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IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA

David McCormick
2401 Pennsylvania Ave.
Philadelphia, PA 19130

Republican National Committee
310 First Street, SE
Washington, D.C. 20003

Republican Party of Pennsylvania
3501 N. Front Street, Suite 200
Harrisburg, PA 17110

Petitioners,

v.

BERKS COUNTY BOARD OF ELECTIONS
Berks County Services Center, 1st Floor, 633 Court
Street, Reading, PA 19601

Respondent.

CIVIL DIVISION

No. _____

ELECTION APPEAL

PETITION FOR REVIEW IN THE NATURE OF A STATUTORY APPEAL

Petitioners David McCormick, the Republican National Committee, and the Republican Party of Pennsylvania, by and through their undersigned counsel, appeal pursuant to 25 P.S. § 3157 from the decision of the Berks County Board of Elections (“Board”) on November 14, 2024, to count 32 provisional ballots missing one or both signatures of the Judge of Elections or minority inspector in the November 5, 2024 General Election. Petitioners aver as follows:

INTRODUCTION

1. This appeal concerns the Board’s decisions to count in the November 5, 2024 General Election provisional ballots missing one or both signatures of the Judge of Elections or minority inspector.

2. The Board erred as a matter of law because those ballots are invalid under Pennsylvania law and cannot be counted.

3. The Election Code directs that individuals signing a provisional ballot “shall” sign an affidavit that is also “signed by the Judge of Elections and minority inspector.” 25 P.S. § 3050(a.4)(2). The Pennsylvania Supreme Court has repeatedly held that the word “shall” in the Election Code is “mandatory” such that noncompliance renders a ballot invalid and ineligible to be counted. *In re: Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d 900, 907 (Pa. 2024); *Chapman v. Ball*, 289 A.3d 1, 28 (Pa. 2023). The Board’s decision nonetheless to count provisional ballots lacking the signature of the Judge of Elections or minority inspector thus violates Pennsylvania law.

4. The Board’s decision to count ballots the Election Code prohibits also likely violates the U.S. Constitution’s Equal Protection Clause as well as the Pennsylvania Constitution. Under the Equal Protection Clause of the U.S. Constitution, a “State may not, by . . . arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98,

104-05 (2000). And counties cannot use “varying standards to determine what [i]s a legal vote.” *Id.* at 107. Likewise, the Pennsylvania Constitution decrees that “[a]ll laws regulating the holding of elections . . . shall be uniform throughout the State,” Pa. Const. art. VII, § 6; *accord* Pa. Const. art. I, § 5; 25 P.S. § 2642(g). The Board’s decision to violate the Election Code—even as other counties follow it—threatens violations of both the U.S. and Pennsylvania Constitutions because ballots will be treated differently depending on the county in which they were cast. This Court can avoid those violations by reversing.

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

JURISDICTION

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

PARTIES

7. Petitioner David McCormick is the Republican candidate for Senate.

8. Petitioner Republican National Committee (RNC) is a national committee of the Republican Party as defined by 52 U.S.C. § 30101(14). The RNC manages the Republican Party’s business at the national level, including development and promotion of the Party’s national platform and fundraising and election strategies; supports Republican candidates for public office at all levels across the country, including those on the ballot in Pennsylvania; and assists state parties throughout the country, including the Republican Party of Pennsylvania, to educate, mobilize, assist, and turn out voters.

9. Petitioner Republican Party of Pennsylvania (RPP) is a major political party, 25 P.S. § 2831(a), and the “State committee” for the Republican Party in Pennsylvania, 25 P.S. § 2834, as well as a federally registered “State Committee” of the Republican Party as defined by

52 U.S.C. § 30101(15). The RPP on behalf of itself and its members nominates, promotes, and assists Republican candidates seeking election or appointment to federal, state, and local office in Pennsylvania.

10. Respondent the Berks County Board of Elections is responsible for overseeing the conduct of all elections in Berks County.

DECISIONS OF THE BOARD AT ISSUE AND FACTUAL BACKGROUND

11. The Board met in a public meeting on November 14, 2024, to adjudicate challenges to provisional ballots. In a 3-0 decision, the Board voted to count 32 provisional ballots that were missing signatures from the Judge of Elections, minority inspector, or both.¹

12. Petitioners objected to that decision before the Board.

13. Petitioners appeal from that decision.

GROUND FOR APPEAL

14. The Election Code adds several extra security measures for those who cast provisional ballots. One such measure is the requirement that electors voting a provisional ballot “**shall**” sign an affidavit that is also “signed by [the] Judge of Elections and minority inspector.” *Id.* § 3050(a.4)(2) (emphasis added); *see also id.* § 3050(a) (“The election officer shall . . . sign an affidavit stating that this has been done.”).

15. This requirement is listed alongside other mandatory components of the affidavit, such as the “Signature of Voter/Elector,” the text of the affidavit itself, and “the Reason for Casting the Provisional Ballot.” *Id.* § 3050(a.4)(2).

16. These requirements ensure that election officials actually supervised the casting

¹ A copy of the transcript of the November 14, 2024 public meeting of the Board will not be available until Monday, November 18, 2024. As a copy of the transcript is unavailable at the time of filing of the instant Petition, Petitioners will provide the Court with the transcript at or before the time of the related hearing.

of provisional ballots; after all, the Pennsylvania Supreme Court has explained that lack of such supervision can call the relevant votes into doubt. *See Ewing v. Filley*, 43 Pa. 384, 388 (Pa. 1862) (explaining that “the judge of the election was absent from duty during the greater part of the day” and that this “is the assertion of very serious official misconduct on the part of the officer, and possibly it vitiates the vote of the division.”).

17. If the Judge of Elections and minority inspector do not sign the mandatory affidavit for a provisional ballot, that ballot is incomplete and cannot be counted. As Justice Wecht has explained, if “the Election Code unambiguously require[s] [a] signature” on balloting materials, then such requirements are not “directives” but rather “mandates.” *In re: Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d at 914 (Wecht, J., concurring). Indeed, a “mandate without consequence is not mandate at all.” *See Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 391 (Pa. 2020) (Wecht, J., concurring).

18. While this Court “should not disregard unambiguous statutory requirements for voting because those requirements are purportedly not a ‘necessity,’ . . . or because they are mere ‘technicalities,’” *In re Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d at 914 (Wecht, J., concurring), the official signature requirement here is anything but. The positions of Judge of Elections and minority inspector are guaranteed by the Pennsylvania Constitution. *See* Pa. Const. art. VII § 11. And though the exact form has varied, these officials’ duty to certify—in writing—that each elector is eligible to vote before their ballot can be cast is almost two hundred years old. *See* Act of July 2, 1839 § 70, 1839 Pa. Laws 534-35; 25 Pa. Stat. § 3050(a). This duty has persisted over the centuries because it is important. Far from being a *pro forma* requirement, the officials’ signatures are a vital tool used to secure convictions for election fraud. *See, e.g., Commonwealth v. Grear*, 76 A.2d 491, 492-93 (Pa. Super. 1950).

19. Accordingly, the Board erred in voting to count provisional ballots missing mandatory signatures from election officials.

20. Petitioners also note that the Board's decisions to count ballots prohibited by the Election Code will likely result in violations of the U.S. Constitution's Equal Protection Clause and the Pennsylvania Constitution.

21. Under the Equal Protection Clause of the U.S. Constitution, a "State may not, by . . . arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). Accordingly, at least where a "statewide" rule governs, such as in a statewide election, there must be "adequate statewide standards for determining what is a legal vote, and practicable procedures to implement them." *Id.* at 110. And counties cannot "use[] varying standards to determine what [i]s a legal vote." *Id.* at 107.

22. Yet that is precisely what will happen if this Court permits the Board not to enforce the date requirement or other mandatory Election Code provisions. Other county boards will follow the law, which means that the Board's actions would result in "varying standards to determine what [i]s a legal vote" from "county to county" and be improper. *See id.* at 106-07.

23. The Board's refusal to follow the Election Code also violates the Pennsylvania Constitution, which decrees that "[a]ll laws regulating the holding of elections . . . shall be uniform throughout the State," Pa. Const. art. VII, § 6, and the Election Code, which requires that elections be "uniformly conducted" throughout the Commonwealth. 25 Pa. Stat. § 2642(g). Once again, other counties will follow the law, which means the Board's decisions will result in unlawful unequal treatment of Pennsylvania voters.

WHEREFORE, Petitioners respectfully request that this Honorable Court enter an order reversing the decision of the Berks County Board of Elections, ordering the Berks County Board

of Elections not to count ballots that do not contain the signature of the Judge of Elections, the minority inspector, or both, and providing such other and further relief as provided by the Pennsylvania Election Code or as this Court deems just and appropriate.

Respectfully submitted,

Dated: November 16, 2024

LAMB McERLANE PC

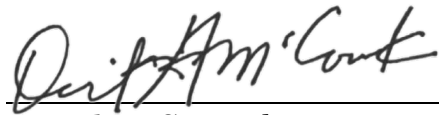
By: /s/ Daniel L. Sulvetta

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Counsel for Petitioners

VERIFICATION

I, David McCormick, verify that that the facts contained in the foregoing are true and correct based upon my knowledge, information, and belief. However, while the facts are true and correct based upon my knowledge, information, and belief, the words contained in the foregoing are those of counsel and not mine. I understand that statements herein are made subject to the penalties set forth in 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

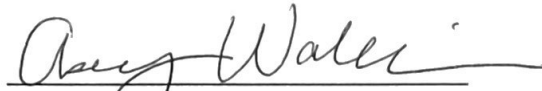


David McCormick

VERIFICATION OF REPUBLICAN NATIONAL COMMITTEE

I, Ashley Walukevich, Pennsylvania State Director at the Republican National Committee, am authorized to make this verification on behalf of the Republican National Committee. I hereby verify that the factual statements set forth in the foregoing Petition For Review In The Nature Of A Statutory Appeal are true and correct to the best of my knowledge or information and belief.

I understand that verification is made subject to the penalties of 18 Pa. Cons. Stat. 4904, relating to unsworn falsifications to authority.



Ashley Walukevich
Pennsylvania State Director
Republican National Committee

VERIFICATION OF REPUBLICAN PARTY OF PENNSYLVANIA

I, Angela Alleman, Executive Director at the Republican Party of Pennsylvania, am authorized to make this verification on behalf of the Republican Party of Pennsylvania. I hereby verify that the factual statements set forth in the foregoing Petition For Review In The Nature Of A Statutory Appeal are true and correct to the best of my knowledge or information and belief.

I understand that verification is made subject to the penalties of 18 Pa. Cons. Stat. 4904, relating to unsworn falsifications to authority.



Angela Alleman
Executive Director
Republican Party of Pennsylvania

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: November 16, 2024

By: /s/ Daniel L. Sulvetta
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