

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

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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.	:	

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

**I. INTRODUCTION**

In his Memorandum of Law in Opposition to Defendants', Luzerne County and Luzerne County Bureau of Elections (together, "Moving Defendants"), Motion to Dismiss ("Response Brief") (*Doc. 41*), Plaintiff largely ignores the indisputable fact that he, as a successful, unopposed candidate for office, suffered *no harm* in the lead-up to the 2024 general election. Rather, Plaintiff now focuses on how he may *possibly* be harmed in an election *nearly two years away* if Defendants' alleged violations of the Pennsylvania Election Code and the First and Fourteenth Amendments to the U.S. Constitution are not remedied. This alleged future harm to Plaintiff is far too speculative to be countenanced by this Court. Having suffered no historical harm and failing to plead particularized imminent harm, Plaintiff continues

to mistakenly insist that he has the right to represent thousands of voters allegedly rendered unable to vote by actions or inactions of Moving Defendants in the 2024 general election, and who also may *possibly* be harmed in a future election *nearly two years away*. Plaintiff's arguments are without merit.

Moving Defendants' Motion to Dismiss should be granted because Plaintiff has not alleged facts to: (1) establish constitutional or prudential standing; (2) establish the case is not moot; (3) establish the case is ripe for judicial review; and (4) state a claim upon which relief may be granted.

## II. REPLY ARGUMENT

### A. Plaintiff Lacks Standing

In his Response Brief, Plaintiff focuses on three cases allegedly supportive of his having standing to pursue his claims, or cases suggesting to the contrary but purportedly distinguishable. To the contrary, the cases strongly support that Plaintiff lacks both constitutional and prudential standing to bring his claims.

#### 1. *Bay County Democratic Party v. Land*, 347 F. Supp. 2d 404 (E.D. Mich. 2004)

In *Bay County Democratic Party*, the plaintiffs consisted of local and state democratic parties, the state NAACP, Association of Community Organizations for Reform Now (ACORN), and Project Vote. *Id.* at 411. Not a single candidate for office was a party to the case. Procedurally, the court in *Bay County Democratic Party* decided motions for preliminary injunction and defendants' motion to dismiss.

*Id.* Prior to the court issuing its opinion, it heard testimony and oral argument on the motions, including testimony from two voters, one who testified that defendants had denied her right to vote in the 2004 primary election, and another who testified that she witnessed multiple eligible voters being turned away from their proper polling location during the same election. *Id.* at 418-19.

In analyzing whether a plaintiff has prudential standing, the court observed, “[w]hen not injured in its own right, ***an association*** has standing when its members would otherwise have standing.” *Id.* at 421 (emphasis supplied). The status of all plaintiffs as associations or organizations is central to the court’s standing analysis. While it is true that the Court notes the impact of defendants’ legal directives on individual voters, standing was conferred upon the ***plaintiffs***, as “organizations that represent and mobilize voters...,” because ***they***, not just voters, would suffer harm. *Id.* at 422. “The ***plaintiffs will suffer an injury*** if their ***members*** who are qualified to vote do not have their votes counted, ***since that will diminish the political power of the organizations.***” *Id.* at 423. A candidate for office does not have members and Walsh has no right to assert claims on voters’ behalf. Accordingly, Plaintiff lacks prudential standing. Moreover, Walsh does not have constitutional standing because, having successfully run unopposed in the 2024 general election, he did not suffer any harm and his alleged future harm is wholly speculative.

Notwithstanding the foregoing, Plaintiff cites to court's observation in *Bay County Democratic Party* that "...political parties and candidates have standing to represent the rights of voters." For support, the court notably cites to dicta in a Third Circuit case, *Penn. Psych Society v. Green Spring Health Servs., Inc.*, 280 F.3d 278 (3d Cir. 2002), wherein the Third Circuit observed, "candidates for public office *may* be able to assert the rights of voters." *Id.* at 288 n.10 (emphasis supplied). However, in *Pennsylvania Psych Society*, the court opined that the plaintiff psychological society had standing because the defendants' policies and procedures were alleged to "have economically injured its *member* psychiatrists..." *Id.* at 289 (emphasis supplied). *Pennsylvania Psych Society* does not involve candidates running for office. Such a candidate does not have members who the candidate, unlike an association, is entitled to represent. This is particularly true where, as here, the candidate has suffered no injury. In his Response Brief, Walsh does not cite to, and Responding Defendants are unaware of, any Third Circuit case finding that a successful candidate for office has standing to represent the interests of prospective voters in connection with alleged election malfeasance.

**2. *Trump v. Wisconsin Elections Comm'n.*, 506 F. Supp. 3d 620 (E.D. Wis. 2020)**

In *Trump*, the court found that then president and candidate Trump, having narrowly lost Wisconsin in the 2020 presidential election, had standing to challenge the defendants' alleged violation of his rights under the Electors Clause. *Id.* at 633,

631. However, Trump having *lost* the 2020 Wisconsin presidential election was critical to the court's finding that he possessed standing:

If plaintiff were to succeed in proving that defendants violated the Elections Clause causing Wisconsin's Presidential Electors to be appointed in a manner inconsistent with the Wisconsin Legislature's directives, and depriving plaintiff of his opportunity to win those Presidential Electors, he should have the ability (and the standing) to enforce the Constitution's plain terms in federal court.

*Id.* at 633. The foregoing simply confirms that, in order to have constitutional standing, a plaintiff must suffer an injury-in-fact. *Id.* at 631. Here, Walsh has not suffered any injury. He won his election. More than that, it was simply not possible that he could lose because he ran unopposed. Accordingly, *Trump* supports the absence of Walsh's constitutional standing.

3. ***Bost v. Illinois State Bd. of Elections*, 114 F. 4<sup>th</sup> 634 (7<sup>th</sup> Cir. 2024)**

In *Bost*, the plaintiffs were candidates *and* voters each of whom alleged they would sustain harm if an Illinois ballot measure extending Election Day, allegedly in violation of two federal statutes, became law. *Id.* at 639. Significantly, the plaintiffs' respective arguments for standing were addressed individually, first as voters and then as candidates. Unlike Walsh, the candidate plaintiffs in *Bost* alleged injury *specific to their status as candidates* – i.e., being forced “to fund [their] campaign for two additional weeks after Election Day...” *Id.* at 61-42. Walsh

himself voted in the general election and prevailed in an uncontested election. Simply put, he suffered no harm.<sup>1</sup> Accordingly, *Bost* also supports that Walsh lacks both constitutional and prudential standing.

**B. This Case is Moot**

Notwithstanding Plaintiff's pled "intent" to run for re-election, it remains speculative that he will be able and willing to run in 2026, that he will face an opponent in the future election, or that any 117<sup>th</sup> Congressional District Luzerne County voter will be disenfranchised in that election. With respect to Article III standing:

a plaintiff's injury must not only be "concrete and particularized" but also "***actual or imminent.***" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The latter requirement for standing "ensure[s] that the alleged injury is not too speculative for Article III purposes. *Id.* at 564 n.2. Thus, when claimant premises standing on a future harm, the harm must be more than just "possible"—the allegedly threatened injury must be "***certainly impending.***" *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990).

*Bost*, 114 F. 4<sup>th</sup> at 642 (emphasis supplied). Plaintiff was unquestionably not harmed with respect to the 2024 general election (i.e. the *gravamen* of Plaintiff's Complaint),

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<sup>1</sup> Ultimately, the *Bost* court determined that the plaintiffs lacked standing because, in the case of the candidates, the harm was "too speculative" in so far as the ballot measure at issue was only under consideration and, therefore, "it was Plaintiffs' choice to expend resources to avoid a hypothetical future harm—an election defeat." *Id.* at 642.

and any speculative harm he remotely might suffer in an election nearly two years away, cannot reasonably be considered “certainly impending.” *Whitmore*, 495 U.S. at 158.

Plaintiff’s reliance on alleged harm to voters in the 2026 election is equally unavailing because, as noted *supra*, Plaintiff lacks prudential standing to assert claims on behalf of thousands of voters. Moreover, even if Plaintiff has standing for such claims, these voters themselves lack Article III standing because their alleged harm is every bit as speculative as any harm to be potentially suffered by candidate Walsh in a future election. Further, there is more than sufficient time, *approximately 18 months*, between now and the next election for any voters who believe they properly registered to vote but allegedly did not receive a ballot during the 2024 election, to take all steps necessary to correct the issue.<sup>2</sup>

**C. This Case Is Not Ripe for Judicial Review**

Plaintiff lacks both constitutional and prudential standing and, therefore, this case is not ripe for judicial review. *See Joint Stock Soc’y v. UDV N. Am., Inc.*, 266 F.3d 164, 174 (3d Cir. 2001) (courts should analyze ripeness under the doctrine of standing). The case is moot.

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<sup>2</sup> In fact, until any voter requests and does not receive a mail-in ballot for some future election, they have suffered no harm whatsoever.

**D. Plaintiff Has Failed to State a Claim Upon Which Relief May be Granted**

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As is addressed more fully in Moving Defendants' Brief in Support of Their Motion to Dismiss Plaintiff's Third Amended Complaint (*Doc. 39*), Plaintiff's operative Complaint is rife with mere legal conclusions and bald assertions masquerading as factual averments. The same are, accordingly, not entitled to a presumption of truth as is otherwise customary at this stage of the litigation. *See Edwards v. Borough of Dickson City*, 994 F. Supp. 2d 616, 619 (M.D. Pa. 2014) ("The Court need not...credit a complainant's 'bald assertions' or 'legal conclusion.'").

Additionally, in his Response Brief, Plaintiff contends that his claims "do not depend on the existence of a private right of action under state law; rather, the claims are based on federal law..." (*Doc. 41*, p. 14). While it is true that Plaintiff does assert claims under the First and Fourteenth Amendments to the United States Constitution, his state law claims must be dismissed because there is no private right of action found within the Pennsylvania Election Code. *See* 25 Pa. C.S. § 2601, *et seq.*; *see also Huber v. Simon's Agency, Inc.*, 84 F.4<sup>th</sup> 132, 147 (3d Cir. 2023) (noting a private right of action must exist to enforce statutory rights). Plaintiff's constitutional claims in no way affect his inability to bring a private right of action pursuant to the Pennsylvania Election Code. Should this Court not dismiss the entirety of Plaintiff's



Third Amended Complaint, in the alternative, Plaintiff's state law claims must be dismissed.

### III. CONCLUSION

For the reasons provided in Moving Defendants' opening Brief and this Reply Brief, Moving Defendants respectfully request this Honorable Court grant their Motion to Dismiss Plaintiff's Third Amended Complaint and enter an Order in the form previously attached.

Respectfully submitted:

**SAXTON & STUMP**

Date: February 25, 2025

By: /s/ Mark E. Cedrone

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served this 25<sup>st</sup> day of February, 2025, via the Court’s Electronic Case Filing (“ECF”) system upon all counsel of record.

*/s/ Mark E. Cedrone*  
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MARK E. CEDRONE

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