

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

EUGENE KOPECKI

Plaintiff

v.

COUNTY OF LACKAWANNA , LACKAWANNA
COUNTY BOARD OF ELECTIONS,
LACKAWANNA COUNTY DEPARTMENT OF
ELECTIONS AND VOTER REGISTRATION,
and ELIZABETH HOPKINS, individually and in
her Official capacity as DIRECTOR,
DEPARTMENT OF ELECTIONS AND VOTER
REGISTRATION

Defendants

Civil Action

No. 3:25-CV-02513-JFS

Hon. Joseph F. Saporito Jr.

ANSWER TO COMPLAINT

NOW COMES the Defendants by and through their undersigned council and
Answers Plaintiff's Complaint as follows:

1. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied.
2. This allegation is a conclusion of law and no answer is required.
3. This allegation is a conclusion of law and no answer is required.
4. This allegation is a conclusion of law and no answer is required.
5. This allegation is a conclusion of law and no answer is required.
6. This allegation is a conclusion of law and no answer is required.
7. This allegation is a conclusion of law and no answer is required.

8. This allegation is a conclusion of law and no answer is required.

9. Admitted.

10. Admitted.

11. This allegation is a conclusion of law and no answer is required.

12. This allegation is a conclusion of law and no answer is required.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. This allegation is a conclusion of law and no answer is required.

18. Admitted. By way of further response, the Lackawanna County election administrative officials were sent the wrong ballots from the printer and by error were inadvertently mailed out. Once the error was discovered, the recipients were notified, including through the press and corrective ballots were sent out within 2-3 days. The Republican ballots for the City of Scranton were sent to the printer later than any other ballots. The Lackawanna County election administrative officials had to wait to have the Republican ballots printed for the City of Scranton as a result of two (2) pending legal actions before the Court of Common Pleas and Commonwealth Court regarding a proposed candidate for the office of Mayor in the City of Scranton being removed from the ballot. The deadline for the Defendants to mail out absentee and mail-in ballots was May 6, 2025. The Defendants mailed out the correct ballots to the affected voters on April 28, 2025, considerably before the deadline.

19. Admitted. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

20. Admitted. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

21. Admitted. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

22. Admitted. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

23. Admitted. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

24. Admitted in part and denied in part. It is admitted that a portion of the Republican primary voters in the City of Scranton. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

25. Admitted in part. It is admitted that Elizabeth Hopkins became aware of the incorrect ballots. The deadline for the Defendants to mail out absentee and mail-In ballots was May 6, 2025. The Defendants mailed out the correct ballots to the affected voters on April 28, 2025, considerably before the deadline. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

26. Denied. It is denied that the ballots were not proofread. To the contrary, the Defendants proofread the ballots before they were printed by the third party vendor. The test ballots sent by the printer passed testing. However, the printer sent the wrong ballots, which were different than the test ballots.

27. Admitted. By way of further response, correct ballots were immediately mailed out to those voters who received incorrect ballots.

28. Denied. It is specifically denied that no efforts were made to remedy the incorrect ballots or contact voters. Defendants took the following actions: (a) staff of the Defendants telephoned those affected voters who had supplied telephone numbers on their application for absentee and mail-in ballots and those voters who had telephone numbers on record with the Department; (b) Defendants emailed those affected voters who had supplied email addresses on their application for absentee and mail-in ballots and those voters who had email addresses on record with the Department; (c) the list of affected voters, with numbers if available, was sent to the County Republican Party, which contacted those voters; (d) a letter was included in the corrected ballots sent to the affected voters explaining the error and corrective action; (e) a press release was sent to all the media outlets which reported on the error and the corrective action; and (f) the County website prominently informed the public.

29. Denied. It is specifically denied that those affected voters did not receive new ballots. The deadline for the Defendants to mail out absentee and mail-in ballots was May 6, 2025. The Defendants mailed out the correct ballots to the affected voters on April 28, 2025, considerably before the deadline. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

30. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied.

31. Admitted in part. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

32. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied.

33. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied. By way of further response, Kopecki was mailed a corrective ballot.

34. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied.

35. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied. By way of further response, Kopecki was mailed a corrective ballot.

36. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied.

37. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied.

38. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

39. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied.

40. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied. By way of further response, Kopecki was mailed a corrective ballot. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

41. Admitted.

42. Admitted.

43. Admitted.

44. Admitted in part and denied in part. It is admitted Hopkins is the Director of Elections. It is specifically denied that she exhibited deliberate indifference and/or intent in failing to administer the election properly. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

45. This allegation is a conclusion of law and no answer is required.

46. This allegation is a conclusion of law and no answer is required.

47. This allegation is a conclusion of law and no answer is required.

48. This allegation is a conclusion of law and no answer is required.

49. Admitted in part. By way of further response, the Lackawanna County election administrative officials were sent the wrong ballots from the printer and by error were inadvertently mailing out these ballots. Once the error was discovered, the recipients were notified, including through the press and corrective ballots were sent out within 2-3 days. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

50. Admitted in part and denied in part. It is admitted that the Defendants did immediately printed and mailed out corrected ballots to affected voters, including the Plaintiff. Defendants lack knowledge or information sufficient to form a belief about the truth of whether Plaintiff received a corrective ballot and therefore it is deemed denied.

51. Admitted in part and denied in part. It is admitted that the printer erred in printing the incorrect ballots. The remaining portion of this averment is denied. By way

of further response, the Lackawanna County election administrative officials were sent the wrong ballots from the printer and by error were inadvertently mailing out these ballots. Once the error was discovered, the recipients were notified, including through the press and corrective ballots were sent out within 2-3 days. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

52. Admitted.

53. Denied. There was a policy and procedure in place. However, an error was committed by the printer of the ballots and an error was committed by the Defendants. However, the Defendants immediately corrected the error. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

54. Denied. There is a policy and procedure in place to train the staff. However, an error was committed. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

55. This allegation is a conclusion of law and no answer is required.

56. This allegation is a conclusion of law and no answer is required.

57. This allegation is a conclusion of law and no answer is required.

58. This allegation is a conclusion of law and no answer is required.

59. This allegation is a conclusion of law and no answer is required.

60. Denied. The Defendants followed procedure set forth by the PA Department of State and the Election Code. The ballots and the machines were tested prior to the election. The printer sent a test deck of various ballots for all county precincts, including the absentee and mail-in ballots along with the election day ballots.

All these ballots passed testing. However, the ballots sent by the printer subsequent to the testing were incorrect. Further, the Sample Ballots (hard copy and electronic file) and Provisional ballots were correct upon delivery.

61. Denied. This allegation is specifically denied. It is specifically denied that Hopkins intentionally and with deliberate indifference did not direct her staff to proof read the ballots. A simple error occurred.

62. Admitted in part and denied in part. It is admitted that the Defendants received the ballots pre-folded from their printer vendor. However, an error was committed by the printer of the ballots and an error was committed by the Defendants. However, the Defendants immediately corrected the error.

63. Denied. An error was committed by the printer of the ballots and an error was committed by the Defendants. However, the Defendants immediately corrected the error.

64. Denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

65. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied.

66. Denied. The Defendants did implement proper protocols and procedures. A human error was committed by both the printer and the Defendants. Plaintiff was not disenfranchised. It is denied that Defendant Hopkins chose not to cause all ballots to be accurately printed. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

67. Denied.

68. This allegation is a conclusion of law and no answer is required.

69. This allegation is a conclusion of law and no answer is required.

70. This allegation is a conclusion of law and no answer is required.

71. This allegation is a conclusion of law and no answer is required.

72. This allegation is a conclusion of law and no answer is required.

73. This allegation is a conclusion of law and no answer is required.

74. This allegation is a conclusion of law and no answer is required.

75. This allegation is a conclusion of law and no answer is required.

76. Admitted.

77. Admitted.

78. This allegation is a conclusion of law and no answer is required.

79. This allegation is a conclusion of law and no answer is required.

80. This allegation is a conclusion of law and no answer is required.

81. This allegation is a conclusion of law and no answer is required.

82. This allegation is a conclusion of law and no answer is required.

83. This allegation is a conclusion of law and no answer is required.

84. Denied. It is specifically denied that the Defendants did not have policies, processes procedures controls and training in place. A simple error occurred which was immediately rectified.

85. Denied.

86. Denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Admitted in part and denied in part.

93. Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore it is deemed denied.

94. This allegation is a conclusion of law and no answer is required.

95. Denied. It is specifically denied that all Defendants were deliberately indifferent and exhibited callous disregard for the rights of Plaintiff.

96. Denied.

97. Denied. A simple error occurred which was immediately rectified.

98. Denied. It is specifically denied that Hopkins made any deliberate decisions concerning the mailing of incorrect ballots.

99. Denied. It is specifically denied that Hopkins made deliberate decisions not to establish a protocol to replace the incorrect ballots. To the contrary, new correct ballots were printed and mailed out immediately. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

100. Denied.

101. Denied. It is specifically denied that the Plaintiff was disenfranchised and that the Defendants acted intentional or otherwise to cause the incorrect ballots to be mailed out. To the contrary, new correct ballots were printed and mailed out

immediately. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

COUNT I

102. Defendants incorporate by reference the previous paragraphs as if the same were set forth herein.

103. This allegation is a conclusion of law and no answer is required.

104. This allegation is a conclusion of law and no answer is required.

105. This allegation is a conclusion of law and no answer is required.

106. This allegation is a conclusion of law and no answer is required.

107. This allegation is a conclusion of law and no answer is required.

108. Denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

109. Denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

110. Denied. A simple error occurred and was rectified immediately. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

111. Denied. It is specifically denied that Hopkins acted deliberately not to proofread the incorrect ballots.

112. Denied. Defendants corrected the error of the mailing of the incorrect ballots upon discovery by immediately mailing the new ballots to those affected voters, including Plaintiff. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

113. Denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

114. Denied. Defendants corrected the error of the mailing of the incorrect ballots upon discovery by immediately mailing the new ballots to those affected voters, including Plaintiff. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

115. Denied.

COUNT II

116. Defendants incorporate by reference the previous paragraphs as if the same were set forth herein.

117. Denied.

118. Denied. Defendants corrected the error of the mailing of the incorrect ballots upon discovery by immediately mailing the new ballots to those affected voters, including Plaintiff. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

119. Denied. Defendants corrected the error of the mailing of the incorrect ballots upon discovery by immediately mailing the new ballots to those affected voters, including Plaintiff. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

120. Denied. Defendants corrected the error of the mailing of the incorrect ballots upon discovery by immediately mailing the new ballots to those affected voters, including Plaintiff. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

121. Denied. Defendants corrected the error of the mailing of the incorrect ballots upon discovery by immediately mailing the new ballots to those affected voters, including Plaintiff. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

COUNT III

122. Defendants incorporate by reference the previous paragraphs as if the same were set forth herein.

123. This allegation is a conclusion of law and no answer is required.

124. Denied. It is specifically denied that any actions or inactions of Hopkins deprived Plaintiff of any rights.

125. Denied. It is specifically denied that Hopkin's conduct was reckless, intentional or showed indifference to Plaintiff. To the contrary, Defendants corrected the error of the mailing of the incorrect ballots upon discovery by immediately mailing the new ballots to those affected voters, including Plaintiff. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

126. Denied. Defendants corrected the error of the mailing of the incorrect ballots upon discovery by immediately mailing the new ballots to those affected voters, including Plaintiff.

COUNT IV

127. Defendants incorporate by reference the previous paragraphs as if the same were set forth herein.

128. This allegation is a conclusion of law and no answer is required.

129. This allegation is a conclusion of law and no answer is required.

130. Denied. The Defendants corrected the error of the incorrect ballots and immediately mailed to new ballots to all affected voters, including the Plaintiff.

131. This allegation is a conclusion of law and no answer is required.

132. Denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

133. Denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

134. Denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

135. Admitted in part and denied in part. It is admitted that some voters initially received incorrect ballots. It is denied that the Defendants did not immediately mail correct ballots to the affected voters, including Plaintiff. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

136. Denied. . Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

137. Denied.

COUNT V

138. Defendants incorporate by reference the previous paragraphs as if the same were set forth herein.

139. Denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

140. Denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

141. Denied. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

142. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

143. Defendants incorporate by reference its response in paragraph 18 as if the same were set forth herein.

144. This allegation is a conclusion of law and no answer is required. By way of further response, Defendants have safeguards in place. A simple error occurred which was immediately rectified.

145. This allegation is a conclusion of law and no answer is required. By way of further response, Defendants have safeguards in place. A simple error occurred which was immediately rectified.

Defendants respectfully requests that this Honorable Court:

- a. Dismiss the Complaint of Plaintiff;
- b. Award Defendants costs and attorney fees; and
- c. Grant Defendants all other relief that the Court deems just and reasonable.

AFFIRMATIVE DEFENSES

146. Defendants incorporate by reference the previous paragraphs as if the same were set forth herein.

147. The Plaintiff's claim is barred by accord and satisfaction. Defendants corrected the error of the incorrect ballots and immediately mailed correct ballots to the affected voters, including Plaintiff.

148. The Plaintiff's claim is barred laches. Plaintiff waited over 9 months to bring forth this action.

149. The Plaintiff's claim is barred by contributory negligence. Defendants immediately mailed corrected ballots to affected voters, including Plaintiff. If Plaintiff did not receive his corrected ballot he should have contacted the voter registration office and a new ballot would have been mailed.

150. The Plaintiff's claim is moot. The primary election of 2025 is over. Defendants have policy, procedures and safeguards in place. The Defendants immediately mailed corrected ballots to affected voters, including Plaintiff.

Defendants respectfully requests that this Honorable Court:

- a. Dismiss the Complaint of Plaintiff;
- b. Award Defendants costs and attorney fees; and
- c. Grant Defendants all other relief that the Court deems just and reasonable.

Respectfully submitted,

Dated: January 22, 2026

/s/ Anthony C. Lomma

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