

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

BETTE EAKIN, *et al.*,

Plaintiffs,

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,

Defendants.

Case No. 1:22-cv-00340-SPB

**PLAINTIFFS' RESPONSE TO DEFENDANT LANCASTER COUNTY BOARD OF
ELECTIONS' CONCISE STATEMENT OF MATERIAL FACTS**

Pursuant to LCvR 56(C) and this Court's Case Management Order (ECF No. 227), Plaintiffs Bette Eakin, DSCC, DCCC, and AFT Pennsylvania hereby reproduce and respond to the Concise Statement of Material Fact, ECF No. 284, submitted by Defendant Lancaster County Board of Elections' ("LCBOE"), and joined by Defendant Berks County Board of Elections, as follows:

1. There are two categories of plaintiffs in this case: the individual plaintiffs and the association plaintiffs. Am. Compl., ECF No. 228, ¶ 12, Appx. Ex. 1.

- **RESPONSE:** Undisputed.

2. The only individual plaintiff is Bette Eakin. *Id.*, ¶ 12.

- **RESPONSE:** Undisputed.

3. Eakin is a registered voter in Erie County. *Id.*

- **RESPONSE:** Undisputed.

4. Eakin believes that if she forgets to include a date on her mail ballot in the future her ballot is at risk of being rejected. *Id.*

- **RESPONSE:** Disputed. Because she is forced to rely on the assistance of others to complete her ballot, Ms. Eakin has no direct control over the way in which her assistant may write the date on her ballot envelope, if at all, and is also concerned that the error of an assistant will jeopardize whether her ballot will be counted. Pls.’ Concise Statement of Material Facts (ECF No. 289) (“CSMF”) ¶¶ 82, 89–90.

5. Eakin is not a Lancaster County voter, has never voted in Lancaster County, has not alleged she intends to vote in Lancaster County, and Lancaster County has never rejected any ballots from Eakin. *Id.*

- **RESPONSE:** Undisputed.

6. The associational plaintiffs are DSCC, DCCC, and AFT Pennsylvania. *Id.*, ¶¶ 13-15.

- **RESPONSE:** Disputed. The use of “associational plaintiffs” in this assertion suggests that Plaintiffs DSCC, DCCC, and AFT Pennsylvania only assert claims on behalf of their members. Plaintiffs DSCC, DCCC, and AFT Pennsylvania also assert claims on their own behalf. CSMF ¶¶ 99–103, 110–112, 122–123.

7. DSCC, DCCC, and AFT claim that *if* ballots containing missing or incorrect dates are rejected in *future* elections they will be forced to “divert resources away from [] existing voter outreach and mobilization efforts towards voter education necessitated specifically by this requirement, and other efforts to ensure that voters who would be disenfranchised as a result have their votes counted.” *Id.*, ¶¶ 13-15.

- **RESPONSE:** Disputed. This assertion incorrectly implies that the

Organizational Plaintiffs (DSCC, DCCC, and AFT Pennsylvania) have identified only future injuries. The Date Provision has injured, and continues to injure, the Organizational Plaintiffs by frustrating their respective missions and erecting obstacles to ensuring all mail ballots cast in favor of candidates that the Organizational Plaintiffs support are counted. CSMF ¶¶ 99, 110, 123. In the 2022 general election, the Date Provision forced Organizational Plaintiffs to divert substantial resources from other activities into educational and curing efforts aimed at preventing otherwise valid votes from being rejected. CSMF ¶¶ 100–101, 122. Absent the requested relief, the Organizational Plaintiffs will be forced to continue diverting resources into measures aimed at both preventing and ameliorating the effects of the Date Provision that would otherwise result in the disenfranchisement of their members and constituents in future elections. CSMF ¶¶ 102–103, 111–112, 123.

8. DSCC, DCCC, and AFT have not identified a specific member whose mailed ballot was not counted by the Lancaster County Board of Elections in the November 2022 general election. Plaintiffs' Fed. R. Civ. P. 26(a) Int. Disc., Appx. Ex. 2.

- **RESPONSE:** Disputed. DSCC, DCCC, and AFT Pennsylvania are not required to identify a specific member whose mail ballot was not counted in the 2022 general election, thus this statement is not material.

9. DSCC, DCCC, and AFT have not identified a specific member who intends to vote in future elections in Lancaster County. *Id.*

- **RESPONSE:** Disputed, as both DSCC and DCCC assert their claims on behalf of their constituents throughout Pennsylvania, including voters who cast votes

for Democratic candidates in Pennsylvania. CSMF ¶¶ 104–105, 113–114. And, since Plaintiffs do not understand LCBOE to be asserting that there are no Democratic voters in Lancaster County, identification of specific voters is unnecessary. Therefore, this information is not material.

10. In the November 2022 general election, the LCBOE complied with the orders of the Pennsylvania Supreme Court in the matter *Ball, et. al. v. Chapman, et. al.*, No. 101 MM 2022 dated November 1, 2022 and November 5, 2022 respectively.

- **RESPONSE:** The assertion of whether LCBOE’s actions during the 2022 general election “complied with the orders of the Pennsylvania Supreme Court” is a legal conclusion to which no response is required. Furthermore, Plaintiffs lack the information to evaluate this assertion, which is not supported as required by LCvR 56(B)(1) (“A party must cite to a particular pleading, deposition, answer to interrogatory, admission on file or other part of the record supporting the party’s statement . . .”).

11. A true and correct copy of the Pennsylvania Supreme Court’s order dated November 1, 2022 in the matter *Ball, et. al. v. Chapman, et. al.*, No. 101 MM 2022 is attached at Appx. Exhibit 3.

- **RESPONSE:** Undisputed.

12. A true and correct copy of the Pennsylvania Supreme Court’s order dated November 5, 2022 in the matter *Ball, et. al. v. Chapman, et. al.*, No. 101 MM 2022 is attached at Appx. Exhibit 4.

- **RESPONSE:** Undisputed.

Dated: May 5, 2023

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