

**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

**INTERVENOR-DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS**

Intervenor-Defendants the Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania respectfully file these Responses to Plaintiffs' Statement of Additional Material Facts, Dkt. No. 321, and state as follows:

1. DSCC's constituents, located in every county of Pennsylvania, are at risk of having their otherwise valid ballots cast for Democratic senatorial candidates set aside due to the continued enforcement of the Date Provision. CSMF ¶¶ 104–05; *e.g.*, Pa. Dep't of State, Reporting Center—2022 General Election, available at <https://electionreturns.pa.gov/ReportCenter/Reports> (last accessed on May 3, 2023).¹

Intervenor-Defendants' Response: Admitted that Plaintiffs' cited sources demonstrate that mail votes were cast for Senator Fetterman in every Pennsylvania county.

¹ “These state election records are public records of which this Court may properly take judicial notice.” *Ostrowski v. D’Andrea*, 2017 WL 4020435, at *7 n.3 (M.D. Pa. Aug. 10, 2017), *report and recommendation adopted*, 2017 WL 4015654 (M.D. Pa. Sept. 12, 2017). And “[j]udicial notice may be used in resolving a motion for summary judgment.” *Mid-S. Grizzlies v. Nat’l Football League*, 550 F. Supp. 558, 570 n.31 (E.D. Pa. 1982) (citing 10 Wright & Miller, Fed. Prac. & Proc. § 2723 (1973)), *aff’d*, 720 F.2d 772 (3d Cir. 1983).

2. DCCC's constituents, located in every county of Pennsylvania, are at risk of having their otherwise valid ballots cast for Democratic congressional candidates set aside due to the continued enforcement of the Date Provision. CSMF ¶¶ 113–14; *e.g.*, Pa. Dep't of State, Reporting Center—2022 General Election, available at <https://electionreturns.pa.gov/ReportCenter/Reports> (last accessed on May 3, 2023); Pa. Dep't of State, Reporting Center—2020 Presidential Election, available at <https://electionreturns.pa.gov/ReportCenter/Reports> (last accessed on May 3, 2023).

Intervenor-Defendants' Response: Admitted that Plaintiffs' cited sources demonstrate that mail votes were cast for Democrat candidates in many of Pennsylvania's counties.

3. AFT Pennsylvania's members, located in at least 35 counties of the Commonwealth, are at risk of having their otherwise valid ballots set aside due to the continued enforcement of the Date Provision. Ex. N (Second AFT Decl.) ¶ 3; CSMF ¶¶ 115–20.

Intervenor-Defendants' Response: Admitted.

4. The county boards determine a person's qualifications to vote when they receive that person's voter-registration application. Ex. O (Marks Dep.) at 136:9–138:2; Ex. P (Kauffman Dep.) at 32:17–25; Ex. Q (Miller Dep.) at 99:6–15.

Intervenor-Defendants' Response: Admitted.

5. Upon receiving an application for a mail ballot, a county board confirms the voter's eligibility to vote in that particular election before sending the mail ballot to the voter. Ex. O (Marks Dep.) at 136:9–138:2; Ex. P (Kauffman Dep.) at 32:17–33:18; Ex. Q (Miller Dep.) at 100:14–22; Ex. R (McCloskey Dep.) at 38:15–39:15.

Intervenor-Defendants' Response: Admitted.

6. County boards do not take any additional steps to confirm the voter's eligibility to vote upon receiving the voter's completed mail ballot. CSMF ¶¶ 30–32; Ex. O (Marks Dep.) at

136:9–138:2; Ex. P (Kauffman Dep.) at 32:17–33:18; Ex. Q (Miller Dep.) at 99:6–15, 100:14–22;
Ex. R (McCloskey Dep.) at 38:15–39:15.

Intervenor-Defendants' Response: Admitted.

Dated: May 10, 2023

Respectfully submitted,

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