

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
 CIVIL ACTION-LAW

DAVID MCCORMICK, REPUBLICAN :
 NATIONAL COMMITTEE, and REPUBLICAN :
 PARTY OF PENNSYLVANIA, :
 Petitioners, :

v. :

CENTRE COUNTY BOARD OF :
 ELECTIONS, :
 Respondent. :

No. 2024-CV-3025-CI

Attorneys for Petitioners:

Thomas E. Breth, Esq.
Louis T. Glantz, Esq.

Attorneys for Respondent:

Elizabeth A. Dupuis, Esq.

OPINION AND ORDER

Grine, P.J.

Presently before the Court is Petitioner’s “Petition for Review in the Nature of a Statutory Appeal” filed on November 14, 2024 by David McCormick, the Republican National Committee, and the Republican Party of Pennsylvania (“Petitioners”). Respondent, the Centre County Board of Elections (“Board”) filed a Response on November 15, 2024. A hearing was held on November 15, 2024. Based upon the applicable statutory and case law, the “Petition for Review in the Nature of a Statutory Appeal” is DENIED and DISMISSED WITH PREJUDICE. Petitioners’ request for *nunc pro tunc* relief is DENIED.

Background

The 2024 General Election was held on November 5, 2024 (“the election”). In connection with the election, the Board’s staff flagged three mail-in ballots for further review

because of irregularities with the date on the envelope. A public meeting of the Board was held on November 7, 2024, at which time the Board voted to accept the three mail-in ballots that had been flagged for date irregularities. At the hearing before this Court, Petitioners called Michelle Schellberg (“Ms. Schellberg”), an individual who was present at the November 7, 2024 public meeting and who challenged the counting of the three mail-in ballots on behalf of the Centre County Republican Committee at that time. Ms. Schellberg confirmed that the vote to accept the three mail-in ballots occurred on November 7, 2024 and testified further that no decisions regarding the mail-in ballots at issue in this appeal occurred at the November 12, 2024 meeting.

While the instant appeal originally sought to address all three of those mail-in ballots, at the time of the hearing, Petitioners withdrew their challenge to two of the ballots. The only remaining ballot at issue was designated as Challenged Ballot #3.

Discussion

The Commonwealth’s well-established case law dictates strict adherence to the statutory requirements for pursuing relief under the Election Code. *Rinaldi v. Ferrett*, 941 A.2d 73, 78 (Pa. Cmwlth. 2007). The jurisdiction of the courts in election contests is not of common law origin but is founded entirely upon statute, and therefore it cannot be extended beyond the limits defined by Acts of Assembly.” *In re Granting Malt Beverage Licenses in Greene Twp., Franklin Cnty.*, 1 A.2d 670, 671 (Pa. 1938). Thus, compliance with any mandatory appeal or filing period is a prerequisite to Common Pleas’ ability to grant any relief to appellants. *Appeal of Orsatti*, 598 A.2d 1341, 1342 (Pa. Cmwlth. 1991). *See also Pa. Dental Ass’n v. Ins. Dep’t*, 516 A.2d 647, 654 (Pa. 1986) (“Periods of time set for filing appeals are jurisdictional.”). “Compliance with statutorily imposed time limitations is especially important in election cases.” *In re Recount of*

Ballots Cast in Gen. Election on Nov. 6, 1973, 325 A.2d 303, 307 (Pa. 1974); *see also In re James*, 944 A.2d 69, 73 (Pa. 2008) (holding statutory period for filing objection petitions under the Code is mandatory). The demand for compliance with these statutory mandates is undergirded by the fundamental policy reason that “[t]he continuing and efficient operation of government is dependent on the prompt resolution of election contests.” *Koter v. Cosgrove*, 844 A.2d 29, 33 (Pa. Cmwlth. 2004).

The provision of the Pennsylvania Election Code governing appeals from decisions of a county board provides, in relevant part, that:

Any person aggrieved by any order or decision of any county board regarding the computation or canvassing of the returns of any primary or election...**may appeal therefrom within two days after such order or decision shall have been made, whether then reduced to writing or not**, to the court [of common pleas of the proper county], setting forth why he feels that an injustice has been done, and praying for such order as will give him relief.

25 P.S. § 3157(a) (emphasis added).

The Board’s decision to canvass and accept Challenged Ballot #3 occurred at the November 7, 2024 public meeting. Therefore, Petitioners were required to file any appeal of that decision no later than Tuesday, November 12, 2024.¹ Because Petitioners did not file their appeal until November 14, 2024, the appeal is untimely under 25 P.S. § 3157(a) and this Court lacks jurisdiction to decide the appeal.

At the time of the hearing, Petitioners made an oral request for *nunc pro tunc* relief if the Court finds the appeal to be untimely. The Pennsylvania Supreme Court has explained that “where a petitioner does not learn of a problem with the election until the filing period has expired and his ignorance is not due to any fault or dereliction on his part ... the petitioner [may] seek relief *nunc*

¹ November 9th and 10th were a Saturday and Sunday, and Monday, November 11th was a state and federal holiday (Veterans Day). Thus, those dates are excluded from the two-day appeal period. See 1 Pa.C.S.A. § 1908.

pro tunc.” *In re Dist. Justice*, 670 A.2d at 635-36 (internal quotation marks and citation omitted). Further, in determining whether *nunc pro tunc* relief is warranted, the Court will consider whether the petitioner is guilty of laches, which requires “lack of due diligence in pursuing a cause of action and resulting prejudice to the other party.” *Id.* at 636. Finally, *nunc pro tunc* relief is generally only warranted where a petitioner can point to fraud or a breakdown in the administrative process on the part of the court or the election board. *Appeal of Orsatti*, 598 A.2d at 1342. “[T]hose seeking ... *nunc pro tunc* [relief] in an election matter must be held to a stricter rule than those in a controversy between individuals[.]” *Appeal of Koch*, 41 A.2d at 660 (emphasis added).

Petitioners were aware of the Board’s decision regarding Challenged Ballot #3 on November 7, 2024, as the decision occurred in a public meeting and their witness, Ms. Schellberg was present and lodged an objection. No evidence was presented to explain Petitioners’ lack of due diligence to file the appeal within the statutory time frame. No evidence was presented of any fraud or breakdown in the administrative process of the court or the election board. For these reasons, Petitioners are not entitled to *nunc pro tunc* relief.

Conclusion

Petitioner’s appeal from the November 7, 2024 decision of the Board is subject to the two-day filing period described in 25 P.S. § 3157(a). The appeal was filed after that two-day deadline, is untimely, and therefore this Court is without jurisdiction to consider the merits of the appeal.

Accordingly, the following ORDER is entered.

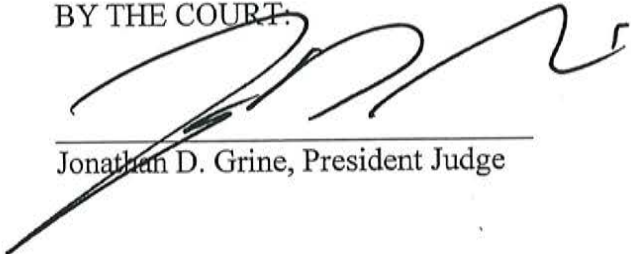
ORDER

NOW THIS 15 day of November, 2024, the Court hereby ORDERS as

follows:

1. Petitioners' Petition for Review in the Nature of a Statutory Appeal is **DENIED**.
2. Petitioner's oral motion for nunc pro tunc relief is **DENIED**.
3. The appeal is **DISMISSED WITH PREJUDICE**.

BY THE COURT:



Jonathan D. Grine, President Judge

Appendix – Order, JAD No. 622, filed August 27, 2024

IN THE SUPREME COURT OF PENNSYLVANIA

IN RE: TEMPORARY MODIFICATION AND : NO. 622
SUSPENSION OF THE RULES OF :
APPELLATE PROCEDURE AND JUDICIAL : JUDICIAL ADMINISTRATION DOCKET
ADMINISTRATION FOR APPEALS ARISING:
UNDER THE PENNSYLVANIA ELECTION :
CODE :

ORDER

PER CURIAM

AND NOW, this 27th day of August, 2024, upon consideration of the requirements of the Electoral Count Reform Act of 2022, see 3 U.S.C. § 5, 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, it is **ORDERED** as follows:

Rule 903(c)(1)(ii) of the Pennsylvania Rules of Appellate Procedure, which provides for a 10-day appeal period from an order in any matter arising under the Pennsylvania Election Code, is **TEMPORARILY MODIFIED** to provide for a 3-day appeal period; further, Pa.R.A.P. 1113(c)(1), which provides for a 10-day period for filing a petition for allowance of appeal from an order in any matter arising under the Pennsylvania Election Code, is **TEMPORARILY MODIFIED** to provide for a 3-day period. All cross-appeals and cross-petitions for allowance of appeal must also be filed within 3 days of the challenged order.

Additionally, Pa.R.A.P. 107 and Pa.R.J.A. 107 are **TEMPORARILY SUSPENDED** to the extent they specify that weekends and holidays are to be excluded in calculating the above 3-day periods.

Answers to jurisdictional statements and petitions for allowance of appeal, and separate motions to quash or dismiss appeals, will not be received in these matters. Any objection to the propriety of the appeal, including questions surrounding the appellate court's jurisdiction, are to be raised in the appellees' merits briefs.

In appeals that fall within the purview of this order, appellants shall file briefs within 24 hours of the filing their notice of appeal and, where applicable, jurisdictional statement. Appellees' briefs are due within 24 hours of the filing of appellants' briefs. Further, Pa.R.A.P. 2113 (regarding reply briefs) is **TEMPORARILY SUSPENDED** in these matters; no reply briefs will be permitted absent order of court.

All filings related to matters encompassed by this order shall be filed electronically when counsel or the litigants have a PACFile account. Otherwise, counsel or the litigants shall contact the relevant filing office to make alternative arrangements to ensure that the filing office receives the submissions by the applicable deadline.

Pa.R.A.P. 1931(a) and (c) (regarding the deadline for transmittal of the record when complete) are **TEMPORARILY SUSPENDED** in matters subject to this order, and the record shall be transferred as soon as practicable. The lower court may transmit partially completed records in the interest of facilitating prompt resolution of any appeal in these matters.

Applications for reconsideration or reargument will not be received on matters falling under this order.

Any 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.

This order shall be effective August 29, 2024, and shall apply to appeals or petitions for allowance of appeal filed from orders entered after that date.

This order shall remain in effect pending further order of this Court.

A True Copy Nicole Traini
As Of 08/27/2024

Attest: Nicole Traini
Chief Clerk
Supreme Court of Pennsylvania