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*\* Pro hac vice application  
forthcoming*

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

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David McCormick; Republican  
National Committee; and Republican  
Party of Pennsylvania,

*Petitioners,*

v.

Erie County Board of Elections,

*Respondent.*

Civil Division

No. 2024-12842

Election Appeal

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**PROPOSED ANSWER**

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Proposed Intervenor-Respondents DSCC and Bob Casey for Senate, Inc. (“Proposed Intervenor”), by and through their attorneys, submit the following Proposed Answer to Petitioners’ Petition for Review of the decision of the Erie County Board of Elections on November 14, 2024, to count one hundred twenty (120) provisional ballots that were missing signatures of the Judge of Elections, the Minority Inspector, or both, in the November 5, 2024 General Election. Proposed Intervenor responds to the allegations in the Petition as follows:

### INTRODUCTION

1. Proposed Intervenor admits the allegations in Paragraph 1.
2. Paragraph 2 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.
3. Paragraph 3 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.
4. Paragraph 4 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.
5. Proposed Intervenor denies the allegations in Paragraph 5.

## JURISDICTION

6. Paragraph 6 contains legal conclusions to which no response is required.

## PARTIES

7. Proposed Intervenors admit the allegations in Paragraph 7.
8. Proposed Intervenors admit the allegations in Paragraph 8.
9. Proposed Intervenors admit the allegations in Paragraph 9.
10. Proposed Intervenors admit the allegations in Paragraph 10.

## DECISION OF THE BOARD AT ISSUE

11. Proposed Intervenors admit that the Board met in a public meeting on November 14, 2024, to adjudicate challenges to provisional ballots and that, in a 5-1 vote, the Board orally announced its decision to count every challenged provisional ballot with the exception of 101 ballots. Proposed Intervenors deny, however, that those 101 ballots consisted of solely provisional ballots where the voter failed to sign or adequately identify themselves: 98 of these provisional ballots were not signed by the vote; on two (2) of them, the voter did not adequately identify themselves; and, on the last one (1), the envelope did not contain a ballot inside. Proposed Intervenors admit the remaining allegations in Paragraph 11, and admit that Exhibit A appears to be what Petitioners purport it to be.

12. Proposed Intervenors admit the allegations in Paragraph 12.

13. Proposed Intervenors admit the allegations in Paragraph 13.

### **GROUNDS FOR APPEAL**

14. Proposed Intervenors admit that the Election Code requires an elector voting a provisional ballot to sign an affidavit. The remaining allegations in Paragraph 14 consist of mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

15. Paragraph 15 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors admit only that Paragraph 15 quotes 25 P.S. § 3050. Proposed Intervenors deny all remaining allegations.

16. Paragraph 16 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

17. Paragraph 17 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

18. Paragraph 18 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

19. Proposed Intervenors admit that the Board voted 54 to count 120 provisional ballots that were missing signatures from election officials To the extent Petitioners intended to cite Exhibit A to their Petition, Proposed Intervenors admit that it appears to be what Petitioners purport it to be. All other allegations in Paragraph 19 are denied.

20. Proposed Intervenors admit the allegations in Paragraph 20.

21. Paragraph 21 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

22. Paragraph 22 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

23. Paragraph 23 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

24. Paragraph 24 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

25. Paragraph 25 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

### **PRAYER FOR RELIEF**

Proposed Intervenors deny that Petitioners are entitled to any relief.

### **GENERAL DENIAL**

Proposed Intervenors deny every allegation in the Compliant that is not expressly admitted herein.

### **AFFIRMATIVE DEFENSES**

1. Petitioners' claim is barred because they seek relief inconsistent with the plain text of the Pennsylvania Election Code.
2. Petitioners' claim is barred because they seek relief inconsistent with the Free and Equal Elections Clause of the Pennsylvania Constitution.
3. Petitioners' claim is barred because they seek relief inconsistent with the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.
4. Petitioners' claim is barred because, contrary to Petitioners' allegations, the decision of the Board to count the provisional ballots at issue is not inconsistent with the U.S. Constitution or the Pennsylvania Constitution.

Dated: November 18, 2024

Respectfully submitted,

/s/ Timothy D. McNair

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*Counsel for Proposed Intervenors DSCC and Bob Casey for Senate, Inc.*

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**CERTIFICATE OF COMPLIANCE WITH CASE RECORDS PUBLIC  
ACCESS POLICY**

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.

/s/ Timothy D. McNair  
Timothy D. McNair (PA 34304)

**CERTIFICATE OF SERVICE**

I hereby certify that on November 18, 2024, I caused a true and correct copy of this document to be served on all counsel of record via email upon:

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