

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

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| <p>MANCINI, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>DELAWARE COUNTY, et al.,</p> <p style="text-align: center;">Defendants.</p> | <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> | <p>No. 2:24-cv-02425-KNS</p> |
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**MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR
JUDGMENT ON THE PLEADINGS**

Defendants Delaware County (“County”) and the Delaware County Board of Elections (“Board”) (collectively “County Defendants”) hereby submit this memorandum of law in opposition to Plaintiffs’ Motion for Judgment on the Pleadings and state as follows:

I. INTRODUCTION

Plaintiffs’ Motion for Judgment on the Pleadings is untimely because the pleadings are not closed. County Defendants’ Motion to Dismiss is currently pending before the Court, and pursuant to Federal Rule of Civil Procedure 12(a)(4), Delaware County’s Answer is not due yet.

II. FACTUAL BACKGROUND

Plaintiffs served the Complaint and Notice to Defend in this suit—the twentieth they’ve filed against the County or Board since the 2020 General Election—on June 11th, 2024. *See* Compl., ECF No. 1. County Defendants filed and served a timely Motion to Dismiss under Rule 12 on July 1. *See* Defs.’ Mot. Dismiss, ECF No. 9. Plaintiffs subsequently acknowledged and responded to County Defendants’ Motion to Dismiss, which is now pending before the Court. *See* Pls.’ Resp., ECF No. 12.

Plaintiffs emailed County Defendants on July 12 requesting a conference, seemingly based on a misapprehension that one was required by this Court's Local Rules and Judge Scott's Policies and Procedures. *See* Pls.' Mot. J. Pleadings, Ex. D, ECF No. 14. County Defendants promptly responded, and explained to Plaintiffs that no Rule 16 conference was required because an answer had not yet been filed. *See id.*

Plaintiffs then filed the instant Motion for Judgment on the Pleadings. *See generally id.* As the basis for their Motion, Plaintiffs cite Rule 12, demonstrating that this frivolous Motion is not based on a mere lack of awareness of the rules. *See id.*, at 1-2. Plaintiffs chiefly complain that the County Defendants have not yet filed an answer, though an answer is not yet due. *See generally id.*; Fed. R. Civ. P. 12(a)(4). The remainder of Plaintiffs' Motion is filled with serious—and baseless—accusations, including that the County Defendants bribed a nonprofit fact-checking organization, improperly shut down the proceedings of a Pennsylvania state court, destroyed and withheld evidence, refused to participate in a required conference, and defrauded this Court. *See* Pls.' Mot. at 2-5, ECF No. 14.

III. LEGAL STANDARD

A party may only move for judgment on the pleadings under Rule 12(c) “[a]fter the pleadings are closed—but early enough not to delay trial.” Fed. R. Civ. P. 12(c) (emphasis added). “To succeed on a motion under Rule 12(c), the movant must clearly establish that no genuine issues of material fact remain and that he is entitled to judgment as a matter of law.” *Trustmark Servs. Co. v. Feeney*, No. CV 20-3686, 2024 WL 869476, *5 (E.D. Pa. Feb. 28, 2024) (internal quotation marks omitted). In considering the motion, a court must accept all allegations in the pleadings of the non-moving party as true, and draw all reasonable inferences in their favor. *Essential Utilities, Inc. v. Swiss Re Grp.*, 654 F. Supp. 3d 476, 480 (E.D. Pa. 2023).

IV. ARGUMENT

Plaintiffs' motion is untimely because the pleadings have not yet closed, and Defendants' answer is not yet due. Under the provisions of Rule 7(a) of the Federal Rules of Civil Procedure, the pleadings are not closed until at least an answer has been filed. *Creedon v. Bowman*, 75 F. Supp. 265 (W.D. Pa. 1948); *see also* 5 Fed. Prac. & Proc. Civ. § 1189 (4th ed. 2024). While a defendant initially has 21 days after service of a complaint to file their answer, Fed. R. Civ. P. 12(a)(1)(a), serving a motion such as County Defendants' Motion to Dismiss alters this deadline and causes the responsive pleading to be due 14 days after the Court denies the motion if it does so, Fed. R. Civ. P. 12(a)(4)(A). County Defendants filed a timely Motion to Dismiss under Rule 12(b), which is now pending before the Court. If the Court denies that Motion, County Defendants' Answer would be due 14 days after notice is given of the Court's action. Fed. R. Civ. P. 12(a)(4)(A). The pleadings are not closed, so a Motion for Judgment on the Pleadings is not proper at this time.

Even if such a motion were proper, it should fail. As outlined in County Defendants' Motion to Dismiss, Plaintiffs' Complaint failed to establish standing and failed to state a claim upon which relief can be granted. *See generally*, Defs.' Mot. Dismiss, ECF No. 9.

V. CONCLUSION

For the foregoing reasons, County Defendants respectfully request that the Court deny Plaintiffs' Motion for Judgment on the Pleadings.

[Signature block on next page.]

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Dated: August 12, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2024, I caused a copy of the foregoing to be served on all pro se Plaintiffs via this Court's ECF system and by e-mail:

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Dated: August 12, 2024

/s/ J. Manly Parks
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