

DAVID McCORMICK,
REPUBLICAN NATIONAL COMMITTEE
and REPUBLICAN PARTY OF
PENNSYLVANIA,

Petitioners

v.

ERIE COUNTY BOARD OF ELECTIONS,
Respondent

v.

DSCC and BOB CASEY FOR SENATE, INC.
Intervenors

IN THE COURT OF COMMON PLEAS
OF ERIE COUNTY, PENNSYLVANIA

CIVIL DIVISION
NO. 12842 of 2024

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DSCC,
120 Maryland Ave, NE,
Washington, D.C. 20002,

BOB CASEY FOR SENATE, INC.,
PO Box 58746,
Philadelphia, PA 19102,

Petitioners

v.

ERIE COUNTY BOARD OF ELECTIONS,
Respondent

v.

DAVID McCORMICK,
REPUBLICAN NATIONAL COMMITTEE,
NATIONAL REPUBLICAN SENATORIAL
COMMITTEE and REPUBLICAN PARTY
OF PENNSYLVANIA,

Intervenors

IN THE COURT OF COMMON PLEAS
OF ERIE COUNTY, PENNSYLVANIA

CIVIL DIVISION
NO. 12863 of 2024

CONSOLIDATED

MEMORANDUM OPINION AND ORDER

I. Background

On November 16, 2024 at Erie County Docket No. 12842 of 2024, the Petitioners therein, David McCormick, Republican National Committee and Republican Party of Pennsylvania filed a Petition for Review in the Nature of Statutory Appeal from determinations of the Respondent, the Erie County Board of Elections (Board), made on November 14, 2024. The Petitioners aver the Board erred overruling challenges to Board decisions to count 120 provisional ballots cast in the November 5, 2024 election that were missing either the signature from the Judge of Elections, or the signature of the minority inspector, or were missing both of those signatures. (*Petit.* ¶3). In this matter, on November 19, 2024, upon motion the Court granted to DSCC and Bob Casey for Senate, Inc. leave to intervene. Intervenors' Proposed Answer was filed on November 18, 2024.

On November 18, 2024 at Erie County Docket No. 12863 of 2024, the Petitioners therein, DSCC and Bob Casey for Senate, Inc., filed a Petition for Review in the Nature of a Statutory Appeal also from determinations made by the Board on November 14, 2024. These Petitioners allege the Board erred in sustaining challenges to “up to” 98 provisional ballots cast in the November 5, 2024 general election and in deciding not to count those ballots where outer provisional ballot envelopes did not contain the two required signatures of the elector: one signature at the Affidavit area and the other signature in the separate designated area. On November 21, 2024, upon motion, the Court granted leave to intervene to David McCormick, the Republican National Committee, the National Republican Senatorial Committee and the

Republican Party of Pennsylvania.¹ On November 21, 2024, these Intervenor filed a motion to dismiss the appeal of Petitioners DSCC and Bob Casey for Senate, Inc.

On November 20, 2024, the Board filed a response to both appeals.

A hearing on the appeals was held on November 21, 2024. The parties and the Intervenor were represented by counsel at the hearing. From the bench the Court granted the Board's uncontested motion to consolidate the appeals. Subsequently, an Order was entered consolidating the appeals.

II. Positions of the Parties and Intervenor

A. Appeal by Petitioners David McCormick, Republican National Committee and Republican Party of Pennsylvania at No. 12842 of 2024

The crux of this appeal is Petitioner's contention that, pursuant §25 P.S. §3050(a.4)(2), if the Judge of Elections and the minority inspector do not both sign the mandatory affidavit for a provisional ballot, that ballot is incomplete and cannot be counted. (*Petit.* ¶17). Petitioners aver the Board's decision to count 120 provisional ballots which were missing either the signature of the Judge of Elections or the signature of the minority inspector, or both of those signatures, expressly violates the Election Code at 25 P.S. §3050(a.4)(2). (*Petit.* ¶3). Petitioners additionally aver these determinations "also likely violate[s] the U.S. Constitution's Equal Protection Clause as well as the Pennsylvania Constitution." (*Petit.* ¶4).

The Erie County Board of Elections argues the Election Code does not mandate the signature of the Judge of Elections or the minority inspector. Rather, the Board asserts the signature of either is "a clerical formality and another layer of proof that the individual who signed the affidavit is the individual who signed the affidavit." (*Response*, p. 3). The Board asserts that

¹ The Order granting this Petition for Leave to Intervene is dated November 21, 2024 and was filed November 22, 2024.

§3050(a.4)(2) does not state the signatures of the Judge of Elections and the minority inspector are mandatory.

In the Proposed Answer filed concurrently with the Application for Leave to Intervene, Intervenors deny the essential averments of the Petition. (*Proposed Answer*).

B. Appeal by Petitioners DSCC and Bob Casey for Senate, Inc. at No. 12863 of 2024

In this appeal the Petitioners contend the 98 or so provisional ballots at issue should be counted even though the elector failed to sign the outer provisional ballot envelope in one of two designated spaces on the envelope: the affidavit section or the separate space on the envelope designated for the elector’s signature. (*Petition*, ¶1). Petitioners expressly limit this appeal to provisional ballots cast where the outer envelope is missing only one signature. (*Petition*, ¶2, *n.1*). However, Petitioners claim they are unable to designate which of the 98 provisional ballots placed at issue meet this criteria because “the Board did not distinguish between ballots with two or one missing signature [sic].” (*Petition*, ¶2, *n.1*). Petitioners baldly contend the omission of a required signature was necessarily a result of a poll worker’s failure to “provide required material or correct an accurate [sic] instructions to voters.” (*Petition*, ¶3).

The Erie County Board of Elections asserts the Election Code unequivocally mandates, at §3050(5)(ii)(A), that a provisional ballot shall not be counted if the outer provisional ballot envelope is not signed by the elector in the two spaces designated by that subsection. (*Response*, *p. 4*).

In the Motion to Dismiss this appeal, Intervenors concur with the Board that the Board’s decision to decline to count up to 98 provisional ballots cast in the 2024 General Election by individuals who failed to sign either the affidavit or the provisional ballot envelope complies with

unambiguous statutory law at 25 P.S. §§ 3050(a.4)(2), (a.4)(3) and (a.4)(5)(ii)(A). (*Motion to Dismiss, pp. 1-2*).

III. Relevant Legal Principles

Both appeals concern whether certain provisional ballots which were *cast* should be *counted*. A provisional ballot is “a ballot issued to an individual who claims to be a registered elector by the judge of elections on election day when the individual’s name does not appear on the general register and the individual’s registration cannot be verified.” 25 P.S. §3050(a.4)(12).

The Pennsylvania Election Code, 25 P.S. §§2600 *et. seq* sets forth procedures governing the casting and counting of provisional ballots. Section 3050 of the Election Code governs the manner of applying to vote, persons entitled to vote, voter’s certificates, entries to be made in the district register, numbered lists of voters and challenges to votes which were cast. The initial requirement for all individuals who wish to cast a vote is that at every primary and general election each elector or individual who appears to vote and who wants to vote “shall first present to an election officer proof of identification.” 25 P.S. §3050(a). The Election Code charges the election officer with the task of examining proof of identification presented and signing an affidavit stating this has occurred. 25 P.S. §3050(a). If the elector unable to produce proof of identification *or* the elector’s proof of identification is challenged by the judge of elections, then “the elector *shall be permitted to cast a provisional ballot in accordance with subsection (a.4)*” of Section 3050 of the Election Code. 25 P.S. §3050(a.2)(*emphasis added*).

Subsection (a.4) of Section 3050 is lengthy. Provisions pertinent to these appeals include Subsections (a.4)(1), (a.4)(2), (a.4)(3) and (a.4)(5)(ii)(A) which provide:

(a.4)(1) at all elections an individual who claims to be properly registered and eligible to vote at the election district but whose name does not appear on the district register and whose registration cannot be determined by the inspectors of election or the county election board shall be permitted to cast a provisional ballot.

Individuals who appear to vote shall be required to produce proof of identification pursuant to subsection (a) and if unable to do so shall be permitted to cast a provisional ballot. An individual presenting a judicial order to vote shall be permitted to cast a provisional ballot.

(a.4)(2) Prior to voting the provisional ballot, the elector shall be required to sign an affidavit stating 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.

Signature of Voter/Elector

Current Address

Check the Reason for Casting the Provisional Ballot.

Signed by Judge of Elections and minority inspector

(a.4)(3) After the provisional ballot has been cast, the individual shall place it in a secrecy envelope. The individual shall place the secrecy envelope in the provisional ballot envelope and shall place his signature on the front of the provisional ballot envelope. ...

...

(a.4)(5)(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;

...

25 P.S. §§3050(a.4)(1), (a.4)(2), (a.4)(3) and (a.4)(5)(ii)(A).

A. Appeal by Petitioners David McCormick, Republican National Committee and Republican Party of Pennsylvania at No. 12842 of 2024

Petitioner's contention that, pursuant §25 P.S. §3050(a.4)(2), if the Judge of Elections and the minority inspector do not both sign the mandatory affidavit for a provisional ballot, that ballot is incomplete and cannot be counted has merit. The clear import of the presence of the language

at (a.4)(2) governing the required affidavit of the individual casting a provisional ballot, “*Signed by Judge of Elections and minority inspector*” is the affidavit must be so attested or verified. Respondent’s position that this verbiage is merely a clerical formality is opaque at best. As the Board acknowledges, the signature of the Judge of Elections and minority inspector as part of the affidavit represents a layer of proof the individual who signed the affidavit is the individual who signed the affidavit. Absent any discretionary language or qualifier at (a.4)(2), the Court will not find this a discretionary item or mere formality. The argument that the absence of the signature of the Judge of Elections and minority inspector is not disqualifying under subsection 3050(a.4)(5)(ii)(A) is not persuasive. The language for the required elector’s affidavit includes the language, “*Signed by Judge of Elections and minority inspector.*” 25 P.S. §3050(a.4)(2)(emphasis added). At this stage in the election, the Court will follow the guidance offered by the Pennsylvania Supreme Court in *New PA Project Education Fund, NAACP v. Schmidt*, 2024 WL 4410884, at *1(Pa. Oct. 5, 2024)(*per curiam*) (“This Court will neither impose nor countenance substantial alterations to existing laws and procedures during the pendency of an ongoing election.”). The appeal will be granted and the determination of the Board will be reversed.

B. Appeal by Petitioners DSCC and Bob Casey for Senate, Inc. at No. 12863 of 2024

Petitioners’ contention the 98 or so provisional ballots at issue should be counted even though the elector failed to sign the outer provisional ballot envelope in one of two designated spaces on the envelope (the affidavit section or the separate space on the envelope designated for the elector’s signature) lacks merit. The Election Code at §3050(a.4)(2) requires the elector casting a provisional ballot to sign the affidavit. 25 P.S. §3050(a.4)(2). The Election Code at §3050(a.4)(3) requires the elector to also sign the front of the provisional ballot envelope. 25 P.S. §3050(a.4)(3).


Section (a.4)(5)(ii)(A) mandates a provisional ballot shall not be counted if either of these signatures is missing. 25 P.S. §3050(a.4)(5)(ii)(A). The determination of the Board in this regard will be upheld.

ORDER

AND NOW, to-wit, this 22nd day of November, 2024, upon consideration of the filings at the above dockets and following a hearing held on November 21, 2024 it is **ORDERED**:

1. The Petition for Review in the Nature of a Statutory Appeal filed at No. 12842 of 2024 on November 16, 2024 by David McCormick, Republican National Committee and Republican Party of Pennsylvania (averring error by the Erie County Board of Elections in deciding to count 120 provisional ballots cast in the November 5, 2024 general election) is **GRANTED**. The decision of the Respondent is **REVERSED**. The Respondent **shall not count the 120 provisional ballots at issue** which are missing a Judge of Elections signature, a minority inspector signature, or both.
2. The Petition for Review in the Nature of a Statutory Appeal filed at No.12863 of 2024 on November 18, 2024 by DSCC and Bob Casey for Senate, Inc. (averring error by the Erie County Board of Elections in deciding not to count “up to” 98 provisional ballots cast in the November 5, 5024 general election) is **GRANTED**. The decision of the Respondent is **AFFIRMED**. The 98 or so provisional ballots at issue shall not be counted.
3. The Motion to Dismiss filed by Intervenors at No. 12863 of 2024 on November 21, 2024 (requesting dismissal of the Petition for Review in the Nature of a Statutory Appeal filed at No.12863 of 2024 on November 18, 2024 by DSCC and Bob Casey for Senate, Inc.) is **DISMISSED as MOOT**.

BY THE COURT:


Daniel J. Brabender, Jr., Judge

cc: Kathleen A. Gallagher, Esq., and Brian M. Adrian, Esq., 436 Seventh Avenue, 30th Floor, Pittsburgh, PA 15219, kag@gallagherlawllc.com and bma@gallagherlawllc.com (Counsel for Petitioners David McCormick, Republican National Committee and Republican Party of Pennsylvania at No. 12842 of 2024 and Counsel for Intervenors at No. 12863 of 2024)

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