

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

DONALD J. TRUMP FOR  
PRESIDENT, INC., *et al.*,  
Plaintiffs

v.

KATHY BOOCKVAR, *et al.*,  
Defendants

No. 2:20-CV-00966-NR

Judge J. Nicholas Ranjan

Electronically Filed Document

**MOTION TO DISMISS ON BEHALF OF DEFENDANT,  
NORTHAMPTON COUNTY BOARD OF ELECTIONS**

Defendant, Northampton County Board of Elections (“Northampton County”), moves to dismiss the Plaintiffs’ Amended Complaint pursuant to Fed. R. Civ. P. 12 (b) (3), (6) for the following reasons:

**Plaintiffs’ Amended Complaint Should Be Dismissed Due to  
Lack of Standing and Jurisdiction**

1. Plaintiff Donald J. Trump for President, Inc. is the principal committee for the reelection campaign of Donald J. Trump, and the Republican National Committee is the political committee that leads the Republican Party (together, the “Organizational Plaintiffs”). Complaint, ¶¶ 8, 13.

2. The Complaint also names as Plaintiffs several individuals, candidates for various elected offices and potential poll watchers, each of whom

is a qualified elector in the state of Pennsylvania. Complaint, ¶¶ 9, 10, 11, 12, 14, 15.

3. Plaintiffs Glen Thompson, Mike Kelly, John Joyce, Guy Reschenthaler, Melanie Stringhill Patterson, Clayton David Show, (together, the “Individual Plaintiffs”) reside in Centre, Butler, Blair, Washington and Fayette counties. *Id.*

4. Northampton County Board of Elections is the governmental office charged with running and operating primaries and elections in the County of Northampton, Pennsylvania.

5. Plaintiffs have brought several claims solely under federal and state constitutional provisions, namely, the First and Fourteenth Amendments to the United States’ Constitution, and the Equal Protection and the Free and Fair Election Clauses under the Pennsylvania Constitution.

6. In essence, Plaintiffs allege that various counties applied different policies regarding voting by mail-in ballot and also prevented poll watchers from serving as poll watchers outside of their county of residence and prevented poll watchers from participating in the canvassing of mail-in ballots.

7. That Plaintiffs’ do not have standing to challenge inconsistencies regarding counties in which they are not electors.

8. Individual Plaintiffs are not aggrieved by other counties’ conduct with respect to local elections in which the Individual Plaintiffs cannot vote.

9. The Court should dismiss Plaintiffs' pleadings and request for relief on the grounds of lack of standing.

**Plaintiffs' Amended Complaint Should be Dismissed Pursuant to Federal Rule of Procedure 12 (b) (3)**

10. Northampton County is in the Eastern District of Pennsylvania.

11. Plaintiffs sued the Moving County in the Western District, which does not have venue of claims over the moving Defendants.

12. Plaintiffs have not alleged that the Moving County took any actions in the Western District.

13. The Congressmen Plaintiffs are not on the ballots in any of the moving counties and have no standing to make claims against the Moving County.

14. Any witnesses that the Moving County might call are all in eastern Pennsylvania, approximately 300 miles and 6 hours of driving time away from Pittsburgh.

15. Moving County asks either that the Plaintiffs' claim be dismissed for lack of venue or that the claims against them be transferred to the U.S. District Court for the Eastern District of Pennsylvania.

**Plaintiffs' Amended Complaint Should be Dismissed Pursuant to Federal Rule of Procedure Rule 12 (b) (6)**

16. The Plaintiffs' Amended Complaint makes broad allegations of the wrongdoing of all Pennsylvania counties' boards of election without specifying the specific deficiencies attributable to the counties.

17. Plaintiffs have not alleged that the Moving County has injured them in any way; nor have they reasonably offered evidence, based on a factual investigation, that the Moving County plan on conducting the November Presidential Election in a way that is inconsistent with Pennsylvania election law.

18. In addition, Plaintiffs have made a claim for attorneys' fees against the Moving County without alleging that it did anything wrong in the past or will do anything wrong in the future.

19. The Plaintiffs have not alleged the statutory basis for claiming attorneys' fees; if their claim is under 42 U.S.C. Section 1988, their claim fails because they have not alleged a deprivation of a Constitutional right caused by the moving counties.

20. For these reasons, all claims against the Moving County should be dismissed.

**Plaintiffs' Amended Complaint Should be Transferred to the Commonwealth Court Pursuant to the Pullman Abstention**

21. If the Court should decide that it has jurisdiction over the claims against the Moving County, the Moving County asks that the Court abstain from deciding this case under the Pullman Abstention Doctrine.

22. The claims raised by the Plaintiffs are closely related, if not nearly identical, to the claims currently pending before the Pennsylvania Commonwealth Court in a case filed by the Pennsylvania Democratic Party and others. (A copy of which is attached ECF#246).

23. Plaintiffs seek relief in this case based on recent amendments to Pennsylvania's election law, which have not been decided by the Commonwealth Court, but which will be decided in the related Commonwealth Court case.

24. Before this Court rules on whether the counties have violated the Plaintiff's Constitutional rights, it should allow the Commonwealth Court to decide and interpret Pennsylvania election law on the issues Plaintiffs raise in this case.

25. Having both the Commonwealth Court and this case decide similar issues on a parallel track could lead to inconsistent results; the Commonwealth Court is the better forum for these issues to be resolved since they relate to Pennsylvania election law which has not been previously interpreted by the Commonwealth Court.

26. For these reasons, the Moving County ask the Court to abstain pursuant to the Pullman Abstention Doctrine.

**Plaintiffs' Amended Complaint Should be Transferred to the Commonwealth Court Pursuant to the Colorado River Abstention**

27. For similar reasons to the Pullman Abstention arguments, the Moving County also asks the Court to abstain from deciding this case pursuant to the Colorado River Abstention Doctrine.

28. Given this Court's lack of venue over all of the Defendant Counties situated in the Middle and Eastern Districts of the State, it is more appropriate for the Commonwealth Court to be deciding questions of unsettled Pennsylvania

law which are currently pending before it rather than having three separate district courts decide the claims. This could conceivably result in three district courts and the Commonwealth Court all deciding similar claims at the same time and just prior to the November election which could call into question the lawfulness of the Pennsylvania vote count.

29. Not only is this an unwieldy process unfair to the parties to have to litigate in multiple jurisdictions, but it also could result in inconsistent decisions which would further complicate the national election when time is of the essence in deciding these questions before November.

30. For these reasons, abstention under the Colorado Abstention Doctrine is also appropriate.

**Plaintiffs' Amended Complaint Should be Stricken Pursuant to  
Federal Rule of Procedure 12 (b) (6) as There is No Properly Pleaded  
Claim of Vote Devaluation**

31. Plaintiffs have alleged the policy determinations of the Pennsylvania legislature have violated their right to an equally weighted vote because of the potential for fraud or improper action.

32. Plaintiffs only alleged a potential for criminal conduct, without any allegations this could be legislated against.

33. Further, there is no allegation that there was anything other than a good faith effort on the part of government actors.

34. Plaintiffs' Amended Complaint fails to plead that any alleged deviations were avoidable.

35. There is no offering on the part of the Plaintiffs to show how this state goal can be better achieved, i.e. an offering that allow more people a safe access to voting.

36. As to the sole potential statewide candidate, it cannot be said that the Article I standard is applicable and, as a result, there must be a greater quantified potential disparity or devaluation under the Equal Protection Clause of the Fourteenth Amendment.

37. Further, if this claim fails as to the statewide candidate, their remains no party that would warrant inclusion of Northampton County in this suit as no individuals reside in or represents this county in the lawsuit as a Plaintiff.

**Joinder in and Incorporation of Co-Defendants' Motions to Dismiss**

38. Moving County is one (1) of thirty-seven (37) Pennsylvania counties named as Defendants in this lawsuit along with the Secretary of the Commonwealth of Pennsylvania.

39. Moving County Northampton County Board of Elections joins in and incorporates by reference any Motions to Dismiss filed by the other sixty-six (66) counties and the Secretary of the Commonwealth of Pennsylvania to the extent that such Motion to Dismiss would provide a basis for the dismissal of Plaintiffs' Complaint as to Moving County.

40. Should this Court grant a Motion to Dismiss filed by any of the other sixty-six (66) counties or the Secretary of the Commonwealth and dismiss

Plaintiffs' Complaint, Moving County respectfully requests that any Order dismissing Plaintiffs' Complaint would apply equally to Moving County.

**WHEREFORE**, the Defendant, Northampton Board of Elections, ask the Court to dismiss Plaintiffs' Complaint.

COUNTY OF NORTHAMPTON

By: /s/ BRIAN J. TAYLOR  
Brian J. Taylor, Assistant Solicitor  
Attorney ID: 66601  
County of Northampton  
669 Washington Street  
Easton, Pennsylvania 18042  
Phone: (610) 829-6350  
Facsimile: (610) 559-3001  
btaylor@northamptoncounty.org

Date: July 31, 2020



**Certificate of Service**

I hereby certify that on this date, a copy of this document was served upon all counsel of record via the Court's CM/ECF system, which will provide electronic notice to all parties of record.

COUNTY OF NORTHAMPTON

By: /s/ BRIAN J. TAYLOR  
Brian J. Taylor, Esq.  
Attorney ID: 66601

Date: July 31, 2020