

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA

DAVID McCORMICK
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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.

CHESTER COUNTY BOARD OF ELECTIONS
601 Westtown Road, Suite 150,
West Chester, PA 19380

Respondent.

CIVIL DIVISION

No. _____

ELECTION APPEAL

RECEIVED

NOV 16 2024

SOLICITORS OFFICE

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 decisions of the Chester County Board of Elections (the "Board") made during a hearing held on November 14, 2024 (the "November 14 Hearing")¹, to count a total of fifty-eight (58) provisional ballots missing signatures of the Judge of Elections, the minority inspector, or both, among the results of November 5, 2024 General Election. In support of this appeal, Petitioners aver as follows:

¹ Although Petitioners requested an expedited copy of the transcript from the November 14 Hearing immediately after its conclusion, it has not yet been provided. This Petition will be updated with appropriate references to the transcript after it has been received by Petitioners.

INTRODUCTION

1. This appeal concerns the Board's decisions to count in the November 5, 2024 General Election a total of fifty-eight (58) defective ballots comprised of the following: nine (9) provisional ballots missing the signature of the Judge of Elections, twenty (20) provisional ballots missing the signature of the minority inspector, and twenty-nine ballots missing signatures from both the Judge of Elections and the 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 which complies with the provisions of the Code, including that it be 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. *See In re: Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d at 900, 907(Pa. 2024); *Ball v. Chapman*, 289 A.3d 1, 28 (Pa. 2022). 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. On November 7, 2024, two days after the Election Date, the Division of Election Administration/Bureau of Elections of the Pennsylvania Department of State issued certain guidelines suggesting that provisional ballots should be counted regardless of whether, as required by section 3050(a.4)(5), the voter affidavit was signed by the Judge of Elections and/or the Minority Inspector.²

² The Pennsylvania Supreme Court has criticized changes to election procedures shortly before a general election. *See, e.g., Baxter v. Philadelphia Board of Elections*, No. 76 EM 2024 (Pa. Nov. 1., 2024) (Staying a non-precedential Commonwealth Court decision issued immediately before the election in order to preserve the status quo for the upcoming election). The Pennsylvania Department of State's decision to

5. The Department's stated position is that a missing signature of the Judge of Elections and/or the Minority Inspector should not invalidate a provisional ballot if there are no other disqualifying errors, claiming that the signatures from the Judge of Elections and/or the Minority Inspector are not specified in the Election Code as a basis for refusing to count a provisional ballot. *See* Email from Pennsylvania Department of State dated November 7, 2024 (citing 25 P.S. § 3050(a.4)(5)(ii)), a copy of which is attached as Exhibit "A".

6. 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.

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

JURISDICTION

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

issue new guidance actually following the election for use during the canvassing should be treated similarly in this Election.

PARTIES

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

10. 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.

11. 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.

12. Respondent the Chester County Board of Elections is responsible for overseeing the conduct of all elections in Chester County.

DECISIONS OF THE BOARD AT ISSUE AND FACTUAL BACKGROUND

13. The Board met in a public meeting on November 14, 2024, to adjudicate various challenges to provisional ballots. In a 2-1 decision, the Board voted to count 58 provisional ballots that were missing signatures from the Judge of Elections, minority inspector, or both.

14. Petitioners appeal from that decision.

GROUND FOR APPEAL

15. The Election Code adds several security measures for those who cast provisional ballots. One such measure is the requirement that electors voting a provisional ballot “shall” sign an affidavit.

16. The Election Code requires the Board to evaluate the provisional ballots to determine whether they are compliant as follows:

(5) (i) Except as provided in subclause (ii), if it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast, the county board of elections shall compare the signature on the provisional ballot envelope with the signature on the elector's registration form and, if the signatures are determined to be genuine, shall count the ballot if the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election.

(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; ...

25 P.S. § 3050(a.4)(5)(i), (ii)(A), (B) (emphasis supplied).

17. The Pennsylvania Supreme Court has expressly held that the permission to submit a provisional ballot granted to a voter contained in 25 P.S. § 3050(a.4)(1) “necessarily implicates the procedures given ... for how that ballot is to be cast” as set forth in paragraphs (a.4)(2)-(12). *In re Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d at 908-09.

18. The contents of an “affidavit under clause (2)” required by section 3050(a.4)(5)(ii)(A) have been specified by the General Assembly and are set forth in 25 P.S. §3050(a.4)(2) which states:

(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

25 P.S. § 3050(a.4)(2).³

19. Thus, the signatures of the Judge of Elections and minority inspector are 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)(1). Omission of those items renders the voter’s affidavit invalid just as omission of the voter’s signature would be a fatal defect in the provisional ballot.

20. The interpretation offered by the Department of State in its recent Guidance ignores the plain language of the Election Code which expressly includes the signatures of the Judge of Elections and the Minority Inspector in the definition of the “affidavit” which the voter is required to present in connection with the provisional ballot.

21. These requirements ensure that election officials actually supervised the casting 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”

³ At the November 14 Hearing, the County Solicitor posited that the various printing which appears on the “Large Green Envelope” used for the provisional ballots indicated that the signatures and the reason for the provisional ballot were for the use of the election officials. Obviously, Chester County cannot vitiate an unambiguous directive from the General Assembly simply by characterizing required elements of the voter’s affidavit as ministerial functions.

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.”).

22. 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 900, 914 (Pa. 2024) (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).

23. 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*, 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. Gear*, 76 A.2d 491, 492-93 (Pa. Super. 1950).

24. Moreover, there is no ambiguity in the language of Section 3050(a.4)(2) with respect to the requirements of the affidavit. Therefore, failure of a voter to present a provisional ballot with the properly completed affidavit violates Section 3050(a.4)(5)(ii) and, under the plain

and unambiguous language of the statute, those ballots shall not be counted.

25. Notably, the General Assembly expressed its clear intention that the signatures on a provisional ballot be witnessed, as it specifically selected the format of an affidavit for this purpose. By contrast, if the voter's signature alone was intended to be sufficient, the General Assembly would have provided that the voter could simply verify the accuracy of the information, under penalty of perjury, much like the manner provided in 7 Pa. Code § 179.106. Instead, the General Assembly specifically required that an affidavit be provided, in a specified format which requires that witnesses confirm the signature of the party making such affidavit. To hold otherwise improperly transforms the required affidavit into a mere verification, in direct contravention of the clearly expressed requirements of the Election Code.

26. In fact, the Petitioners seek only to have the Board comply with the nothing more than the Instructions for Voting a Provisional Ballot which Chester County published in connection with the November 5, 2024 General Election. A copy of the Instructions for Voting a Provisional Ballot is attached as Exhibit "B".⁴

27. The Instructions for Voting a Provisional Ballot plainly advise the voter, in bold print, that

Your ballot will not be counted if the large Green provisional Ballot Envelope does not contain your signature on both locations and the signature of the Judge of Elections and Minority Inspector.

Exhibit "B" at ¶7 (emphasis original). The Instruction for Voting a Provisional Ballot continues, expressly directing the voter to "[w]ait for the Judge of Elections and Minority Inspector to complete, sign and date the bottom portion." Exhibit "B" at ¶8 (emphasis original).

⁴ Petitioner note that in advance of the November 5, 2024 Election, Chester County reviewed and/or revised its Instructions for Voting a Provisional Ballot. This information appears on the Chester County website in the Election Officer's Manual at page 81. The respective Judges of Elections were instructed to provide a copy of this information to each individual casting a provisional ballot.

28. Accordingly, the November 14, 2024 decision of the Board amounts to an affirmative change in the requirements for voting a provisional ballot.

29. The Board erred when it decided to permit the 58 provisional ballots missing mandatory signatures from election officials to be counted among the votes in the November 5, 2024 General Election.

30. 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.

31. 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.

32. 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.

33. 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 Chester County Board of Elections, ordering the Chester County Board of Elections not to count ballots that do not comply with the signature requirement, ordering the Chester County Board of Elections not to count provisional ballots missing signatures from the Judge of Elections and/or the minority inspector, and providing such other and further relief as provided by the Pennsylvania Election Code or as this Court deems just and appropriate.

Respectfully submitted,

LAMB McERLANE PC

Dated: November 16, 2024

/s/ Joel L. Frank

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*Counsel for David McCormick, Republican
National Committee, and 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

/s/ Joel L. Frank

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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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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 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

Date: 11/13/2024

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EXHIBIT A

From: ST, Elections <RA-Elections@pa.gov>
Sent: Thursday, November 7, 2024 6:38:07 PM
Subject: DOS Email: Provisional Ballot Questions

Sent on behalf of Deputy Secretary Jonathan Marks

Dear County Election Officials,

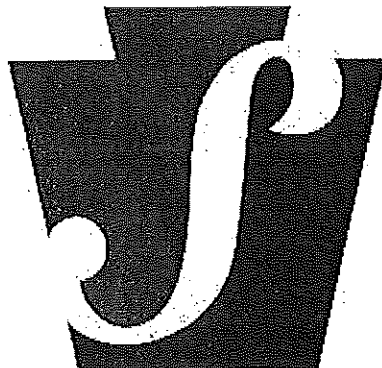
The Department has received inquiries from counties as to whether a provisional ballot should be counted if the voter affidavit is not signed by the Judge of Elections and/or the Minority Inspector. It is the Department's position that a missing signature of the Judge of Elections and/or the Minority Inspector should not invalidate a provisional ballot if there are no other disqualifying errors. The lack of a signature from the Judge of Elections or the Minority Inspector is not specified in the Election Code as a basis for refusing to count a provisional ballot. *See 25 P.S. § 3050(a.4)(5)(ii)*. While the affidavit

to be signed by the voter contains a space for both officials to sign, and the Department's guidance accordingly includes both officials' signing the affidavit as part of the provisional ballot process, nothing in the Election Code authorizes counties to reject provisional ballots because either or both failed to sign the affidavit. By contrast, the Election Code does provide that if the voter's signature is missing from either the affidavit or the provisional ballot envelope the ballot cannot be counted.

Additionally, we write to remind you about an important post-election deadline, and an issue the Department has observed that requires your attention. We believe some counties' sorting machines may not have properly tagged returned ballots as "PEND-NO ID", and counties should apply that status to ensure that voters can have their voices heard. If you properly approved a mail ballot application where the ID didn't verify, and the application was marked as Approved-ID Not verified, the voter should have received the ballot with notification that ID was needed. If the voter returned that ballot before the deadline, but did not include the required ID, their ballot status reason *must* be manually updated to have a ballot status reason of "PEND-NO ID". If these ballots went through a mail scanner, the scanner would not have updated the ballot status reason. We have observed several counties who have marked applications as Approved with ID Not Verified, but who have no mail ballots as PEND NO ID. As a reminder, voters may expect their ballot to be counted if they provide qualifying ID on or before Tuesday, November 12. This is a right granted to them by statute, and discussed on Page 6 of our [Guidance on Civilian Absentee and Mail-in Ballot Procedures](#).

It is critical that you mark all timely returned ballots, where the voter's ID did not verify on the application, as "PEND-NO ID", so that voters are aware of the steps they must take to ensure their ballot is counted.

As always, we urge you to consult with your Solicitor if you have further questions. Thank you for all your efforts ensuring a free and fair election.



Division of Election Administration | Bureau
of Elections
PA Department of State
210 North Office Building, Harrisburg, PA
17120
Office: 717-787-5280
dos.pa.gov | vote.pa.gov | [Facebook](#) | [Twitter](#)



INSTRUCTIONS FOR VOTING A PROVISIONAL BALLOT

You must follow all steps!

1. You must complete and sign section 1, 2 and 3 on the Large Green Provisional Ballot Envelope in front of the Judge of Elections and Minority Inspector BEFORE receiving ballot.
2. You shall receive the following items from the election official.
 - o One (1) Provisional Ballot (*with the numbered stub removed*)
 - o One (1) Small Green Provisional Ballot Secrecy Envelope
 - o One (1) Instruction sheet (*Instructions for voting a Provisional Ballot*)
 - o One (1) Large Green Provisional Ballot Envelope (*mentioned in step 1*)
3. Take all items listed in step 2 to the privacy booth. Mark the ballot with the pen provided.
4. Fold your ballot and seal it in the Small Green Provisional Ballot Secrecy Envelope. Your ballot will not be counted if it is not inside the Secrecy envelope.
5. You must place the sealed Small Green Provisional Ballot Secrecy Envelope in the Large Green Provisional Ballot Envelope. Seal the Large Green Provisional Ballot Envelope.
6. After sealing the Large Green Provisional Ballot Envelope, you must complete, sign and date section 4 in front of the Judge of Elections and Minority Inspector. In doing so, you confirm to be properly registered and eligible to vote at the election district where you have appeared to vote.
7. **IMPORTANT!** You **MUST** make sure all sections of the Large Green Provisional Ballot Envelope are completed. Your ballot will not be counted if the large Green Provisional Ballot Envelope does not contain your signature on both locations and the signature of the Judge of Elections and Minority Inspector.
8. Wait for the Judge of Elections and Minority Inspector to complete, sign and date the bottom portion of the Large Green Provisional Ballot Envelope and affix the Ballot Identification Number (sticker) in the space provided. You will receive the Provisional Ballot Receipts with the corresponding number which lists a phone number and website. In approximately 2 weeks you can learn whether your Provisional Ballot was counted.

NOTE: *If you were issued a Provisional Ballot due to not providing Voter Identification when the poll book required such, you will have to contact Chester County Voter Services and provide proof of ID no later than the Monday following the Election by end of business day. Failure to do so will result in your Provisional Ballot not being counted - 610-344-6410*

CERTIFICATE OF SERVICE

I, Joseph Mancano, hereby certify that on the date set forth below, in accordance with Pa.R.Civ.P. 205.4(g)(1)(ii), the foregoing was electronically filed with the Chester County Court of Common Pleas electronic filing system website and is available for review on the Chester County Court of Common Pleas electronic filing system's website, which filing constitutes proper service upon counsel of record.

Service was also completed by email and hand delivery to counsel as follows:

Colleen Frens, Esquire
Faith Mattox-Baldini, Esquire
Chester County Solicitor
313 W Market Street, Suite 6702
West Chester, PA 19380-0991

Dated: November 16, 2024

/s/ Joel L. Frank

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Joel L. Frank Filings

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Table with columns: Filing ID, Client #, Case Title, Case Number, Date Submitted, Document Type, Court, Court Division, Status. Row 1: 853655, 11-16-2024 10:45:38 AM, CERTIFICATE OF SERVICE OF CHESTER COUNTY PROTHONOTARY'S OFFICE Civil, Awaiting Approv

Number of Filings: 1 - Message from the court/clerk

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