

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

WILLIAM FRENCH and	:	
MELYNDA ANNE REESE,	:	
Plaintiffs,	:	CIVIL ACTION—LAW
	:	
v.	:	No. 3:23-538
	:	
COUNTY OF LUZERNE,	:	(JUDGE MANNION)
LUZERNE COUNTY BOARD	:	
OF ELECTIONS AND	:	
REGISTRATION, and	:	
LUZERNE COUNTY BUREAU	:	
OF ELECTIONS,	:	
	:	
Defendants.	:	

**DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS’ COMPLAINT**

Defendants Luzerne County (“County”) and Luzerne County Board of Elections (the “Board”)¹ (collectively the “Defendants”) by and through their undersigned counsel, hereby Answer the Complaint of Plaintiffs William French (“Mr. French”) and Melynda Anne Reese (“Ms. Reese”) (collectively “Plaintiffs”).

¹ The Complaint (Doc. 1) originally named the Luzerne County Bureau of Elections as a defendant in this case; however, pursuant to the Court’s Memorandum (Doc. 37) and Order (Doc. 38) regarding Defendants’ Federal Rule of Civil Procedure 12(b)(6) motion, the Luzerne County Bureau of Elections has been dismissed from this action.

1. Denied. The allegations contained within this paragraph are conclusions of law, which require no response. Accordingly, they are strictly and specifically denied.

2. Denied. The allegations contained within this paragraph are conclusions of law, which require no response. Accordingly, they are strictly and specifically denied. Furthermore, the allegations refer to a written document, which speaks for itself, and any characterization of its contents is specifically denied.

3. Denied. The allegations contained within this paragraph are conclusions of law, which require no response. Accordingly, they are strictly and specifically denied. Moreover, the allegations refer to a written document, which speaks for itself, and any characterization of its contents are specifically denied. Furthermore, Defendants admit that ballot paper shortages affected certain voting precincts on November 8, 2022; however, it is specifically denied that it was impossible for Plaintiffs, or other voters, to vote in the general election.

4. Admitted in part and denied in part. It is admitted that the County experienced ballot paper shortages on November 8, 2022 and it is admitted, based off of Luzerne County Bureau of Elections records, that Plaintiffs did not vote during the November of 2022 general election; however, it is specifically denied that Plaintiffs had no means to vote or that their right and ability to vote was severely burdened on November 8, 2022. Also, the allegations of this paragraph are

conclusions of law, which require no response. Accordingly, they are strictly and specifically denied.

5. Denied. The allegations of this paragraph are conclusions of law, which require no response. Accordingly, they are strictly and specifically denied.

6. Denied. The allegations of this paragraph are conclusions of law, which require no response. Accordingly, they are strictly and specifically denied.

7. Denied. The allegations of this paragraph are conclusions of law, which require no response. Accordingly, they are strictly and specifically denied. Furthermore, it is specifically denied that the County does not train employees who administer elections.

8. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the remaining allegations of this paragraph. Accordingly, the remaining allegations are strictly and specifically denied.

PARTIES, JURISDICTION, AND VENUE

9. Admitted in part and denied in part. It is admitted that Mr. French is a registered voter in the Commonwealth of Pennsylvania, who resides in Luzerne County. Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the remaining allegations in this paragraph. Accordingly, the remaining allegations are strictly and specifically denied.

10. Admitted in part and denied in part. It is admitted that Ms. Reese is a registered voter in the Commonwealth of Pennsylvania, who resides in Luzerne County. Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the remaining allegations in this paragraph. Accordingly, the remaining allegations are strictly and specifically denied.

11. Admitted.

12. Admitted in part and denied in part. It is admitted that the Luzerne County Board of Elections and Registration is a county board governed by state law and the Luzerne County Home Rule Charter (the "Charter"). The remaining allegations of this paragraph constitute a conclusion of law, which requires no response. Accordingly, they are strictly and specifically denied. Furthermore, pursuant to the Charter, the County has the exclusive right and power to manage the day-to-day affairs of the Election Bureau including the ability to hire, train, and supervise Election Bureau employees.

13. Denied. The allegations contained within this paragraph constitute conclusions of law, which require no response. Accordingly, they are strictly and specifically denied. Furthermore, pursuant to the Charter, the County has the exclusive right and power to manage the day-to-day affairs of the Election Bureau including the ability to hire, train, and supervise Election Bureau employees.

14. Denied. The allegations of this paragraph are conclusions of law, which require no response. Accordingly, they are strictly and specifically denied.

15. Admitted.

16. Admitted.

BACKGROUND

17. Denied. The allegations contained within this paragraph constitute conclusions of law, which require no response. Accordingly, they are strictly and specifically denied. Furthermore, it is specifically denied that the County did not properly train its election employees and workers to administer the November of 2022 general election.

18. Denied. The allegations contained within this paragraph constitute conclusions of law, which require no response. Accordingly, they are strictly and specifically denied. Furthermore, the number of voting precincts affected by the ballot paper shortage was less than forty (40). See Public Report of the Luzerne County District Attorney's Office on the November 8, 2022 General Election, attached hereto as Exhibit "A".

19. Denied as stated. It is specifically denied that citizens, including Plaintiffs, could not vote on November 8, 2022 by any means including by regular, emergency, and/or provisional ballot. It also is specifically denied that Plaintiffs polling locations experienced ballot paper shortages. However, it is admitted that the

electronic ballot marking devices utilized by the County require a specific weight of paper in order for a citizen to select their candidate choices, print the ballot, and then cast the ballot by placing it through a scanner tabulation device. Only then is the vote counted.

20. Denied. Defendants never instructed election officials or workers to tell voters that they could not vote and to come back to the polling places later. Such allegations are specifically and strictly denied.

21. Denied in part and admitted in part. It is admitted that the ballot paper shortage in Luzerne County on November 8, 2022 was widely reported in local, state, and national media outlets; however, the remaining allegations contained within this paragraph refer to news articles, which are written documents that speak for themselves, and any characterization of same is specifically denied.

22. Denied. While some polling places reported paper shortages early in the morning when the polls opened, reports to the Election Bureau that polling precincts ran out of paper were often conflated with polling precincts running low on paper—which was corroborated by the Luzerne County District Attorney's Office's investigation into the ballot paper shortages. See Exhibit A. Accordingly, it is specifically denied that polling places—particularly Plaintiffs' polling precincts—were ever completely offline let alone as early as 8:00 a.m.

23. Denied. The allegations contained within this paragraph constitute conclusions of law, which require no response. Accordingly, the allegations are specifically denied. Furthermore, the County did have training and other protocols in place to deal with ballot paper shortages. In a matter of hours, the County procured additional ballot paper from vendors and arranged delivery of the ballot paper to affected polls. Also, the County petitioned the Court of Common Pleas in Luzerne County to extend voting hours from 8:00 p.m. to 10:00 p.m., which was granted by the Court.

24. Denied. It is specifically denied that County employees refused to answer phone calls from poll workers or offer guidance or assistance to them throughout the day of November 8, 2022. Furthermore, it is specifically denied that poll workers were left to their own devices to respond to ballot paper shortages.

25. Denied. It is specifically denied that the County instructed poll workers to buy paper at office supply stores. Within hours, the County procured additional ballot paper and arranged delivery of the paper to affected polling precincts by the afternoon of November 8, 2022.

26. Denied. After reasonable investigation, the County lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained within this paragraph. Accordingly, it is specifically denied.

27. Denied. It is specifically denied that County election workers instructed voters to vote by a provisional ballot unless there was legitimate reason to do so.

28. Denied. The allegations within this paragraph constitute a conclusion of law, which requires no response. Accordingly, the allegations are specifically denied.

29. Denied in part and admitted in part. It is admitted that the County petitioned the Luzerne County Court of Common Pleas to extend voting hours on November 8, 2022. The allegations contained within this paragraph also refer to a Petition filed of record with the Luzerne County Court, which is a written document that speaks for itself, and any characterization of same is specifically denied. Moreover, it is specifically denied that voters had been intentionally turned away from the polls or that the County *knew* that voters were being disenfranchised. The County petitioned the Court to extend voting hours because it was responding to an evolving situation and delivery of additional paper ballots was in the works.

30. Denied. The allegations contained within this paragraph refer to a Petition filed of record with the Luzerne County Court, which is a written document that speaks for itself, and any characterization of same is specifically denied.

31. Denied. The allegations contained within this paragraph refer to an Order filed of record with the Luzerne County Court, which is a written document that speaks for itself, and any characterization of same is specifically denied.

32. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

33. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

34. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the allegations of this paragraph. Accordingly, the remaining allegations are strictly and specifically denied, and strict proof of same is demanded at trial. Furthermore, according to Luzerne County Bureau of Election records, Mr. French's polling place on November 8, 2022 has not been pleaded accurately.

35. Denied. Defendants deny that Mr. French's polling precinct was one of the locations affected by the ballot paper shortages on November 8, 2022. Strict proof of same is demanded at trial.

36. Denied. Defendants deny that election officials or poll workers instructed Mr. French to come back later in the day to vote. Furthermore, Defendants deny that Mr. French's polling precinct was one of the polling locations affected by the ballot paper shortage. Strict proof of same is demanded at trial.

37. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the remaining allegations of this paragraph. Accordingly, the remaining allegations are strictly and specifically denied, and strict proof of same is demanded at trial.

38. Denied. Defendants deny that election officials or poll workers instructed Mr. French to come back later in the day to vote. Furthermore, Defendants deny that Mr. French's polling precinct was one of the polling locations affected by the ballot paper shortage. Strict proof of same is demanded at trial.

39. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the remaining allegations of this paragraph. Accordingly, the remaining allegations are strictly and specifically denied, and strict proof of same is demanded at trial.

40. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained within this paragraph. Accordingly, the allegations are strictly and specifically denied, and strict proof of same is demanded at trial.

41. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the remaining allegations of this paragraph. Accordingly, the remaining allegations are strictly and specifically denied, and strict proof of same is demanded at trial.

42. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the remaining allegations of this paragraph. Accordingly, the remaining allegations are strictly and specifically denied, and strict proof of same is demanded at trial. Furthermore, based upon Luzerne County Bureau of Elections records, Ms. Reese has not accurately pleaded her polling precinct on November 8, 2022.

43. Denied. It is specifically denied that Defendants instructed poll workers to triage ballots. Moreover, it is specifically denied that Ms. Reese's polling precinct was affected by the ballot paper shortage. Strict proof of same is demanded at trial.

44. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the remaining allegations of this paragraph. Accordingly, the remaining allegations are strictly and specifically denied, and strict proof of same is demanded at trial.

45. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the remaining allegations of this paragraph. Accordingly, the remaining allegations are strictly and specifically denied, and strict proof of same is demanded at trial.

46. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the remaining

allegations of this paragraph. Accordingly, the remaining allegations are strictly and specifically denied, and strict proof of same is demanded at trial.

47. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the remaining allegations of this paragraph. Accordingly, the remaining allegations are strictly and specifically denied, and strict proof of same is demanded at trial.

48. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

49. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

50. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

51. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

52. Denied in part and admitted in part. It is admitted that the Luzerne County Board of Elections and Registration is a five member board; however, the

remaining allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

53. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

54. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

55. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

56. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied. Furthermore, the County hires the Director of Elections and has the exclusive power and authority to hire, train, and supervise employees within the Bureau of Elections.

57. Admitted.

58. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response

may be required, the allegations are specifically denied. Furthermore, the Director of Elections is the highest-ranking official within the Bureau of Elections who is tasked with overseeing all aspects of election administration within Luzerne County.

59. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied. Furthermore, the Director of Elections is the highest-ranking official within the Bureau of Elections who is tasked with overseeing all aspects of election administration within Luzerne County and supervision of all full-time, part-time, and seasonal employees of the Elections Bureau. Moreover, the Director of Elections reports to the Administrative Services Division Head and the Luzerne County Manager under the County Charter.

60. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

61. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

62. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

63. Denied. Defendants specifically deny that a deliberate decision was made to order a different number of ballots for each of its 186 polling precincts.

64. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied. Furthermore, Defendants specifically deny that a deliberate decision was made to order less ballots than legally required and it denies that it violated Plaintiffs' constitutional rights.

65. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

66. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

67. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

68. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

69. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

70. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied. Furthermore, Defendants did provide additional paper ballots to affected polling locations, from its existing supplies initially, and did procure additional paper ballots from vendors and arranged for delivery of the paper ballots by the afternoon of November 8, 2022.

71. Denied. Strict proof of same is demanded at trial. Furthermore, Defendants did employ “rovers” to resupply polling locations with additional ballot paper and it also procured additional ballot paper from vendors and delivered it to affected polling locations by the afternoon of November 8, 2022.

72. Denied. Defendants did not ignore warnings and recommendations from outside agencies. Strict proof is demanded at trial. Indeed, the ballot paper shortage on November 8th was not the product of Defendants inability to procure enough ballot paper in time for the election. Indeed, Defendants procured a significant quantity of ballot paper on November 8th itself and delivered it to affected polling precincts throughout the day. Election officials believed that they had enough paper to administer the 2022 general election.

73. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

74. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

75. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

76. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

77. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

78. Denied. Defendants specifically deny that no training occurs for Bureau of Election employees and poll workers tasked with the administration of elections. Strict proof of same is demanded at trial.

79. Denied. It is specifically denied that Defendants do not maintain any training manuals, guides, or other written documents that notify employees of their

duties and responsibilities in administering elections. Strict proof of same is demanded at trial.

80. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

81. Admitted. Beth Gilbert-McBride was appointed acting Director of Elections in September of 2022.

82. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied. Furthermore, Beth Gilbert-McBride, prior to her employment with the County, was an elected official with the City of Wilkes-Barre and had pursued post-graduate education in applicable fields.

83. Denied. Strict proof of same is demanded at trial.

84. Admitted.

85. Admitted. Former Director of Elections, Michael Susek, resigned effective August of 2022.

86. Denied in part and admitted in part. It is admitted that there has been a high rate of turnover within the Bureau of Elections in recent years; however, any characterization of the relevant experience of each of these employees is specifically

denied. Furthermore, any allegation that high turnover in the Bureau of Elections is unique to Luzerne County is also specifically denied.

87. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

88. Admitted in part and denied in part. It is admitted that an election worker mistakenly discarded nine mailed ballots. The worker was immediately terminated and the matter referred for criminal investigation, which resulted in no charges. The remaining allegations are specifically denied.

89. Admitted.

90. Denied. After reasonable investigation, Defendants lack sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained within this paragraph. Accordingly, the allegations are specifically denied.

91. Denied. Strict proof of same is demanded at trial.

92. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

93. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

94. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

95. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

96. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

97. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

98. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

COUNT I

99. This averment is an incorporation paragraph to which no response is required.

100. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

101. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

102. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

103. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

104. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

105. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

106. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

107. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

108. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

109. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

110. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

111. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

112. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

WHEREFORE, Defendants respectfully request that this Honorable Court dismiss Plaintiffs' Complaint, enter judgment in their favor, together with costs, and award all other relief that the Court deems just and proper.

COUNT II

113. This is an incorporation paragraph to which no response is required.

114. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

115. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

116. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

117. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

118. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

119. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

120. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

WHEREFORE, Defendants respectfully request that this Honorable Court dismiss Plaintiffs' Complaint, enter judgment in their favor, together with costs, and award all other relief that the Court deems just and proper.

COUNT III

121. This is an incorporation paragraph, to which no response is required.

122. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

123. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

124. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

125. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

126. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

127. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

128. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

129. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

130. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

131. Denied. The allegations contained within this paragraph constitute a conclusion of law to which no response is required. To the extent that a response may be required, the allegations are specifically denied.

WHEREFORE, Defendants respectfully request that this Honorable Court dismiss Plaintiffs' Complaint, enter judgment in their favor, together with costs, and award all other relief that the Court deems just and proper.

COUNT IV

132-139. Count IV was dismissed, pursuant to this Court's Memorandum (Doc. 37) and Order (Doc. 38), dated December 4, 2023, and therefore, the remaining allegations require no response.

AFFIRMATIVE DEFENSES

1. Defendants incorporate by reference the preceding paragraphs as if fully set forth herein.
2. Plaintiffs' complaint fails to state a claim(s) upon which relief may be granted.
3. Plaintiffs' claims are barred, in whole or in part, because the actions of Defendants did not constitute a deprivation of constitutional rights.

4. Plaintiffs' claims are barred, in whole or in part, because the conduct of Defendants did not violate clearly established law.

5. Plaintiffs' claims are barred, in whole or in part, because they have not been deprived of any rights under the color of state law.

6. Plaintiff's claims are barred, in whole or in part, because they have not suffered any damages.

7. Plaintiffs' alleged damages, if any, were caused by their own acts and conduct.

8. Plaintiffs' damages are barred, in whole or in part, by the limitation on damages set forth in 42 Pa. C.S.A. § 8549.

9. Defendants reserve the right to supplement its affirmative defenses up until the time of trial.

WHEREFORE, Defendants respectfully request that this Honorable Court dismiss Plaintiffs' Complaint, enter judgment in their favor, together with costs, and award all other relief that the Court deems just and proper.

Respectfully submitted,

/s/ Drew P. McLaughlin

Drew P. McLaughlin I.D. No. 324430

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15 Public Square, Suite 210

Wilkes-Barre, PA 18701

DATED: December 18, 2023

Counsel for Defendants