

In This Together NEPA Inc.; Jenny
L. Wilczak; Hannah Butterwick; and
Carole Shearer,

Plaintiffs,

v.

Romilda Crocamo, in her official
capacity as Luzerne County Manager;
and Luzerne County Board of Elections
and Registration,

Defendants.

: In the Court of Common Pleas

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: Luzerne County

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: No.

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**BRIEF IN SUPPORT OF EMERGENCY MOTION
FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. BACKGROUND

This action for emergency injunctive relief challenges the Luzerne County Manager's unilateral decision to eliminate the use of four drop boxes for voters to deposit their mail ballots in the upcoming election, a decision that is *ultra vires* of the manager's authority and usurps plenary powers vested by the Pennsylvania General Assembly, via the Election Code, exclusively in the Luzerne County Board of Elections and Registration (the "Board" or "Board of Elections").

In a series of duly noticed public hearings starting in May 2020, the Luzerne County Board of Elections adopted a policy and approved the deployment of four drop boxes for the

use of Luzerne County voters. Drop boxes have been used during the 2020 elections cycle and those that followed. Four boxes have been used since the 2022 elections, including in the 2024 primary. The Board voted at its February 21, 2024, meeting to reject a motion to eliminate all drop boxes.

Drop boxes provide voters a secure way to submit their ballot directly into the hands of the election bureau. They enable voters not to rely on the U.S. Postal Service to deliver their ballots by the deadline, as mail-in ballots are determined to be timely by their arrival at the election bureau not by their postmark date. Drop boxes are particularly important for voters with disabilities or those who have an emergency come up in the days preceding election day. Election drop boxes help effectuate the Constitutional right to vote for all citizens.

There have been no substantiated cases of abuse or fraud concerning the drop boxes in Luzerne County. The drop boxes that have been in place since 2020 have been monitored by cameras and no incidents have been reported.

On September 18, 2024, Luzerne County Manager Romilda Crocamo announced that Luzerne County would not use drop boxes for the upcoming November election because of safety and security concerns. At no point was the matter brought to the Board of Elections and no action was taken by the Board of Elections concerning the removal of the election drop boxes. The Board of Elections was the entity that established the drop boxes and is the only unit that has the authority to abolish them. See 25 P.S. § 2642. The County

Manager is not a member of the Board of Elections. On September 23, 2024, the County Manager made a statement reconfirming the decision to eliminate the drop boxes for the forthcoming November election. But that decision was neither presented to nor acted upon by the Board, meaning that the Board's decision to continue using drop boxes remains in effect.

The attorneys for the Plaintiffs, the ACLU of Pennsylvania, made a formal request to the County Manager for her to rescind the decision to remove the election drop boxes. She has not responded to that request or otherwise indicated a willingness to retract her directive.

II. LEGAL ARGUMENT

The County Manager usurped the Board's jurisdiction over the administration of elections, acting *ultra vires* of her authority to eliminate the use of four drop boxes located throughout the county for voters' convenience. Consequently, her decision is void. Plaintiffs ask that the Court order a return to the *status quo ante*, in which the Board most recently affirmed the ongoing use of drop boxes on February 21, 2024, and direct Defendant Crocamo to fulfill forthwith the Board's directive to deploy the four drop boxes.

The Pennsylvania Election Code vests authority over elections in each county's Board of Elections, 25 P.S. § 2641(a). The Board of Elections "shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of [the Election Code]." The Election Code further provides that when a county has adopted a

home rule charter and creates an appointed Board of Elections, that body shall constitute the board of elections for purposes of the Election Code, provided it has minority representation. 25 P.S. § 2641(b). Luzerne County has adopted a home rule charter that provides for the establishment of a five-member Board of Elections and Registration, four members of which are appointed by the county council and one member who is voted on by the appointed members. Home Rule Charter of Luzerne County, Pennsylvania, § 8.02 et seq. The authority and responsibility for running elections and election administration is held by the Luzerne County Board of Elections and Registration.

The General Assembly has “entrusted the County Board[s] of Elections with plenary powers in the administration of the election code.” *in re McCracken Appeal*, 88 A.2d 787, 788 (Pa. 1952); see also *Nutter v. Dougherty*, 921 A.2d 44, 60 (Pa. Cmwlth. 2007) (“[T]he Election Code delegates extensive powers and authority to county election boards . . .”). The Election Code expressly provides that “[t]he county boards of elections, within their respective counties, *shall* exercise . . . all powers granted to them by this act, and *shall* perform all the duties imposed upon them by this act . . .” 25 P.S. § 2642 (emphasis added); see also *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 351 (W.D. Pa. 2020) (“The Election Code vests county boards of elections with discretion to conduct elections and implement procedures intended to ensure the honesty, efficiency, and uniformity of Pennsylvania's elections.”).

The General Assembly's broad delegation of powers to the county boards of elections entails "exclusive control over election equipment." *In re: Petition for Agenda Initiative*, 206 A.3d 617, 624 (Pa. Cmwlth. 2019). Our Supreme Court has ruled that counties are free to utilize drop boxes. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 361 (2020) ("[T]he Election Code should be interpreted to allow county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes."). Therefore, any decision to supply or remove drop-boxes in Luzerne County is within the "exclusive" control of the Board of Elections.

County boards of election are the proper authorities for such decisions, not state or local executives like the Secretary of the Commonwealth or a county manager. See *Cnty. of Fulton v. Sec'y of the Commonwealth*, 276 A.3d 846, 857 (Pa. Cmwlth. 2022) ("It is the county boards, not the Secretary, that must 'maintain primary and election equipment of all kinds' . . .") (citing 25 P.S. §2642(c), (d)); see also *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 374-375 (W.D. Pa. 2020) (finding that county boards, not just the Secretary, are necessary parties to enjoin unconstitutional conduct relating to election administration). The Election Code's hortatory language is clear. By using the language "shall exercise . . . all powers" and "shall perform all duties," see 25 P.S. § 2642, the General Assembly intended to vest county boards of election with exclusive power to administer elections. See 1 Pa.C.S. § 1921(a) ("The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General

Assembly.”); *see also Commonwealth v. McCoy*, 962 A.2d 1160, 1166 (Pa. 2009) (“A statute’s plain language generally provides the best indication of legislative intent.”)

Therefore, the County Manager’s decision to cancel the Board’s official action that Luzerne County continue to use drop boxes in the November 2024 election was *ultra vires* and void. *See Clairton Slag, Inc. v. Dep’t of Gen. Servs.*, 2 A.3d 765, 782 (Pa. Cmwlth. 2010) (“An ultra vires action is one that is performed without authority to act and beyond the scope of legal authorization.”). It does not and legally cannot override the Board’s most recent decision, on February 21, 2024, to continue using four drop boxes to be placed in designated locations around the county. Based on the failure to follow the applicable law, Defendant Crocamo’s actions violated the Pennsylvania Election Code. As such, injunctive relief in the form of enjoining Defendant Crocamo’s illegal directive and ordering her to fulfill the Board’s decision to deploy four election drop boxes is appropriate and necessary.

The standard for issuance for an application for temporary relief is set forth in *Dusman v. Bd. of Directors of Chambersburg Area Sch. Dist.*, 123 A.3d 354, 360 (Pa. Cmwlth. 2015), as follows:

- (1) an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;
- (2) greater injury would result from refusing an injunction than from granting it, and, the issuance of the injunction will not substantially harm other interested parties;
- (3) an injunction will properly restore the parties to their status as it existed prior to the alleged wrongful conduct;
- (4) the activity the petitioner seeks to restrain is actionable, the right to relief is clear, and success on the merits is likely;
- (5) the injunction is reasonably suited to abate the offending activity; and
- (6) an injunction will not adversely affect the public interest.

See also *Cty. of Allegheny v. Commonwealth*, 544 A.2d 1305 (Pa. 1988); *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995 (Pa. 2003); *Lee Publ'ns, Inc. v. Dickinson Sch. of Law of the Pa. State Univ. Ass'n*, 848 A.2d 178 (Pa. Cmwlth. 2004). All six factors of this standard weigh in favor of granting a preliminary injunction in this case.

First, injunctive relief is necessary to prevent immediate and irreparable harm, which cannot be compensated by monetary damages. Citizens in Luzerne County are preparing to vote in the upcoming November 5 election, which includes voting by mail. Delay in restoring the drop boxes could lead to countless voters missing the deadline for receipt of mail-in ballots and thereby being disenfranchised. This risk is particularly high for elderly voters and voters with disabilities who cannot easily travel to in-person polling places and vote in person on Election Day. Especially for voters who experience sudden schedule changes that prevent them from voting in person on Election Day, drop boxes are a vital way to ensure the ballot arrives by the deadline, i.e., once deposited, rather than relying on the uncertainty that attends U.S. Post Office delivery services.

Second, greater injury in the form of disenfranchised voters will occur from denying the injunctive relief than by granting it as the drop boxes have been in place since 2020 with no recorded incidents of fraud or misconduct. As no harm has occurred from the drop boxes' presence, there is no indication of any apparent harm to the County.

Third, this is a case in which the injunctive relief will restore the *status quo* as it existed before the Defendant's wrongful conduct. Luzerne County has demonstrated its

ability to efficiently and securely accept ballots at drop boxes in prior elections, and Plaintiffs merely seek to maintain this established practice, not to impose additional obligations on the County. The Board of Elections has not taken any action to remove the drop boxes for the November 2024 election, so the policy to use those drop boxes will “continue ‘unless and until’ the County Board undert[akes] a new policy.” *Ctr. for Coalfield Just. v. Wash. Cnty. Bd. of Elections*, No. 1172 C.D. 2024, 2024 WL 4272040, at *2, (Pa. Cmwlth. Sept. 24, 2024).

Fourth, as discussed above, the Defendant’s activity is actionable, the Plaintiffs’ right to relief is clear, and the wrong is manifest. The Plaintiffs are likely to prevail on the merits because the Pennsylvania Election Code clearly states that the Luzerne County Board of Elections, not the County Manager, has the authority to direct the execution and administration of the election in the County. See 25 P.S. § 2642.

Fifth, the injunction is reasonably suited to abate the offending activity of the Defendant. Plaintiffs seek simply to prevent the impending removal of four election drop boxes by the County Manager, as discussed in the County Manager’s September 8, 2024, and September 23, 2024, statements.

Sixth, the injunction will not adversely affect the public interest and instead will support it. The Pennsylvania Supreme Court noted that “it is well-settled that, ‘although election laws must be strictly construed to prevent fraud, they ordinarily will be construed liberally in favor of the right to vote’” and the “goal must be to enfranchise and not to

disenfranchise the electorate.” *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020) (internal citations omitted). Preventing the removal of drop boxes without authorization from the Luzerne County Board of Elections—the exclusive decision-maker as to these matters under the Election Code—will enfranchise the electorate and favor the right to vote. This injunctive relief is particularly appropriate where, as here, there is no evidence of any harm to the public interest.

For all the foregoing reasons, this Court should grant the requested injunctive relief enjoining the Defendant from eliminating the four election drop boxes approved by the Board of Elections.

RESPECTFULLY SUBMITTED:

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