

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

PENNSYLVANIA STATE CONFERENCE OF
THE NAACP, *et al.*,

Plaintiffs,

v.

AL SCHMIDT, *in his official capacity as
Secretary of the Commonwealth, et al.*,

Defendants.

No. 1:22-cv-339

Judge Susan Paradise Baxter

**ANSWER TO PLAINTIFFS' AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Defendant, Secretary of the Commonwealth Al Schmidt, by and through his counsel, files this Answer to Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief.

INTRODUCTION

1. Admitted that Paragraph 1 describes Plaintiffs' stated purpose for bringing this action.
2. The Secretary agrees that a voter's handwritten date on a ballot-return envelope serves no purpose in the administration of Pennsylvania's elections, but that election officials currently are required to reject mail ballots returned

by voters who fail to write, or make some error in writing, the date, and thus that such ballots are not included in the certified returns of Pennsylvania's elections.

3. Paragraph 3 contains conclusions and/or statements of law to which no response is required.

4. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 4.

5. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 5.

6. Paragraph 6 contains conclusions and/or statements of law to which no response is required.

JURISDICTION AND VENUE

7. Paragraph 7 contains conclusions and/or statements of law to which no response is required.

8. Paragraph 8 contains conclusions and/or statements of law to which no response is required.

9. Paragraph 9 contains conclusions and/or statements of law to which no response is required.

10. Paragraph 10 contains conclusions and/or statements of law to which no response is required.

PARTIES

11. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 11.

12. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 12.

13. The Secretary agrees election officials currently are required to reject mail ballots returned by voters who fail to write, or commit some error when writing, a date on the return-envelope declaration for their mail ballot. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 13.

14. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 14.

15. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 15.

16. The Secretary agrees election officials currently are required to reject mail ballots returned by voters who fail to write, or commit some error when writing, a date on the return-envelope declaration for their mail ballot. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 16.

17. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 17.

18. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 18.

19. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 19.

20. The Secretary agrees election officials currently are required to reject mail ballots returned by voters who fail to write, or commit some error when writing, a date on the return-envelope declaration for their mail ballot. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 20.

21. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 21.

22. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 22.

23. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 23.

24. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 24.

25. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 25.

26. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 26.

27. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 27.

28. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 28.

29. Left blank by plaintiffs.

30. It is admitted that Plaintiff Barry Seastead's ballot was not counted for the 2022 General Election. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 30.

31. Left blank by plaintiffs.

32. It is admitted that Plaintiff Marlene Gutierrez's ballot was not counted for the 2022 General Election. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 32.

33. Left blank by plaintiffs.

34. It is admitted that Plaintiff Aynne Polinski's ballot was not counted for the 2022 General Election. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 34.

35. It is admitted that Plaintiff Joel Bencan's ballot was not counted for the 2022 General Election. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 35.

36. It is admitted that Plaintiff Laurence Smith's ballot was not counted for the 2022 General Election. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 36.

37. Paragraph 37 contains conclusions and/or statements of law to which no response is required. It is admitted that the Secretary has issued guidance to county boards of elections describing how those boards may best comply with binding judicial orders, Pennsylvania law, and federal law. This guidance is in writing and speaks for itself.

38. Paragraph 38 contains conclusions and/or statements of law to which no response is required.

FACTS

A. Pennsylvania's Mail Ballot Rules

39. Paragraph 39 contains conclusions and/or statements of law to which no response is required.

40. Paragraph 40 contains conclusions and/or statements of law to which no response is required.

41. Paragraph 41 contains conclusions and/or statements of law to which no response is required.

42. Paragraph 42 contains conclusions and/or statements of law to which no response is required.

43. Paragraph 43 contains conclusions and/or statements of law to which no response is required.

44. Admitted that 2,704,174 absentee or mail-in ballots were submitted for the 2020 General Election.

45. Admitted that 1,439,579 absentee or mail-in ballots were requested for the 2022 General Election.

B. Litigation Over the Envelope-Date Requirement

46. Paragraph 46 contains conclusions and/or statements of law to which no response is required.

47. Admitted.

i. *In re Canvass*

48. Paragraph 48 describes a Pennsylvania Supreme Court case that speaks for itself.

49. Paragraph 49 describes a Pennsylvania Supreme Court case that speaks for itself.

ii. *Migliori*

50. Paragraph 50 describes a U.S. Court of Appeals for the Third Circuit case that speaks for itself.

51. Paragraph 51 describes the record from a U.S. Court of Appeals for the Third Circuit case that speaks for itself.

52. Paragraph 52 describes the record from a U.S. Court of Appeals for the Third Circuit case that speaks for itself.

53. Paragraph 53 describes the record from a U.S. Court of Appeals for the Third Circuit case that speaks for itself.

54. Paragraph 54 describes a Pennsylvania Commonwealth Court case that speaks for itself.

55. Paragraph 55 describes a U.S. Court of Appeals for the Third Circuit case that speaks for itself.

56. Paragraph 56 describes the litigation history of a U.S. Court of Appeals for the Third Circuit case that speaks for itself.

57. Paragraph 57 describes the litigation history of a U.S. Court of Appeals for the Third Circuit case that speaks for itself.

iii. *McCormick and Berks County*

58. Paragraph 58 describes Pennsylvania Commonwealth Court cases that speak for themselves.

59. Admitted that the Acting Secretary has issued guidance to county boards of elections describing how those boards may best comply with binding judicial orders, Pennsylvania law, and federal law. This guidance is in writing and speaks for itself.

iv. *Ball v. Chapman*

60. Paragraph 60 describes a Pennsylvania Supreme Court case to which no response is required.

61. Paragraph 61 describes a Pennsylvania Supreme Court case to which no response is required.

62. Admitted.

63. Admitted that the Secretary has issued guidance to county boards of elections describing how those boards may best comply with binding judicial orders, Pennsylvania law, and federal law. This guidance is in writing and speaks for itself.

64. Paragraph 64 describes a Pennsylvania Supreme Court case to which no response is required.

C. Pennsylvania's 2022 Election

65. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 65.

66. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 66 and its subparts.

67. It is admitted that well over a million people voted by mail in 2022. The Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 67.

68. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 68.

69. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 69.

70. The Secretary agrees election officials currently are required to reject mail ballots returned by voters who fail to write, or commit some error when writing, a date on the return-envelope declaration for their mail ballot.

71. The Secretary agrees that a voter's handwritten date on a ballot-return envelope serves no purpose in the administration of Pennsylvania's elections, but that election officials currently are required to reject mail ballots returned by voters who fail to write, or commit an error in writing, a date, and thus that such ballots are not included in the certified returns of Pennsylvania's elections. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 71.

72. Based on information available to the Secretary, it is admitted that voters over 70 years old account for a disproportionate number of submitted ballots that were cancelled for declaration date errors.

73. The Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 73.

74. The Secretary agrees that a voter's handwritten date on a ballot-return envelope serves no purpose in the administration of Pennsylvania's elections, but that election officials currently are required to reject mail ballots returned by voters who fail to write, or commit some error in writing, the date, and thus that such ballots are not included in the certified returns of Pennsylvania's elections. The remaining allegations of Paragraph 74 contain conclusions and/or statements of law to which no response is required.

COUNT I

75. This paragraph requires no response.

76. Paragraph 76 contains conclusions and/or statements of law to which no response is required.

77. Paragraph 77 contains conclusions and/or statements of law to which no response is required.

78. Paragraph 78 and its subparts contain conclusions and/or statements of law to which no response is required.

79. Paragraph 79 contains conclusions and/or statements of law to which no response is required.

80. Paragraph 80 contains conclusions and/or statements of law to which no response is required.

81. Paragraph 81 contains conclusions and/or statements of law to which no response is required.

82. Paragraph 82 contains conclusions and/or statements of law to which no response is required.

COUNT II

83. This paragraph requires no response.

84. Paragraph 84 is a statement of law to which no response is required.

85. Paragraph 85 contains conclusions and/or statements of law to which no response is required.

86. Paragraph 86 contains conclusions and/or statements of law to which no response is required.

87. Paragraph 87 contains conclusions and/or statements of law to which no response is required.

88. Paragraph 88 contains conclusions and/or statements of law to which no response is required.

COUNT III

89. This paragraph requires no response.

90. Paragraph 90 contains conclusions and/or statements of law to which no response is required.

91. Admitted.

92. Admitted.

June 28, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify the foregoing has been filed electronically and is available for viewing and downloading from the Electronic Case Filing System of the United States District Court for the Western District of Pennsylvania. I further hereby certify that, in accordance with Fed. R. Civ. P. 5, service has been made upon counsel of record via ECF.

Date: June 28, 2024

/s/ Jacob B. Boyer

Jacob B. Boyer