

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

**WILLIAM FRENCH AND
MELYNDA ANN REESE,**

Plaintiffs,

v.

**LUZERNE COUNTY AND
LUZERNE COUNTY BOARD
OF ELECTIONS AND
REGISTRATION,**

Defendants.

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CIVIL ACTION--LAW

Case No.: 3:23-cv-538

(JUDGE MANNION)

**DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendants Luzerne County ("County") and the Luzerne County Board of Elections and Registration ("Board") (collectively, "Defendants"), by and through undersigned counsel, hereby submit their Statement of Undisputed Material Facts in support of their Motion for Summary Judgment.

1. Luzerne County is a Third-Class County (population between 210,000 and 499,000) and is one of seven Home Rule counties in Pennsylvania. See <https://www.luzernecounty.org/557/Home-Rule-Charter> (accessed April 13, 2024).

2. Pursuant to the Home Rule Charter (the "Charter"), governmental authority is divided between the legislative and executive branches. See Exhibit A, Luzerne County Home Rule Charter, generally.

3. Eleven (11) individuals serve on County Council (“Council”) who then appoint a County Manager who is tasked with overseeing day-to-day administration of the County’s governmental operations and supervising its personnel. Id.; also Exhibit D, p. 193, ¶¶ 4-25.

4. Council has no authority to supervise County employees directly. Exhibit A.

5. Council can only exercise oversight of the County administration indirectly through appointing a county manager, evaluating the county manager’s performance annually, retaining the ability to terminate the county manager by super-majority vote of the Council, and through the budgetary process. Id.

6. The Luzerne County Bureau of Elections (“Bureau”) is a department within the County administration. Exhibit D, p. 20, ¶¶ 20-22.

7. The Director of Elections oversees the Bureau including its personnel and operations. See Exhibit B, Defendants’ Responses and Objections to Plaintiffs’ First Set of Interrogatories, pp. 10-11, ¶ 11.

8. The Director of Elections reports directly to the Coordinator of Administrative Services and the County Manager. Id.

9. The Board is an independent body that exercises general supervision over the administration of elections. See Exhibit A, § 8.04, pp. 44-46; also Exhibit C, Deposition Transcript of Board Chairperson Denise Williams, p. 20, ¶¶ 15-21; Exhibit D, p. 95, ¶¶ 3-8.

10. The Board is comprised of five (5) members. Four of them are appointed by Council and the fifth member is appointed as chairman of the Board by the other four Board members. Exhibit A, § 8.04, p. 44, ¶ B; also Exhibit C, p. 18, ¶¶ 1-17.

11. The Board does not supervise the Bureau's employees. Exhibit C, p. 29, ¶¶ 3-8, & 18-19; p. 53, ¶¶ 8-20; pp. 114, ¶¶ 21-25, & p. 115, ¶¶ 1-9; also Exhibit D, p. 95, ¶¶ 3-8.

12. While the Board is consulted whenever the County hires a Director of Elections, it does not possess any power or authority, pursuant to the Charter, to reject, veto, approve or otherwise participate in the County administration's selection of the Director of Elections. Exhibit C, p. 43, ¶¶ 1-9; also id. at p. 115, ¶¶ 1-15.

13. The Director of Elections is not an employee of the Board. See Exhibit B, pp. 10-11, ¶ 11.

14. The Board has no power or authority to supervise the Director of Elections. Id.; also Exhibit C, p. 45, ¶¶ 11-18.

15. The Board is not responsible for training the Director of Elections or any other Bureau personnel. Exhibit C, pp. 117-118.

16. The Board has no power or authority to hire, supervise, discipline, or train any Bureau personnel. Id. at pp. 116-118.

17. In November of 2022, Beth Gilbert-McBride (“Ms. Gilbert-McBride”) served as the County’s acting Director of Elections. See Exhibit B at pp. 5-6, ¶ 5.

18. Prior to becoming the acting Director of Elections, Ms. Gilbert-McBride served as the Bureau’s Deputy Director of Elections. See Exhibit D, Deposition Transcript of Emily Cook, pp. 195-196.

19. Ms. Gilbert-McBride was the fifth person to serve as Director of Elections—either in a permanent or acting capacity—since 2020. See Exhibit E, The Public Report of the District Attorney—2022 General Election, pp. 3-4 of 24.

20. High turnover in senior election administration roles is not unique to Luzerne County. See Exhibit D, pp. 162-163.

21. Michael Susek (“Mr. Susek”), Ms. Gilbert-McBride’s immediate predecessor, resigned on July 21, 2022—just six (6) days after she began work as the Deputy Director of Elections—and Mr. Susek’s resignation became effective on August 11, 2022 (less than ninety days before Election Day). Exhibit E, p. 4 of 24.

22. The County advertised the position of Director of Elections and interviewed multiple candidates in or about September of 2022. See Exhibit F, Deposition Transcript of Jennifer Pecora, pp. 84-86.

23. The County offered the position to an applicant from Connecticut; however, the applicant withdrew her name from consideration after she was offered the position. Id.

24. The County then decided to keep the position open, re-advertise it, and hire a permanent Elections Director after the general election on November 8, 2022. Id.

25. Ms. Gilbert-McBride assumed the duties of acting Director of Elections in August of 2022 while the County conducted a search for a new Director of Elections. Id.

26. In September of 2022, Ms. Gilbert-McBride was appointed the acting Director of Elections. Exhibit E, p. 4 of 24.

27. The Bureau's Operations Director, Emily Cook ("Ms. Cook"), was appointed as the acting Deputy Director of Elections. Id.

28. In September of 2022, Jennifer Pecora ("Ms. Pecora") was hired as the Coordinator of Administrative Services. Exhibit F, p. 21, ¶¶ 9-12.

29. Ms. Pecora was a former finance officer and municipal manager in Butler Township, Luzerne County and an elected tax collector. Id. at p. 19, ¶¶ 18-23; also id. at p. 20, ¶¶ 13-17.

30. As the Coordinator for Administrative Services, Ms. Pecora supervised multiple departments including the Bureau of Elections. Id. at p. 21, ¶¶ 13-18.

31. Between September and November of 2022, Ms. Pecora's office was located within the Bureau of Elections itself. Id. at p. 83.

32. She held regular—almost daily—meetings with Bureau of Elections staff including with Ms. Gilbert-McBride and Ms. Cook. Id. at p. 32, ¶¶ 15-17 (“I saw the election team every day. We were meeting on a pretty regular basis just getting prepared for the election.”); also id. at p. 82, generally.

33. Luzerne County held at least ten training sessions for judges of elections (“JOEs”) and other poll workers prior to the November 8, 2022 general election. See Exhibit G, Deposition Transcript of Logan Buglio, p. 23, ¶¶ 16-25 & p. 24, ¶ 1; p. 21, ¶¶ 9-13; p. 22, ¶¶ 3-6.

34. In 2022, Luzerne County hired Logan Buglio (“Mr. Buglio”), a JOE for three (3) years in Butler Township, to design and conduct training for JOEs and other poll workers prior to the November 8, 2022 general election. Id. at p. 27, ¶¶ 4-6; also id. at pp. 36-38; also Exhibit D, p. 106, ¶¶ 10-15 (“[Mr. Buglio] has a very

well-run precinct, and that is always notable within our office when a particular judge of elections stands out for doing a very good job.”)

35. Prior to November of 2022, Mr. Buglio had done every job that exists within a polling place, up to and including as a JOE, and he had worked in at least ten different election cycles. Id. at pp. 36-38.

36. Mr. Buglio tailored the training sessions specifically for poll workers because he felt that the County’s existing training program was focused too much on “macro” issues within the Bureau of Elections and not specifically geared towards the common experiences of “on the ground” poll workers on any given Election Day. Id. at pp. 39-40.

37. Mr. Buglio’s training sessions reviewed how JOEs and other poll workers should respond to voting disruptions that may develop on Election Day whether that be due to issues with supplies or equipment. Id. at pp. 42-43.

38. In order to keep collecting votes, poll workers were also trained on how to utilize emergency and provisional ballots should issues arise with the electronic Ballot Marking Devices (“BMDs”). Id. at p. 43, ¶¶ 10-20.

39. Luzerne County had a training program in place for poll workers prior to November 8, 2022 and before Mr. Buglio was hired to revamp the training protocol. Id. at pp. 40-41.

40. Luzerne County also developed a Polling Place Procedures Manual that was distributed to all poll workers for the 2022 General Election. Exhibit D, pp. 112-113.

41. Ms. Cook developed a Luzerne County Election Guide over several election cycles, which existed prior to November 8, 2022, and was used by senior leadership to prepare for an election. See Exhibit D, p. 55, ¶¶ 17-20; also pp. 56-66; pp. 158-161.

42. Luzerne County utilizes BMDs at each of its polling precincts. Id. at p. 120, ¶¶ 1-10; also Exhibit D, p. 72, ¶¶ 9-25.

43. In November of 2022, Luzerne County had 186 polling precincts located in 143 different polling locations. Exhibit E, p. 6 of 24.

44. On the BMDs, voters make their candidate selections on the electronic ballot via a touchscreen. Id. at pp. 8-9 of 24.

45. Once the voter has reviewed and verified their ballot, it is printed out via a printer that is connected to the BMD. Id.

46. The voter is then required to walk their ballot over to an electronic tabulation scanner, which is positioned in the polling precinct but apart from the BMDs. The voter then runs their ballot through the tabulator and only then is the vote counted and recorded. Id.

47. The BMDs are made by Dominion Voting Systems. Id.

48. Dominion recommends that the BMDs and the tabulators utilize 80-lb. paper for the ballots. Id. at pp. 4-5, & 13 of 24.

49. The BMDs, tabulation scanner, extra ballot paper, and all other equipment necessary to run a polling precinct are distributed to the polling precincts beginning one (1) week prior to Election Day. Exhibit B, pp. 11-12, ¶ 12.

50. The BMDs, tabulation scanners, ballot paper, and all other election related equipment are stored in the County's storage facility, which is a secured facility. Id. at pp. 9-10, ¶ 10.

51. Prior to delivering the equipment to the polling precincts, Elections Bureau personnel are tasked with checking the voting equipment including the BMDs, the tabulation scanners, printers, and ensure that the printers are stocked with paper so ballots can be printed. Id. at pp. 8-9, ¶ 9.

52. Each polling precinct also is supposed to receive extra paper stock as well. Id. at pp. 9-10, ¶ 10.

53. The BMDs and other equipment are then sealed for delivery to the polling precincts. Id. at pp. 9-10, ¶ 10.

54. The County personnel tasked with inspecting and sealing the equipment are designated internally as the Seal Team. Id. at pp. 9-10, ¶ 10; also id. at pp. 12-13, ¶ 13.

55. The BMDs and other equipment cannot be unsealed until the morning of Election Day. See Exhibit D, pp. 89-91.

56. On October 13, 2022, Ms. Cook, while at the County's storage warehouse to seal the BMDs and other voting equipment, texted Ms. Gilbert-McBride about the County's 80-lb. paper supply for the BMDs. Id. at pp. 122-123; also id. at pp. 142-144.

57. The text message read: [from Ms. Cook to Ms. Gilbert-McBride] "I don't think we will need it for this election but we are running low on ballot paper. We will probably send out all the paper we have." Exhibit E, p. 16 of 24.

58. Ms. Gilbert-McBride replied: "I will order." Id.

59. Between October 13, 2022 and November 8, 2022, Ms. Gilbert-McBride did not order any 80-lb. paper stock.

60. At the warehouse, the County had a supply of 100-lb. paper stock. Exhibit F, p. 81, ¶¶ 11-14.

61. There was also 80-lb. paper still at the warehouse. Exhibit D, p. 78, ¶¶ 3-9; also p. 143, ¶¶ 11-13 & 24-25.

62. 80-lb. paper at the warehouse was not, exclusively, all the paper that was held in reserve for the November 8, 2022 general election. Exhibit D, p. 177, ¶¶ 8-15.

63. The County also designates “Rovers” who are provided with extra ballot paper and other voting equipment to resupply polling precincts if, and when, they need it. Exhibit D, p. 70; also id. at p. 116.

64. Rovers are assigned designated areas and polling precincts. Id.

65. On November 8, 2022, Rovers were provided with 80-lb. paper. Exhibit F, p. 92, ¶¶ 11-16; also id. at p. 116.

66. The Rovers assigned to southern Luzerne County are given more supplies than their counterparts assigned to polling precincts closer to Wilkes-Barre—where the Bureau of Elections and storage warehouse are located—because it is easier to resupply Rovers assigned to the northern tier than the southern tier of Luzerne County. Id. at p. 172, ¶¶ 9-21; also id. at p. 116.

67. On November 8, 2022, there was a reserve supply of 80-lb. paper in the warehouse, which was distributed at the direction of Ms. Pecora. Exhibit D, p. 78, ¶¶ 3-9; also p. 143, ¶¶ 11-13 & 24-25.

68. On the morning of November 8, 2022, polling precincts began reporting paper shortages to the Bureau of Elections. Exhibit D, pp. 89-91.

69. Paper shortages did not affect every polling precinct in Luzerne County. Exhibit E, pp. 10-11 of 24; also Exhibit D, p. 171, ¶¶ 6-9.

70. On November 8, 2022, reports of polling precincts being “out of paper” were incorrect but widely disseminated when in reality many polling precincts had run out of “extra paper” or were running “low” on paper but did not run out entirely. Id. at p. 10 of 24, n. 8; also Exhibit D, p. 167, ¶¶ 24-25, & p. 168, ¶¶ 1-3.

71. Ms. Pecora went to the storage warehouse and arranged for delivery of all of the remaining 80-lb. paper left in the warehouse to affected polling precincts. Exhibit D, p. 143, ¶¶ 11-25.

72. Ms. Pecora, Ms. Cook, and other county officials procured additional orders of 80-lb. paper that would be delivered by various vendors throughout the day on November 8, 2022. See Exhibit D, pp. 73-75.

73. The County also arranged to deliver the 100-lb. paper to affected polling precincts after testing the 100-lb. paper in the remaining tabulation scanners at the warehouse. Exhibit E, pp. 4-5 of 24.

74. The 100-lb. paper worked with the tabulation scanners; however, both Dominion and the Pennsylvania Department of State advised against deploying the 100-lb. paper because both entities were worried about paper jams due to climate conditions in the warehouse and if the ballots had to be double-fed through the tabulation scanner if a ballot could not be printed on one side due to the number of candidates in any local polling precinct. Id.; also Exhibit D, pp. 73-75.

75. Detectives with the Luzerne County District Attorney's Office assisted with delivery of 80-lb. paper to affected polling precincts in the afternoon and early evening of November 8, 2022. Exhibit E, pp. 7-8 of 24.

76. Orders of 80-lb. paper were received throughout the afternoon and immediately delivered to affected polling precincts in Luzerne County. Id. at p. 6 of 24.

77. By early afternoon on November 8, 2022, County officials decided—in consultation with legal counsel and representatives of the Democratic and Republican parties—to petition the Luzerne County Court of Common Pleas to extend voting hours from 8:00 p.m. to 10:00 p.m. See Exhibits D and F, generally; also Exhibit H, Transcript of Hearing before Honorable Lesa Gelb, November 8, 2022.

78. The Honorable Lesa Gelb, 11th Judicial District, Luzerne County Court of Common Pleas issued an order granting the County's petition. Id.

79. Luzerne County polling precincts were ordered to remain open until 10:00 p.m. Id.

80. In November of 2022, Plaintiff William French was registered to vote at the Freeland Event Center, 526 Fern Street, Freeland, PA. See Exhibit I, Defendants' Rule 26 Supplemental Disclosures, pp. 3-4, ¶ g.; also id. at BATES 098 and 100.

81. In November of 2022, Plaintiff Melynda Anne Reese was registered to vote at 249 Trailing Pine Road, Shickshinny, PA 18655. Id.

82. Neither of Plaintiff's polling places were shut down due to any ballot paper shortages and voting continued throughout the day. See Exhibit E, p. 11 of 24.

83. Council, the Board, and the public called for the Luzerne County District Attorney's Office to investigate the circumstances surrounding the ballot paper shortage in the general election. Exhibit E, generally.

84. After a thorough investigation, Luzerne County District Attorney Samuel M. Sanguedolce, Esq., issued a public report detailing his findings regarding the November 8, 2022 general election. See Exhibit E, generally.

85. The ballot paper shortages were not due to any intentional conduct by County officials. Exhibit E, pp. 9-15, & 23 of 24.

86. Out of 186 polling precincts, sixteen (16) polling precincts ran out of paper at some point on November 8, 2022; however, these polling locations kept accepting votes by provisional and emergency ballots so that no polling precincts were ever completely shut down on November 8, 2022. Exhibit E, p. 11 of 24.

87. These sixteen polling precincts also received deliveries of 80-lb. paper on November 8, 2022 and hours before the polls closed. Exhibit E, p. 6 of 24 ("Paper was delivered to every poll requesting paper in Luzerne County."); also Exhibit G, p. 32, ¶¶ 17-25 & p. 33, ¶¶ 1-18.

88. Neither of Plaintiffs' polling precincts were among the sixteen (16) precincts identified in the D.A.'s report. See Exhibit E, p. 11 of 24; also Exhibit H, p. 9.

89. Plaintiffs' polling precincts did not cease voting or run out of paper on November 8, 2022. Id.

90. The ballot paper shortages that occurred on November 8, 2022 had never occurred before. See Exhibit E, p. 15 of 24 (detailing ballot paper historical purchasing order data by the Bureau of Elections); also Exhibit D, p. 167, ¶¶ 1-4.

Respectfully submitted,

s/ Drew P. McLaughlin

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DATED: April 15, 2024

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CERTIFICATE OF SERVICE

I, Drew P. McLaughlin, hereby certify that I have caused to be served this day a true and correct copy of the foregoing Defendants’ Statement of Undisputed Material Facts in Support of Motion for Summary Judgment via electronic filing as follows:

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