

PROTHONOTARY LUZERNE COUNTY
FILED OCT 1 24 PM 3:05

In This Together NEPA Inc.; Jenny
L. Wilczak; Hannah Butterwick; and
Carole Shearer,

Plaintiffs,

v.

Romilda Crocarno, in her official
capacity as Luzerne County Manager;
and Luzerne County Board of Elections
and Registration,

Defendants.

: In the Court of Common Pleas

:
: Luzerne County

:
: No. 2024 10567

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, In This Together NEPA Inc. and three mail-ballot voters, by and through their counsel, Joseph C. Borland and Sarah L. Borland of Borland and Borland, LLP, along with the American Civil Liberties Union of Pennsylvania, file this Emergency Complaint for Declaratory and Injunctive Relief. The gravamen of this complaint is that the County Manager has acted *ultra vires* to supersede and negate the official action of the Luzerne County Board of Elections and Registration ("Board") to deploy four drop boxes throughout the County during the upcoming election. Because issuance of mail ballots is imminent, prompt injunctive relief is necessary to restore the Board's authority over the management of Luzerne County's elections and to reinstate their decision to deploy four drop boxes for

voters to deliver mail ballots during the upcoming election period. In support thereof, Plaintiffs aver the following:

1. This is a petition seeking declaratory relief pursuant to Pa.R.C.P. 1601, and injunctive relief pursuant to Pa.R.C.P. 1531.

Jurisdiction and Venue

2. This Court has jurisdiction over this Complaint pursuant to 42 Pa. C.S. § 931(a), which provides that, with limited exceptions, "the courts of common pleas shall have unlimited jurisdiction of all actions and proceedings." 42 Pa.C.S. § 931(a).

3. Venue exists in this Court pursuant to Pennsylvania Rule of Civil Procedure 2103 because this action arose in Luzerne County and this is a suit against a political subdivision within Luzerne County. Pa. R.Civ.P. 2103.

Parties

4. In This Together NEPA Inc. is a 501(c)(3)-Pennsylvania nonprofit organization headquartered in Luzerne County. In This Together NEPA is dedicated to bringing joy and lifting up our community, especially those traditionally overlooked, to build community, and to increase civil engagement throughout this region. The organization's election-related functions include registering voters, monitoring election activities, and assisting non-partisan

election-protection work, which strives to assist all eligible voters with obstacles they may encounter to voting and having their ballots counted.

5. Plaintiff, Jenny L. Wilczak, is a registered voter who lives in Wright Township, Pennsylvania, located in Luzerne County. Ms. Wilczak has applied for, and intends to vote, a mail ballot in the November 5, 2024 Election. Ms. Wilczak wanted to return her mail ballot by using the mail ballot drop boxes established by the Board in the upcoming November election. Due to a scheduled back surgery, Jenny will not be able to vote in person on election day. She wants the reassurance that her vote will be received by the deadline which is not always possible using the U.S. Postal Service to timely deliver a mail-in ballot.

6. Plaintiff, Hannah Butterwick, is a registered voter who lives in Dallas Township, Pennsylvania, located in Luzerne County. Ms. Butterwick has applied for, and intends to vote, a mail ballot in the November 5, 2024 Election. Ms. Butterwick wanted to return her mail ballot by using the mail ballot drop boxes established by the Board in the upcoming November Election. Ms. Butterwick is immunocompromised and cannot vote in person. She wants the reassurance that her vote will be received by the deadline, and not have to risk delay or loss by the U.S. Postal Service.

7. Plaintiff, Carole Shearer, is a registered voter who lives in Butler Township, Pennsylvania, located in Luzerne County. Ms. Shearer has applied for, and intends to vote, a mail ballot in the November 5, 2024 election. Ms. Shearer wanted to return her mail ballot by using a mail ballot drop box in the upcoming November election. Ms. Shearer is

regularly called away to care for both aging and very young family members, as she was before the April 2024 primary election. But for the availability of a drop box, she would have been unable to vote.

8. Defendant Romilda Crocarno is employed by Luzerne County as County Manager and has committed the actions leading to this lawsuit. She is named in her official capacity as County Manager.

9. The Luzerne County Board of Elections and Registration ("Board") is the entity vested with authority by the Pennsylvania Election Code over elections in Luzerne County. 25 P.S. § 2641(a). The Board of Election "shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of [the Election Code]." *Id.* The Election Code expressly provides that "[t]he county boards of elections, within their respective counties, shall exercise . . . all powers granted to them by this act, and shall perform all the duties imposed upon them by this act . . ." 25 P.S. § 2642 (emphasis added); see also *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 351 (W.D. Pa. 2020) ("The Election Code vests county boards of elections with discretion to conduct elections and implement procedures intended to ensure the honesty, efficiency, and uniformity of Pennsylvania's elections."). The Board is named here as an indispensable party to this action.

Factual Allegations

10. The Pennsylvania Election Code vests authority over elections in each county's board of elections, 25 P.S. §.2641(a), who "shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of [the Election Code]."

11. The Election Code further provides that when a county has adopted a home rule charter and creates an appointed board of elections, that body shall constitute the board of elections for purposes of the election code, provided it has minority representation. 25 P.S. § 2641(b).

12. Luzerne County has adopted a home rule charter that provides for the establishment of a five-member Board of Elections and Registration, four members of which are appointed by the county council and one member is voted on by the appointed members. Home Rule Charter of Luzerne County, Pennsylvania, § 8.02 et seq.

13. The Luzerne County Board of Elections and Registration is that entity for Luzerne County.

14. The county manager, Defendant Crocamo, is not a member of the Board of Elections.

15. The Election Code confers on the Board the authority and responsibility for running elections and election administration. See *In re McCracken Appeal*, 88 A.2d 787, 788 (Pa. 1952) (General Assembly has "entrusted the County Board[s] of Elections with

plenary powers in the administration of the election code."); *Nutter v. Dougherty*, 921 A.2d 44, 60 (Pa. Cmwlth. 2007) ("[T]he Election Code delegates extensive powers and authority to county election boards . . ."). The Election Code expressly provides that "[t]he county boards of elections, within their respective counties, *shall* exercise . . . all powers granted to them by this act, and *shall* perform all the duties imposed upon them by this act. . . ." 25 P.S. § 2642 (emphasis added); *see also Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 351 (W.D. Pa. 2020) ("The Election Code vests county boards of elections with discretion to conduct elections and implement procedures intended to ensure the honesty, efficiency, and uniformity of Pennsylvania's elections.").

16. In a series of meetings starting in May 2020 and continuing through this year, the Board has adopted a policy and approved the deployment of drop boxes, located in various places throughout the County, for the use of Luzerne County voters. Currently there is supposed to be one in Wilkes Barre, Wright Township, Hazleton and Dallas.

17. Four drop boxes boxes have been available and used by Luzerne County voters in every election since 2022, including during the most recently held April 2024 primary election.

18. Drop boxes provide voters a secure way to submit their ballot directly into the hands of the election bureau, and allow voters to bypass the uncertainty that accompanies reliance on the U.S. Postal Service.

19. There have been no substantiated cases of abuse or fraud concerning the drop boxes.

20. Since 2020, the Board has periodically voted to maintain drop boxes, sometimes changing the location. The most recent Board action on drop boxes occurred at a duly noticed, regularly scheduled Board meeting on February 21, 2024. At that meeting, the Board rejected, by a 3-2 vote, a motion to eliminate all drop boxes. The Board's decision to maintain drop boxes remains in effect.

21. Notwithstanding the Board's official action this past February, on September 18, 2024, Luzerne County Manager Romilda Crocamo announced that the county would not use drop boxes for the upcoming November election because of purported safety and security concerns.

22. On September 23, 2024, Crocamo made a public statement reconfirming the decision to eliminate the drop boxes for the forthcoming November election.

23. At no point was the matter formally brought to the Board of Elections and no public action was taken by the Board of Elections, since their February official action, to change the policy of deploying the four drop boxes.

24. On September 24, 2024, the American Civil Liberties Union of Pennsylvania ("ACLU-PA") sent a letter to County Manager Crocamo asking her to retract her order to remove the election drop boxes. The County Manager has not responded to the ACLU-

PA's letter or otherwise indicated that she will withdraw her decision canceling the drop boxes.

COUNT I

Violation of Pennsylvania's Election Code 25 P.S. § 2642

23. Plaintiffs hereby incorporate all the foregoing paragraphs as if they were fully set forth herein.

24. The Pennsylvania Election Code vests authority over elections in each county's board of elections, 25 P.S. § 2641(a), who "shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of [the Election Code]."

25. The Election Code further provides that when a county has adopted a home rule charter and creates an appointed board of elections, that body shall constitute the board of elections for purposes of the election code, provided it has minority representation. 25 P.S. § 2641(b).

26. Luzerne County has adopted a home rule charter that provides for the establishment of a five-member Board of Elections and Registration, four members of which are appointed by the county council and one member is voted on by the appointed members. Home Rule Charter of Luzerne County, Pennsylvania, § 8.02 et seq.

27. By law, the Board of Elections is responsible for the honest, efficient and uniform conduct of elections. 25 Pa. Stat. Ann. § 2642(a)-(d), (f)-(g), and (i).

28. The Pennsylvania Supreme Court has confirmed that county boards of elections may establish additional mail ballot drop off locations, including drop boxes, pursuant to their authority for administering elections under the Election Code. See *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020).

29. The County Manager's unilateral decision to eliminate the deployment of four election drop boxes was *ultra vires* of her authority and unlawfully usurped the Board's authority and responsibility over administration of Luzerne County's elections. The General Assembly has "entrusted the County Board[s] of Elections with plenary powers in the administration of the election code." *In re McCracken Appeal*, 88 A.2d 787, 788 (Pa. 1952); see also *Nutter v. Dougherty*, 921 A.2d 44, 60 (Pa. Cmwlth. 2007) ("[T]he Election Code delegates extensive powers and authority to county election boards . . .").

30. Consequently, Defendant Crocamo's cancellation of the Board's official action to continue deploying four drop boxes throughout the County for the upcoming election, which the Board reaffirmed on February 21, 2024, violates the Pennsylvania Election Code.

31. The County Manager's decision will lead to irreparable harm to the voting rights of the citizens of the county as delay in restoring the drop boxes will make it more difficult for some voters, especially those unable for physical or other reasons to vote at the polls or

who regularly are called away unexpectedly for work or personal reasons, to ensure that their mail ballot is cast safely and delivered timely to the Board.

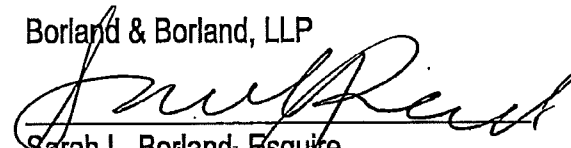
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Honorable Court enter judgment in their favor and against Luzerne County Manager Romilda Crocamo, and:

- a. Declare that County Manager Crocamo's decision to eliminate voting drop boxes is *ultra vires* and void; violates the Election Code, which gives authority over the decision to the Luzerne County Board of Elections; and thereby likely to cause irreparable harm to Plaintiffs and similarly situated Luzerne County voters;
- b. Enjoin County Manager Crocamo from implementing her unilateral and *ultra vires* decision to cancel the Board's official action to deploy four drop boxes in the upcoming election, and direct Crocamo to institute the Board's will by deploying the four drop boxes, as directed by the Board; and
- c. Provide such other and further relief as this Honorable Court deems just and appropriate.

RESPECTFULLY SUBMITTED:

Borland & Borland, LLP



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VERIFICATION

I verify that the fact averments made in the foregoing Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



Alisha Hoffman-Mirilovich
Executive Director, In This Together NEPA

Dated: October 1, 2024

PROTHONOTARY LUZERNE COUNTY
FILED OCT 1 24 PM 3:07

IN THIS TOGETHER NEPA, INC.;
JENNY L. WILCZAK;
HANNAH BUTTERWICK; and
CAROLE SHEARER,

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ROMILDA CROCAMO, in her official capacity
as Luzerne County Manager,
and
LUZERNE COUNTY BOARD
OF ELECTIONS AND REGISTRATION,

Defendants

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY

No. 2024 10567

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Notice and Complaint are served by entering a written appearance, personally or by an attorney, and filing, in writing, with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED RATE OR NO FEE.

AVISO

A USTED SE LE HA DEMANDADO EN LA CORTE. Si usted quiere defenderse contra la demanda expuesta en las siguientes páginas, tiene que tomar acción en un plazo de veinte (20) días después que reciba esta demanda y aviso, por presentar una notificación de comparecencia escrita personalmente o por un abogado y radicar por escrito en la Corte sus defensas u objeciones a las demandas presentadas en su contra. Se le advierte que si falla en hacerlo, el caso podría seguir adelante sin usted y un fallo podría ser dictado en su contra por la Corte sin previo aviso por cualquier dinero reclamado en la demanda o por cualquier otro reclamo o desagravio pedido por el/la demandante. Puede que usted pierda dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO, DIRÍJASE O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ABAJO. ESTA OFICINA PUEDE PROVEERLE CON INFORMACIÓN SOBRE COMO CONTRATAR UN ABOGADO. SI NO TIENE LOS FONDOS SUFICIENTES PARA CONTRATAR UN ABOGADO, ESTA OFICINA PODRÍA PROPORCIONARLE INFORMACIÓN ACERCA DE AGENCIAS QUE PUEDAN OFRECERLES SERVICIOS LEGALES A PERSONAS QUE REÚNAN LOS REQUISITOS A UN HONORARIO REDUCIDO O GRATIS.

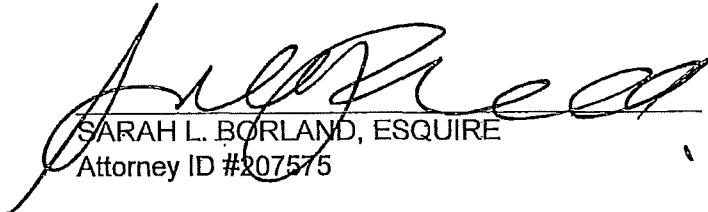
North Penn Legal Services, Inc.
Suite 200, 33 North Main Street
Pittston, PA 18640
570-299-4100
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Servicios Legales de North Penn, Inc.
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Pittston, PA 18640
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570-455-3625 Fax

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Respectfully submitted,



SARAH L. BORLAND, ESQUIRE
Attorney ID #207575

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Attorney for Plaintiffs

PROTHONOTARY LUZERNE COUNTY
FILED OCT 1 '24 PM 3:11

In This Together NEPA Inc.; Jenny
L. Wilczak; Hannah Butterwick; and
Carole Shearer,

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v.

Romilda Crocamo, in her official
capacity as Luzerne County Manager;
and Luzerne County Board of Elections
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: In the Court of Common Pleas

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: Luzerne County

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: No. 202410567

MOTION FOR PRELIMINARY INJUNCTION

NOW COME Plaintiffs, by and through their counsel, Sarah L. Borland Esq.
and Joesph C. Borland Esq. of Borland & Borland, LLP, and the American Civil Liberties
Union of Pennsylvania, and aver as follows in support of their Motion for Preliminary Injunction
pursuant to Pa. R.C.P. 1531:

1. Plaintiffs have filed a Complaint seeking equitable and declaratory relief against
Defendant Crocamo and the Luzerne County Board of Elections and Registration in the above
matter, which Verified Complaint is attached hereto as Exhibit A and made a part hereof.

2. This action seeks to enjoin Defendant Crocamo's ongoing violation of the
Pennsylvania Elections Code, to wit, Defendant Crocamo, acting without authorization and
beyond her authority, unilaterally cancelled the Defendant Board of Elections and

Registration's lawful decision to continue the practice of using four drop boxes around the county for the voters' convenience during the run up to the November 5 election.

3. Plaintiffs seeks special and preliminary injunctive and declaratory relief pursuant to Pa. R.C.P. 1531 as follows: Enjoin Defendant Crocamo's September 18 and 23 directives, in which she unilaterally and in excess of her lawful authority canceled the Board of Election's lawful decision to continue using four election drop boxes during the upcoming election, and direct her to carry out the Board's lawful drop box directive.

4. The relief requested herein is necessary to prevent immediate and irreparable harm, which cannot be compensated by monetary damages.

5. Greater injury will occur from refusing the injunctive relief requested than by granting it, inasmuch as Defendants will suffer no monetary, nor other, harm by forbearing from engaging in the proscribed conduct, pending the determination of Defendants' claims.

6. The injunctive relief requested will restore the parties to the *status quo* as it existed immediately before Defendant Crocamo's wrongful conduct.

7. The activity which is sought to be restrained is actionable, the Plaintiff's right to relief is clear, and the wrong is manifest, or, in other words, the Plaintiffs are likely to prevail on the merits as Pennsylvania Election Law is clear that the Board of Elections has the responsibility for administering elections in Luzerne County.

8. The injunction sought is reasonably suited to abate Defendant Crocamo's illegal actions.

9. The preliminary injunction will not adversely affect the public interest.

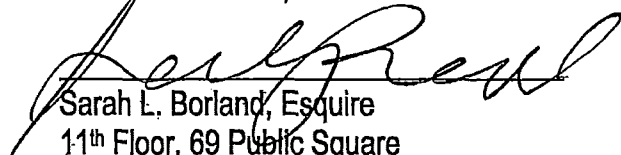
10. Requirement of a bond in the nominal amount of one (\$1) dollar is appropriate pursuant to Pa. R.C.P. 1531(b).

11. Plaintiffs incorporate by reference the arguments in the Brief in Support of Motion for Preliminary Injunction.

WHEREFORE, Plaintiffs' respectfully request that this Court issue an injunction enjoining and restraining Defendant Crocamo's illegal and ultra vires orders cancelling the Defendant Board of Election's lawful decision to continue using four mail-ballot drop boxes for the upcoming November 2024 general election.

RESPECTFULLY SUBMITTED:

Borland & Borland, LLP



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Marian K. Schneider (No. 50337)
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jborland@borlandandborland.com

VERIFICATION

I, Alisha Hoffman-Mirilovich, being duly sworn according to law, depose and state that, I am the Executive Director of In This Together NEPA, Inc., Plaintiff herein; and that, as such Executive Director, I am authorized to execute this Verification.

The language of the foregoing document is that of counsel and not necessarily my own; however, I have read the foregoing document and the factual information contained therein is true and correct to the best of my personal knowledge, except as to any averments specifically stated to be "on information and belief". To the extent that the factual averments of the foregoing document are stated to be "on information and belief", the averments are true and correct to the best of my information and belief. To the extent that the content of the foregoing document is that of counsel, I have relied upon counsel in making this Verification and said content is true and correct to the best of my information and belief.

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IN THIS TOGETHER NEPA, INC.

Dated: _____

9/26/24

BY: _____



ALISHA HOFFMAN-MIRILOVICH
EXECUTIVE DIRECTOR

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Luzerne County

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6. Plaintiff, Hannah Butterwick, is a registered voter who lives in Dallas Township, Pennsylvania, located in Luzerne County. Ms. Butterwick has applied for, and intends to vote, a mail ballot in the November 5, 2024 Election. Ms. Butterwick wanted to return her mail-ballot by using the mail ballot drop boxes established by the Board in the upcoming November Election. Ms. Butterwick is immunocompromised and cannot vote in person. She wants the reassurance that her vote will be received by the deadline, and not have to risk delay or loss by the U.S. Postal Service.

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plenary powers in the administration of the election code.”); *Nutter v. Dougherty*, 921 A.2d 44, 60 (Pa. Cmwlth. 2007) (“[T]he Election Code delegates extensive powers and authority to county election boards . . .”). The Election Code expressly provides that “[t]he county boards of elections, within their respective counties, *shall* exercise . . . all powers granted to them by this act, and *shall* perform all the duties imposed upon them by this act . . .” 25 P.S. § 2642 (emphasis added); *see also Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 351 (W.D. Pa. 2020) (“The Election Code vests county boards of elections with discretion to conduct elections and implement procedures intended to ensure the honesty, efficiency, and uniformity of Pennsylvania’s elections.”).

16. In a series of meetings starting in May 2020 and continuing through this year, the Board has adopted a policy and approved the deployment of drop boxes, located in various places throughout the County, for the use of Luzerne County voters. Currently there is supposed to be one in Wilkes Barre, Wright Township, Hazleton and Dallas.

17. Four drop boxes boxes have been available and used by Luzerne County voters in every election since 2022, including during the most recently held April 2024 primary election.

18. Drop boxes provide voters a secure way to submit their ballot directly into the hands of the election bureau, and allow voters to bypass the uncertainty that accompanies reliance on the U.S. Postal Service.

19. There have been no substantiated cases of abuse or fraud concerning the drop boxes.

20. Since 2020, the Board has periodically voted to maintain drop boxes, sometimes changing the location. The most recent Board action on drop boxes occurred at a duly noticed, regularly scheduled Board meeting on February 21, 2024. At that meeting, the Board rejected, by a 3-2 vote, a motion to eliminate all drop boxes. The Board's decision to maintain drop boxes remains in effect.

21. Notwithstanding the Board's official action this past February, on September 18, 2024, Luzerne County Manager Romilda Crocamo announced that the county would not use drop boxes for the upcoming November election because of purported safety and security concerns.

22. On September 23, 2024, Crocamo made a public statement reconfirming the decision to eliminate the drop boxes for the forthcoming November election.

23. At no point was the matter formally brought to the Board of Elections and no public action was taken by the Board of Elections, since their February official action, to change the policy of deploying the four drop boxes.

24. On September 24, 2024, the American Civil Liberties Union of Pennsylvania ("ACLU-PA") sent a letter to County Manager Crocamo asking her to retract her order to remove the election drop boxes. The County Manager has not responded to the ACLU-

PA's letter or otherwise indicated that she will withdraw her decision canceling the drop boxes.

COUNT I

Violation of Pennsylvania's Election Code 25 P.S. § 2642

23. Plaintiffs hereby incorporate all the foregoing paragraphs as if they were fully set forth herein.

24. The Pennsylvania Election Code vests authority over elections in each county's board of elections, 25 P.S. § 2641(a), who "shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of [the Election Code]."

25. The Election Code further provides that when a county has adopted a home rule charter and creates an appointed board of elections, that body shall constitute the board of elections for purposes of the election code, provided it has minority representation. 25 P.S. § 2641(b).

26. Luzerne County has adopted a home rule charter that provides for the establishment of a five-member Board of Elections and Registration, four members of which are appointed by the county council and one member is voted on by the appointed members. Home Rule Charter of Luzerne County, Pennsylvania, § 8.02 et seq.

27. By law, the Board of Elections is responsible for the honest, efficient and uniform conduct of elections. 25 Pa. Stat. Ann. § 2642(a)-(d), (f)-(g), and (i).

28. The Pennsylvania Supreme Court has confirmed that county boards of elections may establish additional mail ballot drop off locations, including drop boxes, pursuant to their authority for administering elections under the Election Code. *See Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020).

29. The County Manager's unilateral decision to eliminate the deployment of four election drop boxes was *ultra vires* of her authority and unlawfully usurped the Board's authority and responsibility over administration of Luzerne County's elections. The General Assembly has "entrusted the County Board[s] of Elections with plenary powers in the administration of the election code." *In re McCracken Appeal*, 88 A.2d 787, 788 (Pa. 1952); *see also Nutter v. Dougherty*, 921 A.2d 44, 60 (Pa. Cmwlth. 2007) ("[T]he Election Code delegates extensive powers and authority to county election boards . . .").

30. Consequently, Defendant Crocamo's cancellation of the Board's official action to continue deploying four drop boxes throughout the County for the upcoming election, which the Board reaffirmed on February 21, 2024, violates the Pennsylvania Election Code.

31. The County Manager's decision will lead to irreparable harm to the voting rights of the citizens of the county as delay in restoring the drop boxes will make it more difficult for some voters, especially those unable for physical or other reasons to vote at the polls or

who regularly are called away unexpectedly for work or personal reasons, to ensure that their mail ballot is cast safely and delivered timely to the Board.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Honorable Court enter judgment in their favor and against Luzerne County Manager Romilda Crocarno, and:

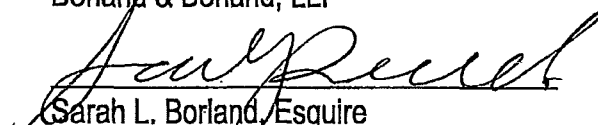
a. Declare that County Manager Crocarno's decision to eliminate voting drop boxes is *ultra vires* and void; violates the Election Code, which gives authority over the decision to the Luzerne County Board of Elections; and thereby likely to cause irreparable harm to Plaintiffs and similarly situated Luzerne County voters;

b. Enjoin County Manager Crocarno from implementing her unilateral and *ultra vires* decision to cancel the Board's official action to deploy four drop boxes in the upcoming election, and direct Crocarno to institute the Board's will by deploying the four drop boxes, as directed by the Board; and

c. Provide such other and further relief as this Honorable Court deems just and appropriate.

RESPECTFULLY SUBMITTED:

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VERIFICATION

I verify that the fact averments made in the foregoing Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



Alisha Hoffinan-Mirilovich
Executive Director, In This Together NEPA

Dated: October 1, 2024

In This Together NEPA Inc.; Jenny L. Wilczak; Hannah Butterwick; and Carole Shearer,

Plaintiffs,

v.

Romilda Crocamo, in her official capacity as Luzerne County Manager; and Luzerne County Board of Elections and Registration,

Defendants.

: In the Court of Common Pleas

: Luzerne County

: No. *2024-10567*

ORDER

AND NOW, this _____ day of _____ 2024, upon

notice and hearing, and good cause having been shown, it is hereby **ORDERED** as follows:

1. Defendants are enjoined from enforcing County Manager Crocamo's unlawful order/directive to cancel the Luzerne County Board of Elections and Registration's official action directing that four drop boxes will continue to be available in four locations throughout the county for the upcoming election; and
2. Defendant Crocamo is ordered to comply with and take all necessary steps to implement the Board of Elections' official action to deploy drop boxes around the County for the upcoming November 2024 election.

BY THE COURT:

J.

PROTHONOTARY LUZERNE COUNTY
FILED OCT 1 24 PM 3:11

In This Together NEPA Inc.; Jenny
L. Wilczak; Hannah Butterwick; and
Carole Shearer,

Plaintiffs,

v.

Romilda Crocamo, in her official
capacity as Luzerne County Manager;
and Luzerne County Board of Elections
and Registration,

Defendants.

: In the Court of Common Pleas

:
: Luzerne County

: No. 2024 10567

**BRIEF IN SUPPORT OF EMERGENCY MOTION
FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. BACKGROUND

This action for emergency injunctive relief challenges the Luzerne County Manager's unilateral decision to eliminate the use of four drop boxes for voters to deposit their mail ballots in the upcoming election, a decision that is *ultra vires* of the manager's authority and usurps plenary powers vested by the Pennsylvania General Assembly, via the Election Code, exclusively in the Luzerne County Board of Elections and Registration (the "Board" or "Board of Elections").

In a series of duly noticed public hearings starting in May 2020, the Luzerne County Board of Elections adopted a policy and approved the deployment of four drop boxes for the

use of Luzerne County voters. Drop boxes have been used during the 2020 elections cycle and those that followed. Four boxes have been used since the 2022 elections, including in the 2024 primary. The Board voted at its February 21, 2024, meeting to reject a motion to eliminate all drop boxes.

Drop boxes provide voters a secure way to submit their ballot directly into the hands of the election bureau. They enable voters not to rely on the U.S. Postal Service to deliver their ballots by the deadline, as mail-in ballots are determined to be timely by their arrival at the election bureau not by their postmark date. Drop boxes are particularly important for voters with disabilities or those who have an emergency come up in the days preceding election day. Election drop boxes help effectuate the Constitutional right to vote for all citizens.

There have been no substantiated cases of abuse or fraud concerning the drop boxes in Luzerne County. The drop boxes that have been in place since 2020 have been monitored by cameras and no incidents have been reported.

On September 18, 2024, Luzerne County Manager Romilda Crocamo announced that Luzerne County would not use drop boxes for the upcoming November election because of safety and security concerns. At no point was the matter brought to the Board of Elections and no action was taken by the Board of Elections concerning the removal of the election drop boxes. The Board of Elections was the entity that established the drop boxes and is the only unit that has the authority to abolish them. See 25 P.S. § 2642. The County

Manager is not a member of the Board of Elections. On September 23, 2024, the County Manager made a statement reconfirming the decision to eliminate the drop boxes for the forthcoming November election. But that decision was neither presented to nor acted upon by the Board, meaning that the Board's decision to continue using drop boxes remains in effect.

The attorneys for the Plaintiffs, the ACLU of Pennsylvania, made a formal request to the County Manager for her to rescind the decision to remove the election drop boxes. She has not responded to that request or otherwise indicated a willingness to retract her directive.

II. LEGAL ARGUMENT

The County Manager usurped the Board's jurisdiction over the administration of elections, acting *ultra vires* of her authority to eliminate the use of four drop boxes located throughout the county for voters' convenience. Consequently, her decision is void. Plaintiffs ask that the Court order a return to the *status quo ante*, in which the Board most recently affirmed the ongoing use of drop boxes on February 21, 2024, and direct Defendant Crocarno to fulfill forthwith the Board's directive to deploy the four drop boxes.

The Pennsylvania Election Code vests authority over elections in each county's Board of Elections, 25 P.S. § 2641(a). The Board of Elections "shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of [the Election Code]." The Election Code further provides that when a county has adopted a

home rule charter and creates an appointed Board of Elections, that body shall constitute the board of elections for purposes of the Election Code, provided it has minority representation. 25 P.S. § 2641(b). Luzerne County has adopted a home rule charter that provides for the establishment of a five-member Board of Elections and Registration, four members of which are appointed by the county council and one member who is voted on by the appointed members. Home Rule Charter of Luzerne County, Pennsylvania, § 8.02 et seq. The authority and responsibility for running elections and election administration is held by the Luzerne County Board of Elections and Registration.

The General Assembly has “entrusted the County Board[s] of Elections with plenary powers in the administration of the election code.” *In re McCracken Appeal*, 88-A.2d 787, 788 (Pa. 1952); *see also Nutter v. Dougherty*, 921 A.2d 44, 60 (Pa. Cmwlth. 2007) (“[T]he Election Code delegates extensive powers and authority to county election boards . . .”). The Election Code expressly provides that “[t]he county boards of elections, within their respective counties, *shall* exercise . . . all powers granted to them by this act, and *shall* perform all the duties imposed upon them by this act . . .” 25 P.S. § 2642 (emphasis added); *see also Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 351 (W.D. Pa. 2020) (“The Election Code vests county boards of elections with discretion to conduct elections and implement procedures intended to ensure the honesty, efficiency, and uniformity of Pennsylvania's elections.”).

The General Assembly's broad delegation of powers to the county boards of elections entails "exclusive control over election equipment." *In re: Petition for Agenda Initiative*, 206 A.3d 617, 624 (Pa. Cmwlth. 2019). Our Supreme Court has ruled that counties are free to utilize drop boxes. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 361 (2020) ("[T]he Election Code should be interpreted to allow county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes."). Therefore, any decision to supply or remove drop-boxes in Luzerne County is within the "exclusive" control of the Board of Elections.

County boards of election are the proper authorities for such decisions, not state or local executives like the Secretary of the Commonwealth or a county manager. *See Cnty. of Fulton v. Sec'y of the Commonwealth*, 276 A.3d 846, 857 (Pa. Cmwlth. 2022) ("It is the county boards, not the Secretary, that must 'maintain primary and election equipment of all kinds'") (citing 25 P.S. §2642(c), (d)); *see also Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 374-375 (W.D. Pa. 2020) (finding that county boards, not just the Secretary, are necessary parties to enjoin unconstitutional conduct relating to election administration). The Election Code's hortatory language is clear. By using the language "shall exercise . . . all powers" and "shall perform all duties," *see* 25 P.S. § 2642, the General Assembly intended to vest county boards of election with exclusive power to administer elections. *See* 1 Pa.C.S. § 1921(a) ("The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General

Assembly."); see also *Commonwealth v. McCoy*, 962 A.2d 1160, 1166 (Pa. 2009) ("A statute's plain language generally provides the best indication of legislative intent.")

Therefore, the County Manager's decision to cancel the Board's official action that Luzerne County continue to use drop boxes in the November 2024 election was *ultra vires* and void. See *Clairton Slag, Inc. v. Dep't of Gen. Servs.*, 2 A.3d 765, 782 (Pa. Cmwlth. 2010) ("An ultra vires action is one that is performed without authority to act and beyond the scope of legal authorization."). It does not and legally cannot override the Board's most recent decision, on February 21, 2024, to continue using four drop boxes to be placed in designated locations around the county. Based on the failure to follow the applicable law, Defendant Crocamo's actions violated the Pennsylvania Election Code. As such, injunctive relief in the form of enjoining Defendant Crocamo's illegal directive and ordering her to fulfill the Board's decision to deploy four election drop boxes is appropriate and necessary.

The standard for issuance for an application for temporary relief is set forth in *Dusman v. Bd. of Directors of Chambersburg Area Sch. Dist.*, 123 A.3d 354, 360 (Pa. Cmwlth. 2015), as follows:

- (1) an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;
- (2) greater injury would result from refusing an injunction than from granting it, and, the issuance of the injunction will not substantially harm other interested parties;
- (3) an injunction will properly restore the parties to their status as it existed prior to the alleged wrongful conduct;
- (4) the activity the petitioner seeks to restrain is actionable, the right to relief is clear, and success on the merits is likely;
- (5) the injunction is reasonably suited to abate the offending activity; and
- (6) an injunction will not adversely affect the public interest.

See also *Cty. of Allegheny v. Commonwealth*, 544 A.2d 1305 (Pa. 1988); *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995 (Pa. 2003); *Lee Publ'ns, Inc. v. Dickinson Sch. of Law of the Pa. State Univ. Ass'n*, 848 A.2d 178 (Pa. Cmwlth. 2004). All six factors of this standard weigh in favor of granting a preliminary injunction in this case.

First, injunctive relief is necessary to prevent immediate and irreparable harm, which cannot be compensated by monetary damages. Citizens in Luzerne County are preparing to vote in the upcoming November 5 election, which includes voting by mail. Delay in restoring the drop boxes could lead to countless voters missing the deadline for receipt of mail-in ballots and thereby being disenfranchised. This risk is particularly high for elderly voters and voters with disabilities who cannot easily travel to in-person polling places and vote in person on Election Day. Especially for voters who experience sudden schedule changes that prevent them from voting in person on Election Day, drop boxes are a vital way to ensure the ballot arrives by the deadline, i.e., once deposited, rather than relying on the uncertainty that attends U.S. Post Office delivery services.

Second, greater injury in the form of disenfranchised voters will occur from denying the injunctive relief than by granting it as the drop boxes have been in place since 2020 with no recorded incidents of fraud or misconduct. As no harm has occurred from the drop boxes' presence, there is no indication of any apparent harm to the County.

Third, this is a case in which the injunctive relief will restore the *status quo* as it existed before the Defendant's wrongful conduct. Luzerne County has demonstrated its

ability to efficiently and securely accept ballots at drop boxes in prior elections, and Plaintiffs merely seek to maintain this established practice, not to impose additional obligations on the County. The Board of Elections has not taken any action to remove the drop boxes for the November 2024 election, so the policy to use those drop boxes will “continue ‘unless and until’ the County Board undert[akes] a new policy.” *Ctr. for Coalfield Just. v. Wash. Cnty. Bd. of Elections*, No. 1172 C.D. 2024, 2024 WL 4272040, at *2, (Pa. Cmwlth. Sept. 24, 2024).

Fourth, as discussed above, the Defendant’s activity is actionable, the Plaintiffs’ right to relief is clear, and the wrong is manifest. The Plaintiffs are likely to prevail on the merits because the Pennsylvania Election Code clearly states that the Luzerne County Board of Elections, not the County Manager, has the authority to direct the execution and administration of the election in the County. See 25 P.S. § 2642.

Fifth, the injunction is reasonably suited to abate the offending activity of the Defendant. Plaintiffs seek simply to prevent the impending removal of four election drop boxes by the County Manager, as discussed in the County Manager’s September 8, 2024, and September 23, 2024, statements.

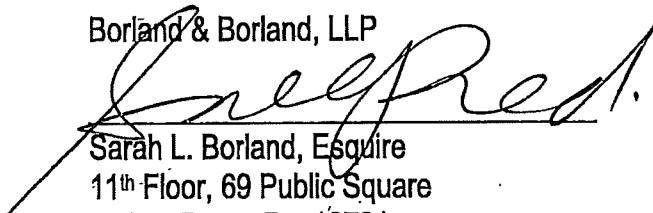
Sixth, the injunction will not adversely affect the public interest and instead will support it. The Pennsylvania Supreme Court noted that “it is well-settled that, ‘although election laws must be strictly construed to prevent fraud, they ordinarily will be construed liberally in favor of the right to vote’” and the “goal must be to enfranchise and not to

disenfranchise the electorate." *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020) (internal citations omitted). Preventing the removal of drop boxes without authorization from the Luzerne County Board of Elections—the exclusive decision-maker as to these matters under the Election Code—will enfranchise the electorate and favor the right to vote. This injunctive relief is particularly appropriate where, as here, there is no evidence of any harm to the public interest.

For all the foregoing reasons, this Court should grant the requested injunctive relief enjoining the Defendant from eliminating the four election drop boxes approved by the Board of Elections.

RESPECTFULLY SUBMITTED:

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IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY

PROTHONOTARY LUZERNE COUNTY
FILED OCT 2 2 44 PM 10:21

IN THIS TOGETHER NEPA INC.; JENNY :
L. WILCZACK; HANNAH BUTTERWICK; :
AND CAROLE SHEARER, :

Plaintiffs, :

v. :

ROMILDA CROCAMO, IN HER OFFICIAL :
CAPACITY AS LUZERNE COUNTY :
MANAGER; AND LUZERNE COUNTY :
BOARD OF ELECTONS AND :
REGISTRATIONS :

Defendants.

IN RE: :
PRELIMINARY INJUNCTION : NO: 2024-10567
SPECIAL ASSIGNMENT :
:

ADMINISTRATIVE ORDER

AND NOW this 2 day of October, IT IS HEREBY ORDERED THAT Judge Lesa S. Gelb, Judge Richard M. Hughes, and Judge Fred A. Pierantoni are hereby appointed to the above captioned matter.

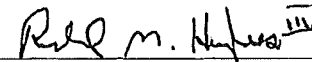
BY THE COURT:

Michael T. Vough
MICHAEL T. VOUGH, P.J.

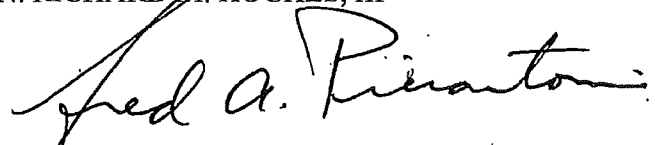
BY THE COURT:



HON. LESA S. GELB



HON. RICHARD M. HUGHES, III



HON. FRED A. PIERANTONI, III

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PROTHONOTARY LUZERNE COUNTY
FILED OCT 2 24 PM 2:55

IN THIS TOGETHER NEPA, INC.;
JENNY L. WILCZAK;
HANNAH BUTTERWICK; and
CAROLE SHEARER,

Plaintiffs

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY

vs.

ROMILDA CROCAMO, in her official capacity
as Luzerne County Manager,
and
LUZERNE COUNTY BOARD
OF ELECTIONS AND REGISTRATION,

Defendants

No. ~~202402084~~ 2024-10567

CERTIFICATE OF SERVICE

I, Joseph C. Borland, Esquire, of the law office of Borland & Borland, LLP, certify that, on the 1st day of October, 2024, I made service of a copy of each of the following documents:

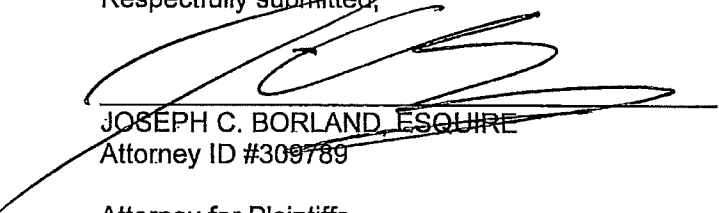
1. Rule;
2. Verified Complaint for Declaratory and Injunctive Relief;
3. Motion for Preliminary Injunction;
4. Brief in Support of Emergency Motion for Declaratory and Injunctive Relief; and
5. Proposed Order

upon Defendant, Romilda Crocamo, in her official capacity as Luzerne County Manager, and Defendant, Luzerne County Board of Elections and Registration, by hand delivery addressed as follows:

Attention: Romilda Crocamo
County Manager
Luzerne County Courthouse
200 North River Street
Wilkes-Barre, PA 18711

Luzerne County Board of Elections and Registration
Luzerne County Courthouse
200 North River Street
Wilkes-Barre, PA 18711

Respectfully submitted,


JOSEPH C. BORLAND, ESQUIRE
Attorney ID #309789

Attorney for Plaintiffs