

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

BETTE EAKIN, *et al.*,

Plaintiffs,

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,

Defendants.

Case No. 1:22-cv-00340-SPB

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

On August 30, 2024, the Pennsylvania Commonwealth Court held that the date requirement under the Pennsylvania Election Code “violates the fundamental right to vote recognized in the free and equal elections clause” of the Pennsylvania Constitution. *Black Pol. Empowerment Project v. Schmidt*, No. 283 M.D. 2024, 2024 WL 4002321, at *1–2 (Pa. Commw. Ct. Aug. 30, 2024) (“*BPEP*”). This Court subsequently directed the parties in this case to “submit briefs addressing the impact of th[at] decision . . . on the pending summary judgment motions.” Text Order, ECF No. 410. However, on September 13, 2024, the Pennsylvania Supreme Court vacated the *BPEP* decision on jurisdictional grounds. *See* Exhibit A (vacating for “failure to name the county boards of elections of all 67 counties”). Thus, the now-vacated *BPEP* ruling has no impact on the resolution of this case.

A federal court has a “virtually unflagging” obligation “to adjudicate claims which fall within its jurisdiction.” *Planned Parenthood of Cent. N.J. v. Farmer*, 220 F.3d 127, 149 (3d Cir. 2000) (cleaned up). Because this case is primed for the Court’s resolution, it can and should promptly issue relief in favor of Plaintiffs. And importantly, neither the specter of *BPEP* or other

state-court proceedings, nor proximity to the November 2024 elections, warrant staying the Court's hand. First, even if a state-court decision were to again enjoin the date requirement, this controversy remains live until and unless the appellate process following such a decision has concluded with finality, as evidenced by the recent vacatur of the *BPEP* decision. *See Dirauf v. Berger*, 57 F.4th 101, 107 (3d Cir. 2022) (holding that a “state court order dismissing . . . [a] case for lack of personal jurisdiction does not moot” appeal of federal court remand to state court because the “possibility of appeal after final judgment remains, and Plaintiffs have not indicated that they will not challenge the personal jurisdiction ruling”).¹

Second, proximity to the upcoming November 2024 elections neither justifies nor requires the Court to refrain from ruling on the pending summary judgment motions. As the Third Circuit has recognized, the *Purcell* doctrine “is a consideration, not a prohibition.” *Kim v. Hanlon*, 99 F.4th 140, 160 (3d Cir. 2024). “The focus of the *Purcell* principle, then, is on avoiding election issues that could lead to voter confusion shortly before an election.” *Id.* In other words, the *Purcell* principle is not merely a question of proximity to an election.² *See e.g., Kim v. Hanlon*, No. CV24-1098 (ZNQ) (TJB), 2024 WL 1342568, at *15 & n.19 (D.N.J. Mar. 29, 2024) (rejecting invocation of *Purcell* because the case “was filed 100 days before the primary election on June 4th, and well over a month before the April 5th deadline for preparing official primary election ballots for printing” and distinguishing from case filed “mere[ly] 18 days before [an] election”), *aff'd*, 99 F.4th 140 (3d Cir. 2024).

¹ *See also* RNC Mem. in Opp'n to Pet'rs' Appl. for Summ. Relief at 49, *BPEP*, No. 283 MD 2024 (July 8, 2024 Pa. Commw. Ct.) (arguing that relief could violate U.S. Constitution, and citing *Moore v. Harper*, 600 U.S. 1, 34–36 (2023)).

² Notably, Plaintiffs here initiated this case nearly two years ago, *see* Complaint, ECF No. 1, and Plaintiffs' Motion for Summary Judgment has been fully briefed for over a year. *See, e.g.,* Pls.' Replies to Opp'ns to Pls. Mot. for Summ. J., ECF Nos. 330, 331.

In any event, “[t]he concerns that troubled the Supreme Court in *Purcell* are not present in this instance” because “[a] voter filling out a[] [mail] ballot will be entirely unaffected by an order enjoining” Defendants from enforcing the date requirement, and “the process for submitting a[] [mail] ballot will remain unchanged.” *Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1055 (D.N.D. 2020); *see also Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.*, 97 F.4th 120, 142 n.5 (3rd Cir. 2024) (Shwartz, J., dissenting) (recognizing that “order[s] affect[ing] election officials, not voters, and provid[ing] clear guidance about whether to count certain mail-in ballots . . . d[oes] not present any risk voter confusion”). Requiring Defendants to count mail ballots cast by qualified voters, rather than rejecting them due to mistake or omission, will not cause any voter confusion. To the contrary, it will remedy it. Thus, the Court can and should promptly grant Plaintiffs’ motion for summary judgment against all Defendants.

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