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

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

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION TO DISMISS FILED BY DEFENDANT LUZERNE COUNTY BOARD OF ELECTIONS AND REGISTRATION

Plaintiff James Walsh ("Mr. Walsh" or "Plaintiff"), by and through his undersigned attorney, hereby files this Memorandum of Law in Opposition to the Motion to Dismiss ("Motion") filed by Defendant Luzerne County Board of Elections and Registration ("Board"), which is joined with Defendants Luzerne County and Luzerne County Bureau of Elections (together, the "County"), (collectively, the County and the Board are referred to as "Defendants"), and opposes the Motion for the following reasons and on the following grounds:

I. BACKGROUND, PROCEDURAL HISTORY, AND COUNTER STATEMENT OF FACTS

By a narrow margin of four votes in the 2024 primary election, the qualified electors of Pennsylvania determined that Mr. Walsh would represent the Republican Party in the November 5, 2024, general election for representative of the 117th Legislative District in the General Assembly of the Commonwealth of Pennsylvania. ECF No. 30; Third Amended Complaint ("Am. Comp."), ¶¶ 11, 52, 59-60. In the General Election, the qualified electors elected Mr. Walsh, and he now serves as assemblyperson for the 117th Legislative District. Am. Comp., ¶ 52.

Procedurally, Mr. Walsh commenced this action on October 25, 2024, eleven days before the General Election, by filing a complaint in the Court of Common Pleas of Luzerne County and a Motion for a Special and Preliminary Injunction. ECF No. 1. This case concerns the unlawful conduct of Defendants in failing and/or refusing to timely process applications to vote and applications for mail-in ballots in the time period immediately preceding the General Election, thereby depriving qualified electors of their fundamental right to vote during the General Election and violating Mr. Walsh's fundamental right as a candidate to receive votes from qualified electors and have those votes counted in his favor during the General Election.

More specifically, Mr. Walsh avers in the instant complaint that the County and Board failed and/or refused to timely process approximately 2,500 additional new applications for voter registration, including from qualified electors residing within the 117th Legislative District, even though said applications were submitted prior to the October 21, 2024 statutory deadline. Mr. Walsh alleges that in implementing this internal practice and/or procedure, Defendants violated 25 Pa.Cons.Stat. § 1328 and the First Amendment. Am. Comp., ¶¶ 8, 26, 33, 39, 42, 48, 56-61, 68-74.

In addition, Mr. Walsh avers that the County and Board failed and/or refused to timely process several thousand requests for mail-in ballots, including from qualified electors residing within the 117th Legislative District, even though said requests were submitted in a timely fashion. Mr. Walsh alleges that in implementing this internal practice and/or procedure, Defendants violated 25 Pa.Cons.Stat. §§ 3150.12b and 3150.15 and the First Amendment. Am. Comp., ¶¶ 9, 27, 34, 43, 48, 62-74.

However, with respect to Mr. Walsh's Motion for a Special and Preliminary Injunction, the Common Pleas court held a hearing on October 30, 2024 (five days after the complaint was filed).

At this hearing, Defendants advised the Common Pleas court that they intended to remove the matter to the Federal District Court for the Middle District of Pennsylvania, and the Common Pleas court immediately halted the proceedings and declined to issue a ruling on the motion for a preliminary injunction. ECF No. 1. After the case was removed to federal court, this Court scheduled a hearing on the Motion for a Special and Preliminary Injunction for November 4, 2024. ECF No. 10. However, by letter dated November 4, 2024, Mr. Walsh withdrew his Motion for a Special and Preliminary Injunction, conceding that, as a practical matter, this Court was unable to grant effective relief on the day before the General Election. ECF Nos. 11-12.

On January 7, 2025, Mr. Walsh filed a third amended complaint, alleging, in addition to Defendants' failure and/or refusal to timely process applications for voter registration and requests for mail-in ballots, that:

> 48. A number of the electors' new applications for voter registration and requests for mail-in votes were from electors who reside within the 117th Legislative District in the General Assembly.
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> 49. Upon information and belief, a majority of these applicants, who were qualified electors, intended to vote for Plaintiff as the Republican candidate for Representative of the 117th Legislative District in the General Assembly; however, through the conduct of the Board and/or Bureau of Elections, these electors were deprived of their fundamental right to vote for the political candidate of their choosing because the Board and/or Bureau of Elections denied and/or or did not process their applications for voter registration and requests for mail-in votes in a timely manner, consistent with the dictates of the Pennsylvania Election Code.
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> 50. In denying or failing to timely process the qualified electors' applications for voter registration and requests for mail-in votes, the Board and/or Bureau of Elections adversely affected Plaintiff's constitutional right to run for public office, including Plaintiff's right to obtain votes from qualified electors who were legally entitled to register to vote and/or receive mail-in ballots through which to vote.
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> 51. In denying or failing to timely process the above-mentioned applications for voter registration and requests for mail-in votes, the Board and/or Bureau of Elections caused Plaintiff's campaign to expend funds on attorney's fees in litigating this matter, including, but not limited to, the attorney's fees that Plaintiff incurred in commencing this suit and while filing and preparing for an emergency

> preliminary injunction to halt Defendants' unlawful conduct that was scheduled to be held on November 4, 2024, at 4:00 p.m.—on the eve of the general election that was held on November 5, 2024.
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> 53. If the Board and/or Bureau of Elections were to continue its unlawful practice and fail to timely process applications from qualified electors to vote and applications from qualified electors to receive mail-in votes, it is quite possible that Plaintiff will be irreparably harmed again in the upcoming primary and/or general election because the conduct of the Board and/or Bureau of Elections (assuming it persists) would likely deprive Plaintiff of his constitutional rights to receive and obtain votes from qualified electors who are lawfully entitled to vote.
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> 55. It is necessary for this Court to grant Plaintiff's requests for relief in order to ensure that Defendants adhere to the requirements of the Election Code in the future. As stated, there is a tight timeline in which the Board and/or Bureau of Elections is obligated to process electors' applications for voter registration and requests for mail-in votes, and the Board and/or Bureau of Elections must comply with their statutory mandates under the Election Code to guarantee that every qualified elector's vote is counted toward the candidate of his/her choosing in accordance with the First and Fourteenth Amendments to the Constitution of the United States.

Am. Comp., ¶¶ 48-51, 53, 55.

Based on these averments, Mr. Walsh asserted that Defendants violated 25 Pa.Cons.Stat. § 1328 by failing to timely examine and process applications for registration (Count I), contravened 25 Pa.Stat. §§ 3150.12b and 3150.15 by failing to timely examine and process requests for mail-in ballots (Count II), and flouted the First and Fourteenth Amendments by denying eligible electors of their constitutional right to vote and adversely affecting Mr. Walsh's First Amendment rights to run for public office and pursue political candidacy (Count III).

On January 24, 2025, the Board filed a motion to dismiss Mr. Walsh's third amended complaint. In this filing, the Board argues that Mr. Walsh (1) failed to establish standing, (2) that the complaint's claims are moot, (3) that complaint's claims are not ripe, and (4) that the complaint fails to state a claim upon which relief can be granted. ECF Nos. 34, 37. Subsequently, the Board

filed a brief in support of its motions to dismiss. Mr. Walsh now files the instant omnibus brief in opposition to that motion.

II. COUNTER STATEMENT OF THE QUESTIONS PRESENTED

A. Whether the facts averred in the complaint demonstrate that Mr. Walsh has Article III standing and prudential standing to maintain and pursue this case?

Suggested Answer: Yes.

B. Whether the facts in the complaint establish that Mr. Walsh's claims are not moot because they are capable of repetition and likely to evade judicial review?

Suggested Answer: Yes.

C. Whether the facts in the complaint show that Mr. Walsh's claims are ripe for disposition?

Suggested Answer: Yes.

D. Whether the facts in the complaint demonstrate that Mr. Walsh states meritorious claims upon which relief may be granted.

Suggested Answer: Yes.

III. LEGAL STANDARD

In order to survive a motion to dismiss under Federal Rule of Civil Procedure ("Rule") 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). The "plausibility" standard required for a complaint to survive a motion to dismiss is not akin to a "probability" requirement, but it asks for more than sheer "possibility." Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 556). In other words, the complaint's factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations are true even if doubtful in fact.

Twombly, 550 U.S. at 555. Facial plausibility is present when a plaintiff pleads factual content that allows the court to draw the reasonable inference that a defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678.

IV. ARGUMENT

Mr. Walsh has pled adequate facts in the third amended complaint to establish that, (1) as a candidate for public office and on behalf of qualified electors who intended to vote for him, he has standing to pursue this action; (2) that this case is capable of repetition and is likely to escape judicial review, thus satisfying an exception to the mootness doctrine; (3) that the claims are ripe for adjudication by this Court; and (4) that the complaint states viable claims upon which relief may be granted as a matter of law.

A. Mr. Walsh Possesses Standing to Assert the Claims in the Third Amended Complaint

A political candidate in an election, such as Mr. Walsh in the 2024 primary and general elections and the upcoming elections in 2026, has extremely broad and flexible standing to challenge statutes and regulations involving election laws, both substantively and procedurally. "Standing consists of both a 'case or controversy' requirement stemming from Article III, Section 2 of the Constitution, and a subconstitutional 'prudential' element." Pitt News v. Fisher, 215 F.3d 354, 359 (3d Cir. 2000). "To demonstrate Article III standing, plaintiffs must demonstrate that they have suffered an injury-in-fact, that the injury is causally connected and traceable to an action of the defendant, and that it is redressable." Id. (citation omitted). "Even when this constitutional minimum has been met, judicially created prudential limitations may defeat a party's standing to maintain a suit." Id. (citation omitted).

Along with other courts, the Third Circuit has concluded that a candidate has standing to represent and assert the rights of voters.[1] See Penn. Psych. Society v. Green Spring Health Servs., Inc., 280 F.3d 278, 288 n. 10 (3d Cir. 2002) (stating that "candidates for public office may be able to assert the rights of voters"); Walgren v. Board of Selectmen of Amherst, 519 F.2d 1364, 1365 n. 1 (1st Cir. 1975) (observing that "[w]e have in the past indicated that a candidate has standing to raise the constitutional rights of voters"); see also Fugazi v. Padilla, 2020 U.S. Dist. LEXIS 89020, *6 (E.D. Cal. 2020) ("Several other circuits have recognized the standing of candidates to represent the rights of their voters.").

In Bay County Democratic Party v. Land, 347 F. Supp. 2d 404 (E.D. Mich. 2004), approximately two weeks before the general election of 2004, the plaintiffs filed a complaint on behalf of all registered voters in the State of Michigan, contending that directives issued by the director of elections prevented local election officials from counting provisional ballots of voters who are found to be qualified to vote in the relevant "jurisdiction" but who cast their provisional ballots in the wrong "precinct." In their motion to dismiss, defendants argued that the plaintiffs lacked standing and did not sustain a concrete, actual, and imminent injury in fact, because the plaintiffs erroneously surmised that some voters would attempt to vote in the wrong precinct and, further, that they would vote for the endorsed, Democratic political candidate.

In rejecting these arguments, the Bay court initially noted that "an out-of-precinct provisional ballot cast by the plaintiffs' constituent who is qualified to vote in the jurisdiction will not be counted in the general election that is but a few weeks away under the [directive] now in place." Id. at 422. Given this basic fact, the court declined to conclude that it was speculative to

[1] See Bay County Democratic Party v. Land, 347 F. Supp. 2d 404, 435 (E.D. Mich. 2004) (discussing the fundamental right to vote: "It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, and to have their votes counted.").

assume that Democratic voters would not be among those voters that cast provisional ballots in the wrong precincts. In so doing, the court explained that although "[t]he exact identity of the group of qualified voters who will cast provisional ballots from incorrect polling places, by definition, cannot be known," "the prospect of recurrence at the upcoming general election is beyond speculation: the plaintiffs will suffer an injury in fact if provisional ballots cast by voters who are eligible under State law are not counted." Id.; accord, e.g., Sandusky County Democratic Party v. Blackwell, 387 F.3d 565 (6th Cir. 2004) ("[A] voter cannot know in advance that his or her name will be dropped from the rolls, or listed in an incorrect precinct, or listed correctly but subject to a human error by an election worker who mistakenly believes the voter is at the wrong polling place. It is inevitable, however, that there will be such mistakes. The issues Appellees raise are not speculative or remote; they are real and imminent."); Florida Democratic Party v. Hood, 342 F. Supp. 2d 1073, 1079 (N.D. Fla. 2004) (same).[2] See McLain v. Meier, 851 F.2d 1045, 1048 (8th Cir. 1988) (discussing intertwined legal relationship between a candidate and a voter and concluding that a voter had standing "because the ballot access laws would restrict his ability to vote for the candidate of his choice"); see also Carson v. Simon, 978 F.3d 1051, 1058 (8th Cir.

[2] Although the plaintiffs in Bay were political parties, the court focused its standing analysis on the particular rights of the voters that were implicated by the legal directive at issue. See id. at 421-23. Therefore, Bay constitutes persuasive authority despite the fact that the plaintiffs in Bay were political parties, while here, Mr. Walsh was a political candidate, because, in terms of asserting the rights of voters, political parties and candidates stand on equal footing and are one and the same. See id. at 422 ("Moreover, political parties and candidates have standing to represent the rights of voters."); id. at 423 (discussing third-party standing and the close relationship that exits between a political party or organization and its members who are qualified to vote and concluding that if the members who are qualified to vote do not have their votes counted, the "political power" of political party would be "diminished"); see also Texas Democratic Party v. Benkiser, 459 F.3d 582, 587 & n.5 (5th Cir. 2006) (stating that the Texas Democratic Party [TDP] "has associational standing on behalf of its candidate" and concluding that "the Democratic party's candidate for [a vacate seat in congress], would have standing for similar reasons that the TDP has direct standing").

2020) ("An inaccurate vote tally is a concrete and particularized injury to candidates such as the Electors."); Party v. Kirk, 84 F.3d 178, 187 n.9 (5th Cir. 1996) (determining that a candidate possessed standing to commence suit because the candidate "clearly has a personal stake in the outcome of [the] controversy.").

Similar to the situations in the above-mentioned case law, Mr. Walsh possessed standing at the time he commenced this action because on October 25, 2024, two weeks and three days before the General Election, Defendants had not provided certain qualified voters with their mail-in ballots (or other ballots through which to vote) or approved their applications to vote. See Am. Comp. ¶¶ 3-5, 8-9, 49, 58, and 65. Akin to Bay, these voters could not know in advance that the County and Board would institute and effectuate an internal practice and policy, in violation of Pennsylvania statutory law, apply that internal practice and policy to deny their requests for voter registration and mail-in ballots, and ultimately (but yet inevitably) deprive some of those voters of their fundamental right to vote. See Am. Comp. ¶ 49. At the time Mr. Walsh commenced suit, the voters had sustained an imminent and concrete injury that is directly traceable to Defendants' internal practice and procedure that could be readily redressed by an injunction from this Court enjoining Defendants from violating Pennsylvania statutes and the First Amendment and requiring Defendants to receive and process applications to vote and requests for mail-in votes before the statutory deadline or election day. See Bay, 347 F. Supp. 2d 422-23 (concluding that voters also satisfied the redressability and traceability requirements for standing). Although Mr. Walsh won in the General Election and now serves as assemblyperson for the 117th Legislative District, this does not alter the fact that eligible Pennsylvania voters, who specifically intended to vote for Mr. Walsh, nonetheless sustained legal harm when Defendants failed and/or refused to timely process their application to vote and requests for mail-in ballots. See Krislov v. Rednour, 226 F. 3d 851, 859

(7th Cir. 2000) ("Thus, the fact that the candidates garnered enough signatures to be placed on the ballot does not negate the other injuries they may have suffered."). Accordingly, Mr. Walsh has standing to sue on behalf of these voters.

The decisions in Trump v. Wisconsin Elections Comm'n, 506 F. Supp. 3d 620, 631 (E.D. Wis. 2020), aff'd, 983 F.3d 919 (7th Cir. 2020), and Bost v. Illinois State Bd. of Elections, 114 F.4th 634 (7th Cir. 2024), do not contradict the proposition that Mr. Walsh has standing. In Trump, the court found that a losing candidate possesses standing to challenge a law that allegedly resulted in the loss or impacted the election, however, the case was ultimately dismissed on the ground of laches because the plaintiff filed suit two days after the election was certified by state officials. Trump, 983 F.3d at 925-26 (7th Cir. 2024). Even though the court granted the plaintiff standing in Trump, the court never addressed, much less analyzed, any cases explaining that standing is a much broader concept and encompasses those instances where, as here, a candidate wins an election. As detailed in this case, Mr. Walsh, still has a personal stake in the outcome of the election and an upcoming election, as the incumbent and a future candidate; therefore, he can assert the rights of voters who had been deprived of their right to vote in the past and those voters who will most likely be deprived of their right to vote in the future if Defendants do not cease their unlawful practice and procedure. See Discussion below at pp. 12-14 (discussing how this satisfies an exception to the mootness doctrine); see also Am. Comp. ¶¶ 53-54. Further, in stark contrast to Trump, Mr. Walsh filed suit prior to the election, is seeking prospective relief, and the doctrine of laches is inapplicable See Democratic Exec. Comm. Of Fla. V. Detzner, 347 F. Supp. 3d 1017, 1025-1026 (N.D. Fla. 2018) (noting that "laches has not prevented courts in this Circuit from entering prospective injunctive relief in close temporal proximity to an election.").

In Bost, voters and candidates challenged a state law that permitted election officials to receive and count mail-in ballots two weeks after the day of the election months before the day of the election (May 2022). In concluding that the voters did not have standing under a "voter dilution" theory, the court determined that all voters would equally have their votes diluted if they were cast and counted after election day, thereby sharing a generalized grievance that was not unique and particular. Here, by contrast, the harm to the voter is personal and individual, whereby qualified elector(s) are outright denied their fundamental right to vote altogether, rather than merely having that vote "diluted" to the same extent as the other voters.

Moreover, in Bost, the court concluded that the candidates did not have standing because they could not allege a certainly impending injury because, when the candidates filed suit "the election was months away," "the voting process was not even started," and it was unclear how counting the mail-in votes after the election would actually impact the election or any voter. Id. at 644. Here, by contrast, Mr. Walsh filed suit a few weeks before the General Election and, at that point in time, the injury was actual and imminent because he specifically alleged that certain qualified voters would be denied their right to vote if they did not receive their approved applications and/or mail-in ballots in time to vote at the General Election. The decision in Bost is not instructive in these particular circumstances and provides this Court will no guidance in addressing the issues presented.

Therefore, Mr. Walsh, in his capacity as a political candidate, possessed standing sue on behalf of voters to assert the First Amendment rights of those voters, along with his own First Amendment rights to run for political office.[3]

[3] To the extent Defendants contend that Mr. Walsh's averments are inherently inadequate because some of the allegations are preceded by the phrase, "upon information and belief," on a motion to dismiss, "the rule is that the complaint must be viewed in the light most favorable to plaintiff and the truth of all facts well pleaded, admitted" and "[t]his includes facts alleged on information and belief." Melo-Sonics Corporation

B. This Election Case is Not Moot because it is Capable of Repetition and Likely to Escape Review.

Mr. Walsh's claims are not moot because the internal policy and procedure implemented and effectuated by Defendants is capable of repetition and likely to escape judicial review during future elections. "[A] case will not be considered moot if the challenged activity is capable of repetition, yet evading review." Lawrence v. Blackwell, 430 F.3d 368, 371 (6th Cir. 2005). The courts may apply this exception when "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." Nat'l Broad. Co. v. Commc'ns Workers of Am., 860 F.2d 1022, 1023 (11th Cir. 1988) (citation omitted).

"We are well aware that the passage of an election does not necessarily render an election-related challenge moot and that such challenges may fall within the 'capable of repetition yet evading review' exception to the mootness doctrine .... The cases that traditionally have fallen within the 'capable of repetition' exception have involved challenges to the validity of statutory provisions that will continue to operate past the election in question and that will burden future candidates in future elections." Tobin for Governor v. Illinois State Board of Elections, 268 F.3d 517, 528-29 n.10 (7th Cir. 2001); see also Joyner v. Mofford, 706 F.2d 1523, 1527 (9th Cir. 1983) ("Election cases like the present one come within the type of controversy that is 'capable of repetition, yet evading review.' 'Evading review' for the purpose of the exception need not mean that review is impossible. It only means that in the ordinary course of affairs it is very likely to escape review."); Rosen v. Brown, 970 F.2d 169, 173 (6th Cir. 1992) ("Both of these two elements

v. Cropp, 342 F.2d 856, 859 (3rd Cir. 1965) (internal citation omitted). See Simonian v. Blistex, Inc., 2010 WL 4539450, 2010 U.S. Dist. LEXIS 117058, *8 (N.D. Ill. 2010) (concluding that "nothing in either Twombly or Iqbal suggests that pleading based upon 'information and belief' is necessarily deficient").

[for the capable of repetition exception] are satisfied here. The parties have stipulated that Rosen intends to run as an Independent in future elections in Ohio. Thus, a reasonable expectation exists that Rosen will be subjected to the same action again. Moreover, the challenged action was too short in duration to be litigated prior to its expiration, the date of the election."); Krislov v. Rednour, 226 F.3d 858 (7th Cir. 2000) ("This exception to the mootness doctrine is applicable, as in the present case, where the challenged situation is likely to recur and the same complaining party would be subjected to the same adversity.").

Here, the statutory deadline for receiving approved voter registrations and mail-in ballots, October 21, 2024, and the date of the Geneal Election, November 5, 2024, makes this case (and every future case like it) virtually impossible to be adjudicated in time for the actual election. Due to the tight timeframe of the procedural circumstances in this case, Mr. Walsh submitted a letter to this Court on November 4, 2024 withdrawing his Motion for a Special and Preliminary Injunction, because, as a practical matter, this Court would be unable to grant effective relief on the day before the election. As alleged, in 2026, Mr. Walsh intends to run for re-election. Am. Comp. ¶53, 55. Unless there is a change in Pennsylvania statutory law regarding the deadline for applications to vote and requests for mail-in ballots, it is highly likely that the same harm that occurred to voters in the most recent general election will reoccur in all future elections. That is, this harm will repeat itself unless or until there is a court order enjoining Defendants from continuing to follow their internal practice and procedure of delaying and/or refusing to process the voters' applications in a timely manner. Therefore, this case is capable of repetition, yet likely to escape judicial review, and it is not moot.

C. This Case is Ripe for Review because Mr. Walsh has Satisfied the Requirements for Standing and the Exception to the Mootness Doctrine

This case is ripe for judicial review. "The Article III case-or-controversy requirement includes ripeness and standing requirements." Joint Stock Soc'y v. UDV N. Am., Inc., 266 F.3d 164, 174 (3d Cir. 2001). However, the doctrines overlap to such an extent that they "are often indistinguishable," and the courts should analyze the ripeness issue under the doctrine of standing. Id. (citation omitted); see also Babbitt v. UFW Nat'l Union, 442 U.S. 289, 300, n.12 (1979) (discussing ripeness in the context of an election that has passed, emphasizing "the prospect of [the harm's] occurrence in an impending or future election," and adding that "there is value in adjudicating election challenges notwithstanding the lapse of a particular election"); accord Miller v. Brown, 462 F.3d 312, 315-16 (4th Cir. 2006).

Here, as noted, Mr. Walsh has standing, this case is not moot, and Mr. Walsh intends to run for office in the future. As such, this case is ripe for resolution. Wolfson v. Brammer, 616 F. 3d 1045, 1056 (9th Cir. 2010) ("We have already concluded that Wolfson has met the ripeness requirement by indicating his intent to run for judicial office in the future."); see Herron v. Fec, 903 F. Supp. 2d 9, 14 (D.D.C. 2012) (explaining that a candidate satisfies the exception to mootness when he/she expresses affirmative intent to run for office again and is potentially subject to the same illegal conduct that occurred in the past); accord Hero v. Lake Cnty. Election Bd., 42 F.4th 768, 774 (7th Cir. 2022) (collecting and discussing cases).

D. Mr. Walsh has Stated Meritorious Claims upon which Relief Can be Granted

In the amended complaint, Mr. Walsh states claims that Defendants violated his First Amendment rights and the First Amendment rights of the voters. This Court has the authority to enter an injunction restraining and/or enjoining Defendants' unconstitutional conduct because Defendants are not entitled to immunity under the Eleventh Amendment. Mt. Healthy City Sch.

Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977) (concluding that counties of a state do not enjoy Eleventh Amendment immunity). Pursuant to 42 U.S.C. § 1983, Defendants are also liable for damages and attorney's fees for their constitutional violations. See Monell v Dept. of Social Servs. of City of New York, 436 U.S. 658, 694-95 (1978) (concluding that a local governmental entity is liable under 42 U.S.C. § 1983 when it implements or effectuates an unconstitutional local policy or custom); accord Doby v. DeCrescenzo, 171 F.3d 858, 868-69 (3d. Cir. 1999). Moreover, Mr. Walsh has stated claims that Defendants have violated Pennsylvania statutory law, and federal law vests this Court with supplemental jurisdiction and the authority to enter an injunction against Defendants restraining and/or enjoining their unlawful conduct. See 28 U.S.C. § 1367 (providing for supplemental jurisdiction); Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73, 78 (1789) (providing federal courts with the power to grant equitable relief, including injunctions); Gullum v. Endeavor Infrastructure Holdings, LLC, 2022 U.S. Dist. LEXIS 74420, *7 (W.D.N.C. 2022) ("This Court's power to grant injunctions, even in cases involving state law claims, arises from federal law.") (citing Fed. R. Civ. P. 65)). Therefore, the County's reliance on Huber v. Simon's Agency, Inc., 84 F.4th 132 (3d Cir. 2023), is misplaced, because Mr. Walsh's claims do not depend on the existence of a private right of action under state law; rather, the claims are based on federal law granting this Court with supplemental jurisdiction to enter injunctions enjoining violations of state law. Accordingly, Mr. Walsh has plead viable claims upon which relief may be granted.

V. CONCLUSION

For the above-stated reasons, this Court should deny the Board's motion to dismiss and enter an order compelling the Board to file an answer to Mr. Walsh's third amended complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic case filing system and constitutes service of this filing under Rule 5(b)(2)(E) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

Dated: February 11, 2025 */s/Gregory H. Teufel, Esq.*