

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

WILLIAM FRENCH, ET. AL.

No. 3:23-cv-538-MEM

Plaintiffs

v.

LUZERNE COUNTY, ET. AL.

Defendants

**PLAINTIFFS' CONCISE STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Under Local Rule 56.1, plaintiffs submit this concise statement of undisputed material facts.

A. THE PARTIES

1. The County of Luzerne (the "County") is a county of the third class organized and existing under the law of the Commonwealth of Pennsylvania. Compl., ECF No. 1 at ¶ 11; Ans., ECF No. 39 at ¶ 11,

2. The Luzerne County Board of Elections and Registration is a county board of elections organized under 25 P.S. § 2641 and the Luzerne County Home Rule Charter. Compl., ECF No. 1 at ¶ 12; Ans., ECF No. 39 at ¶ 12.

3. Plaintiff, William French, is a qualified and registered voter in the Commonwealth of Pennsylvania who resides in Luzerne County. Compl., ECF No. 1 at ¶ 9; Ans., ECF No. 39 at ¶ 9.

4. French was a registered voter in Luzerne County in 2022 and was qualified to vote in Luzerne County in the 2022 General Election on November 8, 2022. *Id.*

5. Plaintiff, Melynda Anne Reese, is a qualified and registered voter in the Commonwealth of Pennsylvania who resides in Luzerne County. Compl., ECF No. 1 at ¶ 10; Ans., ECF No. 39 at ¶ 10.

6. Reese was a registered voter in Luzerne County in 2022 and was qualified to vote in Luzerne County in the 2022 General Election on November 8, 2022. *Id.*

B. BALLOT PAPER AND THE BALLOT PAPER SHORTAGE.

7. 25 P.S. § 2967(a) requires the County to have enough ballot paper for 100% of the registered voters within a voting district minus the number of registered voters within a voting district who requested mail-in or absentee ballots. Defs.' Ans. to Plts.' Int. 9 at Ex. 1.

8. Ballot paper is a critical election supply. Deposition of Jennifer Pecora (“Pecora dep.”), 91:4-7 at Ex. “2.”

9. Preventing ballot paper shortages from occurring is a high priority for the County. *Id.*, 91:8-11.

10. Elections must be properly administered so that people are not denied the right to vote. Deposition of Emily Cook (“Cook dep.”), 31:12-15 at Ex. “3.”

11. It is never acceptable for someone to be denied the right to vote because an election is not properly administered. *Id.*, 31:16-19.

12. If an election is properly administered, there should never be a ballot paper shortage. Pecora dep., 91:12-14.

13. It is obvious that without sufficient ballot paper voters might not be able to vote. Declaration of Beth Gilbert f/k/a Beth Gilbert McBride (“Gilbert dec.”) at ¶ 44 at Ex. 4.

14. In November 2022, the County did not supply each polling location with a sufficient amount of ballot paper for 100% of the registered voters within a voting district minus the number of registered voters within a voting district who requested mail-in or absentee ballots. Def. Ans. to Int. at ¶ 9 at Ex. 1.

15. This ballot-paper shortage affected between 35-40 polling locations in the Luzerne County. Cook dep., 76:22-25, 77:1, 167:9-14 at Ex. “3.”

16. The ballot-paper shortage caused voters in Luzerne County, through no fault of their own to be disenfranchised. *See* Order of the Luzerne County Court of Common Pleas dated November 8, 2022, ECF No. 1-1; *In Re: Extension of Time for the Polls to Remain Open in the 2022 General Election*, No. 09970-2022, N.T. 7:8-13 at Ex. “5.”

C. THE COUNTY’S FAILURE TO TRAIN ELECTION OFFICIALS AND TO ADOPT POLICIES AND PROCEDURES REGARDING BALLOT PAPER AND THE ADMINISTRATION OF ELECTIONS.

17. The Director of Elections is “the highest-ranking official within the Bureau of Elections who is tasked with overseeing all aspects of election administration with Luzerne County and supervisions of all full-time, part-time, and seasonable employees of the Elections Bureau.” Ans., ECF No. 39 at ¶ 59.

18. The Director of Elections is the person who is ultimately responsible for administering elections in the County. Pecora dep. at 30:15-20 at Ex. “2”; Defs.’ Ans. to Int. 11 at Ex. 1.

19. From July 15, 2022 to June 27, 2023, Beth Gilbert, f/k/a Beth Gilbert McBride (“Gilbert”), was employed by County and worked in the Bureau of Elections. Gilbert dec. at ¶ 1 at Ex. “4.”

20. Gilbert was initially hired to serve as the deputy Director of Elections for the County. *Id.*, ¶ 2.

21. The deputy Director of Elections supports the Director of Elections. *Id.*, ¶ 3.

22. In August 2022, the County’s Director of Elections, Michael Susek, resigned. Ans., ECF No. 39 at ¶ 85.

23. To replace him, the County appointed Gilbert the acting Director of Elections for the County. *Id.* at ¶ 81.

24. Therefore, Gilbert was the acting Director of Elections for the November 2022 general election. Compl., ECF No. 1 at ¶ 57, Ans., ECF No. 39 at ¶ 57.

25. As the acting Director of Elections, Gilbert was responsible for, among other things, ordering ballot paper for the November 2022 general election. Defs.’ Ans. to Plts.’ Int. 5 at Ex. “1.”

26. Gilbert decided not to order ballot paper for the November 2022 general election. Cook dep., 121:14-16, 121:21-25 at Ex. “3.”

27. Before she was hired by the County as deputy Director of Elections, Gilbert had no experience in administrating elections for a county and had received no training concerning the same. Gilbert dec. at ¶ 4 at Ex. “4.”

28. Before she was hired, she had two interviews with County officials. *Id.* at ¶ 5.

29. During both interviews, she made abundantly clear to the interviewers that she had no experience or training in administration of elections. *Id.* at ¶ 6.

30. After she was hired, the County did not train Gilbert in any of her responsibilities and did not train her on how to properly administer an election. *Id.* at ¶ 7.

31. Before Gilbert appointing her acting Director of Elections, the County neither offered Gilbert nor provided Gilbert with any training on the administration of elections. *Id.* at ¶ 12.

32. While serving as acting Director of Elections, the only election related instruction Gilbert received was from Dominion Voting Systems on how the County’s voting machines operated. *Id.* at ¶ 14.

33. From September 2022 until January 2023, Cook was the acting deputy Director of Elections. Cook dep. at 24:1-4 at Ex. “3.”

34. Before being named acting deputy Director of Elections, Cook had very limited experience with federal election laws and limited experience with the Pennsylvania Election Code. *Id.* at 37:3-7.

35. Before the November 2022 general election, Cook had never taken any coursework related to the administration of elections. *Id.* at 16:1-20.

36. Before naming her as acting deputy Director of Elections, the County was aware of Cook’s lack of experience administering elections. *Id.* at 37:15-19.

37. Before naming her as acting deputy Director of Elections, the County and the Bureau did not provide Cook with any formal training necessary for her to fulfil her job duties related to administration of elections. *Id.* at 37:20-24.

38. While she was acting deputy Director of Elections, the County never provided Cook any training necessary for her to fulfil her job duties, on the Pennsylvania Election Code, or federal election law. *Id.* at 38:8-13, 38:24-25, 39:1-6.

39. The Director of Elections reports to the Administrative Services Division Head and the Luzerne County Manager. Ans., ECF No. 39 at ¶ 59.

40. The Division Head of Administrative Services oversees the Bureau of Elections, among other departments. Pecora dep. at 21:15-18 at Ex. “2.”

41. Between September 2022 and November 2022, Jennifer Pecora (“Pecora”) was the County’s Administrative Services Division Head. *Id.* at 21:9-12.

42. The County has never provided Pecora with any training on the administration of elections. *Id.* at 36:14-16.

43. The County has never provided Pecora with any training on Pennsylvania Election Code. *Id.* at 36:17-19.

44. The County has never provided Pecora with any training on federal elections laws. *Id.* at 36:20-21.

45. Between September 2022 and November 2022, Pecora and Gilbert met almost daily to discuss the November 2022 general election. *Id.* at 33:18-25, 34:1-9.

46. However, Pecora and Gilbert did not discuss ordering ballot paper during those meetings. *Id.* at 35:6-9.

47. Before the November 2022 general election, the County never provided any training to election officials regarding how much ballot paper to order for an election. Cook dep. at 124:3-6 at Ex. “3.”

48. Before the November 2022 general election, the County never adopted written policies and procedures regarding how much paper to order for each election. *Id.* at 124:7-10.

49. Before the November 2022 general election, the County had not adopted any policies and procedures to make certain that an adequate supply of ballot paper was on hand for each election. *Id.* at 124:11-16.

50. For the November 2022 general election, the County had not adopted any written policy and procedure regarding what to do if a polling location ran low or out of paper. Cook dep. at 94:6-10; 138:19-25, 139:1-11; Gilbert dec. at ¶ 37.

51. In November 2022, the County had not provided any training regarding what to do if a polling location ran out of ballot paper. Cook dep. at 94:11-15.

52. For the November 2022 general election, the County did not maintain any specific policy or procedure concerning how ballot paper was dispatched to polling locations throughout the County. Gilbert dec. at ¶ 33.

53. For the November 2022 general election, the County did not maintain any specific policy or procedure to assure that each polling location had adequate ballot paper. *Id.* at ¶ 34.

54. For the November 2022 general election, the County did not maintain any specific policy or procedure regarding dispatching ballot paper to polling locations that needed it. *Id.* at ¶ 35.

55. For the November 2022 general election, the County did not maintain any specific policy or procedure for replacing ballot paper or maintaining adequate voting related supplies. *Id.* at ¶ 36.

56. The County maintained a “Seal Team,” whose responsibilities included assuring voting machines were properly operating, loaded with supplies, including ballot paper, and sealed before the machines were delivered to polling locations. *Id.* at ¶ 38.

57. Emily Cooke, Jennifer Pecora, Harry Hanson, Dan Reese, Randy Shaw, Jonathan O'Dell were the members of the "Seal Team." *Id.*, at ¶ 39; Defs.' Ans. to Int. No. 13 at Ex. "1."

58. The County had adopted no written policies and procedures that the "Seal Team" was to follow to fulfil their duties. Gilbert dec. at ¶ 41 at Ex. "4," Cook dep. at 94:1-6 at Ex. "3."

59. Before the November 2022 general election, the County had not adopted policies and procedures regarding the stocking of paper in voting machines before they were sealed and delivered to polling locations. Cook dep. at 82:12-16.

60. Cook was the de facto leader of the Seal Team. *Id.* at 87:17-21.

61. The County did not provide the Seal Team with any training necessary for the team to fulfil their duties, did not adopt policies and procedures that the Seal Team should follow, and did not tell the Seal Team to make sure the voting machines had adequate paper before sealing them. *Id.* at 89:3-15.

62. The County provided no training to the “Seal Team” to assist the “Seal Team” in performing their duties. Gilbert dec. at ¶ 40; Cook dep. at 94:1-6.

63. During the November 2022 election, there were no specific and clear policies and procedures on how to administer elections in the County. Gilbert dec. at ¶ 32 at Ex. “4.”

64. The lack of training of County election staff caused at least some voters to be turned away from the polls on election day in 2022. *Id.* at ¶ 42.

65. The lack of formal policies and procedure by the County in how to properly administer elections caused the ballot paper shortage that is the subject matter of this litigation to occur. *Id.* at ¶ 43.

D. DEFENDANTS’ FAILURE TO TRAIN AND TO ADOPT ADEQUATE POLICIES AND PROCEDURES CAUSED PLAINTIFFS TO BE DENIED THE RIGHT TO VOTE OR SIGNIFICANTLY BURDENED THEIR RIGHT TO VOTE.

66. Since 2011, French has been disabled, completely unable to work, and has received disability income. Deposition of William French (“French dep.”) at 13:11-25; 14:1-2.

67. On the morning of November 8, 2022 (Election Day), French went to his local polling place at the Freeland Ambulance Association,

417 Johnson Street, Freeland, PA 18224 to cast his vote in person. Compl., ECF No. 1 at ¶ 34; Deposition of Rule 30(b)(6) Designee of Luzerne County Board of Elections (“Williams dep.”) at 81:9-19. A copy of the deposition transcript is attached at Exhibit “6.”

68. But, upon arrival at his polling place, election officials and workers employed by the defendants told French he could not vote because the polling place did not have ballots on which he could cast a vote. Compl. at ¶ 10 and Williams dep. 81:24-25, 82:1-18.

69. Election officials and poll workers employed by the defendants told French he was to come back later in the day to attempt to vote. Compl. at ¶ 36, 82:19-25, Williams dep., 83:1-4.

70. As instructed, French returned to the same polling place at approximately 3:30 p.m. on election day. Compl. at ¶ 37; Williams dep. 83:6-12.

71. But, again, election officials and workers told French he could not vote because there were still no ballots available. Compl. at ¶ 38; Williams dep. 83:13-23; Deposition of William French (“French dep.”) at 43:5-15 at Ex. “7.”

72. Election officials and workers told the location will still wait-
ing for ballots to be delivered and that there would be extended polling
hours. French dep. at 43:8-15.

73. When French asked the official when the official believed he
would be able to vote and the official responded, “I don’t know.” *Id.* at
45:8-15.

74. However, French’s disability left him unable to return yet
again to attempt to exercise his right to vote. *Id.* at 56:2-18.

75. Because of his disability, French uses a cane to help him walk.
Id. at 34:1-14.

76. The sidewalks leading from French’s home to his polling place
are deteriorated and destroyed. *Id.* at 56:10-18.

77. Walking at night on these sidewalks created a risk of a fall
and injury. *Id.*

78. So, French was not able to return to the polls to attempt to
vote a third time. *Id.*

79. Reese is employed as a corrections officer. Declaration of
Melynda Anne Reese (“Reese dec.”) at ¶ 1 at Ex. “8.”

80. Reese is also the primary care giver for her husband who, as of November 8, 2022, had recently suffered two cardiac arrests and a stroke. *Id.* at ¶ 2.

81. Due to his condition, Reese is not able to leave the house for extended periods of time when her husband will be unattended. *Id.* at ¶ 3.

82. On the morning of November 8, 2022, Reese went to her polling place located at 248 State Route 4012, Shickshinny, Pennsylvania 18655 with her husband. Compl., ECF No. 1 at ¶ 42, Williams dep., 84:1-11.

83. Upon arrival, election officials and workers informed Reese that only her husband could vote because the polling location had only a limited number of ballots remaining and that Reese would have to return later in the day to cast her vote. Compl., ECF No. 1 at ¶ 43, Williams dep., 84:13-25.

84. At 4:00 p.m., Reese returned to vote. Compl., ECF No. 1 at ¶ 44, Williams dep., 85:1-12.

85. When she returned, she was told there was still a waiting time. *Id.*

86. But her husband's physical condition made him unable to wait in the line for a long period of time. *Id.*

87. Reese again returned with her husband to cast her vote later in the day at approximately 6:30 p.m. Compl., ECF No. 1 at ¶ 45, Williams dep., 85:14-25.

88. Once again, however, Reese saw the length of the line was so long that she would not be able to wait with her husband for that long to vote. Reese dec. at ¶ 7.

89. On November 8, 2022, at approximately 9:15 p.m., an election official employed by defendants called Reese and told her that ballots were finally available, and she could come to her polling place to vote. Compl., ECF No. 1 at ¶ 46, Williams dep., 86:3-15.

90. But Reese's husband had already taken his sleeping medication and it was impossible to leave the home with him at this time to attempt to vote a fourth time. Reese dec. at ¶ 9.

Respectfully submitted,

Dated: April 15, 2024

/s/ Walter S. Zimolong

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