

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

PENNSYLVANIA STATE CONFERENCE)	
OF THE NAACP, <i>et al.</i> ,)	
)	Civil Action No.: 1:22-cv-00339
Plaintiffs,)	
)	
v.)	Judge Susan P. Baxter
)	
AL SCHMIDT, <i>et al.</i> ,)	
)	
Defendants.)	

MOTION TO INTERVENE OF RICHARD MARINO

Richard Marino supports and seeks to uphold free and fair elections on behalf of all Pennsylvanians. He therefore respectfully moves to intervene in this case for the purpose of appealing the Court’s order and judgment and upholding the General Assembly’s duly enacted election laws.

Mr. Marino currently serves as the Vice Chairman of the Towamencin Township Board of Supervisors in Montgomery County, Pennsylvania. He was a candidate for reelection in the November 7, 2023 general election. Under the rules in effect on election day—and under which Towamencin Township voters cast their ballots and voted—Mr. Marino prevailed, receiving 4 more votes than his challenger, Kofi Osei.

This Court’s order and judgment issued weeks after election day and weeks after voters had cast their ballots. It nonetheless changed the apparent outcome of the Towamencin Township election. Invoking the Court’s order, the Montgomery County Board of Elections counted 6 ballots that failed to comply with the date requirement. Including those noncompliant ballots in the vote total resulted in a tie between Mr. Marino and Mr. Osei. The Montgomery County Board of Elections convened a casting of lots on November 30, 2023 (the day after this Court entered

judgment), *see* 25 Pa. Stat. § 3168, through which it declared Mr. Osei the winner. In other words, after Mr. Marino had won reelection, this Court's order and judgment flipped the apparent result and Mr. Osei was declared the winner.

Mr. Marino now seeks to intervene in this matter for the purpose of appealing the Court's judgment. Mr. Marino attaches as **Exhibit 1** his declaration and as **Exhibit 2** the Answer and Affirmative Defenses he would file, as necessary, if permitted to intervene.

Time is of the essence. Mr. Marino's current term of office ends on December 31, 2023. Absent a stay or change in the apparent outcome caused by the Court's judgment, Mr. Osei will be sworn into office on January 2, 2024. Mr. Marino therefore respectfully requests that the Court expedite the briefing and decision on this motion. In particular, Mr. Marino requests that the Court set a deadline of Tuesday, December 5, 2023, for any responses to this motion and a deadline of Thursday, December 7, 2023 for a reply in support of this motion, and resolve this motion no later than Friday, December 8, 2023. Mr. Marino intends to file a notice of appeal of the Court's judgment by Monday, December 11, 2023.

Counsel for Mr. Marino contacted counsel for the other parties regarding their position on this motion. The Elk County Board of Elections and the Lancaster County Board of Elections have no objection to this motion.

Plaintiffs, Secretary Schmidt, and the Erie County Board of Elections oppose this motion. The Montgomery County Board of Elections has no intention of consenting to this motion. The Allegheny County Elections Division will not consent to this motion.

The Chester County Board of Elections is unable to provide a response within the time requested. The Bucks County Board of Elections is unable to consent at this time. The Philadelphia County Board of Elections takes no position at this time but reserves the right to

oppose the motion after reviewing the papers. The parties noted below (including parties the Court has dismissed from the action) take no position on this motion.¹

WHEREFORE, Richard Marino respectfully requests that the Court GRANT this motion and permit him to intervene as a defendant in this proceeding.

¹ Armstrong County Board of Elections; Bedford County Board of Elections; Blair County Board of Elections; Bradford County Board of Elections; Cameron County Board of Elections; Carbon County Board of Elections; Centre County Board of Elections; Columbia County Board of Elections; Crawford County Board of Elections; Dauphin County Board of Elections; Delaware County Board of Elections; Fayette County Board of Elections; Franklin County Board of Elections; Fulton County Board of Elections; Greene County Board of Elections; Huntingdon County Board of Elections; Indiana County Board of Elections; Jefferson County Board of Elections; Lawrence County Board of Elections; Lebanon County Board of Elections; Lehigh County Board of Elections; Lycoming County Board of Elections; Monroe County Board of Elections; Montour County Board of Elections; Northampton County Board of Elections; Northumberland County Board of Elections; Perry County Board of Elections; Potter County Board of Elections; Snyder County Board of Elections; Somerset County Board of Elections; Sullivan County Board of Elections; Tioga County Board of Elections; Union County Board of Elections; Venango County Board of Elections; Warren County Board of Elections; Washington County Board of Elections; Wayne County Board of Elections; Wyoming County Board of Elections; York County Board of Elections.

Dated: December 1, 2023

Respectfully submitted,

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Counsel for Prospective Intervenor Richard Marino

* Admitted pro hac vice

Exhibit 1

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PENNSYLVANIA STATE CONFERENCE)	
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)	Civil Action No.: 1:22-cv-00339
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AL SCHMIDT, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF RICHARD MARINO

Pursuant to 28 U.S.C. § 1746, I, Richard Marino, declare as follows:

1. I am over the age of 18 and am otherwise competent to testify.
2. I have personal knowledge of the matters in this declaration.
3. I am currently the Vice Chairman of the Towamencin Township Board of Supervisors (“Board of Supervisors”).
4. I have been an active member of the Board of Supervisors since 2018 and of the Towamencin Municipal Authority since 2016.
5. I am a member of the Republican Party of Pennsylvania.
6. I was the Republican nominee for reelection to the Board of Supervisors in the November 7, 2023 general election.
7. After all ballots were counted under the rules in effect on election day, I led my Democratic challenger, Kofi Osei, in the vote total by 4 votes.
8. This Court issued its order two weeks after election day and two weeks after voters had cast their ballots.
9. Invoking this Court’s order, on Monday, November 27, the Montgomery County

Board of Elections counted in my race 6 ballots that did not comply with the date requirement.

10. Including those ballots in the vote total resulted in a tie between Mr. Osei and me.

11. The Montgomery County Board of Elections convened a casting of lots to choose a winner on November 30, 2023.

12. The Montgomery County Board of Elections declared Mr. Osei the winner by lot.

13. In other words, this Court's order issued two weeks after Election Day 2023 changed the apparent outcome of my race.

14. I intend to exercise my rights to contest that outcome under Pennsylvania law.

15. My current term of office ends on December 31, 2023. Absent a stay or a change in the apparent outcome caused by the Court's order, Mr. Osei will be sworn into office on January 2, 2024.

16. Any delay in, or denial of, my taking the office to which Towamencin Township voters elected me under the rules in effect on election day irreparably harms me. Any such delay or denial denies me of the opportunity to serve in office, to participate in official business of the Board of Supervisors, and to advocate, vote for, and implement the policies the voters elected me to support. Any such delay or denial also deprives me of the compensation that I am entitled to receive as a member of the Board of Supervisors. *See* Towamencin Code art. I, § 2-1.

17. I declare under penalty of perjury that the foregoing is true and correct.

Date: 12-1-2023


Richard Marino

Exhibit 2

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**RICHARD MARINO’S [PROPOSED] ANSWER
AND AFFIRMATIVE DEFENSES TO PLAINTIFFS’ FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Intervenor–Defendant Richard Marino, by and through counsel, files this Answer and Affirmative Defenses to Plaintiffs’ First Amended Complaint for Declaratory and Injunctive Relief. Mr. Marino supports free and fair elections for all Pennsylvanians and commonsense, constitutional rules to govern those elections. He therefore denies that Plaintiffs are entitled to any relief on their challenge to the General Assembly’s duly enacted date requirement for absentee and mail-in ballots, which the Pennsylvania Supreme Court upheld on November 1, 2022. Any allegation in the First Amended Complaint not explicitly responded to in this Answer is hereby denied.

INTRODUCTION

1. Mr. Marino specifically denies the baseless and untrue allegation that mandatory application of the General Assembly’s date requirement for absentee and mail-in ballots—which the Pennsylvania Supreme Court upheld on November 1, 2022—results in any individual being “disenfranchised” or involves “an immaterial paperwork error.” Mr. Marino denies the remaining allegations in Paragraph 1.

2. Mr. Marino specifically denies the baseless and untrue allegation that the General Assembly's date requirement upheld by the Pennsylvania Supreme Court is a "meaningless technicality" or "utterly immaterial" or involves "a trivial paperwork error." Mr. Marino further denies that mandatory application of the date requirement violates any provision of law, including "the Materiality Provision of the Civil Rights Act." Paragraph 2 sets forth legal conclusions and/or statements to which no response is required. To the extent a further response is required, Mr. Marino denies the remaining allegations in Paragraph 2.

3. Mr. Marino specifically denies the baseless and untrue allegations that mandatory application of the date requirement as prescribed by Pennsylvania law violates any provision of law, including the Materiality Provision and the Equal Protection Clause of the Fourteenth Amendment. Paragraph 3 sets forth legal conclusions and/or statements to which no response is required. To the extent a further response is required, Mr. Marino denies the remaining allegations in Paragraph 3.

4. Mr. Marino specifically denies the baseless and untrue allegation that the General Assembly's date requirement upheld by the Pennsylvania Supreme Court is a "hyper-technical rule[]" that involves "an inconsequential paperwork error" or "disenfranchise[s]" anyone. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4, and therefore denies them.

5. Mr. Marino specifically denies the baseless and untrue allegations that mandatory application of the General Assembly's date requirement "disenfranchise[s]" anyone, or that such application takes away anyone's "fundamental right to vote." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5, and therefore denies them.

6. Mr. Marino denies that anyone “will suffer irreparable harm” from mandatory application of the General Assembly’s date requirement. To the extent a further response is required, Mr. Marino denies the remaining allegations in Paragraph 6.

JURISDICTION AND VENUE

7. Paragraph 7 sets forth legal conclusions and/or statements to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 7.

8. Paragraph 8 sets forth legal conclusions and/or statements to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 8.

9. Paragraph 9 sets forth legal conclusions and/or statements to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 9.

10. Paragraph 10 sets forth legal conclusions and/or statements to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 10.

PARTIES

11. Mr. Marino specifically denies the baseless and untrue allegation that the General Assembly’s date requirement upheld by the Pennsylvania Supreme Court puts anyone “at risk of disenfranchisement.” Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 11 and therefore denies them.

12. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and therefore denies them.

13. Mr. Marino specifically denies the baseless and untrue allegation that the General Assembly’s date requirement upheld by the Pennsylvania Supreme Court involves “a trivial paperwork mistake” or will “disenfranchise” anyone. Mr. Marino is without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 13 and therefore denies them.

14. Mr. Marino specifically denies the baseless and untrue allegation that the General Assembly's date requirement upheld by the Pennsylvania Supreme Court puts anyone "at risk of disenfranchisement." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14 and therefore denies them.

15. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and therefore denies them.

16. Mr. Marino specifically denies the baseless and untrue allegation that the General Assembly's date requirement upheld by the Pennsylvania Supreme Court is a "hyper-technical rule[]" that involves a "trivial and immaterial paperwork error[]" or "disenfranchise[s]" anyone. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16 and therefore denies them.

17. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and therefore denies them.

18. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies them.

19. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and therefore denies them.

20. Mr. Marino specifically denies that the date requirement has any "disenfranchising effects," and that the date requirement rule is "immaterial" or involves an "immaterial paperwork error[]." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 20 and therefore denies them.

21. Mr. Marino specifically denies that application of the General Assembly's date requirement upheld by the Pennsylvania Supreme Court puts anyone "at risk of disenfranchisement." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21 and therefore denies them.

22. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and therefore denies them.

23. Mr. Marino specifically denies that the General Assembly's date requirement upheld by the Pennsylvania Supreme Court is a "trivial paperwork requirement," that consequences of failing to comply with it are "drastic," that it was "previously understood . . . to be superfluous," or that applying the date requirement would result in "disenfranchisement." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 23 and therefore denies the same.

24. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and therefore denies the same.

25. Mr. Marino specifically denies that failure to comply with the General Assembly's date requirement upheld by the Pennsylvania Supreme Court is a "minor error[]," or that application of the date requirement would result in "disenfranchisement." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 and therefore denies them.

26. Mr. Marino specifically denies that application of the General Assembly's date requirement upheld by the Pennsylvania Supreme Court puts anyone "at risk of disenfranchisement." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and therefore denies them.

27. Mr. Marino without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 and therefore denies them.

28. Mr. Marino specifically denies that application of the General Assembly's date requirement upheld by the Pennsylvania Supreme Court will "disenfranchise" anyone, that the date requirement is a "trivial" and "technical mail ballot rule[]," or that failure to comply with the date requirement is a "minor" or "trivial paperwork mistake." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 and therefore denies them.

29. Mr. Marino specifically denies that application of the General Assembly's date requirement upheld by the Pennsylvania Supreme Court will lead to anyone "facing disenfranchisement." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 29 and therefore denies them.

30. Mr. Marino specifically denies that application of the General Assembly's date requirement upheld by the Pennsylvania Supreme Court will lead to anyone "facing disenfranchisement." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 30 and therefore denies them.

31. Mr. Marino specifically denies that application of the General Assembly's date requirement upheld by the Pennsylvania Supreme Court will lead to anyone "facing disenfranchisement." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 31 and therefore denies them.

32. Mr. Marino specifically denies that application of the General Assembly's date requirement upheld by the Pennsylvania Supreme Court will lead to anyone "facing

disenfranchisement.” Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 32 and therefore denies them.

33. Mr. Marino specifically denies that application of the General Assembly’s date requirement upheld by the Pennsylvania Supreme Court will lead to anyone “facing disenfranchisement.” Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 33 and therefore denies them.

34. Mr. Marino specifically denies that application of the General Assembly’s date requirement upheld by the Pennsylvania Supreme Court will lead to anyone “facing disenfranchisement.” Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 34 and therefore denies them.

35. Mr. Marino specifically denies that application of the General Assembly’s date requirement upheld by the Pennsylvania Supreme Court will lead to anyone “facing disenfranchisement.” Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 35 and therefore denies them.

36. Mr. Marino specifically denies that application of the General Assembly’s date requirement upheld by the Pennsylvania Supreme Court will lead to anyone “facing disenfranchisement.” Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 36 and therefore denies them.

37. Paragraph 37 is admitted insofar as Defendant Leigh M. Chapman was the Acting Secretary of the Commonwealth of Pennsylvania. Paragraph 37 states legal conclusions and/or statements of what the law provides, to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 37. Paragraph 37 describes the guidance

issued by the Acting Secretary, which speaks for itself and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 37.

38. The allegations in Paragraph 38 are legal conclusions and/or statements of what the law provides, to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 38.

FACTS

39. The allegations in Paragraph 39 are legal conclusions and/or statements of what the law provides, to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 39.

40. The allegations in Paragraph 40 are legal conclusions and/or statements of what the law provides, to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 40.

41. The allegations in Paragraph 41 are legal conclusions and/or statements of what the law provides, to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 41.

42. The allegations in Paragraph 42 are legal conclusions and/or statements of what the law provides, to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 42.

43. The allegations in Paragraph 43 are legal conclusions and/or statements of what the law provides, to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 43.

44. Mr. Marino without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 and therefore denies them. The allegations in the footnote

accompanying Paragraph 44 are legal conclusions and/or statements of what the law provides, to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in the footnote accompanying Paragraph 44.

45. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 and therefore denies them.

46. Mr. Marino specifically denies that the General Assembly's date requirement upheld by the Pennsylvania Supreme Court is "superfluous." Paragraph 46 sets forth legal conclusions and/or statements of what the law provides, to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 46.

47. Paragraph 47 sets forth the history of litigation over the date requirement which history speaks for itself and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 47.

48. Paragraph 48 describes a prior Pennsylvania Supreme Court case which speaks for itself and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 48.

49. Paragraph 49 describes a prior Pennsylvania Supreme Court case which speaks for itself and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 49.

50. Paragraph 50 describes a now-vacated Third Circuit opinion which speaks for itself and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 50.

51. Paragraph 51 describes factual details purportedly from the record in a prior case which speaks for itself and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 51.

52. Paragraph 52 describes matters purportedly from the record in a prior case which speaks for itself and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 52.

53. Paragraph 53 describes matters purportedly from the record in a prior case which speaks for itself and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 53.

54. Paragraph 54 describes past legal proceedings which speak for themselves and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 54.

55. Paragraph 55 describes past legal proceedings which speak for themselves and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 55.

56. Paragraph 56 is admitted insofar as David Ritter sought a stay from the U.S. Supreme Court.

57. Paragraph 57 describes past legal proceedings, which speak for themselves, and sets forth legal conclusions and/or statements of what the law provides, to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 57.

58. Paragraph 58 describes past legal proceedings which speak for themselves and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 58.

59. Paragraph 59 describes past actions of the Acting Secretary of the Commonwealth, which have been superseded by subsequent actions and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 59.

60. Paragraph 60 describes past legal proceedings which speak for themselves and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations and mischaracterizations in Paragraph 60. Mr. Marino specifically denies any suggestion that the Pennsylvania Supreme Court did anything other than uphold the General Assembly's date requirement for the 2022 general election and beyond.

61. Paragraph 61 describes past legal proceedings which speak for themselves and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations and mischaracterizations in Paragraph 61. Mr. Marino specifically denies any suggestion that the Pennsylvania Supreme Court did anything other than uphold the General Assembly's date requirement for the 2022 general election and beyond.

62. Paragraph 62 describes recent actions of the Pennsylvania officials, which speak for themselves and do not require a response. To the extent a response is required, Mr. Marino denies the allegations and mischaracterizations in Paragraph 62.

63. Paragraph 63 describes recent actions of the Acting Secretary, which speak for themselves and do not require a response. To the extent a response is required, Mr. Marino denies the allegations and mischaracterizations in Paragraph 63.

64. Paragraph 64 describes a supplemental order from the Pennsylvania Supreme Court which speaks for itself and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 64.

65. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65 and therefore denies them.

66. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66 and its subparts and therefore denies them.

67. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67 and its subparts and therefore denies them.

68. Mr. Marino specifically denies the baseless allegation that the General Assembly's date requirement is "immaterial." Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 68 and therefore denies them.

69. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69 and therefore denies them.

70. Mr. Marino specifically denies the baseless allegation that applying the General Assembly's date requirement will "disenfranchise[]" anyone. To the extent a response is required, Mr. Marino denies the remaining allegations in Paragraph 70.

71. Mr. Marino specifically denies the baseless allegations that the General Assembly's date requirement is in any way "meaningless," or that Pennsylvania voters will in any way "lose," by honoring the General Assembly's date requirement that was upheld by the Pennsylvania Supreme Court. Paragraph 71 describes details from a past case which speak for themselves and to which no response is required. To the extent a response is required, Mr. Marino denies those allegations. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 71 and therefore denies them.

72. Paragraph 72 describes details from a past case which speak for themselves and to which no response is required. To the extent a response is required, Mr. Marino denies those

allegations. Mr. Marino is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 72 and therefore denies them.

73. Mr. Marino specifically denies that applying the General Assembly's date requirement upheld by the Pennsylvania Supreme Court "disenfranchises" anyone. The allegations in Paragraph 73 are legal conclusions and/or statements of what the law provides, to which no response is required. To the extent a response is required, Mr. Marino denies the allegations and mischaracterizations in Paragraph 73.

74. Mr. Marino specifically denies that any judicial intervention is "required," that application of the date requirement would "constitute[] irreparable harm" or "disenfranchise[]" anyone, or that the federal materiality provision or the Fourteenth Amendment requires that ballots not in compliance with the date requirement be counted. Mr. Marino denies the remaining allegations in Paragraph 74.

COUNT I

75. Mr. Marino reasserts and incorporates by reference his answers in the preceding paragraphs.

76. Paragraph 76 states legal conclusions and/or statements of what the law provides and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 76.

77. Paragraph 77 states legal conclusions and/or statement of what the law provides and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 77.

78. Mr. Marino specifically denies the allegations that failure to comply with the General Assembly's date requirement is an "immaterial paperwork error" and that the ballot

declaration form is a paper “requisite to voting.” Paragraph 78 and its subparts state legal conclusions and/or statements of what the law provides or should provide and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 78 and its subparts.

79. Paragraph 79 states legal conclusions and/or statements of what the law provides or should provide and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 79.

80. Paragraph 80 sets forth legal conclusions and/or statements of what the law provides or should provide and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 80.

81. Paragraph 81 states legal conclusions and/or statements of what the law provides or should provide and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 81.

82. Mr. Marino specifically denies that failure to comply with the General Assembly’s date requirement upheld by the Pennsylvania Supreme Court is an “immaterial error[,]” that application of the date requirement is “contrary to the Materiality Provision,” and that application of the date requirement “will result in the disenfranchisement of” anyone. Paragraph 82 states legal conclusions and/or statements of what the law provides or should provide and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 82.

COUNT II

83. Mr. Marino reasserts and incorporates by reference his answers in the preceding paragraphs.

84. Paragraph 84 states legal conclusions and/or statements of what the law provides or should provide and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 84.

85. Paragraph 85 states legal conclusions and/or statements of what the law provides or should provide and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 85.

86. Paragraph 86 states legal conclusions and/or statements of what the law provides or should provide and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 86.

87. Paragraph 87 states legal conclusions and/or statements of what the law provides or should provide and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 87. Mr. Marino denies that failing to comply with the date requirement is an “immaterial mistake” or a “trivial paperwork error[,]” or that applying the date requirement “disenfranchis[es]” anyone.

88. Paragraph 88 states legal conclusions and/or statements of what the law provides or should provide and to which no response is required. To the extent a response is required, Mr. Marino denies the allegations in Paragraph 88.

PRAYER FOR RELIEF

WHEREFORE, Mr. Marino respectfully requests that the Court enter judgment in favor of the Defendants and Intervenor–Defendants and against the Plaintiffs, and grant such other and further relief as the Honorable Court deems necessary and appropriate.

1. Mr. Marino denies the allegations in Paragraph 1, and denies that Plaintiffs are entitled to the relief requested.

2. Mr. Marino denies the allegations in Paragraph 2 and its subparts, and denies that Plaintiffs are entitled to the relief requested.

3. Mr. Marino specifically denies the allegations in Paragraph 3 and its subparts and denies that Plaintiffs are entitled to the relief requested.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof, and while reserving the right to assert all applicable affirmative defenses supported in law and fact, Mr. Marino asserts the following affirmative defenses:

1. The Court lacks subject matter jurisdiction over this action.

2. Plaintiffs lack standing.

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

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

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

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

power to regulate elections is exclusively a legislative function. U.S. CONST. art. II, § 1, cl. 2; PA. CONST. Art. VII, § 14(a); *Robinson Twp. v. Commonwealth*, 147 A.2d 536, 583 (Pa. 2016); *Agre v. Wolf*, 284 F. Supp. 3d 591, 620 (E.D. Pa. 2018) (Smith, C.J.). Plaintiffs' requested relief would run contrary to the separation of powers and usurp the General Assembly's authority.

7. Plaintiffs have failed to join indispensable parties to this action.

PRAYER FOR RELIEF

WHEREFORE, Richard Marino respectfully requests that this Court enter judgment in favor of the Defendants and Intervenor–Defendants and against the Plaintiffs, and grant such other and further relief as the Court deems necessary and appropriate.

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Dated: December 1, 2023

Respectfully submitted,

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

PENNSYLVANIA STATE CONFERENCE)	
OF THE NAACP, <i>et al.</i> ,)	
)	Civil Action No.: 1:22-cv-00339
Plaintiffs,)	
)	
v.)	Judge Susan P. Baxter
)	
LEIGH M. CHAPMAN, <i>et al.</i> ,)	
)	
Defendants.)	

[PROPOSED] ORDER

AND NOW, this ____ day of December, 2023, upon consideration of the Motion to Intervene filed by Richard Marino, it is hereby ORDERED, ADJUDGED, and DECREED that the Motion is GRANTED. The clerk is directed to file on the docket Richard Marino's Answer.

Honorable Susan P. Baxter
United States District Judge

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