

**IN THE SUPREME COURT OF PENNSYLVANIA**

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Docket No. 136 MM 2024

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REPUBLICAN NATIONAL COMMITTEE and REPUBLICAN PARTY OF  
PENNSYLVANIA,

Petitioners,

v.

All 67 County Boards of Elections,  
Respondents.

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**CENTRE COUNTY BOARD OF ELECTION'S RESPONSE IN  
OPPOSITION TO PETITIONERS' APPLICATION FOR THE EXERCISE  
OF KING'S BENCH POWER OR EXTRAORDINARY JURISDICTION**

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Petitioners' Application for the Exercise of King's Bench Power or Extraordinary  
Jurisdiction, filed November 14, 2024

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*Attorneys for Centre County Board of Elections*

Respondent Centre County Board of Elections, by and through its undersigned counsel, Babst, Calland, Clements, and Zomnir, P.C., files this Response in Opposition to the Application for the Exercise of King’s Bench Jurisdiction or Extraordinary Jurisdiction filed by Petitioners Republican National Committee and Republican Party of Pennsylvania on November 14, 2024.

### **RESPONSE**

Petitioners have presented the Court with what they perceive to be an open-and-shut case of noncompliance with judicial and legislative mandates. And they do so based on a sampling of three counties in a 67-county state, arguing that the Bucks, Centre, and Philadelphia County Board of Elections improperly counted both undated *and* misdated mail-in/absentee ballots cast in the 2024 General Election. (Pet’rs’ App. at 9–10.) Based on this argument, Petitioners ask this Court to reiterate its holding that the outer-envelope date requirement provided in 25 P.S. §§ 3146.6(a) and 3150.16(a) is mandatory. (*Id.* at 10.)

Yet, the Centre County Board of Elections did not count any *undated* ballots this election cycle. Rather, it counted ballots (the “Challenged Ballots”) the outer envelopes of which bore dates that could “reasonably be interpreted to be ‘the day upon which [the voter] completed the [outer-envelope] declaration.’” *See* Pa. Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes*, 9/10/24, at 13 (first alteration in original) (quoting *Ball v. Chapman*, 289

A.3d 1, 23 (Pa. 2023)), available at <https://www.pa.gov/content/dam/copapwp-pa.gov/en/dos/resources/voting-and-elections/directives-and-guidance/2024-guidance-civilian-absentee-mail-in-ballot-procedures-v3.1.pdf>.

The steps that the Centre County Board of Elections took with respect to the Challenged Ballots—flagging them as potentially misdated and then determining if they could reasonably be interpreted as being correctly dated—is consistent with this Court’s statement that “county boards of elections retain authority to evaluate the ballots that they receive in future elections—including those that fall within the date ranges derived from statutes indicating when it is possible to send out mail-in and absentee ballots—for compliance with the Election Code.” *See Ball 289* A.3d at 23.

The broad, generalized relief Petitioners seek in their application (an “order [directing] all 67 county boards of elections not to count undated or misdated mail ballots in the 2024 General Election” (Pet’rs’ App. at 10)) would not address the fact-specific inquiry undertaken by the Centre County Board of Elections under *Ball* and the Department of State Guidance regarding potentially misdated outer-envelope declarations. Nor would it address any other county board of election’s fact-specific inquiries as to whether outer-envelope declarations bear the correct date. It would, as Petitioners contend, allow the Court to reaffirm its prior holding that the date requirement is mandatory, but it is unclear to what end that would serve as to outer envelopes that are reasonably interpreted as bearing the correct date,

although initially flagged as potentially misdated.

And this background underscores the troublesome nature of Petitioners’ request that the Court exercise its King’s Bench powers.<sup>1</sup> There are at least two reasons for this. First, Petitioners, along with U.S. Senate Candidate David McCormick, just yesterday filed an appeal of the Centre County Board of Election’s decision to count the Challenged Ballots—and today the appeal was dismissed with prejudice as jurisdictionally time-barred. *See McCormick v. Centre Cnty. Bd. of Elections*, No. 2024-CV-3025-CI (Centre Cnty. C.C.P. Nov. 15, 2024). Petitioners have also appealed the Bucks and Philadelphia County Boards of Elections’ decisions to count undated and misdated ballots. (Pet’rs’ App. at 9–10.)

As such, Petitioners’ application—at least as to the only county boards of elections named in the application—is an effort to “bypass an existing . . . statutory adjudicative process . . . .” *In re Bruno*, 101 A.3d 635, 670 (Pa. 2014). Such an effort runs afoul of the rule that the “Court’s King’s Bench powers ‘do not constitute a vehicle by which [the Court] may circumvent’ procedural defects in order to reach

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<sup>1</sup> The Centre County Board of Elections submits that Petitioners’ request for an exercise of extraordinary jurisdiction should be summarily denied. Extraordinary jurisdiction allows the Court to “assume plenary jurisdiction of [a matter *pending before any court*] at any stage thereof and enter a final order or otherwise cause right and justice to be done.” 42 Pa.C.S.A. § 726. Petitioners do not separately analyze extraordinary jurisdiction as distinct from the Court’s King’s Bench powers. (*See* Pet’rs’ App.) Rather, they appear to treat the two interchangeably. (*See id.*) Petitioners do not request that the Court exercise plenary jurisdiction over a specific, pending case involving the same parties and the same issues. (*See* Pet’rs’ App.) For that reason alone, Petitioners’ attempt to invoke extraordinary jurisdiction is misplaced. *See* 42 Pa.C.S.A. § 726.

the merits of an appeal.” *In re S.D.M.*, 291 A.3d 357, 358 n.3 (Pa. 2023) (quoting *Commonwealth v. Fahy*, 737 A.2d 214, 224 (Pa. 1999)). Petitioners should not be permitted to sidestep the statutory procedures available to them, particularly given that the Court’s King’s Bench powers are to be exercised “with extreme caution.” *Commonwealth v. Balph*, 3 A. 220, 230 (Pa. 1886).

Second, and relatedly, even if Petitioners’ application “raise[d] valid and serious concerns,” the only colorable arguments against the Centre County Board of Elections would rest on “fact-intensive [] theories requiring a great deal of speculation that generally lie outside this Court’s purview.”<sup>2</sup> *Cf. Delisle v. Boockvar*, 234 A.3d 410, 411 (Pa. 2020) (Wecht, J., concurring). The “ability to develop a record upon which this matter could be decided would be difficult on the compressed timeframe” posed by the looming final certification of election results. *Cf. New PA Project Educ. Fund v. Schmidt*, No. 112 MM 2024, 2024 WL 4410884, at \*2 (Pa. Oct. 5, 2024) (Brobson, J., concurring). Simply put, whether boards of elections are correctly following *Ball* regarding potentially misdated outer envelopes necessarily involves a fact-specific, case-by-case inquiry that is more suited for

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<sup>2</sup> This is so because the Centre County Board of Elections did not count *undated* ballots. What remains, therefore, is a lone, fact-intensive issue: Whether the Centre County Board of Elections followed *Ball* and the Department of State Guidance in determining that the dates on the outer envelopes of the Challenged Ballots could reasonably be interpreted as the date upon which the respective voters completed the outer-envelope declaration. Petitioners do not address that specific issue in their application and instead request that the Court reaffirm that the date requirement is mandatory.

appeals to courts of common pleas than to this Court in the first instance.

For all these reasons—*i.e.*, the relief Petitioners seek does not address the county boards of elections’ authority to evaluate whether outer-envelope declarations are correctly dated, the ongoing litigation either terminated (as in the case of Centre County) or percolating through the courts of common pleas, and the fact-specific nature of county boards of elections’ evaluation of potentially misdated outer envelopes—the Court should decline to exercise its King’s Bench powers. Further, as argued above, *see supra* at n.1, the Court should summarily deny Petitioners’ request that the Court exercise extraordinary jurisdiction.

Respectfully submitted,

BABST, CALLAND, CLEMENTS  
and ZOMNIR, P.C.

*/s/ Michael Libuser*

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Dated: November 15, 2024

**CERTIFICATE OF COMPLIANCE**

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

Date: November 15, 2024

*/s/ Michael Libuser*  
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