

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

JAMES WALSH,	:	No. 4:24-CV-01878
	:	
Plaintiff,	:	(Chief Judge Brann)
	:	
v.	:	
	:	
LUZERNE COUNTY, LUZERNE	:	
BUREAU OF ELECTIONS,	:	
and LUZERNE COUNTY BOARD	:	
OF ELECTIONS AND REGISTRATION,	:	
	:	
Defendants.	:	

DEFENDANT LUZERNE COUNTY BOARD
OF ELECTIONS AND REGISTRATION'S MOTION TO DISMISS
PLAINTIFF'S THIRD AMENDED COMPLAINT

Luzerne County Board of Elections and Registration ("Board"), Defendant herein and by and through undersigned counsel hereby moves this Honorable Court to dismiss Plaintiff's Third Amended Complaint, Doc. 30, as follows:

1. Plaintiff's original complaint, filed in the Court of Common Pleas of Luzerne County on October 25, 2024, began this action and was accompanied by a "motion" for special and preliminary injunction. Doc. 1-2 (p. 1, *et seq.*).

2. The Court of Common Pleas held a hearing before a three judge panel on October 30, 2024, at which time counsel for Defendants Luzerne County and Luzerne County Bureau of Elections ("County Defendants") advised that the

County Defendants' intended to remove this matter to federal court, something which occurred later that day. Doc. 1.

3. After removal, this Court held a status conference by telephone on October 31, 2024, at which time, among other matters discussed, the Court was advised of the error in the caption of the complaint filed in Common Pleas, i.e., the mistaken listing of "Luzerne County Board of Elections" and "Luzerne County Board of Elections and Registration" as defendants, when the former does not exist and the latter is the actual "board" assigned to address election matters. (It was clear that Plaintiff's intent was to also name the Luzerne County *Bureau of Elections* as a Defendant.)

4. At that time, this Court tentatively scheduled a hearing for the afternoon of November 1, 2024, and directed Plaintiff to file a corrective pleading which clarified that one of the County Defendants was the Luzerne County *Bureau of Elections*. Plaintiff accomplished this by the filing of his Amended Complaint. Doc. 7.¹

5. At the Court's urging, the parties attempted to resolve this matter among themselves. As Plaintiff's letter to the Court on November 1, 2024 indicated, Doc. 8, although they could not reach resolution, the parties "had helpful

¹ This first of the series of Plaintiff's amended complaints contained a new error in its caption, but this was corrected in the Second Amended Complaint, Doc. 22, as well as the Third, Doc. 30.

communications ... [which] narrowed [the issues] for the court and [allowed for a] presentation [to] be honed."

6. With the parties failing to reach resolution, the Court scheduled a hearing for November 4, 2024 at 4:00 P.M. on Plaintiff's request for injunctive relief. Doc. 10.² On the morning of the 4th, Plaintiff submitted two letters to the Court, Docs. 11 and 12, withdrawing his injunction request, with both letters indicating that any injunctive relief Ordered by the Court at that time would be "practically [in]effective." Doc. 11.³ Accordingly, the Court cancelled the Evidentiary Hearing. Doc. 14.

7. Thereafter, the County Defendants filed a motion to dismiss, Doc. 15, and supportive brief, Doc. 18, with the Board likewise filing a motion to dismiss, Doc. 16 and brief, Doc. 19.

8. Without addressing these respective motions, Plaintiff sought and received concurrence from the Defendants regarding his motion to file a Second Amended Complaint, Doc. 20, which the Court granted on December 11, 2024. Doc. 21.

² The Court further directed the Board to "file a 'clear and unambiguous' written indication" of its consent to the removal of this matter, to which the Board complied. Doc. 13.

³ The language of Plaintiff's second letter stated the belief that "it would be difficult for an injunction issued th[at] evening to be effective as a practical matter ..." Doc. 12.

9. That same day, Plaintiff filed the Second Amended Complaint, Doc. 22.⁴

10. On December 26, 2024, the Board filed its motion to dismiss this Second Amended Complaint, Doc. 24, with the County Defendants filing theirs the next day. Doc. 25,

11. Before the defendants filed their supportive briefs, Plaintiff again sought (and received) their concurrence to file a *third* amended complaint, which Plaintiff followed with another motion seeking this Court's leave to file same. Doc. 28. The only substantive difference between the Second and Third Amended Complaints is that the Third corrected an obvious typographical error regarding the legislative district which Plaintiff now represents.

12. With the Court granting this motion, Doc. 29, Plaintiff filed the Third Amended Complaint, Doc. 30, which is subject of the present motion.⁵

MOTION TO DISMISS / NON-JUSTICIABLE MATTTTER

a. Plaintiff fails to allege facts sufficient to establish standing

13. Paragraphs 1 through 12 are incorporated herein by reference.

⁴ Given the filing of the Second Amended Complaint, the Court denied the respective motions to dismiss, Docs. 15 and 16, as moot. Doc. 23.

⁵ Again, and with the filing of the Third Amended Complaint, the Court dismissed as moot the challenges to the Second Amended Complaint. Doc. 33.

14. The issue of Plaintiff's lack of standing to pursue this matter (raised herein) has been raised in this matter previously by the Board, first during the status conference held on October 31, 2024, and in its previous motions to dismiss, Docs. 16 and 24.

15. "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

16. "In evaluating whether a complaint adequately pleads the elements of standing, courts apply the standard of reviewing a complaint pursuant to a Rule 12(b)(6) motion to dismiss for failure to state a claim: Courts must accept as true all material allegations set forth in the complaint, and must construe those facts in favor of the nonmoving party. ... A dismissal for lack of statutory standing is effectively the same as a dismissal for failure to state a claim." *In re Schering Plough Corp. Intron/Temodar Consumer Class Action*, 678 F.3d 235, 243 (3d Cir. 2012)(cleaned up).

17. As with the preceding three incarnations of his complaining pleading, Plaintiff's Third Amended Complaint fails in all aspects to remotely present any fact establishing his standing to pursue this matter.

18. Plaintiff continues to advance bald and unsupported allegations that the "Defendants" have: (a) failed to process "approximately 2,500" new voter registrations (Doc. 30, ¶¶ 8, 24, 26, 39, 42, 47a, 58); and (b) have not timely processed "several thousand" mail in ballot applications and ballots themselves (Doc. 30, ¶¶ 9, 27, 40, 43, 47b, 65).

19. Along with failing to offer any specifics as to how the Board has failed in its duties regarding these alleged registrations or mail in ballot requests, the Third Amended Complaint further fails to allege that Plaintiff himself is one of these "2,500" individuals or one of the "several thousand" mail in ballot requestors.

20. As the Supreme Court has held, "when the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. [E]ven when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, this Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth*, 422 U.S. at 499 (cleaned up).

21. Plaintiff asserts an interest in his claims because he "is a qualified and registered voter in the Commonwealth of Pennsylvania who resides in Luzerne County and candidate for Representative of the 117th Legislative District in the

General Assembly..." Doc. 22, ¶ 11, and is "now the incumbent [Representative] of the 117th Legislative District ..." ¶ 52.

22. These assertions pose nothing specific or personal to Plaintiff regarding the alleged failures relative to voter registration or requests for mail in ballots and suggest nothing other than Plaintiff's "rest[ing] his claim to relief on the legal rights or interests of third parties." *Warth, supra*.

23. Although Plaintiff avers he was the successful candidate for legislative office and is now the incumbent, he fails to claim that any error on the part of the Board regarding voter registration or mail in ballot requests somehow impaired his election.

24. Anchored to nothing specific, Plaintiff now alleges that on "information and belief," a "majority" of the unnamed 2,500 alleged voter registrants and alleged "thousands" of mail in ballot requestors "intended to vote for Plaintiff" in the November 2024 election. Doc. 30, ¶ 49.

25. Even if such vague allegations were true, there is nothing within same which establishes Plaintiff's standing nor suggest that he is advancing anything other than someone else's rights (i.e., the alleged unnamed registrants and mail in voters).

26. Additionally, Plaintiff claims that expending campaign funds to litigate the present matter, including the effort to seek "emergency preliminary

injunction," Doc. 22, ¶ 51, does nothing to confer standing, since "electing to undertake expenditures to insure against a result that may or may not come" fails to confer standing. *See Bost v. Illinois State Board of Elections*, 114 F.4th 634, 643 (7th Cir. 2024).⁶

WHEREFORE, as Plaintiff lacks standing to advance this matter, Defendant Luzerne County Board of Elections and Registration hereby moves this Honorable Court to dismiss Plaintiff's Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

b. Plaintiff's claims are moot

27. Paragraphs 1 through 26 are incorporated herein by reference.

28. As noted above, Plaintiff is now the duly elected Representative of Legislative District 117. Given this, the harm which allegedly resulted from any of the alleged registration and/or mail in ballot failures had no bearing on his electoral success.

29. "A plaintiff's claim is rendered moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. The central question of all mootness issues, then, is whether changes in circumstances

⁶ Plaintiff had every opportunity to advance his case before this Court during the November 4 scheduled evidentiary hearing, but decided to withdraw his request for injunctive relief, declaring for himself that any relief granted would not have "practical" effect, rather than leaving to the Court the decision as to what, if any, versions of relief were proper and available. *See* Docs. 11 and 12. Any claim that expenditure for this withdrawn effort confers standing is wholly without merit.

that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief." *Mayer v. Wallingford-Swarthmore Sch. Dist.*, 405 F. Supp. 3d 637, 640 (E.D. Pa. 2019)(cleaned up).

30. As there is no relief available to further advance Plaintiff as candidate, his claims fall squarely within the orbit of mootness jurisprudence.

WHEREFORE, as Plaintiff's claims are moot, Defendant Luzerne County Board of Elections and Registration hereby moves this Honorable Court to dismiss Plaintiff's Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

c. Plaintiff's claims are not ripe.

31. Paragraphs 1 through 30 are incorporated herein by reference.

32. As the now-incumbent office holder whose election was not incumbered by any claimed violations by the Board, the seeming lynchpin of Plaintiff's claim now is that if the allegedly improper actions by the Board "and/or the [Luzerne County] Bureau of Elections were to continue ... it is quite possible that Plaintiff will be irreparably harmed again in the upcoming primary and/or general election ..." Doc. 30, ¶ 53.

33. As it is unclear as to what "upcoming" elections Plaintiff refers (especially since his seat will not be on the ballot until 2026), and given the

extraordinarily vague assertion of some harm being "quite possible," it is clear that Plaintiff seeks peremptory action against something which may or may not occur.

34. The "basic rationale [of the ripeness doctrine] is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Marriott Senior Living Servs., Inc. v. Springfield Twp.*, 78 F. Supp. 2d 376, 384–85 (E.D. Pa. 1999).

35. Given the speculative aspect of Plaintiff's allegations and claims of harm remotely possible in the future, the Third Amended Complaint runs afoul of this doctrine.

WHEREFORE, as Plaintiff's claim is not ripe, Defendant Luzerne County Board of Elections and Registration hereby moves this Honorable Court to dismiss Plaintiff's Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

**MOTION TO DISMISS / FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED**

36. Paragraphs 1 through 35 are incorporated herein by reference.

37. Given the vagueness of the allegations, and the utter failure of Plaintiff to allege any specific violations of any duty on the part of the Board, the Third Amended Complaint fails to "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

38. Even accepting as true all the facts alleged in the Third Amended Complaint, Plaintiff has not pleaded “enough facts to state a claim to relief that is plausible on its face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007), thus requiring dismissal of the Third Amended Complaint.

WHEREFORE, as Plaintiff has failed to state a claim upon which relief can be granted, Defendant Luzerne County Board of Elections and Registration hereby moves this Honorable Court to dismiss Plaintiff's Third Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6).

Respectfully submitted,

s/ Joseph M Cosgrove
PA ID 37130
SELINGO GUAGLIARDO LLC
345 Market Street
Kingston PA 18704
570-287-2400

preferred email and fax:
jmcosgro@msn.com
570-227-0096

*Attorneys for Defendant Luzerne
County Board of Elections and
Registration.*

CERTIFICATE OF SERVICE

I Joseph M Cosgrove, do hereby certify that a true and correct copy of the present Motion to Dismiss was served via the Court's Electronic Case Filing (ECF) system upon all counsel of record.

s/Joseph M Cosgrove

RETRIEVED FROM DEMOCRACYDOCKET.COM