

In This Together NEPA Inc.; Jenny	:	In the Court of Common Pleas
L. Wilczak; Hannah Butterwick; and	:	
Carole Shearer,	:	
	:	Luzerne County
Plaintiffs,	:	
	:	
v.	:	No.
	:	
Romilda Crocamo, in her official	:	
capacity as Luzerne County Manager;	:	
and Luzerne County Board of Elections	:	
and Registration,	:	
	:	
Defendants.	:	

**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 Crocamo 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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Sarah L. Borland, Esquire  
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
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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.



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Alisha Hoffman-Mirilovich  
Executive Director, In This Together NEPA

Dated: October 1, 2024