

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LEIGH M. CHAPMAN, Acting Secretary of the
Commonwealth and the PENNSYLVANIA
DEPARTMENT OF STATE,

Petitioners,

v.

BERKS COUNTY BOARD OF ELECTIONS, et. al.,

Respondents.

No. 355 MD 2022

**EMERGENCY APPLICATION FOR PEREMPTORY JUDGMENT AND
SUMMARY RELIEF**

1. Pursuant to Pennsylvania Rule of Civil Procedure 1098 and Pennsylvania Rule of Appellate Procedure 1532(b), Acting Secretary of the Commonwealth Leigh M. Chapman and the Pennsylvania Department of State ask that this Court enter peremptory judgment granting Petitioners' claim for a writ of mandamus and enter summary relief granting Petitioners' claim for declaratory and injunctive relief.

2. The requested relief is warranted because there are no material factual disputes and Petitioners' right to a writ of mandamus and declaratory and injunctive relief is clear as a matter of law. *MFW Wine Co., LLC v. Pennsylvania Liquor Control Bd.*, 231 A.3d 50, 52 n.2 & 56 (Pa. Commw. Ct. 2020) (describing

standard that governs both peremptory judgment and summary relief); *Thomas v. Com., Bd. of Prob. & Parole*, 699 A.2d 792, 795 (Pa. Commw. Ct. 1997) (same).

3. By law, the Acting Secretary must receive from county boards of elections a certification of returns for any general or primary election that is based on a computation of all lawfully canvassed votes. 25 P.S. §§ 2642(k), 3154(f), 3158.

4. For the 2022 primary election, this Court has already ruled that the Respondent boards must canvass timely received absentee and mail-in ballots from qualified voters where the voter neglected to write a date on the declaration printed on the envelope used to return the ballot. Order, *McCormick v. Chapman*, No. 286 MD 2022 (Pa. Commw. Ct. June 2, 2022). Those ballots must therefore also be included in the Respondent boards' certified election returns.

5. Furthermore, under both Pennsylvania and federal law, timely received absentee and mail-in ballots must be counted if a qualified voter neglected to write a date on the declaration printed on the ballot's return envelope. *Migliori v. Lehigh County Bd. of Elections*, 36 F.4th 153, 162-64 (3d Cir. 2022); Memorandum Opinion at 22-34, *McCormick v. Chapman*, No. 286 MD 2022 (Pa. Commw. Ct. June 2, 2022).

6. Respondent Boards' refusal to provide certified returns for the 2022 primary election that include timely received absentee and mail-in ballots from

qualified voters who neglected to write a date on the return envelope is contrary to law.

7. Petitioners request expedited consideration of this application.

8. In support of this application, Petitioners rely on the contemporaneously filed Memorandum. A proposed order is attached.

Dated: July 11, 2022

Respectfully submitted,

Josh Shapiro
Attorney General

Christine P. Sun (*pro hac vice*
application forthcoming)
Marina Eisner (*pro hac vice* application
forthcoming)
Zack Goldberg (*pro hac vice* application
forthcoming)

Michael J. Fischer (Bar. No. 322311)
Chief Counsel and Executive Deputy
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/s/ Jacob B. Boyer

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No. ___ MD 2022

**[PROPOSED] ORDER GRANTING PETITIONERS' EMERGENCY
APPLICATION FOR PEREMPTORY JUDGMENT AND SUMMARY
RELIEF**

NOW, this _____ day of _____ 2022, upon consideration of the
Petitioners' Emergency Application for Peremptory Judgment and Summary
Relief, and any response thereto, it is hereby ORDERED that:

1. Petitioners' Application is GRANTED; and
2. It is ORDERED that Respondent boards must send the Acting
Secretary within 2 days of this order certified returns of the 2022 primary election
that include timely received absentee and mail-in ballots cast by qualified voters
who failed to date the declaration on their ballot's return envelope; and.
3. It is DECLARED that Respondent boards must include in their
certified returns of the 2022 primary election timely received absentee and mail-in

ballot cast by qualified voters who failed to date the declaration on their ballot's return envelope.

, J.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: July 11, 2022

/s/ Jacob B. Boyer

Jacob B. Boyer

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing document upon the following persons by commercial carrier, which service satisfies the requirements of

Pa.R.A.P. 121:

Berks County Board of Elections
633 Court St., 1st Floor
Reading, PA 19601

Fayette County Board of Elections
Fayette Co. Public Service Bldg.
2 W Main St., Ste. 111
Uniontown, PA 15401-3412

Lancaster County Board of Elections
150 N. Queen St., Ste 117
Lancaster, PA 17603

Dated: July 11, 2022

/s/ Jacob B. Boyer

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