

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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**No. 68 MAP 2024**

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Black Political Empowerment Project, Power Interfaith, Make the Road  
Pennsylvania, ONEPA Activists United, New PA Project Education Fund, Casa  
San Jose, Pittsburgh United, League of Women Voters of Pennsylvania, and  
Common Cause Pennsylvania,

Petitioners/Appellees,

v.

Al Schmidt, in his official capacity as Secretary of the Commonwealth,  
Philadelphia County Board of Elections, Allegheny County Board of Elections,

Respondents,

Republican National Committee and Republican Party of Pennsylvania,

Intervenors/Appellants.

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**INTERVENORS/APPELLANTS' PRINCIPAL BRIEF**

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## INTRODUCTION

The Commonwealth Court majority’s decision is unprecedented, rests on multiple reversible errors, and threatens to unleash chaos, uncertainty, and an erosion of public confidence in the imminent 2024 general election in which millions of Pennsylvanians will vote for President, U.S. Senator, U.S. Representative, and scores of state and local offices.

In a first for Pennsylvania courts, the majority applied strict scrutiny to uphold a Free and Equal Elections Clause challenge to a neutral ballot-casting rule: the General Assembly’s date requirement for mail ballots already upheld under state law by this Court, *see Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 372-74 (Pa. 2020); *Ball v. Chapman*, 284 A.3d 1189 (Pa. 2022), 289 A.3d 1 (Pa. 2023), and under federal law by the Third Circuit, *Pa. State Conf. of NAACP v. Sec’y Commonwealth of Pa.*, 97 F.4th 120 (3d Cir. 2024).<sup>1</sup> The majority arrived at this reversible result only by departing from this Court’s controlling precedent, disregarding procedural defects in Petitioners’ suit, and ordering a remedy that *violates* the Free and Equal Elections Clause.

Most obviously, the majority’s decision is wrong because this Court *already rejected* a Free and Equal Elections challenge to the date requirement. The date

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<sup>1</sup> This brief uses “mail ballot” to refer to both absentee ballots and mail-in ballots. *See* 25 P.S. §§ 3146.6, 3150.16.

requirement is one component of the General Assembly’s declaration mandate, which requires voters to “fill out, date, and sign” a mail-ballot outer envelope. *See* 25 P.S. §§ 3146.6(a), 3150.16(a). In *Pennsylvania Democratic Party*, this Court upheld the declaration mandate against a Free and Equal Elections challenge, even though the General Assembly provided no notice-and-cure opportunity and instead required ballots to be “rejected due to minor errors” in compliance. 238 A.3d at 372, 374. Because the *entire* declaration mandate is constitutional, so, too, is its date requirement *component*.

Even if *Pennsylvania Democratic Party* did not directly control the question of the date requirement’s constitutionality, it still would require reversal. There, the Court declined to apply strict scrutiny or any balancing test to resolve Free and Equal Elections challenges to ballot-casting rules. *See id.* at 374. Quite the contrary: This Court held that “[w]hile the Pennsylvania Constitution mandates that elections be ‘free and equal,’ it leaves the task of effectuating that mandate to the Legislature.” *Id.* It therefore resides with the General Assembly to determine “the procedures for casting and counting a vote by mail” and whether “minor errors” in compliance require “reject[ing]” ballots. *Id.*

The majority thus erred when it applied strict scrutiny. *See id.*; *Petition of Berg*, 713 A.2d 1106, 1109 (Pa. 1998) (“To subject every voting regulation to strict scrutiny ... would tie the hands of states seeking to assure that elections are operated

equitably and efficiently”). Nor could strict scrutiny apply because, if it did, the Clause would imperil *every* “reasonable, non-discriminatory restriction[]” the General Assembly has enacted “to ensure honest and fair elections” in Pennsylvania. *Pa. Democratic Party*, 238 A.3d at 369-70. Even Secretary Schmidt agreed below that strict scrutiny is inapplicable. *See* Secretary’s Brief In Support Of Petitioners’ Application 16 (June 24, 2024) (“Sec’y Br.”).

Instead, as more than a century of this Court’s precedent makes clear, a ballot-casting rule can violate the Clause only when it makes voting “so difficult as to amount to a denial ... of the franchise.” *Winston v. Moore*, 91 A. 520, 523-24 (Pa. 1914); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 810 (Pa. 2018) (“*LWV*”). The date requirement easily falls on the constitutional side of that line. Signing and dating important documents as part of everyday life—and dating a mail-ballot declaration is a usual burden of voting, not an effective “denial” of “the franchise.” *LWV*, 178 A.3d at 810.

Petitioners adduced—and the majority cited—no evidence that the requirement is objectively “difficult” to comply with. *Id.* Instead, the majority pointed to the number of noncompliant ballots in past elections. *See* Appendix (“App.”) 12-13, 75, 82. But even if that number were relevant, undisputed evidence the majority largely ignored *rebutts* the majority’s conclusion.

In the first place, the date requirement is inapplicable to in-person voting, the method the majority of Pennsylvanians use according to Petitioners' figures. Moreover—again according to Petitioners' own figures—*more than 99% of mail voters comply* with the requirement, and that rate continues to *increase*. A rule that is inapplicable to most voters and complied with by more than 99% of the remainder cannot be “so difficult” as to deny “the franchise.” *Winston*, 91 A. at 523, 524. And it has never been easier to comply with the requirement, thanks to the Secretary's new July 1, 2024 Directive: The Directive requires county boards to make changes to the mail-ballot declaration form that—even the majority agreed—“eliminate[]” the most common forms of dating errors in past elections. App. 19.

In its eagerness to address the merits, the majority dashed past procedural defects barring it from wading into this dispute in the first place. The panel lacked jurisdiction for two reasons. *First*, the Secretary is the only Commonwealth official named as a Respondent, but he is not an indispensable party because he does not enforce the date requirement and wields “no control over county boards' administration of elections.” App. 46 (majority). *Second*, Petitioners failed to join indispensable parties: 65 county boards that *are* responsible for enforcing the requirement. *Id.* As a result, if anything, it is *the majority's Order that violates* the Free and Equal Elections Clause. The Order prohibits only the two county boards Petitioners joined—Philadelphia and Allegheny—from “strictly enforcing the” date

requirement, App. 93 ¶ 4, but has no effect on the other 65 county boards, which remain bound to enforce the “mandatory” requirement, *see Ball*, 289 A.3d 1. The Order thus does not “treat[]” Pennsylvania voters “alike” or “the same way under similar circumstances,” so it violates the Clause, *see Winston*, 91 A. at 523, as well as another constitutional provision, Pa. Const. art. VII, § 6 (election rules must be “uniform throughout the State”), the Election Code, *see* 25 P.S. § 2642(g) (elections must be “uniformly conducted” throughout the Commonwealth), and the Equal Protection Clause, *see Bush v. Gore*, 531 U.S. 98, 106-07 (2000) (U.S. Constitution forbids use of “varying standards to determine what [is] a legal vote” from “county to county”).

The Court should reverse.

## **BACKGROUND**

In 2019, a bipartisan majority of the General Assembly adopted universal mail voting for the first time in history. Act of Oct. 31, 2019, P.L. 552, No. 77, sec. 8 (“Act 77”); *see* 25 P.S. § 3150.11(a). As part of that compromise in the historic Act 77, the General Assembly maintained the longstanding requirement that mail voters “fill out, date and sign the declaration” on the ballot return envelope. Act 77, sec. 6, 8; *see* 25 P.S. §§ 3146.6(a), (b)(3), 3150.16(a), (b)(3). This Court has already upheld this declaration mandate against a Free and Equal Elections challenge, *see Pa. Democratic Party*, 238 A.3d at 373-74, and held that the date requirement is



mandatory, *see Ball*, 289 A.3d at 20-23. The Third Circuit has upheld the requirement under the federal Materiality Provision. *Pa. State Conf.*, 97 F.4th 120.

Four original Petitioners in this suit—Black Political Empowerment Project, Make The Road Pennsylvania, League of Women Voters of Pennsylvania, and Common Cause Pennsylvania—first filed a suit challenging the date requirement in federal court in November 2022. They lost that challenge, *see id.*, yet continue to pursue federal constitutional challenges in federal court, *see* Second Am. Compl., ECF No. 413, *Pa. State Conf. of NAACP v. Schmidt*, No. 22-CV-339 (W.D. Pa. filed June 14, 2024). Instead of pleading their various challenges in a single action, Petitioners have pursued a piecemeal approach. On May 28, 2024—more than 18 months after filing their first suit—Petitioners filed yet another action, this time in Commonwealth Court, raising a Free and Equal Elections challenge.

The Petition named three Respondents: Secretary of the Commonwealth Al Schmidt and two county boards of elections, Philadelphia and Allegheny (together, “the Boards”). *See* App. 225 ¶ 1. Petitioners did not join the 65 other county boards, even though they alleged that several have enforced the date requirement. *See* App. 226 ¶ 4. Petitioners sought an order “enjoin[ing] further enforcement” of the date requirement. App. 290-91 ¶ 92 (c).

The Election Code grants the Secretary no authority to enforce the requirement or determine whether any ballot is valid. *See* 25 P.S. § 2621 (setting out

Secretary’s limited powers). Rather, those powers reside exclusively with the county boards. *See* 25 P.S. § 2642 (setting out boards’ powers); App. 259-60 ¶ 44.

The only actions of the Secretary that Petitioners challenge are non-binding guidance documents he issued to county boards. *See, e.g.*, App. 228-86 ¶¶ 10, 13, 17, 20, 23, 26, 30, 33, 36, 42-43, 79. Petitioners expressly disclaimed seeking any relief based upon the Secretary’s prescription of the form of the mail-ballot declaration. *See* Petitioners’ Memorandum In Support of Summary Relief 33 (June 24, 2024) (“Petitioners’ Mem.”). They told the Commonwealth Court that they “simply seek a ruling that *enforcement* of the date requirement” violates the Free and Equal Elections Clause and “do not seek an order barring Respondents from continuing to direct voters to date mail ballot declaration forms, or from continuing to include a date field next to the signature line” on the declaration. *Id.* (emphasis added); *see also* Petitioners’ Opposition to Motion for Summary Relief 52 (July 8, 2024) (same) (“Petitioners’ Opp.”).

Because the named Respondents have consistently declined to defend the date requirement, the Commonwealth Court granted the Republican National Committee and Republican Party of Pennsylvania (“Republican Intervenors”) intervention to defend it. The Commonwealth Court also granted intervention on Petitioners’ side to the Democratic National Committee and Pennsylvania Democratic Party, who also intervened to challenge the date requirement in *Ball*, *see* Br. of Intervenor-

Respondents, *Ball v. Chapman*, No. 102 MM 2022, 2022 WL 18540587 (Pa. Oct. 25, 2022) (“Democratic Intervenors’ *Ball Br.*”), and in the Third Circuit appeal, *see* Order, ECF No. 129, *Pa. State Conf. of NAACP v. Sec’y*, No. 23-3166 (3d Cir. Jan. 3, 2024).

A divided Commonwealth Court panel held that the date requirement is unconstitutional under the Free and Equal Elections Clause. Applying strict scrutiny, the majority concluded that the requirement is unconstitutional because it mandates that “undated or incorrectly dated” mail ballots be rejected and, in the majority’s view, is “meaningless.” App. 82. The majority also rejected various procedural objections to Petitioners’ suit. *See* App. 42-62.

The majority declared that “the Election Code’s dating provisions are invalid and unconstitutional as applied to qualified voters who timely submit undated or incorrectly dated [mail] ballots.” App. 93 ¶ 3. It also entered an Order permanently enjoining the Secretary and the Boards from “strictly enforcing” the date requirement. App. 93 ¶ 4. The Order makes no mention of the form of mail ballots or the mail-ballot declaration and does not direct the Secretary to make any changes to either. *See* App. 92-92. The Order has no effect on the 65 county boards not joined as Respondents, which remain bound to enforce the requirement. *See Ball*, 289 A.3d 1.

Judge McCullough dissented because the majority “usurp[ed] the General Assembly’s role in regulating the manner and method of voting.” App. 149. Republican Intervenors timely appealed.

### STANDARD OF REVIEW

In reviewing grants of summary relief by the Commonwealth Court, this Court reviews questions of law “*de novo*, and [the] scope of review is plenary.” *Pa. Mfrs. Ass’n. Ins. Co. v. Johnson Matthey, Inc.*, 188 A.3d 396, 398 (Pa. 2018).

### ARGUMENT

The majority’s decision fails at the threshold—and should be reversed—because the Commonwealth Court lacked jurisdiction over Petitioners’ suit for at least two reasons. *First*, the Secretary is the only Commonwealth official named as a Respondent, but he lacks any authority to enforce the date requirement. He therefore is not an indispensable party to the *only* form of relief Petitioners seek: an order enjoining “enforcement” of the date requirement. App. 291 ¶ 92(c); Petitioners’ Mem. 33; Petitioners’ Opp. 52. The Commonwealth Court therefore lacked original jurisdiction. *See* 42 Pa. C.S. § 761(a)(1).

*Second*, Petitioners failed to join indispensable parties that *do* enforce the date requirement: the other 65 county boards. The result not only was a judgment issued without jurisdiction, but an Order that creates disparate treatment of identically situated voters across the Commonwealth in violation of the Pennsylvania

Constitution, the Election Code, and the Equal Protection Clause.

The Court therefore should reverse without even addressing the merits. But if it does reach the merits, it should reverse on that basis. The majority's decision rests on an unprecedented and patently erroneous application of strict scrutiny to a neutral ballot-casting rule that the General Assembly passed to facilitate universal mail voting as part of the historic bipartisan Act 77 compromise. It therefore is irreconcilable with *Pennsylvania Democratic Party, Ball*, and an unbroken line of this Court's precedent delineating the Free and Equal Elections Clause. The Court should reject the majority's flawed analysis and uphold the General Assembly's duly enacted and constitutional date requirement.

**I. THE COMMONWEALTH COURT LACKED JURISDICTION.**

The Court should reverse because the Commonwealth Court lacked jurisdiction for two reasons: The Secretary is not an indispensable party to Petitioners' sole requested relief, and Petitioners failed to join 65 county boards, which are indispensable to that relief.

**A. The Secretary Is Not A Proper Or Indispensable Party.**

"Jurisdiction over the subject matter is conferred solely by the Constitution and laws of the Commonwealth." *Commonwealth v. Locust Twp.*, 968 A.2d 1263, 1268-69 (Pa. 2009). The sole basis of subject matter jurisdiction that Petitioners invoked and the Commonwealth Court purported to exercise is 42 Pa. C.S.

§ 761(a)(1), App. 227 ¶ 7; App. 49 (majority), which grants the Commonwealth Court original jurisdiction only over civil actions “[a]gainst the Commonwealth government, including any officer thereof, acting in his official capacity.” 42 Pa. C.S. § 761(a)(1). The “Commonwealth government” includes “departments, boards, commissions, authorities and officers and agencies of the Commonwealth,” but not political subdivisions, local authorities, or local officers or agencies. *Id.* § 102.

“It is well settled that merely naming ... a Commonwealth party as one of several defendants does not necessarily establish” jurisdiction “under Section 761.” *In re Petition for Enforcement of Subpoenas*, 214 A.3d 660, 668 (Pa. 2019). Instead, “[c]ase law has long established that, in order for the Commonwealth Court to exercise original jurisdiction under 42 Pa. C.S. § 761(a)(1), the Commonwealth [entity] must be an indispensable party to the action.” *Id.* at 664.

The “basic” indispensability inquiry is “whether justice can be done in the absence of” that party. *Pa. State Educ. Ass’n v. Dep’t of Cmty. and Econ. Dev.*, 50 A.3d 1263, 1277 (Pa. 2012). A Commonwealth party may be declared indispensable only when “meaningful relief” cannot conceivably be afforded without that party’s direct involvement in the action. *Id.* at 1267; *see also Scherbick v. Cmty. Coll. of Allegheny Cnty.*, 387 A.2d 1301, 1303 (Pa. 1978); *Foreman v. Chester-Upland Sch. Dist.*, 941 A.2d 108, 113 (Pa. Commw. Ct. 2008). Thus, a Commonwealth party is not indispensable when the claimant cannot or does not seek “meaningful relief”

from it. *Pa. State Educ. Ass'n*, 50 A.3d at 1267; *Scherbick*, 387 A.2d 1301, 1303; *see also In re Petition*, 214 A.3d at 667.

In 2022, the Commonwealth Court applied these principles to dismiss for lack of jurisdiction an action brought by Republican Party entities and voters against the Secretary and all 67 county boards. *See Republican Nat'l Comm. v. Schmidt*, No. 447 M.D. 2022 (Pa. Commw. Ct. Mar. 23, 2023) (Ceisler, J.), App. 381. The *Republican National Committee* petitioners challenged certain boards' adoption of notice-and-cure procedures for defective mail ballots. App. 362. The only action of the Secretary they challenged was his guidance document regarding county boards' administration of elections. App. 369-75.

The Commonwealth Court held that any guidance of the Secretary regarding county boards' administration of elections is not legally binding on, or enforceable against, the boards. App. 374-75, 79-83; *see also In re Canvass of Absentee & Mail-In Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1078 n.6 (Pa. 2020) (“[T]he Secretary has no authority to definitively interpret the provisions of the Election Code.”); *Zicarelli v. Allegheny Cnty. Bd. of Elections*, 2:20-cv-1831-NR, 2021 WL 101683, at \*5 n.6 (W.D. Pa. Jan. 12, 2021) (“[U]nder Pennsylvania law, the Secretary’s pre-election guidance is just that—guidance. County boards of elections ultimately determine what ballots to count or not count in the first instance.”). That is because the “Secretary does not have control over the County Boards’

administration of elections, as the General Assembly conferred such authority solely upon the County Boards.” *Republican Nat’l Comm.*, App. 380 (“not[ing]” that the Secretary’s “duties and responsibilities” under the Election Code are quite “limited”); *see also* 25 P.S. §§ 2621, 2642; *Chapman v. Berks Cnty. Bd. of Elections*, No. 355 M.D. 2022, 2022 WL 4100998, at \*10 (Pa. Commw. Ct. Aug. 19, 2022) (the Secretary acknowledging he “does not have the authority to direct the Boards to comply with [a court] order.”).

Accordingly, the Commonwealth Court held that the Secretary’s issuance of non-binding guidance was insufficient to make him an indispensable party in a challenge to county boards’ notice-and-cure practices. *See* App. 378-82. Rather, the Commonwealth Court concluded that because county boards administer elections free from the Secretary’s authority or control, the petitioners could obtain “meaningful relief” without the Secretary through suits against county boards. *See* App. 371-73. It therefore dismissed the case for lack of subject matter jurisdiction. *See* App. 378-88.

Here as well, the Secretary is not an indispensable party. The only actions of the Secretary that Petitioners challenge are his non-binding guidance documents, *see, e.g.*, App. 228-86 ¶¶ 10, 13, 17, 20, 23, 26, 30, 33, 36, 42-43, 79, but those documents do not make him indispensable, *see Republican Nat’l Comm.*, App. 375-76, 378-83; *see also In re Canvass of Absentee & Mail-In Ballots*, 241 A.3d at 1078



n.6; *Zicarelli*, 2021 WL 101683, at \*5 n.6. The only *relief* Petitioners seek is an injunction against enforcement of the date requirement, *see* App. 291 ¶ 92(c); Petitioners’ Mem. 33; Petitioners’ Opp. 52, but the Secretary has no authority, and plays no role, in such enforcement, *see* 25 P.S. § 2621. Rather, that authority rests exclusively with the county boards. *See id.* § 2642; App. 259-61 ¶ 44.

That the Secretary plays no role in enforcing the requirement is evident from this Court’s remedial order in *Ball*. Even though the *Ball* petitioners named the Secretary as a respondent, the remedial order was directed only to the 67 county boards, *not* to the Secretary, thus confirming that enforcement of the requirement rests with the boards, not the Secretary. *See* 284 A.3d 1189, 1192, Nov. 1, 2022 Order (“The Pennsylvania county boards of elections are hereby ORDERED to refrain from counting . . .”).

Because the Secretary plays no role in enforcing the date requirement, Petitioners can—and must—obtain the “meaningful relief” they seek “in the absence of” the Secretary, *Pa. State Educ. Ass’n*, 50 A.3d at 1277; *Scherbick*, 387 A.2d at 1303; *see also In re Petition*, 214 A.3d at 667, through actions against county boards, *see* App. 99-100 (dissent) (“The relief Petitioners seek ... can *only* be afforded against county boards of elections.”); *see also Ball* Order; *Republican Nat’l Comm.* App. 375-76, 378-83. The Secretary therefore is not an indispensable party, meaning the Commonwealth Court lacked jurisdiction and should have dismissed the

Petition. *See* 42 Pa. C.S. § 761(a)(1); App. 99-100 (dissent); *Pa. State Educ. Ass’n*, 50 A.3d at 1277; *Scherbick*, 387 A.2d at 1303.

In fact, Petitioners not only can obtain meaningful relief from county boards, but any relief they obtain from the Secretary is also meaningless because it would do nothing to halt “enforcement” of the requirement. App. 291 ¶ 92(c); Petitioners’ Mem. 33; Petitioners’ Opp. 52. Take, for example, the majority’s Order against “strictly enforcing” the requirement: That Order, as it runs against the Secretary, will *not* result in any county board declining to enforce the date requirement. *See Ball*, 289 A.3d 1. And any order directing the Secretary to rescind or modify his guidance documents—which the majority *did not even enter*, *see* App. 92-94—also would not result in any county board counting noncompliant ballots because those documents do not define boards’ legal obligations, *see Ball*, 289 A.3d 1; *Republican Nat’l Comm.*, App. 371-72, 378-83; *In re Canvass of Absentee & Mail-In Ballots*, 241 A.3d at 1078 n.6; *Zicarelli*, 2021 WL 101683, at \*5 n.6. For this reason, the Secretary not only is not indispensable; Petitioners also lack standing to sue him because his actions bear no “causal connection” to their alleged harm from enforcement of the requirement. *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 473 (Pa. 2021).

The majority nonetheless concluded that the Secretary is indispensable on two bases, *see* App. 43-50, but neither succeeds.

*First*, the majority reasoned that “any declaration made in this case will certainly have an effect on [the Secretary’s] duties and responsibilities under the Election Code as they relate to his prescription of the form of absentee and mail-in ballots generally, and the form of the declarations thereon specifically.” App. 48. This is demonstrably incorrect: Petitioners *disclaimed* seeking any relief regarding the form of mail ballots or the declaration. *See* Petitioners’ Mem. 33; Petitioners’ Opp. 52. And, in fact, the majority’s Order makes no mention of the form of the ballot or declaration and does not require the Secretary to make any changes to either. *See* App. 92-94. This suit—and the majority’s Order against *enforcement* of the date requirement—thus have *no* “effect on [the Secretary’s] duties and responsibilities under the Election Code.” App. 48 (majority).

*Second*, the majority reasoned that the Secretary is indispensable because he has issued “various ... guidance” documents regarding the date requirement. *See* App. 47. But once again, the Secretary’s issuance of non-binding guidance does not make him indispensable in an action challenging enforcement of the requirement, which is the exclusive province of county boards. *See* 25 P.S. §§ 2621, 2642; *Republican Nat’l Comm.*, App. 374-75, 378-83; *see also In re Canvass of Absentee & Mail-In Ballots*, 241 A.3d at 1078 n.6; *Zicarelli*, 2021 WL 101683, at \*5 n.6.

Moreover, this is not a case where the Secretary issued guidance advocating one side of “an unsettled legal question.” *Ball*, 289 A.3d at 20. Instead, the

Secretary’s most recent guidance—which followed *Ball* and the Third Circuit ruling upholding the date requirement—merely lays out “an existing interpretation of settled law.” *Id.* at 19; *see* Email On Behalf Of Deputy Secretary Marks to County Boards of Elections (Apr. 19, 2024) (cited App. 47). Petitioners thus have failed to prove standing to challenge the Secretary’s actions, much less that the Secretary is indispensable. *See Ball*, 289 A.3d at 19.

Finally, Petitioners’ joinder of the two Boards also does not suffice to invoke the Commonwealth Court’s original jurisdiction. As even the majority agreed, county boards are local authorities, not Commonwealth agencies, for purposes of Section 761(a)(1). *See* App. 49; *Republican Nat’l Comm.*, App. 385-88. That holding is correct because the county boards are not denominated as, and have been conferred no powers of, Commonwealth agencies. Instead, their authority is strictly local to their own counties. *See, e.g., T&R Painting Co., Inc. v. Phila. Hous. Auth.*, 353 A.2d 800 (Pa. 1976) (county housing authorities are local authorities, not Commonwealth agencies). The Commonwealth Court erred in exercising jurisdiction over this suit, and the Court should reverse on that basis alone.

**B. Petitioners Failed To Join Indispensable Parties.**

Even if the Secretary is indispensable, the Court still should reverse because Petitioners failed to join indispensable parties: the county boards that enforce the date requirement in 65 of Pennsylvania’s 67 counties.

“Whenever it appears by suggestion of the parties or otherwise ... that there has been a failure to join an indispensable party, the court shall ... dismiss the action.” Pa. R. Civ. P. 1032(b); *see also Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 346 A.2d 788, 789 (Pa. 1975) (proceeding without an “indispensable party ... renders any order or decree of court null and void for want of jurisdiction”). This Court’s analysis of “the indispensability of a party” turns on a variety of considerations, including whether the absent parties “have a right or interest related to the claim,” “the nature of that right or interest,” whether that “right or interest” is “essential to the merits” and whether “justice” can “be afforded without violating the due process rights of absent parties.” *In re Petition*, 214 A.3d at 668. Thus, a party is indispensable when “his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.” *Polydyne, Inc. v. City of Phila.*, 795 A.2d 495, 496 (Pa. Commw. Ct. 2002).

The Petition reveals that Petitioners believed the 65 county boards were indispensable: It makes allegations regarding some of those boards’ enforcement of the date requirement, *see* App. 226-27 ¶ 4, and suggests that the 65 boards would be required to stop “setting aside mail ballot envelopes with missing or incorrect voter-written dates” if Petitioners’ requested relief were granted, App. 286 ¶ 79. Petitioners therefore should have joined the 65 boards as a matter of their own pleading: Obviously, a court order changing those boards’ obligations with respect

to enforcement of the date requirement affects their “right or interest essential to the merits” and cannot be entered in their absence without “violating the[ir] due process rights.” *In re Petition*, 214 A.3d at 668. Petitioners *never* explained how a court order *in a case in which the boards were not even parties* could change the boards’ obligation to enforce the requirement—much less how an order from the Commonwealth Court could override their enforcement obligations under this Court’s decision in *Ball*.

In all events, the 65 boards are indispensable because the majority’s Order granting Petitioners’ requested relief ensnares them in a host of potential constitutional and legal violations. Those boards have obvious “interest[s]” in avoiding such violations on “the merits,” and ensnaring them in such violations in a case in which they are not even parties “violat[es]” their “rights.” *In re Petition*, 214 A.3d at 251; App. 101-02 (dissent).

Indeed, even the majority recognized that the Free and Equal Elections Clause requires voting laws to “treat[] all voters alike” and to impose any burdens on voters “in the same way under similar circumstances.” App. 71 n.53 (citing *Winston*, 91 A. at 523). But its Order violates these precepts. It *prohibits* the two Boards from “strictly enforcing” the date requirement, App. 93-94 ¶ 4, but has *no* effect on the 65 non-joined boards, which remain *bound* to enforce the mandatory date requirement, *see Ball*, 289 A.3d at 20-23. Thus, voters in Allegheny and Philadelphia Counties

are not “treat[ed] ... alike” and “in the same way under similar circumstances” as the voters in the rest of the Commonwealth, and the Court’s Order violates the Clause. *Winston*, 91 A. at 523.

The Order’s disparate treatment of voters based on their county of residence also violates the Pennsylvania Constitution’s requirement that voting laws be “uniform throughout the State,” Pa. Const. art. VII, § 6; *Kerns v. Kane*, 69 A.2d 388, 393 (Pa. 1949) (“To be uniform in the constitutional sense, such a law must treat all persons in the same circumstances alike.”), the Election Code’s requirement that elections be “uniformly conducted” throughout the Commonwealth, 25 P.S. § 2642(g), and the Equal Protection Clause, *see Bush*, 531 U.S. at 106-07 (U.S. Constitution forbids use of “varying standards to determine what [is] a legal vote” from “county to county”); App. 101-02 (dissent).

The majority’s answers to these problems are baffling. It acknowledged the “mandatory” rule that, “in an action for a declaratory judgment, all persons having an interest that would be affected by the declaratory relief sought ordinarily must be made parties to the action.” App. 51-52 (cleaned up). It even acknowledged that “all 67 county boards have an interest in this matter based on their duties and responsibilities to canvass and count [mail] ballots under the Election Code”—and that its decision could “affect the other 65 county boards’ duties with respect to counting undated and incorrectly dated ballots.” *Id.* at 52. Nevertheless, the

majority steamed ahead without the 65 boards on three rationales, none of which withstands scrutiny.

*First*, the majority thought it could proceed because the Petition “named *only* the Philadelphia and Allegheny County” boards. *Id.* But a claimant’s pleading decisions do not affect, much less dictate, whether non-joined parties are indispensable; otherwise, a claimant would *never* have to join any party and there would be no indispensable parties rule. *See, e.g., In re Petition*, 214 A.3d at 667-68; Pa. R. Civ. P. 1032(b). That is especially true here, where Petitioners sued only Respondents that *agree* with Petitioners’ challenges on the merits, and where Petitioners intentionally did not join county boards that have vigorously defended the date requirement in parallel challenges Petitioners have brought in federal court. *See, e.g., Pa. State Conf. of NAACP v. Schmidt*, 703 F. Supp. 3d 632, 643-44 (W.D. Pa. 2023) (noting defenses by Lancaster and Berks County Boards). Petitioners cannot use collusive litigation to leverage relief against 65 boards they did not bother to join.

*Second*, the majority thought “achieving justice is [not] dependent upon the participation of all the county boards” because the 65 boards did not seek “to intervene in this case.” App. 52-53. The non-joined boards have no obligation to volunteer to be bound by a judgment in this case by seeking to intervene on the compressed schedule the Commonwealth Court adopted. Rather, Petitioners had the



obligation to join them and bear the consequence of dismissal for failing to do so. *See, e.g.*, Pa. R. Civ. P. 1032(b); *Mains v. Fulton*, 224 A.2d 195, 196 (Pa. 1966). And this is not a case where “[countless] parties” would have to be joined and make the case “impractical.” App. 53 (majority) (discussing *City of Phila. v. Commonwealth*, 838 A.2d 566, 568 (2003)). Rather, this case is *exactly like Ball*, where *all 67 county boards were joined* to a dispute regarding enforcement of the date requirement that this Court resolved without any “impracticality.” *See Ball*, 289 A.3d 1.

*Third*, the majority dismissed “equal protection concerns” because “all 67 county boards of this Commonwealth do not conduct elections in their respective counties with strict uniformity to each other county in all respects.” App. 53. That is a strawman. The Equal Protection Clause prohibits disparate rules for determining “what [is] a legal vote,” *Bush*, 531 U.S. at 107; it does not prohibit variations in any conceivable election-administration procedure (like different layouts for polling places). Indeed, three Justices of this Court voted to preliminarily enjoin the only arguably apt example of divergent rules cited by the majority—the offer of notice-and-curing procedures by some county boards but not others. *See* App. 53; *Republican Nat’l Comm. v. Chapman*, 284 A.3d 207, 208 (Pa. 2022) (Todd, CJ, Mundy, Brobson, JJ.).

Petitioners' failure to join the 65 boards meant the Commonwealth Court lacked jurisdiction. The Court should reverse.

## **II. THE DATE REQUIREMENT DOES NOT VIOLATE THE FREE AND EQUAL ELECTIONS CLAUSE.**

If the Court considers the merits, it should reverse because the date requirement does not violate the Free and Equal Elections Clause.

The majority did something truly unprecedented: wield the Clause to strike down a neutral ballot-casting rule that governs how voters complete and cast their ballots. *See* App. 95 (dissent) (denouncing “untethered and unprecedented” decision); A. MCCALL, ELECTIONS, *IN* K. GORMLEY ET. AL., THE PENNSYLVANIA CONSTITUTION: A TREATISE ON RIGHTS AND LIBERTIES 215-232 (identifying the types of cases the Clause has been applied in). But in order to function properly, elections must have rules, including ballot-casting rules. The Judiciary may not disregard those rules, rewrite them, or declare them unconstitutional simply because a voter failed to follow them and, accordingly, had his or her ballot rejected. *See, e.g., Ins. Fed’n of Pa., Inc. v. Commonwealth, Ins. Dep’t*, 970 A.2d 1108, 1122 n.15 (Pa. 2009); *Pa. Env’t Def. Found. v. Commonwealth*, 161 A.3d 911, 938 n.31 (Pa. 2017); *accord Ritter v. Migliori*, 142 S. Ct. 1824, 1825 (2022) (Alito, J., dissent) (“When a mail-in ballot is not counted because it was not filled out correctly, the voter is not denied ‘the right to vote.’ Rather, that individual’s vote is not counted because he or she did not follow the rules for casting a ballot. ‘Casting a vote,

whether by following the directions for using a voting machine or completing a paper ballot, requires compliance with certain rules.” (quoting *Brnovich v. DNC*, 594 U.S. 647, 669 (2021)); *Pa. State Conf.*, 97 F.4th at 133-34.

Thus, a voter does not suffer constitutional harm when his ballot is rejected because he failed to follow the rules the General Assembly enacted for completing or casting it. As this Court held over a century ago (and recently reaffirmed), “[t]he power to regulate elections is legislative.” *Pa. Democratic Party*, 238 A.3d at 373 (quoting *Winston*, 91 A. at 522). Thus, “[w]hile the Pennsylvania Constitution mandates that elections be ‘free and equal,’ it leaves the task of effectuating that mandate”—including the adoption of ballot-casting rules and the decision whether ballots should be “rejected due to minor errors made in contravention of those requirements”—“to the Legislature.” *Id.* at 374.

A party seeking to strike down a statute as unconstitutional must meet an extremely high burden. The “starting point” is the presumption that “all legislative enactments” are constitutional and “[a]ny doubts are to be resolved in favor of a finding of constitutionality.” *Mixon v. Commonwealth*, 759 A.2d 442, 447 (Pa. Commw. Ct. 2000); *LWV*, 178 A.3d at 801. This presumption of constitutionality is strong. *Mixon*, 759 A.2d at 447. To overcome it, Petitioners must prove the date requirement “clearly, palpably, and plainly violates the Constitution.” *LWV*, 178 A.3d at 801. Indeed, a “statute is facially unconstitutional only where no set of

circumstances exist under which the statute would be valid.” *Pa. Env’t Def. Found.*, 161 A.3d at 938 n.31.

Petitioners’ Free and Equal Elections challenge to the date requirement fails for several reasons. *First*, this Court has already rejected it. *Pa. Democratic Party*, 238 A.3d at 372-80; *Ball*, 289 A.3d at 14-16 & n.77.

*Second*, even if the Court deems that to be an open question, Petitioners’ claims fail on the Clause’s plain text and history and the controlling precedent construing it. *See, e.g., LWV*, 178 A.3d at 807-10.

*Third*, case-law from other states with “free and equal elections” clauses and case-law construing the right to vote under the U.S. Constitution foreclose Petitioners’ claims.

*Fourth*, Petitioners’ requested relief is improper. Employing the Free and Equal Elections Clause to invalidate the date requirement would “impermissibly distort[]” state law and, thus, violate the Elections and Electors Clauses of the U.S. Constitution. *Moore v. Harper*, 600 U.S. 1, 38 (2023) (Kavanaugh, J., concurring) (cleaned up); *see id.* at 34-36 (holding that federal courts must review state-court interpretations of federal election laws passed by state legislatures). And if this Court fails to reverse, the entirety of Act 77—including its creation of no-excuse mail voting for all Pennsylvania voters—has been invalidated under the non-severability provision the General Assembly enacted to protect its political

compromises in the Act. *See McLinko v. Dep't of State*, 279 A.3d 539, 609-610 (Pa. 2022) (Brobson, J., dissenting).

**A. This Court Has Rejected Free and Equal Elections Challenges To The Date Requirement.**

The majority's decision fails because this Court already has upheld the date requirement against Free and Equal Elections challenges.

Start with *Pennsylvania Democratic Party*, where the petitioners—who included Intervenor Pennsylvania Democratic Party—brought a Free and Equal Elections challenge to the declaration mandate of which the date requirement is part. *See* 238 A.3d at 372. The petitioners argued that mail ballots should be counted notwithstanding “minor errors” or “irregularities” in completion of the declaration. *Id.* at 372-73. They therefore asked this Court to hold that the Clause requires county boards to provide voters notice and an opportunity to cure such “minor errors” before rejecting the ballot. *See id.* at 373-74.

The Secretary opposed this request and the petitioners' construction of the Clause. *See id.* at 373. The Secretary agreed that “so long as a voter follows the requisite voting procedures, he or she will have an equally effective power to select the representative of his or her choice,” which is all that the Clause guarantees. *Id.* (quotation marks omitted). In other words, the Secretary concluded that the General Assembly does not violate the Clause when it mandates that ballots not be counted where a voter fails to “follow[] the requisite voting procedures” it has enacted. *Id.*

This Court agreed and rejected the challenge. It reasoned that the Clause does not mandate a cure procedure “for [mail] ballots that voters have filled out incompletely or incorrectly.” *Id.* at 374. After all, the Clause “leaves the task of effectuating th[e] mandate” that elections be free and equal “to the Legislature.” *Id.* It therefore resides in the General Assembly to decide both “the procedures for casting and counting a vote by mail” and whether even “minor errors made in contravention of those requirements” warrant rejection of the ballot. *Id.*

This Court therefore held that the declaration mandate complies with the Clause. *See id.* Obviously, because the *entire* declaration mandate is constitutional, so, too, is its date requirement *component*. *See id.*

The majority’s position that the date requirement serves no purpose and that mandatory application of it violates the Clause was also presented to this Court in *Ball*, including by the Democratic Intervenors here. *See* Brief of Respondent *Ball v. Chapman*, No. 102 MM 2022, 2022 WL 18540590, at \*37 (Pa. Oct. 25, 2022) (“Imposing draconian consequences for insignificant errors could, as is the case here [] implicate the Constitution’s Free and Equal Elections Clause[.]”); Democratic Intervenors’ *Ball* Br., 2022 WL 18540587, at \*1-2 & \*8-10 (discussion alleged lack of purpose), \*29-32 (making argument under Free and Equal Elections Clause). This Court even noted those arguments in its opinion. *See* 289 A.3d at 14-15 (discussing Free and Equal Elections Clause arguments); 16 n.77 (discussing

requirement's alleged lack of "functionality"). It nonetheless upheld the requirement as "unambiguous and mandatory" such that noncompliance renders the ballot legally "invalid," *id.* at 20-23, thus rejecting those arguments. The majority's reconsideration of those issues is therefore foreclosed by *Ball*.

The majority did not seriously engage these dispositive points. Rather, it attempted to distinguish this case from *Pennsylvania Democratic Party* because "notice and opportunity to cure procedures are *not* at issue" here. App. 68 (emphasis original). But the majority's argument by emphasis offers a distinction without a difference: Because the Court declined to impose a notice-and-cure requirement, the express import of *Pennsylvania Democratic Party* is that the declaration mandate and its date requirement component are constitutional even though "minor errors" in compliance require rejection of ballots. 238 A.3d at 374. This, therefore, is a simple *a fortiori* case.

As for *Ball*, the majority insisted that this Court considered only statutory arguments, App. 67, thus ignoring the Free and Equal Elections arguments this Court noted, *see* 289 A.3d at 14-15, 16 n.77. The majority even suggested it disagrees with this Court's statutory holding, citing older cases distinguishing between "mandatory" and "directory" provisions and pondering "weighty interests." App. 82-83 n.61. But this Court has now decisively abandoned that former approach to statutory construction, emphasizing that the General Assembly's use of the word

“shall” in voting rules is mandatory and definitive. *See Ball*, 289 A.3d at 21-22; *In re 2020 Canvas*, 241 A.3d at 1079 (Wecht, J., concurring and dissenting); *id.* at 1090 (Dougherty, J., concurring and dissenting).

The majority offered no plausible detour around *Pennsylvania Democratic Party* and *Ball*. The Court should adhere to those prior decisions and reverse.

**B. The Date Requirement Does Not Violate The Constitution.**

Even if the Court deems the constitutionality of the date requirement an open question, it still should reverse because the requirement comports with the Free and Equal Elections Clause.

**1. The Court Has Never Invalidated A Mandatory Ballot-Casting Rule Under The Clause.**

Originally adopted in 1790, the Clause provides that “[e]lections shall be free and equal.” Pa. Const. art. I, § 5. Its purpose is to “ensure that each voter will have an equally effective power to select the representative of his or her choice, free from any discrimination on the basis of his or her particular beliefs or views.” *LWV*, 178 A.3d at 809. In other words, the Clause guarantees that every Pennsylvania voter has “the same free and equal *opportunity* to select his or her representatives.” *Id.* at 814; *Pa. Democratic Party*, 238 A.3d at 373 (“so long as a voter follows the requisite voting procedures, he or she will have an equally effective power to select the representative of his or her choice”) (cleaned up).

Precedent and history demonstrate that the Clause performs three functions.



*First*, the Clause prohibits arbitrary voter-qualification rules that disqualify classes of citizens from voting. *LWV*, 178 A.3d at 807. During Pennsylvania’s colonial period, large numbers of Pennsylvanians were prohibited from voting because of religious or property-based qualifications. *Id.* at 804-05. Pennsylvania’s Framers prohibited such arbitrary and discriminatory qualifications when they adopted the Clause. *See id.* at 807; *see* McCall, *supra*, at 217.

*Second*, the Clause prohibits intentional discrimination against voters based on social or economic status, geography of residence, or religious or political beliefs. *LWV*, 178 A.3d at 807. That is why this Court held that the Clause prohibits partisan gerrymandering. *Id.* at 808-09. The Court explained this holding flows from the Clause’s aim to prohibit “dilution of the right of the people of this Commonwealth to select representatives to govern their affairs based on considerations of the region of the state in which they lived, and the religious and political beliefs to which they adhered.” *Id.*

*Third*, the Clause prohibits “regulation[s]” that “make it so difficult [to vote] as to amount to a denial” of “the franchise.” *Id.* at 810 (quoting *Winston*, 91 A. at 523). Unless a regulation imposes such extreme burdens, “no constitutional right of [a] qualified elector is subverted or denied” and the regulation is not subject to judicial scrutiny under the Clause. *Id.*

In accordance with the Clause’s plain text and purpose, this Court has never

used it to strike down a neutral ballot-casting rule governing how voters complete and cast ballots. *See* App. 96 (dissent); McCall, *supra*, at 215-232 (discussing different ways Clause has been used). In fact, it has routinely *upheld* ballot-casting rules—such as the declaration mandate and the secrecy-envelope rule—against such challenges. *See Pa. Democratic Party*, 238 A.3d at 372-80. And it granted only *temporary* relief from the received-by deadline during the COVID-19 pandemic; it did not *invalidate* the deadline for all time, such as Petitioners seek with the date requirement. *See id.* at 371-72.

These holdings make perfect sense: The Clause delegates to the “Legislature” the “task of effectuating” its mandate, subject only to a guarantee that every voter shall have an equal *opportunity* to cast a vote, not that every voter will successfully utilize that opportunity. *Id.* at 374; *LWV*, 178 A.3d at 810. It therefore does not—and has never been interpreted to—restrict the Legislature’s authority to adopt neutral ballot-casting rules. *See* App. 108 (dissent).

Moreover, “[i]t is not possible, nor does the Constitution require, that this freedom and equality of election shall be a perfect one,” and “some may even lose their suffrages by the imperfection of the system; but this is no ground to pronounce a law unconstitutional.” *Patterson v. Barlow*, 60 Pa. 54, 75-76 (1869). “[N]othing short of gross abuse would justify a court in striking down an election law demanded by the people, and passed by the lawmaking branch.” *Winston*, 91 A. at 523.

## 2. The Date Requirement Does Not Violate The Clause.

This Court applied this governing precedent to reject challenges to two sets of ballot-casting rules in *Pennsylvania Democratic Party*: the declaration mandate and the secrecy-envelope rule. *See* 238 A.3d at 372-80. As part of the declaration mandate, and like the secrecy-envelope rule, the date requirement is a neutral, non-discriminatory ballot-casting rule that does not violate the Clause. *See id.* at 372-73; *Mixon*, 759 A.2d at 449-50.

The majority below did not—and could not—claim that the date requirement unconstitutionally narrows who is eligible to vote or constitutes intentional discrimination by the bipartisan majority of the General Assembly that enacted Act 77. *See LWV*, 178 A.3d at 807. Instead, it relied on the Clause’s third protection and believed that the requirement “make[s] it so difficult [to vote] as to amount to a denial” of “the franchise.” *Id.* at 810; *see* App. 71 (majority).

That is nonsense. In the first place, Pennsylvania law permits *all* voters to vote in person without complying with the date requirement. *See, e.g.*, 25 P.S. § 2811. So far from making voting “so difficult as to amount to a denial” of “the franchise,” *LWV*, 178 A.3d at 810, the date requirement is *inapplicable* to an entire universally available method of voting—the method that the majority of Pennsylvania voters use to vote, even on Petitioners’ own figures. *See* App. 266 ¶ 55 & n.6; App. 274-75 ¶ 70 (suggesting that 37% of Pennsylvania voters voted by mail

in the 2024 primary elections); 2022 General Election Official Returns (Statewide), November 8, 2022 (22.8% of ballots counted in the 2022 U.S. Senate election—1,225,446 out of 5,368,021—were mail ballots), <https://tinyurl.com/3kfzwpzh>. It is hard to see how a rule regulating no-excuse mail voting, which was “unknown in the Commonwealth for well over two centuries and is wholly a creature of recent, bipartisan legislate[on],” can violate any right to vote. App. 96 (dissent).

In the second place, even if the majority was correct that the Clause requires ignoring the preferred voting method of most Pennsylvania voters and focusing only on mail voting, there is nothing “difficult” about signing and dating a document, let alone “so difficult” as to deny the right to vote. *LWV*, 178 A.3d at 810. Petitioners’ own position contemplates as much, since they do not challenge the “sign” component of the declaration mandate—and they offer no explanation as to how *dating* the declaration can be more difficult than *filling out and signing* it. Moreover, signing and dating documents is a mandatory and common feature of life. The forms provided in Pennsylvania statutes which provide spaces for both a signature and a date are too numerous to list here.<sup>2</sup> Consequently, “[n]o reasonable person would

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<sup>2</sup> To name a few, *see* 57 Pa. C.S. § 316 (short form certificates of notarial acts); 23 Pa. C.S. § 5331 (parenting plan); 73 P.S. § 201-7(j.1)(iii)(3)(ii) (emergency work authorization form); 42 Pa. C.S. § 8316.2(b) (childhood sexual abuse settlement form); 73 P.S. § 2186(c) (cancellation form for certain contracts); 42 Pa. C.S. § 6206 (unsworn declaration).

find the obligation to sign and date a [mail-ballot] declaration to be difficult or hard or challenging.” App. 128 (dissent).

Furthermore, both signing a piece of paper and writing a date on it are nothing more than the “usual burdens of voting,” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008) (opinion of Stevens, J.); *id.* at 204-09 (Scalia, J., concurring); App. 127 (dissent), not a “difficult[y]” so severe “as to amount to a denial” of “the franchise,” *LWV*, 178 A.3d at 810. Indeed, every State requires voters to write pieces of information on voting papers—both for in-person and mail voting. *See, e.g.*, 25 P.S. §§ 3146.6(a), 3150.16(a) (signature requirement); *id.* § 3050 (requirement to maintain in-person voting poll books); *Electronic Poll Books*, National Conference of State Legislatures (Oct. 25, 2019), [ncsl.org/elections-and-campaigns/electronic-poll-books](https://ncsl.org/elections-and-campaigns/electronic-poll-books); *How States Verify Voted Absentee/Mail Ballots*, National Conference of State Legislatures (Jan. 22, 2024), [ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots](https://ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots).

In fact, dating a ballot declaration is far less difficult than other tasks that have been upheld as non-burdensome and constitutional under the Clause and other constitutional provisions. As noted, this Court has already upheld against Free and Equal Elections challenges the entire declaration mandate and the secrecy-envelope rule. *See Pa. Democratic Party*, 238 A.3d at 372-80. The date requirement—like the signature requirement Petitioners do not challenge—is necessarily *easier* to

comply with than the full range of rules (including the “fill out,” “date,” and “sign” requirements) that form the declaration mandate.

Moreover, the United States Supreme Court has upheld as constitutionally non-burdensome “the inconvenience of making a trip to the [Bureau of Motor Vehicles], gathering . . . required documents, and posing for a photograph” as required to obtain a photo identification for in-person voting. *Crawford*, 533 U.S. at 198 (opinion of Stevens, J.). It has also reasoned that “[h]aving to identify one’s own polling place and then travel there to vote does not exceed the usual burdens of voting.” *Brnovich*, 594 U.S. at 678. Yet both of these tasks are far more difficult than dating a ballot envelope (especially one prepared in accordance with the Directive, *see infra* 37-38)—so, *a fortiori*, the date requirement does not “make it so difficult [to vote] as to amount to a denial” of “the franchise.” *LWV*, 178 A.3d at 810.

The majority below did not dispute any of these points. Instead, in concluding the date requirement “make[s] it so difficult [to vote] as to amount to a denial of the franchise,” *LWV*, 178 A.3d at 810, that court relied on *only one* factor: the number of rejected ballots. App. 75 (showing burden by pointing to those who could not “*correctly* handwrite the date”). But this Court has never equated burdens on the right to vote with the number of rejected ballots. To the contrary, this aspect of this Court’s Free and Equal Elections jurisprudence turns on the objective *burden*

imposed by the challenged rule—*i.e.*, whether the challenged rule “make[s] it so difficult [to vote] as to amount to a denial” of “the franchise”—not the number of voters who fail to comply with it. *LWV*, 178 A.3d at 810. And the majority did not “conduct[] any analysis of the *actual difficulty* [of complying with the date requirement] relative to every other generic and neutral ballot-casting requirement of the Election Code.” App. 109 (dissent).

Taking a somewhat different approach, Justice Wecht has suggested that an election-administration rule is constitutional unless it “will result in a constitutionally intolerable ratio of rejected ballots” *Pa. Democratic Party*, 238 A.3d at 389 (Wecht, J., concurring). The date requirement is also constitutional under that standard, as Petitioners’ own figures demonstrate. *See* App. 129-31 (dissent).

In particular, according to the figures Petitioners invoke, “10,657” mail ballots were not counted in the 2022 general election due to noncompliance with the date requirement. *See* App. 227-28 ¶¶ 8-9 (relying on data analysis by a lawyer advocating for invalidation of requirement in parallel federal challenge). But that represents only 0.85% of the 1,258,336 mail ballots returned statewide in the 2022 general election. *See* U.S. Election Administration Commission, *Election Administration and Voting Survey 2022 Comprehensive Report: A Report from the U.S. Election Assistance Commission to the 118<sup>th</sup> Congress* at 45, 47,

[https://www.eac.gov/sites/default/files/2023-06/2022\\_EAVS\\_Report\\_508c.pdf](https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf). A requirement that over 99% of mail voters complied with cannot be “so difficult as to amount to a denial” of the “franchise.” *LWW*, 178 A.3d at 810.

Moreover, this 0.85% noncompliance rate is *lower* than the historic noncompliance rate under the secrecy-envelope requirement. *See* MIT Election & Science Lab, *How Many Naked Ballots Were Cast in Pennsylvania’s 2020 General Election?* (statewide rejection rate for noncompliance with secrecy-envelope requirement around 1%), <https://electionlab.mit.edu/articles/how-many-naked-ballots-were-cast-pennsylvanias-2020-general-election>. Thus, because the secrecy-envelope requirement does not violate the Free and Equal Elections Clause, *see Pa. Democratic Party*, 238 A.3d at 376-80, the date requirement cannot either.

Notably, the figures Petitioners invoke also show that the noncompliance rate *decreased* in the 2024 primary elections. According to those figures, only 0.21% (4,000 out of 1,900,000) of all ballots submitted and only 0.56% of all mail ballots submitted (4,000 out of 714,315) in those elections were rejected due to dating errors. *See* App. 274-75 ¶¶ 70, 73.

Furthermore, as even the majority recognized, the rejection rate will likely only *further decrease* because the Secretary’s new Directive requires county boards to change the declaration in a manner that “eliminates” the most common forms of



dating errors in past elections. *See* App. 19. In fact, thanks to the Directive, it has never been easier to comply with the date requirement for at least three reasons.

*First*, the Directive requires county boards to preprint the entire year in the date field, *see* App. 154-55, so it “eliminates” the error of “a voter writing an incomplete or inaccurate year,” App. 19 (majority). It also reduces, if not eliminates, the likelihood of voters writing their “birthdate” in the date field. App. 80.

*Second*, the Directive requires county boards to print “Today’s date here (REQUIRED),” *see* App. 162, thus further specifying which date is “correct,” App. 80 (majority).

*Third*, the Directive requires county boards to print four boxes in the date field and to specify that the date should be written in MM/DD format. *See* App. 154-55. It thus eliminates any confusion regarding whether voters should use the American or International dating conventions. *See* App. 270 ¶ 64(c).

Petitioners adduced—and the majority identified—no evidence that the date requirement imposes an unconstitutional “difficult[y]” on voters. *LWV*, 178 A.3d at 810. To the contrary, the record *forecloses* that conclusion. The Court should reverse.

### **3. Pennsylvania Law Forecloses The Majority’s Application Of Strict Scrutiny.**

The majority escaped this conclusion only by applying *strict scrutiny*. But that contravened well-established Pennsylvania law—as even the Secretary

indicated below. *See* Sec’y Br. 16.

Indeed, this Court has *never* applied strict scrutiny—or *any* kind of balancing test—when it has addressed Free and Equal Elections challenges to the General Assembly’s ballot-casting rules. *See Pa. Democratic Party*, 238 A.3d at 372-80. In fact, it has foreclosed “subject[ing] every voting regulation to strict scrutiny.” *Petition of Berg*, 713 A.2d at 1109.

The authorities the majority cited do not support its radical departure from this Court’s precedents or application of strict scrutiny. The majority pointed to *Pennsylvania Democratic Party*, suggesting this Court held that any “significant” burden on the right to vote must satisfy strict scrutiny. App. 74-75. That is a misreading: That portion of the opinion addressed *federal* right-to-vote and First Amendment challenges to Pennsylvania’s poll watcher rules, which this Court rejected. 238 A.3d at 380-86. By contrast, when the Court discussed the Free and Equal Elections challenges, it made no mention of *any* tiers or type of scrutiny. *See id.* at 372-380.

Next, the majority relied on a series of cases applying a rule of statutory construction that ambiguous election rules should be construed in favor of enfranchising voters. App. 11-12, 74-75. Those cases *applied* Pennsylvania’s statutory secret-ballot rule and, thus, provide no support for invalidating a statutory provision. In *Appeal of Norwood*, for example, this Court quoted the statutory

language and persuasively explained that the voter complied with the statute, noting in passing that the statutory canon favoring voting bolstered its conclusion. 116 A.2d 552, 554 (Pa. 1955). *Appeal of Gallagher* did exactly the same thing: interpret and apply, not invalidate, the statutory ballot-secrecy rules. 41 A.2d 630, 631-32 (Pa. 1945). Such cases are irrelevant to the Free and Equal Elections challenge here—and even to the statutory question, because this Court already held that the date requirement is unambiguous and mandatory. *Ball*, 289 A.3d at 20-23.

Nor do the majority’s citations to its own precedents support its rule. *Petition of Berg declined* to apply strict scrutiny. 712 A.2d 340, 342-44 (Pa. Commw. Ct. 1998) (cited App. 74). And in *Applewhite v. Commonwealth* (cited at App. 69, 74, 77), an unpublished decision, the Commonwealth Court enjoined enforcement of Pennsylvania’s voter-identification law because Commonwealth officials were not applying that law in accordance with its terms, and that misapplication resulted in “hundreds of thousands” of eligible voters being stripped of the opportunity to vote entirely. 2014 WL 184988, at \*11, \*20-21 (Pa. Commw. Ct. Jan. 17, 2014); App. 104-06 (dissent). *Applewhite* therefore was a straightforward application of the Clause’s protection of voters’ equal “right to cast their vote.” App. 104 (dissent); *see also LWV*, 178 A.3d at 807 (Clause guarantees “universal suffrage” by invalidating arbitrary rules that deprive large numbers of eligible individuals of access to the ballot box).

Precedent aside, the majority’s test would dramatically and improperly usurp the General Assembly’s authority over elections. *See* App. 109 (dissent); *see also* *Petition of Berg*, 713 A.2d at 1109 (“[S]trict scrutiny ... would tie the hands of states seeking to assure that elections are operated equitably and efficiently”). Under the majority’s approach, courts could apply strict scrutiny to invalidate any voting rule they disfavor merely by positing that the rule imposes a “significant burden” because less than 1% of a subset of voters fail to comply with it. App. 75.

That is not the law—and the implications would be extraordinary if it were. Under the majority’s reading, the Clause would imperil *every* “reasonable, non-discriminatory restriction[]” the General Assembly has enacted “to ensure honest and fair elections” in Pennsylvania. *Pa. Democratic Party*, 238 A.3d at 369-70. Pennsylvania courts would be forced to apply one of the law’s most demanding standards to the General Assembly’s work any time a political party, elected official, or voter disliked a mandatory election rule that resulted in some votes going uncounted. *See, e.g.*, G. Gunther, *The Supreme Court, 1971 Term-Forward: In Search of Evolving Doctrine on a Changing Court: A Model For Newer Equal Protection*, 86 HARV. L. REV. 1, 8 (1972). That reading, therefore, would force the Judiciary to routinely “second-guess the policy choices of the General Assembly.” *Ins. Fed’n of Pa., Inc.*, 970 A.2d at 1122 n.15.

That approach is wrong and must be rejected. “While the Pennsylvania Constitution mandates that elections [shall] be ‘free and equal,’ it leaves the task of effectuating that mandate to the Legislature.” *Pa. Democratic Party*, 238 A.3d at 374; *see* Pa. Const. art. VII, § 14(a). And the Judiciary “may not usurp the province of the legislature by rewriting [statutes] ... as that is not [the court’s] proper role under our constitutionally established tripartite form of governance.” *In re: Fortieth Statewide Investigating Grand Jury*, 197 A.3d 712, 721 (Pa. 2018). Instead of seizing the General Assembly’s authority over election rules, this Court should reaffirm that “ballot and election laws [are] peculiarly within the province of the legislative branch of government,” *Winston*, 91 A. at 522, and uphold the General Assembly’s duly enacted date requirement because complying with it is not so “difficult as to amount to a denial” of the franchise, *LWV*, 178 A.3d at 810.

#### **4. This Court Should Also Reject the Secretary’s Proposed Test.**

Unsurprisingly, even the Secretary—who has opposed the date requirement’s legality in multiple parallel cases—did not advocate for strict scrutiny below. Instead, he argued that ballot-casting rules must merely be “reasonable [and] non-discriminatory.” Sec’y Br. 16. That proposed test sounds exactly like rational-basis review. As discussed below, the date requirement *easily* satisfies that standard. *See infra* 44-48.

But in truth, there is no support even for the Secretary’s invitation to use rational-basis review to second-guess ordinary ballot-casting rules. Under this Court’s precedents, a ballot-casting rule gets *zero scrutiny* unless it renders voting “so difficult as to amount to a denial” of the franchise.” *LWV*, 178 A.3d at 810; *see Pa. Democratic Party*, 238 A.3d at 373-74 (declining to apply balancing).

The Secretary invoked a few cases in an attempt to support his proposed test below, but none does. *Banfield v. Cortes*, 110 A.3d 155 (Pa. 2015) did not address the Free and Equal Elections Clause or a challenge to a ballot-casting rule. *Id.* at 176-77. Instead, it addressed challenges under various other provisions of the Pennsylvania and U.S. Constitutions to the Secretary’s certification of electronic voting machines used only in certain counties. *See id.* This Court, moreover, *rejected* all of those challenges. *See* 110 A.3d at 176-77. *Banfield* thus is doubly irrelevant: it does not suggest, much less prescribe, the analysis for a Free and Equal Elections challenge to a ballot-casting rule, and its *rejection* of constitutional challenges lends no support for the Secretary’s arguments.

The Secretary also cited *DeWalt v. Bartley*, but *DeWalt* did not address a ballot-casting rule; rather, it addressed a challenge to rules for ballot access, prohibitions on electioneering in polling places, rules for poll watchers, and measures to protect ballot secrecy. *See* 24 A. 185, 186-88 (Pa. 1892). If anything, that case supports *upholding* the date requirement: This Court upheld the law

because “[t]here is no doubt of the power of the legislature to regulate elections” and the law did not make voting “so difficult and inconvenient as to amount to a denial” of the franchise. *Id.* at 186. The same is true of the date requirement.

The Secretary’s other authorities below were even more inapt. *Independence Party Nomination* was a statutory interpretation case, not a constitutional case, that in any event reaffirmed that “the Legislature has the power to regulate the details of place, time, manner, etc.” for elections. *Indep. Party Nomination*, 57 A. 344, 345 (Pa. 1904) (interpreting provision as to party nominations). And *Shankey v. Staisey*, upheld against a *federal* Equal Protection Clause challenge a rule regulating ballot access by minor political parties. 257 A.2d 897, 899, 902 (Pa. 1969).

There is no basis to adopt the Secretary’s proposed reasonableness test. Instead, the Court should uphold the date requirement because compliance presents no unconstitutional “difficult[y],” *LWW*, 178 A.3d at 810, so the Free and Equal Elections Clause leaves “to the Legislature” the decision to adopt it and to mandate rejection of ballots “due to minor errors made in contravention of” it. *Pa. Democratic Party*, 238 A.3d at 374.

##### **5. The Date Requirement Satisfies Any Applicable Interest Balancing.**

Thus, neither Petitioners, the majority, nor the Secretary justified application of a judicial balancing test to the date requirement. But even if such an approach

were legitimate, the Court still should reverse because the date requirement would satisfy it, and the majority erred in concluding otherwise.

As a majority of this Court has recognized, the requirement serves several weighty interests and an “unquestionable purpose.” *In re Canvass of Absentee & Mail-In Ballots*, 241 A.3d at 1090 (opinion of Justice Dougherty, Chief Justice Saylor, and Justice Mundy); *see id.* at 1087 (opinion of Justice Wecht) (“colorable arguments ... suggest [the requirement’s] importance”). To start, it “provides proof of when [an] ‘elector actually executed [a] ballot in full,’” *id.* at 1090 (opinion of Justice Dougherty, Chief Justice Saylor, and Justice Mundy), and thus facilitates the “orderly administration” of elections, undoubtedly a legitimate interest, *Crawford*, 553 U.S. at 196 (opinion of Stevens, J.). To be sure, election officials are required to timestamp a ballot and scan the barcode into the Statewide Uniform Registry of Electors (“SURE”) upon receipt. *See Pa. State Conf. of NAACP*, 703 F. Supp. at 665. And there is every reason to think that *ordinarily* happens. *See id.* But the handwritten date serves as a useful backstop, and would become quite important if officials failed to perform those tasks or if SURE malfunctioned—possibilities Judge Matey has highlighted. *See Migliori v. Cohen*, 36 F.4th 153, 165 (3d Cir. 2022) (Matey, J., concurring in judgment).

Further, the requirement serves the State’s interest in solemnity—*i.e.*, in ensuring that voters “contemplate their choices,” including the choice to vote by mail



rather than in person, and “reach considered decisions about their government and laws.” *Minn. Voters All. v. Mansky*, 585 U.S. 1, 15 (2018); *see* App. 126-28 (dissent). Signature-and-date requirements serve a “cautionary function” by “impressing the parties with the significance of their acts and their resultant obligations.” *Davis v. G N Mortg. Corp.*, 244 F. Supp. 2d 950, 956 (N.D. Ill. 2003). Such formalities “guard[] against ill-considered action,” *Thomas A. Armbruster, Inc. v. Barron*, 491 A.2d 882, 883-84 (Pa. Super. Ct. 1985), and the absence of formalities “prevent[s] ... parties from exercising the caution demanded by a situation in which each ha[s] significant rights at stake,” *Thatcher’s Drug Store v. Consol. Supermarkets*, 636 A.2d 156, 161 (Pa. 1994). That is why the “requirement to sign and date documents is deeply rooted in legal traditions that prioritize clear and consensual agreements.” App. 126 (dissent); *accord Vote.Org v. Callanen*, 89 F.4th 459, 489 (5th Cir. 2023) (an “original signature ... carries ‘solemn weight.’”).

Moreover, the requirement advances the State’s interests in “detering and detecting voter fraud” and “protecting the integrity and reliability of the electoral process.” *Crawford*, 553 U.S. at 191 (opinion of Stevens, J.); *In re Canvass of Absentee & Mail-In Ballots*, 241 A.3d at 1091 (opinion of Justice Dougherty, Chief Justice Saylor, and Justice Mundy). The requirement’s advancement of the interest in preventing fraud is actual, not hypothetical: In 2022, the date requirement was used to detect voter fraud committed by a deceased individual’s daughter. *See*

*Commonwealth v. Mihaliak*, CP-36-CR-0003315-2022 (Lancaster Cnty. 2022). In fact, because county boards may not conduct signature matching, *see In Re: Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 595 (Pa. 2020), the *only* evidence of third-party fraud on the face of the fraudulent ballot was the handwritten date of April 26, 2022, which was twelve days after the decedent had passed away. *See App.* 392-95 (charging document in *Mahaliak*). That evidence was used to secure a guilty plea from the fraudster, who was criminally sentenced. *See App.* 396-99.

States do not need to point to evidence of election fraud within their borders in order to adopt rules designed to deter and detect it. *Brnovich*, 594 U.S. at 686. Yet here, where the requirement has actually been used to detect and prosecute fraud, the State’s interest in “detering and detecting voter fraud” is unquestionably advanced. *Crawford*, 553 U.S. at 191 (opinion of Stevens, J.). And the requirement’s anti-fraud function advances the related vital state interest of preserving and promoting voter “[c]onfidence in the integrity of our electoral process[]” that is so “essential to the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006).

The majority below believed the date requirement is “virtually meaningless.” *App.* 76. But it did not consistently embrace that belief: Its Order *permits* Respondents to “evaluate” compliance with the requirement “to ensure that [mail] ballots are timely submitted by qualified electors, and thus prevent fraud.” *App.* 94

¶ 5. The majority thus apparently believed the requirement *is* useful as an election-administration backstop and fraud-detection device. *See id.* Thus, instead of attempting to hedge the scope of its Order, it should have *upheld* the requirement.

The majority’s hedge is particularly puzzling because its opinion says nothing about the requirement’s utility as an election-administration backstop or solemnity function. *See App.* 76. And it refused to engage with concrete evidence of the requirement’s role in detecting and deterring fraud, relegating the *Mihaliak* case to passing mention in a footnote recounting the parties’ arguments. *See id.* at 36 n.33. The Court should reverse.

**C. Other States’ “Free And Equal Elections” Precedent And Federal Right-To-Vote Precedent Foreclose Petitioners’ Claims.**

If more were somehow needed, other States’ “free and equal elections” jurisprudence and federal right-to-vote case-law also refute Petitioners’ arguments.

**1. “Free And Equal Elections” Clauses In Other States Do Not Invalidate Ballot-Casting Rules.**

As this Court has noted, twelve other States have “free and equal elections” provisions similar to the Clause. *LWV*, 178 A.3d at 813 n.71. Yet the majority below cited *zero* cases from any of those States in which a neutral ballot-casting rule like the date requirement was invalidated under such a provision.

That is because courts in those States have consistently held that, under analogous “free and equal” elections clauses, a ballot-casting rule is lawful “so long

as what it requires is not so grossly unreasonable that compliance therewith is practically impossible.” *Simmons v. Byrd*, 136 N.E. 14, 17-18 (Ind. 1922); see *Mills v. Shelby Cnty. Election Comm’n*, 218 S.W.3d 33, 40-41 (Tenn. Ct. App. 2006) (provision “refers to the rights of suffrage and not to the logistics of how the votes are cast.”). Other state courts interpret their “free and equal” election provisions merely to prohibit the use of coercion to bar access to voting or to require that lawfully-cast votes be given equal weight. See, e.g., *Chavez v. Brewer*, 214 P.3d 397, 407 (Ariz. Ct. App. 2009); *Ross v. Kozubowski*, 538 N.E.2d 623, 627 (Ill. App. Ct. 1989) (“free and equal election” provision does not guarantee an election “devoid of all error” and requires “only” that “each voter have the opportunity to cast his or her [own] vote without restraint and that his or her vote have the same influence as the vote of every other voter”); *Graham v. Sec’y of State*, 684 S.W.3d 663, 684-85 (Ky. 2023) (violation only where “restraint or coercion, physical or otherwise, is exercised against a voter’s ability to cast a vote”); *Gentges v. State Election Bd.*, 419 P.3d 224, 228 (Okla. 2018) (provision violated when there is “conscious legislative intent for electors to be deprived of their right to vote”); *Libertarian Party of Or. v. Roberts*, 750 P.2d 1147, 1152 (Or. 1988) (clause requires equal counting of votes); *Chamberlin v. Wood*, 88 N.W. 109, 110-12 (S.D. 1901) (clause prohibits coercion and requires equal counting of votes).

After a diligent search, Petitioners are aware of *zero* cases applying any other State’s “free and equal election” clause to invalidate a neutral ballot-casting rule.<sup>3</sup> To the contrary, the Delaware Chancery Court recently rejected a challenge to a mail-ballot receipt deadline under that State’s Free and Equal Elections Clause. *See League of Women Voters of Del. v. Dep’t of Elections.*, 250 A.3d 922, 935-37 (Del. Ch. 2020). That court acknowledged that “some people will be disenfranchised because they spoil mail-in ballots in a variety of ways,” but explained that such failures are inevitable and do not implicate the Delaware Free and Equal Elections Clause. *Id.* at 935-36. The choice of which rules to set for mail ballots, the court explained, is a “matter of policy, not the Delaware Constitution.” *Id.* at 936.

## **2. Federal Precedent Also Refutes Petitioners’ Challenge.**

Federal right-to-vote case-law also refutes Petitioners’ request to recognize a constitutional right to require counting ballots that do not comply with neutral ballot-casting rules like the date requirement.

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<sup>3</sup> Republican Intervenors made the same representation below, and Petitioners conceded cases supporting their position are “rare” in *any* State. Petitioners’ Opp. 35-36. Moreover, the examples they cited are inapt. *McIntosh v. Helton* did not *invalidate* a rule but merely *applied* it, holding that writing a candidate’s initials did qualify as writing a candidate’s name. 828 S.W. 2d 364, 365-67 (Ky. 1992). Even less apt are *Wallbrech v. Ingram*, 175 S.W. 1022, 1027 (Ky. 1915), and *Young v. Red Clay Consol. Sch. Dist.*, 159 A.3d 713, 799 (Del. Ch. 2017), which did not invalidate or even interpret any state-law rules. And *Weinschenk v. State* dealt with a voter-identification provision and evidence that it would bar hundreds of thousands of people from the polling place. 203 S.W.3d 201, 212-13 (Mo. 2006). The date requirement is not remotely comparable.

To start, the U.S. Supreme Court has recognized that there is no constitutional right to vote by mail and that a State’s regulation of one method of voting cannot violate the right to vote when another voting method remains available. *See, e.g., McDonald v. Bd. of Election Comm’rs*, 394 U.S. 802, 807-808 (1969); *Crawford*, 553 U.S. at 201 (opinion of Stevens, J.); *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 403-05 (5th Cir. 2020). In other words, the federal constitutional right to vote is violated only when an individual is “absolutely prohibited from exercising the franchise” through any method. *McDonald*, 394 U.S. at 809.

The date requirement for mail ballots comports with the U.S. Constitution. *See* App. 115 (dissent). Indeed, “[Pennsylvania] permits [all voters] to vote in person” without complying with the requirement; “that is the exact opposite of ‘absolutely prohibit[ing]’ them from doing so.” *Tex. Democratic Party*, 961 F.3d at 404; *see also McDonald*, 394 U.S. at 809. The right to vote under the federal Constitution is therefore unaffected by the requirement. *See McDonald*, 394 U.S. at 807; App. 115 (dissent).

Moreover, even if the Secretary is correct that this Court could apply a judicial balancing approach here, *see supra* 42-44, federal law underscores that the date requirement is constitutional even under such an approach. Courts assess alleged violations of the federal constitutional right to vote under the so-called *Anderson-Burdick* test. Under that framework, regulations imposing “severe burdens on

[voters'] rights must be narrowly tailored and advance a compelling state interest," while those imposing "[l]esser burdens ... trigger less exacting review, and [the] State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Moreover, the "usual burdens of voting" cannot violate any right to vote under federal law. *Crawford*, 553 U.S. at 198 (opinion of Stevens, J.); *accord Brnovich*, 594 U.S. at 669.

The date requirement easily withstands scrutiny under that standard. Writing a date on a piece of paper is nothing more than a "usual burden[]" of voting" and thus receives no scrutiny under the *Anderson-Burdick* framework. *Crawford*, 553 U.S. at 198 (opinion of Stevens, J.); *id.* at 204-09 (Scalia, J., concurring).

The Third Circuit's holding that the date requirement does not violate the federal statutory "right to vote" underscores that rules imposing the usual burdens of voting cannot violate any right to vote. *Pa. State Conf. of NAACP*, 97 F.4th at 133. As the Third Circuit explained, "a voter who fails to abide by state rules prescribing how to make a vote effective is not 'denied the right to vote' when his ballot is not counted." *Id.* (cleaned up). The Third Circuit reached this conclusion that neutral, nondiscriminatory ballot-casting rules do not violate the "right to vote" without conducting any balancing of the burdens imposed, and state interests served, by those rules. *See id.*

To be sure, the Third Circuit was discussing the statutory “right to vote” in the Materiality Provision. But the appellees there (including Intervenor Democratic National Committee) and the dissenting judge argued that the “right to vote” in the Materiality Provision is *broader* than the right to vote in the U.S. Constitution. *See id.* at 139-40 (Shwartz, J., dissenting); No. 23-3166 (3d Cir.) ECF 144 at 13-14, 17 n.1. If anything, the “right to vote” in the federal civil-rights laws is coterminous with the federal constitutional right—and there is no authority suggesting the federal constitutional right to vote is broader than the federal statutory right to vote. *See Brnovich*, 594 U.S. at 669-70 (consulting “standard practice” at the time “when § 2 [of the Voting Rights Act] was amended” to determine what “furnish[es] an equal ‘opportunity’ to vote in the sense meant by § 2”); *Baker v. Carr*, 369 U.S. 186, 247 (1962) (Douglas, J., concurring) (the “right to vote” was “protected by the judiciary long before that right received [] explicit protection” in civil-rights statutes). *A fortiori*, the Third Circuit’s conclusion that the date requirement does not violate the statutory right to vote means that it cannot violate the constitutional right to vote either.

In all events, the date requirement easily passes muster even if it is subjected to interest balancing under the *Anderson-Burdick* framework. Any burden the requirement imposes is trivial compared to burdens the U.S. Supreme Court has held are minor under the *Anderson-Burdick* framework. *Compare, e.g., Crawford*, 553



U.S. at 198 (obtaining photo ID) (opinion of Stevens, J.); *Brnovich*, 594 U.S. at 678 (identifying and traveling to correct polling place); *supra* 34-35.

Because the requirement imposes, at most, a minor burden on voting, it is subject to “rational basis review.” *Mays v. LaRose*, 951 F.3d 775, 784 (6th Cir. 2020). Under that “quite deferential” standard, *Mazo v. N.J. Sec’y of State*, 54 F.4th 124, 153 (3d Cir. 2022), the “State’s important regulatory interests will usually be enough to justify” election regulations, *Timmons*, 520 U.S. at 351-52. As explained, the date requirement passes rational-basis scrutiny with flying colors. *See supra* 44-48.

#### **D. Invalidating The Requirement Would Violate The U.S. Constitution.**

Invalidating the date requirement would also violate the Elections and Electors Clauses of the U.S. Constitution. The Elections Clause directs: “The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.” U.S. Const. art. I, § 4, cl. 1. The Electors Clause grants the General Assembly plenary authority to prescribe the “Manner” by which the Commonwealth “appoint[s] [Presidential] . . . Electors.” U.S. Const. art. II, § 1, cl. 2; *McPherson v. Blacker*, 146 U.S. 1, 27 (1892).

These provisions “expressly vest[] power to carry out [their] provisions in ‘the Legislature’ of each State, a deliberate choice [courts] must respect.” *Moore*, 600

U.S. at 34. Thus, “state courts do not have free rein” in interpreting or applying state constitutions to election laws passed by the state legislatures. *Id.*; *accord id.* at 38 (Kavanaugh, J., concurring). State courts cannot “impermissibly distort[]” state law “beyond what a fair reading require[s].” *Bush*, 531 U.S. at 115 (Rehnquist, C.J., concurring); *accord Moore*, 600 U.S. at 39 (Kavanaugh, J., concurring) (endorsing this standard); *id.* at 34-36 (holding that federal courts must review state courts’ treatment of election laws passed by state legislatures regulating federal elections).

This Court has already held that the date requirement is mandatory, *Ball*, 289 A.3d at 20-23, and has declined two invitations to wield the Free and Equal Elections Clause to invalidate it, *see supra* Part II.A. And as established, there is no support in the Clause’s text or history, Pennsylvania case-law, precedents interpreting analogous state constitutional provisions, or federal constitutional law for invalidating it. *See supra* Parts II.A-C. Doing so anyway would “transgress the ordinary bounds of judicial review such that [this Court would be] arrogat[ing] to [itself] the power vested in [the] state legislature[] to regulate federal elections,” violate the U.S. Constitution, and lead to potential review by the U.S. Supreme Court. *Moore*, 600 U.S. at 36.

**E. Declaring The Requirement Unconstitutional Would Strike Act 77 And Universal Mail Voting In Pennsylvania.**

Finally, if this Court *were* to affirm, it would necessarily mean striking universal mail voting in Pennsylvania. App. 146-47 (dissent).

“As a general matter, nonseverability provisions are constitutionally proper.” *Stilp v. Commonwealth*, 905 A.2d 918, 978 (Pa. 2006). That is especially true where they arise from “the concerns and compromises which animate the legislative process.” *Id.*

Act 77’s non-severability provision states: “Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.” Act 77 § 11. The date requirement is part of the universal mail voting established in section 8, so invalidating “its application to any person or circumstance” voids the entire Act. *Id.*; see *McLinko*, 279 A.3d at 609-610 (Brobson, J., dissenting); *McClinko v. Dep’t of State*, 270 A.3d 1243, 1277-78 (Pa. Commw. Ct. 2022) (Wojcik, J., dissenting in part); App. 146-50 (dissent).

This provision is enforceable because it was a crucial element in the political compromise that led to Act 77’s passage. See *Stilp*, 905 A.2d at 978. Both the Democratic sponsor and the Republican Senate Majority Leader described Act 77 as a politically difficult compromise. See 2019 Pa. Legislative Journal–Senate 1000 (Oct. 29, 2019); *id.* at 1002. The non-severability provision helped reassure legislators that their parts of the bargain would not be discarded by courts while their concessions remained in place. Consider the following colloquy on the House floor involving State Government Committee Chair Garth Everett:

Mrs. DAVIDSON. ... Then I also understand it also reads that the provisions of the bill will be nonseverable. So is that to mean that if somebody wants to challenge whether or not they were discriminated against because they did not have a ballot in braille, would they be able to – would that be a suit that they could bring to the Supreme Court under the severability clause?

Mr. EVERETT. Thank you, Mr. Speaker.

There is a nonseverability clause, and there is also the section that you mentioned that gives the Supreme Court of Pennsylvania jurisdiction, because **the intent of this is that this bill works together, that it not be divided up into parts.**

Mrs. DAVIDSON. So in effect, if a suit was brought to the Supreme Court of Pennsylvania and they found it to be unconstitutional, it would eliminate the entire bill because it cannot be severed.

Mr. EVERETT. Yes; that would be just in those sections that have been designated as nonseverable.

Mrs. DAVIDSON. All right. Thank you.

2019 Pa. Legislative Journal—*House* 1740–41 (Oct. 29, 2019) (emphasis added).

The majority’s decision and Order declare that the date requirement is “invalid and unconstitutional as applied to qualified voters who timely submit undated or incorrectly dated [mail ballots]” and enjoin Respondents from “strictly enforcing” the requirement against such voters. App. 93-94 ¶¶ 3-4. The majority therefore “held invalid” the requirement’s “application to [such] person[s] [and] circumstances.” Act 77 § 11. Thus, if affirmed, the majority’s decision has voided the entirety of Act 77 and universal mail voting on the eve of the 2024 general

election. *See id.*; *Pa. Democratic Party*, 238 A.3d at 391 (Wecht, J., concurring) (“A mandate without consequences is no mandate at all.”).

The majority’s various attempts to avoid this consequence are unavailing. *First*, the majority suggested that its decision does not trigger Act 77’s non-severability clause because Petitioners challenged only “*enforcement*” of the date requirement and “are *not* asking the Court to ... strike any portion of Act 77.” Maj. App. 86 (emphases original). The majority thus missed that enforcement is “application” of the date requirement. Act 77 § 11. Accordingly, its holding precluding enforcement holds “application” of the date requirement “invalid,” thereby squarely triggering the non-severability provision. *Id.*

*Second*, the majority invoked the presumption of severability discussed in *Stilp*. *See* App. 87. But *Stilp* clarified this presumption gives way when, as in Act 77, a non-severability clause arises from a political “compromise” that would be undone by failing to enforce it. 905 A.2d at 978; *see also McLinko*, 279 A.3d at 609-610 (Brobson, J., dissenting); App. 146-51 (dissent).

*Finally*, the majority suggested it was “*declin[ing] Republican Party Intervenors’ suggestion*” to invalidate Act 77. App. 88 (emphasis original). But it is Petitioners’ requested relief, not Republican Intervenors, that has imperiled universal mail voting in Pennsylvania under Act 77’s non-severability clause. Republican

Intervenors asked the panel—and now ask this Court—to *preserve* Act 77 by upholding, rather than invalidating, the General Assembly’s date requirement.

### CONCLUSION

The majority’s decision—issued less than three weeks before mail voting begins for the 2024 general election and in favor of Petitioners who waited more than 18 months after first challenging the date requirement to raise their current claim—changes election rules that have been in place for decades and, thus, threatens to unleash “voter confusion,” “chaos,” *Kuznik v. Westmoreland Cnty. Bd. of Comm’rs*, 902 A.2d 476, 504-07 (Pa. 2006), and an erosion of public confidence in the Commonwealth’s elections, App. 117 (dissent). Moreover, leaving uncorrected the majority’s legal errors—including its unprecedented application of strict scrutiny—will open the floodgates to a potential deluge of challenges to broad swaths of the Election Code in the lead-up to and aftermath of the imminent general election, as well as future elections. The Court should prevent these unwarranted harms to the Commonwealth, correct the majority’s errors, and reverse.

Dated: September 3, 2024

Respectfully submitted,

/s/ Kathleen A. Gallagher

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**CERTIFICATION OF WORD COUNT**

Pursuant to Rule 2135 of the Pennsylvania Rules of Appellate Procedure, I certify that this Memorandum contains 13,989 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

Dated: September 3, 2024

*/s/ Kathleen A. Gallagher*  
\_\_\_\_\_  
*Counsel for Appellants*



**CERTIFICATE OF COMPLIANCE**

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

Dated: September 3, 2024

*/s/ Kathleen A. Gallagher*  
\_\_\_\_\_ *Counsel for Appellants*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 3, 2024, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

Dated: September 3, 2024

*/s/ Kathleen A. Gallagher*  
\_\_\_\_\_  
*Counsel for Appellants*

## **APPENDIX**

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Black Political Empowerment :  
Project, POWER Interfaith, Make the :  
Road Pennsylvania, OnePA Activists :  
United, New PA Project Education :  
Fund, Casa San José, Pittsburgh :  
United, League of Women Voters of :  
Pennsylvania, and Common Cause :  
Pennsylvania, :

Petitioners :

v. :

No. 283 M.D. 2024  
ARGUED: August 1, 2024

Al Schmidt, in his official capacity as :  
Secretary of the Commonwealth, :  
Philadelphia County Board of :  
Elections, and Allegheny County :  
Board of Elections, :

Respondents :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLY MICHAEL H. WOJCIK, Judge  
HONORABLE ELLEN CEISLER, Judge  
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE CEISLER

FILED: August 30, 2024

In this original jurisdiction matter, we are asked to determine whether two provisions of the Pennsylvania Election Code (Election Code)<sup>1</sup> that require electors of the Commonwealth of Pennsylvania (Commonwealth) to date the declaration of

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<sup>1</sup> Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

the elector printed on the second, or outer, envelope of absentee and mail-in ballots violate the free and equal elections clause of article I, section 5 of the Pennsylvania Constitution, Pa. Const. art. I, § 5.<sup>2</sup> See Sections 1306 and 1306-D of the Election Code,<sup>3</sup> 25 P.S. §§ 3146.6(a) and 3150.16(a) (dating provisions). The dating provisions and other statutory phrases within them have been the subject of numerous lawsuits since the 2019 inception of Act 77. Nevertheless, despite various state and federal jurists’ *suggestions* regarding the potential viability of a challenge to the dating provisions under the free and equal elections clause in prior case law over the past four years, the present challenge is the first of its kind.

For the reasons that follow, we conclude:

1. The fundamental right to vote guaranteed by our Constitution is at issue. For this reason, a strict scrutiny standard of review applies to the dating provisions’ restriction on that right. Under this standard of review, the government bears the heavy burden of proving that the law in question is narrowly tailored to serve a compelling government

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<sup>2</sup> The free and equal elections clause provides: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, § 5.

<sup>3</sup> Section 1306 was added to the Election Code by the Act of March 6, 1951, P.L. 3, and thereafter amended by the Act of October 31, 2019, P.L. 552, No. 77 (Act 77 or Act 77 of 2019). Section 1306 relates to voting by absentee electors and provides, in relevant part, that an absentee “elector shall . . . fill out, date and sign the declaration printed on” the second, or outer, envelope “on which is printed the form of declaration of the elector,” among other things. See 25 P.S. § 3146.6(a).

Section 1306-D was added to the Election Code by Act 77, relates to voting by mail-in electors, and similarly provides, in relevant part, that a mail-in “elector shall . . . fill out, date and sign the declaration printed on” the second, or outer, envelope “on which is printed the form of declaration of the elector,” among other things. See 25 P.S. § 3150.16(a).

interest and where the governmental fails to satisfy its burden, the law or its application is unconstitutional.

As has been determined in prior litigation, the date on the outer mail-in ballot envelopes is not used to determine the timeliness of a ballot, a voter's qualifications/eligibility to vote, or fraud. Therefore, the dating provisions serve no compelling government interest. The refusal to count undated or incorrectly dated but timely mail ballots submitted by otherwise eligible voters because of meaningless and inconsequential paperwork errors violates the fundamental right to vote recognized in the free and equal elections clause.

2. The Petition for Review states a viable claim under the free and equal elections clause of the Pennsylvania Constitution.
3. Petitioners have standing to bring this action as they have interest in the outcome of the litigation that is substantial, direct, and immediate. Petitioners' additional expenditures and diversion of resources to educate electors concerning adherence to the Election Code constitutes a substantial interest. The Secretary's guidance regarding an unsettled legal question shares a causal connection with the alleged harm, namely Petitioners' inability to educate electors effectively, and that connection is neither remote nor speculative.

4. This Court has subject matter jurisdiction over this matter because Respondents Al Schmidt, in his official capacity as Secretary of the Commonwealth, is an indispensable party to this lawsuit, and the Philadelphia County and Allegheny County Boards of Elections are proper parties in this action. The remaining 65 county boards are not indispensable parties to this action.
  
5. The relief Petitioners seek does not implicate Act 77's nonseverability provision. Petitioners seek a declaration that **enforcement** of the dating provisions in a manner that excludes undated and incorrectly dated, but timely received, mail-in ballots from qualified voters is unconstitutional under the free and equal elections clause. Petitioners are not asking the Court to rewrite, amend, or strike any portion of Act 77.

In support of these conclusions, the Court submits the following:

**I. BACKGROUND & PROCEDURAL HISTORY**

On May 28, 2024, the Black Political Empowerment Project, POWER Interfaith, Make the Road Pennsylvania, OnePA Activists United, New PA Project Education Fund, Casa San José, Pittsburgh United, the League of Women Voters of Pennsylvania, and Common Cause Pennsylvania (collectively, Petitioners) filed a Petition for Review Addressed to the Court's Original Jurisdiction (Petition for Review) seeking declaratory and injunctive relief against Al Schmidt, in his official capacity as Secretary of the Commonwealth (Secretary), the Philadelphia County Board of Elections (Philadelphia County BOE), and the Allegheny County Board of Elections (Allegheny County BOE) (collectively, Philadelphia and Allegheny



County BOEs). Specifically, Petitioners seek a declaration under the Declaratory Judgments Act (DJA)<sup>4</sup> that continued enforcement of the dating provisions to reject undated and incorrectly dated, but timely submitted, absentee and mail-in ballots of eligible voters is an unconstitutional interference with the exercise of the right to suffrage in violation of the free and equal elections clause of the Pennsylvania Constitution. (Petition for Review (PFR) ¶¶ 81-85 (Count I); 92 & Wherefore Clause ¶¶ (a)-(b).) Petitioners also seek, *inter alia*, preliminary and permanent injunctive relief, enjoining further enforcement of the dating provisions to reject such ballots in the November 5, 2024 General Election and all future elections. (PFR ¶ 92 & Wherefore Clause ¶¶ (c)-(e).) According to Petitioners, since the Pennsylvania Supreme Court’s decision in *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023) (*Ball*), the Secretary, the 67 county boards of elections, and the federal courts have all confirmed the dating provisions serve no purpose, are meaningless, and have been inconsistently and arbitrarily applied. Petitioners therefore alternatively request that the dating provisions be reinterpreted and applied as “directory,” rather than “mandatory,” such that Respondents cannot use noncompliance with those provisions to disenfranchise eligible voters in violation of their fundamental right to vote. (PFR ¶¶ 86-91 (Count II).)

On May 29, 2024, Petitioners also filed an Application for Special Relief in the Nature of a Preliminary Injunction (Preliminary Injunction Application) pursuant to Pennsylvania Rule of Appellate Procedure 1532(a), Pa.R.A.P. 1532(a) (relating to special relief), and a supporting memorandum of law, asking this Court for similar relief to that requested in the Petition for Review.

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<sup>4</sup> 42 Pa.C.S. §§ 7531-7541.

The Republican National Committee (RNC) and the Republican Party of Pennsylvania (RPP) (collectively, Republican Party Intervenors) have filed Preliminary Objections (POs) and an application for summary relief and supporting memorandum of law, seeking dismissal of the Petition for Review for lack of standing, legal insufficiency of a pleading (demurrer), lack of subject matter jurisdiction, failure to join indispensable parties, and failure to state a claim under the free and equal elections clause. Petitioners also filed an application for summary relief, asserting they are entitled to the declaratory and injunctive relief requested in the Petition for Review. Notably, the Secretary, and the Democratic National Committee (DNC) and the Pennsylvania Democratic Party (PDP) (collectively, Democratic Party Intervenors), **support** Petitioners' position in this case, whereas the Philadelphia and Allegheny County BOEs take no position on the cross-applications for summary relief or any of the procedural objections. All parties have submitted extensive briefs in support of their respective positions.

Before reaching the parties' arguments on the issues presented by the Petition for Review, however, and for purposes of transparency and providing the utmost clarity to the citizens of this Commonwealth given the fundamental right to vote at issue in this case, we first briefly explain the procedural history of the matter, as previously set forth in this Court's July 18, 2024 intervention opinion in *Black Political Empowerment Project v. Schmidt* (Pa. Cmwlth., No. 283 M.D. 2024, filed July 18, 2024) (Ceisler, J.) (single-Judge op.) (*BPEP I*), slip op. at 3-7, and supplemented by succeeding events, followed by the overarching principles of law guiding us in this case.

On May 31, 2024, the Court scheduled a status conference for June 10, 2024, via WebEx videoconferencing (WebEx), for the purpose of discussing filing

deadlines and dates for scheduling oral argument, among other things. Prior to the conference, then-proposed Republican Party and Democratic Party Intervenors each sought to intervene in this case, and by June 10, 2024 Order, the Court permitted those organizations to participate in the conference.

The Court issued another Order on June 10 (Scheduling Order) following the status conference, granting Republican Party and Democratic Party Intervenors' respective unopposed requests to intervene as parties in this matter.<sup>5</sup> The Court's Scheduling Order additionally noted the parties' agreement that there are no outstanding questions of fact, nor factual stipulations required in this case; that this matter involves purely legal questions; and that disposing of the matter via cross-applications for summary relief was the most expeditious means of resolving the legal issues in dispute. Petitioners also agreed to convert their Preliminary Injunction Application to an application for summary relief to expedite the final resolution of this case and ensure there is sufficient time for any appeals to be filed and decided by our Supreme Court under the very tight time constraints imposed by the impending General Election scheduled for November 5, 2024. The Court therefore set an expedited briefing schedule for the cross-applications for summary relief and supporting/opposing briefs; reply briefs were not permitted. The Court indicated that upon completion of the briefing on the cross-applications for summary

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<sup>5</sup> The Court's Order directed the Prothonotary to docket Republican Party Intervenors' POs attached to their intervention application. However, the Court did not order separate briefing on the POs, but instead permitted Republican Party Intervenors to address the claims raised in their POs in their respective application for summary relief and supporting brief, which they have done.

Democratic Party Intervenors did not attach a pleading to their intervention application; however, they indicated that they adopted Petitioners' Petition for Review in full. *See* Pennsylvania Rule of Civil Procedure 2328(a), Pa.R.Civ.P. 2328(a); *see also* Democratic Party Intervenors' Application (Appl.) to Intervene at 2.

relief, the Court would issue a separate order regarding either the submission of the case on briefs and/or the scheduling of oral argument.

On June 11, 2024, Westmoreland County Commissioner Doug Chew (Commissioner Chew) sought to intervene in his official capacity as a member of the Westmoreland County Board of Elections (Westmoreland County BOE), which only Petitioners and the Secretary opposed.<sup>6</sup> The Court held an intervention hearing via WebEx on July 8, 2024,<sup>7</sup> and subsequently denied Commissioner's Chew's intervention application by Order on July 9, 2024,<sup>8</sup> and indicated an opinion would follow. *See Black Pol. Empowerment Proj. v. Schmidt* (Pa. Cmwlth., No. 283 M.D. 2024, filed July 9, 2024) (Ceisler, J.) (single-Judge ord.). On July 18, 2024, the Court issued a Memorandum Opinion explaining its reasoning for its July 9, 2024 Order.<sup>9</sup> On July 23, 2024, Commissioner Chew sought reargument before the Court

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<sup>6</sup> All other parties were considered to be unopposed to Commissioner Chew's intervention, per this Court's June 12, 2024 Order.

<sup>7</sup> On June 24, 2024, the Court scheduled the intervention hearing for July 3, 2024, and directed that witness and exhibit lists be filed by noon on July 1, 2024, which the parties filed on that date. On July 1, 2024, the Court rescheduled the hearing to July 8, 2024.

<sup>8</sup> The Court's July 9, 2024 Order also finally disposed of numerous outstanding applications filed by Commissioner Chew related to his intervention, which the Court had previously held in abeyance pending disposition of his application to intervene. *See Black Pol. Empowerment Proj. v. Schmidt* (Pa. Cmwlth., No. 283 M.D. 2024, filed July 9, 2024) (Ceisler, J.) (single-Judge ord.), slip op. at 2, ¶¶ 2-3. Because the Court already dealt with those applications, we need not discuss them further in this opinion.

<sup>9</sup> In its Memorandum Opinion on intervention, the Court explained that Commissioner Chew failed to demonstrate a legally enforceable interest under Pennsylvania Rule of Civil Procedure 2327(4), Pa.R.Civ.P. 2327(4), as he is not aggrieved by the underlying challenge to the dating provisions either by virtue of his status as an elected Westmoreland County BOE member, his duties under the Election Code, or any potential liability he may face because of his counting or not counting undated or incorrectly dated absentee and mail-in ballots in accordance with the law. *See Black Pol. Empowerment Proj. v. Schmidt* (Pa. Cmwlth., No. 283 M.D. 2024, filed July 18, 2024) (Ceisler, J.) (single-Judge op.) (*BPEP I*), slip op. at 25-52. The Court further determined that Commissioner Chew's intervention also was not proper under Rule 2327(3), as his interests are already adequately represented by Republican Party Intervenors, and his intervention would unduly delay swift resolution of the matter. *BPEP I*, slip op. at 25, 52-54 & n.31.

en banc in relation to the Court's July 9, 2024 Order and July 18, 2024 Memorandum Opinion, which the Court denied by Order of July 24, 2024.

In the interim, and pursuant to this Court's June 10 Scheduling Order, on June 24, 2024, Petitioners and Republican Party Intervenors filed their cross-applications for summary relief and supporting briefs. The Secretary and Democratic Party Intervenors filed briefs in support of Petitioners' application for summary relief. The Philadelphia and Allegheny County BOEs filed a Statement, indicating they take no position on the cross-applications but also highlighting, among other things, the lack of any meaningful purpose served by the dating provisions.<sup>10</sup> On July 8, 2024, Republican Party Intervenors filed a response and memorandum in opposition to Petitioners' application for summary relief. The Philadelphia and Allegheny County BOEs filed a Supplemental Statement of Position regarding the cross-applications. The Secretary and Democratic Party Intervenors filed responses, and Petitioners filed an answer and memorandum of law, in opposition to Republican Party Intervenors' application for summary relief.<sup>11</sup>

By Order of July 11, 2024, the Court scheduled oral argument on the POs and the parties' cross-applications for August 1, 2024, before a special en banc panel of this Court,<sup>12</sup> following which the Court indicated it would take the matter under

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<sup>10</sup> The Republican Leader of the Pennsylvania House of Representatives, Bryan Cutler; President Pro Tempore of the Pennsylvania State Senate, Kim Ward; and Majority Leader of the Pennsylvania Senate, Joe Pittman (collectively, *Amici* Republican Leaders), filed an *Amici Curiae* Brief in Support of Republican Party Intervenors.

<sup>11</sup> Although the Court denied Commissioner Chew's intervention application on July 9, 2024, it nevertheless directed the Prothonotary to docket Commissioner Chew's Brief in Response to Summary Relief Applications as an *Amicus Curiae* Brief. *See* Pa.R.A.P. 531.

<sup>12</sup> Commissioner Chew also filed an Application to Present Oral Argument as *Amicus Curiae* on July 16, 2024. *See* Pa.R.A.P. 531(c). Republican Party Intervenors filed a letter, concurring in the application so long as granting it did not reduce their argument time. The Court directed answers to the application by July 18, 2024 Order. Republican Party Intervenors then **(Footnote continued on next page...)**

advisement and issue a decision as quickly as possible. The Court having heard the parties' respective arguments on the legal issues and reviewed the comprehensive filings, the matter is now ready for disposition.

## **II. OVERARCHING ELECTION LAW PRINCIPLES**

Initially, we observe that this case touches upon the important constitutional principle enshrined in the free and equal elections clause of article I, section 5 of the Pennsylvania Constitution that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, § 5. Our Supreme Court has recognized that “[t]he broad text of this specific provision mandates clearly and unambiguously, and in the broadest possible terms, that **all** elections conducted in this Commonwealth must be free and equal. Stated another way, this clause was specifically intended to equalize the power of voters in our Commonwealth’s election process.” *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 356 (Pa. 2020) (quoting *League of Women Voters v. Cmwlth.*, 178 A.3d 737, 804, 812 (Pa. 2018) (emphasis in original) (brackets & internal quotations omitted)). Additionally, the Supreme Court has “observed that the purpose and objective of the Election Code, which contains Act 77, is ‘[t]o obtain freedom of choice, a fair election[,], and an honest election return[.]’” *Id.* (quoting

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filed an answer repeating their position on the application, and Petitioners and the Secretary filed answers opposing the application. The Secretary also filed an Application for Additional Argument Time and Division of Time on July 22, 2024, requesting, *inter alia*, 90 minutes for oral argument. Democratic Party Intervenors concurred in the Secretary’s application.

By Order of July 24, 2024, the Court granted Commissioner Chew’s application, granted the Secretary’s application in part to the extent it sought 90 minutes for oral argument, and otherwise denied the Secretary’s application. The Court allotted 90 minutes for oral argument on the cross-applications for summary relief and POs, and directed that Petitioners, the Secretary, and Democratic Party Intervenors would proceed first, followed by Republican Party Intervenors and Commissioner Chew. The Philadelphia and Allegheny County BOEs indicated they did not intend to present argument and would cede their time to the Secretary.

*Perles v. Hoffman*, 213 A.2d 781, 783 (Pa. 1965)). “To that end, the Election Code should be liberally construed so as not to deprive, *inter alia*, electors of their right to elect a candidate of their choice.” *Id.* (citing *Perles*, 213 A.2d at 784).

In considering election-related matters generally, including where the fundamental right to vote is at stake, “we are mindful of the ‘longstanding and overriding policy in this Commonwealth to protect the elective franchise.’” *Pa. Democratic Party*, 238 A.3d at 360-61 (quoting *Shambach v. Bickhart*, 845 A.2d 793, 798 (Pa. 2004)). Further, “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.’” *Id.* at 361 (quoting *Shambach*, 845 A.2d at 798). “[O]ur goal must be to enfranchise and not to disenfranchise [the electorate].” *Id.* (quoting *In re Luzerne Cnty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972)). Our Supreme Court has indeed recognized that “[t]he disfranchisement of even one person validly exercising his right to vote is **an extremely serious matter.**” *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 202 A.2d 538, 540 (Pa. 1964) (emphasis added).

As far as rejecting ballots based on minor irregularities is concerned, our Supreme Court has cautioned that such power “must be exercised **very sparingly** and with the idea in mind that either an individual voter or a group of voters are not to be disfranchised at an election **except for compelling reasons.**” *Appeal of Gallagher*, 41 A.2d 630, 632-33 (Pa. 1945) (emphasis added) (further observing that “[m]arking a ballot in voting is a matter not of precision engineering but of unmistakable registration of the voter’s will in substantial conformity to statutory requirements”). Further, “[e]very rationalization within the realm of common sense should aim at saving [a] ballot rather than voiding it[.]” *Appeal of Norwood*, 116 A.2d 552, 554-55 (Pa. 1955) (emphasis added), and, therefore,

“[t]echnicalities should not be used to make the right of the voter insecure[,]” *Appeal of James*, 105 A.2d 64, 65-66 (Pa. 1954) (further providing that “[w]here the elective franchise is regulated by statute, the regulation should, when and where possible, be so construed as to insure rather than defeat the exercise of the right of suffrage”).

Considering these bedrock principles of election law in Pennsylvania, we turn to the undisputed factual averments of the Petition for Review, as supplemented by the Preliminary Injunction Application.

### **III. PETITION FOR REVIEW & PRELIMINARY INJUNCTION APPLICATION**

In the Petition for Review, Petitioners set forth their concern that Pennsylvania election officials, including the Secretary and officials at the Philadelphia and Allegheny BOEs, “have arbitrarily disqualified thousands of plainly eligible voters’ timely-submitted mail-in ballots in every primary and general election since 2020 merely because the voters neglected to write a date, or wrote an ‘incorrect’ date, on the ballot[ ]return envelope.” (PFR ¶ 1.) Petitioners assert that the refusal to count undated or incorrectly dated but timely mail ballots<sup>13</sup> submitted by otherwise eligible voters because of “an inconsequential paperwork error” violates the fundamental right to vote recognized in the free and equal elections clause. (*Id.* ¶¶ 1, 3 (citing, *inter alia*, *Ball*, 289 A.3d 1).)

According to Petitioners, nearly 10,000 voters were disenfranchised in the 2022 General Election and “thousands” more voters were disenfranchised in the 2024 Presidential Primary Election. (PFR ¶¶ 4 (listing disenfranchised voters’ names from various counties, including Allegheny, Philadelphia, Montgomery, York, Bucks, Chester, Berks, and Dauphin Counties), 55-57 (observing that mail

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<sup>13</sup> The terms “mail ballots” or “mail/mail-in voter” used by Petitioners encompasses both absentee and mail-in ballots/voters. (See PFR ¶ 55, n.6.)



voting has been a boon for voter participation in Pennsylvania and that approximately 2.7 million people voted by mail in 2024 Presidential Primary Election), 58 (noting “[o]n information and belief,” that thousands of timely received mail ballots were rejected in the 2024 Presidential Primary Election), 59 (noting that over 10,000 timely absentee/mail-in ballots were rejected in 2022, and that nearly 7,000 were initially rejected in 2023), 75-76; Exhibit (Ex.) 1 (Declaration (Decl.) of A. Shapell).) Petitioners claim that without declaratory and injunctive relief from this Court, Petitioners,<sup>14</sup> Petitioners’ members, and thousands of qualified Pennsylvania voters will suffer the irreparable harm of having their timely-submitted mail ballots rejected in this year’s election and at every election thereafter. (*Id.* ¶ 5.) Further, Petitioners point out that multiple state and federal courts<sup>15</sup> have recently found that the dating provisions’ requirement that voters handwrite the date on mail ballot return envelopes is meaningless, as it neither establishes voter eligibility nor

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<sup>14</sup> Petitioners bring this matter as “nonpartisan organizations dedicated to promoting American democracy and the participation of Pennsylvania voters in our shared civic enterprise” and “to ensure that their members, the people they serve, and other qualified Pennsylvania voters do not again lose their constitutional right to vote based on a meaningless requirement.” (Petition for Review (PFR) ¶ 2.) Descriptions of each Petitioner organization can be found on pages 4-33 of the Petition for Review.

<sup>15</sup> Petitioners highlight the myriad litigation that has ensued over the dating provisions since 2020, which provisions have to date withstood challenges in court based on state law statutory interpretation and the federal Civil Rights Act of 1964’s Materiality Provision set forth in 52 U.S.C. § 10101(a)(2)(B). (*See* PFR ¶ 60 (citing *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058 (Pa. 2020) (*In re Canvass*), *cert. denied*, 141 S.Ct. 1451 (2021); *Ritter v. Lehigh Cnty. Bd. of Elections*, 272 A.3d 989 (Pa. Cmwlth.) (Table), *appeal denied*, 271 A.3d 1285 (Pa. 2022); *Migliori v. Cohen*, 36 F.4th 153 (3d Cir.), *vacated as moot*, 143 S.Ct. 297 (2022); and *Pa. State Conf. of the NAACP v. Schmidt*, 703 F. Supp. 3d 632 (W.D. Pa. 2023), 2023 WL 8091601 (*NAACP II*), *rev’d & remanded*, *Pa. State Conf. of NAACP Branches v. Sec’y*, 97 F.4th 120 (3d Cir. 2024) (No. 23-3166) (*NAACP III*); *Chapman v. Berks Cnty. Bd. of Elections* (Pa. Cmwlth., No. 355 M.D. 2022, filed Aug. 19, 2022) (Cohn Jubelirer, P.J.) (single-Judge op.) (*Berks Cnty.*), 2022 WL 4100998; *McCormick v. Chapman* (Pa. Cmwlth., No. 286 M.D. 2022, filed June 2, 2022) (Cohn Jubelirer, P.J.) (single-Judge op.), 2022 WL 2900112; and *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023) (*Ball*)).)

timely ballot receipt. (*Id.* ¶¶ 6, 51-54, 60, 67.) However, they highlight that no court has ever decided whether applying the dating provisions to disenfranchise voters violates their fundamental right to vote under the free and equal elections clause, “[u]ntil now.” (*Id.* ¶¶ 6, 61-62.)

Regarding the Secretary specifically, Petitioners observe that the Election Code confers authority upon him to implement absentee and mail-in voting procedures in the Commonwealth. (PFR ¶¶ 37-38 (citing Sections 1303(b) and 1303-D(b) of the Election Code,<sup>16</sup> 25 P.S. §§ 3146.3(b), 3150.13(b) (requiring that absentee and mail-in ballots be on a form prescribed by the Secretary)), 39 (citing Sections 1304 and 1304-D,<sup>17</sup> 25 P.S. §§ 3146.4, 3150.14 (requiring that the form of declaration on absentee and mail-in ballots must be as prescribed by the Secretary)), 41 (citing Section 201(f) of the Election Code, 25 P.S. § 2621(f) (outlining Secretary’s duties “[t]o receive from county boards of elections the returns of primaries and elections, to canvass and compute the votes cast for candidates and upon questions as required by the provisions of this act; to proclaim the results of such primaries and elections, and to issue certificates of election to the successful candidates at such elections”)).) In this regard, Petitioners inform that, prior to the 2024 Presidential Primary Election, the Secretary redesigned the mail-in ballot return envelope to now include a field that pre-populated “20” at the beginning of the year on the outer return envelope; however, voters still made dating mistakes. (PFR ¶¶ 40, 74.)<sup>18</sup> They also point to prior guidance from the Secretary to the county

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<sup>16</sup> Section 1303 was added by the Act of March 6, 1951, P.L. 3, and Section 1303-D was added by Act 77.

<sup>17</sup> Section 1304 was added by the Act of March 6, 1951, P.L. 3, and Section 1304-D was added by Act 77.

<sup>18</sup> *See* Pa. Dep’t of State Newsroom, Shapiro Administration Introduces Redesigned Mail Ballot Materials to Give Voters Clearer Instructions, Decrease Number of Rejected Ballots, and **(Footnote continued on next page...)**

boards of elections regarding undated and incorrectly dated mail ballots. (*Id.* ¶ 42 (citing Secretary’s and his predecessors’ November 3, 2022 guidance<sup>19</sup> to segregate and exclude from tabulation undated/incorrectly dated mail ballots and April 3, 2023 guidance<sup>20</sup> to set aside and not count undated ballots and to set aside and segregate incorrectly dated ballots).) They further note that following the Third Circuit’s decision in *Pennsylvania State Conference of NAACP Branches v. Secretary*, 97 F.4th 120 (3d Cir. 2024) (No. 23-3166) (*NAACP III*),<sup>21</sup> the Department of State (Department) continues to instruct counties not to count mail ballots arriving in

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Ensure Every Legal Vote is Counted, Nov. 29, 2023, available at <https://www.pa.gov/en/agencies/dos/newsroom/shapiro-administration-introduces-redesigned-mail-ballot-materials-to-give-voters-clearer-instructions-decrease-number-of-rejected-ballots-and-ensure-every-legal-vote-is-counted.html> (last visited Aug. 22, 2024) (indicating that “[v]oters can expect to see mail-in ballots that incorporate the following requirements, based on counties’ current best practices: . . . A pre-filled “20” at the beginning of the year on the outer envelope to alert voters to write the current date, not their birthdate, in that field. . .”).

<sup>19</sup> See PFR ¶ 42; Pa. Dep’t of State, Guidance on Undated and Incorrectly Dated Mail-in and Absentee Ballot Envelopes Based on the Pennsylvania Supreme Court’s Order in *Ball v. Chapman*, issued November 1, 2022, at 1, available at <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/archived/2022-11-03-Guidance-UndatedBallot.pdf> (last visited Aug. 22, 2024) (directing that absentee and mail-in ballots determined to be undated or incorrectly dated should be coded as “CANC – NO SIGNATURE” within the SURE System and “segregated from other ballots”).

<sup>20</sup> See PFR ¶ 42; Pa. Dep’t of State, Guidance Concerning Civilian Absentee and Mail-in Ballot Procedures, Updated: April 3, 2023, at 6, available at <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2023-04-03-DOS-Guidance-Civilian-Absentee-Mail-In-Ballot-Procedures-v3.pdf> (last visited Aug. 22, 2024) (providing that “[a] ballot-return envelope with a declaration that is not . . . dated is not sufficient and must be set aside, declared void, and may not be counted” and that “any declarations that are undated or that contain a date deemed by the county board of elections to be incorrect should be set aside and segregated”).

<sup>21</sup> On March 27, 2024, the United States Court of Appeals for the Third Circuit, in a 2-1 decision, reversed the United States District Court for the Western District of Pennsylvania’s November 21, 2023 order in *NAACP II*; held that the federal Materiality Provision of the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(B), only applies when the state is determining who may vote and, thus, does not apply to rules, like the dating provisions, that govern how a qualified voter must cast his/her ballot; and remanded for consideration of the equal protection claim.

undated or incorrectly dated declaration envelopes. (*Id.* ¶¶ 43 (citing an April 19, 2024 email from Deputy Secretary Jonathan Marks stating the Department’s view that certain handwritten dates can reasonably be interpreted as the date in which the voter completed the declaration, but noting that the Department has not otherwise modified its prior guidance), 68-69; Ex. 13 (4/19/2024 Marks Email).) Petitioners also highlight evidence adduced in prior litigation over the dating provisions regarding the age of voters whose ballots had no date, (PFR ¶ 63) (citing *Ritter v. Lehigh Cnty. Bd. of Elections*, 272 A.3d 989 (Pa. Cmwlth.) (Table), *appeal denied*, 271 A.3d 1285 (Pa. 2022), and observing evidence in that case established that nearly three-quarters of the 257 timely-received, but undated, mail ballots at issue were those of voters 65 years of age or older and that 15 voters were older than 90); inconsistencies across the Commonwealth in how voters have been treated with respect to the rejection and/or counting of undated and incorrectly dated mail ballots, (*id.* ¶ 64(a)-(f) (citing *NAACP II* Court’s observations regarding inconsistencies in voter treatment based on the evidence adduced in that case)); and the rejection of thousands of timely received mail ballots based on simple voter errors and partial omissions related to the ballot declaration, (*id.* ¶ 65(a)-(c) (including examples from *NAACP II*)).

As for the Philadelphia and Allegheny County BOEs, Petitioners observe that they are responsible for administering elections in their respective counties, and ensuring that elections are honestly, efficiently, and uniformly conducted. (PFR ¶ 44(a)-(i) (delineating responsibilities of county boards of elections under Section 302 of the Election Code, 25 P.S. § 2542, with respect to absentee and mail-in ballots).) Petitioners claim that, as of the date of the Petition for Review, the county boards of elections have recorded their receipt of 714,315 mail ballots in the

Statewide Uniform Registry of Electors (SURE) System<sup>22</sup> for the 2024 Presidential Primary Election, representing more than 37% of all ballots cast in that election. (PFR ¶ 70.) However, pursuant to the Secretary’s guidance, no county boards canvassed any undated or incorrectly dated mail ballots; thus, “thousands” have been set aside and segregated, and not counted. (*Id.* ¶¶ 71-72, 73 (citing Decl. of A. Shapell, ¶ 12(b), and noting more than 4,000 ballots were marked as cancelled in the SURE System based on failure to write a date or wrong date written).) Petitioners identify several disenfranchised individuals whose votes were not counted in the 2024 Presidential Primary Election because of dating errors, (*see* PFR ¶ 76(a)-(k) (declarations of voters from various Pennsylvania counties)),<sup>23</sup> and claim that voters will continue to be disenfranchised by the Philadelphia and Allegheny County BOEs, and the other 65 county boards of elections, based on the Secretary’s

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<sup>22</sup> Our Supreme Court recently described the SURE System, in part, as follows:

SURE is an acronym for the “Statewide Uniform Registry of Electors.” 25 Pa.C.S. § 1222. This registry is a “single, uniform integrated computer system” maintained by the . . . Department . . . [,] which is “ a database of all registered electors in this Commonwealth.” *Id.* § 1222(c)(1). The database contains individual information for each registered elector collected during the voter registration process, *i.e.*, the elector’s name, address, party affiliation, the last four digits of their Social Security number, their driver’s license or state ID number if they have such documentation, and their signature. [*McLinko v. Dep’t of State*, 279 A.3d 539, 575 (Pa. 2022).]

*In re Doyle*, 304 A.3d 1091, 1096 n.3 (Pa. 2023).

<sup>23</sup> These individuals include: Otis Keasley (Allegheny County) (PFR ¶ 76(a) & Ex. 2 (Keasley Decl.)); Joanne Sowell (Allegheny County) (PFR ¶ 76(b) & Ex. 3 (Sowell Decl.)); Eugene Ivory (Philadelphia County) (PFR ¶ 76(c) & Ex. 4 (Ivory Decl.)); Bruce Wiley (Philadelphia County) (PFR ¶ 76(d) & Ex. 5 (Wiley Decl.)); Stephen Arbour (Montgomery County) (PFR ¶ 76(e) & Ex. 6 (Arbour Decl.)); Kenneth Hickman (York County) (PFR ¶ 76(f) & Ex. 7 (Hickman Decl.)); Janet Novick (Bucks County) (PFR ¶ 76(g) & Ex. 8 (Novick Decl.)); Joseph Sommar (Chester County) (PFR ¶ 76(h) & Ex. 9 (Sommar Decl.)); Phyllis Sprague (Bucks County) (PFR ¶ 76(i) & Ex. 10 (Sprague Decl.)); Mary Stout (Berks County) (PFR ¶ 76(j) & Ex. 11 (Stout Decl.)); and Lorine Walker (Dauphin County) (PFR ¶ 76(k) & Ex. 12 (Walker Decl.)).

guidance, in the upcoming November 2024 General Election and beyond, absent the requested declaration from this Court. (PFR ¶¶ 77, 78 (noting those voters impacted are disproportionately senior citizens), 79-80 (asserting the Pennsylvania Constitution requires that ballots with missing or incorrect dates be counted and that the disenfranchisement of voters constitutes irreparable harm for which there is no adequate remedy at law and for which court intervention is required).) Petitioners therefore seek the above-described declaration under the DJA and preliminary and permanent injunctive relief enjoining further enforcement of the Election Code’s dating provisions beginning with the November 5, 2024 General Election.

As noted above, this Court’s June 10, 2024 Scheduling Order reflects Petitioners’ agreement to convert their Preliminary Injunction Application to an application for summary relief, the underlying facts of which are the same as those set forth in the Petition for Review. The Court therefore dispenses with a detailed summary of the Preliminary Injunction Application and notes only the following from that Application. In seeking preliminary injunctive relief, Petitioners add that the timeliness of mail ballots is established through the county boards’ scanning of a unique barcode on the ballots’ outer envelopes. (Prelim. Inj. Appl. (PI Appl.) ¶¶ 1, 5 (citing *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058 (Pa. 2020) (*In re Canvass*), for the proposition that dating provisions therefore are “unnecessary” with respect to determining timeliness).) Relevantly, with respect to their legal argument they are likely to succeed on the merits of their claims, Petitioners argue for the first time that strict scrutiny should be applied here, because the fundamental right to vote guaranteed by our Constitution is at issue, and that under such analysis, the government bears the burden of proving that the dating provisions serve a compelling government interest,

which it cannot meet here. (PI Appl. ¶¶ 12-15; Memo. of Law at 11-18 (further asserting that the dating provisions cannot survive **any** level of scrutiny, because they serve no purpose).)

The Court additionally observes that, since the Petition for Review was filed, some facts averred therein have changed. Specifically, on July 1, 2024, the Secretary issued a new Directive to all county boards, directing them to, *inter alia*, preprint the full year (2024) in the date field of absentee and mail-in ballots' declarations on the outer return envelopes, effective immediately for all elections taking place following issuance of the Directive. (*See* Repub. Party Intervenors' July 10, 2024 Notice of Suppl. Auth., Attach. (Pa. Dep't of State, Directive Concerning the Form of Absentee & Mail-in Ballot Materials, dated July 1, 2024, at 7-8 & App. E).)<sup>24</sup> In their Notice of Supplemental Authority, Republican Party Intervenors relevantly opine that the Secretary's July 1, 2024 Directive eliminates the risk of a voter writing an incomplete or inaccurate year on a mail ballot's declaration. (*Id.* at 2.)

With the above undisputed facts in mind, we turn to the parties' arguments on the cross-applications and procedural objections.

#### **IV. PETITIONERS' APPLICATION FOR SUMMARY RELIEF**

As mentioned above, the Secretary and Democratic Party Intervenors support and join in Petitioners' application for summary relief, and their arguments largely overlap with each other. As such, the below summary of the arguments includes those of Petitioners, the Secretary, and Democratic Party Intervenors, unless otherwise noted.

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<sup>24</sup> The Department's July 1, 2024 Directive can also be found at: <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2024-Directive-Absentee-Mail-in-Ballot-Materials-v2.0.pdf> (last visited Aug. 22, 2024).

In their application for summary relief, Petitioners argue that their right to relief on Count I of the Petition for Review is clear, as the right to vote has been historically regarded as fundamental in Pennsylvania and is vigorously protected by the clear, unambiguous, and broad text, as well as the history, of the free and equal elections clause. (Pet’rs’ Memo. of Law in Supp. of Appl. for Summ. Relief (ASR) at 16-20; Sec’y’s Br. in Supp. of Pet’rs’ ASR at 13-16; Br. of Dem. Party Intervenors in Supp. of Pet’rs’ ASR at 4-8 (citing *Pa. Democratic Party*, 238 A.3d 345 (Pa. 2020), *League of Women Voters v. Cmwlth.*, 178 A.3d 737 (Pa. 2018), and *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914) (explaining that elections are “free and equal” for constitutional purposes when, *inter alia*, “when they are public and open to all qualified electors alike; when every voter has the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied him”)).) Because the fundamental right to vote is at issue, Petitioners contend, and Democratic Party Intervenors agree, that a strict scrutiny standard of review applies to the dating provisions’ restriction on that right, under which the government bears the heavy burden of proving that the law in question is narrowly tailored to serve a compelling government interest; and where the governmental fails to satisfy its burden, the law or its application is unconstitutional. (Pet’rs’ Memo. of Law at 18-20 (citing *Petition of Berg*, 712 A.2d 340 (Pa. Cmwlth. 1998), *Applewhite v. Cmwlth.* (Pa. Cmwlth., No. 330 M.D. 2012, filed Jan. 17, 2014) (McGinley, J.) (single-Judge op.), 2014 WL 184988); Br. of Dem. Party Intervenors at 17-20.) According to Petitioners, applying the dating provisions to exclude undated or incorrectly dated mail ballots



restricts the right to have one's vote counted to only those voters who correctly handwrite the date on their mail ballot envelope declaration, thus denying the right to vote to all duly qualified, registered electors. (*Id.* at 19-20.)

Petitioners repeat their claims that the dating provisions serve no purpose based on the prior litigation that has extensively shown that the date is not used to determine the timeliness of a ballot, a voter's qualifications/eligibility to vote, or fraud; therefore, they assert, the dating provisions serve no compelling government interest. (Pet'rs' Memo. of Law at 21-22, 24 (citing *NAACP* cases); Sec'y's Br. at 21-28; Br. of Dem. Party Intervenors at 8-10.) Petitioners add that none of the post-hoc justifications contemplated in *In re Canvass* in 2020, prior to further exploration of the dating provisions by multiple courts, withstands scrutiny. (Pet'rs' Memo. of Law at 22-26.) According to Petitioners, the Election Code itself establishes that the date is irrelevant, as timely submission of a ballot is evaluated based on when a county board receives it, i.e., by 8:00 p.m. on Election Day, and the county boards' timestamping and scanning procedures reflect this fact. (*Id.* at 22-24 (citing *NAACP* cases); Sec'y's Br. at 21-22; Br. of Dem. Party Intervenors at 9 (citing Sections 1306(c) and 1306-D(c) of the Election Code, 25 P.S. §§ 3146.6(c) (providing 8:00 p.m. deadline for absentee ballots), 3150.16(c) (providing same 8:00 p.m. deadline for mail-in ballots); and Sections 1309(b)(5) and 1307-D(b)(5) of the Election Code,<sup>25</sup> 25 P.S. §§ 3146.9(b)(5) (requiring that county boards "shall maintain a record of . . . [t]he date on which the electors' completed absentee ballot is received by the county board"), 3150.17(b)(5) (requiring that county boards "shall maintain a record of . . . [t]he date on which the elector's completed mail-in ballot is received by the county board").) There is also no danger of backdating, per Petitioners,

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<sup>25</sup> Section 1309 was added to the Election Code by the Act of March 6, 1951, P.L. 3, and Section 1307-D was added to the Election Code by Act 77 of 2019.

because ballots received after 8:00 p.m. on Election Day are simply not counted. (Pet’rs’ Memo. of Law at 24.) Further, the prior litigation established that the handwritten date plays no role in determining a voter’s eligibility to vote. (*Id.*) Also, according to Petitioners, knowing when an elector executed a ballot via the handwritten date is not a legitimate purpose to support the dating provisions, as signing the ballot sufficiently demonstrates the voter’s desire to cast the vote by mail in lieu of appearing in person; and pinpointing the precise day, minute, or hour, **when** a voter marked the ballot within any statutory timeframe is irrelevant and not contemplated by the Election Code. (*Id.* at 25-26.)<sup>26</sup> Petitioners and Democratic Party Intervenors also submit that the dating provisions cannot survive any other level of scrutiny, including intermediate scrutiny or rational basis review. (*Id.* at 26-27; Br. of Dem. Party Intervenors at 22; *see also* Sec’y’s Br. at 28-32 (arguing that declaration dates are a vestige of different voting rules),<sup>27</sup> 33-35 (further asserting

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<sup>26</sup> Democratic Party Intervenors also appear to argue that Republican Party Intervenors are collaterally estopped from arguing the dating provisions serve any purpose, citing *NAACP III* in support of their argument. (*See* Br. of Dem. Party Intervenors in Supp. of Pet’rs’ ASR at 11-13.) Because of our ultimate conclusion in this case, we need not address this argument further.

<sup>27</sup> The Secretary describes the history of absentee ballots, various amendments to the Election Code, and the fact that county boards never had to assess whether the affidavit and jurat accompanying such ballots was “sufficient” based on any date requirement. (*See* Sec’y’s Br. at 28-32 & Exs. 1-5.) He informs that, in 1941, the General Assembly added a requirement that county boards set aside absentee ballots bearing a postmark later than the date of the particular election. (*Id.* at 30.) However, the written date requirement for absentee ballots (requiring that a voter’s jurat “shall be . . . dated”) was not added to the Election Code until 1945, and it was not until 1963 that the affidavit and jurat requirement for such ballots was replaced by the single declaration that is still used today. (*Id.* at 30-31.) Thereafter, in 1968, the General Assembly finally aligned the deadline for absentee voters to complete their ballots and for county boards to receive those ballots, after which the General Assembly removed the requirement that county boards set aside ballots based on the date on the declaration. (*Id.* at 31-32.) The Secretary submits that when the General Assembly enacted Act 77 of 2019, “it adopted wholesale the pre[ ]existing text and procedures for absentee voting,” which had been materially unchanged since 1968, and simply added the mail-in ballot portion of the Act into the existing canvassing procedures for **(Footnote continued on next page...)**

that requiring elections officials to review declarations impedes effective election administration).)

Finally, Petitioners argue that they are entitled to a permanent injunction, claiming it is necessary to avoid the injury of disenfranchisement to their members that cannot be compensated by damages. (Pet’rs’ Memo. of Law at 28.) Petitioners also assert that they, as organizations, are irreparably harmed by the unconstitutional enforcement of a statute that forces them to divert and waste resources they need to carry out their missions of educating and mobilizing Pennsylvania voters. (*Id.* at 29-30.) Petitioners emphasize that each of the Petitioner organizations conduct activities and initiatives core to their substantive missions that do not otherwise involve helping people mitigate the consequences of not complying with the dating provisions. (*Id.*) They further argue that greater injury would result from denying the injunction than from granting it, as refusing to enforce a rule that has no purpose harms no one and certainly does not harm elections officials who are tasked with administering elections moving forward. (*Id.* at 30-31 (citing Exs. 14-22 (Decls. of Pet’rs’ Dirs.)).) For all these reasons, Petitioners assert that their request for summary and injunctive relief should be granted.

Republican Party Intervenors respond that Petitioners cannot establish a clear right to relief because they rely solely on the facts set forth in their Petition for Review and Preliminary Injunction Application, and ignore the other facts asserted

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absentee ballots. (*Id.*) According to the Secretary, this history shows that the declaration date is among the “vestiges remaining in the Election Code” of prior voting rules, which has no relationship to protecting free, honest, and fair elections. (*Id.* at 28, 32 (quoting *In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 610 n.24 (Pa. 2020), and further noting that while the date requirement remains, the requirement to set aside ballots based on the date has not existed since 1968).)

by the Secretary and the Philadelphia and Allegheny County BOEs in their filings.<sup>28</sup> (Repub. Party Intervenors' Resp. in Opp'n to Pet'rs' ASR at 3-5.) Further, according to Republican Party Intervenors, Petitioners' right to relief is not clear based on the asserted procedural objections, discussed below; alternatively, as to the merits, Republican Party Intervenors assert that the Supreme Court's decisions in *Pennsylvania Democratic Party* and *Ball* are controlling here and do not establish a free and equal elections clause claim. (*Id.* at 6-11.) Republican Party Intervenors also deny that strict scrutiny applies here, submit that invalidating the dating provisions would on its own violate the free and equal elections clause, and assert that Act 77's nonseverability provision would apply if the dating provisions are ruled unconstitutional. (*Id.* at 12-13.) Republican Party Intervenors also assert in their memorandum of law in opposition to Petitioners' application<sup>29</sup> that Petitioners cannot satisfy their burden to show that greater injury will result from refusing rather than granting the requested permanent injunction, because any harm from denying an injunction is outweighed by the irreparable harm that will be caused to the Commonwealth, Pennsylvania voters, and Republican Party Intervenors on the eve of the 2024 General Election. (*Id.* at 54-58 (noting in this regard that granting an injunction will cause chaos and confusion, erode public confidence, and harm

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<sup>28</sup> Because the parties agreed that there are no factual issues in this case, that no stipulations of fact were required, and that this matter involves only legal issues, the Court will not discuss the additional facts asserted by the Secretary and the Philadelphia and Allegheny BOEs in their filings for purposes of disposition of the cross-applications. (*See* Cmwlth. Ct. Sched. Ord. dated June 10, 2024.) Suffice it to say, however, that such facts, even if considered, would militate against granting Republican Party Intervenors' application for summary relief.

<sup>29</sup> Republican Party Intervenors' memorandum of law in opposition to Petitioners' application for summary relief repeats essentially the same arguments raised in Republican Party Intervenors' cross-application for summary relief. Accordingly, we do not address those arguments in full here but will do so below when discussing Republican Party Intervenors' cross-application.

Republican Party Intervenors’ efforts to train and educate various individuals regarding the dating provisions).)

**V. REPUBLICAN PARTY INTERVENORS’ POS & APPLICATION FOR SUMMARY RELIEF**<sup>30</sup>

**A. Procedural Objections**

In their application for summary relief, Republican Party Intervenors assert that the Petition for Review suffers from at least five defects, each of which independently warrants dismissal of the Petition. First, they assert that Petitioners lack standing to sue the Secretary because his guidance regarding the dating provisions is not legally binding or enforceable against the county boards of elections, there is no causal connection between the guidance and Petitioners’ alleged harm of county boards declining to count mail ballots that fail to comply with the dating provisions, and enjoining such guidance would not redress Petitioners’ alleged harm. (Repub. Party Intervenors’ ASR ¶ 20; Memo. of Law at 4 (citing *Repub. Nat’l Comm. v. Chapman* (Pa. Cmwlth., No. 447 M.D. 2022, filed Mar. 23, 2023) (Ceisler, J.) (single-Judge op.) (*RNC II*), slip op. at 20), 9, 11-15, 18.)<sup>31</sup> Republican Party Intervenors also highlight that the Petition for Review only

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<sup>30</sup> Republican Party Intervenors’ arguments on the POs are subsumed within their application for summary relief. Accordingly, to the extent possible, we combine Republican Party Intervenors’ arguments on the POs with their arguments on the procedural objections asserted in their application for summary relief.

<sup>31</sup> Republican Party Intervenors appear to incorporate their first and second POs into this one procedural defect. Specifically, in their first PO, Republican Party Intervenors argue that Petitioners lack standing to bring their pre-enforcement claim under the DJA with respect to the Election Code’s dating provisions, which claim they assert also runs afoul of binding Pennsylvania Supreme Court precedent in *Ball*, 289 A.3d 1, and the Third Circuit’s decision in *NAACP III*. (POs ¶¶ 25, 34-38 (citing, among other cases, *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467 (Pa. 2021) (*Firearm Owners II*), for general and associational/organizational standing principles), 44-50.) In this regard, they assert that none of Petitioners are aggrieved, as they each **(Footnote continued on next page...)**

seeks relief against the Secretary with respect to his non-binding guidance, and not against the Philadelphia or Allegheny County BOEs, which are ultimately responsible for enforcement of the dating provisions. (Repub. Party Intervenors’ Memo. of Law at 7-8 (citing PFR ¶ 92), 11-12.) According to Republican Party Intervenors, the 67 county boards are the entities that are bound to enforce the dating provisions under *Ball*, not the Secretary, and any relief ordered against the Secretary with respect to his non-binding guidance would therefore not result in enjoining “further enforcement” of those provisions or change the county boards’ legal obligation to enforce the dating provisions. (*Id.* at 8, 12-13 (citing *RNC II*, slip op. at 20; *In re Canvass*, 241 A.3d at 1078 n.6; *Chapman v. Berks Cnty. Bd. of Elections* (Pa. Cmwlth., No. 355 M.D. 2022, filed Aug. 19, 2022) (Cohn Jubelirer, P.J.) (single-Judge op.) (*Berks Cnty.*), 2022 WL 4100998, at \*10 (noting Secretary’s admission to lacking authority to direct the county boards in their administration of elections, to follow the Secretary’s guidance, or to comply with a court order)), 13-14 (citing *Ball v. Chapman*, 284 A.3d 1189, 1192 (Pa. 2022) (Nov. 1, 2022 Order) (observing the Supreme Court’s November 1, 2022 Order did not require the Secretary to do anything, including rescind or modify the guidance challenged); and

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advance the same argument as to why they are harmed but have failed to identify any concrete, distinct, or particularized harm they have suffered because of Respondents following clear Pennsylvania law. (POs ¶¶ 39-40, 41(a)-(i) (observing each Petitioner asserts it is harmed because it will have to expend resources to educate voters regarding their compliance with the dating provisions and that such resources could be spent elsewhere), 42, 51-54.) In their second PO, Republican Party Intervenors assert that Petitioners have no redressable claims against the Secretary because his November 3, 2022 and April 3, 2023 guidance is not legally binding or enforceable upon the county boards of elections. (POs ¶¶ 55-69 (citing, *inter alia*, *RNC II*, *Berks Cnty.*, *Ball*, and *In re Canvass*)).)

*Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467 (Pa. 2021) (*Firearm Owners II*)), 15 (citing *Chadwick v. Caulfield*, 834 A.2d 562 (Pa. Super. 2003)).<sup>32</sup>

Second, Republican Party Intervenors claim that this Court lacks subject matter jurisdiction because the Secretary is not a proper or indispensable party to this lawsuit based on his non-binding and unenforceable guidance. (POs ¶¶ 70-86; Repub. Party Intervenors’ ASR ¶ 21; Memo. of Law at 4 (citing *RNC II*, slip op. at 13-14, 18-28), 9-10, 15-18.) In this regard, they assert that this Court’s prior, single-Judge opinion in *RNC II* is directly on point with the instant matter. (Repub. Party Intervenors’ Memo. of Law at 17-19 (citing, *inter alia*, *RNC II*, slip op. at 8-28).) Third, again relying on *RNC II*, Republican Party Intervenors argue that this Court also lacks jurisdiction over the Philadelphia and Allegheny County BOEs because no relief is sought against them, and they are local agencies, not Commonwealth ones. (POs ¶¶ 87-97; Repub. Party Intervenors’ ASR ¶ 22; Memo. of Law at 4-5 (citing *RNC II*, slip op. at 22-27), 10, 19-20.) Fourth, even if this Court has jurisdiction and relief was sought against the Philadelphia and Allegheny County BOEs, Republican Party Intervenors contend that the Petition for Review must be dismissed because Petitioners failed to join the other 65 county boards, which are indispensable parties to this case. (POs ¶¶ 98-110; Repub. Party Intervenors’ ASR

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<sup>32</sup> Republican Party Intervenors cite *Chadwick v. Caulfield*, 834 A.2d 562 (Pa. Super. 2003), for the proposition that redressability is a requirement of standing. However, *Chadwick* involved a husband’s appeal from the denial of a petition for a writ of habeas corpus stemming from his confinement for civil contempt after he transferred marital assets overseas during his divorce proceedings. However, “redressability” was only mentioned once in the opinion in that case in the context of discussing the wife’s standing under Article III of the United States Constitution, U.S. Const. art. III, in a **federal** court case involving the same parties. *Id.* at 570. As our Supreme Court recently observed in *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*, 309 A.3d 808, 832 (Pa. 2024) (*Allegheny Reprod. III*), “the federal standing analysis ‘does not control our resolution of the standing issue’ because we are not bound by the dictates of Article III of the United States Constitution.” Accordingly, we need not consider Republican Party Intervenors’ redressability argument with respect to the Secretary’s standing.

¶ 23; Memo. of Law at 5, 10, 21-24 (citing *Polydyne, Inc. v. City of Philadelphia*, 795 A.2d 495 (Pa. Cmwlth. 2002)).) In this regard, Republican Party Intervenors first contend that the county boards cannot be relieved of their duty to enforce the dating provisions via judicial order entered in a case that does not name them or seek “redress” against them, which deprives the Court of jurisdiction over this action. (Repub. Party Intervenors’ Memo. of Law at 22-23 (further observing the Petition for Review references some of the 65 other county boards and their alleged inconsistent practices with respect to determining compliance with the dating provisions).) Second, they claim that even if an injunction is entered against the 2 named County BOEs, it would establish varying standards across the 67 counties, which would “potentially ensnare all 67 county boards of elections in an [e]qual [p]rotection violation.” (*Id.* at 23 (citing *Bush v. Gore*, 531 U.S. 98 (2000)).) Stated differently, an injunction entered against the 2 named County BOEs requiring them to count noncompliant ballots would not affect the other 65 county boards’ obligation **not to count** such ballots under the Election Code and *Ball.* (*Id.* at 23-24.)

Fifth, Republican Party Intervenors argue that the Petition for Review fails to state a violation of the free and equal elections clause, as the Supreme Court has already rejected similar arguments regarding the constitutionality of and the meaninglessness underlying the dating provisions in *Ball.* (POs ¶¶ 111-61; Repub. Party Intervenors’ ASR ¶ 24; Memo. of Law at 10.) However, even if the constitutionality of the dating provisions is an open question, Republican Party Intervenors submit that the clause’s text and history, and Supreme Court precedent regarding other ballot casting rules, foreclose the conclusion that the dating provisions are unconstitutional. (POs ¶¶ 111-61 (further noting that Petitioners’



argument that strict scrutiny applies is incorrect, and that even if the dating provisions are ruled unconstitutional, this Court must strike Act 77 in its entirety); Repub. Party Intervenors' ASR ¶ 24; Memo. of Law at 5, 10-11 (citing *Pa. Democratic Party*, 238 A.3d at 374), 24-58.)

For their part, Petitioners assert that none of the above procedural objections have merit. (Pet'rs' 6/24/2024 Memo. of Law at 32.) First, Petitioners deny that the relief they seek implicates Act 77's nonseverability provision. (*Id.*) Petitioners clarify that they seek a declaration that **enforcement** of the dating provisions in a manner that excludes undated and incorrectly dated, but timely received, mail ballots from qualified voters is unconstitutional under the free and equal elections clause; they are not asking the Court to rewrite, amend, or strike any portion of Act 77. (*Id.* at 32-33 (further clarifying that they seek to have the counties cease treating the immaterial handwritten date requirement as so significant that failure to comply results in loss of the franchise).) Petitioners assert that *Stilp v. Commonwealth*, 905 A.2d 918 (Pa. 2006), and *Pennsylvania Federation of Teachers v. School District of Philadelphia*, 484 A.2d 751 (Pa. 1984), are on point with respect to nonseverability. (*Id.* at 34-36.)

Petitioners also assert that all Respondents are proper parties in this case. (Pet'rs' 6/24/2024 Memo. of Law at 36-38.) First, the Secretary's duties under the Election Code, and particularly, his duty to determine and prescribe the form of absentee and mail-in ballots, and his guidance issued in relation thereto, makes him a proper party. (*Id.* at 36-37.) In this regard, Petitioners point out that in *Ball*, the Supreme Court noted that the issuance of such guidance was the basis for the RNC's petition concerning the dating provisions in that case. (*Id.* at 37.) Similarly, the county boards' duties under the Election Code with respect to administering

elections, and reviewing, processing, and canvassing absentee and mail-in ballots, as well as stamping them with the date of receipt, also makes them proper parties in this case. (*Id.* at 37.) Petitioners also clarify the obvious that they do not seek relief against any of the other 65 county boards. (*Id.* at 38 & n.12 (citing *City of Philadelphia v. Cmwlth.*, 838 A.2d 566 (Pa. 2003), and further opining that even if the dating provisions are ruled unconstitutional, other county boards not named here would be expected to follow that ruling, which does not necessarily make them indispensable parties).)

Republican Party Intervenors respond that Petitioners fail to address their own lack of standing, counter that the Court lacks jurisdiction as it relates to the Secretary and the other 65 county boards, address the Court's prior holding in *RNC II*, and provide any legal authority to establish why the 65 county boards are not indispensable parties to this action. (Repub. Party Intervenors' Resp. in Opp'n to Pet'rs' ASR at 6-10; Memo. in Opp'n to Pet'rs' ASR at 7-14 (repeating their theory that *RNC II* is indistinguishable from this case), 15-17.) As for the Secretary's guidance at issue in *Ball*, Republican Party Intervenors submit this is inconsequential because *Ball* involved the Supreme Court's exercise of its King's Bench powers, which are not constrained by any limitations on **this** Court's jurisdiction, like in *RNC II*; the guidance at issue in *Ball* created a "lack of clarity" regarding whether county boards had to enforce the dating provisions and threatened nonuniformity with respect to their enforcement in the 2022 General Election in light of the then-conflicting state and federal case law on the subject, which is now settled; and, finally, the *Ball* petitioners named all 67 county boards and, thus, secured a uniform order directing all of them to enforce the dating provisions, whereas, any ruling here

would not bind the other 65 county boards. (Repub. Party Intervenors' Memo. in Opp'n to Pet'rs' ASR at 10-13.)

In the Secretary's view, this Court has jurisdiction because he is an indispensable party, where the specific claim and the relief sought implicate a right or interest of the Commonwealth party that is essential to the merits of the issue under review. (Sec'y's Resp. to Repub. Party Intervenors' ASR at 31-32.) The Secretary highlights that he is the chief election official in Pennsylvania with numerous responsibilities for administering Pennsylvania's elections, including prescribing the form of the declaration at issue, and that he is a regular party in declaratory judgment actions that raise what the Election Code, the Pennsylvania Constitution, or federal law requires in Pennsylvania as a statewide election practice. (*Id.* at 32-33.) He also points out that he has changed his guidance regarding the mail ballot declaration twice in the past year, and that he "has an interest in the consequence of failing to satisfactorily complete the declaration he prescribes." (*Id.* at 33.) Further, he claims resolution of the ultimate question in this case will determine which ballots shall be counted and included with the returns that are transmitted to him from the county boards on forms he prescribes. (*Id.* at 33-34 (further asserting that counties' initial determinations on which mail ballots to canvass bear directly on whether the Secretary's performance of his own responsibilities complies with the law, and stating that the RNC, in *Ball*, also cited the Secretary's responsibilities in including the Secretary as a respondent in that case).)

The Secretary also agrees with Petitioners that granting their requested relief would not require invalidation of Act 77, and submits that doing so would directly implicate many of his duties in various Election Code sections that have been

amended by Act 77, including with respect to absentee and mail-in ballots. (Sec’y’s Resp. to Repub. Party Intervenors’ ASR at 35 (noting the Secretary has also been a respondent in prior efforts to invalidate Act 77).) He also claims that Republican Party Intervenors wrongly rely on this Court’s unreported *RNC II* decision, which, although correctly decided, is readily distinguishable from this matter due to what was at issue in that case, i.e., notice and opportunity to cure procedures developed and implemented **by the county boards themselves**, and not any issue of which governing law required a **statewide** practice. (*Id.* at 35-37.) The Secretary further argues that the Court can proceed without the other counties, like the Supreme Court did in *In re Canvass*, in which only the Philadelphia and Allegheny County BOEs participated and the Court nevertheless dictated what the Election Code required of **all** county boards. (*Id.* at 38-39.) Moreover, contrary to Republican Party Intervenors’ argument in this regard, any ruling by this Court that the dating provisions are unconstitutional would **remedy** inconsistencies that have resulted since *Ball*, and all counties would be required to follow it if it is precedential. (*Id.* at 39-40 (further opining that roping every county board into litigation involving a statewide issue would burden tax-strapped counties, many of whom are regularly inactive even if named as a party).)

Democratic Party Intervenors agree with Petitioners and the Secretary that the procedural objections are unavailing, adding that *Ball* contradicts Republican Party Intervenors’ arguments regarding Petitioners’ standing and the Secretary’s indispensability and that Republican Party Intervenors conflate federal and state standing principles regarding “redressability,” misstate the Secretary’s responsibilities regarding the dating provisions, “misconceive[] the law regarding indispensability,” incorrectly rely on this Court’s unreported decision in *RNC II*,

which, as the Secretary pointed out, involved a different issue, and wrongly argue that the other 65 county boards are indispensable parties in light of their incidental interest in the dating provisions and limited role in following the law with respect to those provisions. (*See* Dem. Party Intervenors’ Resp. in Opp’n to Repub. Party Intervenors’ ASR at 31-42.) Moreover, Democratic Party Intervenors assert, the Secretary has always been a proper party in cases challenging the constitutionality of Act 77 and plays a critical role in enforcing, implementing, and administering the dating provisions. (*Id.* at 36-37.)

In their brief in opposition to Republican Party Intervenors’ application for summary relief, Petitioners rejoin that Republican Party Intervenors’ reliance on *RNC II* for the proposition that Petitioners lack standing to sue the Secretary is misplaced, as their argument is primarily premised on their claim that the Court lacks jurisdiction over the matter because the Secretary is not an indispensable party; however, the question of subject matter jurisdiction is not the same as standing of Petitioners. (Pet’rs’ Memo. of Law in Opp’n to Repub. Party Intervenors’ ASR at 41.) Petitioners also generally agree with the Secretary and Democratic Party Intervenors as to indispensability, *RNC II* being distinguishable, and nonapplicability of Act 77’s nonseverability provision. (*Id.* at 42-55.)

The Philadelphia and Allegheny County BOEs have not directly addressed Republican Party Intervenors’ procedural objections; rather, they only make arguments in favor of the merits of the Petition for Review and regarding their view that Act 77’s nonseverability provision is inapplicable.

**B. Merits**

As to the merits, Republican Party Intervenors argue that they, not Petitioners, are entitled to summary relief, as “Petitioners invite the Court to do something

unprecedented in the Commonwealth’s history: to wield the [free and equal elections clause] to strike down a neutral ballot-casting rule that governs how voters complete and cast their ballots.” (Repub. Party Intervenors’ Br. in Supp. of ASR at 24 (citation omitted).) They submit that elections need rules, and that the judiciary has no power to disregard such rules enacted by the General Assembly, rewrite them, or declare them unconstitutional simply because a voter failed to follow them and, therefore, had his or her ballot rejected. (*Id.* at 24-26 (further explaining it is the General Assembly that is tasked with effectuating the mandate that elections be free and equal).)

Republican Party Intervenors further highlight the well-established notions that statutes are presumptively constitutional and that a party seeking to strike down a statute as such bears a heavy burden. (*Id.* at 26.) Considering this standard, Republican Party Intervenors submit that Petitioners’ free and equal elections clause challenge with respect to the duly enacted and longstanding dating provisions fails for several reasons. They repeat that the Supreme Court already rejected Petitioners’ arguments in *Ball* and *Pennsylvania Democratic Party*. (Repub. Party Intervenors’ ASR ¶ 11; Memo. of Law at 26, 28-31 (further disagreeing with Petitioners that *Ball* left the door open to a free and equal election clause challenge of this nature), 34-40.) Even if it is an open question, however, Petitioners’ claim fails based on the clause’s plain text and history and the controlling case law; moreover, according to Republican Party Intervenors, the Supreme Court has never invalidated a ballot-casting rule governing how voters complete and cast their ballots under the free and equal elections clause. (Repub. Party Intervenors’ ASR ¶ 12; Memo. of Law at 27-34, 40.) The Supreme Court also has expressly upheld other ballot-casting requirements of Act 77, such as the declaration and ballot secrecy envelope rules

appearing in the same statutory sections, which Petitioners do not challenge here. (Repub. Party Intervenors’ ASR ¶¶ 13-14; Memo. of Law at 34-37.) Republican Party Intervenors assert that, in any event, all voters in Pennsylvania can go to the polls and vote instead of complying with the dating provisions, and, alternatively, there is nothing difficult about signing and dating a document. (Memo. of Law at 35.)

Republican Party Intervenors further posit that the free and equal elections clause serves three purposes: (1) to prohibit arbitrary voter-qualification rules that disqualify classes of citizens from voting; (2) to prohibit intentional discrimination against voters based on social or economic status, geography of residence, or religious or political beliefs; and (3) to prohibit regulations that make it so difficult to vote as to amount to a denial of the franchise. (Memo. of Law at 32-33 (citing *League of Women Voters*, 178 A.3d at 807-10 (quoting *Winston*, 91 A. at 523)).) Unless a ballot-casting regulation imposes one of these “extreme burdens,” Republican Party Intervenors opine that no constitutional right is denied, and the regulation therefore is not subject to judicial scrutiny. (*Id.* at 33.) Along these same lines, Republican Party Intervenors disagree with Petitioners’ view that the fundamental right to vote triggers a strict scrutiny standard of review. (*Id.* at 41-43; *but see id.* at 45-54 (opining that under a federal balancing approach, the dating provisions are constitutional).) Alternatively, Republican Party Intervenors opine that the dating provisions easily survive rational basis review, repeating the state’s “weighty interests” our Supreme Court asserted with respect to the dating provisions in *In re Canvass*. (*Id.* at 50-51 (observing the dating provisions provide proof of when an elector executed a ballot in full, ensuring voters contemplate their choice of candidate and reach considered decisions about their government/law, deterring

and detecting voter fraud,<sup>33</sup> and protecting the integrity and reliability of the process).) Specifically with respect to the interest of when a voter executed a ballot in full, Republican Party Intervenors concede that Pennsylvania elections officials are required to timestamp a ballot upon receiving it, and that county elections officials rely on that timestamped date when entering information into the SURE System. (Memo. of Law at 50.) However, Republican Party Intervenors submit that the handwritten date serves as an important backup in the event the SURE System malfunctioned for some reason. (*Id.*)

Republican Party Intervenors also point to other states’ case law addressing similar free and equal elections clauses and construing the right to vote under the United States Constitution, which they assert forecloses Petitioners’ claims. (Memo. of Law at 43-54.) They also claim that granting Petitioners’ requested relief would “distort” state law and, thus, violate the various elections clauses of the United States Constitution.<sup>34</sup> (*Id.* at 27, 54.) Finally, Republican Party Intervenors repeat their

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<sup>33</sup> Republican Party Intervenors contend the interest of detecting fraud is actual and not hypothetical, and they highlight a recent case involving election fraud in Pennsylvania in *Commonwealth v. Mihaliak*, CP-36-CR-0003315-2022 (Lanc. Cnty. CCP 2022), where the **only** evidence of the fraud there was the handwritten date of April 26, 2022, which was 12 days after the decedent (who purportedly filled out the mail ballot) had passed away. (Memo. of Law at 52 (noting Mihaliak pleaded guilty, was sentenced to probation, and was barred from voting for four years), & Ex. C (charging document in *Mihaliak*)). See also *Ball*, 289 A.3d at 14-15 (discussing the same case).

<sup>34</sup> The Elections Clause of Article I, Section 4, Clause 1 of the United States Constitution provides: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of ch[oo]sing Senators.” U.S. Const. art. I, § 4, cl.1.

Republican Party Intervenors also cite Article II, Section 1, Clause 2 of the United States Constitution, which they refer to as the “Electors Clause.” It provides, with respect to Presidential elections, as follows: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which **(Footnote continued on next page...)**



nonseverability arguments. (*Id.* at 27, 55-58 (opining, based on Act 77’s legislative history, journal notes, and a colloquy between legislators, that the nonseverability clause was part of a political compromise in passing Act 77).)<sup>35</sup> For all these reasons, Republican Party Intervenors request that summary relief be entered in their favor and against Petitioners.

Petitioners’ response to Republican Party Intervenors’ application for summary relief can be boiled down to the following: *Ball* did not already decide the issue in this case, and Republican Party Intervenors misread *Pennsylvania Democratic Party*; they ignore controlling authority that requires that strict scrutiny be applied where the fundamental right to vote is at stake; their assertion that federal law controls in this case is wrong; their argument that invalidating the dating requirements would also violate the United States Constitution is “fanciful” and flies in the face of precedent rejecting such argument; they misread this Court’s decision in *RNC II* as to the procedural objections; their argument that the other 65 county boards are indispensable fails because Petitioners do not seek any relief against those 65 county boards, and because such position is based on a flawed premise rejected in other case law; and Republican Party Intervenors ignore that **enforcement** of the dating provisions is at issue, not excision of those provisions from the Election

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the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.”

<sup>35</sup> The Court observes that the legislators’ colloquy quoted by Republican Party Intervenors relates primarily to Section 13 of Act 77’s language imbuing the Supreme Court with exclusive jurisdiction over constitutional challenges to the enumerated statutory provisions in that section, including the dating provisions, within the first 180 days after Act 77’s enactment. (Memo. of Law at 57-58.) If anything, the quoted colloquy leaves open the question of whether invalidating the enforcement of literally two words (“shall . . . date”) of a nonseverable statutory provision requires invalidation of Act 77 as a whole.

Code—as such, the nonseverability provision is not triggered in this case. (Pet’rs’ Memo. of Law in Opp’n at 2-5, 9-55.)

## **VI. PHILADELPHIA & ALLEGHENY COUNTY BOEs’ STATEMENTS**

The Philadelphia and Allegheny County BOEs take no position on the Petitioners’ constitutional claims, do not dispute Petitioners’ factual allegations in the Petition for Review, and do not seek summary relief. (*See* Phila. & Allegheny Cnty. BOEs’ Stmt. of Position on ASRs at 2; Suppl. Stmt. at 1.) Instead, the Philadelphia and Allegheny County BOEs respond to highlight the lack of any meaningful purpose served by the dating provisions; the disparate impact enforcement of the dating provisions has had on elderly and disadvantaged voters (*see id.* at 1, 3 (providing statistics for Philadelphia County in the 2022 General Election)); the administrative burdens associated with enforcing those provisions; and the County BOEs’ commitment to ensuring the integrity and fairness of elections in their respective counties. The Philadelphia and Allegheny County BOEs add that they have complied with *Ball* and the dating provisions and will continue to do so and set aside and not count absentee and mail-in ballots that arrive in undated or misdated outer return envelopes absent an order from this Court or the Supreme Court directing that they handle the ballots a different way. (*Id.* at 5-6 (assuring they will continue good faith efforts to verify dates on ballots per *Ball*, despite their belief that the Supreme Court erred in its decision in that case).) In their view, however, the dating provisions’ “requirement to handwrite the date is merely a paperwork-related technicality that imposes a burden on voters’ fundamental right to vote without offering any benefit to” these County BOEs in the administration of elections in the Commonwealth. (*Id.* at 3.) Further, they inform that counties must expend considerable time, labor, and resources to enforce the dating provisions by

hand, because their machines used for sorting mail ballots and identifying other defects (like lack of a secrecy envelope or a handwritten signature) cannot be configured to determine whether a handwritten date is “correct.” (*Id.* at 4-5.)

In their Supplemental Statement filed in response to Republican Party Intervenor’s nonseverability argument, the Philadelphia and Allegheny County BOEs submit that declining to enforce the meaningless dating provisions would **not** trigger the nonseverability provision or justify voiding the entirety of Act 77’s no-excuse mail-in voting scheme. (Suppl. Stmt. at 1-9.) They opine that adopting Republican Party Intervenor’s extraordinary argument in this regard would have “staggering and profound implications for the electoral process in Pennsylvania, needlessly disenfranchising thousands of Pennsylvania voters and sowing electoral chaos shortly before the 2024 General Election.” (*Id.* at 1-2, 10-12.) They further assert that this Court’s holding in *Bonner v. Chapman*, 298 A.3d 153, 168-69 (Pa. Cmwlth. 2023), confirms that the dating provisions need not be invalidated or stricken from Act 77 to effectuate Petitioner’s requested relief, as the dating provisions will remain part of the Election Code after any ruling in this case and voters will continue to comply with those provisions. (*Id.* at 1-3.) Moreover, even if the nonseverability provision is triggered, it would not justify striking Act 77 in its entirety, as Pennsylvania statutes are presumed to be severable, and this Court has discretion to exercise its independent judgment on how to interpret and apply the severability provision. (*Id.* at 3.) For these reasons, Philadelphia and Allegheny County BOEs submit that “[t]his Court should decline [Republican Party Intervenor’s] invitation to create mass election confusion and chaos shortly before a major [P]residential election.” (*Id.* at 11-12.)

## VII. DISCUSSION<sup>36</sup>

### A. Legal Principles for Declaratory Relief, Summary Relief, & POs

“Petitions for declaratory judgment are governed by the provisions of the DJA, which are broad in scope and are to be liberally construed and administered.” *Bonner*, 298 A.3d at 160 (citing *Ronald H. Clark, Inc. v. Township of Hamilton*, 562 A.2d 965, 967 (Pa. Cmwlth. 1989)). “Requests for declaratory relief are intended to ‘settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.’” *Id.* (quoting 42 Pa.C.S. § 7541). Moreover, declaratory judgments are not obtainable as a matter of right. *Ronald H. Clark, Inc.*, 562 A.2d at 968-69. Rather, whether a court should exercise jurisdiction over a declaratory judgment proceeding is a matter of sound judicial discretion. *Id.* at 969.

Pennsylvania Rule of Appellate Procedure 1532(b) governs applications for summary relief and provides: “At any time after the filing of a petition for review in an . . . original jurisdiction matter, the court may on application enter judgment if the right of the applicant thereto is clear.” Pa.R.A.P. 1532(b). “An application for summary relief may be granted if a party’s right to judgment is clear and no material issues of fact are in dispute.” *Leach v. Cmwlth.*, 118 A.3d 1271, 1277 n.5 (Pa. Cmwlth. 2015) (en banc), *aff’d*, 141 A.3d 426 (Pa. 2016). “[I]n ruling on a motion for summary relief, the evidence must be viewed in the light most favorable to the non-moving party[,] and the court may enter judgment only if: (1) there are no genuine issues of material fact; and (2) the right to relief is clear as a matter of law.” *MFW Wine Co., LLC v. Pa. Liquor Control Bd.*, 231 A.3d 50, 56 n.2 (Pa. Cmwlth.

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<sup>36</sup> At oral argument in this matter, the Court observes that the parties focused their arguments on whether Petitioners have standing to maintain this action, the Secretary’s and the other 65 county boards’ indispensability, the proper level of scrutiny to be applied in considering the constitutionality of the dating provisions, and nonseverability.

2020) (Brobson, J.) (single-Judge op.) (quoting *Flagg v. Int’l Union, Sec., Police, Fire Pros. of Am., Loc. 506*, 146 A.3d 300, 305 (Pa. Cmwlth. 2016)). This right to relief “may be granted only in cases where the right is clear and free from doubt.” *O’Rourke v. Pa. Dep’t of Corr.*, 730 A.2d 1039, 1041 (Pa. Cmwlth. 1999).

To justify the award of a permanent injunction, the party seeking relief “must establish that his right to relief is clear, that an injunction is necessary to avoid an injury that cannot be compensated by damages, and that greater injury will result from refusing rather than granting the relief requested.” *Kuznik v. Westmoreland Cnty. Bd. of Comm’rs*, 902 A.2d 476, 489 (Pa. 2006) (quoting *Harding v. Stickman*, 823 A.2d 1110, 1111 (Pa. Cmwlth. 2003)). “However, unlike a claim for a preliminary injunction, the party need not establish either irreparable harm or immediate relief[,] and a court ‘may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law.’” *Buffalo Township v. Jones*, 813 A.2d 659, 663 (Pa. 2002) (citation omitted).

Finally, in ruling on POs, the Court accepts as true all well-pleaded material allegations in the petition for review and any reasonable inferences that may be drawn from the averments. *Meier v. Maleski*, 648 A.2d 595, 600 (Pa. Cmwlth. 1994). This Court, however, is not bound by legal conclusions, unwarranted inferences from facts, argumentative allegations, or expressions of opinion encompassed in the petition for review. *Id.* The Court may sustain POs only when the law makes clear that the petitioner cannot succeed on the claim, and the Court must resolve any doubt in favor of the petitioner. *Id.* “[The Court] review[s] [POs] in the nature of a demurrer under the above guidelines and may sustain a demurrer only when a petitioner has failed to state a claim for which relief may be granted.”

*Armstrong Cnty. Mem'l Hosp. v. Dep't of Pub. Welfare*, 67 A.3d 160, 170 (Pa. Cmwlth. 2013).

Thus, for Petitioners to prevail on their application for summary relief, they must establish that their right to relief, i.e., an order declaring that continued enforcement of the Election Code's dating provisions to reject undated or incorrectly dated, but timely received, absentee and mail-in ballots violates the free and equal elections clause and permanently enjoining their enforcement in future elections, is clear as a matter of law. *Flagg*, 146 A.3d at 305. In contrast, to prevail on their cross-application for summary relief and/or POs, Republican Party Intervenors must establish that the law will not permit Petitioners to recover on the Petition for Review and that their right to relief, i.e., dismissal of the Petition for Review, is clear as a matter of law. *Id.* Considering these standards, we begin with determining whether Republican Party Intervenors have met their burdens of proof on their claims that Petitioners lack standing and that this Court lacks jurisdiction based on the Secretary's and the Philadelphia and Allegheny County BOEs dispensability, and the other 65 county boards' indispensability to this action.

## **B. Procedural Objections**

### *1. Lack of subject matter jurisdiction/indispensable parties*

Because they are jurisdictional, we will first address Republican Party Intervenors' procedural objections asserting lack of subject matter jurisdiction. Republican Party Intervenors argue that this Court lacks subject matter jurisdiction under Section 761(a)(1) of the Judicial Code, 42 Pa.C.S. § 761(a)(1), because the Secretary is not a proper or indispensable party to this matter based on his non-binding and unenforceable guidance. Second, they assert that in the absence of the Secretary, this Court also lacks jurisdiction over the Philadelphia and Allegheny

County BOEs, because no relief is sought against them, and they are local agencies, not Commonwealth ones; thus, they must be sued individually in the courts of common pleas. Republican Party Intervenors claim that these questions were already decided in *RNC II*.

*RNC II* involved a group of campaign committee and individual voter petitioners who filed suit against the then-Acting Secretary, the Director of the Pennsylvania Bureau of Election Services and Notaries (Director), and the 67 county boards of elections, challenging various county boards' use of notice and opportunity to cure procedures with respect to absentee and mail-in ballots that failed to comply with the Election Code's signature and ballot secrecy requirements. *See RNC II*, slip op. at 2-3, 13-15.<sup>37</sup> The petitioners sought both declaratory and injunctive relief enjoining the county boards from implementing such notice and cure procedures in apparent violation of the Election Code.

In considering POs raising lack of subject matter jurisdiction, the *RNC II* Court set forth the following jurisdictional principles governing its analysis of the Secretary's and Director's indispensability:

[T]he Court “begin[s] with the undisputed basic principle that this Court, as any other court, must have subject matter jurisdiction over a controversy because, without it, any judgment rendered would be void.” *Stedman v. Lancaster Cnty. Bd. of Comm’rs*, 221 A.3d 747, 755 (Pa. Cmwlth. 2019) (quoting *Patterson v. Shelton*, 175 A.3d 442, 449 (Pa. Cmwlth. 2017)). “Thus, ‘whenever a court discovers that it lacks jurisdiction over the subject matter or a cause of action, it is compelled to dismiss the matter under all circumstances.’” *Id.* (quoting *Hughes v. Pa. State Police*, 619 A.2d 390, 393 (Pa. Cmwlth. 1992)). Our Supreme

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<sup>37</sup> In *Republican National Committee v. Chapman* (Pa. Cmwlth., No. 447 M.D. 2022, filed Sept. 29, 2022) (Ceisler, J.) (single-Judge op.) (*RNC I*), affirmed by equally divided court, 284 A.3d 207 (Pa. 2022), this Court denied the petitioners' request for a preliminary injunction with respect to the county boards' notice and opportunity to cure procedures.

Court previously set forth the well[-]settled scope and standard of review regarding questions of subject matter jurisdiction as follows:

Jurisdiction over the subject matter is conferred solely by the Constitution and laws of the Commonwealth. The test for whether a court has subject matter jurisdiction inquires into the competency of the court to determine controversies of the general class to which the case presented for consideration belongs. Thus, as a pure question of law, the standard of review in determining whether a court has subject matter jurisdiction is *de novo* and the scope of review is plenary. Whether a court has subject matter jurisdiction over an action is a fundamental issue of law which may be raised at any time in the course of the proceedings, including by a reviewing court *sua sponte*.

*Off[.] of Att’y Gen. ex rel. Corbett v. Locust Twp.*, 968 A.2d 1263, 1268-69 (Pa. 2009).

Relevant here, Section 761(a)(1) of the Judicial Code states that “[t]he Commonwealth Court shall have original jurisdiction of all civil actions or proceedings . . . (1) Against the Commonwealth government, including any officer thereof, acting in his official capacity . . . .” 42 Pa.C.S. § 761(a)(1). Section 102 of the Judicial Code defines the term “Commonwealth government” as follows:

**“Commonwealth government.”** The government of the Commonwealth, including the courts and other officers or agencies of the unified judicial system, the General Assembly and its officers and agencies, the Governor, and the departments, boards, commissions, authorities and officers and agencies of the Commonwealth, **but the term does not include any political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision or local authority.**

42 Pa.C.S. § 102 (emphasis added). Although the Acting Secretary . . . [is] an “officer” of the Commonwealth, “this alone is not sufficient to establish jurisdiction.” *Stedman*, 221 A.2d at 756 (quoting *Pa. Sch. Bds. Ass’n, Inc. v. Cmwlt. Ass’n of Sch. Admins.*, 696 A.2d 859, 867 (Pa. Cmwlt. 1997), and stating that “[t]he mere naming . . . of the Commonwealth or its officers in an action does not conclusively



establish this [C]ourt’s jurisdiction, and [that] the joinder of such parties when they are only tangentially involved is improper”).

Rather, “for this Court to have original jurisdiction over a suit against the Commonwealth and another, non-Commonwealth party, the Commonwealth or one of its officers must be an indispensable party to the action.” *Stedman*, 221 A.3d at 757 (citations omitted). “A party is indispensable when ‘his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.’” *Stedman*, 221 A.3d at 757 (quoting *Rachel Carson Trails Conserv., Inc. v. Dep’t of Conserv. & Nat. Res.*, 201 A.3d 273, 279 (Pa. Cmwlth. 2018)).<sup>□</sup> “Thus, the main inquiry for determining whether a party is indispensable involves whether justice can be accomplished in the absence of the party.” *Stedman*, 221 A.3d at 758 (quoting *Rachel Carson Trails*, 201 A.3d at 279). In conducting this inquiry,<sup>[FN 32]</sup> “the nature of the particular claim and the type of relief sought should be considered.” *Rachel Carson Trails*, 201 A.3d at 279. “A Commonwealth party may be declared an indispensable party when meaningful relief cannot conceivably be afforded without the Commonwealth party’s direct involvement in the action.” *Ballroom, LLC v. Cmwlth.*, 984 A.2d 582, 588 (Pa. Cmwlth. 2009). Importantly, “[w]here a petitioner ‘seeks absolutely no relief’ from the Commonwealth party, and the Commonwealth party’s involvement is only ‘minimal,’ we have held that it is not an indispensable party.” *Stedman*, 221 A.3d at 758 (quoting *Rachel Carson Trails*, 201 A.3d at 280).

<sup>[FN 32]</sup> This analysis requires an examination of the following four factors: (1) “[d]o absent parties have a right or interest related to the claim?”; (2) “[i]f so, what is the nature of that right or interest?”; (3) “[i]s that right or interest essential to the merits of the issue?”; and (4) “[c]an justice be afforded without violating the due process rights of absent parties?” *Rachel Carson Trails*[, 201 A.3d at 279].

*RNC II*, slip op. at 16-18 & n.32 (emphasis in original) (footnote omitted).

Relying on the above principles, the *RNC II* Court held that neither the Acting Secretary nor Director were indispensable parties. See *RNC II*, slip op. at 16-18, 22 (citing *Stedman*, 221 A.3d at 757). In so doing, and despite the petitioners’ mention of the Acting Secretary’s various guidance issued over the three years prior to the

*RNC II* Court's decision in their amended petition, the Court determined that the petitioners did not assert any real claims against, or request any relief with respect to, the Acting Secretary or Director<sup>38</sup> to make them indispensable. *Id.* at 18-22, 28. Specifically, the Court observed that the petitioners did not make any claims implicating the limited duties and responsibilities of the Acting Secretary under the Election Code identified in the amended petition. Rather, the petitioners merely took issue with the various guidance the Acting Secretary had issued in previous years in response to the then-developing case law in this area, which the Court found did not implicate what was truly at the heart of the case: ***some of the county boards' development and implementation of notice and opportunity to cure procedures.*** *Id.* at 20. The Court further determined that the Acting Secretary's general interests in election administration and enfranchisement of voters were not essential to a determination of whether some county boards were unlawfully using notice and cure procedures for defective mail ballots. *Id.* The Court also observed that the Acting Secretary had no control over county boards' administration of elections, and the prospect of the Secretary issuing more guidance in the future was too tangential and minimal of an involvement to make the Acting Secretary indispensable. *Id.* at 20-21 (further noting that the petitioners could conceivably obtain meaningful relief with respect to the county boards' purportedly unlawful actions without the Acting Secretary's involvement). Accordingly, the *RNC II* Court sustained the POs regarding lack of subject matter jurisdiction as it related to the Acting Secretary and Director and dismissed them from the action. *Id.* at 22.

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<sup>38</sup> The petitioners in *RNC II* made no claims or sought any relief against Director in their amended petition. For that reason, the Court found she was not indispensable. *RNC II*, slip op. at 21.

*RNC II* is easily distinguished from this case. As it relates to the Secretary, we note that Petitioners named the Secretary in the instant matter, in his official capacity, as a Respondent based on his duties under the Election Code with respect to, *inter alia*, **the form of absentee and mail-in ballots and the form of those ballots' declarations**. Specifically, Petitioners observe that the Election Code confers authority upon the Secretary to implement absentee and mail-in voting procedures in the Commonwealth. (PFR ¶¶ 37-38 (citing Sections 1303(b) and 1303-D(b) of the Election Code, 25 P.S. §§ 3146.3(b), 3150.13(b) (requiring that absentee and mail-in ballots be **on a form prescribed by the Secretary**)), 39 (citing Sections 1304 and 1304-D, 25 P.S. §§ 3146.4, 3150.14 (requiring that the **form of declaration** on absentee and mail-in ballots **must be as prescribed by the Secretary**)), 41 (citing Section 201(f) of the Election Code, 25 P.S. § 2621(f) (outlining Secretary's duties to receive from county boards of elections the returns of primaries and elections, to canvass and compute the votes cast for candidates, to proclaim the results of such primaries and elections, and to issue certificates of election to successful candidates))).) Further, they make various allegations regarding the Secretary's generally inconsistent guidance issued in the aftermath of our Supreme Court's decision in *Ball* and the Third Circuit's decision in *NAACP III*; the redesignation of mail ballot materials in late 2023; and the Department's continued instruction, as recently as April 2024, to county boards not to count undated or incorrectly dated mail ballots, all of which have resulted in the continued disenfranchisement of voters over the dating provisions. (PFR ¶¶ 40, 42-43, 68-69, 74.) We also note the Secretary has again issued new guidance bearing directly on this matter just last month on July 1, 2024. Furthermore, unlike in *RNC II*, the Secretary, as the chief election official in Pennsylvania, also now supports

Petitioners' position in this litigation and joins in their request for relief with respect to the dating provisions, which was not the case regarding the notice and cure procedures at issue in *RNC II*. Finally, we observe that the Petition for Review specifically seeks relief against the Secretary. (*See generally* PFR, Wherefore Clause.) For all these reasons, we conclude that *RNC II* is not controlling as to the Secretary's indispensability here, and that the Secretary is in fact indispensable to this matter, as any declaration made in this case will certainly have an effect on his duties and responsibilities under the Election Code as they relate to his prescription of the form of absentee and mail-in ballots generally, and the form of the declarations thereon specifically. *See Stedman*, 221 A.3d at 757-58.

Returning to *RNC II*, the *RNC II* Court next determined that, in the absence of the two named Commonwealth respondents in the case, it lacked jurisdiction over the remaining 67 county board respondents because they are political subdivisions, and thus local agencies, which are excluded from the definition of "Commonwealth government" under Sections 102 and 761(a)(1) of the Judicial Code, for purposes of this Court's original jurisdiction. *See RNC II*, slip op. at 22-28 (citing, *inter alia*, *Finan v. Pike County Conservation District*, 209 A.3d 1108, 111 (Pa. Cmwlth. 2019), and *Blount v. Philadelphia Parking Authority*, 965 A.2d 226, 231-32 (Pa. 2009)). In so concluding, the Court explained the principles set forth in *Finan* and *Blount* for determining whether an entity is a local or Commonwealth agency for jurisdictional purposes, which governed its analysis as to the 67 county boards. *RNC II*, slip op. at 22-28. "When the enabling statute does not specify the court of original jurisdiction," such factors for consideration include: whether the entity operates on a statewide basis and whether it is predominantly controlled by the state, *see Finan*, 209 A.3d at 1111-12 (citations omitted); multiple other factors may also be

considered, including: the entity's functions, reach of operations, and the degree of state control over finance and governance, *see Blount*, 965 A.2d at 229-34. *RNC II*, slip op. at 22-24.

Having considered the above factors from *Finan* and *Blount*, the *RNC II* Court determined that the 67 county boards were local agencies, because various provisions of the Election Code indicated (but did not expressly state) the county boards were local agencies, and the legislative intent of those provisions reflected that the General Assembly imbued jurisdiction to administer and conduct elections solely within the confines of each of the respective counties of the Commonwealth to the county boards; the county boards are not controlled in any way by the Commonwealth because they are governed by county commissioners; and the county boards are funded by the county commissioners or other appropriating authorities of the county. *See RNC II*, slip op. at 24-28 (concluding, based on the above, that “all signs point to the [c]ounty [b]oards falling under the designation of ‘political subdivision,’ suits against which are excluded from this Court’s original jurisdiction under Section 761(a)(1) of the Judicial Code”). Therefore, the *RNC II* Court held that jurisdiction over the remaining county board respondents properly lay in the respective county courts of common pleas. *Id.*

Here, the Philadelphia and Allegheny County BOEs are clearly local agencies, as this Court determined with respect to the 67 county board respondents in *RNC II*. However, because we have already concluded that the Secretary is part of the Commonwealth government and an indispensable party to this matter, thus establishing this Court’s original jurisdiction under 42 Pa.C.S. § 761(a)(1), we also conclude we have jurisdiction over the Philadelphia and Allegheny BOEs in this case. *See Stedman*, 221 A.3d at 757 (providing that “for this Court to have original

jurisdiction over a suit against the Commonwealth and another, non-Commonwealth party, the Commonwealth or one of its officers must be an indispensable party to the action”); *see also* PFR ¶ 44(a)-(i) (delineating responsibilities of county boards of elections under Section 302 of the Election Code, 25 P.S. § 2542, with respect to absentee and mail-in ballots). We need not belabor our conclusion on this point any further.

Having determined that the Secretary is indispensable, and that this Court has jurisdiction over both the Secretary and the Philadelphia and Allegheny County BOEs,<sup>39</sup> we will not dismiss the Petition for Review on these bases. We therefore turn to Republican Party Intervenors’ argument that we lack jurisdiction due to Petitioners’ failure to join the other 65 county boards.

2. *Lack of subject matter jurisdiction/failure to join indispensable parties*

Republican Party Intervenors argue that the Court lacks jurisdiction because Petitioners failed to join the other 65 county boards, which they claim are indispensable parties to this action. They assert that any order issued in this case

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<sup>39</sup> We also reject Republican Party Intervenors’ assertion that this Court lacks jurisdiction over the Philadelphia and Allegheny County BOEs because no relief is sought against them, notwithstanding that Petitioners’ Prayer for Relief and Wherefore Clause fail to mention those BOEs. Clearly, the Petition for Review, summarized above in Section III of this opinion, extensively discusses these County BOEs and their duties under the Election Code with respect to absentee and mail-in ballots. As this Court recognized in *BPEP I*, “the relief requested in the Petition for Review implicates only **the Philadelphia and Allegheny County BOEs’** statutorily prescribed administrative and executive functions requiring **those BOEs, and not merely one of their members or any of the other 65 county boards of elections**, to count absentee and mail-in ballots in accordance with the law.” *BPEP I*, slip op. at 52 (emphasis in original & added). This Court also recognized Petitioners’ counsel’s statements during the intervention hearing that Petitioners intentionally named, *inter alia*, the Philadelphia and Allegheny County BOEs, because those are the two counties where Petitioners “know” voters are being harmed by enforcement of the dating provisions. *Id.*, slip op. at 53. Accordingly, we read the Petition for Review as seeking relief against both the Secretary and the Philadelphia and Allegheny County BOEs.

against the 2 named County BOEs would not affect the other 65 county boards' obligation not to count undated and incorrectly dated mail ballots under the Election Code and *Ball*. Moreover, they claim that entering relief against only the 2 named County BOEs would establish varying standards across all 67 counties. In substance, Republican Party Intervenors cite only *Polydyne, Inc.*, 795 A.2d 495, for the standards to be applied regarding indispensability, and *Kerns v. Kane*, 69 A.2d 388, 393 (Pa. 1949), *Winston*, 91 A. at 524, and *Bush*, 531 U.S. at 106-07, as support for their argument that any order in this case would result in nonuniformity amongst the county boards.

As quoted above, “[a] party is indispensable when ‘his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.’” *Stedman*, 221 A.3d at 757 (quoting *Rachel Carson Trails*, 201 A.3d at 279). “A corollary of this principle is that a party against whom no redress is sought need not be joined.” *Sprague v. Casey*, 550 A.2d 184, 189 (Pa. 1988). “[T]he main inquiry for determining whether a party is indispensable involves whether justice can be accomplished in the absence of the party.[.]” *Stedman*, 221 A.3d at 758 (quoting *Rachel Carson Trails*, 201 A.3d at 279). In conducting this inquiry, “the nature of the particular claim and the type of relief sought should be considered.” *Rachel Carson Trails*, 201 A.3d at 279, n.32.<sup>40</sup>

We also “note the general principle that, in an action for declaratory judgment, all persons having an interest that would be affected by the declaratory relief sought ordinarily must be made parties to the action.” *City of Phila.*, 838 A.2d at 581-82.

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<sup>40</sup> Whether a party is indispensable also is said to include an examination of whether the absent parties have a right or interest related to the claim; if so, the nature of the right or interest; whether that right or interest is essential to the merits of the issue; and whether justice can be afforded without violating the due process rights of absent parties. *Rachel Carson Trails*, 201 A.3d at 279. We implicitly consider these factors in our analysis below.

Section 7540(a) of the Judicial Code, which is part of the DJA, states that, “[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.” 42 Pa.C.S. § 7540(a). “While this provision is mandatory, it is subject to limiting principles.” *Banfield v. Cortes*, 922 A.2d 36, 43-44 (Pa. Cmwlth. 2007).

Here, Petitioners are asking for a declaration that the dating provisions are unconstitutional under the free and equal elections clause, and they seek permanent injunctive relief to enjoin those provisions’ prospective enforcement to prevent against further disenfranchisement of voters based on what they perceive to be a “meaningless” date requirement. *See BPEP I*, slip op. at 49. While all 67 county boards have an interest in this matter based on their duties and responsibilities to canvass and count absentee and mail-in ballots under the Election Code in accordance with Pennsylvania law, *see BPEP I*, slip op. at 50, 54 n.31 (quoting various Election Code provisions delineating powers and duties of all county boards regarding absentee and mail-in ballots), Petitioners do not seek redress from the other 65 county boards, but only from the 2 named County BOEs. *See BPEP I*, slip op. at 53 (recognizing Petitioners’ counsel’s statements during the intervention hearing that Petitioners intentionally named **only** the Philadelphia and Allegheny County BOEs, because those are the two counties where Petitioners “know” voters are being harmed by enforcement of the dating provisions). Further, while any decision in this case may tangentially affect the other 65 county boards’ duties with respect to counting undated and incorrectly dated ballots, we do not believe that achieving justice is dependent upon the participation of all the county boards. *See City of Phila.*, 838 A.2d at 583-85 (stating that construing Section 7540(a) of the



DJA “in an overly literal manner in the context of constitutional challenges to legislative enactments” that may affect many people or entities “could sweep in [countless] parties and render the litigation unmanageable” and that “requiring the participation of all parties having an interest which could potentially be affected by the invalidation of a statute would be impractical”). Along those same lines, we note that **none of the 65 county boards**, save for Commissioner Chew (as a member of one county board), sought to intervene in this case, despite that they could have, which militates against finding that any of those county boards are indispensable to this case.

As for their equal protection concerns, Republican Party Intervenors do not develop their argument in this regard, as they only cite, without any substantive explanation, the above cases for the proposition set forth therein in passing that all laws regulating the holding of elections shall be uniform across the state. (*See* Repub. Party Intervenors’ Memo. in Supp. of ASR at 21-42 & Memo. of Law in Opp’n at 15-17.) While we generally agree with this well-established principle of uniformity, it is also well known, and undisputed in this case, that all 67 county boards of this Commonwealth do not conduct elections in their respective counties with strict uniformity to each other county in all respects. *See generally RNC II* (involving **some** county boards’ notice and opportunity to cure procedures with respect to absentee and mail-in ballots); *see also Pa. Democratic Party*, 238 A.3d at 382-83 (discussing *Repub. Party of Pa. v. Cortés*, 218 F. Supp. 3d 396, 409 (E.D. Pa. 2016) (in which the Eastern District Court of Pennsylvania considered the constitutionality of the Election Code’s poll watcher residency requirement and explained that Pennsylvania’s General Assembly enacted a county-based scheme to manage elections within the state, endeavored to allow county election officials to

oversee a manageable portion of the state in all aspects of the process, and ensured as much coherency in that patchwork system as possible)). In the absence of any other citation to binding authority stating that any order issued in this case, by an en banc panel of this Court, would have no effect as it relates to the other 65 county boards, we decline to hold that we lack jurisdiction on these bases.

Accordingly, because it is not clear and free from doubt that we lack original jurisdiction over this matter, we will not dismiss the Petition for Review on this basis. We next turn to Republican Party Intervenors' assertion that Petitioners lack standing.

### 3. Standing

“Standing is a [threshold] justiciability concern, implicating a court’s ability to adjudicate a matter.” *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481 (Pa. 2021) (*Firearm Owners II*) (citations omitted). It “‘stems from the principle that judicial intervention is appropriate only where the underlying controversy is real and concrete, rather than abstract,’ and its touchstone is ‘protect[ing] against improper plaintiffs.’” *Ball*, 289 A.3d at 18-19 (citations omitted). To establish standing, a plaintiff must show aggrievement, i.e., an interest in the outcome of the litigation that is substantial, direct, and immediate. *Id.* at 19; *see also Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 309 A.3d 808, 832 (Pa. 2024) (*Allegheny Reprod. III*).

A party’s interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, a party’s interest is immediate when the causal connection with the alleged harm is neither remote nor speculative.

*Firearm Owners II*, 261 A.3d at 481 (citations omitted). Further, “[g]enerally speaking, in our Commonwealth, standing is granted more liberally than in federal courts.” *Allegheny Reprod. III*, 309 A.3d at 832.

Republican Party Intervenors argue that Petitioners lack standing to bring their claims in this case because none of them are aggrieved, and they each advance the same argument as to why they are harmed but have failed to identify any concrete harm they have suffered as a result of Respondents following the law on the counting or not counting of undated and incorrectly dated mail ballots. Republican Party Intervenors further assert that Petitioners’ purported harm based on their expenditure of resources to educate voters regarding their compliance with the dating provisions and diversion of such resources that could be spent elsewhere is not enough to establish standing under *Ball*. Petitioners point out, however, that Republican Party Intervenors, in their application for summary relief, conflate their lack of standing arguments raised in their POs with their arguments on lack of standing/lack of subject matter jurisdiction with respect to the Secretary’s non-binding and unenforceable guidance.<sup>41</sup> (See Pet’rs’ Memo. of Law in Opp’n to Repub. Party Intervenors’ ASR at 41; see also POs ¶¶ 25, 34-38, 44-50, 55-69 (citing, *inter alia*, *Ball* and *Firearm Owners II*), & Repub. Party Intervenors’ ASR ¶ 20; Memo. of Law at 4 (citing, *inter alia*, *RNC II*.) We agree with Petitioners’ assessment. However, notwithstanding this apparent deficiency, we nevertheless construe Republican Party Intervenors’ standing arguments as being primarily based on *Ball* and will address them as such under that case, which is the most recent precedent addressing organizational standing in election matters. Moreover, we have already addressed this Court’s jurisdiction above.

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<sup>41</sup> See *Bisher v. Lehigh Valley Health Network, Inc.*, 265 A.3d 383, 403 (Pa. 2021) (“Pennsylvania . . . does not view standing as a jurisdictional question.”).

In *Ball*, 289 A.3d 1,<sup>42</sup> our Supreme Court *sua sponte* addressed the issue of whether campaign arms of a major political party, including Republican Party Intervenors here plus the National Republican Congressional Committee (NRCC) (collectively, party petitioners), had standing in the context of a challenge to none other than the Election Code’s dating provisions. In that case, the Supreme Court exercised its King’s Bench Power to consider eight individual voters (voter petitioners) and the party petitioners’ request for injunctive and declaratory relief concerning whether undated and incorrectly dated absentee and mail-in ballots should be included in the pre-canvass or canvass of votes for the November 8, 2022 General Election. *Ball*, 289 A.3d at 8, n.2. The then-Acting Secretary challenged

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<sup>42</sup> For background purposes, we note that in *Ball*, the Supreme Court issued a per curiam Order on November 1, 2022, granting in part and denying in part the petitioners’ request for injunctive and declaratory relief and ordering Pennsylvania county boards of elections to refrain from counting any absentee and mail-in ballots received for the November 8, 2022 General Election that were contained in undated or incorrectly dated outer envelopes; further noting the Court was evenly divided on the issue of whether failing to count such ballots violates 52 U.S.C. § 10101(a)(2)(B) (i.e., the federal Materiality Provision); further directing the county boards to segregate and preserve any ballots contained in undated or incorrectly dated outer envelopes; and dismissing the individual voter petitioners from the case for lack of standing. The Court noted that opinions would follow, and that Chief Justice Todd and Justices Donohue and Wecht would find a violation of federal law, while Justices Dougherty, Mundy, and Brobson would find no violation of federal law. *See Ball v. Chapman*, 284 A.3d 1189 (Pa. 2022) (per curiam).

On November 5, 2022, the Supreme Court issued a supplemental Order, clarifying that for purposes of the November 8, 2022 General Election, “incorrectly dated outer envelopes” are as follows: (1) mail-in ballot outer envelopes with dates that fall outside the date range of September 19, 2022, through November 8, 2022; and (2) absentee ballot outer envelopes with dates that fall outside the date range of August 30, 2022, through November 8, 2022 (citing Sections 1302.1-D (added by Act 77), 1305-D (added by Act 77), 1302.1 (added by the Act of August 13, 1963, P.L. 707, and amended by Act 77), and 1305 (added by the Act of March 6, 1951, P.L. 3, and amended by Act 77), 25 P.S. §§ 3150.12a, 3150.15, 3146.2a(a), 3146.5(a)). *See Ball v. Chapman* (Pa., No. 102 MM 2022, suppl. order issued Nov. 5, 2022) (per curiam). Notably, this Order was issued by the Court **unanimously**.

On February 23, 2023, the Court issued numerous opinions explaining the Court’s rationale and/or agreement or disagreement with the Court’s prior orders. *See Ball*, 289 A.3d 1.

the voter and party petitioners' standing, objected to their claim that the Election Code requires disqualification of undated and incorrectly dated absentee and mail-in ballots, and asserted that not counting such ballots violates federal law. *Id.* at 8. For our purposes, we are only concerned with the party petitioners' standing.

The party petitioners advanced three theories of standing: (1) they asserted that their organizations devote substantial time and resources to training election monitors, highlighted the lack of clarity created by the then-Acting Secretary's guidance and precedent of this Court regarding the meaning and application of the dating provisions, and argued that without such clarity, their training and monitoring activities would be rendered less effective, waste considerable resources, or require them to devote even more resources to such activities; (2) they contended that the lack of clarity regarding the dating provisions' meaning would affect resources and expenditures they devote to ensuring Republican candidates and their voters understand the rules of the election process; and (3) they claimed a concrete interest in winning elections, and that, if left uncorrected, the then-Acting Secretary's guidance would result in a plethora of non-compliant ballots being counted, which could alter the final vote tallies. *Ball*, 289 A.3d at 13 (further noting the party petitioners pointed to evidence in *Migliori*, where the counting of non-compliant ballots decided the outcome of a race for a seat on a court of common pleas, and asserted "an interest in preserving 'the structure of the competitive environment' in which the election is to be run"). Conversely, the then-Acting Secretary argued that the party petitioners lacked standing because they were not aggrieved. *Id.* at 13-14 (further asserting that "[a] professed interest in obedience to the law generally is not an interest that surpasses that of any other citizen or the public at large").

Agreeing with the then-Acting Secretary in that case that an organization’s expenditure of resources alone ordinarily does not confer standing, the Supreme Court nevertheless noted that it was “unpersuaded that the instant dispute f[ell] within the category of ‘general grievance[s] about the correctness of government conduct.’” *Id.* at 19. In so noting, and relevant here, the Court observed, as follows (with emphasis added):

Had [the party petitioners] facially challenged an existing interpretation of settled law, or simply sought to compel the Commonwealth to act in a way that aligns with its mission or its investment of resources, that challenge would have been unlikely to succeed. **But the particular facts giving rise to this case are highly relevant, and they must guide our analysis.** The Commonwealth Court has issued contradictory interpretations as to the import of our 2020 ruling [in *In re Canvass*]. The [then-]Acting Secretary published unambiguous guidance that was consistent with one of these competing approaches and that was, in part, based upon a reading of recent federal decisions that had been vacated for mootness [in *NAACP*]. **Accordingly, [the party petitioners] could not have asserted an interest in adherence to the law, because the law was unclear with respect to which ballots should be discounted.**

Under these circumstances, **we hold that [the party petitioners’] expenditure of resources to educate candidates, electors, and voting officials concerning adherence to the Election Code constitutes a substantial interest.** The alleged violation (the Secretary’s guidance regarding an unsettled legal question) shares a causal connection with the alleged harm ([the party petitioners’] inability to educate candidates, electors, and voting officials effectively), and that connection is neither remote nor speculative. Accordingly, we hold that [the party petitioners] have standing.

*Ball*, 289 A.3d at 19-20.

As in *Ball*, the facts of this instant matter must guide our analysis, as this is not simply a case where Petitioners “facially challenge an existing interpretation of settled law, or simply [seek] to compel the Commonwealth to act in a way that aligns

with [their] mission[s] or investment of resources,” which challenges the Supreme Court opined would be “unlikely to succeed.” *Ball*, 289 A.3d at 19. Rather, Petitioners have raised an issue of first impression regarding whether the continued failure to count undated and incorrectly dated absentee and mail-in ballots in accordance with Pennsylvania law violates the free and equal elections clause of our state’s charter, **which was not at issue in *Ball*.**

According to the Petition for Review, Petitioners bring this matter as “nonpartisan organizations dedicated to promoting American democracy and the participation of Pennsylvania voters in our shared civic enterprise” and “to ensure that their members, the people they serve, and other qualified Pennsylvania voters do not again lose their constitutional right to vote based on a meaningless requirement.” (See PFR ¶ 2.) All Petitioners claim that the Secretary’s various guidance regarding undated and incorrectly dated mail ballots, and the Philadelphia and Allegheny County BOEs’ continued failure to count such ballots according to that guidance, directly affects their members, interferes with their ability to carry out their similar missions of increasing voter turnout and participation amongst marginalized and underserved communities of color and non-English speaking voters, and will require diversion of resources, including staff and volunteers, from their voter education and mobilization efforts in the upcoming General Election and future elections, as well as other initiatives,<sup>43</sup> because they will have to continue

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<sup>43</sup> For example, Make the Road Pennsylvania has other initiatives that serve its mission, including its immigrant rights, education justice, housing justice, climate justice, and worker rights initiative. (PFR ¶ 17(e).) OnePA Activists United similarly conducts other civic engagement efforts, such as uniting the community against exploitative corporate landlords, labor law violators, and health-threatening industrial polluters, and transforming the narrative around community needs. (*Id.* ¶ 20(e).) Casa San José provides a variety of resources, including clinics, food pantries, summer camps, community meetings and “Know Your Rights” sessions, among other services. **(Footnote continued on next page...)**

educating voters on how to avoid disenfranchisement with respect to the dating provisions, as well as regarding any cure processes and provisional voting. (*See* PFR ¶¶ 8-10(a)-(e) (Black Political Empowerment Project); 11-13(a)-(d) (POWER Interfaith); 14-17(a)-(e) (Make the Road Pennsylvania); 18-20(a)-(e) (OnePA Activists United); 21-23(a)-(c) (New PA Project Education Fund); 24-26(a)-(e) (Casa San José); 27-30(a)-(d) (Pittsburgh United); 31-33(a)-(e) (League of Women Voters of Pennsylvania); and 34-36(a)-(d) (Common Cause Pennsylvania); *see also* (Pet’rs’ Memo. of Law at 30-31 (citing Exs. 14-22 (Declarations of Petitioners’ directors).)<sup>44</sup> Petitioners assert that most of these organizations have also previously had to assist and/or contact voters with respect to errors or omissions on their already-submitted mail ballot envelopes to avoid having their votes set aside. (*See generally id.*)

The undisputed facts of this case establish that, **since the Supreme Court issued its decision in *Ball* on February 8, 2023**, thousands of Pennsylvania voters continue to be disenfranchised by the Philadelphia and Allegheny County BOEs’ rejection of their mail ballots, based on the Secretary’s guidance, due to missing or incorrect dates on their mail ballot envelopes. (*See, e.g.*, PFR ¶¶ 71-72, 73 (citing

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(*Id.* ¶ 24.) Pittsburgh United conducts a multitude of activities, including various clean water, worker, and affordable housing initiatives. (*Id.* ¶ 30(d).)

<sup>44</sup> *See* Pet’rs’ Memo. of Law, Exs. 14 (5/24/2024 Decl. of Tim Stevens, Chairman & Chief Executive Officer (CEO) of The Black Political Empowerment Project), ¶¶ 3-11; 15 (5/28/2024 Decl. of Bishop Dwayne Royster, Executive Director of POWER Interfaith), ¶¶ 3-8; 16 (5/25/2024 Decl. of Diana Robinson, Co-Deputy Director of Make the Road Pennsylvania), ¶¶ 5-12; 17 (5/27/2024 Decl. of Steve Paul, Executive Director of OnePA Activists United), ¶¶ 5-22; 18 (Decl. of Kadida Kenner, CEO of New PA Project Education Fund), ¶¶ 4-20; 19 (5/27/2024 Decl. of Monica Ruiz, MSW, Executive Director of Casa San José), ¶¶ 4-19; 20 (5/27/2024 Decl. of Alex Wallach Hanson, Executive Director of Pittsburgh United), ¶¶ 4-17; 21 (5/24/2024 Decl. of Amy Widstrom, Executive Director of the League of Women Voters of Pennsylvania), ¶¶ 4-11; and 22 (5/24/2024 Decl. of Philip Hensley-Robin, Executive Director of Common Cause Pennsylvania), ¶¶ 4-11.



Ex. 1, Decl. of A. Shapell, ¶ 12(b), and noting that more than 6,000 ballots submitted in the November 2023 municipal election, and over 4,000 ballots in the April 2024 Presidential Primary Election, were marked as cancelled in the SURE System based on voters' failure to write a date or inclusion of the wrong date).) In this regard, the Secretary has issued new, and conflicting, guidance on at least three occasions since *Ball* "settled" the law surrounding the counting or not counting of undated and incorrectly dated absentee and mail-in ballots, and he concedes that he has changed his guidance regarding the mail ballot declaration **twice in the past year**. (See Sec'y's Resp. to Repub. Party Intervenors' ASR at 33.) Moreover, Petitioners point to evidence adduced in prior state and federal litigation showing that disenfranchisement based on the Secretary's various guidance has disproportionately affected senior citizens, that county boards continue to treat voters inconsistently with respect to their rejection and/or counting of undated or incorrectly dated mail ballots, and that **timely received** mail ballots have been rejected based on simple voter errors and partial omissions related to the ballot declaration. (PFR ¶¶ 63, 64(a)-(f), 65(a)-(c) (citing *Ritter* and *NAACP II*.) Petitioners also point to state and federal courts' determinations since *Ball* that the dating provisions are meaningless, as they neither establish eligibility nor timely ballot receipt. (*Id.* ¶¶ 6, 51-54, 60, 67.)

Based upon these undisputed facts and the continued lack of clarity concerning the county boards' application of the dating provisions to undated and incorrectly dated mail ballots in the aftermath of *Ball*, we hold that Petitioners' additional expenditures and diversion of resources to educate and assist voters concerning the dating provisions in the upcoming General Election and future elections constitutes a substantial interest. The alleged violation (i.e., the Secretary's

inconsistent guidance to county boards following *Ball* and the Philadelphia and Allegheny County BOEs' continued rejection of undated and incorrectly dated mail ballots pursuant to that guidance) shares a causal connection with the alleged harm (Petitioners' inability to effectively educate and assist voters regarding the dating provisions while incurring additional expenditures and having to divert resources from other initiatives), which is neither remote nor speculative. *See Ball*, 289 A.3d at 19-20; *Firearm Owners II*, 261 A.3d at 481. Furthermore, we conclude that a decision in this case will afford Petitioners, and, consequently, their members, "relief from uncertainty and insecurity with respect to rights, status, and other legal relations" as it relates to the dating provisions in the aftermath of *Ball*, which is "the core and remedial purpose behind the [DJA]. 42 Pa.[.]C.S. § 7541(a)." *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497 (Pa. Cmwlth. 2019), *aff'd*, *Firearm Owners II*.<sup>45</sup> Accordingly, because it is not clear and free from doubt that Petitioners do not have standing in this matter, we will not dismiss the Petition for Review on this basis.

4. *Failure to state a claim*

Republican Party Intervenors next argue that Petitioners' Petition for Review should be dismissed because they fail to state a claim under the free and equal elections clause. They assert that the Supreme Court already considered and rejected the same arguments in *Ball*. We disagree.

The precise issues, aside from standing, that were before the Supreme Court in *Ball* were whether **the Election Code** required disqualification of undated and incorrectly dated absentee and mail-in ballots and whether failing to count mail ballots that do not comply with the dating provisions would violate the federal

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<sup>45</sup> We also reject Republican Party Intervenors' assertion that Petitioners lack standing based on *Firearm Owners II*, as that case was not an election matter.

Materiality Provision of the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(B). Notably, the *Ball* Court **did not decide** the precise claim presented in this case of whether the dating provisions’ continued enforcement to reject undated and incorrectly dated but timely received absentee and mail-in ballots violates the free and equal elections clause. The parties have not identified any other case in which any court has considered this issue. Accordingly, and for the additional reasons discussed above with respect to Petitioners’ standing and below as to Count I of the Petition for Review, we conclude it is not clear and free from doubt that Petitioners have not stated a viable claim under the free and equal elections clause, and we therefore will not dismiss the Petition for Review on this basis.

Having disposed of the potential bars to relief, we turn to our consideration of the merits of Petitioners’ claims.

**C. Petition for Review**

*1. Count I – Declaratory Judgment & Injunctive Relief*

In Count I of their Petition for Review, Petitioners present an as-applied challenge to the dating provisions and seek a declaration that Respondents’ strict application of those provisions to reject timely submitted absentee and mail-in ballots based solely on voters’ “inadvertent failure to add a meaningless, superfluous handwritten date next to their signature on the mail ballot [r]eturn [e]nvelope” is an unconstitutional interference with the exercise of the fundamental right to vote in violation of the free and equal elections clause. (PFR ¶¶ 82-84.) Petitioners also seek a permanent injunction barring further enforcement of the dating provisions, contending that continued enforcement of the dating provisions will result in the disenfranchisement of eligible Pennsylvania voters in the 2024 General Election and beyond, unless and until permanently enjoined by this Court. (*Id.* ¶ 85.)

We begin with the text of the dating provisions. Section 1306(a) of the Election Code, which was added to the statute in 1951 and thereafter amended by Act 77, relates to voting by absentee electors and provides, in relevant part, that an absentee “elector shall . . . fill out, **date** and sign the declaration printed on” the second, or outer, envelope “on which is printed the form of declaration of the elector,” among other things. *See* 25 P.S. § 3146.6(a) (emphasis added). Section 1306-D(a) of the Election Code, which was added to the statute by Act 77, relates to voting by mail-in electors and similarly provides, in relevant part, that a mail-in “elector shall . . . fill out, **date** and sign the declaration printed on” the second, or outer, envelope “on which is printed the form of declaration of the elector,” among other things. *See* 25 P.S. § 3150.16(a) (emphasis added).

As indicated above, the dating provisions and other statutory phrases within them have been the subject of lawsuits since Act 77’s inception. In this regard, Republican Party Intervenors assert their right to relief is clear because our Supreme Court already rejected the same free and equal elections clause challenge Petitioners assert here in *Pennsylvania Democratic Party and Ball*. We briefly address this argument first before reaching Petitioners’ constitutional claim.

Most recently for our purposes, in *Ball*, 289 A.3d 1, a majority of our Supreme Court weighed in on the interpretation of the dating provisions, recognizing that “an undeniable majority [of that Court] already ha[d] determined that the Election Code’s command is unambiguous and mandatory, and that undated ballots would **not** be counted in the wake of *In re [] Canvass*.”<sup>46</sup> *Ball*, 289 A.3d at 21-22 (noting

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<sup>46</sup> In *In re Canvass*, 241 A.3d 1058, which involved five consolidated appeals, our Supreme Court addressed, in the context of the November 2020 General Election, whether the Election Code required county boards to disqualify mail-in or absentee ballots submitted by qualified electors who signed the declaration on their ballot’s outer envelope but did not handwrite their name, **(Footnote continued on next page...)**

that “[f]our Justices [in *In re Canvass*] agreed that failure to comply with the date requirement would render a ballot invalid in any election after 2020”) (emphasis in original). The *Ball* Court therefore reaffirmed the *In re Canvass* majority’s conclusion as a matter of statutory interpretation of the Election Code. *Id.* at 22. As for incorrectly dated mail ballots, which *In re Canvass* did not address, the Court rejected other state and federal courts’ interpretation<sup>47</sup> that any date is “sufficient,” reasoning that “[i]mplicit in the Election Code’s textual command . . . is the understanding that the ‘date’ refers to the day upon which an elector signs the declaration.” *Id.* The Court determined, however, that how county boards verify the date an elector provides is the day upon which he or she completed the declaration was a question beyond its purview. *Id.* at 23. Further, having issued guidance for the November 8, 2022 General Election in its November 5, 2022 supplemental order,<sup>48</sup> the Court observed that “county boards of elections retain authority to evaluate the ballots that they receive in future elections—including those

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address, and/or the date, where no fraud or irregularity was alleged. *See In re Canvass*, 241 A.3d at 1061-62. Ultimately, the Court concluded that the Election Code did not require county boards to disqualify signed but undated absentee or mail-in ballot declarations, reading the dating provisions’ language as directory rather than mandatory. *Id.* at 1076-77, 1079 (noting the Court found that such defects, “while constituting technical violations of the Election Code, do not warrant the wholesale disenfranchisement of thousands of Pennsylvania voters” and that “[h]aving found no compelling reasons to do so, we decline to intercede in the counting of the votes at issue in these appeals”).

<sup>47</sup> *See Berks Cnty.* (Pa. Cmwlth., No. 355 M.D. 2022, filed Aug. 19, 2022) (Cohn Jubelirer, P.J.) (single-Judge op.), 2022 WL 4100998, at \*18 (observing that the dating provisions say “date” but that the statute “does not specify which date”); and *Migliori*, 36 F.4th at 163 (observing that the county board of elections “counted ballots with obviously incorrect dates”), *vacated as moot*, 143 S.Ct. 297 (2022).

<sup>48</sup> It also clarified that its November 5, 2022 supplemental order was intended to provide guidance and uniformity for the November 8, 2022 General Election, and that the date ranges included therein “were intended to capture the broadest discernible period of time within which an elector could have an absentee or mail-in ballot in hand, and thus could become able to ‘fill out, date and sign’ the declaration on the return envelope.” *Ball*, 289 A.3d at 23.

that fall within the date ranges derived from statutes indicating when it is possible to send out mail-in and absentee ballots—for compliance with the Election Code.” *Id.* This was the extent of the Supreme Court’s interpretation of the dating provisions under state law in *Ball*.

With respect to whether the dating provisions violated the federal Materiality Provision, as to which the *Ball* Court was evenly divided<sup>49</sup> and regarding which it did not issue any order, we note, in relevant part, the Supreme Court’s finding that “invalidating ballots received in return envelopes that do not comply with the [dating provisions] denies an individual the right of ‘having such ballot counted and included in the appropriate totals of votes cast,’ and therefore [] ‘den[ies] the right of an individual to vote in any election.’” *Ball*, 289 A.3d at 25 (citing federal Materiality Provision). Further, recognizing that the interpretive rule against superfluities (i.e., that a statute should be read together so effect is given to all of its provisions and so none are rendered inoperative or superfluous) counseled against a reading of the Materiality Provision as including, in the term “voting,”<sup>50</sup> **all** steps involved in casting a ballot, which would render the Materiality Provision’s term “other act requisite to voting” without meaning, the Court opined, as follows, in footnote 156:

In the event that Congress’ meaning in the phrase “other act requisite to voting” might be deemed ambiguous, we would reach the same result. In such a circumstance, **failure to comply with the [dating**

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<sup>49</sup> Three Supreme Court Justices at the time joined Part III(C) of *Ball* regarding the Materiality Provision, including Justice Wecht, Chief Justice Todd, and Justice Donohue.

<sup>50</sup> For context, we note the Materiality Provision provides, in relevant part, that “[n]o person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to **voting**, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.” See 52 U.S.C. § 10101(a)(2)(B) (emphasis added).

**provisions] would not compel the discarding of votes in light of the [f]ree and [e]qual [e]lections [c]lause, and our attendant jurisprudence that ambiguities are resolved in a way that will enfranchise, rather than disenfranchise, the electors of this Commonwealth. See Pa. Const. art. I, § 5; [*Pa. Democratic Party*], 238 A.3d at 361.**

*Ball*, 289 A.3d at 26-27, n.156 (emphasis added).

We have already stated in disposing of the procedural objections that the precise issues that were before the Court in *Ball* are not currently before this Court in the instant matter, and that the *Ball* Court did not decide whether continued enforcement of the dating provisions to disenfranchise voters violates the free and equal elections clause of the Pennsylvania Constitution. Nevertheless, the *Ball* Court recognized, albeit with respect to the federal Materiality Provision, that a free and equal elections clause challenge to the dating provisions may someday arise notwithstanding their unambiguous and mandatory command, as it has today under different circumstances. We therefore reject Republican Party Intervenors' contention that *Ball* settled the score regarding the free and equal elections clause issue Petitioners now raise.

As for *Pennsylvania Democratic Party*, 238 A.3d 345, which notably was issued mere weeks before a hotly contested Presidential election and amid the novel COVID-19 pandemic, we observe that our Supreme Court did not consider any issue regarding the Election Code's dating provisions specifically, let alone under the free and equal elections clause. Republican Party Intervenors nevertheless rely on that case for the proposition that the Supreme Court already rejected a challenge to the broader absentee and mail-in ballot declaration requirements, only one part of which is the dating provisions, under the free and equal elections clause, and assert that Petitioners' right to relief therefore is not clear as to this issue. They point

specifically to the Supreme Court’s consideration of whether the Constitution’s free and equal elections clause required that county boards implement notice and opportunity to cure procedures for mail ballots containing minor defects, which is just one of the discrete issues that was before the Court in that case. *See Pa. Democratic Party*, 238 A.3d at 372-74. However, as we have also already observed, notice and opportunity to cure procedures are **not** at issue in this case. We therefore find Republican Party Intervenors’ reliance on *Pennsylvania Democratic Party* for the proposition that Petitioners’ constitutional claim is foreclosed here to also be without merit. As such, we conclude that Republican Party Intervenors have not shown they are clearly entitled to the relief they seek as a matter of law on these bases.

Turning to Petitioners’ constitutional claim regarding the dating provisions, we begin by noting that, in considering the constitutionality of a statute, “we are guided by the principle that ‘acts passed by the General Assembly are strongly presumed to be constitutional.’” *Cmwlth. v. Neiman*, 84 A.3d 603, 611 (Pa. 2013) (quoting *Pa. State Ass’n of Jury Comm’rs v. Cmwlth.*, 64 A.3d 611, 618 (Pa. 2013)). Further, a statute is presumed to be valid and will be declared unconstitutional only if it is shown to be “clearly, palpably, and plainly [violative of] the Constitution.” *Pa. Democratic Party*, 238 A.3d at 384 (quoting *West Mifflin Area Sch. Dist. v. Zahorchak*, 4 A.3d 1042, 1048 (Pa. 2010)). “While deference is generally due the legislature, we are mindful that the judiciary may not abdicate its responsibility to ensure that government functions within the bounds of constitutional prescription under the guise of its deference to a coequal branch of government.” *Mixon v. Cmwlth.*, 759 A.2d 442, 447 (Pa. Cmwlth. 2000).



The free and equal elections clause is at the heart of this case, which provides that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, § 5; *Applewhite v. Cmwlth.*, 54 A.3d 1, 3 (Pa. 2012) (observing the free and equal elections clause is part of our Constitution’s Declaration of Rights); *see also League of Women Voters*, 178 A.3d at 803 (emphasizing generally that “[a]lthough plenary, the General Assembly’s police power is not absolute, as legislative power is subject to restrictions enumerated in the Constitution and to limitations inherent in the form of government chosen by the people of this Commonwealth[,]” and that article I, section 5 “is contained within the Pennsylvania Constitution’s ‘Declaration of Rights,’ which . . . is an enumeration of the fundamental individual human rights possessed by the people of this Commonwealth that are specifically exempted from the powers of Commonwealth government to diminish” (citations omitted)).

In considering the language of the free and equal elections clause, our Supreme Court, in *League of Women Voters*, 178 A.3d at 804, observed that

[t]he broad text of the first clause of this provision mandates clearly and unambiguously, and in the broadest possible terms, that **all** elections conducted in this Commonwealth must be “free and equal.” In accordance with the plain and expansive sweep of the words “free and equal,” we view them as indicative of the framers’ intent that all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth, and, also, conducted in a manner which guarantees, to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government. Thus, [a]rticle I, [s]ection 5 guarantees our citizens an equal right, on par with every other citizen, to elect their representatives. Stated another way, the actual and plain language of [s]ection 5 mandates that all voters have an equal opportunity to translate their votes into representation.

(Emphasis in original.) Furthermore, in recognizing that it “has infrequently relied on this provision to strike down acts of the legislature pertaining to the conduct of elections, the qualifications of voters to participate therein, or the creation of electoral districts, [the Supreme Court noted its] view as to what constraints [a]rticle I, [s]ection 5 places on the legislature in these areas has been consistent over the years.” *League of Women Voters*, 178 A.3d at 809.

In describing such constraints, the Court first cited *Patterson v. Barlow*, 60 Pa. 54, 75 (1869),<sup>51</sup> for the proposition that “while our Constitution gives to the General Assembly the power to promulgate laws governing elections, those enactments are nonetheless subject to the requirements of the [f]ree and [e]qual [e]lections clause . . . , and hence may be invalidated by our Court ‘in a case of plain, palpable[,] and clear abuse of the power which actually infringes the rights of the electors’”; therefore, “any legislative scheme which has the effect of impermissibly diluting the potency of an individual’s vote for candidates for elective office relative to that of other voters will violate the guarantee of ‘free and equal’ elections afforded by [a]rticle I, [s]ection 5.”<sup>52</sup> *League of Women Voters*, 178 A.3d at 809-10 (quoting *Patterson*, 60 Pa. at 75).

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<sup>51</sup> The Supreme Court’s decision in *Patterson v. Barlow*, 60 Pa. 54, 74-75 (1869), involved a challenge to an act of the legislature that established eligibility qualifications for electors to vote in all elections held in Philadelphia, and it specified the manner in which those elections were to be conducted.

<sup>52</sup> We observe that *League of Women Voters*, 178 A.3d 737, involved a constitutional challenge to Pennsylvania’s 2011 congressional redistricting plan. The Supreme Court held that the plan was a partisan gerrymander “designed to dilute the votes of those who in prior elections voted for the party not in power in order to give the party in power a lasting electoral advantage.” See generally *League of Women Voters*, 178 A.3d 737, and *League of Women Voters*, 181 A.3d 1083, 1084 (Pa. 2018) (per curiam op. & ord.) (adopting remedial congressional redistricting plan). Therefore, the Court held that the plan violated the free and equal elections clause because “a diluted vote is not an equal vote.” 181 A.3d at 1084.

Next citing its decision in *Winston*, 91 A. 520, which involved an unsuccessful challenge under the free and equal elections clause to an act of the legislature that set standards regulating the nominations and elections for judges and elective offices in the City of Philadelphia, the Court noted it nevertheless prescribed in that case that elections shall be “free and equal” within the meaning of the Constitution

when they are public and open to all qualified electors alike; when every voter has the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; **when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial**; and when no constitutional right of the qualified elector is subverted or denied him.

*League of Women Voters*, 178 A.3d at 810 (quoting *Winston*, 91 A. at 523 (emphasis added));<sup>53</sup> see also *Banfield*, 922 A.2d at 48 (citing same standard); *Shankey v. Staisey*, 257 A.2d 897, 899 (Pa. 1969) (utilizing *Winston*’s interpretation of free and equal elections clause, Court rejected third-party candidates’ claim that election statute wrongfully equated public petitions with secret ballots so as to deny ballots of people who voted for third-party candidates the same weight as the ballots of people who voted for major party candidates, because statute promoted equal elections by requiring all candidates to satisfy same condition of showing support by set number of people); *In re New Britain Borough Sch. Dist.*, 145 A. 597, 599-

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<sup>53</sup> In *Winston*, the Supreme Court held that the Act of July 24, 1913, P.L. 1001, known as the Nonpartisan Ballot Law in question, when “[j]udged by these tests, . . . cannot be attacked successfully on the ground that it offends against the ‘free and equal’ clause of the bill of rights” as “[i]t denies no qualified voter the right to vote; it treats all voters alike; the primaries held under it are open and public to all those who are entitled to vote and take the trouble to exercise the right of franchise; and the inconveniences if any bear upon all in the same way under similar circumstances and are made necessary by limiting the number of names to be printed upon the official ballot, a right always recognized in our state and not very confidently disputed in the case at bar.” *Winston*, 91 A. at 523.

600 (Pa. 1929) (relying on principles from *Winston* in striking down legislative act that created voting districts for elective office that, while valid legislation, had the inadvertent effect of depriving voters in new borough their right to vote for school directors); *De Walt v. Bartley*, 24 A. 185, 186 (Pa. 1892) (providing that “[t]he test is whether such legislation denies the franchise, or renders its exercise so difficult and inconvenient as to amount to a denial” and rejecting free and equal elections clause challenge to entirety of statute providing for, *inter alia*, secret ballots, because no voter was denied the exercise of the franchise). *But see Working Families Party v. Cmwlth.*, 209 A.3d 270, 271-72, 281-82 (Pa. 2019) (rejecting free and equal elections clause challenge to Election Code’s anti-fusion provisions, i.e., provisions that prohibit the process by which two or more political organizations place the same candidate on the ballot in a general election for the same office, noting the appellants who challenged the provisions had the same right as every other voter, thus satisfying principles set forth in *Winston*); *In re Nom. Papers of Rogers*, 908 A.2d 948, 954-55 (Pa. Cmwlth. 2006) (finding that Supreme Court applied “gross abuse” standard in *Winston* to determine whether election statutes violate the free and equal elections clause, thereby giving substantial deference to the legislature’s judgment, and applying such standard in rejecting free and equal elections clause challenge to minor party signature requirement of Election Code).

The parties to this litigation do not dispute that the fundamental right to vote guaranteed by our Constitution is at issue. *See Pa. Democratic Party*, 238 A.3d at 361 (employing a construction of the Election Code that “favors the fundamental right to vote and enfranchises, rather than disenfranchises, the electorate”); *Banfield v. Cortés*, 110 A.3d 155, 176 (Pa. 2015) (observing that “the right to vote is fundamental and ‘pervasive of other basic civil and political rights’”) (citing

*Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999)); *In re Nader*, 858 A.2d 1167, 1181 (Pa. 2004) (holding that, “where the fundamental right to vote is at issue, a strong state interest must be demonstrated”); *see also Repub. Party of Pa.*, 218 F. Supp. 3d at 407 (observing that “[v]oting is a fundamental right”). They disagree, however, about the applicable level of judicial review to be applied in this case, and specifically, whether strict scrutiny or a lesser standard of judicial review applies based on the above principles.

Because we find it instructive, we briefly return to *Pennsylvania Democratic Party*, in which our Supreme Court considered, among other issues, whether Pennsylvania’s poll watcher residency requirement, found in Section 417(b) of the Election Code, 25 P.S. § 2687(b) (requiring poll watchers to be qualified registered electors of the county in which the election district for which the watcher was appointed is located), violated state or federal constitutional rights. Although *Pennsylvania Democratic Party* is distinguishable from this case, because the Court there upheld the poll watcher residency requirement under a rational basis standard of review and a federal court’s reasoning, concluding it imposed no burden on one’s constitutional right to vote, the opinion is nevertheless instructive as to the proper standards to be considered, which guide our analysis here. *See Pa. Democratic Party*, 238 A.3d at 384-85:

The “times, places and manner” of conducting elections generally falls to the states. [Article I, Section 4 of the United States Constitution,] U.S. Const. art. I, § 4 (providing that “the Times, Places and Manner of holding Elections . . . shall be prescribed in each State by the Legislature thereof”). Pennsylvania has enacted a comprehensive code of election laws pursuant to its authority to regulate its elections. The General Assembly, in enacting its comprehensive scheme, has required that any person serving as a poll watcher for a particular candidate or party be a resident of the county in which she serves in her position. 25 P.S. § 2687(b).

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In analyzing whether a state election law violates the constitution, courts must first examine the extent to which a challenged regulation burdens one’s constitutional rights. *Burdick v. Takushi*, 504 U.S. 428, 434 . . . (1992). Upon determining the extent to which rights are burdened, courts can then apply the appropriate level of scrutiny needed to examine the propriety of the regulation. *See id.* (indicating that “the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment[, U.S. Const. amends. I, XVI,] rights”).

**Where a state election regulation imposes a “severe” burden on a plaintiff’s right to vote, strict scrutiny applies and requires that the regulation is “narrowly drawn to advance a state interest of compelling importance.”** *Id.* When a state election law imposes only “reasonable, nondiscriminatory restrictions,” upon the constitutional rights of voters, an intermediate level of scrutiny applies, and “the State’s important regulatory interests are generally sufficient to justify” the restrictions. *See [i]d.* (upholding Hawaii’s ban on write-in voting in the primary where doing so places a minimal burden on one’s voting right and supports the state’s interest in supporting its ballot access scheme). Where, however, the law does not regulate a suspect classification (race, alienage, or national origin) or burden a fundamental constitutional right, **such as the right to vote**, the state need only provide a rational basis for its imposition. *See Donatelli [v. Mitchell]*, 2 F.3d [508,] 510 & 515 [(3d Cir. 1993)].

*See id.* (emphasis added); *see also Appeal of Norwood*, 116 A.2d at 555 (providing that the power to throw out a ballot for minor irregularities must be exercised very sparingly and with the idea in mind that voters are not be disenfranchised at an election **except for compelling reasons**); *Petition of Berg*, 712 A.2d 340, 341-42 (Pa. Cmwlt. 1998) (setting forth the same standards); *Applewhite v. Cmwlt.* (Pa. Cmwlt., No. 330 M.D. 2012, filed Jan. 17, 2014) (McGinley, J.) (single-Judge op.), 2014 WL 184988, at \*20-21 (analyzing former voter identification law under strict

scrutiny because its enforcement had the effect of disenfranchising electors through no fault of their own and infringing upon qualified electors' right to vote).

Petitioners claim that the dating provisions' continued enforcement to reject timely received mail ballots of qualified electors without dates or with incorrect dates disenfranchises the electorate to such a degree that the dating provisions should be ruled unconstitutional under a strict scrutiny level of review. In examining the constitutionality of the dating provisions under the above-described standards, we agree with Petitioners and find that the dating provisions impose a significant burden on one's constitutional right to vote, in that they restrict the right to have one's vote counted to only those voters who **correctly** handwrite the date on their mail ballots and effectively deny the right to all other qualified electors who seek to exercise the franchise by mail in a timely manner but make minor mistakes regarding the handwritten date on their mail ballots' declarations. Stated another way, the dating provisions make it so difficult for some voters to exercise the franchise that it effectively amounts to a denial of the franchise itself. *Winston*, 91 A. at 523; *De Walt*, 24 A. at 186. Accordingly, we conclude that strict scrutiny applies to the dating provisions' restriction on that fundamental right, and that under such standard, the government bears the heavy burden of proving that the law in question, i.e., the dating provisions, is "narrowly drawn to advance a state interest of compelling importance." *Pa. Democratic Party*, 238 A.3d at 385; *see also Appeal of Gallagher*, 41 A.2d at 632-33 (providing that the power to throw out ballots based on minor irregularities "must be exercised **very sparingly** and with the idea in mind that either an individual voter or a group of voters are not to be disfranchised at an election **except for compelling reasons**" (emphasis added)); *In re Nader*, 858 A.2d

at 1180 (recognizing that “where a precious freedom such as voting is involved, a **compelling state interest** must be demonstrated” (emphasis added)).

We also agree with Petitioners’ assertion that the dating provisions cannot survive strict scrutiny, as they serve no compelling government interest. As has been determined in prior litigation involving the dating provisions, the date on the outer absentee and mail-in ballot envelopes is not used to determine the timeliness of a ballot, a voter’s qualifications/eligibility to vote, or fraud. It is therefore apparent that the dating provisions are virtually meaningless and, thus, serve no compelling government interest. *See, e.g., NAACP III*, 97 F.4th at 125, 127, 137 (recognizing that the dating provisions “serve[] little apparent purpose” because the date is “not used to confirm timely receipt of the ballot or to determine when the voter completed it[,]” as timeliness is instead “established both by a receipt stamp placed on the envelope by the county board and separately through scanning of the unique barcode on the envelope”; and the date does not determine voter qualifications); *see id.* at 140, 155 n.31 (Shwartz, C.J., dissenting) (observing, based on the evidence, that the date is also not used to detect fraud, and that no county board in *NAACP* identified any fraud concern due to an undated or incorrectly dated mail ballot declaration).

At the en banc oral argument before this Court, counsel for the Secretary confirmed that none of the county boards of elections use the handwritten date for any purpose, and he further relayed that the only reason the date is included on absentee and mail-in ballot envelope declarations is because such requirement is in the Election Code. Counsel for the Secretary also pointed out that the county boards are required by law to record when they receive absentee and mail-in ballots, and that they “certainly do.” He also confirmed that county boards having to confirm whether dates are correct or incorrect burdens the county boards and results in



unequal treatment of mail ballots across the Commonwealth, as no two county boards approach this endeavor the same way, and, further, ensuring consistency across the boards is difficult. *See also infra* notes 56-59 (Voter Declarations of voters who timely applied for, received, and returned their mail ballots with signed declarations, but whose ballots were not counted due to issues with the dates; further showing disparities between how different counties treat mail ballots with date issues). Moreover, although they are not “the government” for purposes of strict scrutiny, Republican Party Intervenors are, notably, the only parties to this case that seek to have the dating provisions upheld under the Constitution;<sup>54</sup> however, they have not provided this Court with any compelling or otherwise legitimate reasons for doing so other than repeating the post hoc justifications mentioned in *In re Canvass*, discussed above. They have also conceded that Pennsylvania elections officials are required to timestamp a ballot upon receiving it, and that county elections officials rely on that timestamped date when entering information into the SURE System. (Repub. Party Intervenors’ Memo. of Law at 50.) In the absence of any other compelling interest to support the dating provisions’ restriction on the right to vote, coupled with the fact that the Secretary (i.e., the government) and, to an extent, the Philadelphia and Allegheny County BOEs actually support Petitioners’ view in this case, Republican Party Intervenors cannot successfully defend against the dating provisions, which have the effect of disenfranchising those who fail to fully comply with their requirements at the expense of not having their votes counted. *See Applewhite*, slip op. at 20. Moreover, there has been no showing here

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<sup>54</sup> In his *Amicus Curiae* brief, Commissioner Chew largely repeats Republican Party Intervenors’ arguments as to the procedural objections and the merits of the constitutional claim presented in this case, including their arguments surrounding the salutary purpose of the dating provisions. We therefore dispense with summarizing his arguments for the sake of brevity, seeing as this opinion is already too long to begin with.

of any connection between the handwritten date requirement and maintaining the honesty and integrity of elections, where timestamps and barcodes are used to determine a mail ballot's timeliness. Accordingly, the burdens attendant to including a handwritten date on a mail ballot declaration are unnecessary and not narrowly tailored to serve any compelling government interest. *See id.* at 20-21.

With all of this said, it is important to clarify what we are and are not doing in this case. We are not asked to interpret the dating provisions' language under statutory construction principles, as our Supreme Court has already done so and found such language to be unambiguous and mandatory in *Ball*. Furthermore, we are not asked to declare the language unconstitutional on its face, but, rather, Petitioners instead ask whether **application** of the statutory language to reject qualified electors' timely received mail ballots that do not comply with a meaningless date requirement results in the unconstitutional infringement on electors' fundamental right to vote. In this regard, we recognize that “the state may enact substantial regulation containing reasonable, non[discriminatory] restrictions to ensure honest and fair elections that proceed in an orderly and efficient manner” and that “an orderly and efficient election process can be crucial to the protection of a voter's participation in that process.” *Pa. Democratic Party*, 238 A.3d at 369-70 (quoting *Banfield*, 110 A.3d at 176-77) (further recognizing “the struggles of our most populous counties to avoid disenfranchising voters while processing the overwhelming number of pandemic-fueled mail-in ballot applications during the 2020 Primary demonstrates that orderly and efficient election processes are essential to safeguarding the right to vote”). However, we cannot countenance **any** law governing elections, determined to be mandatory or otherwise, that has the practical effect in its application of impermissibly infringing on certain individuals'

fundamental right to vote, **which is “pervasive of other basic civil and political rights,”** relative to that of other voters who may be able to exercise the franchise more easily in light of the free and equal elections clause’s prescription guaranteeing **all citizens an equal right on par with every other citizen** to elect their representatives.<sup>55</sup> See *League of Women Voters*, 178 A.3d at 809-10; *Banfield*, 110 A.3d at 176 (emphasis added); *Patterson*, 60 Pa. at 75.

To look at a mail ballot that substantially follows the requirements of the Election Code, save for including a handwritten date on the outer envelope declaration, **and which also includes a barcode unique to that ballot as well as a timestamped date indicating its timely receipt by the voter’s respective county board of elections by 8:00 p.m. on Election Day**, and say that such voter is not entitled to vote for whomever candidates he or she has chosen therein due to a minor irregularity thereon “is to negate the whole genius of our electoral machinery.” *Appeal of James*, 105 A.2d at 66. Simply put, the “practical” regulation of requiring

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<sup>55</sup> Indeed, despite repeating Republican Party Intervenors’ arguments in favor of upholding the dating provisions almost to a tee, *Amici* Republican Leaders point out in their brief that the General Assembly has continued to propose, debate, and vote upon additional changes to the Election Code, including a series of revisions to the dating provisions. (*Amici* Repub. Leaders’ Br. at 20.) However, *Amici* Republican Leaders couch these proposed amendments as revealing “a collective understanding that the dating requirement itself is constitutional and can only be modified or repealed by the General Assembly itself.” (*Id.* at 20-22.) While not particularly relevant to the constitutional claim before us, we observe only that the proposed revisions are telling in their substance. (*Id.* at 20-21 (noting a 2021-2022 proposed amendment that would have provided, among other things, that a missing or inaccurate date on the declaration of the elector on the outer return envelope shall not be a fatal defect for the ballot; and highlighting three 2023-2024 proposed amendments, the first of which would provide that the failure to date an envelope shall not disqualify the ballot if the declaration is otherwise properly executed, the second of which would provide that having a missing or inaccurate date would not be a fatal defect, and the third of which would strike the date requirement entirely for mail-in ballots).) Moreover, *Amici* Republican Leaders, like Republican Party Intervenors, simply repeat the post hoc justifications identified in *In re Canvass* as the “important election administration purposes” for the dating provisions. (*Id.* at 22-25.)

voters to date their mail ballot declarations “obstructs and hampers the independent voter” and places voters on unequal playing fields where voters timely submit their mail ballots, but one voter may inadvertently include what has been coined an “incorrect” date,<sup>56</sup> or a birthdate,<sup>57</sup> or forgets to include the date altogether<sup>58</sup> or the

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<sup>56</sup> See PFR ¶ 76(a) & Ex. 2 (Keasley Decl.), ¶¶ 9-13 (73-year-old United States Marine Corps. and Vietnam veteran, and Allegheny County voter, whose ballot for 2024 Primary Election was rejected and not counted due to **an incorrect date** on ballot declaration); PFR ¶ 76(b) & Ex. 3 (Sowell Decl.), ¶¶ 9-15 & Ex. A (76-year-old retired corporate seamstress and Allegheny County voter who received notice from Allegheny County BOE via 4/13/2024 email that her mail ballot for 2024 Primary Election was rejected due to **an incorrect date**, and due to her traveling on a cruise, she was unable to go to polling place fix her ballot); and PFR ¶ 76(c) & Ex. 4 (Ivory Decl.), ¶¶ 7-10 (74-year-old retired educator and Philadelphia County voter who received notice his mail ballot for 2024 Primary Election would be rejected due to **an incorrect date**)).

See also PFR ¶ 76(e) & Ex. 6 (Arbour Decl.), ¶¶ 9-14 & Ex. A (51-year-old chief technology officer for wealth management software company and Montgomery County voter who received notice from Montgomery County BOE that its sorting machine indicated his mail ballot for 2024 Primary Election included **an invalid date** (not between the date range of 4/5/2024 and 4/23/2024) on his return envelope and was unable to make it to polling place to fix ballot); PFR ¶ 76(f) & Ex. 7 (Hickman Decl.), ¶¶ 9-15 (89-year-old retired mechanical engineer and York County voter who submitted mail ballot for 2024 Primary Election, never received notice or confirmation that his ballot was received, and later received notice by the American Civil Liberties Union (ACLU) of Pennsylvania that his ballot had **an incorrect date** and would not be counted); PFR ¶ 76(i) & Ex. 10 (Sprague Decl.), ¶¶ 9-15 (80-year-old retired administrative assistant in aerospace industry and Bucks County voter who submitted mail ballot for 2024 Primary Election and received email and letter from Bucks County BOE that her ballot would not be counted due to **an incorrect date** on ballot envelope and instructions to cure; however, she was unable to go to polling place due to recovery from spine surgery).

<sup>57</sup> See PFR ¶ 76(g) & Ex. 8 (Novick Decl.), ¶¶ 9-15 (80-year-old retired schoolteacher and former small business owner and Bucks County voter who submitted mail ballot for 2024 Primary Election, along with her husband, and later received voicemail and email from Bucks County BOE that they had **incorrect dates**, i.e., she included her **birthdate** before “2024, on their ballots and that the ballots would not be counted if the errors were not fixed).

<sup>58</sup> See PFR ¶ 76(d) & Ex. 5 (Wiley Decl.), ¶¶ 6-11 (71-year-old retired truck driver and Philadelphia County voter whose mail ballot for 2024 Primary Election was not counted because he **forgot to write the date** on the envelope and was later informed about the date issue by the ACLU of Pennsylvania)

See also PFR ¶ 76(h) & Ex. 9 (Sommar Decl.), ¶¶ 10-18 & Ex. A (71-year-old retired computer service technician, electrician, and union representative and Chester County voter who  
**(Footnote continued on next page...)**

correct or full year, and another may include the date on which they filled out the declaration. *Oughton v. Black*, 61 A. 346, 349 (Pa. 1905) (Dean, J., dissenting). Other voters' ballots may not be counted for unknown reasons.<sup>59</sup> This fact is strikingly evident from the undisputed facts underlying this matter, which again establish that voters are **still** being disenfranchised on account of the Secretary's inconsistent and ever-changing guidance following *Ball*'s apparently unequivocal holding that the dating provisions are mandatory, and that at least the two most populous counties in the Commonwealth (i.e., the Philadelphia and Allegheny County BOEs) continue to reject timely received mail ballots for failure to fully or substantially comply with a meaningless date requirement. We highlight that the Secretary has **thrice changed his guidance following *Ball***, most recently directing county boards to utilize the full year on mail ballot outer envelope declarations.

While this Court is fully cognizant that the General Assembly is the entity tasked with effectuating "free and equal" elections vis-à-vis reasonable regulations directing the manner and method of voting, "when the effect of a restriction or a regulation is to debar a large section of intelli[gent] voters from exercising their choice, the Constitution is certainly violated in spirit, if not in letter." *See Oughton*,

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submitted mail ballot for 2024 Primary Election, received a 4/19/2024 email from Chester County BOE of error on ballot and how to fix it, and later learned he **forgot to include a date** on outer envelope; he did not follow up with the County BOE to fix his ballot); and PFR ¶ 76(j) & Ex. 11 (Stout Decl.), ¶¶ 9-15 (77-year-old retired nurse and Berks County voter who submitted mail ballot for 2024 Primary Election who received notice in mail from Berks County BOE that her ballot was **missing a date** and she would have to go in person to fix it; however, she could not go because of mobility issues).

<sup>59</sup> Lorine Walker (Dauphin County) (PFR ¶ 76(k) & Ex. 12 (Walker Decl.), ¶¶ 9-15 & Ex. A (74-year-old retired school librarian and media specialist and Dauphin County voter who submitted mail ballot for 2024 Primary Election who received notice from Dauphin County BOE that her ballot was received on 4/18/2024 and that if any issues were identified with the ballot, she may or may not receive further notice; however, she did not receive further notice, but later learned her ballot was not counted, which she would have corrected if given an opportunity to do so).

61 A. at 349-50 (Dean, J., dissenting); *see also Ball*, 289 A.3d at 25 (opining<sup>60</sup> that “invalidating ballots received in return envelopes that do not comply with the [dating provisions] denies an individual the right of ‘having such ballot counted and included in the appropriate totals of votes cast,’ and therefore [] ‘den[ies] the right of an individual to vote in any election’”); *see also In re Canvass*, 241 A.3d at 1076-77, 1079 (opining, in Opinion Announcing the Judgment of the Court, that the Election Code did not require county boards to disqualify signed but undated absentee or mail-in ballot declarations; and noting the Court found that such defects, “while constituting technical violations of the Election Code, do not warrant the wholesale disenfranchisement of thousands of Pennsylvania voters” and that “[h]aving found no compelling reasons to do so, [the Court] decline[d] to intercede in the counting of the votes at issue in th[o]se appeals”).

Simply put, the refusal to count undated or incorrectly dated but timely received mail ballots submitted by otherwise eligible voters because of meaningless and inconsequential paperwork errors violates the fundamental right to vote recognized in and guaranteed by the free and equal elections clause of the Pennsylvania Constitution. Accordingly, concluding that Petitioners have shown they have a clear right to the relief requested in Count I of the Petition for Review, we grant Petitioners’ requested relief, in part,<sup>61</sup> and declare that the Secretary’s and

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<sup>60</sup> Although this opinion was expressed by only a handful of Justices with respect to federal Materiality Provision, it nevertheless rings true under the undisputed facts presented here.

<sup>61</sup> Considering our conclusion that the dating provisions’ strict application to reject timely received absentee and mail-in ballots that fail to comply with the meaningless date requirement violates the free and equal elections clause, it is unnecessary to address Petitioners’ alternative request in Count II that the dating provisions be read as directory instead of mandatory. We also recognize that our Supreme Court has already settled this question, concluding that the dating provisions are mandatory, in *Ball*.

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However, we observe that our Supreme Court’s jurisprudence has been less than clear on “whether [] information is made mandatory by the Election Code or whether the inclusion of information is directory, i.e., a directive from the Legislature that should be followed but the failure to provide the information does not result in invalidation of the ballot.” **Compare cases concluding directives of Election Code are mandatory:** *In re Canvass*, 241 A.3d at 1062; *id.* at 1071 (disagreeing with notion “that because the General Assembly used the word ‘shall’ in this context [(i.e., in Sections 1306 and 1306-D of the Election Code)], it is of necessity that the directive is a mandatory one, such that a failure to comply with any part of it requires a board of elections to declare the ballot void and that it cannot be counted”); *id.* at 1079 (Wecht, J., concurring and dissenting) (“[the date] requirement is stated in unambiguously mandatory terms, and nothing in the Election Code suggests that the legislature intended that courts should construe its mandatory language as directory”); *id.* at 1090 (Dougherty, J., concurring and dissenting) (“the meaning of the terms ‘date’ and ‘sign’ . . . are self-evident, they are not subject to interpretation, and the statutory language expressly requires that the elector provide them”); *Ball*, 289 A.3d at 20-23 (holding Election Code’s dating provision are mandatory); *Pa. Democratic Party*, 238 A.3d at 378 (holding the secrecy envelope requirement of the Election Code is mandatory); *In re Canvass of Absentee Ballots of Nov. 4, 2003 (Appeal of Pierce)*, 843 A.2d 1223, 1231 (Pa. 2004) (holding Election Code’s in-person ballot delivery requirement was mandatory and that votes delivered by third persons must not be counted), **with cases deeming mandatory language merely directory and without consequence:** *Shambach v. Bickhart*, 845 A.2d 793, 795 (Pa. 2004) (declining to invalidate a write-in vote cast for a candidate who was named on the ballot proper, observing that ballots containing mere minor irregularities should only be stricken for compelling reasons); *id.* at 806 (Saylor, J., concurring) (construing requirement of Section 1112-A(b) of Election Code, added by the Act of July 11, 1980, P.L. 600, 25 P.S. § 3031.12(b) (regarding write-in votes), consistent with precedent, as directory, not mandatory, in the aftermath of an election, and observing that “the matter of distinguishing between certain mandatory and directory provisions of election laws is a sufficiently subjective undertaking”); *In re Luzerne Cnty. Return Bd. (In re Weiskerger Appeal)*, 290 A.2d 108, 109 (Pa. 1972) (declining to invalidate electors’ ballots marked in red ink despite Election Code’s requirement that only certain colors of ink may be used).

The Supreme Court’s precedent in this regard appears to distinguish between those cases in which minor irregularities are at issue, in which cases a mandatory directive may be read as directory, and those other cases implicating “weighty interests[,]” see *In re Canvass*, 241 A.3d at 1073 (including, for example, fraud prevention or ballot secrecy), in which cases Election Code directives are construed as mandatory. Considering this distinction, even if we did consider Count II of Petitioners’ Petition for Review, we would urge that the dating provisions should nevertheless be reinterpreted as directory rather than mandatory in light of our overall holding under the free and equal elections clause that strict application of the dating provisions operates to disenfranchise voters and effectively denies the franchise, as a voter’s failure to include the date or inclusion of the wrong date may be considered a minor irregularity at this point in light of the Election Code’s failure to keep up with new technology (county boards’ date timestamping and scanning of unique barcodes on mail ballots).

the Philadelphia and Allegheny County BOEs' strict application of the Election Code's meaningless dating provisions at the expense of disenfranchising voters is unconstitutional.<sup>62</sup>

## 2. Permanent Injunction

As noted above, to justify the award of a permanent injunction, the party seeking relief “must establish that his right to relief is clear, that an injunction is necessary to avoid an injury that cannot be compensated by damages, and that greater injury will result from refusing rather than granting the relief requested.” *Kuznik*, 902 A.2d at 489 (quoting *Harding*, 823 A.2d at 1111). “However, unlike a claim for a preliminary injunction, the party need not establish either irreparable harm or immediate relief and a court ‘may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law.’” *Buffalo Township v. Jones*, 813 A.2d at 663 (citation omitted).

Regarding the first criterion, we have already determined that Petitioners established their right to relief is clear on Count I of the Petition for Review. Specifically, they have established that strict application of the meaningless dating provisions to reject undated or incorrectly dated but timely received mail ballots at the expense of disenfranchising voters who submit such ballots treats those voters

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<sup>62</sup> Even if this Court were to apply an intermediate level of scrutiny here and view the dating provisions as imposing “reasonable, nondiscriminatory restrictions” on mail voters, thus resulting in the state’s important regulatory interests in enacting a comprehensive absentee and mail-in voting scheme generally being sufficient to justify the restriction, *see Pa. Democratic Party*, 238 A.3d at 384-85, **strict application** of the dating provisions to reject undated and/or incorrectly dated but timely received mail ballots still would not pass constitutional muster, as voters’ mail ballots will likely continue to be rejected for such minor irregularities stemming from the meaningless date requirement, which goes against the well-established principles that “[t]echnicalities should not be used to make the right of the voter insecure[,]” and that a regulation of the elective franchise “should, when and where possible, be so construed as to insure rather than defeat the exercise of the right of suffrage.” *Appeal of James*, 105 A.2d at 65-66.



unequally and violates the fundamental right to vote under the free and equal elections clause. For this reason, Petitioners have established a clear right to the permanent injunctive relief they seek.

As for the second criterion, i.e., that an injunction is necessary to avoid an injury that cannot be compensated by damages, Petitioners argue that a permanent injunction is necessary to avoid the injury of disenfranchisement to thousands of Pennsylvanians, including Petitioners' members, which cannot be compensated by damages. Although not required to be shown for a permanent injunction, Petitioners also argue that they, as organizations, will be irreparably harmed by unconstitutional enforcement of the dating provisions, which will force them to waste the resources that they need to carry out their respective missions. Absent an injunction, they assert, their resources will be diverted to helping mitigate mass disenfranchisement due to strict enforcement of the dating provisions. Because “[t]he disenfranchisement of even one person validly exercising his right to vote is an extremely serious matter[,]” *see Perles*, 202 A.2d at 540, and given that these organization Petitioners may **waste** scarce resources to mitigate mass disenfranchisement, both of which clearly cannot be compensated by damages, we conclude that Petitioners have satisfied the second criterion for the grant of a permanent injunction. *See Applewhite*, slip op. at 26 (observing that “[d]eprivation of the franchise is neither compensable nor reparable by after-the-fact legal remedies”).

Finally, Petitioners argue that greater injury would result from denying the injunction than from granting it, as refusing to enforce a rule that has no purpose harms no one and certainly does not harm elections officials who are tasked with administering elections moving forward. They claim there is no countervailing public interest to support enforcement of a meaningless technical requirement that

no Respondent here (or any other of the county boards) relies upon for any purpose. Because denying the injunction will almost certainly result in disenfranchisement of voters in the upcoming November 2024 General Election, we believe that greater injury would result from denying the injunction than from granting it. Accordingly, Petitioners have also satisfied this third criterion for the grant of a permanent injunction.

Accordingly, for the above reasons, the Court permanently enjoins strict enforcement of the dating provisions to disenfranchise voters who timely submit to the their respective Philadelphia or Allegheny County BOE undated or incorrectly dated absentee or mail-in ballots, as further set forth in the attached Order.

3. Act 77's Nonseverability Provision

As a final matter, we must address the parties' arguments on whether our holding triggers Act 77's nonseverability provision. In this regard, Petitioners remind us that they seek a declaration that **enforcement** of the dating provisions in a manner that excludes qualified voters' timely received mail ballots based on their failure to comply the meaningless dating provisions is unconstitutional under the free and equal elections clause, and that they are **not** asking the Court to rewrite, amend, or strike any portion of Act 77. We also clarified this above in our discussion. Petitioners, the Secretary, and Democratic Party Intervenors all agree that *Stilp*, 905 A.2d 918, among other cases, is on point with respect to nonseverability, and they argue that Act 77's nonseverability provision is not triggered here. Conversely, Republican Party Intervenors submit that our holding of unconstitutionality with respect to the dating provisions' strict enforcement would trigger Act's 77's nonseverability provision found in Section 11 of that Act, thus requiring that the

entirety of Act 77 be stricken at this late stage in the game on the eve of the November 2024 General Election.

Act 77's nonseverability provision is found in Section 11 of the Act, which provides, in relevant part: "Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of this act **or its application to any person or circumstance is held invalid**, the remaining provisions or applications of this act are void." (Emphasis added.) For our purposes, we are concerned only with Sections 6 (which amended Section 1306 of the Election Code) and 8 (which added Section 1306-D to the Election Code) of Section 11 of Act 77, which comprise the dating provisions.

In *Stilp*, 905 A.2d at 970, our Supreme Court recognized that Section 1925 of the Statutory Construction Act of 1972 (Statutory Construction Act), 1 Pa.C.S. § 1925, established a presumption of severability applicable to all statutes which "is not merely boilerplate." It provides:

The provisions of every statute shall be severable. **If any provision of any statute or the application thereof to any person or circumstance is held invalid, the remainder of the statute, and the application of such provision to other persons or circumstances, shall not be affected thereby**, unless the court finds that the valid provisions of the statute are so essentially and inseparably connected with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

1 Pa.C.S. § 1925 (emphasis added). The Supreme Court stated that this section, "[t]hus, . . . does not mandate severance in all instances, but only in those circumstances where a statute can stand alone absent the invalid provision." *Stilp*, 905 A.2d at 970. It also "sets forth a specific, cogent standard, one which both

emphasizes the logical and essential interrelationship of the void and valid provisions, and also recognizes the essential role of the Judiciary in undertaking the required analysis.” *Id.* Furthermore, because severability “has its roots in a jurisprudential doctrine . . . , the courts have not treated legislative declarations that a statute is severable, or nonseverable, as ‘inexorable commands,’ but rather have viewed such statements as providing a rule of construction.” *Id.* at 972.

Considering the substantive standard in Section 1925 of the Statutory Construction Act and the above principles, we decline to treat Act 77’s nonseverability as an “inexorable command” requiring that the entirety of Act 77 be declared void. Stated differently, **we do not strike Act 77 in its entirety and decline Republican Party Intervenors’ suggestion that we do so.** Rather, we find that the remainder of Act 77, which enacted a comprehensive scheme of no-excuse mail-in voting that has since been upheld in full as a constitutional exercise of our General Assembly’s legislative authority to create universal mail-in voting in *McLinko v. Department of State*, 279 A.3d 539, 582 (Pa. 2022), will not be affected by our ultimate conclusion with respect to the unconstitutionality of strict enforcement of the dating provisions at the expense of disenfranchising voters. *See Stilp*, 905 A.2d at 973 (holding that the legislative unvouchered expense provision determined to plainly and palpably violate the Constitution was severable from the otherwise constitutionality valid remainder of the act at issue); *see also Pa. Fed’n of Teachers*, 484 A.2d at 754 (holding that nonseverability provision inapplicable where act is unconstitutional only as applied to persons who were members of retirement system at time of the enactment, but constitutional as applied to those who became members of the retirement system subsequent to the effective date of

the act at issue). Specifically, we observe that nothing in the otherwise valid provisions of Act 77 is “so essentially and inseparably connected with” the dating provisions, nor can we say that the remaining valid provisions of Act 77, “standing alone, are incomplete [or] are incapable of being executed in accordance with the legislative intent” of that Act. *See* 1 Pa.C.S. § 1925. We therefore see no reason to interfere with this comprehensive scheme enacted and amended multiple times by our Legislature since its inception in 2019, which allows voters of this Commonwealth to confidently vote from the comfort of their own homes. For these reasons, we find in our judicial discretion that the nonseverability clause is ineffective, and, accordingly, we will not enforce it under the circumstances of this case. *See Stilp*, 905 A.2d at 977-81 (holding that nearly identical nonseverability provision was “ineffective and cannot be permitted to dictate [the Court’s] analysis” and that “enforcement of the clause would intrude upon the independence of the Judiciary and impair the judicial function”).

As a final matter, we believe that our decision on nonseverability **preserves** our Supreme Court’s decision in *Ball*, 289 A.3d 1, by still technically requiring voters to “fill out, **date** and sign” their absentee and mail-in ballots, and with respect to its statement in that case that county boards retain authority to evaluate absentee and mail-in ballots they receive in all elections for compliance with the Election Code, “including those that fall within the date ranges derived from statutes indicating when it is possible to send out mail-in and absentee ballots[.]” *Ball*, 289 A.3d at 23. In this regard, we observe that this case makes abundantly clear that neither the Election Code nor the Legislature have kept up with all the new technology affecting our manner and method of voting by absentee or mail-in ballots, including the county boards’ use of unique barcodes and their scanning of

those barcodes into the SURE System, particularly for the past four years and despite the myriad litigation surrounding the dating provisions to date. We believe this new technology renders the dating provisions meaningless, in that it ensures that absentee and mail-in ballots are timely received by qualified electors' county boards, thus negating the need for voters to handwrite the date on their ballots at the expense of possible disenfranchisement. Nevertheless, our narrow holding of unconstitutionality in this case ensures that the county boards retain the discretion to discard ballots that are fraudulent or otherwise determined to be improper for reasons, such as voting outside the deadlines imposed by the Election Code, as contemplated by our Supreme Court's decision in *Ball*.

Because Republican Party Intervenors have not shown they are entitled to relief on this claim as a matter of law, we deny their application and grant Petitioners' application.

## **VIII. CONCLUSION**

A substantial threat of disenfranchisement based on strict enforcement of the dating provisions still exists today notwithstanding our Supreme Court's decision in *Ball*, and the Secretary's and county boards' continued efforts at making absentee and mail-in voting easier for voters. Petitioners have established a clear right to relief from strict enforcement of the Election Code's dating provisions. "The right to vote, [regarded as] fundamental in Pennsylvania, is irreplaceable, necessitating its protection before any deprivation occurs. Deprivation of the franchise is neither compensable nor reparable by after-the-fact legal remedies, necessitating injunctive and declaratory relief." *See Applewhite*, slip op. at 26. Petitioners also established "greater injury will result from refusing rather than from granting the relief requested." *Kuznik*, 902 A.2d at 504. Moreover, enjoining the dating provisions

that are almost incapable of being enforced without resulting in disenfranchisement preserves integrity of elections; contrarily, denying the requested relief would add to the chaos and inconsistent guidance issued by the Secretary, and enforced by the county boards, since Act 77's enactment. *Applewhite*, slip op. at 26.

Accordingly, Petitioners' application for summary relief is granted, in part, to the extent it requests declaratory and permanent injunctive relief as to Count I of the Petition for Review, and dismissed as to Count II, to the extent it seeks alternative relief. Republican Party Intervenors' cross-application for summary relief is denied.

Based on our reasoning set forth above, we declare that strict enforcement of the dating provisions to reject timely submitted but undated or incorrectly dated absentee and mail-in ballots is unconstitutional under the free and equal elections clause and enjoin their strict enforcement to prevent against further disenfranchisement. We also decline to strike Act 77 in its entirety as a consequence of our holding.

Petitioners' Preliminary Injunction Application and Republican Party Intervenors' POs are dismissed as moot.

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ELLEN CEISLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Black Political Empowerment	:	
Project, POWER Interfaith, Make the	:	
Road Pennsylvania, OnePA Activists	:	
United, New PA Project Education	:	
Fund, Casa San José, Pittsburgh	:	
United, League of Women Voters of	:	
Pennsylvania, and Common Cause	:	
Pennsylvania,	:	
	:	
Petitioners	:	
	:	
v.	:	No. 283 M.D. 2024
	:	
	:	
Al Schmidt, in his official capacity as	:	
Secretary of the Commonwealth,	:	
Philadelphia County Board of	:	
Elections, and Allegheny County	:	
Board of Elections,	:	
	:	
Respondents	:	

**ORDER**

AND NOW, this 30<sup>th</sup> day of August, 2024, following oral argument of the parties before an en banc panel of this Court, and upon consideration of parties’ filings and arguments contained therein, it is hereby **ORDERED** as follows:

1. Petitioners’ application for summary relief, seeking declaratory and permanent injunctive relief with respect to Count I of their Petition for Review Addressed to the Court’s Original Jurisdiction (Petition for Review) is **GRANTED, in part**, to the extent it seeks declaratory and injunctive relief regarding Sections 1306 and 1306-D of the Pennsylvania Election Code,<sup>1</sup> 25 P.S. §§ 3146.6(a) and 3150.16(a)

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<sup>1</sup> Act of June 3, 1937, P.L. 1333, *as amended*, added by the Act of March 6, 1951, P.L. 3, and the Act of October 31, 2019, P.L. 552, 25 P.S. §§ 2600-3591.



(dating provisions) under the free and equal elections clause set forth in article I, section 5 of the Pennsylvania Constitution, Pa. Const. art. I, § 5. Petitioners' application for summary relief is otherwise **DISMISSED** as to Count II of the Petition for Review, to the extent it seeks alternative relief with respect to interpretation of the dating provisions.

2. The Republican National Committee's and the Republican Party of Pennsylvania's (collectively, Republican Party Intervenors) cross-application for summary relief is **DENIED**.
3. It is hereby **DECLARED** that the Election Code's dating provisions are invalid and unconstitutional as applied to qualified voters who timely submit undated or incorrectly dated absentee and mail-in ballots to their respective county boards, as the dating provisions strict enforcement to reject such ballots burdens the fundamental right to vote guaranteed by the free and equal elections clause set forth in article I, section 5 of the Pennsylvania Constitution, Pa. Const. art. I, § 5.
4. It is further **ORDERED** that Respondents Al Schmidt, in his official capacity as Secretary of the Commonwealth, the Philadelphia County Board of Elections, and the Allegheny County Board of Elections are **PERMANENTLY ENJOINED** from strictly enforcing the dating provisions of the Election Code, which require that electors of the Commonwealth of Pennsylvania date the declaration of the elector printed on the second, or outer, envelope of absentee and mail-in ballots. However, nothing in this Order permanently enjoining strict enforcement of the dating provisions to disenfranchise voters shall

preclude the enforcement of the remaining provisions contained within the dating provisions in Sections 1306 and 1306-D of the Election Code that are unrelated to the handwritten date requirement.

5. As prescribed by the Pennsylvania Supreme Court in *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023), county boards of elections retain authority to evaluate absentee and mail-in ballots for compliance with the Election Code, including the dating provisions to ensure that the absentee and mail-in ballots are timely submitted by qualified electors, and thus prevent fraud.
6. Petitioners' Application for Special Relief in the Nature of a Preliminary Injunction, and Republican Party Intervenors' Preliminary Objections, are **DISMISSED AS MOOT**.

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ELLEN CEISLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Black Political Empowerment Project, :  
POWER Interfaith, Make the Road :  
Pennsylvania, OnePA Activists United, :  
League of Women Voters of :  
Pennsylvania, and Common Cause :  
Pennsylvania, :

Petitioners :

v. :

No. 283 M.D. 2024  
Argued: August 1, 2024

Al Schmidt, in his official capacity as :  
Secretary of the Commonwealth, :  
Philadelphia County Board of Elections, :  
and Allegheny County Board of Elections :

Respondents :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE MICHAEL H. WOJCIK, Judge  
HONORABLE ELLEN CEISLER, Judge  
HONORABLE MATTHEW S. WOLF, Judge

DISSENTING OPINION  
BY JUDGE McCULLOUGH

FILED: August 30, 2024

Today a majority of a truncated special *en banc* panel of this Court, in untethered and unprecedented fashion, declares unconstitutional the enforcement of innocuous and universally-applicable voter declaration requirements that do not burden the fundamental voting franchise of a single Pennsylvania voter. These voter declaration requirements, which have until now rightfully withstood challenges in both Pennsylvania and Federal courts, fall squarely within the purview of the General Assembly’s authority to establish neutral ballot-casting rules for the very voting processes it has created. Indeed, although there is in Pennsylvania a

constitutional right to vote by absentee ballot in some form, there is no constitutional right to vote by mail without excuse, which process was unknown in the Commonwealth for well over two centuries and is wholly a creature of recent, bipartisan legislative grace. Our constitution and our Supreme Court’s precedent soundly reserve the authority for establishing neutral procedures to govern both voting mechanisms to the General Assembly. That is, until today.

We are tasked in this original jurisdiction case with determining, quite simply, whether enforcement of the voter declaration requirements clearly, palpably, and plainly violate the Free and Equal Elections Clause<sup>1</sup> of the Pennsylvania Constitution. In other words, we must determine whether they render voting so difficult that they effectively deny the franchise altogether. To thus properly and precisely state the question is to answer it.

In no prior case has this Court or our Supreme Court applied the Free and Equal Elections Clause to declare unconstitutional a provision that regulates the manner and method of casting ballots. Nor has any Pennsylvania court ever applied “strict scrutiny” in considering whether neutral, generally-applicable manner-of-voting regulations enacted by the General Assembly violate the Free and Equal Elections Clause. And yet, to reach its desired end, the Majority today (1) finds jurisdiction where it does not exist, (2) ignores more than a century of sound Pennsylvania Supreme Court precedent interpreting the Free and Equal Elections Clause, (3) applies strict scrutiny without any authority for doing so, (4) accepts Petitioners’ invitation to usurp the role of the General Assembly and re-write Act 77

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<sup>1</sup> Pa. Const. art. I, § 5 (“Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”).

of 2019<sup>2</sup> (Act 77), and, in a twist of tragic irony, (5) voids altogether absentee and mail-in voting in Pennsylvania.

Because I am convinced that the Majority's pronouncements in this case misapply the law and involve a wholesale abandonment of common sense, I respectfully, but vigorously, dissent.

**I. THIS COURT LACKS SUBJECT MATTER JURISDICTION**

**A. Respondent Secretary Al Schmidt, the only Commonwealth party, is not indispensable.**

The Majority preliminarily errs by concluding that this Court has subject matter jurisdiction over this action. It does not, for several interrelated reasons. First, this Court lacks subject matter jurisdiction because Secretary Al Schmidt (Secretary) is not an indispensable party. Our original jurisdiction is conferred by Section 761(a)(1) of the Judicial Code, which, relevant here, grants this Court original jurisdiction over civil actions “[a]gainst the Commonwealth government, including any officer thereof, acting in his official capacity.” 42 Pa.C.S. § 761(a)(1). “Commonwealth government” is defined as:

The government of the Commonwealth, including the courts and other officers or agencies of the unified judicial systems, the General Assembly, and its officers and agencies, the Governor, and the departments, boards, commissions, authorities and officers and agencies of the Commonwealth, **but the term does not include any political subdivision, municipal or other local authority, or any agency of any such political subdivision or local authority.**

*Id.* § 102 (emphasis added). To properly exercise jurisdiction under Section 761(a)(1), more is required than merely naming the Commonwealth or one of its

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<sup>2</sup> Act of October 31, 2019, P.L. 552, No. 77.

officers in a lawsuit. Instead, the Commonwealth or one of its officers must be *indispensable* to the action. *Stedman v. Lancaster County Board of Commissioners*, 221 A.3d 747, 756-57 (Pa. Cmwlth. 2019). A party is indispensable when his or her rights are so intertwined with the claims in the litigation that relief cannot be granted without affecting those rights; in other words, justice cannot be accomplished without the party’s participation. *Id.* at 757-58. By contrast, where the Commonwealth party’s involvement in the suit is minimal and no relief can be afforded against it, it is not indispensable. *Id.* at 758. The question of indispensability is decided by examining the nature of the claims asserted and the relief sought to determine whether the party has a right or interest related to the claims and essential to their merits such that due process requires the party’s participation in the litigation. *Rachel Carson Trails Conservancy, Inc. v. Department of Conservation and Natural Resources*, 201 A.3d 273, 279 (Pa. Cmwlth. 2018).

This Court very recently applied this indispensability standard in *Republican National Committee v. Schmidt* (Pa. Cmwlth., No. 447 M.D. 2022, filed March 23, 2023) (Ceisler, J.) (single-judge op.) (*RNC II*), where the petitioners, who included the Republican Intervenors here, filed a petition for review in the Court’s original jurisdiction against then-Acting Secretary Al Schmidt, the Director of the Pennsylvania Bureau of Election Services and Notaries, and all 67 county boards of elections. The petitioners challenged certain “notice and cure” procedures that various county boards of elections had developed to pre-canvass mail-in and absentee ballots to check for voter errors in completing the signature and secrecy envelope requirements set forth in the Pennsylvania Election Code<sup>3</sup> (Election Code).

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<sup>3</sup> Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

*Id.*, slip op. at 2. The respondents preliminarily objected to this Court’s exercise of subject matter jurisdiction, and, in a single-judge opinion, we agreed and dismissed the petition. Although the petitioners in *RNC II* challenged certain guidance issued by the Secretary regarding election procedures, this Court nevertheless concluded that such guidance did not sufficiently relate to the claims in the case, which centered on procedures developed by county boards. *Id.* at 20. This Court concluded:

[The p]etitioners have not made any claims implicating the duties and responsibilities of the [ ] Secretary under the Election Code . . . . Although the [ ] Secretary may have a generalized interest in issues surrounding the administration of elections in the Commonwealth and the enfranchisement of voters, generally, the [ ] Secretary’s interests in this regard are not essential to a determination of whether some [c]ounty [b]oards are unlawfully implementing notice and cure procedures with respect to absentee and mail-in ballots that are defective under the Election Code. Further, the [ ] Secretary does not have control over the [c]ounty [b]oards’ administration of elections, as the General Assembly conferred such authority solely upon the [c]ounty [b]oards . . . . Because [the p]etitioners could conceivably obtain meaningful relief with respect to the [c]ounty [b]oards’ purportedly unlawful actions without the [ ] Secretary’s involvement in this case, the [ ] Secretary is not an indispensable party.

*Id.*, slip op. at 20.

The same rationale applies here. The Secretary’s only challenged conduct is the issuance of non-binding guidance that is not mandatory and does not determine whether, or in what circumstances, any county boards of elections count or reject absentee and mail-in ballots that contain an incomplete voter declaration. Indeed, pursuant to the Supreme Court’s decision in *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023), the Secretary *may not* issue guidance to county boards instructing them to count such ballots. Thus, the relief Petitioners seek, namely, a state-wide ban on

enforcement of the voter declaration requirements, can *only* be afforded against county boards of elections. For that reason, the Secretary is not an indispensable party. Because the Secretary is the only Commonwealth officer named as a Respondent, this Court lacks subject matter jurisdiction and should dismiss the Petition for Review.

The Majority's attempt to distinguish *RNC II*'s holding in this regard is wanting. The Majority concludes that *RNC II* is distinguishable because, here, (1) Petitioners name the Secretary as a party with regard to his duties to develop the format of absentee and mail-in ballots and their voter declarations; (2) Petitioners allege that the Secretary has issued inconsistent guidance to county boards in the wake of *Ball*; (3) Petitioners seek relief against the Secretary; and (4) the Secretary will be impacted by our decision. *Black Political Empowerment Project v. Schmidt* (Pa. Cmwlth., No. 283 M.D. 2024, filed August 30, 2024) (MO), slip op. at 46-48. None of these factors establishes the Secretary as an indispensable party.

First, the mere naming of the Secretary as a party avails nothing. Second, the format of mail-in ballots and the required, completed declaration are not at issue in this litigation. Whatever allegations Petitioners may make regarding them are irrelevant. Third, the Secretary's guidance is not binding on county boards of elections and, following *Ball*, any guidance may not as a matter of law direct county boards to count noncompliant ballots. Fourth, the only form of "relief" sought against the Secretary in the Petition for Review is his nominal inclusion in the Prayer for Relief. (Petition for Review, at p. 67.) No specific relief is sought against the Secretary because, as *RNC II* aptly recognized, none can be had. The rationale and holding in *RNC II* therefore is applicable and should be controlling here. Indeed, the



only meaningful difference between this case and *RNC II* in this regard is the identity of the petitioners.

**B. Petitioners cannot maintain an original jurisdiction action against the county boards only.**

By implication, the Court also lacks subject matter jurisdiction over any claims against Respondents Philadelphia County Board of Elections and Allegheny County Board of Elections (County Boards). This Court addressed this issue in *RNC II*, concluding that county boards of elections are local agencies over which the Court may not independently exercise original jurisdiction. (*RNC II*, slip op. at 28.) Simply put, without the participation of an indispensable Commonwealth party, there is no case in this Court.

**C. Given the Commonwealth-wide relief that Petitioners seek (and that the Majority affords), Petitioners have failed to join 65 indispensable county boards of elections.**

Lastly, even assuming that this Court had original jurisdiction over the County Boards, Petitioners fatally have failed to join all 67 county boards of elections against which they undoubtedly seek relief. At the core of this case, Petitioners ask this Court to require all county boards of elections across the Commonwealth to count ballots that include an incomplete voter declaration that *Ball*, at least until now, forbade them from counting. However, and notwithstanding the many allegations in the Petition for Review that reference allegedly aggrieved voters in many other counties, *see, e.g.*, Petition for Review, ¶¶ 4 & n.1, 64, and 76, Petitioners have failed to name any other county boards as Respondents. Without those boards' participation, the sought relief cannot be had. Moreover, any injunction granted against only the named County Boards (like the one the Majority enters today) would (and does) create varying standards for determining the legality

of votes across the Commonwealth and potentially subjects all 67 county boards of elections to an Equal Protection Clause<sup>4</sup> challenge. *See, e.g., Bush v. Gore*, 531 U.S. 98, 106-07 (2000).

For all of these reasons, this Court lacks subject matter jurisdiction over Petitioners' claims, which defect mandates dismissal of the Petition for Review.<sup>5</sup>

## **II. ENFORCEMENT OF THE VOTER DECLARATION REQUIREMENTS DOES NOT VIOLATE THE FREE AND EQUAL ELECTIONS CLAUSE**

Even assuming this Court had jurisdiction to hear this matter, which it does not, Petitioners' claims fail as a matter of law.

### **A. The Constitutionality of Legislation is Strongly Presumed.**

A party seeking to strike down a statute as unconstitutional must meet an extremely high burden. The starting point is the presumption that “all legislative enactments” are constitutional and “[a]ny doubts are to be resolved in favor of a finding of constitutionality.” *Mixon v. Commonwealth*, 759 A.2d 442, 447 (Pa. Cmwlth. 2000); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 801 (Pa. 2018). This presumption of constitutionality is strong. *Mixon*, 759 A.2d at 447. To overcome it, Petitioners **must prove** that the voter declaration requirements “**clearly, palpably, and plainly** violate the [c]onstitution.” *League of Women Voters*, 178 A.3d at 801. Pennsylvania legislators are also, of course, charged with knowledge of the Pennsylvania Constitution. As United States Chief Justice John Marshall pointed out in *Marbury v. Madison*, 5 U.S. 137, 179-80 (1803), legislators,

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<sup>4</sup> U.S. Const. amend. XIV, § 1.

<sup>5</sup> I acknowledge that Petitioners' standing to bring this action originally was challenged by preliminary objection. For purposes of this dissent, I assume without concluding that Petitioners' standing is established.

having taken the same oath as we take, surely are as committed to fidelity to the constitution as are we. Accordingly, we must, without reservation, assume that the drafters of Sections 1306(a) and 1306-D(a) of the Election Code,<sup>6</sup> 25 P.S. §§ 3146.6(a), 3150.16(a), were aware of the Free and Equal Elections Clause.

**B. The Free and Equal Elections Clause guarantees voters equal opportunity and power to elect their representatives; it does not guarantee the counting of ballots that do not comply with neutral and objective ballot-casting rules.**

Originally adopted in 1790, the Free and Equal Elections Clause provides:

**Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.**

Pa. Const. art. I, § 5 (emphasis added). Elaborating on the meaning of the Clause, our Supreme Court has opined that

elections are free and equal within the meaning of the Constitution when they are public and open to all qualified electors alike; when every voter has the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself[;] and when no constitutional right of the qualified elector is subverted or denied him.

*Shankey v. Staisey*, 257 A.2d 897, 899 (Pa. 1969) (quoting *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914)).

Pennsylvania precedent does not permit regulation of the right to vote in a fashion that denies the franchise, or “**make[s] it so difficult as to amount to a denial.**” *Winston*, 91 A. at 523 (emphasis added). The spirit of the Free and Equal

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<sup>6</sup> Relevant here, Sections 6 and 8 of Act 77 amended Section 1306, added by Section 11 of the Act of March 6, 1951, P.L. 3, and added Section 1306-D to the Election Code.

Elections Clause “requires that each voter shall be permitted to cast a free and unintimidated ballot.” *DeWalt v. Bartley*, 24 A. 185, 186 (Pa. 1892). The framers of the Clause chiefly sought to remedy the “dilution of the right of the people of this Commonwealth to select representatives to govern their affairs based on considerations of the region of the state in which they lived, and the religious and political beliefs to which they adhered.” *League of Women Voters*, 178 A.3d at 808-09. Thus, our Supreme Court noted long ago that “free and equal” election laws enacted by the General Assembly must “arrange all the qualified electors into suitable districts[] and make their votes equally potent in the election[] so that some shall not have more votes than others . . . .” *Id.* at 809 (quoting *Patterson v. Barlow*, 60 Pa. 54, 75 (1869)). Laws that “dilut[e] the potency” of an individual’s vote relative to other voters therefore will violate the Clause. *Id.*

In keeping with these principles, our courts have applied the Free and Equal Elections Clause to invalidate voting laws only in those instances where the law denied voters the right to cast their vote and have their vote counted. For example, in *Applewhite v. Commonwealth*, 54 A.3d 1 (Pa. 2012), at issue was the initial implementation of a prior version of the voter photo identification (ID) law. *See* Former Section 1210 of the Election Code, *formerly* 25 P.S. § 3050. Various low-income and homeless petitioners sought an injunction against a recently implemented voter identification law, arguing that it would prevent qualified and eligible electors from voting in violation of the Free and Equal Elections Clause because the voters would not have enough time to learn about the law’s requirements and obtain the necessary identification. *Applewhite*, 54 A.3d at 4-5. In particular, the question was whether the voters had adequate access to the free ID that the law provided to those who did not have any other qualifying ID. *Id.* The plaintiffs

argued that the voter ID law was being implemented in a manner that denied Pennsylvanians their fundamental right of suffrage under the Free and Equal Elections Clause. *Id.* The Pennsylvania Department of Transportation was requiring an original or certified copy of a birth certificate or its equivalent, along with a social security card and two forms of documentation showing current residency. It was clear that some qualified, low-income and homeless voters would be unable to meet these requirements because they either did not have an adequate opportunity to become educated about the requirements and navigate the process or, because of age, disability, and/or poverty, they would be unable to meet the requirements in time for the upcoming election. The petitioners argued that it was being implemented in a manner that denied Pennsylvanians their fundamental right of suffrage under the Clause. *Id.* This Court denied the injunction, but the Supreme Court reversed the denial and remanded the case so we could consider the issue further. In doing so, the Supreme Court

agree[d] with [the petitioners'] essential position that if a statute violates constitutional norms [viz., the Free and Equal Elections Clause] in the short term, a facial challenge may be sustainable even though the statute might validly be enforced at some time in the future. Indeed, the most judicious remedy, in such a circumstance, is the entry of a preliminary injunction, which may moot further controversy as the constitutional impediments dissipate.

*Id.* at 5.

On remand, this Court was tasked with considering whether the flaws in the implementation of the voter photo ID law could be cured prior to the election. *Applewhite v. Commonwealth* (Pa. Cmwlth., No. 330 M.D. 2012, filed Jan. 17, 2014) (McGinley, J.) (single-judge op.). Finding that it could not, we enjoined under the

Free and Equal Elections Clause the implementation of the voter ID law because the legislation did not provide for a “non-burdensome provision of a compliant photo ID to all qualified electors.” *Id.*, slip op. at 34. We concluded that the law could not stand because the law’s identification requirements disproportionately burdened low-income and homeless voters, who were less likely to have a compliant ID and would face difficulty obtaining compliant identification. *Id.*, slip op. Appendix A, at 32-34. Thus, in that situation, this Court held that the voter ID law renders Pennsylvania’s fundamental right to vote so difficult to exercise as to cause a *de facto* disenfranchisement. *Id.*, slip op. at 44-45.

Similarly, in *In re New Britain Borough School District*, 145 A. 597 (Pa. 1929), a law was struck down because it, in substance, granted the right to vote to a group of voters while denying it to another group. There, the Supreme Court struck down a legislative act that created voting districts for elective office that had the inadvertent effect of depriving voters in a new borough of their right to vote for school directors. In that case, the legislature created a new borough from parts of two existing townships and created a school district which overlapped the boundaries of the new borough. The law at issue directed that, “when a new school district is hereafter formed by the creation of a new city, borough, or township, the court of common pleas having jurisdiction shall determine and enter in its decree the class of school districts to which such new district shall belong, and shall appoint a board of school directors.” *Id.* at 597 (additional quotations omitted). The trial court declared a new school district of the fourth class and appointed a board of school directors in the county in which the district was situated. *Id.* Residents of each of the former townships challenged the constitutionality of the effect of the combination of their former respective school districts under the Free and Equal

Elections Clause, arguing that they had been deprived of their right to select school directors.

The Supreme Court agreed and found that the residents of the two former school districts were effectively denied their right to elect representatives of their choosing to represent them on a body which would decide how their tax monies were spent. The Court noted that the residents of the newly-created school district could not lawfully vote for representatives on the school boards of their prior districts, given that they were no longer legally residents thereof, and they also could not lawfully vote for school directors in the newly created school district, given that the ballot for every voter was required to be the same, and, because the new school district had not been approved, the two groups of borough residents would each have to be given separate ballots for their former districts. *Id.* at 599. In the Court's discussion of the Free and Equal Elections Clause, it noted that the law's effect was to bar the voters in the new district from participating in the election of school directors, when taxpayers in fourth class school districts had that right. *Id.* The Court emphasized that the rights protected by the Free and Equal Elections Clause may not be taken away by an act of the legislature, and that that body is prohibited by this Clause from interfering with the exercise of those rights, even if the interference occurs by inadvertence. *Id.*

The circumstances in *Applewhite* and *In re New Britain*, which impacted the **right** to vote, simply are not present here. Section 1306(a) of the Election Code relates to voting by absentee electors and provides, in relevant part, that an absentee "elector shall . . . **fill out, date and sign the declaration** printed on" the second, or outer, envelope "on which is printed the form of declaration of the elector," among other things. 25 P.S. § 3146.6(a). Section 1306-D(a) similarly

provides, in relevant part, that a mail-in “elector shall . . . **fill out, date and sign the declaration** printed on” the second, or outer, envelope “on which is printed the form of declaration of the elector,” among other things. 25 P.S. § 3150.16(a). Petitioners’ challenge to the nuts-and-bolts of election administration cannot be equated with state laws that deny equality of voting power, which are the principal types of state actions that the Supreme Court has declared to violate the Free and Equal Elections Clause. The voter declaration requirements are neutral ballot-casting rules governing **how** voters complete their voter declaration and cast their mailed ballots. On their face, the voter declaration requirements, which require the voter to date and sign the declaration, comport with the Free and Equal Elections Clause by granting to every Pennsylvania voter “the same free and equal opportunity” to either vote by mail in compliance with the Election Code **or** vote in person. The Election Code thus carries out the Clause’s mandate that all Pennsylvania voters wield “equally effective power to select [their] representative[s,]” so long as they “follow the requisite voting procedures.” *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 373 (Pa. 2020) (quoting *League of Women Voters*, 178 A.3d at 809).

Yet, without any legal analysis whatsoever, the Majority summarily posits that applying the voter declaration requirements to exclude undated or misdated ballots restricts the right to vote **to only those voters who correctly handwrite the date** on their declaration and **denies the right to vote to those who do not**. In other words, the Majority reckons that the voter declaration requirements **restrict the right to vote to only those voters who comply with the instructions to date their declarations**. This holding is wholly conclusory and contrary to sound reasoning. First, as correctly understood, the Free and Equal Elections Clause does not apply here because Petitioners have not challenged a law that, *de jure* or *de facto*,



**grants the right to vote** to some while **denying the vote to others**. The voter declaration requirements on their face make no distinctions whatsoever and do not grant or deny anyone's right to vote. The analysis can, and should, end here.

To get around this, though, the Majority creates two illusory classes: those who correctly complete their voter declarations and those who do not. The Majority then hastily concludes that the voter declaration requirements make voting so difficult for those who do not properly complete their ballot declarations that they are denied the right altogether, all without conducting any analysis of the **actual difficulty** relative to every other generic and neutral ballot-casting requirement of the Election Code, a comparison that is part of any Free and Equal Elections Clause analysis. To be sure, aside from the simple requirement to complete the declaration itself by adding the date, the Majority identifies no obstacle that blocks or seriously hinders voting.

The Majority likewise fails to consider Pennsylvania's voting system as a whole and the other voting methods made available to voters, a comparison with which is essential to assessing any alleged difficulty imposed on voting. As I explain below, to properly assess the difficulty imposed by the voter declaration requirements, we must consider the totality of the circumstances to determine if the requirements' **objective** difficulty denies the franchise. As I will demonstrate, the only sound conclusion in this respect is that voters who **choose** to vote by mail and fail to date their voter declarations labor under no unconstitutional difficulty and have the same right to vote as every other voter.

**C. The voter declaration requirements do not make voting so difficult that they effectively deny the franchise.**

**1. The totality of the circumstances should be considered.**

To reiterate: disenfranchisement under the Free and Equal Elections Clause means the denial of an **equal opportunity to participate in the electoral process** that thereby precludes an individual from exercising his or her **rights** to vote and have the vote counted. Judged by **this** test, enforcement of the voter declaration requirements cannot be invalidated on the grounds that they offend the Free and Equal Elections Clause.

First, the voter declaration requirements do not deny any qualified electors the right to vote. **By operation** they treat alike all voters who choose to vote by mail, and in **substance** impose no classifications. Any purported classification between those who comply with the requirements and those who do not has been created out of whole cloth. The requirements are facially neutral because they require **all** mail-in and absentee voters, regardless of their age, race, sex, religion, or creed, to place a date next to the signature on their ballot declaration. In my view, also critical to the analysis is the fact that Pennsylvania provides multiple ways to vote—not just by mail. Our citizens are free to cast their vote for their candidate of choice by mail-in, absentee, **or** in-person vote. Where a voter fails to comply with a ballot-casting rule that applies to only a subset of these methods, discounting that voter’s ballot does not constitute an abridgment of the right to vote when the voter could have easily avoided the requirement.

In *Brnovich v. Democratic National Committee*, 594 U.S. 647 (2021), the United States Supreme Court considered a challenge to the Democratic National Committee (DNC)’s challenges to two of three methods of voting in Arizona under the Voting Rights Act of 1965 (VRA)<sup>7</sup>: precinct-voting on election day and early

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<sup>7</sup> 42 U.S.C. §§ 10101-10702.

mail-in voting.<sup>8</sup> In Arizona, if a voter votes in the wrong precinct, the vote is not counted. For Arizonans who vote early by mail, Arizona makes it a crime for any person other than a postal worker, an elections official, or a voter’s caregiver, family member, or household member to knowingly collect an early ballot—either before or after it has been completed. *Id.* at 661-62. The DNC and certain affiliates filed suit, alleging, *inter alia*, that Arizona’s refusal to count ballots cast in the wrong precinct and its ballot-collection restriction had an adverse and disparate effect on Arizona’s American Indian, Hispanic, and African American citizens in violation of Section 2(a) of the VRA, 52 U.S.C. § 10301(a).<sup>9</sup> *Id.* at 662.

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<sup>8</sup> Arizona also permits voters to vote at a “voting center” in their county of residence. That aspect of voting was not challenged.

<sup>9</sup> The VRA provides:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in [S]ection 10303(f)(2) of this title, as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this [S]ection establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

52 U.S.C. § 10301.

The U.S. Supreme Court, looking at the “the totality of circumstances,” identified certain guideposts that can help courts decide Section 2 cases. I believe those may be helpful here because both Section 2 of the VRA and our Free and Equal Elections Clause (1) concern counting votes, (2) require a showing that the political processes leading to an election are not equally open to all voters, and (3) require a showing that that some voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. *See* 52 U.S.C. § 10301(b). One of the guideposts identified as useful by the U.S. Supreme Court in deciding Section 2 equal openness cases (which I submit is applicable to other time, place, or manner-of-casting-ballots vote denial cases) was to examine “the opportunities provided by the State’s entire system of voting.” *Id.* at 671. Justice Alito, delivering the opinion of the Court, explained that

courts must consider the opportunities provided by a State’s **entire system of voting when assessing the burden imposed by a challenged provision**. This follows from [Section] 2(b)’s reference to the collective concept of a State’s “political processes” and its “political process” **as a whole**. Thus, **where a State provides multiple ways to vote, any burden imposed on voters who choose one of the available options cannot be evaluated without also taking into account the other available means**.

*Id.* (emphasis provided).

With regard to Arizona’s out-of-precinct policy, the *Brnovich* Court concluded that even if it is marginally harder for Arizona voters to find their assigned polling places, the State offers other easy ways to vote:

Any voter can request an early ballot without excuse. Any voter can ask to be placed on the permanent early voter list so that an early ballot will be mailed automatically. Voters may drop off their early ballots at any polling place, even one to which they are not assigned. And for nearly a month

before election day, any voter can vote in person at an early voting location in his or her county.

*Id.* at 680. Regarding the alleged burden caused by Arizona’s ballot-collection restriction, the Court considered that there were other means of voting:

Arizonans who receive early ballots can submit them by going to a mailbox, a post office, an early ballot drop box, or an authorized election official’s office within the 27-day early voting period. They can also drop off their ballots at any polling place or voting center on election day, and in order to do so, they can skip the line of voters waiting to vote in person.

*Id.* at 683.

In the end, the Court, considering several other guideposts, *see infra*, upheld Arizona’s rules. Taking instruction from *Brnovich*, I believe we must consider the totality of the circumstances by looking at our political process as a whole, when deciding if the voter declaration requirements of the Election Code are so difficult so as to amount to the denial to vote under the Free and Equal Elections Clause. Like Arizona, Pennsylvania makes it very easy to vote and provides multiple ways to do so. Voters may cast their votes on Election Day in person. All qualified voters can vote by mail without providing a specific reason for not being able to vote in person on Election Day.<sup>10</sup> Voters who are unable to be present in their election district on Election Day due to duties, business, occupation, or physical incapacity can vote via absentee ballots.<sup>11</sup> An elector may legally receive assistance in filling out the absentee ballot if the elector has a physical disability that “renders

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<sup>10</sup> Section 1301-D(a) of the Election Code, added by Act 77, 25 P.S. § 3150.11(a).

<sup>11</sup> Section 1306-D(a) of the Election Code, 25 P.S. § 3150.16(a).

him unable to see or mark . . . the ballot.”<sup>12</sup> These methods provide Pennsylvania voters with multiple options to exercise their right to vote, accommodating varying needs and circumstances. The “difficulty” of the mail-in vote procedures must be considered in light of these other options. Any voter may **avoid** the voter declaration requirements by selecting in-person voting. The voter declaration requirements affect only one method of voting among several. All electors are **not** subject to the requirement to sign and date a voter declaration. The voter declaration requirements cannot violate the Free and Equal Elections Clause **merely because a voter chooses not to take advantage of the other avenues available to cast his or her ballot that do not involve having to sign and date a declaration.**

Every electoral law and regulation necessarily has some impact on the right to vote. The U.S. Supreme Court recognized as much in *Burdick v. Takushi*, 504 U.S. 428 (1992), observing that “[e]lection laws will invariably impose some burden upon individual voters.” *Id.* at 433. However, not every election requirement rises to the level of a burden that seriously blocks or hinders the right to vote. Indeed, our Supreme Court has already resolved that the voter declaration requirements do not “make it . . . difficult” to vote, let alone “so difficult as to amount to a denial” of “the franchise.” *See Pennsylvania Democratic Party* (rejecting as invalid a claim under the Free and Equal Elections Clause based exclusively on any “difficulty” created by a voter’s noncompliance with minor and neutral ballot-casting rules specifically with regard to absentee and mail-in voting) (discussed more fully *infra*).

In *Brnovich*, the U.S. Supreme Court identified another “guidepost” that is useful in considering the measure of the burden imposed which involves

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<sup>12</sup> Section 1306.1 of the Election Code, added by the Act of August 13, 1963, P.L. 707, 25 P.S. § 3146.6a.

comparison between the challenged law’s burden and the “usual burdens of voting.”

It explained that

the concepts of ‘open[ness]’ and ‘opportunity’ connote the absence of obstacles and burdens that block or seriously hinder voting, and therefore the size of the burden imposed by a voting rule is important. After all, **every voting rule imposes a burden of some sort. Voting takes time and, for almost everyone, some travel, even if only to a nearby mailbox. Casting a vote, whether by following the directions for using a voting machine or completing a paper ballot, requires compliance with certain rules. But because voting necessarily requires some effort and compliance with some rules, the concept of a voting system that is “equally open” and that furnishes an equal “opportunity” to cast a ballot must tolerate the “usual burdens of voting.”** *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 198 . . . (2008) (opinion of Stevens, J.).

594 U.S. at 669 (emphasis added).

The *Brnovich* Court concluded that neither Arizona’s out-of-precinct rule nor its ballot-collection law exceed the usual burdens of voting. With regard to the out-of-precinct law, it concluded that “[h]aving to identify one’s own polling place and then travel there to vote does not exceed the ‘usual burdens of voting.’” *Id.* at 678. It found those tasks to be the “quintessential examples of the usual burdens of voting” and “unremarkable burdens.” *Id.* at 678. With regard to the ballot-collection law, it reasoned,

Arizonans who receive early ballots can submit them by going to a mailbox, a post office, an early ballot drop box, or an authorized election official’s office within the 27-day early voting period. They can also drop off their ballots at any polling place or voting center on election day, and in order to do so, they can skip the line of voters

waiting to vote in person. **Making any of these trips—much like traveling to an assigned polling place—falls squarely within the heartland of the “usual burdens of voting.”**

*Id.* at 683.

Here, when compared to the usual burdens of voting, the unremarkable requirement to date one’s voter declaration **in the space provided** when using the mailed ballot option cannot conceivably be deemed to exceed the “usual burdens of voting.” In fact, this mundane task **is a quintessential example** of the “usual burdens of voting.” All voting procedures place some burdens on voting. Voting in person is itself burdensome to many; it requires voters to be at the polling place by 8:00 p.m. on Election Day—which is a workday and not a national holiday. The burdens of voting in person include finding a method to transport oneself to a polling place during the voter’s off hours on Election Day and waiting in line to vote, by a deadline set by statute. *League of Women Voters of Delaware v. Department of Elections*, 250 A.3d 922 (Del. 2020) (requirement that absentee and mail-in ballots be received by Election Day did not violate Delaware’s free and equal elections clause). Based on my evaluation of these relevant factors in context of the totality of the circumstances, I conclude that the voter declaration requirements of the Election Code are not even remotely in violation of our Free and Equal Elections Clause.

**2. The Voter Declaration Requirements are ballot-casting requirements that do not affect voter eligibility.**

Without question, the legislature has the power to provide a standard for completing the voter declaration. The requirement to complete an attestation or declaration to accompany mailed ballots is a statutory question for policymakers, rather than a constitutional question for the judiciary. The Commonwealth “may



enact substantial regulation containing reasonable, non-discriminatory restrictions to ensure honest and fair elections that proceed in an orderly and efficient manner.” *Banfield v. Cortes*, 110 A.3d 155, 176-77 (Pa. 2015). Indeed, “[t]he right to vote is the right to participate in an electoral process that is **necessarily structured to maintain the integrity of the democratic system.**” *Burdick*, 504 U.S. at 441 (emphasis added).

It is also axiomatic that “[t]he judiciary may not sit as a super legislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceeds along suspect lines.” *Mercurio v. Allegheny County Redevelopment Authority*, 839 A.2d 1196, 1203 (Pa. Cmwlth. 2003) (internal citations omitted); *see also Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) (“Courts do not substitute their social and economic beliefs for the judgment of legislative bodies, [which] are elected to pass laws.”). Indeed, courts should be cautious before: “**swoop[ing] in and alter[ing]** carefully considered and democratically enacted state election rules when an election is imminent. That important principle of judicial restraint not only prevents voter confusion but also prevents election administrator confusion—and thereby protects the State’s interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.” *Democratic National Committee v. Wisconsin State Legislature*, 141 S. Ct. 28, 31 (2020) (Roberts, C.J., concurring) (emphasis added).

Like the U.S. Supreme Court, our Supreme Court has faithfully adhered to the rule of legislative primacy to set ballot-casting rules. It has never used the Free and Equal Elections Clause to strike down a neutral ballot-casting rule governing how voters complete and cast their ballots. In *Pennsylvania Democratic*

*Party*, 238 A.3d at 372-80, our Supreme Court expressly upheld against Free and Equal Elections Clause challenges to the declaration mandate—of which the date requirement is part—and the secrecy-envelope rule. In so doing, our Supreme Court recognized that “[w]hile the Pennsylvania Constitution mandates that elections be ‘free and equal,’ it leaves the task of effectuating that mandate to the [l]egislature.” *Id.* at 374.

Long ago, in *Winston*, the Supreme Court warned against undue judicial encroachment upon the General Assembly’s prerogative to establish election procedures:

The power to regulate elections is a legislative one, and has been exercised by the General Assembly since the foundation of the government. Legislation may be enacted which regulates the exercise of the elective franchise, and does not amount to a denial of the franchise itself. . . . [B]allot and election laws have always been regarded as peculiarly within the province of the legislative branch of government, and should never be stricken down by the courts unless in plain violation of the fundamental law.

91 A. at 455 (citations omitted). The *Winston* Court also reminded Pennsylvania jurists that separation of powers principles are of particular import in election matters:

[i]f it were our duty to make the law, no doubt some of its provisions would be written differently; but we cannot declare an act void because in some respects it may not meet the approval of our judgment, or because there may be difference of opinion as to its wisdom upon grounds of public policy. Questions of this character are for the [General Assembly] and not for the courts. If the restrictions complained of in this proceeding are found to be onerous or burdensome, the [General Assembly] may be appealed to for such relief, or for such amendments, as the people may think proper to demand.

*Id.* at 462-63. Further,

[t]he legislature has from time to time passed various laws to regulate elections. The object has always been to protect the purity of the ballot. It is too late to question the constitutionality of such legislation, so long as it merely regulates the exercise of the elective franchise, and does not ‘deny the franchise itself.’ *See, also Patterson v. Barlow*, 60 Pa. 54. Abundance of authority might be cited, were it necessary. **The test is whether such legislation denies the franchise, or renders its exercise so difficult and inconvenient as to amount to a denial.**

*DeWalt*, 24 A. at 186 (emphasis added).

Our Supreme Court has routinely declined to find a constitutional violation where the law at issue merely **regulates the exercise of** the elective franchise and does not deny or dilute the franchise itself. Justice Todd emphasized this recently in *League of Women Voters*, 178 A.3d at 809, noting that the Court has “infrequently relied on this provision to strike down acts of the legislature pertaining to the conduct of elections.”

For example, in *Working Families Party v. Commonwealth*, 209 A.3d 270, 271 (Pa. 2019), our Supreme Court rejected a Free and Equal Elections Clause challenge specifically because certain election rules, which in some sense **impacted** elections, nevertheless did not deprive any voters of either the *right* to vote or equal **power** to elect the representatives of their choice. In *Working Families Party*, the Court considered the constitutionality of provisions of the Election Code that prohibit fusion, the process by which two or more political organizations place the same candidate on the ballot in a general election for the same office. In rejecting the Free and Equal Elections Clause challenge to the anti-fusion provisions, the Court determined:

The overarching objective of [the Free and Equal Elections Clause] of our constitution is to prevent dilution of an individual's vote by mandating that the power of his or her **vote** in the selection of representatives be equalized to the greatest degree possible with all other Pennsylvania citizens. Viewed from this perspective, [the a]ppellants **have not established that their votes were diluted by the ban against cross-nomination.** Here, Appellants had the **opportunity to support and vote for the candidate of their choice** in the 2016 general election. In no sense were their votes diluted by the fact that Rabb appeared on the ballot only as the candidate of the Democratic Party. **Here, [the a]ppellants had "the same right as every other voter," and thus the foundational principle underlying Article I, [s]ection 5 is not offended.** See *Winston*, 91 A. at 523.

*Id.* at 282 (emphasis added). *Working Families Party* makes clear, then, that procedural voting rules violate the Free and Equal Elections Clause only when they, in effect, offend its central purpose to prohibit (1) the outright denial of the **opportunity** or **right** to vote and (2) the inequitable dilution of particular voters' power to vote for the candidate of their choice.

I also find *Scribner v. Sachs*, 164 N.E.2d 481 (Ill. Sup. 1960) to be instructive on this point. There, a statutory election provision expressly stated that voters must mark their paper ballots by making a cross (x) in the space next to the candidate of their choice. In concluding that the requirement did not violate the state's free and equal elections clause, the court noted that the state constitution left to the legislature the manner of holding an election. It reasoned that

millions of electors cast their votes on proposed amendments and the possible symbols or words that could be used to express their intent is numberless. There are thousands of election officials who must interpret such symbols and words, and what may be clear to one official

may be ambiguous to another. Therefore, it is necessary as well as usual and ordinary for the legislature to provide some standard for marking the ballot in order to prevent fraud and to [e]nsure uniformity as to which ballots are to be counted. We cannot, therefore, accept contestants' argument that the legislature has no power . . . to provide for the method of marking a ballot when a proposed amendment is submitted to the electors.

It is also argued that to require a [(x)] in voting on a proposed constitutional amendment violates section 18 of article II of the Illinois constitution which provides for free and equal elections, that it creates an unreasonable interference with a citizen's privileges and immunities . . . . This argument is based on the premise that the legislature, by giving effect to a ballot marked only with a [(xx)], is discriminating against and giving less influence to the ballot marked with a check or 'yes.'

As we have indicated the legislature has the power to provide a standard for marking a ballot. The standard set by the legislature is to mark the ballot with a [(x)]. **This requirement is applicable to all voters. There is no question of equal protection, due process, greater influence, et cetera, until a voter has failed to follow the standard set by the legislature. At this point it is not the statute that produces the result of which the contestants complain but the act of the voter in not following the definite and unambiguous standard set by the legislature.**

*Id.* at 491.

Here, the voter declaration requirements simply require a voter to sign and date his/her voter's declaration. This **requirement is applicable equally** to all voters. There is no question of the denial of the franchise, inequality, greater influence, or difficulty, etc., **until a voter has failed to follow the standard set by the legislature.** All voters have **the same opportunity** to vote by mail and to

comply with the simple rule to date the declaration. At this point it is not the Election Code provisions that produce the result of which Petitioners complain, but, rather, it is the act of the voter in not following the definite and unambiguous standard set by the legislature.

**3. A voter does not suffer constitutional harm when his or her ballot is rejected because he failed to follow ballot-casting rules enacted by the General Assembly.**

The Majority merely assumes, without elaboration, that a voter necessarily suffers constitutional harm when his/her ballot is rejected because he/she failed to follow the regulation for whatever reason. Unlike the Majority, I do not equate a voter's failure to comply with a simple ballot-casting rule with a deprivation of that voter's free and equal **opportunity** to select his or her representatives. Our Supreme Court has held that a voter does not suffer constitutional harm when his ballot is rejected because he failed to follow the rules the General Assembly enacted for completing or casting it. In *Pennsylvania Democratic Party*, our Supreme Court already upheld the mandatory application of the **entire** declaration mandate for mail ballots—which encompasses the “fill out, date, and sign” requirements—without requiring an opportunity to cure. 238 A.3d at 372-74 (quoting 25 P.S. §§ 3146.6(a), 3150.16(a) (emphasis added). As Justice Baer, speaking for the Court explained, **the Free and Equal Elections Clause does not require counting mail ballots that “voters have filled out incompletely or incorrectly,”** even where voters have committed only “minor errors” on the declaration. *Id.* at 374 (emphasis added). Justice Baer went on to explain that

**so long as a voter follows the requisite voting procedures, he or she will have an equally effective power to select the representative[s] of his or her choice,**

which is all the Free and Equal Election Clause guarantees. *Id.* at 373 (emphasis added).

In *Pennsylvania Democratic Party*, the Supreme Court rejected the petitioner’s argument that minor technical errors, such as not completing the voter declaration or using an incorrect ink color to complete the ballot should not be used to disenfranchise voters. There, petitioner argued, *inter alia*, that the lack of an opportunity to cure such facial defects impeded the right to vote. The petitioner relied upon the Free and Equal Elections Clause to contend that “[t]echnicalities should not be used to make the right of the voter insecure.” 238 A.3d at 372. The Supreme Court rejected the argument, concluding that “the [e]lection [b]oards are not required to implement a ‘notice and opportunity to cure’ procedure for mail-in and absentee ballots that voters have filled out incompletely or incorrectly.” *Id.* at 374. The Supreme Court reasoned that the Free and Equal Elections Clause is violated where “application of the statutory language to the facts of [an] unprecedented situation results in an as-applied infringement of electors’ right to vote,” **but not where “a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of [Election Code] requirements[.]”** *Id.* at 362, 374 (emphasis added). In making this determination, and heeding its own cautionary admonitions from *Winston*, the Court explained:

**While the Pennsylvania Constitution mandates that elections be “free and equal,” it leaves the task of effectuating that mandate to the [l]egislature.** As noted herein, although the Election Code provides the procedures for casting and counting a vote by mail, it does not provide for the notice and opportunity to cure procedure sought by [the p]etitioner. **To the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, we agree that the decision to provide a**

**notice and opportunity to cure procedure to alleviate that risk is one best suited for the [l]egislature.**

*Id.* (emphasis added) (some internal quotations and citations omitted). Thus, the Pennsylvania Supreme Court already has rejected as invalid any claim under the Free and Equal Elections Clause based exclusively on any “difficulty” created by a voter’s noncompliance with minor and neutral ballot-casting rules specifically with regard to absentee and mail-in voting. This portion of *Pennsylvania Democratic Party* is controlling here and should have concluded the Majority’s analysis. But the Majority does not mention, let alone apply, the Pennsylvania Supreme Court’s rationale in this respect.

**4. The Voter Declaration Requirements do not implicate voting eligibility—the “right” to vote.**

Contrary to the Majority’s assessment, Petitioners’ constitutional challenge implicates only the opportunity to vote **by mail**—not the more fundamental eligibility to vote. As Intervenors correctly point out, the right to vote in any particular manner is not absolute. *See Burdick*. The voters’ **choice** not to participate in the opportunities Pennsylvania provides, other than by mail, is, at least in part, the cause of their inability to vote – not the voter declaration requirements themselves.

In derogation of all of the above, the Majority has somehow resolved that requiring the voter **to complete his attestation/declaration** and discounting his/her ballot if he/she fails to do so implicates the Free and Equal Elections Clause because it significantly interferes with the fundamental right to vote. However, I am not persuaded that the requirement to date one’s voter declaration is unconstitutional because I disagree that the Free and Equal Elections Clause confers a constitutionally protected right to cast an incomplete ballot. The precedent is clear that it does not.



A full consideration of the challenged voter declaration requirements of the Election Code in context demonstrates that counting an incomplete ballot was not intended by the legislature.

As to the validity of the ballot, the Election Code requires that the voter's declaration be in a particular form, which includes that it be dated and signed. The requirement to date the declaration is an integral part of the voter's attestation, *i.e.*, his/her affirmation that he/she is qualified to vote, and that the ballot inside the envelope represents his/her election choices. It is *prima facie* evidence that the declaration was properly executed on the date stated. In *In re Nov. 3, 2020 General Election*, 240 A.3d 591 (Pa. 2020), our Supreme Court described the voter's declaration as a necessary confirmation that the voter who votes by mail is qualified to vote, and that he/she has not already voted in the election. The voter's declaration accompanies the mailed-in vote as a type of attestation, or oath. Justice Todd recognized that signing and dating one's voter declaration is comprised of both the signature and date:

The **voter's declaration** is a pre-printed statement required to appear on the ballot return envelope containing a voter's absentee or mail-in ballot declaring: that **the voter is qualified to vote the ballot enclosed in the envelope, and that the voter did not already vote in the election for which the ballot was issued.** 25 P.S. § 3146.2. **The declaration also contains lines for the voter to print his or her name and address, a space for the voter to sign his or her name or make a mark if unable to sign, and a space for the voter to enter the date on which he or she executed the declaration.** *Id.* § 3146.6.

240 A.3d at 595 n.4 (emphasis added).

In *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 General Election*, 241 A.3d 1058, 1065 (Pa. 2020), the Supreme Court again regarded the declaration as an oath or affirmation, explaining that a signed voter declaration, attests, on pain of criminal penalty,<sup>13</sup> that the elector, *inter alia*, (1) is qualified to vote from the stated address; (2) has not already voted in the election; and (3) is qualified to vote the enclosed ballot.

The requirement to sign and date documents is deeply rooted in legal traditions that prioritize clear and consensual agreements, ensuring that all parties are aware of and agree to the terms at a specific time. The purpose of signing a document is to authenticate it, which means to verify that it comes from the person whose name is signed and to confirm that the signer agrees to the contents or obligations stated within the document. It is part of the authentication process. Including the date next to one's signature confirms the act of subscription and is as important as the signature itself in the declaration. It is all part of the same transaction, *i.e.*, declaring that the ballot cast by the particular voter is valid. When we strip the date from the signature and consider it in isolation, we distort the significance of the declaration itself. For that reason, I take issue with the Majority's focus on whether the date, divorced from the rest of the voter declaration requirements, has any purpose **to the election boards**. The Majority accepts

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<sup>13</sup> See Section 1853 of the Election Code, added by the Act of January 8, 1860, 25 P.S. § 3553 (“If any person shall sign an application for absentee ballot, mail-in ballot or declaration of elector on the forms prescribed **knowing any matter declared therein to be false, or shall vote any ballot other than one properly issued to the person, or vote or attempt to vote more than once in any election for which an absentee ballot or mail-in ballot** shall have been issued to the person, or shall violate any other provisions of Article XIII or Article XIII-D of this act, the person **shall be guilty of a misdemeanor of the third degree**, and, upon conviction, shall be sentenced to pay a fine not exceeding two thousand five hundred dollars (\$2,500), or be imprisoned for a term not exceeding (2) years, or both, at the discretion of the court.”) (emphasis added).

Petitioners' contention that the date aspect of the voter declaration requirements serves no purpose. By couching it in such terms (no need to **date "the ballot"** because timeliness of mail ballots is established through the county board's scanning of a unique barcode), it allows Petitioners to steer the focus on the usefulness or uselessness of the **date of the ballot to the election boards**, when that really is not the issue at all. Asking and answering the question of whether the date "of the ballot" is useful to the **election boards** is misguided. The date is an integral part of the voter's attestation, *i.e.*, his/her declaration that he/she is qualified to vote, and that the ballot inside the envelope represents his/her choices. The date requirement must be considered in that context, not in isolation or in a vacuum, which is exactly what Petitioners and the Majority do when they conclude that "the date of the ballot," by itself, is meaningless to the election boards. **The question is not whether "the date of the ballot," by itself, is meaningless to the election boards, rather, the question in a Free and Equal Elections Clause analysis is whether the requirement to complete a voter declaration, which, of necessity, includes both the signature and date, is "so difficult as to amount to a denial."** *League of Women Voters*, 178 A.3d at 810. Because the date of one's signature is integral to, and part and parcel of, the voter's declaration, the only way to determine its purpose is to consider it in that proper context.

Signing and dating a voter declaration that must accompany a mailed vote is a commonsense procedural necessity, and it amounts to nothing more than a normal and usual step required to vote in Pennsylvania. As I stated above, this familiar task is no more of an imposition than is the exercise of the franchise itself, which can involve waiting in long lines and traveling distances in order to personally cast a ballot on Election Day. The responsibility of the voter is simply to fill out

his/her declaration correctly. It is neither a restraint nor a restriction. It is just one step, of several, that a voter must take in order to vote by mail. The evidence shows that the vast majority of Pennsylvania voters have met that burden and cast their ballots in our elections.

I cannot fathom how it could be considered unconstitutional to discount a ballot **that has an incomplete voter attestation**. No reasonable person would find the obligation to sign and date a declaration to be difficult or hard or challenging. Just like placing the ballot in a secrecy envelope, requiring a completed declaration does not translate into a constitutional violation. *See Pennsylvania Democratic Party*, 238 A.3d at 372-80. Unlike a vote made in person, mail-in and absentee ballots are not face-to-face; no identification is required. The only way to establish the authenticity of one's mailed ballot is to complete the voter declaration by signing and dating it. To say that requiring the voter to complete his/her declaration by including a date is so difficult as to deny one the right to vote, is to find that there can be no reasonable procedures for verification of any vote cast not in person whatsoever.

In order to function properly, elections must have rules, including ballot-casting rules. "The right to vote is the right to participate in an electoral process that is **necessarily structured to maintain the integrity of the democratic system**." *Burdick*, 504 U.S. at 441. As our Supreme Court recognized long ago, the right of suffrage may not be impaired or infringed upon in any way except through fault of the voter himself. *Appeal of Norwood*, 116 A.2d 552 (Pa. 1955). That is precisely what happened here. A subset of voters simply failed to follow the requisite voting procedures. That does not amount to a violation of the Free and Equal Elections Clause. Our Supreme Court has made clear time and again, the

judiciary may not disregard those rules, rewrite them, or declare them unconstitutional simply because a voter failed to follow them and, accordingly, had his or her ballot rejected. Justice Wecht wrote in *2020 Canvass*, “[a] court’s only ‘goal’ should be to remain faithful to the terms of the statute that the General Assembly enacted, employing only one juridical presumption when faced with unambiguous language: that the legislature meant what it said.” 241 A.3d at 1082 (Wecht, J., concurring and dissenting) (emphasis in original). We must adhere to that precept.

Nevertheless, in an effort to portray voter declaration requirements as being “so difficult as to amount to a denial,” Petitioners point to **the number** of ballots discounted for lack of a date. However, Petitioners’ argument is incomplete because they fail to support these figures with any relativity. They provide no meaningful comparison that I believe is necessary to assess the burden or difficulty posed by the rule.

According to the figures relied upon by Petitioners, “10,657” mail ballots were not counted in the 2022 general election due to noncompliance with the date requirement. *See* Pet. Ex. 1 ¶¶ 8-9 (relying on data analysis by a lawyer advocating for invalidation of date requirement in parallel federal challenge). But that represents only 0.85% of the 1,258,336 mail ballots returned statewide in the 2022 general election.<sup>14</sup> **That is not even 1%. A requirement that over 99% of mail voters complied with cannot be “so difficult as to amount to a denial” of the “franchise.”** *League of Women Voters*, 178 A.3d at 810.

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<sup>14</sup> *See* U.S. Election Administration Commission, Election Administration and Voting Survey 2022 Comprehensive Report: A Report from the U.S. Election Assistance Commission to the 118th Congress at 45, 47, [https://www.eac.gov/sites/default/files/2023-06/2022\\_EAVS\\_Report\\_508c.pdf](https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf) (last visited August 22, 2024).

Moreover, this 0.85% noncompliance rate is actually lower than the historic noncompliance rate under the secrecy-envelope requirement.<sup>15</sup> Thus, because the secrecy envelope requirement does not violate the Free and Equal Elections Clause, *see Pennsylvania Democratic Party*, 238 A.3d at 376-80, the Majority is hard-pressed to conclude that the date requirement alone does.

Notably, the figures Petitioners rely on also show that the rate of noncompliance with the date requirement decreased in the 2024 primary elections. According to those figures, only 0.21% (4,000 out of 1,900,000) of all ballots submitted and only **0.56%** of all mail ballots submitted (4,000 out of 714,315) in those elections were rejected due to an incorrect or missing date. *See* Pet. ¶¶ 70, 73 and Exhibit A. Based on Petitioners' own figures, the vast majority of Pennsylvania mail voters therefore again complied with the date requirement. So, I am loath to conclude, as the Majority has, that the raw numbers establish a *per se* burden for purposes of the Free and Equal Elections Clause, especially here where the number of ballots discounted represented less than 1% of the total votes.

Additionally, pointing to the 10,000 ballots that were discounted for lack of a date on the declaration as *per se* evidence of the difficulty of complying with voter declaration requirements, without knowing the number of ballots discounted because they were not **signed**, is an unfair assumption. If the number of ballots discounted as unsigned equals or exceeds the number of ballots discounted for a lack of a date, then, the number of ballots discounted as undated cannot be proof that the dating requirement "make[s] it so difficult [to vote] as to amount to a

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<sup>15</sup> *See* MIT Election & Science Lab, How Many Naked Ballots Were Cast in Pennsylvania's 2020 General Election? (statewide rejection rate for noncompliance with secrecy-envelope requirement around 1%), <https://electionlab.mit.edu/articles/how-many-nakedballots-were-cast-Pennsylvanias-2020-general-election>. (last visited August 24, 2024).

denial” of “the franchise” under the Free and Elections Clause. Without that data we cannot possibly conclude that the number of ballots discounted for a lack of a date is disproportionate to the number of ballots discounted for lack of a signature – which **no one** contends is so difficult so as to amount to a denial of the right to vote.

Rather, the standard under the Free and Equal Clause requires Petitioners to demonstrate objectively how the voter declaration requirements interfere with the right to vote. Petitioners offer no evidence or argument as to why or how adding a date to one’s voter declaration is difficult let alone “so difficult as to amount to a denial” of “the franchise.” Instead, they argue that unconstitutional difficulty is **impliedly** demonstrated by the raw numbers of ballots that were not counted in the past election **due to noncompliance** with the date requirement, which they characterize as a “large section of intelligent voters.” *Black Political Empowerment v. Schmidt*, \_\_\_ A.3d \_\_\_, at \_\_\_ (Pa. Cmwlth., No. 283 M.D. 2024, filed \_\_\_) slip op. at 81. They ask us to conclude that because this subset of voters’ ballots were discounted because their declaration was undated, then the requirement **must**, consequently, be difficult. The Majority adopts Petitioners’ unique “if then” analysis as the standard for evaluating a law’s burdens, but it fails to articulate a coherent constitutional threshold—a point at which such a likelihood renders state voting practices unconstitutional. The Majority provides no framework whatsoever for determining when the numerical differences that are unavoidable in the election setting become constitutionally problematic. It seems to me that the Majority was swayed by the **raw numbers** and avoided applying the true test for evaluating a Free and Equal Elections Clause claim. However, as I just pointed out, the raw numbers do not tell the whole story. Clearly, **the raw numbers** were the whole impetus of, and basis for, this lawsuit. In my view, Petitioners have failed to meet their

extremely high burden of demonstrating that the voter declaration requirements “clearly, palpably, and plainly violate[] the Constitution.” *League of Women Voters*, 178 A.3d at 801.

In *Brnovich*, the U.S. Supreme Court, analyzing Section 2 of the VRA, (the objectives of which are similar to the Free and Equal Elections Clause), cautioned against relying on the **mere** fact that there is some difference in impact, without conducting any meaningful comparison. It explained that

the mere fact there is some disparity in impact does not necessarily mean that a system is not equally open or that it does not give everyone an equal opportunity to vote. The size of any disparity matters. And in assessing the size of any disparity, **a meaningful comparison is essential**. What are at bottom very small differences should not be artificially magnified.

594 U.S. at 671 (emphasis added). **“A policy that appears to work for 98% or more of voters to whom it applies—minority and non-minority alike—is unlikely to render a system unequally open.”** *Id.* at 680 (emphasis added).

Moreover, as one court, engaged in a burden measuring analysis (albeit in context of a Fourteenth Amendment Equal Protection Clause analysis), explained, “[z]eroing in on the abnormal burden experienced by a small group of voters is problematic at best, and prohibited at worst.” *Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612, 631 (6th Cir. 2016). Yet, this is exactly what the Majority has done here. It is contrary to the Supreme Court’s Free and Equal Elections Clause jurisprudence, which turns on the objective burden imposed on **all** voters by the challenged rule—*i.e.*, whether the challenged rule “make[s] [voting] so difficult as to amount to a denial” of “the franchise”—not the number of voters who fail to comply with it. *League of Women Voters*, 178 A.3d at 810. Here **all**



**voters**, regardless of any affiliation or personal characteristic, **are treated the same** – when they choose to vote by mail, they all must complete the voter declaration by signing and **dating** it. The date requirement applies non-discriminately to all voters.

In *Crawford*, 553 U.S. 181, the U.S. Supreme Court upheld an Indiana voter ID law. In support of their Fourteenth Amendment equal protection challenge to a voter ID law that applied non-discriminately to all voters, the plaintiffs urged the Court to consider the burden imposed on the “narrow class of voters” who could not afford or obtain a birth certification and had to return to the circuit court clerk’s office after voting. *Id.* at 200 (opinion of Stevens, J.). The lead opinion refrained from weighing the “special burden” faced by “a small number of voters” because the evidence on the record gave “no indication of how common the problem is,” which made it impossible “to quantify . . . the magnitude of the burden.” *Id.* at 200. In a concurrence, Justice Scalia rejected outright the idea of measuring the burden on a subset of voters. “The Indiana law affects different voters differently, . . . but what petitioners view as the law’s several light and heavy burdens,” he reasoned, “are no more than the different **impacts** of the single burden that the law uniformly imposes on all voters.” *Id.* at 205 (Scalia, J., concurring in the judgment) (emphasis in original). Justice Scalia went on to explain: “To vote in person in Indiana, everyone must have and present a photo ID that can be obtained for free. . . . The Indiana photo-ID law is a generally applicable, nondiscriminatory voting regulation, and our precedents refute the view that individual impacts are relevant to determining the severity of the burden it imposes.” *Id.*

Although *Crawford* involved rule challenges in an equal protection context, there is no reason why the rationale of measuring the burden on voting rights imposed by the rule is not equally applicable in this instance, where Petitioners are

claiming that the dating provisions are so difficult so as to amount to a denial of the right to vote. Burden-measuring is necessary under the Free and Equal Elections Clause to determine whether a rule dilutes or entirely deprives someone of the right or opportunity to vote. That is the whole analysis under that Clause, and it ends there.

I would, however, reject the urge to consider the individual impacts to determine the difficulty in complying with the voter declaration requirements.<sup>16</sup> I believe the Majority has been led astray by Petitioners' raw data, which is highly misleading. In so doing, the Majority, in essence, has concluded that requiring the voter to properly complete his attestation or declaration and discounting his ballot if he fails to do so must be difficult because a subset of voters failed to comply with it. However, a distorted picture can be created by relying on the raw data alone. Properly understood, Petitioners' statistics show only a small disparity that provides little support for concluding that Pennsylvania's political processes are not equally open. *Brnovich*, 594 U.S. at 681.

In summary, I believe the mistake the Majority makes is to confuse its role in this matter by rewriting the Election Code in an attempt to guarantee an errorless election. The failure to complete one's declaration by including the date should invalidate the ballot. I would follow Supreme Court precedent faithfully and leave the sign and date requirement intact and discount ballots that lack a complete attestation or affirmation. Even if that means .85% of the ballots are discounted.

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<sup>16</sup> As one court pointed out, individual impacts from the perspective of the affected voters **may** be relevant where the court is evaluating a **non-uniform rule** under a statute that effects "disparate treatment" on various classes of voters. *See e.g.; Mays v. LaRose*, 951 F.3d 775, 784-85 (6th Cir. 2020). In other words, the evaluation of a law's impact on certain subgroups of affected voters may be appropriate when a law directly distinguishes between those subgroups and accords them different voting rights. However, that analysis is not applicable here because there is no claim that the dating provision effects "disparate" treatment on various classes of voters.

**D. The Majority Incorrectly Applies “Strict Scrutiny”.**

**1. “Strict Scrutiny” does not apply to Free and Equal Elections Clause Challenges; it applies in the Equal Protection context.**

The Majority’s adoption of “strict scrutiny” to invalidate the enforcement of the voter declaration requirements under the Free and Equal Elections Clause is incorrect and reaches the wrong result accordingly. The traditional “scrutiny” analysis has never been utilized to determine whether neutral, objective, universally-applicable ballot-casting rules like the voter declaration requirements violate the Free and Equal Elections Clause. As I already have shown, that Clause guards against unequal voting power, the dilution of one vote compared with another, and the deprivation of the voting franchise altogether by burdensome and prohibitive procedural rules. In contrast, and as discussed below, “scrutiny” analysis is reserved for constitutional challenges, chiefly under the Equal Protection Clause, to distinction-making legislation. Pursuant to such analysis, we apply, as appropriate, varying degrees of scrutiny to determine whether legislative distinctions are precisely drawn to serve government interests of varying levels of importance.

In *League of Women Voters*, the Pennsylvania Supreme Court emphasized the unique analysis that applies to Free and Equal Elections Clause challenges as compared with other types of constitutional claims:

Moreover, and importantly, when properly presented with the argument, our Court entertains as distinct claims brought under the Free and Equal Elections Clause . . . and the federal Equal Protection Clause, and we adjudicate them separately, utilizing the relevant Pennsylvania and federal standards. In *Shankey* . . . , a group of third-party voters challenged a Pennsylvania election statute which specified that, in order for an individual’s vote for a third-party candidate for a particular office in the primary election to be counted, the total number of aggregate votes by third-party voters for that office had to equal or exceed

the number of signatures required on a nominating petition to be listed on the ballot as a candidate for that office. The voters' challenge, which was brought under both the Free and Equal Elections Clause of the Pennsylvania Constitution and the Equal Protection Clause of the United States Constitution, alleged that these requirements wrongfully equated public petitions with ballots, thereby imposing a more stringent standard for their vote to be counted than that which voters casting ballots for major party candidates had to meet.

Our Court applied different constitutional standards in deciding these claims. **In considering and rejecting the Article I, Section 5 claim—that the third-party candidates' right to vote was diminished because of these special requirements—our Court applied the interpretation of the Free and Equal Elections Clause set forth in *Winston, supra*, and ruled that, because the statute required major party candidates and third party candidates to demonstrate *the same numerical level of voter support* for their votes to be counted, the fact that this demonstration was made by ballot as opposed to by petition *did not render the election process unequal*.** By contrast, in adjudicating the equal protection claim, our Court utilized the test for an equal protection clause violation articulated by the United States Supreme Court and examined *whether the statute served to impermissibly classify voters without a reasonable basis to do so*.

*League of Women Voters*, 178 A.3d at 812 (emphasis provided). *See also Shankey*, 257 A.2d at 897. Here, Petitioners challenge the voter declaration requirements under the Free and Equal Elections Clause and not the federal Constitution. Moreover, the voter declaration requirements impose no **actual** classifications, create no **actual** distinctions, and cause no **impermissible** disparate treatment among voters. Thus, “strict” or any other level of traditional scrutiny simply does not apply here.

The Majority’s citation to *Pennsylvania Democratic Party* to support its invocation of strict scrutiny analysis is inapposite. There, and in conformity with *League of Women Voters*, the Pennsylvania Supreme Court conducted a “scrutiny” analysis **only** with regard to a poll watcher residency requirement that was challenged under the First<sup>17</sup> and Fourteenth Amendments of the federal Constitution. 238 A.3d at 353, 380. That Court concluded, **analyzing and applying only federal cases**, that the poll watcher requirement “imposes no burden on one’s constitutional **right** to vote and, accordingly, requires only a showing that a rational basis exists to be upheld.” *Id.* at 385 (emphasis added). Although the petitioners in *Pennsylvania Democratic Party* also challenged the poll watcher residency requirement under the Free and Equal Elections Clause, *see id.* at 353, the Supreme Court conducted no independent analysis under the Clause because, at least in this respect, it afforded no more protection than the federal Constitution. *Id.* at 386 n.35.

In contrast, in the relevant and controlling portion of *Pennsylvania Democratic Party*, which the Majority here sidesteps entirely, the Court considered whether the Free and Equal Elections Clause required county boards of elections to notify voters of “minor facial defects” in cast mail-in ballots and afford them an opportunity to cure. *Id.* at 372. We quote from the Court’s analysis at length because it is controlling on this point:

[The p]etitioner bases this claim on its assertion that the multi-stepped process for voting by mail-in or absentee ballot inevitably leads to what it describes as minor errors, such as not completing the voter declaration or using an incorrect ink color to complete the ballot. According to [the p]etitioner, these minor oversights result in many ballots being rejected and disenfranchising voters who believe they have exercised their right to vote.

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<sup>17</sup> U.S. Const. amend. I.

[The p]etitioner submits that voters should not be disenfranchised by technical errors or incomplete ballots, and that the “notice and opportunity to cure” procedure ensures that all electors who desire to cast a ballot have the opportunity to do so, and for their ballot to be counted. [The p]etitioner further claims there is no governmental interest in either: (1) requiring the formalities for the completion of the outside of the mailing envelope to be finalized prior to mailing as opposed to prior to counting, or (2) rejecting the counting of a ballot so long as ballots continue to arrive under federal law, which is the [Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. §§ 20301-20311 UOCAVA)] deadline of seven days after Election Day.

As legal support for its position, [the p]etitioner relies upon the Free and Equal Elections Clause. It further emphasizes that election laws should be construed liberally in favor of voters, and that technicalities should not be used to make the right of the voter insecure. [The p]etitioner also asserts that ballots with minor irregularities should not be rejected, except for compelling reasons and in rare circumstances. Based on these legal principles, as well as this Court’s broad authority to craft meaningful remedies when necessary, [the p]etitioner claims that the Pennsylvania Constitution and spirit of the Election Code require the [b]oards to provide a “notice and opportunity to cure” procedure, and that this Court has the authority to afford the relief it seeks.

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Upon review, we conclude that the [b]oards are not required to implement a “notice and opportunity to cure” procedure for mail-in and absentee ballots that voters have filled out incompletely or incorrectly. Put simply, as argued by the parties in opposition to the requested relief, the [p]etitioner has cited no constitutional or statutory basis that would countenance imposing the procedure [the p]etitioner seeks to require (*i.e.*, having the [b]oards contact those individuals whose ballots the [b]oards have reviewed and identified as including “minor” or “facial”

defects—and for whom the [b]oards have contact information—and then afford those individuals the opportunity to cure defects until the UOCAVA deadline).

While the Pennsylvania Constitution mandates that elections be “free and equal,” it leaves the task of effectuating that mandate to the legislature. As noted herein, although the Election Code provides the procedures for casting and counting a vote by mail, it does not provide for the “notice and opportunity to cure” procedure sought by [the p]etitioner. To the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, we agree that the decision to provide a “notice and opportunity to cure” procedure to alleviate that risk is one best suited for the Legislature. We express this agreement particularly in light of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Pennsylvania’s government.

*Id.* at 372-74. Entirely absent from the Court’s analysis is any “scrutiny” in the traditional sense, and certainly not “strict” scrutiny.

**2. Even if I used the Majority’s own test, “strict scrutiny” still would not apply.**

Even if strict scrutiny could apply here, which it cannot, the voter declaration requirements in any event are not subject to such scrutiny according to the Majority’s own standard. The Majority holds that strict scrutiny applies because the date requirements make voting so difficult for some voters that it denies them the franchise altogether. (Majority, slip op. at 75.) The Majority in this respect has unfortunately begun its “strict scrutiny” analysis with a wrong conclusion that it never would or should have reached after the correct analysis. As I note above,

merely because certain ballots are not counted because they are mailed in envelopes with undated or misdated voter declarations does not mean that the voters who failed to follow the rules have been subjected to an unconstitutionally burdensome difficulty in voting. Thus, even under the Majority's test, strict scrutiny would not apply here.

To illustrate, although the Court in *Pennsylvania Democratic Party* did not consider whether the procedural requirements for mail-in voting, if enforced, were unconstitutional under the Free and Equal Elections Clause, tacit to the Court's analysis is the principle that ballot-casting rules are not subject to judicial scrutiny under the Free and Equal Elections Clause where they do not burden the franchise but, rather, only result in the disqualification of objectively noncompliant ballots. That is the very principle that the Majority here refuses to countenance and that controls the outcome of this case. Justice Wecht emphasized this point in his concurring opinion in *Pennsylvania Democratic Party*, in which he stated his belief that the Court's holding under the Free and Equal Elections Clause extended to permit rejection of ballots based on "defects that are capable of objective assessment pursuant to uniform standards." *Id.* at 389 (Wecht, J., concurring). Pertinent here, Justice Wecht went on to illustrate:

For example, the failure to "fill out, date and sign the declaration printed on" the ballot return envelope, as required by 25 P.S. § 3150.16(a), is a deficiency that can be readily observed. Absent some proof that the enforcement of such a uniform, neutrally applicable election regulation will result in a constitutionally intolerable ratio of rejected ballots, I detect no offense to the Free and Equal Elections Clause.

*Id.* at 389.



This same principle was enunciated, albeit in a slightly different legal context, in *Pennsylvania State Conference of NAACP Branches v. Secretary*, 97 F.4th 120 (3d Cir. 2024), where the Third Circuit Court of Appeals ruled that the “Materiality Provision” of the federal Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(b),<sup>18</sup> required the counting of undated or incorrectly-dated mail-in ballots notwithstanding that the Pennsylvania Supreme Court held in *Ball* that the dating requirement is mandatory and non-compliant ballots must not be counted. *Pennsylvania State Conference*, 97 F.4th at 125. The Third Circuit concluded that the materiality provision categorically does not apply to ballot-casting rules that determine **how** a qualified voter casts a ballot, regardless of whether they serve any valid state purpose. *Id.* at 125, 131. The Third Circuit noted that ballot-casting rules govern **how** a person votes and do not impact **whether** a person is qualified to vote, *i.e.*, his or her “right” to vote. *Id.* at 130, 135. Rather, the Court recognized that, “[t]o cast a ballot that is valid and will be counted, all qualified voters must abide by certain requirements, just like those authorized to drive must obey the State’s traffic laws like everybody else.” *Id.* at 130. Necessarily, then,

individuals are not “denied” the “right to vote” if non-compliant ballots are not counted. Suppose a county board of elections excludes a voter’s ballot from the vote tally because he cast more than the permissible number of votes. Or it sets aside a ballot because the voter revealed his identity by improperly marking the secrecy envelope containing the ballot. Is that person denied the right to vote? In both instances, the voter failed to follow a rule—

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<sup>18</sup> As stated by the Third Circuit, the materiality provision “prohibits denial of the right to vote because of an ‘error or omission’ on paperwork ‘related to any application, registration, or other act requisite to voting,’ if the mistake is ‘not material in determining whether [an] individual is qualified’ to vote.” 97 F.4th at 125 (quoting 52 U.S.C. § 10101(a)(2)(B)) (brackets in original).

like the dat[ing] [provisions]—that renders his ballot defective under state law.

*Id.* at 135. *See also id.* (quoting *Ritter v. Migliori*, 142 S.Ct. 1824 (2022) (Alito, J.) (“Even the most permissive voting rules must contain some requirements, and the failure to follow those rules constitutes the forfeiture of the right to vote, not the denial of that right.”)).

**E. The Majority Effectively Re-Writes the Elections Code and Sustains What is, in Actuality, a Facial Challenge to the Voter Declaration Requirements.**

In analyzing Petitioners’ constitutional challenge, the Majority has incorrectly framed their claim as an “as-applied” challenge, when it is, at its core, a **facial** challenge to the voter declaration requirement. We have explained that “an as-applied attack . . . does not contend that a law is unconstitutional as written but that its application to a *particular person* under *particular circumstances* deprived *that person* of a constitutional right.” *Nigro v. City of Philadelphia*, 174 A.3d 693, 699 (Pa. Cmwlth. 2017) (emphasis added). As such, “an as-applied challenge will not necessarily invalidate a law given that a law may operate in an unconstitutional way as to *one particular individual or company*, as to which it may be declared void, and yet may, as to others still be effective.” *Id.* (emphasis added).

The Majority has stretched this concept to the absolute limit by declaring the voter declaration requirements of the Election Code— applicable to all 67 counties of this Commonwealth— “unconstitutional as applied to qualified voters who timely submit undated or incorrectly dated absentee and mail-in ballots” in Philadelphia and Allegheny Counties. (Order, ¶ 3.) This vague, overly-broad category of potential future voters flies in the face of, and is fundamentally inconsistent with, the limited nature of a true as-applied challenge to the validity of

a statute. Although the Majority intimates that the voter declaration requirements disparately impact the elderly, an intimation that I find insulting to that group of voters, among others, it has identified no “particular individual or company” allegedly deprived of a constitutional right. *Nigro*, 174 A.3d at 699.

Additionally, the relief the Majority affords for Petitioners’ “as-applied” challenge is permanent, rather than temporary, and has not been implemented as a result of any unique or challenging circumstances, unlike that issued by our Supreme Court during the COVID-19 pandemic. *See Pennsylvania Democratic Party*, 238 A.3d at 371 (finding in context of as-applied Free and Equal Elections Clause challenge to statutory received-by timeline for absentee and mail-in ballots to unprecedented facts caused by COVID-19 pandemic resulted in infringement of electors’ right to vote and adopting, under its extraordinary jurisdiction, three-day extension of deadline to allow for tabulation of ballots postmarked by 8:00 p.m. on Election Day). In sharp contrast, the relief ordered by the Majority here is neither temporary nor emergency-driven.

Given that Petitioners’ challenge is in actuality a facial challenge to the voter declaration requirements of the Election Code, the Majority has proceeded to effectively re-write the statute in crafting its remedy.

**III. THE RELIEF AFFORDED BY THE MAJORITY IS UNEQUAL, INCONSISTENT, AND PERMITS INVALIDATION OF BALLOTS IN 65 PENNSYLVANIA COUNTIES**

With respect to the relief crafted by the Majority, I reemphasize that, under long-standing Pennsylvania Supreme Court precedent, “elections are free and equal within the meaning of the Constitution . . . *when every voter has the same right as any other voter[.]*” *Winston*, 91 A. at 523 (emphasis added). “[T]he *overarching objective* of [article I, section 5] of our constitution is to prevent dilution of an

individual's vote by mandating that the power of his or her vote in the selection of representatives be *equalized to the greatest degree possible with all other Pennsylvania citizens.*" *League of Women Voters*, 178 A.3d at 817 (emphasis added).

Despite this clear directive, the relief ordered by the Majority accomplishes **the direct opposite**, in that it permits only **two** counties of this Commonwealth to ignore the voter declaration requirements, leaving the remaining 65 counties bound to follow the law as written. Thus, under the guise of promoting free and equal elections, the Majority has instead created a new system of inequality wherein voters who write an incorrect date on a mail-in or absentee ballot in Philadelphia County have their votes counted despite non-compliance with Election Code requirements, while the votes of those who make this same error in Lehigh County must be invalidated as prescribed by our General Assembly and, until today, our Supreme Court. I fail to see how equality is accomplished when the validity of a mail-in or absentee ballot with the same facial error turns upon the county in which that voter resides.

Additionally, the relief ordered by the Majority reveals the internal inconsistency of its logic, in that it includes a carve out specifying that the Philadelphia and Allegheny County Boards retain the authority to evaluate mail-in and absentee ballots for compliance with the voter declaration requirements to ensure timely submission "and thus prevent fraud." (Order, ¶ 6.) This carve out tacitly concedes that the dating provisions mandated by the legislature **do serve a purpose** and directly undercuts the Majority's repeated declarations that "the dating provisions are virtually meaningless" and are "not used to determine the timeliness of a ballot, a voter's qualifications/eligibility to vote, or fraud." (Majority Op. at 75-76.)

#### IV. ACT 77 IS NOW VOID IN ITS ENTIRETY

In his concurring and dissenting opinion in *McLinko v. Department of State*, 270 A.3d 1243 (Pa. Cmwlth.) (*McLinko I*), *aff'd in part and rev'd in part*, 279 A.3d 539 (Pa. 2022) (*McLinko II*), Judge Wojcik of this Court, joined by Judge Ceisler, aptly noted that

Section 11 of Act 77 contains a “poison pill” that would invalidate all of Act 77’s provisions if this Court determines that any of its provisions are invalid. . . . Thus, if the no-excuse mail-in provisions of Act 77 are found to be unconstitutional, all of Act 77’s provisions are void.

*McLinko I*, 270 A.3d at 1278 (Wojcik, J., concurring in part and dissenting in part). *See also McLinko II*, 279 A.3d at 609-10 (Brobson, J., dissenting) (noting that the DNC “advance[d] the nonseverability provision [of Act 77] as a reason why [the Supreme Court] should reject the constitutional challenge to Act 77’s mail-in ballot provisions . . . , because doing otherwise would trigger the nonseverability provision and render the entirety of Act 77 invalid). I agree. The nonseverability clause of Act 77 is straightforward and provides that “Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of this act **or its application to any person or circumstance** is held invalid, the remaining provisions or applications to this act are void.” Section 11 of Act 77 (emphasis added). Sections 6 and 8 of Act 77 govern absentee and mail-in voting and contain the voter declaration requirements. It would seem to obviously follow, then, that this Court’s forbidding of the enforcement of the voter declaration requirements, which our Supreme Court has held to be mandatory, renders all of Act 77 void and, resultantly, voids all absentee and mail-in voting in Pennsylvania. The Majority nevertheless

sidesteps Section 11 and ignores the intent of the General Assembly to save the remainder of Act 77 which, according to the Majority's keeping-up-with-the-times wisdom, can function perfectly well as the Majority has now interpreted it. *See BPE*, \_\_\_ A.3d at \_\_\_, slip op. at 88-89. With this I cannot agree.

It is true that, generally speaking, statutes are presumed to contain severable provisions that each will remain in effect notwithstanding that one or more of the others are held to be invalid. *See* Section 1925(a) of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1925(a). Where, however, a court determines that the (1) **General Assembly would not have enacted** the valid provisions without the invalid ones, or (2) the valid provisions, standing alone, cannot function **in accordance with legislative intent** without the invalid ones, the statute's provisions will not be severable. *Stilp v. Commonwealth*, 905 A.2d 918, 970 (Pa. 2006) (citing 1 Pa.C.S. § 1925(a)).

In line with these principles, nonseverability provisions in statutes are constitutionally proper. *Stilp*, 905 A.2d at 978. Although courts will decline to enforce such provisions where they constitute boilerplate attempts by the General Assembly to coerce the judiciary and thwart judicial review, *id.* at 978-79, our Supreme Court nonetheless has recognized that

[t]here may be reasons why the provisions of a particular statute essentially inter-relate, but in ways which are not apparent from a consideration of the bare language of the statute as governed by the settled severance standard set forth in Section 1925 of the Statutory Construction Act[.]. In such an instance, the General Assembly may determine that it is necessary to make clear that a taint in any part of the statute ruins the whole. Or, there may be purely political reasons for such an interpretive directive, arising from the concerns and compromises which animate the legislative process. In an instance involving such

compromise, the General Assembly may determine[] the court's application of the logical standard of essential interconnection set forth in Section 1925 might undo the compromise; a nonseverability provision, in such an instance, may be essential to securing the support necessary to enact the legislation in the first place. Once again, this is a concern that would not necessarily be apparent to a court analyzing the bare language of the statute.

*Id.* at 978. Thus, where a nonseverability clause effectuates these legitimate purposes, it does not implicate separation of powers concerns and is enforceable. *Id.* at 978-79.

Here, there is clear evidence that Section 11 of Act 77 was an important component of the democratically-reached political compromises that brought about the Act's passage. The Democratic sponsor of Act 77, as well as the Republican Senate Majority Leader, acknowledged that Act 77 was a politically difficult compromise. *See Pennsylvania Legislative Journal-Senate*, October 29, 2019, 1000, 1002. Further, the nonseverability provision helped to reassure the General Assembly that all of the interworking component parts of the bipartisan bargain would not be discarded by the courts. For example, House of Representatives State Government Committee Chair Garth Everett commented as follows on the House floor:

Mr. EVERETT. Thank you, Mr. Speaker.

**There is a nonseverability clause**, and there is also the section that you mentioned that gives the Supreme Court of Pennsylvania jurisdiction, **because the intent of this is that this bill works together, that it not be divided up into parts**, and there is also a provision that the desire is, and of course, that could be probably gotten around legally, but that suits be brought within 180 days so that we can settle everything before this would take effect. So those are the provisions that have to do with severability.

Mrs. DAVIDSON. So in effect, if a suit was brought to the Supreme Court of Pennsylvania and they found it to be unconstitutional, it would eliminate the entire bill because it cannot be severed.

Mr. EVERETT. Yes; that would be just in those sections that have been designated as nonseverable.

*Pennsylvania Legislative Journal-House*, October 29, 2019, 1740-41 (emphases added). Section 11 of Act 77 thus is not a generic, boilerplate nonseverability provision included by the General Assembly as a judicial hamstringing measure unrelated to the careful and laborious political compromises weaved throughout the statute. The General Assembly specifically listed certain non-negotiable sections of Act 77 that were essential to those compromises and, accordingly, are not severable. Both Sections 6 and 8 are included in that list. Section 11 therefore must be enforced by this Court.

The Majority appears to acknowledge, as it must, that its broad pronouncements here trigger the applicability of Section 11 of Act 77, which applies anytime the **application** of Act 77's provisions are declared to be invalid. Nevertheless, the Majority circumvents this by deciding that it will not enforce Section 11 because, in the Majority's view, the rest of Act 77 can function without the voter declaration requirements. The Majority conducts no analysis at all concerning the General Assembly's intent, but, rather, in its "discretion," decides not to enforce Section 11 because the **Majority's intent** is that the rest of Act 77 function without the voter declaration requirements. That decision simply is not the Majority's to make.

Finally, I hasten to reiterate my conclusion that the voter declaration requirements are valid and, accordingly, Act 77 can remain on the books and its provisions may be enforced. That is the most rationale, commonsense, and honest



application of the Free and Equal Elections Clause and our Supreme Court's precedent interpreting it. It is the Majority's **misapplication** of the Clause that necessitates an end run around the General Assembly's intent, all so the Majority can avoid being ascribed with exactly what it has done here: invalidate Act 77 and, with it, absentee and mail-in voting in Pennsylvania.

## V. CONCLUSION

The members of the Majority have discarded their judicial robes and donned legislative hats to re-write both the Free and Equal Elections Clause and Act 77, all so that they might invalidate the simplest and perhaps **least** burdensome of all ballot-casting requirements. Today the Majority says that requiring the date on the voter declaration on a mail-in or absentee ballot envelope is subject to strict judicial scrutiny and cannot be enforced because doing so unconstitutionally denies the voting franchise altogether. I must wonder whether walking into a polling place, signing your name, licking an envelope, or going to the mailbox can now withstand the Majority's newly minted standard. Of course, those everyday ballot-casting requirements are all more burdensome and prohibitive than the voter declaration requirements, but they implicitly remain part of the Election Code. For now.

I would follow Supreme Court precedent faithfully, leave the voter declaration requirements intact, and not upend that Court's directive in *Ball* that ballots that contain undated or misdated voter declaration must not be counted. Changing, eliminating, or rendering directory the voter declaration requirements are all viable options for the General Assembly, but not for this Court. We must exercise judicial review with great care so as to not usurp the General Assembly's role in regulating the manner and method of voting. Adherence to this long-standing rule of jurisprudence and preservation of the separation of powers is especially important

in the politically-charged and highly partisan atmosphere in which we now live and work. Exceeding our function as impartial arbiters of the constitution and rewriting legislation to keep up with the times does little to reinforce trust and respect for the Commonwealth's system of justice. I fear that the Majority has neglected this important consideration today.

For all of the foregoing reasons, I dissent.

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PATRICIA A. McCULLOUGH, Judge



# Directive Concerning the Form of Absentee and Mail-in Ballot Materials

Date: July 1, 2024

Version: 2.0

## Directive 2 of 2024

The following Directive is issued July 1, 2024, by the Secretary of the Commonwealth (“Secretary”) pursuant to authority contained at Sections 201, 1304, and 1304-D of the Pennsylvania Election Code, 25 P.S. §§ 2621, 3146.4, 3150.14.

### Background

Pennsylvania law requires county officials to provide qualified electors voting by absentee or mail-in ballot with “two envelopes, the official  ballot, lists of candidates, when authorized by [law], the uniform instructions in form and substance as prescribed by the Secretary of the Commonwealth and nothing else.”<sup>1</sup> Moreover, certain counties are subject to Section 203 of the federal Voting Rights Act (“Section 203”),<sup>2</sup> requiring them to provide voting materials in non-English languages.

This Directive prescribes these forms and provides English, bilingual, and in some instances, trilingual versions. This Directive also prescribes a process for counties to seek a variance where necessary to accommodate equipment limitations or specifications. The highlighted portions of each form in **Appendix A** are those whose contents may be altered to provide information unique to the county, voter, or election, without requesting permission for a variance as provided in Section 6. These alterations may be made to the content of the text. Provided, however, that the discretion to adjust the contents is subject to additional prescriptions in the relevant sections.

As discussed further in Sections 2 and 5, Counties are left with discretion to arrange text orientation, and to enlarge text font sizes, in order to best serve their voters and accommodate different equipment specifications. Likewise, counties may adjust the orientation in order to accommodate envelopes with dimensions different from those presented in the samples.

The forms prescribed under this Directive will also be provided to counties under separate, secure cover in a digital format that can be directly used for printing and formatting. This Directive provides only minimum requirements for compliance with Pennsylvania law and the Secretary’s prescriptions. Although nothing in this Directive is intended to be incompatible with known county equipment requirements, each county is responsible for ensuring that their iterations of the forms are compliant with their existing equipment and postal selections. Likewise, each county should verify with the United

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<sup>1</sup> 25 P.S. §§ 3146.4, 3150.14.

<sup>2</sup> 52 USC § 10503.

States Postal Service (USPS) that their materials comport with the election mail specifications set by USPS.

## Mailing Envelopes

Mailing envelopes are used to send outgoing mail-in and absentee balloting materials to qualified electors. The Department has provided samples in two sizes, attached as **Appendix B**. These samples include different language configurations, which can be adopted by any county, provided that all counties subject to Section 203 use a form including all required languages.

Counties should use the font sizes, logos, and colors,<sup>3</sup> as provided. Counties may use envelopes of a size different than presented, provided that the size of the envelope is large enough to include all other materials described herein. So long as the content, font type, font size, logos, logo sizes, and coloration are maintained, the arrangement of the materials on these forms is at the discretion of the counties to orient. Counties may adjust as necessary to accommodate, among other things, additional bar code tracking materials.

## Secrecy Envelopes/Inner Envelopes

Pennsylvania law provides that two envelopes shall be mailed to each absentee or mail-in elector; the smaller of these envelopes is sometimes referred to alternatively as the “secrecy envelope,” or “inner envelope.”

The secrecy envelope shall be rectangular and of a size large enough to contain all content included on the prescribed forms. For example, a standard size nine envelope (3.875” by 8.875”) would comply.

The secrecy envelope should be in a yellow color, such as the samples shown in **Appendix C**. These samples include different language configurations, which can be adopted by any county, provided that all counties subject to Section 203 use a form including all required languages.

Pennsylvania law requires the inner envelope to bear the text “official election ballot.”<sup>4</sup> The samples in **Appendix B** contain watermarking with the statutorily required language.

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<sup>3</sup> The blue color is used to ensure it is a familiarized color recognized by the USPS as outgoing election mail.

<sup>4</sup> 25 P.S. §§ 3146.4, 3150.14(a).

## Instructions

The uniform instructions shall be printed on paper no smaller than a standard paper size of 8.5” by 11”. The paper must be of a non-white color.

The text font, text size, logos, and language must be in conformance with the samples prescribed in **Appendix D**. Each sample includes a different language configuration, which can be adopted by any county, provided that all counties subject to Section 203 use a form including all required languages.

Although the line “[INSERT ELECTION DATE]” is highlighted in **Appendix A**, this highlighting does not permit a county to use generic text in the absence of a variance. Counties must include the date of the relevant election.

The contents of this Appendix have been revised since version 1.1 of this Directive issued in December 2023.

## Outer Envelopes/Declaration Envelopes

Pennsylvania law provides that two envelopes shall be mailed to each absentee or mail-in elector; the larger of these envelopes is sometimes referred to alternatively as the “outer envelope” or “declaration envelope.” Samples of the prescribed forms are shown in **Appendix E**. These samples include different language configurations, which can be adopted by any county, provided that all counties subject to Section 203 use a form including all required languages.

The outer envelope shall be rectangular and of a size large enough to contain all prescribed content. For example, a standard size ten envelope (4.125” by 9.5”) would comply.

The flap of any such envelope must leave proper space to include the designs prescribed in **Appendix E**.

Counties may replace the portions of the samples in **Appendix E** that are in purple color with any other non-white and non-black color ink. Such counties should coordinate with all bordering counties to minimize the possibility that neighboring counties will use the same non-purple color. This replacement does not require the seeking of a variance, but counties must update the graphics and text in the uniform instructions to reflect the colors of their declaration envelopes.

All templates in **Appendix E** have been revised to include “Y”s in the last two boxes of the dating portion of the template. These digits are also highlighted in **Appendix A**, to

indicate that this text must be edited by counties. Counties must replace the “Y”s in these boxes with the digits reflecting the year of the election in which the envelopes are to be used. For example, if the envelopes will be used for an election taking place in 2024, the “Y”s must be replaced with a “2” and a “4.” This prescription is immediately in effect for all elections taking place following the issuance of this Directive.

Counties that use mail envelopes with “windows” may make alterations to the arrangements of the contents to accommodate the placement of barcodes and unique identifiers in places that will be visible through the window. Such minor alterations, so long as they do not alter the font size or content, may be implemented without seeking a variance. Likewise, so long as the content, font type, minimum font size, logos, logo sizes, and coloration are maintained, the arrangement of the materials on these forms are at discretion of the counties to orient or enlarge.

The Department further notes that any county opting to use green color ink is not permitted to allow the green coloring to wrap over the top of the envelope, in order to avoid interference with USPS sorting equipment. The Department again advises that counties vet all mail ballot materials through the USPS procedures.

Lastly, counties may apply a hole punch in the outer envelope without seeking a variance. Counties providing envelopes to blind and low vision voters must hole punch the return envelope provided to such voters under the Department’s [Guidance on Managing Accessible Remote Absentee and Mail-in Voting for Voters with Disabilities](#).

## Variance Procedures

Any county that believes it is unable to comply with the prescriptions of this Directive, or that wishes to implement changes to the forms that are in line with the aims of this Directive, may seek permission from the Department for a variance. A variance will only be granted where the county demonstrates that it is in line with the Directive’s twin goals of promoting uniformity and improving the voting experience.

A county seeking a variance must provide the Bureau of Elections with a proposed alternative to the prescribed forms, as well as the additional information described in this section, at least 60 days before the election for which the materials will be used.

The Department is also providing templates of forms with logos and formations that deviate from those shown in **Appendixes A-E**. These pre-approved variant forms are included as **Appendix F**. Counties are permitted to use the forms in Appendix X without seeking a variance, provided that the icons on the instructions are updated accordingly.

The below table includes a set of pre-approved variances that do not require Department approval to implement. This table is not intended to provide an exhaustive list of the variances the Department has approved or would approve if sought by a county.

<u>Short Title</u>	<u>Specifications</u>	<u>Other Notes</u>
Highlighting in Declaration Envelope Fields	Counties are permitted to shade the entry boxes of the sign and date fields on the declaration envelope in a yellow color.	Counties are responsible for ensuring that the shading will not impact the mail sorting equipment they use.  Counties must update the logos of the instructions to reflect this change.
Increased font size	Counties are permitted to increase the font size of any prescribed content, provided all other requirements and specifications are satisfied.	The United States Postal Service Mailpiece Design Analyst (USPS MDA) must review and approve all font size changes made to outgoing and return envelopes.

###

<b>Version</b>	<b>Date</b>	<b>Description</b>
1.0	11/28/2023	Initial document release
1.1	12/14/2023	Appendices Revised
2.0	7/1/2024	Appendices and Prescriptions Revised



# Appendix A

# Official Ballot

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Vivian Voter  
1234 Crest Blvd.  
Sample, PA 99999-4321



Your ballot must be received  
by 8 p.m. on election day at  
your county election board

## Ways to return your ballot

A159



### By mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.



### In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

See instructions inside

## Return your ballot right away!

Your ballot must be received by 8 p.m. on election day at your county election board.

Official Ballot

### Contact information



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



[www.franklincounty.gov/elections](http://www.franklincounty.gov/elections)



[elections@franklincounty.gov](mailto:elections@franklincounty.gov)



English: 111-222-3333  
Español: 111-222-4444



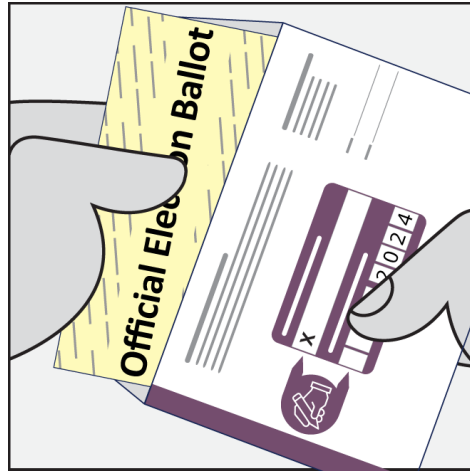
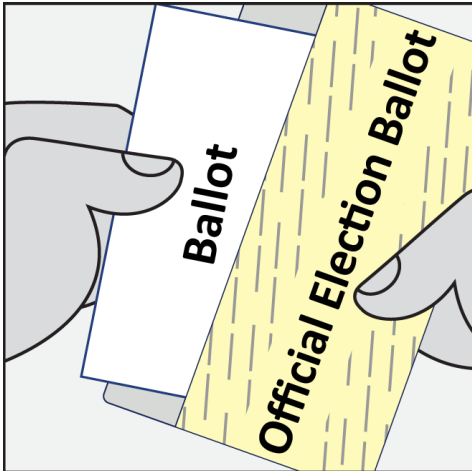
Fax: 111-222-6666



TTY: 1-222-555-1222



# Instructions—Make your ballot count!



1. Put your ballot in the yellow envelope that says “**Official Election Ballot**” and seal it.
2. Put the yellow envelope that says “Official Election Ballot” in the **return envelope with the purple coloring**.
3. Sign and date the return envelope. **Put today’s date**—the date you are signing.



**Return your ballot right away.** Your ballot must be received by your county **board of elections** by 8 p.m. on **[INSERT ELECTION DATE]**.

Track your ballot at <https://vote.pa.gov/mailballotstatus>.

- ✓ **You must either mail or return your ballot yourself.** If you have a disability that prevents you from returning your ballot yourself, contact us at the phone number below.
- ✓ **If you lose your ballot or make a mistake,** contact us at the phone number below.
- ✓ **If you return your voted mail ballot by 8 p.m. on election day,** you cannot vote in-person at your polling place.
  - **If you bring your mail ballot and return envelope to your polling place,** you can vote in-person at your polling place.
  - **If you do not bring your mail ballot and return envelope to your polling place,** you can only vote a provisional ballot at your polling place.

## Contact

Franklin County

[Franklincountyelections.gov](http://Franklincountyelections.gov)

1-222-555-1222

4321 Sample Avenue, Sample, PA 99999

7 a.m. – 7 p.m.

# Official Ballot Return Envelope

A161

Your ballot must be received  
by 8 p.m. on election day at  
your **county election board**

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234

FIRST CLASS  
POSTAGE REQUIRED



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



## Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

## Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

Sign and date



Sign or mark here (REQUIRED)

X

Today's date here (REQUIRED)

				2	0	Y	Y
Month		Day		Year			

## For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

Witness, sign here

\_\_\_\_\_

Witness address

Street \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

For county election use only

# Appendix B

**Official Ballot**

**Papeleta oficial**

**官方選票**

Your ballot must be received by 8 p.m. on election day at your county election board

Su papeleta debe recibirse antes de las 8 p.m. el día de las elecciones en la junta electoral de su condado

您所在縣的選舉委員會必須在選舉日晚上8點前收到您的選票

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Vivian Voter  
1234 Crest Blvd.  
Sample, PA 99999-4321





## How to return your ballot Formas de devolver su papeleta 交回選票的方法

A165



### By Mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.

### Por correo

Envíe su papeleta por correo para que la oficina electoral de su condado la reciba antes de las 8 p.m. el día de las elecciones.

### 郵寄

郵寄您的選票，以便您在縣的選舉委員會在選舉日晚上8點前收到您的選票。

### In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

### En persona

Devuelva su papeleta a la oficina electoral de su condado o a un sitio oficial de entrega del condado antes de las 8 p.m. el día de las elecciones.

### 親自遞交

在選舉日晚上8點前將選票交回您所在縣的選舉辦事處或官方縣投遞點。



See instructions inside  
Ver instrucciones en el interior  
請參閱裡面的說明

Official Ballot  
Papeleta oficial  
官方選票

## Contact information


## Información de contacto

## 聯絡資訊

 Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234

 [www.franklincounty.gov/elections](http://www.franklincounty.gov/elections)

 [elections@franklincounty.gov](mailto:elections@franklincounty.gov)

 English: 111-222-3333  
Español: 111-222-4444  
中文: 111-222-4444

 Fax/ 傳真: 111-222-6666

 TTY: 1-222-555-1222

**Official Ballot**  
**Papeleta oficial**

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Your ballot must be received  
by 8 p.m. on election day at  
your county election board

Su papeleta debe recibirse  
antes de las 8 p.m. el día de  
las elecciones en la junta  
electoral de su condado

Vivian Voter  
1234 Crest Blvd.  
Sample, PA 99999-4321



## Ways to return your ballot Formas de devolver su papeleta



A167

### By mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.

### Por correo

Envíe su papeleta por correo para que la oficina electoral de su condado la reciba antes de las 8 p.m. el día de las elecciones.

### In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.



### En persona

Devuelva su papeleta a la oficina electoral de su condado o a un sitio oficial de entrega del condado antes de las 8 p.m. el día de las elecciones..

See instructions inside  
Ver instrucciones en el interior

Official Ballot  
Papeleta oficial

## Return your ballot right away! ¡Devuelva su papeleta de inmediato!

Your ballot must be received by 8 p.m. on election day at your county election board.

Su papeleta debe recibirse antes de las 8 p.m. el día de las elecciones en la junta electoral de su condado.

## Contact information Información de contacto



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



[www.franklincounty.gov/elections](http://www.franklincounty.gov/elections)



[elections@franklincounty.gov](mailto:elections@franklincounty.gov)



English: 111-222-3333  
Español: 111-222-4444



Fax: 111-222-6666



TTY: 1-222-555-1222

# Official Ballot

## 官方選票

Your ballot must be received by 8 p.m. on election day at your county election board

您所在縣的選舉委員會必須在選舉日晚上8點前收到您的選票

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Vivian Voter  
1234 Crest Blvd.  
Sample, PA 99999-4321



## How to return your ballot 交回選票的方法

A169



### By Mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.

### 郵寄

郵寄您的選票，以便您所在縣的選舉委員會在選舉日晚上8點前收到您的選票。



### In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

### 親自遞交

在選舉日晚上8點前將選票交回您所在縣的選舉辦事處或官方縣投遞點。

## See instructions inside 請參閱裡面的說明

## Return your ballot right away! 儘快回郵您的選票！

Your ballot must be received by 8 p.m. on election day at your county election board

您所在縣的選舉委員會必須在選舉日晚上8點前收到您的選票。

## Official Ballot 官方選票

### Contact information 聯絡資訊



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



[www.franklincounty.gov/elections](http://www.franklincounty.gov/elections)



[elections@franklincounty.gov](mailto:elections@franklincounty.gov)



English: 111-222-3333  
中文: 111-222-4444



Fax/ 傳真: 111-222-6666



TTY: 1-222-555-1222

# Official Ballot

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Vivian Voter  
1234 Crest Blvd.  
Sample, PA 99999-4321



Your ballot must be received  
by 8 p.m. on election day at  
your county election board

## Ways to return your ballot

A171



### By mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.



### In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

See instructions inside

## Return your ballot right away!

Your ballot must be received by 8 p.m. on election day at your county election board.

Official Ballot

## Contact information



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



[www.franklincounty.gov/elections](http://www.franklincounty.gov/elections)



[elections@franklincounty.gov](mailto:elections@franklincounty.gov)



English: 111-222-3333  
Español: 111-222-4444



Fax: 111-222-6666



TTY: 1-222-555-1222

# Official Ballot

## Papeleta oficial

## 官方選票

Your ballot must be received by 8 p.m. on election day at your county election board

Su papeleta debe recibirse antes de las 8 p.m. el día de las elecciones en la junta electoral de su condado

您所在縣的選舉委員會必須在選舉日晚上8點前收到您的選票

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Vivian Voter  
1234 Crest Blvd.  
Sample, PA 99999-4321

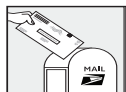




# Official Ballot Papeleta oficial 官方選票

See instructions inside  
Ver instrucciones en el interior  
請參閱裡面的說明

## Ways to return your ballot Formas de devolver su papeleta 交回選票的方法



### By Mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.

### Por correo

Envíe su papeleta por correo para que la oficina electoral de su condado la reciba antes de las 8 p.m. el día de las elecciones.

### 郵寄

郵寄您的選票，以便您所在縣的選舉委員會在選舉日晚上8點前收到您的選票。



### In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

### En persona

Devuelva su papeleta a la oficina electoral de su condado o a un sitio oficial de entrega del condado antes de las 8 p.m. el día de las elecciones.

### 親自遞交

在選舉日晚上8點前將選票交回您所在縣的選舉辦事處或官方縣投遞點。

## Contact information Información de contacto 聯繫信息



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



[www.franklincounty.gov/elections](http://www.franklincounty.gov/elections)



[elections@franklincounty.gov](mailto:elections@franklincounty.gov)



English: 111-222-3333  
Español: 111-222-4444  
中文: 111-222-4444



Fax/ 傳真: 111-222-6666



TTY: 1-222-555-1222

# Official Ballot

## Papeleta oficial

Your ballot must be received by 8 p.m. on election day at your county election board

Su papeleta debe recibirse antes de las 8 p.m. el día de las elecciones en la junta electoral de su condado

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Vivian Voter  
1234 Crest Blvd.  
Sample, PA 99999-4321



# Official Ballot Papeleta Oficial

# See instructions inside Ver instrucciones en el interior

## Ways to return your ballot Formas de devolver su papeleta



### By mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.

### Por correo

Envíe su papeleta por correo para que la oficina electoral de su condado la reciba antes de las 8 p.m. el día de las elecciones.



### In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

### En persona

Devuelva su papeleta a la oficina electoral de su condado o a un sitio oficial de entrega del condado antes de las 8 p.m. el día de las elecciones.

## Return your ballot right away! ¡Devuelva su papeleta de inmediato!

Your ballot must be received by 8 p.m. on election day at your county election board.

Su papeleta debe recibirse antes de las 8 p.m. el día de las elecciones en la junta electoral de su condado.

## Contact information Información de contacto



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



[www.franklincounty.gov/elections](http://www.franklincounty.gov/elections)



[elections@franklincounty.gov](mailto:elections@franklincounty.gov)



English: 111-222-3333  
Español: 111-222-4444



Fax: 111-222-6666



TTY: 1-222-555-1222

# Official Ballot

Your ballot must be received  
by 8 p.m. on election day at  
your county election board

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Vivian Voter  
1234 Crest Blvd.  
Sample, PA 99999-4321



## Official Ballot

See instructions inside

### Return your ballot right away!

Your ballot must be received by 8 p.m. on election day at your county election board.

### Ways to return your ballot



#### By mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.



#### In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

### Contact information



Franklin County Elections  
Department  
4321 Sample Avenue  
Sample, PA 99999-1234



[www.franklincounty.gov/elections](http://www.franklincounty.gov/elections)



[elections@franklincounty.gov](mailto:elections@franklincounty.gov)



English: 111-222-3333  
Español: 111-222-4444



Fax: 111-222-6666



TTY: 1-222-555-1222

# Appendix C

# Official Election Ballot

# Papeleta Electoral Oficial

REPEATING PHRASE: Papeleta Electoral Official Election Ballot



# Official Election Ballot

OFFICIAL ELECTION BALLOT

# Official Election Ballot Papeleta Electoral Oficial 官方選舉選票

OFFICIAL ELECTION BALLOT PAPELETA ELECTORAL OFICIAL 官方選舉選票

# Official Election Ballot Papeleta Electoral Oficial



# Official Election Ballot

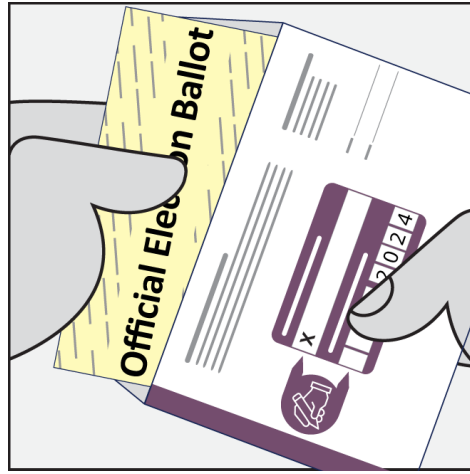
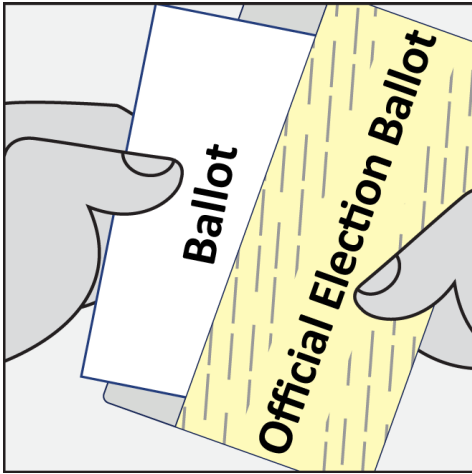
OFFICIAL ELECTION BALLOT



# Appendix D



# Instructions—Make your ballot count!



1. Put your ballot in the yellow envelope that says **“Official Election Ballot”** and seal it.
2. Put the yellow envelope that says **“Official Election Ballot”** in **the return envelope with the purple coloring.**
3. Sign and date the return envelope. **Put today’s date**—the date you are signing.



**Return your ballot right away.** Your ballot must be received by your county board of elections by 8 p.m. on [INSERT ELECTION DATE].

Track your ballot at <https://vote.pa.gov/mailballotstatus>.

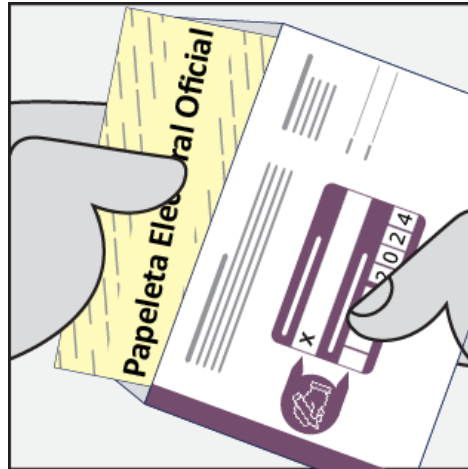
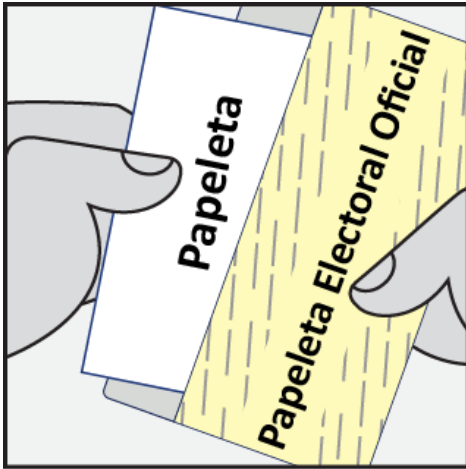
- ✓ **You must either mail or return your ballot yourself.** If you have a disability that prevents you from returning your ballot yourself, contact us at the phone number below.
- ✓ **If you lose your ballot or make a mistake,** contact us at the phone number below.
- ✓ **If you return your voted mail ballot by 8 p.m. on election day,** you cannot vote in-person at your polling place.
  - **If you bring your mail ballot and return envelope to your polling place,** you can vote in-person at your polling place.
  - **If you do not bring your mail ballot and return envelope to your polling place,** you can only vote a provisional ballot at your polling place.

## Contact

Franklin County  
Franklincountyelections.gov  
1-222-555-1222  
4321 Sample Avenue, Sample, PA 99999  
7 a.m. – 7 p.m.



# Instrucciones: ¡Haga que su papeleta cuente!



1. Coloque su papeleta en el sobre amarillo que indica **“Papeleta electoral oficial”** y séllelo.

2. Coloque el sobre amarillo que dice **“Papeleta electoral oficial”** en el sobre de **devolución de color púrpura.**

3. Firme y escriba la fecha en el sobre de devolución. **Escriba la fecha de hoy**, la fecha en la que está firmando.



**Devuelva su papeleta de inmediato.** su papeleta debe ser recibida por la junta electoral de su condado antes de las 8 p.m. el [INSERT ELECTION DATE].

Podrá rastrear su papeleta en [vote.pa.gov/MailBallotStatus](https://vote.pa.gov/MailBallotStatus)

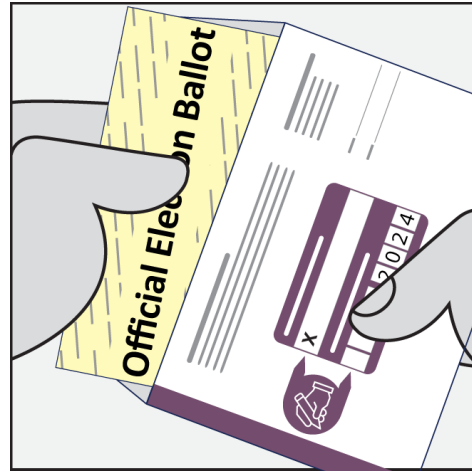
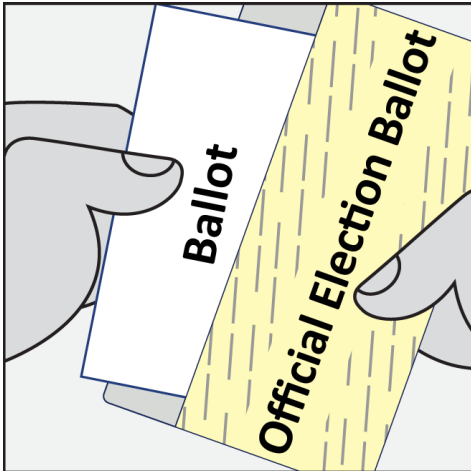
- ✓ **Debe enviar su papeleta por correo o devolverla usted mismo.** Si tiene una discapacidad que le impide devolver su papeleta usted mismo, contáctenos al número de teléfono que aparece a continuación.
- ✓ **Si pierde su papeleta o comete un error,** contáctenos al número de teléfono que aparece a continuación.
- ✓ **Si devuelve su papeleta votada por correo antes de las 8 p.m. el día de las elecciones,** no puede votar en persona en su centro de votación.
  - **Si trae la papeleta que se le envió por correo y el sobre de devolución a su centro de votación,** puede votar en persona en su centro de votación.
  - **Si no trae la papeleta que se le envió por correo y el sobre de devolución a su centro de votación,** solo podrá votar con una papeleta provisional en su centro de votación.

## Contacto

Franklin County  
Franklincountyelections.gov  
1-222-555-1222  
4321 Sample Avenue, Sample, PA 99999  
7 a.m. – 7 p.m.



# Instructions—Make your ballot count!



1. Put your ballot in the yellow envelope that says **“Official Election Ballot”** and seal it.
2. Put the yellow envelope that says **“Official Election Ballot”** in the **return envelope with the purple coloring.**
3. Sign and date the return envelope. **Put today’s date**—the date you are signing.



**Return your ballot right away.** Your ballot must be received by your county board of elections by 8 p.m. on [INSERT ELECTION DATE].

Track your ballot at <https://vote.pa.gov/mailballotstatus>.

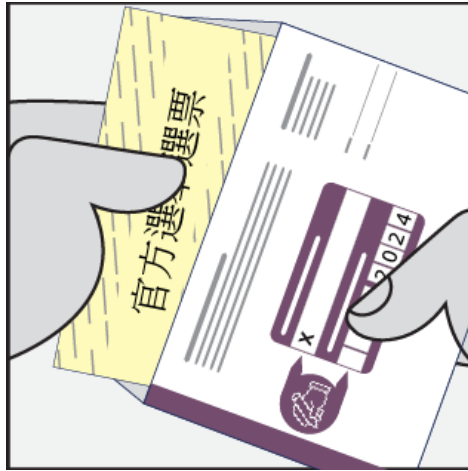
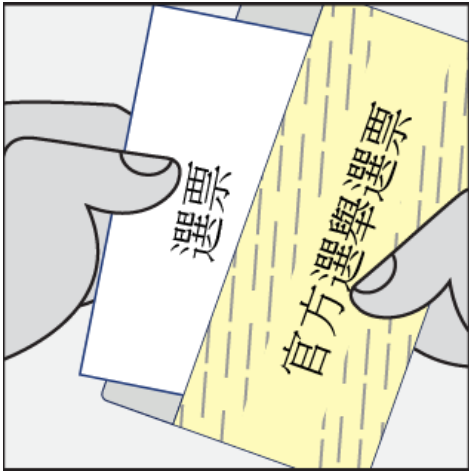
- ✓ **You must either mail or return your ballot yourself.** If you have a disability that prevents you from returning your ballot yourself, contact us at the phone number below.
- ✓ **If you lose your ballot or make a mistake,** contact us at the phone number below.
- ✓ **If you return your voted mail ballot by 8 p.m. on election day,** you cannot vote in-person at your polling place.
  - **If you bring your mail ballot and return envelope to your polling place,** you can vote in-person at your polling place.
  - **If you do not bring your mail ballot and return envelope to your polling place,** you can only vote a provisional ballot at your polling place.

## Contact

Franklin County  
Franklincountyelections.gov  
1-222-555-1222  
4321 Sample Avenue, Sample, PA 99999  
7 a.m. – 7 p.m.



# 說明—讓你的選票算數！



1. 將選票放入記有「**官方選舉選票**」的黃色信封並密封。
2. 將記有「**官方選舉選票**」的黃色信封放入紫色的回郵信封。
3. 在交回的信封上簽名並注明日期。寫上今天的日期，即您簽名的日期。



**立即交回您的選票。** 您所在縣的選舉委員會必須在以下時間前收到您的選票： [INSERT ELECTION DATE] 晚上8點。

在此追蹤您的選票：[vote.pa.gov/MailBallotStatus](https://vote.pa.gov/MailBallotStatus)。

- ✓ 您必須自行郵寄或交回您的選票。如果您有殘疾，無法親自交回選票，請撥打以下電話號碼與聯絡我們聯繫。
- ✓ 若您遺失選票或犯了錯誤，請通過以下電話號碼聯絡我們。
- ✓ 如果您在選舉當天晚上 8 點之前將已投票的郵寄選票寄回，則不能親自前往投票站投票。
  - 如果您將郵寄選票和回郵信封帶到投票站，您可以親自到投票站投票。
  - 如果您未將郵寄選票和回郵信封帶到投票站，您只能在投票站投臨時選票。

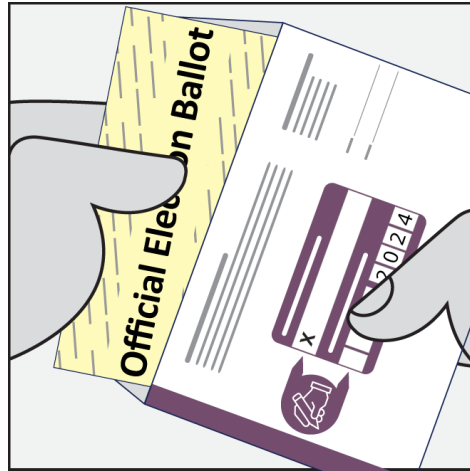
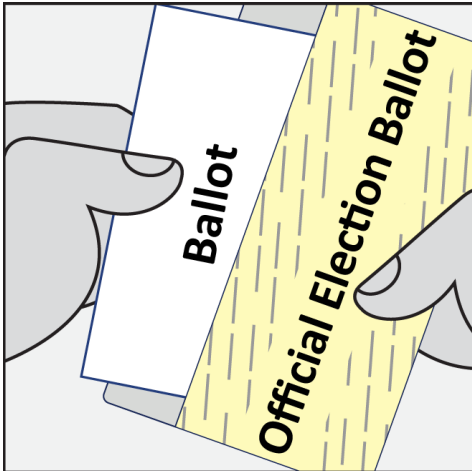
## 聯絡資訊

Franklin County  
Franklincountyelections.gov  
1-222-555-1222  
4321 Sample Avenue, Sample, PA 99999  
7 a.m. – 7 p.m.

Turn over for English



# Instructions—Make your ballot count!



1. Put your ballot in the yellow envelope that says “**Official Election Ballot**” and seal it.
2. Put the yellow envelope that says “**Official Election Ballot**” in the **return envelope with the purple coloring**.
3. Sign and date the return envelope. **Put today’s date**—the date you are signing.



**Return your ballot right away.** Your ballot must be received by your county board of elections by 8 p.m. on [INSERT ELECTION DATE].

Track your ballot at <https://vote.pa.gov/mailballotstatus>.

- ✓ **You must either mail or return your ballot yourself.** If you have a disability that prevents you from returning your ballot yourself, contact us at the phone number below.
- ✓ **If you lose your ballot or make a mistake,** contact us at the phone number below.
- ✓ **If you return your voted mail ballot by 8 p.m. on election day,** you cannot vote in-person at your polling place.
  - **If you bring your mail ballot and return envelope to your polling place,** you can vote in-person at your polling place.
  - **If you do not bring your mail ballot and return envelope to your polling place,** you can only vote a provisional ballot at your polling place.

## Contact

Franklin County  
Franklincountyelections.gov  
1-222-555-1222  
4321 Sample Avenue, Sample, PA 99999  
7 a.m. – 7 p.m.

# Appendix E

**Official Ballot  
Return Envelope**

**Papeleta oficial  
Sobre de  
devolución**

Your ballot must be received  
by 8 p.m. on election day at  
your county election board

Su papeleta debe recibirse  
antes de las 8 p.m. el día de  
las elecciones en la junta  
electoral de su condado

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



**FIRST CLASS  
POSTAGE REQUIRED  
SE REQUIERE ENVÍO DE  
PRIMERA CLASE**



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234





### Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

### ¡Antes de completar este lado!

A197

1. Selle su papeleta en el sobre amarillo que dice "Papeleta electoral oficial."
2. Luego Luego selle ese sobre dentro de este sobre.

### Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

### Declaración del votante

Estoy calificado para votar en la papeleta adjunta y aún no he votado en esta elección.

Si no puedo firmar sin ayuda porque tengo una enfermedad o discapacidad física, he dejado mi huella o alguien me ha ayudado a dejar mi huella.

### Sign and date



### Firmar y fechar

<b>Sign or mark here (REQUIRED)</b> <b>Firme o marque aquí (OBLIGATORIO)</b>											
<b>X</b>											
<b>Today's date here (REQUIRED)</b> <b>Escriba la fecha de hoy aquí (OBLIGATORIO)</b>											
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>Month/Mes</i>				<i>Day/Día</i>				<i>Year/Año</i>			

### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

### Sólo para tu testigo

Si tiene una enfermedad o discapacidad física que le impide firmar, pídale a su testigo que complete esta sección.

Witness, sign here | Testigo, firme aquí

Witness address | Dirección del testigo

Street | Calle

City | Ciudad \_\_\_\_\_ Zip | Código postal \_\_\_\_\_

For county election use only

Para uso exclusivo en las elecciones del condado

# Official Ballot Return Envelope

官方選票

回郵信封

Your ballot must be received  
by 8 p.m. on election day at  
your county election board

您所在縣的選舉委員會必  
須在選舉日晚上8點前收到  
您的選票

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



FIRST CLASS  
POSTAGE REQUIRED  
需要一級郵資

### Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

A199

### 在完成此面之前!

1. 將選票封入記有「官方選舉選票」的黃色信封裡。
2. 然後將那個信封封入這個信封裡。

### Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

### 選民聲明

我有用所附選票進行投票的資格，而我尚未在本次選舉中投票。

如果我因疾病或身心障礙而無法在沒有幫助的情況下簽名，我會留下我的印記，或者有人會幫我留下我的印記。

### Sign and date



### 簽名並註明日期

Sign or mark here (REQUIRED) 在此簽名或標記 (必填)					
<b>X</b>					
Today's date here (REQUIRED) 今日的日期在此 (必填)					
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Month/月	Day/日	2	0	Y	Y
			Year/年		

### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

### 僅供您的見證人

如果您因疾病或身心障礙而無法簽字，請讓您的見證人填寫此部分。

Witness, sign here | 見證人在此簽名

Witness address | 見證人地址

Street | 街道

City | 市

Zip | 郵遞區號

For county election use only

僅供縣選舉使用

# Official Ballot Return Envelope

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234

FIRST CLASS  
POSTAGE REQUIRED



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Your ballot must be received  
by 8 p.m. on election day at  
your county election board

A200

## Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope. <sup>1</sup>Seal here.

### Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

### Sign and date



Sign or mark here (REQUIRED)					
<b>X</b>					
Today's date here (REQUIRED)					
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Month		Day		2 0	Y Y
				Year	

### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

#### Witness, sign here

---

#### Witness address

Street \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

For county election use only

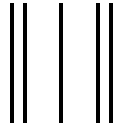
**Official Ballot  
Return  
Envelope**

**Papeleta oficial  
Sobre de  
devolución**

Your ballot must be received by 8 p.m. on election day at your county election board

Su papeleta debe recibirse antes de las 8 p.m. el día de las elecciones en la junta electoral de su condado

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



**FIRST CLASS  
POSTAGE REQUIRED  
SE REQUIERE ENVÍO DE  
PRIMERA CLASE**



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



### Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

### ¡Antes de completar este lado!

1. Selle su papeleta en el sobre amarillo que dice "Papeleta electoral oficial."
2. Luego selle ese sobre dentro de este sobre.

### Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.  
If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

### Declaración del elector

Estoy calificado para votar en la papeleta adjunta y aún no he votado en esta elección.  
Si no puedo firmar sin ayuda porque tengo una enfermedad o discapacidad física, he dejado mi huella o alguien me ha ayudado a dejar mi huella.

### Sign and date



Firmar y fechar

Sign or mark here (REQUIRED) Firme o marque aquí (OBLIGATORIO)											
X											
Today's date here (REQUIRED) Escriba la fecha de hoy aquí (OBLIGATORIO)											
				2	0	Y	Y				
Month/Mes		Day/Día		Year/Año							

### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

### Sólo para su testigo

Si tiene una enfermedad o discapacidad física que le impide firmar, pídale a su testigo que complete esta sección.

### Witness, sign here | Testigo, firme aquí

### Witness address | Dirección del testigo

Street | Calle \_\_\_\_\_

City | Ciudad \_\_\_\_\_ Zip | Código postal \_\_\_\_\_

**For county election use only**  
**Para uso exclusivo en las elecciones del condado**

**Official Ballot  
Return  
Envelope**

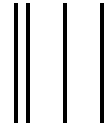
**官方選票**

**回郵信封**

Your ballot must be received by 8 p.m. on election day at your county election board

您所在縣的選舉委員會必須在選舉日晚上8點前收到您的選票

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



**FIRST CLASS  
POSTAGE REQUIRED  
需要一級郵資**



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234





### Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

### 在完成此面之前!

1. 將選票封入記有「官方選舉選票」的黃色信封裡。
2. 然後將那個信封封入這個信封裡。

### Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

### 選民聲明

我有所附選票進行投票的資格，而我尚未在本次選舉中投票。

如果我因疾病或身心障礙而無法在沒有幫助的情況下簽名，我會留下我的印記，或者有人會幫我留下我的印記。

### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

### 僅供您的見證人

如果您因疾病或身心障礙而無法簽字，請讓您的見證人填寫此部分。

Witness, sign here | 見證人在此簽名

Witness address | 見證人地址

Street | 街道

City | 市

Zip | 郵遞區號

For county election use only

僅供縣選舉使用

### Sign and date



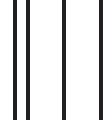
簽名並註明日期

Sign or mark here (REQUIRED) 在此簽名或標記 (必填)											
X											
Today's date here (REQUIRED) 今日的日期在此 (必填)											
				2	0	Y	Y				
Month/月		Day/日		Year/年							

# Official Ballot Return Envelope

Your ballot must  
be received by 8  
p.m. on election  
day at your county  
election board

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



**FIRST CLASS  
POSTAGE REQUIRED**



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



## Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

### Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

### Sign and date



<b>Sign or mark here (REQUIRED)</b>					
<input type="checkbox"/>		<input type="checkbox"/>			
<b>Today's date here (REQUIRED)</b>					
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Month		Day		Year	

### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

### Witness, sign here

\_\_\_\_\_

### Witness address

Street \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

<b>For county election use only</b>	
A207	

# Appendix F

# Official Ballot Return Envelope

# Papeleta oficial Sobre de devolución

Your ballot must be received  
by 8 p.m. on election day at  
your county election board

Su papeleta debe recibirse  
antes de las 8 p.m. el día de  
las elecciones en la junta  
electoral de su condado

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



FIRST CLASS  
POSTAGE REQUIRED  
SE REQUIERE ENVÍO DE  
PRIMERA CLASE

### Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

A210

### ¡Antes de completar este lado!

1. Selle su papeleta en el sobre amarillo que dice "Papeleta electoral oficial."
2. Luego Luego selle ese sobre dentro de este sobre.

### Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

### Declaración del votante

Estoy calificado para votar en la papeleta adjunta y aún no he votado en esta elección.

Si no puedo firmar sin ayuda porque tengo una enfermedad o discapacidad física, he dejado mi huella o alguien me ha ayudado a dejar mi huella.



Sign/Firmar

Sign or mark here (Required) Firme o marque aquí (Obligatorio)		
X		

Today's date here (Required)  
Escriba la fecha de hoy aquí (Obligatorio)

Month/Mes	Day/Día	Year/Año
		20YY

Date/Fechar



### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

### Soló para tu testigo

Si tiene una enfermedad o discapacidad física que le impide firmar, pídale a su testigo que complete esta sección.

Witness, sign here | Testigo, firme aquí

Witness address | Dirección del testigo

Street | Calle

City | Ciudad \_\_\_\_\_ Zip | Código postal \_\_\_\_\_

For county election use only

Para uso exclusivo en las elecciones del condado

# Official Ballot Return Envelope

官方選票  
回郵信封

Your ballot must be received  
by 8 p.m. on election day at  
your county election board  
您所在的縣選舉委員會必須  
在選舉日的晚上八點之前  
收到您的選票。

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



FIRST CLASS  
POSTAGE REQUIRED  
需要平信郵費



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



A211

### Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot".
2. Then seal that envelope inside this envelope.

A212

### 在您完成這一頁之前！

1. 將您的選票封在只寫著“官方選舉選票”的信封裡
2. 然後，將信封封在此信封裡

### Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

### 選民聲明

我有資格參加本次選舉；而且尚未在本次選舉中投票。

如果因為疾病或殘疾而無法簽署聲明，我決定在接受協助情況下，以特殊標記代替本人簽名。



Sign/簽名

Sign or mark here (Required)  
在此簽名或標記(必填)

X

Today's date here (Required)  
今日的日期在此(必填)

Month/月

Day/日

Year/年

20YY

Date/日期



### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

### 如果無法簽名

如果因為疾病或殘疾而無法簽名，請您的見證人完成此部分。

Witness, sign here | 見證人，在此簽名

Witness address | 見證人的地址

Street | 地址

City | 城市

Zip | 郵政編碼

For county election use only



# Official Ballot Return Envelope

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234

**FIRST CLASS  
POSTAGE REQUIRED**



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



Your ballot must be received  
by 8 p.m. on election day at  
your county election board

A213

## Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

### Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.



Sign

X

Sign or mark here (*Required*)

Today's date here (*Required*)

Month

Day

Year

20YY

Date



### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

**Witness, sign here**

**Witness address**

Street \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

For county election use only

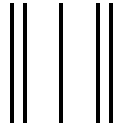
**Official Ballot  
Return  
Envelope**

**Papeleta oficial  
Sobre de  
devolución**

Your ballot must be received by 8 p.m. on election day at your county election board

Su papeleta debe recibirse antes de las 8 p.m. el día de las elecciones en la junta electoral de su condado

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



**FIRST CLASS  
POSTAGE REQUIRED  
SE REQUIERE ENVÍO DE  
PRIMERA CLASE**



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



### Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

### ¡Antes de completar este lado!

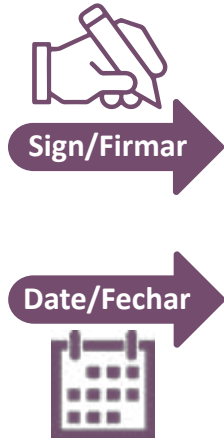
1. Selle su papeleta en el sobre amarillo que dice "Papeleta electoral oficial."
2. Luego selle ese sobre dentro de este sobre.

### Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.  
If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

### Declaración del elector

Estoy calificado para votar en la papeleta adjunta y aún no he votado en esta elección.  
Si no puedo firmar sin ayuda porque tengo una enfermedad o discapacidad física, he dejado mi huella o alguien me ha ayudado a dejar mi huella.



<b>Sign or mark here (Required)</b> <b>Firme o marque aquí (Obligatorio)</b>		
<b>X</b>		
<b>Today's date here (Required)</b> <b>Escriba la fecha de hoy aquí (Obligatorio)</b>		
		<b>20YY</b>
<i>Month/Mes</i>	<i>Day/Día</i>	<i>Year/Año</i>

### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

### Sólo para su testigo

Si tiene una enfermedad o discapacidad física que le impide firmar, pídale a su testigo que complete esta sección.

### Witness, sign here | Testigo, firme aquí

### Witness address | Dirección del testigo

Street | Calle \_\_\_\_\_

City | Ciudad \_\_\_\_\_ Zip | Código postal \_\_\_\_\_

**For county election use only**  
**Para uso exclusivo en las elecciones del condado**

**Official Ballot  
Return  
Envelope**

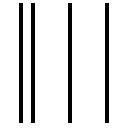
**官方選票**

**回郵信封**

Your ballot must be received by 8 p.m. on election day at your county election board

您所在縣的選舉委員會必須在選舉日晚上8點前收到您的選票

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



**FIRST CLASS  
POSTAGE REQUIRED  
需要一級郵資**



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



### Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

### 在完成此面之前!

1. 將選票封入記有「官方選舉選票」的黃色信封裡。
2. 然後將那個信封封入這個信封裡。

### Voter's declaration

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### 選民聲明

我有所附選票進行投票的資格，而我尚未在本次選舉中投票。

如果我因疾病或身心障礙而無法在沒有幫助的情況下簽名，我會留下我的印記，或者有人會幫我留下我的印記。



Sign/簽名

Date/日期



Sign or mark here (Required)  
在此簽名或標記 (必填)

X

Today's date here (Required)  
今日的日期在此 (必填)

Month/月

Day/日

20YY

Year/年

### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

### 僅供您的見證人

如果您因疾病或身心障礙而無法簽字，請讓您的見證人填寫此部分。

Witness, sign here | 見證人在此簽名

\_\_\_\_\_

Witness address | 見證人地址

Street | 街道 \_\_\_\_\_

City | 市 \_\_\_\_\_ Zip | 郵遞區號 \_\_\_\_\_

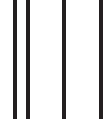
For county election use only

僅供縣選舉使用

# Official Ballot Return Envelope

Your ballot must  
be received by 8  
p.m. on election  
day at your county  
election board

Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



**FIRST CLASS  
POSTAGE REQUIRED**



Franklin County Elections Department  
4321 Sample Avenue  
Sample, PA 99999-1234



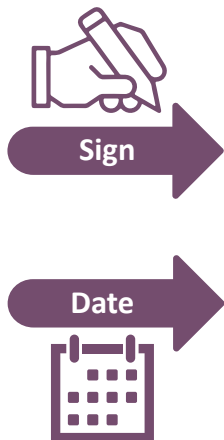
## Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

### Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.



<b>Sign or mark here (Required)</b>		
X		
<b>Today's date here (Required)</b>		
		20YY
<i>Month</i>	<i>Day</i>	<i>Year</i>

### For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

#### Witness, sign here

---

#### Witness address

Street \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

<b>For county election use only</b>	
-------------------------------------	--



**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**BLACK POLITICAL  
EMPOWERMENT PROJECT,  
POWER INTERFAITH, MAKE THE  
ROAD PENNSYLVANIA, ONEPA  
ACTIVISTS UNITED, NEW PA  
PROJECT EDUCATION FUND,  
CASA SAN JOSÉ, PITTSBURGH  
UNITED, LEAGUE OF WOMEN  
VOTERS OF PENNSYLVANIA,  
AND COMMON CAUSE  
PENNSYLVANIA,**

**Petitioners,**

**v.**

**AL SCHMIDT, in his official capacity  
as Secretary of the Commonwealth,  
PHILADELPHIA COUNTY BOARD  
OF ELECTIONS, AND  
ALLEGHENY COUNTY BOARD OF  
ELECTIONS,**

**Respondents.**

**No. \_\_\_\_\_  
Original Jurisdiction**

John A. Freedman\*  
James F. Speyer\*  
David B. Bergman\*  
Erica E. McCabe\*  
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[bgeffen@pubintl.org](mailto:bgeffen@pubintl.org)

\* *Pro hac vice* applications to be filed

Witold J. Walczak (No. 62976)  
Stephen Loney (No. 202535)  
Marian K. Schneider (No. 50337)  
Kate I. Steiker-Ginzberg  
(No. 332236)  
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PENNSYLVANIA  
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[asavitzky@aclu.org](mailto:asavitzky@aclu.org)

## NOTICE TO PLEAD

**To Al Schmidt, in his official capacity as Secretary of the Commonwealth, the Philadelphia County Board of Elections, and the Allegheny County Board of Elections:** You are hereby notified to file a written response to the Petitioners' enclosed Petition for Review within twenty (30) days from service hereof, or such other time as the Court prescribes, or judgment may be entered against you.

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 thirty (30) days, or within the time set by order of the court, after this petition for review and notice are served, by entering a written appearance personally or by 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 claims or relief requested by the plaintiff. 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 or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Dauphin County Bar Association  
Lawyer Referral Service  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**BLACK POLITICAL  
EMPOWERMENT PROJECT,  
PHILADELPHIANS ORGANIZED  
TO WITNESS, EMPOWER AND  
REBUILD, MAKE THE ROAD  
PENNSYLVANIA, ONEPA  
ACTIVISTS UNITED, NEW PA  
PROJECT EDUCATION FUND,  
CASA SAN JOSÉ, PITTSBURGH  
UNITED, LEAGUE OF WOMEN  
VOTERS OF PENNSYLVANIA,  
AND COMMON CAUSE  
PENNSYLVANIA,**

**Petitioners,**

**v.**

**AL SCHMIDT, in his official  
capacity as Secretary of the  
Commonwealth, PHILADELPHIA  
COUNTY BOARD OF  
ELECTIONS, AND ALLEGHENY  
COUNTY BOARD OF  
ELECTIONS,**

**Respondents.**

**No. \_\_\_\_\_  
Original Jurisdiction**

**PETITION FOR REVIEW  
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION**

## I. SUMMARY OF THE LAWSUIT

1. Pennsylvania election officials, including Secretary of the Commonwealth Al Schmidt (“Secretary Respondent”) and officials at the Philadelphia and Allegheny County Board of Election (“County Respondent”) have arbitrarily disqualified thousands of plainly eligible voters’ timely-submitted mail-in ballots in every primary and general election since 2020 merely because the voters neglected to write a date, or wrote an “incorrect” date, on the ballot-return envelope. Such conduct violates the Pennsylvania Constitution’s Free and Equal Elections Clause, Pa. Const. art. I, § 5.

2. Petitioners, nonpartisan organizations dedicated to promoting American democracy and the participation of Pennsylvania voters in our shared civic enterprise, bring this Petition for Review to ensure that their members, the people they serve, and other qualified Pennsylvania voters do not again lose their constitutional right to vote based on a meaningless requirement.

3. The refusal to count timely mail ballots submitted by otherwise eligible voters because of an inconsequential paperwork error violates the fundamental right to vote recognized in the Free and Equal Elections Clause, which provides that “no power, civil or military, shall at any time interfere to prevent the free exercise of the right to suffrage.” Pa. Const. art. 1, § 5. *See Ball v. Chapman*, 289 A.3d 1, 27 n.156 (Pa. 2023) (plurality opinion) (acknowledging that

the “failure to comply with the date requirement would not compel the discarding of votes in light of the Free and Equal Elections Clause, and our attendant jurisprudence that ambiguities are resolved in a way that will enfranchise, rather than disenfranchise, the electors of this Commonwealth”).

4. Enforcement of the dating provision disenfranchised at least 10,000 voters in the 2022 general election and thousands more<sup>1</sup> voters in the 2024 Presidential primary whose ballots were timely received by election day. These include individuals like Allegheny County voters Joanne Sowell and Otis Keasley, Philadelphia County voters Bruce Wiley and Eugene Ivory, and other impacted individuals from across the Commonwealth like Stephen Arbour (Montgomery County), Kenneth Hickman (York County), Janet Novick (Bucks County), Joe Sommar (Chester County), Phyllis Sprague (Bucks County), Mary Stout (Berks

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<sup>1</sup> Petitioners note that the precise number of votes impacted by this issue in the 2024 primary election is currently unknown, as several counties still have not entered all ballot cancelations in the SURE system. It is already clear as of the date of this filing, however, that the meaningless envelope dating provision again impacted several thousand Pennsylvania voters even in this low-turnout election. In any event, recent history has proven that not counting even a relatively small number of mail ballots based on this provision can be outcome determinative in close races. *See, e.g.*, Katherine Reinhard and Robert Orenstein, “Cohen wins Lehigh County judicial election by 5 votes,” *Pennsylvania Capital-Star* (June 17, 2022) (noting impact on municipal election results after counting 257 mail ballots received in undated envelopes following *Migliori v. v. Cohen*, 36 F.4th 153, 162-64 (3d Cir. 2022), *vacated as moot*, 2022 WL 6571686 (U.S. Oct. 11, 2022)); Dan Sokil, “Towamencin supervisors race tied after Montgomery County election update,” *The Reporter Online* (Nov. 27, 2023) (noting impact on Towamencin Township supervisor results after counting 6 impacted mail ballots following *NAACP, et al. v. Schmidt, of NAACP v. Schmidt*, No. 1:22-CV-00339, 2023 WL 8091601 (W.D. Pa. Nov. 21, 2023), *rev’d* 97 F.4th 120 (2024)); Borys Krawczeniuk, “Court says six mail-in ballots in state 117th House District race should count,” *WVIA News* (May 8, 2024) (noting potential impact on outcome of state house race if six outstanding mail ballots are counted in Luzerne County).

County), and Lorine Walker (Dauphin County), whose timely ballots, as described herein, were rejected for arbitrary and trivial reasons.

5. Absent declaratory and injunctive relief by this Court enjoining enforcement of the date requirement, Petitioners, their members and thousands of qualified Pennsylvania voters will suffer the irreparable harm of having their timely-submitted mail-in ballots rejected in this year's general election and at every election thereafter.

6. As multiple courts have found in recent prior lawsuits, the voter-written date is meaningless, necessary neither to establish voter eligibility or timely ballot receipt. While the date requirement has nevertheless survived previous court challenges, none of the lawsuits thus far have tested the date requirement under the Pennsylvania Constitution's Free and Equal Elections Clause, Pa. Const. art. I, § 5. Until now.

## **II. JURISDICTION**

7. This Court has original jurisdiction over this Petition for Review pursuant to 42 Pa.C.S. § 761(a)(1).

## **III. PARTIES**

8. Black Political Empowerment Project ("B-PEP") is a non-profit, non-partisan organization that has worked since 1986 to ensure that the Pittsburgh African-American community votes in every election. B-PEP's and its supporters

throughout the Pittsburgh Region, including in Allegheny County, work with community organizations to empower Black and brown communities, including by promoting voting rights and get-out-the vote efforts.

9. During every election cycle, B-PEP's work includes voter registration drives, get-out-the-vote activities, education and outreach about the voting process, and election-protection work. B-PEP focuses these activities in predominantly Black neighborhoods in Allegheny County, with some efforts in Westmoreland and Washington Counties.

10. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects B-PEP's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. Respondent Allegheny County Board of Elections' failure to count such ballots will also obligate B-PEP to continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. In connection with the 2024 general election, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters B-PEP will have to divert its resources towards educating voters about the risk of disenfranchisement due to the envelope dating requirement and about any available cure processes. B-PEP



will also divert resources toward continued advocacy for new processes to ensure that voters who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake, as it has in other prior election cycles since at least 2022.

b. In connection with the November 2022 election, for example, B-PEP conducted outreach to members and constituent communities in Allegheny County about the importance of voting in person or by mail. When it was announced that county boards of elections would not count timely-submitted mail ballots based solely on missing or supposedly incorrect dates on return envelopes, B-PEP redirected its limited resources, including staff and volunteer time, to efforts to inform voters of this change and educate them as to how to avoid disenfranchisement.

c. In the days leading up to the election in November 2022, B-PEP's staff and volunteers also expended time and money developing, printing and distributing hundreds of flyers and other educational materials to dozens of churches for the purpose of informing prospective voters of the envelope dating issues generated by prior court decisions.

d. B-PEP's time and resources dedicated by B-PEP staff and volunteers would otherwise have been available for the organization's other

“get out the vote” efforts and other initiatives serving BPEP’s mission, including its Greater Pittsburgh Coalition Against Violence.

e. Leading up to the November 2024 General Election and other future elections, B-PEP plans similarly to divert its staff and volunteer resources from voter engagement and community initiatives toward preventing the disenfranchisement of voters who have already submitted their ballots.

11. POWER Interfaith (“POWER”) is a Pennsylvania non-profit organization of more than 100 congregations of various faith traditions, cultures and neighborhoods committed to civic engagement and organizing communities so that the voices of all faiths, races and income levels are counted and have a say in government.

12. During every election cycle, POWER’s civic engagement efforts include voter education programs, voter registration drives, and “Souls to the Polls” efforts<sup>2</sup> within Philadelphia County to encourage congregants to vote. In the weeks leading up to the November 2022 election, for example POWER launched a

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<sup>2</sup>“Souls to the Polls” refers to the efforts of Black church leaders to encourage their congregants to vote *See, e.g.* Daniels, III, D. “The Black Church has been getting “souls to the polls” for more than 60 years,” *The Conversation*, Oct. 30, 2020, <https://theconversation.com/the-black-church-has-been-getting-souls-to-the-polls-for-more-than-60-years-145996>

bus tour focused on engaging Philadelphia County voters who were not already participating in the political process.

13. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects POWER's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. Respondent Philadelphia County Board of Elections' failure to count such ballots will also compel POWER to continue diverting resources in this and future elections from its other voter education and mobilization efforts towards investigating and educating voters about any available cure processes or to advocate that new processes be developed to ensure that voters who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, POWER will reassign volunteers and staff from its other voter education and mobilization efforts towards contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their vote set aside, as it has in prior election cycles since at least 2022.

b. In one prior example, when Philadelphia published a list of over 3,000 voters who were at risk of having their November 2022 general election ballots thrown out over technical errors, including a missing or incorrect date on the return envelope, POWER's members and volunteers made more than 1,200 manual calls and sent more than 2,900 texts to the voters whose names appeared on Philadelphia's at-risk list to provide them with information to help them cure their ballot or vote provisionally. POWER also stationed volunteers at City Hall to ensure voters returning their mail ballots to that location had correctly dated their return envelopes.

c. The time and attention that POWER devoted to ensuring voters who had already submitted their mail ballots would have their votes counted would otherwise have been used to engage and educate people who had not already attempted to vote.

d. Leading up to the 2024 General Election and other future elections, POWER plans to similarly divert its member and volunteer resources from their intended mission—engaging, educating, and mobilizing new voters—toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope.

14. Make the Road Pennsylvania (“Make the Road PA”) is a not-for-profit, member-led organization formed in 2014 that builds the power of the working class in Latino and other communities to achieve dignity and justice through organizing, policy innovation, and education services. Make the Road PA’s more than 10,000 members are primarily working-class residents of Pennsylvania, many in underserved communities. Many members of Make the Road PA are registered voters in Pennsylvania.

15. Make the Road PA’s work includes voter protection, voter advocacy and voter education on, for example, how to register to vote, how to apply for mail-in/absentee ballots, how to return mail-in/absentee ballots, and where to vote. Its get-out-the-vote efforts have included knocking on doors and speaking directly with eligible voters in historically underserved communities of color, especially in Berks, Bucks, Lehigh, Northampton and Philadelphia Counties.

16. Many members of Make the Road PA are registered voters in Pennsylvania and are at risk of disenfranchisement if Respondents fail to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope. Because Make the Road PA’s efforts are focused on communities where some voters are not native English speakers, the risk that some voters may make a minor paperwork mistake in filling out various forms related to mail or absentee ballot voting is heightened.

17. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects Make the Road PA's members and interferes with its ability to carry out its mission of increasing voter turnout and participation.

Respondent Philadelphia County Board of Elections' failure to count such ballots will also compel Make the Road PA to continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. In connection with the 2024 general election, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, Make the Road PA will have to divert its resources towards investigating and educating voters about any available cure processes or to advocate that new processes be developed to ensure that voters who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake, as it has in prior election cycles since at least 2022.

b. During the 2024 election cycle, Make the Road PA will reassign volunteers and staff from its other voter education and mobilization efforts, redirecting its limited resources to efforts to inform voters of the risk of disenfranchisement from the envelope dating rule and to educate them as to how to avoid disenfranchisement.

c. Similarly, in connection with the 2022 General Election, Make the Road PA contacted thousands of Pennsylvania voters, including Philadelphia County voters, to provide them with information to help them cure their ballot or vote provisionally to prevent the counties' actions from disenfranchising them.

d. Leading up to the November 2024 General Election and other future elections, Make the Road PA plans to similarly divert its staff and volunteer resources from voter engagement and community initiatives toward preventing the disenfranchisement of voters who have already submitted their ballots.

e. But for application of the rule at issue in this case, such time and resources dedicated by Make the Road PA staff and volunteers would have been available for the organization's other "get out the vote" efforts and other initiatives serving Make the Road PA's mission, including its Immigrant Rights, Education Justice, Housing Justice, Climate Justice and Worker Rights initiative.

18. OnePA Activists United (d/b/a "One PA For All") is a community organizing and voter engagement group that fights for racial, economic and environmental justice. It builds multiracial, working-class progressive power in Pennsylvania with a deep focus on Black liberation, with offices in Pittsburgh and

Philadelphia, and does voter engagement work in Philadelphia, Allegheny, Delaware, and Dauphin Counties.

19. One PA For All's mission and program include a variety of voting- and election-related activities, including boosting voter registration and turnout within Black communities in Pennsylvania and educating and mobilizing community members for active participation in democratic processes, including city council, school board, zoning hearings, and PA General Assembly meetings. In connection with every election cycle, One PA For All runs an ambitious and comprehensive strategy to engage marginalized communities through door-to-door canvassing, phone calls, relational organizing, text messaging, digital ads, and earned media, with a goal to increase civic participation. In 2024, One PA plans to register more than 35,000 voters and make more than 2.14 million contacts with voters. In just the last two years, One PA has registered 28,000 voters in working class Black communities in Philadelphia, Delaware, and Allegheny Counties.

20. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects One PA For All's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. The County Respondents' failure to count such ballots will also compel One PA For All to



continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. Since Respondents began strictly enforcing the envelope date requirement to disenfranchise people, One PA For All has helped 1000+ voters correct mistakes on their mail ballot envelopes. In one striking instance in 2022, One PA For canvassers knocked on door of Ms. Phyllis, a voter in her 70s, after learning that her mail-in ballot was in danger of not being counted because she had forgotten to write the date on the return envelope. Canvassers took her to her polling place and helped her obtain a provisional ballot, ensuring that her vote would count. Such a monumental effort requiring the resources of One PA For All and its staff and volunteers would not have been necessary if not for the decision to set aside mail ballots submitted without a voter written date on the return envelope.

b. One PA For All has, in past election cycles, expended scarce resources to help voters, like Ms. Phyllis, correct errors on mail ballot envelopes. This work is labor intensive and prevents its staff and volunteers from carrying out other aspects of its civic engagement work. In addition to contacting voters through the telephone or text message, One PA For All also sends staff and volunteers to the voters' homes and provides rides to the polling location for those voters who need a ride.

c. If the envelope dating requirement remains in place to disenfranchise mail-ballot voters who do not handwrite a date on the return envelope, or who write an “incorrect” date, One PA For All will continue its work instructing voters on how to correctly fill out a mail ballot return envelope. This work includes: distribution of a digital video via social media channels walking voters through how to properly vote by mail; organizing staff and volunteers to perform a “ballot chase” program that involves calling voters who have not turned in their mail ballots; and deploying staff and volunteers to mount a “ballot envelope curing” program that includes getting a copy of the list of voters in Allegheny and Philadelphia counties, contacting those voters and helping them correct the error on the envelope or helping them cast a provisional ballot in person.

d. In connection with the 2024 general election, One PA For All plans to deploy a five-person staff for the purpose of contacting voters who have made a mistake on their mail ballot envelope.

e. But for application of the rule at issue in this case, resources and staff deployed to reach out to voters with mistakes on their envelopes could be spent doing other work to advance One PA For All’s mission, such as knocking on additional doors, covering more territory in canvassing voters, calling or texting newly-registered voters, and recruiting and training

more volunteers. One PA For All is also diverting resources away from broader civic engagement and voter education program, which includes producing and distributing content publication on social media channels and coordinating messaging with micro influencers who have followings on Instagram and TikTok. If One PA For All did not have to expend resources on creating content about mail ballot envelope dating mistakes, it could focus educational materials more on voter registration, reach out to more first-time voters to encourage them to vote in the first place, and produce more communications focused on participation in the election in general. One PA For All would also have more resources to dedicate to its other civic engagement efforts, including its efforts to unite the community against exploitative corporate landlords, labor law violators, and health-threatening industrial polluters, and to transform the media narrative around community needs, enabling residents to share their stories for non-partisan direct action and civic engagement.

21. New PA Project Education Fund (“NPPEF”) is a nonpartisan, nonprofit organization based in Pennsylvania. NPPEF and its affiliated organization have offices in West Chester, Norristown, Harrisburg, and Pittsburgh. NPPEF is led by community leaders across the Commonwealth dedicated to centering underrepresented and underserved communities to embrace their power.

NPPEF works to ensure full participation in the democratic process through civic education and year-round engagement by centering Black, Indigenous, and other people of color, immigrant communities and the youth.

22. In connection with every election cycle, NPPEF conducts civic engagement and voter education in Philadelphia, Chester, Delaware, Montgomery, Bucks, Monroe, Lehigh, Northampton, Dauphin, Cumberland, Lebanon, York, Allegheny and Berks Counties. In 2024, NPPEF seeks to expand its operations into Erie, Beaver, Lawrence, Centre and Lackawanna counties. In the past two years, NPPEF and its affiliated organization registered nearly 40,000 Pennsylvanians to vote in Pennsylvania. More than 70% of those NPPEF registered to vote in 2024 are under the age of 36 and 68% of the newly registered, who self-identified, belong to a community of color. NPPEF’s voter registration, voter education and mobilization programs include repeat phone and email outreach to voters, door knocking, canvassing, mailings, preparing and distributing voter information guides, creating digital media, radio ads and emailed newsletters, and reaching out to voters on social media platforms. NPPEF also engages in “Community Conversations,” whereby staff travels the Commonwealth attending events and setting up informational tables to engage voters and potential voters and we provide nonpartisan information on how to register to vote, how to vote by mail and instructions for properly completing the vote by mail return envelope.

23. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects NPPEF's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. The County Respondents' failure to count such ballots will also compel NPPEF to continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, NPPEF will have to divert volunteers and staff from its other voter education and mobilization efforts to help ensure people are not disenfranchised by the envelope date requirement. Working in coalition with partner organizations, NPPEF expends resources towards ensuring that registered voters are notified of any mistakes on the mail ballot envelope, such as missing and incorrect dates, and provide information on how to make sure their vote counts. NPPEF will continue and expand this program for the general election in 2024. Because of the confusion around proper dates on mail ballot envelopes, in 2024, NPPEF anticipates adding information on the consequences of failing to handwrite the date or writing

the wrong date on the mail ballot envelope into its revised voter information guide tri-fold pamphlet.

b. Given the number of voters NPPEF aims to contact in 2024, any time spent discussing with voters the consequences of failing to date their mail ballot envelopes means staff and volunteers have that much less time to discuss other issues, and register additional Pennsylvanians to vote. NPPEF staff and volunteers are also forced to spend time and resources addressing inconsistent communication around correctly completing and returning vote by mail ballots and the resulting misinformation and voter fatigue around mail-in voting. NPPEF has thus had to spend additional resources to more thoroughly training staff, producing additional content and literature, more often than planned or budgeted, and redirecting staff capacity away from the organization's primary focus of registering Pennsylvanians to vote.

c. If NPPEF staff and volunteers did not need to spend time and resources educating voters about the dangers of being disenfranchised due to the envelope dating requirement, they would have more opportunities to discuss other issues with their centered communities instead of spending precious resources instructing them on how to properly date the mail ballot envelope. The more time and resources NPPEF is forced to spend providing

civic education around mail voting, the less time and resources it has to meet its organizational goals, and the expectations of its funders and donors.

24. Casa San José is a nonpartisan, nonprofit organization based in Pittsburgh, Pennsylvania, employing a staff of 24 and supported by three members of the order of the Sisters of St. Joseph and more than 100 volunteers. Casa San José connects, supports, and advocates with and for the Latino community toward a Pittsburgh region that celebrates Latino culture, welcomes immigrants, and embraces inclusion, dignity, and respect. In addition to voter engagement for the Latino community, Casa San José provides a variety of resources including weekly clinics, food pantries, summer camps, community meetings, and Know Your Rights sessions, among other services.

25. In connection with every election cycle, Casa San José does voter outreach in Allegheny, Beaver, Butler, Erie, Indiana, Lawrence, Washington, and Westmoreland counties. Casa San José engages the rapidly growing Latino community through phone calls, relational organizing, text messaging, and digital ads with a goal to increase the civic participation of the Latino communities. In 2022, for example, Casa San José conducted three phone call campaigns and three text campaigns, in addition to holding civic engagement events and distributing voter education information through social media sites, including Spanish videos with information on the importance of voting and the impact on local communities.

26. Respondent Schmidt’s direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects Casa San José’s members and interferes with its ability to carry out its mission of increasing voter turnout and participation. Respondent Allegheny County Board of Elections’ failure to count such ballots will also compel Casa San José to continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, Casa San José will have to divert volunteers and staff from its other voter education and mobilization efforts to help ensure people are not disenfranchised by the envelope date requirement. As in past elections since at least 2022, Casa San José will need to spend time making thousands of “ballot chasing” calls and text messages educating voters on the danger of being disenfranchised based on envelope dating issues.

b. In the 2022 election, phone calls and texts that included information on envelope dating issues were completed by a Community Policy Organizer and six volunteers.

c. Contacting voters and spending time and effort on the correct way to fill out the mail ballot envelope is time consuming and requires Casa



San José to carefully train callers and volunteers to make sure they emphasize the need for the date and the consequences for omitting it.

d. But for application of the rule at issue in this case, resources and staff deployed to reach out to voters who thought they already voted properly could be used for a multitude of other activities core to Casa San José's mission, including but not limited to: creating educational material to help voters understand the importance of elections; engaging with more voters through phone calls and text messages; additional canvassing in predominantly Latino neighborhoods; and registering more voters, especially first time voters.

e. If the mail ballot dating rule continues to be enforced in a way that disenfranchises voters in future elections, Casa San José will have to continue diverting its time and resources away from these activities and toward addressing mail ballot envelope dating issues with voters who thought they already voted properly, as it did in 2022, in connection with the November 2024 general election.

27. Pittsburgh United is a nonpartisan organization that strives to advance social and economic justice in the Pittsburgh region. It is a membership and coalition organization employing 31 staff members in six offices, one each in Pittsburgh, Ambridge, Meadville, Erie, Greensburg and State College.

28. Among its other community-based initiatives, Pittsburgh United staff and volunteers work to increase civic engagement in the communities it serves, including through work to increase voter turnout and expand access to mail voting in Black, low-income, and white working class communities across its six chapters in Allegheny, Beaver, Erie, Crawford, Centre, and Westmoreland Counties.

29. In connection with each election cycle, Pittsburgh United engages with voters in a variety of ways, including door-to-door canvassing, phone, text and digital outreach. Over the past four years, Pittsburgh United has made hundreds of thousands of phone calls and knocked on hundreds of thousands of doors. Its staff and volunteers provide nonpartisan information on the election process, and how elections directly impact the issues that matter most to the organization and its members, such as jobs, housing, racial justice, and climate equity. Pittsburgh United uses a variety of methods to reach voters and distribute information via social media platforms many times using content created by its coalition partners.

30. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects Pittsburgh United's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. Respondent Allegheny County Board of Elections' failure to count such ballots

will also compel Pittsburgh United to continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, Pittsburgh United will have to divert volunteers and staff from its other voter education and mobilization efforts to help ensure people are not disenfranchised by the envelope date requirement.

b. In their direct voter outreach, Pittsburgh United staff and volunteers will have to continue spending time with voters explaining the numerous steps required to accurately complete a mail ballot, including the date field, and talking to voters who have had their ballot fail to be counted. They will also have to continue devoting significant resources to calling voters whose mail ballots were rejected because of a handwritten date error on the outer envelope and advising them to contact their county or go to their local polling place and cast a provisional ballot on election day.

c. Pittsburgh United has extremely limited resources to reach people who are typically left out of the process of voting. The time necessary to explain the steps of correctly filling out a mail ballot, including the dating requirement, slows down its staff because they have to take more

time in each conversation with a voter, ultimately reducing the number of voters Pittsburgh United can reach leading up to the 2024 election.

d. But for application of the rule at issue in this case, the additional resources and staff spent with voters who thought they already voted properly could be used both for more voter outreach and for a multitude of other activities core to Pittsburgh United’s mission, including but not limited to its “Clean Rivers Campaign,” its “Our Water Campaign,” its worker campaigns, and its affordable housing campaigns.

31. The League of Women Voters of Pennsylvania (“the League”) is a non-partisan statewide non-profit formed in 1920. The League and its members are dedicated to helping the people of Pennsylvania exercise their right to vote, as protected by the law. The League encourages informed and active participation in government, works to increase understanding of major public policy issues, and seeks to influence public policy through education and advocacy. The League is a predominantly volunteer organization and has 30 member chapters and one Inter-League Organization operating in 28 counties around the Commonwealth. The League has nearly 2,500 individual members who are registered voters and regularly vote in state and federal elections using, among other methods, absentee and mail ballots.

32. The League's mission is to empower voters and defend democracy, which includes voter registration, education, and get-out-the-vote drives. During every election cycle, the League conducts voter-registration drives, staffs nonpartisan voter-registration tables, educates incarcerated and formerly incarcerated individuals about their voting rights, and works with local high schools and universities to register young voters. The League maintains voter information resources on its website in English and Spanish. It also maintains an online database called VOTE411, a nonpartisan and free digital voter resource with information available in both English and Spanish, including registration information, voter guides, mail-in ballot information, candidate information, polling rules and locations.

33. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects the League's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. The County Respondents' failure to count such ballots will also force the League to continue diverting resources in this and future elections from its other voter education and mobilization efforts towards investigating and educating voters about any available cure processes or to advocate that new processes be developed to ensure that voters

who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, the League will have to divert volunteers and staff from its other voter education and engagements efforts to help ensure people are not disenfranchised by the envelope date requirement, as it has in prior election cycles since at least 2022.

b. In 2022, for example, the League had to reassign its members' and volunteers' time and efforts from its core activities towards contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their ballot set aside. Following the Pennsylvania Supreme Court's decision in *Ball v. Chapman, et al.*, 284 A.3d 1189 (Pa. 2022) just before Election Day and after many LWVPA members and others served by LWVPA's mission had already submitted mail ballots, the League was forced to redirect its limited resources, including staff and volunteer time, to efforts to inform voters of this change and educate them about how to avoid disenfranchisement. League staff members and volunteers spent time contacting voters directly through any means possible, including via email,

in person, and through social media, to alert them that their ballot would not be counted because of the missing or incorrect date and provided steps that voters could take to rectify the error. The League also enlisted staff members and volunteers from its local chapters and coordinated the chapters' efforts to broadcast the potential to cure ballots on social media channels, sharing available information including, when possible, direct links to undated ballot lists. The League developed and issued a statement about the Pennsylvania court's ruling, and the League's members spent time creating content for its websites, posting information on social media, and attending Board of Elections meetings urging counties to provide notice and cure opportunities for mail-ballot voters.

c. Similar work continued into the 2024 primary election season and in preparation for the 2024 general election season. For example, as a direct result of the uncertainty around the mail ballot envelope dating requirement, the League developed and hosts a webinar—"Ballot Box Basics"—to educate voters about the steps to successfully vote by mail. The League has had to spend resources developing this series to inform voters of the required steps—especially the date requirement—to ensure a ballot does not get rejected for a dating error. League staff also publish written materials to educate voters on how to avoid a ballot being rejected, including through

social media posts, emails, and postcards and flyers about the intricacies of voting by mail and the importance of the date requirement to have one's ballot counted. And League staff do media appearances to educate voters about the date requirement and the potential for disenfranchisement if a voter makes minor mistakes when completing a mail-in ballot. Local League chapters also dedicate time and resources to informing voters about the date requirement during the dozens of voter registration and education events they host across the Commonwealth.

d. If the LWVPA didn't have to devote the time, staff, and financial resources to educating voters about the logistics of completing a mail ballot, the importance of properly filling in the date, and checking to ensure that ballots are ultimately counted, it could instead focus on other important forms of voter engagement and participation, including: helping individuals make a personalized plan to vote and developing creative solutions to eliminate voters' personal obstacles to voting; conducting more outreach and voter registration efforts with new voters, younger voters, and voters from marginalized communities; educating more voters about substantive issues that affect their lives and communities, and generally directing resources toward making Pennsylvanians more efficacious and informed voters.



e. The envelope dating requirement further hinders the League’s mission by generating confusion around mail-in ballots and mistrust around the electoral process, which in turn decreases voter participation. Any aspect of the voting process that makes it harder for voters to successfully cast a ballot and have it counted—such as not counting ballots over a dating error—harms the League’s efforts to increase voter participation and confidence in the electoral process. Absent the relief requested in this case, the League will continue in the 2024 General Election and other future elections to divert staff, member and volunteer resources from their core activities toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope.

34. Common Cause Pennsylvania (“Common Cause PA”) is a non-profit, non-partisan organization, and a chapter of the national Common Cause organization. Common Cause PA is a non-partisan good government organization with approximately 36,000 members and supporters who live in all 67 counties of Pennsylvania, including Allegheny and Philadelphia Counties.

35. One of Common Cause PA’s core functions is to increase the level of voter registration and voter participation in Pennsylvania elections, especially in communities that are historically underserved and whose populations have a low

propensity for voting. In preparation for every major state-wide election, Common Cause PA mobilizes hundreds of volunteers to help fellow Pennsylvanians navigate the voting process and cast their votes without obstruction, confusion, or intimidation. As part of these efforts, Common Cause PA is a leader of the nonpartisan Election Protection volunteer program in Pennsylvania, which works to ensure voters have access to the ballot box, to provide voters with necessary and accurate information about voting and answer their questions, to quickly identify and correct any problems at polling places, and to gather information to identify potential barriers to voting.

36. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects Common Cause PA's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. The County Respondents' failure to count such ballots will also force Common Cause PA to continue diverting resources in this and future elections from its other voter education and mobilization efforts towards investigating and educating voters about any available cure processes or to advocate that new processes be developed to ensure that voters who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, Common Cause PA will have to divert volunteers and staff from its other voter education and engagements efforts to help ensure people are not disenfranchised by the envelope date requirement, as it has in prior election cycles since at least 2022.

b. During the 2022 election, for example, Common Cause PA had to reassign its volunteers' time and efforts from Common Cause PA's other efforts toward contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their vote set aside. When Respondent Schmidt's predecessor announced that ballot envelopes with an incorrect or missing date would be segregated and not counted, Common Cause PA ensured that accurate information was available for voters, including those in Allegheny and Philadelphia Counties. Additionally, Common Cause PA issued the press advisories, held press briefings and issued press statements with the goal of alerting as many voters as possible to the Commonwealth's requirements.

c. Heading into the 2024 General Election and other future elections, Common Cause PA will continue to divert its volunteer resources

from its intended mission—educating and mobilizing voters—toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope.

d. If Common Cause PA did not have to devote time, staff, and financial resources to educating voters about the *logistics* of completing a mail ballot, the importance of properly filling in the date, and checking to ensure that ballots are ultimately counted, it could instead focus on other important forms of voter engagement and participation, including informing additional eligible citizens about how to register to vote, working to debunk election-related misinformation, and conducting additional voter education efforts.

37. Respondent Al Schmidt is the Secretary of the Commonwealth. The Pennsylvania Election Code confers authority upon the Secretary to implement absentee and mail voting procedures throughout the Commonwealth.

38. Specifically, the absentee and mail-in ballots must be in a form as provided by statute which form “shall be determined and prescribed by the secretary of the commonwealth.” 25 P.S. § 3146.3(b) (absentee ballots); *id.* § 3150.13(b) (mail-in ballots).

39. Similarly, the Election Code mandates that the form of the declaration printed on absentee and mail ballot envelopes, which includes a place for voters to insert the date, must be “as prescribed” by the secretary of the commonwealth. 25 P.S. § 3146.4 (absentee ballots); *id.* § 3150.14 (mail-in ballots).

40. In accordance with its specific statutory authority, before the 2024 primary election, Respondent Schmidt redesigned the mail ballot return envelope. Among other things, he included a field that pre-populated “20” at the beginning of the year on the outer return envelope. *Shapiro Administration Introduces Redesigned Mail Ballot Materials To Give Votes Clearer Instructions, Decrease Number Of Rejected Ballots, And Ensure Every Legal Vote Is Counted*, Pennsylvania Pressroom, Nov. 29, 2023, <https://www.media.pa.gov/pages/state-details.aspx?newsid=584>. Nevertheless, voters across the Commonwealth continued to make inconsequential envelope dating mistakes even on the DOS redesigned envelope. See Carter Walker, *Pennsylvania’s redesigned mail ballot envelopes trip up many voters who left date incomplete*, Votebeat Pennsylvania, Apr. 23, 2024, <https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>; <https://ny1.com/nyc/all-boroughs/politics/2024/04/24/pennsylvania-voters-ballot-envelopes>

41. In Respondent Schmidt’s official capacity, he has the duty “[t]o receive from county boards of elections the returns of primaries and elections, to

canvass and compute the votes cast for candidates and upon questions as required by the provisions of this act; to proclaim the results of such primaries and elections, and to issue certificates of election to the successful candidates at such elections. . . .” 25 P.S. § 2621(f).

42. Respondent Schmidt and his predecessors have issued guidance to county boards of elections that timely-submitted mail-in ballots with a missing or incorrect date on the return envelope must be segregated and excluded from tabulation. Specifically, on November 3, 2022, the Secretary issued guidance instructing counties that “ballots which are administratively determined to be undated or incorrectly dated” should be coded as “CANC – NO SIGNATURE within the SURE system” (*i.e.*, should be canceled and not accepted) and “segregated from other ballots.” *Guidance on Undated and Incorrectly Dated Mail-in and Absentee Ballot Envelopes Based on the Pennsylvania Supreme Court’s Order in Ball v. Chapman*, at 1, Pa. Dep’t of State, Nov. 3, 2022 (Archived), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2022-11-03-Guidance-UndatedBallot.pdf>. On April 3, 2023, Respondent Schmidt issued guidance stating, in relevant part, “A ballot-return envelope with a declaration that is not signed *or dated* is not sufficient and must be set aside, declared void, and may not be counted”; and any declarations “that contain a date deemed by the

county board of elections to be incorrect should be set aside and segregated.”

*Guidance Concerning Civilian Absentee And Mail-In Ballot Procedures*, at 6, Pa.

Dep’t of State, Updated Apr. 3, 2023,

<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2023-04-03-DOS-Guidance-Civilian-Absentee-Mail-In-Ballot-Procedures-v3.pdf>

43. Following the Third Circuit’s decision in *NAACP v. Schmidt*, the Department of State continued to instruct counties not to count ballots arriving in undated or incorrectly-date declaration envelopes. For instance, in an April 19, 2024 email, Deputy Secretary Jonathan Marks provided “the Department’s view” that certain handwritten dates that can “reasonably be interpreted” as the date in which the voter completed the declaration—such as omitting “24” in the year field—“should not be rejected.”<sup>3</sup> However, the Department did otherwise not modify its previous guidance that envelopes that lack a date or have an otherwise “incorrect” date should not be counted.

44. The Boards of Elections of Allegheny and Philadelphia Counties are responsible for administering elections in their respective counties. Section 301 of the Election Code, 25 P.S. § 2641. County Boards are also charged with ensuring

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<sup>3</sup> A true and correct copy of the April 19, 2024 DOS email to county election officials is attached hereto as Exhibit 13.

elections are “honestly, efficiently, and uniformly conducted.” 25 P.S. § 2642(g).

As relevant to absentee ballots, County Boards are responsible for:

- a. reviewing and processing applications for absentee and mail ballots. 25 P.S. § 3146.2b, 3150.12b;
- b. confirming an absentee applicant’s qualifications by verifying their proof of identification and comparing the information on the application with information contained in the voter’s record. 25 P.S. §§ 3146.2b, 3150.12b; *see also id.* § 3146.8(g)(4).
- c. sending a mail-ballot package that contains a ballot, a “secrecy envelope” marked with the words “Official Election Ballot,” and the pre-addressed outer return envelope, on which a voter declaration form is printed (the “Return Envelope”). *Id.* §§ 3146.6(a), 3150.16(a).
- d. maintaining poll books that track which voters have requested mail ballots and which have returned them. *Id.* §§ 3146.6(b)(3), 3150.16(b)(3).
- e. Upon return of an absentee ballot, stamping the Return Envelope with the date of receipt to confirm its timeliness. *See Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* at 2–3, Pa. Dep’t of State, (Sept. 11, 2020), <https://campaignlegal.org/sites/default/files/2020->



[09/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf](https://campaignlegal.org/sites/default/files/2020-09/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf)

f. Logging returned absentee ballots in the Department of State’s Statewide Uniform Registry of Electors (“SURE”) system, the voter registration system. *See* Pa. Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* at 2–3, Pa. Dep’t of State, (Sept. 11, 2020),

<https://campaignlegal.org/sites/default/files/2020-09/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf>

g. Keeping returned absentee ballots in sealed or locked containers until they are canvassed by the County Board. 25 P.S. § 3146.8(a)

h. Pre-canvassing and canvassing absentee ballots, including examining the voter declaration. 25 P.S. § 3146.8(g).

i. Conducting a formal hearing to hear challenges as to all challenged absentee ballot applications and challenged absentee ballots. 25 P.S. § 3146.8(g)(5).

## IV. FACTS

### **Pennsylvania's Mail Ballot Rules**

45. Pennsylvania has long provided absentee ballot options for voters who cannot attend a polling place on Election Day. *See* 25 P.S. § 3146.1–3146.9. In 2019, Pennsylvania enacted new mail-in voting provisions, extending the vote-by-mail option to *all* registered, eligible voters. Act of Oct 31, 2019, P.L. 552, No. 77, § 8.

46. A voter seeking to vote by mail must complete an application and send it to their county board of elections that includes their name, address, and proof of identification. 25 P.S. §§ 3146.2, 3150.12. Such proof of identification must include, a Pennsylvania driver's license number, or non-driver identification number, if the voter has one. If the voter does not have a PennDOT-issued identification, they must provide the last four digits of the voter's social security number. 25 P.S. § 2602(z.5)(3). As part of the application process, voters provide all the information necessary for county boards of elections to verify that they are qualified to vote in Pennsylvania, namely, that they are at least 18 years old, have been a U.S. citizen for at least one month, have resided in the election district for at least 30 days, and are not currently incarcerated on a felony conviction. *See* 25 Pa.C.S. § 1301.

47. After the application is submitted, the county board of elections confirms applicants' qualifications by verifying their proof of identification and comparing the information on the application with information contained in a voter's record. 25 P.S. §§ 3146.2b, 3150.12b; *see also id.* § 3146.8(g)(4).<sup>4</sup> The county board's determinations on that score are conclusive as to voter eligibility unless challenged prior to Election Day. *Id.*

48. Once the county board verifies the voter's identity and eligibility, it sends a mail-ballot package that contains a ballot, a "secrecy envelope" marked with the words "Official Election Ballot," and the pre-addressed outer return envelope, on which a voter declaration form is printed (the "Return Envelope"). *Id.* §§ 3146.6(a), 3150.16(a). Poll books kept by the county show which voters have requested mail ballots and which have returned them. *Id.* §§ 3146.6(b)(3), 3150.16(b)(3).

49. At "any time" after receiving their mail-ballot package, the voter marks their ballot, puts it inside the secrecy envelope, and places the secrecy envelope in the Return Envelope. 25 P.S. §§ 3146.6(a), 3150.16(a). The voter

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<sup>4</sup> *See also* Pa. Dep't of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* at 2 (Sept. 11, 2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf>.

delivers the ballot, in the requisite envelopes, by mail or in person, or by other designated method, to their county board of elections.

50. The Election Code provides that the voter “shall...fill out, date and sign the declaration” printed on the outer envelope used to return their mail ballots. *See* 25 P.S. §§ 3146.6(a), 3150.16(a).

51. However, the date written on the envelope is not used to establish whether the mail ballot was submitted on time. Indeed, lawsuits in both state and federal court have conclusively demonstrated that the date is meaningless, necessary neither to establish voter eligibility nor timely ballot receipt. *See, e.g., NAACP*, 97 F.4th 120, 129 (3d Cir. 2024) (“Nor is [the handwritten date] used to determine the ballot’s timeliness because a ballot is timely if received before 8:00 p.m. on Election Day, and counties’ timestamping and scanning procedures serve to verify that. Indeed, not one county board used the date on the return envelope to determine whether a ballot was timely received in the November 2022 elections.”). *See also Pennsylvania State Conf. of NAACP v. Schmidt*, No. 1:22-CV-00339, 2023 WL 8091601, at \*32 (W.D. Pa. Nov. 21, 2023) (Baxter, J.) (“Whether a mail ballot is timely, and therefore counted, is not determined by the date indicated by the voter on the outer return envelope, but instead by the time stamp and the SURE system scan indicating the date of its receipt by the county board”).

52. A mail ballot is timely so long as the county board of elections receives it by 8 p.m. on Election Day. *Id.* §§ 3146.6(c), 3150.16(c). Upon receipt of a mail ballot, county boards of elections stamp the Return Envelope with the date of receipt to confirm its timeliness and log it in the Department of State’s Statewide Uniform Registry of Electors (“SURE”) system, the voter registration system used to generate poll books.<sup>5</sup>

53. A voter whose mail ballot was timely received could have signed the voter declaration form *only* in between the date their county board sent the mail-ballot packages and the Election-Day deadline. Ballots received by county boards *after* 8 p.m. on Election Day are not counted regardless of the handwritten envelope date. *See NAACP*, 2023 WL 8091601, at \*32 (“Irrespective of any date written on the outer Return Envelope’s voter declaration, if a county board received and date-stamped a . . . mail ballot before 8:00 p.m. on Election Day, the ballot was deemed timely received . . . [I]f the county board received a mail ballot after 8:00 p.m. on Election Day, the ballot was not timely and was not counted, despite the date placed on the Return Envelope”), *rev’d on other grounds*, *NAACP*, 97 F.4th 120 (3d Cir. 2024).

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<sup>5</sup> *See, e.g., Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* at 2–3, Pa. Dep’t of State, (Sept. 11, 2020).

54. Timely absentee and mail-in ballots are then verified consistent with procedures set forth in § 3146.8(g)(3). Any ballot that has been so verified by the county board of elections and has not been challenged is counted and included with the election results. *Id.* § 3146.8(d), (g)(4).

55. Pennsylvania’s adoption of mail voting has been a boon for voter participation in the Commonwealth. For example, in 2020, 2.7 million Pennsylvanians voted by absentee or mail ballot.<sup>6</sup>

56. In the 2024 primary election, approximately 714,315 Pennsylvania voters returned mail ballots.<sup>7</sup>

57. But the enforcement of the dating provision again resulted in the arbitrary and baseless rejection of thousands timely ballots.

58. On information and belief, in the 2024 Presidential primary election, several thousand timely absentee and mail-in ballots were rejected because of the envelope dating provision.

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<sup>6</sup> *Report on the 2020 General Election* at 9, Pa. Dep’t of State, (May 14, 2021), <https://www.dos.pa.gov/VotingElections/Documents/2020-General-Election-Report.pdf>. For ease of reference, the term “mail ballots” is used herein to encompass both absentee and mail ballots. The relevant rules governing the treatment of absentee and mail ballots are identical.

<sup>7</sup> The number of returned ballots is alleged based on data provided by the Pennsylvania Department of State. Turnout in the 2024 primary has not been fully reported, but approximately 1.9 million voters voted based on the number of votes cast in the statewide U.S. Senate race *See* 2024 Presidential Primary (Unofficial Returns) Statewide, Apr. 23, 2024, accessed May 17, 2024 <https://www.electionreturns.pa.gov/>

59. This is not new. In the 2022 election, over 10,000 timely absentee and mail-in ballots were rejected because of the dating provision. In the 2023 municipal elections, nearly 7,000 eligible Pennsylvania voters' absentee and mail ballots were initially<sup>8</sup> rejected due to application of the envelope dating provision. *See* Ex. 1 (5/27/24 Decl. of A. Shapell (“Shapell Decl.”)) at ¶ 12(a).

### **Previous Litigation over the Envelope-Date Requirement**

60. Despite the date requirement's complete irrelevance to the electoral process and its devastating impact on the fundamental right to vote, it has withstood prior court challenges based on state-law statutory-interpretation principles and the Materiality Provision of the Civil Rights Act. Specifically, between 2020 and 2022, several courts addressed statutory construction of the Election Code concerning the envelope-dating provision -- reaching different conclusions. *Compare In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1062 (Pa. 2020), *cert. denied*, 141 S. Ct. 1451 (2021) (concluding they would be counted for 2020 election only but not in future) *with Ritter v. Lehigh Cnty. Bd. of Elections*, 272 A.3d 989 (Pa. Commw. Ct. Jan. 3, 2022), *appeal denied*, 271 A.3d 1285 (Pa. 2022) (ruling statute required

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<sup>8</sup> County boards ultimately counted many of the votes that were initially set aside in the 2023 General Election, following the U.S. District Court's December 2023 determination in *NAACP, et al. v. Schmidt*, 2023 WL 8091601, that the envelope dating provision violates the federal Materiality Provision. That decision was later reversed on the merits by the Third Circuit in 2024, after several counties had already counted initially rejected ballots from the 2023 election.

undated envelopes should not be counted). Additional courts considered whether the dating provision violated the Materiality Clause of the Civil Rights Act, also reaching different conclusions. *Compare Migliori v. Cohen*, 36 F.4th 153, 162-64 (3d Cir.), *vacated as moot*, 143 S. Ct. 297 (2022) (concluding immaterial) and *NAACP v. Schmidt*, 2023 WL 8091601 (W.D. Pa. Nov. 21, 2023) (same) and *Chapman v. Berks Cnty. Bd. of Elections*, No. 355 M.D. 2022, 2022 WL 4100998, at \*12–\*29 (Pa. Commw. Ct. Aug. 19, 2022) (same) and *McCormick for U.S. Senate v. Chapman*, No. 286 M.D. 2022, 2022 WL 2900112, at \*9–\*15 (Pa. Commw. Ct. June 2, 2022) (same) *with Ball v. Chapman*, 289 A.3d 1, 33-34 (Pa. 2023) (deadlocking 3-to-3 as to materiality) *with NAACP v. Schmidt*, 97 F.4th 120 (3rd Cir. 2024) (concluding material).

61. However, no court has decided whether applying this provision to disenfranchise voters violates their fundamental right to vote under the Pennsylvania Constitution’s Free and Equal Elections Clause. Pa. Const. art. I, § 5.

62. In a previous case concerning the Materiality Clause, three of the six Pennsylvania Supreme Court justices in *Ball v. Chapman* expressly acknowledged that, even if the federal Materiality Provision does not require canvassing of mail ballots received in undated envelopes:

**[F]ailure to comply with the date requirement would not compel the discarding of votes in light of the Free and Equal Elections**



**Clause**, and our attendant jurisprudence that ambiguities are resolved in a way that will enfranchise, rather than disenfranchise, the electors of this Commonwealth.

*Ball*, 289 A.3d at 27 n.156 (emphasis added) (citing Pa. Const. art. I, § 5; *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020)), *cert. denied*, 141 S. Ct. 732 (2021).

63. Meanwhile, evidence adduced in prior litigation over the envelope dating provision reflects that enforcement of this provision has been arbitrary and has disenfranchised a significant number of Pennsylvania voters. For example, the evidence in the *Ritter* litigation found that of the 257 timely-received mail ballots based on mail-ballot voters' inadvertent failure to handwrite a date on the Return Envelope, three-quarters of the affected voters were over 65 years old, and fifteen of them were older than 90.<sup>9</sup>

64. Similarly, evidence in the *NAACP v. Schmidt* case indicated that over 10,000 ballots had been rejected in the 2022 general election alone based on the envelope dating requirement, and that the requirement was inconsistently and arbitrarily enforced. The plaintiffs obtained discovery from all 67 counties and found dramatic inconsistencies in how voters had been treated. *See NAACP*, 2023 WL 8091601, at \*32 (Baxter, J.) (“[T]he record is replete with evidence that the

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<sup>9</sup> These and other facts relating to the 2021 Lehigh County election are drawn from the Joint App'x in *Migliori v. Cohen*, No. 22-1499 (3d Cir.), Dkt.33-2.

county boards' application of the *Ball* order in the November 2022 general election created inconsistencies across the Commonwealth in the way 'correctly dated' and 'incorrectly dated' ballots were rejected or counted by different counties.”). For example:

a. Many county boards refused to count ballots where the envelope date was correct but missing one term, such as “Oct. 25” with no year provided, even though they only could have been signed during 2022. *Id.* at \*33 (“[A]cross the Commonwealth other timely-received ballots were set aside because the voter declaration omitted the year; omitted the month; omitted the day”). But others counted such ballots. *Id.* at \*33, n. 43-45.

b. Some county boards set aside ballots where the voter put the date elsewhere on the envelope, or included “a cross-out to correct an erroneous date.” *Id.*

c. County boards took varying approaches to dates that appeared to use the international format (*i.e.*, day/month/year), with some counties basing the date range “strictly on the American dating convention” and others “try[ing] to account for both the American and European dating conventions. . . .” *Id.* at \*33. *See also Id.* (“Ballots were set aside for having incorrect dates which, if construed using the European dating convention, would have been within the *Ball* date range”) (footnote omitted).

d. Many county boards counted ballots with necessarily “incorrect” envelope dates—*e.g.*, the handwritten date was before the county sent out the mail-ballot package, or after the elections board received it back from the voter—because the date written nevertheless fell within the date range that the Pennsylvania Supreme Court identified in its supplemental order in *Ball*. *Id.* (“The record reveals that some counties precisely followed the *Ball* date range even where the date on the return envelope was an impossibility because it predated the county's mailing of ballot packages to voters”).

e. At least one county board counted a ballot marked September 31—a date that does not exist. *Id.* at \*33, n. 45.

f. County boards also took inconsistent approaches to voters who mistakenly wrote their birthdates on the date line, with most refusing to do so. *Id.* at \*33.

65. In addition, “[s]imple voter error and partial omissions related to the date declaration also resulted in rejection of mail ballots that were timely received. . . .” *Id.* For instance:

a. More than 1,000 *timely-received* ballots were set aside and not counted because of “an obvious error by the voter in relation to the date,” such as writing a month prior to September or a month after November 8. *Id.*

The *NAACP* district court found that this “shows the irrelevance of any date written by the voter on the outer envelope.” *Id.*

b. On information and belief, counties also refused to count an hundreds of timely-received ballots with obviously unintentional slips of the pen, such as a voter writing a year prior to the election (e.g. “2021”) or a year in the future (e.g. “2023”). Yet the *NAACP* district court agreed that it was a “factual impossibility” for a voter to have signed the mail-ballot envelope any year before the election. *Id.* In other instances of rejected ballots, voters made simple typos such as “2033” or “2202” instead of “2022.”

c. On information and belief, county boards attempting to apply the directive to set aside envelopes bearing “incorrect” dates ultimately failed to count many ballots where it turned out the voter had actually written a correct date.

66. Moreover, in *NAACP v. Schmidt* the district court confirmed that the handwritten-date requirement serves absolutely no purpose and concluded in granting the plaintiffs’ motion for summary judgment that it was beyond dispute that the Date Requirement was “wholly irrelevant” in determining when the voter filled out the ballot or whether the ballot was timely received by 8:00 p.m. on Election Day. *See NAACP*, 2023 WL 8091601, at \*29 (Baxter, J.). Further, the

evidence at the district court “show[ed], and the parties either agree . . . or admit . . .” that county boards did not use the date “*for any purpose* related to determining a voter’s age, citizenship, county or duration of residence, felony status, or timeliness of receipt.” *Id.* at \*22, \*29. In fact, the undisputed record before the district court revealed that the 10,000-plus mail ballots that were not counted in the November 2022 elections were all timely submitted by otherwise qualified voters and the *only* basis for rejecting those votes was the failure to write a date or writing a date that was deemed “incorrect.”

67. These findings were confirmed on appeal. *NAACP*, 97 F.4th at 125 (“The date requirement, it turns out, serves little apparent purpose”); *id.* at 127 (“[I]t may surprise, the date on the declaration plays no role in determining a ballot’s timeliness”); *id.* at 131 (The Materiality Provision does not “preempt state requirements . . . regardless what (if any) purpose those rules serve”); *id.* at 139-40 (Shwartz, J., dissenting) (In the November 2022 election, “10,000 timely-received ballots were not counted because they did not comply” with the Date Requirement “even though the date on the envelope is not used to (1) evaluate a voter’s statutory qualifications to vote, (2) determine the ballot’s timeliness, or (3) confirm that the voter did not die before Election Day or to otherwise detect fraud”).

## The 2024 Primary Election

68. Throughout all of the foregoing cases, Respondent Schmidt and his predecessors had consistently taken the position that eligible voters who timely submit mail ballots should have their ballots counted regardless of the envelope-dating rule. *See, e.g., Ball*, 289 A.3d at 16 (“the Acting Secretary argues that none of the proffered justifications for the date requirement withstand scrutiny, and that if the Court finds any ambiguity in the Election Code, such ambiguity should be resolved in favor of the exercise of the franchise”) (footnote omitted).

69. Following the Third Circuit’s decision in *NAACP v. Schmidt*, however, the Department of State’s instruction to counties – i.e., that they segregate and not count ballots that were received in envelopes that lacked the date or had a handwritten date that was deemed “incorrect” – remained in place. *See Ex. 13* (April 19, 2024 email from Deputy Secretary Jonathan Marks, instructing counties not to reject ballots where the handwritten date can “reasonably be interpreted” as the date the voter signed the declaration, but not otherwise modifying its prior guidance that ballots arriving in undated or incorrectly dated envelopes must be set aside and not counted).

70. On information and belief, as of the date of this Petition, Pennsylvania county boards of elections had recorded their receipt of 714,315 mail ballots in the Department of State’s Statewide Uniform Registry of Electors (“SURE”) system

for the 2024 Primary Election. That number represents more than 37% of all ballots cast in the primary.

71. Pursuant to Respondent Schmidt’s guidance, no county boards of elections canvassed any mail ballot received in an outer return envelope that is missing a voter-written date or has a date that the county board deemed “incorrect.”

72. As a result, thousands of mail-ballot envelopes have been set aside and segregated—and the ballots contained therein were not counted—pursuant to Respondent’s guidance because they were received in return envelopes with missing or incorrect handwritten dates next to the voters’ signatures.

73. On information and belief, more than 4,000 such ballots were marked as canceled in the SURE system for 2024 primary election due to a missing or incorrect handwritten date as of the date of this Petition. *See* Ex. 1 (Shapell Decl.) at ¶ 12(b).

74. Voters across the Commonwealth continued to make envelope dating mistakes even on the DOS redesigned envelopes in 2024. *See*

<https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>; <https://ny1.com/nyc/all-boroughs/politics/2024/04/24/pennsylvania-voters-ballot-envelopes>

75. Even in a low-turnout election, application of the envelope dating rule resulted in rejection of thousands of timely submitted mail and absentee ballots submitted by eligible Pennsylvania voters.

76. As noted above, thousands of voters were impacted by the date requirement in the 2024 primary – this impacted eligible Pennsylvania voters of all walks of life and across the political spectrum who were disenfranchised by this rule in the 2024 primary election. These are some of the impacted individuals:

a. Allegheny County voter Otis Keasley, a 73-year-old Vietnam veteran who rarely misses an opportunity to vote. Mr. Keasley timely applied for and received a mail ballot package from Respondent Allegheny County Board of Elections, marked his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and mailed it to the elections office rather than dropping it off in person because he was dealing with a family health issue. Respondent Allegheny County Board of Elections timely received Mr. Keasley's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Keasley's timely mail ballot submission, and he believed he had done everything correctly. Mr. Keasley did not learn until after the date



of the primary that there was a problem with his mail ballot submission, and his primary vote was not counted. *See* Ex. 2 (Keasley Decl.).

b. Allegheny County voter Joanne Sowell, a 76-year-old Pittsburgh resident who rarely misses an opportunity to vote. Ms. Sowell timely applied for and received a mail ballot package from Respondent Allegheny County Board of Elections, marked her ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. She then signed the envelope and returned it to the elections office early because she had travel plans on the day of the 2024 primary, believing she had done everything correctly. Respondent Allegheny County Board of Elections timely received Ms. Sowell's mail ballot well in advance of 8pm on April 23, 2024, but decided to set her ballot aside due to a purported envelope dating error. There were no other errors with Ms. Sowell's timely mail ballot submission. Ms. Sowell was boarding a flight when she saw an email notifying her that her ballot would not be counted because of the date issue, and she was unable to correct the purported issue with her ballot submission as she did not return home until after April 23. Ms. Sowell's primary vote was not counted. *See* Ex. 3 (Sowell Decl.).

c. Philadelphia voter Eugene Ivory, a 74-year-old retired Philadelphia educator who has been voting regularly for more than 50 years.

Mr. Ivory timely applied for and received a mail ballot package from Respondent Philadelphia County Board of Elections, marked his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and returned the ballot package at a dropbox located at the Eastwick Library on or about April, 22, 2024. Respondent Philadelphia County Board of Elections timely received Mr. Ivory's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Ivory's timely mail ballot submission, and he believed he had done everything correctly. Mr. Ivory received a notice on the date of the primary election that his ballot may not be counted due to an incorrect date on the envelope, but he was unable to correct the error or cast a provisional ballot in person that day due to a family emergency. Respondent Philadelphia County Board of Elections did not count Mr. Ivory's primary vote. *See Ex. 4 (Ivory Decl.)*.

d. Philadelphia voter Bruce Wiley, a 71-year-old home-bound voter who voted by mail for the first time in the 2024 primary due to health limitations that prevent him from leaving the home except for doctor appointments. Mr. Wiley timely applied for and received a mail ballot package from Respondent Philadelphia County Board of Elections, marked

his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and mailed it to the elections office in advance of primary day. Respondent Philadelphia County Board of Elections timely received Mr. Wiley's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Wiley's timely mail ballot submission, and he believed he had done everything correctly. Mr. Wiley did not learn until after the date of the primary that there was a problem with his mail ballot submission, and his primary vote was not counted. *See Ex. 5 (Wiley Decl.)*.

e. Montgomery County Stephen Arbour, a Chief Technology Officer who has dutifully voted in every election since becoming a naturalized U.S. citizen in 2010. Mr. Arbour timely applied for and received a mail ballot package from the Montgomery County Board of Elections, marked his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and returned it prior to the primary election day. The Montgomery County Board of Elections timely received Mr. Arbour's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Arbour's timely mail ballot

submission, and he believed he had done everything correctly. Mr. Arbour received an email notification on April 22, 2024, that his ballot may not count due to a mistake in the date on the declaration form but could not go in person to cure the error or cast a provisional ballot on election day due to work and family commitments. His primary vote was not counted. *See Ex. 6 (Arbour Decl.)*.

f. York County voter Kenneth Hickman, an 89-year-old retired mechanical engineer who has been voting since 1973. Mr. Hickman timely applied for and received a mail ballot package from the York County Board of Elections, marked his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and mailed it to the elections office within a week or two of receiving it. The York County Board of Elections timely received Mr. Hickman's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Hickman's timely mail ballot submission, and he believed he had done everything correctly. Mr. Hickman did not learn until after the date of the primary that there was a problem with his mail ballot submission, and his primary vote was not counted. *See Ex. 7 (Hickman Decl.)*.

g. Bucks County voter Janet Novick, an 80-year-old retired high school English teacher with mobility issues who has voted regularly since registering in 1979. Ms. Novick timely applied for and received a mail ballot package from the Bucks County Board of Elections, marked her ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. She then signed the envelope and mailed it to the elections office in advance of the primary election date. The Bucks County Board of Elections timely received Ms. Novick's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Ms. Novick's timely mail ballot submission, and she believed she had done everything correctly. Ms. Novick and her husband received voicemails indicating that their mail ballots would not be counted due envelope dating errors. When they returned the call, the elections office informed Ms. Novick that she had written her birthdate in the date line next to "2024," which Ms. Novick attributes to "a momentary lapse when I was completing the outer envelope." The elections office also informed Ms. Novick that the only way to correct these errors would be to go in person to the office in Doylestown. The Novicks could not appear in person due to their mobility issues, and their primary votes were not counted. *See Ex. 8 (Novick Decl.)*.

h. Chester County voter Joseph Sommar, a 71-year-old retired electrician and union representative who has voted in nearly every Pennsylvania election since the 1980s. Mr. Sommar timely applied for and received a mail ballot package from the Chester County Board of Elections, marked his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and returned it to the elections office in advance of the primary election date. The Chester County Board of Elections timely received Mr. Sommar's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Sommar's timely mail ballot submission, and he believed he had done everything correctly. Mr. Sommar was surprised and frustrated to receive a notice on or about April 19 that his vote may not count due to an envelope dating error. Mr. Sommar's 2024 primary vote was not counted. *See Ex. 9 (Sommar Decl.)*.

i. Bucks County voter Phyllis Sprague, an 80-year-old regular voter who has never missed a presidential election in over 50 years. Ms. Sprague timely applied for and received a mail ballot package from the Bucks County Board of Elections, marked her ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope.

She then signed the envelope and returned it to the elections office prior to a cervical spine surgery she had scheduled for April 18<sup>th</sup>. The Bucks County Board of Elections timely received Ms. Sprague's mail ballot prior to 8pm on April 23, 2024, but decided to set her ballot aside due to a purported envelope dating error. There were no other errors with Ms. Sprague's timely mail ballot submission, and she believed he had done everything correctly. After Ms. Sprague was discharged from the hospital following her surgery, she received an email notice that her ballot may not count due to an envelope dating issue. Not wanting to miss the opportunity to vote, Ms. Sprague got ready to go to her polling place to cast a provisional ballot on Election Day but had a fall and injured herself before she had the chance to do so. Ms. Sprague's 2024 primary vote was not counted. *See Ex. 10 (Sprague Decl.)*.

j. Berks County voter Mary Stout, a 77-year old retired nurse who started voting by mail a few years ago after getting back surgery. Ms. Stout timely applied for and received a mail ballot package from the Berks County Board of Elections, marked her ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. She then signed the envelope and returned it to the elections office about two weeks before the primary election date. The Berks County Board of Elections timely

received Ms. Stout's mail ballot prior to 8pm on April 23, 2024, but decided to set her ballot aside due to a purported envelope dating error. There were no other errors with Ms. Stout's timely mail ballot, and she believed she had done everything correctly. Ms. Stout received a notice about a week before the primary that her ballot would not count because of a missing date on the envelope, but she was unable to go in person to fix it because of her mobility issues. Ms. Stout's 2024 primary vote was not counted. *See Ex. 11 (Stout Decl.)*.

k. Dauphin County voter Lorine Walker, a 74-year-old retired school librarian who started voting by mail in 2020 during the pandemic and can no longer drive because of mobility issues. Ms. Walker timely applied for and received a mail ballot package from the Dauphin County Board of Elections, marked her ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. She then signed the envelope and mailed it to the elections office a few weeks ahead of the 2024 primary election date. The Dauphin County Board of Elections timely received Ms. Walker's mail ballot prior to 8pm on April 23, 2024, but decided to set her ballot aside due to a purported envelope dating error. There were no other errors with Ms. Walker's timely mail ballot submission, and she believed she had done everything correctly. Ms. Walker did not



learn until after the date of the primary that there was a problem with her mail ballot submission, and her primary vote was not counted. *See* Ex. 12 (Walker Decl.).

77. These and many other Pennsylvania voters will continue to lose their right to vote unless this Court declares application of the date requirement unconstitutional and enjoins the continued rejection of timely submitted ballots from eligible voters simply because they omitted a meaningless date, or wrote the wrong date, on the Return Envelope. In a high-turnout election, where Petitioners anticipate based on recent history that more than 37% of votes are cast by mail ballot, even a 1% error rate will result in the rejection of tens of thousands of mail ballots.

78. Impacted voters are disproportionately senior citizens, many of whom have voted dutifully for decades. They hail from throughout the Commonwealth and include voters registered Republican, Democrat and independent. These are all duly registered, eligible Pennsylvania voters who filled out their mail ballots, returned them on time, and signed the declaration on the Return Envelope, but simply made a mistake on the Return Envelope by omitting a handwritten date or writing an incorrect date. The challenged envelope-date rule ensnares even voters who reasonably believed they were complying with all of the proper requirements to cast their ballot.

79. Absent court intervention, the County Respondents and other county boards of election will continue to follow Respondent Schmidt’s guidance, setting aside mail ballot envelopes with missing or incorrect voter-written dates in the November 2024 General Election and subsequent elections.

80. The Pennsylvania Constitution requires that ballots with missing or incorrect dates be counted. The disenfranchisement of the affected voters in this and future elections constitutes irreparable harm for which there is no adequate remedy at law and for which this Court’s intervention is required.

**V. CLAIMS**

**COUNT I  
(Violation of Pennsylvania’s Free and Equal Elections Clause,  
Pa. Const. art. I, § 5)**

81. Petitioners hereby incorporate and adopt each and every allegation set forth in the foregoing paragraphs of the Petition for Review.

82. Pennsylvania citizens enjoy a fundamental right to vote, as recognized by the command of the Pennsylvania Constitution’s Free and Equal Elections Clause: “no power, civil or military, shall at any time interfere to prevent the free exercise of the right to suffrage.” Pa. Const. art. 1, § 5.

83. Pursuant to that mandate, the Pennsylvania Supreme Court has consistently held that election law must be applied in a way so as to enfranchise, rather than disenfranchise. *See, e.g., Boockvar*, 238 A.3d at 361; *see also, e.g.,*

*Shambach v. Bickhart*, 845 A.2d 793, 798-99 (Pa. 2004) (“we have held that ballots containing mere minor irregularities should only be stricken for compelling reasons”) (citations omitted); *Petition of Cioppa*, 626 A.2d 146, 148 (Pa. 1993) (noting the “longstanding and overriding policy in this Commonwealth to protect the elective franchise”) (citations omitted); *In re Luzerne Cnty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972) (citing *Appeal of James*, 105 A.2d 64 (Pa. 1954) (“[T]he power to throw out a ballot for minor irregularities should be sparingly used . . . In construing election laws . . . [o]ur goal must be to enfranchise and not to disenfranchise.”); *cf. Ball*, 289 A.3d at 27 n.156.

84. Respondent’s application of the Election Code’s envelope dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), to reject timely mail ballots submitted by eligible voters based solely on the inadvertent failure to add a meaningless, superfluous handwritten date next to their signature on the mail ballot Return Envelope is an unconstitutional interference with the exercise of the right to suffrage in violation of the Free and Equal Elections Clause.

85. Continued application of this requirement will result in the disenfranchisement of eligible Pennsylvania voters who submit timely mail ballots in the 2024 General Election and all future elections, unless and until enjoined by this Court.

**COUNT II**  
**(Violation of Pennsylvania’s Free and Equal Elections Clause,**  
**Pa. Const. art. I, § 5))**

86. Petitioners hereby incorporate and adopt each and every allegation set forth in the foregoing paragraphs of the Petition for Review.

87. Under Pennsylvania’s canon of constitutional avoidance, a statute must be given a construction that is consistent with the Pennsylvania Constitution. *See, e.g., Atlantic-Inland, Inc. v. Board of Supervisors of West Goshen Township*, 410 A.2d 380, 382 (Pa. Commw. Ct. 1980) (courts have an “obligation to adopt a reasonable construction which will save the constitutionality of the ordinance”) (citation omitted).

88. Moreover, Pennsylvania courts have consistently held that provisions of the Election Code must be interpreted “in order to favor the right to vote,” interpreting the statute so as “to enfranchise and not to disenfranchise.” *In re Luzerne Cnty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972) (citing *Appeal of James*, 105 A.2d 64 (Pa. 1954)); *see also, e.g., Ball v. Chapman*, 289 A.3d 1, 27 n.156 (2022) (plurality opinion) (citing Pa. Const. art. I, § 5; *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020)) (“failure to comply with the date requirement would not compel the discarding of votes in light of the Free and Equal Elections Clause, and our attendant jurisprudence that ambiguities are resolved in a way that will enfranchise, rather than disenfranchise”); *Shambach v.*

*Bickhart*, 845 A.2d 793, 798-99 (Pa. 2004) (“To that end, we have held that ballots containing mere minor irregularities should only be stricken for compelling reasons.”) (citations omitted).

89. Since the Pennsylvania Supreme Court’s decision in *Ball v. Chapman* in 2022, Respondent Schmidt, the county boards of election in all 67 counties, and federal courts in the Western District of Pennsylvania and the Third Circuit have all confirmed beyond a shadow of a doubt that the envelope dating provision serves no purpose whatsoever, and it has been applied to disenfranchise thousands of eligible Pennsylvania voters in each and every primary and general election since 2022.

90. Since the Pennsylvania Supreme Court’s decision in *Ball v. Chapman* in 2022, the record in the other court cases establishes that the envelope dating rule has been inconsistently and arbitrarily enforced.

91. Accordingly, Petitioners claim in the alternative that, because Respondents’ application of the Election Code’s meaningless envelope dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), imposing a mandatory requirement to disenfranchise eligible mail and absentee voters, triggers a violation of voters’ fundamental constitutional right to vote, the statutory envelope dating requirement must be reinterpreted and applied as a “directory” provision such that Respondents cannot use noncompliance with this entirely meaningless provision as a basis to

disenfranchise eligible voters to submit timely absentee and mail ballots. *Cf. In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 General Election*, 241 A.3d 1058 (Pa. 2020) (plurality opinion).

### **PRAYER FOR RELIEF**

92. Petitioners have no adequate remedy at law to redress the wrongs suffered as set forth in this petition. Petitioners have suffered and will continue to suffer irreparable harm as a result of the unlawful acts, omissions, policies, and practices of Respondent, as alleged herein, unless this Court grants the relief requested.

**WHEREFORE**, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Secretary of State and:

- a. Declare pursuant to Pennsylvania's Declaratory Judgments Act, 42 Pa.C.S. § 7531. et seq., that enforcement of the Election Code's envelope dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), to reject timely mail ballots submitted by eligible voters, based solely on the absence of a handwritten date on the mail ballot return envelope is unconstitutional under the Free and Equal Elections Clause, Pa. Const. art. I, § 5;
- b. Declare pursuant to Pennsylvania's Declaratory Judgments Act, 42 Pa.C.S. § 7531. et seq., that enforcement of the Election Code's

envelope dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), to reject timely mail ballots submitted by eligible voters, based solely on the determination that the voter wrote an incorrect date on the mail ballot return envelope is unconstitutional under the Free and Equal Elections Clause, Pa. Const. art. I, § 5;

- c. Preliminarily and permanently enjoin further enforcement of the Election Code’s envelope dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), to reject timely mail ballots submitted by eligible voters, based either on (i) the absence of a handwritten date on the mail ballot return envelope or (ii) the determination that the voter-written date is “incorrect”;
- d. Award Petitioners costs; and
- e. Provide such other and further relief as this Honorable Court deems just and appropriate.

Dated: May 28, 2024

Respectfully submitted,

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James F. Speyer\*  
David B. Bergman\*  
Erica E. McCabe\*  
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\* *Pro hac vice* applications to be filed

*Attorneys for Petitioners*



## CERTIFICATE OF COMPLIANCE

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

/s/ Benjamin Geffen

VERIFICATION

I, IMM STEVENS, hereby state:

1. The statements made in the foregoing Petition for Review are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

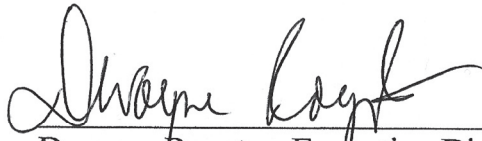
A handwritten signature in black ink, appearing to be 'IMM STEVENS', is written over a horizontal line.

Dated: May 24, 2024

## VERIFICATION

I, Dwayne Royster, hereby state:

1. The statements made in the foregoing Petition for Review are true and correct to the best of my own personal knowledge, information, and belief;  
and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



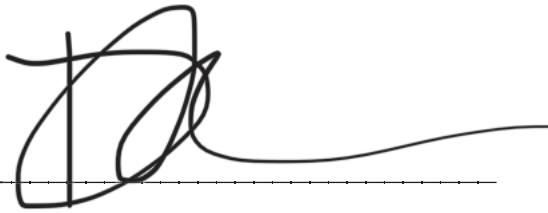
Dwayne Royster, Executive Director  
POWER Interfaith

Dated: May 28, 2024

## VERIFICATION

I,    Diana Robinson   , hereby state:

1. The statements made in the foregoing Petition for Review are true and correct to the best of my own personal knowledge, information, and belief;  
and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to be 'Diana Robinson', is written over a horizontal line. The signature is stylized and cursive.

Dated: May   24  , 2024

**VERIFICATION**

I verify that the statements made in the foregoing Petition for Review 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.



Dated: May 27, 2024

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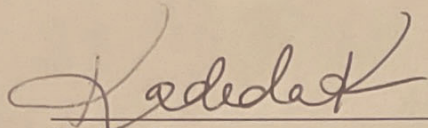
SIGNATURE

---

Steve Paul  
Executive Director  
One PA For All

VERIFICATION

I verify that the statements made in the foregoing Petition for Review 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.



---

Kadida Kenner  
Chief Executive Officer  
New PA Project Education Fund

Dated: May 26, 2024

**VERIFICATION**

I verify that the statements made in the foregoing Petition for Review 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.

*Monica Ruiz, MSW*

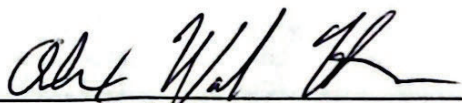
---

Monica Ruiz, MSW  
Executive Director  
Casa San José

Dated: May 27, 2024

**VERIFICATION**

I verify that the statements made in the foregoing Petition for Review 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.



Alex Wallach Hanson  
Executive Director  
Pittsburgh United

Dated: May 27, 2024



## VERIFICATION

I, Amy Widestrom, hereby state:

1. The statements made in the foregoing Petition for Review are true and correct to the best of my own personal knowledge, information, and belief;  
and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in blue ink, consisting of a stylized initial 'A' followed by a long horizontal stroke.

---

Dated: May 24, 2024

VERIFICATION

I, Philip Hensley-Robin, hereby state:

1. The statements made in the foregoing Petition for Review are true and correct to the best of my own personal knowledge, information, and belief;  
and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, reading "Philip Hensley-Robin", written over a horizontal line.

Dated: May 24, 2024

# EXHIBIT

1

**DECLARATION OF ARIEL SHAPELL  
IN SUPPORT OF PETITIONERS' PETITION FOR REVIEW**

1. I, Ariel Shapell, am an attorney at the American Civil Liberties Union of Pennsylvania (“ACLU-PA”) and have a background in data analytics.

2. I received a B.S.B.A. with majors in mathematics and finance from Washington University in St. Louis in 2011 and a J.D. from the University of Pennsylvania Carey Law School in 2021.

3. In 2014 and 2015, I served as the Director of Business Intelligence at Beatport LLC, a digital music and entertainment company, where I was responsible for organizing, analyzing, and reporting the company’s business data. In my role, I performed data analyses and visualizations and developed systems to extract, transform, and load data. I also supervised a team of three data scientists and analysts.

4. From 2015 until 2018, I served as the lead product manager at Postlight LLC, a technology consultancy. At Postlight LLC, I oversaw data analytics and digital product development projects for large entertainment, finance, and cultural institutions.

5. From 2019 through the present, I have worked as a volunteer, intern, and now legal fellow at the ACLU-PA. During my time with the ACLU-PA, I have conducted numerous analyses of large data sets for both litigation and advocacy.

6. During my time with the ACLU-PA, I have conducted numerous analyses of large data sets for both litigation and advocacy.

7. I have been asked by the ACLU-PA, Arnold & Porter Kaye Scholer LLP, and the Public Interest Law Center (collectively, “Petitioners’ Counsel” or “Counsel”) to apply my training and expertise to assess the number of mail-ballots that were coded as canceled or pending because the voter neglected to write the date on the outer envelope or because the voter wrote a date that was deemed “incorrect.”

8. I have been informed and understand that on August 21, 2023, ACLU-PA attorney Kate Steiker-Ginzberg received access from the Pennsylvania Department of State to the “Pennsylvania Statewide Mail-Ballot File,” which contains point-in-time public information about each mail-ballot application and mail-ballot recorded in Pennsylvania’s Statewide Uniform Registry of Electors (“SURE”) system.

9. Attorney Steiker-Ginzberg made two versions of the Pennsylvania Statewide Mail-Ballot File available to me: (1) a version of the file generated on November 17, 2023 based on Department of State data from the SURE system corresponding to mail-ballots submitted in the November 2023 municipal election, under the file name VR\_SWMailBallot\_External 20231117.TXT; and (2) a version of the file generated on May 14, 2024 based on Department of State data from the SURE system corresponding to mail-ballots received in the April 2024 Pennsylvania

presidential primary election, under the file name VR\_SWMailBallot\_External 20240514.TXT.

10. For the May 14, 2024 SURE file, I identified mail ballots that were coded as canceled or pending because the voter neglected to write the date on the outer envelope by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - NO DATE” or “PEND – NO DATE.” For the November 17, 2023 SURE file, I identified mail ballots that were coded as canceled because the voter neglected to write the date on the outer envelope by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - NO DATE.” No “PEND – NO DATE” “Ballot status reason” values were present in the November 17, 2023 SURE file.

11. Similarly, for the May 14, 2024 SURE file, I identified mail ballots that were coded as canceled or pending because the voter wrote a date that was deemed “incorrect” by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - INCORRECT DATE” or “PEND – INCORRECT DATE”. For the November 17, 2023 SURE file, I identified mail ballots that were coded as canceled because the voter wrote a date that was deemed “incorrect” by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - INCORRECT DATE.” No “PEND – INCORRECT DATE” “Ballot status reason” values were present in the November 17, 2023 SURE file.

12. Based on the methodology described above, I determined that:

- a. As of November 17, 2023, **6,804 mail-ballots** submitted in the November 2023 municipal election had been coded in the SURE file as canceled because the voter neglected to write the date on the outer envelope or because the voter wrote a date that was deemed “incorrect.” Of that total, 4,849 ballots were coded as canceled because the voter neglected to write the date on the outer envelope, and 1,955 were coded as canceled because the voter wrote a date that was deemed “incorrect.”
- b. As of May 14, 2024, **4,421 mail-ballots** submitted in the April 2024 Pennsylvania presidential primary election had been coded in the SURE file as canceled or pending because the voter neglected to write the date on the outer envelope or because the voter wrote a date that was deemed “incorrect.” Of that total, 1,216 ballots were coded as canceled or pending because the voter neglected to write the date on the outer envelope, and 3,205 were coded as canceled or pending because the voter wrote a date that was deemed “incorrect.”

13. My conclusions, and the bases for my conclusion, are presented in this declaration. My work on these matters is ongoing, and I may make necessary

revisions or additions to the conclusions in this declaration should new information become available or to respond to any opinions and analyses proffered by Respondents. I am prepared to testify on the conclusions in this declaration, as well as to provide any additional relevant background. I reserve the right to prepare additional exhibits to support any testimony.

The statements made in this Declaration 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.



---

Ariel Shapell

5/27/2024



# EXHIBIT

2

## **DECLARATION OF OTIS KEASLEY**

I, Otis Keasley, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 73 years old and am otherwise competent to testify.

3. I am a resident of Pittsburgh, Pennsylvania, located in Allegheny County. I have lived in Pittsburgh for nearly my entire adult life.

4. I am a veteran of the United States Marine Corps. It was my honor to serve in Vietnam 1969-1970.

5. I am a registered voter in Allegheny County. I have been a registered voter since I got out of the service.

6. I vote regularly. It is rare for me to miss a primary or general election. I try to vote in every single one.

7. Voting is important to because I truly believe in democracy. I believe in fair play and in the majority having its way.

8. As I have become older, I have been glad to have the opportunity to vote by mail. I usually vote by mail instead of voting at my polling place.

9. Ahead of the April 23, 2024 primary election, I applied for and received a mail ballot from Allegheny County.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.

11. I returned my ballot by putting it in the mailbox, well in advance of April 23. I usually take it to the county office in person, but I was dealing with a family member's health situation and it was important for me to be around the house. I decided just to mail it instead of taking it personally to the county.

12. I did not learn until after the election that my ballot was rejected because I had written the incorrect date.

13. I am very upset that my ballot will not count. I mailed my ballot in on time, so I do not understand why a date on the envelope was a reason to reject it.

14. It bothers me when people say they are not planning to vote because "my vote doesn't count." Every qualified voter should participate in our democracy, and everyone's vote should be tabulated. If you do not vote, you are wasting your privilege of living in a free democracy.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 23 of May, 2024 in Pittsburgh, Pennsylvania.

  
Otis Keasley

# EXHIBIT

## 3

## DECLARATION OF JOANNE SOWELL

I, Joanne Sowell, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am 76 years old and am otherwise competent to testify.
3. I am a resident of Pittsburgh, Pennsylvania, located in Allegheny County. I have lived in Allegheny County for nearly my entire life.
4. I am presently retired. During my career, I worked as a seamstress, first for a company that made slip covers and upholstery, and later for a company that made bumper pads for the trucking industry.
5. I am a registered voter in Allegheny County, and have been for more than 30 years.
6. I vote regularly. It is rare for me to miss an election.
7. Voting is important to because I wanted to have my view and perspective included. If you don't make an effort to vote, you can't say anything about the politicians in office.
8. I started voting by mail in 2020, when Pennsylvania first began allowing people to vote by mail even if they would not qualify for an absentee ballot.
9. Ahead of the April 23, 2024 primary election, I applied for and received a mail ballot from Allegheny County.
10. After I received my ballot, I marked it, inserted it into the secrecy

envelope and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.

11. I returned my ballot early because we were preparing to travel on a cruise, and I wanted to get my ballot in before we left.

12. On April 13, 2024, I received an email informing me that my mail ballot would not count because I wrote an incorrect date. The email said that they were sending the ballot back to me if I wanted to fix the mistake. A true and correct copy of the email dated April 13 is attached hereto as Exhibit A.

13. I did not see this email until the next day, April 14, at which time I was already boarding a flight to New York. I was on my way to travel on a cruise. I boarded the cruise on April 15, and did not return to Allegheny County until April 26, three days after the primary election.

14. Because of my travel, it was not possible for me to cure the date problem on my mail ballot, nor could I go to my polling place on April 23, nor could I timely receive and send voting materials by mail while traveling on a cruise ship. When I returned from my trip, the returned ballot was waiting at my house, but it was too late to fix it.

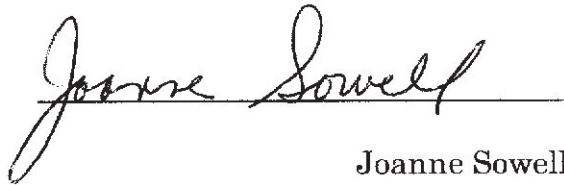
15. I am very upset that my ballot will not count because nobody's ballot should get rejected for a trivial paperwork mistake. When I received the email, it really bothered me for a few days because the date shouldn't matter; it's what's inside the ballot that counts.

16. I was so disappointed to learn that my ballot wouldn't be counted in

this election. I believe that it's important to vote and have a voice in selecting the politicians.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 23 of May, 2024 in Pittsburgh, Pennsylvania.

A handwritten signature in cursive script, reading "Joanne Sowell", is written over a horizontal line. The signature is fluid and extends slightly above and below the line.

Joanne Sowell

# EXHIBIT

# A



## Your Ballot Status Has Changed – Check for Updates

RA-voterregstatcert@state.pa.us <RA-voterregstatcert@state.pa.us>

Sat 4/13/2024 12:46 PM

To:HOTGRANNYJ@MSN.COM <HOTGRANNYJ@MSN.COM>

Dear JOANNE M SOWELL,

After your ballot was received by ALLEGHENY County, it received a new status.

The county has noticed that the date written on your ballot return envelope is incorrect. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot return envelope, and you should go to <https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx> to get more information.

If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.

You can get more information on your ballot's new status by going to <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions or need more information after checking your ballot's status, please contact ALLEGHENY County at (412) 350-4500.

Para leer esta información en español, vaya a

<https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx> .

要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>。

Thank you.

\*\*\*\*Please do not reply to this email.\*\*\*\*

# EXHIBIT

4

## DECLARATION OF EUGENE IVORY

I, Eugene Ivory, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am 74 years old and am otherwise competent to testify.
3. I am a resident of Philadelphia, Pennsylvania. I have lived in Philadelphia for 57 years. I am now retired, but was an educator for many years.
4. I am a registered voter in Philadelphia. I have been a registered voter in Pennsylvania since the early 1970s.
5. I vote regularly and have voted in every election, from local to presidential, for as long as I can remember.
6. Voting is important because it ensures that we are working to make a better country. Voting protects my rights and the rights of others and serves as an accountability measure for our elected officials.
7. I started voting by mail out of convenience four years ago. Ahead of the 2024 primary election, I applied for and received a mail ballot from the Philadelphia elections office.
8. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. On April 22, I returned my ballot by mail via the Official Mail-In Dropbox located at the Eastwick Library on Island Ave.

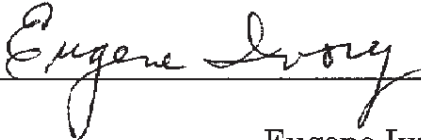
9. On Election Day, I received notice that my ballot had been received, but may not be counted due to an incorrect date on my envelope. The notice informed me that I could vote via a provisional ballot at my in-person polling location. My wife, who also voted by mail, received the same notice. At the time of notice, we were experiencing a family emergency and did not have the time nor capacity to vote via a provisional ballot. so neither of us were able to go to our polling place on primary day..

10. I am disappointed that my ballot did not count because I fully intended to participate in the primary. I had many personal matters occurring around that time and still set aside time to cast my mail ballot, only for it not to count due to a meaningless error.

11. I believe that these ballots should count because every eligible voter who completes a mail ballot and returns it on time should have their vote counted. Whether or not a ballot should be counted should not come down to a small detail like dating the envelope.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this <sup>th</sup>24 of May, 2024 in Philadelphia, Pennsylvania.

  
Eugene Ivory

# EXHIBIT

5

## DECLARATION OF BRUCE WILEY

I, Bruce Wiley, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am 71 years old and am otherwise competent to testify.
3. I am a resident of Philadelphia, Pennsylvania. I have lived in Philadelphia for eight years.
4. I am now retired, but was a trailer truck driver for many years.
5. I am a registered voter in Philadelphia. I have been a registered voter in Pennsylvania since 2016. I vote regularly and have voted in every presidential election.
6. Due to my health, I started voting by mail in the 2024 Primary Election. I previously only voted in-person to ensure there were no errors with counting my ballot. However, my health now limits me to the constraints of my home. I rarely leave the house, except for doctors' visits. Thus, it was necessary to vote by mail.
7. I voted by mail this year. Ahead of the 2024 primary election, I applied for and received a mail ballot from the Philadelphia elections office.
8. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I posted the ballot from my personal mailbox. I thought I had done everything correctly.

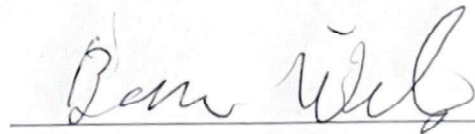
9. I was informed on May 21, 2024 that my ballot was not counted in the primary election because I forgot to write the date on the outer envelope. A person from the ACLU of Pennsylvania contacted me and informed me about this date issue. I do not regularly check my email and was unaware that I should monitor my email for updates regarding my mail ballot. Regardless, due to my health, it would not have been possible for me to correct the error on my ballot in person.

10. I am very upset that my ballot will not count because I am very passionate about Presidential elections.

11. This process lowered my confidence in voting by mail procedures because these ballots should be counted and not thrown out due to a meaningless error. I believe the state should be targeting fraudulent election practices, instead of invalidating ballots from eligible voters.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this \_\_\_ of May, 2024 in Philadelphia, Pennsylvania.

A handwritten signature in cursive script, appearing to read "Bruce Wiley", is written over a horizontal line.

Bruce Wiley

# EXHIBIT

6



## DECLARATION OF STEPHEN ARBOUR

I, Stephen Arbour, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 51 years old and am otherwise competent to testify.

3. I am a resident of Elkins Park, Pennsylvania, located in Montgomery County. I have lived in Montgomery County since 2006.

4. I am the Chief Technology Officer for a company that creates software for the wealth management industry. Our software helps keep markets honest by ensuring that our clients are in compliance with regulations.

5. I am naturalized United States citizen. I was born in Ecuador to a Canadian father and Salvadoran mother, and moved to the United States at eight years old.

6. When I received my citizenship in 2010, I immediately registered to vote in Montgomery County. I have voted in every primary and general election since becoming a citizen.

7. Voting is very important to me. For most of my adult life, I did not have the rights of citizenship. I have children in the United States, and I need to be able to participate in developing the best community possible for them.

8. I started voting by mail during the COVID pandemic in 2020 to avoid being around large groups of people. I continued voting by mail in the years since because I found this to be a very convenient system for our busy

family and complicated schedules.

9. I voted by mail this year. Ahead of the 2024 primary election, I applied for and received a mail ballot from Montgomery County.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I signed the outer envelope. I thought I had done everything correctly.

11. I returned my mail ballot to Montgomery County before Election Day. On Monday, April 22, 2024, I received an email saying that I had made a mistake when completing the date on the declaration form. A true and correct copy of the email dated April 22 is attached hereto as Exhibit A.

12. When I received the email right before Election Day, I had meetings scheduled all day and did not have time to get to Norristown by 4:00pm to fix the mistake. On Election Day, I was unable to cast a provisional ballot due to my busy work and family schedule.

13. I am very frustrated that my ballot will not be counted over this date issue. I do not know the point of the date other than to catch people making minor mistakes and to disqualify ballots. The post office and the county put a date on it, so whether the voter has dated it seems superfluous.

14. I am very upset that my ballot will not count. Voting gives me a voice that I did not otherwise have in this country for most of my adult life. I believe that voting is a responsibility of every American citizen.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 22 of May, 2024 in Elkins Park, Pennsylvania.

A handwritten signature in black ink, appearing to read 'S. Arbour', is written above a horizontal line.

Stephen Arbour

# EXHIBIT

## A



## FW: Important Message Regarding Your Ballot - Incomplete Declaration

1 message

Montco Votes <MontcoVotes@montgomerycountypa.gov>

Mon, Apr 22, 2024 at 10:51 AM

Dear Montgomery County Voter,

We have received your ballot for the 2024 Primary election. However, our sorting machine has indicated that the Voter Declaration field included an invalid date (not between the date range of 4/5/2024 to 4/23/2024) on your return envelope has not been fully completed. The Montgomery County Voter Services office is open on the dates and times below for voters that wish to cancel the pending ballot, and receive a new ballot. The outer return envelope must be signed and dated. Without the completed Voter Declaration ballots may not be counted.

To correct this issue, you can:

1. Physically come into One Montgomery Plaza, located at 425 Swede Street in Norristown, to cancel your current ballot and request a replacement.

Our office is open Monday through Friday from 8AM until 4:30PM. We are located at **425 Swede St (Suite 602), Norristown PA 19401. Ballot replacement can either be done in-person at One Montgomery Plaza or by mail.**

**The last day to cure your ballot in-person is Monday, April 22<sup>nd</sup>, 2024.**

You may still vote at your polling location by casting a provisional ballot. To find your polling location, please visit: <https://www.pavoterservices.pa.gov/Pages/PollingPlaceInfo.aspx>

Respectfully,  
Voter Services Team  
Montgomery County Voter Services  
425 Swede St Ste 602  
Norristown, PA 19401-3447  
Phone: 610-278-3280 Opt. #2  
[www.montcopa.org/VoteByMail](http://www.montcopa.org/VoteByMail)

### **Sarah Piening**

Senior Mail-In Balloting Clerk  
Voters Services

P: (610) 278-3433

X: 3433

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

# EXHIBIT

7

## DECLARATION OF KENNETH HICKMAN

I, KENNETH HICKMAN, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration, and this is what I would testify to if called as a witness in Court.

2. I am 89 years old and am otherwise competent to testify.

3. I am a resident of York, located in York County, Pennsylvania. I have lived in York County since 1973.

4. I am a retired mechanical engineer, but I continue to work part-time as a mechanical engineer for a building technologies company.

5. I am a registered voter in York County. I have been a registered voter in Pennsylvania since 1973.

6. I vote regularly in primary and national elections.

7. Voting is important to me because I believe it is a person's civic duty, and it is the only opportunity you have to change government representatives.

8. I started voting by mail as soon as it was allowed in 2020.

9. I voted by mail this year. Ahead of the 2024 primary election, I applied for and received a mail ballot from York.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.

11. I returned my ballot to the post office within a week or two of receiving it, well in advance of election day.

12. I did not receive any notice or a confirmation of receiving my ballot.

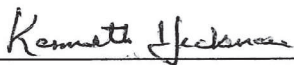
13. I found out that my vote was not counted when a person from the ACLU of Pennsylvania called me and told me my ballot was not counted because of an incorrect date.

14. I am surprised and upset that my ballot will not count. My vote should be counted if at all possible. If the counties do not use the date for any purpose, I believe it is unreasonable to not count my vote because of this issue.

15. I believe that voting is important because it is my chance to change who is in government.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 27<sup>th</sup> of May, 2024 in York, Pennsylvania.



Kenneth Hickman



# EXHIBIT

8

## DECLARATION OF JANET NOVICK

I, Janet Novick, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 80 years old and am otherwise competent to testify.

3. I am a resident of Washington Crossing, located in Bucks County, Pennsylvania. My family moved from New Jersey to Pennsylvania in 1979, and we have lived in Bucks County ever since.

4. I am presently retired. During my career, I was a schoolteacher and mostly taught high school English. My husband was a professor at The College of New Jersey. For many decades, my husband and I owned a small antiquarian bookshop in Lambertville, New Jersey. We decided to close the shop in 2013 due to health issues.

5. I have been a registered voter in Pennsylvania since moving to Bucks County in 1979.

6. I vote regularly. We take voting very seriously and always put lots of time and care into deciding who we are going to select. We vote in nearly every primary and general election, including in local elections.

7. I started voting by mail during the pandemic. I never had an issue regarding my mail-in ballot until this primary election.

8. My husband and I vote by mail because of the convenience and security it provides, given our health and mobility issues. I have spinal pain

and severe arthritis. I can still drive locally, but we typically stay close to home. My husband does not drive anymore. He has been diagnosed with neuropathy and typically gets around with a cane or walker.

9. I voted by mail this year. Ahead of the 2024 primary election, I applied for and received a mail-in ballot from Bucks County.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope, and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.

11. A short time later, I received a voicemail and an email from Bucks County letting me know that I had made an error when completing my ballot and that my ballot would not be counted if I did not correct it. My husband, Barry, was also informed that he had made a mistake and his ballot would not be counted. It turns out that both of us had written an “incorrect” date on the outer return envelope.

12. I was very surprised when I received this email because we are always very careful when completing our mail-in ballot. I called the election office and asked what my mistake had been. I was told that I wrote my birthday next to “2024.” I was dumbfounded when I heard this, and thought it must be have been a momentary lapse when I was completing the outer envelope. I asked the election worker if it was possible to fix it over the phone, and she said the only way to correct the ballot was to come in person to Doylestown and complete another ballot, or to cast a provisional ballot on Election Day. I

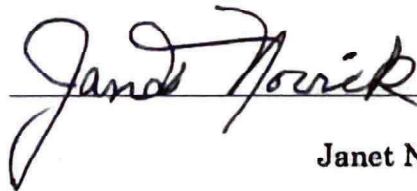
explained that I was the only driver in our household, and that I would be physically unable to drive 45 minutes each way to Doylestown due to my health constraints.

13. When we learned that our ballots would not be counted, we felt terrible. I never imagined I would have made a mistake that could result in my ballot not being counted. Everyone has a momentary lapse and makes a mistake, and this should not disqualify my right to vote.

14. I consider voting to be a right and a privilege. It is my civic duty to vote and make my voice heard, and it is very unfair that my vote and my husband's vote will not be counted in this election.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 26 of May, 2024 in Washington Crossing, Pennsylvania.

  
Janet Novick

# EXHIBIT

9

## DECLARATION OF JOSEPH M. SOMMAR

I, Joseph Sommar, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 71 years old and am otherwise competent to testify.

3. I am a resident of Glenmoore, Pennsylvania, located in Chester County.

4. I grew up in Philadelphia. After attending university and working in Arizona, I decided to move back to Pennsylvania because my parents were getting older and have been living in Chester County since the 1980s. I am the proud father of two children – one is a public school teacher and the other is an army officer.

5. I am presently retired. Early in my career, I worked as a computer service technician. Later, I became an electrician and was a member of the IBEW local. At one time I was the union representative for the Chester County branch of the AFL-CIO.

6. I have been a registered voter in Chester County since moving back to Pennsylvania. I vote in nearly every primary and general election. I may have missed one or two, but can't remember the last time I missed an election.

7. When I was a young person, I was a conservative Republican voter. I am now a registered Democrat, after being exposed to many different perspectives while working in the union.

8. Voting is very important to me and I believe that it's everyone's duty to vote. In my opinion, if you don't vote, you have no right to complain about our politicians. I also believe that the more people vote, the better government we will have and the more active role that people will take in our society.

9. I started voting by mail during the COVID pandemic. I prefer to vote by mail because of the convenience and privacy. I don't like people trying to tell me who to vote for outside of the polling place.

10. I voted by mail this year. A few weeks before the April 2024 primary election, I received a mail-in ballot from Chester County.

11. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I signed the declaration on the outer envelope. I thought I had done everything correctly.

12. In prior elections when I voted by mail, I never made a mistake that disqualified my ballot. I was just going through the motions quickly and didn't take as much care as I should have when completing the mail-in ballot.

13. After I returned my ballot, I received an email on April 19, informing me that there was an error with my mail-in ballot and that it might not be counted if I didn't take additional steps to rectify it. I learned later that I had forgotten to include a date on the outer envelope. A true and correct copy of the email dated April 19 is attached hereto as Exhibit A.

14. When I learned that my ballot would not be counted because I forgot the date, I was very annoyed. I felt stupid for making this mistake, but also

angry that it would disqualify my vote.

15. I am ashamed to say that I didn't follow up on the County's instructions to fix my ballot. At the time I was frustrated and didn't think the situation was fair.

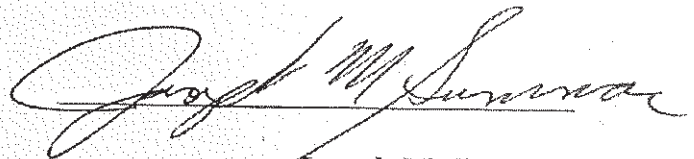
16. I believe that my vote should count. I am a citizen of this country who wants to participate in electing our government representatives.

17. I believe that everyone should vote because the more people who participate, then better candidates are more likely to get elected.

18. I don't believe that the date serves any purpose. The county knows that my ballot was received on time, and I don't know why the date is necessary. It seems like an arbitrary thing, just another step to allow people to mess up and have their votes not counted. I believe our election turnout is so low because people don't think that their vote will make a difference. If everyone's vote were counted and people thought their voices would be heard, more people would participate in the process and we would have a stronger democracy.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 22nd of May, 2024 in Glenmoore, Pennsylvania.



Joseph M. Sommar



# EXHIBIT

# A

## Your Ballot Status Has Changed – Check for Updates

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From: RA-voterregstatcert@state.pa.us (ra-voterregstatcert@state.pa.us)

To: joe.sommar@yahoo.com

Date: Friday, April 19, 2024 at 01:00 PM EDT

---

Dear JOSEPH M SOMMAR,

After your ballot was received by CHESTER County, it received a new status.

The county has noticed an error with your ballot envelopes, which means your ballot may not be counted. If you cannot fix the errors in time, you can go to your polling place on election day and cast a provisional ballot.

You can get more information on your ballot's new status by going to <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions or need more information after checking your ballot's status, please contact CHESTER County at (610) 344-6410.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx> .  
要閱讀此資訊的中文版, 請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

Thank you.

\*\*\*\*Please do not reply to this email.\*\*\*\*

# EXHIBIT

# 10

## DECLARATION OF PHYLLIS SPRAGUE

I, Phyllis Sprague hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 80 years old and am otherwise competent to testify.

3. I am a resident of Chalfont, located in Bucks County, Pennsylvania.

I have lived in Bucks County for 48 years.

4. I am currently retired. Previously, I worked as an administrative assistant in the aerospace industry at GE Aerospace and Lockheed Martin.

5. I am a registered voter in Bucks County. I have been a registered voter in Pennsylvania since becoming eligible to vote.

6. I vote regularly. I have never missed a presidential election since I moved to Pennsylvania.

7. Voting is important to me because it is my right as a citizen to participate in democracy. My mother was a lifelong voter advocate. During my childhood in Virginia, I witnessed how she paid poll taxes in order to vote. She helped others to register to vote and instilled in her children the importance of voting.

8. I started voting by mail in the last few years. A few months before the election, I decided to vote by mail-in ballot.

9. I voted by mail this year. Before the 2024 primary election, I applied for and received a mail ballot from Bucks County.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.

11. I returned my ballot at the post office a week before my surgery scheduled for April 18, 2024.

12. A few days before Election Day, I received an e-mail and letter notification that my ballot would not be counted due to an incorrect date. I was instructed to go to the county office or local polling place on Election Day and vote with a provisional ballot. I chose to go to the polling place because no one was available to drive me to the county office.

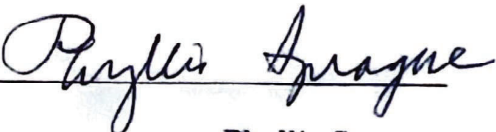
13. I was unable to vote with a provisional ballot at a polling place on Election Day because I experienced an accident while recovering from my cervical spine surgery. On April 19, 2024, I was discharged from the hospital following surgery. On April 23, 2024, while I was preparing to walk to the polling place, I fell down, injuring myself. My husband and granddaughter cautioned me from going to the polling station due to my pain from the recent surgery. Had I been given a safer option to vote with a provisional ballot, I would have voted.

14. I am very upset that my ballot will not count because I was unable to go to the polling place due to my injury and illness.

15. I believe that voting is important because it is an opportunity to allow your voice to be heard. I hope my vote is counted in the next election.

I understand that false statements herein are subject to the penalties of 18  
Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 26th of May, 2024 in Chalfont, Pennsylvania.

  
\_\_\_\_\_  
Phyllis Sprague

# EXHIBIT

11

## DECLARATION OF MARY STOUT

I, Mary Stout hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 77 years old and am otherwise competent to testify.

3. I currently live in Douglassville, PA, located in Berks County, Pennsylvania. I have lived in Berks County for 10 years.

4. I am a retired nurse.

5. I am a registered voter in Berks County. I have lived in Pennsylvania for my entire life, and have been a registered voter in Pennsylvania since I first became eligible to vote.

6. I vote regularly. I have voted in nearly every primary and general election since I was 21 years old.

7. Voting is important to me because my parents raised me with the belief that we have an obligation to vote in every election. Both my father and my husband were veterans who were on 100% disability. I believe that our right to vote is important and that we therefore have an obligation to exercise the right to vote.

8. I started voting by mail two or three years ago. I got back surgery around that time and as a result I have a hard time moving around and need to use a walker. Because of this, I can't wait in line to vote. Voting by mail-in ballot makes things much easier for me, and I've never had a problem with voting by mail in past elections.



9. I voted by mail this year. Before the 2024 primary election, I applied for and received a mail ballot from Berks County.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.

11. I returned my ballot about two weeks before the April 2024 election. I posted my ballot from the mailbox at my residence.

12. Approximately a week before the election, Berks County sent me a notice by mail that my ballot would not be counted because it was missing a date on the envelope. The notice informed me I would have to go in-person to Reading in order to have my vote counted.

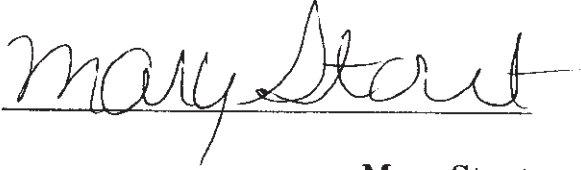
13. I was unable to go to Reading because of my mobility issues. As a result, my vote was not counted in the recent primary election.

14. I am very upset that my ballot will not count because I take my obligation to vote very seriously. I don't think that my vote should be discounted simply because I didn't include the date on the envelope when everything else about my ballot was correct.

15. I have been voting in Pennsylvania for almost my entire life and believe that voting is important because voting is both a right and an obligation.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 26 of May, 2024 in Douglassville, Pennsylvania.

A handwritten signature in cursive script that reads "Mary Stout". The signature is written in black ink and is positioned above a solid horizontal line.

Mary Stout

# EXHIBIT

12

## DECLARATION OF LORINE WALKER

I, Lorine Walker hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 74 years old and am otherwise competent to testify.

3. I am a resident of Harrisburg, located in Dauphin County, Pennsylvania. I have lived in Dauphin County for 58 years.

4. I am currently retired. I was a school librarian and media specialist before retirement.

5. I am a registered voter in Dauphin County. I have been a registered voter in Pennsylvania since I first became eligible to vote.

6. I vote regularly. I vote in most primary and general elections ever since I became eligible to vote.

7. Voting is important to me because people died so I could have the right to vote. I am doing what everyone should be able to do, and I am exercising my rights when I vote. I believe voting is important for the democratic process and I want to cast my vote for who I want to be in office.

8. I started voting by mail in 2020 during the pandemic because it was more convenient. I used to drive myself to vote, but I cannot drive anymore because of pain in my leg. After I stopped driving, my neighbor used to take me to vote, but now they vote by mail as well. Voting by mail is my best option to make my voice heard.

9. I voted by mail this year. Before the 2024 primary election, I applied for and received a mail ballot from Dauphin County.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I tried to be careful because of concerns on the news about voting by mail during the last election. I thought I had done everything correctly.

11. I returned my ballot by mail a few weeks ahead of the 2024 primary election date.

12. On April 18, 2024, I received an email notice that my mail ballot had been “received by Dauphin County.” I did not receive any other notice, calls, or emails from Dauphin County that there was an issue with my mail ballot or that my ballot would not be counted. A true and correct copy of the email dated April 18 is attached hereto as Exhibit A.

13. If I had received notice that there was an issue with my mail ballot, I would have fixed it prior to Election. I had enough time to correct any issue or mistake with my mail ballot because it was received by the county almost a week before Election Day.

14. I am very upset that my ballot will not count because voting is important to me, and I have voted since I was able to cast a ballot. I am an eligible voter and took the time to apply for and complete a mail ballot, so to learn that my ballot was not counted is very frustrating.

15. I believe that voting is important because voting matters in a

democratic process. I believe it is important for people to choose who they think should be in office even if there are disagreements. It matters and affects our democratic process if votes are not counted.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 24<sup>th</sup> of May, 2024 in Harrisburg, Pennsylvania.

A handwritten signature in cursive script, reading "Lorine Walker". The signature is written in dark ink and is positioned above a horizontal line.

Lorine Walker

# EXHIBIT

## A

ra-voterregstatcert@state.pa.us

4/18/2024 1:13 PM

## Your Ballot Has Been Received

To lwalkerje2300@comcast.net

Dear LORINE C WALKER,

Your ballot has been received by DAUPHIN County as of April 18, 2024. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if DAUPHIN County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact DAUPHIN County at (717) 780-6360.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.  
要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>。

Thank you.

\*\*\*\*Please do not reply to this email.\*\*\*\*



# EXHIBIT

13

## Marybeth Kuznik

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**From:** ST, Elections <RA-Elections@pa.gov>  
**Sent:** Friday, April 19, 2024 12:23 PM  
**Cc:** Marks, Jonathan  
**Subject:** DOS Email: Department Response to Inquiries on Ballot Envelope Dates

**CAUTION**

This message originated from an external source. Verify the legitimacy before clicking links or opening attachments.

**Sent on behalf of Deputy Secretary Marks**

Dear County Election Official:

The Department has received questions from several county boards of elections about the handwritten date on the redesigned mail ballot return. Specifically, counties have asked whether they should consider certain handwritten dates to be “incorrect” under the Supreme Court’s decision in *Ball v. Chapman*.<sup>[1]</sup>

It is the Department’s view that, if the date written on the ballot can reasonably be interpreted to be “the day upon which [the voter] completed the declaration,”<sup>[2]</sup> the ballot should not be rejected as having an “incorrect” date or being “undated.”

Therefore, the following would not justify rejecting a ballot as having an “incorrect” date or being “undated”:

- If the voter entered the month and day but did not write “24” in the year field.
- Use of the European dating convention (D/M/Y)
- Use of slashes in empty boxes (for example, “/4-17-2024” or “4/-17-2024”)

This list is not intended to be exhaustive, but is based on examples provided by county boards of elections.

As always, you should consult your solicitor on these matters.

<sup>[1]</sup> 289 A.3d 1 (Pa. 2023).

<sup>[2]</sup> *Ball*, 289 A.3d at 23.

**Rachel R. Hadrick** (*she/her/hers*)

Chief of Elections Administration

PA Department of State

401 North Street | 210 North Office Building

Harrisburg, PA 17120

Phone (desk): 717.409.3242 | Fax: 717.787.1734

[www.dos.pa.gov](http://www.dos.pa.gov)

[f](#) PA Department of State | [t](#) @PAStateDept

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Republican National Committee; :  
National Republican Senatorial :  
Committee; National Republican :  
Congressional Committee; Republican :  
Party of Pennsylvania; David Ball; :  
James D. Bee; Debra A. Biro; Jesse D. :  
Daniel; Gwendolyn Mae Deluca; Ross :  
M. Farber; Connor R. Gallagher; Lynn :  
Marie Kalcevic; Linda S. Kozlovich; :  
William P. Kozlovich; Vallerie :  
Siciliano-Biancaniello; S. Michael :  
Streib, :

Petitioners :

v. :

Al Schmidt, in his official :  
capacity as Acting Secretary of the :  
Commonwealth; Jessica Mathis, in :  
her official capacity as Director of the :  
Pennsylvania Bureau of Election :  
Services and Notaries; Adams County :  
Board of Elections; Allegheny County :  
Board of Elections; Armstrong County :  
Board of Elections; Beaver County :  
Board of Elections; Bedford County :  
Board of Elections; Berks County Board :  
of Elections; Blair County Board of :  
Elections; Bradford County Board of :  
Elections; Bucks County Board of :  
Elections; Butler County Board of :  
Elections; Cambria County Board of :  
Elections; Cameron County Board of :  
Elections; Carbon County Board of :  
Elections; Centre County Board of :  
Elections; Chester County Board of :  
Elections; Clarion County Board of :  
Elections; Clearfield County Board of :  
Elections; Clinton County Board of :  
Elections; Columbia County Board of :  
Elections; Crawford County Board of :

No. 447 M.D. 2022

Elections; Cumberland County Board :  
of Elections; Dauphin County Board of :  
Elections; Delaware County Board of :  
Elections; Elk County Board of :  
Elections; Erie County Board of :  
Elections; Fayette County Board of :  
Elections; Forest County Board of :  
Elections; Franklin County Board of :  
Elections; Fulton County Board of :  
Elections; Greene County Board of :  
Elections; Huntingdon County Board :  
of Elections; Indiana County Board of :  
Elections; Jefferson County Board of :  
Elections; Juniata County Board of :  
Elections; Lackawanna County Board :  
of Elections; Lancaster County Board :  
of Elections; Lawrence County Board :  
of Elections; Lebanon County Board :  
of Elections; Lehigh County Board of :  
Elections; Luzerne County Board of :  
Elections; Lycoming County Board of :  
Elections; McKean County Board of :  
Elections; Mercer County Board of :  
Elections; Mifflin County Board of :  
Elections; Monroe County Board of :  
Elections; Montgomery County Board :  
of Elections; Montour County Board of :  
Elections; Northampton County Board :  
of Elections; Northumberland County :  
Board of Elections; Perry County :  
Board of Elections; Philadelphia County:  
Board of Elections; Pike County Board :  
of Elections; Potter County Board of :  
Elections; Schuylkill County Board of :  
Elections; Snyder County Board of :  
Elections; Somerset County Board of :  
Elections; Sullivan County Board of :  
Elections; Susquehanna County Board :  
of Elections; Tioga County Board of :  
Elections; Union County Board of :  
Elections; Venango County Board of :  
Elections; Warren County Board of :  
Elections; Wayne County Board of :

Elections; Westmoreland County Board :  
of Elections; Wyoming County Board of:  
Elections; and York County Board of :  
Elections, :  
Respondents :

BEFORE: HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE CEISLER

FILED: March 23, 2023

In this original jurisdiction action, the Republican National Committee (RNC), and the Republican Party of Pennsylvania (RPP) (collectively, Republican Committee Petitioners),<sup>1</sup> and David Ball, James D. Bee, Debra A. Biro, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Connor R. Gallagher, Lynn Marie Kalcevic, Linda S. Kozlovich, William P. Kozlovich, Vallerie Siciliano-Biancaniello, and S. Michael Streib (collectively, Voter Petitioners)<sup>2</sup> (all collectively referred to as Petitioners), filed a petition for review directed to this Court’s original jurisdiction seeking declaratory and injunctive relief (petition for review or petition) on September 1, 2022, and later a First Amended Petition for Review Directed to

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<sup>1</sup> The National Republican Senatorial Committee (NRSC) and the National Republican Congressional Committee (NRCC) voluntarily terminated their claims against all Respondents via praecipe on January 30, 2023. As such, the term “Petitioners” used throughout this opinion does not include either the NRSC or the NRCC, except where indicated.

<sup>2</sup> Voter Petitioners are 12 registered voters who reside in Washington County, Cambria County, Northampton County, Indiana County, Beaver County, Westmoreland County, Allegheny County, Fayette County, Delaware County, and Butler County, who regularly vote in both primary and general elections. (First Amended Petition for Review (Amended Pet.) ¶¶ 33-44.) They repeat that they intend to vote for candidates in all races, including for federal and statewide offices, that will be on the ballot in the 2022 General Election, notwithstanding that election has since passed. (Amended Pet. ¶ 45.)

Court’s Original Jurisdiction Seeking Declaratory and Injunctive Relief (Amended Petition), on February 17, 2023,<sup>3</sup> against Al Schmidt, in his official capacity as Acting Secretary of the Commonwealth (Acting Secretary),<sup>4</sup> and Jessica Mathis, in her official capacity as Director of the Pennsylvania Bureau of Election Services and Notaries (collectively, Commonwealth Respondents); and the Commonwealth’s 67 County Boards of Elections (County Boards).<sup>5</sup> In the Amended Petition, Petitioners again challenge the various County Boards’ actions in developing and implementing notice and opportunity to cure procedures with respect to absentee and mail-in ballots that fail to comply with the Pennsylvania Election Code’s (Election Code)<sup>6</sup> signature and ballot secrecy requirements. Specifically, Petitioners allege that the County Boards’ “practice of conducting these pre-canvass activities” before Election Day “under the guise of [notice and opportunity to cure] procedures” is in direct contravention of multiple provisions of the Election Code; the Pennsylvania Supreme Court’s holding in *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020); article I, section 5 and article VII, section 6 of the Pennsylvania

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<sup>3</sup> On this date, the Court, *inter alia*, granted Petitioners’ unopposed Application for Leave to File Amended Petition for Review, and struck as moot the preliminary objections filed to the original petition for review.

<sup>4</sup> By Order dated February 16, 2023, this Court substituted Al Schmidt, in his official capacity as Acting Secretary of the Commonwealth, as a party respondent for Leigh M. Chapman, in her official capacity as former Acting Secretary of the Commonwealth pursuant to Pennsylvania Rule of Appellate Procedure 502(c), Pa.R.A.P. 502(c).

<sup>5</sup> Notwithstanding its apparent omission from the caption, as noted in this Court’s September 29, 2022 Memorandum Opinion in this case, the Court considers the Washington County Board of Elections to be a Respondent in this case. *See Republican Nat’l Comm. v. Chapman* (Pa. Cmwlth., No. 447 M.D. 2022, filed Sept. 29, 2022) (single-Judge op.) (Ceisler, J.) (*RNC I*), slip op. at 3 n.2, *aff’d by evenly divided court*, 284 A.3d 207 (Pa. 2022) (Oct. 21, 2022) (Pa., No. 100 MAP 2022).

<sup>6</sup> Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

Constitution, Pa. Const. art. I, § 5 (free and equal elections clause)<sup>7</sup> & art. VII, § 6 (relating to uniformity with respect to laws regulating elections);<sup>8</sup> and Article I, Section 4, Clause 1 of the United States Constitution, U.S. Const. art. I, § 4, cl. 1 (Elections Clause).<sup>9</sup> (First Amended Petition for Review (Amended Pet.) ¶¶ 2-14, 17-19.) They seek declarations in these regards under the Declaratory Judgments Act (DJA),<sup>10</sup> as well as statewide, permanent injunctive relief enjoining the 67 County Boards from implementing such procedures and prohibiting the Acting Secretary from issuing any guidance as to such procedures in violation of the Election Code.

Presently before the Court are the Preliminary Objections (POs) of: (1) Commonwealth Respondents; (2) Bucks County Board of Elections; (3) Bedford, Carbon, Centre, Columbia, Dauphin, Fayette, Jefferson, Huntingdon, Indiana, Lawrence, Lebanon, Northumberland, Snyder, Venango, and York County Boards of Elections; (4) Chester County Board of Elections; (5) Delaware County Board of Elections; (6) Montgomery County Board of Elections; (7) Philadelphia County Board of Elections; (8) the Democratic National Committee and the Pennsylvania Democratic Party (DNC and PDP); and (9) the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee (DSCC and

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<sup>7</sup> The free and equal elections clause provides: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, § 5.

<sup>8</sup> It provides: “All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State,” with certain exceptions not applicable to this case. Pa. Const. art. VII, § 6.

<sup>9</sup> The Elections Clause provides: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of ch[oo]sing Senators.” U.S. Const. art. I, § 4, cl. 1.

<sup>10</sup> 42 Pa.C.S. §§ 7531-7541.

DCCC)<sup>11</sup> (all collectively referred to as Respondents, unless otherwise indicated). Respondents ask the Court to dismiss Petitioners' Amended Petition based on (1) lack of subject matter jurisdiction; (2) lack of standing (3) laches; and (4) legal insufficiency and/or failure to state a claim as to all counts.

For the reasons that follow, the Court sustains the POs asserting lack of subject matter jurisdiction and dismisses as moot the remaining POs.

### **Background & Procedural History**

By way of brief background, Petitioners initially alleged in the petition for review that several County Boards took it upon themselves to develop and implement notice and opportunity to cure procedures with respect to absentee and mail-in ballots that failed to comply with the Election Code's signature and ballot secrecy requirements, for the November 8, 2022 General Election and beyond, in direct contravention of the Election Code and the Supreme Court's holding in *Pennsylvania Democratic Party*; and that the County Boards' cure procedures usurped the General Assembly's exclusive legislative authority to adopt cure procedures and constituted a violation of the authority granted to the General Assembly to regulate the manner of federal elections under the Elections Clause. They requested declarations in those regards, as well as a declaration that the County Boards may not adopt **cure** procedures other than as the General Assembly expressly provided in the Election Code<sup>12</sup> and, further, statewide injunctive relief prohibiting

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<sup>11</sup> The Court permitted the intervention of the DNC and the PDP, and the DSCC and the DCCC on September 22, 2022.

<sup>12</sup> See Section 1308(h) of the Election Code, added by the Act of March 6, 1951, P.L. 3, which provides:

(h) For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:



the 67 County Boards from developing or implementing **cure** procedures and directing the Acting Secretary to take no action inconsistent with such injunction order.<sup>13</sup>

Petitioners then filed the Amended Petition upon leave of this Court on February 17, 2023. Also on that date, this Court set an expedited briefing schedule, and further directed the parties to file and serve separate briefs addressing the Supreme Court’s recent decision in *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023), and the effect of that decision, if any, on the instant matter. The Court also indicated, among other things, that following the filing of the above briefs, the Court would determine whether this matter would be argued or decided on the papers.

The Parties have complied with this Court’s February 17, 2023 Order and filed pleadings and/or POs and comprehensive supporting briefs, as well as briefs addressing *Ball*.<sup>14</sup> As noted above, Respondents filed nine sets of POs, and eight

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(1) Deleted by [the Act of October 31, 2019, P.L. 552, No. 77 (Act 77), effective immediately] . . . .

(2) If the proof of identification is received and verified prior to the sixth calendar day following the election, then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted.

25 P.S. § 3146.8(h).

<sup>13</sup> In a single-Judge Memorandum Opinion and Order issued on September 29, 2022, this Court denied Petitioners’ separate request for preliminary injunctive relief because Petitioners failed to meet their heavy burden of proving entitlement to such sweeping relief. On appeal, the Supreme Court affirmed this Court’s decision on the basis that the Justices were evenly divided on the question before them. *See RNC I, aff’d by evenly divided court*, 284 A.3d 207 (Pa. 2022).

<sup>14</sup> The following Parties filed briefs addressing the Supreme Court’s decision in *Ball*: Berks County; DNC and PDP; Montgomery County; Bedford, Carbon, Centre, Columbia,

Answers, some with New Matter,<sup>15</sup> to the Amended Petition. Petitioners filed responses generally opposing the POs, and an omnibus brief addressing all of the POs. In light of the Parties' comprehensive filings, and the proximity of the May 16, 2023 Municipal Primary Election and the County Boards' distribution of absentee and mail-in ballots to voters, the Court determined that argument was not necessary and, by Order dated March 16, 2023, directed that the POs and responses opposing them would be decided on the papers already filed, without oral argument, unless otherwise ordered.

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Dauphin, Fayette, Jefferson, Huntingdon, Indiana, Lawrence, Lebanon, Northumberland, Snyder, Venango, and York Counties (collectively, Bedford County, et al.); Lehigh County; Chester County; Commonwealth Respondents; Philadelphia County; Bucks County; Petitioners; Delaware County; Allegheny County; Luzerne County; Potter County; and DSCC and DCCC.

Lehigh, Bucks, and Delaware Counties join in Montgomery County's brief. Chester County joins in Commonwealth Respondents' and Philadelphia County's briefs. Allegheny County joins in all Respondents' briefs to the extent they address, among other things, lack of standing.

Berks and Potter Counties take no position on *Ball*'s applicability to this case, and Bedford County, et al., Luzerne County, and DNC and PDP opine that *Ball* is not relevant to this case. DNC and PDP additionally opine that *Ball* reaffirms the broad authority of County Boards in administering elections. Aside from Petitioners, the other Respondents observe that *Ball* is applicable here with respect to, *inter alia*, standing and the broad authority of County Boards.

<sup>15</sup> Adams, Allegheny (with New Matter), Berks, Lehigh, Luzerne, Northampton (with New Matter), and Potter Counties filed Answers to the Amended Petition, generally denying the averments of the Amended Petition. In addition to filing an Answer, Luzerne County filed a Statement in Lieu of Brief in Support of Answer. Blair County filed a no answer letter, indicating therein that it will not be filing an answer in this case.

In its New Matter, Allegheny County contends that Petitioners claims are barred by laches and res judicata, that this Court lacks subject matter jurisdiction, and that Petitioners failed to state a claim upon which relief can be granted and lack standing. (Allegheny Ans. & New Matter ¶¶ 1-5.) Northampton County asserts in its New Matter that Petitioners' claims are barred by laches and the applicable statute of limitations, and that Petitioners have failed to state a claim upon which relief may be granted and failed to exhaust other remedies available to them. (Northampton Ans. & New Matter ¶¶ 163-66.)

## Amended Petition

In their Amended Petition, Petitioners repeat the same background information regarding Voter Petitioners and Republican Committee Petitioners, respectively, and the factual circumstances of the case described in this Court’s September 29, 2022 Memorandum Opinion, which the Court will not repeat here in its entirety for the sake of brevity. (*See Republican Nat’l Comm. v. Chapman* (Pa. Cmwlth., No. 447 M.D. 2022, filed Sept. 29, 2022) (single-Judge op.) (Ceisler, J.) (*RNC I*), slip op. at 11-17, *aff’d by evenly divided court*, 284 A.3d 207 (Pa. 2022) (Oct. 21, 2022) (Pa., No. 100 MAP 2022); *compare* original petition for review ¶¶ 2-12, 13-39, 40-64, 65-80, 82-85, 86-92 (count I), 93-96 (count II), 97-103 (count III), *with* Amended Pet. ¶¶ 2-23, 27, 28-52, 53-77, 93-104, 111-14, 117-20, 127-33 (Count I), 152-55 (Count III), 156-62 (Count IV).)

The Court observes, however, that in the Amended Petition, Petitioners add to their argument from their original petition that the County Boards are prohibited from developing and implementing **notice and cure** procedures<sup>16</sup> not expressly created by the General Assembly, now asserting and seeking a declaration under the DJA that the Boards’ implementation of such procedures directly violates the Election Code’s various pre-canvassing and provisional ballot provisions; that the furnishing of voters’ personally identifying information to political party representatives, candidates, and/or special interest groups violates voters’ constitutional right to informational privacy under article I, section 1 of the Pennsylvania Constitution, Pa. Const. art. I, § 1,<sup>17</sup> and *Pennsylvania State Education*

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<sup>16</sup> In their Amended Petition, Petitioners now highlight “**notice and cure** procedures,” as opposed to just “**cure** procedures” mentioned in the original petition for review.

<sup>17</sup> It provides: “All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own

*Association v. Department of Community and Economic Development*, 148 A.3d 142 (Pa. 2016); and that the Acting Secretary has issued guidance directing the County Boards to engage in pre-canvass activities under the guise of making “administrative determinations” and statements encouraging the Boards to contact voters whose defective ballots have been cancelled due to errors on the ballots’ outer envelopes so they may have the opportunity to have their votes count. (See Amended Pet. ¶¶ 29, 79-92, & 134-35 (Count I).)

As to the pre-canvass and provisional ballot provisions specifically, Petitioners newly argue that notice and cure procedures are “inconsistent with law” under Section 302(f) of the Election Code, 25 P.S. § 2642(f),<sup>18</sup> and directly violate the Election Code, because “[t]he Election Code tightly constrains what Boards may do with absentee and mail-in ballots once they receive them.” (Amended. Pet. ¶¶ 76, 78.) In this regard, they first assert that absentee and mail-in ballots must be kept in sealed or locked containers until Election Day under Section 1308(a) of the Election Code, 25 P.S. § 3146.8(a),<sup>19</sup> and that County Boards are thus prohibited

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happiness.” Pa. Const. art. I, § 1. Petitioners do not develop this argument in the Amended Petition.

<sup>18</sup> Section 302(f) provides that County Boards have authority “[t]o make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers and electors.” 25 P.S. § 2642(f).

<sup>19</sup> Section 1308(a) provides:

(a) The county boards of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D, shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections. An absentee ballot, whether issued to a civilian, military or other voter during the regular or emergency application period, shall be canvassed in accordance with subsection (g). A mail-in ballot shall be canvassed in accordance with subsection (g).

25 P.S. § 3146.8(a).

from doing anything else with the ballots until Election Day. (*Id.* ¶¶ 79-80.) Second, they claim that notice and cure procedures are effectively an “inspection . . . of” absentee and mail-in ballots under the definition of “pre-canvass” in Section 102(q.1) of the Election Code, 25 P.S. § 2602(q.1);<sup>20</sup> however, they highlight that County Boards cannot begin the pre-canvass of those ballots until 7:00 a.m. on Election Day under Section 1308(g)(1.1) of the Election Code, 25 P.S. § 3146.8(g)(1.1).<sup>21</sup> (*Id.* ¶¶ 81-82.) Third, they argue that the County Boards’ email

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<sup>20</sup> Section 102(q.1) provides:

(q.1) The word “pre-canvass” shall mean **the inspection and opening of all envelopes containing official absentee ballots or mail-in ballots**, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots. The term does not include the recording or publishing of the votes reflected on the ballots.

25 P.S. § 2602(q.1) (emphasis added).

<sup>21</sup> Section 1308(g)(1.1) provides:

(g)(1)(i) An absentee ballot cast by any absentee elector as defined in section 1301(a), (b), (c), (d), (e), (f), (g) and (h) shall be canvassed in accordance with this subsection if the ballot is cast, submitted and received in accordance with the provisions of 25 Pa.C.S. Ch. 35 (relating to uniform military and overseas voters).  
. . . .

(1.1) The county board of elections shall meet no earlier than seven o'clock A.M. on election day to pre-canvass all ballots received prior to the meeting. A county board of elections shall provide at least forty-eight hours’ notice of a pre-canvass meeting by publicly posting a notice of a pre-canvass meeting on its publicly accessible Internet website. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are pre-canvassed. No person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls.

25 P.S. § 3146.8(g)(1.1).

and/or internet notification to voters via the SURE System and others regarding signature, date, or secrecy envelope defects in absentee or mail-in ballots following their “inspection” is “inconsistent with law” because Section 1308(g)(1.1)’s prohibition on nondisclosure of the results of the pre-canvass until the polls close on Election Day necessarily includes a prohibition on the disclosure of a Board’s determination that a ballot will not count due to such a defect. (*Id.* ¶¶ 83-85.) Last, Petitioners acknowledge that those voters who requested absentee and mail-in ballots but did not cast them may vote provisionally. (*Id.* ¶ 90 n.2 (citing Sections 1306(b)(2)-(3) and 1306-D(b)(2)-(3) of the Election Code, 25 P.S. §§ 3146.6(b)(2)-(3), 3150.16(b)(2)-(3)).)<sup>22</sup> They argue, however, that the County Boards cannot encourage voters who improperly cast their absentee or mail-in ballot to cast a second vote via provisional ballot, claiming this “cure” essentially requires voters to make knowingly false statements subject to the penalty of perjury on their provisional ballots. (Amended Pet. ¶¶ 87-92 (citing Sections 1306(b)(1), 1306-D(b)(1), and 1210(a.4)(2) of the Election Code, 25 P.S. §§ 3146.6(b)(1) (providing that an elector who receives and votes an absentee ballot “shall not be eligible to vote at a polling place on election day”), 3150.16(b)(1) (same with respect to mail-in ballots), 3050(a.4)(2) (requiring an elector to sign affidavit prior to voting a provisional ballot)).)

Petitioners also add a new Count II to the Amended Petition, in which they request a declaration that the disparate approaches taken by the County Boards with respect to notice and cure procedures violate the free and equal elections clause (Pa. Const. art. I, § 5), the clause requiring uniformity in the laws regulating the holding

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<sup>22</sup> Section 1306 was added to the Election Code by the Act of March 6, 1951, P.L. 3. Section 1306-D was added to the Election Code by the Act of October 31, 2019, P.L. 552, No. 77 (Act 77).

of elections in the Commonwealth (Pa. Const. art. VII, § 6), and Section 302(g) of the Election Code, 25 P.S. § 2642(g).<sup>23</sup> (See Amended Pet. ¶¶ 136-51 (Count II).)

Petitioners seek declarations from this Court under the DJA that the County Boards' development and implementation of notice and cure procedures violates Pennsylvania law and is prohibited, (Amended Pet. ¶¶ 127-35 & Wherefore Clause, pp. 34-35 (Count I) & ¶¶ 136-51 & Wherefore Clause, p. 38 (Count II)); and that the adoption of such procedures not expressly authorized by the General Assembly for federal elections violates the Elections Clause of the United States Constitution (Amended Pet. ¶¶ 152-55 & Wherefore Clause, p. 39 (Count III)). They further seek a statewide, permanent injunction prohibiting the County Boards from developing or implementing notice and cure procedures. (Amended Pet. ¶¶ 156-62 & Wherefore Clause, p. 41 (Count IV).) In addition to the relief sought in Counts I, II, and IV, Petitioners request that this Court prohibit the Acting Secretary from issuing guidance or other statements directing the County Boards to violate provisions of the Election Code. (Amended Pet. at 34-35 (Count I, Wherefore Clause), 38 (Count II, Wherefore Clause), 41 (Count IV, Wherefore Clause).)

Notably, Petitioners further allege that this Court has original jurisdiction over the Amended Petition under Section 761(a)(1) of the Judicial Code, 42 Pa.C.S. § 761(a)(1), "because this matter is asserted against Commonwealth officials in their official capacities." (Amended Pet. ¶ 28.)

As mentioned above, Commonwealth Respondents and some County Boards have filed the following POs, asserting that the Amended Petition should be

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<sup>23</sup> Section 302(g) provides that County Boards have authority "[t]o instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted." 25 P.S. § 2642(g).

dismissed based on this Court’s lack of subject matter jurisdiction, Petitioners’ lack of standing, the doctrine of laches, and the legal insufficiency of the Amended Petition and/or Petitioners’ failure to state a claim as to some or all counts of the Amended Petition.<sup>24</sup>

### **Standard of Review**

In ruling on preliminary objections, the Court accepts as true all well-pleaded material allegations in the petition for review and any reasonable inferences that may be drawn from the averments. *Meier v. Maleski*, 648 A.2d 595, 600 (Pa. Cmwlth. 1994). This Court, however, is not bound by legal conclusions, unwarranted inferences from facts, argumentative allegations, or expressions of opinion encompassed in the petition for review. *Id.* The Court may sustain preliminary objections only when the law makes clear that the petitioner cannot succeed on the claim, and the Court must resolve any doubt in favor of the petitioner. *Id.* “[The Court] review[s] preliminary objections in the nature of a demurrer under the above guidelines and may sustain a demurrer only when a petitioner has failed to state a claim for which relief may be granted.” *Armstrong Cnty. Mem’l Hosp. v. Dep’t of Pub. Welfare*, 67 A.3d 160, 170 (Pa. Cmwlth. 2013).

Because it is jurisdictional, the Court will first address the POs asserting the Court lacks subject matter jurisdiction, followed by the other POs, if necessary.

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<sup>24</sup> Specifically, Delaware County, Commonwealth Respondents, Chester County, and Philadelphia County demur to the Amended Petition based on lack of subject matter jurisdiction, lack of standing, and failure to state a claim as to all or various counts of the Amended Petition.

Bucks County and DSCC and DCCC demur to the Amended Petition based on lack of standing and failure to state a claim. Bucks County additionally asserts, along with Montgomery County, that laches bars the relief sought in the Amended Petition.

Bedford County, et al. and DNC and PDP demur to the Amended Petition solely based on failure to state a claim.



### **Subject Matter Jurisdiction**

Commonwealth Respondents (PO 1) and some County Boards<sup>25</sup> first argue that this Court lacks subject matter jurisdiction<sup>26</sup> under Section 761(a)(1) of the Judicial Code, 42 Pa.C.S. § 761(a)(1), because neither of the Commonwealth Respondents is an indispensable party to this matter; the County Boards are neither Commonwealth agencies nor part of the Commonwealth government, and, as such, the County Boards must be sued in their respective local court of common pleas; and the Acting Secretary has only limited powers over the County Boards relating to elections. (Cmwlth. Resp'ts' POs ¶¶ 33-55 (citing *In re Voter Referendum Pet. Filed Aug. 5, 2008*, 981 A.2d 163, 170 (Pa. 2009)), Cmwlth. Resp'ts' Br. at 14-23; Delaware POs ¶¶ 10-37, Delaware Br. at 3-7 (citing *Finan v. Pike Cnty. Conserv. Dist.*, 209 A.3d 1108, 111 (Pa. Cmwlth. 2019), and *Blount v. Phila. Parking Auth.*, 965 A2d 226, 231-32 (Pa. 2009)); Chester POs ¶¶ 37-54, Chester Br. at 12-14; Phila. POs ¶¶ 47-72 (citing *Blount*), Phila. Br. at 15-20.) Commonwealth Respondents further assert that Petitioners do not challenge any Department of State (Department) requirement or statewide practice, and they have not alleged what, if any, type of action the Acting Secretary might take here if Petitioners' requested relief is granted. (Cmwlth. Resp'ts' POs ¶¶ 39-40, 43-46 (citing ¶ 116 of the Amended Petition); Chester POs ¶ 53; Chester Br. at 16 (noting the Amended Petition fails to seek any meaningful relief from either Commonwealth Respondent).) Chester County additionally highlights an inconsistency in paragraphs 68 and 103 of Petitioners' Amended Petition, noting that paragraph 103 asserts injunctive relief is necessary to stop Commonwealth Respondents from "encouraging" implementation of notice

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<sup>25</sup> These include: Delaware County (PO 1), Chester County (PO 2), and Philadelphia County (PO 1).

<sup>26</sup> See Pa.R.Civ.P. 1028(a)(1).

and cure procedures, but that paragraph 68 cites guidance showing Commonwealth Respondents oppose implementation of notice and cure procedures. (Chester POs ¶¶ 48-51; Chester Br. at 15-16.)

Petitioners respond that this Court has subject matter jurisdiction because the Acting Secretary is an indispensable party, and the County Boards are part of the Commonwealth government. (Pet’rs’ Omnibus Br. at 16-17.) As support for their assertion the Acting Secretary is an indispensable party, Petitioners point to the Acting Secretary’s November 3, 2022 guidance, issued in response to the Supreme Court’s November 1, 2022 order in *Ball*,<sup>27</sup> regarding the mechanics of absentee and mail-in voting and the County Boards’ inspection of ballots and whether a right to cure exists, as well as the former Acting Secretary’s recent litigation against three County Boards in *Chapman v. Berks County Board of Elections* (Pa. Cmwlth., No. 355 M.D. 2022, filed August 19, 2022), regarding whether Boards may exercise discretion to count absentee and mail-in ballots without dates or with incorrect dates. (Pet’rs’ Omnibus Br. at 17.) Petitioners claim that the Acting Secretary’s guidance “is precisely the type of inspection included within the definition of ‘pre-canvass’ under the Election Code, which cannot begin until 7:00 a.m. on Election Day”; thus, according to Petitioners, the Acting Secretary is instructing the County Boards to directly violate the Election Code. (*Id.* at 17-18.)<sup>28</sup> Petitioners therefore claim that

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<sup>27</sup> According to Petitioners, the Acting Secretary issued guidance on this date, directing County Boards to examine all absentee and mail-in ballots to determine if the return envelopes are signed and dated. (Pet’rs’ Omnibus Br. ¶ 17 (citing Pa. Dep’t of State, *Guidance on Undated and Incorrectly Dated Mail-in and Absentee Ballot Envelopes Based on the Pennsylvania Supreme Court’s Order in Ball v. Chapman*, issued November 1, 2022, <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2022-11-03-Guidance-UndatedBallot.pdf> (last visited Mar. 22, 2023).)

<sup>28</sup> Further, and notwithstanding that the 2022 General Election has already occurred, Petitioners again point to the Acting Secretary’s guidance issued days before that election, in which former Acting Secretary Chapman “encouraged” County Boards to contact voters whose ballots

this case challenges actions taken by the Acting Secretary, thus making him an indispensable party. (*Id.* at 18.) Petitioners do not address in their Amended Petition or subsequent briefs whether Director Mathis is an indispensable party.

As for the County Boards, Petitioners assert they are not “local authorities” excluded from the definition of “Commonwealth government,” as they are not created by political subdivisions. (Pet’rs’ Omnibus Br. at 19.) Rather, the County Boards are formed by statute, i.e., Section 301(a) of the Election Code, 25 P.S. § 2641(a) (relating to county boards of elections and membership), and, thus, they constitute a component part of the “Commonwealth government” as that term is defined under 42 Pa.C.S. § 761. (*Id.* at 18-19 (pointing to definition of “Commonwealth government” and specifically “boards” in the definition in 42 Pa.C.S. § 102, and citing *In re Nom. Pets. of Griffis*, 259 A.3d 542 (Pa. Cmwlth. 2021),<sup>29</sup> and *Cnty. of Fulton v. Sec. of the Cmwlth.*, 276 A.3d 846, 861 (Pa. Cmwlth. 2021) (stating that both the Secretary and County Boards “are government agencies created by the General Assembly”)).)<sup>30</sup>

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were cancelled due to defects so that those voters could have the opportunity to have their vote count. (Pet’rs’ Omnibus Br. at 18 (citing an inactive link to the Department’s website).)

<sup>29</sup> Petitioners’ reliance on *In re Nomination Petitions of Griffis*, 259 A.3d 542 (Pa. Cmwlth. 2021), for the proposition that the 67 County Boards are part of the Commonwealth government for jurisdictional purposes is misplaced, as the case was properly brought in this Court’s **appellate** jurisdiction and involved review of a trial court’s order denying the objectors’ petitions to set aside the nomination petitions of a candidate for office who failed to properly file her statement of financial interests (SOFI) with the “governing authority” of a specific county. This Court held that the candidate’s filing of her SOFI with the county elections office satisfied the requirements of the applicable statute and regulations because the county’s commissioners were the “governing authority” of that county and the county’s board of elections under the Election Code. *In re Griffis*, 259 A.3d at 548.

<sup>30</sup> Petitioners’ reliance on *County of Fulton v. Secretary of the Commonwealth*, 276 A.3d 846, 861 (Pa. Cmwlth. 2021), is also misplaced, as it dealt with responsibilities of the Secretary and the County Boards in relation to election equipment. In that case, this Court noted that it was not clear whether the Secretary or the County Boards had the responsibility of preventing tampering with election equipment, but that “[b]oth are government agencies created by the

In considering this PO, the Court “begin[s] with the undisputed basic principle that this Court, as any other court, must have subject matter jurisdiction over a controversy because, without it, any judgment rendered would be void.” *Stedman v. Lancaster Cnty. Bd. of Comm’rs*, 221 A.3d 747, 755 (Pa. Cmwlth. 2019) (quoting *Patterson v. Shelton*, 175 A.3d 442, 449 (Pa. Cmwlth. 2017)). “Thus, ‘whenever a court discovers that it lacks jurisdiction over the subject matter or a cause of action, it is compelled to dismiss the matter under all circumstances.’” *Id.* (quoting *Hughes v. Pa. State Police*, 619 A.2d 390, 393 (Pa. Cwmlth. 1992)). Our Supreme Court previously set forth the well settled scope and standard of review regarding questions of subject matter jurisdiction as follows:

Jurisdiction over the subject matter is conferred solely by the Constitution and laws of the Commonwealth. The test for whether a court has subject matter jurisdiction inquires into the competency of the court to determine controversies of the general class to which the case presented for consideration belongs. Thus, as a pure question of law, the standard of review in determining whether a court has subject matter jurisdiction is *de novo* and the scope of review is plenary. Whether a court has subject matter jurisdiction over an action is a fundamental issue of law which may be raised at any time in the course of the proceedings, including by a reviewing court *sua sponte*.

*Office of Att’y Gen. ex rel. Corbett v. Locust Twp.*, 968 A.2d 1263, 1268-69 (Pa. 2009).

Relevant here, Section 761(a)(1) of the Judicial Code states that “[t]he Commonwealth Court shall have original jurisdiction of all civil actions or proceedings . . . (1) Against the Commonwealth government, including any officer

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General Assembly with discrete and separate roles to fulfill toward the end of honest elections in Pennsylvania” and that “[b]oth agencies are presumed to act lawfully and reasonably in the exercise of their statutory duties.” *County of Fulton*, 276 A.3d at 861. The case is otherwise irrelevant for purposes of the instant matter, except as indicated below.

thereof, acting in his official capacity . . . .” 42 Pa.C.S. § 761(a)(1). Section 102 of the Judicial Code defines the term “Commonwealth government” as follows:

**“Commonwealth government.”** The government of the Commonwealth, including the courts and other officers or agencies of the unified judicial system, the General Assembly and its officers and agencies, the Governor, and the departments, boards, commissions, authorities and officers and agencies of the Commonwealth, **but the term does not include any political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision or local authority.**

42 Pa.C.S. § 102 (emphasis added). Although the Acting Secretary and Director Mathis are each an “officer” of the Commonwealth, “this alone is not sufficient to establish jurisdiction.” *Stedman*, 221 A.2d at 756 (quoting *Pa. Sch. Bds. Ass’n, Inc. v. Cmwlth. Ass’n of Sch. Admins.*, 696 A.2d 859, 867 (Pa. Cmwlth. 1997), and stating that “[t]he mere naming . . . of the Commonwealth or its officers in an action does not conclusively establish this [C]ourt’s jurisdiction, and [that] the joinder of such parties when they are only tangentially involved is improper”).

Rather, “for this Court to have original jurisdiction over a suit against the Commonwealth and another, non-Commonwealth party, the Commonwealth or one of its officers must be an indispensable party to the action.” *Stedman*, 221 A.3d at 757 (citations omitted). “A party is indispensable when ‘his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.’” *Stedman*, 221 A.3d at 757 (quoting *Rachel Carson Trails Conservancy, Inc. v. Dep’t of Conserv. & Nat. Res.*, 201 A.3d 273, 279 (Pa. Cmwlth. 2018)).<sup>31</sup> “Thus, the main inquiry for determining whether a party is indispensable

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<sup>31</sup> Section 7540(a) of the DJA further explains the concept of an indispensable party by providing that “[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration.” 42 Pa.C.S. § 7540(a).

involves whether justice can be accomplished in the absence of the party.” *Stedman*, 221 A.3d at 758 (quoting *Rachel Carson Trails*, 201 A.3d at 279). In conducting this inquiry,<sup>32</sup> “the nature of the particular claim and the type of relief sought should be considered.” *Rachel Carson Trails*, 201 A.3d at 279. “A Commonwealth party may be declared an indispensable party when meaningful relief cannot conceivably be afforded without the Commonwealth party’s direct involvement in the action.” *Ballroom, LLC v. Cmwlt.*, 984 A.2d 582, 588 (Pa. Cmwlt. 2009). Importantly, “‘where a petitioner ‘seeks absolutely no relief’ from the Commonwealth party, and the Commonwealth party’s involvement is only ‘minimal,’ we have held that it is not an indispensable party.” *Stedman*, 221 A.3d at 758 (quoting *Rachel Carson Trails*, 201 A.3d at 280).

With these principles in mind, the Court will evaluate the alleged indispensability of the Acting Secretary and Director Mathis.

In this case, Petitioners named the Acting Secretary and Director Mathis, in their official capacities, as Respondents, apparently due to their responsibilities under the Election Code. Petitioners identify the Acting Secretary’s responsibilities as including receiving the returns of primaries and elections from the County Boards, the canvassing and computing of the votes cast for candidates, proclaiming the results of such primaries and elections, and issuing certificates of election to the successful candidates at such elections. (Amended. Pet. ¶ 50 (citing Sections 201(f) and 1409 of the Election Code, 25 P.S. §§ 2621(f), 3159).) However, the only

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<sup>32</sup> This analysis requires an examination of the following four factors: (1) “[d]o absent parties have a right or interest related to the claim?”; (2) “[i]f so, what is the nature of that right or interest?”; (3) “[i]s that right or interest essential to the merits of the issue?”; and (4) “[c]an justice be afforded without violating the due process rights of absent parties?” *Rachel Carson Trails Conservancy, Inc. v. Dep’t of Conserv. & Nat. Res.*, 201 A.3d 273, 279 (Pa. Cmwlt. 2018).

material allegations made against former Acting Secretary Chapman in the Amended Petition relate to the following:

- her position in the *Pennsylvania Democratic Party* litigation from 2020, (Amended Pet. ¶ 58);
- her recent guidance that voters will not have the opportunity to correct their ballots before the election if there is a problem, (Amended Pet. ¶ 68 (quoting the Acting Secretary’s guidance that “if there’s a problem with your mail-in ballot, you won’t have the opportunity to correct it before the election[,]” and citing <https://www.vote.pa.gov/voting-in-pa/pages/mail-and-absentee-ballot.aspx> (last visited Mar. 22, 2023)));
- confusingly, her purported failure to take action to stop the County Boards’ unauthorized notice and cure procedures following her involvement as a party in an unrelated federal case, (Amended Pet. ¶¶ 103-04);
- the notion that in Counties that have not implemented cure procedures, the SURE system, maintained by the Acting Secretary, provides notice via email to voters that their ballots may not be counted, (Amended Pet. ¶ 116);
- the Acting Secretary’s November 3, 2022 guidance, issued in response to *Ball*, directing County Boards to examine all mail-in ballots received to determine if the return envelopes are signed and dated, which according to Petitioners directs the Boards to violate the Election Code, (Amended Pet. ¶¶ 121-24); and
- former Acting Secretary Chapman’s guidance issued prior to *Ball* in apparent response to the *Berks County* case, but before the November 2022 General Election, encouraging Boards to contact voters whose ballots have been cancelled due to defects on the outer envelopes so they can have their votes

count, which constitutes an endorsement of notice and cure, according to Petitioners, (Amended Pet. ¶¶ 125-26).

Based on these averments, Petitioners request that this Court prohibit the Acting Secretary from issuing guidance or other statements directing the County Boards to violate provisions of the Election Code. (*See* Amended Pet. at 34-35 (Count I, Wherefore Clause), 38 (Count II, Wherefore Clause), 41 (Count IV, Wherefore Clause).)

Here, Petitioners have not made any claims implicating the duties and responsibilities of the Acting Secretary under the Election Code identified in the Amended Petition, which duties and responsibilities the Court notes are limited,<sup>33</sup> but rather, Petitioners merely take issue with the various guidance the Acting Secretary has issued over the past three years in response to the developing case law in this area, which does not implicate what is truly at the heart of this case: ***some of the County Boards' development and implementation of notice and opportunity to cure procedures.*** Although the Acting Secretary may have a generalized interest in issues surrounding the administration of elections in the Commonwealth and the enfranchisement of voters, generally, the Acting Secretary's interests in this regard are not essential to a determination of whether some County Boards are unlawfully implementing notice and cure procedures with respect to absentee and mail-in ballots that are defective under the Election Code. Further, the Acting Secretary does not have control over the County Boards' administration of elections, as the General Assembly conferred such authority solely upon the County Boards, as will be discussed *infra*. Compare 25 P.S. § 2642 (outlining County Boards' extensive powers and duties over administration and conduct of elections), with 25 P.S. §§

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<sup>33</sup> See 25 P.S. §§ 2621, 3159.



2621 (outlining limited powers and duties of Secretary), 3159 (providing for Secretary’s duties to tabulate, compute, and canvass returns). That the Acting Secretary *may, in the future*, issue guidance or statements on this issue is too “tangential” and “minimal” of an involvement, and speculative even,<sup>34</sup> to make him an indispensable party to this matter. Because Petitioners could conceivably obtain meaningful relief with respect to the County Boards’ purportedly unlawful actions without the Acting Secretary’s involvement in this case, the Acting Secretary is not an indispensable party.

As for Director Mathis, Petitioners observe she is responsible for overseeing the Election Services and Voter Registration divisions of the Department, as well as the Bureau of Election Services and Notaries, which is responsible for planning, developing, and coordinating the statewide implementation of the Election Code. (Amended Pet. ¶ 51 (citing <https://www.dos.pa.gov/about-us/Pages/Director-Bureau-of-Elections-and-Notaries.aspx> (last visited Mar. 22, 2023)).) Other than this statement of her duties, Petitioners do not make any claims or request any relief as to Director Mathis in the Amended Petition. Because no relief is sought against Director Mathis, she is not indispensable to this matter. *See Stedman*, 221 A.3d at 758.

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<sup>34</sup> Petitioners have also not identified any authority whatsoever that would **require** an order from this Court **at this juncture** prohibiting the Acting Secretary from issuing any guidance or statements on this issue later. The Court cannot predict whether the Acting Secretary will again issue guidance or any statements regarding notice and cure procedures, and notes that the former Acting Secretary has most recently issued guidance in response to the Supreme Court’s recent decision in *Ball* essentially **opposing** the implementation of any notice and cure procedures, which does not help Petitioners’ case. (*See* <https://www.vote.pa.gov/voting-in-pa/pages/mail-and-absentee-ballot.aspx> (last visited Mar. 22, 2023)).) Presumably, if the Acting Secretary was to issue any guidance or statements on this issue in the future, the Court opines that he would do so in accordance with whatever is the controlling case law on the issue at that time.

Having concluded that neither the Acting Secretary nor Director Mathis are indispensable parties to this action, the POs in this regard are sustained, and the Acting Secretary and Director Mathis are dismissed from this action.

The Court must now consider whether it has original jurisdiction over the remaining Respondents, i.e., the 67 County Boards, or whether original jurisdiction lies in the respective courts of common pleas. As the Parties suggest, these questions hinge on whether the County Boards are Commonwealth agencies, as Petitioners contend, or local agencies that are excluded from the definition of “Commonwealth government,” as Respondents contend. This Court agrees with Respondents.

As set forth above, this Court has original jurisdiction over all civil actions brought against the “Commonwealth government.” 42 Pa.C.S. § 761(a)(1). However, that term does not include any political subdivision, municipal, or other local authority, or any officer or agency of any such political subdivision or local authority. 42 Pa.C.S. § 102. The Court must therefore determine whether the County Boards fall into one of these categories.

In *Finan*, this Court considered, in the context of an appeal from a trial court order sustaining a preliminary objection challenging its jurisdiction, whether the Pike County Conversation District created pursuant to the Conservation District Law<sup>35</sup> qualified as a local agency or a Commonwealth agency for jurisdictional purposes. 209 A.3d at 1110. In doing so, this Court recognized that

[t]he type of agency dictates the proper court of original jurisdiction; for actions against local agencies, the proper court is the county court of common pleas, whereas actions against Commonwealth agencies are properly filed in the Commonwealth Court. *Blount*[, 965 A.2d 226.] Our analysis for determining the type of agency depends on the purpose for which we review agency status. [*James J. Gory Mech. Contr’g, Inc.*

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<sup>35</sup> Act of May 15, 1945, P.L. 547, as amended, 3 P.S. §§ 849-864.

*v. Phila. Hous. Auth.*, 855 A.2d 669 (Pa. 2004); *T & R Painting Co., Inc. v. Phila. Hous. Auth.*, 353 A.3d 800 (Pa. 1976); *Quinn v. Se. Pa. Transp. Auth. (SEPTA)*, 659 A.2d 613 (Pa. Cmwlth. 1995).]

Generally, for purposes of jurisdiction, Commonwealth agency status is narrowly construed. *Gory*; see *Dep't of Aging v. Lindberg*, . . . 469 A.2d 1012 (Pa. 1983) (construing this Court's jurisdiction under 42 Pa.C.S. § 761(a)(1) narrowly). When the enabling statute does not specify the court of original jurisdiction, in analyzing the type of agency for jurisdictional purposes, "the pivotal factors are whether the entity [1] operates on a statewide basis and [2] is predominantly controlled by the state." *Gory*, 855 A.2d at 677 (emphasis added). We discern legislative intent to confer jurisdiction on this Court where the entity acts throughout the state and under state control. *Id.* By contrast, where "the entity operates within a single county . . . and is governed in large part by that county . . . the entity must be characterized as a local agency and sued in the courts of common pleas." *Id.* at 678.

*Finan*, 209 A.3d at 1111-12 (footnote omitted). This Court further observed that *Blount*, cited above, is "[t]he seminal case in determining agency status for jurisdiction purposes[.]" *Id.* at 1114.

In *Blount*, the Supreme Court analyzed whether the Philadelphia Parking Authority (PPA) qualified as a Commonwealth agency such that this Court was the court of original jurisdiction. In so doing, the Supreme Court considered multiple factors, including the PPA's functions, reach of operations, and the degree of state control over finance and governance, and ultimately concluded that the PPA was a Commonwealth agency, and that jurisdiction in this Court was proper, because the PPA undertook both state functions and operated outside Philadelphia. See *Finan*, 209 A.3d at 1114 (discussing *Blount*); see also *Blount*, 965 A.2d at 229-34.

Returning to *Finan*, this Court concluded that the Pike County Conservation District did not meet the *Blount* factors for Commonwealth agency status because the District operates solely within the confines of Pike County, which reach of authority indicated local agency status addressing issues within a single county;

implements statewide policies and initiatives and fees, but only in Pike County; is not controlled by the Commonwealth, as its governing body was not selected by the Governor or any other Commonwealth agent; and there is little state control over the District's budget or finances. *Finan*, 209 A.3d at 1114-15. The Court further noted that although the Department of Environmental Protection (DEP) delegated certain functions to the District through a delegation agreement, such delegation did not confer Commonwealth agency status upon the District. *Id.* Accordingly, absent any state control or exercise of statewide authority, the Court concluded there was no basis for deeming the District to be a Commonwealth agency for jurisdictional purposes. *Id.* at 1115 (citing *Blount*; *T & R Painting*). Moreover, the Court rejected the District's proffered third factor for consideration, i.e., that this Court's jurisdiction should extend to county conservation districts because they share implementation and enforcement authority with two statewide agencies (DEP and the State Conservation Commission created under the Conservation District Law) and thus deal with implementation of statewide laws. *Id.* at 1115.

Considering the *Blount* factors, and *Finan*, as they relate to the instant matter, the Court concludes that the 67 County Boards are local agencies for jurisdictional purposes. Notably, the Judicial Code does not define what constitutes a local agency. However, Section 1991 of the Statutory Construction Act of 1972 defines "political subdivision" as "[a]ny county, city, borough, incorporated town, township, school district, vocational school district and county institution district." 1 Pa.C.S. § 1991; see *Blount*, 965 A.2d at 230 (observing, *inter alia*, the definition of "local authority" under the rules of statutory construction for purposes of determining whether the PPA was a Commonwealth or local agency). Section 102(b) and (c) of the Election Code defines "county" as "any county of this Commonwealth" and

“county board” or “board” as “the county board of elections of any county [t]herein provided for.” 25 P.S. § 102(b), (c).

Importantly, Section 301(a) of the Election Code provides that “[t]here shall be a county board of elections in and for each county of this Commonwealth, which shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of this act.” 25 P.S. § 2641(a) (emphasis added). Section 301(b) of the Election Code further provides that “[i]n each county of the Commonwealth, the county board of elections shall consist of the county commissioners of such county ex officio, or any officials or board who are performing or may perform the duties of the county commissioners . . . .” 25 P.S. § 2641(b). Section 302 of the Election Code outlines the powers and duties of the County Boards, providing that “[t]he county boards of elections, **within their respective counties**, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act,” including the 16 powers and duties enumerated in that section. 25 P.S. § 2642 (emphasis added). Included in these powers are those at issue in the instant matter, namely Section 302(f) and (g), which authorize the County Boards:

(f) To make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers and electors.

(g) To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.

25 P.S. §§ 2642(f), (g).

Section 305(a) of the Election Code further provides that “[t]he county commissioners or other appropriating authorities of the county shall appropriate annually, and from time to time, to the county board of elections of such county, the funds that shall be necessary for the maintenance and operation of the board and for the conduct of primaries and elections in such county . . . .” 25 P.S. § 2645(a); *see also* Section 305(a)1.-4. of the Election Code, 25 P.S. § 2645(a)1.-4. (providing additional expenses related to elections for which the Counties are liable). Conversely, under Section 201 of the Election Code, the Secretary’s powers and duties are limited, and include different powers than those granted solely to the County Boards in Sections 301 and 302. *See* 25 P.S. § 2621.

Because these provisions of the Election Code reflect that the County Boards are local agencies, but do not expressly state the same, the Court must analyze the legislative intent behind the statute. “In discerning legislative intent to confer Commonwealth agency status, courts consider whether conferring jurisdiction on a particular court would lead to an absurd or unreasonable result.” *Finan*, 209 A.3d at 1113 (citing 1 Pa.C.S. § 1921). “When the matter involves a local community, and ‘the issues involved were matters strictly within the concern of a particular locality rather than a concern of the Commonwealth generally,’ then it would be absurd to conduct the litigation in Harrisburg as opposed to the locality.” *Finan*, 209 A.3d at 1113 (citing *T & R Painting*, 353 A.2d at 802 (citation omitted)).

Here, the County Boards do not meet the *Blount* factors, which means they are local agencies. First, the General Assembly granted jurisdiction to administer and conduct primaries and elections solely within the confines of the respective Counties of the Commonwealth to the County Boards under Section 301(a) of the Election Code. The County Boards’ authority indicates local agency status because

it has jurisdiction to administer and conduct elections and primaries **within each respective county**, not statewide. Second, the County Boards are not controlled by the Commonwealth, as the County Boards are governed by the county commissioners under Section 301(b) of the Election Code, and, under Section 302(f) and (g), the County Boards are authorized to make rules, regulations, and instructions necessary for the guidance of, among others, elections officers and electors and to instruct elections officers in their duties. The Court therefore rejects Petitioners' argument that the County Boards are Commonwealth agencies because they were created by statute; rather, under *Blount*, it is the degree of Commonwealth control over them that is dispositive. As the Court observed in *County of Fulton*, the Department does not control the County Boards. *See County of Fulton*, 276 A.3d at 861-62 (stating that “[t]he county boards of elections are not bureaus within the Department of State subject to management by the Secretary of the Commonwealth” and that “[t]hey are separate and stand-alone government agencies”).

Further, the County Boards are funded by the county commissioners or other appropriating authorities of the county annually under Section 305 of the Election Code, not by the Department or other Commonwealth entity. Thus, although the subject matter of this litigation implicates elections, both local and statewide,<sup>36</sup> which are governed by the Election Code,<sup>37</sup> all signs point to the County Boards

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<sup>36</sup> In *Finan*, this Court declined “to expand this Court’s original jurisdiction to include cases challenging local implementation of statewide laws in the interest of uniformity. The potential for conflicting constructions of statewide laws by the county courts of common pleas exists whenever a statewide law is applied differently by different local agencies.” *Finan*, 209 A.3d at 1115-16.

<sup>37</sup> This Court has exclusive original jurisdiction in the following election-related matters only:

(1) Contested nominations and elections of the second class under the . . . [Election Code.]

falling under the designation of “political subdivision,” suits against which are excluded from this Court’s original jurisdiction under Section 761(a)(1) of the Judicial Code. *See also In re Voter Referendum Pet.*, 981 A.2d at 171 (recognizing that a county board of elections is a local agency). As a result, jurisdiction for an action challenging a County Board’s development and implementation of notice and cure procedures properly lies in the respective County’s court of common pleas. *See* 42 Pa.C.S. § 931 (providing that “[e]xcept where exclusive original jurisdiction of an action or proceeding is by statute or by general rule . . . vested in another court of this Commonwealth, the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings, including all actions and proceedings heretofore cognizable by law or usage in the courts of common pleas”). Accordingly, because this Court lacks subject matter jurisdiction over Petitioners’ claims against the 67 County Boards in the absence of the Acting Secretary and Director Mathis, the POs in this regard are sustained,<sup>38</sup> and the Amended Petition is dismissed.<sup>39</sup>



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ELLEN CEISLER, Judge

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(2) All matters arising in the Office of the Secretary of the Commonwealth relating to Statewide office, except nomination and election contests within the jurisdiction of another tribunal.

42 Pa.C.S. § 764.

<sup>38</sup> Given the Court’s disposition, Respondents’ other POs are dismissed as moot.

<sup>39</sup> Ordinarily, this Court would transfer the matter to the proper court with original jurisdiction over the matter. *See* 42 Pa.C.S. § 5103(a). However, given the impracticality of doing so in this case and given the fact that some County Boards may have changed their procedures since the November 2022 General Election, the Court will not transfer this matter and, instead, will dismiss the Amended Petition. Should Petitioners wish to file suit in the respective courts of common pleas where notice and cure procedures are challenged, they may do so.



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Republican National Committee; :  
National Republican Senatorial :  
Committee; National Republican :  
Congressional Committee; Republican :  
Party of Pennsylvania; David Ball; :  
James D. Bee; Debra A. Biro; Jesse D. :  
Daniel; Gwendolyn Mae Deluca; Ross :  
M. Farber; Connor R. Gallagher; Lynn :  
Marie Kalcevic; Linda S. Kozlovich; :  
William P. Kozlovich; Vallerie :  
Siciliano-Biancaniello; S. Michael :  
Streib, :

Petitioners :

v. :

Al Schmidt, in his official :  
capacity as Acting Secretary of the :  
Commonwealth; Jessica Mathis, in :  
her official capacity as Director of the :  
Pennsylvania Bureau of Election :  
Services and Notaries; Adams County :  
Board of Elections; Allegheny County :  
Board of Elections; Armstrong County :  
Board of Elections; Beaver County :  
Board of Elections; Bedford County :  
Board of Elections; Berks County Board :  
of Elections; Blair County Board of :  
Elections; Bradford County Board of :  
Elections; Bucks County Board of :  
Elections; Butler County Board of :  
Elections; Cambria County Board of :  
Elections; Cameron County Board of :  
Elections; Carbon County Board of :  
Elections; Centre County Board of :  
Elections; Chester County Board of :  
Elections; Clarion County Board of :  
Elections; Clearfield County Board of :  
Elections; Clinton County Board of :  
Elections; Columbia County Board of :  
Elections; Crawford County Board of :

No. 447 M.D. 2022

Elections; Cumberland County Board :  
of Elections; Dauphin County Board of :  
Elections; Delaware County Board of :  
Elections; Elk County Board of :  
Elections; Erie County Board of :  
Elections; Fayette County Board of :  
Elections; Forest County Board of :  
Elections; Franklin County Board of :  
Elections; Fulton County Board of :  
Elections; Greene County Board of :  
Elections; Huntingdon County Board :  
of Elections; Indiana County Board of :  
Elections; Jefferson County Board of :  
Elections; Juniata County Board of :  
Elections; Lackawanna County Board :  
of Elections; Lancaster County Board :  
of Elections; Lawrence County Board :  
of Elections; Lebanon County Board :  
of Elections; Lehigh County Board of :  
Elections; Luzerne County Board of :  
Elections; Lycoming County Board of :  
Elections; McKean County Board of :  
Elections; Mercer County Board of :  
Elections; Mifflin County Board of :  
Elections; Monroe County Board of :  
Elections; Montgomery County Board :  
of Elections; Montour County Board of :  
Elections; Northampton County Board :  
of Elections; Northumberland County :  
Board of Elections; Perry County :  
Board of Elections; Philadelphia County:  
Board of Elections; Pike County Board :  
of Elections; Potter County Board of :  
Elections; Schuylkill County Board of :  
Elections; Snyder County Board of :  
Elections; Somerset County Board of :  
Elections; Sullivan County Board of :  
Elections; Susquehanna County Board :  
of Elections; Tioga County Board of :  
Elections; Union County Board of :  
Elections; Venango County Board of :  
Elections; Warren County Board of :  
Elections; Wayne County Board of :

Elections; Westmoreland County Board :  
of Elections; Wyoming County Board of:  
Elections; and York County Board of :  
Elections, :  
Respondents :

## **ORDER**

AND NOW, this 23<sup>rd</sup> day of March, 2023, it is hereby **ORDERED** as follows:

1. The first Preliminary objection (PO) of Al Schmidt, in his official capacity as Acting Secretary of the Commonwealth, and Jessica Mathis, in her official capacity as Director of the Pennsylvania Bureau of Election Services and Notaries; the first PO of the Delaware County Board of Elections; the second PO of the Chester County Board of Elections; and the first PO of the Philadelphia County Board of Elections, relating to lack of subject matter jurisdiction, are **SUSTAINED**.
2. All remaining POs are **DISMISSED AS MOOT**.
3. Petitioners' First Amended Petition for Review Directed to Court's Original Jurisdiction Seeking Declaratory and Injunctive Relief is **DISMISSED**.



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ELLEN CEISLER, Judge

**COMMONWEALTH OF PENNSYLVANIA**  
**COUNTY OF: Lancaster**



**POLICE CRIMINAL COMPLAINT**  
**COMMONWEALTH OF PENNSYLVANIA**  
**VS.**

Magisterial District Number: 02-2-02

DEFENDANT:

(NAME and ADDRESS):

MDJ: Hon. **BRUCE A. ROTH, ESQ**  
**150 NORTH QUEEN STREET**  
**SUITE 120**  
**LANCASTER, PA 17603**  
 Telephone: **717-295-2000**

**CHERYL MIHALIAK**  
 First Name Middle Name Last Name Gen  
**831 3RD ST**  
**LANCASTER PA 17603**

NCIC Extradition Code Type:

- |  |   |  |                                    |
|--|---|--|------------------------------------|
| <input type="checkbox"/> 1-Felony Full               | <input type="checkbox"/> 5-Felony Pend.                     | <input type="checkbox"/> C-Misdemeanor Surrounding States          | <input type="checkbox"/> Distance: |
| <input type="checkbox"/> 2-Felony Ltd.               | <input type="checkbox"/> 6-Felony Pend. Extradition Determ. | <input type="checkbox"/> D-Misdemeanor No Extradition              |                                    |
| <input type="checkbox"/> 3-Felony Surrounding States | <input type="checkbox"/> A-Misdemeanor Full                 | <input type="checkbox"/> E-Misdemeanor Pending                     |                                    |
| <input type="checkbox"/> 4-Felony No Ext             | <input checked="" type="checkbox"/> B-Misdemeanor Limited   | <input type="checkbox"/> F-Misdemeanor Pending Extradition Determ. |                                    |

**DEFENDANT IDENTIFICATION INFORMATION**

Docket Number **CR-126-22** Date Filed **06/03/22** OTN/InScan Number **R 300522-5** Complaint **150** Incident Number **DA-22-0138** Request Lab Services?  YES  NO

GENDER  Male  Female  
 DOB **6/13/1961** POB AKA First Name Middle Name Last Name Gen. Add'l DOB Co-Defendant(s)

RACE  White  Asian  Black  Native American  Unknown

ETHNICITY  Hispanic  Non-Hispanic  Unknown

HAIR COLOR  GRY (Gray)  RED (Red/Aubn.)  SDY (Sandy)  BLU (Blue)  PLE (Purple)  BRO (Brown)  
 BLK (Black)  ONG (Orange)  WHI (White)  XXX (Unk/Bald)  GRN (Green)  PNK (Pink)  
 BLN (Blonde/Strawberry)

EYE COLOR  BLK (Black)  BLU (Blue)  BRO (Brown)  GRN (Green)  GRY (Gray)  
 HAZ (Hazel)  MAR (Maroon)  PNK (Pink)  MUL (Multicolored)  XXX (Unknown)

DNA  YES  NO DNA Location WEIGHT (lbs.)

FBI Number **688907JA3** MNU Number **160**

Defendant Fingerprinted?  YES  NO FL HEIGHT In

Fingerprint Classification: **5 11**

**DEFENDANT VEHICLE INFORMATION**

Plate #	State	Hazmat <input type="checkbox"/>	Registration Sticker (MM/YY)	Comm'l Veh. Ind. <input type="checkbox"/>	School Veh. <input type="checkbox"/>	Oth. NCIC Veh. Code	Reg. same as Def. <input type="checkbox"/>
VIN	Year	Make	Model	Style	Color		

Office of the attorney for the Commonwealth  Approved  Disapproved Because:

(The attorney for the Commonwealth may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing. See Pa.R.Crim.P.507.)

Andrew J. Gonzalez [Signature] 6/3/22  
 (Name of the attorney for the Commonwealth) (Signature of the attorney for the Commonwealth) (Date)

I, **MARTIN, LARRY** **10158**  
 (Name of the Affiant) PSP/MPOETC Assigned Affiant ID Number and Badge #  
 of **LANCASTER CO DETECTIVES** **PA036013A**  
 (Identify Department or Agency Represented and Political Subdivision) (Police Agency ORI Number)

do hereby state: (check appropriate box)

- I accuse the above named defendant who lives at the address set forth above
- I accuse the defendant whose name is unknown to me but who is described as \_\_\_\_\_
- I accuse the defendant whose name and popular designation or nickname are unknown to me and whom I have therefore designated as John Doe or Jane Doe

with violating the penal laws of the Commonwealth of Pennsylvania at [ **301** ] **Lancaster City**  
 (Subdivision Code) (Place-Political Subdivision)

**150 N QUEEN ST LANCASTER, PA 17603**

in **Lancaster** County [ **36** ] on or about **Between 04/26/2022 0001 and 04/26/2022 2359**  
 (County Code) (Offense Date)



# POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: <b>06/03/2022</b>	OTN/LiveScan Number	Complaint <b>150</b>	Incident Number <b>DA-22-0138</b>
Defendant Name	First: <b>CHERYL</b>	Middle:	Last: <b>MIHALIAK</b>	

- I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made.
- I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.
- This complaint consists of the preceding page(s) numbered 1 through 4.
- 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 of confidential information and documents differently than non-confidential information and documents.

The acts committed by the accused, as listed and hereafter, were against the peace and dignity of the Commonwealth of Pennsylvania and were contrary to the Act(s) of the Assembly, or in violation of the statutes cited.  
**(Before a warrant of arrest can be issued, an affidavit of probable cause must be completed, sworn to before the issuing authority, and attached.)**

June 3, 2022 DA [Signature]  
 (Date) (Signature of Affiant)

AND NOW, on this date \_\_\_\_\_ I certify that the complaint has been properly completed and verified.  
 An affidavit of probable cause must be completed before a warrant can be issued.

02-2-02 \_\_\_\_\_  
 (Magisterial District Court Number) (Issuing Authority)





# POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: <b>06/03/2022</b>	OTN/LiveScan Number	Complaint <b>150</b>	Incident Number <b>DA-22-0138</b>
Defendant Name	First: <b>CHERYL</b>	Middle:	Last: <b>MIHALIAK</b>	

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically.

(Set forth a *brief* summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated.

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Over _____
------------------	--	---	---	--

<input checked="" type="checkbox"/>	<b>1</b>	<b>4101</b>	<b>(a)(3)</b>	of the	<b>PA Crimes Code</b>	<b>1</b>	<b>M1</b>		<b>250</b>
Lead?	Offense #	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code

PennDOT Data (if Applicable)	Accident Number	<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone
------------------------------	-----------------	-------------------------------------	--------------------------------------	------------------------------------

Statute Description (Include the name of the statute or ordinance):

**FORGERY-UTTER FORGED WRIT**

Acts of the accused associated with this Offense:

**PACC 4101(a)3 Forgery**

*WP AB 7/25/22*

**IN THAT, on or about April 26, 2022, THE DEFENDANT did unlawfully utter a writing, namely, a commercial instrument or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations, which said actor knew to be forged, with intent to defraud or injure TO WIT: Cheryl Mihaliak completed a mail in voter ballot for her deceased mother and signed her mother's name to the ballot. It was returned to the Lancaster County Board of Elections.**

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Over _____
------------------	--	---	---	--

<input type="checkbox"/>	<b>2</b>	<b>3517</b>	<b>-</b>	of the	<b>25</b>	<b>1</b>	<b>M2</b>		
Lead?	Offense #	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code

PennDOT Data (if Applicable)	Accident Number	<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone
------------------------------	-----------------	-------------------------------------	--------------------------------------	------------------------------------

Statute Description (Include the name of the statute or ordinance):

Acts of the accused associated with this Offense:

**Any person who shall forge or falsely make the official endorsement on any ballot or wilfully destroy or deface any ballot or wilfully delay the delivery of ant ballot. TO WIT: Cheryl Mihaliak completed a mail in voter ballot for her deceased mother and signed her mother's name to the ballot.**



# Police Criminal Complaint

Docket Number:	Date Filed: <b>06/03/2022</b>	OTN/LiveScan Number	Complaint <b>150</b>	Incident Number <b>DA-22-0138</b>
Defendant Name	First <b>CHERYL</b>	Middle:	Last: <b>MIHALIAK</b>	

## AFFIDAVIT OF PROBABLE CAUSE

1) On April 28, 2022, I (Detective Larry R. Martin) was assigned to investigate an alleged voter fraud incident. I received information from Christa Miller Chief Clerk/ Chief Registrar of the Lancaster County Board of Elections and Registration Commission.

2) Christa Miller stated she received a mail in ballot from Teresa J. Mihaliak signed and dated April 26, 2022. The ballot for the democrat primary was received on April 28, 2022, by her office. However, Christa Miller reported that Teresa J. Mihaliak was deceased on April 14, 2022. Christa Miller said this was confirmed by an obituary and records from the Department of Health. She said Teresa J. Mihaliak was removed from the voter rolls on April 25, 2022.

3) Christa Miller stated that Teresa J. Mihaliak's ballot was requested by Cheryl Mihaliak on March 17, 2022, Cheryl Mihaliak requested her own ballot on March 17, 2022. Christa Miller reported both Teresa Mihaliak and Cheryl Mihaliak's ballots were returned on April 28, 2022.

4) On May 5, 2022, at 1641 hours I spoke with Cheryl Mihaliak. During that conversation Cheryl Mihaliak told me that she did vote for her mother and signed her ballot after her mother died. Cheryl Mihaliak said that she knew who her mother was going to vote for and decided to vote for her after she died. Cheryl Mihaliak said she filled out her mother Teresa J. Mihaliak ballot and signed her ballot.

5) Due to the above information, I request that a summons be issued for defendant Cheryl Mihaliak.

I, LARRY MARTIN, BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

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 OF CONFIDENTIAL INFORMATION AND DOCUMENTS DIFFERENTLY THAN NO-CONFIDENTIAL INFORMATION AND DOCUMENTS.

  
(Signature of Affiant)

Sworn to me and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_ Date \_\_\_\_\_, Magisterial District Judge

My commission expires first Monday of January,

**SEAL**

# Magisterial District Judge 02-2-02

## DOCKET TRANSCRIPT

Docket Number: MJ-02202-CR-0000126-2022

## Criminal Docket

Commonwealth of Pennsylvania  
v.  
Cheryl Mihaliak

Page 1 of 4

### CASE INFORMATION

<u>Judge Assigned:</u>	Magisterial District Judge Bruce A. Roth	<u>Issue Date:</u>	06/03/2022
<u>OTN:</u>	R 300522-5	<u>File Date:</u>	06/03/2022
<u>Arresting Agency:</u>	Lancaster County, District Attorney	<u>Arrest Date:</u>	
<u>Complaint No.:</u>	DA-22-0138	<u>Incident No.:</u>	DA-22-0138
<u>Disposition:</u>	Waived for Court	<u>Disposition Date:</u>	07/25/2022
<u>County:</u>	Lancaster	<u>Township:</u>	Lancaster City
<u>Case Status:</u>	Closed		

### STATUS INFORMATION

<u>Case Status</u>	<u>Status Date</u>	<u>Processing Status</u>
Closed	07/25/2022	Completed
	06/03/2022	Awaiting Preliminary Hearing

### CALENDAR EVENTS

<u>Case Calendar</u>	<u>Schedule</u>		<u>Judge Name</u>	<u>Schedule</u>	
<u>Event Type</u>	<u>Start Date</u>	<u>Start Time</u>	<u>Room</u>	<u>Status</u>	
Preliminary Hearing	06/29/2022	2:00 pm		Magisterial District Judge Bruce A. Roth	Continued
<i>Continuance Reason: Defendant Attorney Request</i>					
<i>Requested By: Attorney Michael Todd Winters</i>					
Preliminary Hearing	07/25/2022	2:00 pm		Magisterial District Judge Bruce A. Roth	Scheduled
Formal Arraignment	08/26/2022	9:00 am	Courtroom A		Scheduled

### DEFENDANT INFORMATION

<u>Name:</u>	Mihaliak, Cheryl	<u>Sex:</u>	Female
<u>Date of Birth:</u>	06/13/1961	<u>Race:</u>	
<u>Address(es):</u>			
<u>Other</u>			
831 Third Street Lancaster, PA 17603			

Advised of His Right to Apply for Assignment of Counsel?	Yes
Public Defender Requested by the Defendant?	No
Application Provided for Appointment of Public Defender?	No
Has the Defendant Been Fingerprinted?	No



# Magisterial District Judge 02-2-02

## DOCKET TRANSCRIPT

Docket Number: MJ-02202-CR-0000126-2022

## Criminal Docket

Commonwealth of Pennsylvania  
v.  
Cheryl Mihaliak

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### CASE PARTICIPANTS

<u>Participant Type</u>	<u>Participant Name</u>	<u>OTN/LOTN</u>	<u>Docket Number</u>	<u>Was Sworn In?</u>	<u>Has Testified?</u>
Prosecution	Commonwealth of Pennsylvania				
Arresting Officer	Martin, Larry R.				
Defendant	Mihaliak, Cheryl				
Witness for the Commonwealth	Miller, Christa				

### BAIL

<b>Bail Set:</b>				<b>Nebbia Status: None</b>
<u>Bail Action Type</u>	<u>Bail Action Date</u>	<u>Bail Type</u>	<u>Percentage</u>	<u>Amount</u>
Set	07/25/2022	Unsecured		\$2,500.00

### CHARGES

<u># Charge</u>	<u>Grade</u>	<u>Description</u>	<u>Offense Dt.</u>	<u>Disposition</u>
1 18 § 4101 §§ A3	M1	Forgery - Utters Forged Writing	04/26/2022	Withdrawn
2 25 § 3517	M2	Forging And Destroying Ballots	04/26/2022	Waived for Court

### DISPOSITION / SENTENCING DETAILS

<u>Case Disposition</u>	<u>Disposition Date</u>	<u>Was Defendant Present?</u>
Waived for Court	07/25/2022	Yes
<u>Offense Seq./Description</u>	<u>Offense Disposition</u>	
1 Forgery - Utters Forged Writing	Withdrawn	
2 Forging And Destroying Ballots	Waived for Court	

### ATTORNEY INFORMATION

<b>Private</b>	<b>Assistant District Attorney</b>
<u>Name:</u> Michael Todd Winters, Esq.	<u>Name:</u> Jennifer Lauren Ponessa, Esq.
<u>Representing:</u> Mihaliak, Cheryl	<u>Representing:</u> Commonwealth of Pennsylvania
<u>Counsel Status:</u> Active	<u>Counsel Status:</u> Active
<u>Supreme Court No.:</u> 077976	<u>Supreme Court No.:</u> 319222
<u>Phone No.:</u> 717-584-1895	<u>Phone No.:</u> 717-299-8100
<u>Address:</u> 53 N Duke St Ste 318 Lancaster, PA 17602	<u>Address:</u> Lancaster County Da's Office 50 N Duke St Lancaster, PA 17602-2805

# Magisterial District Judge 02-2-02

## DOCKET TRANSCRIPT

Docket Number: MJ-02202-CR-0000126-2022

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## DOCKET ENTRY INFORMATION

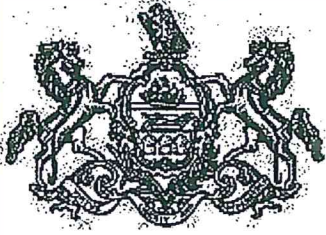
Filed Date	Entry	Filer	Applies To
07/25/2022	Bail Set	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
07/25/2022	Formal Arraignment Scheduled	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
07/25/2022	Waiver of Preliminary Hearing	Cheryl Mihaliak	Cheryl Mihaliak, Defendant
07/25/2022	Waived for Court	Magisterial District Judge Bruce A. Roth	Cheryl Mihaliak, Defendant
07/25/2022	Docket Transcript Printed	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
07/22/2022	Attorney Active	Jennifer Lauren Ponessa, Esq.	Commonwealth of Pennsylvania, Prosecution
06/24/2022	First Class Summons Accepted	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
06/13/2022	Subpoena Issued	Magisterial District Court 02-2-02	Christa Miller, Witness for the Commonwealth
Event: Preliminary Hearing-07/25/2022 2:00PM- 2:05PM Testify On Behalf Of: Commonwealth of Pennsylvania			
06/13/2022	First Class Subpoena Issued	Magisterial District Court 02-2-02	Christa Miller, Witness for the Commonwealth
06/13/2022	Preliminary Hearing Scheduled	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
06/13/2022	Preliminary Hearing Continued	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
06/09/2022	Attorney Active	Michael Todd Winters, Esq.	Cheryl Mihaliak, Defendant
06/06/2022	Certified Summons Accepted	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
06/06/2022	Certified Fingerprint Order Accepted	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
06/03/2022	Summons Issued	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
06/03/2022	Subpoena Issued	Magisterial District Court 02-2-02	Christa Miller, Witness for the Commonwealth
Event: Preliminary Hearing-06/29/2022 2:00PM- 2:15PM Testify On Behalf Of: Commonwealth of Pennsylvania			
06/03/2022	First Class Subpoena Issued	Magisterial District Court 02-2-02	Christa Miller, Witness for the Commonwealth
06/03/2022	Certified Summons Issued	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
06/03/2022	First Class Fingerprint Order Issued	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
06/03/2022	Fingerprint Order Issued	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
Report to Agency: Lancaster Police Dept Authority: Roth, Bruce A. Report From: 6/3/2022 12:00:00 AM Report To: 6/29/2022 12:00:00 AM			
06/03/2022	Certified Fingerprint Order Issued	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
06/03/2022	Preliminary Hearing Scheduled	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant
06/03/2022	Criminal Complaint Filed	Magisterial District Court 02-2-02	

# Magisterial District Judge 02-2-02

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## DOCKET ENTRY INFORMATION

Filed Date	Entry	Filer	Applies To
06/03/2022	First Class Summons Issued	Magisterial District Court 02-2-02	Cheryl Mihaliak, Defendant

July 25, 2022

Date

Magisterial District Judge Bruce A. Roth

