plaintiffs' claims are barred by the doctrine of res judicata and collateral estoppel.

Eighth Affirmative Defense

Plaintiffs' requested relief would have the Court—not the General Assembly—create new laws governing the conduct of elections in Pennsylvania.

Ninth Affirmative Defense

Plaintiffs' requested relief would run contrary to the separation of powers and usurp the General Assembly's authority.

Tenth Affirmative Defense

Plaintiffs have failed to set forth a claim for any federal constitutional violation against Westmoreland.

Eleventh Affirmative Defense

Westmoreland acted in accordance with the United States Constitution.

Twelfth Affirmative Defense

Westmoreland acted in accordance with orders issued by the Supreme Court of Pennsylvania.

Thirteenth Affirmative Defense

Westmoreland acted in accordance with applicable state and federal laws, including the Pennsylvania Election Code, the United States Constitution and the Constitution of the Commonwealth of Pennsylvania.

Fourteenth Affirmative Defense

Plaintiffs have failed to join indispensable parties to this action.

Fifteenth Affirmative Defense

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

PRAYER FOR RELIEF

WHEREFORE, the Defendant, Westmoreland County Board of Elections, respectfully requests that this Honorable Court deny the relief request by Plaintiffs, enter judgment in favor of the Defendants and against the Plaintiffs, and grant such other and further relief as the Honorable Court deems necessary and appropriate.

Dated: February 22, 2023

Respectfully submitted,

/s/ Melissa A. Guiddy

Melissa A. Guiddy, Esquire

Pa. I.D. #79223

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Attorney for Defendant

Westmoreland County Board of Elections

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Entry of Appearance was filed electronically and served via the Court's CM/ECF system, pursuant to the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ Melissa A. Giddy

Melissa A. Giddy, Esquire

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