

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

LEIGH M. CHAPMAN, Acting Secretary of the  
Commonwealth and the PENNSYLVANIA  
DEPARTMENT OF STATE,

Petitioners,

v.

BERKS COUNTY BOARD OF ELECTIONS, et. al.,

Respondents.

No. 355 MD 2022

**EMERGENCY APPLICATION FOR PEREMPTORY JUDGMENT AND  
SUMMARY RELIEF**

1. Pursuant to Pennsylvania Rule of Civil Procedure 1098 and Pennsylvania Rule of Appellate Procedure 1532(b), Acting Secretary of the Commonwealth Leigh M. Chapman and the Pennsylvania Department of State ask that this Court enter peremptory judgment granting Petitioners' claim for a writ of mandamus and enter summary relief granting Petitioners' claim for declaratory and injunctive relief.

2. The requested relief is warranted because there are no material factual disputes and Petitioners' right to a writ of mandamus and declaratory and injunctive relief is clear as a matter of law. *MFW Wine Co., LLC v. Pennsylvania Liquor Control Bd.*, 231 A.3d 50, 52 n.2 & 56 (Pa. Commw. Ct. 2020) (describing

standard that governs both peremptory judgment and summary relief); *Thomas v. Com., Bd. of Prob. & Parole*, 699 A.2d 792, 795 (Pa. Commw. Ct. 1997) (same).

3. By law, the Acting Secretary must receive from county boards of elections a certification of returns for any general or primary election that is based on a computation of all lawfully canvassed votes. 25 P.S. §§ 2642(k), 3154(f), 3158.

4. For the 2022 primary election, this Court has already ruled that the Respondent boards must canvass timely received absentee and mail-in ballots from qualified voters where the voter neglected to write a date on the declaration printed on the envelope used to return the ballot. Order, *McCormick v. Chapman*, No. 286 MD 2022 (Pa. Commw. Ct. June 2, 2022). Those ballots must therefore also be included in the Respondent boards' certified election returns.

5. Furthermore, under both Pennsylvania and federal law, timely received absentee and mail-in ballots must be counted if a qualified voter neglected to write a date on the declaration printed on the ballot's return envelope. *Migliori v. Lehigh County Bd. of Elections*, 36 F.4th 153, 162-64 (3d Cir. 2022); Memorandum Opinion at 22-34, *McCormick v. Chapman*, No. 286 MD 2022 (Pa. Commw. Ct. June 2, 2022).

6. Respondent Boards' refusal to provide certified returns for the 2022 primary election that include timely received absentee and mail-in ballots from

qualified voters who neglected to write a date on the return envelope is contrary to law.

7. Petitioners request expedited consideration of this application.

8. In support of this application, Petitioners rely on the contemporaneously filed Memorandum. A proposed order is attached.

Dated: July 11, 2022

Respectfully submitted,

Josh Shapiro  
Attorney General

Christine P. Sun (*pro hac vice*  
application forthcoming)  
Marina Eisner (*pro hac vice* application  
forthcoming)  
Zack Goldberg (*pro hac vice* application  
forthcoming)

Michael J. Fischer (Bar. No. 322311)  
Chief Counsel and Executive Deputy  
Attorney General

*/s/ Jacob B. Boyer*

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Respondents.

No. \_\_\_ MD 2022

**[PROPOSED] ORDER GRANTING PETITIONERS' EMERGENCY  
APPLICATION FOR PEREMPTORY JUDGMENT AND SUMMARY  
RELIEF**

NOW, this \_\_\_\_\_ day of \_\_\_\_\_ 2022, upon consideration of the  
Petitioners' Emergency Application for Peremptory Judgment and Summary  
Relief, and any response thereto, it is hereby ORDERED that:

1. Petitioners' Application is GRANTED; and
2. It is ORDERED that Respondent boards must send the Acting  
Secretary within 2 days of this order certified returns of the 2022 primary election  
that include timely received absentee and mail-in ballots cast by qualified voters  
who failed to date the declaration on their ballot's return envelope; and.
3. It is DECLARED that Respondent boards must include in their  
certified returns of the 2022 primary election timely received absentee and mail-in

ballot cast by qualified voters who failed to date the declaration on their ballot's return envelope.

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, J.

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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: July 11, 2022

*/s/ Jacob B. Boyer*

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Jacob B. Boyer

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**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing document upon the following persons by commercial carrier, which service satisfies the requirements of

Pa.R.A.P. 121:

Berks County Board of Elections  
633 Court St., 1st Floor  
Reading, PA 19601

Fayette County Board of Elections  
Fayette Co. Public Service Bldg.  
2 W Main St., Ste. 111  
Uniontown, PA 15401-3412

Lancaster County Board of Elections  
150 N. Queen St., Ste 117  
Lancaster, PA 17603

Dated: July 11, 2022

*/s/ Jacob B. Boyer*

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