

**IN THE SUPREME COURT OF PENNSYLVANIA**

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NO. \_\_\_\_ MM 2024

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NEW PA PROJECT EDUCATION FUND, NAACP PENNSYLVANIA STATE CONFERENCE,  
COMMON CAUSE PENNSYLVANIA, LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA,  
BLACK POLITICAL EMPOWERMENT PROJECT, POWER INTERFAITH, MAKE THE ROAD  
PENNSYLVANIA, ONEPA ACTIVISTS UNITED, CASA SAN JOSÉ, AND PITTSBURGH  
UNITED.

*Petitioners,*

v.

AL SCHMIDT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE COMMONWEALTH,  
AND 67 COUNTY BOARDS OF ELECTIONS  
(See back cover for list of County Respondents)

*Respondents,*

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**APPLICATION FOR EXTRAORDINARY RELIEF UNDER THE  
COURT'S KING'S BENCH JURISDICTION**

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*Respondents.*

## Table of Contents

I.	INTRODUCTION .....	1
II.	THE PARTIES .....	4
A.	Petitioners .....	4
B.	Respondents .....	13
III.	STATEMENT OF THE CASE .....	16
A.	Origins of the Envelope-Date Provision.....	16
B.	The Mail-Ballot Process .....	17
C.	Litigation over the Envelope-Date Provision .....	19
D.	Election Officials Confirm the Envelope-Date Provision Serves No Purpose.....	22
E.	The Envelope-Date Requirement Is Enforced Inconsistently to Disenfranchise Thousands of Pennsylvanians in Each Election.....	25
IV.	BASIS FOR EXERCISING KING’S BENCH POWER.....	29
V.	ARGUMENT.....	32
A.	Disenfranchising Voters for Noncompliance with the Envelope-Date Provision Violates the Free and Equal Elections Clause. ....	32
1.	The Right to Vote in Pennsylvania Is Paramount. ....	32
2.	Strict Scrutiny Applies to the Envelope-Date Requirement’s Restriction on the Fundamental Right to Vote. ....	34
3.	Enforcement of the Irrelevant Envelope-Date Provision Cannot Survive Even Lesser Constitutional Scrutiny. ....	37
B.	There Is No Reason to Deny the Requested Relief. ....	42
1.	This Court Has Not Addressed the Constitutionality of Disenfranchising Voters Due to Envelope-Dating Errors. ....	43
2.	The B-PEP Intervenor-Respondents’ Efforts to Neuter the Free and Equal Elections Clause Have No Merit. ....	44
3.	The Relief Petitioners Seek Does Not Require Invalidation of any Part of Act 77. ....	48
4.	The Relief Requested Does Not Implicate the Federal Elections Clause. ....	51

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b><u>Cases</u></b>	
<i>Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.</i> , 309 A.3d 808 (Pa. 2024).....	33
<i>Appeal of Gallagher</i> , 41 A.2d at 632-33 .....	34
<i>Applewhite v. Commonwealth</i> , No. 330 M.D. 2012, 2014 WL 184988 (Pa. Cmwlt. Jan. 17, 2014).....	34, 45, 50
<i>Applewhite v. Commonwealth</i> , No. 330 MD 2012, 2012 WL 4497211 (Pa. Cmwlt. Oct. 2, 2012) .....	44
<i>Banfield v. Cortés</i> , 110 A.3d 155 (Pa. 2015).....	33
<i>Bd. of Revisions of Taxes, City of Phila. v. City of Phila.</i> , 4 A.3d 610 (Pa. 2010).....	28
<i>Bergdoll v. Kane</i> , 731 A.2d 1261 (Pa. 1999).....	33
<i>Black Political Empowerment Project v. Schmidt (“B-PEP”)</i> , No. 283 MD 2024, 2024 WL 4002321 (Pa. Cmwlt. Aug. 30, 2024), <i>vacated</i> No. 68 MAP 2024, 2024 WL 4181592 (Pa. Sept. 4, 2024).....	<i>passim</i>
<i>Bonner v. Chapman</i> , 298 A.3d 153 (Pa. Cmwlt. 2023).....	47
<i>Chapman v. Berks Cnty. Bd. of Elections, et al.</i> , No. 355 MD 2022, 2022 WL 4100998 (Pa. Cmwlt. Aug. 19, 2022) .....	19, 46
<i>Commonwealth v. Williams</i> , 129 A.3d 1199 (Pa. 2015).....	28

<i>Friends of Danny DeVito v. Wolf</i> , 227 A.3d 872 (Pa. 2020).....	28, 29
<i>In re 2020 Canvass</i> , 241 A.3d at 1086 n.40.....	<i>passim</i>
<i>In re Bruno</i> , 101 A.3d 635 (Pa. 2014).....	3, 28
<i>In re Nader</i> , 858 A.2d 1167 (Pa. 2004).....	33
<i>James v. SEPTA</i> , 477 A.2d 1302 (Pa. 1984).....	33
<i>League of Women Voters v. Commonwealth</i> , 178 A.3d 737 (Pa. 2018).....	<i>passim</i>
<i>McCafferty v. Guyer</i> , 59 Pa. 109 (1868).....	44
<i>McCormick, et al. v. Chapman, et al.</i> , No. 286 MD 2022, 2022 WL 2900112 (Pa. Cmwlt. June 2, 2022).....	19
<i>McLinko v. Commonwealth</i> , 279 A.3d 539 (Pa. 2022).....	49
<i>Migliori v. Cohen</i> , 36 F.4th 153 (3d Cir. 2022) .....	19, 20, 46
<i>Mixon v. Commonwealth</i> , 759 A.2d 442 (Pa. Cmwlt. 2000).....	44, 50
<i>Moore v. Harper</i> , 600 U.S. 1 (2023).....	49, 50
<i>Morrison Informatics, Inc. v. Members 1st Fed. Credit Union</i> , 139 A.3d 1241 (Pa. 2016).....	40
<i>Pa. Fed'n of Teachers v. Sch. Dist. of Phila.</i> , 484 A.2d 751 (Pa. 1984).....	48

<i>Pa. State Conf. of NAACP Branches v. Schmidt</i> , 97 F.4th 120 (3d Cir. 2024) .....	<i>passim</i>
<i>Pa. State Conf. of NAACP v. Schmidt</i> , 703 F. Supp. 3d 632 (W.D. Pa. 2023).....	<i>passim</i>
<i>Page v. Allen</i> , 58 Pa. 338 (1868).....	44, 50
<i>Pennhurst State Sch. &amp; Hosp. v. Halderman</i> , 465 U.S. 89 (1984).....	21, 43
<i>Perles v. Cnty. Return Bd. of Northumberland Cnty.</i> , 202 A.2d 538 (Pa. 1964).....	34
<i>Peters v. Lincoln Elec. Co.</i> , 285 F.3d 456 (6th Cir. 2002) .....	39
<i>Petition of Berg</i> , 712 A.2d 340 (Pa. Cmwlth. 1998).....	33, 34, 45
<i>Ritter v. Migliori</i> , 143 S. Ct. 297 (2022).....	19
<i>Shoul v. Com. Dep’t of Transportation, Bureau of Driver Licensing</i> , 173 A.3d 669 (Pa. 2017).....	35
<i>Stilp v. Commonwealth</i> , 905 A.2d 918 (Pa. 2006).....	47, 48, 49
<i>United States v. Munsingwear</i> , 340 U.S. 36 (1950).....	19
<i>William Penn Sch. Dist. v. Pa. Dep’t of Educ.</i> , 294 A.3d 537 (Pa. Cmwlth. 2023).....	33
<i>Winston v. Moore</i> , 91 A. 520 (Pa. 1914).....	<i>passim</i>

**Statutes**

25 P.S. § 2621 .....	13, 17
25 P.S. § 2641 .....	13

25 P.S. §§ 3146.1 .....	14
25 P.S. § 3146.2 .....	15
25 P.S. § 3146.2b .....	16
25 P.S. § 3146.3 .....	12, 43
25 P.S. § 3146.4 .....	12, 39
25 P.S. § 3146.6 .....	4, 16, 39, 52
25 P.S. § 3146.8 .....	13, 17, 47
25 P.S. § 3146.9 .....	17, 38
25 P.S. § 3150.12 .....	15
25 P.S. § 3150.12b .....	16
25 P.S. § 3150.13 .....	12
25 P.S. § 3150.14 .....	12, 39
25 P.S. § 3150.16 .....	4, 16, 39, 52
25 P.S. § 3157 .....	3
1 Pa.C.S. § 1922 .....	49
1 Pa.C.S. § 1925 .....	48
25 Pa.C.S. § 1301 .....	16
42 Pa.C.S. § 7531 .....	52
28 U.S.C. § 1746 .....	39
52 U.S.C. § 10101 .....	18, 46
<b><u>Other Authorities</u></b>	
Pa. Const. art. 1, § 5 .....	<i>passim</i>

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/> .....24

David D. Daniels, III, *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>. .....9

Pa. Dep’t of State, *Directive Concerning the Form of Absentee and Mail-in Ballot Materials*, v.2.0 (July 1, 2024), <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> .....12

Pa. Dep’t of State, *Guidance Concerning Civilian Absentee and Mail-In Ballot Procedures*, v.3.0 (Apr. 3, 2023), <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> .....12

Pa. Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes*, at 2–3 (Sept. 11, 2020), <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/archived/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf> .....13

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*, (Nov. 3, 2022), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2022-11-03-Guidance-UndatedBallot.pdf> .....24



## I. INTRODUCTION

This Petition presents an issue of extraordinary and immediate importance: Thousands of voters face imminent disenfranchisement in violation of the Pennsylvania Constitution. The voters at risk are those who timely submit mail ballots that county boards of elections will not count because the voter omitted a handwritten date, or wrote some “incorrect” date, on the outer return envelope. The voters are disproportionately older, from both populous and rural counties, from across the political spectrum, and from all walks of life. Since this Court decided *Ball v. Chapman*, two federal courts and the Commonwealth Court have confirmed—based on a complete record including discovery taken in one of those cases from all 67 counties—that the voter-written date serves no purpose. It plays no role in establishing a ballot’s timeliness or voter eligibility and is not used to prevent fraud. No one disputes any of that.

The refusal to count timely mail ballots submitted by eligible voters because of an inconsequential 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 of suffrage.” Pa. Const. art. 1, § 5. That clause, at a minimum, demands that “all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to

the voters of our Commonwealth....” *League of Women Voters v. Commonwealth* (“*LWV*”), 178 A.3d 737, 804 (Pa. 2018).

The imminent threat of mass disenfranchisement warrants this Court’s exercise of its King’s Bench authority. Enforcement of this envelope-date provision disenfranchised more than 10,000 voters in the 2022 general election and thousands more voters in the 2024 Presidential primary, all of them qualified, registered voters whose mail ballots were timely received by Election Day. With a higher turnout anticipated in the November 2024 general election, many thousands more will needlessly lose their right to vote absent immediate relief.

This Court has emphasized that Pennsylvania’s Free and Equal Elections Clause requires “striking...all regulations...which shall impair the right of suffrage....” *LWV*, 178 A.3d at 809. Whether the Free and Equal Elections Clause—one of the pillars of our constitutional edifice—protects mail ballot voters from the arbitrary disenfranchisement at issue here is a question of first impression and immense importance. This Court has the power to take up this issue, and it has already recognized its worthiness for extraordinary review. In *Ball v. Chapman*, the Court exercised King’s Bench authority mere days before the 2022 general election to decide whether the envelope-date requirement was mandatory rather than directive as a matter of statutory interpretation. *See Ball*, 289 A.3d 1, 32 (Pa. 2023) (Dougherty, J., concurring and dissenting) (“we deemed this case important enough

to warrant an exercise of our ‘very high and transcendent’ King’s Bench authority” (quoting *In re Bruno*, 101 A.3d 635, 669 (Pa. 2014)). Now, just as it did in *Ball*, the Court should again exercise its King’s Bench authority to address the constitutional implications of the envelope-date requirement, and to resolve this issue once and for all, and on a statewide basis.

This is the final opportunity for the parties, and election officials in all counties, to obtain clarity regarding the application of the Free and Equal Elections Clause to the envelope date requirement before the November 2024 general election. Many of the Petitioners sought adjudication of these issues earlier this year in *B-PEP v. Schmidt*. See *Black Political Empowerment Project v. Schmidt* (“*B-PEP*”), No. 283 MD 2024, 2024 WL 4002321 (Pa. Cmwlth. Aug. 30, 2024), *vacated*, No. 68 MAP 2024, 2024 WL 4181592 (Pa. Sept. 4, 2024). But with the dismissal of the *B-PEP* action by this Court on procedural grounds, and with time before Election Day growing short, there is no realistic opportunity through any other procedural means to obtain timely, statewide review on the question presented here.

For the reasons outlined below, Petitioners request that the Court grant review and (1) declare that enforcement of the purposeless envelope-dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), to disqualify timely mail and absentee ballots violates the Pennsylvania Constitution’s Free and Equal Elections Clause; and (2) enjoin each of the Respondents from continuing to set aside and not count mail and absentee

ballots based on missing or incorrect voter-written dates. This relief is warranted, reasonable, and, above all, essential to prevent imminent mass disenfranchisement.

## **II. THE PARTIES**

### **A. Petitioners**

Petitioners are nonpartisan organizations dedicated to promoting American democracy and the participation of Pennsylvania voters in our shared civic enterprise. They bring this Petition 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.

Absent declaratory and injunctive relief by this Court enjoining enforcement of the envelope-date requirement, each of the Petitioners, their members, and thousands of qualified Pennsylvania voters will suffer the irreparable harm of having timely-submitted mail ballots rejected in this year's general election and at every election thereafter. Moreover, continued enforcement of the envelope-date requirement to disenfranchise voters has forced—and will continue to force—each of the Petitioners to redirect their limited resources away from get-out-the-vote efforts, voter education, and other mission-critical initiatives towards educating voters about the envelope-date requirement and helping notify their members and others in the community when their ballots have been disqualified so that impacted voters can attempt to cure envelope-dating issues or preserving their right to vote by

voting provisionally on Election Day. *See* Ex. A (9/23/24 Decl. of K. Kenner [“Kenner Decl.”]) at ¶¶ 18-21; Ex. B (9/25/24 Decl. of S. Taylor [“Taylor Decl.”]) at ¶¶ 8-14; Ex. C (9/24/25 Decl. of P. Hensley-Robin [“Hensley-Robin Decl.”]) at ¶¶ 7-11; Ex. D (9/24/24 Decl. of A. Widestrom [“Widestrom Decl.”]) at ¶¶ 7-11; Ex. E (5/24/24 Decl. of T. Stevens [“Stevens Decl.”]) at ¶¶ 4-11; Ex. F (5/28/24 Decl. of D. Royster [“Royster Decl.”]) at ¶¶ 4-8; Ex. G (9/24/24 Decl. of D. Robinson [“Robinson Decl.”]) at ¶¶ 7-12; Ex. H (5/27/24 Decl. of S. Paul [“Paul Decl.”]) at ¶¶ 10-22; Ex. I (5/27/24 Decl. of M. Ruiz [“Ruiz Decl.”]) at ¶¶ 9-19; Ex. I (5/27/24 Decl. of A. Wallach Hanson [“Hanson Decl.”]) at ¶¶ 9-17.

**New PA Project Education Fund (“NPPEF”)** is a nonpartisan, nonprofit organization operating throughout the Commonwealth of Pennsylvania. NPPEF and its affiliated 501(c)(4) organization have offices in West Chester (Chester County), Norristown (Montgomery County), Harrisburg (Dauphin County), City of Chester (Delaware County) and Pittsburgh (Allegheny County). Kenner Decl., ¶ 4. In connection with every election cycle, NPPEF conducts voter registration, voter education, and voter mobilization programs in Allegheny, Beaver, Berks, Bucks, Centre, Chester, Cumberland, Dauphin, Delaware, Erie, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, and York Counties. *Id.*, ¶ 6. In addition, its online and print voter

education efforts are directed at a statewide audience and have reached Pennsylvania voters in at least 57 counties. *Id.* ¶ 8.<sup>1</sup>

**NAACP Pennsylvania State Conference (“State Conference”)** is a nonprofit, nonpartisan organization that works to, among other objectives, improve the political, educational, social, and economic status of African-Americans and other racial and ethnic minorities, to eliminate racial prejudice, and to take lawful action to secure the elimination of racial discrimination. Taylor Decl., ¶ 5. The State Conference has 106 active chapters and units in 35 Pennsylvania counties, *id.*,<sup>2</sup> with thousands of members who live and/or work throughout Pennsylvania, many of whom are registered to vote in Pennsylvania and are at risk of disenfranchisement due to refusal to count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope, *id.*, ¶ 7. The State Conference advocates for civil rights, including voting rights, for Black Americans, both nationally and in Pennsylvania. *Id.* Every election cycle, the State Conference engages in efforts to get out the vote, including by educating Black voters in Pennsylvania on different

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<sup>1</sup> Specifically, NPPEF’s voter education efforts have reached voters in Adams, Armstrong, Blair, Bradford, Butler, Cambria, Cameron, Carbon, Clarion, Clinton, Columbia, Crawford, Elk, Franklin, Greene, Huntingdon, Juniata, Lycoming, Mercer, Mifflin, Montour, Northumberland, Perry, Pike, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Washington, Wayne, Westmoreland, and Wyoming Counties. *Id.*

<sup>2</sup> The State Conference has local branches and units in Allegheny, Beaver, Berks, Blair, Bucks, Cambria, Centre, Chester, Clinton, Crawford, Dauphin, Delaware, Erie, Fayette, Greene, Indiana, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Monroe, Montgomery, Northampton, Northumberland, Philadelphia, Schuylkill, Snyder, Union, Washington, Westmoreland, and York Counties.

methods of voting, providing educational guides on local candidates to increase voter engagement, and focusing on strategies to eliminate Black-voter suppression both nationally and in Pennsylvania. *Id.*

**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 nonpartisan good-government organization with approximately 36,000 members and supporters who live in all 67 counties of Pennsylvania. Hensley-Robin Decl., ¶ 5. 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. *Id.*, ¶ 6. Among other civic engagement programs, Common Cause PA mobilizes hundreds of volunteers around every major statewide election to staff the nonpartisan Election Protection Hotline, which helps fellow Pennsylvanians across the entire state navigate problems encountered during the voting process and to cast their votes without obstruction, confusion, or intimidation. *Id.*, ¶ 7.

**The League of Women Voters of Pennsylvania (“the League”)** is a non-partisan statewide non-profit formed in 1920. Widstrom Decl., ¶ 5. The League is a predominantly volunteer organization with members in 66 of Pennsylvania’s 67

counties,<sup>3</sup> as well as 30 member chapters and one Inter-League Organization operating in 28 counties. *Id.*<sup>4</sup> 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. *Id.* 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. *Id.*, ¶ 6. 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 ballot information, candidate information, and polling rules and locations. *Id.*

**Black Political Empowerment Project (“B-PEP”)** is a nonprofit, nonpartisan organization that has worked since 1986 to ensure that the Pittsburgh

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<sup>3</sup> LWV has members in Adams, Allegheny, Armstrong, Beaver, Bedford, Berks, Blair, Bradford, Bucks, Butler, Cambria, Carbon, Centre, Chester, Clarion, Clearfield, Clinton, Columbia, Crawford, Cumberland, Dauphin, Delaware, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Washington, Wayne, Westmoreland, Wyoming, and York Counties. *See* Widestrom Decl., ¶ 5.

<sup>4</sup> LWV has local leagues in Allegheny, Berks, Bucks, Centre, Chester, Clarion, Dauphin, Delaware, Erie, Indiana, Lancaster, Lawrence, Lehigh, Luzerne, Lycoming, Mercer, Monroe, Montgomery, Northampton, Northumberland, Philadelphia, Pike, Susquehanna, Union, Warren, Washington, and Westmoreland Counties. *See* <https://www.palwv.org/join-the-league>.



African-American community votes in every election. Stevens Decl., ¶ 3. B-PEP and its supporters throughout the Pittsburgh region work with community organizations in and around Allegheny, Westmoreland, and Washington Counties to empower Black and brown communities, including by promoting voting rights and get-out-the-vote efforts. *Id.*, ¶ 4. 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. *Id.*

**POWER Interfaith (“POWER”)** is a Pennsylvania non-profit organization comprising 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. Royster Decl., ¶ 3. During every election cycle, POWER’s civic engagement efforts include voter education programs, voter registration drives, and “Souls to the Polls” efforts<sup>5</sup> within Philadelphia County to encourage congregants to vote. *Id.*, ¶ 4.

**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

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<sup>5</sup>“Souls to the Polls” refers to the efforts of Black church leaders to encourage their congregants to vote *See, e.g.*, David D. Daniels, III, *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>.

in Latino and other communities to achieve dignity and justice through organizing, policy innovation, and education services. Robinson Decl., ¶ 5. Make the Road PA's approximately 13,000 members are primarily working-class residents of Pennsylvania, many in underserved communities. *Id.* 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/absentee ballots, how to return mail/absentee ballots, and where to vote. *Id.*, ¶ 7. 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, Luzerne, Northampton, and Philadelphia Counties. *Id.*

**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. Paul Decl., ¶ 5. It maintains offices in Pittsburgh and Philadelphia, and does voter engagement work in Allegheny, Delaware, Dauphin, and Philadelphia Counties. *Id.*, ¶ 6. One PA For All's mission and programs 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 board hearings, and PA General Assembly meetings. *Id.*, ¶ 7. In connection with every election cycle, One

PA For All engages in door-to-door canvassing, phone calls, relational organizing, text messaging, digital ads, and earned media. *Id.*, ¶ 8.

**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. Ruiz Decl., ¶ 4. Casa San José connects, supports, and advocates with and for the Latino community in the Pittsburgh region. *Id.*, ¶ 5. In connection with every election cycle, Casa San José does voter outreach in Allegheny, Beaver, Butler, Erie, Indiana, Lawrence, Washington, and Westmoreland Counties. *Id.*, ¶ 8. 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. *Id.*

**Pittsburgh United** is a nonpartisan organization that strives to advance social and economic justice in the Pittsburgh region. Hanson Decl., ¶ 5. It is a membership and coalition organization employing 31 staff members in six offices, one each in Pittsburgh (Allegheny County), Ambridge (Beaver County), Meadville (Crawford County), Erie (Erie County), Greensburg (Westmoreland County) and State College (Centre County). *Id.*, ¶ 6. 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, working to increase voter turnout and expand access to

mail voting in Black, low-income, and white working-class communities across its six chapters. *Id.*, ¶ 9.

Respondents' enforcement of the envelope-date provision to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope forces each Petitioner to divert resources from its voter education, voter mobilization, election protection, and other mission-related initiatives to help ensure people are not disenfranchised by the envelope-date requirement. Each Petitioner will have to continue diverting staff and volunteers to spend time with voters explaining the numerous steps required to accurately complete a mail ballot, including the date field, and assisting voters who have had their ballot rejected. Petitioners have limited resources to reach people who are typically left out of the process of voting. The time necessary to assist voters whose ballots are rejected for noncompliance with the envelope-date requirement diverts organizational resources from voter mobilization and post-election canvass efforts. *See, e.g.*, Kenner Decl., ¶¶ 18-21; Taylor Decl., ¶¶ 7-14; Hensley-Robin Decl., ¶¶ 7-11; Widestrom Decl., ¶¶ 7-11; Stevens Decl., ¶¶ 4-11; Royster Decl., ¶¶ 4-8; Robinson Decl., at ¶¶ 7-12; Paul Decl., ¶¶ 10-22; Ruiz Decl., ¶¶ 17-19; Hanson Decl., ¶¶ 16-17.

## B. Respondents

**Respondent Al Schmidt** is the Secretary of the Commonwealth. The Pennsylvania Election Code confers certain specific authority upon the Secretary to implement absentee and mail voting procedures throughout the Commonwealth, including the responsibility for implementing the mail-ballot procedural requirements at issue here. *See* 25 P.S. §§ 3146.3(b), 3150.13(b) (Secretary prescribes form of absentee and mail ballots); 25 P.S. §§ 3146.4, 3150.14 (Secretary prescribes form of voter declaration for absentee and mail ballots). Pursuant to this authority, on July 1, 2024, Respondent Schmidt issued a Mail Ballot Directive prescribing the text, content, shape, size, or form of the declaration envelope, mandating that the envelopes continue to include the disputed date field on the form, and also mandating that the counties include the current year pre-filled.<sup>6</sup> This directive also includes mail ballot instructions consistent with prior guidance that timely mail-ballot submissions with a missing or incorrect date must be segregated and excluded from tabulation.<sup>7</sup>

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<sup>6</sup> *See* Pa. Dep't of State, *Directive Concerning the Form of Absentee and Mail-in Ballot Materials*, v.2.0 (July 1, 2024) (“DOS Mail Ballot Directive”), <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>.

<sup>7</sup> *See, E.g.*, Pa. Dep't of State, *Guidance Concerning Civilian Absentee and Mail-In Ballot Procedures*, v.3.0 (Apr. 3, 2023) (“DOS April 2023 Guidance”), <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>.

Respondent Schmidt also 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 ballot 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). Thus, enforcement of the envelope-date provision directly bears on whether the Secretary’s performance of such certification duties complies with law.

Each of the **67 County Board of Elections Respondents** is responsible for administering elections occurring within its county. *See* 25 P.S. § 2641(a). County Boards are also charged with ensuring elections are “honestly, efficiently, and uniformly conducted.” *Id.* § 2642(g). As set forth in greater detail below, with regard to mail and absentee ballots,<sup>8</sup> County Boards are responsible for processing mail ballot applications, sending and receiving mail ballot materials, and ensuring that mail-ballot voting is extremely safe and secure, which includes, among other things:

- confirming each mail-ballot applicant’s qualifications by verifying their proof of identification and comparing the information on the application with information contained in the voter’s record;
- maintaining poll books that track which voters have requested mail ballots and which have returned them;

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<sup>8</sup> For ease of reference, “mail ballots” includes both absentee and mail ballots unless otherwise noted. The rules governing treatment of absentee and mail ballots are identical.

- upon return of a mail ballot, stamping the return envelope with the date of receipt to confirm its timeliness;
- logging returned mail ballots in the Department of State’s Statewide Uniform Registry of Electors (“SURE”) system, the voter registration system;
- keeping returned absentee ballots in sealed or locked containers until they are canvassed by the County Board;
- pre-canvassing and canvassing mail ballots, including examining the voter declaration and reviewing them for sufficiency; and
- conducting a formal hearing to hear challenges as to all challenged mail-ballot applications and challenged mail ballots.

*See* 25 P.S. §§ 3146.2b, 3146.6(a), 3146.6(b)(3), 3146.8(a), 3146.8(g), 3146.9(b)(5), 3150.12b, 3150.16(a), 3150.16(b)(3), 3150.17(b)(5).<sup>9</sup>

Thus, it is the County Boards that receive, time-stamp, and log receipt of mail ballot submissions in the SURE system. And since at least 2022, the County Boards have also been responsible for reviewing outer return envelopes to determine whether they include a correct voter-written date, and setting aside those with a missing or “incorrect” voter-written date. Thus, both the Secretary and the County Boards are responsible for carrying out—in different ways—the unconstitutional enforcement of the envelope-date provision.

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<sup>9</sup> *See* Pa. Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes*, at 2–3 (Sept. 11, 2020) (“DOS September 2020 Guidance”), <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/archived/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf>.

### III. STATEMENT OF THE CASE

#### A. Origins of the Envelope-Date Provision

The Election Code has long provided an absentee ballot option for certain Pennsylvania voters. *See* 25 P.S. §§ 3146.1–3146.9. In 1963, the General Assembly added to the absentee ballot provisions a requirement that the “elector shall...fill out, date and sign [a] declaration printed on” the outer envelope used to return absentee ballots. Act of Aug. 13, 1963, P.L. 707, No. 379, sec. 22, § 1306. At the same time, the Code’s canvassing provision was amended to instruct county boards to set aside ballots returned in envelopes bearing a date after the election, *id.*, sec. 24 § 1308(c). Thus, for a brief time in the 1960s, the Election Code directed use of the handwritten envelope date as part of the determination whether absentee ballots were timely.

But in 1968, the Legislature updated the Code to make *date of receipt* the sole factor in determining timeliness of absentee ballots, eliminating the requirement to set aside ballots based on the envelope date. Act of Dec. 11, 1968, P.L. 1183, No. 375, sec. 8, §§ 1308(a) & (c). Thus, while the instruction to “fill out, date and sign” the envelope declaration remained after 1969, the only date used to determine an absentee ballot’s timeliness was date of *receipt*.

In 2019, the General Assembly enacted Act 77, which provides all eligible voters the option of no-excuse mail voting. The General Assembly largely repurposed the Code’s absentee-ballot provisions in the new mail-ballot provisions,



including carrying over the instruction from § 3146.6(a) to “fill out, date and sign” a declaration printed on the return envelope. The Legislature’s Republican Party leadership have acknowledged that absentee-ballot language was adopted wholesale “to minimize the complexities of legislative drafting,” (6/24/24 Br. of *Amici Curiae* Bryan Cutler, et al., 24)<sup>10</sup>, *not* because the legislature made any determination that the voter-written date served some purpose in administering the mail ballot process.

## **B. The Mail-Ballot Process**

A voter seeking to vote by mail must complete an application to their county board of elections that includes their name, address, and proof of identification. *See* 25 P.S. §§ 3146.2, 3150.12. The requisite information allows county boards to verify the voter’s qualifications to vote in Pennsylvania—namely, they are over 18 years old, have been a citizen and resided in the election district for at least one month, and are not currently incarcerated on a felony conviction. *See* 25 Pa.C.S. § 1301(a).

The county board then confirms the applicant’s qualifications by verifying proof of identification and comparing the application information with the voter’s record. 25 P.S. §§ 3146.2b, 3150.12b; *see also id.* § 3146.8(g)(4).<sup>11</sup> The county board’s eligibility determinations are conclusive unless challenged. *Id.* §§ 3146.2c, 3150.12b(3).

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<sup>10</sup> A true and correct copy of the relevant excerpt from the Brief of *Amici Curiae* submitted to the Commonwealth Court by Bryan Cutler, et al., in *B-PEP* is attached hereto as Exhibit K.

<sup>11</sup> *See also* DOS April 2023 Guidance, *supra* n.7.

After verifying voter identity and eligibility, the county board sends a mail-ballot package that contains a ballot, a secrecy envelope marked with the words “Official Election Ballot,” and a pre-addressed return envelope containing a pre-printed voter declaration form. *Id.* §§ 3146.6(a), 3150.16(a). Both the mail ballot itself and the “form of declaration and envelope shall be as prescribed by the Secretary of the Commonwealth.” *Id.* § 3146.4; *see also id.* §§ 3146.3(b), 3150.13(b).

At “any time” after receiving their mail-ballot package, the voter marks their ballot, places it in the secrecy envelope and the return envelope, completes the declaration, and delivers the ballot, by mail or in person, to their county board. *Id.* §§ 3146.6(a), 3150.16(a). The date written on the return envelope is not used to determine or confirm voter identity, eligibility, or timeliness of the ballot. Rather, a mail ballot is timely if the county board receives it by 8 p.m. on Election Day. *Id.* §§ 3146.6(c), 3150.16(c).

Upon receipt, the county board must stamp the return envelope with the date of receipt to confirm its timeliness and log the receipt in the Statewide Uniform Registry of Electors (“SURE”) system, the voter database used to generate poll books. *See id.* §§ 3146.9(b)(5); 3150.17(b)(5) (requiring boards to “maintain a record of...the date on which the elector’s completed mail-in ballot is received by

the county board”).<sup>12</sup> The poll books each county generates from the SURE system show which voters requested and returned mail ballots. *Id.* §§ 3146.6(b)(1), 3150.16(b)(1).

Mail ballots are verified pursuant to 25 P.S. § 3146.8(g). Any verified ballot submission that is not challenged is counted and included with the election results. *Id.* § 3146.8(g)(4). After the counties count the ballots, the Secretary has the duty “[t]o receive from [them] the returns of primaries and elections, to canvass and compute the votes cast...; to proclaim the results of such primaries and elections, and to issue certificates of election to the successful candidates at such elections...” *Id.* § 2621(f).

### **C. Litigation over the Envelope-Date Provision**

Millions of Pennsylvania voters have voted by mail ballot since Act 77 passed in 2019. Litigation over the validity of mail ballots received in un- and mis-dated envelopes began almost immediately. A series of state and federal cases have interpreted the Election Code’s envelope-dating provisions and considered the application of the federal Materiality Provision, 52 U.S.C. § 10101(a)(2)(B). Before the recent Commonwealth Court decision in *B-PEP*, 2024 WL 4002321, none of those cases presented a claim under the Free and Equal Elections Clause.

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<sup>12</sup> See DOS September 2020 Guidance, *supra* n.9, at 2.

In 2020, this Court conducted a statutory analysis of the envelope-date provision and issued a split decision, with four Justices ruling in favor of counting timely ballots received in the 2020 election. *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election* (“*In re 2020*”), 241 A.3d 1058, 1076-79 (Pa. 2020), *cert. denied*, 141 S. Ct. 1451 (2021) (opinion announcing judgment of the court [“OAJC”]); *id.*, 1088 (Wecht, J., concurring and dissenting). In those fast-moving, consolidated post-election appeals, appellants (political campaigns seeking to disqualify ballots) postulated governmental interests that supposedly supported strict enforcement of the envelope-date provision. Without any record testing these theories, six Justices split over whether the purported interests appeared sufficiently “weighty” to justify interpreting the Code’s date instruction as “mandatory.”<sup>13</sup> *See id.*, 1076-79 (OAJC) (envelope-date provision was “a directory, rather than a mandatory, instruction” because purported interests were not “weighty”); *id.*, 1090-91 (Dougherty, J., concurring and dissenting) (crediting purported “weighty interests” to interpret the provision as mandatory).

In early 2022, Lehigh County voters who were disenfranchised by the envelope-date requirement in the 2021 municipal election filed a federal Materiality Provision challenge. A unanimous Third Circuit panel held that the Materiality

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<sup>13</sup> The seventh Justice opined that a plain-text reading should be applied to interpret “shall...date” as mandatory regardless of any “weighty interests,” but voted with the plurality in the OAJC to require the counting of such ballots for the 2020 election only. *Id.*, 1079-80 (Wecht, J.).

Provision prohibited disenfranchising voters for inconsequential envelope-dating errors. *Migliori v. Cohen*, 36 F.4th 153, 164 (3d Cir.), *vacated as moot*, 143 S. Ct. 297 (2022). Following *Migliori*, state courts directed county boards to count ballots despite envelope-dating errors in the 2022 primary. *See Chapman v. Berks Cnty. Bd. of Elections, et al.*, No. 355 MD 2022, 2022 WL 4100998 (Pa. Cmwlth. Aug. 19, 2022); *McCormick, et al. v. Chapman, et al.*, No. 286 MD 2022, 2022 WL 2900112 (Pa. Cmwlth. June 2, 2022).

In October 2022, after Lehigh County counted the ballots at issue in *Migliori* and certified all 2021 election results, the U.S. Supreme Court vacated the Third Circuit’s opinion for mootness pursuant to *United States v. Munsingwear*, 340 U.S. 36 (1950). *Ritter v. Migliori*, 143 S. Ct. 297 (2022). Within days of that non-merits vacatur, on October 16, 2022, the Republican Party filed a King’s Bench petition in this Court seeking to enjoin officials from counting mail ballots where voters had omitted the handwritten envelope date or written an “incorrect” date on the envelope. The *Ball* petitioners filed their King’s Bench petition mere weeks before Election Day, with voting already underway.

In the context of another fast-moving case without a factual record, this Court granted the King’s Bench petition, applying the bottom-line conclusion from *In re 2020*—that the envelope-date provisions are mandatory under the Election Code. *Ball*, 289 A.3d at 21-22 (citing *In re 2020*, 241 A.3d at 1086-87 (Wecht, J.) & 1090-

91 (Dougherty, J.)). The Court did not revisit the *In re 2020* debate regarding whether “weighty interests” supported mandatory application of the envelope-date provision. And it was not presented with any constitutional claim under the Free and Equal Elections Clause. One week before Election Day, the Court granted the petition and ordered that ballots arriving in un- or incorrectly-dated return envelopes be set aside in the 2022 general election. *Ball v. Chapman*, 284 A.3d 1189, 1192 (Pa. 2022) (per curiam). Consequently, county boards across the Commonwealth, who had prepared pursuant to the Third Circuit’s *Migliori* decision to canvass and count ballots with missing or incorrect voter-written envelope dates, adjusted on the eve of Election Day to set aside those ballots.

**D. Election Officials Confirm the Envelope-Date Provision Serves No Purpose.**

After the Court’s decision in *Ball*, voters facing disenfranchisement and nonpartisan voting-rights organizations filed a second federal Materiality Provision case against the Secretary and all 67 county boards.<sup>14</sup> *See Pa. State Conf. of NAACP v. Schmidt* (“*NAACP I*”), 703 F. Supp. 3d 632 (W.D. Pa. 2023), *rev’d on other grounds*, 97 F.4th 120 (3d Cir. 2024). This was the first time all parties—including all Respondents here and political party intervenors—conducted full discovery,

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<sup>14</sup> The plaintiffs in *NAACP* raised only federal claims in that federal litigation. They did not raise the Free and Equal Elections Clause, which is not referenced in the federal court opinions. *Cf. Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984) (limiting federal courts from enforcing state constitutional rights against state actors).

including interrogatories, depositions, and admissions, to develop a record regarding the voter-written date's role (if any) in election administration and its impact on voters.

Interrogatory responses from the Secretary and all 67 County Boards, supplemented by deposition testimony, confirmed *no* party or entity responsible for election administration uses the date for any reason—including to determine timely receipt or voter qualifications—other than to disenfranchise voters who did not write a “correct” date. *See NAACP I*, 703 F. Supp. 3d at 668 (“County boards of elections acknowledge that they did not use the handwritten date on the voter declaration on the Return Envelope for any purpose related to determining a voter’s age..., citizenship..., county or duration of residence..., felony status..., or timeliness of receipt...”) (internal record citations omitted). Indeed, while political party intervenors defended this pointless requirement, sixty-four County Boards expressly agreed not to contest the requested relief. *See NAACP I*, W.D. Pa. No. 1:22-cv-00339, ECF Nos. 157 (Order approving stipulation with 33 county boards), 192 (Order approving stipulation with 8 additional county boards), 243 (stipulation with 22 additional county boards); 445 (stipulation with Westmoreland County Board).

Based on this comprehensive record, the district court granted summary judgment, finding that the envelope-date provision is “wholly irrelevant” to election administration. *NAACP I*, 703 F. Supp. 3d at 678. A divided Third Circuit panel

subsequently reversed the result in *NAACP I* based on a novel legal interpretation of the federal Materiality Provision, but that court *endorsed* the district court’s conclusions—based on the discovery record from all 67 County Boards about the envelope-date provision—that it “serves little apparent purpose.” *Pa. State Conf. of NAACP Branches v. Schmidt* (“*NAACP II*”), 97 F.4th 120, 125 (3d Cir. 2024). The Third Circuit agreed that the date plays no role in determining a ballot’s timeliness. *Id.*, 125, 127.<sup>15</sup> It also agreed that the date is not used to determine voter qualifications. *Id.*, 129 (“No party disputed that election officials ‘did not use the handwritten date...for any purpose related to determining’ a voter’s qualification under Pennsylvania law.”). And the Third Circuit did not disturb the district court’s conclusion that the envelope date is not used to detect fraud. *See NAACP I*, 703 F. Supp. at 679 n.39 (single instance of purported fraud in Lancaster County was “detected by way of the SURE system and Department of Health records, rather than by using the date on the return envelope”); *see also NAACP II*, 97 F.4th at 139-40 (Shwartz, J., dissenting) (handwritten date “not used to...detect fraud”).<sup>16</sup>

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<sup>15</sup> *See also NAACP I*, 703 F. Supp. at 679 (“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.”).

<sup>16</sup> *Cf. In re 2020*, 241 A.3d at 1076-77 (because ballots received after 8:00p.m. on Election Day cannot be counted, there is no “danger that any of these ballots was...fraudulently back-dated”).



**E. The Envelope-Date Requirement Is Enforced Inconsistently to Disenfranchise Thousands of Pennsylvanians in Each Election.**

Though the date serves no discernible purpose, Respondents have continued to follow *Ball*, and direction from the Secretary, to disqualify and exclude from tabulation timely mail-ballot submissions with a missing or incorrect voter-written date on the return envelope. *See* DOS Mail Ballot Directive, *supra* n.6; DOS April 2023 Guidance, *supra* n.7. Under the current guidance, and consistent with the record developed in *NAACP* regarding post-*Ball* practices by the counties, where the return envelope does not have a handwritten date, it is deemed “not sufficient and must be set aside, declared void, and may not be counted.” DOS April 2023 Guidance, *supra* n.7, at 6. Moreover, if the envelope declaration “contain[s] a date deemed by the county board of elections to be incorrect,” the voter’s ballot “should be set aside and segregated.” *Id.*<sup>17</sup> The Secretary has instructed that such ballots be coded as “CANC – NO SIGNATURE within the SURE system” (*i.e.*, should be coded as canceled in SURE) in addition to being “segregated from other ballots.”<sup>18</sup>

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<sup>17</sup> 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.” However, the Department otherwise did not modify its previous guidance that envelopes that lack a date or have an otherwise “incorrect” date should not be counted. A true and correct copy of the 4/19/24 Department of State Email is attached hereto as Exhibit L.

<sup>18</sup> 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* (Nov. 3, 2022) (“DOS November 2022 Guidance”), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2022-11-03-Guidance-UndatedBallot.pdf>.

As a result, thousands of mail ballots have been set aside and not counted in every election. In the 2022 general election, enforcement of the envelope-date provision disenfranchised over 10,000 voters. *E.g., NAACP II*, 97 F.4th at 127. Thousands more were disenfranchised for this reason in the 2023 municipal elections, and again in the 2024 presidential primary. *See* Ex. M (5/27/24 Decl. of A. Shapell), at ¶ 12. Indeed, in the 2024 primary, voters across the Commonwealth continued to make inconsequential envelope dating mistakes even after the Secretary mandated a redesign of the envelope form that pre-populated “20” at the beginning of the year of the date line.<sup>19</sup> *See* DOS Mail Ballot Directive, *supra* n.6, at 3-4.

Enforcement of the envelope-date provision has disenfranchised eligible voters throughout Pennsylvania, from all walks of life, and across the political spectrum. *See B-PEP*, 2024 WL 4002321, at \*8 n.23 (citing voter declarations); *id.*, \*34 nn.56-59 (same). And Respondents’ attempts to implement the envelope-date provision as a mandatory, disenfranchising requirement has led to disparate and arbitrary results among counties, further underscoring its lack of value to election administration. For example, in the 2022 general election:

- Many counties set aside ballots where the envelope date was correct but missing the year; others counted such ballots. *NAACP I*, 703 F. Supp. at 681, n.43.

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<sup>19</sup> *See, e.g.,* 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/>.

- More than 1,000 timely-received ballots were set aside 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.*, 681. The district court found that this “shows the irrelevance of any date written by the voter on the outer envelope.” *Id.*, 681.
- Counties took varying approaches to dates written in the international format (*i.e.*, day/month/year). *Id.*, 681-82.
- Counties set aside hundreds of timely-received ballots with obviously unintentional slips of the pen. *Id.*

And many counties *counted* ballots with necessarily “incorrect” envelope dates. For example:

- “[S]ome counties precisely followed [the prescribed] 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.” *Id.*, 680.
- One county counted a ballot marked September 31—a date *that does not exist*—because it was literally within the acceptable date range. *Id.*, 681 n. 45.
- Counties took inconsistent approaches to voters who mistakenly wrote their birthdates. *Id.*, 681.

None of these facts, or the election officials’ admissions that the date serves no purpose, have been disputed in several cases.

**F. *Black Political Empowerment Project, et al. v. Schmidt, et al.***

After the Third Circuit’s ruling regarding the scope of the federal Materiality Provision, a group of nonpartisan voting rights organizations—including most Petitioners here—filed suit in the Commonwealth Court against the Secretary and

the County Boards of Elections for Pennsylvania’s two most populous counties, Philadelphia and Allegheny Counties. *B-PEP*, 2024 WL 4002321. *B-PEP* was the first case to challenge enforcement of the envelope-date provision under the Free and Equal Elections Clause of the Pennsylvania Constitution. Political parties again intervened, with Republican Party intervenors defending enforcement of the envelope-date provision; no County Board intervened in defense of using this pointless requirement to disenfranchise their voters.<sup>20</sup>

The Commonwealth Court determined, consistent with every court to consider the purposes of the envelope-date provision since 2020, that “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.” *Id.*, \*32. While the Republican Party intervenor-defendants attempted to relitigate the determination that the envelope-date provision is meaningless, they never controverted (or sought to put into controversy) the factual record from *NAACP* that established, beyond legitimate dispute, the envelope-date provision’s lack of utility. *Cf. id.*, \*11 n.28 (“the parties agreed that there are no factual issues in this case, that no stipulations of fact were

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<sup>20</sup> A sole county commissioner sought to intervene in *B-PEP*, but admitted that the rest of his board—the Westmoreland County Board of Elections—voted to reject the proposal to intervene as a board in *B-PEP*. *Id.*, \*4.

required, and that this matter involves only legal issues”). Accordingly, the Commonwealth Court held that continued enforcement of the envelope-date provision to disqualify timely votes submitted by eligible voters is a violation of the Free and Equal Elections Clause. *Id.*, \*38-39.

The Republican Party intervenor-defendants appealed *B-PEP* to this Court. Without ruling on the merits of the constitutional challenge, this Court vacated the Commonwealth Court’s ruling on the grounds that the petitioners had not joined all indispensable parties—namely, all 67 County Boards of Elections—and that the Secretary was not an indispensable party for the purposes of conferring original jurisdiction on the Commonwealth Court.

Petitioners now bring this case with all 67 County Boards joined and seek an order declaring once and for all that the meaningless envelope-date provision cannot be used to deny eligible voters who timely submit their mail ballot their fundamental right to vote under the Free and Equal Elections Clause.

#### **IV. BASIS FOR EXERCISING KING’S BENCH POWER**

The imminent disenfranchisement of thousands of Pennsylvanians, in violation of the Pennsylvania Constitution, justifies the invocation of this Court’s King’s Bench power.

“King’s Bench authority is generally invoked to review an issue of public importance that requires timely intervention by the court of last resort to avoid the

deleterious effects arising from delays incident to the ordinary process of law.” *Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 884 (Pa. 2020) (quoting *Commonwealth v. Williams*, 129 A.3d 1199, 1206 (Pa. 2015)); *In re Bruno*, 101 A.3d 635, 670 (Pa. 2014); *see also id.*, 672 (“the power of King’s Bench allow[s] the Court to innovate a swift process and remedy appropriate to exigencies of the event”); *Bd. of Revisions of Taxes v. City of Phila.*, 4 A.3d 610, 620 (Pa. 2010) (“King’s Bench jurisdiction...allows [the Court] to exercise power of general superintendency over inferior tribunals even when no matter is pending”); 42 Pa. C.S. § 502.

The Court should grant this Application and exercise its King’s Bench authority here. Pennsylvania’s Free and Equal Elections Clause firmly establishes the right to vote as a fundamental right that may not be diminished by the government. The Clause “strike[s]...at all regulations...which shall impair the right of suffrage....” *LWV*, 178 A.3d at 809 (citation omitted). As an *en banc* panel of the Commonwealth Court recognized, in a 4-1 decision just three weeks ago, rejecting thousands of timely votes cast by eligible voters based on an irrelevant, trivial error violates this sacred constitutional guarantee. Enforcement of the envelope-date provision to reject thousands of timely votes is doing severe damage to Pennsylvanians’ fundamental right to vote, and will continue to do so absent immediate action by this Court.

It is critical that the Court exercise its King’s Bench power *now*. That is true both because this case presents issues of utmost public importance involving imminent danger to the most treasured of fundamental rights, *Friends of Danny DeVito*, 227 A.3d at 884, and because, with the Court’s dismissal of *B-PEP* on procedural grounds, there is no other realistic opportunity to address this grave threat before that fundamental right is again denied to thousands of voters in the November 2024 general election.<sup>21</sup>

There are no procedural barriers to this action. The Commonwealth Court’s recent decision upholding the rights of voters under the Free and Equal Elections Clause was vacated on procedural grounds because the petitioners had not joined all 67 County Boards of Elections, and because the Commonwealth Court did not have original jurisdiction over claims against the Secretary. In seeking an order finally resolving the core constitutional questions on their merits, Petitioners here now join all 67 County Boards, and this Court need not be concerned with the strictures of original jurisdiction over claims against the Secretary.

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<sup>21</sup> One other case—filed by two voters pursuant to 25 P.S. § 3157, challenging their county board’s refusal to count their ballots in a State House special election for noncompliance with the envelope-date provision—is now pending in the Philadelphia County Court of Common Pleas. *Baxter, et al. v. Phila. Bd. of Elections*, Phila. C.P. No. 240902481. That case was filed earlier this week in connection with races in a single county and is not guaranteed to proceed to a stage where a court of general statewide jurisdiction will be able to provide guidance to all election officials across the Commonwealth prior to the November election.

In *Ball*, this Court granted a strikingly similar King’s Bench petition filed by the Republican Party even closer in time to the 2022 general election—solidifying the mandatory application of the envelope-date requirement *as a matter of statutory construction*. The same considerations that applied in *Ball*, including the need to resolve important legal questions presented by the petition that are critical to election officials’ ability to lawfully canvass ballots in a fast-approaching election, apply here. If anything, they apply here with even greater urgency, because the cherished constitutional rights of thousands—and perhaps tens of thousands—of Pennsylvanians are now explicitly at stake.

## V. ARGUMENT

### A. **Disenfranchising Voters for Noncompliance with the Envelope-Date Provision Violates the Free and Equal Elections Clause.**

#### 1. *The Right to Vote in Pennsylvania Is Paramount.*

In Pennsylvania, the right to vote is enshrined in and protected by the Free and Equal Elections Clause, which states: “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. The Clause means not only that voters must have an equal opportunity to participate in elections, but also that: “each voter under the law has the right to cast [their] ballot and have it honestly counted,” *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914); that “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,” *id.*; that “no constitutional right of the qualified elector is subverted,” *LWV*, 178 A.3d at 810; and that elections must “be kept open and unrestricted to the voters of our Commonwealth,” *id.*, 804.

Any rule that requires disqualification of votes for noncompliance is, on its face, a restriction on voting. Yet in defending enforcement of the envelope-date provision to disenfranchise voters in prior cases, the Republican Party intervenors in those cases argued that the Free and Equal Elections Clause—perhaps the signal achievement of our Commonwealth’s Constitution—is toothless in the face of a pointless rule driving mass disenfranchisement in every election. Such a radical diminishment of the Clause’s scope cannot be squared with this Court’s longstanding jurisprudence.

The Free and Equal Elections Clause is uniquely broad in scope and powerful in its protective force. As this Court detailed in *LWV*, the right to vote in this Commonwealth emanates from a proud tradition that predates the country’s founding and guarantees broader protections than the federal Constitution:

Pennsylvania’s Constitution, when adopted in 1776, was widely viewed as “the most radically democratic of all the early state constitutions.” Ken Gormley, “Overview of Pennsylvania Constitutional Law,” as appearing in Ken Gormley, ed., *The Pennsylvania Constitution A Treatise on Rights and Liberties*, 3 (2004). Indeed, our Constitution, which was adopted over a full decade before the United States Constitution, served as the foundation—the template—for the federal charter. *Id.* Our autonomous state Constitution, rather than a “reaction” to federal constitutional jurisprudence, stands as a self-contained and self-governing body of constitutional law, and acts as a wholly

independent protector of the rights of the citizens of our Commonwealth.

*LWV*, 178 A.3d at 802. Our framers envisioned the right to vote as “that most central of democratic rights[.]” *Id.*, 741; *see also Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 386-87 (Pa. 2020) (“*PDP*”) (Wecht, J., concurring) (“No right is more precious....Other rights, even the most basic, are illusory if the right to vote is undermined.”).

Accordingly, the “plain and expansive sweep of the words ‘free and equal’” is “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....” *LWV*, 178 A.3d at 804 (emphases added). It “strike[s]...at *all* regulations of law which shall impair the right of suffrage rather than facilitate or reasonably direct the manner of its exercise.” *Id.*, 809 (citation omitted) (emphasis added).

2. *Strict Scrutiny Applies to the Envelope-Date Requirement’s Restriction on the Fundamental Right to Vote.*

This Court has repeatedly reaffirmed that the right to vote guaranteed by the Free and Equal Elections Clause is fundamental. *See, e.g., PDP*, 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) (“[T]he right to vote is fundamental and

‘pervasive of other basic civil and political rights’....”) (quoting *Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999)). Strict scrutiny applies to any restriction on this fundamental right. *In re Nader*, 858 A.2d 1167, 1181 (Pa. 2004) (“where the fundamental right to vote is at issue, a strong state interest must be demonstrated”).

Laws that “infringe upon,” “affect,” or “burden” the fundamental right to vote may trigger such review, even absent a “severe” burden. *See, e.g., Petition of Berg*, 712 A.2d 340, 342 (Pa. Cmwlth.), *aff’d*, 552 Pa. 126 (1998) (“It is well settled that laws which affect a fundamental right, such as the right to vote...are subject to strict scrutiny.”)<sup>22</sup>; *James v. SEPTA*, 477 A.2d 1302, 1306 (Pa. 1984) (“where a...fundamental right has been burdened, another standard of review is applied: that of strict scrutiny”)<sup>23</sup>; *see also LWV*, 178 A.3d at 810 (quoting *Winston*, 91 A. at 523) (elections are “free and equal 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**

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<sup>22</sup> The Court in *Berg* declined to apply strict scrutiny only upon finding that the case did not involve denial of fundamental right to vote. 712 A. 2d at 342-44.

<sup>23</sup> Likewise, infringements on any other fundamental right trigger strict scrutiny. *See, e.g., Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 309 A.3d 808, 945-96 (Pa. 2024) (plurality in relevant part) (“[T]he right to reproductive autonomy, like other privacy rights, is fundamental....Accordingly, we would remand to the Commonwealth Court to apply strict scrutiny based on the framework of the Section 26 analysis....”); *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 294 A.3d 537, 957 (Pa. Cmwlth. 2023) (“Petitioners’ equal protection claim is based on a fundamental right to education, the alleged impingement of which should be reviewed under strict scrutiny.”).

*denied him.*” (emphasis added)); *Applewhite v. Commonwealth* (“*Applewhite II*”), No. 330 M.D. 2012, 2014 WL 184988, at \*20 (Pa. Cmwlth. Jan. 17, 2014) (laws that “infringe[] upon qualified electors’ right to vote” are analyzed “under strict scrutiny”). Regardless what terminology one uses to describe the harsh result here, losing the right to have one’s vote included due to a meaningless mistake is an “extremely serious matter” that triggers strict scrutiny under Pennsylvania law. *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 202 A.2d 538, 540 (Pa. 1964) (“The disfranchisement of even one person validly exercising his right to vote is an extremely serious matter.”).

Under strict scrutiny, the proponents of a restriction on fundamental rights have the burden of proving that the law in question is “narrowly drawn to advance a state interest of compelling importance.” *PDP*, 238 A. 3d at 385; *see also, e.g., Appeal of Gallagher*, 41 A.2d 630, 632-33 (Pa. 1945) (noting 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)).<sup>24</sup>

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<sup>24</sup> The Republican Party intervenors’ refrain in *B-PEP* that legislative enactments enjoy a presumption of constitutionality misses the point. The presumption of constitutionality gives way to a strict scrutiny analysis where, as here, a fundamental right is at stake. *See Berg*, 712 A.2d at 342; *see also LWV*, 178 A.3d at 803 (“Although plenary,...legislative power is subject to restrictions enumerated in the Constitution”.... “[T]he people have delegated general power to the General Assembly, with the express exception of certain fundamental rights reserved to the people in Article I....”).

In prior litigation, no party or intervenor has been able to show that enforcing the envelope-date provision on pain of disenfranchisement clears this high bar. Indeed, not even the Republican Party intervenors in *B-PEP* attempted to dispute that the envelope-date provision would fail strict scrutiny. As multiple courts have held, the envelope-date provision has nothing to do with ensuring fairness or integrity in Pennsylvania elections, and application of strict scrutiny to the practice of disenfranchising people based on one meaningless restriction would not imperil election officials' ability to continue implementing ordinary and meaningful rules of election administration.

3. *Enforcement of the Irrelevant Envelope-Date Provision Cannot Survive Even Lesser Constitutional Scrutiny.*

Disenfranchising thousands based on a mandatory envelope-date provision cannot survive even a lower level of scrutiny because that requirement serves no purpose. At a minimum, “under our state charter, we must assess whether the challenged law has ‘a real and substantial relation’ to the public interests it seeks to advance....” *Shoul v. Commonwealth, Dep’t of Transportation, Bureau of Driver Licensing*, 173 A.3d 669, 677-78 (Pa. 2017).

Upon reviewing the detailed and uniform conclusions of multiple courts—including the *NAACP* courts who ruled on a full discovery record—the Commonwealth Court in *B-PEP* correctly held: “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.” 2024 WL 4002321, at \*32.

When previously presented with the question of whether the envelope-date provision serves a state interest in a case raising a statutory challenge under the Election Code, a plurality of this Court determined that “a signed but undated declaration is sufficient and *does not implicate any weighty interest.*” *In re 2020*, 241 A.3d at 1078 (OJAC) (emphasis added). A minority of the Court took the opposite view. *Id.*, 1090 (Dougherty, J.). But it did so without the benefit of any record or meaningful exploration by the parties of the purported state interests.

*In re 2020* was filed and quickly decided immediately after Election Day in 2020—the first general election with expanded mail voting. Consequently, the Court decided the issue in a vacuum, based only on the political campaigns’ *theories* about how the date *might* be used. Since then, however, there have been multiple elections and subsequent court decisions, including a comprehensive discovery process—involving the Secretary, all 67 counties, and political party intervenors. That discovery produced a record disproving all the hypothetical “weighty interests.” *See, e.g., NAACP II*, 97 F.4th at 125 (agreeing that the envelope-date provision “serves little apparent purpose”); *NAACP I*, 703 F. Supp. 3d at 678 (agreeing after a review

of the full record that the voter-written date on the outer return envelope is “wholly irrelevant”); *cf. B-PEP* 2024 WL 4002321, at \*33 (“[C]ounsel 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.”).

While failing to address, much less refute, the record and admissions generated since this Court decided *PDP* and *Ball*, the Republican Party intervenors in *B-PEP* simply repackaged three theoretical purposes served by the envelope-date provision. None survive any level of scrutiny.

*First*, there has been no instance of the envelope-date provision ever serving as a “useful backstop” for determining whether a ballot is timely. Indeed, no party has disputed the Third Circuit’s conclusion that the handwritten date is not “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.” *NAACP II*, 97 F.4th at 129. The *B-PEP* intervenor-respondents’ pure conjecture—that the handwritten date *might* be used to determine timeliness, *if* there were *both* a failure to timestamp *and* a failure of the SURE scanning procedure—is far too speculative to qualify as an “important regulatory interest.” *See B-PEP*, 2024 WL 4002321, at \*33-35 & n.62; *see also* 25 P.S. §§ 3146.9(b)(5); 3150.17(b)(5)

(requiring boards to “maintain a record of...the date on which the elector’s completed mail-in ballot is received by the county board”).<sup>25</sup>

*Second*, there is no authority, from Pennsylvania or anywhere else, for the assertion that the voter-written date is necessary to “authenticate” the ballot submission (*B-PEP*, 2024 WL 4002321, at \*53 (McCulloch, J., dissenting)), or that it serves some supposed interest in “solemnity.”<sup>26</sup> This supposed government interest could not even theoretically justify disenfranchising voters. *See In re 2020*, 241 A.3d at 1089 n.54 (Wecht, J.) (“It is inconsistent with protecting the right to vote to insert more impediments to its exercise than considerations of fraud, election security, and voter qualifications require.”). And whatever purported interest might exist in “authenticity” or “solemnity” is accounted for by the other requirements for successfully submitting a mail ballot—including that the voter submit an application, have their identification verified, and that they sign a declaration stating, “I am qualified to vote the enclosed ballot and I have not already voted in this

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<sup>25</sup> *Cf. In re 2020 Canvass*, 241 A.3d at 1077 (“The date stamp and the SURE system provide a clear and objective indicator of timeliness, making any handwritten date unnecessary and, indeed, superfluous.”).

<sup>26</sup> The cases cited by the Republican Party intervenors to the Commonwealth Court in *B-PEP* for this fabricated “solemnity” concern were strikingly off-topic, as none actually involved requirements to date or sign documents. Meanwhile, the *only* case they have ever cited that mentions “solemnity,” *Vote.org v. Callanen*, is a federal Materiality Provision case that ruled on the materiality of a wet *signature* requirement but did not mention a handwritten date requirement except to note that the *immateriality* of the envelope date in Pennsylvania is “fairly obvious.” 89 F.4th 459, 480, 489 (5th Cir. 2023).



election.”<sup>27</sup> See 25 P.S. §§ 3146.4, 3146.6, 3150.14, 3150.16. It is insulting to voters and inconsistent with the principles embodied by the Free and Equal Elections Clause to suggest that, after taking all these steps, making a minor mistake in filling in a handwritten date on a form on the envelope somehow negates the “solemnity” of voters’ participation or suggests they did not adequately contemplate their actions.

*Third*, the notion that the envelope-date provision helps detect voter fraud has been thoroughly debunked since 2020. When pressed, proponents of the envelope-date requirement have pointed to a single instance in the 2022 primary, where a ballot was submitted with a date twelve days after the voter had died, and the fraudster was convicted. But as the undisputed record in *NAACP* shows, the Lancaster County Board of Elections had learned of the death of the voter and had ***already removed*** her from the rolls long before it received the ballot, and accordingly would not have counted the ballot regardless of the handwritten date on it. See *NAACP I*, 703 F. Supp. at 679 n.39 (“[T]he county board’s own Rule 30(b)(6) designee testified that the fraudulent ballot was first detected by way of the SURE system and Department of Health records, rather than by using the date on the return

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<sup>27</sup> Indeed, a missing or incorrect date commonly does ***not*** deprive a document of its legal effect. For example, with respect to declarations signed under penalty of perjury in accordance with federal law (28 U.S.C. § 1746), “the absence of a date...does not render [the declaration] invalid if extrinsic evidence could demonstrate the period when the document was signed.” *Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 475-76 (6th Cir. 2002). Here, the “period when the [envelope] was signed” is known and undisputed, because mail ballots were sent to voters on a date certain and are not accepted by county boards after 8:00 p.m. on Election Day.

envelope.”).<sup>28</sup> This is consistent with this Court’s determination that the envelope-date provision is not independently used to determine whether a ballot was “fraudulently back-dated.” *In re 2020*, 241 A.3d at 1077 (no danger of fraudulent backdating because ballots received after 8:00 p.m. on Election Day are not counted).

In sum, the lack of any *bona fide* government interest served by the envelope-date provision means enforcement of the envelope-date provision to disenfranchise cannot satisfy intermediate, or even rational basis, scrutiny. *Cf. Morrison Informatics, Inc. v. Members 1st Fed. Credit Union*, 139 A.3d 1241, 1252 n.6 (Pa. 2016) (Wecht, J., concurring) (“Where stops the reason, there stops the rule.”).

**B. There Is No Reason to Deny the Requested Relief.**

None of the arguments raised in previous cases warrants avoiding adjudication of these important constitutional questions.

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<sup>28</sup> The majority in *B-PEP* declined the attempt by intervenor-respondents to relitigate their claim that the date written on the envelope was the “only evidence” of fraud in the 2022 Lancaster County example. That assertion has already been squarely rejected based on the Lancaster Board’s admissions. *NAACP I*, 703 F. Supp. at 679 n.39. It is undisputed that the Lancaster Board had learned of the voter’s death weeks earlier and removed her from the voter rolls even before receiving a ballot in her name. *See Ex. N (2/13/23 C. Miller Tr. [“Miller Tr.”])*, at 87:18-94:15. The receipt of a ballot so long after the voter’s death was *itself* evidence of fraud. In any event, election fraud is prevented and detected in the case of deceased voters by reliance on SURE data and Department of Health records, without the need to reference a handwritten envelope date. *Id.*, 100:25-102:18.

1. *This Court Has Not Addressed the Constitutionality of Disenfranchising Voters Due to Envelope-Dating Errors.*

In the *B-PEP* litigation, the Republican Party intervenors contended that this Court’s prior cases foreclosed relief under the Free and Equal Elections Clause. But this Court has yet to address a Free and Equal Elections Clause challenge to the enforcement of the envelope-date provision. The last Pennsylvania Supreme Court case to address the envelope-date provision—*Ball*—involved no Free and Equal Elections Clause challenge. There, the Court reaffirmed its statutory interpretation of the envelope-date provision from *In re 2020*. Indeed, half of the Justices in *Ball* acknowledged that “failure to comply with the date requirement would not compel discarding votes in light of the Free and Equal Elections Clause...” 289 A.2d at 27 n.156. That footnote was the only mention of the Free and Equal Elections Clause in the *Ball* Court’s analysis.<sup>29</sup>

Nor did *PDP* involve the claim at issue here. The petitioners in *PDP* raised no constitutional challenge to enforcement of the envelope-date provision. Petitioners there claimed only that the Free and Equal Elections Clause affirmatively required that voters be given “*notice and [an] opportunity to cure*” minor errors

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<sup>29</sup> Discussion of the Clause was otherwise relegated to a fleeting reference in the portion of the *Ball* opinion describing the parties’ respective positions, which noted an assertion in the Secretary’s brief that the RNC’s interpretation of the statute “*could implicate* the Free and Equal Elections Clause.” *Ball*, 289 A.3d at 16 (emphasis added). The Court was not describing any claim or defense under the Free and Equal Elections Clause and did not conduct a constitutional analysis.

before mail ballots were rejected. 238 A.3d at 373 (emphasis added). They did not seek a ruling on the antecedent question, namely, whether enforcing the envelope-date provision to reject timely ballots is unconstitutional. This Court decided only that “the Boards are not required to implement a ‘notice and opportunity to cure’ procedure” because the petitioners had “cited no constitutional or statutory basis” for imposing such a post-hoc cure process requirement on all counties. *Id.*, 374. This case raises an entirely different issue.

In sum, there has been substantial litigation regarding *statutory interpretation* of the envelope-date provision in the Election Code, and *different* constitutional challenges involving *other* Election Code provisions, but before the Commonwealth Court’s decision in *B-PEP*, no court had addressed whether disenfranchising voters for noncompliance with the envelope-date provision violates the Pennsylvania Constitution.<sup>30</sup> And until now, this Court has never done so.

2. *The B-PEP Intervenor-Respondents’ Efforts to Neuter the Free and Equal Elections Clause Have No Merit.*

In the *B-PEP* litigation, the Republican Party intervenors contended that Free and Equal Elections Cause did not apply to so-called “ballot-casting” rules. This

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<sup>30</sup> The Third Circuit, in *NAACP II*, did not and could not opine on the enforceability of the date requirement under the Free and Equal Elections Clause. The court held only that enforcing the date requirement does not violate a *federal statute*, relying on a novel theory that the statute categorically does not apply to mail ballot-related paperwork. There was no state constitutional claim in *NAACP* and there is no reference to the Free and Equal Elections Clause anywhere in the federal court’s opinions. *Cf. Pennhurst*, 465 U.S. 89.

novel position ignores the text, history, and precedent and represents an extreme departure from established principles.

*First*, the idea of some separate category of “ballot-casting” rules is not grounded in the Election Code or found anywhere in 250 years of precedent.<sup>31</sup> Adopting this litigation-driven exemption now would require the Court to overturn longstanding jurisprudence applying the Free and Equal Elections Clause to “all aspects of the electoral process,” *LWV*, 178 A.3d at 804, and would render the Clause impotent even against Jim Crow-era requirements like literacy tests (as long as they were imposed as part of the “ballot-casting” process), or a requirement to write the voter’s paternal grandfather’s name on the return envelope. The theories offered by the Republican Party intervenors in *B-PEP* would immunize blatant infringements on the right to vote from any constitutional scrutiny so long as they involve “ballot-casting.” Such a radical carveout is irreconcilable with this Court’s recognition that the Clause must apply in a “broad and robust” manner. *LWV*, 178 A.3d at 814.

Pennsylvania courts have never limited the Clause to a “ballot-casting rule.” Indeed, this Court applied the Clause to the mail-ballot-receipt deadline—clearly a

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<sup>31</sup> The Election Code undercuts the concept of a “ballot-casting” stage that includes dating the return envelope. Based on a plain reading of the Code’s mail-ballot procedures, completion of the envelope declaration is not itself “ballot casting.” The Code provides separate sets of rules that apply to the ballot on one hand and the return envelope declaration on the other. *Compare* 25 P.S. § 3146.3(b) (concerning the form of ballots), *with id.* § 3164.14 (concerning the form of return envelope with voter declaration). Lumping the envelope dating requirement together with “ballot-casting” is a novel concept adopted earlier this year by two federal judges in *NAACP II*, which finds no support in the Code or any Pennsylvania case.

“ballot-casting” rule—during the November 2020 election. *PDP*, 238 A.3d at 371-72. The Commonwealth Court, following remand instructions from this Court, also applied the Clause to invalidate a statute requiring people casting ballots in person to show photo identification. *Applewhite v. Commonwealth*, No. 330 MD 2012, 2012 WL 4497211, at \*6 (Pa. Cmwlth. Oct. 2, 2012). This Court also affirmed a ruling that a registration ban on people released from prison within the previous five years violates the Clause. *Mixon v. Commonwealth*, 759 A.2d 442, 452 (Pa. Cmwlth. 2000) (*en banc*), *aff’d without opinion*, 783 A.2d 763 (Pa. 2001). These decisions build on older cases applying the Clause to invalidate statutes that barred certain categories of people *from casting ballots*. See, e.g., *McCafferty v. Guyer*, 59 Pa. 109, 112 (1868) (there is no “power of the legislature to disfranchise one to whom the Constitution has given the rights of an elector”); *Page v. Allen*, 58 Pa. 338, 353 (1868) (enjoining enforcement of statute that added ten days to constitutional residency requirement for voting).

All of this is consistent with this Court’s emphasis that “the words ‘free and equal’ as used in Article I, Section 5 have a broad and wide sweep.” *LWV*, 178 A.3d at 809.

*Second*, the Clause’s reach is not limited to voting regulations that “make it so difficult [to vote] as to amount to a denial” of the franchise, as the Republican Party intervenors suggested in *B-PEP*. See *id.*, 810. This Court’s decisions, in cases

like *Berg* and *Applewhite*, make clear that voting rules or practices that “affect” or “infringe upon” the right to vote must all be consistent with the Free and Equal Elections Clause’s basic requirements. *See infra*, Section V.A.2.<sup>32</sup>

*Third*, this Court’s precedent also forecloses any argument that the Clause protects only the opportunity to cast a ballot, but not the right to have it counted.<sup>33</sup> The Clause applies broadly, to “*all* aspects of the electoral process.” *LWV*, 178 A.3d at 804 (emphasis added). The fundamental right to vote under the Pennsylvania Constitution extends beyond just the right to register or fill out a ballot; it encompasses “the right to cast [a] ballot *and have it honestly counted.*” *Winston*, 91 A. at 523 (emphasis added). The envelope-date requirement obviously impairs the right to have a ballot “counted.”<sup>34</sup>

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<sup>32</sup> The Republican Party intervenors’ contrary view in *B-PEP* was based on a partial quotation from *Winston*. That quote omitted critical language making clear that the Clause extends to restrictions that “effectively” deny the right to vote *or* “deny the franchise itself” *or* “subvert” that right. *LWV*, 178 A.3d at 810 (quoting *Winston*, 91 A. at 523). Here, enforcement of the date provision actually *and* effectively denies voters the right to have their ballots included—or at minimum subverts the right. *See B-PEP*, 2024 WL 4002321, at \*35.

<sup>33</sup> Nor is there any good argument that the envelope-date provision is so trivial in its effects that the constitutional violation it causes can be ignored. The date line undisputedly trips *thousands* of people in every election, including over 10,000 eligible voters in the 2022 general election. It does not matter that most voters are able to avoid disenfranchisement on this basis; invalidating 10,000 votes is constitutionally problematic. *LWV*, 178 A.3d at 813 n.71 (an election is not “free and equal” when “*any substantial number* of legal voters are, from any cause, denied the right to vote”) (emphasis added). This is more than the entire population of Sullivan and Cameron Counties combined; surely disenfranchising enough people to fill two counties constitutes “a constitutionally intolerable ratio of rejected ballots.” *PDP*, 238 A.3d at 389 (Wecht, J., concurring).

<sup>34</sup> At least three of the six Justices who presided in *Ball* expressly agreed that enforcing the date requirement to reject votes “den[ies] the right of an individual to vote....” *Ball*, 289 A.3d at 25 (quoting 52 U.S.C. § 10101(a)(2)(B)). Four out of the six federal circuit judges considering the

This Court should reaffirm over a century of jurisprudence that the Free and Equal Elections Clause and this Commonwealth’s long tradition of safeguarding voters’ rights precludes enforcement of a voting rule that serves no purpose other than to disenfranchise thousands every election.

3. *The Relief Petitioners Seek Does Not Require Invalidation of any Part of Act 77.*

The relief sought here does not implicate Act 77’s nonseverability provision and, contrary to the ominous claims by the Republican Party intervenors in *B-PEP*, would not require striking “no-excuse” mail voting in Pennsylvania.

To begin, Petitioners do not ask this Court to re-write, amend, or strike any provision of Act 77. Nor do Petitioners seek an order barring voters from being directed to date mail ballot declaration forms, or Respondents from continuing to include a date field next to the signature line. The Court accordingly need not invalidate or excise “shall...date” from § 3146.6 to grant the relief sought. Petitioners seek a ruling that enforcement of the envelope-date provision cannot, consistent with the Free and Equal Elections Clause, result in rejecting timely mail ballots. That does not invalidate any provision or application of Act 77, let alone all of it, particularly given that the provision addressing the sufficiency of the voter declaration on the

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question under federal law in the *Migliori* and *NAACP* cases concluded likewise. And the Commonwealth Court also agreed in both *Chapman*, 2022 WL 4100998, \*27, and *B-PEP*, 2024 WL 4002321, at \*35.



return envelope—§ 3146.8(g)—predates Act 77. *Cf. Bonner v. Chapman*, 298 A.3d 153, 168-69 (Pa. Cmwlth. 2023) (*en banc*) (finding that Act 77 nonseverability clause was not implicated by prior successful challenges to the dating requirement).

Moreover, even a holding that the envelope-date provision or its application is invalid would not require the Court to invalidate all of Act 77. Pennsylvania courts regularly deem it appropriate to sever provisions in statutes containing similar nonseverability clauses, because it is not for the “General Assembly to dictate the effect of a judicial finding that a provision in an act is invalid.” *PDP*, 238 A.3d at 397 n.4 (Donohue, J., concurring and dissenting) (internal citations and quotations marks omitted). “[B]oilerplate” nonseverability clauses, designed merely to ward off judicial review, cannot override the courts’ fundamental duty to adjudicate constitutional matters and to fashion legal and equitable relief. *See generally Stilp v. Commonwealth*, 905 A.2d 918, 970-81 (Pa. 2006). That established rule applies with full force here. Indeed, this Court in *Stilp* declined on those powerful separation-of-powers grounds to enforce a “boilerplate” nonseverability provision that is *literally identical* to the one in Act 77, instead giving effect to the terms of the binding rules of statutory construction, 1 Pa.C.S. § 1925 (“The provisions of every statute shall be severable”). *Stilp*, 905 A.2d at 979-81; *see also Pa. Fed’n of Teachers v. Sch. Dist. of Phila.*, 484 A.2d 751, 753-754 (Pa. 1984) (declining to enforce more specific nonseverability clause on these grounds).

As in those cases, the application of Act 77’s nonseverability provision is neither required nor sensible here. The undisputed facts are that the envelope-date provision serves no purpose, benefits nobody, and disenfranchises thousands. It is easily severed from the rest of Act 77. Accordingly, even an order striking the envelope-date provision from the text of Act 77—relief that, to be clear, Petitioners *do not seek*—would not require the rest of Act 77 to be disturbed.

Indeed, invalidating the entire Act, the result suggested by the Republican Party intervenors in *B-PEP*, would be much more transgressive of the General Assembly’s intentions. It would effectively override the General Assembly’s intent to open no-excuse mail voting to all eligible Pennsylvania voters, on which millions of Pennsylvanians have come to rely, simply because a single pointless provision in a single section of the Act has been enforced in an unconstitutional manner. And it would also nullify numerous other election administration provisions included in Act 77 that have nothing to do with voting by mail, such as provisions eliminating straight-party voting or providing 90 million dollars of financing for the purchase of new voting equipment (which has already been spent). Invalidating the entire Act would needlessly nullify “years of careful [legislative] consideration and debate...on the reform and modernization of elections in Pennsylvania.” *McLinko v. Commonwealth*, 279 A.3d 539, 543 (Pa. 2022). Such an outcome, exactly the type of outlandish, “in terrorem” threat that this Court rejected in *Stilp*, 905 A.2d at 970-

81, would be unreasonable if not absurd—and it is presumed that “the General Assembly does not intend a result that is absurd[...or unreasonable.” 1 Pa.C.S. § 1922(1).

The relief sought here would only vindicate Act 77’s larger aims to expand mail ballot voting to all and would harmonize that aim with the requirements of the Free and Equal Elections Clause.

4. *The Relief Requested Does Not Implicate the Federal Elections Clause.*

Republican Party intervenors in *B-PEP* theorized that the U.S. Constitution prohibits Pennsylvania courts from exercising their basic judicial functions, including reviewing state action or the application of state law for compliance with the provisions of the state constitution. The U.S. Supreme Court reached ***exactly the opposite conclusion*** in *Moore v. Harper*, 600 U.S. 1 (2023).

There, the Court firmly “rejected the contention that the Elections Clause vests state legislatures with exclusive and independent authority when setting the rules governing federal elections.” *Id.*, 26. This Court rejected the same Elections Clause argument in *LWV*, 178 A.3d at 811.

*Moore* expressly held that “state legislatures remain bound by state constitutional restraints” when they make the rules that apply in federal elections, 600 U.S. at 32, reaffirming that “[s]tate courts retain the authority to apply state constitutional restraints” via the power of judicial review accorded to them by their

state constitutions, *id.*, 37; *see also id.*, 38 (Kavanaugh, J., concurring) (“[S]tate laws governing federal elections are subject to ordinary state court review, including for compliance with the relevant state constitution.”).

This is not the highly exceptional case where a state court has acted so far outside its normal ambit as to “transgress the ordinary bounds of judicial review” in a manner that implicates the federal Elections Clause. *Moore*, 600 U.S. at 36. Here, the relief sought is consistent with decades of prior cases reviewing state election rules and practices, including ones that affect federal elections, for compliance with the Free and Equal Elections Clause. *Supra*, 44-46; *see also, e.g., PDP*, 238 A.3d at 371-72; *Page*, 58 Pa. at 364-65; *Mixon*, 759 A.2d at 452; *Applewhite II*, 2014 WL 184988, at \*62-64.

Indeed, this is an *easier* case than *Moore*, which involved the North Carolina Supreme Court’s rejection of a congressional districting plan on the grounds that partisan gerrymandering was inconsistent with principles of state constitutional law, including North Carolina’s version of a Free and Equal Elections Clause. 600 U.S. at 7-14. Even in that context—where the state court essentially fashioned a new right of action against partisan gerrymandering based on broad principles of state constitutional law, and reached deep into an area where legislative discretion is traditionally at its maximal breadth—the Supreme Court had no trouble confirming

that state courts may exercise judicial review to ensure that the enactments of the state legislature comport with the state constitution.

Here, unlike in *Moore*, no legislative body is even a party in this case, and the Republican Party intervenors from *B-PEP* would not have standing as private political parties to assert whatever rights might be granted to the General Assembly by the U.S. Constitution. And even if the issue were properly presented, this case fits easily within the capacious “ordinary bounds of judicial review” standard. Enforcement of the Free and Equal Clause is part of the Pennsylvania courts’ ancient and inalienable role in safeguarding the fundamental rights independently guaranteed by the Pennsylvania Constitution through judicial review. *See LWV*, 178 A.3d at 812. Appellees seek no more and no less in this case.

### **PRAYER FOR RELIEF**

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 exercise its King’s Bench authority and enter judgment in their favor and against the Secretary of Commonwealth and all 67 County Boards of Elections:

- 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: September 25, 2024

Respectfully submitted,

John A. Freedman\*  
Elisabeth A. Theodore\*  
James F. Speyer\*  
David B. Bergman\*  
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\* *Pro hac vice* applications to be filed

/s/ Stephen A. Loney  
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Witold J. Walczak (No. 62976)  
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## CERTIFICATE OF COMPLIANCE

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

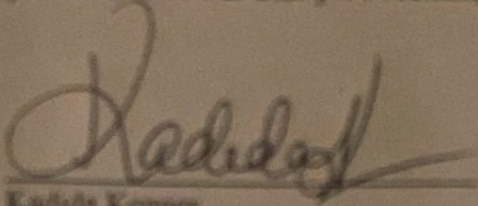
*/s/ Stephen Loney*

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VERIFICATION

I verify that the statements made in the foregoing Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction 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: September 23, 2024

VERIFICATION

I verify that the statements made in the foregoing Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction 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.

  
\_\_\_\_\_  
Stacey Taylor  
President  
State Conference of the NAACP

Dated: September 25, 2024

**VERIFICATION**

I verify that the statements made in the foregoing Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction 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.



Philip Hensley-Robin  
Executive Director  
Common Cause Pennsylvania

Dated: September 24, 2024

**VERIFICATION**

I verify that the statements made in the foregoing Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction 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.



Amy Widstrom  
Executive Director  
League of Women Voters of Pennsylvania

Dated: September 24, 2024

**VERIFICATION**

I verify that the statements made in the foregoing Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction 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.



---

Tim Stevens  
Chairman & CEO  
Black Political Empowerment Project (B-PEP)

Dated: September 24, 2024



**VERIFICATION**

I verify that the statements made in the foregoing Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction 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.

  
Rev. Dr. Gregory Edwards  
Interim Executive Director  
POWER Interfaith

Dated: September 25, 2024

**VERIFICATION**

I verify that the statements made in the foregoing Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction 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.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line extending to the right.

Diana Robinson  
Co-Deputy Director  
Make the Road Pennsylvania

Dated: September 24, 2024

**VERIFICATION**

I verify that the statements made in the foregoing Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



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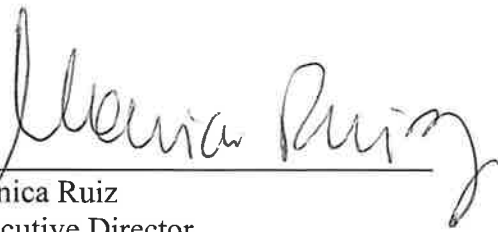
Steve Paul  
Executive Director  
One PA Activists United

Dated: September 25, 2024



**VERIFICATION**

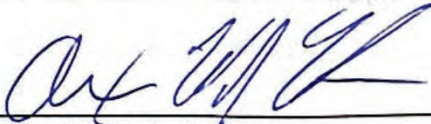
I verify that the statements made in the foregoing Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Monica Ruiz  
Executive Director  
Casa San José

Dated: September 24, 2024

VERIFICATION

I verify that the statements made in the foregoing Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction 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: September 25, 2024

# **Exhibit A**

## DECLARATION OF KADIDA KENNER

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 over eighteen years of age and am otherwise competent to testify.

3. I am a resident of and registered voter in Chester County, Pennsylvania.

4. I am the founding Chief Executive Officer of New PA Project Education Fund ("NPPEF"). NPPEF is a nonpartisan, nonprofit 501(c)(3) organization based in Pennsylvania. NPPEF and its affiliated organization have offices in West Chester, Norristown, Harrisburg, Pittsburgh and the City Chester.

5. NPPEF is led by community leaders across the Commonwealth dedicated to centering underrepresented and underserved communities to embrace their power. NPPEF ensures 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 - with intention - as they are the least represented and most impacted by decisions our government is making.

6. NPPEF conducts civic engagement and voter education in Philadelphia, Chester, Delaware, Lancaster, Montgomery, Bucks, Monroe, Lehigh, Northampton, Dauphin, Cumberland, Lebanon, Luzerne, York, Allegheny and Berks County. In 2024, NPPEF expanded its operations into Erie, Beaver, Lawrence, Centre and Lackawanna counties.



7. NPPEF has registered our fellow Pennsylvanians in urban, suburban, exurban and rural PA. In the past two years, NPPEF and its affiliated organization registered nearly 40,000 Pennsylvanians to vote in Pennsylvania. More than 70% of those we've 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. Our efforts are nonpartisan and 28% of the voters we have registered have chosen not to affiliate with any major political party.

8. NPPEF aims its voter registration efforts at Pennsylvania voters across the Commonwealth. To date, NPPEF has registered voters in 57 of Pennsylvania counties through its voter education and outreach efforts. The counties in addition to those referenced in paragraph 6 with whom we have registered voters are : Adams, Armstrong, Blair, Bradford, Butler, Cambria, Cameron, Carbon, Clarion, Clinton, Columbia, Crawford, Elk, Franklin, Greene, Huntingdon, Juniata, Lycoming, Mercer, Mifflin, Montour, Northumberland, Perry, Pike, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Washington, Wayne, Westmoreland, and Wyoming.

9. NPPEF's voter registration, voter education and mobilization programs combine traditional and digital methods to reach voters. Core components of our program include:

- a. Engaging voters multiple times in their communities to share information and to register unregistered voters;
- b. Canvassing or door knocking in our centered communities;
- c. Sending "social pressure" mailings to targeted voters;



- d. Preparing and distributing voter information guides in the form of tri-fold pamphlets that include detailed information about how to cast a ballot;
- e. creating digital media, radio ads and emailed newsletters for voters to register, become more civically engaged and vote;
- f. reaching out to voters on social media platforms such as Facebook, X, and Instagram to provide civic education and voter information.

10. Another integral part of our program is called "Community Conversations." As the name suggests, our staff travels the Commonwealth attending events and setting up informational tables. During these events, we are able to engage voters in conversations about what issues are most important to them and what change they would like to see. At all of these kinds of events, 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. We have organized events in all of the counties listed in paragraph 6 above, along with Clarion, Venango, Westmoreland, Mercer and Elk counties,

11. Since the Pennsylvania Department of State added a check box on the voter registration form, we have routinely helped voters request a mail ballot at the time of registration by checking the box on the voter registration form - especially on college campuses, and within the counties where these newer forms are available for use



12. Although we have our own materials that instruct voters on how to fill out mail ballot envelopes, we also share with voters instructions from the Pennsylvania Department of State about mail voting procedures.

13. Once we have registered a voter, our program requires our team to contact that voter multiple times by telephone. On the second of at least three phone calls, our team asks whether the voter received a registration card and also provides information on voting by mail or in person. We have conducted this kind of outreach to voters whom we have registered in the 57 Pennsylvania counties mentioned in this declaration.

14. On the third call, our callers help voters understand how to vote, how to request to vote by mail ballot, how to properly fill it out and return it or direct voters to their proper polling location. We have conducted this kind of outreach to voters whom we have registered in the 57 Pennsylvania counties mentioned in this declaration.

15. Our voter registration and outreach programs are labor intensive. We spend portions of our time debunking false narratives around mail voting, and persuading voters that their mail ballot will be counted.

16. Because we are a partner organization with the Pennsylvania Voice 501(c)(3) civic engagement table, we share the database of voters we have collected with other table partners, including information on voters we have registered and those who have requested a mail ballot. Using the fruits of our labor, other table partners are also able to work 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.

17. We will continue and expand our program for the general election in 2024. Using all of the methods of voter outreach described above, our goal is to register approximately 45,000 voters in Pennsylvania and provide them with trusted and accurate information about the mechanics of voting.

18. Because of the confusion around proper dates on ballots, in 2024, we have added information on the consequences of failing to handwrite the date or writing the wrong date on the mail ballot envelope into our revised voter information guide tri-fold pamphlet. We have expended resources to ensure that the information is available in English and Spanish

19. Given the number of voters we aim to contact in 2024, any time we have to spend discussing with voters the consequences of failing to date their mail ballot envelopes means we have that much less time to discuss other issues, and register additional Pennsylvanians to vote. If we did not need to educate voters about the date requirement on mail ballot envelopes, we would have more opportunities to discuss other issues with our centered communities instead of spending precious resources instructing them on how to properly fill out the mail ballot envelope.

20. In our experience with engaging Pennsylvania's electorate, the confusion around mail voting has increased voter apathy and fatigue, and casts doubts about the accuracy of our free and fair elections. The ever-changing and inconsistent communication around correctly completing and returning vote by mail

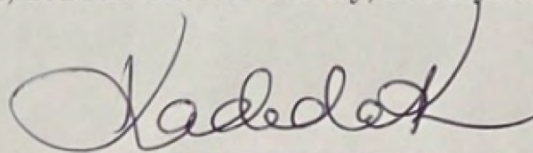


ballots tends to result in an electorate that is often misinformed and susceptible to misinformation. As a statewide organization that centers particular counties in our work, it is still paramount that we are able to share accurate information with Pennsylvanians in all 67 counties, so clarity and finality in the law will ensure more uniformity among counties.

21. The inconsistencies and confusion require our organization to spend additional resources to more thoroughly train our staff, produce additional content and literature, more often than planned or budgeted, and requires more staff capacity away from our primary focus of registering Pennsylvanians to vote. In addition, we must spend more time and resources clearing up confusion over the rules for voting a mail ballot and reassuring voters that our election system is trustworthy.

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<sup>rd</sup> day of September, 2024 in Chester County, Pennsylvania.

A handwritten signature in black ink, appearing to read "Kadida Kenner". The signature is fluid and cursive, with a large initial "K".

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Kadida Kenner, Chief Executive Officer  
New PA Project Education Fund

# **Exhibit B**

## **DECLARATION OF STACEY TAYLOR**

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 over eighteen years of age and am otherwise competent to testify.

3. I am a resident of and registered voter in Berks County, Pennsylvania.

4. I am the President of the NAACP Pennsylvania State Conference (the State Conference). I was a member of the State Conference's Executive Committee for approximately seven years. I also spent ten years as president of the State Conference's Reading branch, Berks County. I took office as president on or about July 2023.

5. The State Conference is a non-profit, non-partisan organization that works to improve the political, educational, social, and economic status of African-Americans and other racial and ethnic minorities, to eliminate racial prejudice, and to take lawful action to secure the elimination of racial discrimination, among other objectives. The State Conference has active chapters and units in Allegheny, Beaver, Berks, Blair, Bucks, Cambria, Centre, Chester, Clinton, Crawford, Dauphin, Delaware, Erie, Fayette, Greene, Indiana, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Monroe, Montgomery, Northampton, Northumberland, Philadelphia, Schuylkill, Snyder, Union, Washington, Westmoreland, and York Counties.

6. The State Conference has thousands of members who live and/or work across Pennsylvania, many of whom are registered to vote in Pennsylvania and are at risk of disenfranchisement due to Respondents' failure to count timely-submitted mail-in ballots based solely on a missing or incorrect handwritten date on the return envelope.

7. The State Conference advocates for civil rights, including voting rights, for all voters, both nationally and in Pennsylvania. Every election cycle, the State Conference engages in efforts to get out the vote, including by educating voters in Pennsylvania on different methods of voting, providing educational guides on local candidates to increase voter engagement, and focusing on strategies to eliminate all voter suppression and encourage new voters to participate in elections both nationally and in Pennsylvania. For example, in the 2022 election cycle, the State Conference coordinated Souls to the Polls efforts, solicited poll monitor volunteers, and organized phone- and text-banking to generate voter engagement and remind voters of the importance of the election. The State Conference is conducting similar efforts in connection with the upcoming 2024 Presidential election.

8. Respondents' failure to count timely-submitted mail-in ballots based solely on a missing or incorrect handwritten date on the return envelope disenfranchises voters, directly affects the State Conference's members, and

interferes with its ability to carry out its mission of increasing voter turnout and participation.

9. During the 2022, 2023, and 2024 election cycles, Respondents' failure to count such ballots has caused the State Conference to divert resources from its existing voter education and mobilization efforts towards investigating and educating voters about any available cure processes to fix the envelope date issue.

10. In particular, in the period following the Pennsylvania Supreme Court's order in *Ball v. Chapman* and the counties' indication that they would not count timely-submitted mail-in ballots based solely on a missing or incorrect handwritten date on the return envelope, the State Conference contacted Pennsylvania voters to provide them with information to help them cure their ballot or vote provisionally to prevent Defendants' actions from disenfranchising them. The State Conference also engaged in public education efforts around the issue to help voters understand how to avoid disenfranchisement or cure problems with their ballots due to the envelope-date rule. The State Conference focused its resources, including the precious time of volunteers and staff, on real-time remediation efforts to mitigate potential disenfranchisement of voters by the Defendant counties. But for the Respondents' imposition of the envelope-date rule and the potential disenfranchisement it raised, such voter contact and education efforts would have been directed to other, existing

get-out-the-vote programs like monitoring the polls and engaging and educating new voters.

11. For example, the State Conference initially devoted two of its volunteers to calling affected voters, but quickly realized this would not be enough people to reach all of the affected voters in time for them to cure their ballots by 8:00 P.M. on Election Day. Accordingly, on November 8, 2022, the State Conference (in conjunction with other local partners) spent additional time and resources toward organizing and coordinating an Election Day command center, with approximately 17 students from Howard University Law School manning phone lines to attempt to contact voters that the State Conference had identified as having submitted a ballot return envelope with a missing or incorrect date. The State Conference's field director helped to put together the script and information for command-center callers to use, and the State Conference's Philadelphia branch hosted the command center at its office, so that all affected voters would receive calls from the same phone number with a 570 area code. Three additional people—the State Conference's field director and two additional volunteers—were also deployed to conduct a text bank to contact affected voters.

12. The time and attention of the State Conference's field director, Philadelphia branch, and volunteers have all been diverted from their intended mission—conducting election protection on Election Day in Philadelphia—toward

coordinating and manning the phone lines needed to address the emergency created by Respondents' actions.

13. The time and attention of each of these branches were diverted from their intended mission—using the last few days before the election to engage and educate people who have not already voted—toward creating social media posts, often directed to people who had *already* attempted to vote, in order to address the emergency created by Defendants' actions.

14. Absent the relief requested in this case, the State Conference anticipates that it will need to again divert its staff and volunteer resources in future elections, shifting those resources from their intended mission—engaging, educating, and mobilizing new voters—toward addressing the risk that Defendants' actions will disenfranchise people who are already casting mail ballots but make a paperwork error on their mail ballot envelope.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of September, 2024, in Reading, Pennsylvania.

 Case 25-2318-JLS-ETD

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Stacey Taylor, President

# **Exhibit C**



## DECLARATION OF PHILIP HENSLEY-ROBIN

I, Philip Hensley-Robin, 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 over eighteen years of age and am otherwise competent to testify.
3. I am a resident of and registered voter in Philadelphia County, Pennsylvania.
4. I am the Executive Director of Common Cause Pennsylvania. I have held this position since October, 2023.
5. Common Cause Pennsylvania is a non-profit political advocacy organization and a chapter of the national Common Cause organization. Common Cause Pennsylvania (hereinafter “Common Cause”) has approximately 36,000 members and supporters in Pennsylvania. These members live in all 67 counties of Pennsylvania, and many members are registered voters in Pennsylvania who 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.
6. Common Cause seeks 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. Many of these communities are communities of color.

7. In preparation for each major statewide election, Common Cause mobilizes hundreds of volunteers to help fellow Pennsylvanians navigate the voting process and cast their votes without obstruction, confusion, or intimidation.
8. As part of these efforts, Common Cause 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 voting information and answer their questions, to quickly identify and correct any problems at polling places, and to gather information to identify potential barriers to voting.
9. Because of Respondents' refusal to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope, in recent and future elections Common Cause was required and will be required to divert resources from its existing efforts toward educating voters about the drastic consequences of failing to comply with a trivial paperwork requirement that was previously understood (including by numerous federal judges) to be superfluous, and about any available processes in each county for curing mail-in ballots or casting provisional ballots to prevent the disenfranchisement of its members and other Pennsylvania voters.
10. For example, during the 2022 election, Common Cause had to reassign its volunteers' time and efforts from Common Cause'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. And when the Department of State announced that ballot envelopes with an incorrect or missing date would be segregated and not counted, Common Cause redirected resources to ensuring that accurate information was available for voters, including those in Allegheny and Philadelphia Counties. Additionally, Common Cause issued press advisories, held press briefings, and issued press statements with the goal of alerting as many voters as possible to the Commonwealth's requirements. While the envelope dating rule remains in place, Common Cause is engaging in similar efforts during the 2024 general election cycle.

11. If Common Cause did not 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 informing eligible citizens about how to register to vote, debunking election-related misinformation, and conducting additional voter education efforts targeted toward communities that face particular challenges in exercising their right to vote, including voters with limited English proficiency, voters with disabilities, and voters in pretrial detention or on probation.

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 24th of September, 2024 in Philadelphia County, Pennsylvania.



Philip Hensley-Robin

# **Exhibit D**

## DECLARATION OF AMY WIDESTROM

I, Amy Widestrom, 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 over eighteen years of age and am otherwise competent to testify.
3. I am a resident of and registered voter in Montgomery County, Pennsylvania.
4. I am the Executive Director of the League of Women Voters of Pennsylvania ("the League" or "LWVPA"). I have held this position since January 2024.
5. The League is a nonpartisan statewide non-profit organization that was formed in 1920 (incorporated in 1923). 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. LWVPA 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. The League has active members in every county in Pennsylvania except for Cameron County.

6. 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. 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.
7. Following the Pennsylvania Supreme Court's November 1, 2022 decision in *Ball v. Chapman, et al.*, No. 102 MM 2022, county boards of elections segregated and did not count mail ballots that arrived in envelopes missing the voter-written date or showing a date that was deemed "incorrect." This abrupt change in voting rules just before Election Day, after many LWVPA members and others served by LWVPA's mission had already submitted mail ballots, caused LWVPA 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. For instance:
  - a. 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.

- b. 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.
  - c. 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.
8. The date requirement continues to frustrate LWVPA's ability to fulfill its mission of increasing voter participation and engagement in the electoral process. League staff and volunteers have devoted significant time and resources to educating voters about the intricacies of the mail-ballot process, with particular emphasis on the date requirement. This work has been underway since 2022 and has continued with the 2024 primary election season and in preparation for the 2024 general election season. For example:
- a. As a direct result of the uncertainty around mail ballots, LWVPA developed and hosts a webinar—"Ballot Box Basics"—to educate voters about the steps to successfully vote by mail. LWVPA 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. Most recently, LWVPA presented webinars in this series on August 20 and September 17, 2024, and has another scheduled for October 1.

- b. League staff 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.
- c. 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. For instance, in late February 2024, ahead of the most recent primary election, I was invited to do a radio interview about the redesigned ballot envelope, in which I spent significant airtime reminding voters how to correctly date the outer envelope declaration. My most recent interview was aired on September 17, 2024, during which I spoke about the date requirement.
- d. The local League chapters host dozens of voter registration and education events across the Commonwealth in every election cycle, during which energy is devoted to informing voters about

administrative details of completing a mail ballot, especially the date requirement.

9. 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:
  - a. Helping individuals make a personalized plan to vote and developing creative solutions to eliminate voters' personal obstacles to voting;
  - b. Outreach and voter registration efforts with new voters, younger voters, and voters from marginalized communities;
  - c. Educating voters about substantive issues that affect their lives and communities, and generally directing resources toward making Pennsylvanians more efficacious and informed voters; and
10. The date requirement further hinders LWVPA'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.

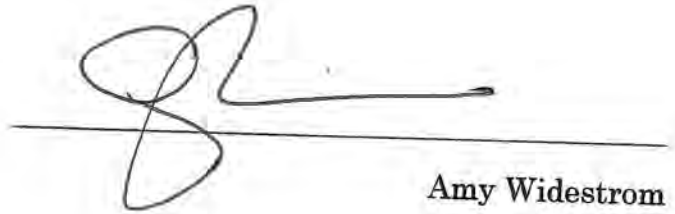
11. The League has already diverted numerous resources toward responding to the date requirement. Absent the relief requested in this case, LWVPA will again need to divert resources for the November 2024 election toward similar voter education and outreach efforts so that voters will not be disenfranchised due to mail ballot envelope dating problems. For instance:

- a. The newly hired Voter Services Coordinator will need to focus on issues such as mail-ballot “curing” and providing detailed educational materials on the mechanics of voting, rather than exploring innovative voter engagement strategies and developing new partnerships to increase voter participation.
- b. League staff will continue to expend financial resources and personnel to create educational publicity materials, participate at local meetings to advocate for “cure” procedures, and do media appearances to educate voters about the date requirement.
- c. LWVPA has issued and plans to continue issuing statements, social media posts and other communications about the correct way to submit a mail-in ballot.

12. In the April 2024 primary election, the League identified at least one member in Lancaster County whose ballot was rejected because of the date requirement.

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 24th day of September 2024 in Montgomery County, Pennsylvania.



A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a horizontal line extending to the right. The signature is positioned above a solid horizontal line.

Amy Widestrom

# **Exhibit E**

**Declaration of Tim Stevens on behalf of  
The Black Political Empowerment Project (B-PEP)**

I, Tim Stevens, hereby declare as follows:

1. I am over the age of eighteen and otherwise competent to testify.
2. I am the Chairman & CEO of The Black Political Empowerment Project (“B-PEP”).
3. 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 and its supporters throughout the Pittsburgh Region work with community organizations to empower Black and brown communities, including by promoting voting rights and get-out-the vote efforts.
4. 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.
5. 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 and its members and interferes with the organization’s ability to carry out its mission of increasing voter turnout and participation.

6. The failure to count mail ballots without dates or with “incorrect” dates will force B-PEP to divert resources in the upcoming November 2024 election from its other voter education and mobilization efforts, as well as other critical work unrelated to elections. Instead, B-PEP will be required to educate voters about any available cure processes, advocate to develop 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, and assist voters with curing of submitted mail ballots determined to be defective.

7. For the November 2022 election, B-PEP was forced to engage in activities similar to what we expect will be required for the November 2024 election.

8. For the November 2022 election, B-PEP conducted outreach to members and constituent communities 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.

9. 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.

10. 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 B-PEP's mission, including its Greater Pittsburgh Coalition Against Violence and Corporate Equity & Inclusion Roundtable.

11. B-PEP anticipates that, leading up to the November 2024 General Election and other future elections, it will similarly need 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.

***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 34 of May, 2024, in Pittsburgh, Pennsylvania.



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Tim Stevens, Chairman & CEO, The Black Political Empowerment Project (B-PEP)



# **Exhibit F**

## **Declaration of Dwayne Royster on behalf of POWER Interfaith**

I, Dwayne Royster, hereby declare as follows:

1. I am over the age of eighteen and otherwise competent to testify.
2. I am the Executive Director of POWER Interfaith (“POWER”).
3. POWER is a non-profit, non-partisan organization of more than 100 congregations of various faith traditions, cultures and neighborhoods in and around Philadelphia 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.
4. During every election cycle, POWER’s civic engagement efforts include voter education programs and voter registration drives within Philadelphia County. These efforts include “Souls to the Polls” initiatives during which Black church leaders 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, available at <https://theconversation.com/the-black-church-has-been-getting-souls-to-the-polls-for-more-than-60-years-145996>. In connection with the November 2022 election, for example, POWER launched a bus tour focused on engaging Philadelphia County voters who were not already participating in the political process.

5. 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 and its members and interferes with the organization's ability to carry out its mission of increasing voter turnout and participation.

6. The failure to count mail ballots received in envelopes without dates, or with "incorrect" dates, will force POWER to divert resources in the upcoming November 2024 election from its other voter education and mobilization efforts, as it did in past elections. When the Philadelphia County Board of Elections published a list of over 3,000 voters who were at risk of having their November 2022 general election ballots thrown out over such 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. POWER will again reassign volunteers and staff from its other voter education and mobilization efforts towards contacting and educating voters in connection with the 2024 General Election if

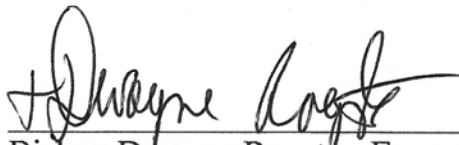
the Philadelphia County Board of Elections is again unable or unwilling to open and count ballots received in undated and/or “incorrectly” dated return envelopes.

7. 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.

8. POWER anticipates that, leading up to the November 2024 General Election and other future elections, it will similarly need 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.

*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 28 of May, 2024, in Philadelphia, Pennsylvania.



\_\_\_\_\_  
Bishop Dwayne Royster, Executive Director  
POWER Interfaith

# **Exhibit G**

## DECLARATION OF DIANA ROBINSON

I, Diana Robinson, 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 over eighteen years of age and am otherwise competent to testify.
3. I am a resident of and registered voter in Philadelphia County, Pennsylvania.
4. I am the Co-Deputy Director of Make the Road Pennsylvania. I have held this position since January 1, 2024.
5. 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 approximately 13,000 members are primarily working-class residents of Pennsylvania, many in underserved communities.
6. 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.
7. 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. Make the Road PA has run active programs to register voters in historically

underserved communities of color, especially in Berks, Bucks, Lehigh, Luzerne, Northampton, and Philadelphia Counties.

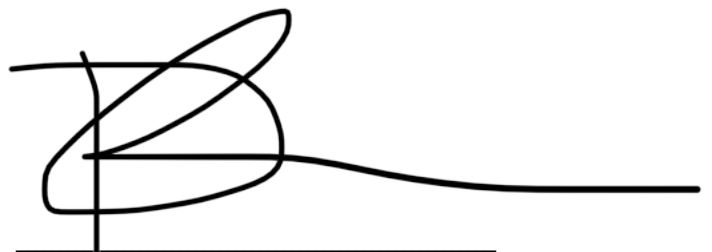
8. Respondents' failure to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope will disenfranchise potentially thousands of voters, thus directly affecting Make the Road PA's members and interfering with Make the Road PA's ability to carry out its mission of increasing voter turnout and participation.
9. 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.
10. For example, if a voter followed the date sequencing convention used by many other countries, they may have transposed the day before the month in dating their outer return envelope—and, on information and belief, that would constitute an “incorrect” date under Respondents' standards.
11. Respondents' failure to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope in recent and future elections also has forced and will force Make the Road PA to divert resources from its existing efforts toward focusing voters on trivial, technical mail ballot rules and toward investigating and educating voters about any available cure processes that might be available for the thousands who will invariably be disenfranchised by a paperwork mistake under Respondents'

current policy. For example, Make the Road's staff and volunteers had to direct time and resources in the critical time before Election Day in 2022 to contacting voters about the date provision and contacting county election officials to address the need to inform non-English speakers of any problems with the dating of their mail ballot envelopes. If the envelope dating rule remains in place, Make the Road PA anticipates needing to engage in similar efforts during the 2024 general election.

12. If Make the Road PA did not have to devote the time, staff, and financial resources to educating voters about this issue, it could instead focus on other important forms of voter engagement and participation, including its Immigrant Rights, Education Justice, Housing Justice, Climate Justice and Worker Rights initiative.

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 day of September, 2024 in Philadelphia County, Pennsylvania.

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a long horizontal line extending to the right.

Diana Robinson



# **Exhibit H**

## **DECLARATION OF STEVE PAUL**

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 over eighteen years of age and am otherwise competent to testify.

3. I am a resident of and registered voter in Philadelphia, Pennsylvania.

4. I am the Executive Director of One PA Activists United (d/b/a One PA For All). One PA For All is a nonpartisan, nonprofit 501 (c)(3) organization based in Pennsylvania.

5. One PA For All is a community organizing and voter engagement group that fights for racial, economic and environmental justice. We build multiracial, working-class progressive power in Pennsylvania with a deep focus on Black liberation. At One PA For All, we are on a mission to empower Black and working class communities through voter education, and leadership development.

6. One PA For All has offices in Pittsburgh and Philadelphia, and does voter engagement work in Philadelphia, Allegheny, Delaware, and Dauphin Counties.

7. One PA For All's mission and program include a variety of activities, such as:

- a. Boosting voter registration and turnout within Black communities in Pennsylvania;
- b. Educating and mobilizing community members for active participation in democratic processes, including city council, school board, zoning hearings, and PA General Assembly meetings;
- c. Uniting the community against exploitative corporate landlords, labor law violators, and health-threatening industrial polluters;

- d. Transforming the media narrative around community needs, enabling residents to share their stories for non-partisan direct action and civic engagement.

8. 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.

9. In 2024, One PA plans to register more than 35,000 voters and make more than 2.14 million contacts with voters:

10. In just the last two years, One PA has registered 28,000 voters in working class Black communities in Philadelphia, Delaware, and Allegheny Counties. One PA has also had tens of thousands of conversations with voters about switching to Vote by Mail (VBM) and helped 1000+ voters correct mistakes on their mail ballot envelopes.

11. One of our most empowering moments of 2022 concerned Ms. Phyllis, a woman in her 70s who has voted every year since she was 18. Our canvassers knocked on Ms. Phyllis' door after we learned that her mail-in ballot was in danger of not being counted because she had forgotten to write the date on the return envelope. Our rapid response team jumped into action: our canvasser explained the situation to Ms. Phyllis, took her to her polling place, and helped her obtain a provisional ballot, ensuring that her vote would count. While these are the moments that count most—helping a respected elder exercise her right to choose her elected representatives—such a monumental effort 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.

12. One PA For All has, in past election cycles, expended scarce resources to help voters, like Ms. Phyllis, correct an error on a mail ballot envelope. This work is labor intensive and prevents our staff and volunteers from carrying out other aspects of our civic engagement work.

13. One PA For All plans to continue its work instructing voters on how to correctly fill out a mail ballot return envelope. This work includes:

- a. Digital video that we will distribute via social media channels walking voters through how to properly vote by mail;
- b. Organizing staff and volunteers to perform a “ballot chase” program that involves calling voters who have not turned in their mail ballots;
- c. 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.

14. The effort to contact voters who have made a mistake on their mail ballot envelopes, include date errors, is labor intensive. 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.

15. For 2024, 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.

16. Counties’ rejection of mail ballots with a missing or incorrect date on the return envelope harms One PA For All because the staff engaged in reaching out to

voters with mistakes on their envelopes could be doing other work to advance our mission, such as knocking on additional doors, covering more territory in canvassing voters, calling or texting newly-registered voters.

17. Instead of expending resources on voters who thought they already voted, our staff could be engaged in calling people who have not yet returned their mail ballot or encouraging those voters to vote in person.

18. One PA For All's broader civic engagement and voter education program includes:

- a. Canvassing in neighborhoods;
- b. Text messaging and calls;
- c. Producing and distributing content in-house for publication on social media channels;
- d. Coordinating messaging with micro influencers who have followings on Instagram and TikTok. Target micro-influencers have between 5,000 and 10,000 people and One PA For All helps them craft messages aligned with our mission.

19. For the general election in 2024, we plan to create various media pieces on mistakes on mail ballot envelopes and distribute them via social media.

20. If we did not have to expend so many resources on creating content for mail ballot envelope mistakes, we could focus our educational materials on voter registration, we could reach out to more first-time voters to encourage them to vote in the first place, and we could focus our communications more on participation in the election in general.

21. Our staff who is engaged in reaching out to voters with mistakes on the date field of the mail ballot envelopes could instead be doing more volunteer recruitment and development and training of volunteers.

22. Spending scarce resources on the date requirement education harms our efforts to focus on racial equity in voting and to increase participation in the election by chronically excluded populations.

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 of May, 2024 in Philadelphia, Pennsylvania.



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Steve Paul, Executive Director  
One PA For All

# **Exhibit I**

## **DECLARATION OF MONICA RUIZ, MSW**

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 over eighteen years of age and am otherwise competent to testify.

3. I am a resident of and registered voter in Allegheny County, Pennsylvania.

4. I am the Executive Director of Casa San José, a nonpartisan, nonprofit 501(c)(3) organization based in Pittsburgh, Pennsylvania. Casa San José employs a staff of 24, is supported by three members of the order of the Sisters of St. Joseph and more than 100 volunteers.

5. Casa San José, connects, supports, and advocates with and for the Latino community. We envision a Pittsburgh region that celebrates Latino culture, welcomes immigrants, and embraces inclusion, dignity, and respect.

6. Casa San José, serves as a base of support for the Latino community where we provide a variety of resources including weekly clinics, food pantries, summer camps, community meetings, Know Your Rights sessions, among other services.

7. Casa San José's mission and programs include a variety of activities such as:

- a. Social services and resource mapping
- b. Mental health and medical service coordination



- c. Youth programming in schools and community centers
- d. Voter engagement for the Latino community
- e. Community meetings

8. Casa San José is located in Pittsburgh, Pennsylvania, and connects with voters in Allegheny, Beaver, Butler, Erie, Indiana, Lawrence, Washington, and Westmoreland counties. Casa San Jose plans to engage 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 2024.

9. In 2022, Casa San José, conducted three phone call campaigns and three text campaigns. The phone calls and texts were completed by our Community Policy Organizer and six volunteers from either Casa San Jose or the Hispanic Federation. Casa San José's staff and volunteers are bilingual so that they can carry out their mission for voters who speak either English or Spanish.

10. The first campaign of the 22,841 phone call attempts was conducted to explain voting by mail. In our vote by mail campaign, we would ensure that voters knew they had the option to vote by mail and if they did not, we would help them over the phone to fill out the application to vote by mail.

11. The second of the 22,841 phone call attempts consisted of calls in regard to ballot chasing. In our ballot chase campaign, we would call voters who had applied for their mail in ballot. We would inquire whether they had received their ballot or not. If they had not received their ballot, we provided them with resources

to help ascertain its location. If they had received their mail in ballot at the time of the phone call, we would help guide them through the steps to fill it out correctly and seal it in the secrecy envelope before returning it.

12. Also in 2022, Casa San José sent nearly 15,000 texts regarding voting by mail. In our vote by mail text campaign, we would ensure that voters knew of the option to vote by mail and if they did not, we would help them by text to fill out the application to vote by mail.

13. Similar to our phone campaign, we also sent nearly 15,000 texts to voters to check to see if they had applied for a vote by mail ballot, if they had received the ballot, and if so, we would guide them through the steps to properly return the voted ballot by inserting it in the secrecy envelope, and then inserting it into the outer return envelope, and instructing them on how to correctly fill out the declaration on the mail ballot return envelope, especially inserting the date in the proper area.

14. In 2024, Casa San José, plans to engage 9,500 registered voters in Allegheny and surrounding counties to assist them in finding their appropriate polling places, send voter ballot guides, and educate them on how to vote by mail, and help Latino voters navigate voting at the polls.

15. Our plans for 2024 mirror our efforts during the 2020 presidential election cycle. In September and October 2020, Casa San José printed and mailed 13,772 postcards to households throughout southwestern PA providing information on: registering to vote, voting registration deadlines, and voting by mail. Casa San

José targeted areas with known Latinx populations to encourage participation in the 2020 Election.

16. Casa San José provided voter education information through our social media sites, including Spanish videos with information on the importance of voting and the impact on local communities, published photos of events, and pushed information reminding people to register to vote and to vote by mail. Casa San Jose also published voter information banner ads in *Presente* Magazine, a Spanish language Latinx magazine with distribution in Pittsburgh and surrounding areas. Casa's Communications Specialist spent 150 hours working on developing and managing voter engagement content.

17. Contacting voters and spending time and effort on the correct way to fill out the mail ballot envelope is time consuming and requires us to carefully train our callers to make sure they emphasize the need for the date and the consequences for omitting it.

18. Instead of spending labor and resources on voters who thought they already voted properly, our staff could be using their capacity for a multitude of activities including but not limited to:

- a. Create educational material to help voters understand the importance of elections;
- b. Engage with more voters through phone calls and text messages;
- c. Canvass in predominantly Latino neighborhoods;

d. Register voters, especially first time voters;

19. 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 we did in 2022, in connection with the November 2024 general election.

The statements made in this Declaration are true and correct to the best of my knowledge, information, and belief. 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 27th of May 2024 in Allegheny County, Pennsylvania.

*Monica Ruiz, MSW*

---

Monica Ruiz, Executive Director  
Casa San José

# **Exhibit J**

## **DECLARATION OF ALEX WALLACH HANSON**

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 over eighteen years of age and am otherwise competent to testify.

3. I am a resident of and registered voter in Allegheny County, Pennsylvania.

4. I am the Executive Director of Pittsburgh United, a nonpartisan, nonprofit 501 (c)(3) organization based in Pittsburgh, Pennsylvania.

5. Pittsburgh United strives to advance social and economic justice in the Pittsburgh region by working to ensure that working families and low and moderate-income communities share in the prosperity that is generated by economic growth and development. We promote strategies that will build healthy and sustainable communities, raise standards for low wage workers, and forge a fair economy for all. We use innovative community organizing, research, advocacy and communications methods to win policy and organizing campaigns.

6. Pittsburgh United is a membership and coalition organization with 31 staff members. We have six offices, one each in Pittsburgh, Ambridge, Meadville, Erie, Greensburg and State College. Over the last 15 years, Pittsburgh United - a coalition of community, faith, environment, and labor - has become one of the most effective forces for poor and working people in the region, winning over \$1.2 billion in economic and community benefits. Together, coalition members are working to create a more just and equitable Western Pennsylvania.

7. Pittsburgh United’s work has always been defined by the intersection of economic development and community benefit. Our public policy advocacy has strived to create a community where all workers are able to care for themselves and raise their families, sharing in the prosperity generated by economic growth and development. Our campaigns include:

- a. “Clean Rivers Campaign” to establish an environmentally sustainable plan to remedy the region’s sewer problem;
- b. “Our Water Campaign” focusing on access to safe, affordable, public water in Pittsburgh;
- c. Worker campaigns advocating for paid sick days, higher wages, union representation, better unemployment benefits and safer working conditions;
- d. Affordable housing campaigns that advocate for residents to benefit from increased investment in communities. Recent wins include, among others, better protections for renters, passage of the Housing Opportunity Fund, and increases in funding for Whole Home Repairs;

8. Pittsburgh United staff and volunteers work to increase civic engagement in the communities we serve. We seek to increase voter turnout and expand access to mail voting in Black, low-income, and white working class communities across our six chapters in Allegheny, Beaver, Erie, Crawford, Centre,

and Westmoreland Counties, while strengthening our relationships in our communities.

9. We engage with voters in a variety of ways, including door to door canvassing, phone, text, and digital outreach, and other community outreach methods. We provide nonpartisan information on the election process, and how elections directly impact the issues that matter to us most, such as jobs, housing, racial justice, and climate equity. We use a variety of methods to reach voters and distribute information via social media platforms many times using content created by our coalition partners.

10. Our team has made hundreds of thousands of calls to voters over the past four years to help voters apply to vote by mail and encourage them to return their mail ballots. We have also knocked on hundreds of thousands of doors, talking to voters about the issues that matter most to people in their communities. Across both of these forms of voter contact, we have had to spend time with voters explaining the numerous steps required to accurately complete a mail ballot, including the date field, and talked to voters who have had their ballot fail to be counted.

11. Our staff has devoted significant resources to calling voters whose mail ballots were rejected because of an 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.



12. In 2024, we expect to expand our programs as described above and launch a Rural Civic Engagement Voting Program. In this effort, we will build on our deep relationships in small cities and towns across Western Pennsylvania to ensure that all communities of color and working class communities are engaged in the process of voting.

13. There are over a dozen small cities and towns with concentrations of people of color, making up tens of thousands of people, that live about a half an hour outside of Pittsburgh. These communities are often left out of public policy conversations because they live in majority white counties.

14. Pittsburgh United will run a comprehensive program with our members to do relational outreach, community events, and canvassing to ensure people of color in these communities have access to mail voting, including “over the counter” mail voting at the county election office, and election day voting to give them every chance to participate in the election.

15. Our voter education and outreach in these rural communities will include specific information on the proper way to fill out a mail ballot envelope including the date, and the consequences for not following the instructions.

16. 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 our staff down because they have to take more time in each conversation with a voter.

17. The reality of the time involved in our contacts requires that we choose between either 1) engaging fewer people in the process of voting; or 2) spending more organizational resources explaining the process. Pittsburgh United does not have the resources available to reach as many voters as we could if we did not have to spend the time explaining the dating process to voters.

The statements made in this Declaration are true and correct to the best of my knowledge, information, and belief. 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 27th of May 2024 in Allegheny County, Pennsylvania.

A handwritten signature in black ink, appearing to read 'Alex Wallach Hanson', written over a horizontal line.

Alex Wallach Hanson, Executive Director  
Pittsburgh United

# **Exhibit K**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

---

**No. 283 MD 2024**

---

**BLACK POLITICAL EMPOWERMENT PROJECT, et al.,**

**Petitioners,**

**v.**

**AL SCHMIDT, in his official capacity as Secretary of the Commonwealth, et al.,**

**Respondents.**

---

**BRIEF OF *AMICI CURIAE* REPUBLICAN LEADER OF THE  
PENNSYLVANIA HOUSE OF REPRESENTATIVES BRYAN CUTLER,  
PRESIDENT PRO TEMPORE OF THE PENNSYLVANIA SENATE KIM  
WARD AND MAJORITY LEADER OF THE PENNSYLVANIA SENATE  
JOE PITTMAN IN SUPPORT OF INTERVENOR-RESPONDENTS**

---

**CHALMERS, ADAMS, BACKER &  
KAUFMAN, LLC**

Zachary M. Wallen

Pa. ID No. 309176

301 South Hills Village Drive

No. LL200-420

Pittsburgh, PA 15241

(412) 200-0842

(412) 235-5001 (facsimile)

zwallen@chalmersadams.com

*Counsel for Amici Curiae*

ballot declaration helped to detect fraud. *See Commonwealth v. Mihaliak*, Docket Nos. MJ-02202-CR-000126-2022; CP-36-CR-0003315-2022.<sup>6</sup>

As the U.S. District Court for the Western District of Pennsylvania previously concluded, “the Pennsylvania legislature ‘weigh[ed] the pros and cons,’ and adopted a broader system of ‘no excuse’ mail-in voting as part of the Commonwealth’s Election Code.” *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 395 (W.D. Pa. 2020) (citing *Weber v. Shelley*, 347 F.3d 1101, 1107 (9th Cir. 2003)). “And the key point is that the legislature made that judgment in the context of erecting a broader election scheme that authorizes other forms of voting and has many . . . safeguards in place to catch or deter fraud and other illegal voting practices.” *Id.* at 396. “In this larger context, the Court cannot say that the balance Pennsylvania struck across the Election Code was unreasonable, illegitimate, or otherwise not ‘sufficiently weighty to justify . . . .’” *Id.*

Lastly, as noted in Part III.A above, the General Assembly mirrored the existing ballot return procedures for absentee ballots when crafting Act 77 to create no-excuse mail-in voting. Again, this was an intentional approach to minimize the complexities of legislative drafting, remain consistent with laws governing absentee

---

<sup>6</sup> While Petitioners insist the date is rarely used by counties, an inference could be made that the lack of affirmative “use” of the date in prosecuting fraud is evidence that the date works to deter fraud in the first place, as opposed to being a mere “superfluous” requirement.

ballot procedures, and maintain familiarity for voters wishing to take advantage of mail-in voting who may have previously cast an absentee ballot.

\* \* \*

Therefore, given the General Assembly's well-recognized constitutional plenary power to prescribe the time, place, and manner of the Commonwealth's elections, the clear legislative mandate of what is required of the elector, and the election-administration purposes of the statute, the statute in question is an important part of Pennsylvania's Election Code that should be modified only by legislative enactment.

**IV. Petitioners Should Not Be Permitted to Sow Election Chaos Through Their Cavalcade of Judicial Challenges or Intended Usurpation of the General Assembly.**

Just as the rule of law is reinforced by the stability and predictability that come from adherence to legal precedent, consistency in voting procedures furthers public confidence in elections. Perpetual litigation, along with constantly shifting guidance from the Secretary of the Commonwealth over the dating requirement, conversely, serves only to raise doubts, and to confuse voters. To the extent voters are confused about the dating requirement, it is because they are now repeatedly told – six decades after expansion of absentee voting, including the dating requirement – that all of a sudden, it is unconstitutional.

Commonwealth’s “democratically-elected representatives to weigh the pros and cons of various balloting systems,” *Weber*, 347 F.3d at 1106, and deny Petitioners’ Application.

Respectfully submitted,

/s/ Zachary M. Wallen

Zachary M. Wallen

Pa. ID No. 309176

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KAUFMAN, LLC

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*Counsel for Amici Curiae*



# **Exhibit L**

## Marybeth Kuznik

---

**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

# **Exhibit M**

**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.

A handwritten signature in blue ink that reads "Ariel Shapell". The signature is written in a cursive style with a large initial "A".

---

Ariel Shapell

5/27/2024



# **Exhibit N**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
-----  
PENNSYLVANIA STATE CONFERENCE  
OF THE NAACP, et al.,  
Plaintiffs,  
v.  
LEIGH M. CHAPMAN, in her official capacity as  
Acting Secretary of the Commonwealth, et al.,  
Defendants.  
Case No. 1:22-cv-00339-SPB  
-- and --  
BETTY EAKIN, et al.  
Plaintiffs,  
v.  
ADAMS COUNTY BOARD OF ELECTIONS, et al.  
Defendants.  
Case No. 1:22-cv-340  
-----  
Remote Deposition of Crista Miller  
Monday, February 13, 2023  
11:00 a.m.  
Recorded Stenographically by:  
Jennifer Miller, RMR, CRR, CCR  
Job No.:222617

Page 2

1  
2                   A P P E A R A N C E S  
3  
4       Counsel for Plaintiffs:  
5       ACLU of Pennsylvania  
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8       1735 Market Street  
9       Philadelphia, PA 19103  
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12       Daniel Cohen, Esq.  
13       Litigation Associate  
14       Elias Law Group  
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16       Washington DC 20002  
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20       American Civil Liberties Union  
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22       New York, NY 10004  
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25       Witold Walczak, Esq.  
      American Civil Liberties  
      Union of Pennsylvania  
      P.O. Box 23058  
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Page 4

1  
2       Appearances Cont'd  
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4       Elections:  
5       Melissa Guidy, Esquire  
6       Office of County Solicitor  
7       Westmoreland County  
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9       Greensburg, PA 15601  
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11       Counsel on behalf of Chester County Board of  
12       Elections:  
13       Faith Mattox-Baldini, Esq.  
14       County of Chester Solicitor's Office  
15       313 W. Market Street, Suite 6702  
16       West Chester, PA 19380  
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18       Counsel for Defendant, Bucks County:  
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20       First Assistant County Solicitor  
21       Law Department - County of Bucks  
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      Commonwealth Al Schmidt:  
      Robert Wiygul, Esq.  
      Hangley Aronchick Segal Pudlin & Schiller  
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      Philadelphia, PA 19103

Page 3

1  
2       Appearances Cont'd  
3       Counsel for Plaintiff in the 1:22-cv-339  
4       matter:  
5       Megan Keenan, Esq.  
6       Luis Manuel Rico Román, Esq.  
7       American Civil Liberties Union  
8       125 Broad Street  
9       New York, NY 10004  
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11       Counsel on behalf of Acting Secretary of the  
12       Commonwealth Leigh Chapman:  
13       Elizabeth Lester-Abdalla, Esq.  
14       Honors Deputy Attorney General  
15       Pennsylvania Office of Attorney General  
16       1600 Arch Street  
17       Philadelphia, PA 19103  
18  
19       Counsel for behalf of the Lancaster County  
20       Board of Elections and the Deponent:  
21       Walter Zimolong, Esq.  
22       James Fitzpatrick, Esq.  
23       Zimolong Law, LLC  
24       353 West Lancaster Avenue  
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Page 5

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2       Appearances Cont'd  
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4       and Registration:  
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6       Selingo Guagliardo LLC  
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8       Kingston, PA 18704  
9  
10       Counsel for Berks County Board of Elections:  
11       Cody Kauffman, Esq.  
12       First Assistant County Solicitor  
13       Berks County Solicitor's Office  
14       633 Court Street  
15       Reading, PA 19601  
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17       Counsel on behalf of the Defendants Bedford  
18       County, Carbon County Centre County, Columbia  
19       County, Dauphin County, Huntingdon County,  
20       Indiana County, Jefferson County, Lawrence  
21       County, Lebanon County, Monroe County, Montour  
22       County, Northumberland County, Snyder County,  
23       Venango County, and York County Board of  
24       Elections:  
25       Jessica Barnes, Esq.  
      Two Gateway Center  
      Pittsburgh, PA 15222  
      Counsel on behalf of Defendant Philadelphia  
      Board of Elections:  
      Aimee Thomson, Esq.  
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Page 6

1	
2	Appearances Cont'd
3	Counsel on behalf of defendant, the Delaware County Board of Elections:
4	J. Manly Parks, Esq. Duane Morris LLP 30 South 17th Street Philadelphia, PA 19103
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7	
8	Counsel on behalf of the Defendant Butler County Board of Elections:
9	H. William White, III, Esq. Solicitor for the County of Butler Butler County Commissioners' Office 124 West Diamond Street P.O. Box 1208 Butler, PA 16003
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13	
14	Counsel for Intervenor-Defendants, the Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania:
15	John Gore, Esq. Jones Day 51 Louisiana Avenue, N.W. Washington, D.C. 20001
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18	Counsel for Berks County Board of Elections:
19	Jeffrey Bukowski, Esq. Smith Bukowski 14133 Kutztown Road Fleetwood, PA 19522
20	
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22	
23	
24	
25	

Page 8

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2	Exhibits Cont'd
3	Exhibit 10 Document Bates-stamped 78 DAUPHIN000001_5
4	Exhibit 11 Document Bates-stamped 80 DAUPHIN000001_7
5	
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7	Exhibit 12 Mihaliak police report 90
8	
9	
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Page 7

1		
2		I N D E X
3	WITNESS	PAGE
4	BY MR. LONEY	10
5	BY MR. OSHER	98
6		E X H I B I T S
7		
8	Exhibit 1 Notice of Deposition	17
9	Exhibit 2 Answers of Defendant Lancaster County Board of Elections to Plaintiffs' First Set of Requests for Admission	20
10		
11		
12	Exhibit 3 Answers and Objections of Defendant Lancaster County Board of Elections to Plaintiffs' First Set of Interrogatories	21
13		
14		
15	Exhibit 4 Answers and Objections of Defendant Lancaster County Board of Elections to Plaintiffs' First Set of Requests for Production of Documents	23
16		
17		
18		
19	Exhibit 5 Ball order granting in part and denying in part injunction	48
20		
21	Exhibit 6 Chapman supplemental order	49
22		
23	Exhibit 7 Document Bates-stamped DAUPHIN000001	66
24	Exhibit 8 Document Bates-stamped DAUPHIN000001_2	73
25	Exhibit 9 Document Bates-stamped DAUPHIN000001_3	75

Page 9

C. Miller

P R O C E E D I N G S

CHRISTA MILLER, after

having been first duly sworn, was  
examined and testified as follows:

MR. OSHER: Before Mr. Loney  
begins his questioning, I'd like to put on  
the record an agreement that was reached  
before we went on the record here, which  
is that we are here appearing in two  
different cases, the NAACP case, which is  
the 22-cv-339 case; and the Eakin case,  
which is 22-cv-340.

The parties have agreed that the  
questioning that is elicited by the  
plaintiffs in the 339 case will be usable  
in the 340 case and vice versa. And the  
Eakin plaintiffs have agreed that the time  
used by the 339 plaintiffs will count  
against their seven hours under the rules.

Mr. Zimolong, is that sufficient  
for you?

MR. ZIMOLONG: That's accurate.

Thank you.

MR. OSHER: And, Mr. Loney, is

Page 10

1 C. Miller  
2 that good for you?  
3 MR. LONEY: Yeah. That works  
4 for plaintiffs in 339.  
5 Thanks for putting that on the  
6 record.  
7 MR. OSHER: Okay. And my  
8 understanding is that there's no objection  
9 from any other party, but they should  
10 speak up now if that is the case.  
11 Thanks, all.  
12 - - -  
13 E X A M I N A T I O N  
14 - - -  
15 BY MR. LONEY:  
16 Q. Okay. Good morning, Ms. Miller.  
17 Thank you for taking the time today.  
18 Just for the record, my name is  
19 Steve Loney. I'm an attorney with the ACLU of  
20 Pennsylvania, and I represent the plaintiffs in  
21 the 339 case. That's the Pennsylvania State  
22 Conference of the NAACP and all of the other  
23 plaintiffs in that case.  
24 Have you been deposed before?  
25 A. I have not.

Page 12

1 C. Miller  
2 counsel. But it's always helpful to make sure  
3 we're on the same page.  
4 So we have a Court Reporter on  
5 the Zoom here. Everything we're saying is  
6 being transcribed. So it's important for us to  
7 speak as clearly as possible and to avoid  
8 speaking over each other.  
9 And I should ask: Can you hear  
10 me clearly in the room where you're sitting?  
11 A. Yes.  
12 Q. Okay. And it's important to make  
13 sure your responses are verbal, like the one  
14 you just gave, because the Court Reporter can't  
15 take down gestures or nods and the like.  
16 Also there are a lot of lawyers  
17 here attending for a lot of different parties,  
18 including your counsel for the Lancaster board.  
19 They have the right to object to  
20 my questions as we go. I've been known to ask  
21 some questions that trigger some objections  
22 every once in a while.  
23 So if your lawyer or anybody  
24 else on the Zoom starts to speak when I am  
25 completing a question, it's a little difficult

Page 11

1 C. Miller  
2 Q. Okay. Have you ever given testimony  
3 at a trial, you know, in a witness box in a  
4 courtroom?  
5 A. I have.  
6 Q. How many times have you done that?  
7 A. A few. I don't know the exact  
8 number.  
9 Q. And have any of those been in  
10 connection with your role with the Lancaster  
11 County Board of Elections?  
12 A. Yes.  
13 Q. And when was the last time that you  
14 gave trial testimony in that capacity?  
15 A. A few weeks ago.  
16 Q. Okay. Do you remember what the case  
17 was?  
18 A. It was a hearing with the Department  
19 of State.  
20 Q. Did that case involve mail-in  
21 ballots?  
22 A. No.  
23 Q. Okay. Well, I'm just going to go  
24 through a couple of the basics of depositions,  
25 some of which you may have heard from your

Page 13

1 C. Miller  
2 over Zoom, but we just ask that you do what you  
3 can to give whoever chimes in a moment to get  
4 their objection on the record before you give  
5 your answer.  
6 But once the objection is  
7 stated, you should generally answer the  
8 question posed unless I withdraw the question.  
9 Does that make sense?  
10 A. Yes.  
11 Q. The one exception to answering the  
12 question posed is if your counsel objects on  
13 the basis of privilege. So we don't want you  
14 to disclose any information covered by the  
15 attorney-client privilege, so you should let us  
16 hash out any privilege objections before  
17 answering my question if you hear one of those  
18 objections.  
19 If you don't understand a  
20 question I ask, feel free to let me know. And  
21 I'll do what I can to explain the question or  
22 rephrase.  
23 If you need a break at any time,  
24 just say the word. We'll try to take breaks  
25 around every hour, maybe a little bit more than

Page 14

1 C. Miller  
2 that. And I'll do my best to accommodate a  
3 request for a break unless there's a question  
4 pending. We always ask that the question be  
5 answered unless we're taking a break for one of  
6 those privilege objections.  
7 So, with that, can you think of  
8 any reason why you might not be able to  
9 understand or respond accurately to any of my  
10 questions today?  
11 A. No.  
12 - - -  
13 (Whereupon, there was an  
14 off-the-record discussion.)  
15 - - -  
16 BY MR. LONEY:  
17 Q. Okay. Ms. Miller, so I should note  
18 for the record that this is a remote  
19 deposition. We are in separate rooms.  
20 It looks like you have  
21 Mr. Zimolong there in the same room with you;  
22 is that right?  
23 A. That's correct.  
24 Q. Is there anybody else in that room  
25 with you?

Page 16

1 C. Miller  
2 A. I am the chief clerk and chief  
3 registrar of the Lancaster County Board of  
4 Elections and Registration Commission.  
5 Q. How long have you held -- how long  
6 have you had that position?  
7 A. Two years.  
8 Q. What did you do before that?  
9 A. I worked for USA Field Hockey as the  
10 women's team manager.  
11 Q. And so you've been in your current  
12 position for two years.  
13 So you were in that position  
14 also during the November 2022 general election,  
15 right?  
16 A. Correct.  
17 Q. And also during the primary election  
18 in the spring of 2022?  
19 A. Correct.  
20 Q. Prior to your role with the -- strike  
21 that.  
22 Prior to your current role, did  
23 you ever have any other position with the  
24 Lancaster County Board of Elections?  
25 A. I did not.

Page 15

1 C. Miller  
2 A. No.  
3 Q. And, obviously, you all are on a  
4 computer to link into this Zoom.  
5 Can you tell me how many screens  
6 you have in front of you?  
7 A. Two.  
8 Q. And is there anything other than this  
9 Zoom program open on any of those computer  
10 screens?  
11 A. No.  
12 Q. Do you have a smartphone with you in  
13 the room?  
14 A. Yes.  
15 Q. Okay. So I'm just going to ask that,  
16 while we're on the record -- so other than  
17 during breaks -- that you leave your phone to  
18 the side and keep all of the windows, other  
19 than this Zoom screen, closed on your computer  
20 while we're on the record.  
21 Can we agree to that for the  
22 day?  
23 A. Yes.  
24 Q. Okay. So what is your current  
25 position?

Page 17

1 C. Miller  
2 Q. And prior to your current role, had  
3 you ever had any other roles dealing with  
4 elections?  
5 A. I did not.  
6 MR. LONEY: I'm going to share  
7 my screen and ask that the document I'm  
8 putting up be marked as Exhibit  
9 Lancaster 1.  
10 - - -  
11 (Whereupon, there was an  
12 off-the-record discussion.)  
13 - - -  
14 MR. LONEY: I'm about to show  
15 what is in that folder as Tab Number 1.  
16 - - -  
17 (Whereupon, Exhibit 1 was marked  
18 for identification.)  
19 - - -  
20 MR. LONEY: Hopefully I can do  
21 this correctly.  
22 BY MR. LONEY:  
23 Q. Ms. Miller, do you see on your screen  
24 right now a document with a court caption and a  
25 title Notice of Deposition?

Page 18

1 C. Miller

2 A. Yes, I do.

3 Q. Do you see anything else on that

4 shared screen?

5 A. No.

6 Q. So I'm showing you on the screen

7 what's being marked as Exhibit Lancaster 1.

8 It's the notice of today's deposition.

9 Have you seen this deposition

10 notice before?

11 A. I have.

12 Q. And do you understand that you've

13 been designated to testify on behalf of the

14 Lancaster board --

15 A. Yes.

16 Q. -- concerning the topics in this

17 deposition notice?

18 A. Yes.

19 Q. So I'm going to scroll to the second

20 page, which is a list of topics.

21 Did you review these topics

22 before today's deposition?

23 A. I did.

24 Q. And what, if anything, did you do to

25 prepare yourself to speak about these topics on

Page 20

1 C. Miller

2 caption on them like this notice of deposition

3 does?

4 A. Yes.

5 Q. Did you review any other documents

6 without a court caption on them in preparation

7 for this deposition?

8 A. Just any documents that had been sent

9 over that we would be looking at today.

10 Q. So anything that you reviewed has

11 been produced to -- in this case?

12 A. From the best of my knowledge, yes.

13 MR. LONEY: Okay. Let's take

14 this down and put up -- for the Court

15 Reporter's benefit, it's Tab 2.

16 - - -

17 (Whereupon, Exhibit 2 was marked

18 for identification.)

19 - - -

20 MR. LONEY: And I'll ask that

21 this be marked as Exhibit Lancaster 2.

22 I'll share that now.

23 BY MR. LONEY:

24 Q. So, Ms. Miller, I'm showing on the

25 screen a document that's been marked as -- or

Page 19

1 C. Miller

2 the board's behalf?

3 A. I just reviewed the questions with my

4 lawyer.

5 Q. Did you speak with any other -- any

6 of the board members in preparation for this

7 deposition?

8 A. I did not.

9 Q. And you said that you met with your

10 lawyer. And I don't want to get into what was

11 discussed between you and your lawyer, but how

12 many times did you meet about this deposition?

13 A. Once.

14 Q. And for how long?

15 A. I believe an hour.

16 Q. Did you review any documents to get

17 ready for this deposition, other than the

18 notice that's up on the screen right now?

19 A. I did.

20 Q. What other documents did you review?

21 A. We reviewed -- I reviewed the

22 documents that we had submitted previously with

23 answers to questions.

24 Q. And we'll go through those in a

25 second, but did those also have a -- a court

Page 21

1 C. Miller

2 is being marked as Exhibit Lancaster 2. It's

3 the Lancaster board's answers to plaintiffs'

4 first set of requests for admissions.

5 Is this one of the documents you

6 reviewed in preparation for your deposition?

7 A. Yes.

8 Q. Did you personally review the

9 plaintiffs' request for admission before they

10 were submitted in this case on January 20th?

11 A. Yes.

12 Q. And did you approve the responses

13 before they were served on the other side?

14 A. I did.

15 MR. LONEY: I'll take that down

16 for now and move on to the next one,

17 which, for the Court Reporter, is Tab 3.

18 - - -

19 (Whereupon, Exhibit 3 was marked

20 for identification.)

21 - - -

22 MR. LONEY: And I'll ask that

23 this be marked as Lancaster 3.

24 BY MR. LONEY:

25 Q. Ms. Miller, I'm showing on the screen

Page 22

1 C. Miller  
2 a document that is being marked as Lancaster 3.  
3 It's the Lancaster board's answers and  
4 objections to the plaintiffs' first set of  
5 interrogatories.  
6 Is this also one of the  
7 documents that you reviewed in preparation for  
8 your deposition today?  
9 A. I did.  
10 Q. And I'm going to scroll -- please  
11 stop me if you feel the need to look at any  
12 part of this document that I'm sort of going  
13 past quickly, but I'm going to go to the last  
14 page for now, which is a declaration page.  
15 Is that your signature on the  
16 declaration page?  
17 A. It is.  
18 Q. And did you review the answers to  
19 these interrogatories before they were served  
20 on January 20th?  
21 A. Yes.  
22 Q. And you approved the substance of the  
23 answers?  
24 A. I did.  
25 MR. LONEY: I'm taking

Page 24

1 C. Miller  
2 that were served in response to the plaintiffs'  
3 request for production?  
4 A. I did.  
5 Q. So I'm going to -- again, let me know  
6 if you feel the need to review the full  
7 document, but I'm going to jump to Request  
8 Number 2.  
9 Hopefully, you can see me  
10 highlighting that on the screen.  
11 So this is a request for copies  
12 of the mail ballot return envelopes that were  
13 set aside because they either lacked a  
14 handwritten date or showed a date that the  
15 board deemed to be incorrect.  
16 Do you see the request that I'm  
17 referring to?  
18 A. I do.  
19 MR. ZIMOLONG: Objection to  
20 form.  
21 You can answer.  
22 THE WITNESS: I do.  
23 BY MR. LONEY:  
24 Q. And just below the request is an  
25 answer which includes some objections. And

Page 23

1 C. Miller  
2 Lancaster 3 down.  
3 I'm going to do one more before  
4 we get into some more questions.  
5 For the Court Reporter's  
6 benefit, this is Tab 4.  
7 - - -  
8 (Whereupon, Exhibit 4 was marked  
9 for identification.)  
10 - - -  
11 BY MR. LONEY:  
12 Q. Ms. Miller, I'm showing on the screen  
13 a document that is being marked as Lancaster 4.  
14 It's the Lancaster board's  
15 answers and objections to plaintiffs' first set  
16 of requests for production of documents.  
17 Is this also a document you  
18 reviewed in preparation for your testimony  
19 today?  
20 A. Yes.  
21 Q. And did you review the plaintiffs'  
22 requests for production of documents before the  
23 Lancaster board responded on January 20th?  
24 A. Yes.  
25 Q. And did you approve the responses

Page 25

1 C. Miller  
2 scrolling a bit down to page 3 now where the  
3 Lancaster board responded, notwithstanding the  
4 objections, that the board "will produce copies  
5 of the ballots, redacted where appropriate, for  
6 inspection and review pursuant to an acceptable  
7 confidentiality order and other order of the  
8 Court."  
9 Am I reading that correctly?  
10 A. Yes.  
11 Q. So were you aware that the board had  
12 agreed to provide copies of the mail ballot  
13 envelopes at issue pursuant to an acceptable  
14 confidentiality order?  
15 MR. ZIMOLONG: Objection.  
16 That's not what it says.  
17 BY MR. LONEY:  
18 Q. Did the board not agree to produce  
19 copies of the envelopes pursuant to an  
20 acceptable confidentiality order?  
21 MR. ZIMOLONG: Objection. Goes  
22 to attorney-client work product litigation  
23 strategy.  
24 Don't answer.  
25



Page 26

1 C. Miller  
2 BY MR. LONEY:  
3 Q. Are you going to follow your  
4 counsel's instruction not to answer my last  
5 question?  
6 A. I am.  
7 Q. Okay. Are you aware that the  
8 Lancaster board consented to an acceptable  
9 confidentiality order on February 3rd?  
10 MR. ZIMOLONG: Objection.  
11 BY MR. LONEY:  
12 Q. You can answer.  
13 MR. ZIMOLONG: Calls for  
14 speculation.  
15 BY MR. LONEY:  
16 Q. Are you -- are you aware of that  
17 fact?  
18 MR. ZIMOLONG: Objection. Calls  
19 for speculation. There's no acceptable  
20 confidentiality order.  
21 BY MR. LONEY:  
22 Q. Okay. You can answer.  
23 MR. ZIMOLONG: If you understand  
24 it.  
25 THE WITNESS: Yeah. I'm not

Page 28

1 C. Miller  
2 representation in the exhibit marked  
3 Lancaster 4.  
4 So we're going to have to hold  
5 this deposition open and come back to  
6 complete it, if necessary, after the board  
7 completes its production.  
8 MR. ZIMOLONG: Well, no. And  
9 we're not -- you can state whatever you  
10 want for the record.  
11 We're not agreeing to produce  
12 another designee here.  
13 The answers were served on  
14 January 20th. It's January -- it's  
15 February 13th. You've had these for  
16 23 days.  
17 On Friday night --  
18 MR. LONEY: We've had the  
19 enveloped for 23 days?  
20 MR. ZIMOLONG: You've had the  
21 answers for 23 days.  
22 On Friday night you sent an  
23 email to me stating produce the mail  
24 ballot envelopes, which I've never agreed  
25 to produce, because you believed that we

Page 27

1 C. Miller  
2 sure exactly what you're asking. I never  
3 saw -- I've not seen anything or -- or I  
4 should say our board has not shown me  
5 anything that they would have received.  
6 BY MR. LONEY:  
7 Q. Okay. So you're not aware that the  
8 Court entered a confidentiality order in this  
9 case on February 7th? That hasn't been shown  
10 to you?  
11 A. Not to my knowledge.  
12 Q. Okay. Has the board or have you  
13 prepared envelope copies for production and  
14 inspection in this case?  
15 A. I have not.  
16 Q. Do you know if anybody has?  
17 A. I do not.  
18 Q. Have you or anybody else working for  
19 the Lancaster board provided counsel with  
20 copies of the envelopes at issue?  
21 A. We did not.  
22 MR. LONEY: All right. So I'll  
23 note for the record that we also have not  
24 received any requests for envelope copies,  
25 despite our repeated requests and the

Page 29

1 C. Miller  
2 agreed to produce them pursuant to our  
3 answer to Request for Production Number 2.  
4 You're wrong.  
5 MR. LONEY: So can I just --  
6 instead of your objection --  
7 MR. ZIMOLONG: No. You can just  
8 put something on the record. I'm not  
9 speaking objection anything.  
10 You just went on the record and  
11 stated what you're going to do. And I'm  
12 stating in response to that. That's not a  
13 question. That's a statement. So I can  
14 make a statement back.  
15 MR. LONEY: All right. Go for  
16 it.  
17 MR. ZIMOLONG: And what I'm  
18 saying is you've misrepresented what this  
19 says. You've made a statement on the  
20 record as if it were a fait accompli.  
21 Ms. Miller is here as a designee  
22 pursuant to Rule 30(b)(6). She's here for  
23 seven hours. You agreed to it. She's not  
24 coming back.  
25 There's absolutely nothing wrong

Page 30

1 C. Miller  
2 with this answer. You believe it's  
3 incorrect. You believe that we made  
4 something -- we have produced -- not  
5 produced something has been agreed to be  
6 produced or there was an unreasonable  
7 objection.  
8 Well, we can take that up. We  
9 can meet and confer about it, and you can  
10 advise the Court if you need it.  
11 But to say here today,  
12 February 13th, after having these answers  
13 for 23 days, that you're going to bring  
14 her back because you don't think the  
15 production is full or complete, that  
16 doesn't work -- it doesn't work that way.  
17 So I'll let you keep continuing  
18 your questioning.  
19 MR. LONEY: Okay. So -- just so  
20 that we're all clear, what I'm putting on  
21 the record now is a reservation of rights  
22 to hold this deposition open and also to  
23 file a motion to compel now that I'm  
24 hearing Lancaster County is now refusing  
25 to produce the envelope copies requested

Page 32

1 C. Miller  
2 So now you're in a deposition,  
3 and you're making a statement that we're  
4 refusing to produce it.  
5 I have a difference of opinion.  
6 MR. LONEY: Are you?  
7 MR. ZIMOLONG: What's that?  
8 MR. LONEY: Are you refusing to  
9 produce them?  
10 MR. ZIMOLONG: Yeah. We have an  
11 objection to producing them.  
12 MR. LONEY: Okay. So you're  
13 refusing --  
14 MR. ZIMOLONG: As stated in the  
15 request for production, we have an --  
16 Lancaster County Board of Elections has a  
17 objection, as we've told you repeatedly.  
18 Not us, not just us, Mr. Loney.  
19 Multiple counties have an objection to it.  
20 As we told you, when we were  
21 negotiating the confidentiality order, we  
22 have an objection to it. As we told you  
23 in negotiating the confidentiality order,  
24 it didn't alleviate our objection.  
25 You agreed to it. You agreed to

Page 31

1 C. Miller  
2 in Request for Production Number 2.  
3 MR. ZIMOLONG: I never refused  
4 that. I've objected to it.  
5 MR. LONEY: So can I -- can I  
6 ask you --  
7 MR. ZIMOLONG: No.  
8 MR. LONEY: Can I ask you just  
9 for the record --  
10 MR. ZIMOLONG: I'm not going to  
11 have a deposition where you state  
12 something on the record because you heard  
13 they refused to produce --  
14 MR. LONEY: Okay. So --  
15 MR. ZIMOLONG: The answer is  
16 on -- the answer is on the screen before  
17 you. Okay?  
18 MR. LONEY: Correct. And it  
19 says --  
20 MR. ZIMOLONG: The proper way --  
21 and if you had a problem with that, up  
22 until any of the previous 23 days, you  
23 could have met and conferred with me about  
24 that. Perhaps we could have broached that  
25 impasse. Perhaps we couldn't.

Page 33

1 C. Miller  
2 it.  
3 MR. LONEY: I didn't.  
4 MR. ZIMOLONG: Yeah, you agreed.  
5 MR. LONEY: Can we stop making  
6 speeches on the record? Can we do that?  
7 MR. ZIMOLONG: You started it.  
8 MR. LONEY: Okay.  
9 MR. ZIMOLONG: I will be happy  
10 for you to continue with your questioning.  
11 MR. LONEY: So --  
12 MR. ZIMOLONG: This colloquy is  
13 a statement. And if you're going to make  
14 statements on the record and make  
15 misrepresentations on the record, I'm  
16 going to make statements back.  
17 MR. LONEY: Okay.  
18 MR. ZIMOLONG: So if you want to  
19 continue with your questioning, you're  
20 free. I haven't interrupted your  
21 questioning at all.  
22 MR. LONEY: Okay.  
23 MR. ZIMOLONG: But you started  
24 making a statement on the record, and now  
25 you don't like that I'm making a statement

Page 34

1 C. Miller  
2 back.  
3 So would you like to question  
4 the witness, Mr. Loney?  
5 MR. LONEY: Okay. So I'm going  
6 to question the witness subject to our  
7 ongoing objection to the refusal to  
8 produce these envelopes.  
9 And just to make sure there are  
10 no open misstatements on the record, we  
11 did meet and confer after receiving a  
12 response on January 20th. We engaged in  
13 lengthy meet-and-confers about an  
14 acceptable confidentiality order. One was  
15 entered, six days ago, and we are awaiting  
16 the production that we asked for.  
17 Now, given that you're not  
18 providing it and you are standing on an  
19 objection, despite the entry of a  
20 confidentiality order, I'm noting for the  
21 record that we may go to the Court.  
22 There's no misrepresentation of  
23 any of that. I'm telling you what we may  
24 do after this.  
25 Now, I'm going to continue with

Page 36

1 C. Miller  
2 vote in the election in which they have cast a  
3 ballot?" If so, what is the basis for that  
4 contention?"  
5 Did I read that correctly?  
6 A. You did.  
7 Q. And can you take a moment to read  
8 over the Lancaster board's response?  
9 A. Yeah, I will.  
10 Q. Let me know when you're finished  
11 reading.  
12 A. Okay.  
13 Q. So the response that you just read,  
14 you reviewed that and approved it before it was  
15 served in this case, right?  
16 A. Yes.  
17 Q. And so you agree, in the first  
18 instance, looking at the first line of the  
19 response, that the dates written on envelopes  
20 are not material to the question of whether a  
21 person is qualified to vote?  
22 The date written on the  
23 envelope, for example, doesn't tell you whether  
24 the person is over 18 years old, right?  
25 A. Correct.

Page 35

1 C. Miller  
2 my questioning.  
3 MR. ZIMOLONG: Well, you have  
4 misrepresented it, but I'll let you --  
5 I'll let you continue.  
6 MR. LONEY: Okay. So I'm going  
7 to take the document production responses  
8 off the screen and go back to the  
9 interrogatory responses, which are Exhibit  
10 Lancaster 3.  
11 BY MR. LONEY:  
12 Q. And I have jumped here, Ms. Miller,  
13 to Interrogatory Number 14.  
14 Do you see that on your -- on  
15 your screen?  
16 A. I do.  
17 Q. And, again, if you feel the need to  
18 flip through this and look at anything else to  
19 contextualize your answer, let me know. But,  
20 otherwise, I'm just going to ask about Question  
21 Number 14 for a moment.  
22 So plaintiffs' interrogatory  
23 reads: "Do you contend that the handwritten  
24 date is material in determining whether a  
25 ballot" -- "a mail ballot voter is qualified to

Page 37

1 C. Miller  
2 Q. And the date written on the envelope  
3 doesn't tell you whether the voter is or has  
4 been a U.S. citizen for at least a month,  
5 right?  
6 A. Correct.  
7 Q. And the date written on the envelope  
8 doesn't tell you whether the voter has resided  
9 in Lancaster County for at least 30 days, does  
10 it?  
11 A. Correct.  
12 Q. And it also doesn't tell you whether  
13 the person voting is incarcerated on a felony  
14 conviction, right?  
15 A. Correct.  
16 Q. For all of those other things I just  
17 went through -- citizenship, age, residence in  
18 the county, whether the person is  
19 incarcerated -- the Lancaster board has other  
20 methods of confirming all of those things that  
21 are relevant to qualification, right? You  
22 don't need the -- the -- the date on the  
23 envelope?  
24 MR. ZIMOLONG: Objection to  
25 form.

Page 38

1 C. Miller  
2 You can answer.  
3 THE WITNESS: That is correct.  
4 BY MR. LONEY:  
5 Q. But it's the Lancaster board's  
6 position that -- and looking again at  
7 Interrogatory Number 14 -- that the date is,  
8 nevertheless, material in determining whether  
9 the ballot was cast in compliance with the  
10 election code; is that right?  
11 A. That is correct.  
12 Q. Okay. So can you help me understand  
13 how that is?  
14 Is it because the voter who  
15 didn't write the correct date next to their  
16 signature didn't comply with the election code  
17 and its requirement to sign and date the outer  
18 envelope?  
19 A. Correct. The election code says that  
20 it must be dated, and so we are looking to see  
21 if there is a date or not to determine whether  
22 we can open to count the ballot or not.  
23 Q. Okay. So you've used the date or the  
24 absence of a date to determine whether the  
25 voter complied with the dating requirements.

Page 40

1 C. Miller  
2 board's perspective; is that right?  
3 A. Correct.  
4 Q. Okay. So I'm going to flip back to  
5 Exhibit Lancaster 2, which is the requests for  
6 admission.  
7 Do you have that on your screen  
8 now?  
9 A. I do.  
10 Q. And I'm going to focus on the first  
11 one, Request for Admission Number 1, on that  
12 first page.  
13 The request is -- or the  
14 statement that we've asked the counties to  
15 admit is: "You have never used or referred to  
16 the date handwritten on the outer envelope  
17 containing a mail ballot for any purpose  
18 related to determining or confirming the mail  
19 ballot voter's eligibility (that is, their age,  
20 citizenship, county, and duration of residence  
21 and felony status)."  
22 Did I read that correctly?  
23 A. Yes.  
24 Q. And the Lancaster board replied to  
25 that with one word, simply saying "Denied."

Page 39

1 C. Miller  
2 Do I have that right?  
3 A. Correct.  
4 Q. And that's the only way a  
5 voter-written date is relevant to whether the  
6 vote is counted, right, to determine if the  
7 voter complied with that requirement to date  
8 and sign?  
9 MR. ZIMOLONG: Objection to  
10 form.  
11 You can answer.  
12 THE WITNESS: We use that date.  
13 We follow the court order, if there is  
14 one, for that election to give us the date  
15 range and if there is a date there at all.  
16 BY MR. LONEY:  
17 Q. Right. If they don't include the  
18 date, it's a noncompliant vote, based on the  
19 most recent court order. And if they did  
20 provide a date within a particular range, it's  
21 a compliant vote.  
22 Do I have that right?  
23 A. That is correct.  
24 Q. And that's -- that's the end of the  
25 analysis of the date, from the Lancaster

Page 41

1 C. Miller  
2 Can you help me square that with  
3 the first sentence from the interrogatory  
4 response we just saw that said the handwritten  
5 date is not material to determining whether a  
6 mail ballots voter is qualified to vote?  
7 MR. ZIMOLONG: Objection to  
8 form.  
9 You can answer.  
10 THE WITNESS: We have not used  
11 it to determine someone's eligibility.  
12 BY MR. LONEY:  
13 Q. Okay. So the board's only basis for  
14 denying this request is -- this overlaps with  
15 Interrogatory 14.  
16 Am I right that Interrogatory 14  
17 tells us how the Lancaster board uses the date  
18 on the envelopes?  
19 A. Correct.  
20 MR. ZIMOLONG: Go ahead.  
21 THE WITNESS: Correct.  
22 BY MR. LONEY:  
23 Q. Is there anything else -- any other  
24 way in which the date is relevant to the  
25 board's decision whether to open and canvas the

Page 42

1 C. Miller  
2 mail ballot inside an envelope other than what  
3 we've already discussed and what's in these  
4 written responses?  
5 A. There is not.  
6 MR. LONEY: I'm going to stop  
7 sharing this.  
8 BY MR. LONEY:  
9 Q. So if we're talking about what -- the  
10 election code requirement that the envelope be  
11 signed and dated, does Lancaster County or the  
12 Lancaster County Board of Elections take the  
13 same position with respect to any provision in  
14 the election code? If the code requires it,  
15 then you require it to count the vote?  
16 A. Yes.  
17 Q. Would that include the requirement to  
18 use blue, black, or blue-black ink in fountain  
19 pen or ballpoint pen or black lead pencil or  
20 indelible pencil to mark a ballot?  
21 A. Yes.  
22 Q. So that requirement for the -- either  
23 using pencil or a particular color ink is on  
24 the same level, from your perspective, as the  
25 date requirement?

Page 44

1 C. Miller  
2 we would have to follow it.  
3 BY MR. LONEY:  
4 Q. And if there's a requirement in the  
5 election code, and the Court says follow it,  
6 that says every voter has to draw a  
7 self-portrait on their return envelope on their  
8 mail ballot, would drawing the self-portrait be  
9 material as to whether the ballot is eligible  
10 to be counted?  
11 MR. ZIMOLONG: Objection. Calls  
12 for improper opinion testimony. Also  
13 beyond the scope of the Rule 30(b)(6)  
14 notice.  
15 BY MR. LONEY:  
16 Q. You can answer.  
17 A. If there was a court order that we  
18 were to follow that said it, we would have to  
19 follow it.  
20 Q. So I'll get back to the facts in this  
21 case.  
22 So you agree that, if a voter  
23 returns a ballot or returned a ballot in  
24 connection with the November 2022 election  
25 without a handwritten date on it at all on the

Page 43

1 C. Miller  
2 MR. ZIMOLONG: Objection to  
3 form.  
4 You can answer.  
5 THE WITNESS: Yes. The scanners  
6 will not scan it.  
7 BY MR. LONEY:  
8 Q. But did the Lancaster board  
9 disqualify any ballots for using a color ink  
10 other than black, blue, or blue-black?  
11 A. Not that I can think of.  
12 Q. Let's say the legislature added a  
13 provision to the election code requiring every  
14 voter to write the name of their first pet or  
15 their mother's maiden name on a return  
16 envelope.  
17 Would the mother's maiden name  
18 be material to whether the ballot is eligible  
19 to be counted, in your view?  
20 MR. ZIMOLONG: Objection to  
21 form. Calls for speculation.  
22 THE WITNESS: Yeah, I mean, in  
23 my opinion, there's -- I don't know that  
24 that would ever happen. But if there was  
25 a court order requiring it, we would be --

Page 45

1 C. Miller  
2 outer envelope, then Lancaster County did not  
3 count their ballot.  
4 Is that -- do I understand that  
5 correctly?  
6 A. That is correct.  
7 Q. And if a voter returned a ballot with  
8 a handwritten date that was outside of the  
9 range defined by the Pennsylvania Supreme  
10 Court, again, Lancaster board did not count  
11 that ballot?  
12 A. That is correct.  
13 Q. I'm going to put back up the  
14 interrogatories, which is Exhibit Lancaster 3.  
15 And I'm going to jump to page 3 and the answer  
16 to Interrogatory Number 2.  
17 Do you see that Interrogatory  
18 Number 2 on your screen?  
19 A. I do.  
20 Q. So in response to Interrogatory  
21 Number 2, the Lancaster board offered some  
22 objections and then, after that, stated that  
23 the Lancaster board "set aside 232 mail ballots  
24 under the orders of the Supreme Court of  
25 Pennsylvania dated November 1st and

Page 46

1 C. Miller  
2 November 5th, 2022, and the guidance of the  
3 secretary of state."  
4 Did I read that correctly?  
5 I think I might have missed the  
6 word "respectively" in there.  
7 A. Yes, that is correct.  
8 Sorry. I was just trying to  
9 find it.  
10 Q. Yeah. And to your knowledge, is that  
11 number correct, 232? Was that the total number  
12 of mail ballots envelopes set aside by the  
13 Lancaster board in the November 2022 election?  
14 A. That had to do with this Supreme  
15 Court order, yes.  
16 Q. Okay. Thanks for that clarification.  
17 And that includes both the  
18 envelopes received with no handwritten date and  
19 envelopes with -- received with something  
20 written in the date line but it was deemed  
21 incorrect; is that right?  
22 A. Correct.  
23 Q. Of those 232, how many were set aside  
24 because they had no voter-written date at all?  
25 A. Off the top of my head, I don't know.

Page 48

1 C. Miller  
2 - - -  
3 (Whereupon, Exhibit 5 was marked  
4 for identification.)  
5 - - -  
6 MR. LONEY: I'll share that on  
7 my screen now.  
8 BY MR. LONEY:  
9 Q. Ms. Miller, do you have on your  
10 screen a Supreme Court of Pennsylvania document  
11 with a caption starting "David Ball"?  
12 A. I do.  
13 Q. Okay. So this is being marked as  
14 Exhibit Lancaster 5. It's a November 1st,  
15 2022, per curiam order of the Pennsylvania  
16 Supreme Court in Ball versus Chapman, Case  
17 Number 102 MM 2022.  
18 And my only question on this,  
19 Ms. Miller: Is this the November 1st order you  
20 referenced in response to Interrogatory  
21 Number 2?  
22 A. Yes.  
23 MR. LONEY: I'll ask the Court  
24 Reporter to mark as Lancaster 6 Tab  
25 Number 6 in the folder I sent.

Page 47

1 C. Miller  
2 Q. And I'll ask the other way.  
3 Do you know how many of those  
4 were set aside because they had something  
5 written in the date line that was deemed  
6 incorrect?  
7 A. Off the top of my head, I do not  
8 know.  
9 Q. But if we had those -- copies of the  
10 ballot envelopes, we could see for ourselves,  
11 right?  
12 A. Correct.  
13 Q. Do you have a sense for what the --  
14 so I don't want you to guess. I'd like you to  
15 estimate, if you can, based on your knowledge  
16 of the -- of the numbers you've seen.  
17 Do you think it was -- more than  
18 200 of those 232 were completely undated?  
19 A. No.  
20 Q. Was it the majority?  
21 A. It was approximately 50 percent.  
22 MR. LONEY: Okay. I'm going to  
23 ask the Court Reporter to mark as Exhibit  
24 Lancaster 5 the document I previously sent  
25 as Tab 5.

Page 49

1 C. Miller  
2 - - -  
3 (Whereupon, Exhibit 6 was marked  
4 for identification.)  
5 - - -  
6 MR. LONEY: I'll share that now.  
7 BY MR. LONEY:  
8 Q. Ms. Miller, do you see on your screen  
9 another Supreme Court of Pennsylvania document  
10 with a caption starting "David Ball"?  
11 A. I do.  
12 Q. So this document on your screen is  
13 being marked as Exhibit Lancaster 6. It is a  
14 November 5th, 2022, supplemental order of the  
15 Pennsylvania Supreme Court in Ball versus  
16 Chapman, same case number as Exhibit 5.  
17 Is this the November 5th order  
18 you referenced in response to Interrogatory  
19 Number 2?  
20 A. Yes.  
21 Q. Prior to these orders from the  
22 Pennsylvania Supreme Court, the secretary of  
23 state had instructed county boards to open and  
24 canvass ballots received in envelopes without a  
25 handwritten date on them, right?



Page 50

1 C. Miller  
2 A. Correct.  
3 Q. And the Lancaster board was going to  
4 follow that guidance had the Supreme Court not  
5 weighed in in November; is that right?  
6 A. That is correct.  
7 Q. In other words, had these orders not  
8 come in the week before the election, Lancaster  
9 board would have canvassed and opened the mail  
10 ballot envelopes received without a handwritten  
11 date on them?  
12 A. Correct.  
13 Q. And when these orders came out, did  
14 the Lancaster board give anyone the opportunity  
15 to -- strike that.  
16 When the orders came out, did  
17 the Lancaster board notify Lancaster County  
18 voters of this change in approach?  
19 A. We did not.  
20 Q. Did the Lancaster board give anybody  
21 the opportunity to correct any problems with  
22 the missing or incorrect dates on their mail  
23 ballot envelopes?  
24 A. No.  
25 Q. Did the Lancaster board notify

Page 52

1 C. Miller  
2 A. No, not that I can remember.  
3 Q. No, you don't know one way or the  
4 other? Or, no, that didn't happen?  
5 A. I am not sure.  
6 Q. Okay. So I'm going to turn back to  
7 Exhibit Lancaster 6, the November 5th order.  
8 Spanning the first and second  
9 page, the Supreme Court stated that for the  
10 purposes of the November 8th, 2022, general  
11 election, incorrectly dated ballots or --  
12 strike that -- incorrectly dated outer  
13 envelopes are those with dates that fall  
14 outside the date range of September 19th, 2022,  
15 through November 8th, 2022.  
16 Did I read that correctly?  
17 A. Yes, for mail ballots.  
18 Q. So if somebody -- strike that.  
19 And is this the instruction that  
20 the Lancaster board followed in connection with  
21 mail ballots submitted in the 2022 election?  
22 A. Yes.  
23 Q. So if somebody wrote a date on their  
24 mail ballot envelope that preceded  
25 November 19th, 2022, you would have set it

Page 51

1 C. Miller  
2 anybody that their ballot was going to be set  
3 aside on this basis?  
4 A. No.  
5 Q. If anybody had separately learned,  
6 you know, by reading the news or following the  
7 secretary of state's website, if they had  
8 separately learned that this issue had come up,  
9 could they have come in and cast a provisional  
10 ballot on Election Day if they chose to do so?  
11 MR. ZIMOLONG: Objection. Asks  
12 the witness to guess.  
13 BY MR. LONEY:  
14 Q. Do you know whether that was an  
15 option?  
16 A. Any voter could vote a provisional  
17 ballot on Election Day at their precinct.  
18 - - -  
19 (Stenographer clarification.)  
20 - - -  
21 BY MR. LONEY:  
22 Q. Do you know if anybody, in fact, cast  
23 a provisional ballot who also had their prior  
24 attempt at voting by mail set aside based on  
25 the Supreme Court's orders in Ball?

Page 53

1 C. Miller  
2 aside?  
3 A. Correct.  
4 Q. And if somebody wrote September 20th,  
5 2022, and everything else appeared in order,  
6 that would have been in compliance with the  
7 election code, as interpreted by the  
8 Pennsylvania Supreme Court, and so the  
9 Lancaster board would have opened that envelope  
10 and canvassed the ballot?  
11 A. If the date was withinside what the  
12 order gave us, yes, we would have counted it.  
13 Q. Including September 20th, in  
14 particular?  
15 A. I believe the order was from the 19th  
16 through the 8th. So the 20th would have been  
17 included.  
18 Q. So am I correct, though, that  
19 Lancaster County did not even start issuing  
20 mail ballot packets until September 26th?  
21 A. Correct.  
22 Q. So nobody could have actually been  
23 signing that envelope as early as  
24 September 20th?  
25 A. Correct.

Page 54

1 C. Miller

2 Q. But if they wrote "September 20th,

3 2022," the envelope would not have been set

4 aside on the basis of the Ball order?

5 A. Correct.

6 Q. If somebody wrote a date after

7 November 8th, 2022, you also would have set

8 that aside pursuant to the court order?

9 A. Correct. Except for a military

10 ballot was a different deadline.

11 Q. And what was the military ballot

12 deadline?

13 A. The military -- sorry.

14 Military ballots are due back to

15 county boards of elections one week

16 postelection. So this past election would have

17 been November 15th.

18 Q. Okay. So if a military ballot voter

19 got their ballot back by November 15th but

20 wrote a date on the envelope that postdated

21 November 15th, that would have been set aside?

22 A. Yes, that would have been set aside.

23 Q. What about somebody who wrote

24 "October 2022" but didn't provide the exact

25 day?

Page 56

1 C. Miller

2 Q. Why? Didn't that person date the

3 envelope, and isn't October 1st in the range?

4 A. Again, that would have been set aside

5 to be looked at at the canvass as part of the

6 election.

7 I do not believe that we had any

8 like that, though. So I would be speculating

9 what we would have done.

10 Q. Okay. And all of the -- just so I'm

11 clear, all of the ballots at issue in this case

12 were submitted for the 2022 general election,

13 right?

14 A. Correct.

15 Q. And you know for sure that nobody

16 submitting any of these ballots filled them out

17 earlier in the year than September 26th because

18 that's when you first started issuing the

19 ballot packages, right?

20 A. Military ballots are different from

21 that. But all normal mail-in or absentee

22 ballots, that is correct.

23 Q. Will you agree with me that the date

24 line on the voter declaration on the return

25 envelope doesn't actually specify that the

Page 55

1 C. Miller

2 A. I don't remember. I believe we would

3 have set those aside as it was not a full date.

4 Q. Okay. But the entire month of

5 October is within the range provided by the

6 Supreme Court, right?

7 A. Correct.

8 Q. But if they said "October 2022," you

9 still would have set that aside?

10 A. I don't remember that we had anything

11 like that to actually have looked at. Those

12 would have just been set aside to look at at

13 the canvassing, and then a decision would have

14 been made.

15 Q. Okay. And if we could look at the

16 copies of the mail ballot envelopes, we might

17 find some in there that say "October 2022"?

18 A. I don't know off the top of my head.

19 Q. What about if somebody wrote the

20 month and day that was between September 19th

21 and November 8th but didn't write a year?

22 So if somebody just wrote

23 "October 1st" with no year, would you have set

24 that aside?

25 A. Yes.

Page 57

1 C. Miller

2 voter has to write the year or, as you put it,

3 the full date?

4 MR. ZIMOLONG: Objection to

5 form. Calls for speculation.

6 THE WITNESS: I would need to

7 see one in front of me to look at how we

8 have it.

9 BY MR. LONEY:

10 Q. But sitting here right now, you don't

11 recall whether it says full date, month, day,

12 year?

13 A. I believe that it does, but I would

14 just need to see one to confirm that.

15 Q. Now, the November 5th supplemental

16 order of the Supreme Court said the envelopes

17 could be dated through November 8th, 2022.

18 Did the Lancaster board apply

19 that literally to mean, if somebody wrote

20 "November 8th, 2022," that was within the range

21 because it's through November 8th and that

22 ballot would be counted?

23 A. Yes.

24 Q. And we're only talking about

25 envelopes that were received by 8:00 p.m. on



Page 58

1 C. Miller  
2 Election Day, right, leaving aside what -- the  
3 qualification you gave earlier about military  
4 votes?  
5 A. Correct.  
6 Q. Now, if an envelope comes in with a  
7 postmark on it, you know that it was mailed and  
8 not placed in a drop box by the voter, right?  
9 A. Correct.  
10 Q. And we know -- would you agree with  
11 me that any ballot received through the U.S.  
12 mail by 8:00 p.m. on Election Day must have  
13 been placed in a mailbox sometime before  
14 Election Day?  
15 MR. ZIMOLONG: Objection to  
16 form.  
17 You can answer.  
18 THE WITNESS: Correct.  
19 BY MR. LONEY:  
20 Q. Which must mean that anybody who  
21 mailed their ballot in time for it to be  
22 received on November 8th could not have been  
23 signing the envelope on November 8th?  
24 MR. ZIMOLONG: Objection.  
25 Beyond the scope of the Rule 30(b)(6)

Page 60

1 C. Miller  
2 else appeared to be in order, the Lancaster  
3 board would have counted it, period, full stop,  
4 right? There's no further evaluation as to  
5 whether or not the person signed it on  
6 November 8th?  
7 MR. ZIMOLONG: Objection to  
8 form.  
9 THE WITNESS: As long as it was  
10 received by 8:00 p.m. on Election Day.  
11 BY MR. LONEY:  
12 Q. And because that's what the Supreme  
13 Court instructed, not because you're using the  
14 voter-written date to make a determination as  
15 to when the voter actually signed their  
16 envelope, right?  
17 A. Correct. We would not know that.  
18 Q. Let's talk a bit about dates falling  
19 after November 8th, and I'm going to limit  
20 these questions to domestic mail-in ballots,  
21 right. So leaving aside the military ballots  
22 that might have come in by the 15th.  
23 If you receive an envelope by  
24 8:00 p.m. on Election Day, you know for a fact  
25 that the voter didn't fill out their ballot

Page 59

1 C. Miller  
2 notice.  
3 She's here as a fact witness.  
4 You're getting into opinion testimony.  
5 You can answer to the extent you  
6 understand it.  
7 BY MR. LONEY:  
8 Q. Do you understand my question?  
9 A. I do.  
10 We do work with our local postal  
11 service, and they do deliver on Election Day.  
12 Multiple carriers come in. So there is a  
13 chance that, if someone put one in a mailbox on  
14 the 8th, we would still receive it on the 8th.  
15 Q. Fair enough.  
16 So the Lancaster board didn't do  
17 anything to evaluate when somebody put  
18 "November 8th, 2022," on their mail-in envelope  
19 to see whether they could have actually signed  
20 it on the same day?  
21 A. I'm not sure I understand that  
22 question.  
23 Q. I'll ask a different question.  
24 If the date showing on the outer  
25 envelope was November 8th, 2022, and everything

Page 61

1 C. Miller  
2 after November 8th, regardless of what they  
3 wrote on the envelope, right?  
4 A. Correct.  
5 Q. But pursuant to the court order, you  
6 still would have set aside any envelope where  
7 the voter wrote a date that falls after  
8 November 8th, 2022, even if it was received by  
9 8:00 p.m. on Election Day, right?  
10 A. Correct.  
11 Q. And that's because you're  
12 following -- strictly following the court  
13 order, not because you're using the  
14 voter-written date to determine when the voter  
15 actually filled out the ballot, right?  
16 A. Correct.  
17 Q. What about envelopes received after  
18 Election Day?  
19 Leaving aside for a second the  
20 date issue on what's written on the envelope,  
21 what does the Lancaster board do with mail  
22 ballots received after Election Day?  
23 A. They are time-stamped in to show when  
24 we received them, and then they are set aside  
25 and not -- and not counted.

Page 62

1 C. Miller

2 Q. And they're set aside and not counted

3 regardless of the date the voter writes on

4 them, right?

5 A. Correct.

6 Q. So if the voter doesn't get their

7 mail ballot to the board by 8:00p.m.

8 on Election Day, they couldn't possibly get

9 their late vote counted by backdating the

10 signature on the envelope, right?

11 A. Correct.

12 Q. So whether or not you receive a

13 ballot before 8:00 p.m. on Election Day has

14 nothing to do with whether the voter wrote

15 "November 8th, 2022," or some earlier date on

16 the envelope?

17 A. Correct.

18 Q. Now, going to the other end of the

19 timeline, envelopes dated before

20 September 19th, 2022. Again, I'll focus on

21 domestic mail ballots, leaving aside the

22 military ballots.

23 There is no way anybody in

24 Lancaster County could have actually filled out

25 the 2022 general election paperwork before

Page 64

1 C. Miller

2 A. Military ballots are absentee

3 ballots.

4 Q. So the Pennsylvania Supreme Court

5 said on November 5th, 2022, that an incorrectly

6 dated outer envelope for absentee ballots would

7 be one with a date falling outside the range of

8 August 30th, 2022, through November 8th, 2022.

9 But you still would have counted

10 a military absentee ballot received and dated

11 up through November 15th?

12 A. Received by the 15th. It still would

13 have to be dated by the 8th.

14 Q. Understood.

15 So if you receive a military

16 absentee ballot on November 14th, that met the

17 submission deadline; but if the date the voter

18 wrote on that envelope was November 9th, you

19 would have set it aside pursuant to the court

20 order?

21 A. Correct.

22 Q. Got it.

23 Would the same thing be true of

24 people who might have flipped the day and the

25 month in their -- in how they write their date?

Page 63

1 C. Miller

2 September 19th, right?

3 A. Correct.

4 Q. So even if somebody wrote "9/1/2022"

5 on their envelope, you knew for a fact they

6 could not have actually tried to vote using

7 this paperwork on 9/1/2022?

8 A. Correct.

9 Q. But you would have set aside that

10 envelope anyway because that's what the Supreme

11 Court instructed, right?

12 A. For mail ballots, yes. Absentees had

13 a different date range.

14 Q. Do you know what the date range was

15 for absentee?

16 A. August 30th through November 8th.

17 Q. And so I can put up the document

18 again, but I just read it. And good memory;

19 that's exactly what the document said in the

20 next part. It wasn't intended to be a memory

21 test.

22 But it said August 30th, 2022,

23 through November 8th, 2022, and did not set

24 forth a different deadline for military

25 ballots, right?

Page 65

1 C. Miller

2 So, for example, some people who

3 wish to indicate November 4th might write

4 4/11 instead of 11/4?

5 MR. ZIMOLONG: Objection to

6 form.

7 You can answer.

8 BY MR. LONEY:

9 Q. Is that something you're aware of

10 people doing out in the world?

11 MR. ZIMOLONG: Calls for

12 speculation as to what people out in the

13 world do.

14 THE WITNESS: If somebody did,

15 we -- yes. I mean, I'm sure that

16 happened. But that would be seen as

17 month, date, year in our office.

18 BY MR. LONEY:

19 Q. So your office would not have done

20 anything to evaluate whether flipping the day

21 and the month in the order would have actually

22 cured a problem? You just did not count it if

23 it didn't hit the range, assuming everybody is

24 writing month then day then year?

25 A. Correct.

Page 66

1 C. Miller

2 MR. LONEY: I think now would be

3 a good time to take five minutes before I

4 get into the next stretch.

5 Can we go off the record.

6 - - -

7 (Whereupon, a short recess was

8 taken.)

9 - - -

10 MR. LONEY: Ms. Miller, I'm

11 going to show the next exhibit and ask the

12 Court Reporter to mark Tab 7 as Exhibit

13 Lancaster 7.

14 - - -

15 (Whereupon, Exhibit 7 was marked

16 for identification.)

17 - - -

18 MR. LONEY: I'm sharing my

19 screen now.

20 BY MR. LONEY:

21 Q. Ms. Miller, do you see on the screen

22 a mail-in ballot envelope sample?

23 A. I do, yes.

24 MR. LONEY: Okay. And for the

25 record, I'll note that, in order to orient

Page 68

1 C. Miller

2 right now, from what Lancaster County voters

3 got?

4 A. Again, I would have to see ours

5 directly next to it in order to compare.

6 Q. Okay. Well, this exhibit shows a

7 date line. It says "today's date" and, in

8 parentheses, "required."

9 Do you see where I'm looking?

10 A. I do.

11 Q. And there's nothing there that

12 requires -- to our earlier conversation --

13 requires that month, day, and year be provided

14 in that order, is there?

15 MR. ZIMOLONG: Objection to

16 form.

17 You can answer.

18 THE WITNESS: Not for Dauphin

19 County. But, again, I would need to see

20 Lancaster's county next to it.

21 BY MR. LONEY:

22 Q. Do the counties have different forms

23 for these declarations and outer envelopes

24 within the Commonwealth of Pennsylvania?

25 A. Yes.

Page 67

1 C. Miller

2 my next line of questioning, I'm using a

3 couple of examples from Dauphin County's

4 production because we don't have any

5 produced by Lancaster County. And Dauphin

6 is a neighboring county to Lancaster that

7 redacted all of the personal identifying

8 information of any voter on any of these

9 envelopes.

10 I understand that the plaintiffs

11 in the 340 case have also received the

12 same production pursuant to protective

13 order.

14 BY MR. LONEY:

15 Q. So this Exhibit Number 7,

16 Lancaster 7, does this show the same

17 declaration form that voters in Lancaster

18 County would have gotten for the 2022 general

19 election?

20 A. I would need to see one of ours with

21 it to confirm, but it looks similar.

22 Q. You don't see anything on here

23 that -- other than the markings at the very

24 bottom for this case, you don't see anything on

25 here that would distinguish it, as you sit here

Page 69

1 C. Miller

2 Q. Okay. So we would need to see one of

3 the Lancaster envelopes to know whether there's

4 a month, day, year requirement?

5 A. Correct.

6 Q. Also, in Exhibit Lancaster 7, there

7 is a date stamp -- date and time stamp near the

8 top. I've just highlighted it.

9 Do you see that?

10 A. Yes.

11 Q. Did the Lancaster board also apply a

12 date stamp to incoming mail ballot envelopes?

13 A. Yes.

14 Q. And the date stamp on the return

15 envelope stamped by the Lancaster board would

16 reflect the day the envelope was received by

17 the board, right?

18 A. Correct.

19 Q. So if the date stamp applied by the

20 Lancaster board was before 8:00 p.m. on 1/8/22,

21 that envelope was received in time under the

22 election code, right?

23 A. Correct.

24 Q. Now, looking specifically at the

25 document marked Lancaster 7, there's a

Page 70

1 C. Miller  
2 handwritten date on this envelope that reads  
3 "11/7/2012."  
4 Do you see that?  
5 A. I do.  
6 Q. Now, if this were received in  
7 Lancaster County, it couldn't possibly be  
8 somebody who actually tried to vote in 2012,  
9 right?  
10 A. Correct.  
11 Q. And nobody -- none of us knew that  
12 Dr. Oz was running for Senate in 2012.  
13 So had you received an envelope  
14 in Lancaster County where somebody, similarly,  
15 wrote "2012" as the year instead of "2022,"  
16 would that have indicated to you that the voter  
17 was engaging in any sort of fraud?  
18 A. Not fraud.  
19 Q. But you would have set aside this  
20 vote because it's incorrectly dated because it  
21 falls outside the date range ordered by the  
22 Supreme Court, right?  
23 A. Correct.  
24 Q. And that's because you were following  
25 the Supreme Court's instructions, not because

Page 72

1 C. Miller  
2 If the stamp on the envelope  
3 indicates the mail ballot was received in time,  
4 right -- so the stamp is on or before  
5 November 8th, right?  
6 A. Yes.  
7 Q. And you know that nobody voted before  
8 September 26th, 2022, because nobody could have  
9 gotten the mail ballot forms before that,  
10 right, in Lancaster County?  
11 A. Correct.  
12 Q. And so you know everybody who  
13 submitted one of these envelopes between the  
14 time you issued the mail ballot packages and  
15 the November 8th stamp voted -- actually filled  
16 out their envelope during that window, right?  
17 MR. ZIMOLONG: Objection to  
18 form. Calls for speculation.  
19 THE WITNESS: One would have to  
20 assume that.  
21 BY MR. LONEY:  
22 Q. I mean, there's no way they could  
23 have voted before September 26th, right?  
24 A. Correct.  
25 Q. And there's no way they could have

Page 71

1 C. Miller  
2 you would look at this 2012 date to determine  
3 when the voter actually filled out their  
4 ballot, right?  
5 A. We would have been following the  
6 order from the Court.  
7 Q. But you wouldn't have viewed this  
8 2012 date as any indication that somebody was  
9 attempting to mark their ballot outside of the  
10 allowable date, right?  
11 A. I'm not sure I completely understand  
12 that question.  
13 Q. I'll ask a different question.  
14 Does it matter to the Lancaster  
15 County board whether somebody was actually  
16 marking their ballot within the date range if  
17 they got the wrong date on the envelope?  
18 MR. ZIMOLONG: Objection to  
19 form.  
20 To the extent you understand the  
21 question.  
22 THE WITNESS: Yeah, I -- can you  
23 rephrase that.  
24 BY MR. LONEY:  
25 Q. Sure. If somebody -- strike that.

Page 73

1 C. Miller  
2 voted after November 8th if you stamped the  
3 envelope "received" on or before November 8th,  
4 right?  
5 A. Correct.  
6 Q. So in those situations, does any of  
7 that matter once you see that somebody  
8 mistakenly put "2012" instead of "2022" on  
9 their envelope?  
10 A. For this election, it did not because  
11 the Supreme Court order gave us date ranges to  
12 use.  
13 MR. LONEY: I'm going to ask the  
14 Court Reporter to mark the next exhibit,  
15 which is Tab 8, as Lancaster 8.  
16 - - -  
17 (Whereupon, Exhibit 8 was marked  
18 for identification.)  
19 - - -  
20 MR. LONEY: Share that on my  
21 screen.  
22 BY MR. LONEY:  
23 Q. This is another example from Dauphin  
24 County.  
25 Do you have another mail ballot

Page 74

1 C. Miller  
2 envelope sample up on your screen?  
3 A. I do.  
4 Q. And there's also a stamp on this  
5 example near the top, similar to the date  
6 stamps that the Lancaster board applied when it  
7 received incoming mail ballots, right?  
8 A. Correct.  
9 Q. And there's also a handwritten date  
10 on this envelope that reads "1/1/22," right?  
11 A. Correct.  
12 Q. And just like the last example, we  
13 know nobody filled out a mail-in ballot for the  
14 November '22 election as early as New Year's  
15 Day 2022, right?  
16 A. Correct.  
17 Q. But if the person had just put an  
18 extra 1 in front of the 1 that's currently  
19 there for the month so that it would read  
20 11/1/22 instead of 1/1/22, that would have been  
21 in compliance with the dating rule, right?  
22 A. If it said 11/1, yes.  
23 Q. Right. So if the Lancaster board  
24 didn't inquire as to whether that was a simple  
25 mistake, that somebody wrote 1 instead of 11,

Page 76

1 C. Miller  
2 BY MR. LONEY:  
3 Q. Do you have another mail ballot  
4 envelope sample up on your screen?  
5 A. I do.  
6 Q. And, again, this envelope has a  
7 handwritten date on it that reads "8/11/22,"  
8 right?  
9 A. Correct.  
10 Q. Now, this could be an example, could  
11 it not, of what we were talking about before?  
12 If somebody switched month and day, they wrote  
13 day/month, then they were actually writing  
14 Election Day on this envelope, right?  
15 MR. ZIMOLONG: Objection to  
16 form. Calls for speculation.  
17 THE WITNESS: It's not up to our  
18 office to assume what someone is writing.  
19 We can only look at exactly what's in  
20 front of us and what is submitted.  
21 BY MR. LONEY:  
22 Q. But you did assume that everybody  
23 wrote month/day/year, and that was their  
24 intent, right?  
25 A. Again, I would have to look at our

Page 75

1 C. Miller  
2 they would have set this aside based on what  
3 appears on the face of the envelope, right?  
4 MR. ZIMOLONG: Objection to  
5 form.  
6 You can answer.  
7 THE WITNESS: Yes. We take the  
8 date that is written by the voter.  
9 BY MR. LONEY:  
10 Q. And that's, again, because that's  
11 what the Supreme Court instructed you to do,  
12 not because you would look at a January date  
13 and think that the person actually tried to  
14 vote in January, right?  
15 A. Correct.  
16 MR. LONEY: I'm going to ask the  
17 Court Reporter to mark the next one, which  
18 is Tab 9, as Exhibit Lancaster 9.  
19 - - -  
20 (Whereupon, Exhibit 9 was marked  
21 for identification.)  
22 - - -  
23 MR. LONEY: I'll share that up  
24 on my screen now.  
25

Page 77

1 C. Miller  
2 envelope to see if that is actually on our  
3 envelope.  
4 Q. And we would also have to look at  
5 your envelopes to see if they are actually on  
6 your envelope, right?  
7 A. Correct.  
8 Q. But in any event, if somebody wrote a  
9 date that -- assuming it's month/day/year and  
10 that didn't fall within the range ordered by  
11 the Supreme Court, the Lancaster board didn't  
12 inquire as to whether it could have been  
13 someone intending to write day/month/year?  
14 A. We did not.  
15 Q. And this example up on the screen,  
16 this is one that you would have set aside  
17 without further inquiry, right?  
18 A. Correct.  
19 MR. LONEY: I'll ask the Court  
20 Reporter to mark the next one, which is  
21 Tab 11, as Exhibit Lancaster 10, if that  
22 makes sense.  
23 - - -  
24 (Whereupon, Exhibit 10 was  
25 marked for identification.)

Page 78

1 C. Miller  
2 - - -  
3 MR. LONEY: And I'm sharing that  
4 on the screen now.  
5 BY MR. LONEY:  
6 Q. Ms. Miller, do you see another sample  
7 ballot envelope on your screen?  
8 A. I do.  
9 Q. And on this one, again, there's a  
10 stamp near the top similar to the stamps that  
11 the Lancaster board applied when it received  
12 incoming mail ballots, right?  
13 A. Yes.  
14 Q. And that stamp is, in this example,  
15 October 27th, 2022.  
16 Do you see that?  
17 A. I do.  
18 Q. And there's also a handwritten date  
19 on this envelope which reads "11/25/22," right?  
20 A. Correct.  
21 Q. Now, if you had received or seen an  
22 envelope in Lancaster County dated  
23 November 25th, 2022, would that have indicated  
24 to you that somebody tried to vote after  
25 Election Day?

Page 80

1 C. Miller  
2 - - -  
3 (Whereupon, Exhibit 11 was  
4 marked for identification.)  
5 - - -  
6 BY MR. LONEY:  
7 Q. Do you see another example mail  
8 ballot envelope on your screen?  
9 A. I do.  
10 Q. So this document that's being marked  
11 as Lancaster 11 actually has two dates written  
12 on it. One reads "9/25/22." It looks like  
13 somebody put an X through at least part of  
14 that. And then there's another date written  
15 below it that's "3/6/1944."  
16 Do you see that?  
17 A. I do.  
18 Q. Now, did you -- do you remember, in  
19 Lancaster County, receiving any mail ballot  
20 envelopes and setting them aside that had dates  
21 that were long in the past?  
22 A. Yes.  
23 Q. Did you look to see if any of those  
24 ballots came from people who wrote their birth  
25 dates on the envelopes instead of the day they

Page 79

1 C. Miller  
2 A. No.  
3 Q. And if you look at the comparison  
4 between the date written and the date stamped,  
5 if the person had put 10/25 instead of 11/25,  
6 that would have been in compliance and signed  
7 just two days before the board received it,  
8 right?  
9 A. Correct.  
10 Q. But in Lancaster County's approach,  
11 if you had seen this, you would set it aside  
12 without further inquiry as to whether or not  
13 the person intended to write "October" instead  
14 of "November," right?  
15 A. Correct.  
16 Q. And, again, that's because that's  
17 what the Supreme Court ordered and not because  
18 you had any inclination that somebody mailed in  
19 a ballot in October but actually filled it out  
20 in November?  
21 A. Correct.  
22 MR. LONEY: I'm going to ask the  
23 Court Reporter to mark as Exhibit  
24 Lancaster 11 what we previously sent over  
25 as Tab 12.

Page 81

1 C. Miller  
2 were voting?  
3 A. We did not go back to look at that.  
4 We took just what the date was written.  
5 Q. So in this example, you would have  
6 set it aside because the date that's not  
7 crossed out is from 1944, which is obviously  
8 outside of the date range ordered by the  
9 Supreme Court, right?  
10 A. I would be speculating on that,  
11 without seeing this unredacted, to see what  
12 else was on this envelope and why there were  
13 two dates.  
14 Q. Ah. So you're saying -- so there are  
15 a couple of things redacted here, not just the  
16 signature.  
17 Are you saying that you might --  
18 if somebody wrote some sort of explanation  
19 underneath, that might have weighed into your  
20 thinking?  
21 A. Again, I would just need to see it  
22 unredacted to know what we would have done.  
23 Q. Now, if the Lancaster board had seen  
24 an envelope or if you had seen an envelope  
25 submitted with just "3/6/1944" in the date line



Page 82

1 C. Miller  
2 and nothing else other than the signature, you  
3 would have set that aside, right?  
4 A. Correct.  
5 Q. And not because you thought somebody  
6 had actually filled out a ballot in 1944 and  
7 saved it until 2022, right? It's just because  
8 you were following the Supreme Court's order  
9 as -- as written, right?  
10 A. Correct.  
11 Q. Now, does this indicate to you, if  
12 somebody wrote a date long in the past, that  
13 the voter was engaging in any sort of voter  
14 fraud?  
15 A. No.  
16 Q. And did the Lancaster board initiate  
17 any investigations of any voters who wrote  
18 dates from the 1900s on their outer envelopes  
19 to see if they were committing voter fraud?  
20 A. No.  
21 Q. Did you refer anybody to the police  
22 from the November 2022 general election for  
23 putting dates long in the past in the 1900s?  
24 A. No.  
25 MR. LONEY: Is anybody else as

Page 84

1 C. Miller  
2 Do you see where I'm reading  
3 from?  
4 A. Yes.  
5 Q. And then the Lancaster board  
6 responded: "Denied to the extent that the  
7 request is referring to the deadline referenced  
8 in Section 3150.16(c)."  
9 Do I have that right?  
10 A. Yes, I see that.  
11 Q. Now, do you happen to know whether  
12 3150.16(c) is the provision requiring mail  
13 ballots to be received at the county Board of  
14 Elections by 8:00 p.m. on Election Day?  
15 A. Without it in front of me, I would be  
16 speculating on that. But I believe that it is.  
17 Q. Okay. So if we -- and I will  
18 represent, for the purpose of the next  
19 question, that that was our intent in writing  
20 this request, right.  
21 The question is asking the  
22 Lancaster board to admit that it has never  
23 referred to the date handwritten on the mail  
24 ballot envelope to establish whether the ballot  
25 was received on Election Day or before.

Page 83

1 C. Miller  
2 disturbed as I am by continuing to say  
3 "the 1900s" like it's three centuries ago?  
4 You don't have to answer that.  
5 MR. ZIMOLONG: No. I think  
6 maybe people just aren't as disturbed as  
7 you by it.  
8 MR. LONEY: I'm going to go back  
9 for a moment to the requests for  
10 admission, which I believe are Exhibit  
11 Lancaster 2.  
12 I'm putting that back up on the  
13 screen.  
14 BY MR. LONEY:  
15 Q. So do you have the requests for  
16 admissions back up on the screen?  
17 A. Yes.  
18 Q. I'm going to focus in on the second  
19 request and denial here.  
20 Plaintiffs asked for an  
21 admission that the Lancaster board had never  
22 referred to the date handwritten on a mail  
23 ballot return envelope to establish whether  
24 you, the Lancaster board, received the ballot  
25 by the applicable deadline.

Page 85

1 C. Miller  
2 So with that understanding, can  
3 you help me understand why this statement is  
4 denied?  
5 MR. ZIMOLONG: Objection.  
6 BY MR. LONEY:  
7 Q. It doesn't sound like, from our prior  
8 conversation -- like the Lancaster board  
9 actually uses the date written to determine the  
10 date received.  
11 MR. ZIMOLONG: Objection to  
12 form.  
13 BY MR. LONEY:  
14 Q. Is that right?  
15 A. We don't use -- can you rephrase  
16 that. I'm sorry.  
17 Q. Sure. I'll just ask it separate from  
18 the request for admission.  
19 The Lancaster board doesn't  
20 actually use the date written on the envelope  
21 to establish when the ballot is received by the  
22 board, does it?  
23 A. No.  
24 Q. I mean, it stamps the date received  
25 on the envelope.

Page 86

1 C. Miller  
2 It doesn't adjust the date on  
3 the stamp according to the date written by the  
4 voter, right?  
5 A. Correct.  
6 Q. So if we had written this statement  
7 more cleanly to say that -- to say exactly  
8 that, that the Lancaster board does not use the  
9 date written by the voter to determine whether  
10 the envelope was received by Election Day, it  
11 shouldn't be a denial, right? That should be  
12 admitted?  
13 MR. ZIMOLONG: Objection to  
14 form.  
15 You can answer.  
16 THE WITNESS: I would be  
17 speculating what the board would agree to  
18 for that answer. But for my own self, I  
19 would say correct.  
20 BY MR. LONEY:  
21 Q. So I asked a second ago about whether  
22 anybody was referred to the police or  
23 investigated for fraud.  
24 Of the 232 voters whose mail  
25 ballots were set aside in the 2022 general

Page 88

1 C. Miller  
2 A. Correct. To the district attorney.  
3 Q. To the district attorney. Okay.  
4 Now, that person was referred  
5 for voting another person's ballot, right? It  
6 was their mother's ballot?  
7 A. Correct.  
8 Q. And that person was caught because  
9 their mother was deceased by Election Day,  
10 right?  
11 A. Their mother was deceased when we  
12 received the ballot back.  
13 Q. And did that -- those are mail ballot  
14 envelopes, right -- or it was a mail ballot  
15 envelope that purported to come from the  
16 deceased person, right?  
17 A. Correct.  
18 Q. Did that mail ballot envelope have a  
19 date on it under the signature?  
20 A. It did.  
21 Q. Was the date within the range that --  
22 strike that.  
23 Did it have a correct date on  
24 it?  
25 MR. ZIMOLONG: Objection to

Page 87

1 C. Miller  
2 election based on this envelope dating issue,  
3 how many of those are being investigated for  
4 voter fraud?  
5 A. None.  
6 Q. And are you aware of any other cases  
7 involving alleged fraud in connection with this  
8 mail ballot envelope-dating issue?  
9 MR. ZIMOLONG: Objection to  
10 form.  
11 What do you mean "this mail  
12 ballot dating envelope issue"?  
13 BY MR. LONEY:  
14 Q. Did you understand my question?  
15 A. No.  
16 Q. Okay. So I'll ask a different  
17 question.  
18 Are you aware of a Lancaster  
19 County voter being referred to the police in  
20 connection with the 2022 primary election --  
21 A. Yes.  
22 Q. -- for alleged voter fraud?  
23 A. Yes.  
24 Q. And you were the person who reported  
25 this voter to the police, right?

Page 89

1 C. Miller  
2 form.  
3 You can answer.  
4 THE WITNESS: It had a date on  
5 it. There was -- there was not a Supreme  
6 Court order for the primary with the date  
7 range.  
8 BY MR. LONEY:  
9 Q. Do you know whether it had a date  
10 that was many years in the past, into the  
11 1900s?  
12 A. No. The date on it was August 26th,  
13 2022.  
14 Q. August 26th or April 26th?  
15 A. Sorry. April 26th.  
16 Q. Have you seen the police report from  
17 that referral of -- well, strike that. I'll  
18 ask this first.  
19 The voter who was referred to  
20 the DA's office is named Cheryl Mihaliak; is  
21 that right?  
22 A. Correct.  
23 Q. And have you seen the police report  
24 or the criminal complaint against Cheryl  
25 Mihaliak before today?



Page 90

1 C. Miller

2 A. Yes.

3 MR. LONEY: I'm going to ask the

4 Court Reporter to mark as Exhibit

5 Lancaster 12 the document that we

6 previously emailed over as Tab 13.

7 - - -

8 (Whereupon, Exhibit 12 was

9 marked for identification.)

10 - - -

11 MR. LONEY: I'll share my

12 screen.

13 BY MR. LONEY:

14 Q. Do you have the police criminal

15 complaint up on your screen?

16 A. I do.

17 Q. And is this -- I'm going to scroll

18 through it. Tell me to slow down if I need to.

19 My first question, as I scroll

20 through, is: Is the document on your screen,

21 Exhibit Lancaster 12, the criminal complaint

22 against Cheryl Mihaliak --

23 A. Yes.

24 Q. -- that we were just talking about?

25 A. Yes, it is.

Page 92

1 C. Miller

2 Q. Ah. Thank you very much.

3 It also says that Teresa

4 Mihaliak was removed from the voter roles on

5 April 25th, 2022, right?

6 A. Correct.

7 Q. And that was before you received any

8 mail-in ballot for her?

9 A. Yes, the day before -- or three days

10 before.

11 Q. Got it.

12 So Lancaster -- the Lancaster

13 board has some mechanism for removing people

14 who die before Election Day from the voter

15 rolls, right?

16 A. Correct.

17 Q. And you would have done that in this

18 case for Teresa Mihaliak before any mail-in

19 ballot had been submitted on her behalf, right?

20 A. Correct.

21 Q. So as soon as you or the system saw

22 that Teresa Mihaliak had submitted a mail-in

23 vote after she had been removed from the voters

24 rolls because she had died, you knew that this

25 was an invalid vote, right?

Page 91

1 C. Miller

2 Q. And on the affidavit of probable

3 cause -- do you see where I am?

4 A. Yep.

5 Q. It appears to be written by Detective

6 Larry Martin.

7 Do you know who Larry Martin is?

8 A. I do.

9 Q. And did you provide a report of what

10 you knew about Ms. Mihaliak and her alleged

11 voter fraud to Detective Martin?

12 A. I did.

13 Q. Okay. In the second paragraph, it

14 says the ballot for the Democrat primary was

15 received on April 28th, 2022, by your office,

16 right?

17 A. Correct.

18 Q. And the mother, Teresa Mihaliak, had

19 been deceased since April 14th, right?

20 A. Correct.

21 Q. Now, the criminal complaint here does

22 not indicate what date, if any, was written on

23 Ms. Mihaliak's mail-in vote, right?

24 A. It was dated April -- it says it. It

25 says it was dated April 26th, 2022.

Page 93

1 C. Miller

2 A. Yes.

3 Q. You didn't need to look at the date

4 written on the envelope to determine that this

5 was an invalid vote?

6 A. We did.

7 Q. You did need to look at the envelope

8 to determine if this was an invalid vote?

9 A. Yes, because of when -- because of

10 how the dates lined up for all of it to have

11 happened.

12 She could have received -- she

13 did -- she would have received a ballot before

14 she died as well as the request. However, once

15 it was returned, she had already been deceased

16 for, I believe, almost two weeks.

17 Q. Right. And dying two weeks before

18 the ballot comes in makes the vote invalid as a

19 matter of course, right?

20 A. Oh, yes. It would have been

21 invalidated it either way.

22 Q. Right. So regardless of the date

23 written on the envelope, that vote would not

24 have counted?

25 A. Correct.

Page 94

1 C. Miller

2 Q. Because you had already caught that

3 Teresa Mihaliak had died and removed her from

4 the voter rolls before Election Day?

5 A. Yes.

6 Q. And I understand that the police are

7 interested in how the dates line up because

8 they're, presumably, going for a fraud case

9 against Cheryl Mihaliak.

10 But just focusing on whether

11 this was a valid vote, the date written on the

12 envelope didn't matter one way or the other?

13 A. Correct. When we received it back,

14 as we had already removed her, that ballot

15 would have been set to the side.

16 MR. LONEY: We can put this

17 aside for a second. I want to get back

18 for a moment to military and overseas

19 ballots.

20 And I'd like to go back to

21 Exhibit Lancaster 3, the interrogatory

22 responses.

23 If everybody would just bear

24 with me for a second while I'm chopping

25 things out of my outline to get us out of

Page 96

1 C. Miller

2 Interrogatory Number 1.

3 Is that back up on your screen?

4 A. Yes.

5 Q. In interrogatory Number 1, we asked

6 for the numbers, how many ballots and how many

7 military-overseas ballots voters returned to

8 the Lancaster board in the 2022 general

9 election.

10 And in response, the Lancaster

11 board stated that it had received 34,202 mail

12 ballots and 188 military-overseas ballots.

13 Do I have that right?

14 A. Yes.

15 Q. Now, I'm going to scroll down to

16 Interrogatory Number 15.

17 Please, again, let me know if

18 you feel like you need to read anything in

19 between to contextualize.

20 A. Okay.

21 Q. But in Number 15, we asked whether

22 the Lancaster board counted timely received

23 military-overseas ballots in the 2022 general

24 election where the voter failed to write a date

25 on the voter declaration or included a date

Page 95

1 C. Miller

2 here sooner.

3 BY MR. LONEY:

4 Q. Okay. So I'm sharing, again, Exhibit

5 Lancaster 3. And I've jumped to page 3, the

6 response to Interrogatory Number 1.

7 Do you see where I am?

8 A. I do.

9 Q. Actually, I'm going to ask to go off

10 the record for a few minutes.

11 - - -

12 (Whereupon, a short recess was

13 taken.)

14 - - -

15 BY MR. LONEY:

16 Q. Ms. Miller, we were talking right

17 before the break about Cheryl Mihaliak, if I

18 pronounced that correctly.

19 Are you aware of any other

20 Lancaster County voters being investigated for

21 voter fraud since your time working with the

22 Lancaster board?

23 A. I am not.

24 Q. Let me go back to sharing Exhibit

25 Lancaster 3. We were just about to talk about

Page 97

1 C. Miller

2 that was incorrect.

3 Do you see where I'm reading

4 from?

5 A. Yes.

6 Q. And the answer here from the

7 Lancaster board is no.

8 So the first question I have is:

9 Is that right that the -- of the 188

10 military-overseas ballots there were none set

11 aside because of a missing date or incorrect

12 date on the return envelope?

13 A. Correct.

14 Q. Now, is that because all 188 of those

15 voters wrote a correct date under their

16 signature on the return envelope, or is it

17 because the Lancaster board counted some

18 that -- strike that.

19 I'll just ask the first part of

20 that.

21 Is that because all 188 -- I'm

22 going to strike the last question or partial

23 question and just ask a new one, which is: Is

24 this answer to Interrogatory Number 15 because

25 all 188 military-overseas voters wrote a date

Page 98

1 C. Miller  
2 that the Lancaster board deemed to be correct  
3 on their outer envelopes?  
4 A. Correct.  
5 MR. LONEY: Those are all of my  
6 questions for now. Thank you very much.  
7 - - -  
8 (Whereupon, there was an  
9 off-the-record discussion.)  
10 - - -  
11 E X A M I N A T I O N  
12 - - -  
13 BY MR. OSHER:  
14 Q. Good afternoon, Ms. Miller. My name  
15 is Dan Osher. I represent the plaintiffs in  
16 the second of these two cases, and I only have  
17 a few questions for you to add on here.  
18 Can you remind me? What is your  
19 position at the county?  
20 A. I am the -- sorry.  
21 I am the chief clerk, chief  
22 registrar of the Lancaster County Board of  
23 Elections and Registration Commission.  
24 Q. So how -- can you describe what the  
25 relationship is between your position and the

Page 100

1 C. Miller  
2 mean both mail-in ballots and absentee  
3 ballots -- does the board make a determination  
4 of whether that person is eligible to  
5 participate in the election?  
6 A. I'm not sure I understand.  
7 Q. Sure. So you said -- in response to  
8 my question of after the person successfully  
9 registers to vote, I asked you does the board  
10 make any future determinations about that  
11 person's eligibility to participate in  
12 elections, and you said the board does roll  
13 maintenance.  
14 And so my question was: When a  
15 person submits an application to vote by mail,  
16 whether mail-in or absentee, does the board  
17 make a determination again as to whether that  
18 voter is eligible to vote?  
19 A. Yes. The first thing we do is to  
20 make sure that that person is actually a  
21 registered voter first before we process any  
22 mail ballot applications.  
23 Q. Okay. And -- okay. That answered my  
24 question. Thank you.  
25 So does the Board of Elections

Page 99

1 C. Miller  
2 Board of Elections?  
3 A. The Board of Elections directly  
4 oversees my position at our office.  
5 Q. Understood. Okay.  
6 So in terms of when the board  
7 actually determines when a person is eligible  
8 to vote, when does that occur in the process of  
9 a person -- let's say a person moves to  
10 Pennsylvania, wants to register to vote and  
11 participate in Pennsylvania's elections.  
12 When does the Board of Elections  
13 determine that that person is eligible to cast  
14 a ballot in one of their elections?  
15 A. When we are registering them to vote.  
16 Q. Okay. After that point, let's say  
17 that the person successfully registers to vote,  
18 does the board determine whether that voter is  
19 eligible to cast the ballot at any point in the  
20 future?  
21 A. There are many voter roll maintenance  
22 programs that we do throughout every single  
23 year, so yes.  
24 Q. When a person submits a mail ballot  
25 application -- and when I say "mail ballot," I

Page 101

1 C. Miller  
2 use the date that is written on the mail ballot  
3 return envelope to determine that person's  
4 eligibility to vote?  
5 A. In a way, yes. Because sometimes,  
6 when they come back, if it's a deceased voter,  
7 then we have to remove it.  
8 Q. Okay. And when is that person's  
9 eligibility to vote determined?  
10 Is it based on when they  
11 submitted the ballot? Is it based on Election  
12 Day?  
13 What is the date by which you  
14 determine that person's eligibility to vote in  
15 a particular election?  
16 A. We pull deceased voter ballots up  
17 through Election Day.  
18 Q. So if a person passes away before the  
19 election, you say you pull the ballot.  
20 What does that mean?  
21 A. If we received their ballot -- their  
22 voted ballot already, we would then pull that  
23 from those received ballots and set aside.  
24 Q. And how do you determine whether a  
25 person has passed away?

Page 102

1 C. Miller

2 A. We receive Department of Health

3 records, as all counties do. And we also use

4 local obituaries or if someone has a death

5 certificate that they have submitted to us.

6 Q. So if a person passes away before

7 Election Day and they -- and their ballot is

8 received for a particular election, that

9 person's ballot will not be counted?

10 A. Correct.

11 Q. And that is regardless of whether

12 there's a date on their return envelope,

13 whether the date is incorrect?

14 A. If there is not a date on the

15 envelope, we would have already pulled it for

16 it being no date. But, yes, otherwise, looking

17 at the date, yes, we still would pull it at

18 that point.

19 Q. So in response to Mr. Loney's

20 questions, you said that before the

21 Pennsylvania Supreme Court's order in November

22 of 2022 the Board of Elections was prepared to

23 count ballots regardless of whether they

24 contained a date on the envelope or whether

25 that date was correct; is that right?

Page 104

1 C. Miller

2 A. Yes.

3 Q. Okay. Are you familiar with those

4 opinions? Did you review them?

5 A. Very briefly. I wouldn't say I'm

6 super familiar with them.

7 Q. Has the board reviewed them?

8 A. I -- I know they have been sent them.

9 I can't speak to whether they have actually

10 reviewed them themselves or not.

11 Q. Okay. I'm going to now ask you

12 questions about what the board is intending to

13 do in future elections with respect to dates

14 written on the envelopes containing mail-in and

15 absentee ballots.

16 How is the Board of Elections

17 going to handle mail ballots contained in

18 envelopes in which there are no written dates

19 in future elections?

20 A. We have not spoken -- I've not spoken

21 with the Board of Elections to determine what

22 we will be doing going forward.

23 Q. You have not spoken to the Board of

24 Elections?

25 A. Since those orders have come out

Page 103

1 C. Miller

2 A. Correct.

3 Q. Okay. Prior to that, has the Board

4 of Elections ever rejected a ballot solely

5 because it was contained in an envelope that

6 did not contain a date written on the envelope

7 or the date was incorrect?

8 A. Previous to that, yes. We did set

9 ballots aside that did not have a date, and we

10 did not count them.

11 Q. And can you give me the time periods

12 for that?

13 A. This fall would have been the first

14 election that we would have counted ballots

15 with no date.

16 All other elections before that,

17 we would have set those aside. But per court

18 orders that came out -- or court cases, I

19 should say, that had determinations and updated

20 guidance by the Department of State, we were

21 following that for the fall election only.

22 Q. Got it. Thank you.

23 Are you aware that the Supreme

24 Court of Pennsylvania issued its opinions in

25 that Ball case last week?

Page 105

1 C. Miller

2 for -- to determine what we're doing going

3 forward, we have not met to speak about that

4 yet.

5 Q. Okay. Are you aware that, in the

6 notice -- the deposition notice that we sent

7 for this deposition, Topic Number 3 was "the

8 criteria that the Lancaster Board of Elections

9 will use during future elections to determine

10 whether the date written on the mail ballot

11 return envelope is correct"?

12 A. I believe that's what that said, yes.

13 Q. So were you aware that this

14 deposition was supposed to cover what the Board

15 of Elections was planning to do in future

16 elections?

17 A. I do. But those court orders also

18 just came out, and we have not had a chance to

19 meet to go over that yet.

20 Q. When will that determination be made?

21 A. I don't know if we have a date that

22 we have set yet. I assume it would be sometime

23 in March, though, but I would be guessing.

24 Q. Okay. You answered some questions by

25 Mr. Loney about the format of the date that's

Page 106

1 C. Miller  
2 written on the mail ballot return envelope.  
3 And you said that -- that you  
4 rejected -- when I say "you," I mean the Board  
5 of Elections -- you rejected -- you rejected  
6 on -- ballots contained in envelopes where the  
7 date was written in a format that suggested  
8 that the -- let's say the date predated the  
9 first date of the range set by the Pennsylvania  
10 Supreme Court; is that right?  
11 A. I believe.  
12 Q. And you presumed that the format was  
13 month, date, then year.  
14 Did I hear that right?  
15 A. I did. And, again, I would need to  
16 see our ballot -- our ballot return envelope,  
17 not Dauphin County's, because I believe that is  
18 on our actual ballot return envelopes so people  
19 have the right format.  
20 Q. And can you tell me why you think  
21 that?  
22 A. I was -- I'm trying to remember  
23 exactly what they look like, and I believe that  
24 it is on there. But, again, without seeing it  
25 in front of me, I cannot confirm that.

Page 108

1 C. Miller  
2 I assume they're the same, but I  
3 don't think there's any reason to risk it.  
4 Thank you. I appreciate it.  
5 And let's go to -- so this  
6 doesn't actually contain the documents  
7 that were produced, does it?  
8 Okay. No problem. I will --  
9 I'll offer a new exhibit then. If you  
10 wouldn't mind just giving me one second.  
11 All right. Jennifer, I did not  
12 send an email before the deposition  
13 containing our possible exhibits.  
14 So I'm just going to put it in  
15 the chat, if that works.  
16 THE COURT STENOGRAPHER: That  
17 works for me. Thank you.  
18 MR. OSHER: Thanks.  
19 THE COURT STENOGRAPHER: And  
20 what are we marking this as?  
21 MR. OSHER: I don't know what we  
22 finished on.  
23 MR. LONEY: The next one should  
24 probably be Lancaster 13.  
25 MR. OSHER: 13. Great. Thanks.

Page 107

1 C. Miller  
2 Q. And what's your recollection about  
3 what those instructions said?  
4 A. I believe that it says today's date  
5 required. And then after it, it says --  
6 MM/DD/YYYY. But, again, without seeing it in  
7 front of me, I can't confirm.  
8 Q. Do you know whether you -- whether  
9 the board did that for envelopes for overseas  
10 and military ballots?  
11 A. Off the top of my head, I cannot  
12 remember.  
13 Q. Would there have been any reason for  
14 the board to provide that guidance in domestic  
15 ballots but not military and overseas ballots?  
16 A. Not that I can think of.  
17 MR. OSHER: Mr. Loney, did you  
18 mark already the board's responses to your  
19 RFPs?  
20 MR. LONEY: I did. Those should  
21 be Lancaster 4.  
22 MR. OSHER: Okay. I apologize.  
23 Would you mind pulling that up? I think  
24 it would be easier for you to do it rather  
25 than me use a different document.

Page 109

1 C. Miller  
2 - - -  
3 (Whereupon, Exhibit 13 was  
4 marked for identification.)  
5 - - -  
6 MR. OSHER: So I've just put in  
7 the chat feature of Zoom a document that  
8 we're going to mark as -- I'm sorry.  
9 Mr. Loney, did you say 13 or 14?  
10 THE COURT STENOGRAPHER: 13.  
11 MR. OSHER: 13. Thank you.  
12 So this will be Exhibit 13, and  
13 I'm going to share my screen.  
14 BY MR. OSHER:  
15 Q. Can you see what I'm showing on the  
16 screen here?  
17 A. I can.  
18 Q. And does this appear to you to be the  
19 Lancaster Board of Elections response to the  
20 NAACP plaintiffs request for production of  
21 documents?  
22 A. Yes.  
23 Q. Okay. And is there any way -- can  
24 you read this okay? Do I need to zoom in at  
25 all?

Page 110

1 C. Miller  
2 A. It's fine.  
3 Q. Okay. Thanks.  
4 I'm going to move down to page 9  
5 of this document. And it looks like -- and  
6 this is listed as Exhibit A to the responses to  
7 the request for production.  
8 I'm going to show you page 9,  
9 which looks like half of a ballot envelope.  
10 Does that look right?  
11 A. Yes.  
12 Q. Okay. And if -- you said before that  
13 you recall that there might have been guidance  
14 as to the format by which people should write  
15 their date; is that right?  
16 A. Correct.  
17 Q. Would that have been -- so it looks  
18 like, towards the bottom of this envelope, you  
19 have the absentee -- it's cut off, so we can't  
20 see everything that it says. But it appears to  
21 be the absentee elector's declaration.  
22 Where in this would the guidance  
23 as to date, month, year have been or month,  
24 date, year?  
25 A. This -- these are used specifically

Page 112

1 C. Miller  
2 A. No.  
3 Q. Will the Board of Elections make that  
4 assumption in future elections?  
5 MR. ZIMOLONG: Objection to  
6 form.  
7 THE WITNESS: I can't speak to  
8 what the Board of Elections will determine  
9 without meeting with them first.  
10 BY MR. OSHER:  
11 Q. Does the Board of Elections provide  
12 training to its workers about how to determine  
13 whether the date written on a ballot is  
14 correct?  
15 A. We go over it with the staff, yes.  
16 But I don't know that there's direct training  
17 about dates specifically.  
18 Q. Aside from your recollection that  
19 there might have been guidance as to format of  
20 the date that should be written on envelopes,  
21 putting that aside, does the board provide  
22 guidance to voters as to how they should format  
23 the date written on the envelope?  
24 A. I can't recall at the moment without  
25 seeing something in front of me.

Page 111

1 C. Miller  
2 for military ballots, not all of our absentee  
3 and regulatory mail-in ballots. So this one  
4 does not appear that it has it, but it would be  
5 next to the date.  
6 Q. But before, when I asked you if there  
7 was any reason why the board would have  
8 different instructions as to the format of the  
9 dates between absentee ballots, domestic mail  
10 ballots, and military ballots, you could not  
11 think of any; is that right?  
12 A. No, I couldn't think of any.  
13 MR. OSHER: Okay. I am going to  
14 stop sharing my screen.  
15 BY MR. OSHER:  
16 Q. So going back to the assumption that  
17 the date written on the envelope would be  
18 month, date, year.  
19 Why did you make that  
20 assumption?  
21 A. Again, without seeing our -- for  
22 domestic mail-in absentee ballots, without  
23 seeing that in front of me, I believe that it  
24 is on there, which is why we use that.  
25 Q. Any other reason?

Page 113

1 C. Miller  
2 Q. You're not aware of any?  
3 A. I can't recall. I don't -- I just  
4 don't remember what's exactly in our  
5 instructions.  
6 Q. Okay. I think in response to  
7 Mr. Loney's questions you said that the board  
8 does not provide notice to voters if their  
9 ballot is rejected because of a missing or  
10 incorrect date.  
11 Do I have that right?  
12 A. Correct.  
13 Q. To your knowledge, does the board  
14 have any intention of providing such notice in  
15 the future?  
16 A. I can't speak to what the board will  
17 decide going forward.  
18 Q. Sure. But to your knowledge, you  
19 don't know of any intent to do that in the  
20 future?  
21 A. I am not sure what they will do with  
22 that going forward.  
23 Q. Earlier, in response to Mr. Loney's  
24 questions, you said that the board uses the  
25 date written on the envelope to determine



Page 114

1 C. Miller  
2 whether the ballot is compliant with  
3 election -- with the election code.  
4 Do I have that right?  
5 A. Correct.  
6 Q. Does the board use the written date  
7 on the envelope for any other purpose?  
8 A. We do not.  
9 Q. I have a few questions about the SURE  
10 system.  
11 So can you just explain what the  
12 SURE system is?  
13 A. It's the voter registration system  
14 for Pennsylvania.  
15 Q. Okay. And can you describe to me the  
16 process by which the Board of Elections  
17 interacts with the SURE system when a mail  
18 ballot is returned to them?  
19 A. So we have to -- all ballots have to  
20 be scanned into the system to say that --  
21 basically saying -- I was trying to think what  
22 the exact wording is that it uses.  
23 But it's basically saying that  
24 we received that ballot. And then there are  
25 rejection codes, should a rejection code be

Page 116

1 C. Miller  
2 Q. What happens if the board receives a  
3 mail ballot from the voter and then the voter  
4 appears at a voting place and tries to vote in  
5 person?  
6 A. They would have to do a provisional  
7 ballot.  
8 Q. And if they submit a provisional  
9 ballot and nothing else happens, what happens?  
10 A. If we received their mail ballot,  
11 their provisional ballot would not count.  
12 Q. And is that because the mail ballot  
13 was received first?  
14 A. Correct.  
15 Q. How does the election official at the  
16 polling place know that the voter has submitted  
17 their mail ballot?  
18 A. It shows them in the poll book.  
19 Q. And when it comes time to tabulate  
20 the votes, how does the Board of Elections  
21 know -- I'm sorry.  
22 When it comes time to tabulate  
23 the votes, the Board of Elections will always  
24 know whether a mail ballot was submitted prior  
25 to any provisional ballot submitted by the

Page 115

1 C. Miller  
2 needed.  
3 Q. And what are those rejection codes  
4 reflecting?  
5 A. I don't, off the top of my head, know  
6 all of them. But that could be no secrecy  
7 envelope, no signature or date. Things to that  
8 nature.  
9 Q. Does the rejection code differentiate  
10 between missing signature and missing date?  
11 A. I don't believe that it did. I  
12 believe that has been changed going forward,  
13 though.  
14 Q. Do you know when that change was  
15 made?  
16 A. I do not. Again, I don't remember if  
17 it actually updated that or not yet. I just  
18 know there was talk of it.  
19 Q. So am I correct that, when the mail  
20 ballot is received by the Board of Elections,  
21 it is time-stamped, and then that time and date  
22 is entered into the SURE system?  
23 A. Yes. They are scanned into the SURE  
24 system that day so that the voter knows that we  
25 have received their ballot.

Page 117

1 C. Miller  
2 voter; is that right?  
3 A. Correct.  
4 Q. What happens if a mail -- if a -- if  
5 a voter requests a mail ballot, the board sends  
6 it out, and the voter then appears at a polling  
7 place and it does not appear that they have  
8 returned their mail ballot?  
9 A. If they bring back their ballot as  
10 well as their return envelope, there is a form  
11 that they have to fill out. They turn that in  
12 to the judge of elections, and then they may  
13 vote at the polls.  
14 If they do not have those two  
15 pieces, then they must vote provisionally.  
16 Q. And if they submit a provisional  
17 ballot and the mail ballot comes in after that  
18 and it's before the deadline, the 8:00 p.m.  
19 deadline of Election Day, what happens then?  
20 A. I don't know if we've ever had a case  
21 of that, so I can't speak to what would happen.  
22 Q. But in all events here, the board  
23 will know when the mail ballot is returned and  
24 when the provisional ballot has been cast,  
25 correct?

Page 118

1 C. Miller  
2 A. Correct.  
3 Q. Aside from the incident that you  
4 discussed with Mr. Loney regarding the 2022  
5 primary, has the board identified any credible  
6 fraud concerns relating to ballots,  
7 specifically with respect to the date written  
8 on their ballot, in any other instance besides  
9 that one that you referred to?  
10 A. No.  
11 Q. If a mail envelope is missing a  
12 written date, is that a reason to suspect voter  
13 fraud?  
14 MR. ZIMOLONG: Objection to the  
15 form. Calls for speculation.  
16 THE WITNESS: No, we would not  
17 assume that.  
18 MR. OSHER: All right. Can we  
19 go off the record for about five minutes.  
20 Let me just make sure that I don't have  
21 any other questions.  
22 - - -  
23 (Whereupon, a short recess was  
24 taken.)  
25 - - -

Page 120

1 C. Miller  
2 In preparing for this  
3 deposition, as the representative of the Board  
4 of Elections, you are not aware of that?  
5 A. Correct.  
6 Q. We went through a few formulations of  
7 what happens when a voter submits a mail  
8 ballot, comes to the polls, and variations of  
9 that.  
10 What if the mail ballot is  
11 received by the Board of Elections and is  
12 rejected because of a missing or incorrect date  
13 and the voter then appears at the polling  
14 place? What happens then?  
15 A. Again, I'm not aware of any instances  
16 that that has happened. So I would be  
17 speculating as to how we would handle that  
18 because we have not had to.  
19 Q. Based on your preparation as a  
20 representative of the board and your position,  
21 how -- based on your understanding of how the  
22 election code works, what is your understanding  
23 of how the board would treat that voter?  
24 MR. ZIMOLONG: Objection to  
25 form.

Page 119

1 C. Miller  
2 BY MR. OSHER:  
3 Q. Ms. Miller, does the Lancaster board  
4 coordinate at all with the boards of other  
5 counties to ensure uniformity in the way that  
6 they interpret the election code?  
7 MR. ZIMOLONG: Objection to the  
8 form.  
9 You can answer.  
10 THE WITNESS: I would be  
11 speculating if I said I knew if the board  
12 members were reaching out directly to  
13 other boards.  
14 BY MR. OSHER:  
15 Q. Is there any formal system for that  
16 that you're aware of?  
17 A. Not that I'm aware of.  
18 Q. Are you aware of any communication  
19 between the boards of elections regarding how  
20 they will deem dates to be correct or  
21 incorrect?  
22 A. No. Again, I would be speculating as  
23 to what they sent to other people or talks  
24 amongst themselves.  
25 Q. But you're not aware of any of that?

Page 121

1 C. Miller  
2 I don't believe that was one of  
3 the topics that she was asked to prepare  
4 for, but -- and also calls for  
5 speculation.  
6 But with those objections, you  
7 can answer the question as best you can.  
8 THE WITNESS: Again, it would be  
9 speculation as to how the board would  
10 choose to move forward on those  
11 provisional ballots.  
12 BY MR. OSHER:  
13 Q. Do you have any reason to believe  
14 that the voter's in-person ballot would not be  
15 counted because of the rejected mail ballot  
16 that was received before?  
17 MR. ZIMOLONG: Objection to  
18 form.  
19 You can answer.  
20 THE WITNESS: I would truly be  
21 speculating if I gave an answer on that.  
22 MR. OSHER: All right. I don't  
23 have any more questions. Thank you.  
24 THE COURT STENOGRAPHER: Does  
25 anybody else have any questions?



Page 122

1 C. Miller

2 This is Jeff Bukowski on behalf

3 of Berks County. We have no questions.

4 MR. ZIMOLONG: If no one else

5 has any questions -- going once, going

6 twice -- then we'll let Ms. Miller go.

7 Okay. Thank you very much.

8 - - -

9 (Whereupon, the deposition

10 was concluded at 1:22 p.m.)

11 - - -

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Page 123

ERRATA SHEET

1

2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg.	No.	Now Reads	Should Read	Reason
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22				_____ Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

23 THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2023.

24 \_\_\_\_\_

25 (Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_

Page 124

1 C. Miller

2 CERTIFICATE

3 I HEREBY CERTIFY that the

4 proceedings, evidence and objections are

5 contained fully and accurately in the

6 stenographic notes taken by me upon the


7 deposition of Crista Miller, taken on

8 February 13, 2023 and that this is

9 a true and correct transcript of same.

10 Date, February 23, 2023

11

12 

13

14 Jennifer Miller, RMR, CCR, CRR

15 and Notary Public

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25 supervision of the certifying reporter.)

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