

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA STATE CONFERENCE	)	
OF THE NAACP, <i>et al.</i> ,	)	
	)	Civil Action No.: 1:22-cv-00339
Plaintiffs,	)	
	)	
v.	)	Judge Susan P. Baxter
	)	
LEIGH M. CHAPMAN, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**INTERVENOR-DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

Intervenor-Defendants the Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania support and seek to uphold free and fair elections on behalf of all Pennsylvanians. Intervenor-Defendants therefore respectfully ask the Court to deny Plaintiffs' motion for summary judgment and to uphold the General Assembly's duly enacted laws governing Pennsylvania's elections.

Plaintiffs' motion fails "as a matter of law," Fed. R. Civ. P. 56(a), to provide any basis for this Court to strike down the General Assembly's date requirement for absentee and mail-in ballots that the Pennsylvania Supreme Court upheld as mandatory just a few months ago, *see Ball v. Chapman*, 284 A.3d 1189 (Pa. 2022). Indeed, Plaintiffs' memorandum in support of their motion largely recycles their meritless arguments from the motion to dismiss stage. But no amount of discovery can cure the legal flaws in Plaintiffs' meritless theory that the date requirement violates the federal materiality provision and the U.S. Constitution.

*First*, Plaintiffs' Count I rests on a counter-textual and nonsensical statutory reading. As Intervenor-Defendants have explained—and three U.S. Supreme Court Justices have agreed—the date requirement does not even *implicate*, let alone violate, the federal materiality provision. *See Ritter v. Migliori*, 142 S. Ct. 1824, 1824-25 (2022) (Mem.) (Alito, J., dissenting from the denial of the application for stay). In fact, Plaintiffs' contrary construction of the federal materiality provision would invalidate broad swaths of commonplace and commonsense voting rules nationwide, subjecting state election laws to federal superintendence that Congress did not intend and did not enact.

*Second*, Plaintiffs make only passing mention of their constitutional claim in Count II. That claim, moreover, asks the Court to misapply hornbook Equal Protection principles. It also rests

on an alleged statutory exception to the date requirement that does not exist—and that Plaintiffs hardly even attempt to prove.

As if the legal failings in Plaintiffs’ claims were not enough, Plaintiffs also simply ignore record evidence that forecloses their claims—including evidence *they* proffered. Plaintiffs do not even mention that the date requirement was used to detect voter fraud in *Commonwealth v. Mihaliak*—or that the fraudster’s handwritten date was the only evidence of fraud on the face of the ballot envelope in that case. *See* Responsive Statement of Facts (“RSOF”) ¶¶ 128-32. And Plaintiffs’ motion makes no mention of their own putative expert’s analysis, presumably because he *agreed* that the date requirement helped to detect fraud in *Mihaliak*, adopted an overly expansive definition of “disenfranchisement” that would imperil all state voting rules, and conceded that the date requirement applies to overseas and military voters. *See id.* ¶¶ 131-32, 138-41, 143.

Plaintiffs’ claims fail on the law and facts. The Court should deny Plaintiffs’ motion for summary judgment.

## ARGUMENT

### I. MANDATORY APPLICATION OF THE DATE REQUIREMENT DOES NOT VIOLATE THE FEDERAL MATERIALITY PROVISION

As Intervenor-Defendants already have explained, Plaintiffs’ claim that the date requirement violates the federal materiality provision fails as a matter of law. *See* ECF No. 271 at 4-17; *see also Ritter*, 142 S. Ct. at 1824-25 (Mem.) (Alito, J., dissenting from the denial of the application for stay). At the threshold, Plaintiffs lack a private right of action to enforce the materiality provision, and Count I fails for that reason alone. *See* ECF No. 271 at 4-5. But even if the Court reaches the merits, Count I still fails because the date requirement does not even implicate, let alone violate, the federal materiality provision. *See id.* at 5-17; *see also Ritter*, 142 S. Ct. at 1824-25 (Mem.) (Alito, J., dissenting from the denial of the application for stay). Indeed,

Count I fails at least three essential elements of the federal materiality provision because mandatory application of the date requirement does not affect a “determin[ation] whether such individual is qualified under state law to vote,” 52 U.S.C. § 10101(a)(2)(B), “deny the right of any individual to vote,” *id.*, or pertain to an “application, registration, or other act requisite to voting,” *id.*; *see also* ECF No. 271 at 5-17; *Ritter*, 142 S. Ct. at 1824-25 (Mem.) (Alito, J., dissenting from the denial of the application for stay). Each of these failures independently requires summary judgment against Plaintiffs on Count I. *See* ECF No. 271 at 5-17.

Plaintiffs offer five arguments in an attempt to shoehorn the date requirement into the narrow sweep of the federal materiality provision. All fail.

*First*, Plaintiffs concede that “the voter-written date on the mail ballot envelope is not used in any way to determine an individual’s qualification to vote.” ECF No. 275 at 19. That concession *disproves* Plaintiffs’ materiality claim and forecloses Count I as a matter of law. *See* ECF No. 271 at 8-11. By its express terms, the materiality provision applies only to paper-based errors or omissions that affect a “determin[ation] whether such individual is qualified under State law to vote.” 52 U.S.C. § 10101(a)(2)(B); *see also* ECF No. 271 at 8-11. It therefore regulates requirements and practices related to qualifications and registration to vote, not rules “that must be met in order to cast a ballot that will be counted.” *Ritter*, 142 S. Ct. at 1825 (Mem.) (Alito, J., dissenting from the denial of the application for stay); *see also id.* (“[I]t would be absurd to judge the validity of voting rules based on whether they are material to eligibility.”). In other words, to fall within the narrow scope of the materiality provision, “it is not enough that the error or omission be immaterial *to* whether the individual is qualified to vote; the paper or record must also be used ‘in determining’ the voter’s qualifications.” *Ball v. Chapman*, 289 A.3d 1, 38 (Pa. 2023) (Opinion of Justice Brobson) (emphasis original).

Statutory context confirms this construction. The materiality provision is nested within and among other statutory sections that address voter qualifications. *See* ECF No. 271 at 9-10. Thus, like those other sections, the materiality provision “relates to determinations of *who* may vote—*i.e.*, voter qualifications,” not what voters must *do* to complete and cast a valid ballot, *Ball*, 289 A.3d at 37 (Opinion of Justice Brobson) (emphasis original).

Even the legislative history Plaintiffs cite is in accord. That legislative history recounts that Congress enacted the materiality provision “in response to the practice of Black voters’ *registrations* being rejected for ‘minor misspelling errors or mistakes in age or length or residence,’ or other ‘trivial reasons’ in filling out the requisite forms.” ECF No. 275 at 15 (quoting H. Rep. No. 88-914 at 2491) (emphasis added); *see* ECF No. 271 at 9-11; *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1173 (11th Cir. 2008). It therefore underscores that the materiality provision addresses only voter qualification and registration practices, not “the rules for casting a ballot.” *Ritter*, 142 S. Ct. at 1825 (Mem.) (Alito, J., dissenting from the denial of the application for stay).

For all of these reasons, because “the voter-written date on the mail ballot envelope is not used in any way to determine an individual’s qualification to vote,” ECF No. 275 at 19, it does not even implicate, let alone violate, the federal materiality provision, *see* ECF No. 271 at 8-11. Count I fails as a matter of law for this reason alone.

*Second*, Plaintiffs argue that mandatory application of the date requirement results in “denial of the right to vote.” ECF No. 275 at 18. Not so: mandatory rules governing the act of completing and casting a ballot do not deny anyone the right to vote. *See* ECF No. 271 at 5-8; *see also Ritter*, 142 S. Ct. at 1824-25 (Mem.) (Alito, J., dissenting from the denial of the application for stay); *Vote.Org v. Callanen*, 39 F.4th 297, 305 n.6 (5th Cir. 2022) (“It cannot be that any



requirement that may prohibit an individual from voting if the individual fails to comply denies the right of that individual to vote under” the federal materiality provision). Thus, “[w]hen a mail-in ballot is not counted because it was not filled out correctly, the voter is not denied ‘the right to vote.’” *Ritter*, 142 S. Ct. at 1825 (Mem.) (Alito, J., dissenting from the denial of the application for stay) (quoting 52 U.S.C. § 10101(a)(2)(B)). Rather, the right to vote has been “forfeit[ed]”: “that individual’s ballot is not counted because he or she did not follow the rules for casting a ballot.” *Id.*

After all, the consequence of failing to comply with the date requirement is not disqualifying the voter, stripping the individual’s right to vote, or removing the individual from the list of eligible voters. *See Ball*, 284 A.3d at 1189; *see also* ECF No. 271 at 5-9. Indeed, that individual *retains* the right to vote in compliance with the state-law rules for completing and casting a ballot and on equal terms with all other eligible voters in Pennsylvania. *See Ball*, 284 A.3d at 1189; *see also* ECF No. 271 at 5-9. Instead, the consequence is that election officials carry out the General Assembly’s directive not to count the individual’s ballot—which is exactly what occurs when a voter shows up to the polls after Election Day, fails to use a secrecy envelope for or to sign an absentee or mail-in ballot, attempts to vote for too many candidates for a single office, returns the ballot to the wrong location, or arrives at the wrong polling place. *See Ritter*, 142 S. Ct. at 1825 (Mem.) (Alito, J., dissenting from the denial of the application for stay) (“Even the most permissive voting rules must contain some requirements, and the failure to follow those rules constitutes the forfeiture of the right to vote, not the denial of that right.”); ECF No. 271 at 5-9.

Plaintiffs attempt to bolster their construction by invoking the statutory definition of “vote.” *See* ECF No. 275 at 17-18 (citing 52 U.S.C. § 10101(a)(3)(A), (e)). But the materiality provision covers only denials of the “*right*” to vote, not application of neutral and mandatory rules

to the *act* of voting. 52 U.S.C. § 10101(a)(2)(B) (emphasis added); *see* ECF No. 271 at 6-7. The materiality provision therefore does not guarantee that an invalid ballot will be counted where an individual fails to cast it in compliance with state law, as Plaintiffs contend. *See Ritter*, 142 S. Ct. at 1825 (Mem.) (Alito, J., dissenting from the denial of the application for stay); *see* ECF No. 271 at 5-9. In other words, the question is not, as Plaintiffs argue, whether mandatory application of the date requirement results in a ballot not being “count[ed].” ECF No. 275 at 18. Rather, the question is whether such mandatory application deprives any individual of the *right* to have their ballot counted where they have complied with the state-law rules for completing and casting it. *See* ECF No. 271 at 5-7; 52 U.S.C. § 10101(a)(2)(B). Mandatory application of the state-law date requirement results in no such denial of the right to vote. *See Ritter*, 142 S. Ct. at 1825 (Mem.) (Alito, J., dissenting from the denial of the application for stay); *see* ECF No. 271 at 5-9.

*Third*, Plaintiffs argue that the materiality provision is a “broader prophylactic” that goes beyond the state-law qualification and registration practices targeted by Congress. ECF No. 275 at 16. In particular, Plaintiffs assert that the date requirement falls within the materiality provision’s coverage of “other act[s] requisite to voting.” *Id.* at 19. That assertion, however, fails as a matter of straightforward statutory construction. The materiality provision lists “application, registration, and other act requisite to voting” as matters within its scope. 52 U.S.C. § 10101(a)(2)(B). Because “application” and “registration” refer to acts to confirm a voter’s qualifications, so too does “other act requisite to voting.” *See, e.g., Ball*, 289 A.3d at 38 n.11 (Opinion of Justice Brobson) (the “understanding that the scope of the [materiality provision] is limited to records or papers used in determining a voter’s qualifications is supported by the *ejusdem generis* canon of statutory construction”); ECF No. 271 at 11-12. It would be an “awkward” statutory construction at best to extend the materiality provision to absentee and mail-

in ballots and the date requirement. *Ritter*, 142 S. Ct. at 1825 (Mem.) (Alito, J., dissenting from the denial of the application for stay); *see also Ball*, 289 A.3d at 26 (Opinion of Justice Wecht) (“Logic and ordinary rules of statutory construction ... dictate that an ‘act requisite to voting’ must be different from voting itself.”). Voting is voting; it is not an act requisite to voting. *See* ECF No. 271 at 11-12.

This proper construction of the statutory list leaves plenty of work for the “other act requisite to voting” term to do. In particular, this term prevents “Jim Crow” states, ECF No. 275 at 16, from circumventing the materiality provision by disqualifying voters based on practices the state calls something other than “application” or “registration.” The “other act requisite to voting” term therefore is part and parcel of Congress’s effort “to counteract state and local government tactics of using, among other things, burdensome registration requirements to disenfranchise African-Americans.” *Fla. State Conf. of the NAACP*, 522 F.3d at 1173.

Plaintiffs’ contrary construction is untenable. Indeed, under Plaintiffs’ reading, “other act requisite to voting” would encompass not only “complet[ing] the envelope form” on an absentee or mail-in ballot but, in fact, *all* paper-based practices and rules related to voting. ECF No. 275 at 18-19. That reading, however, improperly treats the terms “application” and “registration” in the materiality provision “as surplusage.” *Tavarez v. Klingensmith*, 372 F.3d 188, 190 (3d Cir. 2004). After all, if Congress meant to sweep all paper-based practices and rules into the “other act[s] requisite to voting” term, there would have been no reason for it to include “application” and “registration” in the statutory list. *See, e.g., id.* But Congress did include “application” and “registration” in the list—and those terms delineate, rather than are subsumed by, the “other act requisite to voting” term that completes the list. *See, e.g., Ritter*, 142 S. Ct. at 1825 (Mem.) (Alito,

J., dissenting from the denial of the application for stay); *Ball*, 289 A.3d at 26 (Opinion of Justice Wecht); *id.* at 38 n.11 (Opinion of Justice Brobson); *see also* ECF No. 271 at 11-12.

Moreover, the implications of Plaintiffs' proposed reading are breathtakingly broad—and, unsurprisingly, incorrect. *See* ECF No. 271 at 12-16. According to Plaintiffs' own putative expert—whom their brief nowhere mentions—“disenfranchise[ment]” and denial of the right to vote occur whenever “an eligible voter[’s] ... ballot [is] not counted,” even where state law *requires* the ballot not to be counted. RSOF ¶ 138. Thus, Plaintiffs' reading of the materiality provision “would subject virtually every electoral regulation” related to voting records and papers nationwide to the superintendence of the federal materiality provision, “hamper the ability of States to run efficient and equitable elections, and compel federal courts to rewrite state electoral codes.” *Clingman v. Beaver*, 544 U.S. 581, 593 (2005). Indeed, under Plaintiffs' reading, “no election law that imposes informational requirements unrelated to determining voter qualification can survive a [§ 10101(a)(2)(B)] challenge.” *Ball*, 289 A.3d at 39 (Opinion of Justice Brobson). For example, Plaintiffs' reading would imperil the signature requirement contained in the same statutory sentence as the date requirement, the secrecy-envelope requirement, the overvote prohibition, and even commonplace voter assistance declarations. *See* ECF No. 271 at 13-16. In fact, under Plaintiffs' reading, numerous state election rules in Pennsylvania and elsewhere have been invalid since Congress enacted the federal materiality provision nearly six decades ago. *See* ECF No. 271 at 15-16.

Merely to point out the implications of Plaintiffs' proposed reading of the materiality provision is to refute it. Congress did not hide the “elephant” of federal superintendence of all paper-based voting practices and rules in the “mousehole” of the federal materiality provision or the “other act requisite to voting” list item. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1627 (2018).

*Fourth*, Plaintiffs suggest that the date requirement must not be material under state law because, in their view, it does not serve any state interest or “perform any ... function.” ECF No. 275 at 21. But, of course, the Pennsylvania Supreme Court’s declaration that the date requirement is mandatory and material under state law is conclusive and binding on this Court. *See Ball*, 284 A.3d 1189. Moreover, Plaintiffs ignore that the date requirement performs important functions and serves “unquestionable purpose[s].” *Ball*, 289 A.3d at 10; *see also In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1090 (Pa. 2020) (Opinion of Justice Dougherty, Chief Justice Saylor, and Justice Mundy); ECF No. 271 at 3-4. In fact, Plaintiffs’ own putative expert admitted that the date requirement helped to detect voter fraud in the *Mihaliak* case. *See* RSOF ¶¶ 131-32, 140-41; *see also Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2348 (2021) (noting the “legitimate interest” in “prevention of fraud”); *Crawford v. Marion Cnty. Elec. Bd.*, 553 U.S. 181, 196 (2008) (Opinion of Stevens, J.) (“the propriety” of “preventing election fraud” is “perfectly clear”). Plaintiffs, however, mention neither the *Mihaliak* case nor their own putative expert. *See* ECF No. 275 at 21.

Nor does the fact that some county boards of elections followed different practices for implementing the date requirement in the November 2022 general election, *see* ECF No. 275 at 21-22, mean that the date requirement is immaterial under state law, *compare Ball*, 289 A.3d at 23 (“[C]ounty boards of elections retain authority to evaluate the ballots that they receive in future elections—including those that fall within the date ranges derived from statutes indicating when it is possible to send out mail-in and absentee ballots—for compliance with the Election Code.”). If anything, that fact merely raises a question as to whether all county boards are in *compliance* with state law, not whether the date requirement is material under state law. Regardless, because Plaintiffs concede that “the voter-written date on the mail ballot envelope is not used in any way

to determine an individual's qualification to vote," ECF No. 275 at 19, the date requirement's materiality for other purposes is of no moment to the federal materiality provision, *see* ECF No. 271 at 8-11.

*Finally*, Plaintiffs cite a handful of cases that they contend support their reading of the materiality provision. One is the Third Circuit's now-vacated panel decision in *Migliori*. *See* ECF No. 275 at 15-20. Plaintiffs are wrong that "[n]othing has changed since *Migliori*," *id.* at 17: in fact, the Supreme Court vacated that decision, leaving it with no "precedential effect," *County of Los Angeles v. Davis*, 440 U.S. 625, 634 n.6 (1979); *see also* ECF No. 271 at 16-17. The *Migliori* panel's incomplete and incorrect analysis is simply of no help to the Court. *See Ritter*, 142 S. Ct. at 1825 (Mem.) (Alito, J., dissenting from the denial of the application for stay).

Plaintiffs' other three cases are district court decisions, two of which are unpublished and none of which involves a final decision on the merits. *See Martin v. Crittenden*, 347 F. Supp. 3d 1302 (N.D. Ga. 2018) (temporary restraining order) (cited at ECF No. 275 at 16, 20-21); *League of Women Voters of Ark. v. Thurston*, No. 5:20-cv-05174, 2021 WL 5312640 (W.D. Ark. Nov. 15, 2021) (denying motion to dismiss) (cited at ECF No. 275 at 15, 16); *Ford v. Tenn. Senate*, No. 06-2031, 2006 WL 8435145 (W.D. Tenn. Feb. 1, 2006) (cited at ECF No. 275 at 16, 18). None of these cases meaningfully engaged the plain text of the materiality provision or its essential elements. All of Plaintiffs' cases predate—and contravene—more persuasive authority from three Justices of the United States Supreme Court, the unvacated panel opinion of the Fifth Circuit, and Justices Brobson and Mundy in *Ball*. *See Ritter*, 142 S. Ct. at 1825 (Mem.) (Alito, J., dissenting from the denial of the application for stay); *Vote.Org*, 39 F.4th at 305 n.6; *Ball*, 289 A.3d at 37-39 (Opinion of Justice Brobson); *see also Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1370-71 (S.D. Fla. 2004) (the materiality provision "was designed to eliminate practices that could encumber an

individual’s ability to register to vote”); *Thrasher v. Ill. Republican Party*, 2013 WL 442832, at \*3 (C.D. Ill. Feb. 5, 2013) (the “actual harms the statute protects against” is “discrimination in the registration of voters,” and “[c]ourts that have applied the statute have done so in the context of voter registration”); ECF No. 271 at 5-17. The Court should deny Plaintiffs’ motion for summary judgment.

## **II. MANDATORY APPLICATION OF THE DATE REQUIREMENT DOES NOT VIOLATE EQUAL PROTECTION**

As Intervenor-Defendants already have explained, Plaintiffs’ claim that the date requirement violates the Fourteenth Amendment fails as a matter of law. *See* ECF No. 271 at 17-25. *First*, Pennsylvania law does not exempt military and overseas voters from the date requirement—as even Plaintiffs’ own putative expert conceded. *See id.* at 17-21. *Second*, even if it did so, any such exemption would not violate Equal Protection because military and overseas voters are not “similarly situated” to domestic absentee and mail-in voters. *Shuman ex rel. Shertzer v. Penn Manor Sch. Dist.*, 422 F.3d 141, 151 (3d Cir. 2005); *see also* ECF No. 271 at 21-24. *Third*, in all events, even if Plaintiffs’ Equal Protection claim were meritorious, it would at most justify relief against the three county boards of elections that (properly) declined to count domestic ballots that failed to comply with the date requirement but (improperly) counted such ballots from military and overseas voters. RSOF ¶ 108. Even then, the proper remedy would be to require those three county boards to enforce the date requirement as to military and overseas voters, not to grant the sweeping statewide injunction Plaintiffs seek. *See* ECF No. 271 at 24-25.

Plaintiffs devote only two pages of their brief to a half-hearted defense of their Equal Protection claim in Count II. *See* ECF No. 275 at 23-25. Plaintiffs contend that “[s]tate law appears to treat domestic and overseas mail ballot voters differently.” ECF No. 275 at 24. But a mere “appear[ance]” of differential treatment does not prove a constitutional violation—and state

law, in fact, does not treat domestic and overseas voters differently. *See* ECF No. 271 at 17-21. Moreover—as they did in their Amended Complaint, *see id.* at 18-20—Plaintiffs omit the operative “under this chapter” limitation from their quotation of the UMOVA mistake provision they invoke, 25 Pa. C.S. § 3515(a), *see* ECF No. 275 at 24. Plaintiffs do not even include an ellipsis where that limitation appears in the statutory text, pretending instead that it simply does not exist. *See id.*; *see also* 25 Pa. C.S. § 3515(a)(1).

Finally, Plaintiffs’ lone case finding an Equal Protection violation in the differential treatment of domestic and overseas voters is also inapposite: as Plaintiffs recognize, that case involved “*in-person* early voting.” ECF No. 275 at 24 (citing *Obama for Am. v. Husted*, 888 F. Supp. 2d 897, 905-06 (S.D. Ohio), *aff’d*, 697 F.3d 423 (6th Cir. 2012)) (emphasis added). As the Sixth Circuit recognized in that very case, military and overseas voters who vote *by mail* because they are *absent* from the country “in many respects . . . are *not* similarly situated to domestic voters” due to such absence. *Obama for Am. v. Husted*, 697 F.3d at 435 (emphasis added). Therefore, any (non-existent) exemption from Pennsylvania’s date requirement for such voters would not violate Equal Protection in any event. *See* ECF No. 271 at 21-25.

### CONCLUSION

The Court should deny Plaintiffs’ motion for summary judgment.



Dated: May 5, 2023

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA STATE CONFERENCE  
OF THE NAACP, *et al.*,

*Plaintiffs,*

v.

AL SCHMIDT, in his official capacity as  
Acting Secretary of the Commonwealth, *et al.*,

*Defendants.*

Case No. 1:22-cv-00339-SPB

**INTERVENOR-DEFENDANTS' RESPONSES TO  
PLAINTIFFS' LOCAL CIVIL RULE 56(B)(1) STATEMENT**

Intervenor-Defendants the Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania respectfully file these Responses to Plaintiffs' Local Civil Rule 56(B)(1) Statement and state as follows:

**I. BACKGROUND**

**A. History and Practice of Mail Ballot Voting in Pennsylvania**

1. Pennsylvania has long provided absentee-ballot options for voters who cannot attend a polling place on Election Day. APP\_00954 (Marks Dep.); 25 P.S. § 3146.1-3146.9.

**Intervenor-Defendants' Response: Admitted.**

2. In 2019, Pennsylvania enacted new mail-in voting provisions, which allow all registered, eligible voters to vote by mail. APP\_00954 (Marks Dep.); APP\_01180 (Greenburg Report); Act of Oct 31, 2019, P.L. 552, No. 77, § 8.

**Intervenor-Defendants' Response: Admitted.**

3. More than 2.6 million Pennsylvanians voted by absentee or mail ballot in the November 2020 general election, and more than 1.2 million Pennsylvanians voted by absentee or

mail ballot in the November 2022 general election. APP\_01181 (Greenburg Report); *see also* APP\_00981-982 (Marks Dep.).

**Intervenor-Defendants' Response: Admitted.**

4. A voter seeking to vote by mail must complete an application and have their identity and qualifications verified before receiving a mail ballot. Voters provide all the information necessary for county boards of elections to verify that they are qualified to vote in Pennsylvania—namely, that on the day of the next election, they will have been a U.S. citizen for at least one month, will be at least 18 years old, will have resided in the election district for at least 30 days, and have not been confined in a penal institution for a conviction of a felony within the last five years—at the time of registration, at which time the county board of elections first determines their eligibility to vote. 25 Pa. C.S. §§ 1301, 1327(b); *see also* APP\_00893 (Lancaster Dep.); APP\_00995-997 (Marks Dep.).

**Intervenor-Defendants' Response: Admitted.**

5. To apply to receive a mail ballot, voters must submit an application that contains information relevant to their qualifications—including their date of birth, address, and length of time as a resident of the voting district—as well as proof of identification (a Pennsylvania driver's license number or, if the voter does not have one, the last four digits of the voter's social security number). APP\_01036-1037 (mail ballot application); 25 P.S. §§ 3150.12, 2602(z.5)(3).

**Intervenor-Defendants' Response: Admitted in part and denied in part.**

**Admitted that voters must submit an application that contains this information to request a mail ballot.**

**Denied that the voter's address is relevant to their qualifications to vote, which are that on the day of the next election, they will have been a U.S. citizen for at least one month, will be at least 18 years old, will have resided in the election district for at least**

**30 days, and have not been confined in a penal institution for a conviction of a felony within the last five years. See 25 Pa. C.S. §§ 1301, 1327(b); Ex. 53 at 73.**

6. After the application is submitted, county boards of elections verify the voter's proof of identification and compare the information in the mail ballot application to the information provided at the time of registration, using the data housed in the Statewide Uniform Registry of Electors ("SURE") system. 25 P.S. § 3150.12b; *see also* APP\_01136 (Pa. Dep't of State Guidance); APP\_00894 (Lancaster Dep.); APP\_00916-917 (Westmoreland Dep.); APP\_00957-961 (Marks Dep.); APP\_01182 (Greenburg Report); APP\_001015, APP\_001020-1025 (Greenburg Dep.).

**Intervenor-Defendants' Response: Admitted.**

7. County boards of elections issue mail ballot packages to voters only after verifying their qualifications to vote, based on the information provided in their voter registration records and mail ballot applications. 25 P.S. § 3150.12b; *see also* APP\_00917 (Westmoreland Dep.).

**Intervenor-Defendants' Response: Admitted.**

8. The county board's determination that an individual is qualified to vote is conclusive unless the voter's eligibility is challenged prior to Election Day. 25 P.S. §§ 3150.12b, 3146.8(g)(3)-(4); *see also* APP\_01182 (Greenburg Report); APP\_01136 (Pa. Dep't of State Guidance).

**Intervenor-Defendants' Response: Admitted.**

9. Once the county board verifies the voter's identity and eligibility, it sends a mail-ballot package that contains a ballot, a "secrecy envelope" marked with the words "Official Election Ballot," and the pre-addressed outer return envelope, on which a voter declaration form is printed (the "Return Envelope"). 25 P.S. §§ 3146.6(a), 3150.16(a); *see also* APP\_00965-966 (Marks Dep.); APP\_01182-1183 (Greenburg Report).

**Intervenor-Defendants' Response: Admitted.**

10. A voter can mark their ballot, put it inside the secrecy envelope, and place the secrecy envelope in the Return Envelope, and complete the form declaration on the return envelope at “any time” between receiving their mail-ballot package from the county board of elections and 8:00 P.M. on Election Day. 25 P.S. §§ 3146.6(a), 3150.16(a); *see also* APP\_00977 (Marks Dep.); APP\_01183, APP\_01189-1190 (Greenburg Report).

**Intervenor-Defendants' Response: Admitted.**

11. The voter must then deliver their ballot, in the requisite envelopes, by mail or in person to their county board of elections. To be considered timely under the Election Code, a county board of elections must receive a voter's mail ballot by 8:00 P.M. on Election Day. 25 P.S. §§ 3146.6(c), 3150.16(c); *see also* APP\_00974-76 (Marks Dep.); APP\_01183 (Greenburg Report).

**Intervenor-Defendants' Response: Admitted.**

12. Upon receipt of a mail ballot, county boards of elections stamp or otherwise mark the Return Envelope with the date of receipt to confirm its timeliness and log it in the SURE system. APP\_01183, APP\_01189 (Greenburg Report); APP\_01136-1137 (Pa. Dep't of State Guidance); APP\_00977-978 (Marks Dep.), 70:5-8; APP\_00834 (Berks Dep.).

**Intervenor-Defendants' Response: Admitted.**

**B. Previous Litigation over the Date Requirement**

13. The Election Code provides that a voter “shall ... fill out, date and sign the declaration printed on” the mail ballot Return Envelope. *See* 25 P.S. §§ 3146.6(a), 3150.16(a). The voter declaration forms that accompany paper mail and absentee ballots include a line for the voter

to sign and date the declaration.<sup>1</sup> *See, e.g.*, APP\_01290 (Berks mail ballot envelope); APP\_01291 (Bucks military ballot envelope).

**Intervenor-Defendants' Response: Admitted.**

14. This envelope-dating provision has been the subject of repeated litigation. APP\_00824 (Berks Dep.).

**Intervenor-Defendants' Response: Admitted.**

15. In the months leading up to the 2022 election, the Secretary of the Commonwealth advised counties to count otherwise valid and timely-received mail ballots even where voters omitted a handwritten date, or wrote a plainly wrong date like a birthdate, on the Return Envelope. APP\_01139-1142 (Sept. 26, 2022 Pa. Dep't of State Guidance), APP\_00824a-824c (Berks Dep.); APP\_00869-870 (Lancaster Dep.); APP\_00920-921 (Westmoreland Dep.); APP\_00986-989, APP\_00991-992 (Marks Dep.).

**Intervenor-Defendants' Response: Admitted.**

16. The Secretary reaffirmed that guidance after the U.S. Supreme Court vacated on mootness grounds the Third Circuit's *Migliori v. Cohen* decision regarding the envelope-date rule. APP\_01143 (Oct. 11, 2022 Pa. Dep't of State email).

**Intervenor-Defendants' Response: Admitted that the Secretary continued to advise counties to disregard the date requirement following the vacatur of the Third Circuit's *Migliori v. Cohen* decision.**

17. On October 16, 2022, a group of petitioners including political party entities brought a King's Bench petition in the Supreme Court of Pennsylvania seeking to invalidate mail

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<sup>1</sup> UOCAVA voters have the option to submit their absentee ballots electronically, or they can return a paper ballot by mail. *See* APP\_00998-00999 (Marks Dep.). This case focuses solely on the treatment of *paper* mail and absentee ballots.

ballots based on voter errors or omissions with respect to the envelope date on the Return Envelope. APP\_01202.

**Intervenor-Defendants' Response: Admitted.**

18. On November 1, 2022, the Supreme Court of Pennsylvania issued an order directing that the mail ballots at issue should be segregated and not counted. APP\_01147-1148.

**Intervenor-Defendants' Response: Admitted.**

19. Following that decision, on November 1, 2022, the Department of State's Deputy Secretary for Elections and Commissions, Jonathan Marks, sent an email to counties advising elections officials of the Supreme Court of Pennsylvania's order to "refrain from counting any absentee and mail-in ballots received for the November 8, 2022 general election that are contained in undated or incorrectly dated outer envelopes," and to "**segregate and preserve** any ballots contained in undated or incorrectly dated outer envelopes." Deputy Secretary Marks instructed that the elections officials "**must remember to do two things** as [they] pre-canvass and canvass absentee and mail-in ballots: Segregate AND preserve these undated and incorrectly dated ballots; and Do not count the votes cast on ballots with undated or incorrectly dated ballots." APP\_01149 (all emphasis in original email).

**Intervenor-Defendants' Response: Admitted.**

20. On November 3, Acting Secretary Chapman issued new guidance, instructing counties that "ballots which are administratively determined to be undated or incorrectly dated" should be coded as "CANC — NO SIGNATURE within the SURE system" (*i.e.*, should be cancelled and not accepted) and "segregated from other ballots." APP\_01006-1007.

**Intervenor-Defendants' Response: Admitted.**

21. On November 5, 2022, the Supreme Court of Pennsylvania issued a supplemental order stating that “incorrectly dated outer envelopes” include “(1) mail-in ballot outer envelopes with dates that fall outside the date range of September 19, 2022 through November 8, 2022; and (2) absentee ballot outer envelopes with dates that fall outside the date range of August 30, 2022 through November 8, 2022.” APP\_01150-1151.

**Intervenor-Defendants’ Response: Admitted.**

## **II. PLAINTIFFS**

22. Laurence Smith is a Montgomery County voter who sought to vote in the November 2022 election. *See* APP\_01047-1051 (Smith Decl.); APP\_01392 (Montgomery voter list).

**Intervenor-Defendants’ Response: Admitted.**

a. Smith is 78 years old. Before his retirement, he worked as an entrepreneur in the medical services industry. APP\_01047.

**Intervenor-Defendants’ Response: Admitted.**

b. He has been a registered voter for decades, and he has been voting regularly in Montgomery County since moving there in 1991, including voting by mail since 2020. APP\_01047.

**Intervenor-Defendants’ Response: Admitted.**

c. For the November 8, 2022 election, Smith properly requested a mail-in ballot, marked his ballot, and inserted it into the secrecy envelope and then into an outer envelope on which he signed the declaration. APP\_01048; APP\_01392.

**Intervenor-Defendants’ Response: Admitted.**

d. The Montgomery County Board of Elections did not count Smith’s ballot on the basis of a missing date. APP\_01392.

**Intervenor-Defendants’ Response: Admitted.**



- e. Smith believed he had followed all of the necessary steps to complete the declaration, and he was unaware of what the Montgomery County Board of Elections concluded was wrong with the date form. APP\_01048-1049.

**Intervenor-Defendants' Response: Admitted.**

- f. Mr. Smith was not notified of any opportunity to cure any defect prior to Election Day. APP\_01049.

**Intervenor-Defendants' Response: Admitted.**

23. Joel Bencan is a Montgomery County voter who sought to vote in the November 2022 election. *See* APP\_01052-1056 (Bencan Decl.); APP\_01392 (Montgomery voter list).

**Intervenor-Defendants' Response: Admitted.**

- a. Bencan is 71 years old and is a retired pharmacist. APP\_01052.

**Intervenor-Defendants' Response: Admitted.**

- b. He has been a registered voter for decades and has participated regularly in elections since the Nixon Administration. Bencan began voting by mail in 2020 because of the COVID-19 pandemic and has continued since then to vote by mail. APP\_01052.

**Intervenor-Defendants' Response: Admitted.**

- c. For the November 8, 2022 election, Bencan properly requested a mail-in ballot, marked his ballot, and inserted it into the secrecy envelope and then into an outer envelope on which he signed the declaration. APP\_01052; APP\_01392.

**Intervenor-Defendants' Response: Admitted.**

- d. The Montgomery County Board of Elections did not count Bencan's ballot on the basis of a missing date. APP\_01392.

**Intervenor-Defendants' Response: Admitted.**

- e. Bencan believed he had followed all of the necessary steps to complete the declaration, and he was unaware of why the Montgomery County Board of Elections rejected the date he wrote as "incorrect." APP\_01052- 1053.

**Intervenor-Defendants' Response: Admitted in part and denied in part. Denied to the extent that Plaintiffs say that Bencan's ballot was rejected for having an "incorrect" date is an undisputed fact. The Montgomery County voter list indicates that Bencan's ballot was rejected for missing a date. Ex. 54 at APP\_01392.**

- f. Bencan was not notified of any opportunity to cure any defect prior to Election Day. APP\_01053.

**Intervenor-Defendants' Response: Admitted.**

24. Aynne Pleban Polinski is a York County voter who sought to vote in the November 2022 election. *See* APP\_01057-1058 (Polinski Decl.); APP\_01400 (York voter list).

**Intervenor-Defendants' Response: Admitted.**

- a. Polinski is 71 years old and is a retired art educator, art therapist, and professional artist. APP\_01057.

**Intervenor-Defendants' Response: Admitted.**

- b. Polinski is a qualified voter who participates regularly in elections: she has been a registered voter in York County since 2016 and a registered voter in the Commonwealth of Pennsylvania since she was 18 years old. Polinski has been voting by mail since the June 2020 presidential primary because of the COVID-19 pandemic. APP\_01057.

**Intervenor-Defendants' Response: Admitted.**

- c. For the November 8, 2022 election, Polinski properly requested a mail-in ballot, marked her ballot, and inserted it into the secrecy envelope and then into an outer envelope on which she signed the declaration. APP\_01057-1058; APP\_01400.

**Intervenor-Defendants' Response: Admitted.**

- d. The York County Board of Elections has confirmed that it did not count Polinski's ballot on the basis of a missing date. APP\_01400.

**Intervenor-Defendants' Response: Admitted.**

- e. Polinski was not notified of any opportunity to cure any defect prior to Election Day and only learned after Election Day that her vote was not counted. APP\_01058.

**Intervenor-Defendants' Response: Admitted.**

25. Marlene Gutierrez is a York County voter who sought to vote in the November 2022 election. APP\_01059-1061 (Gutierrez Decl.); APP\_01400 (York voter list).

**Intervenor-Defendants' Response: Admitted.**

- a. Gutierrez is 64 years old and works as a corporate travel agent. APP\_01059.

**Intervenor-Defendants' Response: Admitted.**

- b. She first registered to vote in York County when she was 18 years old, and after residing elsewhere for several years, she most recently registered to vote in York County when she moved back in September 2020. She has been regularly voting by mail for at least twenty years. APP\_01059.

**Intervenor-Defendants' Response: Admitted.**

- c. For the November 8, 2022 election, Gutierrez properly requested a mail-in ballot, marked her ballot, and inserted it into the secrecy envelope and then into an outer envelope on which she signed the declaration. APP\_01059-1060.

**Intervenor-Defendants' Response: Admitted.**

- d. Gutierrez believed she had followed all of the instructions but learned on Election Day that her ballot would not be counted, and she did not have time to cure her ballot. APP\_01060.

**Intervenor-Defendants' Response: Admitted.**

- e. The York County Board of Elections has confirmed that it did not count Gutierrez's ballot on the basis of a missing date. APP\_01400.

**Intervenor-Defendants' Response: Admitted.**

- f. Gutierrez was not notified of any opportunity to cure any defect prior to Election Day. APP\_01060.

**Intervenor-Defendants' Response: Admitted.**

26. Barry Seastead is a Warren County voter who sought to vote in the November 2022 election. *See* APP\_01062-1064 (Seastead Decl.); APP\_01394 (Warren voter list).

**Intervenor-Defendants' Response: Admitted.**

- a. Seastead is a 68-year-old retired welder. APP\_01062.

**Intervenor-Defendants' Response: Admitted.**

- b. He has been a registered voter in Warren County for decades, ever since he was legally eligible to vote. He votes regularly, and has been voting by mail for the past few years. APP\_01062.

**Intervenor-Defendants' Response: Admitted.**

- c. For the November 8, 2022 election, Seastead properly requested a mail-in ballot, marked his ballot, and inserted it into the secrecy envelope and then into an outer envelope on which he signed the declaration. APP\_01063.

**Intervenor-Defendants' Response: Admitted.**

- d. The Warren County Board of Elections has confirmed that it did not count Seastead's ballot on the basis of an "invalid" date. APP\_01394.

**Intervenor-Defendants' Response: Admitted.**

- e. Seastead believed he wrote the date on which he filled out the ballot, and he is unaware of why the Warren County Board of Elections rejected the date he wrote as "incorrect." APP\_01063.

**Intervenor-Defendants' Response: Admitted.**

- f. Mr. Seastead was not notified of any opportunity to cure any defect prior to Election Day. APP\_01063; APP\_01394.

**Intervenor-Defendants' Response: Admitted.**

- g. Because Warren County did not provide him with any notice of its determination that the date he wrote was incorrect, he had no opportunity to cure any defect regarding the date on his outer return envelope prior to Election Day and only learned after Election Day that his vote was not counted. APP\_01063.

**Intervenor-Defendants' Response: Admitted.**

27. The Pennsylvania State Conference of the NAACP (the "State Conference") is a non-profit, non-partisan organization that works to improve the political, educational, social, and economic status of African-Americans and other racial and ethnic minorities, to eliminate racial prejudice, and to take lawful action to secure the elimination of racial discrimination, among other objectives. APP\_01065-1081 (State Conf. Decl.).

**Intervenor-Defendants' Response: Admitted.**

- a. The State Conference has thousands of members who live and/or work in Pennsylvania, many of whom are registered to vote in Pennsylvania. APP\_01065.

**Intervenor-Defendants' Response: Admitted.**

- b. Every election cycle, the State Conference engages in efforts to get out the vote, including by educating voters in Pennsylvania on different methods of voting, providing educational guides on local candidates to increase voter engagement, and focusing on strategies to encourage new voters to participate in elections in Pennsylvania. For example, in the 2022 election cycle, the State Conference coordinated Souls to the Polls efforts, solicited poll monitor volunteers, and organized phone- and text-banking to generate voter engagement and remind voters of the importance of the election. APP\_01065-1066.

**Intervenor-Defendants' Response: Admitted.**

- c. During the 2022 election, the State Conference reassigned volunteers and staff from its existing voter education and mobilization efforts towards contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their vote set aside. APP\_01066-1067.

**Intervenor-Defendants' Response: Admitted.**

- d. For example, the time and attention of the State Conference's Philadelphia branch field director, as well as volunteers (including approximately 17 volunteer law students from Howard University) were all diverted from their intended mission—conducting election protection at the polls on Election Day in Philadelphia—toward

coordinating and manning the phone lines in order to contact and/or assist mail ballot voters affected by the envelope-date rule. APP\_01067-1068.

**Intervenor-Defendants' Response: Admitted.**

- e. In the days leading up to the election in November 2022, multiple local branches of the State Conference also created and shared social media posts alerting the public, and especially those who had already submitted mail ballots, that “thousands of voters” had “accidentally left off or wrote the incorrect date on the outside of their absentee/mail-in ballots,” and that “those ballots CAN be cured, and the votes counted” if the affected voters took urgent action. APP\_01078-1081. The time and attention of each of these branches that was spent on those efforts in the last few days before the election would otherwise have been used to engage and educate people who had not already voted. APP\_01068-1069.

**Intervenor-Defendants' Response: Admitted.**

- f. The State Conference anticipates that, in future elections, it will similarly need to divert its staff and volunteer resources from their intended mission—engaging, educating, and mobilizing new voters— toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope. APP\_01069.

**Intervenor-Defendants' Response: Admitted.**

28. The League of Women Voters of Pennsylvania (“the League”) is a non-partisan statewide non-profit formed in 1920. APP\_01082-1106.

**Intervenor-Defendants' Response: Admitted.**

- a. The League encourages informed and active participation in government, works to increase understanding of major public policy issues, and seeks to influence public policy through education and advocacy. APP\_01082.

**Intervenor-Defendants' Response: Admitted.**

- b. The League is a predominantly volunteer organization and has 31 member chapters and one Inter-League Organization operating in 29 counties around the Commonwealth. LWVPA has more than 2,500 individual members, many of whom who are registered voters and regularly vote in state and federal elections using, among other methods, absentee and mail ballots. APP\_01082.

**Intervenor-Defendants' Response: Admitted.**

- c. During every election cycle, the League conducts voter-registration drives, staffs nonpartisan voter-registration tables, educates incarcerated and formerly incarcerated individuals about their voting rights, and works with local high schools and universities to register young voters. The League maintains voter information resources on its website in English and Spanish. APP\_01082-1083.

**Intervenor-Defendants' Response: Admitted.**

- d. During the November 2022 election, the League reassigned its members' and volunteers' time and efforts from these core activities towards contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their ballot set aside. APP\_01083.



**Intervenor-Defendants' Response: Admitted.**

- e. Three staff members and approximately 30 volunteers spent time scouring publicly available lists of affected voters and contacting hundreds of Pennsylvania voters to provide them with information to help them cure their ballot or vote provisionally. In particular, the Lower Merion & Narberth league directly emailed more than 250 members with explicit instructions on how to vote if their mail ballots were cancelled. APP\_01083-1087.

**Intervenor-Defendants' Response: Admitted.**

- f. The League (and many of its local leagues) shared information on social media channels and the League's websites to alert voters of the risk that their vote would not be counted and instruct voters about how to correct their mail ballot envelopes. The League also attended county board of elections meetings, especially in Montgomery, Allegheny, and Lancaster Counties, to advocate for notice and cure opportunities for voters whose ballots were set aside due to an error or omission of the handwritten date on the mail ballot return envelope. APP\_01084-1087.

**Intervenor-Defendants' Response: Admitted.**

- g. The Lower Merion and Narberth League also worked in coalition with civic and community groups to spread the word about correcting errors on mail ballot envelopes and participated in an event with the Bethel AME Church in Ardmore to help congregants check their mail ballot status and instruct them on how to correct paperwork errors. APP\_01086-1087.

**Intervenor-Defendants' Response: Admitted.**

h. The League anticipates that, in future elections, it will similarly need to divert staff, member and volunteer resources from their core activities toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope. For example, in advance of the 2023 municipal primary, the League has developed a webinar featuring mail voting and how to apply and correctly submit a mail ballot. Similarly, its social media posts, website content and public statements will need to focus on helping voters avoid disenfranchisement for errors on mail ballot envelopes. APP\_01087-1088.

**Intervenor-Defendants' Response: Admitted in part. Denied to the extent that Plaintiffs are stating a legal conclusion that anyone could be disenfranchised by enforcement of Pennsylvania's longstanding date requirement.**

29. Philadelphians Organized to Witness, Empower and Rebuild ("POWER") is a Pennsylvania non-profit organization of more than 100 congregations of various faith traditions, cultures and neighborhoods committed to civic engagement and organizing communities so that the voices of all faiths, races and income levels are counted and have a say in government. APP\_01107-1110 (POWER Decl.).

**Intervenor-Defendants' Response: Admitted.**

a. POWER's civic engagement efforts include civic engagement efforts include voter education programs, voter registration drives, and "Souls to the Polls" efforts to encourage congregants to vote. In the weeks leading up to the November 2022

election, POWER launched a bus tour focused on engaging voters who were not already participating in the political process. APP\_01107-1108.

**Intervenor-Defendants' Response: Admitted.**

- b. During the 2022 election, POWER reassigned volunteers and staff from its existing voter education and mobilization efforts towards contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their vote set aside. APP\_01108-1109.

**Intervenor-Defendants' Response: Admitted.**

- c. For example, when Philadelphia published a list of over 3,000 voters who were at risk of having their November 2022 general election ballots thrown out over technical errors, including a missing or incorrect date on the return envelope, POWER's members and volunteers made more than 1,200 manual calls and sent more than 2,900 texts to the voters whose names appeared on Philadelphia's at-risk list to provide them with information to help them cure their ballot or vote provisionally. POWER also stationed volunteers at City Hall to ensure voters returning their mail ballots to that location had correctly dated their return envelopes. APP\_01108-1109.

**Intervenor-Defendants' Response: Admitted.**

- d. The time and attention that POWER devoted to ensuring voters who had already submitted their mail ballots would have their votes counted would otherwise have been used to engage and educate people who had not already attempted to vote. APP\_01109.

- e. POWER anticipates that, in future elections, it will similarly need to divert its member and volunteer resources from their intended mission—engaging, educating, and mobilizing new voters—toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope. APP\_01109.

**Intervenor-Defendants’ Response: Admitted.**

30. Common Cause Pennsylvania (“Common Cause PA”) is a non-profit, non-partisan organization, and a chapter of the national Common Cause organization. APP\_01111-1124 (Common Cause PA Decl.).

**Intervenor-Defendants’ Response: Admitted.**

- a. Common Cause PA is a non-partisan good government organization with approximately 36,000 members and supporters who live in all 67 counties of Pennsylvania. One of Common Cause PA’s core functions is to increase the level of voter registration and voter participation in Pennsylvania elections, especially in communities that are historically underserved and whose populations have a low propensity for voting. APP\_01111.

**Intervenor-Defendants’ Response: Admitted.**

- b. In preparation for every election cycle, and most significantly in even-year elections, Common Cause PA leads the Election Protection Coalition field program which recruits and trains volunteers to visit polling places and assist voters. As part of its Election Protection Coalition work, Common Cause PA disseminates accurate information about voting and instructions for navigating the voting process

on its website, on social media, and through outreach to traditional media.  
APP\_01112.

**Intervenor-Defendants' Response: Admitted.**

- c. During the 2022 election, Common Cause PA reassigned its volunteers' time and efforts from Common Cause PA's existing efforts toward contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their vote set aside. APP\_01113.

**Intervenor-Defendants' Response: Admitted.**

- d. When defendants announced that they would segregate and not count ballots with an incorrect or missing date, Common Cause PA ensured that accurate information was available for voters. Additionally, Common Cause PA organized a press briefing with Make the Road PA, All Voting is Local PA and Pennsylvania Voice to remind voters to date their mail ballot envelopes and to alert them that their ballot would not count if the date was missing. Common Cause PA issued the press advisory, held the press briefing and issued a press statement within the span of 24 hours, with the goal of alerting as many voters as possible as quickly as possible.  
APP\_01113-1114.

**Intervenor-Defendants' Response: Admitted.**

- e. To protect voters from having their ballot set aside due to an error or omission of the handwritten date on their mail ballot return envelope, Common Cause PA also created and sent an email to all of its members and supporters immediately after the November 2022 election advising them that, if they cast a provisional ballot, to check and make sure the ballot was counted. APP\_01114.

**Intervenor-Defendants' Response: Admitted.**

f. Common Cause PA anticipates that, in future elections, it will continue to divert its volunteer resources from its intended mission—educating and mobilizing voters—toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope. For example, in advance of the 2023 municipal primary, Common Cause PA is developing a new webinar on mail voting, specifically focusing on the impact of the enforcement of the date requirement. This webinar is part of a series, but it diverts resources away from providing other important voter education information. APP\_01114-1115.

**Intervenor-Defendants' Response: Admitted.**

31. Black Political Empowerment Project (“B-PEP”) is a non-profit, non-partisan organization that has worked since 1986 to ensure that the Pittsburgh African-American community votes in every election. APP\_01125.

**Intervenor-Defendants' Response: Admitted.**

a. B-PEP has numerous supporters, of various ages and races, throughout the Pittsburgh Region, working with numerous community organizations to empower Black and brown communities. APP\_01125.

**Intervenor-Defendants' Response: Admitted.**

b. During every election cycle, B-PEP’s work includes voter registration drives, get-out-the-vote activities, education and outreach about the voting process, and election-protection work. B-PEP focuses these activities in predominantly Black neighborhoods in Allegheny County, with some

efforts in Westmoreland and Washington Counties. For the November 2022 election, B-PEP conducted outreach to members and constituent communities about the importance of voting in person or by mail. APP\_01125-1126.

**Intervenor-Defendants' Response: Admitted.**

- c. When it was announced that county boards of elections would not count timely-submitted mail ballots based solely on missing or supposedly incorrect dates on return envelopes, many B-PEP members and others served by its mission had already submitted mail ballots. This abrupt change in voting rules just before Election Day caused B-PEP to redirect its limited resources, including staff and volunteer time, to efforts to inform voters of this change and educate them as to how to avoid disenfranchisement. APP\_01126.

**Intervenor-Defendants' Response: Admitted in part. Denied to the extent that Plaintiffs are stating a legal conclusion that anyone could be disenfranchised by enforcement of Pennsylvania's longstanding date requirement.**

- d. Specifically, in the days leading up to the election in November 2022, B-PEP's staff and volunteers also expended time and money developing, printing and distributing hundreds of flyers and other educational materials to dozens of churches for the purpose of informing prospective voters of the envelope dating issues generated by the Ball decision. APP\_01126, APP\_01129-1131.

**Intervenor-Defendants' Response: Admitted.**

- e. B-PEP staff and volunteers also spent valuable time in discussion with county election directors seeking clarity and guidance about their handling of mail ballots, and then working with other voting rights and community organizations to maximize voters' understanding of the county election boards' procedures. APP\_01126.

**Intervenor-Defendants' Response: Admitted.**

- f. B-PEP's time and resources dedicated by B-PEP staff and volunteers would otherwise have been available for the organization's other "get out the vote" efforts and other initiatives serving BPEP's mission, including its Greater Pittsburgh Coalition Against Violence. APP\_01126-1127.

**Intervenor-Defendants' Response: Admitted.**

- g. B-PEP anticipates that, in future elections, it will similarly need to divert its staff and volunteer resources from voter engagement and community initiatives toward preventing the disenfranchisement of voters who have already submitted their ballots. APP\_01127.

**Intervenor-Defendants' Response: Admitted in part. Denied to the extent Plaintiffs are stating a legal conclusion that anyone can be disenfranchised by enforcement of Pennsylvania's longstanding date requirement.**

32. Make the Road Pennsylvania ("Make the Road PA") is a not-for-profit, member-led organization formed in 2014 that builds the power of the working class in Latino and other communities to achieve dignity and justice through organizing, policy innovation, and education services. APP\_01132.

**Intervenor-Defendants' Response: Admitted, except that Robinson's declaration is not clear that Make The Road Pennsylvania is a "member-led" organization. Ex. 45 at APP\_01132.**



- a. Make the Road PA's more than 10,000 members are primarily working-class residents of Pennsylvania, many in underserved communities. Many members of Make the Road PA are registered voters in Pennsylvania. APP\_01132.

**Intervenor-Defendants' Response: Admitted.**

- b. Make the Road PA's work includes substantial field work aimed at voter protection, voter advocacy and voter education on, for example, how to register to vote, how to apply for mail-in/absentee ballots, how to return mail-in/absentee ballots, and where to vote. Its get-out-the-vote efforts in the 2022 General Election alone included knocking on over 300,000 doors and speaking directly with over 29,000 people in Berks, Bucks, Lehigh, Northampton and Philadelphia Counties. APP\_01132-1133.

**Intervenor-Defendants' Response: Admitted.**

- c. When defendants announced that they would not count timely- submitted mail ballots based solely on missing or supposedly incorrect dates on return envelopes, many Make the Road PA members and others served by its mission had already submitted mail ballots. This abrupt change in voting rules just before Election Day caused Make the Road PA to redirect its limited resources, including staff and volunteer time, to efforts to inform voters of this change and educate them as to how to avoid disenfranchisement. Moreover, because Make the Road's efforts are focused on communities where many voters are not native English speakers, the risk that some voters may make a minor paperwork mistake in filling

out various forms related to mail or absentee ballot voting is heightened. Accordingly, Make the Road PA's staff and volunteers directed time and resources in the critical time before Election Day to contacting county election officials to determine how, if at all, they would inform non-English speakers of any problems with the dating of their mail ballot envelopes. APP\_01133.

**Intervenor-Defendants' Response: Admitted in part. Denied to the extent that Plaintiffs state a legal conclusion that anyone can be disenfranchised by enforcement of Pennsylvania's longstanding date requirement and to the extent that Plaintiffs mischaracterize failing to comply with Pennsylvania's election laws as a "minor paperwork mistake."**

- d. Make the Road PA's staff and volunteers conducted extensive phone and text message outreach, on an emergency basis, to its members informing prospective voters of the envelope dating issues generated. APP\_01133. Make the Road PA contacted thousands of Pennsylvania voters to provide them with information to help them cure their ballot or vote provisionally to prevent the counties' actions from disenfranchising them. Make the Road PA's staff and volunteers also spent valuable time in discussion with county election directors seeking clarity and guidance about their handling of mail ballots. But for application of the rule at issue in this case, such time and resources dedicated by Make the Road PA staff and volunteers would have been available for the organization's other "get out the vote" efforts and other initiatives serving Make the Road PA's mission, including its Immigrant Rights, Education Justice, Housing Justice, Climate Justice and Worker Rights initiative. APP\_01134.

**Intervenor-Defendants' Response: Admitted in part. Denied to the extent that Plaintiffs state a legal conclusion that anyone can be disenfranchised by enforcement of Pennsylvania's longstanding date requirement.**

- e. Make the Road PA anticipates that, in future elections, it will similarly need to divert its staff and volunteer resources from voter engagement and community initiatives toward preventing the disenfranchisement of voters who have already submitted their ballots. APP\_01134.

**Intervenor-Defendants' Response: Admitted in part. Denied to the extent that Plaintiffs state a legal conclusion that anyone can be disenfranchised by enforcement of Pennsylvania's longstanding date requirement.**

### III. THE 2022 ELECTION

33. The November 2022 general election involved elections for the U.S. Senate, U.S. House of Representatives, Pennsylvania Governor, and Pennsylvania House and Senate offices. APP\_01194.

**Intervenor-Defendants' Response: Admitted.**

34. For the November 2022 election, different counties sent out their mail-ballot packages at different times:

**Intervenor-Defendants' Response: Admitted.**

- a. Adams County began sending mail ballot packages to voters on September 28, 2022. APP\_00005 (Adams Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- b. Allegheny County began sending mail ballot packages to voters on September 30, 2022. APP\_00027 (Allegheny Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- c. Armstrong County began sending mail ballot packages to voters on October 10, 2022. APP\_00041 (Armstrong Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- d. Beaver County began sending mail ballot packages to voters on September 26, 2022. APP\_00062 (Beaver Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- e. Berks County began sending mail ballot packages to voters on October 7, 2022. APP\_00078 (Berks Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- f. Blair County began sending mail ballot packages to voters on October 14, 2022. APP\_00097 (Blair Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- g. Bradford County began sending mail ballot packages to voters on September 27th, 2022. APP\_00108 (Bradford Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- h. Bucks County began sending mail ballot packages to voters on October 5, 2022 and military/overseas ballots on September 22, 2022. APP\_00117 (Bucks Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- i. Butler County began sending mail ballot packages to voters on October 12, 2022. APP\_00131 (Butler Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- j. Cambria County began sending mail ballot packages to voters on October 6, 2022. APP\_00140 (Cambria Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- k. Cameron County began sending mail ballot packages to voters on October 12, 2022. APP\_00150 (Cameron Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- l. Chester County began sending mail ballot packages to voters on October 10, 2022. APP\_00169 (Chester Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- m. Clarion County began sending mail ballot packages to voters on October 4, 2022. APP\_00185 (Clarion Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- n. Clearfield County began sending mail ballot packages to voters on October 3, 2022. APP\_00294 (Clearfield Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- o. Clinton County began sending mail ballot packages to voters on September 30, 2022. APP\_00216 (Clinton Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- p. Crawford County began sending mail ballot packages to voters on September 26, 2022. APP\_00233 (Crawford Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- q. Cumberland County began sending mail ballot packages to voters on October 3, 2022. APP\_00252 (Cumberland Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- r. Delaware County began sending mail ballot packages to voters on October 8, 2022. APP\_00267 (Delaware Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- s. Elk County began sending mail ballot packages to voters on September 16, 2022. APP\_00279 (Elk Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- t. Erie County began sending mail ballot packages to voters on October 6, 2022. APP\_00292 (Erie Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- u. Fayette County began sending mail ballot packages to voters on October 11, 2022. APP\_00309 (Fayette Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- v. Forest County began sending mail ballot packages to voters on October 6, 2022. APP\_00321 (Forest Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- w. Franklin County began sending mail ballot packages to voters on October 3, 2022. APP\_00336 (Franklin Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- x. Fulton County began sending mail ballot packages to voters on October 21, 2022. APP\_00347 (Fulton Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- y. Greene County began sending mail ballot packages to voters on September 30, 2022. APP\_00355 (Greene Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- z. Juniata County began sending mail ballot packages to voters on September 27, 2022. APP\_00363 (Juniata Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- aa. Lackawanna County began sending mail ballot packages to voters on October 3, 2022. APP\_00373 (Lackawanna Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- bb. Lancaster County began sending mail ballot packages to voters on September 26, 2022. APP\_00389 (Lancaster Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- cc. Lehigh County began sending mail ballot packages to voters on September 23, 2022. APP\_00401 (Lehigh Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- dd. Luzerne County began sending mail ballot packages to voters on October 13, 2022. APP\_00417 (Luzerne Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- ee. Lycoming County began sending mail ballot packages to voters on September 22, 2022. APP\_00439 (Lycoming Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- ff. McKean County began sending mail ballot packages to voters on September 30, 2022. APP\_00453 (McKean Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- gg. Mercer County began sending mail ballot packages to voters on October 7, 2022. APP\_00461 (Mercer Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted, except that ballots were mailed "on or around" October 7, 2022. Ex. 27 at APP\_00461.**

- hh. Mifflin County began sending mail ballot packages to voters on October 10, 2022. APP\_00468 (Mifflin Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- ii. Montgomery County began sending mail ballot packages to voters on October 6, 2022. APP\_00481 (Montgomery Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- jj. Northampton County began sending mail ballot packages to voters on October 3, 2022. APP\_00495 (Northampton Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted, except that Northampton County mailed "UMOVA ballots" on October 3, 2022, and "mail ballot packages after." Ex. 31 at APP\_00495.**

- kk. Perry County began sending mail ballot packages to voters on October 3, 2022. APP\_00511 (Perry Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- ll. Philadelphia County began sending mail ballot packages to voters on October 10, 2022. APP\_00530 (Philadelphia Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- mm. Pike County began sending mail ballot packages to voters on October 3, 2022. APP\_00541 (Pike Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- nn. Potter County began sending mail ballot packages to voters on September 26, 2022. APP\_00575 (Potter Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**



oo. Schuylkill County began sending mail ballot packages to voters on October 13, 2022. APP\_00587 (Schuylkill Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

pp. Somerset County began sending mail ballot packages to voters on October 5, 2022. APP\_00599 (Somerset Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

qq. Sullivan County began sending mail ballot packages to voters on October 4, 2022. APP\_00609 (Sullivan Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

rr. Susquehanna County began sending mail ballot packages to voters on October 19, 2022. APP\_00619 (Susquehanna Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

ss. Tioga County began sending mail ballot packages to voters on September 21, 2022. APP\_00629 (Tioga Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

tt. Union County began sending mail ballot packages to voters on September 23, 2022. APP\_00635 (Union Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

uu. Warren County began sending mail ballot packages to voters on October 5, 2022. APP\_00646 (Warren Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

vv. Washington County began sending military overseas ballots on September 23, 2022 and mail ballot packages to voters on October 4, 2022. APP\_00667 (Washington Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

ww. Wayne County began sending mail ballot packages to voters on August 23, 2022. APP\_00691 (Wayne Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

xx. Westmoreland County began sending mail ballot packages to voters on October 5, 2022. APP\_00706 (Westmoreland Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

yy. Wyoming County began sending mail ballot packages to voters on September 19, 2022. APP\_00714. (Wyoming Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

zz. Bedford County began sending mail ballot packages to voters on October 7, 2022. APP\_00732 (Bedford Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

aaa. Carbon County began sending mail ballot packages to voters on September 27, 2022. APP\_00733 (Carbon Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

bbb. Centre County began sending mail ballot packages to voters on September 27, 2022. APP\_00733 (Centre Interrog. Resp.).

**Intervenor-Defendants' Response: Denied. Centre County began sending mail ballot packages to voters on October 11, 2022. Ex. 41 at APP\_00733.**

ccc. Columbia County began sending mail ballot packages to voters on September 27, 2022. APP\_00733 (Columbia Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

ddd. Dauphin County began sending mail ballot packages to voters on September 2, 2022. APP\_00733 (Dauphin Interrog. Resp.).

**Intervenor-Defendants' Response: Denied. Dauphin County began sending mail ballot packages to voters on September 21, 2022. Ex. 41 at APP\_00733.**

eee. Jefferson County began sending mail ballot packages to voters on September 12, 2022. APP\_00733 (Jefferson Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

fff. Huntington County began sending mail ballot packages to voters on October 4, 2022. APP\_00733 (Huntingdon Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

ggg. Indiana County began sending mail ballot packages to voters on October 3, 2022. APP\_00733 (Indiana Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

hhh. Lawrence County began sending mail ballot packages to voters on September 26, 2022. APP\_00733 (Lawrence Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

iii. Lebanon County began sending mail ballot packages to voters on October 7, 2022. APP\_00733 (Lebanon Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

jjj. Monroe County began sending mail ballot packages to voters on October 7, 2022. APP\_00733 (Monroe Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

kkk. Montour County began sending mail ballot packages to voters on September 23, 2022. APP\_00733 (Montour Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

lll. Northumberland County began sending mail ballot packages to voters on September 21, 2022. APP\_00733 (Northumberland Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

mmm. Snyder County began sending mail ballot packages to voters on September 23, 2022. APP\_00733 (Snyder Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

nnn. Venango County began sending mail ballot packages to voters on September 27, 2022. APP\_00733 (Venango Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

ooo. York County began sending mail ballot packages to voters on September 28, 2022. APP\_00733 (York Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

35. The county boards of elections reported receiving 1,238,522 mail and absentee ballots in the November 2022 election. APP\_00005 (Adams Interrog. Resp.); APP\_00035 (Allegheny Interrog. Resp.); APP\_00040 (Armstrong Interrog. Resp.); APP\_00060 (Beaver Interrog. Resp.); APP\_00077 (Berks Interrog. Resp.); APP\_00096 (Blair Interrog. Resp.); APP\_00107 (Bradford Interrog. Resp.); APP\_00116 (Bucks Interrog. Resp.); APP\_00130 (Butler Interrog. Resp.); APP\_00140 (Cambria Interrog. Resp.); APP\_00149 (Cameron Interrog. Resp.); APP\_00168 (Chester Interrog. Resp.); APP\_00185 (Clarion Interrog. Resp.); APP\_00209

(Clearfield Interrog. Resp.); APP\_00215 (Clinton Interrog. Resp.); APP\_00232 (Crawford Interrog. Resp.); APP\_00251 (Cumberland Interrog. Resp.); APP\_00266 (Delaware Interrog. Resp.); APP\_00278 (Elk Interrog. Resp.); APP\_00291 (Erie Interrog. Resp.); APP\_00308 (Fayette Interrog. Resp.); APP\_00320 (Forest Interrog. Resp.); APP\_00335 (Franklin Interrog. Resp.); APP\_00347 (Fulton Interrog. Resp.); APP\_00354 (Greene Interrog. Resp.); APP\_00363 (Juniata Interrog. Resp.); APP\_00371 (Lackawanna Interrog. Resp.); APP\_00388 (Lancaster Interrog. Resp.); APP\_00400 (Lehigh Interrog. Resp.); APP\_00416 (Luzerne Interrog. Resp.); APP\_00438 (Lycoming Interrog. Resp.); APP\_00452 (McKean Interrog. Resp.); APP\_00461 (Mercer Interrog. Resp.); APP\_00468 (Mifflin Interrog. Resp.); APP\_00481 (Montgomery Interrog. Resp.); APP\_00494 (Northampton Interrog. Resp.); APP\_00510 (Perry Interrog. Resp.); APP\_00529 (Philadelphia Interrog. Resp.); APP\_00541 (Pike Interrog. Resp.); APP\_00573 (Potter Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00598 (Somerset Interrog. Resp.); APP\_00609 (Sullivan Interrog. Resp.); APP\_00619 (Susquehanna Interrog. Resp.); APP\_00629 (Tioga Interrog. Resp.); APP\_00634 (Union Interrog. Resp.); APP\_00645 (Warren Interrog. Resp.); APP\_00666 (Washington Interrog. Resp.); APP\_00690 (Wayne Interrog. Resp.); APP\_00705 (Westmoreland Interrog. Resp.); APP\_00714 (Wyoming Interrog. Resp.); APP\_00729-30 (Babst Calland<sup>2</sup> Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted that Plaintiffs' number is approximately accurate. But because the counties' responses are not uniform in whether they include military/overseas ballots in their overall mail ballot counts, it is not possible to derive a completely accurate number from the discovery responses. Compare Ex. 1 at APP\_00005 with Ex. 2 at APP\_00040.**

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<sup>2</sup> Cites to the "Babst Calland" Responses to Requests for Admissions and Interrogatories refer to the collective responses filed by the Bedford, Carbon, Centre, Columbia, Dauphin, Huntingdon, Indiana, Jefferson, Lawrence, Lebanon, Monroe, Montour, Northumberland, Snyder, Venango, and York County Boards of Elections. *See generally* APP\_00723-775.

36. In the November 2022 general election, the county boards of elections segregated at least 10,506 mail ballots solely based on missing or incorrect dates on their outer return envelopes:

**Intervenor-Defendants' Response: Admitted that Plaintiffs' number is approximately accurate. However, as noted below, some of Plaintiffs' subsidiary numbers are inaccurate. Furthermore, because the counties are not uniform as to whether they track which ballots were cured or whether ballots that were undated or misdated had other defects that would have independently caused those ballots to be rejected, it is impossible to derive a completely accurate number from the discovery responses in this case.**

- a. Adams County segregated 4 ballots with undated return envelopes and 0 ballots with misdated envelopes. APP\_00005-6 (Adams Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- b. Allegheny County segregated 1,009 ballots with undated or misdated return envelopes. APP\_00026-27 (Allegheny Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- c. Armstrong County segregated 15 ballots with undated or misdated return envelopes. APP\_00040 (Armstrong Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which also had other defects preventing such ballots from being counted. APP\_00042.**

- d. Beaver County segregated 182 ballots with undated or misdated return envelopes. APP\_00060 (Beaver Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which were corrected or cured, or which also had other defects preventing such ballots from being counted. Ex. 3 at APP\_00061, APP\_00063.**

- e. Berks County segregated 782 ballots with undated or misdated return envelopes. APP\_00078 (Berks Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Berks County did not track whether those ballots had other defects which would have prevented them from being counted. Ex. 4 at APP\_00080.**

- f. Blair County segregated 55 ballots with undated or misdated return envelopes. APP\_00096 (Blair Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Blair County did not track whether such ballots also may have lacked a secrecy envelope. Ex. 5 at APP\_00098-00099.**

- g. Bradford County segregated 22 ballots with undated return envelopes and 1 ballot with misdated envelopes. APP\_00107-108 (Bradford Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which also had other defects which would have prevented them from being counted. Ex. 6 at APP\_000109.**

- h. Bucks County segregated 357 ballots with undated or misdated return envelopes. APP\_00116 (Bucks Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- i. Butler County segregated 66 ballots with undated or misdated return envelopes. APP\_00130 (Butler Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- j. Cambria County segregated 38 ballots with undated or misdated return envelopes. APP\_00140 (Cambria Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Cambria County did not track which of these ballots may have been cured. Ex. 8 at APP\_00142.**

- k. Cameron County segregated 5 ballots with undated return envelopes and 0 ballots with misdated envelopes. APP\_00150 (Cameron Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- l. Chester County segregated 67 ballots with undated return envelopes and 68 ballots with misdated envelopes. APP\_00168 (Chester Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which were also missing a signature, and Chester County did not track which ballots may have been cured. Ex. 10 at APP\_00168, 00173-00174.**

- m. Clarion County segregated 9 ballots with undated return envelopes and 3 ballots with misdated envelopes. APP\_00185 (Clarion Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- n. Clearfield County segregated 12 ballots with undated or misdated return envelopes. APP\_00204 (Clearfield Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Clearfield County did not track which ballots may have been cured. Ex. 12 at APP\_00206.**

- o. Clinton County segregated 20 ballots with undated or misdated return envelopes. APP\_00216 (Clinton Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- p. Crawford County segregated 51 ballots with undated or misdated return envelopes. APP\_00233 (Crawford Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which had other defects which would have prevented them from being counted. Ex. 13 at APP\_00238. Additionally, Crawford County did not track how many ballots were cured or corrected, but "believe[s]" that number to be "approximately 50." *Id.* at APP\_00240.**

- q. Cumberland County segregated 100 ballots with undated or misdated return envelopes. APP\_00252 (Cumberland Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**



- r. Delaware County segregated 49 ballots with undated return envelopes and 65 ballots with misdated envelopes. APP\_00267 (Delaware Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Delaware County did not track how many ballots were cured or corrected. Ex. 14 at APP\_00271.**

- s. Elk County segregated 10 ballots with undated or misdated return envelopes. APP\_00278 (Elk Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which were ultimately corrected or whose voters ultimately filed a provisional ballot. Ex. 15 at APP\_00279. Additionally, Elk County did not track whether those ballots had other defects that would have prevented them from being counted. *Id.***

- t. Erie County segregated 168 ballots with undated return envelopes and 51 ballots with misdated envelopes. APP\_00292 (Erie Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which were ultimately corrected or cured, and ballots which also had other defects that would have prevented them from being counted. Ex. 16 at APP\_00294-00295.**

- u. Fayette County segregated 137 ballots with undated or misdated return envelopes. APP\_00309 (Fayette Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which were ultimately corrected or cured, and ballots which also had other defects that would have prevented them from being counted. Ex. 18 at APP\_00311-00312.**

- v. Forest County segregated 38 ballots with undated or misdated return envelopes. APP\_00320 (Forest Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which were ultimately corrected or cured, and ballots which also had other defects that would have prevented them from being counted. Ex. 19 at APP\_00322, 00324.**

- w. Franklin County segregated 114 ballots with undated or misdated return envelopes. APP\_00336 (Franklin Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which also had other defects that would have prevented them from being counted. Ex. 20 at APP\_00337.**

- x. Fulton County segregated 5 ballots with undated or misdated return envelopes. APP\_00347 (Fulton Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which were ultimately corrected or cured. Ex. 21 at APP\_00348.**

- y. Greene County segregated 11 ballots with undated or misdated return envelopes. APP\_00354 (Greene Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- z. Juniata County segregated 5 ballots with undated or misdated return envelopes. APP\_00363 (Juniata Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which were ultimately corrected or cured, and ballots which also had other defects that would have prevented them from being counted. Ex. 22 at APP\_00363.**

- aa. Lackawanna County segregated 160 ballots with undated or misdated return envelopes. APP\_00372 (Lackawanna Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- bb. Lancaster County segregated 232 ballots with undated or misdated return envelopes. APP\_00388 (Lancaster Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which also had other defects that would have prevented them from being counted. Ex. 23 at APP\_00390.**

- cc. Lehigh County segregated 176 ballots with undated return envelopes and 237 ballots with misdated envelopes. APP\_00400 (Lehigh Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which also had other defects that would have prevented them from being counted. Ex. 24 at APP\_00400. Additionally, Lehigh County did not track which of these ballots were cured. *Id.* at APP\_00404.**

- dd. Luzerne County segregated 166 ballots with undated or misdated return envelopes. APP\_00416 (Luzerne Interrog. Resp.).

**Intervenor-Defendants' Response: Denied. Luzerne County responded in its interrogatory response that it set aside 131 mail ballots that had a misdated or undated ballot declaration. Ex. 25 at APP\_00416. Additionally, Luzerne County did not track whether those ballots had other defects which would have prevented them from being counted, and did not track all the avenues through which those ballots could have been cured. *Id.* at APP\_00416, 00418.**

- ee. Lycoming County segregated 36 ballots with undated or misdated return envelopes. APP\_00438 (Lycoming Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes voters who ended up casting provisional ballots. Ex. 26 at APP\_00442. Lycoming County did not track how many mail ballot voters cured their envelope date issues. *Id.***

- ff. McKean County segregated 35 ballots with undated or misdated return envelopes. APP\_00453 (McKean Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- gg. Mercer County segregated 63 ballots with undated or misdated return envelopes. APP\_00461 (Mercer Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which also had other defects that would have prevented them from being counted. Ex. 27 at APP\_00462.**

- hh. Mifflin County segregated 10 ballots with undated or misdated return envelopes. APP\_00468 (Mifflin Interrog. Resp.).

**Intervenor-Defendants' Response: Denied. Mifflin County responded in its interrogatory response that it received "13 ballots undated." Ex. 28 at APP\_00468. However, that number includes ballots with other defects which would have**

prevented them from being counted. *Id.* at APP\_00470.

- ii. Montgomery County segregated 460 ballots with undated or misdated return envelopes. APP\_00481 (Montgomery Interrog. Resp.).

**Intervenor-Defendants' Response: Denied. Montgomery County's most recent interrogatory response says that it set aside 445 ballots. Ex. 30 at APP\_00481. Additionally, Montgomery County did not track how many such ballots were cured. *Id.***

- jj. Northampton County segregated 230 ballots with undated return envelopes and 50 ballots with misdated envelopes. APP\_00495 (Northampton Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- kk. Perry County segregated 27 ballots with undated return envelopes and 8 ballots with misdated envelopes. APP\_00511 (Perry Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- ll. Philadelphia County segregated 2,617 ballots with undated or misdated return envelopes. APP\_00529 (Philadelphia Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes voters who ultimately submitted provisional ballots. Ex. 33 at APP\_00529.**

- mm. Pike County segregated 55 ballots with undated or misdated return envelopes. APP\_00541 (Pike Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

- nn. Potter County segregated 14 ballots with undated return envelopes and 0 ballots with misdated envelopes. APP\_00574 (Potter Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes a ballot which was also missing a signature, and also includes voters who ultimately submitted provisional ballots. Ex. 34 at APP\_00574, 00576.**

oo. Schuylkill County segregated 59 ballots with undated or misdated return envelopes. APP\_00587 (Schuylkill Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted, however, Plaintiffs' number includes a ballot which was also missing a signature. Ex. 35 at APP\_00587.**

pp. Somerset County segregated 63 ballots with undated or misdated return envelopes. APP\_00598 (Somerset Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes ballots which also had other defects that would have prevented them from being counted. Ex. 36 at APP\_00600.**

qq. Sullivan County segregated 4 ballots with undated or misdated return envelopes. APP\_00609 (Sullivan Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

rr. Susquehanna County segregated 0 ballots with undated or misdated return envelopes. APP\_00619 (Susquehanna Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

ss. Tioga County segregated 4 ballots with undated or misdated return envelopes. APP\_00629 (Tioga Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

tt. Union County segregated 23 ballots with undated or misdated return envelopes. APP\_00634 (Union Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

uu. Warren County segregated 10 ballots with undated return envelopes and 8 ballots with misdated envelopes. APP\_00646 (Warren Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes a ballot which was also missing a signature. Ex. 38 at APP\_00647.**

vv. Washington County segregated 66 ballots with undated or misdated return envelopes. APP\_00666 (Washington Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

ww. Wayne County segregated 40 ballots with undated return envelopes and 15 ballots with misdated envelopes. APP\_00691 (Wayne Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Wayne County also noted that “[f]ewer than 10” mail ballot voters cured their envelope date issue. Ex. 39 at APP\_00693.**

xx. Westmoreland County segregated 95 ballots with undated or misdated return envelopes. APP\_00705 (Westmoreland Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

yy. Wyoming County segregated 17 ballots with undated return envelopes and 0 ballots with misdated envelopes. APP\_00714. (Wyoming Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Plaintiffs' number includes a ballot which also lacked a signature. Ex. 50 at APP\_00715.**

zz. Bedford County segregated 0 ballots with undated or misdated return envelopes. APP\_00731 (Bedford Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

aaa. Carbon County segregated 27 ballots with undated or misdated return envelopes. APP\_00731 (Carbon Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Carbon County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.**

bbb. Centre County segregated 115 ballots with undated or misdated return envelopes. APP\_00731 (Centre Interrog. Resp.).

**Intervenor-Defendants' Response: Denied.** Centre County updated that number to be 116 ballots. Ex. 42 at APP\_00778. Additionally, Centre County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.

ccc. Columbia County segregated 29 ballots with undated or misdated return envelopes. APP\_00731 (Columbia Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.** However, Columbia County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.

ddd. Dauphin County segregated 95 ballots with undated or misdated return envelopes. APP\_00731 (Dauphin Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.** However, Dauphin County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.

eee. Jefferson County segregated 23 ballots with undated or misdated return envelopes. APP\_00731 (Jefferson Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.** However, Jefferson County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.

fff. Huntingdon County segregated 34 ballots with undated or misdated return envelopes. APP\_00731 (Huntingdon Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.** However, Huntingdon County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.

ggg. Indiana County segregated 107 ballots with undated or misdated return envelopes. APP\_00731 (Indiana Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.** However, Indiana County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.

hhh. Lawrence County segregated 15 ballots with undated or misdated return envelopes. APP\_00731 (Lawrence Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Lawrence County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736. Additionally, Lawrence County "believes" that "a few" ballots were cured. Id. at APP\_00739.**

iii. Lebanon County segregated 24 ballots with undated or misdated return envelopes. APP\_00731 (Lebanon Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Lebanon County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.**

jjj. Monroe County segregated 462 ballots with undated or misdated return envelopes. APP\_00731 (Monroe Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Monroe County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736. Additionally, Monroe County "cured 191 ballots based on an envelope date issue." Id. at APP\_00739.**

kkk. Montour County segregated 8 ballots with undated or misdated return envelopes. APP\_00731 (Montour Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Montour County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.**

lll. Northumberland County segregated 14 ballots with undated or misdated return envelopes. APP\_00731 (Northumberland Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Northumberland County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.**

mmm. Snyder County segregated 9 ballots with undated or misdated return envelopes. APP\_00732 (Snyder Interrog. Resp.).



**Intervenor-Defendants' Response: Admitted. However, Snyder County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.**

nnn. Venango County segregated 42 ballots with undated or misdated return envelopes. APP\_00732 (Venango Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted. However, Venango County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.**

ooo. York County segregated 1,061 ballots with undated or misdated return envelopes. APP\_00732 (York Interrog. Resp.).

**Intervenor-Defendants' Response: Denied. York County updated this number to be 1,354 ballots. Ex. 42 at APP\_00778. Additionally, York County did not track whether those ballots contained other defects which would have prevented them from being counted. Ex. 41 at APP\_00736.**

37. In administering the November 2022 general election, the county boards of elections did not count mail ballots that were timely received and submitted in signed envelopes but without a handwritten date on the outer return envelope. APP\_00004 (Adams RFA Resp.); APP\_00021 (Allegheny RFA Resp.); APP\_00038 (Armstrong RFA Resp.); APP\_0050 (Beaver RFA Resp.); APP\_00073 (Berks RFA Resp.); APP\_00091 (Blair RFA Resp.); APP\_00106 (Bradford RFA Resp.); APP\_00114 (Bucks RFA Resp.); APP\_00126 (Butler RFA Resp.); APP\_00137 (Cambria RFA Resp.); APP\_00160 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00194 (Clearfield RFA Resp.); APP\_00212 (Clinton RFA Resp.); APP\_00226 (Crawford RFA Resp.); APP\_00247 (Cumberland RFA Resp.); APP\_00262 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00282 (Erie RFA Resp.); APP\_00303 (Fayette RFA Resp.); APP\_00318 (Forest RFA Resp.); APP\_00330 (Franklin RFA Resp.); APP\_00348 (Fulton RFA Resp.); APP\_00352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00368 (Lackawanna RFA Resp.); APP\_00383 (Lancaster RFA Resp.); APP\_00397 (Lehigh RFA Resp.);

APP\_00411 (Luzerne RFA Resp.); APP\_00431 (Lycoming RFA Resp.); APP\_00450 (McKean RFA Resp.); APP\_00466 (Mifflin RFA Resp.); APP\_00476 (Montgomery RFA Resp.); APP\_00489, APP\_00490 (Northampton RFA Resp.); APP\_00505 (Perry RFA Resp.); APP\_00524 (Philadelphia RFA Resp.); APP\_00544 (Pike RFA Resp.); APP\_00550 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00593 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA Resp.); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA Resp.); APP\_00642 (Warren RFA Resp.); APP\_00655 (Washington RFA Resp.); APP\_00681 (Wayne RFA Resp.); APP\_00698 (Westmoreland RFA Resp.); APP\_00719 (Wyoming RFA Resp.); *see also* APP\_00822-823 (Berks Dep.); APP\_00867-868 (Lancaster Dep.); APP\_00918-919 (Westmoreland Dep.).

**Intervenor-Defendants' Response: Admitted.**

38. Thousands of ballots were set aside and not counted solely based on a missing handwritten date on the return envelope in the November 2022 election. *See* APP\_01494-1496, APP\_01572 (Tetro Decl.) (summarizing manual review of certain counties' ballot envelopes); APP\_01162a (Philadelphia meeting minutes stating 2,143 ballots were excluded based on a missing handwritten date on the return envelope in Philadelphia alone).

**Intervenor-Defendants' Response: Admitted.**

- a. For example, Clearfield County set aside the ballot of a voter who omitted the handwritten date on their return envelope, even though the stamp on the envelope indicates the ballot was received by the county board of elections on "OCT 11 2022." An election official wrote a note on this envelope that says "can't come in disabled." APP\_01433.

**Intervenor-Defendants' Response: Admitted.**

- b. Clearfield County also set aside the ballot of another voter who omitted the handwritten date on their return envelope, even though the stamp on the envelope indicates the ballot was received by the county board of elections on “OCT 24 2022.” An election official wrote a note on that envelope that says “can not fix[,] in Florida.” APP\_01434.

**Intervenor-Defendants’ Response: Admitted.**

- c. Cumberland County set aside the ballot of a voter who omitted the handwritten date on the “Today’s Date (Required)” line of the voter declaration form of their return envelope, even though the date “30 OCT 2022” appears in another signed and dated portion of the envelope that was completed by a witness, who assisted the voter because the voter was unable to sign their declaration because of illness or physical disability. APP\_01435.

**Intervenor-Defendants’ Response: Admitted.**

39. In administering the November 2022 general election, the county boards of elections did not count mail ballots that were timely received and submitted in signed envelopes, but had a handwritten date on the outer return envelope that appeared to pre-date September 19, 2022, or to post-date November 8, 2022. APP\_00022 (Allegheny RFA Resp.); APP\_00038 (Armstrong RFA Resp.); APP\_00051 (Beaver RFA Resp.); APP\_00074 (Berks RFA Resp.); APP\_00091 (Blair RFA Resp.); APP\_00106 (Bradford RFA Resp.); APP\_00114 (Bucks RFA Resp.); APP\_00126 (Butler RFA Resp.); APP\_00137 (Cambria RFA Resp.); APP\_00161 (Chester RFA Resp.); 00182 (Clarion RFA Resp.); APP\_00194 (Clearfield RFA Resp.); APP\_00212 (Clinton RFA Resp.); APP\_00226 (Crawford RFA Resp.); APP\_00262 (Delaware RFA Resp.);

APP\_00276 (Elk RFA Resp.); APP\_00282 (Erie RFA Resp.); APP\_00304, APP\_00305 (Fayette RFA Resp.); APP\_00318 (Forest RFA Resp.); APP\_00330 (Franklin RFA Resp.); APP\_00348 (Fulton RFA Resp.); APP\_00352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00369 (Lackawanna RFA Resp.); APP\_00384 (Lancaster RFA Resp.); APP\_00398 (Lehigh RFA Resp.); APP\_00412 (Luzerne RFA Resp.); APP\_00431 (Lycoming RFA Resp.); APP\_00450 (McKean RFA Resp.); APP\_00466 (Mifflin RFA Resp.); APP\_00477 (Montgomery RFA Resp.); APP\_00490 (Northampton RFA Resp.); APP\_00505 (Perry RFA Resp.); APP\_00525 (Philadelphia RFA Resp.); APP\_00544 (Pike RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00593 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA Resp.); APP\_00642 (Warren RFA Resp.); APP\_00681 (Wayne RFA Resp.); APP\_00699 (Westmoreland RFA Resp.); APP\_00719 (Wyoming RFA Resp.); APP\_00727 (Babst Calland RFA Resp.); *see also* APP\_00822-823 (Berks Dep.); APP\_00868 (Lancaster Dep.); APP\_00918-919 (Westmoreland Dep.).<sup>3</sup>

**Intervenor-Defendants’ Response: Admitted, except to the extent that certain counties may have disregarded the Pennsylvania Supreme Court’s order. *See, e.g., infra* ¶ 69 and Response thereto.**

40. At least 21 counties admitted that they provided voters with no notice that their ballot had been set aside because of a missing or incorrect date on the outer return envelope.

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<sup>3</sup> The only counties that did not admit this are those that did not report receiving any mail ballots in incorrectly dated envelopes. APP\_00004 (Adams RFA Resp.) (“Adams did not receive any such ballots and therefore no admission is made.”); APP\_00248 (Cumberland RFA Resp.) (“The Cumberland BOE did not receive any mail ballots in connection with the 2022 General Election that were timely received in signed envelopes that showed a date on the outer return envelope predating September 19, 2022, or post-dating November 8, 2022.”); APP\_00562 (Potter Suppl. RFA Resp.) (“As understood the request is DENIED as all ballots set aside by Defendant regarding date issues were ballots which had a blank date on the outer envelope. SUPPLEMENTAL ANSWER: As an additional response the request is DENIED because no ballots were received with dates pre or post the dates mentioned.”); APP\_00146 (Cameron RFA Resp.) (“No such mail ballots were received in connection with the 2022 General Election.”); APP\_00616 (Susquehanna RFA Resp.) (“Defendant denies the first clause of the preceding statement insofar as no such ballots had been received”); APP\_00626 (Tioga RFA. Resp.) (“Defendant objects to the preceding request as it assumes events contrary to fact. Subject to this objection, no envelopes bearing dates were uncounted.”); APP\_00655 (Washington RFA Resp.) (“Upon reasonable review of information in Defendant’s possession and control, Defendant is without sufficient knowledge and/or information to admit or deny this Request.”).

APP\_00043 (Armstrong Interrog. Resp.); APP\_00100 (Blair Interrog. Resp.); APP\_00109 (Bradford Interrog. Resp.); APP\_00152 (Cameron Interrog. Resp.); APP\_00187 (Clarion Interrog. Resp.); APP\_00219 (Clinton Interrog. Resp.); APP\_00255 (Cumberland Interrog. Resp.); APP\_00323 (Forest Interrog. Resp.); APP\_00356 (Greene Interrog. Resp.); APP\_00375 (Lackawanna Interrog. Resp.); APP\_00391 (Lancaster Interrog. Resp.); APP\_00456 (McKean Interrog. Resp.); APP\_00513 (Perry Interrog. Resp.); APP\_00611 (Sullivan Interrog. Resp.); APP\_00621 (Susquehanna Interrog. Resp.); APP\_00636 (Union Interrog. Resp.); APP\_00648 (Warren Interrog. Resp.); APP\_00671 (Washington Interrog. Resp.); APP\_00692 (Wayne Interrog. Resp.); APP\_00708 (Westmoreland Interrog. Resp.); APP\_00716 (Wyoming Interrog. Resp.); *see also* APP\_00870-871 (Lancaster Dep.); APP\_00921 (Westmoreland Dep.); APP\_00980 (Marks Dep.).

**Intervenor-Defendants' Response: Admitted. However, Susquehanna County had *no* undated or misdated ballots, so there was no occasion to notify voters. Ex. 37 at APP\_00619. Additionally, two voters had contacted Forest County Board of Elections and they were given the opportunity to cure their ballots. Ex. 19 at APP\_00323.**

41. At least 20 additional counties admitted that they provided voters with no notice that their ballot had been set aside because of a missing or incorrect date on the outer return envelope, except that they uploaded that information into the SURE system, which sends an automatic notification to voters who provided the county with their email address. APP\_00738-739 (Bedford Interrog. Resp.); APP\_00132 (Butler Interrog. Resp.); APP\_00738-739 (Carbon Interrog. Resp.); APP\_00738-739 (Centre Interrog. Resp.); APP\_00738-739 (Columbia Interrog. Resp.); APP\_00738-739 (Dauphin Interrog. Resp.); APP\_00738-739 (Jefferson Interrog. Resp.); APP\_00364 (Juniata Interrog. Resp.); APP\_00738-739 (Huntingdon Interrog. Resp.); APP\_00738-739 (Indiana Interrog. Resp.); APP\_00738-739 (Lebanon Interrog. Resp.);

APP\_00462 (Mercer Interrog. Resp.); APP\_00738-739 (Montour Interrog. Resp.); APP\_00738-739 (Northumberland Interrog. Resp.); APP\_00542 (Pike Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00738-739 (Snyder Interrog. Resp.); APP\_00601 (Somerset Interrog. Resp.); APP\_00738-739 (Venango Interrog. Resp.); APP\_00738-739 (York Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

42. All of the voters whose ballots were set aside in the November 2022 election solely because of a missing or incorrect handwritten date on the outer return envelope had previously been determined to be eligible and qualified to vote in the election by their county board of elections. APP\_00008 (Adams Interrog. Resp.); APP\_00029 (Allegheny Interrog. Resp.); APP\_00042 (Armstrong Interrog. Resp.); APP\_00064-65 (Beaver Interrog. Resp.); APP\_00080 (Berks Interrog. Resp.); APP\_00099 (Blair Interrog. Resp.); APP\_00109 (Bradford Interrog. Resp.); APP\_00118 (Bucks Interrog. Resp.); APP\_00132 (Butler Interrog. Resp.); APP\_00141 (Cambria Interrog. Resp.); APP\_00152 (Cameron Interrog. Resp.); APP\_00171 (Chester Interrog. Resp.); APP\_00186 (Clarion Interrog. Resp.); APP\_00205 (Clearfield Interrog. Resp.); APP\_00219 (Clinton Interrog. Resp.); APP\_00238 (Crawford Interrog. Resp.); APP\_00255 (Cumberland Interrog. Resp.); APP\_00269 (Delaware Interrog. Resp.); APP\_00279 (Elk Interrog. Resp.); APP\_00294 (Erie Interrog. Resp.); APP\_00311 (Fayette Interrog. Resp.); APP\_0032 (Forest Interrog. Resp.); APP\_00338 (Franklin Interrog. Resp.); APP\_00347 (Fulton Interrog. Resp.); APP\_00356 (Greene Interrog. Resp.); APP\_00363 (Juniata Interrog. Resp.); APP\_00375 (Lackawanna Interrog. Resp.); APP\_00391 (Lancaster Interrog. Resp.); APP\_00419 (Luzerne Interrog. Resp.); APP\_00440 (Lycoming Interrog. Resp.); APP\_00455 (McKean Interrog. Resp.); APP\_00462 (Mercer Interrog. Resp.); APP\_00470 (Mifflin Interrog. Resp.); APP\_00482

(Montgomery Interrog. Resp.); APP\_00497 (Northampton Interrog. Resp.); APP\_00513 (Perry Interrog. Resp.); APP\_00533 (Philadelphia Interrog. Resp.); APP\_00542 (Pike Interrog. Resp.); APP\_00577 (Potter Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00600 (Somerset Interrog. Resp.); APP\_00611 (Sullivan Interrog. Resp.); APP\_00620 (Susquehanna Interrog. Resp.); APP\_00630 (Tioga Interrog. Resp.); APP\_00636 (Union Interrog. Resp.); APP\_00647 (Warren Interrog. Resp.); APP\_00670 (Washington Interrog. Resp.); APP\_00692 (Wayne Interrog. Resp.); APP\_00708 (Westmoreland Interrog. Resp.); APP\_00715 (Wyoming Interrog. Resp.); APP\_00736-737 (Babst Calland Interrog. Resp.); *see also* APP\_01165-1168 (Philadelphia meeting minutes).

**Intervenor-Defendants' Response: Admitted.**

43. The county boards of elections did not identify or raise any fraud concerns with respect to any November 2022 general election mail ballot that was signed and timely received but set aside because of a missing or incorrect handwritten date on the outer return envelope. APP\_00009 (Adams Interrog. Resp.), APP\_00029 (Allegheny Interrog. Resp.); APP\_00043 (Armstrong Interrog. Resp.); APP\_00064 (Beaver Interrog. Resp.); APP\_00080 (Berks Interrog. Resp.); APP\_00099 (Blair Interrog. Resp.); APP\_00109 (Bradford Interrog. Resp.); APP\_00118 (Bucks Interrog. Resp.); APP\_00132 (Butler Interrog. Resp.); APP\_00141 (Cambria Interrog. Resp.); APP\_00152 (Cameron Interrog. Resp.); APP\_00172 (Chester Interrog. Resp.); APP\_00187 (Clarion Interrog. Resp.); APP\_00205 (Clearfield Interrog. Resp.); APP\_00219 (Clinton Interrog. Resp.); APP\_00239 (Crawford Interrog. Resp.); APP\_00255 (Cumberland Interrog. Resp.); APP\_00270 (Delaware Interrog. Resp.); APP\_00279 (Elk Interrog. Resp.); APP\_00294 (Erie Interrog. Resp.); APP\_00311 (Fayette Interrog. Resp.); APP\_0323 (Forest Interrog. Resp.); APP\_00338 (Franklin Interrog. Resp.); APP\_00347 (Fulton Interrog. Resp.);

APP\_00356 (Greene Interrog. Resp.); APP\_00364 (Juniata Interrog. Resp.); APP\_00375 (Lackawanna Interrog. Resp.); APP\_00391 (Lancaster Interrog. Resp.); APP\_00403 (Lehigh Interrog. Resp.); APP\_00417 (Luzerne Interrog. Resp.); APP\_00440 (Lycoming Interrog. Resp.); APP\_00455 (McKean Interrog. Resp.); APP\_00462 (Mercer Interrog. Resp.); APP\_00471 (Mifflin Interrog. Resp.); APP\_00482 (Montgomery Interrog. Resp.); APP\_00497 (Northampton Interrog. Resp.); APP\_00513 (Perry Interrog. Resp.); APP\_00542 (Pike Interrog. Resp.); APP\_00533 (Philadelphia Interrog. Resp.); APP\_00578 (Potter Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00601 (Somerset Interrog. Resp.); APP\_00611 (Sullivan Interrog. Resp.); APP\_00647 (Warren Interrog. Resp.); APP\_00620 (Susquehanna Interrog. Resp.); APP\_00630 (Tioga Interrog. Resp.); APP\_00636 (Union Interrog. Resp.); APP\_00670 (Washington Interrog. Resp.); APP\_00692 (Wayne Interrog. Resp.); APP\_00708 (Westmoreland Interrog. Resp.); APP\_00716 (Wyoming Interrog. Resp.); APP\_00737 (Babst Calland Interrog. Resp.); APP\_00929r (Westmoreland Dep.); Phila Bd. Transcript at 14-15.

**Intervenor-Defendants' Response: Admitted. However, Intervenor-Defendants note that, simply because a county board does not check whether a noncompliant ballot raises fraud concerns, see Ex. 11 at APP\_00187, does not mean that the date requirement serves no purpose combatting voting fraud. The date requirement has already been used to detect voter fraud in Lancaster County. See Ex. 55 ¶ 2, Police Criminal Complaint, *Commonwealth v. Mihaliak*, No. CR-126-22 (June 3, 2022) (“*Mihaliak* Compl.”); Ex. 53 at 115:8-117:2; see also Ex. 53 at 61:3-9.**

44. The voters whose ballots were set aside based on a missing or incorrect handwritten date include voters who identify as Democrats, Republicans, and Independents, as well as unaffiliated voters. APP\_01292-1400 (Beaver, Berks, Blair, Butler, Centre, Erie, Franklin, Indiana, Lancaster, Lawrence, Luzerne, Venango, Wayne, and Westmoreland voter lists).

**Intervenor-Defendants' Response: Admitted.**



45. The voters whose ballots were set aside based on a missing or incorrect handwritten date ranged in age from 18 to at least 101 years old, and the date requirement had a significant impact on voters who were 65 or older. APP\_01292- 1400. For example:

**Intervenor-Defendants' Response: Admitted in part and denied in part.**

**Admitted that voters whose ballots were set aside based on a missing or incorrect handwritten date ranged in age from 18 to at least 101 years old.**

**Denied to the extent that Plaintiffs assert a legal conclusion in calling the date requirement's impact "significant."**

- a. In Beaver County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 96. Approximately 70 percent of the affected voters in Beaver County were at least 65 years old, and approximately 30 percent of the affected voters were at least 80 years old. APP\_01292-01296.

**Intervenor-Defendants' Response: Admitted.**

- b. In Berks County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 101. Approximately 43 percent of the affected voters in Berks County were at least 65 years old, and 16 percent of the affected voters were at least 80 years old. APP\_01298- 01353.

**Intervenor-Defendants' Response: Admitted.**

- c. In Blair County, the youngest voter affected by the date requirement was 25, and the oldest voter affected by the date requirement was 95. Approximately 69 percent of the affected voters in Blair County were at

least 65 years old, and 18 percent of the affected voters were at least 80 years old. APP\_01357- 01358.

**Intervenor-Defendants' Response: Admitted.**

- d. In Butler County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 96. Approximately 48 percent of the affected voters in Butler County were at least 65 years old, and 16 percent of the affected voters were at least 80 years old. APP\_01359- 01360.

**Intervenor-Defendants' Response: Admitted.**

- e. In Centre County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 100. Approximately 56 percent of the affected voters in Centre County were at least 65 years old, and 24 percent of the affected voters were at least 80 years old. APP\_01361- 01364.

**Intervenor-Defendants' Response: Admitted.**

- f. In Erie County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 92. Approximately 66 percent of the affected voters in Erie County were at least 65 years old, and 25 percent of the affected voters were at least 80 years old. APP\_01367- 01372.

**Intervenor-Defendants' Response: Admitted.**

- g. In Franklin County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 96.

Approximately 60 percent of the affected voters in Franklin County were at least 65 years old, and 30 percent of the affected voters were at least 80 years old. APP\_01373-01375.

**Intervenor-Defendants' Response: Admitted.**

- h. In Indiana County, the youngest voter affected by the date requirement was 20, and the oldest voter affected by the date requirement was 94. Approximately 42 percent of the affected voters in Indiana County were at least 65 years old, and 10 percent of the affected voters were at least 80 years old. APP\_01376-01379.

**Intervenor-Defendants' Response: Admitted.**

- i. In Lancaster County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 99. Approximately 61 percent of the affected voters in Lancaster County were at least 65 years old, and 22 percent of the affected voters were at least 80 years old. APP\_01380-01386.

**Intervenor-Defendants' Response: Admitted.**

- j. In Lawrence County, the youngest voter affected by the date requirement was 19, and the oldest voter affected by the date requirement was 92. Approximately 66 percent of the affected voters in Lawrence County were at least 65 years old, and 26 percent of the affected voters were at least 80 years old. APP\_01387.

**Intervenor-Defendants' Response: Admitted.**

- k. In Luzerne County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 97. Approximately 61 percent of the affected voters in Luzerne County were at least 65 years old, and 15 percent of the affected voters were at least 80 years old. APP\_01388-01391.

**Intervenor-Defendants' Response: Admitted.**

- l. In Venango County, the youngest voter affected by the date requirement was 24, and the oldest voter affected by the date requirement was 97. Approximately 77 percent of the affected voters in Venango County were at least 65 years old, and 30 percent of the affected voters were at least 80 years old. APP\_01393.

**Intervenor-Defendants' Response: Admitted.**

- m. In Wayne County, the youngest voter affected by the date requirement was 19, and the oldest voter affected by the date requirement was 97. Approximately 59 percent of the affected voters in Wayne County were at least 65 years old, and 25 percent of the affected voters were at least 80 years old. APP\_01395- 01396.

**Intervenor-Defendants' Response: Admitted.**

- n. In Westmoreland County, the youngest voter affected by the date requirement was 19, and the oldest voter affected by the date requirement was 94. Approximately 67 percent of the affected voters in Westmoreland County were at least 65 years old, and 28 percent of the affected voters were at least 80 years old. APP\_01397-01398.

**Intervenor-Defendants' Response: Admitted.**

- o. In Philadelphia County, one of the commissioners reported: “the median age of voters who submitted undated ballots is 64 years old and the median age of voters who submitted misdated ballots is 66 years old. By comparison, the median age of registered voters in Philadelphia is 43. Looked at more closely, 74.5% of undated ballots were submitted by voters age 50 or older and 77.2% of misdated ballots were submitted by voters age 50 or older. At age 60 or older, those numbers are 60.9% for undated ballots and 64.1% for misdated ballots. Over a third of the undated and misdated ballots were submitted by voters over 70 years of age. 37.5% for the undated, and 40.9% for the misdated. 14.1% of the undated ballots were submitted by voters 80 years or older and 13.9% of the misdated ballots were submitted by voters in this age group. Voters age 90 or older submitted 57 undated ballots and 15 misdated ballots. Importantly, these percentages all are significantly higher than the percentage of Philadelphia’s registered voters that these age groups represent... In addition, the Board has reviewed the distribution of these ballots across Philadelphia and that analysis suggests that the issue disproportionately impacts certain Philadelphia communities. These include areas with higher poverty rates, lower rates of educational attainment, and minority communities.” APP\_01163-1164 (Philadelphia meeting minutes).

**Intervenor-Defendants' Response: Admitted.**

#### IV. THE DATE REQUIREMENT

46. The voter declaration forms that accompany paper mail and absentee ballots include a line for the voter to sign and date the declaration. *See, e.g.*, APP\_01298 (Berks mail envelope); APP\_01299 (Bucks military envelope). The exact phrasing of the label under the date line varies by county—for example, some counties employ the label “Today’s date (required) / Fecha de hoy (obligatorio),” while others use “Today’s date (MM/DD/YYYY (required).” APP\_01298 (Berks envelope); APP\_01486 (Lancaster envelope).

#### **Intervenor-Defendants’ Response: Admitted.**

47. In administering the November 2022 general election, the county boards of elections did not use the handwritten date on the outer return envelope containing a mail or absentee ballot for any purpose related to determining or confirming the mail ballot voter’s age. APP\_00003 (Adams RFA Resp.); APP\_00019-20 (Allegheny RFA Resp.); APP\_00037-38 (Armstrong RFA Resp.); APP\_00049-50 (Beaver RFA Resp.); APP\_00072-73 (Berks RFA Resp.); APP\_00088-90 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_00113 (Bucks RFA Resp.); APP\_00124, APP\_00125 (Butler RFA Resp.); APP\_00136-137 (Cambria RFA Resp.)<sup>4</sup>; APP\_00145-146 (Cameron RFA Resp.); APP\_00158-159 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193-194 (Clearfield RFA Resp.); APP\_0211-212 (Clinton RFA Resp.); APP\_00225-226 (Crawford RFA Resp.); APP\_00245-246 (Cumberland RFA Resp.); APP\_00261 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00281-282 (Erie RFA Resp.); APP\_00301-303 (Fayette RFA Resp.); APP\_00317- 318 (Forest RFA Resp.);

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<sup>4</sup> Cambria County responded to this request (and others) with a simple “No,” which can only be interpreted to mean that this county, like all others, never used or referred to the handwritten date to determine or confirm the mail ballot voter’s age. Cambria County consistently responded to Plaintiffs’ interrogatory requests that it does not contend the handwritten date on Return Envelope is “material in determining whether a mail ballot voter is qualified to vote” (Interrogatory No. 14) and agreed not to oppose Plaintiffs’ requested relief in this action (ECF No. 157).

APP\_00328-329 (Franklin RFA Resp.); APP\_00351-352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00367-368 (Lackawanna RFA Resp.); APP\_00396-397 (Lehigh RFA Resp.); APP\_00410-411 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA Resp.); APP\_00448-449 (McKean RFA Resp.); APP\_00465 (Mifflin RFA Resp.); APP\_00475-476 (Montgomery RFA Resp.); APP\_00488-489 (Northampton RFA Resp.); APP\_00503-504 (Perry RFA Resp.); APP\_00523-524 (Philadelphia RFA Resp.); APP\_00543 (Pike RFA Resp.); APP\_00548-549 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA Resp.); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA Resp.); APP\_00641-642 (Warren RFA Resp.); APP\_00653-654 (Washington RFA Resp.); APP\_00680-681 (Wayne RFA Resp.); APP\_00697-698 (Westmoreland RFA Resp.); APP\_00718-719 (Wyoming RFA Resp.); APP\_00725-726 (Babst Calland RFA Resp.); *see also* APP\_00814-816 (Berks Dep.); APP\_00861-862, APP\_00866 (Lancaster Dep.); APP\_00906-910 (Westmoreland Dep.); APP\_00983-984, APP\_00995-997 (Marks Dep.); APP\_01190-1191 (Greenburg Report).

**Intervenor-Defendants' Response: Admitted.**

48. In administering the November 2022 general election, the county boards of elections did not use the handwritten date on the outer return envelope containing a mail or absentee ballot for any purpose related to determining or confirming the mail ballot voter's citizenship. APP\_00003 (Adams RFA Resp.); APP\_00019-20 (Allegheny RFA Resp.); APP\_00037-38 (Armstrong RFA Resp.); APP\_00049-50 (Beaver RFA Resp.); APP\_00072-73 (Berks RFA Resp.); APP\_00088-90 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_00113 (Bucks RFA Resp.); APP\_00124-125 (Butler RFA Resp.); APP\_00136-137 (Cambria

RFA Resp.); APP\_00145-146 (Cameron RFA Resp.)<sup>5</sup>; APP\_00158-159 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193-194 (Clearfield RFA Resp.); APP\_00211-212 (Clinton RFA Resp.); APP\_00225-226 (Crawford RFA Resp.); APP\_00245-246 (Cumberland RFA Resp.); APP\_00261 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00281-282 (Erie RFA Resp.); APP\_00301, APP\_00303 (Fayette RFA Resp.); APP\_00317-318 (Forest RFA Resp.); APP\_00328- 329 (Franklin RFA Resp.); APP\_00351-352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00367-368 (Lackawanna RFA Resp.); APP\_00396-397 (Lehigh RFA Resp.); APP\_00410-411 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA Resp.); APP\_00448-449 (McKean RFA Resp.); APP\_00465 (Mifflin RFA Resp.); APP\_00475-476 (Montgomery RFA Resp.); APP\_00488-489 (Northampton RFA Resp.); APP\_00503-504 (Perry RFA Resp.); APP\_00523-524 (Philadelphia RFA Resp.); APP\_00543 (Pike RFA Resp.); APP\_00548-549 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA. Resp.); APP\_00641-642 (Warren RFA Resp.); APP\_00653-654 (Washington RFA Resp.); APP\_00680-681 (Wayne RFA Resp.); APP\_00697-698 (Westmoreland RFA Resp.); APP\_00718-719 (Wyoming RFA Resp.); APP\_00725-726 (Babst Calland RFA Resp.); *see also* APP\_00814-816 (Berks Dep.); APP\_00861-862, APP\_00866 (Lancaster Dep.); APP\_00906-910 (Westmoreland Dep.); APP\_00983-984, APP\_00995-997 (Marks Dep.); APP\_01190-1191 (Greenburg Report).

**Intervenor-Defendants' Response: Admitted.**

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<sup>5</sup> Cambria County responded to this request with a simple “No,” which can only be interpreted to mean that this county, like all others, never used or referred to the handwritten date to determine or confirm the mail ballot voter’s citizenship. *See supra* n.4.



49. In administering the November 2022 general election, the county boards of elections did not use the handwritten date on the outer return envelope containing a mail or absentee ballot for any purpose related to determining or confirming the mail ballot voter's county or duration of residence. APP\_00003 (Adams RFA Resp.); APP\_00019-20 (Allegheny RFA Resp.); APP\_00037-38 (Armstrong RFA Resp.); APP\_00049-50 (Beaver RFA Resp.); APP\_00072-73 (Berks RFA Resp.); APP\_00088- 90 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_00113 (Bucks RFA Resp.); APP\_00124-125 (Butler RFA Resp.); APP\_00136-137 (Cambria RFA Resp.)<sup>6</sup>; APP\_00145-146 (Cameron RFA Resp.); APP\_00158-159 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193-194 (Clearfield RFA Resp.); APP\_00211-212 (Clinton RFA Resp.); APP\_00225-226 (Crawford RFA Resp.); APP\_00245-246 (Cumberland RFA Resp.); APP\_00261 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00281-282 (Erie RFA Resp.); APP\_00301, APP\_00303 (Fayette RFA Resp.); APP\_00317-318 (Forest RFA Resp.); APP\_00328- 329 (Franklin RFA Resp.); APP\_00351-352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00367-368 (Lackawanna RFA Resp.); APP\_00396-397 (Lehigh RFA Resp.); APP\_00410-411 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA Resp.); APP\_00448-449 (McKean RFA Resp.); APP\_00465 (Mifflin RFA Resp.); APP\_00475- 476 (Montgomery RFA Resp.); APP\_00488-489 (Northampton RFA Resp.); APP\_00503-504 (Perry RFA Resp.); APP\_00523-524 (Philadelphia RFA Resp.); APP\_00543 (Pike RFA Resp.); APP\_00548-549 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA. Resp.); APP\_00641-642 (Warren RFA Resp.); APP\_00653-654

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<sup>6</sup> Cambria County responded to this request with a simple "No," which can only be interpreted to mean that this county, like all others, never used or referred to the handwritten date to determine or confirm the mail ballot voter's county or duration of residence. *See supra* n.4.

(Washington RFA Resp.); APP\_00680-681 (Wayne RFA Resp.); APP\_00697-698 (Westmoreland RFA Resp.); APP\_00718-719 (Wyoming RFA Resp.); APP\_00725-726 (Babst Calland RFA Resp.); *see also* APP\_00814-816 (Berks Dep.); APP\_00861-862, APP\_00866 (Lancaster Dep.); APP\_00906-910 (Westmoreland Dep.); APP\_00983-984, APP\_00995-997 (Marks Dep.); APP\_01190-1191 (Greenburg Report).

**Intervenor-Defendants' Response: Admitted.**

50. In administering the November 2022 general election, the county boards of elections did not use the handwritten date on the outer return envelope containing a mail or absentee ballot for any purpose related to determining or confirming the mail ballot voter's felony status. APP\_00003 (Adams RFA Resp.); APP\_00019-20 (Allegheny RFA Resp.); APP\_00037-38 (Armstrong RFA Resp.); APP\_00049-50 (Beaver RFA Resp.); APP\_00072-73 (Berks RFA Resp.); APP\_00088-90 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_00113 (Bucks RFA Resp.); APP\_00124-125 (Butler RFA Resp.); APP\_00136-137 (Cambria RFA Resp.)<sup>7</sup>; APP\_00145-146 (Cameron RFA Resp.); APP\_00158-159 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193-194 (Clearfield RFA Resp.); APP\_00211-212 (Clinton RFA Resp.); APP\_00225-226 (Crawford RFA Resp.); APP\_00245-246 (Cumberland RFA Resp.); APP\_00261 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00281-282 (Erie RFA Resp.); APP\_00301, APP\_00303 (Fayette RFA Resp.); APP\_00317-318 (Forest RFA Resp.); APP\_00328- 329 (Franklin RFA Resp.); APP\_00351-352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00367-368 (Lackawanna RFA Resp.); APP\_00396-397 (Lehigh RFA Resp.); APP\_00410-411 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA

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<sup>7</sup> Cambria County responded to this request with a simple "No," which can only be interpreted to mean that this county, like all others, never used or referred to the handwritten date to determine or confirm the mail ballot voter's county or duration of residence. *See supra* n.4.

Resp.); APP\_00448-449 (McKean RFA Resp.); APP\_00465 (Mifflin RFA Resp.); APP\_00475-476 (Montgomery RFA Resp.); APP\_00488-489 (Northampton RFA Resp.); APP\_00503-504 (Perry RFA Resp.); APP\_00523-524 (Philadelphia RFA Resp.); APP\_00543 (Pike RFA Resp.); APP\_00548-549 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA. Resp.); APP\_00641-642 (Warren RFA Resp.); APP\_00653-654 (Washington RFA Resp.); APP\_00680-681 (Wayne RFA Resp.); APP\_00697-698 (Westmoreland RFA Resp.); APP\_00718-719 (Wyoming RFA Resp.); APP\_00725-726 (Babst Calland RFA Resp.); *see also* APP\_00814-816 (Berks Dep.); APP\_00861-862, APP\_00866 (Lancaster Dep.); APP\_00906-910 (Westmoreland Dep.); APP\_00983-984, APP\_00995-997 (Marks Dep.); APP\_01190-1191 (Greenburg Report).

**Intervenor-Defendants' Response: Admitted.**

51. In administering the November 2022 general election, the county boards of elections did not use the handwritten date on the outer return envelope containing a mail ballot to establish whether they received the ballot by 8:00 P.M. on November 8, 2022. APP\_00003 (Adams RFA Resp.); APP\_00020 (Allegheny RFA Resp.); APP\_00037 (Armstrong RFA Resp.); APP\_00049 (Beaver RFA Resp.); APP\_00073 (Berks RFA Resp.); APP\_00090 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_0013 (Bucks RFA Resp.); APP\_00125 (Butler RFA Resp.); APP\_00136 (Cambria RFA Resp.)<sup>8</sup>; APP\_00145 (Cameron RFA Resp.); APP\_00158 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193 (Clearfield RFA Resp.); APP\_00211 (Clinton RFA Resp.); APP\_00225 (Crawford RFA Resp.); APP\_00246 (Cumberland

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<sup>8</sup> Cambria County responded to this request with a simple “No,” which can only be interpreted to mean that this county, like all others, never used or referred to the handwritten date to establish whether they received the ballot by the applicable deadline. *See supra* n.4.

RFA Resp.); APP\_00261 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00281 (Erie RFA Resp.); APP\_00302 (Fayette RFA Resp.); APP\_00317 (Forest RFA Resp.); APP\_00329 (Franklin RFA); APP\_00351 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00368 (Lackawanna RFA Resp.); APP\_00396 (Lehigh RFA Resp.); APP\_00410 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA Resp.); APP\_00449 (McKean RFA Resp.); APP\_00465 (Mifflin RFA Resp.); APP\_00476 (Montgomery RFA Resp.); APP\_00488 (Northampton RFA Resp.); APP\_0504 (Perry RFA Resp.); APP\_00523 (Philadelphia RFA Resp.); APP\_00543 (Pike RFA Resp.); APP\_00549 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA Resp.); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA. Resp); APP\_00641 (Warren RFA Resp.); APP\_00653 (Washington RFA Resp.); APP\_00680 (Wayne RFA Resp.); APP\_00697 (Westmoreland RFA Resp.); APP\_00718 (Wyoming RFA Resp.); APP\_00725 (Babst Calland RFA Resp.); *see also* APP\_00886-887 (Lancaster Dep.); APP\_00993-995, APP\_01001 (Marks Dep.); APP\_01165-1166 (Philadelphia meeting minutes).

**Intervenor-Defendants' Response: Admitted. However, Intervenor-Defendants note that Philadelphia "denie[d]" that it "never used or referred to the date handwritten on the outer return envelope or on any other paperwork accompanying a returned military-overseas ballots to establish whether [it] received the ballot by the applicable deadline." Ex. 32 at APP\_00524. Moreover, Intervenor-Defendants note that Bucks County and Chester County did use the handwritten date for military/overseas ballots for other purposes. Ex. 7 at APP\_00113, Ex. 9 at 00158. Intervenor-Defendants also note that Fayette County made no representations as to its use of the handwritten dates for military/overseas ballots. Ex. 17 at APP\_00302-00303.**

52. Setting aside military-overseas ballots, in administering the November 2022 general election, the county boards of elections did not use or refer to the date handwritten on the outer return envelope containing an absentee ballot to establish whether they received the ballot by the applicable deadline. APP\_00003 (Adams RFA Resp.); APP\_00020-21 (Allegheny RFA

Resp.); APP\_00037-38 (Armstrong RFA Resp.); APP\_00049-50 (Beaver RFA Resp.); APP\_00073 (Berks RFA Resp.); APP\_00091 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_00113-14 (Bucks RFA Resp.); APP\_00125-26 (Butler RFA Resp.); APP\_00136 (Cambria RFA Resp.)<sup>9</sup>; APP\_00145-46 (Cameron RFA Resp.); APP\_00158-59 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193-94 (Clearfield RFA Resp.); APP\_00211-12 (Clinton RFA Resp.); APP\_00225-26 (Crawford RFA Resp.); APP\_00247 (Cumberland RFA Resp.); APP\_00261 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00281-82 (Erie RFA Resp.); APP\_00302-03 (Fayette RFA Resp.); APP\_00317-18 (Forest RFA Resp.); APP\_00329 (Franklin RFA Resp.); APP\_00351- 52 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00368 (Lackawanna RFA Resp.); APP\_00396-97 (Lehigh RFA Resp.); APP\_00410-11 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA Resp.); APP\_00449 (McKean RFA Resp.); APP\_00465-66 (Mifflin RFA Resp.); APP\_00476 (Montgomery RFA Resp.); APP\_00488-89 (Northampton RFA Resp.); APP\_00504 (Perry RFA Resp.); APP\_00543 (Pike RFA Resp.); APP\_00549-50 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA Resp.); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA. Resp.); APP\_00641-42 (Warren RFA Resp.); APP\_00653-54 (Washington RFA Resp.); APP\_00680-81 (Wayne RFA Resp.); APP\_00697-98 (Westmoreland RFA Resp.); APP\_00718-19 (Wyoming RFA Resp.); APP\_00725-26 (Babst Calland RFA Resp.); *see also* APP\_00886-887 (Lancaster Dep.); APP\_00993-995, APP\_01001 v(Marks Dep.); APP\_01165 (Philadelphia meeting minutes).

**Intervenor-Defendants' Response: Admitted.**

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<sup>9</sup> *See supra* n.8.

53. A voter could not have signed the voter declaration form on the 2022 general election mail ballot outer return envelope on any date before their county board of elections sent the mail ballot materials for the 2022 election to voters, because the voter would not yet have the mail ballot materials in their possession. For example, if a county board of elections did not send mail ballots to voters until October 1, 2022, then a voter in that county could not have filled out their mail ballot before October 1, 2022, regardless of what if any date the voter wrote on the outer return envelope. APP\_00827, APP00831-832, APP\_00840-41 (Berks Dep.); APP\_00876-877, APP\_00880-881 (Lancaster Dep.); APP\_00928-929 (Westmoreland Dep.); APP\_01000, APP\_01002-1003 (Marks Dep.); APP\_01189-1190 (Greenburg Report).

**Intervenor-Defendants' Response: Admitted.**

54. If a county board of elections received and date-stamped a 2022 general election mail ballot before 8:00 P.M. on Election Day (November 8, 2022), then that ballot was timely received under the Election Code. 25 P.S. §§ 3146.6(c), 3150.16(c); *see also, e.g.*, APP\_00834 (Berks Dep.); APP\_01189 (Greenburg Report).

**Intervenor-Defendants' Response: Admitted.**

55. If a county board of elections received a 2022 general election mail ballot by 8:00 P.M. on Election Day (November 8, 2022), then the voter who submitted that ballot could not have filled out that ballot *after* 8:00 P.M. on Election Day, regardless of what if any date the voter wrote on the outer return envelope. APP\_00830 (Berks Dep.); APP\_00874-875 (Lancaster Dep.); APP\_00925-926 (Westmoreland Dep.); APP\_01000 (Marks Dep.).

**Intervenor-Defendants' Response: Admitted.**

56. If a county board of elections received a 2022 general election mail ballot *after* 8:00 P.M. on Election Day (November 8, 2022), then the board of elections did not count that ballot,

regardless of what if any date the voter wrote on the outer return envelope. APP\_00830a (Berks Dep.); APP\_00875-876 (Lancaster Dep.); APP\_00926-927 (Westmoreland Dep.); APP\_01000-1001 (Marks Dep.).

**Intervenor-Defendants' Response: Admitted.**

57. More than 20 county boards of elections have stated that they do not contend that the handwritten date is material in determining whether a mail ballot voter is qualified to vote in the election in which they have cast a ballot. APP\_00010 (Adams Interrog. Resp.); APP\_00031-32 (Allegheny Interrog. Resp.); APP\_00100 (Blair Interrog. Resp.); APP\_00118 (Bucks Interrog. Resp.); APP\_00142 (Cambria Interrog. Resp.); APP\_00174 (Chester Interrog. Resp.); APP\_00220 (Clinton Interrog. Resp.); APP\_00271 (Delaware Interrog. Resp.); APP\_00295 (Erie Interrog. Resp.); APP\_00312 (Fayette Interrog. Resp.); APP\_00324 (Forest Interrog. Resp.); APP\_00364 (Juniata Interrog. Resp.); APP\_00392 (Lancaster Interrog. Resp.); APP\_00404 (Lehigh Interrog. Resp.); APP\_00456 (McKean Interrog. Resp.); APP\_00483 (Montgomery Interrog. Resp.); APP\_00535 (Philadelphia Interrog. Resp.); APP\_00602 (Somerset Interrog. Resp.); APP\_00612 (Sullivan Interrog. Resp.); APP\_00637 (Union Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted in part. Denied in that Montgomery County merely objected "because [its] opinion ... as to the materiality of the date provision is not relevant to the litigation." Ex. 30 at APP\_00483. Accordingly, Plaintiffs' assertion here should be construed narrowly, and not to suggest that Montgomery County affirmatively declared that compliance with the date requirement is immaterial in determining whether a mail ballot voter is qualified to vote.**

58. An additional ten counties have taken no position on this contention. APP\_00043 (Armstrong Interrog. Resp.); APP\_00066 (Beaver Interrog. Resp.); APP\_00187 (Clarion Interrog. Resp.); APP\_00240 (Crawford Interrog. Resp.); APP\_00256 (Cumberland Interrog. Resp.);

APP\_00357 (Greene Interrog. Resp.); APP\_00462 (Mercer Interrog. Resp.); APP\_00472 (Mifflin Interrog. Resp.); APP\_00631 (Tioga Interrog. Resp.); APP\_00716 (Wyoming Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted in part. Denied to the extent that Mercer County stated only that it "take[s] no position on the efficacy" of the Pennsylvania Supreme Court's and the General Assembly's decisions. Ex. 27 at APP\_00462 (emphasis added).**

59. Of those county boards of elections that identified any purported use for the voter-written date in their discovery responses, 30 counties identified that the only reason for looking at this date was to ensure compliance with the Election Code and the Supreme Court of Pennsylvania's Ball decision. APP\_00080 (Berks Interrog. Resp.); APP\_00110 (Bradford Interrog. Resp.); APP\_00153 (Cameron Interrog. Resp.); APP\_00339 (Franklin Interrog. Resp.); APP\_00348 (Fulton Interrog. Resp.), APP\_00376 (Lackawanna Interrog. Resp.); APP\_00418 (Luzerne Interrog. Resp.); APP\_00499 (Northampton Interrog. Resp.); APP\_00514 (Perry Interrog. Resp.); APP\_00579 (Potter Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00672 (Washington Interrog. Resp.); APP\_00693 (Wayne Interrog. Resp.); APP\_00709 (Westmoreland Interrog. Resp.); APP\_00740 (Babst Calland Interrog. Resp.); *see also* APP\_00817, APP\_00820-821 (Berks Dep.); APP\_00863-865 (Lancaster Dep.); APP\_00914-916 (Westmoreland Dep.).

**Intervenor-Defendants' Response: Denied. Plaintiffs apparently refer to the counties' responses to Interrogatory #14, which asked: "Do You contend that the handwritten date is material in determining whether a mail ballot voter is qualified to vote in the election in which they have cast a ballot? If so, what is the basis for that contention?" See, e.g., Ex. 31 at APP\_00499. Accordingly, whether there is *any reason at all* to look at the handwritten date is beyond the scope of what the counties were asked in this interrogatory, which only asked whether the handwritten date was narrowly material to voter qualification.**

60. The only other purported use for the voter-written date identified in discovery by any county is that considering the date written on a voter declaration might aid in prosecution of



voter fraud relating to deceased voters. No county mentioned this use of the voter-written date in their interrogatory responses, but both Lancaster County and Westmoreland County addressed it when deposed. APP\_00910-915 (Westmoreland Dep.); APP\_00888-892 (Lancaster Dep.).

**Intervenor-Defendants' Response: Admitted.**

61. If a county board of elections learns that a registered voter died before 8:00 P.M. on Election Day, the board of elections removes the deceased person from the voter rolls. 25 P.S. § 3146.8(d); APP\_01191 (Greenburg Report); APP\_01016-1019, APP\_01026-1029 (Greenburg Dep.); APP\_00888-892, APP\_00895-896 (Lancaster Dep.).

**Intervenor-Defendants' Response: Admitted.**

62. County boards of elections determine whether a voter died before 8:00 P.M. on Election Day by reviewing Department of Health records, local obituaries, and/or death certificates. APP\_00895-896 (Lancaster Dep.); APP\_00911-912 (Westmoreland Dep.); APP\_01032 (Greenburg Dep.).

**Intervenor-Defendants' Response: Admitted.**

63. If a county board of elections learns that a registered voter died before 8:00 P.M. on Election Day, the county board of elections will not count that person's vote, even if the vote was timely submitted before the voter's death. APP\_00818 (Berks Dep.); APP\_00890-891 (Lancaster Dep.); APP\_00911-914 (Westmoreland Dep.); APP\_01016-1019, APP\_01026-1029 (Greenburg Dep.).

**Intervenor-Defendants' Response: Admitted.**

64. If a county board of elections learns that a registered voter died before 8:00 P.M. on Election Day, the county board of elections will not count that person's vote, regardless of what if any handwritten date appears on the outer return envelope of the deceased voter's ballot. 25 P.S.

§ 3146.8(d); APP\_00819 (Berks Dep.); APP\_00890-891 (Lancaster Dep.); APP\_00914 (Westmoreland Dep.); APP\_01016-1019, APP\_01026-1029 (Greenburg Dep.).

**Intervenor-Defendants' Response: Admitted.**

- a. For example, the Beaver County Board of Elections set aside the ballot of a deceased voter who also happened to write the date on the wrong line of their return envelope. On the return envelope, an elections official wrote "Voter passed away[,] DOH notification 11/3/22[,] moot on date."  
APP\_01485.

**Intervenor-Defendants' Response: Admitted.**

**V. Defendants' Arbitrary and Inconsistent Applications of the Date Requirement**

**Intervenor-Defendants' Response: Denied to the extent Defendants are stating a legal conclusion as to defendant county boards' practices.**

**A. Missing or incorrect year**

65. A voter whose mail ballot was timely received by their county board of elections could only have signed the voter declaration form in the year 2022, because the county boards of elections did not begin sending the relevant mail ballot materials to voters until August 2022 or later (*see supra* ¶ TK), and the ballots must have been received by November 8, 2022 to be considered timely. APP\_00835-81 (Berks Dep.); APP\_00878-879, APP\_00884-885 (Lancaster Dep.); APP\_00923-924, APP\_00929g, APP\_00929l-929q (Westmoreland Dep.).

**Intervenor-Defendants' Response: Admitted.**

*i. Past year*

66. At least 530 voters' ballots were set aside because their handwritten date included a year earlier than 2022. APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants' Response: Admitted.**

67. Of those voters whose ballots were set aside for writing a past year, at least 474 voters wrote a day and month within the Supreme Court of Pennsylvania's date range, but wrote a past year (*e.g.*, 2020 or 2021). APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants' Response: Admitted.**

- a. For example, one voter whose ballot was set aside wrote "October 15, 2020" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/17/22." APP\_01466.

**Intervenor-Defendants' Response: Admitted.**

- b. Another voter whose ballot was set aside wrote "10/31/21" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "11/02/22." APP\_01467.

**Intervenor-Defendants' Response: Admitted.**

- c. Another voter whose ballot was set aside wrote "11-06-2021" on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on "NOV 08 2022." APP\_01468.

**Intervenor-Defendants' Response: Admitted.**

- d. Another voter whose ballot was set aside wrote "10/7/1922" on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on "2022 OCT 12." APP\_01469.

**Intervenor-Defendants' Response: Admitted.**

- e. Another voter whose ballot was set aside wrote "Oct. 18, 2012" on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on "2022 OCT 20." APP\_01470.

**Intervenor-Defendants' Response: Admitted.**

- f. Another voter whose ballot was set aside wrote “10-26-2002” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “2022 OCT 31.” APP\_01471.

**Intervenor-Defendants' Response: Admitted.**

- g. Another voter whose ballot was set aside wrote “October 26, 2002” on the date line. APP\_01472.

**Intervenor-Defendants' Response: Admitted.**

- h. Another voter whose ballot was set aside wrote “11-2-2002” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/27/22.” APP\_01473.

**Intervenor-Defendants' Response: Denied in part. The stamp on the envelope indicated that the ballot was processed by the county board of elections on “2022 Nov-6.” Ex. 52 at APP\_01473.**

68. Of those voters whose ballots were set aside for writing a past year, at least 50 voters wrote their birth date instead of the date they signed the declaration. APP\_01494-1496, APP\_01572 (Tetro Decl.).<sup>10</sup> See, e.g., APP\_01474-1484 (11 envelopes with examples of this pattern).

**Intervenor-Defendants' Response: Admitted.**

- a. For example, one voter whose ballot was set aside wrote “9/25/22” on the date line—the date five days before the ballot was date stamped by the county board of elections on “09/30/2022”—but then crossed out that date

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<sup>10</sup> This total reflects only those birth dates that Plaintiffs could confirm via the lists of voter date of birth that certain counties produced. Additional ballots in other counties looked like possible birth dates, but those counties did not produce complete dates of birth against which Plaintiffs could compare the envelopes. APP\_01494-1496, APP\_01572 (Tetro Decl.).

(“~~9/25/22~~”) and wrote his date of birth beneath it. APP\_01474; APP\_01365  
(Dauphin voter list).

**Intervenor-Defendants’ Response: Admitted.**

69. Conversely, at least one county board of elections—Montgomery—ultimately decided to count ballots if they determined the voter had written their birth date instead of the date they signed the declaration on the outer return envelope. APP\_01286-1289.

**Intervenor-Defendants’ Response: Admitted that the minutes from Montgomery County Board of Elections’s meeting indicated that they would count ballots if they determined the voter had written their birth date instead of the date they signed the declaration on the outer return envelope. However, Intervenor-Defendants’ note that—as Plaintiffs observed above—Montgomery County indicated in its response to Request for Admissions that it “followed the Orders of the Pennsylvania Supreme Court.” Ex. 29 at APP\_00477; see supra Response to ¶ 39.**

*ii. Future year*

70. At least 228 voters’ ballots were set aside because their handwritten date included a year later than 2022 (e.g., “2023” or “2202”). APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants’ Response: Admitted.**

a. For example, one voter whose ballot was set aside wrote “11/3/2023” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/07/22.” APP\_01423.

**Intervenor-Defendants’ Response: Admitted.**

b. Another voter whose ballot was set aside wrote “November 7 2023” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/08/22.” APP\_01424.

**Intervenor-Defendants’ Response: Admitted.**

- c. Another voter whose ballot was set aside wrote “11/03/2023” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “2022 NOV 04.” APP\_01425.

**Intervenor-Defendants’ Response: Admitted.**

- d. Another voter whose ballot was set aside wrote “10/12/2222” on the date line. APP\_01426.

**Intervenor-Defendants’ Response: Admitted.**

- e. Another voter whose ballot was set aside wrote “10/22/2122” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/25/22.” APP\_01427.

**Intervenor-Defendants’ Response: Admitted.**

- f. Another voter whose ballot was set aside wrote “10-17-2200” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/29/22.” APP\_01428.

**Intervenor-Defendants’ Response: Denied in part. The stamp on the envelope indicates the ballot was processed by the county board of elections on “10/19/22.” Ex. 56 at APP\_01428.**

- g. Another voter whose ballot was set aside wrote “10/21/31” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/27/22.” APP\_01429.

**Intervenor-Defendants’ Response: Admitted.**

- h. Another voter whose ballot was set aside wrote “10-20-2202” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/23/22.” APP\_01430.

**Intervenor-Defendants' Response: Admitted.**

- i. Another voter whose ballot was set aside wrote "10/24/2024" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/25/22." APP\_01431.

**Intervenor-Defendants' Response: Admitted.**

- j. Another voter whose ballot was set aside wrote "10-23-2033" on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on "2022 OCT 25." APP\_01432.

**Intervenor-Defendants' Response: Admitted.**

*iii. Omitted year*

71. At least 60 voters' ballots were set aside because they wrote a handwritten date that was between September 19 and November 8, but omitted the year. APP\_01494-1496, APP\_01572 (Tetro Decl.); *see also* APP\_01153 (meeting minutes reflecting that Luzerne Board voted to reject ballots dated "10/26" and "Oct 2nd").

**Intervenor-Defendants' Response: Admitted.**

- a. For example, one voter whose ballot was set aside wrote "October 8" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/13/22." APP\_01446.

**Intervenor-Defendants' Response: Admitted.**

- b. Another voter whose ballot was set aside wrote "Wednesday Oct. 26" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/31/22." APP\_01447.

**Intervenor-Defendants' Response: Admitted.**

- c. Another voter whose ballot was set aside wrote “11/2” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/04/22.” APP\_01448.

**Intervenor-Defendants’ Response: Admitted.**

- d. Another voter whose ballot was set aside wrote “Thu. Oct. 6” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/11/22.” APP\_01449.

**Intervenor-Defendants’ Response: Admitted.**

- e. Another voter whose ballot was set aside wrote “Thursday October 6” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/11/22.” APP\_01450.

**Intervenor-Defendants’ Response: Admitted.**

- f. Another voter whose ballot was set aside wrote “Oct. 25” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/31/22.” APP\_01451.

**Intervenor-Defendants’ Response: Admitted.**

- g. Another voter whose ballot was set aside wrote “Nov. 2<sup>nd</sup>” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/03/22.” APP\_01452.

**Intervenor-Defendants’ Response: Admitted.**

- h. Another voter whose ballot was set aside wrote “10/15” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/18/22.” APP\_01453.



**Intervenor-Defendants' Response: Admitted.**

- i. Another voter whose ballot was set aside wrote "10/04" on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on "2022 OCT 7." APP\_01454.

**Intervenor-Defendants' Response: Admitted.**

72. Conversely, at least three county boards of elections—Blair, Fayette, and Montgomery—ultimately decided to count ballots with "partial dates" if the "information in the date line [wa]s sufficient to determine that the ballot was returned within the appropriate date range." APP\_01286-1289 (Montgomery County voted to count ballots with "partial dates" if the "information in the date line [wa]s sufficient to determine that the ballot was returned within the appropriate date range"); *see also* APP\_01177 (Blair County's "canvassing board instructions" includes a list of "VALID DATING FORMATS," which includes month and day without a year); APP\_01161 (meeting minutes reflecting that Fayette Board voted to count ballots dated "Friday November 4th, no year" and "November 3rd, no year").

**Intervenor-Defendants' Response: Admitted.**

**B. Missing or incorrect month**

73. A voter whose mail ballot was timely received by 8:00 P.M. on November 8, 2022 could only have signed the voter declaration form in the time period between the date that their county boards of elections sent mail ballot packages to voters and Election Day. APP\_00878-879 (Lancaster Dep.); APP\_00929g-929j, APP\_00929o- 929p (Westmoreland Dep.).

**Intervenor-Defendants' Response: Admitted.**

74. At least 605 voters' timely-received ballots were set aside because their handwritten date included an incorrect month that indicated that they signed their ballot earlier than September 19, 2022. APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants' Response: Admitted.**

- a. For example, one voter whose ballot was set aside wrote "9/13/22" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/14/22." APP\_01455.

**Intervenor-Defendants' Response: Admitted.**

- b. Another voter whose ballot was set aside wrote "9-17-2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/18/22." APP\_01456.

**Intervenor-Defendants' Response: Admitted.**

- c. Another voter whose ballot was set aside wrote "09/14/2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/17/22." APP\_01457.

**Intervenor-Defendants' Response: Admitted.**

- d. Another voter whose ballot was set aside wrote "9/14/2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/16/22." APP\_01458.

**Intervenor-Defendants' Response: Admitted.**

- e. Another voter whose ballot was set aside wrote "9-13-2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/20/22." APP\_01459.

**Intervenor-Defendants' Response: Admitted.**

- f. Another voter whose ballot was set aside wrote “9/14/2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/16/22.” APP\_01460.

**Intervenor-Defendants’ Response: Admitted.**

- g. Another voter whose ballot was set aside wrote “Sept 12, 2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10 16 22.” APP\_01461.

**Intervenor-Defendants’ Response: Admitted.**

- h. Another voter whose ballot was set aside wrote “9/11/2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/16/22.” APP\_01462.

**Intervenor-Defendants’ Response: Admitted.**

- i. Another voter whose ballot was set aside wrote “9/17/22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/18/22.” APP\_01463.

**Intervenor-Defendants’ Response: Admitted.**

- j. Another voter whose ballot was set aside wrote “Sept. 10, 2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/14/22.” APP\_01464.

**Intervenor-Defendants’ Response: Admitted.**

- k. Another voter whose ballot was set aside wrote “9-6-2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/07/22.” APP\_01465.

**Intervenor-Defendants' Response: Admitted.**

75. At least 427 voters' ballots were set aside because their handwritten date included an incorrect month that indicated that they signed their ballot after November 8, 2022 (e.g., "11/28/22"). APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants' Response: Admitted.**

- a. For example, one voter whose ballot was set aside wrote "11/23/2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/25/22." APP\_01414.

**Intervenor-Defendants' Response: Admitted.**

- b. Another voter whose ballot was set aside wrote "11/27/2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/31/22." APP\_01415.

**Intervenor-Defendants' Response: Admitted.**

- c. Another voter whose ballot was set aside wrote "11/12/2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/15/22." APP\_01416.

**Intervenor-Defendants' Response: Admitted.**

- d. Another voter whose ballot was set aside wrote "11/19/2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/24/22." APP\_01417.

**Intervenor-Defendants' Response: Admitted.**

- e. Another voter whose ballot was set aside wrote “11-13-2022” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 13.” APP\_01418.

**Intervenor-Defendants’ Response: Admitted.**

- f. Another voter whose ballot was set aside wrote “11-23-2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/26/22.” APP\_01419.

**Intervenor-Defendants’ Response: Admitted.**

- g. Another voter whose ballot was set aside wrote “11/14/22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10-17.” APP\_01420.

**Intervenor-Defendants’ Response: Admitted.**

- h. Another voter whose ballot was set aside wrote “11-25-22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/27/2022.” APP\_01421.

**Intervenor-Defendants’ Response: Admitted.**

- i. Another voter whose ballot was set aside wrote “11-17-2022” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 20.” APP\_01422.

**Intervenor-Defendants’ Response: Admitted.**

76. At least three voters’ ballots were set aside because their handwritten date omitted the month. APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants’ Response: Admitted in part. Denied in part to the extent that Plaintiffs’ count includes their example in ¶ 76(a), *supra*.**

- a. For example, one voter whose ballot was set aside wrote “Friday 7 2022” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 12.” APP\_01443.

**Intervenor-Defendants’ Response: Denied. The date referred to was written in the voter assistance portion of the declaration. There was no date in the date line for voters who did not receive assistance. Ex. 51 at APP\_01443.**

- b. Another voter whose ballot was set aside wrote “20/2022” on the date line. APP\_01444.

**Intervenor-Defendants’ Response: Admitted.**

- c. Another voter whose ballot was set aside wrote “14/2022” on the date line. APP\_01445.

**Intervenor-Defendants’ Response: Admitted.**

**C. Missing or incorrect day**

77. At least four voters’ ballots were set aside because their handwritten date included a day that does not exist. APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants’ Response: Admitted.**

- a. For example, one voter whose ballot was set aside wrote “10/111/22” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 13.” APP\_01486.

**Intervenor-Defendants’ Response: Admitted.**

- b. Another voter whose ballot was set aside wrote “11/0/22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/02/22.” APP\_01487.

**Intervenor-Defendants’ Response: Admitted.**

- c. Another voter whose ballot was set aside wrote “09/31/22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/06/22.” APP\_01488.

**Intervenor-Defendants’ Response: Admitted.**

78. Conversely, Luzerne County voted to *count* a ballot dated “09/31/22.” APP\_01153 (Luzerne meeting minutes).

**Intervenor-Defendants’ Response: Admitted.**

79. A voter could not have signed the voter declaration form on the outer return envelope on a date that does not exist.

**Intervenor-Defendants’ Response: Admitted.**

80. At least 40 voters’ ballots with a handwritten date that omitted the day were set aside. APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants’ Response: Admitted.**

- a. The majority of these 29 ballots indicated “10,” “Oct,” or “October” for the month, with the remaining indicating “11,” “Nov,” or “November” for the month. APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants’ Response: Intervenor-Defendants cannot admit or deny this statement, because Plaintiffs do not explain their reference to “29 ballots.”**

- b. All 29 of these ballots indicated 2022 for the year. APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants’ Response: Intervenor-Defendants cannot admit or deny this statement, because Plaintiffs do not explain their reference to “29” ballots.**

- c. For example, one voter whose ballot was set aside wrote “10- -22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “OCT 28 2022.” APP\_01436.

**Intervenor-Defendants’ Response: Admitted.**

- d. Another voter whose ballot was set aside wrote “10- -2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/28/2022.” APP\_01437.

**Intervenor-Defendants’ Response: Admitted.**

- e. Another voter whose ballot was set aside wrote “10- -2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/19/2022.” APP\_01438.

**Intervenor-Defendants’ Response: Admitted.**

- f. Another voter whose ballot was set aside wrote “10/ /2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/11/22.” APP\_01439.

**Intervenor-Defendants’ Response: Admitted.**

- g. Another voter whose ballot was set aside wrote “10- -2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “OCT 11 2022.” An election official wrote a note on the envelope that reads: “Left message 11/3/22. . . can’t come in to fix 11/4/22.” APP\_01440.

**Intervenor-Defendants’ Response: Admitted.**



- h. Another voter whose ballot was set aside wrote “10/ /2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/31/22.” APP\_01441.

**Intervenor-Defendants’ Response: Admitted.**

- i. Another voter whose ballot was set aside wrote “10- -22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/11/22.” APP\_01442.

**Intervenor-Defendants’ Response: Admitted.**

81. Conversely, at least two county board of elections—Bucks and Fayette—voted unanimously to count a mail ballot “dated October 2022 with no day listed,” because the board was “able to ascertain what day the ballot was mailed and what day it was received,” and the “entire month of October is included in the date range in the [Pennsylvania Supreme] Court’s Order.” APP\_01157 (Bucks meeting minutes); *see also* APP\_01161 (Fayette Board voted to count ballot dated “10-no day -2022”).

**Intervenor-Defendants’ Response: Admitted.**

82. Any day within October 2022 would have been within the range provided by the Supreme Court’s supplemental order in *Ball v. Chapman*. APP\_01150-1151.

**Intervenor-Defendants’ Response: Admitted.**

**D. Wrong line**

83. At least twelve ballots were set aside for having a missing or incorrect date on the voter declaration form, even though the voter had written a date that was within the Supreme Court of Pennsylvania’s date range elsewhere on the outer return envelope. APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants’ Response: Admitted.**

- a. For example, one voter whose ballot was set aside wrote “Nov 4, 2022” *underneath* the date line instead of on it. APP\_01489.

**Intervenor-Defendants’ Response: Admitted.**

- b. Another voter whose ballot was set aside wrote their name on the “Today’s Date (Required)” line of the voter declaration, and wrote “10-24-2022” on a different “Today’s Date” line intended for voters who were unable to sign their declaration because of illness or physical disability. APP\_01490.

**Intervenor-Defendants’ Response: Admitted.**

- c. Another voter whose ballot was set aside wrote “10-15-22” in a box beneath the date line that is intended for county election use only, rather than on the date line. APP\_01491.

**Intervenor-Defendants’ Response: Admitted.**

**E. “Election Day” as “Today’s Date”**

84. At least 16 ballots were set aside because the voter wrote November 8, 2022 (Election Day) as “Today’s Date” instead of writing the (earlier-in-time) date that they signed the voter declaration form. APP\_01494-1496, APP\_01572 (Tetro Decl.).

**Intervenor-Defendants’ Response: Admitted.**

- a. For example, one voter whose ballot was set aside wrote “10-12-22” on the date line—the same date the ballot was date stamped “2022 OCT 12” by the county board of elections—but then crossed out that date (“~~10-12-22~~”) and wrote “11-8-22” beneath it, accompanied by their initials. APP\_01407.

**Intervenor-Defendants’ Response: Admitted.**

85. Election Day was within the Supreme Court of Pennsylvania’s date range. APP\_01150-1151.

**Intervenor-Defendants' Response: Admitted.****F. International dating convention**

86. 18 county boards of elections determined whether the date written on the outer envelope was within the “correct” date range based on only the American dating convention of writing the month, then day, then year (MM/DD/YYYY), and set aside ballots if the voter used a European dating convention of writing the day, then month, then year (*e.g.*, if a voter wrote 1/11/2022 to indicate November 1, 2022). APP\_00039 (Armstrong RFA Resp.); APP\_00051 (Beaver RFA Resp.); APP\_00213 (Clinton RFA Resp.); APP\_00106 (Bradford RFA Resp.); APP\_00277 (Elk RFA Resp.); APP\_00283 (Erie RFA Resp.); APP\_00319 (Forest RFA Resp.); APP\_00331 (Franklin RFA Resp.); APP\_00353 (Greene RFA Resp.); APP\_00369 (Lackawanna RFA Resp.); APP\_00412 (Luzerne RFA Resp.); APP\_00451 (McKean RFA Resp.); APP\_00467 (Mifflin RFA Resp.); APP\_00506 (Perry RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00594 (Somerset RFA Resp.); APP\_00682 (Wayne RFA Resp.); *see also* APP\_00877a, APP\_00882-883 (Lancaster Dep.).

**Intervenor-Defendants' Response: Admitted. However, Intervenor-Defendants note that ballot declarations sometimes specify that the date should be given in “MM/DD/YYYY” form. *See, e.g.*, Ex. 49 at APP\_01426; Ex. 57 at LCBOE0083.**

87. Conversely, at least 31 other counties tried to account for both the American and International dating conventions in determining whether the outer return envelope had been correctly dated. APP\_00023, APP\_00024 (Allegheny RFA Resp.); APP\_00074 (Berks RFA Resp.); APP\_00114 (Bucks RFA Resp.); APP\_00127, APP\_00128 (Butler RFA Resp.); APP\_00195 (Clearfield RFA Resp.); APP\_00227 (Crawford RFA Resp.); APP\_00249 (Cumberland RFA Resp.); APP\_00263 (Delaware RFA Resp.); APP\_00305 (Fayette RFA Resp.); APP\_00348 (Fulton RFA Resp.); APP\_00398, APP\_00399 (Lehigh RFA Resp.); APP\_00432 (Lycoming RFA Resp.); APP\_00492 (Northampton RFA Resp.); APP\_00700 (Westmoreland

RFA Resp.); APP\_00728-729 (Babst Calland RFA Resp.); *see also* APP\_01146 (citizen comment at Oct. 20, 2022 Berks Board meeting, asking “whether the Election office is checking dates on ballots that may be flipped citing that some people’s country of origin may write a date differently”); APP\_01177 (Blair County’s “canvassing board instructions” includes a list of “VALID DATING FORMATS,” which includes day-month-year).

**Intervenor-Defendants’ Response: Admitted.**

88. At least 34 ballots were set aside for having “incorrect” dates, even though the handwritten date on the outer return envelope could be read as within the Supreme Court of Pennsylvania’s date range, assuming the voter used the International dating convention (DD-MM-YYYY, rather than MM-DD-YYYY APP\_01494-1496, APP\_01572 (Tetro Decl.); APP\_00841-843 (Berks Dep.); APP\_00929k-n (Westmoreland Dep.).

**Intervenor-Defendants’ Response: Admitted.**

- a. For example, one voter whose ballot was set aside wrote “1/11/22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/02/22.” APP\_01408.

**Intervenor-Defendants’ Response: Admitted.**

- b. Another voter whose ballot was set aside wrote “3-10-2022” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 5.” APP\_01409.

**Intervenor-Defendants’ Response: Admitted.**

- c. Another voter whose ballot was set aside wrote “4-10-22” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT-6.” APP\_01410.

**Intervenor-Defendants' Response: Admitted.**

- d. Another voter whose ballot was set aside wrote "06/10/2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/13/22." APP\_01411.

**Intervenor-Defendants' Response: Admitted.**

- e. Another voter whose ballot was set aside wrote "06-10-2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/07/22." APP\_01412.

**Intervenor-Defendants' Response: Admitted.**

- f. Another voter whose ballot was set aside wrote "5/11/2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "11/06/22." APP\_01413.

**Intervenor-Defendants' Response: Admitted.**

**G. Adherence to date range in *Ball* supplemental order**

89. The Supreme Court of Pennsylvania's supplemental order in *Ball v. Chapman* defined "incorrectly dated outer envelopes" to mean "mail-in ballot outer envelopes with dates that fall outside the date range of September 19, 2022, through November 8, 2022," and "absentee ballot outer envelopes with dates that fall outside the date range of August 30, 2022, through November 8, 2022." APP\_01150-1151.

**Intervenor-Defendants' Response: Admitted.**

90. At least 17 counties set aside and did not count mail-in or absentee ballot envelopes that bore a handwritten date *within* the court's prescribed date range (September 19-November 8) if that handwritten date was before the county started sending out mail ballots. For example, because Westmoreland County did not begin sending mail ballots to voters until September 30,

2022, it would not have counted mail ballots that were dated within the *Ball* date range if the handwritten date on the outer return envelope was between September 19 and September 29, 2022. APP\_921a-921c (Westmoreland Dep.). *See also* APP\_00141 (Cambria Interrog. Resp.); APP\_00150 (Cameron Interrog. Resp.); APP\_00185 (Clarion Interrog. Resp.); APP\_00234 (Crawford Interrog. Resp.); APP\_00321 (Forest Interrog. Resp.); APP\_00336 (Franklin Interrog. Resp.); APP\_00347 (Fulton Interrog. Resp.); APP\_00363 (Juniata Interrog. Resp.); APP\_00454 (McKean Interrog. Resp.); APP\_00469 (Mifflin Interrog. Resp.); APP\_00575 (Potter Interrog. Resp.); APP\_00610 (Sullivan Interrog. Resp.); APP\_00619-620 (Susquehanna Interrog. Resp.); APP\_00629-630 (Tioga Interrog. Resp.); APP\_00635 (Union Interrog. Resp.); APP\_00646 (Warren Interrog. Resp.); APP\_00706 (Westmoreland Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted in part. Denied to the extent that Plaintiffs are suggesting Susquehanna County set aside and did not count any mail-in or absentee ballots. In fact, Susquehanna County received no such ballots. Ex. 37 at APP\_00619.**

91. At least 25 other counties followed the date range in the Supreme Court of Pennsylvania's supplemental order in *Ball v. Chapman*, even where the handwritten date on the mail-in or absentee ballot envelope was "incorrect" inasmuch as it occurred before the counties sent 2022 general election mail ballot materials to voters, or after the date that the voter's ballot was received by their county board of elections. APP\_00826-828 (Berks Dep.); APP\_00872-873 (Lancaster Dep.); APP\_00027-28 (Allegheny Interrog. Resp.); APP\_00062 (Beaver Interrog. Resp.); APP\_00078 (Berks Interrog. Resp.); APP\_00097 (Blair Interrog. Resp.); APP\_00204 (Clearfield Interrog. Resp.); APP\_00268 (Delaware Interrog. Resp.); APP\_00292, APP\_00293 (Erie Interrog. Resp.); APP\_00417 (Luzerne Interrog. Resp.); APP\_00530- 531 (Philadelphia Interrog. Resp.); APP\_00733-34 (Babst Calland Resp.); *see also* APP\_01159 (Fayette meeting minutes).

**Intervenor-Defendants’ Response: Admitted in part. Denied in part because Luzerne County responded that it did not know whether it counted such absentee ballot envelopes. Ex. 25 at APP\_00417. Also, Philadelphia County responded that it counted all absentee ballots whose envelopes were dated September 19, 2022, through November 8, 2022. Ex. 33 at APP\_00531. In fact, the Pennsylvania Supreme Court’s range for absentee ballots was August 30, 2022, through November 8, 2022. Ex. 46 at APP\_01151. To the extent Philadelphia County rejected absentee ballots that were correctly dated between August 30, 2022, and September 19, 2022, it did not “follow[] the date range” in the supplemental order.**

92. For example, Berks County counted ballots if the handwritten date on the outer return envelope was September 20, 2022, even though it did not begin sending mail ballots to voters until October 7, 2022. APP\_00826-829, APP\_00831 (Berks Dep.).

**Intervenor-Defendants’ Response: Admitted.**

93. Likewise, Lancaster County counted ballots if the handwritten date on the outer return envelope was September 20, 2022, even though it did not begin sending mail ballots to voters until September 26, 2022. APP\_00872-873 (Lancaster Dep.).

**Intervenor-Defendants’ Response: Admitted.**

94. At least one county—Fayette—counted ballots where the voter had written an envelope date that was after the date that the board of elections had already received and time-stamped the package. APP\_01159 (Fayette Board voted to count all ballots that fell within the Supreme Court of Pennsylvania’s date range, including “incorrectly dated ballots within the date range of September 19, 2022, through November 8, 2022”).

**Intervenor-Defendants’ Response: Admitted.**

95. Other counties did not count ballots where the voter had written an envelope date that was after the date that the board of elections had already received and time-stamped the package, even if the voter’s handwritten date was within the Supreme Court of Pennsylvania’s date range.

**Intervenor-Defendants' Response: Intervenor-Defendants can neither admit nor deny this statement, because it is unclear to what record evidence, if any, Plaintiffs are referring.**

96. At least two counties took different approaches to mail-in and absentee ballots. The county boards of elections in both Elk and Somerset County counted absentee ballots if the outer return envelope contained any date within the full *Ball* date range (*i.e.*, even before the board had sent the ballot materials to voters), but counted mail-in ballots only if the handwritten date was *after* the date on which the board had sent out the ballot materials. APP\_00279 (Elk Interrog. Resp.); APP\_00599 (Somerset Interrog. Resp.).

**Intervenor-Defendants' Response: Denied.** Elk County responded that it only counted military/overseas ballots that were dated before it sent out the ballot materials. Ex. 15 at APP\_00279. Somerset County did not say that it counted absentee ballots if the outer return envelope contained any date within the full *Ball* date range. Ex. 36 at APP\_00599. Rather, Somerset County said only that it counted absentee ballots from voters who received their ballots earlier than the mailing date because they requested it from the county. *Id.* at APP\_00599.

**H. Date appears correct**

97. At least 47 ballots were set aside for having “incorrect” dates, even though the voter included a handwritten date on the outer return envelope that appeared correct and was within the Supreme Court of Pennsylvania’s date range. APP\_01494-1496, APP\_01572 (Tetro Decl.); *see also, e.g.*, APP\_00844 (Berks Dep.).

**Intervenor-Defendants' Response: Admitted.**

- a. For example, one voter whose ballot was set aside wrote “10/17/2020” on the date line, then crossed out the year (“2020”), and wrote the year “2022” beneath it. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 19.” APP\_01402.

**Intervenor-Defendants' Response: Admitted.**



- b. Another voter whose ballot was set aside wrote “10/23/2023” on the date line, then crossed out the last digit of the year and wrote a 2 next to it on the date line (“20232”), and wrote their initials beneath the crossed-out digit. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/26/22.” APP\_01403.

**Intervenor-Defendants’ Response: Admitted.**

- c. Another voter whose ballot was set aside wrote the date “9-8-22,” then crossed out that date (“~~9-8-22~~”) and wrote “10-8-22” next to it. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 13.” APP\_01404.

**Intervenor-Defendants’ Response: Admitted.**

- d. Another voter whose ballot was set aside wrote “10/14/2023” on the date line, then crossed that date out (“~~10/14/2023~~”), and wrote the date “10/14/2022” next to it on the date line. The postmark on that ballot reads: “14 OCT 2022.” APP\_01405.

**Intervenor-Defendants’ Response: Admitted.**

- e. Another voter whose ballot was set aside wrote “10/4/21” on the date line, then crossed out the year (“~~21~~”), and wrote the year “22” next to it on the date line, along with their initials. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 5.” APP\_01406.

**Intervenor-Defendants’ Response: Admitted.**

**VI. UNEQUAL TREATMENT AS COMPARED TO MILITARY/OVERSEAS BALLOTS**

98. The Secretary of State provides envelope templates that prescribe the form of the envelopes that county boards of elections must use for mail and absentee ballots. APP\_00963-964 (Marks Dep.).

**Intervenor-Defendants' Response: Admitted.**

99. The templates for both the mail ballot and the absentee ballot include a voter declaration form that the voter must sign and date on the return envelope that contains the voter's secrecy envelope and ballot. APP\_00966-973 (Marks Dep.).

**Intervenor-Defendants' Response: Admitted.**

100. The county boards of elections vary the form and layout of the return envelopes that they submit to voters, but each county's mail ballot materials include an outer return envelope (inside which the voter places their secrecy envelope and, in turn, their ballot) bearing a voter declaration that voters are instructed to sign and date. APP\_00966-973 (Marks Dep.); *see, e.g.*, APP\_01290 (Berks mail ballot envelope).

**Intervenor-Defendants' Response: Admitted.**

101. Each county's absentee ballot materials also include a voter declaration that voters are instructed to sign and date. APP\_00966-973 (Marks Dep.); APP\_00933-936 (Westmoreland Dep.). When UOCAVA voters request a paper ballot from their county board of elections (rather than opting to submit their ballot electronically), that declaration appears on the envelope containing the voter's secrecy envelope and ballot. APP\_00933-936 (Westmoreland Dep.); *see, e.g.*, APP\_01291 (Bucks military-overseas ballot envelope).

**Intervenor-Defendants' Response: Admitted.**

102. The instructions that Berks County provided to domestic voters submitting mail ballots in the November 2022 general election told the voters to “Sign and date the pre-addressed return envelope,” and told voters that “YOUR BALLOT WILL NOT COUNT IF IT IS NOT SIGNED AND DATED.” APP\_01170.

**Intervenor-Defendants’ Response: Admitted, except that Plaintiffs misquote Berks County’s instructions. The actual quote is: “Sign and write today’s date in the Voter’s Declaration section of the pre-addressed return envelope.” Ex. 48 at APP\_01170.**

103. The instructions that Berks County provided to UOCAVA voters submitting absentee ballots in the November 2022 general election told the voters to ““Fill out the absentee elector’s declaration on the back of this envelope with your name and address. Be sure to sign where indicated. Your ballot will not be counted without a signature,” but did not indicate that the ballot would not be counted if the declaration on the return envelope lacked a handwritten date. APP\_01169.

**Intervenor-Defendants’ Response: Admitted in part and denied in part.**

**Denied to the extent that Plaintiffs overlook that the fvap.gov website instructs voters to “[m]ake sure to follow your state instructions when filling out your FWAB.” <https://www.fvap.gov/eo/overview/materials/forms>. See Ex. 61. Also denied to the extent that Plaintiffs overlook that the fvap.gov website’s Pennsylvania guide in its “Hardcopy Instructions” directs voters to “sign and date the ‘Voter Information’ page” “[o]nce your FWAB is complete.” <https://www.fvap.gov/guide/chapter2/pennsylvania>. See Ex. 62.**

**Intervenor-Defendants also note that Plaintiffs misquote Berks County’s instructions. The actual quote is: “Fill out the ‘ABSENTEE ELECTOR’S DECLARATION’ on the back of this envelope with your name and address. Be sure to sign where indicated. Your ballot will not be counted without a signature.” Ex. 47 at APP\_01169.**

104. Berks County did not set aside any absentee ballots submitted by UOCAVA voters in the November 2022 general election on the basis of a missing or incorrect handwritten date on the ballot’s return envelope. APP\_00103 (Berks Dep.); Berks ROG Resp. at 6.

**Intervenor-Defendants’ Response: Admitted. However, Intervenor-Defendants also**

**note that Berks County did not receive *any* military/overseas ballots with missing or incorrect handwritten dates on the ballot’s return envelope. Ex. 4 at APP\_00082, Ex. 43 at 00847.**

105. The envelopes that Westmoreland County provided to domestic voters submitting mail ballots in the November 2022 general election instructed voters that “YOUR BALLOT WILL NOT BE COUNTED UNLESS: You sign and date the voter’s declaration in your own handwriting[.]” APP\_01401.

**Intervenor-Defendants’ Response: Admitted.**

106. The envelopes that Westmoreland County provided to UOCAVA voters did not instruct those voters that their ballots would not be counted if the voter failed to date the voter’s declaration. APP\_01201.

**Intervenor-Defendants’ response: Admitted. However, Intervenor-Defendants note that Plaintiffs overlook that the fvap.gov website instructs voters to “[m]ake sure to follow your state instructions when filling out your FWAB.” <https://www.fvap.gov/eo/overview/materials/forms>. See Ex. 61. Also denied to the extent that Plaintiffs overlook that the fvap.gov website’s Pennsylvania guide in its “Hardcopy Instructions” directs voters to “sign and date the ‘Voter Information’ page” “[o]nce your FWAB is complete.” <https://www.fvap.gov/guide/chapter2/pennsylvania>. See Ex. 62.**

107. Westmoreland County did not set aside any absentee ballots submitted by UOCAVA voters in the November 2022 general election on the basis of a missing or incorrect handwritten date on the ballot’s return envelope. APP\_00936-937 (Westmoreland Dep.); Westmoreland ROG Resp. at 7.

**Intervenor-Defendants’ Response: Admitted. However, Intervenor-Defendants also note that Westmoreland County did not receive *any* military/overseas ballots with missing or incorrect handwritten dates on the ballot’s return envelope. Ex. 40 at APP\_00709, Ex. 44 at 00936-00938.**

108. At least three county boards of elections—Bucks, Philadelphia, and Tioga—counted timely-received military-overseas ballots in the November 2022 general election if the

voter failed to date their voter declaration or included a date that the county deemed to be incorrect. APP\_00118-119 (Bucks Interrog. Resp., Bucks counted 11 ballots with reflecting that undated or misdated declarations); APP\_00535-536 (Philadelphia Interrog. Resp., reflecting that Philadelphia counted 13 ballots with undated or misdated declarations); APP\_00632 (Tioga Interrog. Resp., reflecting that Tioga counted 10 ballots with undated or misdated declarations).

**Intervenor-Defendants' Response: Admitted.**

109. At least one additional county board of elections—Lehigh—did not check the date on the voter declaration for timely-received military-overseas ballots in the November 2022 general election. APP\_00405 (Lehigh Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

110. At least five additional county boards of elections did not segregate or set aside any timely-received military-overseas ballots in the November 2022 general election based on a missing or incorrect date on the voter declaration. APP\_00579 (Potter Interrog. Resp.); APP\_00716 (Wyoming Interrog. Resp.); APP\_00673 (Washington Interrog. Resp.); APP\_00484 (Montgomery Interrog. Resp.); APP\_00499 (Northampton Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted in part and denied in part.**

**Denied to the extent that Plaintiffs characterize Montgomery County as counting undated military/overseas ballots. Montgomery County responded: "Military-overseas ballots were checked to make sure the declarations were complete. If the declarations were complete, the ballot was counted. No military-overseas ballots were set aside for having a missing or incorrect date." Ex. 30 at APP\_00484.**

111. Over half of the county boards of elections—37 in total—indicated that they did not receive any military-overseas ballots in the November 2022 general election that had a missing or incorrect date on the voter declaration, and so they did not have to determine whether to set aside or count such ballots. APP\_00010 (Adams Interrog. Resp.); APP\_00031 (Allegheny

Interrog. Resp.); APP\_00044 (Armstrong Interrog. Resp.); APP\_00066 (Beaver Interrog. Resp.); APP\_00082 (Berks Interrog. Resp.); APP\_00101 (Blair Interrog. Resp.); APP\_00110 (Bradford Interrog. Resp.); APP\_00133 (Butler Interrog. Resp.); APP\_00142 (Cambria Interrog. Resp.); APP\_00153-54 (Cameron Interrog. Resp.); APP\_00206 (Clearfield Interrog. Resp.); APP\_00220 (Clinton Interrog. Resp.); APP\_00240-41 (Crawford Interrog. Resp.); APP\_00256 (Cumberland Interrog. Resp.); APP\_00271 (Delaware Interrog. Resp.); APP\_00279 (Elk Interrog. Resp.); APP\_00296 (Erie Interrog. Resp.); APP\_00313 (Fayette Interrog. Resp.); APP\_00324 (Forest Interrog. Resp.); APP\_00339 (Franklin Interrog. Resp.); APP\_00348 (Fulton Interrog. Resp.); APP\_00357 (Greene Interrog. Resp.); APP\_00377 (Lackawanna Interrog. Resp.); APP\_00421 (Luzerne Interrog. Resp.); APP\_00442 (Lycoming Interrog. Resp.); APP\_00462 (Mercer Interrog. Resp.); APP\_00472 (Mifflin Interrog. Resp.); APP\_00542 (Pike Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00602 (Somerset Interrog. Resp.); APP\_00612 (Sullivan Interrog. Resp.); APP\_00621 (Susquehanna Interrog. Resp.); APP\_00637 (Union Interrog. Resp.); APP\_00649 (Warren Interrog. Resp.); APP\_00692 (Wayne Interrog. Resp.); APP\_00709 (Westmoreland Interrog. Resp.).

**Intervenor-Defendants' Response: Admitted.**

## **VII. RELIEF**

112. County boards of elections are responsible for creating and retaining official records of election results, including a copy of the returns that must be available for public inspection at the county election board's office. APP\_01183 (Greenburg Report); 25 P.S. § 3152.

**Intervenor-Defendants' Response: Admitted.**

113. County boards of elections maintain digital and paper records of the total number of votes received by each candidate in past elections. APP\_00846 (Berks Dep.); APP\_00930-931 (Westmoreland Dep.); APP\_01183 (Greenburg Report).

**Intervenor-Defendants' Response: Admitted.**

114. County boards of elections are capable of updating records of the total number of votes received by each candidate in past elections if ordered to do so by a court. APP\_01183-1184 (Greenburg Report); APP\_00931-932 (Westmoreland Dep.).

**Intervenor-Defendants' Response: Admitted.**

**INTERVENOR-DEFENDANTS' COUNTER STATEMENT OF MATERIAL FACTS**

115. Pursuant to Local Rule LCvR 56.C.1.c, Intervenor-Respondents incorporate by reference their Concise Statement of Material Facts, ECF No. 272, as if same were set forth at length herein.

**A. The Date Requirement**

116. Pennsylvania's election laws provide a date requirement for absentee and mail-in voting. 25 P.S. § 3146.6(a); § 3150.16(a).

117. In both provisions, the wording of the date requirement is the same: "The elector shall then fill out, date and sign the declaration printed on such envelope." 25 P.S. § 3146.6(a); § 3150.16(a).

118. After seven cases in five courts over two years, the current state of the law is that the General Assembly's date requirement is mandatory and that any noncompliant absentee or mail-in ballot may not be counted.

119. The U.S. Supreme Court vacated the Third Circuit panel's decision in *Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022). See *Ritter v. Migliori*, No. 22-30, 2022 WL 6571686 (U.S. Oct. 11, 2022) (Mem.).

120. When addressing a request for a stay at an earlier stage in that case, three Justices opined that the Third Circuit's now-vacated holding was "very likely wrong" on the merits because

it rested upon a misconstruction of the materiality provision. *Ritter*, 142 S. Ct. at 1824 (Mem.) (Alito, J., dissenting from the denial of the application for stay).

121. In November 2022, the Pennsylvania Supreme Court exercised its original jurisdiction to reaffirm that the General Assembly's date requirement is mandatory. *Ball v. Chapman*, 284 A.3d 1189 (Pa. 2022).

122. In that litigation, Acting Secretary Leigh M. Chapman agreed that the signature requirement is valid and mandatory and does not violate the federal materiality provision. **Ex. 58**, Acting Sec'y Ans. 15–23, *Ball v. Chapman*, No. 102 MM 2022 (Oct. 19, 2022).

123. The Acting Secretary also conceded in that litigation that the secrecy envelope does not violate the federal materiality provision. *Id.* at 39 n.15.

124. The Pennsylvania Supreme Court was evenly divided on whether the federal materiality provision invalidates the date requirement. *Id.* at 9.

**B. The Date Requirement Serves “Unquestionable Purposes”**

125. The date requirement has already been used to detect election fraud. *See Ex. 59*, Tr. of Hearing in *Chapman v. Berks County Bd. of Elections*, No. 355 MD 2022 (Pa. Commw. July 28, 2022), at 100-116, 141-153.

126. Last year, officials in Lancaster County discovered that an individual had cast a fraudulent ballot in her deceased mother's name in *Commonwealth v. Mihaliak*, No. CR-126-22 (June 3, 2022); *see Ex. 55*, Affidavit of Probable Cause ¶ 2, Police Criminal Complaint, *Commonwealth v. Mihaliak*, No. CR-126-22 (June 3, 2022) (“*Mihaliak Compl.*”).

127. In Lancaster County, the only information a voter is required to supply on a ballot declaration is the date and a signature. *See Ex. 57*, Exemplar Ballot Declaration from Lancaster County Board; *see also Ex. 53*, Greenburg Dep. at 114:23-115:7.



128. Under the Pennsylvania Supreme Court’s current precedent, county boards of elections lack authority to conduct signature comparisons, so they may not check ballots for a non-matching signature, much less use any non-matching signature to detect fraud by a third party. *See In re November 3, 2020 General Election*, 240 A.3d 591 (Pa. 2020).

129. In *Mihaliak*, the only evidence on the face of the ballot declaration indicating that someone other than the decedent had completed the ballot was the handwritten date of April 26, 2022, which was twelve days after the decedent had passed away. *See Ex. 55* ¶ 2.

130. The investigation into the election fraud committed in *Mihaliak* was predicated upon the date supplied on the ballot declaration. *See id.* ¶ 2.

131. Plaintiffs’ putative expert agreed that the date supplied on the *Mihaliak* ballot declaration was the only piece of evidence of fraud on the face of the ballot. *Ex. 53* at 114:15-118:2.

132. Plaintiffs’ putative expert agreed that the date on the ballot declaration helped to detect fraud in *Mihaliak*. *Id.* at 116:19-117:2.

### **C. Military and Overseas Ballots**

133. The chief clerk and chief registrar of the Lancaster County Board of Elections and Registration Commission testified at her deposition that “if the date the voter wrote on” the envelope of a “military absentee ballot” was “November 9th,” that she “would have set it aside pursuant to the” Pennsylvania Supreme Court’s order. *Ex. 63* at 15:24-16:16, 64:15-21.

### **D. Mr. Jeffrey Greenburg’s Putative Expert Testimony**

134. Plaintiffs designated Mr. Jeffrey Greenburg to be an expert witness. *See Ex. 75*, Plaintiffs’ Designation of Expert Witness.

135. Mr. Greenburg testified that voters “are required to affirm that they meet the qualifications” to vote “on the voter registration application.” *Ex. 53* at 69:13-25.

136. Mr. Greenburg testified that voters “provide the information necessary for the boards to verify they are qualified” on “their voter registrations.” **Ex. 53** at 69:13-17.

137. Mr. Greenburg agreed that providing a signature is not a qualification to vote. **Ex. 53**, at 76:3-5.

138. Mr. Greenburg’s “definition of ‘disenfranchised’” was, “in [his] opinion,” “an eligible voter who, for one reason or another, their ballot was not counted.” **Ex. 60** at 90:8-14. He stated in his deposition:

If a legally eligible voter’s ballot is not counted, it’s disenfranchisement. When you’re interpreting the law correctly or not, the ability for them to cast that ballot is not happening because of something that either they did or they omitted.

**Ex. 53** at 93:3-15.

139. For purposes of his report, Mr. Greenburg classified such voters as “disenfranchise[d]” even if the “election official” “follow[ed] the law” in setting aside the voter’s ballot. *Id.* at 93:9-19.

140. Mr. Greenburg admitted that, in the *Mihaliak* case, the only piece of information on the face of the ballot indicating that a third party had attempted to vote someone else’s ballot was the handwritten date. *Id.* at 115:8-20.

141. Mr. Greenburg admitted that, in the *Mihaliak* case, the date requirement helped to identify fraud. *Id.* at 116:19-117:2.

142. Mr. Greenburg agreed that fraud involving mail ballots is possible now and in the future in Pennsylvania. *Id.* at 61:3-9.

143. Mr. Greenburg agreed that the date requirement applies to overseas voters. *Id.* at 84:2-4.

Dated: May 5, 2023

Respectfully submitted,

/s/ Kathleen A. Gallagher

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