

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

DONALD J. TRUMP FOR PRESIDENT, INC.; Civil Action No. 2:20-CV-966
GLENN THOMPSON; MIKE KELLY;
JOHN JOYCE; GUY RESCHENTHALER;
REPUBLICAN NATIONAL COMMITTEE; Honorable Judge J. Nicholas Ranjan
MELANIE STRINGHILL PATTERSON; and
CLAYTON DAVID SHOW,

Plaintiffs,

Filed Electronically

v.

KATHY BOOCKVAR, in her capacity as
Secretary of the Commonwealth of
Pennsylvania; WASHINGTON COUNTY
BOARD OF ELECTIONS; *et al.*,

Defendants.

**DEFENDANT WASHINGTON COUNTY BOARD OF ELECTIONS’
MOTION TO DISMISS, OR, ALTERNATIVELY,
MOTION FOR A MORE DEFINITE STATEMENT AND/OR MOTION TO STRIKE**

AND NOW, comes the Defendant, Washington County Board of Elections, by and through its attorneys, Robert J. Grimm, Esquire and the law firm of Swartz Campbell, LLC, and files the instant Motion to Dismiss, or, alternatively, Motion for a More Definite Statement and/or Motion to Strike, setting forth and averring in support thereof the following:

I. FACTS & PROCEDURE

1. The Plaintiffs, piloted by the President’s reelection campaign (“the Plaintiffs”), have brought suit against the Defendants, including the Secretary of the Commonwealth of Pennsylvania and the Boards of Elections of Pennsylvania’s 67 Counties, among them the Washington County Board of Elections (“Washington County”).

2. The Plaintiffs' Complaint recounts purported election irregularities surrounding Pennsylvania's June 2, 2020 Primary Election and raises the specter of the same plaguing the November 3, 2020 General Election.
3. The Plaintiffs allege that the irregularities are a result of the flawed administration of Act 77, the mail-in voting law enacted by the General Assembly in the fall of 2019.
4. The Plaintiffs challenge specific practices, including the return of ballots to locations other than the offices of the Counties' Boards of Elections; the counting of ballots lacking a secrecy envelope; and residency requirements imposed on poll watchers.
5. Where Washington County is concerned, the Plaintiffs have not attributed any such practices to it, and, as such, have failed to state any plausible claims against it.
6. Accordingly, Washington County seeks dismissal and/or other relief as specified herein.

II. ARGUMENT IN SUPPORT OF MOTION TO DISMISS

7. In reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), "[t]he applicable standard of review requires the court to accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party." Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989).
8. Under the United States Supreme Court's decision in Bell Atlantic Corp. v. Twombly, dismissal of a complaint pursuant to Rule 12(b)(6) is proper where the averments of the complaint demonstrably fail to raise directly or inferentially the material elements necessary to obtain relief under a viable legal theory of recovery. 550 U.S. 544 (2007).
9. The allegations of the complaint must be grounded on adequate factual and legal bases such as to move the claim from the realm of mere possibility to one that shows entitlement by presenting "a claim to relief that is plausible on its face." Id. at 570.

10. As for the Plaintiffs' Complaint, Washington County receives only passing references in it, appearing in the caption and listed as a Defendant under the "Parties" section of the Complaint, along with 66 other Counties. See Pls.' Compl. at ¶ 17.
11. What is more, the Complaint is absolutely devoid of any allegations implicating Washington County in the practices of which the Plaintiffs complain.
12. The Complaint contains substantive allegations directed at Allegheny County and Philadelphia County, as well as general allegations against twenty (20) unidentified Counties, but none against Washington County. Id. at ¶¶ 2, 102-104, 106, 111, 113.
13. The Plaintiffs' Complaint does not charge Washington County with violating Act 77 by accepting ballots at locations other than the office of the Board of Elections, counting ballots without a secrecy envelope, or excluding non-resident poll watchers.
14. Thus, even accepting as true the allegations and inferences of the Plaintiffs' Complaint, it is evident that those allegations and inferences do not elevate the Plaintiffs' claims against Washington County from the realm of possibility to that of plausibility.
15. Therefore, the Plaintiffs have not stated any claims against Washington County upon which the Court can grant relief, and, as such, Washington County should be dismissed.

III. ARGUMENT IN SUPPORT OF MOTION FOR MORE DEFINITE STATEMENT

16. Federal Rule of Civil Procedure 12(e) authorizes a party to make a motion for a more definite statement if a pleading is "so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e).
17. "Motions for more definite statements arise in . . . 'cases where because of the vagueness and ambiguity of the pleading the answering party will not be able to frame a responsive pleading.'" Schaedler v. Reading Eagle Publ'ns, Inc., 370 F.2d 795, 798 (3d Cir. 1967).

18. In the event the Court declines to grant dismissal, it should, in the alternative, order the Plaintiffs to file an amended pleading that remedies the woeful insufficiency of their allegations with respect to Washington County.
19. Despite the length and verbosity of the Plaintiffs' Complaint, it does not contain any allegations whatsoever touching upon Washington County.
20. Indeed, the Complaint does not include even a solitary allegation that Washington County permitted ballots to be returned to locations other than the office of the Board of Elections; processed and counted ballots returned without a secrecy envelope; or barred poll watchers from Counties other than Washington County.
21. In view of the dearth of allegations against Washington County, coupled with the vague and ambiguous character of the Plaintiffs' allegations overall, the Court should order the Plaintiffs to file an amended pleading supplying a more definite statement of the Plaintiffs' claims against Washington County.

IV. ARGUMENT IN SUPPORT OF MOTION TO STRIKE

22. Federal Rule of Civil Procedure 12(f) permits a motion to strike, whereby a party may move the Court to "strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f).
23. Motions to strike find additional support under Federal Rule of Civil Procedure 8, which requires a plaintiff to make "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).
24. In Wallace v. Fed. Employees of U.S. Dist. Court, the Eastern District Court observed:

Pursuant to Fed. R. Civ. P. 8(a)(2), a complaint setting forth a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief," and the plaintiff is limited to a "short and plain statement" in order to give the defendant fair notice of the plaintiff's claims and the bases thereof. Where plaintiffs have filed

voluminous complaints containing arguments, recitations of the law, and otherwise unnecessary detail, courts have dismissed their complaints pursuant to Rules 8 and 12(f), which provides that the court, on its own or pursuant to a motion by a party, “may order stricken from any pleading . . . any redundant, immaterial, impertinent, or scandalous matter.”

Wallace v. Fed. Employees of U.S. Dist. Court, No. CIV.A. 07-1132 NLH, 2008 WL 1886107, at *3, n. 4 (E.D. Pa. Apr. 28, 2008).

25. The Plaintiffs’ Complaint, which is 56 pages in length and features 204 paragraphs, is rife with anecdotal and unsubstantiated accounts of election irregularities which fit the very definition of immaterial or impertinent. See Hoffer v. Grange Ins. Co., No. 1:14-CV-0262, 2014 WL 2177589, at *3 (M.D. Pa. May 23, 2014) (“Impertinent matter consists of statements that do not pertain, and are not necessary, to the issues in question.”).
26. Furthermore, the Complaint presents needless argumentation and is peppered with an inordinate number of citations to state and federal cases, state and federal statutes, and the Pennsylvania and United States Constitutions.
27. The Court, under the auspices of Rule 12(f), should strike from the Plaintiffs’ Complaint the allegations it deems contrary to the pleading standard prescribed by Rule 8(a)(2).

V. JOINDER IN AND INCORPORATION OF OTHER DEFENDANTS’ MOTIONS

28. Washington County joins in and incorporates by reference the Motions to Dismiss and other Motions of the various Defendants, including but not limited to the Motions filed by Secretary Boockvar.
29. Washington County joins in and incorporates these Motions to Dismiss and other Motions both to the extent they align with Washington County’s own Motions and to the extent they introduce additional and/or alternative grounds for relief, including but not

limited to those relating to the Plaintiffs' standing, the existence of jurisdiction, the propriety of venue, and the applicability of the Pullman abstention doctrine.

VI. CONCLUSION

30. Washington County moves the Court to dismiss the Plaintiffs' Complaint against it for failure to state a claim upon which relief can be granted.

31. Alternatively, Washington County moves the Court to order the Plaintiffs to file an amended pleading curing the pleading deficiencies discussed above and omitting all allegations struck by the Court.

WHEREFORE, the Defendant, Washington County Board of Elections, respectfully requests that this Honorable Court **GRANT** the within Motion, thereby dismissing the Plaintiffs' Complaint and all claims set forth therein against the Defendant, Washington County Board of Elections, in their entirety and with prejudice.

Respectfully submitted,

SWARTZ CAMPBELL, LLC

By: /s/Robert J. Grimm
Robert J. Grimm, Esquire
PA ID No. 55381
436 7th Ave., Floors 7 & 8
Koppers Building
Pittsburgh, PA 15219
(412) 232-9800
rgrimm@swartzcampbell.com
Attorneys for the Defendant,
Washington County
Board of Elections

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

DONALD J. TRUMP FOR PRESIDENT, INC.; Civil Action No. 2:20-CV-966
GLENN THOMPSON; MIKE KELLY;
JOHN JOYCE; GUY RESCHENTHALER;
REPUBLICAN NATIONAL COMMITTEE; Honorable Judge J. Nicholas Ranjan
MELANIE STRINGHILL PATTERSON; and
CLAYTON DAVID SHOW,

Plaintiffs,

Filed Electronically

v.

KATHY BOOCKVAR, in her capacity as
Secretary of the Commonwealth of
Pennsylvania; WASHINGTON COUNTY
BOARD OF ELECTIONS; *et al.*,

Defendants.

ORDER OF COURT (1)

AND NOW, this _____ day of _____, 2020, upon consideration of the Motion to Dismiss, or, alternatively, Motion for a More Definite Statement and/or Motion to Strike of the Defendant, Washington County Board of Elections, it is hereby **ORDERED, ADJUDGED and DECREED** that said Motion to Dismiss is **GRANTED**. The Plaintiffs' Complaint and all claims set forth therein are **DISMISSED** in their entirety and **WITH PREJUDICE** as to the Defendant, Washington County Court of Elections.

BY THE COURT:

_____ J.

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

DONALD J. TRUMP FOR PRESIDENT, INC.; Civil Action No. 2:20-CV-966
GLENN THOMPSON; MIKE KELLY;
JOHN JOYCE; GUY RESCHENTHALER;
REPUBLICAN NATIONAL COMMITTEE; Honorable Judge J. Nicholas Ranjan
MELANIE STRINGHILL PATTERSON; and
CLAYTON DAVID SHOW,

Filed Electronically

Plaintiffs,

v.

KATHY BOOCKVAR, in her capacity as
Secretary of the Commonwealth of
Pennsylvania; WASHINGTON COUNTY
BOARD OF ELECTIONS; *et al.*,

Defendants.

ORDER OF COURT (2)

AND NOW, this _____ day of _____, 2020, upon consideration of the Motion to Dismiss, or, alternatively, Motion for a More Definite Statement and/or Motion to Strike of the Defendant, Washington County Board of Elections, it is hereby **ORDERED, ADJUDGED and DECREED** that said Motion for a More Definite Statement and/or Motion to Strike are **GRANTED**. The Plaintiffs shall file an amended pleading containing specific allegations against the Defendant, Washington County Court of Elections. Furthermore, the Plaintiffs shall remove from the amended pleading the following Paragraphs, which are hereby stricken:

_____.

BY THE COURT:

_____ J.

CERTIFICATE OF SERVICE

I, Robert J. Grimm, Esquire, hereby certify that true and correct copies of the foregoing **Defendant Washington County Board of Elections' Motion to Dismiss, or, alternatively, Motion for a More Definite Statement and/or Motion to Strike** have been served this 24th day of July, 2020, by ECF, to:

All Counsel of Record

Respectfully submitted,

SWARTZ CAMPBELL, LLC

By: /s/Robert J. Grimm
Robert J. Grimm, Esquire
PA ID No. 55381
436 7th Ave., Floors 7 & 8
Koppers Building
Pittsburgh, PA 15219
(412) 232-9800
rgrimm@swartzcampbell.com
Attorneys for the Defendant,
Washington County
Board of Elections

