

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

DONALD J. TRUMP FOR PRESIDENT, INC., et al.	:	NO. 2:20-CV-00966
Plaintiffs,	:	
	:	
v.	:	JUDGE J. NICHOLAS RANJAN
	:	
KATHY BOOCKVAR, in her capacity as Secretary of the Commonwealth of Pennsylvania, et al.	:	JURY TRIAL DEMANDED
Defendants.	:	

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

Defendant, Berks County Board of Elections, by and through its attorneys, Deasey, Mahoney & Valentini, Ltd., 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. Plaintiffs, lead 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 Berks County Board of Elections (“Berks County”).

2. Plaintiffs’ Complaint alleges 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. 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. 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. As for the conduct of Berks County, the Plaintiffs have not attributed any such practices surrounding Pennsylvania's June 2, 2020 Primary Election to it and, as such, have failed to state any plausible claims against it.

6. Accordingly, Berks 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. In Plaintiffs' Complaint, Berks County receives only passing references, appearing in the caption and listed as a Defendant under the "Parties" section of the Complaint, along with 66 other Counties. (ECF 1, Pls.' Compl. at ¶ 17).

10. The Complaint is absolutely devoid of any allegations implicating Berks County in the practices of which Plaintiffs complain.

11. Plaintiffs' Complaint does not accuse Berks County of 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.

12. Accordingly, even accepting as true the allegations and inferences of Plaintiffs' Complaint, it is evident that those allegations and inferences do not elevate the Plaintiffs' claims against Berks County from the realm of possibility to that of plausibility.

13. Therefore, Plaintiffs have not stated any claims against Berks County upon which the Court can grant relief, and, as such, Berks County should be dismissed.

III. ARGUMENT IN SUPPORT OF MOTION FOR MORE DEFINITE STATEMENT

14. 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).

15. In the event the Court declines to grant dismissal, it should, in the alternative, order Plaintiffs to file an amended pleading that remedies the woeful insufficiency of their allegations with respect to Berks County.

16. Although the Complaint is excessively long and verbose, spanning 56 pages and consisting of 204 paragraphs, concrete factual allegations involving Berks County are remarkably absent.

17. The Complaint does not include even a solitary allegation that Berks 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 Berks County.

18. In light of the absence of allegations against Berks County, coupled with the vague and ambiguous character of Plaintiffs' allegations overall, the Court should order

Plaintiffs to file an amended pleading supplying a more definite statement of Plaintiffs' claims against Berks County.

IV. ARGUMENT IN SUPPORT OF MOTION TO STRIKE

19. 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).

20. 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.").

21. The Complaint presents needless argument 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.

22. The Court, under the auspices of Rule 12(f), should strike from 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

23. Berks 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.

24. Berks County joins in and incorporates these Motions to Dismiss and other Motions both to the extent they align with Berks 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 and Burford abstention doctrines.

WHEREFORE, the Defendant, Berks County Board of Elections, respectfully requests that this Honorable Court GRANT the within Motion, thereby dismissing Plaintiffs' Complaint and all claims set forth therein against the Defendant, Berks County Board of Elections, in their entirety and with prejudice. Alternatively, Berks County Board of Elections move the Court to order Plaintiffs to file an amended pleading curing the pleading deficiencies discussed above and omitting all allegations struck by the Court.

Respectfully submitted,

DEASEY, MAHONEY & VALENTINI, LTD.

Date: July 24, 2020

BY: /s/ Christine D. Steere, Esquire
CHRISTINE D. STEERE, ESQUIRE
PA ID NO. 84066
103 Chesley Drive, Suite 101
Media, PA 19063
(610) 892-2732 Phone
(215) 587-9456 Fax
csteere@dmvlawfirm.com
*Attorney for Defendant,
Berks County Board of Elections*

CERTIFICATE OF SERVICE

I, Christine D. Steere, Esquire, attorney for Defendant, Berks County Board of Elections, hereby certify that a true and correct copy of the foregoing Motion to Dismiss, or, alternatively, Motion for a More Definite Statement and/or Motion to Strike with supporting Brief were filed electronically and served via the Court's ECF system to all counsel of record.

DEASEY, MAHONEY & VALENTINI, LTD.

Date: July 24, 2020

BY: /s/ Christine D. Steere, Esquire
CHRISTINE D. STEERE, ESQUIRE