

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

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

Plaintiffs,

v.

LEIGH M. CHAPMAN, *in her official capacity
as Acting 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, Acting Secretary of the Commonwealth Leigh M. Chapman, by and through her 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 Acting Secretary agrees that because a voter's handwritten date on a ballot return envelope serves no purpose in the administration of Pennsylvania's elections, 52 U.S.C. § 10101(a)(2)(B) prohibits setting aside a

ballot merely because it was returned in an envelope lacking such a handwritten date. It is denied that the Acting Secretary counts or canvasses any ballots for any election since the Acting Secretary is instead responsible for accurately certifying the results of Pennsylvania's elections, 25 P.S. § 3159.

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

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

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

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

13. It is denied that the Acting Secretary counts or canvasses any ballots for any election since the Acting Secretary is instead responsible for accurately certifying the results of Pennsylvania's elections. *See* 25 P.S. § 3159. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 13.

14. It is denied that the Acting Secretary counts or canvasses any ballots for any election since the Acting Secretary is instead responsible for accurately certifying the results of Pennsylvania's elections. *See* 25 P.S. § 3159. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 14.

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

16. It is denied that the Acting Secretary counts or canvasses any ballots for any election since the Acting Secretary is instead responsible for accurately certifying the results of Pennsylvania's elections. *See* 25 P.S. § 3159. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 16.

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

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

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

20. It is denied that the Acting Secretary counts or canvasses any ballots for any election since the Acting Secretary is instead responsible for accurately certifying the results of Pennsylvania's elections. *See* 25 P.S. § 3159. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 20.

21. It is denied that the Acting Secretary counts or canvasses any ballots for any election since the Acting Secretary is instead responsible for accurately certifying the results of Pennsylvania's elections. *See* 25 P.S. § 3159. The

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

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

23. It is denied that the Acting Secretary counts or canvasses any ballots for any election since the Acting Secretary is instead responsible for accurately certifying the results of Pennsylvania's elections. *See* 25 P.S. § 3159. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 23.

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

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

26. It is denied that the Acting Secretary counts or canvasses any ballots for any election since the Acting Secretary is instead responsible for accurately certifying the results of Pennsylvania's elections. *See* 25 P.S. § 3159. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 26.

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

28. It is denied that the Acting Secretary counts or canvasses any ballots for any election since the Acting Secretary is instead responsible for accurately certifying the results of Pennsylvania's elections. *See* 25 P.S. § 3159. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 28.

29. It is denied that the Acting Secretary disenfranchises voters, as the Acting Secretary is responsible for accurately certifying the results of Pennsylvania's elections, 25 P.S. § 3159, but does not canvass or count any ballots for any election. It is denied that Plaintiff Jean Terrizzi's ballot was not counted for the 2022 General Election. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 29.

30. It is denied that the Acting Secretary disenfranchises voters, as the Acting Secretary is responsible for accurately certifying the results of Pennsylvania's elections, 25 P.S. § 3159, but does not canvass or count any ballots for any election. It is admitted that Plaintiff Barry Seastead's ballot was not counted for the 2022 General Election. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 30.

31. It is denied that the Acting Secretary disenfranchises voters, as the Acting Secretary is responsible for accurately certifying the results of Pennsylvania's elections, 25 P.S. § 3159, but does not canvass or count any ballots for any election. It is admitted that Plaintiff Marjorie Boyle's ballot was not counted for the 2022 General Election. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 31.

32. It is denied that the Acting Secretary disenfranchises voters, as the Acting Secretary is responsible for accurately certifying the results of Pennsylvania's elections, 25 P.S. § 3159, but does not canvass or count any ballots for any election. It is admitted that Plaintiff Marlene Gutierrez's ballot was not counted for the 2022 General Election. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 32.

33. It is denied that the Acting Secretary disenfranchises voters, as the Acting Secretary is responsible for accurately certifying the results of Pennsylvania's elections, 25 P.S. § 3159, but does not canvass or count any ballots for any election. The Acting Secretary is without sufficient knowledge or information to admit or deny whether Plaintiff Deborah Diehl's ballot was not counted for the 2022 General Election as two registered voters have the

same name in York County. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 33.

34. It is denied that the Acting Secretary disenfranchises voters, as the Acting Secretary is responsible for accurately certifying the results of Pennsylvania's elections, 25 P.S. § 3159, but does not canvass or count any ballots for any election. It is admitted that Plaintiff Aynne Polinski's ballot was not counted for the 2022 General Election. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 34.

35. It is denied that the Acting Secretary disenfranchises voters, as the Acting Secretary is responsible for accurately certifying the results of Pennsylvania's elections, 25 P.S. § 3159, but does not canvass or count any ballots for any election. It is admitted that Plaintiff Joel Bencan's ballot was not counted for the 2022 General Election. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 35.

36. It is denied that the Acting Secretary disenfranchises voters, as the Acting Secretary is responsible for accurately certifying the results of Pennsylvania's elections, 25 P.S. § 3159, but does not canvass or count any

ballots for any election. It is admitted that Plaintiff Laurence Smith's ballot was not counted for the 2022 General Election. The Acting 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 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.

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 cast 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 and to which no response is required.

49. Paragraph 49 describes a Pennsylvania Supreme Court case that speaks for itself and to which no response is required.

ii. *Migliori*

50. Paragraph 50 describes a Court of Appeals for the Third Circuit case that speaks for itself and to which no response is required.

51. Paragraph 51 describes the record from a Court of Appeals for the Third Circuit case that speaks for itself and to which no response is required.

52. Paragraph 52 describes the record from a Court of Appeals for the Third Circuit case that speaks for itself and to which no response is required.

53. Paragraph 53 describes the record from a Court of Appeals for the Third Circuit case that speaks for itself and to which no response is required.

54. Paragraph 54 describes a Pennsylvania Commonwealth Court case that speaks for itself and to which no response is required.

55. Paragraph 55 describes a Court of Appeals for the Third Circuit case that speaks for itself and to which no response is required.

56. Paragraph 56 describes the litigation history of a Court of Appeals for the Third Circuit case that speaks for itself and to which no response is required.

57. Paragraph 57 describes the litigation history of a United States Supreme Court case and conclusions and/or statements of law to which no response is required.

iii. *McCormick and Berks County*

58. Paragraph 58 describes Pennsylvania Commonwealth Court cases that speak for themselves and to which no response is required.

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.

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 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.

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

C. Pennsylvania's 2022 Election

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

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

67. Admitted that, as of January 4, 2023, county boards of election have marked approximately 7,900 ballots submitted in the 2022 General Election as having been cancelled because the voter failed to date, "correctly" date, or sign the ballot return envelope. The Acting Secretary is without sufficient

knowledge or information to admit or deny the remaining allegations in Paragraph 67.

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

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

70. The Acting Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 70. By way of further answer, the Acting Secretary does not canvass or “count” any ballots for any election, but rather is responsible for accurately certifying the results of Pennsylvania’s elections. *See* 25 P.S. § 3159.

71. The Acting Secretary agrees that because a voter’s handwritten date on a ballot return envelope serves no purpose in the administration of Pennsylvania’s elections, 52 U.S.C. § 10101(a)(2)(B) prohibits setting aside a ballot merely because it was returned in an envelope lacking such a handwritten date. It is denied that the Acting Secretary disqualifies ballots, as the Acting Secretary is responsible for accurately certifying the results of Pennsylvania’s elections, 25 P.S. § 3159, but does not canvass or count any ballots for any election. The Acting Secretary is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 71.

72. The Acting Secretary is without sufficient knowledge or information to admit or deny the allegations in Paragraph 72.

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

74. The Acting Secretary agrees that because a voter's handwritten date on a ballot return envelope serves no purpose in the administration of Pennsylvania's elections, 52 U.S.C. § 10101(a)(2)(B) prohibits setting aside a ballot merely because it was returned in an envelope lacking such a handwritten date.

COUNT I

75. This paragraph requires no response.

76. Although Paragraph 76 contains conclusions and/or statements of law to which no response is required, the Acting Secretary agrees that because a voter's handwritten date on a ballot return envelope serves no purpose in the administration of Pennsylvania's elections, 52 U.S.C. § 10101(a)(2)(B) prohibits setting aside a ballot merely because it was returned in an envelope lacking such a handwritten date.

77. Although Paragraph 77 contains conclusions and/or statement of law to which no response is required, the Acting Secretary agrees that because a voter's handwritten date on a ballot return envelope serves no purpose in the

administration of Pennsylvania's elections, 52 U.S.C. § 10101(a)(2)(B) prohibits setting aside a ballot merely because it was returned in an envelope lacking such a handwritten date.

78. Although Paragraph 78 contains conclusions and/or statements of law to which no response is required, the Acting Secretary agrees that because a voter's handwritten date on a ballot return envelope serves no purpose in the administration of Pennsylvania's elections, 52 U.S.C. § 10101(a)(2)(B) prohibits setting aside a ballot merely because it was returned in an envelope lacking such a handwritten date. It is denied that the Acting Secretary invalidates any ballots, as the Acting Secretary is responsible for accurately certifying the results of Pennsylvania's elections, 25 P.S. § 3159, but does not canvass or count any ballots for any election.

79. Although Paragraph 79 contains conclusions and/or statements of law to which no response is required, the Acting Secretary agrees that because a voter's handwritten date on a ballot return envelope serves no purpose in the administration of Pennsylvania's elections, 52 U.S.C. § 10101(a)(2)(B) prohibits setting aside a ballot merely because it was returned in an envelope lacking such a handwritten date.

80. Although Paragraph 80 contains conclusions and/or statements of law to which no response is required, the Acting Secretary agrees that because a

voter's handwritten date on a ballot return envelope serves no purpose in the administration of Pennsylvania's elections, 52 U.S.C. § 10101(a)(2)(B) prohibits setting aside a ballot merely because it was returned in an envelope lacking such a handwritten date.

81. Although Paragraph 81 contains conclusions and/or statements of law to which no response is required, the Acting Secretary agrees that because a voter's handwritten date on a ballot return envelope serves no purpose in the administration of Pennsylvania's elections, 52 U.S.C. § 10101(a)(2)(B) prohibits setting aside a ballot merely because it was returned in an envelope lacking such a handwritten date.

82. Although Paragraph 82 contains conclusions and/or statements of law to which no response is required, the Acting Secretary agrees that because a voter's handwritten date on a ballot return envelope serves no purpose in the administration of Pennsylvania's elections, 52 U.S.C. § 10101(a)(2)(B) prohibits setting aside a ballot merely because it was returned in an envelope lacking such a handwritten date.

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.

January 4, 2023

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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: January 4, 2023

/s/ Elizabeth P. Lester-Abdalla
Elizabeth P. Lester-Abdalla