

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

DAVID McCORMICK,	:	CIVIL DIVISION
REPUBLICAN NATIONAL	:	DKT # 2024-10291-EL
COMMITTEE, REPUBLICAN	:	<i>(ELECTION APPEAL)</i>
PARTY OF PENNSYLVANIA,	:	
PETITIONERS,	:	
	:	
vs.	:	
	:	
CHESTER COUNTY BOARD	:	
OF ELECTIONS,	:	
	:	
	:	

MEMORANDUM

Petitioners aver that the Chester County Board of Elections erred in counting 58 provisional ballots whose only defects were the missing signatures of the Judges of Elections, minority inspectors or both. Petitioners rely on 25 P.S. §3050 (a.4) in their argument for why these provisional ballots should be set aside.

PROCEDURAL HISTORY

The Chester County Board of Elections Meeting was held on November 14, 2024.¹ Counsel for the McCormick Campaign was present and made a substantially similar argument to the Chester County Board of Elections as they made before this Court on November 19, 2024 at the hearing. The docket

¹ All parties agreed to incorporate the November 14, 2024 transcript from the Chester County Board of Elections meeting into the record at the November 19, 2024 hearing on the instant petition.

indicates that the instant petition was filed on November 16, 2024.

Accordingly, the instant action was timely filed in accordance with 25 P.S. §3157.

LEGAL ANALYSIS

The standard review in this matter is *de novo*. Based on the governing law and facts presented, the Petitioners have not sufficiently demonstrated that the decision to count the 58 provisional ballots at issue herein by the Chester County Board of Elections violates the Pennsylvania Election Code, Pennsylvania case law, the Pennsylvania Constitution, or the United States Constitution.

In the instant matter, the Petitioners liken the failure of the Judges of Elections and/or Minority Inspectors to sign the provisional ballots to the requirements of 25 P.S. §3150.16 that voters who vote by mail must sign and properly date the outer envelopes containing their ballots.

This Court is not persuaded by the argument however. There are critical distinctions in how the statutes are written. Notably, 25 P.S. §3050 which governs provisional ballots contains a very specific clause affirmatively articulating the only reasons why provisional ballots should be rejected, whereas 25 P.S. §3150.16 does not. Rather, 25 P.S. §3150.16 is a mandatory statute written without exceptions included in it.

Importantly, 25 P.S. §3050(a.4)(5)(ii) states: (ii) A **provisional ballot shall not be counted if:**

(A) either the provisional ballot envelope under clause (3) or the affidavit under clause (2) is not signed by the individual;

(B) the signature required under clause (3) and the signature required under clause (2) are either not genuine or are not executed by the same individual ...² (emphasis added).

The failure of the Judge of Elections and/or the Minority Inspector to sign the exterior provisional ballot envelope are simply not enumerated reasons to disqualify provisional ballots. Importantly, the Legislature has specifically itemized certain reasons why provisional ballots cannot be counted.

This Court is guided by the Pennsylvania Supreme Court's decision in *In re Canvass of Absentee Ballots of November 4, 2003 General Election*, 577 Pa. 231, 843 A.2d 1223 (2004) opining "[...] the best indication of legislative intent is the plain language of a statute.... It is only when the words of a statute 'are

² All of the reasons to disqualify a provisional ballot enumerated in 25 P.S. § 3050(a.4)(5)(ii) are set forth herein for ease of reference:

"A provisional ballot shall not be counted if: (A) either the provisional ballot envelope under clause (3) or the affidavit under clause (2) is not signed by the individual; (B) the signature required under clause (3) and the signature required under clause (2) are either not genuine or are not executed by the same individual; (C) a provisional ballot envelope does not contain a secrecy envelope; (D) in the case of a provisional ballot that was cast under subsection (a.2)(1)(i), within six calendar days following the election the elector fails to appear before the county board of elections to execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot and that the elector is indigent and unable to obtain proof of identification without the payment of a fee; (E) in the case of a provisional ballot that was cast under subsection (a.2)(1)(ii), within six calendar days following the election, the elector fails to appear before the county board of elections to present proof of identification and execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of the proof of identification and an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot; or (F) the elector's absentee ballot or mail-in ballot is timely received by a county board of elections."

not explicit' that a court may resort to other considerations, such as the statute's perceived 'purpose,' in order to ascertain legislative intent.... [T]his Court has repeatedly recognized that rules of construction, such as consideration of a statute's perceived 'object' or 'purpose,' are to be resorted to only when there is an ambiguity. *Id. at 242-243 (internal citations omitted)*.

Moreover, the *In re Canvass of Absentee Ballots of November 4, 2003 General Election* Court specifically noted its prior holding "[w]here the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words." *Id. at 243. (internal citations omitted)*.

The Court continued, "all things being equal, the law will be construed liberally in favor of the right to vote but, at the same time, we cannot ignore the clear mandates of the Election Code." *Id. at 244 (internal citations omitted)*.

The statute at issue herein, 25 P.S. § 3050, specifically details the reasons that a provisional ballot must be set aside. There is no ambiguity. Failure of the Judge of Elections and/or the Minority Inspector to sign the provisional ballot envelope are just not enumerated reasons to disqualify them.

Petitioners also argued that the 25 P.S. § 3050 (a.4) was amended through Act 2004-97 to require the voter to sign an affidavit asserting the following: "I do solemnly swear or affirm that my name is _____, that my date of birth is _____, and at the time that I registered I resided at _____ in the municipality of _____ in _____ County of the Commonwealth of Pennsylvania and that this is the only ballot that I cast

in this election.” The affidavit must contain the signature of voter/elector, their current address, and that it be signed by Judge of Elections and minority inspector. *See, 25 P.S. §3050 (a.4).* Petitioners asserted that pursuant to the amendments of Act 2004-97 to the statute that these provisional ballots must be disqualified. However, this Court’s review of the various amendments to 25 P.S. §3050 reveal that despite the Legislature’s amendment to require the voter to sign the aforementioned affidavit, the Legislature specifically declined to add the failure of the Judge of Elections and/or the Minority Inspector to sign the affidavit as a reason to disqualify the provisional ballots.

Additionally, it appears that the Legislature has modified this very statute five additional times since then, and again the Legislature affirmatively did not add failure of either the Judge of Elections and/or the Minority Inspector to sign the provisional ballot envelope as reasons to disqualify or set aside provisional ballots.

For the above stated reasons, this Court **DENIES** the instant Petition and *affirms* the Chester County Board of Elections decision to count the 58 provisional ballots that were not signed by Judges of Elections and/or Minority Inspectors.

BY THE COURT:



NICOLE R. FORZATO, J.