

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

IN RE: PROVISIONAL BALLOT
SUFFICIENCY DETERMINATION
AND PROVISIONAL BALLOT
CHALLENGE HEARING OF THE
NOVEMBER 5, 2024 ELECTION

STATUTORY APPEAL

ELECTION MATTER

NOVEMBER TERM, 2024

No. _____

(Election Appeal)

**NOTICE OF APPEAL VIA
PETITION FOR REVIEW
OF DECISION BY
THE PHILADELPHIA COUNTY
BOARD OF ELECTIONS**

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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 decision of the Philadelphia County Board of Elections (the “PCBE” or “Board”), acting by and through its Commissioners Omar Sabir, Lisa M. Deeley, and Seth Bluestein (“Commissioners”) on November 15, 2024, to count in the November 5, 2024 General Election provisional ballots missing one or both signatures of the Judge of Elections or minority inspector and provisional ballots with incomplete voter affidavits. Petitioners aver as follows:

INTRODUCTION

1. This appeal concerns the Board’s decision to count invalid provisional ballots in the November 5, 2024 General Election. The following categories of ballots are at issue, totaling 966:

- a. Missing one or both signature of the Judge of Elections and/or Minority Inspector (663)
- b. Missing or incorrect information voter is required to supply on affidavit (50)
- c. Voter failed to check the reason for casting the provisional ballot (227)
- d. Multiple defects on same affidavit, including missing board worker signature and failure to check the reason for casting the provisional ballot (26)

2. The Board’s decision is legally erroneous because all three categories of provisional ballots are invalid under Pennsylvania law and cannot be counted.

3. The Election Code directs that individuals signing a provisional ballot “shall” sign a completed affidavit that is also “signed by the Judge of Elections and minority inspector.” 25 P.S. § 3050(a.4)(2). As part of the affidavit, the voter is required to supply her name, date of birth, and information regarding her voter registration. *See id.* The voter is also required to

“Check the Reason for Casting the Provisional Ballot.”

4. 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 decisions nonetheless to count provisional ballots lacking the signature of the Judge of Elections or minority inspector and provisional ballots with incomplete voter affidavits thus violate Pennsylvania law.

5. The Board’s decisions 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).

6. 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).

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 Philadelphia City Commissioners operates Philadelphia County's elections. It maintains an office at City Hall, Room 142, 1400 John F Kennedy Blvd, Philadelphia, PA 19107.

13. Respondents Omar Sabir, Lisa M. Deeley, and Seth Bluestein are the Philadelphia City Commissioners (collectively, the "Commissioners") responsible for overseeing the conduct of all elections in Philadelphia County. The PCBE acts by and through the Commissioners.

DECISION OF THE BOARD AT ISSUE AND FACTUAL BACKGROUND

14. The Commissioners met in a public meeting on November 15, 2024, to vote on Provisional Ballot Sufficiency Determinations and to adjudicate challenges to provisional ballots.

The Commissioners orally announced the decisions to count 663 provisional ballots missing one or both signatures of the Judge of Elections or minority inspector, 227 provisional ballots without a reason noted, 50 provisional ballots with incomplete or incorrect voter affidavits, and 26 ballots with multiple defects including combinations of the above-listed defects. *See* <https://www.youtube.com/live/Ar5NKURQTlg?si=TycNZi9FuVH3ExSV>.

15. Petitioners objected to those decisions before the Board. *See* <https://www.youtube.com/live/Ar5NKURQTlg?si=TycNZi9FuVH3ExSV>.

GROUND FOR APPEAL

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

17. 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).

18. These requirements confirm the voter’s identity and ensure that election officials actually supervised the casting of provisional ballots. Such proof of identity obviously advances election integrity, and the Pennsylvania Supreme Court has explained a lack of election official 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.”).

19. If the voter does not complete affidavit or 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).

20. 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 affidavit completion and official signature requirements here are anything but. Completing the affidavit provides proof of the voter’s identity and eligibility to cast a provisional ballot, and prevents double voting by a voter. Moreover, 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).

21. Accordingly, the Board erred in voting to count provisional ballots missing mandatory signatures from election officials or with incomplete voter affidavits.

22. 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.

23. 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.

24. Yet that is precisely what will happen if this Court permits the Board not to enforce these 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.

25. 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 Philadelphia County Board of Elections, ordering the Philadelphia County Board of Elections not to count provisional ballots that lack a signature of the Judge of Elections and/or minority inspector or both, ordering the Philadelphia County Board of Elections not to count provisional ballots with incomplete or incorrect voter affidavits, including those without a reason provided for casting a provisional ballot, and providing such other and further relief as provided by the Pennsylvania Election Code or as this Court deems just and appropriate.

Respectfully submitted,

BOCHETTO & LENTZ, P.C.

/s/ George Bochetto

Dated: November 17, 2024

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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.

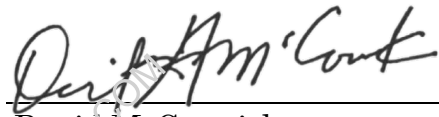
Dated: November 17, 2024

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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.



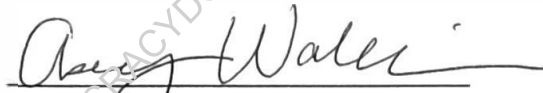
David McCormick

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VERIFICATION OF REPUBLICAN 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

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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

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