

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

1789 FOUNDATION, INC. d/b/a CITIZEN	:	No. 3:24-cv-1865
AG <i>and</i> ANTHONY GOLEMBIEWSKI	:	
Plaintiffs	:	
	:	
v.	:	(Judge Mariani)
	:	
AL SCHMIDT, in his official capacity as	:	
Secretary of State <i>and</i> COMMONWEALTH	:	
OF PENNSYLVANIA	:	
Defendants	:	Electronically Filed Document

COMMONWEALTH OF PENNSYLVANIA’S BRIEF IN SUPPORT OF ITS
MOTION TO DISMISS

The Commonwealth of Pennsylvania, by and through counsel, hereby submits this Brief in Support of its Motion to Dismiss Plaintiffs’ Complaint.

Plaintiffs 1789 Foundation, Inc. d/b/a Citizen AG as well as Anthony Golembiewski are alleging that the Defendants – the Secretary of State¹ and the Commonwealth – are violating the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. §§ 20501, *et seq.*

In its correspondence to the Court, dated December 18, 2024, Plaintiffs indicate a desire to file a supplemental complaint following receipt of a response by the Secretary of State to their right to know request. (Doc. 38). The proposed Supplemental Complaint (Doc. 40) does not present any factual averments against

¹ The Secretary of State is separately represented in this matter.

the Commonwealth of Pennsylvania – a separate entity from the Secretary of State. It is abundantly clear that Plaintiffs have concerns over the information they have received from the Secretary of State, but it is also abundantly clear that Plaintiffs have mis-joined the Commonwealth, and despite requests to rectify the misjoinder, Plaintiffs haven't dismissed the Commonwealth as a named party.

Because the Commonwealth has been mis-joined to this action and no factual averments have been presented against it, the Complaint must be dismissed as against the Commonwealth.

PROCEDURAL HISTORY

On October 29, 2024, Plaintiffs filed a Complaint (Doc. 1) and an Emergency Motion for a Temporary Restraining Order (Doc. 3). The Court held a telephone conference on October 31st and provided the parties with an expedited briefing schedule to address the pending pleadings. After submission of necessary briefs, this Court denied Plaintiffs' Motion for a TRO and requested that the Plaintiffs provide a status report. (*See* Docs. 21, 37). Plaintiffs submitted a status report and filed a Motion to Supplement their Complaint on December 27, 2024. (*See* Docs. 38, 40).

STATEMENT OF FACTS

On October 4, 2024 Citizen AG submitted a right-to-know request to the Secretary of State. (Doc. 1 at 3; Doc. 1-4). Citizen AG receive a response from the

Secretary of State, as permitted by the Pennsylvania Right-to-Know Law, seeking additional time to respond to the request, identifying that a final written response would be provided by November 12, 2024. (Doc. 1 at 3; Doc. 1-5). Citizen AG initially averred that the Secretary of State miscalculated its final determination deadline and have construed the Secretary's response as a denial of records.

Following receipt of a response from Secretary Schmidt to the right to know request, Plaintiffs indicated to the Court a desire to supplement their complaint to assert that the Defendants – both the Secretary of State and the Commonwealth – have violated the National Voters Registration Act. (*See* Doc. 40). There are no factual allegations presented in either the original or proposed supplemental complaint against the Commonwealth.

STATEMENT OF QUESTION INVOLVED

Whether the Commonwealth should be dismissed as a party because it is not otherwise an indispensable party to this action?

Suggested answer: Yes - the Commonwealth should be dismissed as a party.

ARGUMENT

The NVRA permits a private right of action against the Chief Election Official of a State if a violation of the Act is not corrected within 90 days after receipt of required notice. *See* 52 U.S.C. § 20510(b). The NVRA requires each

State to designate a state officer as the chief state election official. *See* 52 U.S.C. § 20509. The Commonwealth of Pennsylvania designated the Secretary of State as the chief state election official. *See* Doc. 1 ¶ 7; 25 P.S. § 2621.

Here, Plaintiffs cannot be successful on their claims against the Commonwealth as an entity because they have mis-joined the Commonwealth to this action. Plaintiffs have not presented this Court with any authority to bring a private right of action against the Commonwealth and have presented no factual allegations against the Commonwealth in either the original or proposed supplemental complaint. Because Plaintiffs have failed to demonstrate through their averments that the Commonwealth, as a separate entity, is a necessary party to this action, the Commonwealth should be dismissed as a party.

Respectfully submitted,

MICHELLE A. HENRY
Attorney General

Date: December 30, 2024

By: *s/ Nicole R. DiTomo*

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CERTIFICATE OF SERVICE

I, Nicole R. DiTomo, Chief Deputy Attorney General, Office of Attorney General, hereby certify that on December 30, 2024, I caused to be served a true and correct copy of the foregoing document titled Commonwealth's Brief in Support of their Motion to Dismiss to the following:

VIA ECF

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