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LOWEL

**BRIAN T. BAXTER and SUSAN T. KINNIRY,**

**Petitioners,**

**v.**

**PHILADELPHIA BOARD OF ELECTIONS,**

**Respondent,**

**And**

**REPUBLICAN NATIONAL COMMITTEE and REPUBLICAN PARTY OF PENNSYLVANIA,**

**Intervenors.**

**COURT OF COMMON PLEAS OF PHILADELPHIA**

**SEPTEMBER TERM, 2024**

**No. 02481**

**ELECTION MATTER**

**NOTICE OF APPEAL**

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forthcoming*

Notice is hereby given that Intervenor-Respondents Republican National Committee and Republican Party of Pennsylvania hereby appeal to the Commonwealth Court of Pennsylvania from the following:

- The September 26, 2024 Order granting the Petition for Review and reversing the decision of the Philadelphia County Board of Elections not to count undated and incorrectly dated mail ballots submitted in the September 17, 2024 Special Election; and directing the Board to count undated and incorrectly dated mail ballots submitted in that Special Election “[b]ecause the refusal to count a ballot due to a voter’s failure to ‘date ... the declaration printed on [the outer] envelope’ used to return his/her mail-in ballot, as directed in 25 P.S. §§ 3146.6(a) and 3150.16(a), violates Art. I, § 5 of the Constitution of the Commonwealth of Pennsylvania, which states that ‘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.’” September 26, 2024 Order Paragraph 1(b). The September 26, 2024 Order and its exhibit, the transcript of the hearing held on September 25, 2024, are attached collectively as Exhibit A; and

- The September 27, 2024 Final Disposition Order—docketed on September 28, 2024—that *inter alia*, denied Intervenor-Respondents’ Motion to Dismiss, attached as Exhibit B.

The appealed Judgment and Orders were entered in this matter by the Honorable James C. Crumlish, III, Court of Common Pleas of Philadelphia County, and are attached as Exhibit A and B respectively. They have been entered on the docket, attached here as Exhibit C.

On August 27, 2024, the Supreme Court of Pennsylvania entered an Order to “expedite appeals in matters arising under the Pennsylvania Election Code with respect to the November 5, 2024 General Election, and pursuant to Article V, Section 10 of the Pennsylvania Constitution.” That Order is inapplicable to this notice of appeal and Intervenor-Respondents’ appeal for two main reasons.

*First*, this case does not relate to the November 2024 General Election, but rather to the decision of the Philadelphia Board of Elections not to count certain undated mail ballots cast in the September 17, 2024, Special Election. Moreover, while the underlying action was styled as Petition for Review in the Nature of A Statutory Appeal pursuant to 25 Pa. CS.A. § 3157, Petitioners sought “an order declaring the Commissioners’ decision unlawful under the Pennsylvania Constitution,” not the Election Code. *See* Petition for Review n.1 (attached as Ex. D). A “declaratory judgment action” raising constitutional claims “does not

‘arise under’ the Election Code.” *Working Families Party v. Commonwealth*, 209 A.3d 270, 278 (2019). Rather, where a party brings a declaratory judgment action alleging that a provision of the Election Code or its implementation violates the Constitution, “the thirty-day appeal period for a declaratory judgment matter is appropriate.” *Id.*

*Second*, the Order of the Supreme Court of Pennsylvania further provides that “[a]ny court deciding a matter that arises under the Pennsylvania Election Code in relation to the November 5, 2024 General Election shall append a copy of this order to its decision.” The Court of Common Pleas of Philadelphia did not append a copy of the Supreme Court’s Order to either the September 26, 2024 Order or the September 27, 2024 Final Disposition Order, which are the orders at issue in this appeal. That omission makes perfect sense because this action does not implicate the Supreme Court’s Order.

Dated: October 3, 2024

Respectfully submitted,

/s/ Kathleen A. Gallagher

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# EXHIBIT A

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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL

BRIAN T. BAXTER and SUSAN T. KINNIRY,	:	SEPTEMBER TERM, 2024
	:	
	:	NO. 02481
Petitioners,	:	
	:	ELECTION MATTER
v.	:	
	:	Control No. 24094566
PHILADELPHIA BOARD OF ELECTIONS,	:	
	:	
Respondent.	:	

DOCKETED

SEP 26 2024

R. POSTELL  
COMMERCE PROGRAM

**ORDER**

AND NOW, this 26<sup>th</sup> day of September, 2024, upon consideration of petitioners' Petition for Review in the Nature of a Statutory Appeal pursuant to 25 P.S. § 3157 from respondent's decision on September 21, 2024, not to count petitioners' and sixty-seven other registered voters' mail-in ballots in the September 17, 2024 Special Election because the date written on the outer envelope was missing or incorrect, and after a hearing on the Petition at which petitioners and respondent stipulated to the operative facts underlying their dispute, it is **ORDERED** as follows:

1. The Petition is **GRANTED** and the September 21, 2024 decision of the Philadelphia Board of Elections in which it refused to count petitioners' and the sixty-seven other registered voters' mail-in ballots is **REVERSED**:
  - a. Based on the stipulation and representations made on the record as set forth in the transcript of the hearing held on September 25, 2024, which is attached hereto as an exhibit; and

ORDER-Baxter Etal Vs Philadelphia Board Of Elections [RCP]



24090248100019

Case ID: 240902481

- b. Because the refusal to count a ballot due to a voter's failure to "date . . . the declaration printed on [the outer] envelope" used to return his/her mail-in ballot, as directed in 25 P.S. §§ 3146.6(a) and 3150.16(a), violates Art. I, § 5 of the Constitution of the Commonwealth of Pennsylvania, which states that "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."
2. Respondent Board of Elections shall cause petitioners' and the sixty-seven other registered voters' date-disqualified mail-in ballots from the Special Election to be verified, counted if otherwise valid, and included in the results of the Special Election.

**BY THE COURT:**

  
CRUMLISH, III, J.



IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

- - -  
BRIAN T. BAXTER and : SEPTEMBER TERM 2024  
SUSAN T. KINNIRY :  
Petitioners, : NO. 02481  
V. :  
PHILADELPHIA BOARD OF : ELECTION APPEAL  
ELECTIONS :  
Respondent. :

- - -  
September 25, 2024

- - -  
Courtroom 602

The Juanita Kidd Stout Center for Criminal Justice  
Philadelphia, Pennsylvania

- - -  
BEFORE: THE HONORABLE JAMES C. CRUMLISH, J.

- - -  
PETITION  
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APPEARANCES

- - -

STEPHEN A. LONEY, ESQUIRE  
ACLU OF PENNSYLVANIA  
P.O. Box 60173  
Philadelphia, PA 19102  
Attorney for Petitioners

ALISON L. STOHR, ESQUIRE  
CITY OF PHILADELPHIA LAW DEPARTMENT  
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Attorney for Respondent

Also present:

LINDA A. KERNS, ESQUIRE  
LAW OFFICES OF LINDA A. KERNS LLC  
1420 Locust Street, Suite 200  
Philadelphia, PA 19102  
Attorney for Republican National Committee and  
Republican Party of Pennsylvania

1 (Call to order at 2:52 PM.)

2 THE COURT: Good afternoon. All parties  
3 and representatives are here?

4 MR. LONEY: For petitioners, yes,  
5 Your Honor.

6 MS. STOHR: Yes, Your Honor, for  
7 respondent.

8 THE COURT: Good afternoon. My name is  
9 Judge Crumlish. I am the trial judge assigned  
10 to this matter by the president judge. I'm  
11 sitting in the matter captioned as Baxter and  
12 Kinniry v. the Philadelphia Board of Elections.  
13 This is case number 240902481. It is further  
14 captioned as an election appeal.

15 It's a petition for review in the nature  
16 of a statutory appeal, I assume under 3157 of  
17 the Code.

18 MR. LONEY: Yes, Your Honor.

19 THE COURT: Will counsel please identify  
20 themselves for the record and their clients.

21 MR. LONEY: Your Honor, Stephen Loney of  
22 the ACLU on behalf of petitioners. To my right  
23 are Susan Kinniry and Brian Baxter.

24 THE COURT: Thank you.

25 MS. STOHR: Alison Stohr on behalf of the

1 Board of Elections. I'm joined by counsel  
2 Ilana Eisenstein and David Josefovits.

3 THE COURT: Welcome, everyone. You can be  
4 seated. It's not necessary for counsel to  
5 stand to address the Court.

6 I have had an opportunity to review the  
7 petition, and I understand that it is a  
8 petition supported by affidavits. That  
9 precisely, I think, is grounded in Article 1  
10 Section 5 of the Pennsylvania Constitution.

11 Do I have that right?

12 MR. LONEY: Yes, Your Honor.

13 THE COURT: Secondly, the city  
14 commissioners sitting as the Board of Elections  
15 for the City and County of Philadelphia ruled  
16 and determined as a matter of the exercise of  
17 their discretion to not count approximately 22  
18 ballots that have part of the exterior  
19 authentication, I'll call it, the date and  
20 signature -- or either?

21 MR. LONEY: We're focused solely on the  
22 date issue, Your Honor.

23 Our understanding is that 23 were set  
24 aside because they did not have a date on the  
25 outer envelope. An additional 46 were set

1           aside for some issue with the date, the date  
2           being deemed to be the incorrect date.

3           Both of our petitioners, I believe, are in  
4           the former category that there was no date  
5           included on the date line.

6           THE COURT: So is it uncontested that  
7           these absentee ballots were timely received  
8           irrespective of the exterior date or signature?  
9           That's not in dispute?

10          MS. STOHR: Correct, Your Honor. Mail-in  
11          and absentee, yes.

12          THE COURT: Got it. Having said that,  
13          I've reviewed the petition and also the  
14          Commonwealth Court opinions, plural, both of  
15          them not reported, however.

16          I've also reviewed the preceding case in  
17          the Supreme Court of Pennsylvania. Therefore,  
18          at least I am familiar with the legal arguments  
19          that I expect to be presented.

20          Is there any dispute as to the verified  
21          affidavits of your clients?

22          MR. LONEY: Not that we're aware of.

23          THE COURT: They say what they say, or do  
24          we need live testimony?

25          MS. STOHR: In our opinion, we do not need

1 live testimony. We do not object to any of the  
2 facts.

3 THE COURT: So for the record, those are  
4 stipulated facts. If called to testify, the  
5 affiants would testify as reflected in those  
6 affidavits. Fair enough?

7 MR. LONEY: Yes, Your Honor.

8 THE COURT: Okay. As a matter --

9 MS. KERNS: Excuse me, Your Honor. If I  
10 may.

11 THE COURT: Yes.

12 MS. KERNS: My name is Linda Kerns. I  
13 represent the Republican National Committee.  
14 The order that I received said this hearing  
15 started at 3:00. I apologize if I got the  
16 wrong order.

17 THE COURT: No need to apologize,  
18 Ms. Kerns. You haven't intervened. I haven't  
19 seen a docket --

20 MS. KERNS: We did. We filed an  
21 intervention.

22 THE COURT: When?

23 MS. KERNS: About within the last hour.

24 THE COURT: Okay. I haven't had a chance  
25 to review it or approve it, but you're

1 certainly welcome to join us at least at this  
2 juncture as a participant, as a witness as to  
3 the regularity of the proceeding.

4 MS. KERNS: Just to be clear, Linda Kerns  
5 Supreme Court ID 84495 for the Republican  
6 National Committee and Republican Party of  
7 Pennsylvania.

8 THE COURT: Understood. Thank you. You  
9 can be seated.

10 Petitioner, you may address the Court.

11 MR. LONEY: Thank you, Your Honor. I know  
12 you said we didn't have to stand.

13 THE COURT: It's an old habit.

14 MR. LONEY: Yes. Old habit, and I'm a  
15 little jittery just baseline.

16 As Your Honor noted, our arguments are in  
17 the papers and the basis for our claims under  
18 the Pennsylvania Constitution. In some ways  
19 this is an issue of first impression, but in  
20 other ways an issue that has gone the  
21 petitioner's way every time it has come up.

22 Your Honor noted the recent opinion from  
23 the Commonwealth Court in the *Black Political*  
24 *Empowerment Project, et al. v. Schmidt* case,  
25 which has been vacated.

1           So I acknowledge that, but that was a 4-1  
2 ruling from an en banc panel of the  
3 Commonwealth Court ruling that all of the legal  
4 claims we make in this case are valid, that it  
5 is a violation of the fundamental right to vote  
6 reflected in Article 1 Section 5 of the  
7 Pennsylvania Constitution to disqualify ballots  
8 based on a requirement or a rule or a provision  
9 in the Election Code that serves no purpose  
10 other than to disqualify.

11           We put in record evidence from the  
12 petitioners indicating that these ballots we  
13 are talking about are timely received. There's  
14 no dispute of that.

15           THE COURT: Were they qualified electors?

16           MR. LONEY: Yes, Your Honor. There's no  
17 dispute of that.

18           In fact, in order to get a mail ballot  
19 package, they have to apply for it, and the  
20 Board of Elections has to confirm their  
21 qualifications before they even get the mail  
22 ballot package. So there's no dispute they're  
23 qualified electors.

24           There's no dispute that they returned the  
25 mail ballot package on time. They signed the



1           outer envelope.

2           And there's also no dispute that the  
3 envelopes themselves are not, broadly speaking,  
4 undated. The Board of Elections date-stamps  
5 the envelope as soon as they receive it. So  
6 the handwritten date by the voter is a  
7 superfluous requirement, and it's been  
8 acknowledged to be such by multiple state and  
9 federal courts.

10           The only question here that is left by  
11 those prior opinions is whether that  
12 constitutes a violation of the free and equal  
13 elections clause. An en banc panel of the  
14 Commonwealth Court has held that it does.

15           THE COURT: Unfortunately in an  
16 unpublished opinion which limits our ability.  
17 It may be persuasive in the Court's analysis of  
18 this Article 1 Section 5 challenge. But again,  
19 both opinions, Judge Wojcik's and also Judge  
20 Ceisler's, are unpublished.

21           MR. LONEY: That's fair enough,  
22 Your Honor.

23           I will note that the internal operating  
24 procedures of the Commonwealth Court dictate  
25 that in an election case they issue unpublished

1 opinions, dispense with the potentially  
2 time-consuming step of getting full court  
3 approval to publish, and they go back to it  
4 later if one of the parties applies for  
5 publication.

6 So the fact that it's --

7 THE COURT: I'm somewhat familiar with the  
8 IOPs.

9 MR. LONEY: Understood, Your Honor.

10 THE COURT: I just want to be clear  
11 because I am going to be asked to render an  
12 opinion at least where I stand now.

13 And I include in at least my preliminary  
14 analysis that Justice Wecht has expressed some  
15 appreciation of the timeliness of this kind of  
16 challenge. I am just facing that without  
17 ruling on the merits just yet.

18 MR. LONEY: Understood, Your Honor. We  
19 appreciate that as well.

20 I should, to be above-board, tell  
21 Your Honor that also within the last hour in  
22 response to the Supreme Court's acknowledgement  
23 that it's important to decide the underlying  
24 legal issue expeditiously, we did file a King's  
25 Bench -- the ACLU of Pennsylvania and our

1 cocounsel, not petitioner sitting here.

2 THE COURT: On behalf of your client?

3 MR. LONEY: On behalf of different  
4 clients.

5 THE COURT: Which was the invitation of  
6 Judge Wecht, as I understood it.

7 MR. LONEY: That's how we read it as well.  
8 This one, unlike the BPEP case, does include  
9 all 67 counties' Boards of Elections and the  
10 secretaries as respondents.

11 And we hope that the Pennsylvania Supreme  
12 Court will take up the underlying  
13 constitutional issue and put this to bed, but  
14 we're dealing with the calendar that we're  
15 dealing with.

16 We've got two voters who in the meantime  
17 have voted in a special election that's kind of  
18 off the normal calendar, and they are before  
19 the Court asking that their votes be counted  
20 and that their constitutional rights not be  
21 violated.

22 And we also have no guarantee the court --  
23 I tend to agree with Your Honor that at least  
24 three of the justices kind of invited this  
25 King's Bench as a next step, but that's not the

1 majority. We don't know if they will take this  
2 up. We see no reason the Court shouldn't call  
3 balls and strikes on the constitutional claim  
4 in this case in the meantime.

5 I don't think you will hear from any party  
6 that the critical facts are disputed as to the  
7 timeliness and eligibility of the petitioners  
8 and the other 67 or so folks whose mail ballots  
9 were rejected on similar grounds or that there  
10 is any fraud here, that anybody did anything  
11 other --

12 THE COURT: There is no suggestion of  
13 anything other than the utmost good faith and  
14 regular proceedings under the Home Rule Act as  
15 well as the Constitution of Pennsylvania of the  
16 city commissioners who are making these  
17 decisions. Fair enough?

18 MR. LONEY: Fair enough.

19 I will also note for the record, because  
20 Your Honor did mention the commissioners voting  
21 not to count these votes, that it was a 2-1  
22 vote.

23 There was a dissenting commissioner who  
24 made an impassioned plea to uphold their oath  
25 as commissioners. We frankly think that

1 commissioner was correct on the law, but the  
2 other two felt bound by the current state of  
3 play in the appellate courts.

4 THE COURT: And there it falls to me under  
5 the code to call the balls and strike in that  
6 kind of dispute.

7 MR. LONEY: Yes, Your Honor. The only  
8 thing I'll say to that is that in analyzing  
9 whether this Court is bound by prior appellate  
10 rulings, prior rulings from the Pennsylvania  
11 Supreme Court simply did not address the issues  
12 presented here.

13 THE COURT: I'm familiar with the  
14 general -- that's why I suggested at the  
15 beginning of the argument that this was a  
16 unique fair exercise challenge as distinguished  
17 from some others. Fair enough?

18 MS. STOHR: Yes, I think that's fair.

19 THE COURT: Again, I'm trying to create a  
20 full record of undisputed -- and I understand  
21 this is really a pure issue of law asserted in  
22 good faith by the parties.

23 And I have to agree with counsel for the  
24 petitioner that there's been a degree of  
25 invitation from the appellate courts to advance

1 this for a final disposition.

2 Let me ask the solicitor. Is this a  
3 circumstance at least from a purely legal  
4 standpoint that I have a constitutional  
5 imperative of what the exercise of the  
6 franchise looks like in the case of ballots  
7 omitting some kind of information?

8 MS. STOHR: Yes, Your Honor, statutory and  
9 the case law interpreting that statute and the  
10 conflict between those two.

11 THE COURT: But there's something of a  
12 paucity in the Article 1 Section 5 argument and  
13 the statute conflict.

14 MS. STOHR: Yes, that's correct.

15 In the lead-up to the vote that was taken  
16 on Saturday on these undated and incorrectly  
17 dated mail-in and absentee ballots, from the  
18 beginning of the special election through the  
19 actual counting, we started where *Ba11 v.*  
20 *Chapman* was good law stating that boards should  
21 not count undated and incorrectly dated  
22 ballots.

23 Then we had the BPEP decision by the  
24 Commonwealth Court. Then that was vacated by  
25 the Supreme Court. So the Board is doing its

1 best to keep up with the state of the law.

2 THE COURT: I think we've now stipulated  
3 that this the utmost good faith of the public  
4 officials who oversee our elections here in the  
5 City and County of Philadelphia.

6 MS. STOHR: And I appreciate that,  
7 Your Honor. Yes. Attempting to, you know,  
8 take all these decisions into account and vote  
9 according to what they believe those decisions  
10 require them to do.

11 THE COURT: There's no doubt in my mind,  
12 having said all that, about the bona fides of  
13 these public officials in discharging their  
14 duties.

15 The statute also puts it in the hands of  
16 this Court to make a fair and just  
17 determination in applying the statutory  
18 mandates of the Election Code, to paraphrase  
19 slightly. I don't know if anyone would  
20 disagree with that. Somebody might, as  
21 advocates are entitled to do.

22 So we have a stipulated record of the  
23 affiants. We have what I think is a pretty  
24 clearly focused body of recent appellate law  
25 that creates, at least right now for me, a

1 degree of uncertainty. There is no per se  
2 controlling law on this conflict issue.

3 I think that Judge Ceisler and  
4 Judge Wojcik wrote very persuasive opinions,  
5 albeit non-reported and not necessarily the  
6 subject of confirmation by the supremes.

7 The relief petitioner seeks is to reverse  
8 the decision of the city commissioners sitting  
9 as the Board of Elections and to allow the  
10 counting of these ballots that have this  
11 outward alleged defect in the dating.

12 Is that fair enough?

13 MR. LONEY: That's fair, Your Honor.

14 And I should note in case it hasn't been  
15 clear on the record that we do not request as  
16 part of our requested relief any slowdown or  
17 stopping of the process of certification of  
18 results.

19 The number of ballots at issue is not  
20 enough to impact the outcome, especially in an  
21 unopposed race, or two unopposed races. So  
22 we've agreed with the respondents here, and I  
23 believe there's a proposed order consented to  
24 that's either been filed or is about to be  
25 filed that certification can go forward



1           notwithstanding.

2           THE COURT: It would be really helpful to  
3 me if someone could give that to me today.

4           MS. STOHR: It was filed.

5           THE COURT: Yes. But I was running from  
6 the security in City Hall to this fine  
7 environment.

8           MR. LONEY: The finer point on the  
9 requested relief is to amend the final vote  
10 count to include these votes. And that's --

11           THE COURT: The 2-1 vote of the  
12 commissioners?

13           MR. LONEY: I'm sorry. To reverse the  
14 vote of the commissioners and canvass these  
15 unopened envelopes, count the ballots if they  
16 are countable inside those envelopes, and then  
17 if that happens after certification of the  
18 results, to update the official vote count.

19           THE COURT: In effect, amend.

20           But is there a stipulation that it is  
21 unlikely if not impossible that these would be  
22 outcome determinative in the special election?

23           MS. STOHR: It is impossible, Your Honor.

24           THE COURT: So that's an important fact.

25           MS. STOHR: Yes.

1           THE COURT: All right. Based upon the  
2 representations of counsel and the precision of  
3 the record I am presented with, I do believe  
4 the petitioners made out a claim for Article 1  
5 Section 5 relief under the Pennsylvania  
6 Constitution which always prevails over a  
7 conflict in the statutory language, if any.

8           I am also presented with a joint consent  
9 order which will allow expedited review by the  
10 appellate courts if the parties so choose.

11           Again, this is upon the undeniable and  
12 confirmatory position of the parties that this  
13 will in no way prejudice the ordinary and  
14 efficient process of the Board of Elections in  
15 processing their faithful duty to the Election  
16 Code.

17           Fair enough to everyone?

18           MR. LONEY: Yes, Your Honor.

19           MS. STOHR: Yes, Your Honor.

20           THE COURT: Have I missed anything?

21           MR. LONEY: For petitioners, no.

22           THE COURT: For respondent?

23           MS. STOHR: No, Your Honor.

24           THE COURT: Thank you very much for being  
25 here on very short notice. As you know, we

1 have now an accelerated timetable for making  
2 these decisions. I'm sure you all have a lot  
3 of work ahead of you.

4 MR. LONEY: Ahead, behind, and around us,  
5 yes.

6 THE COURT: As my dad always said, this is  
7 an all-volunteer army.

8 MS. STOHR: True, Your Honor.

9 THE COURT: You're in faithful service to  
10 the public. Thank you, everyone. Have a nice  
11 evening.

12 Ms. Kerns?

13 MS. KERNS: Yes, Your Honor. I would just  
14 like to preserve the Republican National  
15 Committee's and the Republican Party of  
16 Pennsylvania's petition to intervene in this  
17 matter. I had contacted the petitioners, and  
18 they said they did not take a position on the  
19 matter. The City hadn't responded yet, which  
20 I'm sure through no fault --

21 THE COURT: Nor have I.

22 MS. KERNS: Right.

23 THE COURT: Succinctly stated, you oppose  
24 the petition that's before me today? Your  
25 client does?

1 MS. KERNS: Yes, Your Honor.

2 THE COURT: Okay. You understand the  
3 parties have stipulated to elemental facts.  
4 This is a real true issue of law for the Court.

5 Do you understand that that is not with  
6 prejudice toward the Republican Party of  
7 Pennsylvania asserting any rights in the  
8 appellate process?

9 MS. KERNS: Yes, Your Honor.

10 THE COURT: Fair enough to everyone?

11 MS. KERNS: I don't know what facts were  
12 stipulated to. That would be --

13 THE COURT: Do you have the petition  
14 you're trying to intervene in? There's a  
15 petition that I just ruled on.

16 MS. KERNS: Yes.

17 THE COURT: Do you have that?

18 MS. KERNS: Yes.

19 THE COURT: Okay. Those are the  
20 stipulated facts.

21 MS. KERNS: I understand, Your Honor.

22 MS. STOHR: May I make one clarification?

23 THE COURT: Absolutely.

24 MS. STOHR: Just that the Board doesn't  
25 take a position on the merits of the arguments.

1 THE COURT: I understand that.

2 MS. STOHR: But we do stipulate to all the  
3 facts, not the arguments.

4 THE COURT: The facts. Under the statute,  
5 especially on a review from administrative  
6 agency, under the code I have that duty to  
7 conform the constitutional mandates with the  
8 statutory mandates. That's all I was saying.

9 MS. STOHR: Thank you.

10 THE COURT: Fair enough to everyone?

11 MR. LONEY: Yes, Your Honor.

12 THE COURT: All right. You look like you  
13 have one last word on your mind.

14 MS. KERNS: Well, I'm a lawyer.

15 THE COURT: Don't put me in extra innings  
16 now.

17 MS. KERNS: Hopefully we'll have a Red  
18 October. I just want to be clear, Your Honor.  
19 Is there no ruling now on our petition to  
20 intervene?

21 THE COURT: I haven't reviewed it, so I  
22 don't know the nature of it. But I have  
23 allowed to you advance your client's argument.  
24 I'll decide on that in due course. I can't do  
25 things making them up as I go.

1 MS. KERNS: I understand, Your Honor. I  
2 just want to make sure I preserve my clients'  
3 rights.

4 THE COURT: And you have. As I said, this  
5 is a purely legal issue that I am ruling upon.  
6 The parties have consented that the  
7 constitutional mandate would require that these  
8 ballots be counted and upon the factual record  
9 before me and whatever appellate rights are  
10 preserved. I'm sure, regrettably, the first in  
11 line here making this decision.

12 MS. KERNS: Thank you, Your Honor. And  
13 I'm sorry. Did the time move?

14 THE COURT: That's a second thing.

15 MS. KERNS: Did the time move and I did  
16 not get that?

17 THE COURT: No. We were all here at 3:00.

18 MS. KERNS: Thank you.

19 THE COURT: Anything else?

20 MR. LONEY: No, Your Honor.

21 THE COURT: Thank you again.

22 (Hearing adjourned at 3:14 PM.)  
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C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above case and that this copy is a correct transcript of the same.

Leah Blum, RPR  
Registered Professional Reporter  
Official Court Reporter

-----

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)

# EXHIBIT B



**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL**

BRIAN T. BAXTER and SUSAN T. KINNIRY,	:	SEPTEMBER TERM, 2024
	:	
Petitioners,	:	NO. 02481
	:	ELECTION MATTER
v.	:	
	:	Control No. 24095206
PHILADELPHIA BOARD OF ELECTIONS,	:	
	:	
Respondent,	:	
	:	
And	:	
	:	
REPUBLICAN NATIONAL COMMITTEE and REPUBLICAN PARTY OF PENNSYLVANIA,	:	
	:	
Intervenors.	:	

**ORDER**

**AND NOW**, this 27<sup>th</sup> day of September, 2024, upon consideration of Petition of Republican National Committee and Republican Party of Pennsylvania to Intervene in the above action (filed September 26, 2024 the day after the hearing in the above matter) and the Joint Emergency Motion of Petitioners Baxter and Kinniry and Respondent Philadelphia Board of Elections wherein the parties do not oppose the Petition to Intervene, it is hereby **ORDERED** that the Petition to Intervene is **GRANTED**<sup>1</sup> and the Emergency Motion for Reconsideration and Clarification is **MOOT**.

---

<sup>1</sup> Intervenor disadvantaged under the time constraints of review, the court when counsel appeared at the hearing after it had already concluded and, for the first time, advised the court it had *already* filed a Petition to Intervene. Counsel advised the court that although a Petition “had been filed”, before the hearing but, it could not provide the court any such any filing on the 25th.

It is further ordered and due consideration, that Intervenor's Motion to Dismiss is **DENIED**.

BY THE COURT:



---

Crumlish, III, J.

---

The court deferred considering Intervenor's Petition in this matter and repeatedly consulted the docket for a filing, but no Petition was reflected on the record as of the time the court submitted its order and its order was entered on the docket at 4:38 p.m. on September 25. The docket thereafter revealed that Petitioner's filing was not made (despite representations to the court to the contrary) until 1:13 pm the following day after the hearing had been concluded. Petitioner's delay disadvantaged the court insofar as the court had no basis at the trial to review the Intervenor's Petition and issue a ruling until such filing was made of record and the delay further has caused inconvenience to the parties in obtaining finality in the court's ruling and necessitating further proceedings to dispose of the Petition to Intervene.

# EXHIBIT C



A \$5 Convenience fee will be added to the transaction at checkout.

**Case Description**

**Case ID:** 240902481  
**Case Caption:** BAXTER ETAL VS PHILADELPHIA BOARD OF ELECTIONS  
**Filing Date:** Monday , September 23rd, 2024  
**Court:** PETITIONS  
**Location:** CITY HALL  
**Jury:** NON JURY  
**Case Type:** ELECTION MATTERS  
**Status:** ORDER ENTERED - FINAL DISPOS

**Related Cases**

*No related cases were found.*

**Case Event Schedule**

*No case events were found.*

**Case motions**

*No case motions were found.*

**Case Parties**

Seq #	Assoc	Expn Date	Type	Name
1			ATTORNEY FOR PETITIONER	DEPALMA, CLAUDIA
<b>Address:</b>	2 PENN CENTER 1500 JFK BLVD. SUITE 802 PHILADELPHIA PA 19102 (267)546-1313 cdepalma@pubintl.org		<b>Aliases:</b>	<i>none</i>
2	1		PETITIONER	BAXTER, BRIAN T
<b>Address:</b>	2401 PENNSYLVANIA AVENUE UNIT 8A11 PHILADELPHIA PA 19130		<b>Aliases:</b>	<i>none</i>
3	1		PETITIONER	KINNIRY, SUSAN T

Case ID: 240902481

<b>Address:</b>	859 N. STILLMAN STREET PHILADELPHIA PA 19130	<b>Aliases:</b>	<i>none</i>	
4	11		RESPONDENT	PHILADELPHIA BOARD OF ELECTIONS
<b>Address:</b>	1400 JFK BLVD., ROOM 142 CITY HALL PHILADELPHIA PA 19107	<b>Aliases:</b>	<i>none</i>	
5	1		ATTORNEY FOR PETITIONER	MCKENZIE, MARY M
<b>Address:</b>	PUBLIC INTEREST LAW CENTER 1709 BENJAMIN FRANKLIN PARKWAY PHILADELPHIA PA 19103 (267)546-1319 mmckenzie@pubintl.org	<b>Aliases:</b>	<i>none</i>	
6	1		ATTORNEY FOR PETITIONER	GEFFEN, BENJAMIN D
<b>Address:</b>	PUBLIC INTEREST LAW CENTER 1500 JFK BLVD SUITE 802 PHILADELPHIA PA 19102 (267)546-1308 bgeffen@pubintl.org	<b>Aliases:</b>	<i>none</i>	
7	1		ATTORNEY FOR PETITIONER	SCHNEIDER, MARIAN K
<b>Address:</b>	295 E. SWEDES FORD ROAD, #348 WAYNE PA 19087 (610)644-1925 marianesq@mac.com	<b>Aliases:</b>	<i>none</i>	
8	1		ATTORNEY FOR PETITIONER	LONEY, STEPHEN A

<b>Address:</b>	ACLU OF PENNSYLVANIA P.O. BOX 60173 PHILADELPHIA PA 19102 (215)592-1513 sloney@aclupa.org	<b>Aliases:</b>	none	
9	1		ATTORNEY FOR PETITIONER	STEIKER- GINZBERG, KATE
<b>Address:</b>	ACLU OF PENNSYLVANIA P.O. BOX 60173 PHILADELPHIA PA 19102 (917)444-6803 ksteiker-ginzberg@aclupa.org	<b>Aliases:</b>	none	
10			JUDGE	PADILLA, NINA W
<b>Address:</b>	360 CITY HALL PHILADELPHIA PA 19107	<b>Aliases:</b>	none	
11			ATTORNEY FOR RESPONDENT	STOHR, ALISON L
<b>Address:</b>	CITY OF PHILADELPHIA LAW DEPT 1515 ARCH STREET 15TH FLOOR PHILADELPHIA PA 19102 (215)683-3563 alison.stohr@phila.gov	<b>Aliases:</b>	none	
12	11		ATTORNEY FOR RESPONDENT	JOSEFOVITS, M DAVID
<b>Address:</b>	112 RENNARD PL PHILADELPHIA PA 19116 (215)656-3378 david.josefovits@us.dlapiper.com	<b>Aliases:</b>	none	
13	11		ATTORNEY FOR RESPONDENT	FABENS-LASSEN, BEN
<b>Address:</b>	2000 AVENUE OF THE STARS, SUIT LOS ANGELS CA 910067 (215)656-3300 ben.fabens- lassen@us.dlapiper.com	<b>Aliases:</b>	none	

14	11		ATTORNEY FOR RESPONDENT	EISENSTEIN, ILANA H
<b>Address:</b>	ONE LIBERTY PL 1650 MARKET ST SUITE 5000 PHILADELPHIA PA 19103 (215)656-3351 ilana.eisenstein@dlapiper.com	<b>Aliases:</b>	none	
15	11		ATTORNEY FOR RESPONDENT	BENJET, BRIAN H
<b>Address:</b>	1650 MARKET STREET PHILADELPHIA PA 19103 (215)656-3311 brian.benjet@us.dlapiper.com	<b>Aliases:</b>	none	
16			ATTORNEY FOR PETITIONER	KERNS ESQ, LINDA A
<b>Address:</b>	1420 LOCUST STREET SUITE 200 PHILADELPHIA PA 19102 (215)731-1400 linda@lindakernslaw.com	<b>Aliases:</b>	none	
17			JUDGE	CRUMLISH III, JAMES
<b>Address:</b>	534 CITY HALL PHILADELPHIA PA 19107	<b>Aliases:</b>	none	
18			MOTION ASSIGNMENT JUDGE	CRUMLISH III, JAMES
<b>Address:</b>	534 CITY HALL PHILADELPHIA PA 19107	<b>Aliases:</b>	none	
19	11		ATTORNEY FOR RESPONDENT	PFAUTZ, MICHAEL W
<b>Address:</b>	PHILADELPHIA LAW DEPARTMENT 1515 ARCH ST 15TH FLOOR PHILADELPHIA PA 19102 (215)683-5233 michael.pfautz@phila.gov	<b>Aliases:</b>	none	

Case ID: 240902481

20	22		INTERVENOR	REPUBLICAN NATIONAL COMMITTEE
<b>Address:</b>	NONE GIVEN PHILADELPHIA PA 19107	<b>Aliases:</b>	none	
21	22		INTERVENOR	REPUBLICAN PARTY OF PENNSYLVANIA
<b>Address:</b>	NONE GIVEN PHILADELPHIA PA 19107	<b>Aliases:</b>	none	
22			ATTORNEY FOR INTERVENOR	KERNS ESQ, LINDA A
<b>Address:</b>	1420 LOCUST STREET SUITE 200 PHILADELPHIA PA 19102 (215)731-1400 linda@lindakernslaw.com	<b>Aliases:</b>	none	
23	22		ATTORNEY FOR INTERVENOR	KING III, THOMAS W
<b>Address:</b>	128 W. CUNNINGHAM ST. BUTLER PA 16001 (724)283-2200 tking@dmkcg.com	<b>Aliases:</b>	none	
24			JUDGE	EMERGENCY JUDGE, JUDGE
<b>Address:</b>	ROOM 280 CITY HALL PHILADELPHIA PA 19107	<b>Aliases:</b>	none	

**Docket Entries**

Filing Date/Time	Docket Type	Filing Party	Disposition Amount
23-SEP-2024 04:12 PM	ACTIVE CASE		
<b>Docket Entry:</b>	E-Filing Number: 2409047953		



23-SEP-2024 04:12 PM	COMMENCEMENT BY PETITION	DEPALMA, CLAUDIA	
<b>Documents:</b>	<a href="#">Final Cover</a>		
<b>Docket Entry:</b>	PETITION FOR ELECTION MATTERS FILED.		
23-SEP-2024 04:12 PM	PETITION FILED	DEPALMA, CLAUDIA	
<b>Documents:</b>	<a href="#">24.09.23 Philadelphia 3157 combined for filing.pdf</a>		
<b>Docket Entry:</b>	66-24094566		
24-SEP-2024 11:35 AM	MOTION ASSIGNED		
<b>Docket Entry:</b>	66-24094566 PETITION FILED ASSIGNED TO JUDGE: PADILLA, NINA W. ON DATE: SEPTEMBER 24, 2024		
24-SEP-2024 04:48 PM	ORDER ENTERED/236 NOTICE GIVEN	PADILLA, NINA W	
<b>Documents:</b>	<a href="#">ORDER_5.pdf</a>		
<b>Docket Entry:</b>	66-24094566 UPON CONSIDERATION OF THE PETITION FOR REVIEW IN TEH NATURE OF A STATUTORY APPEAL, IT IS HEREBY ORDERED THAT A HEARING SHALL BE HELD ON SEPTEMBER 25, 2024, AT 3:00 P.M., IN COURTROOM 602, JUANITA KIDD STOUT CENTER FOR CRIMINAL JUSTICE, PHILADELPHIA, PENNSYLVANIA. A COPY OF THIS ORDER AND A COPY OF THE PETITION SHALL BE SERVED UPON TEH COUNTY BOARD OF ELECTIONS BY PERSONAL SERVICE ON AN EMPLOYEE IN CHARGE, IN ROOM 142, CITY HALL, PHILADELPHIA, PENNSYLVANIA, NO LATER THAN SEPTEMBER 25, 2024, AT 9:00 A.M. ...BY THE COURT - WRIGHT PADILLA, P.J., 9-24-24		
24-SEP-2024 04:48 PM	NOTICE GIVEN UNDER RULE 236		
<b>Docket Entry:</b>	NOTICE GIVEN ON 24-SEP-2024 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 24-SEP-2024.		
24-SEP-2024 04:55 PM	MOTION HEARING SCHEDULED		
<b>Docket Entry:</b>	66-24094566		

Case ID: 240902481

25-SEP-2024 06:01 AM	ENTRY OF APPEARANCE	STOHR, ALISON L	
<b>Documents:</b>	<a href="#">24.09.25 - EOA_Stohr.pdf</a>		
<b>Docket Entry:</b>	ENTRY OF APPEARANCE OF ALISON L STOHR FILED. (FILED ON BEHALF OF PHILADELPHIA BOARD OF ELECTIONS)		
25-SEP-2024 06:01 AM	CITY CHARGE SUBSEQUENT FILINGS	STOHR, ALISON L	
<b>Docket Entry:</b>	<i>none.</i>		
25-SEP-2024 09:03 AM	ENTRY OF APPEARANCE	JOSEFOVITS, M DAVID	
<b>Documents:</b>	<a href="#">Baxter EOA - MDJ.pdf</a>		
<b>Docket Entry:</b>	ENTRY OF APPEARANCE OF M DAVID JOSEFOVITS FILED. (FILED ON BEHALF OF PHILADELPHIA BOARD OF ELECTIONS)		
25-SEP-2024 09:17 AM	ENTRY OF APPEARANCE	FABENS-LASSEN, BEN	
<b>Documents:</b>	<a href="#">Baxter EOA - BFL.pdf</a>		
<b>Docket Entry:</b>	ENTRY OF APPEARANCE OF BEN FABENS-LASSEN FILED. (FILED ON BEHALF OF PHILADELPHIA BOARD OF ELECTIONS)		
25-SEP-2024 09:44 AM	ENTRY OF APPEARANCE	EISENSTEIN, ILANA H	
<b>Documents:</b>	<a href="#">Baxter EOA - IHE.pdf</a>		
<b>Docket Entry:</b>	ENTRY OF APPEARANCE OF ILANA H EISENSTEIN FILED. (FILED ON BEHALF OF PHILADELPHIA BOARD OF ELECTIONS)		
25-SEP-2024 10:04 AM	ENTRY OF APPEARANCE	BENJET, BRIAN H	
<b>Documents:</b>	<a href="#">Baxter EOA - BB.pdf</a>		
<b>Docket Entry:</b>	ENTRY OF APPEARANCE OF BRIAN H BENJET FILED. (FILED ON BEHALF OF PHILADELPHIA BOARD OF ELECTIONS)		

25-SEP-2024 11:31 AM	MOTION ASSIGNMENT UPDATED		
<b>Docket Entry:</b>	66-24094566 REASSIGNED TO JUDGE CRUMLISH, JAMES ON 25-SEP-24		
25-SEP-2024 01:45 PM	STIPULATION FILED	STOHR, ALISON L	
<b>Documents:</b>	<a href="#">Baxter v. PCBOE - Consent Order Authorizing Certification (9-25-2024).pdf</a>		
<b>Docket Entry:</b>	28-24095328 STIPULATION TO ENTER CONSENT ORDER FILED. AWAITING JUDICIAL APPROVAL (FILED ON BEHALF OF PHILADELPHIA BOARD OF ELECTIONS) ENTRY OF APPEARANCE FILED ON BEHALF OF PHILADELPHIA BOARD OF ELECTIONS.		
25-SEP-2024 04:38 PM	ORDER ENTERED/236 NOTICE GIVEN	CRUMLISH III, JAMES	
<b>Documents:</b>	<a href="#">ORDER_15.pdf</a>		
<b>Docket Entry:</b>	66-24094566 IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS: 1. THE PHILADELPHIA COUNTY BOARD OF ELECTIONS IS SUTHORIZED TO CERTIFY THE RESULTS OF THE SEPTEMBER 17, 2024 SPECIAL ELECTION TO THE PENNSYLVANIA DEPARTMENT OF STATE AND TO TAKE ANY AND ALL SUCH OTHER ACTIONS NECESSARY TO ACCOMPLISH THE SAME, WITHOTU IMPACTING THE PENDING LITIGATION; AND 2. THE PARTIES HAVE AGREED THAT IF EITHER OR BOTH OF THE PETITIONER ULTIMATELY PREVAIL ON THE MERTIS, THE PHILADELPHIA COUNTY BOURD OF ELECTIONS WILL OPEN AND CANVASS THEIR MAIL BALLOTS AND FILE AN AMENDED VOTE COUNT WITH THE PENNSYVANIA DEPARTMENT OF STATE REFLECTING THEIR VOTES IN THE SEPTEMBER 17, 2024 SPECIAL ELECTION. ...BY THE COURT; CRUMLISH, J. 9-23-24		
25-SEP-2024 04:38 PM	NOTICE GIVEN UNDER RULE 236		
<b>Docket Entry:</b>	NOTICE GIVEN ON 26-SEP-2024 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 25-SEP-2024.		
26-SEP-2024 01:10 PM	PETITION TO INTERVENE	KERNS ESQ, LINDA A	
<b>Documents:</b>	<a href="#">Baxter Petition for Leave to Intervene(1541320339.2).pdf</a> <a href="#">Baxter v. Philly Motion to Dismiss(1541321597.1).pdf</a> <a href="#">Brief in Support of Motion to Dismiss Petition (Baxter v. Philly)(1541321636.1).pdf</a> <a href="#">Motion CoverSheet Form</a>		
<b>Docket Entry:</b>	06-24095206 PETITION TO INTERVENE (FILED ON BEHALF OF REPUBLICAN PARTY OF PENNSYLVANIA AND REPUBLICAN NATIONAL COMMITTEE)		

Case ID: 240902481

26-SEP-2024 01:13 PM	MOTION ASSIGNED		
<b>Docket Entry:</b>	06-24095206 PETITION TO INTERVENE ASSIGNED TO JUDGE: CRUMLISH, JAMES . ON DATE: SEPTEMBER 26, 2024		
26-SEP-2024 03:43 PM	ORDER ENTERED/236 NOTICE GIVEN	CRUMLISH III, JAMES	
<b>Documents:</b>	<a href="#">ORDER_19.pdf</a>		
<b>Docket Entry:</b>	<p>66-24094566 AND NOW, THIS 26TH DAY OF SEPTEMBER, 2024, UPON CONSIDERATION OF PETITIONERS' PETITION FOR REVIEW IN THE NATURE OF A STATUTORY APPEAL PURSUANT TO 25 P.S. SECTION 3157 FROM RESPONDENT'S DECISION ON SEPTEMBER 21, 2024, NOT TO COUNT PETITIONERS' AND SIXTY-SEVEN OTHER REGISTERED VOTERS' MAIL-IN BALLOTS IN THE SEPTEMBER 17, 2024 SPECIAL ELECTION BECAUSE THE DATE WRITTEN ON THE OUTER ENVELOPE WAS MISSING OR INCORRECT, AND AFTER A HEARING ON THE PETITION AT WHICH PETITIONERS AND RESPONDENT STIPULATED TO THE OPERATIVE FACTS UNDERLYING THEIR DISPUTE, IT IS ORDERED AS FOLLOWS: 1. THE PETITION IS GRANTED AND THE SEPTEMBER 21, 2024 DECISION OF THE PHILADELPHIA BOARD OF ELECTIONS IN WHICH IT REFUSED TO COUNT PETITIONERS' AND THE SIXTY-SEVEN OTHER REGISTERED VOTERS' MAIL-IN BALLOTS IS REVERSED: A. BASED ON THE STIPULATION AND REPRESENTATIONS MADE ON THE RECORD SET FORTH IN THE TRANSCRIPT OF THE HEARING HELD ON SEPTEMBER 25, 2024, WHICH IS ATTACHED HERETO AS AN EXHIBIT; AND B. BECAUSE THE REFUSAL TO COUNT A BALLOT DUE TO A VOTER'S FAILURE TO "DATE...THE DECLARATION PRINTED ON [THE OUTER] ENVELOPE" USED TO RETURN HIS/HER MAIL-IN BALLOT, AS DIRECTED IN 26 P.S. SECTIONS 3146.6(A), VIOLATES ART. I, SECTION 5 OF THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA, WHICH STATES THAT "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." 2. RESPONDENT BOARD OF ELECTIONS SHALL CAUSE PETITIONERS' AND THE SIXTY-SEVEN OTHER REGISTERED VOTERS' DATE-DISQUALIFIED MAIL-IN BALLOTS FROM THE SPECIAL ELECTION TO BE VERIFIED, COUNTED IF OTHERWISE VALID, AND INCLUDED IN THE RESULTS OF THE SPECIAL ELECTION. BY THE COURT: JUDGE CRUMLISH, III, 9/26/24.</p>		
26-SEP-2024 03:43 PM	NOTICE GIVEN UNDER RULE 236		
<b>Docket Entry:</b>	NOTICE GIVEN ON 26-SEP-2024 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 26-SEP-2024.		
26-SEP-2024 03:43 PM	ORDER ENTERED/236 NOTICE GIVEN	CRUMLISH III, JAMES	
<b>Documents:</b>	<a href="#">ORDER_20.pdf</a>		

<b>Docket Entry:</b>	66-24094566 AND NOW, THIS 26TH DAY OF SEPTEMBER, 2024, A PETITION FOR LEAVE TO INTERVENE BY THE REPUBLICAN NATIONAL COMMITTEE AND THE REPUBLICAN PARTY OF PENNSYLVANIA HAVING BEEN FILED IN THE ABOVE ACTION FOLLOWING THE COURT HAVING COMPLETED A HEARING ON PETITIONERS' STATUTORY APPEAL FROM A DECISION OF RESPONDENT PHILADELPHIA BOARD OF ELECTIONS AND FOLLOWING THE COURT'S ENTRY OF AN ORDER GRANTING THE APPEAL AND REVERSING THE BOARD'S DECISION, IT IS HEREBY ORDERED THAT PETITIONERS AND RESPONDENT SHALL FILE A RESPONSE TO THE PETITION FOR LEAVE TO INTERVENE, IF ANY, WITHIN TEN (10) DAYS OF THE DATE OF THIS RULE TO SHOW CAUSE AND ALL INTERESTED PARTIES OR INTERVENORS SHALL APPEAR BEFORE THE UNDERSIGNED ON OCTOBER 10, 2024 AT 11:00 A.M. IN COURTROOM 636 CITY HALL TO SHOW CAUSE WHY THE PETITION FOR LEAVE TO INTERVENE SHOULD NOT BE GRANTED. BY THE COURT: JUDGE CRUMLISH, III, 9/26/24.		
26-SEP-2024 03:43 PM	NOTICE GIVEN UNDER RULE 236		
<b>Docket Entry:</b>	NOTICE GIVEN ON 26-SEP-2024 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 26-SEP-2024.		
26-SEP-2024 03:54 PM	MOTION HEARING SCHEDULED		
<b>Docket Entry:</b>	66-24094566 PETITION TO INTERVENE IS SCHEDULED FOR 10/10/24 AT 11:00 AM IN COURTROOM 636 CITY HALL.		
27-SEP-2024 10:02 AM	MOTION ASSIGNMENT UPDATED		
<b>Docket Entry:</b>	28-24095328 REASSIGNED TO JUDGE CRUMLISH, JAMES ON 27-SEP-24		
27-SEP-2024 10:36 AM	ENTRY OF APPEARANCE-CO COUNSEL	PFAUTZ, MICHAEL W	
<b>Documents:</b>	<a href="#">24.09.27 - EOA_Pfautz.pdf</a>		
<b>Docket Entry:</b>	ENTRY OF APPEARANCE OF MICHAEL W PFAUTZ AS CO-COUNSEL FILED. (FILED ON BEHALF OF PHILADELPHIA BOARD OF ELECTIONS)		
27-SEP-2024 11:50 AM	OTHER EVENT CANCELLED	CRUMLISH III, JAMES	
<b>Docket Entry:</b>	28-24095328		

27-SEP-2024 01:10 PM	ORDER ENTERED/236 NOTICE GIVEN	CRUMLISH III, JAMES	
<b>Documents:</b>	<a href="#">ORDER_28.pdf</a>		
<b>Docket Entry:</b>	38-24095238 AND NOW, THIS 27TH DAY OF SEPTEMBER, 2024, THE COURT HAVING HELD A HEARING ON THE PETITIONERS' APPEAL OF THE DECISION OF THE PHILADELPHIA BOARD OF ELECTIONS, AND THE PARTIES HAVING PROVIDED THE COURT WITH A STIPULATED ORDER AT THE HEARING, IT IS HEREBY ORDERED THAT THE CONTENTS OF THE FILED STIPULATION HAVE BEEN INCORPORATED INTO THE COURT'S ORDER OF SEPTEMBER 25, 2024, AND, ACCORDINGLY, ANY FURTHER ACTION ON THE PROPOSED STIPULATION (24095238) WOULD BE DUPLICATIVE AND THEREFORE THE STIPULATED REQUEST TO ENTER THE CONSENT ORDER IS MOOT. BY THE COURT: JUDGE CRUMLISH, III, 9/27/24.		
27-SEP-2024 01:10 PM	NOTICE GIVEN UNDER RULE 236		
<b>Docket Entry:</b>	NOTICE GIVEN ON 01-OCT-2024 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 27-SEP-2024.		
27-SEP-2024 06:11 PM	MOTION FOR RECONSIDERATION	PFAUTZ, MICHAEL W	
<b>Documents:</b>	<a href="#">Joint Emergency Motion for Reconsideration.pdf</a> <a href="#">Proposed Order Reconsideration.pdf</a> <a href="#">Motion CoverSheet Form</a>		
<b>Docket Entry:</b>	62-24095662 MOTION FOR RECONSIDERATION OF JUDGE CRUMLISH'S ORDER DATED 9/26/2024 (FILED ON BEHALF OF PHILADELPHIA BOARD OF ELECTIONS, SUSAN T KINNIRY AND BRIAN T BAXTER)		
27-SEP-2024 06:11 PM	CITY CHARGE SUBSEQUENT FILINGS	PFAUTZ, MICHAEL W	
<b>Docket Entry:</b>	<i>none.</i>		
28-SEP-2024 01:35 PM	ORDER ENTERED - FINAL DISPOS	CRUMLISH III, JAMES	
<b>Documents:</b>	<a href="#">ORDRF_29.pdf</a>		
<b>Docket Entry:</b>	06-24095206 UPON CONSIDERATION OF THE PETITION OF REPUBLICAN NATIONAL COMMITTEE AND THE REPUBLICAN PARTY OF PENNSYLVANIA TO INTERVENE IN THE ABOVE ACTIONS AND THE JOINT EMERGENCY MOTION OF PETITIONERS BAXTER AND KINNIRY AND RESPONDENT PHILADELPHIA BOARD OF ELECTIONS WHEREIN THE PARTIES DO NOT OPPOSE THE PETITION TO INTERVENE, IT IS ORDERED THAT THE PETITION TO INTERVENE IS GRANTED AND THE EMERGENCY MOTION FOR RECONSIDERATION AND		

Case ID: 240902481

	CLARIFICATION IS MOOT. IT IS FURTHER ORDERED AND DUE CONSIDERATION, THAT INTERVENOR'S MOTION TO DISMISS IS DENIED. ...BY THE COURT; CRUMLISH, J. 9-27-24		
28-SEP-2024 01:35 PM	NOTICE GIVEN UNDER RULE 236		
<b>Docket Entry:</b>	NOTICE GIVEN ON 28-SEP-2024 OF ORDER ENTERED - FINAL DISPOS ENTERED ON 28-SEP-2024.		
30-SEP-2024 10:39 AM	MOTION ASSIGNED		
<b>Docket Entry:</b>	62-24095662 MOTION FOR RECONSIDERATION ASSIGNED TO JUDGE: EMERGENCY JUDGE, JUDGE . ON DATE: SEPTEMBER 30, 2024		
30-SEP-2024 12:05 PM	CORRECTIVE ENTRY	EMERGENCY JUDGE, JUDGE	
<b>Docket Entry:</b>	62-24095662 ***PLEASE NOTE: THIS ENTRY IS BEING MADE TO CLOSE A MOTION RECORD WHICH REMAINED OPEN IN ERROR. SEE JUDICIAL ORDER ENTERED UNDER CONTROL NO. 24095206. ...OJR TXF		

- [▶ Case Description](#)
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- [▶ Case Parties](#)
- [▶ Docket Entries](#)

# EXHIBIT D



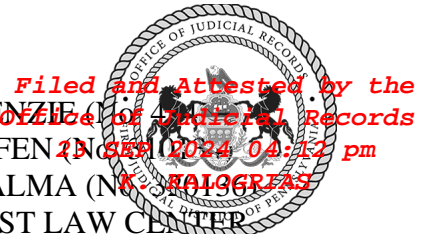
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**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY,  
PENNSYLVANIA**

**BRIAN T. BAXTER**  
2401 Pennsylvania Ave.  
Philadelphia, PA 19130

and

**SUSAN T. KINNIRY**  
859 N. Stillman St.  
Philadelphia, PA 19130

Petitioners,

v.

**PHILADELPHIA BOARD OF ELECTIONS**  
City Hall, 1400 JFK Blvd., Rm 142  
Philadelphia, PA 19107

Respondents.

**CIVIL DIVISION**

No. \_\_\_\_\_

**ELECTION APPEAL**

**PETITION FOR REVIEW IN THE NATURE OF A STATUTORY APPEAL**

Case ID: 240902481  
Control No.: 24094566

Petitioners Brian T. Baxter and Susan T. Kinniry, qualified registered electors of Philadelphia County, by and through their undersigned counsel, appeal pursuant to 25 P.S. § 3157 from the decision of the Philadelphia Board of Elections (“Board”) on September 21, 2024, to not count their mail-in ballots in the September 17, 2024 Special Election, and aver as follows:<sup>1</sup>

### **INTRODUCTION**

1. Voting is the cornerstone of our democracy and the fundamental right upon which all our civil liberties rest. In Pennsylvania, the right to vote and have that vote count is enshrined and protected by the Free and Equal Elections Clause in the Pennsylvania Constitution, 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. I, § 5.

2. This appeal concerns the decision of the Board following the September 17, 2024 Special Election for State House Districts 195 and 201 to not count mail-in ballots because of a missing handwritten date on the outside declaration envelope. The Board set aside and did not count Petitioners’ mail-in ballots because both Petitioners inadvertently forgot to handwrite a date on the declaration envelope. 67 other ballots were also not counted because the voter either omitted the date or wrote a date that was deemed “incorrect” on the declaration envelope.

3. Since 2022, if a voter fails to handwrite the date on the outer declaration envelope of their mail ballot or writes a date that is deemed “incorrect,” their mail ballot is not counted.

*See Ball v. Chapman*, 289 A.3d 1 (Pa. 2023).

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<sup>1</sup> As Petitioners do not seek a recount or recanvass under §§ 1701, 1702, or 1703 of the Election Code, and the race in their election districts is not close enough for the affected voters’ mail-in ballots to potentially impact any outcomes, there is no need for the Court or the Commissioners to suspend certification of the election results in the special election. Rather, Petitioners seek an order declaring the Commissioners’ decision unlawful under the Pennsylvania Constitution and requiring the Commissioners to amend the final vote count to include the mail-in ballots of Petitioners. That said, given the upcoming November general election, time is of the essence to achieve clarity of the law before then.

4. However, in recent prior lawsuits multiple courts have found that the voter-written date is meaningless, unnecessary to establish voter eligibility or timely ballot receipt. *See, e.g., Pa. State Conf. of NAACP v. Schmidt* (“NAACP I”), 703 F. Supp. 3d 632, 668 (W.D. Pa. 2023), *rev’d on other grounds*, 97 F.4th 120 (3d Cir. 2024) (“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)); *Pa. State Conf. of NAACP Branches v. Schmidt* (“NAACP II”), 97 F.4th 120, 125, 127, 129 (3d Cir. 2024)(agreeing the handwritten date plays no role in determining a ballot’s timeliness or voter qualifications or in detecting fraud); *see also, e.g., Black Political Empowerment Project, et al. v. Schmidt, et al.* (“B-PEP”), No. 283 M.D. 2024, 2024 WL 4002321 at \*32 (Pa. Cmwlth. Aug. 30, 2024), *vacated on other grounds*, No. 68 MAP 2024 (Pa. Sept. 13, 2024) (“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.”).

5. Accordingly, the refusal to count timely mail ballots submitted by otherwise eligible voters because of an inconsequential date error violates the fundamental right to vote enshrined in the Free and Equal Elections Clause. *See B-PEP*, 2024 WL 4002321, at \*32-33; *see also Ball*, 289 A.3d at 27 n.156 (Pa. 2023) (plurality opinion) (acknowledging that the “failure to comply with the date requirement would not compel the discarding of votes in light of the Free and Equal Elections Clause, and our attendant jurisprudence that ambiguities are resolved in a way that will enfranchise, rather than disenfranchise, the electors of this Commonwealth”).

6. Enforcement of this envelope-date provision disenfranchised at least 10,000 voters in the 2022 general election and thousands more voters in the 2024 Presidential primary whose ballots were timely received by Election Day. In the September 17, 2024 Special Election—a low turnout election involving only two seats in the Pennsylvania House of Representatives—the Board disenfranchised 23 mail-in voters for failing to include the date on the outer declaration envelope and 46 mail-in voters for writing a date that was deemed to be “incorrect.”

7. Although previous cases addressed whether federal or state statutory law required enforcement of the handwritten date, the only case to assess whether enforcement of the meaningless envelope-date requirement violates the Free and Equal Elections Clause found that it did. *B-PEP*, 2024 WL 4002321, at \*32-33. But that decision was recently vacated on procedural grounds. *See B-PEP*, No. 68 MAP 2024 (Pa. Sept. 13, 2024) (without reaching the merits, vacating lower court opinion on procedural grounds, holding that the Commonwealth Court lacked subject matter jurisdiction).

8. The Board’s decision to refuse to count Petitioners’ votes violates art.1, §5 of the Pennsylvania Constitution.

9. Petitioners are aggrieved by the Board’s decision and hereby appeal from it pursuant to 25 P.S. § 3157(a).

### **JURISDICTION**

10. The Court has jurisdiction over this statutory appeal pursuant to 25 P.S. § 3157(a).

### **PARTIES**

11. Petitioner Brian T. Baxter is an 81-year-old qualified registered voter who lives in Philadelphia. Mr. Baxter submitted a mail-in ballot ahead of the September 17, 2024 Special

Election for State Representative in the 195<sup>th</sup> state house district. *See* Declaration of Brian T. Baxter ¶¶ 1-3, 9 (“Baxter Decl.”).<sup>2</sup>

12. Mr. Baxter has a master’s degree in public policy and has had a long professional career in politics and public sector governance. *Id.*, ¶ 5.

13. Mr. Baxter votes in every election because voting is important to him and he believes it is a citizen’s responsibility to participate in shaping the policies under which we live. *Id.*, ¶¶ 6-7.

14. Mr. Baxter votes by mail because he appreciates the ability to take his time and research the candidates while deciding for whom to vote. He has been voting by mail for two years. *Id.*, ¶ 8.

15. About one month before the September 2024 Special Election, Mr. Baxter received a mail-in ballot from the Board. *Id.*, ¶ 9. He marked it, inserted it into the secrecy envelope and the outer return envelope. He thought he had filled out everything on the declaration envelope correctly when he submitted it. *Id.*, ¶ 10.

16. However, Mr. Baxter neglected to include a date on the outer declaration envelope when completing his mail-in ballot packet.<sup>3</sup>

17. As a consequence, the Board set aside and did not count his mail ballot in the September 2024 Special Election.

18. Petitioner Susan T. Kinniry is a 38-year-old qualified registered voter in Philadelphia who submitted a mail-in ballot in the September 17, 2024 Special Election for State

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<sup>2</sup> A true and correct copy of Brian T. Baxter’s Declaration is attached hereto as Exhibit 1.

<sup>3</sup> See Philadelphia Board of Elections, *List of Flawed Ballots, 2024 Special Election* (Sept. 15, 2024), [https://vote.phila.gov/media/2024\\_Special\\_Election\\_Deficiency\\_List.pdf](https://vote.phila.gov/media/2024_Special_Election_Deficiency_List.pdf).

Representative in the 195<sup>th</sup> state house district. *See* Declaration of Susan T. Kinniry ¶¶ 1-3, 9 (“Kinniry Decl.”).<sup>4</sup>

19. Ms. Kinniry tries to vote in every election and especially in off-cycle, low turnout elections to show that voters are paying attention to what local officials are doing. Kinniry Decl. ¶¶ 6, 15.

20. Ms. Kinniry, who is a regular mail voter, received a mail-in ballot from the Board a few weeks before the September 2024 Special Election. *Id.*, ¶¶ 8-9. She marked her ballot and inserted it into the secrecy envelope and thought she properly filled out the declaration after she inserted everything into the return envelope. *Id.*, ¶ 10.

21. Ms. Kinniry received an email from the Board on August 27, 2024, informing her that she did not date her ballot return envelope and that her vote would not be counted. *Id.*, ¶ 12.

22. As a consequence, the Board set aside and did not count her mail ballot in the Special Election.

23. Respondent the Philadelphia Board of Elections is responsible for overseeing the conduct of all elections in Philadelphia County.<sup>5</sup> Among other duties, County Boards are responsible for:

- a. Reviewing and processing applications for absentee and mail ballots.<sup>6</sup> 25 P.S. §§ 3146.2b, 3150.12b.
- b. Confirming an absentee applicant’s qualifications by verifying their proof of identification and comparing the information on the application with information

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<sup>4</sup> A true and correct copy of Susan Kinniry’s Declaration is attached hereto as Exhibit 2.

<sup>5</sup> The Board is composed of the three Philadelphia City Commissioners (the “Commissioners”), who are a bipartisan group of elected officials who oversee elections and voter registration in Philadelphia. Pursuant to the Philadelphia Home Rule Charter, the Commissioners serve as the county board of elections for Philadelphia County as provided in the Election Code. 25 P.S. § 2641.

<sup>6</sup> The rules governing mail and absentee ballot processing are identical. For ease of reference, Petitioners will refer to both absentee and mail ballots as “mail ballots.”

contained in the voter's record. 25 P.S. §§ 3146.2b, 3150.12b; *see also id.* § 3146.8(g)(4).

- c. Sending a mail-ballot package that contains a ballot, a “secrecy envelope” marked with the words “Official Election Ballot,” and the pre-addressed outer return envelope, on which a voter declaration form is printed (the “Return Envelope”). *Id.* §§ 3146.6(a), 3150.16(a).
- d. Maintaining poll books that track which voters have requested mail ballots and which have returned them. *Id.* §§ 3146.6(b)(3), 3150.16(b)(3).
- e. Upon return of a mail ballot, stamping the Return Envelope with the date of receipt to confirm its timeliness.<sup>7</sup>
- f. Logging returned mail ballots in the Department of State’s Statewide Uniform Registry of Electors (“SURE”) system, the voter registration system. *Id.*
- g. Keeping returned mail ballots in sealed or locked containers until they are canvassed by the County Board. 25 P.S. § 3146.8(a).
- h. Pre-canvassing and canvassing mail ballots, including examining the voter declaration. *Id.* § 3146.8(g).
- i. Conducting a formal hearing to hear challenges as to all challenged absentee ballot applications and challenged absentee ballots. *Id.* § 3146.8(g)(5).

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<sup>7</sup> See Pa. Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes*, at 2–3 (April 3, 2023), <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2023-04-03-Examination-Absentee-Mail-In-Ballot-Return-Envelopes-4.0.pdf>.

## **DECISION OF THE BOARD AT ISSUE**

24. Pursuant to 25 P.S. § 3154(f), the Board met in a public meeting on Saturday, September 21, 2024 to review the mail ballots from the Special Election.<sup>8</sup> Following a 2-1 vote, the Board orally announced its decision to refuse to count 69 ballots—including Petitioners’ ballots—with a missing or incorrect date.<sup>9</sup>

25. Petitioners appeal from that decision.

## **FACTUAL BACKGROUND**

### **A. Voting by Mail in Pennsylvania**

26. Pennsylvania has long provided absentee ballot options for voters who cannot attend a polling place on Election Day. *See* 25 P.S. §§ 3146.1–3146.9. In 2019, Pennsylvania enacted new mail-in voting provisions, extending the vote-by-mail option to *all* registered, eligible voters. Act of Oct. 31, 2019, P.L. 552, No. 77, § 8.

27. A voter seeking to vote by mail must complete an application that includes their name, address, and proof of identification and send it to their county board of elections. 25 P.S. §§ 3146.2, 3150.12. Such proof of identification must include a Pennsylvania driver’s license number, or non-driver identification number, if the voter has one. If the voter does not have a PennDOT-issued identification, they must provide the last four digits of the voter’s social security number. 25 P.S. § 2602(z.5)(3). As part of the application process, voters provide all the information necessary for county boards of elections to verify that they are qualified to vote in Pennsylvania, namely, that they are at least 18 years old, have been a U.S. citizen for at least one

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<sup>8</sup> *See* Philadelphia Board of Elections, *Agenda of the Philadelphia City Commissioners Return Board Meeting* (Sept. 21, 2024), [https://vote.phila.gov/media/Agenda\\_for\\_09\\_21\\_2024.pdf](https://vote.phila.gov/media/Agenda_for_09_21_2024.pdf).

<sup>9</sup> *See* Philadelphia Board of Elections, *Livestream Meetings: Return of Board Meeting on 9-21-2024*, <https://vote.phila.gov/resources-data/commissioner-meetings/livestream-meetings/>.



month, have resided in the election district for at least 30 days, and are not currently incarcerated on a felony conviction. *See* 25 Pa.C.S. § 1301.

28. After the application is submitted, the county board of elections confirms applicants' qualifications by verifying their proof of identification and comparing the information on the application with information contained in a voter's record. 25 P.S. §§ 3146.2b, 3150.12b; *see also id.* § 3146.8(g)(4). The county board's determinations on that score are conclusive as to voter eligibility unless challenged prior to Election Day. *Id.*

29. Once the county board verifies the voter's identity and eligibility, it sends a mail-ballot package that contains a ballot, a "secrecy envelope" marked with the words "Official Election Ballot," and the pre-addressed outer return envelope, on which a voter declaration form is printed (the "Return Envelope"). *Id.* §§ 3146.6(a), 3150.16(a). Poll books kept by the county show which voters have requested mail ballots and which have returned them. *Id.* §§ 3146.6(b)(3), 3150.16(b)(3).

30. At "any time" after receiving their mail-ballot package, the voter marks their ballot, puts it inside the secrecy envelope, and places the secrecy envelope in the Return Envelope. 25 P.S. §§ 3146.6(a), 3150.16(a).

31. The Election Code provides that the voter "shall...fill out, date and sign the declaration" printed on the outer envelope used to return their mail ballots. *See* 25 P.S. §§ 3146.6(a), 3150.16(a).

32. The voter delivers the ballot, in the requisite envelopes, by mail or in person, or by other designated method, to their county board of elections.

33. A mail ballot is timely so long as the county board of elections receives it by 8 p.m. on Election Day. *Id.* §§ 3146.6(c), 3150.16(c). Upon receipt of a mail ballot, county boards

of elections stamp the Return Envelope with the date of receipt to confirm its timeliness and log it in the Department of State’s Statewide Uniform Registry of Electors (“SURE”) system, the statewide database counties use to, among other purposes, generate poll books.<sup>10</sup>

34. Timely mail-in ballots are then verified consistent with procedures set forth in 25 P.S. § 3146.8(g)(3). Any ballot that has been so verified by the county board of elections and has not been challenged is counted and included with the election results. *Id.* § 3146.8(d), (g)(4).

### **B. The Date Provision Serves No Purpose**

35. Pennsylvania’s adoption of mail voting has been a boon for voter participation in the Commonwealth. For example, in 2020, 2.7 million Pennsylvanians voted by mail ballot.<sup>11</sup>

36. In the 2024 primary election, more than 4,000 mail-in ballots across Pennsylvania were marked as canceled in the SURE system due to a missing or incorrect handwritten date. *See* Declaration of Ariel Shapell at ¶ 12(b).<sup>12</sup>

37. The enforcement of the dating provision results in the arbitrary and baseless rejection of thousands of timely ballots. *See NAACP I*, 703 F.Supp.3d at 680 (finding the record “replete with evidence that the county boards’ application of the [date requirement] in the November 2022 general election created inconsistencies across the Commonwealth in the way ‘correctly dated’ and ‘incorrectly dated’ ballots were rejected or counted by different counties”).

38. This is not new. In the 2022 election, over 10,000 timely absentee and mail-in ballots were rejected because of the dating provision. *See NAACP I*, 703 F. Supp.3d at 668.

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<sup>10</sup> Pa. Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes*, at 2-3 (Apr. 3, 2023), <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2023-04-03-Examination-Absentee-Mail-In-Ballot-Return-Envelopes-4.0.pdf>.

<sup>11</sup> Pa. Dep’t of State, *Report on the 2020 General Election* at 9 (May 14, 2021), <https://www.dos.pa.gov/VotingElections/Documents/2020-General-Election-Report.pdf>.

<sup>12</sup> A true and correct copy of the Declaration of Ariel Shapell is attached hereto as Exhibit 3.

39. The date written on the envelope serves no purpose. In particular, it is not used to establish whether the mail ballot was submitted on time. Indeed, lawsuits in both state and federal court raising statutory challenges have conclusively demonstrated that the date is meaningless, necessary neither to establish voter eligibility nor timely ballot receipt. *See, e.g., NAACP II*, 97 F.4th at 129 (“Nor is [the handwritten date] used to determine the ballot’s timeliness because a ballot is timely if received before 8:00 p.m. on Election Day, and counties’ timestamping and scanning procedures serve to verify that. Indeed, not one county board used the date on the return envelope to determine whether a ballot was timely received in the November 2022 elections.”); *see also NAACP I*, 703 F. Supp.3d at 679 (“Whether a mail ballot is timely, and therefore counted, is not determined by the date indicated by the voter on the outer return envelope, but instead by the time stamp and the SURE system scan indicating the date of its receipt by the county board.”); *B-PEP*, 2024 WL 4002321, at \*32 (“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.”).<sup>13</sup>

40. A voter whose mail ballot was timely received could have signed the voter declaration form *only* in between the date their county board sent the mail-ballot packages and the Election-Day deadline. Ballots received by county boards *after* 8 p.m. on Election Day are not counted regardless of the handwritten envelope date. *See NAACP I*, 703 F.Supp.3d 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

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<sup>13</sup> The courts’ findings in *NAACP I* and *NAACP II* that this voter-written date serves no purpose, plays no role in establishing a ballot’s timeliness or voter eligibility and is not used to prevent fraud are based on a complete record including discovery from all 67 county boards of elections, including Philadelphia.

ballot was deemed timely received...[I]f the county board received a mail ballot after 8:00 p.m. on Election Day, the ballot was not timely and was not counted, despite the date placed on the Return Envelope”), *rev’d on other grounds, NAACP II*, 97 F.4th 120 (3d Cir. 2024).

**C. The Board Timely Received Petitioners’ Mail-In Ballots.**

41. Petitioners are qualified voters who are registered to vote in Pennsylvania.

42. Petitioners validly applied for, received, and timely submitted their mail-in ballots prior to the Special Election on September 17, 2024.

43. Before the day of the Special Election and upon receipt of the mail-in ballots at issue here, the election staff reviewed the envelopes and determined that Petitioners had made an error that would prevent the Board from counting them under Pennsylvania law. Specifically, both Petitioners forgot to handwrite a date on the mail ballot declaration envelope.

44. On September 9, 2024, the Board posted a list of mail-in ballots on its website that had been received ahead of the 2024 Special Election that were “administratively determined to be potentially flawed.”<sup>14</sup> The public notice stated that “[t]hese ballot submissions have the possibility of **NOT** being counted” and provided information about requesting a replacement ballot or casting a provisional ballot.<sup>15</sup> Petitioners’ names appeared on this list of defective mail-in ballots received prior to Election Day, but they did not correct the error on their mail ballot envelopes before 8 p.m. on the day of the Special Election.

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<sup>14</sup> See Philadelphia Board of Elections, *2024 Special Election: Unverifiable Identification, Undeliverable and/or Potentially Flawed Ballots* (Sept. 9, 2024), <https://vote.phila.gov/news/2024/09/09/2024-special-election-unverifiable-identification-undeliverable-and-or-potentially-flawed-ballots/>.

<sup>15</sup> *Id.*

#### **D. The Board Voted to Not Count Petitioners' Mail-in Ballots in the 2024 Special Election**

45. The Board convened at a public meeting on Saturday, September 21, 2024 to adjudicate mail-in ballots and make “sufficiency determinations” about mail ballot packets with flaws.<sup>16</sup>

46. The Board was informed that 23 mail-in ballots had been segregated due to a “missing date.” Commissioner Sabir moved that “this Board not accept ballots with a missing date.” The motion was seconded by Commissioner Bluestein.<sup>17</sup>

47. Commissioner Deeley responded to the motion by reading from the Commonwealth Court’s August 30, 2024 opinion in which the Board was named as a Respondent including that:

The fundamental right to vote guaranteed by our Constitution is at issue. For this reason, a strict scrutiny standard of review applies to the dating provisions’ restriction on that right. Under this standard of review, the government bears the heavy burden of proving that the law in question is narrowly tailored to serve a compelling government interest and where the governmental fails to satisfy its burden, the law or its application is unconstitutional. As has been determined in prior litigation, the date on the outer mail-in ballot envelopes is not used to determine the timeliness of a ballot, a voter’s qualifications/eligibility to vote, or fraud. Therefore, the dating provisions serve no compelling government interest. The refusal to count undated or incorrectly dated but timely mail ballots submitted by otherwise eligible voters because of meaningless and inconsequential paperwork errors violates the fundamental right to vote recognized in the Free and Equal Elections Clause.

48. Commissioner Deeley observed that the Commonwealth’s order was vacated “on technical grounds” by the Pennsylvania Supreme Court, which “did not rule on the merits of the

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<sup>16</sup> See Philadelphia Board of Elections, *Agenda of the Philadelphia City Commissioners Return Board Meeting* (Sept. 21, 2024), [https://vote.phila.gov/media/Agenda\\_for\\_09\\_21\\_2024.pdf](https://vote.phila.gov/media/Agenda_for_09_21_2024.pdf).

<sup>17</sup> See Philadelphia Board of Elections, *Livestream Meetings: Return of Board Meeting on 9-21-2024*, <https://vote.phila.gov/resources-data/commissioner-meetings/livestream-meetings/>. The allegations in paragraphs 47-54, *infra*, recount the proceedings as recorded in this livestream.

constitutional arguments.” Commissioner Deeley concluded, in light of the Commonwealth Court’s ruling, that “not counting these ballots because of meaningless and inconsequential errors that do not affect determinations of the timeliness of a ballot, a voter’s eligibility to vote, or the prevention of fraud, would be a violation of the Pennsylvania Constitution.”

49. Commissioner Deeley further explained that as Commissioner she is legally required to swear an oath to uphold the Pennsylvania Constitution at the beginning of each term. “The Pennsylvania Constitution is one of the documents that we swear to support, obey, and defend. Therefore, I believe...that we should count these ballots.”

50. Commissioner Bluestein responded to the remarks by stating, “While I agree in principle with Vice-Chair Deeley that these ballots *should* count, the Pennsylvania Supreme Court vacated the Commonwealth Court ruling and we have an obligation to follow the law as it currently stands. Unfortunately, that means that we are not able to count these ballots in my opinion.”

51. The Board voted 2-1 to not count mail-in ballots that arrived in undated declaration envelopes.

52. The Board was then informed that 46 ballots had arrived in envelopes that were “incorrectly dated.” The Board moved to not count “incorrectly dated” ballots, and Commissioner Deeley again noted her objection in light of the *B-PEP* ruling, stating “I believe the Free and Equal Election Clause of the Pennsylvania Constitution requires us to count these ballots.”

53. Commissioner Sabir responded that he “agree[d] with the sentiments” expressed by his colleague.

54. The Board voted 2-1 to not count mail-in ballots that arrived in “incorrectly dated” declaration envelopes. Thus, Petitioners’ votes were not counted in the 2024 Special Election.

### **GROUND FOR APPEAL**

55. The Board’s decision to not count Petitioners’ mail ballots violated Petitioners’ fundamental right to vote under the Free and Equal Elections Clause.

56. 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).

57. Under this guarantee “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 of Pa. v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018). Likewise, the Pennsylvania Constitution forbids the imposition of rules applicable to the right to vote when such regulation denies the franchise or subverts the right to vote. *Winston*, 91 A. at 523.

58. The Pennsylvania Supreme Court has repeatedly held that the right to vote guaranteed by the Free and Equal Elections Clause is fundamental. *See, e.g., Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020) (employing a construction of the Election Code that “favors the fundamental right to vote and enfranchises, rather than disenfranchises, the electorate”); *Banfield v. Cortés*, 110 A.3d 155, 176 (Pa. 2015) (observing

that “the right to vote is fundamental and ‘pervasive of other basic civil and political rights’”) (quoting *Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999)).

59. Strict scrutiny applies to any restriction on this fundamental right. *See, e.g., Petition of Berg*, 712 A.2d 340, 342 (Pa. Cmwlth. 1998), *aff’d*, 713 A.2d 1106 (Pa. 1998) (“It is well settled that laws which affect a fundamental right, such as the right to vote..., are subject to strict scrutiny”); *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.”); *James v. SEPTA*, 477 A.2d 1302, 1306 (Pa. 1984) (“[W]here a...fundamental right has been burdened, another standard of review is applied: that of strict scrutiny.”).

60. Under strict scrutiny, the party defending the challenged action must prove that it serves a compelling government interest. *Pap’s A.M. v. City of Erie*, 812 A.2d 591, 596 (Pa. 2002); *see also, e.g., In re Nader*, 858 A.2d 1167, 1180 (Pa. 2004), *abrogated on other grounds by In re Vodvarka*, 140 A.3d 639 (Pa. 2016) (“[W]here a precious freedom such as voting is involved, a compelling state interest must be demonstrated”).

61. The Board cannot demonstrate a compelling interest that justifies its complete disenfranchisement of voters where the handwritten date requirement on mail ballot envelopes serves absolutely no purpose in determining timeliness of receipt or voter qualifications. The Board acknowledged at the September 21 hearing that the date requirement serves no purpose.

62. The only court to have tested the envelope-date provisions in 25 P.S. §§ 3146.6(a), 3150.16(a) against the guarantee of the right to vote under Article I, § 5 concluded that the envelope-date provisions “serve no compelling government interest” and that the “refusal to count undated or incorrectly dated but timely mail ballots submitted by otherwise



eligible voters because of meaningless and inconsequential paperwork errors violates the fundamental right to vote recognized in the free and equal elections clause.” *B-PEP*, 2024 WL 4002321, at \*1.

63. The Board’s application of the Election Code’s envelope dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), to reject Petitioners’ timely mail ballots based solely on the inadvertent failure to add a meaningless, superfluous handwritten date next to their signature on the mail ballot Return Envelope is an unconstitutional interference with the exercise of the right to suffrage in violation of the Free and Equal Elections Clause.

WHEREFORE, Petitioners respectfully request that this Honorable Court enter an order reversing the decision of the Philadelphia Board of Elections, declaring that the Pennsylvania Constitution requires the counting of Petitioners’ ballots, directing the Board to count the mail ballots cast by Petitioners in the September 17, 2024 Special Election, and enter such other and further relief as provided by the Pennsylvania Election Code or as this Court deems just and appropriate.

Respectfully submitted,

Dated: September 23, 2024

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*Counsel for Petitioners*  
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to be filed

**CERTIFICATE OF COMPLIANCE**

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

Dated: September 23, 2024

/s/ Claudia De Palma  
Claudia De Palma  
*Counsel for Petitioners*

## VERIFICATION

I, BRIAN T. BAXTER, hereby state:

1. The statements made in the foregoing *Petition for Review in the Nature of a Statutory Appeal* are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Brian T. Baxter

Dated: September 23, 2024

## VERIFICATION

I, Susan T. Kinniry, hereby state:

1. The statements made in the foregoing *Petition for Review in the Nature of a Statutory Appeal* are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Susan T. Kinniry", is written over a horizontal line.

Dated: September 23<sup>rd</sup>, 2024

# EXHIBIT

1

## DECLARATION OF BRIAN T. BAXTER

I, Brian T. Baxter, 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 81 years old and am otherwise competent to testify.

3. I live in Philadelphia, Pennsylvania.

4. I have lived in Philadelphia for fourteen years. I lived in Harrisburg in the 1980s and later resided in Cherry Hill, New Jersey before moving to Philadelphia. I am happily married to my wife Ilene and a proud father.

5. I am presently retired. For most of my career, I worked for elected officials, both Republicans and Democrats, at the state and local level in Pennsylvania, New Jersey, and New York. I have a master's degree in public policy from Princeton University, and I am very interested in politics and elections. Some of my professional roles include serving as city administrator of Trenton, New Jersey for nine years, working for Elizabeth Holtzman when she was the Comptroller of New York City, and working for Governor Christine Todd Whitman of New Jersey. I gained experience with political campaigns in the City of Philadelphia by supporting Joseph Rock's run for City Controller in 1989. I most recently worked as a lobbyist at S.R. Wojdak & Associates, the largest lobbying firm in the state. I continue to stay involved with political work by volunteering on the 35 Doors Project for Indivisible Pennsylvania.

6. I am a registered voter in Philadelphia. I vote in every election,

including primary and general elections.

7. Voting is very important to me and I believe it is the responsibility of every citizen to vote. Voting is a critical way to participate in shaping the policies under which we live.

8. I started voting by mail about two years ago. I prefer to vote by mail because it provides time to do internet research and gather information about the candidates and issues on the ballots before I submit my vote. I believe that voting around the kitchen table results in smarter voting because I can review the ballot in advance. I do not want to walk into the voting booth without the proper amount of information and vote on a ballot that I am seeing for the first time.

9. I voted by mail in the Philadelphia's Special Election this year for State Representative in the 195th District. About one month before the September 2024 special election, I received a mail-in ballot from the Philadelphia City Commissioners.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I thought I had filled out everything on the ballot correctly when I submitted it. I was aware that there were lawsuits and efforts in the state legislature to change the envelope dating requirement and I tried to follow all the directions so that my vote would be counted.

11. As far as I know, I have never made a mistake that disqualified my ballot in prior elections when I voted by mail. I am getting older and more



forgetful, which may have contributed to my mistake when completing the mail-in ballot envelope.

12. I believe that my vote should be counted. After reading dozens of articles about this issue, I am not aware of any rationale for why the date is helpful or necessary. The date on the envelope is not important because it is the date that the ballot arrives in the election office that determines whether the vote is valid. I tried to comply with the mail-in ballot rules, but this bureaucratic stumbling block will prevent my vote from counting.

13. I returned my mail-in ballot on time and I believe that denying a citizen's vote because they didn't include the date on the mail-in ballot envelope is taking away that person's vote for no good reason.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 22<sup>nd</sup> of September, 2024 in Philadelphia, Pennsylvania.

A handwritten signature in black ink that reads "Brian T. Baxter". The signature is written in a cursive style and is positioned above a horizontal line.

Brian T. Baxter

# EXHIBIT

2

## DECLARATION OF SUSAN T. KINNIRY

I, Susan T. Kinniry, 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 38 years old and am otherwise competent to testify.

3. I am a resident of Philadelphia, Pennsylvania.

4. I grew up in Jenkintown, Pennsylvania. I attended high school and law school in Philadelphia.

5. I have worked as an attorney for the Social Security Administration since 2017. My work initially focused on the disability program and presently involves labor and employee relations issues.

6. I have been a registered voter in Philadelphia since around 2018. I try to vote in every primary and general election.

7. Voting is very important to me because it is one of the most direct ways that citizens can influence what kind of government we have and who represents our interests. I try not to pass up that opportunity to participate in governance.

8. I started voting by mail in Philadelphia in 2019. I prefer to vote by mail because it is more convenient than voting in person, and because I like having time to review the ballot at home before casting my vote.

9. I voted by mail this year in Philadelphia's Special Election for State Representative in the 195th District. I made an annual request for mail-in

ballots and received a mail-in ballot from the Philadelphia City Commissioners a few weeks before the September 2024 special election.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I signed the declaration on the outer envelope. I thought I had filled out the outer envelope correctly when I submitted it. I was aware that elections offices in Pennsylvania cannot count ballots for immaterial reasons, so I am embarrassed that I forgot to include the date.

11. As far as I know, I have never made any mistakes on prior mail-in ballots. I do not recall ever receiving an email stating that my ballot was invalid before this September 2024 special election.

12. After I returned my ballot, I received an email from the Pennsylvania Department of State on August 27, informing me that I did not date my ballot return envelope and that my vote would not be counted if I didn't take additional steps to fix this mistake. A true and correct copy of the email dated August 27 is attached hereto as Exhibit A.

13. I was annoyed at myself when I learned that my ballot would not be counted because I forgot the date. I also thought that if I made this mistake, despite my experience with technical, legal requirements, many others must make the same mistake.

14. I did not attempt to fix my ballot because shortly after receiving the email stating that I forgot to date my ballot return envelope, I read in the news

about a recent Commonwealth Court decision finding that it was unconstitutional to reject ballots that do not comply with the date requirement. I thought that the Court had reached the right result.

15. I wish that my vote had been counted in this election. I think it is important to participate in off-cycle elections to show that voters are paying attention to what local officials are doing. Often voter turnout is low in these kinds of special elections, so I made an intentional effort to submit my ballot.

16. I believe that voting rules should encourage more participation, not less. The envelope dating requirement seems like an unnecessary stumbling block that will result in fewer ballots being counted. That is not the result that is in everyone's best interest.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 22<sup>nd</sup> of September, 2024 in Philadelphia, Pennsylvania.

A handwritten signature in black ink, appearing to read "Susan T. Kinniry", written over a horizontal line.

Susan T. Kinniry

# Declaration Exhibit A

From: <[RA-voterregstatcert@state.pa.us](mailto:RA-voterregstatcert@state.pa.us)>  
Date: Tue, Aug 27, 2024, 4:58 PM  
Subject: Your Ballot Status Has Changed – Check for Updates  
To: <[SUSANKINNIRY@gmail.com](mailto:SUSANKINNIRY@gmail.com)>

Dear SUSAN T KINNIRY,

After your ballot was received by PHILADELPHIA County, it received a new status.

Your ballot may not be counted because you did not date your ballot return envelope. If you receive this email on or before election day, you can go to your polling place on election day before 8 p.m. and request a provisional ballot.

You can get more information on your ballot's new status by going to <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions or need more information after checking your ballot's status, please contact PHILADELPHIA County at (215) 686-VOTE.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx> .  
要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>。

Thank you.

\*\*\*\*Please do not reply to this email.\*\*\*\*

Case ID: 240902481  
Control No.: 24094566

# EXHIBIT

3



**DECLARATION OF ARIEL SHAPELL  
IN SUPPORT OF PETITIONERS' PETITION FOR REVIEW**

1. I, Ariel Shapell, am an attorney at the American Civil Liberties Union of Pennsylvania (“ACLU-PA”) and have a background in data analytics.

2. I received a B.S.B.A. with majors in mathematics and finance from Washington University in St. Louis in 2011 and a J.D. from the University of Pennsylvania Carey Law School in 2021.

3. In 2014 and 2015, I served as the Director of Business Intelligence at Beatport LLC, a digital music and entertainment company, where I was responsible for organizing, analyzing, and reporting the company’s business data. In my role, I performed data analyses and visualizations and developed systems to extract, transform, and load data. I also supervised a team of three data scientists and analysts.

4. From 2015 until 2018, I served as the lead product manager at Postlight LLC, a technology consultancy. At Postlight LLC, I oversaw data analytics and digital product development projects for large entertainment, finance, and cultural institutions.

5. From 2019 through the present, I have worked as a volunteer, intern, and now legal fellow at the ACLU-PA. During my time with the ACLU-PA, I have conducted numerous analyses of large data sets for both litigation and advocacy.

6. During my time with the ACLU-PA, I have conducted numerous analyses of large data sets for both litigation and advocacy.

7. I have been asked by the ACLU-PA, Arnold & Porter Kaye Scholer LLP, and the Public Interest Law Center (collectively, “Petitioners’ Counsel” or “Counsel”) to apply my training and expertise to assess the number of mail-ballots that were coded as canceled or pending because the voter neglected to write the date on the outer envelope or because the voter wrote a date that was deemed “incorrect.”

8. I have been informed and understand that on August 21, 2023, ACLU-PA attorney Kate Steiker-Ginzberg received access from the Pennsylvania Department of State to the “Pennsylvania Statewide Mail-Ballot File,” which contains point-in-time public information about each mail-ballot application and mail-ballot recorded in Pennsylvania’s Statewide Uniform Registry of Electors (“SURE”) system.

9. Attorney Steiker-Ginzberg made two versions of the Pennsylvania Statewide Mail-Ballot File available to me: (1) a version of the file generated on November 17, 2023 based on Department of State data from the SURE system corresponding to mail-ballots submitted in the November 2023 municipal election, under the file name VR\_SWMailBallot\_External 20231117.TXT; and (2) a version of the file generated on May 14, 2024 based on Department of State data from the SURE system corresponding to mail-ballots received in the April 2024 Pennsylvania

presidential primary election, under the file name VR\_SWMailBallot\_External 20240514.TXT.

10. For the May 14, 2024 SURE file, I identified mail ballots that were coded as canceled or pending because the voter neglected to write the date on the outer envelope by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - NO DATE” or “PEND – NO DATE.” For the November 17, 2023 SURE file, I identified mail ballots that were coded as canceled because the voter neglected to write the date on the outer envelope by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - NO DATE.” No “PEND – NO DATE” “Ballot status reason” values were present in the November 17, 2023 SURE file.

11. Similarly, for the May 14, 2024 SURE file, I identified mail ballots that were coded as canceled or pending because the voter wrote a date that was deemed “incorrect” by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - INCORRECT DATE” or “PEND – INCORRECT DATE”. For the November 17, 2023 SURE file, I identified mail ballots that were coded as canceled because the voter wrote a date that was deemed “incorrect” by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - INCORRECT DATE.” No “PEND – INCORRECT DATE” “Ballot status reason” values were present in the November 17, 2023 SURE file.

12. Based on the methodology described above, I determined that:

- a. As of November 17, 2023, **6,804 mail-ballots** submitted in the November 2023 municipal election had been coded in the SURE file as canceled because the voter neglected to write the date on the outer envelope or because the voter wrote a date that was deemed “incorrect.” Of that total, 4,849 ballots were coded as canceled because the voter neglected to write the date on the outer envelope, and 1,955 were coded as canceled because the voter wrote a date that was deemed “incorrect.”
- b. As of May 14, 2024, **4,421 mail-ballots** submitted in the April 2024 Pennsylvania presidential primary election had been coded in the SURE file as canceled or pending because the voter neglected to write the date on the outer envelope or because the voter wrote a date that was deemed “incorrect.” Of that total, 1,216 ballots were coded as canceled or pending because the voter neglected to write the date on the outer envelope, and 3,205 were coded as canceled or pending because the voter wrote a date that was deemed “incorrect.”

13. My conclusions, and the bases for my conclusion, are presented in this declaration. My work on these matters is ongoing, and I may make necessary

revisions or additions to the conclusions in this declaration should new information become available or to respond to any opinions and analyses proffered by Respondents. I am prepared to testify on the conclusions in this declaration, as well as to provide any additional relevant background. I reserve the right to prepare additional exhibits to support any testimony.

The statements made in this Declaration are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.



---

Ariel Shapell

5/27/2024

## CERTIFICATE OF SERVICE

I, Kathleen A. Gallagher, hereby certify that on the date set forth below, I served a true and correct copy of the foregoing **Notice of Appeal**, upon the person(s) and in the manner indicated below, in conformance with Pa. R. App. P. 906:

Via Email:

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Via Hand Delivery:

**The Honorable James C. Crumlish, III**  
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*Trial Judge*

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By Email (by agreement per Pa. R. App. P. 121):

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Street, 2nd Floor The Land & Title  
Building Philadelphia, PA 19110  
*Court Reporter*

Dated: October 3, 2024

Respectfully submitted,

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

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Brian M. Adrian

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