

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

David Ball, et alia,	:	
Petitioners	:	
	:	
vs.	:	102 MM 2022
	:	
Leigh M. Chapman, et alia,	:	
Respondents	:	

**RESPONSE OF THE LEHIGH COUNTY BOARD OF ELECTIONS IN
OPPOSITION TO PETITIONERS’ APPLICATION FOR KING’S BENCH
OR EXTRAORDINARY RELIEF**

The Lehigh County Board of Elections (Lehigh) hereby joins in the Responses of Respondent Leigh M. Chapman, and those Respondent Boards of Elections which have been filed in opposition to the Petitioners’ Application for King’s Bench or Extraordinary Relief.

By way of additional response, Lehigh asserts the following:

- I. Lehigh is willing to segregate undated ballots but is not willing to identify and segregate what Petitioners refer to as “incorrectly dated” ballots.**

As part of the relief requested, Petitioners have asked this Court to mandate that the 67 County Boards of Elections segregate undated absentee and mail-in ballots *as well as* **incorrectly dated** absentee and mail-in ballots. While Lehigh has segregated and will continue to segregate the undated absentee and mail-in ballots

it receives, it vehemently objects to the idea that it is in a position to identify what an incorrectly dated ballot is. Trying to identify an incorrectly dated ballot without specific guidance from the legislature would be dangerous and would certainly lead to further litigation, as well as potentially disenfranchising voters who were not given specific direction on the date to use on the ballot.

Petitioners do not identify or define what they consider to be an incorrectly dated ballot. And for good reason. The statute does not specify what date is to be placed on the ballot by the voter, just that it is dated.¹ Arguably, any date could be sufficient to meet the requirement that the ballot be dated. Should the date be the date of the election? Would a range of dates from the time the ballots are mailed by the Boards of Elections until election day be considered correct? Is it the date that the actual ballot is filled out, or the date the ballot is mailed, or the date that the envelope is filled out. Perhaps it should be the date that the voter made his or her decision about the candidates on the ballot, whether that was memorialized in writing or not at the time. Some voters believe they should put their birthdate on the ballot, perhaps as proof of identity along with their signature. If the ballot is received in a timely fashion, why should that matter?

¹ “The elector shall then fill out, date and sign the declaration printed on such envelope.” 25 P.S. §3146.6(a) for absentee ballots and 25 P.S. §3150.16(a) for mail-in ballots.

Without a definition, Petitioners would leave it to the 67 counties to determine what might be incorrect (which Lehigh asserts is within its power to do as part of administering elections) and would lead to the same sort of different treatment of ballots of which they despair in their Application and in the *RNC v. Chapman* matter before this Court docketed at 100 MM 2022. Yet that is what the result could be if this Court grants their Application.

What constitutes an incorrect date is at best diaphanous and at worst sludge. There is not a clear set of guidelines for the Election Boards to follow. This Court should not mandate that Boards of Election waste countless hours screening each of the dated ballots to determine if they are possibly incorrect. If the voter dated their ballot, and the ballot was received on time, there is no statutory basis to exclude that ballot from canvassing. This Court should reject Petitioners' request for an order directing the segregation and elimination of those ballots which are "incorrectly dated".

II. Petitioners are fearmongering about fraud to distract from their weak argument.

Petitioners' sole example of voter fraud involves the case of a Lancaster woman (Mihaliak) who has been criminally charged with fraud for signing, **dating** and casting a ballot in her deceased mother's name. Petitioners assert that the situation was discovered because of the date on the ballot envelope, which was twelve days after the mother's death. Petitioners failed to mention that the mother had already

been removed from the voter rolls, two days before the ballot was dated.

<https://lancaster.crimewatchpa.com/da/11617/post/lancaster-woman-charged-voter-fraud-may-2022-primary> . Because the ballot was dated, on its face, it would have appeared to be valid. The system in place for handling deceased voters worked as it is supposed to, with prompt communication from the Department of Health's Division of Vital Records leading to the removal of the deceased woman from the voter rolls. Thus, when the mail-in ballot was checked in, the discrepancy was flagged. While the date may help support the criminal case, it had nothing to do with invalidating the ballot. None of the relief sought by Petitioners in this matter would have addressed or prevented the situation presented in the Mihaliak case. Dating a ballot will not protect the system from fraud.

III. Conclusion

Petitioners have not presented a case which justifies this Court exercising its King's Bench authority or Extraordinary Jurisdiction. There is no imminent threat to the integrity of elections, nor is there inequality of treatment of those voters who date their ballots which would rise to the level of a constitutional or actionable harm.

Undated ballots which are timely received should be counted, because the date has no impact on the conduct of the election or the ability of the Board of Elections to ascertain fraud. Dating the ballot serves no significant purpose, and

therefore the lack of a date for a ballot received in a timely fashion should not be the basis for throwing out a legitimate vote. Similarly, ballots with dates which Petitioners assert are incorrect should not be discounted, because there is no set definition of what a correct date would be.

Petitioners' Application should be dismissed.

Respectfully submitted,

/s/Catharine M. Roseberry, Esq.

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RULE 2135 CERTIFICATE OF COMPLIANCE

I certify pursuant to Pa. R.A.P. 2135(d) that the foregoing Response of the Respondent Lehigh County Board of Elections does not exceed 14,000 words (excluding the supplementary matter outlined in Pa. R.A.P. 2135(b)), as determined using Microsoft Word for Office 365 software, and therefore complies with the word count limit set forth in Pa.R.A.P. 2135(a)(1).

Respectfully submitted,

Date: October 19, 2022

/s/Catharine M. Roseberry, Esq.

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CERTIFICATE OF COMPLIANCE

I, Catharine M. Roseberry, certify that this filing complies with the provisions of the Public Access Policy of the Unified 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,

Date: October 19, 2022

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