

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

James Walsh,	:	
Plaintiff,	:	
	:	CIVIL ACTION - LAW
v.	:	
	:	No. 4:24-cv-01878
Luzerne County, Luzerne Bureau	:	
of Elections, and Luzerne County Board	:	Chief Judge Matthew W. Brann
of Elections and Registration,	:	
Defendants.	:	

**DEFENDANTS', LUZERNE COUNTY
AND THE LUZERNE COUNTY BUREAU OF ELECTIONS,
MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendants, Luzerne County and the Luzerne County Bureau of Elections (together, "Moving Defendants"), by and through their counsel, hereby move to dismiss Plaintiff's Second Amended Complaint (*Doc. 22*) as set forth below.

This matter arises out of alleged Constitutional and Pennsylvania Election Code violations relating to the now past November 5, 2024 election.

1. Plaintiff filed a Complaint and Motion for Special and Preliminary Injunction on October 25, 2024, in the Luzerne County Court of Common Pleas, which Court, by Order dated October 28, 2024, scheduled a hearing on Plaintiff's Motion for October 30, 2024, at 11:00 a.m.

2. On October 30, 2024, the Luzerne County Court of Common Pleas commenced the preliminary injunction hearing during which Moving Defendants' counsel apprised the Court that they intended to remove the instant matter to federal court and contemporaneously filed a Notice of Removal in the United States District Court for the Middle District of Pennsylvania and a Notice of Filing of Notice of Removal with the Luzerne County Court of Common Pleas.

3. The Luzerne County Court of Common Pleas immediately ceased its proceedings and did not reach a decision nor enter an order at the Preliminary Injunction Hearing.

4. This matter was removed to this Court on October 30, 2024, and Plaintiff filed an Amended Complaint. *Doc. 7.*

5. This Court set a hearing on Plaintiff's Motion for Preliminary Injunction for November 4, 2024.

6. Plaintiff withdrew his Motion for Preliminary Injunction by letter on November 4, 2024, *doc. 12*, and proceeded on his Amended Complaint, *doc. 7*.

7. This Court canceled the hearing following Plaintiff's withdrawal of his Motion for Preliminary Injunction. *Doc. 14.*

8. Moving Defendants filed a Motion to Dismiss Plaintiff's Amended Complaint on November 15, 2024, *doc. 15*, and a Brief in Support thereof on November 27, 2024, *doc. 18*.

9. Codefendant Luzerne County Board of Elections and Registration filed a Motion to Dismiss Plaintiff's Amended Complaint on November 15, 2024, *doc. 16*, and a Brief in Support thereof on November 28, 2024, *doc. 19*.

10. In response to the Motions to Dismiss, Plaintiff filed a Consent Motion for Leave to File a Second Amended Complaint on December 5, 2024, *doc. 20*, which this Court granted on December 11, 2024, *doc. 21*.

11. Accordingly, Plaintiff proceeds on his Second Amended Complaint, filed December 11, 2024. *Doc. 22*.

12. Plaintiff has not—because he cannot—cured any defects with his Second Amended Complaint, and Moving Defendants file the instant Motion to Dismiss Plaintiff's Second Amended Complaint.

A. Plaintiff's Second Amended Complaint Should be Dismissed Because Plaintiff Lacks Prudential Standing.

13. Plaintiff's Second Amended Complaint has done nothing to remedy his lack of prudential standing.

14. This Court recently recognized that standing includes both Constitutional and prudential standing, the latter of which exists for a plaintiff “if: (1) he is asserting his own legal rights, rather than those of another; (2) his grievance is not abstract and generalized; and (3) his ‘complaint falls within the zone of interest protected by the law invoked.’” *Jackson v. KWU Co.*, No. 4:24-CV-01275, 2024 WL 4279504, at *2 (M.D. Pa. Sept. 24, 2024) (citations omitted).

15. “Because it is nonjurisdictional, prudential standing is analyzed under the Rule 12(b)(6) standard, which places the burden on the movant to show that the plaintiff has failed to state a claim when all well-pled allegations are accepted as true and all reasonable inferences drawn in his favor.” *Id.* (citing *Potter v. Cozen & O’Connor*, 46 F.4th 148, 157 (3d Cir. 2022)).

16. Here, Plaintiff is not asserting his own legal rights; rather, on the face of his Second Amended Complaint, Plaintiff inappropriately attempts to assert the legal rights of others. *See Doc. 7* at ¶¶ 8-9, 24, 26-27, 39-40, 42-43, 47, 51, 58, 65 (referencing 2,500 or several thousand unnamed individuals **but not** Plaintiff).

17. Additionally, Plaintiff’s grievance is abstract and generalized insofar as the “facts” pleaded in Plaintiff’s Second Amended Complaint revolve around Plaintiff’s purported “information and belief.” *Id.* at ¶¶ 8-9, 24, 26-27, 49, 58, 65 (pleading “facts” solely upon “information and belief,” which “facts” relate to the aforementioned 2,500 unnamed individuals).

18. Finally, Plaintiff’s Second Amended Complaint does not fall within the zone of interest of the Constitution nor the Pennsylvania Election Code insofar as the averments of Plaintiff’s Second Amended Complaint woefully are inadequate.

19. Accordingly, in the absence of any factual allegations to substantiate the notion that Plaintiff asserts his own rights, and that Moving Defendants did or failed to do something impacting those rights, the three claims in Plaintiff’s Second

Amended Complaint should be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

WHEREFORE, Defendants, Luzerne County and the Luzerne County Bureau of Elections, respectfully request that this Honorable Court grant their Motion to Dismiss Plaintiff's Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6).

B. Plaintiff's Second Amended Complaint Should be Dismissed Because Plaintiff's Claims are Moot.

12. Plaintiff's Second Amended Complaint has failed to address his moot claims.

13. "When the questions or issues presented are no longer 'live,' the case is moot. That is, an issue is moot if changes in circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief." *Ordonez-Tevalan v. Attorney Gen. of U.S.*, 837 F.3d 331, 339-40 (3d Cir. 2016) (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 396 (1980)).

14. "Mootness evaluates a plaintiff's 'personal interest in the dispute' throughout the proceedings." *Road-Con, Inc. v. City of Phila.*, 120 F.4th 346, 356 (3d Cir. 2024) (quoting *Uzuegbunam v. Preczewski*, 592 U.S. 279, 282 (2021)).

15. "A 'case generally is moot' when 'in the course of litigation, a court finds that it can no longer provide a plaintiff with any effectual relief.'" *Id.* (quoting *Uzuegbunam*, 592 U.S. at 282).

16. Here, the gravamen of Plaintiff's poorly pleaded allegations revolves around the November 5, 2024, election, which indisputably has concluded.

17. Plaintiff's Second Amended Complaint alleges that Plaintiff must vindicate the rights of the aforementioned unnamed thousands of voters (which he cannot do) "to prevent future violations of those rights to vote by Defendants." *Doc.* 22 at ¶¶ 10, 55, 74.

18. Plaintiff's allegations of future harm do not save his Second Amended Complaint from its fatal mootness.

19. This Court rejected a capable-of-repetition argument where the plaintiff failed to "adduce 'affirmative evidence' of a reasonable expectation that he will be subject to the same conduct again." *Elliott v. Pa. Interscholastic Athletic Ass'n, Inc.*, 595 F. Sup. 3d 213, 332 (M.D. Pa. 2022) (citing *N.J. Turnpike Auth. v. Jersey Cent. Power and Light*, 772 F.2d 25, 34 (3d Cir. 1985)).

20. Moreover, courts have made clear that "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Castello v. Abrogast*, No. 4:24-CV-1032, 2024 WL 4941027, at *2 (M.D. Pa. Dec. 2, 2024) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); accord *Rosario v. Middlesex Cnty. Prosecutor's Office*, No. 23-20854 (RK) (JTQ), 2024 WL 5153276, at *4 (D.N.J. Dec. 18, 2024)).

21. Accordingly, this Court—and indeed, any court—cannot provide Plaintiff with any effectual relief, and the three claims in Plaintiff’s Second Amended Complaint should be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

WHEREFORE, Defendants, Luzerne County and the Luzerne County Bureau of Elections, respectfully request that this Honorable Court grant their Motion to Dismiss Plaintiff’s Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6).

C. Plaintiff’s Second Amended Complaint Should be Dismissed Because Plaintiff’s Second Amended Complaint Fails to State Any Claim Upon Which Relief Can be Granted.

22. “In deciding a motion to dismiss, the Court should consider the allegations in the complaint, exhibits attached to the complaint, and matters of public record.” *Edwards v. Borough of Dickson City*, 994 F. Supp. 2d 616, 619 (M.D. Pa. 2014) (citing *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993)).

23. “The Court need not assume the plaintiff can prove facts that were not alleged in the complaint . . . or credit a complaint’s ‘bald assertions’ or ‘legal conclusions.’” *Id.* (citing *City of Pittsburgh v. W. Penn Power Co.*, 147 F.3d 256, 263 n.13 (3d Cir 1988) and quoting *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997)).

24. Plaintiff's Pennsylvania Election Code claims cannot be brought since no private right of action—explicit or implicit—exists relative to these claims. *See, e.g., Huber v. Simon's Agency, Inc.*, 84 F.4th 132, 147 (3d Cir. 2023) (noting that a private right of action must exist to enforce statutory rights).

25. Here, Plaintiff pleads putative facts “upon information and belief,” which putative facts amount to nothing more than bald assertions. *Doc. 22* at ¶¶ 8-9, 24, 26-27, 49, 58, 65.

26. Moreover, Plaintiff's Second Amended Complaint is rife with allegations which are mere legal conclusions. *Id.* at ¶¶ 2-10, 18, 24-30, 32-34, 37-48, 50-61, 63-67, 69-74.

27. Accordingly, Plaintiff has failed to state a claim upon which relief can be granted, and Plaintiff's Second Amended Complaint should be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

WHEREFORE, Defendants, Luzerne County and the Luzerne County Bureau of Elections, respectfully request that this Honorable Court grant their Motion to Dismiss Plaintiff's Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6).

Respectfully Submitted,

Date: December 27, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss Second Amended Complaint was served this 27th day of December, via the Court’s Electronic Case Filing (“ECF”) system upon all counsel of record.

/s/ Mark E. Cedrone

MARK E. CEDRONE

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