

**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 LUZERNE COUNTY
BUREAU OF ELECTIONS, BRIEF IN SUPPORT OF
MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT**

Defendants, Luzerne County and Luzerne County Bureau of Elections (together, "Moving Defendants"), by and through undersigned counsel, submit this Brief in Support of their Motion to dismiss Plaintiff's Third Amended Complaint, *Doc. 34*, pursuant to Fed. R. Civ. P. 12(b)(6).

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

This matter derives from alleged, legally deficient averments concerning purported Constitutional and Pennsylvania Election Code violations relating to the now past November 5, 2024, election. On October 25, 2024, Plaintiff, James Walsh (the "Plaintiff"), filed a Complaint and Motion for Special and Preliminary Injunction in the Luzerne County Court of Common Pleas. On October 28, 2024,

that court scheduled a hearing on Plaintiff's Motion for October 30, 2024, at 11:00 am, which commenced as scheduled. During the October 30, 2024, hearing, Moving Defendants apprised the Luzerne County Court of Common Pleas that they intended to remove the 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.

The Luzerne County Court of Common Pleas immediately ceased its proceedings and neither reached a decision concerning, nor entered an order on, Plaintiff's requested Preliminary Injunction.¹ This matter was removed to this Court on October 30, 2024, and on November 1, 2024, Plaintiff filed an Amended Complaint. *Doc. 7*. This Court set a hearing on Plaintiff's Motion for Preliminary Injunction for November 4, 2024, which did not occur because Plaintiff withdrew his Motion by letter dated November 4, 2024, and noted that Plaintiff is proceeding on his Amended Complaint "in normal fashion." *Doc. 12*.

On November 15, 2024, Moving Defendants filed a Motion to Dismiss Plaintiff's Complaint. *Doc. 15*. On that same date, Codefendant Luzerne County

¹ The Luzerne County Court of Common Pleas did deny an oral motion to dismiss the case made by co-defendant the Luzerne County Board of Elections and Registration, in which Moving Defendants joined.

Board of Elections and Registration also filed a Motion to Dismiss. *Doc. 16*. 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*. Plaintiff filed his Second Amended Complaint filed December 11, 2024, *Doc. 22*, and both Codefendant and Moving Defendants filed Motions to Dismiss Plaintiff's Second Amended Complaint on December 26 and December 27, 2024, respectively, *Docs. 24, 25*.

Once again, in response to the Motions to Dismiss, Plaintiff filed a Consent Motion for Leave to File a Third Amended Complaint on January 3, 2025, *Doc. 28*, which this Court granted on January 6, 2025, *Doc. 29*. Accordingly, Plaintiff proceeds on, and Moving Defendants move to dismiss, Plaintiff's Third Amended Complaint insofar as Plaintiff has not—because he cannot—cure any defects with his Third Amended Complaint. Indeed, **Plaintiff's *only* revision in the Third Amended Complaint corrected an apparent clerical error** by changing the 119th Legislative District to the 117th. *See Doc. 30* at ¶¶ 11, 28, 48-49, 52, 59-60.

Moving Defendants now timely submit this Brief in Support of their Motion to Dismiss Plaintiff's Third Amended Complaint.

II. QUESTIONS PRESENTED

- A. **Whether Plaintiff’s Third Amended Complaint Should be Dismissed Pursuant to Fed. R. Civ. P. 12(b)(6) for Lack of Prudential Standing?**

Suggested Answer: Yes.

- B. **Whether Plaintiff’s Third Amended Complaint Should be Dismissed Pursuant to Fed. R. Civ. P. 12(b)(6) Because the Claims Asserted are Moot?**

Suggested Answer: Yes.

- C. **Whether Plaintiff’s Third Amended Complaint Should be Dismissed Pursuant to Fed. R. Civ. P. 12(b)(6) Because Plaintiff’s Amended Complaint Fails to State a Claim Upon Which Relief Can be Granted?**

Suggested Answer: Yes.

III. ARGUMENT

To avoid dismissal under Federal Rule of Civil Procedure 12(b)(6), a complaint must include factual allegations that “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 697 (2009). A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the complaint and in making this determination, a court must read the complaint in the light most favorable to the plaintiff and all factual allegations must be considered true. *Estelle v. Gamble*, 429 U.S. 97, 99 (1976). In determining whether a plaintiff has met this standard, the reviewing court must ignore legal conclusions, “[t]hreadbare recitals

of the elements of a cause of action supported by mere conclusory statements [,] . . . labels and conclusions[,]” and “naked assertions [that are] devoid of ‘further factual enhancement.’” *Iqbal*, 556 U.S. at 677 (citations omitted). Such allegations are “not entitled to the assumption of truth.” *Id.* at 679.

Thus, “a complaint must do more than allege the plaintiff’s entitlement to relief. A complaint [must] ‘show’ such an entitlement with its facts.” *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009). Furthermore, federal notice and pleading rules require the complaint to “give the defendant notice of what the . . . claim is and the grounds upon which it rests.” *Sershen v. Cholish*, No. 3:07-CV-1011, 2007 WL 3146357, at *4 (M.D. Pa. Oct. 26, 2007) (quoting *Erickson v. Pardus*, 551 U.S. 89, 127 S. Ct. 2197, 2200, 167 L. Ed. 2d 1081 (2007)). The plaintiff must allege facts that, if true, demonstrate a plausible right to relief. *See* Fed. R. Civ. P. 8(a) (stating that the complaint should include “a short and plain statement of the claim showing that the pleader is entitled to relief”); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 548 (2007) (requiring plaintiffs to allege facts sufficient to “raise a right to relief above the speculative level”); *Victaulic Co. v. Tieman*, 499 F.3d 227, 234 (3d Cir. 2007).

A plaintiff must make a factual showing of his entitlement to relief by alleging sufficient facts that, when taken as true, suggest the required elements of a particular legal theory. *Twombly*, 550 U.S. at 555 at 562. “[W]here the well-pleaded facts do

not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘shown’—‘that the pleader is entitled to relief.’” *Iqbal*, 556 U.S. at 679 (citing Fed. R. Civ. P. 8(a)(2)).

This Court recently noted that, within the Third Circuit, courts review a complaint’s sufficiency consistent with *Twombly* and *Iqbal* in three steps:

- (1) “take note of the elements the plaintiff must plead to state a claim”;
- (2) “identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth”; and
- (3) “assume the veracity” of all “well-pleaded factual allegations” and then “determine whether they plausibly give rise to an entitlement to relief.”

Morgan v. Centre Cnty., No. 4:23-CV-00872, 2024 WL 4713870, at *2 (M.D. Pa. Nov. 7, 2024) (quoting *Connelly v. Lane Const. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016)). As explained below, Plaintiff’s Third Amended Complaint is woefully insufficient because Plaintiff lacks prudential standing, Plaintiff’s claims are moot, and Plaintiff’s Third Amended Complaint fails to state a claim upon which relief can otherwise be granted.

Moreover, and critically, Plaintiff thrice has amended his complaint merely making minor modifications in response to pending Motions to Dismiss. Moving Defendants foresee two future possibilities awaiting this Court and the Defendants: (1) Plaintiff may attempt to file a fourth amended complaint via consent motion, as he already has done twice; or (2) Plaintiff may respond to the Motions to Dismiss by arguing that the Motions to Dismiss should be denied and, if the Motions to Dismiss

are granted, that this Court also should grant Plaintiff leave to file a fourth amended complaint.

In the first scenario, Moving Defendants respectfully will object to and decline to endorse any further consent motions to file amended complaints in this matter. In the second scenario, should this Court be inclined to grant Moving Defendants' Motion to Dismiss, Moving Defendants respectfully oppose any leave for Plaintiff to further amend his operative Complaint insofar as Plaintiff's prior amendments did not even attempt to cure any pleading defects first raised by Moving Defendants in response to Plaintiff's original pleading. *See Docs. 7, 22, 30.* Moving Defendants oppose² future amendment of the complaint insofar as the *Foman* factors provide that "[d]enial of leave to amend can be based on undue delay, bad faith or dilatory motive on the part of the movant; **repeated failure to cure deficiencies by amendments previously allowed**; prejudice to the opposing party; and futility." *Foman v. Davis*, 371 U.S. 178, 182 (1962) (emphasis added); *accord Mullin v. Balicki*, 875 F.3d 140, 149 (3d Cir. 2017).

² Plaintiff's trivial alterations throughout his three amended complaints form the foundation of Moving Defendants' opposition and demonstrates Plaintiff's dilatory motive and, obviously, Plaintiff's repeated failures to even attempt to cure any deficiencies. Plaintiff's repeated failures make sense since no amount of amendment will alter the utter lack of underlying factual support for Plaintiff's allegations. Additionally, Plaintiff's perpetual procession of pleadings prejudices the Defendants by keeping alive baseless litigation which renders any further amendment futile.

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

Plaintiff's Third Amended Complaint has done nothing to remedy his lack of prudential standing. 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). "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)).

The requirements of prudential standing "are not derived from Article III, and rather are 'a set of judge-made rules forming an integral part of judicial self-government.'" *Potter*, 46 F.4th at 154 (citations omitted). "This prudential rule is designed to 'avoid deciding questions of broad social import . . . and to limit access to the federal courts to those litigants best suited to assert a particular claim.'" *N.J. Bankers Ass'n v. Atty. Gen. N.J.*, 49 F.4th 849, 859 (3d Cir. 2022) (quoting *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 99-100 (1979)).

First, it is clear that Plaintiff is not asserting his own legal rights. Rather, on the face of his Third Amended Complaint, Plaintiff inappropriately attempts to assert the rights of others. *See Doc. 30* at ¶¶ 8-10, 23-24, 26-27, 39-40, 42-43, 47, 49-51, 58, 65, 73-74 (referencing 2,500 unnamed individuals **but not** Plaintiff). Essentially, Plaintiff suggests, but does not specifically allege, the disenfranchisement of the right to vote of this amorphously pled 2,500 unnamed individuals. Moreover, and critically, Plaintiff does not and could not plead that his right to vote has been somehow disenfranchised.³

Second, Plaintiff's Third Amended Complaint pleads a grievance which is nothing more than abstract and generalized insofar as the "facts" pled revolve around Plaintiff's purported "information and belief." *See Doc. 30* 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 **but not** Plaintiff). Indeed, Plaintiff's grievance could not be more abstract and generalized since Plaintiff himself pled nothing of substance to support his allegations, nor has he provided any insight into the basis for his "information and belief."

³ Although outside the pleading record, Plaintiff has conceded that he submitted a mail-in ballot for the November 5, 2024, election, which was received and properly processed. In fact, attached hereto as Exhibit "A" is a partially redacted copy of Plaintiff's public record from the Pennsylvania Statewide Uniform Registry of Electors (aka the SURE system) establishing that Plaintiff last voted on November 5, 2024.

Third, Plaintiff's Third Amended Complaint does not fall within the zone of interest of the Constitution nor the Pennsylvania Election Code insofar as Plaintiff's averments are woefully inadequate. Moreover, Plaintiff does not, because he cannot, avail himself of a private right of action relative to the Pennsylvania Election Code claims since no such private right of action exists. *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).

Accordingly, in the absence of any factual allegations to substantiate that Plaintiff asserts his own rights, and that Moving Defendants did or failed to do something impacting those rights, all three claims in Plaintiff's Third Amended Complaint should be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(6) for failure to plead prudential standing.


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

Plaintiff's Third Amended Complaint, like all previous versions thereof, has failed to address his moot claims. "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)). "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)). “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).

Stated differently, a case becomes moot where, as here, “developments occur during the course of adjudication that eliminate a plaintiff’s personal stake in the outcome of a suit or prevent a court from being able to grant the requested relief.” *Hamilton v. Bromley*, 862 F.3d 329, 335 (3d Cir. 2017) (quoting *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 698-99 (3d Cir. 1996)). At bottom, a federal court “may not ‘decide questions that cannot affect the rights of litigants in the case before them’ or give ‘opinions advising what the law would be upon a hypothetical set of facts.’” *Id.* (quoting *Blanciak*, 77 F.3d at 698-99).

Here, the gravamen of Plaintiff’s poorly pled allegations revolves around the November 5, 2024, election, which indisputably has concluded. Critically, Plaintiff ran unopposed in this election for a seat which had no incumbent,⁴

117th Legislative District	By County	By Vote Method
JAMIE WALSH (REP)		100% (Votes: 28,176)

⁴ Available at:

<https://www.electionreturns.pa.gov/General/OfficeResults?officeId=13&ElectionID=105&ElectionType=G&IsActive=1>

And Plaintiff currently is noted to be the 117th Legislative District's Representative.⁵

Further, Plaintiff's Third Amended Complaint alleges that Plaintiff must vindicate the rights of the aforementioned unnamed thousands of votes (which he cannot do) "to prevent future violations of those rights to vote by Defendants." *Doc. 30* at ¶¶ 10, 55, 74. Plaintiff's allegations of future harm do not save his Third Amended Complaint from its fatal mootness. 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. Supp. 3d 312, 332 (M.D. Pa. 2022) (citing *N.J. Turnpike Auth. v. Jersey Cent. Power and Light*, 772 F.2d 25, 34 (3d Cir. 1985)). 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)).

⁵ Available at:
https://www.legis.state.pa.us/cfdocs/legis/home/member_information/House_bio.cfm?id=2032

Additionally, to the extent Plaintiff suggests he has some sort of standing to assert the rights of other prospective, unnamed, and theoretically disenfranchised voters and, specifically, the 2,500 unnamed voter registrants, such claim(s) is/are likewise moot. Again, the gravamen of the Third Amended Complaint focuses on the November 5, 2024, election and, to the extent any entitled individual was not registered to vote, the next election is in the spring of next year and the hypothetically aggrieved voters could simply timely register for that election.

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

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

“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)). “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)).

Here, Plaintiff pleads putative facts “upon information and belief,” which putative facts amount to nothing more than bald assertions. *Doc. 30* at ¶¶ 8-9, 24, 26-27, 49, 58, 65. Moreover, Plaintiff’s Third Amended Complaint is rife with allegations constituting mere legal conclusions. *Id.* at ¶¶ 2-10, 18, 24-30, 32-34, 37-48, 50-61, 63-67, 69-74. None of these bald assertions and legal conclusions are entitled to a presumption of truth in evaluating Plaintiff’s Third Amended Complaint.

Moreover, 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). The Pennsylvania Election Code contains no provision suggesting that a private right of action exists. *See generally* 25 Pa. C.S. § 2601 *et seq.*; *see also* 25 Pa. C.S. §§ 1 1328, 3150.12b, 3150.15 (explaining Pennsylvania election procedure—not codifying private rights of action). This makes sense insofar as allowing every private citizen to file suit under the Pennsylvania Election Code would serve to paralyze not simply elections themselves, but also the courts. Additionally, and importantly, Plaintiff has

identified neither a legal theory under nor a vehicle by which he purports to bring his Pennsylvania Election Code claims.

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

IV. CONCLUSION

For the foregoing reasons, Defendants, Luzerne County and the Luzerne County Bureau of Elections, respectfully request that this Honorable Court grant their Motion to Dismiss Plaintiff's Third Amended Complaint.

Respectfully submitted:

SAXTON & STUMP

Date: February 4, 2025

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that this Brief contains 2,688 words, which is within the word limit set forth in Local Rule 7.8.

Date: February 4, 2025

/s/ Mark E. Cedrone

MARK E. CEDRONE

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss Complaint was served this 4th day of February, 2025, 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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