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

DAVID MCCORMICK; REPUBLICAN NATIONAL COMMITTEE; REPUBLICAN PARTY OF PENNSYLVANIA Petitioners	:	
v.	:	No. 2024-CV-3025-CI
CENTRE COUNTY BOARD OF ELECTIONS, Respondent	:	

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ORDER

AND NOW, this 14th day of November, 2024, a hearing on Petitioners' Petition for Review in the Nature of a Statutory Appeal is scheduled for **Friday, November 15, 2024** at **8:30 am** in **Courtroom No. 1**, Centre County Courthouse, 102 S. Allegheny Street, Bellefonte, Pennsylvania.

BY THE COURT:

Jonathan D. Grine, President Judge

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JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

Centre County

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Docket No: 2024-CV-3025-CI	

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SECTION A

Commencement of Action:
☐ Complaint ☐ Writ of Summons ☒ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:	Lead Defendant's Name:
David McCormick, et al	Centre County Board of Elections
Are money damages requested? ☐ Yes ☒ No	Dollar Amount Requested: (check one) ☐ within arbitration limits ☐ outside arbitration limits
Is this a *Class Action Suit*? ☐ Yes ☒ No	**Is this an *MDJ Appeal*?** ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Thomas W. King III, Esquire / Louis T. Glantz, Esquire

☐ **Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)**

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SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your ***PRIMARY CASE.*** If you are making more than one type of claim, check the one that you consider most important.

TORT *(do not include Mass Tort)*
- ☐ Intentional
- ☐ Malicious Prosecution
- ☐ Motor Vehicle
- ☐ Nuisance
- ☐ Premises Liability
- ☐ Product Liability *(does not include mass tort)*
- ☐ Slander/Libel/ Defamation
- ☐ Other:

MASS TORT
- ☐ Asbestos
- ☐ Tobacco
- ☐ Toxic Tort - DES
- ☐ Toxic Tort - Implant
- ☐ Toxic Waste
- ☐ Other:

PROFESSIONAL LIABLITY
- ☐ Dental
- ☐ Legal
- ☐ Medical
- ☐ Other Professional:

CONTRACT *(do not include Judgments)*
- ☐ Buyer Plaintiff
- ☐ Debt Collection: Credit Card
- ☐ Debt Collection: Other
- ☐ Employment Dispute: Discrimination
- ☐ Employment Dispute: Other
- ☐ Other:

REAL PROPERTY
- ☐ Ejectment
- ☐ Eminent Domain/Condemnation
- ☐ Ground Rent
- ☐ Landlord/Tenant Dispute
- ☐ Mortgage Foreclosure: Residential
- ☐ Mortgage Foreclosure: Commercial
- ☐ Partition
- ☐ Quiet Title
- ☐ Other:

CIVIL APPEALS
Administrative Agencies
- ☐ Board of Assessment
- ☒ Board of Elections
- ☐ Dept. of Transportation
- ☐ Statutory Appeal: Other
- ☐ Zoning Board
- ☐ Other:

MISCELLANEOUS
- ☐ Common Law/Statutory Arbitration
- ☐ Declaratory Judgment
- ☐ Mandamus
- ☐ Non-Domestic Relations Restraining Order
- ☐ Quo Warranto
- ☐ Replevin
- ☐ Other:

Updated 1/1/2011

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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

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Republican Party of Pennsylvania
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Petitioners,

v.

CENTRE COUNTY BOARD OF ELECTIONS
420 Holmes Street, Bellefonte, PA 16823

Respondent.

CIVIL DIVISION

No. 2024-CV-3025-CI

ELECTION APPEAL

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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.

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JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

§ 3157 from the decision of the Centre County Board of Elections ("Board") on November 12, 2024, to count three undated or misdated mail ballots in the November 5, 2024 General Election.[1] Petitioners aver as follows:

INTRODUCTION

1. This appeal concerns the Board's decision to count undated and misdated mail ballots in the November 5, 2024 General Election.

2. The Board's decision is legally erroneous because undated or misdated mail ballots are invalid as a matter of law and cannot be counted in the 2024 General Election—as the Pennsylvania Supreme Court has already made clear.

3. In particular, the Election Code unambiguously requires individuals voting by mail to "fill out, date and sign the declaration" on the ballot return envelope. *See* 25 P.S. §§ 3146.6(a), (b)(3), 3150.16(a), (b)(3). After years of repeatedly holding that the date requirement is mandatory, the Pennsylvania Supreme Court earlier this month reaffirmed that the requirement "shall ... be applied to the November 5, 2024 General Election." *Baxter v. Philadelphia Bd. of Elections*, __A.3d__, 2024 WL 4650792, at *1 (Pa. Nov. 1, 2024) (staying lower court order against date requirement). The Board's baffling decision *not* to enforce the date requirement and to count noncompliant ballots thus directly contravenes binding Pennsylvania law. *See id.*; *New Pa. Project Education Fund v. Schmidt*, No. 112 MM 2024, 2024 WL 4410884, at *1 (Pa. Oct. 5, 2024) (per curiam) ("*New Pa.*") (declining to exercise King's Bench jurisdiction over state constitutional challenge to date requirement); *Black Political Empowerment Project v. Schmidt*, 322 A.3d 221, 222 (Pa. 2024) (per curiam) ("*BPEP* Order")

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[1] The Election Code's date requirement implicated in this appeal governs county boards' processing both of absentee ballots and mail-in ballots. *See* 25 P.S. §§ 3146.6(a), (b)(3), 3150.16(a), (b)(3). For ease of reference, this Petition refers to both types of ballots as "mail ballots."

(vacating order striking down date requirement under state constitution); *Ball v. Chapman*, 289 A.3d 1, 14-16 & n.77 (Pa. 2022) (rejecting host of challenges to date requirement); *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020) (rejecting state constitutional challenge to sign-and-date mandate, of which date requirement is a part); *In re: Canvass of Absentee and Mail-in Ballots of Nov. 3, 2020 General Election*, 241 A.3d 1058, 1085-89 (Pa. 2020) (Wecht, J., concurring in part) (deciding vote making clear date requirement is mandatory and enforceable for all elections after 2020).

4. Even more on point, on October 5, 2024, the Pennsylvania Supreme Court rejected a challenge to the date requirement and held it would "neither impose nor countenance substantial alterations to existing laws and procedures during the pendency of an ongoing election." *New Pa.*, 2024 WL 4410884, at *1. In particular, the Pennsylvania Supreme Court adopted the *Purcell* principle from federal law, which prohibits changes to electoral rules close to an election—and especially *after* Election Day. *See id.* (quoting *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016)). The Commonwealth Court subsequently disregarded that instruction and struck down the date requirement, which led to the Pennsylvania Supreme Court entering a stay and reaffirming that the date requirement is mandatory and must be enforced for the 2024 General Election. *See Baxter*, 2024 WL 4650792, at *1.

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5. In what can only be understood as a confused or defiant action, the Board has voted to count three mail ballots that do not comply with the date requirement. The Pennsylvania Supreme Court has clearly prohibited this action. And to the extent anyone suggests that the date requirement violates the Materiality Provision of the federal Civil Rights Act, that too is wrong as a matter of law. The U.S. Court of Appeals for the Third Circuit has rejected that claim. *Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth. of Pa.*, 97 F.4th 120 (3d Cir. 2024),

reh'g denied, 2024 WL 3085152 (Apr. 30, 2024).

6. Further, the Board's decision not to enforce the date requirement triggers the absolute non-severability provision in Act 77, which established universal mail-in voting. Accordingly, if left uncorrected, the Board's decision jeopardizes universal mail-in voting for all Commonwealth voters.

7. Finally, the Board's decision to count undated and incorrectly dated mail ballots in contravention of the Election Code violates the U.S. Constitution's Equal Protection Clause and 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), so counties cannot use "varying standards to determine what [i]s a legal vote" in a statewide election, *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, and the Free and Equal Elections Clause requires voting laws to "treat[] all voters alike" in "the same circumstances," *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914).

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8. Other county boards of elections have correctly decided *not* to count mail ballots that do not comply with the date requirement. Thus, allowing the Board *to count* such ballots would unconstitutionally create "varying standards to determine what [i]s a legal vote," *Bush*, 531 U.S. 104-05, and inject *disuniformity* into the administration of the General Election across the Commonwealth, *see* Pa. Const. art. VII, § 6; *Winston*, 91 A. at 523.

9. For all of these reasons, the Court should reverse the Board's decision to count mail ballots that fail to comply with the date requirement.

10. Petitioners are aggrieved by the Board's decisions and hereby appeal from them

pursuant to 25 P.S. § 3157(a).

JURISDICTION

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

PARTIES

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

3. 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.

4. 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.

5. Respondent the Centre County Board of Elections is responsible for overseeing the conduct of all elections in Centre County.

DECISION OF THE BOARD AT ISSUE

6. The Board met in a public meeting on November 12, 2024, to adjudicate

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challenges to mail and provisional ballots. In this meeting the Board voted to count three mail ballots that did not comply with the date requirement. *See* Centre County Board of Elections Meeting 11/12/24 at 1:32:46-1:39:00, https://www.youtube.com/watch?v=-bnyKXCjVMA ("Video").

FACTUAL BACKGROUND

7. In 2019, as part of an important bipartisan compromise, the General Assembly amended the Election Code to permit all Pennsylvanians to vote by mail without any excuse. 2019 Pa. Leg. Serv. Act 2019-77 ("Act 77"). As part of the compromise, which was protected with an absolute non-severability clause, *see* Act 77, § 11, the bill also included certain mandatory rules that Pennsylvanians voting by mail must follow to have their ballots counted.

8. For example, mail voters must enclose their ballots and secrecy envelopes within mailing envelopes bearing a declaration that voters must sign and date. *See* 25 P.S. §§ 3146.6(a).

9. The Pennsylvania Supreme Court has repeatedly held that the date requirement is mandatory; an elector's failure to comply renders the ballot ineligible to be counted. *See, e.g.*, *Ball*, 289 A.3d at 14-16; *Pa. Democratic Party*, 238 A.3d at 372-74, 380 (rejecting challenge under Free and Equal Elections Clause to mandatory rules for mailing envelopes, including date requirement). That is why the Pennsylvania Supreme Court ordered all 67 county boards of elections not to count mail ballots that do not comply with the date requirement during the 2022 General Election. *See Ball v. Chapman*, 284 A.3d 1189 (Pa. 2022).

10. Nevertheless, various litigants have continued to file lawsuits seeking invalidation of the date requirement. All of these efforts have failed, and the Pennsylvania Supreme Court has *twice* held that the date requirement must be enforced for the 2024 General Election. *See New Pa.*, 2024 WL 4410884; *Baxter*, 2024 WL 4650792, at *1.

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11. For example, litigants have previously argued that the date requirement violates the federal Materiality Provision in the Civil Rights Act of 1964. But the U.S. Court of Appeals for the Third Circuit decisively rejected those challenges and upheld the date requirement under the Materiality Provision. *See Pa. State Conf. of NAACP Branches*, 97 F.4th at 129-39. That court correctly held that the Materiality Provision only applies to voter-registration rules. *Id.* at 129-35. And because the date requirement does not apply during voter registration, it is clearly lawful under the Materiality Provision. *See id.*

12. Litigants have also continued to assert state-law arguments against the date requirement. In June 2024, the Commonwealth Court invalidated the date requirement under the Free and Equal Elections Clause, but the Pennsylvania Supreme Court vacated that opinion and order on multiple procedural grounds. *See BPEP* Order at *1, *vacating Black Political Empowerment Project v. Schmidt*, No. 283 M.D. 2024, 2024 WL 4002321, at *1 (Pa. Commw. Ct. Aug. 30, 2024).

13. Subsequently, litigants filed a King's Bench petition asking the Pennsylvania Supreme Court to invalidate the date requirement. The Pennsylvania Supreme Court rejected that petition on October 5, 2024, holding that it would "neither impose nor countenance substantial alterations to existing laws and procedures during the pendency of an ongoing election." *New Pa.*, 2024 WL 4410884, at *1.

14. Nevertheless, litigants did not give up on their efforts to invalidate the date requirement for the 2024 General Election. In a lawsuit related to the Philadelphia Board of Elections' compliance with the date requirement in a 2024 special election, the Commonwealth Court again struck down the date requirement. *See Baxter v. Philadelphia Bd. of Elections*, 2024 WL 4614689 (Pa. Commw. Ct. Oct. 30, 2024). The Pennsylvania Supreme Court promptly

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stayed that ruling and said it "shall not be applied to the November 5, 2024 General Election." *Baxter*, 2024 WL 4650792, at *1. In a concurrence, Justice Donohue explained that the stay was necessary so that "county boards" would not rely on the opinion during "canvassing . . . in the upcoming election," which would "disturb[] the status quo." *Id.* at *1 (Donohue, J., concurring). Justice Dougherty also concurred and sharply criticized the continuing efforts of courts and litigants to invalidate the date requirement for the 2024 General Election, accusing them of defying the Pennsylvania Supreme Court's clear orders. *Id.* at *2-8 (Dougherty, J., concurring) (recounting full history of such efforts).

15. The Board met on November 12, 2024 to adjudicate disputes over mail ballots cast in the 2024 General Election. A video of the Board's meeting is available online. *See* Centre County Board of Elections Meeting 11/12/24, https://www.youtube.com/watch?v=-bnyKXCjVMA.

16. In contravention of the Pennsylvania Supreme Court's clear order that the date requirement is in force for the 2024 General Election, the Board unanimously voted to count three ballots in violation of the Pennsylvania Supreme Court's date requirement. Video at 1:32:46-1:37:12.

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GROUNDS FOR APPEAL

17. The Board violated the Election Code's mandatory date requirement and the Pennsylvania Supreme Court's repeated orders holding that the date requirement must be enforced in the 2024 General Election.

18. As noted, the Pennsylvania Supreme Court has now issued two orders making clear that the date requirement is in force and cannot be changed for the 2024 General Election. *See New Pa.*, 2024 WL 4410884, at *1; *Baxter*, 2024 WL 4650792, at *1. As Justice Dougherty

explained, failing to enforce the date requirement in the 2024 General Election can only be understood as defiance of the Pennsylvania Supreme Court. *See id.* at *2-8 (Dougherty, J., concurring). Because the Board refused to enforce the date requirement for the 2024 General Election, this Court should reverse for that reason alone.

19. Moreover, the Board's decision not to enforce the date requirement jeopardizes universal mail voting across Pennsylvania. As "a general matter, nonseverability provisions are constitutionally proper." *Stilp v. Commonwealth*, 905 A.2d 918, 978 (Pa. 2006). Act 77's non-severability provision states: "Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void." Act 77 § 11. The date requirement is part of the universal mail voting established in section 8, so invalidating "its application to any person or circumstance" voids the entire Act. *Id.*; *see McLinko v. Dep't of State*, 279 A.3d 539, 609-610 (Pa. 2022) (Brobson, J., dissenting); *McLinko v. Dep't of State*, 270 A.3d 1243, 1277-78 (Pa. Commw. Ct. 2022) (Wojcik, J., concurring in part and dissenting in part); *BPEP*, 2024 WL 4002321, at *62-64 (McCullough, J., dissenting).

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20. Finally, the Board's decision to count mail ballots that do not comply with the date requirement violates 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*, 531 U.S. at 104-05. 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. Other county boards have correctly decided to follow the law, which means that the Board's decision would result in "varying standards to determine what [i]s a legal vote" from "county to county" and be unconstitutional. *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, the Free and Equal Elections Clause, *see Winston*, 91 A. at 523, and the Election Code, which requires that elections be "uniformly conducted" throughout the Commonwealth. 25 Pa. Stat. § 2642(g). Because other counties have correctly decided to follow the law, the Board's decision will result in unlawful unequal treatment of Pennsylvania voters.

24. For all of these reasons, the Court should reverse the Board's decision to count in the 2024 General Election mail ballots that do not comply with the date requirement.

WHEREFORE, Petitioners respectfully request that this Honorable Court enter an order reversing the decision of the Centre County Board of Elections, ordering the Centre County Board of Elections not to count ballots that do not comply with the date requirement, and providing such other and further relief as provided by the Pennsylvania Election Code or as this Court deems just and appropriate.

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Dated: November 14, 2024

Respectfully Submitted:

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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

Date: 11/13/24

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VERIFICATION

I, Louis T. Glantz, verify that the facts contained in the foregoing 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 of 18 Pa. Cons. Stat. §4904 relating to unsworn falsification to authorities.

Dated: 11-14-2024

Louis T. Glantz

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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

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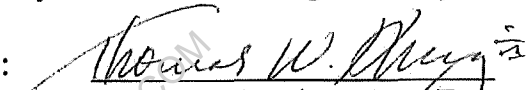
CERTIFICATE OF COMPLIANCE

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.

Submitted by: Thomas W. King, III, Esq.

Signature: 

Name: Thomas W. King, III, Esq.

Attorney No.: 21580

(if applicable) Counsel For Petitioners

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