

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

| | | |
|--|---|-----------------------------|
| PENNSYLVANIA STATE | : | |
| CONFERENCE OF THE NAACP, <i>et al.</i> , | : | |
| | : | CIVIL ACTION |
| Plaintiffs, | : | |
| | : | No. 1:22-cv-00339-SPB |
| v. | : | |
| | : | |
| AL SCHMIDT, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | ELECTRONICALLY FILED |
| | : | |

**BRIEF OF DEFENDANT BERKS COUNTY BOARD OF ELECTIONS IN
OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT ON
COUNTS II AND III OF PLAINTIFFS’ SECOND AMENDED COMPLAINT**

Defendant Berks County Board of Elections (“Berks County”) opposes Plaintiffs’ motion for summary judgment (doc. 400) as to Plaintiffs’ remaining constitutional claims asserted in Counts II and III of Plaintiffs’ Second Amended Complaint (doc 413). As explained in Berks County’s July 5, 2024 motion for summary judgment and supporting brief (doc. 437, 438),¹ Plaintiffs’ claims against Berks County in Count II (Equal Protection claim) and Count III (First and Fourteenth Amendment Right-to-Vote Claim) should be dismissed because Plaintiffs lack standing to assert either of these claims against Berks County. Moreover, enforcing the Pennsylvania Election Code’s statutory requirement that voters not only sign but also write the

¹ Instead of filing another brief making the same arguments, for brevity and judicial economy, Berks County incorporates by reference all the arguments in its July 5, 2024 brief in support of its own motion for summary judgment on Plaintiffs’ Second Amended Complaint (doc. 438) as though set forth at length here. Berks County also incorporates by reference the arguments in Intervenor-Defendants’ July 18, 2024 opposition to Plaintiffs’ motion for summary judgment (doc. 439) and the opposition arguments of the other defendant county boards of elections to the extent they apply to Berks County and warrant denying Plaintiffs’ summary judgment motion and granting summary judgment for Berks County.

correct date on the voter declaration on the outer envelope used to submit their absentee and mail-in ballots (the “Date Requirement”) does not violate either the Equal Protection Clause or the right to vote guaranteed by the First and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

Dated: July 18, 2024

SMITH BUKOWSKI, LLC

By: /s/ Jeffrey D. Bukowski
Jeffrey D. Bukowski, Esquire
PA Attorney I.D. No. 76102
JBukowski@SmithBukowski.com
1050 Spring Street, Suite 1
Wyomissing, PA 19610
Telephone: (610) 685-1600
Facsimile: (610) 685-1300

Attorneys for Berks County Board of Elections