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**IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA**

American Civil Liberties Union Foundation  
of Pennsylvania and Elizabeth Kurian

Plaintiffs,

v.

York County Board of Elections

Defendant.

CIVIL DIVISION  
Case No. 2024-SU-000643

**PLAINTIFFS' RESPONSE TO DEFENDANT'S PRELIMINARY OBJECTIONS**

Plaintiffs American Civil Liberties Union Foundation of Pennsylvania ("ACLU-PA") and Elizabeth Kurian (collectively, "Plaintiffs") hereby respond to Defendant York County Board of Elections' Preliminary Objections. For the reasons set forth below, and in the accompanying Brief in Opposition, which is fully incorporated by reference herein, Defendant's preliminary objections should be overruled and judgment should be entered in Plaintiffs' favor. In response to the particular averments in Defendant's preliminary objections, Plaintiffs state as follows:

1. Admitted.
2. Admitted.

3. Admitted in part as stated. In this action, plaintiffs seek (i) a declaration that members of the public are permitted to observe the official computation and canvassing of returns conducted pursuant to 25 P.S. § 3154(a); (ii) a declaration that Defendant violated §3154 by prohibiting plaintiffs from attending and observing the official canvassing of returns; (iii) issue an injunction enjoining Defendant from excluding Plaintiffs and members of the public from observing the official canvassing of returns; and (iv) an award of nominal damages.

4. Plaintiffs incorporate their responses to Paragraphs 1 through 3 as if fully restated here.

5. Denied. Paragraph 5 is a conclusion of law to which no response is required. To the extent this paragraph contains any statement of fact requiring a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

6. Paragraph 6 consists of conclusions of law to which no response is required. To the extent that a response is required, Plaintiffs state that paragraph 6 contains generally accurate statements of the law, but deny Defendant's arguments that Plaintiffs lack standing under the standards quoted in this paragraph.

7. Denied. Paragraph 7 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference. It is specifically denied that Plaintiffs "assert[] no rights distinguishable from the public interest in seeking obedience to the law."

8. Paragraph 8 consists of conclusions of law to which no response is required. To the extent that a response is required, Plaintiffs state that paragraph 8 contains generally accurate

statements of the law, but deny Defendant's arguments that Plaintiffs lack standing under the standards quoted in this paragraph.

9. Paragraph 9 consists of conclusion of law to which no response is required. To the extent that a response is required, Plaintiffs state that paragraph 9 contains generally accurate statements of the law, but deny Defendant's arguments that Plaintiffs lack standing under the standards quoted in this paragraph.

10. Denied. Paragraph 10 is a conclusion of law to which no response is required. To the extent that a response is required, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference. It is specifically denied that Plaintiff Kurian has alleged no "immediate interest" under the Election Code.

11. Paragraph 11 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant's first preliminary objections and issue judgment in Plaintiffs' favor for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

12. Plaintiffs incorporate their responses to Paragraphs 1 through 11 as if fully restated here.

13. Paragraph 13 is a conclusion of law to which no response is required. To the extent that a response is required, Plaintiffs state that paragraph 13 contains generally accurate statements of the law, but deny Defendant's arguments that Plaintiffs have failed to state a claim. By way of further response, the trial court may "interpret the applicable law and determine the merits of the claim" because there is "no factual dispute in the case, only a dispute over the

interpretation of the law.” *Calandra by Calandra v. State Coll. Area Sch. Dist.*, 512 A.2d 809, 811 (Pa. Commw. Ct. 1986). For the reasons set forth in the accompanying Brief in Opposition, straightforward principles of statutory interpretation support a plain-language, commonsense reading that Section 1404 in the Election Code, 25 P.S. § 3154 requires the Board to allow members of the public to observe the “Official Canvass.” *In re Canvassing Observation*, 241 A.3d 339, 349 (Pa. 2020). Accordingly, the Court can and should determine at this stage that Plaintiffs are entitled to declaratory judgment as a matter of law.

14. Paragraph 14 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

15. Admitted in part and denied in part. Plaintiffs admit only that the operative complaint sets forth two causes of action – for declaratory judgment and injunctive relief. The remainder of paragraph 15 consists of conclusions of law as to which no response is required. To the extent that a response is required, the remainder of this paragraph not specifically admitted is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

16. Paragraph 16 is a conclusion of law to which no response is required. To the extent that a response is required, Plaintiffs state that paragraph 16 contains generally accurate statements of the law, but deny Defendant’s arguments applying the Declaratory Judgment Act.

17. Paragraph 17 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

18. Paragraph 18 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

19. Paragraph 19 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

20. Paragraph 20 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

21. Paragraph 21 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

22. Paragraph 22 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

23. Paragraph 23 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

24. Paragraph 24 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

25. Paragraph 25 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

26. Paragraph 26 is a conclusion of law to which no response is required. To the extent that a response is required, Plaintiffs state that paragraph 26 contains generally accurate statements of the law, but deny Defendant's arguments applying the law relating to claims for injunctive relief.

27. Paragraph 27 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

28. Paragraph 28 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant's second preliminary objection and issue judgment in Plaintiffs' favor for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

29. Plaintiffs incorporate their responses to Paragraphs 1 through 28 as if fully restated here.

30. Admitted in part, denied in part as stated. It is only admitted that Plaintiffs ask this Court to exercise its jurisdiction and authority to issue an injunction preventing Defendant from continuing to violate the public's rights under Section 1404 of the Election Code. Plaintiffs deny the statement that such injunction would "prevent the Board from exercising its statutory

authority and duties,” as no duty exists to preclude members of the public from observing public proceedings under the Election Code.

31. Paragraph 31 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

32. Paragraph 32 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

33. Paragraph 33 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

34. Paragraph 34 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant’s third preliminary objection and issue judgment in Plaintiffs’ favor for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

35. Plaintiffs incorporate their responses to Paragraphs 1 through 34 as if fully restated here.

36. Paragraph 36 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, Plaintiffs state that paragraph 36 contains generally accurate statements of the law, but deny Defendant’s arguments that the doctrine of laches has any application in this case.

37. Paragraph 37 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, Plaintiffs state that paragraph 37 contains generally accurate statements of the law, but deny Defendant's arguments that the doctrine of laches has any application in this case.

38. Paragraph 38 is a conclusion of law to which no response is required. To the extent this paragraph contains any statement of fact requiring a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference. It is specifically denied that Plaintiffs were "not diligent" in bringing this Action by "delaying" four months, when in fact it was Defendant's own delay that resulted in the timing of this lawsuit being filed.

39. Admitted.

40. Paragraph 40 is a conclusion of law to which no response is required. To the extent this paragraph requires a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

41. Paragraph 41 is a conclusion of law to which no response is required. To the extent this paragraph contains any statement of fact requiring a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference. It is specifically denied that Plaintiffs "delayed" four months in bringing this suit. It is further denied that Plaintiffs "should have known" about an existing remedy under the Election Code where that provision is inapplicable to Plaintiff's claim. By way of further response, Plaintiffs state that any purported "delay" in this case was caused entirely by Defendant's own



actions during pre-litigation communications and its unwillingness to discuss any reasonable modifications to its procedures. *See* Compl., Ex. A-C; *see also* Resp. to Prelim. Obj., Ex. A-C.<sup>1</sup>

42. Paragraph 42 is a conclusion of law to which no response is required. To the extent this paragraph contains any statement of fact requiring a response, it is denied for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference. It is admitted only that Plaintiffs filed this suit before an election, but any implication that the timing of this lawsuit implicates the defense of laches is denied.

43. Plaintiffs are without sufficient knowledge and information to admit or deny the factual assertion about the Board's election procedures made for the first time by Defendants in paragraph 43 of their Preliminary Objections. By way of further response, Plaintiffs note that preliminary objections may only be based on the facts set forth on the face of the operative complaint and are an improper channel for resolving affirmative defenses like laches that are based on new facts extending beyond the face of the complaint. *Banfield v. Cortes*, 922 A.2d 36, 45–46 (Pa. Commw. Ct. 2007) (“the defense of laches is an affirmative defense that is not properly raised in preliminary objections but must be raised in a responsive pleading as new matter”). *See also Bicentennial Comm'n v. Olde Bradford Co., Inc.*, 365 A.2d 172, 178 (Pa. Commw. Ct. 1976) (Laches may only be determined by preliminary objections “if laches clearly appears on the face of the complaint”).

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant's third preliminary objection and issue judgment in Plaintiffs' favor for the reasons set forth in the accompanying Brief in Opposition, which is fully incorporated herein by reference.

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<sup>1</sup> True and correct copies of correspondence between undersigned counsel and the York County Solicitor's Office, dated January 22, 2024, and February 26, 2024, are attached hereto as Exhibits A, B and C respectively.

For all of the foregoing reasons, and those set forth in the accompanying Brief in Opposition, the Court should overrule all of Defendant's Preliminary Objections and grant judgment in favor of Plaintiffs on all counts.

Respectfully submitted,

Dated: April 22, 2024

**ACLU OF PENNSYLVANIA**

/s/ Marian K. Schneider

Marian K. Schneider, Esq.

Stephen A. Loney, Esq.

Kate Steiker-Ginzberg, Esq.

*Attorneys for Plaintiffs*

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**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

Dated: April 22, 2024

/s/ Marian K. Schneider  
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Marian K. Schneider, Esq.

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the April 22, 2024 Plaintiffs' Response to Defendant's Preliminary Objections via electronic delivery to all counsel of record on April 22, 2024.

Dated: April 22, 2024

Respectfully submitted,

/s/ Marian K. Schneider

Marian K. Schneider, Esq. (PA ID No. 50337)

**AMERICAN CIVIL LIBERTIES UNION  
OF PENNSYLVANIA**

P.O. Box 60173

Philadelphia, PA 19102

mschneider@aclupa.org

*Counsel for Petitioner*

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# EXHIBIT

# A

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# YORK COUNTY BOARD OF COMMISSIONERS

COMMISSIONERS  
JULIE WHEELER, PRESIDENT  
J. SCOTT BURFORD, VICE PRESIDENT  
DOUG HOKE, COMMISSIONER

CHIEF OPERATIONS OFFICER/CHIEF CLERK  
GREGORY MONSKIE



SOLICITOR  
JONELLE HARTER ESHBACH

ASSISTANT SOLICITOR  
DEIRDRE SULLIVAN

ASSISTANT SOLICITOR  
PRISON BOARD OF INSPECTORS  
DONALD L. REIHART

## SOLICITOR'S OFFICE

YORK COUNTY ADMINISTRATIVE CENTER  
28 East Market Street, York, PA 17401

January 22, 2024

Marian K. Schneider  
[mschneider@aclupa.org](mailto:mschneider@aclupa.org)

Stephen A. Loney, Jr.  
[sloney@aclupa.org](mailto:sloney@aclupa.org)

Kate Steiker-Ginzberg  
[ksteiker-ginzberg@aclupa.org](mailto:ksteiker-ginzberg@aclupa.org)

Re: ACLU letter dated January 11, 2024

Dear ACLU of Pennsylvania Representatives:

I am the newly appointed Solicitor for the County of York, Pennsylvania. Your letter was recently forwarded to me, and I note that you have demanded a response by Friday, January 26, 2024. Unfortunately, I cannot respond by your chosen deadline, owing to many other pressing matters and my recent taking of the helm in my office. If an additional two weeks, with a response by February 9, 2024, is satisfactory, please advise of the same. If this is unsatisfactory, then you will simply have to do what you feel you must.

You are welcome to reply directly to my email which is [jeshbach@yorkcountypa.gov](mailto:jeshbach@yorkcountypa.gov).

Sincerely,

*/s/ Jonelle Harter Eshbach*

Jonelle Harter Eshbach  
Solicitor of York County, Pennsylvania

JHE

# EXHIBIT B

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## York County Response to January 11, 2024, letter

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**Kate Steiker-Ginzberg** <ksteiker-ginzberg@aclupa.org>

Mon, Jan 22, 2024 at 1:39 PM

To: "Puleo, Agatha" <APuleo@yorkcountypa.gov>, "Eshbach, Jonelle" <JEshbach@yorkcountypa.gov>

Cc: "mschneider@aclupa.org" <mschneider@aclupa.org>, "sloney@aclupa.org" <sloney@aclupa.org>, "Sullivan, Deirdre" <DSullivan@yorkcountypa.gov>

Dear Ms. Eshbach,

Thank you very much for your response to our letter dated January 11, 2024.

We understand that you were recently appointed as York County solicitor and have not had sufficient time to fully review our inquiry.

We agree to your request for an additional two weeks to respond, and look forward to hearing from you on or before February 9, 2024 regarding this matter.

Best,

Kate Steiker-Ginzberg

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# EXHIBIT C

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## OFFICIAL CANVASS and COMPUTATION OF VOTES

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**Kate Steiker-Ginzberg** <ksteiker-ginzberg@aclupa.org>

Mon, Feb 26, 2024 at 9:29 AM

To: "Eshbach, Jonelle" <JEshbach@yorkcountypa.gov>

Cc: "mschneider@aclupa.org" <mschneider@aclupa.org>, "sloney@aclupa.org" <sloney@aclupa.org>, "Burford, Scott" <SBurford@yorkcountypa.gov>, "Haertsch, Julie V." <JVHaertsch@yorkcountypa.gov>, "Sheaffer, Bryan M." <BMSheaffer@yorkcountypa.gov>

Dear Solicitor Eshbach,

Thank you for your email and for considering the concerns set forth in our January 11, 2024 letter regarding York County's canvassing procedures. It is unfortunate that, despite the authority we have cited to you, the Board still plans to prevent non-partisan public access to the official canvass.

Please be advised that the ACLU-PA intends to initiate a declaratory judgment action against York County for failing to comply with the Election Code in this regard.

Sincerely,

Kate Steiker-Ginzberg

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