

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

**WILLIAM FRENCH and
MELYNDA ANNE REESE,**

Plaintiffs,

V.

**COUNTY OF LUZERNE,
LUZERNE COUNTY BOARD
OF ELECTIONS and
REGISTRATION,**

Defendants.

Civil No.: 3:23-cv-00538

(Judge Mannion)

DEFENDANTS' RESPONSE TO PLAINTIFFS' CONCISE STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendants Luzerne County (the “County”) and Luzerne County Board of Elections and Registration (the “Board”), by and through their undersigned counsel, hereby submit their response to Plaintiffs William French (“Mr. French”) and Melynda Anne Reese (“Ms. Reese”), pursuant to Local Rule 56.1 of the Middle District of Pennsylvania.

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

5. Admitted.

6. Admitted.

7. Denied. This paragraph constitutes a conclusion of law and not a statement of material fact. The provisions of this statute speak for itself. Furthermore, it is specifically denied that an alleged violation of a state statute gives rise to a constitutional claim under 42 U.S.C. § 1983. Hennings v. Grafton, 523 F.2d 861, 864 (7th Cir. 1975) (citing Snowden v. Hughes, 321 U.S. 1, 11, 88 L.Ed. 497, 64 S. Ct. 397 (1944)).

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted in part and denied in part. This paragraph constitutes a conclusion of law and not a statement of material fact. It is admitted that people should not be denied the right to vote who choose to exercise their right to vote; however, it is denied that Plaintiffs were denied the right to vote or that their claims are cognizable under 42 U.S.C. § 1983.

12. Admitted in part and denied in part. This paragraph constitutes a conclusion of law and not a statement of material fact. It is admitted that there never should be ballot paper shortages during an election; however, it is denied that supply

issues alone constitute constitutional violations enforceable through 42 U.S.C. § 1983.

13. Denied. If ballot paper is in short supply at a polling place then voters may vote by provisional or emergency ballots. (Doc. 48, ¶¶ 37-38) Furthermore, polling places can be resupplied with ballot paper as they were on November 8, 2022. (Id. at ¶¶ 63-67).

14. Admitted in part and denied in part. It is admitted that approximately 35-40 polling precincts—out of 186—reported ballot paper shortages on November 8, 2022; however, while the County admits that a sufficient amount of ballot paper was not distributed to each polling precinct at the outset of Election Day, it is specifically denied that these polling precincts did not have a sufficient amount of ballot paper by the end of Election Day to conduct the election. (Doc. 48, ¶¶ 70-72, 75-76, and 86). Polling precincts were resupplied by the late afternoon and early evening of November 8, 2022. (Id.) Moreover, polling precincts continued to accept votes by provisional and emergency ballots. (Id. at ¶ 38 & 86). Most importantly, it is specifically denied that any alleged failure to comply with a state law constitutes a federal constitutional violation, enforceable through 42 U.S.C. § 1983. Hennings v. Grafton, 523 F.2d 861, 864 (7th Cir. 1975).

15. Admitted in part and denied in part. It is admitted that 35-40 polling precincts reported ballot shortages initially; however, less than 20 polling precincts actually ran out of paper. Among these locations, polling precincts kept accepting votes by provisional and emergency ballots. Also, on November 8th, polling precincts often incorrectly reported that they ran out of paper when they merely were running low on paper or running out of extra ballot paper. (Doc. 48, Ex. E).

16. Denied. This paragraph constitutes a conclusion of law and not a statement of material fact. Furthermore, it is specifically denied that voters were disenfranchised on November 8, 2022.

17. Admitted in part and denied in part. It is admitted that the Director of Elections is “the highest-ranking official within the Bureau of Elections” responsible for administering elections and procuring election supplies such as ballot paper; however, other county officials including the County Manager and the Coordinator of Administrative Services also supervise and oversee the Bureau of Elections including the Director of Elections. (Doc. 49-2, p. 11 of 22); (also Doc. 49-1, pp. 25-26 of 70) (detailing the powers and duties of the County Manager pursuant to the Home Rule Charter).

18. Admitted in part and denied in part. It is admitted that the Director of Elections is “the highest-ranking official within the Bureau of Elections” responsible for administering elections and procuring election supplies such as ballot paper; however, other county officials including the County Manager and the Coordinator of Administrative Services also supervise and oversee the Bureau of Elections including the Director of Elections. (Doc. 49-2, p. 11 of 22); (also Doc. 49-1, pp. 25-26 of 70) (detailing the powers and duties of the County Manager pursuant to the Home Rule Charter).

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted in part and denied in part. It is admitted that former Director of Elections, Michael Susek, resigned his position in the summer of 2022; however, he resigned on July 21, 2022 and the resignation became effective on August 8, 2022—just three months until Election Day. (Doc. 48, ¶ 21; Id. Exhibit E, p. 4 of 24).

23. Admitted in part and denied in part. It is admitted that ultimately, Ms. Gilbert, was appointed the acting Director of Elections to replace Mr. Susek; however, it is specifically denied that the County appointed her to the job immediately upon Mr. Susek’s resignation. Ms. Gilbert assumed the duties and

responsibilities of the director as the highest-ranking official within the Bureau of Elections. The County then advertised the Director of Elections position and interviewed several candidates for it in the fall of 2022. The County initially offered the position to a candidate from Connecticut. In late September of 2022, she ultimately declined the job. Former County Manager Randy Robertson then appointed Ms. Gilbert as the acting Director of Elections until after the November 8, 2022 general election and the County re-advertised the job as open. (Doc. 48, ¶¶ 22-28).

24. Admitted in part and denied in part. It is admitted that Ms. Gilbert served as acting Director of Elections on November 8, 2022; however, she served in that position after a deliberative selection process. A full-time replacement as Director of Elections could not be hired prior to November 8, 2022—more fully detailed in the previous paragraph. (Doc. 48, ¶¶ 22-28).

25. Admitted.

26. Denied. Ms. Gilbert failed to order additional ballot paper; however, it is specifically denied that she deliberately chose not to. Moreover, Plaintiffs cite to the deposition transcript of Ms. Cook to support this alleged undisputed statement of material fact; however, nowhere in these transcript passages did Ms. Cook testify that Ms. Gilbert deliberately did not order ballot paper. It merely states that paper was not ordered. Notably, Ms. Gilbert's own declaration (Doc. 51-4), submitted in

support of Plaintiff's motion for summary judgment, does not state that she deliberately failed to order ballot paper. Furthermore, Ms. Gilbert's declaration does not even address the text exchange her and Ms. Cook had on October 13, 2022. (See Doc. 48, ¶¶ 56-59). Plaintiffs do not dispute these facts (See Doc. 53, p. 7 of 12); however, without record support, Plaintiffs ascribe motive and intent to Ms. Gilbert that she intentionally chose not to order any ballot paper.

27. Admitted in part and denied in part. It is admitted that Ms. Gilbert had never served as a county election official; however, it is specifically denied that she was unqualified to serve as the Deputy Director of Elections. Furthermore, prior to joining the County, Ms. Gilbert served as an elected city councilwoman in the City of Wilkes-Barre for multiple four (4) year terms, earned a masters degree, and was a doctoral candidate. (See Doc. 48, Ex. D., p. 191, ¶ 25, and p. 192 ¶ 1). Also, Ms. Gilbert was knowledgeable in election laws and demonstrated that to her superiors during her tenure with the County. (Doc. 48, Ex. F, p. 88, ¶¶ 20-25 & p. 89, ¶¶ 1-3).

28. Admitted in part and denied in part. This paragraph is not a statement of material fact that is determinative of the outcome of the legal issues involved in the case. Nevertheless, it is admitted that Ms. Gilbert interviewed with County officials prior to her being hired.

29. Denied. Ms. Gilbert is no longer employed by Luzerne County and issues of credibility and bias are best left for trial and should not be decided on summary judgment. Moreover, it defies logic that a candidate for a job would claim that they have no experience in the job that they are applying for and then be hired. It is specifically denied that she was unqualified to serve as the Deputy Director of Elections. Furthermore, prior to joining the County, Ms. Gilbert served as an elected city councilwoman in the City of Wilkes-Barre for multiple four (4) year terms, earned a masters degree, and was a doctoral candidate. (See Doc. 48, Ex. D., p. 191, ¶ 25, and p. 192 ¶ 1). Also, Ms. Gilbert was knowledgeable in election laws and demonstrated that to her superiors during her tenure with the County. (Doc. 48, Ex. F, p. 88, ¶¶ 20-25 & p. 89, ¶¶ 1-3). Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009)

30. Denied. Ms. Gilbert is no longer employed by Luzerne County and issues of credibility and bias are best left for trial and should not be decided on summary judgment. Moreover, it is specifically denied that the County did not offer Ms. Gilbert any training. (Doc. 48, Ex. D., p. 50, ¶¶ 3-20). Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009)

31. Denied. Ms. Gilbert is no longer employed by Luzerne County and issues of credibility and bias are best left for trial and should not be decided on summary judgment. Moreover, it is specifically denied that the County did not offer Ms. Gilbert any training. (Doc. 48, Ex. D., p. 50, ¶¶ 3-20). Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009).

32. Denied. Ms. Gilbert is no longer employed by Luzerne County and issues of credibility and bias are best left for trial and should not be decided on summary judgment. Moreover, it is specifically denied that the County did not offer Ms. Gilbert any training. (Doc. 48, Ex. D., p. 50, ¶¶ 3-20; also Doc. 48, Ex. F, p. 39, 10-25). Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009)

33. Admitted.

34. Denied. Ms. Cook, acting Deputy Director of Elections in November of 2022, previously served in a variety of roles within the Bureau of Elections and had hands-on experience administering elections in Luzerne County. The allegation that Ms. Cook was unqualified to hold her position within the Bureau is specifically denied. Moreover, the County Office of Law provides legal support to the Bureau of

Elections and is available to advise on federal and state election law issues. (Doc. 48, Ex. D, p. 35, ¶¶ 19-25, p. 36, ¶¶ 1-15, p. 190, ¶¶ 4-9; p. 192, ¶¶ 1-7)

35. Admitted in part and denied in part. It is admitted that Ms. Cook did not take any “coursework” however, it is specifically denied that this is the only way for an elections worker to acquire knowledge and experience in the administration of elections. Ms. Cook had firsthand experience administering multiple elections in Luzerne County prior to November of 2022. (Doc. 48, Ex. D, p. 35, ¶¶ 19-25, p. 36, ¶¶ 1-15, p. 190, ¶¶ 4-9; p. 192, ¶¶ 1-7)

36. Denied. On the contrary, Ms. Cook did have experience administering multiple elections in Luzerne County prior to November of 2022. (Doc. 48, Ex. D, p. 35, ¶¶ 19-25, p. 36, ¶¶ 1-15, p. 190, ¶¶ 4-9; p. 192, ¶¶ 1-7)

37. Denied. (Doc. 48, Ex. D., p. 50, ¶¶ 3-20; Doc. 48, Ex. F, pp. 39-40)

38. Denied. (Doc. 48, Ex. D., p. 50, ¶¶ 3-20)

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted.

43. Admitted.

44. Admitted.

45. Admitted.

46. Admitted.

47. Denied. The County did not conduct a formal training session; however, the County had developed the Luzerne County Election Guide, which had been updated over several election cycles and codified the County's existing policies and practices regarding the administration of an election. (Doc. 48, Ex. D, p. 61, ¶¶ 22-25; p. 63, ¶¶ 18-24, p. 64, ¶¶ 7-11 & 20-23); (also id. at p. 161, ¶¶ 3-7 (noting that the purpose of the Election Guide was to codify and condense the institutional memory of the Bureau of Elections into a single governing document)).¹

48. Denied. The County did not conduct a formal training session; however, the County had developed the Luzerne County Election Guide, which had been updated over several election cycles and codified the County's existing policies and practices regarding the administration of an election. (Doc. 48, Ex. D, p. 61, ¶¶ 22-25; p. 63, ¶¶ 18-24, p. 64, ¶¶ 7-11 & 20-23); (also id. at p. 161, ¶¶ 3-7 (noting that the purpose of the Election Guide was to codify and condense the institutional memory of the Bureau of Elections into a single governing document)).

¹ Contrary to Plaintiffs' insinuation that the "Election Guide" was merely notes on a steno pad (Doc. 53, ¶ 41), Ms. Cook testified that the Election Guide was transferred into a Microsoft Word document well-before the November 8, 2022 general election and was available for senior leadership including the Director of Elections. Furthermore, the Elections Guide continues to be updated after each election cycle. (See Doc. 48, Ex. D, p. 58, ¶¶ 14-25 & p. 59, ¶¶ 1-7).

49. Denied. The County had developed the Luzerne County Election Guide, which had been updated over several election cycles and codified the County's existing policies and practices regarding the administration of an election. (Doc. 48, Ex. D, p. 61, ¶¶ 22-25; p. 63, ¶¶ 18-24, p. 64, ¶¶ 7-11 & 20-23); (also id. at p. 161, ¶¶ 3-7 (noting that the purpose of the Election Guide was to codify and condense the institutional memory of the Bureau of Elections into a single governing document)).

50. Denied. The County had developed the Luzerne County Election Guide, which had been updated over several election cycles and codified the County's existing policies and practices regarding the administration of an election. (Doc. 48, Ex. D, p. 61, ¶¶ 22-25; p. 63, ¶¶ 18-24, p. 64, ¶¶ 7-11 & 20-23); (also id. at p. 161, ¶¶ 3-7 (noting that the purpose of the Election Guide was to codify and condense the institutional memory of the Bureau of Elections into a single governing document)). Moreover, the County's training coordinator conducted at least ten (10) training sessions with judges of elections and other poll workers about how to troubleshoot issues that may arise at the polls. (Doc. 48, ¶ 33). Likewise, the County established "Rovers" who are designated to resupply polling precincts and Luzerne County distributed a Polling Place Procedures Manual to all poll workers. (Id. at ¶¶ 34-40). On page 18 of the 2022 Polling Place Procedures Manual, it states "**Running Low on Ballots:** "If you run low on blank ballot stock for the BMD printers, call our

office (Election Bureau) and we will get you more. Call the Bureau immediately if you are opening your final shrink wrapped package of ballots.”) 2022 Polling Place Procedures Manual, attached hereto as Exhibit A. (emphasis in original).

51. Denied. The County had developed the Luzerne County Election Guide, which had been updated over several election cycles and codified the County’s existing policies and practices regarding the administration of an election. (Doc. 48, Ex. D, p. 61, ¶¶ 22-25; p. 63, ¶¶ 18-24, p. 64, ¶¶ 7-11 & 20-23); (also id. at p. 161, ¶¶ 3-7 (noting that the purpose of the Election Guide was to codify and condense the institutional memory of the Bureau of Elections into a single governing document)). Moreover, the County’s training coordinator conducted at least ten (10) training sessions with judges of elections and other poll workers about how to troubleshoot issues that may arise at the polls. (Doc. 48, ¶ 33). Likewise, the County established “Rovers” who are designated to resupply polling precincts and Luzerne County distributed a Polling Place Procedures Manual to all poll workers. (Id. at ¶¶ 34-40). On page 18 of the 2022 Polling Place Procedures Manual, it states “**Running Low on Ballots:** “If you run low on blank ballot stock for the BMD printers, call our office (Election Bureau) and we will get you more. Call the Bureau immediately if you are opening your final shrink wrapped package of ballots.”) 2022 Polling Place Procedures Manual, attached hereto as Exhibit A. (emphasis in original).

52. Denied. (Doc. 48, ¶¶ 49-54). Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009).

53. Denied. (Doc. 48, ¶¶ 49-54). Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009).

54. Denied. (Doc. 48, ¶¶ 49-54). Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009).

55. Denied. (Doc. 48, ¶¶ 49-54). Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009).

56. Admitted.

57. Admitted.

58. Denied. (Doc. 48, ¶¶ 49-54). Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009).

59. Denied. (Doc. 48, ¶¶ 49-54).

60. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation.

61. Denied. (Doc. 48, ¶¶ 49-54). Furthermore, the Bureau of Elections also relied upon the institutional memory of its employee workforce that had decades of experience exclusively within the Bureau of Elections. (Doc. 48, Ex. D, p. 65, ¶¶ 3-9).

62. Denied. (Doc. 48, ¶¶ 49-54). Furthermore, the Bureau of Elections also relied upon the institutional memory of its employee workforce that had decades of experience exclusively within the Bureau of Elections. (Doc. 48, Ex. D, p. 65, ¶¶ 3-9). Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009).

63. Denied. The County had developed the Luzerne County Election Guide, which had been updated over several election cycles and codified the County’s existing policies and practices regarding the administration of an election. (Doc. 48, Ex. D, p. 61, ¶¶ 22-25; p. 63, ¶¶ 18-24, p. 64, ¶¶ 7-11 & 20-23); (also id. at p. 161, ¶¶ 3-7 (noting that the purpose of the Election Guide was to codify and condense the institutional memory of the Bureau of Elections into a single governing document)). Moreover, the County’s training coordinator conducted at least ten (10) training sessions with judges of elections and other poll workers about how to troubleshoot issues that may arise at the polls. (Doc. 48, ¶ 33). Likewise, the County established “Rovers” who are designated to resupply polling precincts and Luzerne

County distributed a Polling Place Procedures Manual to all poll workers. (Id. at ¶¶ 34-40). Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009).

64. Denied. This paragraph is a conclusion of law and not a statement of material fact; however, it is specifically denied that the County lacked policies and procedures that caused the ballot paper shortage. The ballot paper shortage was caused by human error and not as a result of deficient policies and procedures. Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009).

65. Denied. This paragraph is a conclusion of law and not a statement of material fact; however, it is specifically denied that the County lacked policies and procedures that caused the ballot paper shortage. The ballot paper shortage was caused by human error and not as a result of deficient policies and procedures. Also, “conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.” Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009).

66. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation. Moreover, if this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

67. Denied. If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony. Moreover, Plaintiffs improperly rely upon just their complaint and the deposition of the Board's Chairwoman, Denise Williams, to support an alleged undisputed fact as to Mr. French's conduct on November 8, 2022. Not only does this fall outside of the parameters of the Rule 30(b)(6) Notice (attached hereto as Exhibit B), but it is inadmissible speculative testimony. (See also Doc. 49, Exs. E and H) (detailing that Freeland Event Center did not experience ballot paper shortages on November 8, 2022).

68. Denied. If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony. Moreover, Plaintiffs improperly rely upon just their complaint and the deposition of the Board's Chairwoman, Denise Williams, to support an alleged undisputed fact as to Mr. French's conduct on November 8, 2022. Not only does this fall outside of the parameters of the Rule 30(b)(6) Notice (attached hereto as Exhibit B), but it is inadmissible speculative testimony. (See also Doc. 49, Exs. E and H) (detailing that Freeland Event Center did not experience ballot paper shortages on November 8, 2022).

69. Denied. If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony. Moreover, Plaintiffs improperly rely upon just their complaint and the deposition of the Board's Chairwoman, Denise Williams, to support an alleged undisputed fact as to Mr. French's conduct on November 8, 2022. Not only does this fall outside of the parameters of the Rule 30(b)(6) Notice (attached hereto as Exhibit B), but it is inadmissible speculative testimony. (See also Doc. 49, Exs. E and H) (detailing that Freeland Event Center did not experience ballot paper shortages on November 8, 2022).

70. Denied. If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony. Moreover, Plaintiffs improperly rely upon just their complaint and the deposition of the Board's Chairwoman, Denise Williams, to support an alleged undisputed fact as to Mr. French's conduct on November 8, 2022. Not only does this fall outside of the parameters of the Rule 30(b)(6) Notice (attached hereto as Exhibit B), but it is inadmissible speculative testimony. (See also Doc. 49, Exs. E and H) (detailing that Freeland Event Center did not experience ballot paper shortages on November 8, 2022).

71. Denied. If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony. Moreover, Plaintiffs improperly rely upon the deposition of the Board's Chairwoman, Denise Williams, to support an alleged undisputed fact as to Mr. French's conduct on November 8, 2022. Not only does this

fall outside of the parameters of the Rule 30(b)(6) Notice (attached hereto as Exhibit B), but it is inadmissible speculative testimony. (See also Doc. 49, Exs. E and H) (detailing that Freeland Event Center did not experience ballot paper shortages on November 8, 2022).

72. Denied. If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony. (See also Doc. 49, Exs. E and H) (detailing that Freeland Event Center did not experience ballot paper shortages on November 8, 2022).

73. Denied. If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony. (See also Doc. 49, Exs. E and H) (detailing that Freeland Event Center did not experience ballot paper shortages on November 8, 2022).

74. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation. Moreover, if this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

75. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation. Moreover, if this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

76. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation. Moreover, if this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

77. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation. Moreover, if this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

78. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation. Moreover, if this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

79. Admitted.

80. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation. Moreover, if this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

81. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation. Moreover, if this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

82. Denied. Ms. Reese did not arrive at the polls until after she finished work after 2:00 p.m. in the afternoon. If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony. See Deposition of Melynda Anne Reese, attached hereto as Exhibit "C", pp. 25-26.

83. Denied. If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony. Moreover, Plaintiffs improperly rely upon the allegations in their complaint only and the deposition of the Board's Chairwoman, Denise Williams, to support an alleged undisputed fact as to Ms. Reese's conduct on November 8, 2022. Not only does this fall outside of the parameters of the Rule 30(b)(6) Notice (attached hereto as Exhibit B), but it is inadmissible speculative testimony.

84. Denied. If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony. Moreover, Plaintiffs improperly rely upon the allegations in their complaint only and the deposition of the Board's Chairwoman, Denise Williams, to support an alleged undisputed fact as to Ms. Reese's conduct on November 8, 2022. Not only does this fall outside of the parameters of the Rule 30(b)(6) Notice (attached hereto as Exhibit B), but it is inadmissible speculative testimony.

85. Denied. When Ms. Reese returned to the polls, she never got out of her car or ever interacted again with any poll workers or election officials. See Exhibit C, p. 47, ¶¶ 13-16 ("Q: You didn't speak to any poll workers the second time you went around, right?" A: No, sir."); also p. 47, ¶¶ 21-24 & p. 48, ¶¶ 1-4). If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

86. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation. Moreover, if this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

87. Denied. If this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony. Moreover, Plaintiffs improperly rely upon the allegations in their complaint only and the deposition of the Board's Chairwoman, Denise Williams, to support an alleged undisputed fact as to Ms. Reese's conduct on November 8, 2022. Not only does this fall outside of the parameters of the Rule 30(b)(6) Notice (attached hereto as Exhibit B), but it is inadmissible speculative testimony. Furthermore, Ms. Reese never got out of her car or talked to any Luzerne County poll workers. Exhibit C, p. 52, ¶¶ 11-16.

88. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation. Moreover, if this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

89. Denied. It is specifically denied that Ms. Reese was called at 9:15 p.m. and told to come vote with only 45 minutes before the polls closed. Moreover, Plaintiffs improperly rely upon the allegations in their complaint only and the deposition of the Board's Chairwoman, Denise Williams, to support an alleged undisputed fact as to Ms. Reese's conduct on November 8, 2022. Not only does this

fall outside of the parameters of the Rule 30(b)(6) Notice (attached hereto as Exhibit B), but it is inadmissible speculative testimony.

90. Denied. This paragraph is not a statement of material fact that has a bearing on the outcome of the litigation. Moreover, if this case proceeds to a trial, the fact finder will assess the credibility of this witnesses' testimony.

Respectfully submitted,

/s/ Drew P. McLaughlin

Drew P. McLaughlin, I.D. No. 324430

Kristyn Giarratano Jeckell, I.D. No. 327284

Keighlyn J. Oliver, I.D. No. 330372

ELLIOTT GREENLEAF, P.C.

15 Public Square, Suite 210

Wilkes-Barre, PA 18701

(570) 371-5290

Attorneys for Defendants

DATED: May 20, 2024

