

**IN THE COMMONWEALTH OF PENNSYLVANIA  
COURT OF COMMON PLEAS OF MONTGOMERY COUNTY  
CIVIL DIVISION**

**DAVID MCCORMICK**  
2401 Pennsylvania Ave.  
Philadelphia, PA 19130,

**REPUBLICAN NATIONAL COMMITTEE**  
310 First Street, SE  
Washington, D.C. 20003,

**and**

**REPUBLICAN PARTY OF PENNSYLVANIA**  
3501 N. Front Street, Suite 200  
Harrisburg, PA 17110,

Petitioners,

v.

**MONTGOMERY COUNTY BOARD OF  
ELECTIONS**  
425 Swede Street  
Suite 602  
Norristown, PA 19401

Respondent.

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 and 25 P.S. § 3050(a.4)(4)(v) from the decisions of the Montgomery County Board of Elections (“Board”) on November 14, 2024, to count defective provisional ballots in the November 5, 2024 General Election. Petitioners aver as follows:

## INTRODUCTION

1. This appeal concerns the decisions of the Board following the November 5, 2024 General Election to count provisional ballots missing a mandatory voter signature and provisional ballots missing one or both signatures of the Judge of Elections or minority inspector.

2. The Board erred as a matter of law in these decisions because each of these categories of ballots is invalid under Pennsylvania law and cannot be counted.

3. *First*, the Board erred in deciding to count 251 provisional ballots that were missing a mandatory signature of the voter on affidavits required by the Election Code. The Election Code states that “[a] provisional ballot shall not be counted if . . . the signature required under” the prescribed voter affidavits “is not signed by the individual.” 25 P.S. § 3050(a.4)(5)(i). The Pennsylvania Supreme Court has made clear that provisional ballots with missing voter signatures cannot be counted. *See In re: Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d 900, 904-09 (Pa. 2024). And the Secretary of the Commonwealth recently instructed county boards that “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.” Email on behalf of Deputy Secretary Jonathan Marks to County Election Officials (Nov. 7, 2024) (attached as Exhibit A).

4. The Board thus erred in deciding to count provisional ballots that lack a required signature of a voter.

5. *Second*, the Board erred in deciding to count 163 provisional ballots

that were missing a signature of the Judge of Elections or minority inspector (42 of which were missing both signatures). 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. *See In re: Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d at 907; *Ball*, 289 A.3d at 28. The Board’s decision nonetheless to count provisional ballots lacking the signature of the Judge of Elections or minority inspector thus violates Pennsylvania law.

6. The Board’s decisions to count ballots the Election Code prohibits also likely violate 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 ignore its lawyers’ advice and 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 decisions and hereby appeal from them pursuant to 25 P.S. § 3157(a).

### **JURISDICTION**

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

### **PARTIES**

9. Petitioner David McCormick is the Republican candidate for Senate. The United States Senate recognizes McCormick as the Senator-elect from Pennsylvania.

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 Montgomery County Board of Elections is responsible for overseeing the conduct of all elections in Bucks County.

### **DECISIONS OF THE BOARD AT ISSUE**

13. The Board met in a public meeting on November 14, 2024, to adjudicate challenges to provisional ballots. In a 2-1 vote, the Board orally announced its decision to count 162 provisional ballots with a missing voter signature under Section 2 of the ballot. *See* Montgomery County Commissioners – November 14, 2024 (“Video”), <https://www.montgomerycountypa.gov/95/County-Commissioners>, at 03:47:50-04:03:33.

14. In a 2-1 vote, the Board orally announced its decision to count 89 provisional ballots with missing voter signatures under Section 4 of the ballot. *Id.* at 04:05:45-04:11:25.

15. In a 3-0 decision, the Board voted to count 121 provisional ballots that were missing signatures from either the Judge of Elections or minority inspector, and in a 2-1 decision, to count 42 provisional ballots that were missing both. *Id.* at 04:11:25-04:22:05.

16. Petitioners objected to all four decisions before the Board.

17. Petitioners appeal from those decisions.

## FACTUAL BACKGROUND

### A. Ignored the Election Code and Pennsylvania Supreme Court Precedent When It Voted to Count Provisional Ballots That Were Missing Voter Signatures.

18. The Election Code also imposes mandatory requirements for those who cast provisional ballots. Those who cast provisional ballots must place the provisional ballot within a secrecy envelope, which is in turn placed within a provisional ballot envelope. 25 P.S. § 3050(a.4). The elector also “shall be required to sign an affidavit” with prescribed language. *Id.* § 3050(a.4)(2). The elector also “shall place his signature on the front of the provisional ballot envelope.” *Id.* § 3050(a.4)(3). In other words, individuals casting provisional ballots must provide *two* signatures: one for the affidavit and one on the provisional ballot envelope.

19. The Election Code expressly states that “[a] provisional ballot shall not be counted if . . . the signature required under clause (3) [the envelope signature] or the affidavit under clause (2) is not signed by the individual.” *Id.* § 3050(a.4)(5)(ii). In other words, election officials shall and must reject a provisional ballot unless both required signatures are present—a point the Pennsylvania Supreme Court has already made clear. *See In re: Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d at 907.

20. Nevertheless, the Board, in open defiance of the law, voted to count 251 provisional ballots that were missing affidavit signatures. *See Video* at 03:47:50-04:11:25.

21. Petitioners objected to the Board’s decision. *See id.*

**B. The Board Improperly Voted to Count Provisional Ballots Missing Signatures From Election Officials.**

22. The Election Code adds several extra security measures for those who cast provisional ballots aside from voter signature requirements. One such measure requires 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)(1) (emphasis added); *see also id.* § 3050(a) (“The election officer shall . . . sign an affidavit stating that this has been done.”).

23. 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)(1).

24. 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” 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.”).

25. Nevertheless, in a 3-0 decision, the Board voted to count 121 provisional ballots that were missing signatures from either the Judge of Elections or minority inspector, and in a 2-1 decision, to count 42 provisional ballots that were missing both. *Id.* at 04:11:25-04:22:05.

26. .Petitioners objected to this decision before the Board. *See id.*

## GROUNDS FOR APPEAL

27. The Board violated the Election Code in two ways.

28. *First*, the Board violated the Election Code by voting to count provisional ballots with unsigned voter affidavits.

29. The Election Code is unambiguous on this point. The Election Code states that electors “shall be required to sign an affidavit” with prescribed language when casting provisional ballots. 25 P.S. § 3050(a.4)(2). Separately, the Election Code expressly states that “[a] provisional ballot shall not be counted if” the affidavit “is not signed by the individual.” *Id.* § 3050(a.4)(5)(ii).

30. The Pennsylvania Supreme Court has recognized that the voter signature requirements for provisional ballots are “clear and unambiguous.” *In re: Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d at 907. And the Election Code “buttresses [the signature requirements] by directing that a provisional ballot [that is missing a signature] ‘shall not be counted.’” *Id.* (quoting 25 P.S. § 3050(a.4)(5)(ii)). “The General Assembly has thus spelled out the consequences for an elector’s failure to sign” the affidavit. *Id.*

31. The Pennsylvania Supreme Court’s decision in *In re Canvass of Provisional Ballots in 2024 Primary Election* governs this case. *Id.* at 7. Although that case dealt with a missing signature on the provisional ballot envelope, there is no principled basis to treat a missing affidavit signature differently. The exact same “shall” language is used to mandate the signatures in the first instance; and identical statutory language states that a provisional ballot “shall not be counted” if either



signature is missing. 25 P.S. § 3050(a.4)(5)(ii). Provisional ballots missing either signature must be rejected under the Election Code’s unambiguous terms.

32. Notably, the Secretary of the Commonwealth recognized this point in an email to the county boards of elections on November 7, 2024. *See* Email (“[T]he 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.”).

33. The Board thus erred in voting to count 16 provisional ballots with missing affidavits signatures.

34. *Second*, the Board wrongfully voted to count provisional ballots that were missing mandatory signatures from election officials.

35. The Election Code states 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)(1) (emphasis added); *see also id.* § 3050(a) (“The election officer shall . . . sign an affidavit stating that this has been done.”). 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)(1).

36. 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). After all, 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).

37. 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*, 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).

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

39. 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.

40. 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.

41. 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.

42. 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 Montgomery County Board of Elections, ordering the Montgomery County Board of Elections not to count provisional ballots with any missing voter signature, not to count provisional ballots missing a signature from either the Judge of Elections or 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,

---

Britain R. Henry, Esquire  
Attorney I.D. No. 314279  
Goldstein Law Partners  
200 School Alley, Suite 5  
Green Lane, PA 18054

*/s/ Walter S. Zimolong*

WALTER S. ZIMOLONG, ESQUIRE

Attorney I.D. No. 89151

[wally@zimolonglaw.com](mailto:wally@zimolonglaw.com)

JAMES J. FITZPATRICK, ESQUIRE

Attorney I.D. No. 320497

[james@zimolonglaw.com](mailto:james@zimolonglaw.com)

ZIMOLONG LLC

353 W. Lancaster Avenue, Suite 300

Wayne, PA 19087

(215) 665-0842

*Attorneys for Petitioners*

*David McCormick,*

*Republican National Committee,*

*and Republican Party of Pennsylvania*

**CERTIFICATE OF COMPLIANCE  
WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

/s/ Britain Henry, Esq.

Britain R. Henry, Esquire  
Attorney I.D. No. 314279  
Goldstein Law Partners  
200 School Alley, Suite 5  
Green Lane, PA 18054

November 16, 2024

RETRIEVED FROM DEMOCRACYDOCS.COM

## CERTIFICATE OF SERVICE

I, Britain R. Henry, 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 Montgomery County Court of Common Pleas electronic filing system website and is available for review on the Montgomery 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 to counsel as follows:

John Marlatt  
Benajmin Fields  
Montgomery County Solicitor's Office  
P.O. Box 311  
Norristown, PA 19404-0311  
[John.Marlatt@montgomerycountypa.gov](mailto:John.Marlatt@montgomerycountypa.gov)  
[Benjamin.Field@montgomerycountypa.gov](mailto:Benjamin.Field@montgomerycountypa.gov)

Timothy Ford, Esq.  
1500 Market Street  
Suite 3500E  
Philadelphia, PA 19102  
[tford@dilworthlaw.com](mailto:tford@dilworthlaw.com)

Dated: November 16, 2024

/s/ Britain R. Henry