

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

NO. 68 MAP 2024

BLACK POLITICAL EMPOWERMENT PROJECT, et al.,

Petitioners-Appellees,

v.

AL SCHMIDT, et al.,

Respondents,

v.

REPUBLICAN NATIONAL COMMITTEE, et al.,

Intervenor-Appellants

Appeal of: Republican Party of Pennsylvania and Republican National Committee

BRIEF OF APPELLEES

On Appeal from the Order of the Commonwealth Court of Pennsylvania, 283 MD
2024, entered August 30, 2024.

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I. INTRODUCTION

Since 2020, thousands of Pennsylvania voters who timely submitted mail ballots have been disenfranchised because they omitted a handwritten date, or wrote an “incorrect” date, on the outer mail ballot envelope. Two federal courts have confirmed, based on a complete record including discovery from the Commonwealth and all 67 counties, that this voter-written date serves no purpose. It plays no role in establishing a ballot’s timeliness or voter eligibility and is not used to detect fraud. No one disputes any of that.

Appellants ignore the uncontested facts. On the law, they propose a radically neutered construction of the Free and Equal Elections Clause—one that contravenes two centuries of jurisprudence and this Commonwealth’s traditions, eliminating protections against subverting the right to vote, as well as the right to have ballots “honestly counted,” *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914).

Whether the Free and Equal Elections Clause—one of the pillars of our constitutional edifice—protects mail ballot voters from the arbitrary disenfranchisement at issue here is a question of first impression. The Court should now affirm the relief granted by the Commonwealth Court, preventing another round of unconstitutional mass disenfranchisement that was set to ensue in this November’s election, and upholding the Clause’s fundamental guarantee.

II. COUNTER-STATEMENT OF THE QUESTIONS INVOLVED

1. Did the Commonwealth Court correctly hold that enforcement of a purposeless envelope-dating provision to disenfranchise thousands of voters in every election violates the fundamental right to vote guaranteed by the Pennsylvania Constitution's Free and Equal Elections Clause?

Suggested answer: Yes.

2. Should this Court re-interpret the Election Code's envelope-dating provisions set forth at 25 P.S. §§ 3146.6(a), 3150.16(a) as merely directory, to avoid the constitutional violation triggered by interpreting the provisions as requiring disenfranchisement for non-compliance?

Suggested answer: Yes.

III. COUNTER-STATEMENT OF THE CASE

A. Origins of the Date Provision

The Election Code has long provided an absentee ballot option for certain Pennsylvania voters. *See* 25 P.S. §§ 3146.1–3146.9. In 1963, the General Assembly added to the absentee ballot provisions a requirement that the “elector shall...fill out, date and sign [a] declaration printed on” the outer envelope used to return absentee ballots. Act of Aug. 13, 1963, P.L. 707, No. 379, sec. 22, § 1306. At the same time, the Code's canvassing provision was amended to instruct county boards to set aside ballots returned in envelopes bearing a date after the election, *id.*, sec. 24 § 1308(c).

Thus, for a time in the 1960s, the Election Code directed use of the handwritten envelope date as part of the determination whether absentee ballots were timely.

In 1968, the Legislature updated the Code to make *date of receipt* the sole factor in determining timeliness of absentee ballots, eliminating the requirement to set aside ballots based on the envelope date. Act of Dec. 11, 1968, P.L. 1183, No. 375, sec. 8, §§ 1308(a) & (c). Thus, while the instruction to “fill out, date, and sign” the envelope declaration remained after 1969, the only date used to determine an absentee ballot’s timeliness was date of receipt.

In 2019, the Legislature enacted Act 77, which provides all eligible voters the option of no-excuse mail-in voting. The Legislature largely repurposed the Code’s absentee-ballot provisions in the new mail ballot provisions, including the instruction from § 3146.6(a) to “fill out, date, and sign” a declaration printed on the return envelope. The Legislature’s Republican Party leadership stated below that absentee-ballot language was adopted wholesale “to minimize the complexities of legislative drafting,” (6/24/24 Br. of *Amici Curiae* Bryan Cutler, et al., 24), *not* because the legislature made any determination that the voter-written date served some purpose in administering the mail ballot process.

B. The Mail Ballot Process¹

A voter seeking to vote by mail must complete an application to their county elections board that includes their name, address, and proof of identification. 25 P.S. §§ 3146.2, 3150.12. The requisite information allows boards to verify the voter's qualifications to vote in Pennsylvania—namely, they are over 18-years old, have been a citizen and resided in the election district for at least one month, and are not currently incarcerated on a felony conviction. *See* 25 Pa.C.S. § 1301(a).

The board then confirms the applicant's qualifications by verifying proof of identification and comparing the application information with the voter's record. 25 P.S. §§ 3146.2b, 3150.12b.² The board's eligibility determinations are conclusive unless challenged. *Id.* §§ 3146.2c, 3150.12b(3).

After verifying voter identity and eligibility, the board sends a mail-ballot package that contains a ballot, a secrecy envelope marked with the words "Official Election Ballot," and a pre-addressed return envelope containing a pre-printed voter declaration form. *Id.* §§ 3146.6(a), 3150.16(a). Both the mail ballot itself and the

¹ For ease of reference, "mail ballots" includes both absentee and mail ballots unless otherwise noted. The rules governing treatment of absentee and mail ballots are identical.

² *See also* Pa. DOS, Guidance Concerning Civilian Absentee and Mail-In Ballot Procedures, at 2, <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2023-04-03-DOS-Guidance-Civilian-Absentee-Mail-In-Ballot-Procedures-v3.pdf> (last updated Apr. 3, 2023).

“form of declaration and envelope shall be as prescribed by the Secretary of the Commonwealth.” *Id.* §§ 3146.3(b), 3146.4, 3150.13(b).

At “any time” after receiving their mail-ballot package, the voter marks their ballot, places it in the secrecy envelope and the return envelope, completes the declaration, and delivers the ballot, by mail or in person, to their county board. *Id.* §§ 3146.6(a), 3150.16(a). The date written on the return envelope is not used to determine or confirm voter identity, eligibility, or timeliness of the ballot. Rather, a mail ballot is timely if the board receives it by 8 p.m. on Election Day. *Id.*, §§ 3146.6(c), 3150.16(c).

Upon receipt, the board must stamp the return envelope with the date of receipt to confirm its timeliness and log the receipt in the Statewide Uniform Registry of Electors (“SURE”) system, the voter database used to generate poll books. *See* 25 P.S. §§ 3146.9 (b)(5); 3150.17(b)(5) (requiring boards to “maintain a record of...the date on which the elector's completed mail-in ballot is received by the county board”); *see also* Op. 77; Appellants Br. (“Br.”), 45. The poll books each county generates from the SURE system show which voters requested and returned mail ballots. 25 P.S. §§ 3146.6(b)(1), 3150.16(b)(1).

Mail ballots are verified pursuant to 25 P.S. § 3146.8(g). Any verified ballot submission that is not challenged is counted and included with the election results. *Id.*, § 3146.8(g)(4). After the counties count the ballots, the Secretary has the duty

“[t]o receive from [them] the returns of primaries and elections, to canvass and compute the votes cast...; to proclaim the results of such primaries and elections, and to issue certificates of election to the successful candidates at such elections....”
Id. § 2621(f).

C. Litigation over the Date Provision

Millions of Pennsylvania voters have voted mail ballot since Act 77 passed in 2019. Litigation over the validity of mail ballots received in un- and mis-dated envelopes began almost immediately. A series of state and federal cases have interpreted the Election Code’s envelope-dating provisions and considered the application of the federal Materiality Provision, 52 U.S.C. § 10101(a)(2)(B). None of those cases presented a claim under the Free and Equal Elections Clause.

In 2020, this Court conducted a statutory analysis of the date provision and issued a split decision with four Justices ruling in favor of counting timely ballots received in the 2020 election. *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election* (“*In re 2020*”), 241 A.3d 1058, 1076-79 (Pa. 2020), *cert. denied*, 141 S. Ct. 1451 (2021), (opinion announcing judgment [“OAJC”]); *id.*, 1088 (Wecht, J., concurring and dissenting). In these fast-moving, consolidated post-election appeals, appellants (political campaigns seeking to disqualify ballots) postulated governmental interests that supposedly supported strict enforcement of the date provision. Without any record testing these theories, six Justices split over

whether the purported interests appeared sufficiently “weighty” to justify interpreting the Code’s date instruction as “mandatory.”³ *See id.*, 1076-79 (OAJC) (date provision was “a directory, rather than a mandatory, instruction” because purported interests were not “weighty”); *id.*, 1090-91 (Dougherty, J., concurring and dissenting) (crediting purported “weighty interests” to interpret the provision as mandatory).

In early 2022, Lehigh County voters disenfranchised by the date requirement in the 2021 municipal election filed a federal Materiality Provision challenge. A unanimous Third Circuit panel held that the Materiality Provision prohibited disenfranchising voters for inconsequential envelope-dating errors. *Migliori v. Cohen*, 36 F.4th 153, 164 (3d Cir.), *vacated as moot*, 143 S. Ct. 297 (2022). Following *Migliori*, state courts directed county boards to count ballots despite envelope-dating errors in the 2022 primary. *See Chapman v. Berks Cnty. Bd. of Elections, et al.*, No. 355 MD 2022, 2022 WL 4100998 (Pa. Cmwlth. Aug. 19, 2022); *McCormick, et al. v. Chapman, et al.*, No. 286 MD 2022, 2022 WL 2900112 (Pa. Cmwlth. June 2, 2022).

In October 2022, after Lehigh County counted the ballots at issue in *Migliori* and certified all 2021 election results, the U.S. Supreme Court vacated the Third

³ The seventh Justice opined that a plain-text reading should be applied to interpret “shall ... date” as mandatory regardless of any “weighty interests,” but voted with the plurality in the OAJC to require the counting of such ballots for the 2020 election only. *Id.*, 1079-80 (Wecht, J.).

Circuit’s opinion for mootness pursuant to *United States v. Munsingwear*, 340 U.S. 36 (1950). 143 S. Ct. 297. Within days of that non-merits *vacatur*, the Republican Party (Appellants here) filed a King’s Bench petition in this Court seeking to enjoin officials from counting mail ballots received in envelopes with a missing or “incorrect” voter-written date. Appellants filed their King’s Bench petition mere weeks before Election Day.

In the context of another fast-moving case without a factual record, this Court granted the petition, applying the bottom-line conclusion from *In re 2020*—that the date provisions are mandatory under the Election Code. *Ball v. Chapman*, 289 A.3d 289 A.3d 1, 21-22 (Pa. 2023) (citing *In re 2020*, 241 A.3d at 1086-87 (Wecht, J.) & 1090-91 (Dougherty, J.)). The Court did not revisit the *In re 2020* debate regarding whether “weighty interests” supported mandatory application of the date requirement. And it was not presented with any constitutional claim under the Free and Equal Elections Clause. One week before Election Day, the *Ball* Court ordered that ballots arriving in un- or incorrectly-dated return envelopes be set aside in the 2022 general election. *Id.* Consequently, county boards across the Commonwealth adjusted quickly on the eve of Election Day to set aside ballots with missing or incorrect envelope dates.

D. Election Officials Confirm the Date Provision Serves No Purpose.

Following *Ball*, voters facing disenfranchisement and non-partisan voting-rights organizations filed a federal Materiality Provision case in 2022 against the Secretary and all 67 county boards.⁴ *See Pa. State Conf. of NAACP v. Schmidt* (“*NAACP I*”), 703 F. Supp. 3d 632 (W.D. Pa. 2023), *rev’d on other grounds*, 97 F.4th 120 (3d Cir. 2024).

NAACP was the first time all parties—including Appellants here, who intervened and participated fully—conducted full discovery, including interrogatories, depositions and admissions, to develop a record regarding the voter-written date’s role (if any) in election administration and its impact on voters.⁵ Interrogatory responses from the Secretary and all 67 county boards, supplemented by deposition testimony, confirmed *no* party or entity responsible for election administration uses the date for any reason—including to determine timely receipt or voter qualifications—other than to disenfranchise voters who did not write a “correct” date. *See NAACP I*, 703 F.Supp.3d at 668 (“County boards of elections acknowledge that they did not use the handwritten date on the voter declaration on

⁴ The plaintiffs in *NAACP* raised only federal claims in that federal litigation. They did not raise the Free and Equal Elections Clause, which is not referenced in the federal court opinions. *Cf. Pennhurst State Sch. v. Halderman*, 465 U.S. 89 (1984) (limiting federal courts from enforcing state constitutional rights against state actors).

⁵ In *NAACP*, Appellants were able to serve requests, notice depositions, and cross-examine all testifying witnesses. Accordingly, Appellants agreed in the proceedings below that elements of the record developed in *NAACP I* may be relied upon in this case and are subject to judicial notice. *See Op. 24*, n.28.

the Return Envelope for any purpose related to determining a voter's age..., citizenship..., county or duration of residence..., felony status..., or timeliness of receipt) (internal record citations omitted). Based on this fulsome record, the district court granted summary judgment, finding that the date provision is “wholly irrelevant” to election administration. *NAACP I*, 703 F. Supp. 3d at 678.

While a divided Third Circuit panel subsequently reversed based on a novel legal interpretation of the federal Materiality Provision, that court endorsed the district court's findings about the date provision. Indeed, the majority agreed that the date provision “serves little apparent purpose.” *Pa. State Conf. of NAACP Branches v. Schmidt* (“*NAACP II*”), 97 F.4th 120, 125 (3d Cir. 2024). It agreed that the date plays no role in determining a ballot's timeliness. *Id.*, 125 & 127.⁶ It also agreed that the date is not used to determine voter qualifications. *Id.*, 129 (“No party disputed that election officials ‘did not use the handwritten date...for any purpose related to determining’ a voter's qualification under Pennsylvania law.”). And the court did not disturb the district court's conclusion that the date requirement is not used to detect fraud. *See NAACP I*, 703 F. Supp. at 679, n.39 (single instance of purported

⁶ *See also NAACP I*, 703 F. Supp. at 679 (“Irrespective of any date written on the outer Return Envelope's voter declaration, if a county board received and date-stamped a...mail ballot before 8:00 p.m. on Election Day, the ballot was deemed timely received.... [I]f the county board received a mail ballot after 8:00 p.m. on Election Day, the ballot was not timely and was not counted, despite the date placed on the Return Envelope”).

fraud in Lancaster County was “detected by way of the SURE system and Department of Health records, rather than by using the date on the return envelope”); *see also NAACP II*, 97 F.4th at 139-40 (Shwartz, J., dissenting) (handwritten date “not used to...detect fraud.”).⁷

This lawsuit followed *NAACP II* and is the first to raise a claim under the Free and Equal Elections Clause.

E. Enforcement of the Date Requirement Disenfranchises Thousands of Pennsylvania Voters in Each Election.

Though the date serves no discernible purpose, the Secretary has issued guidance and directives to county boards following *Ball* that timely mail-ballot submissions with a missing or incorrect date must be segregated and excluded from tabulation. Pa. DOS, “Guidance Concerning Civilian Absentee and Mail-In Ballot Procedures,” v.3.0 (April 3, 2023), <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2023-04-03-DOS-Guidance-Civilian-Absentee-Mail-In-Ballot-Procedures-v3.pdf>; Pa. DOS, “Directive Concerning the Form of Absentee and Mail-in Ballot Materials, v.2.0 (July 1, 2024) (“Mail Ballot Directive”), <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2024->

⁷ *Cf. In re 2020*, 241 A.3d at 1076-77 (because ballots received after 8:00p.m. on Election Day cannot be counted, there is no “danger that any of these ballots was...fraudulently back-dated”).

Directive-Absentee-Mail-in-Ballot-Materials-v2.0.pdf; *see also* A442⁸ (4/19/24 DOS Email).

Meanwhile, thousands of mail ballots have been set aside in every election. In the 2022 general election, enforcement of the date provision disenfranchised over 10,000 voters. *E.g.*, *NAACP II*, 97 F.4th at 127. Thousands more were disenfranchised for this reason in the 2023 municipal elections, and again in the 2024 Presidential primary. *See* A403 (Shapell Decl.), ¶ 12.

Enforcement of the date provision has disenfranchised eligible voters throughout Pennsylvania, from all walks of life, and across the political spectrum. *See* Op. 80-81, n.56-59 (citing voter-witness declarations).⁹ It has also led to arbitrary results among counties, further underscoring its lack of value to election administration. For example, in the 2022 general election:

- Many counties set aside ballots where the envelope date was correct but missing the year; others counted such ballots. *NAACP I*, 703 F. Supp. At 681, n.43.
- More than 1,000 timely-received ballots were set aside because of “an obvious error by the voter in relation to the date,” such as writing a month prior to September or a month after November 8. *Id.*, 681. The

⁸ References herein to page numbers A400-A516 refer to selections from the record below that Appellees attach as an Appendix to this Brief for the Court’s convenience. Appellees anticipate that the separate record on appeal will not be compiled before Briefing is closed and therefore attach true and correct copies of any document from the record below referenced in Appellees’ Brief.

⁹ For ease of reference, true and correct copies of the voter-witness declarations are provided in the attached Appendix, A405-A441.

district court found that this “shows the irrelevance of any date written by the voter on the outer envelope.” *Id.*

- Counties took varying approaches to dates written in the international format (*i.e.*, day/month/year). *Id.*, 681-82.
- Counties set aside hundreds of timely-received ballots with obviously unintentional slips of the pen. *Id.*

And many counties *counted* ballots with necessarily “incorrect” envelope dates. For example:

- “[S]ome counties precisely followed [the prescribed] date range even where the date on the return envelope was an impossibility because it predated the county’s mailing of ballot packages to voters.” *Id.*, 680.
- One county counted a ballot marked September 31—a date that does not exist. *Id.*, 681, n. 45.
- Counties took inconsistent approaches to voters who mistakenly wrote their birthdates. *Id.*

While Appellants attempt to relitigate the determination that the date provision is meaningless, they have not controverted the factual record underlying the *NAACP* courts’ determinations. These facts, and election officials’ admissions that the date serves no purpose, remain undisputed. *Cf.* Op. 24, n.28 (“the parties agreed that there are no factual issues in this case, that no stipulations of fact were required, and that this matter involves only legal issues”).

IV. SUMMARY OF THE ARGUMENT

Enforcement of the date provision to reject thousands of timely votes does severe damage to Pennsylvanians’ right to vote. Pennsylvania’s Free and Equal

Elections Clause firmly establishes the right to vote as a fundamental that may not be diminished by the government. The Clause “strike[s]...at all regulations...which shall impair the right of suffrage....” *League of Women Voters v. Commonwealth* (“*LWV*”), 178 A.3d 737, 740-41 (Pa. 2018) (citation omitted). And under this Clause, this mass disenfranchisement cannot continue.

Appellants’ argument hinges on a radical position that the Free and Equal Elections Clause is powerless against so-called “ballot-casting rules.” This concept appears nowhere in the Election Code, and nor does the phrase “ballot-casting rule” appear in any Pennsylvania judicial opinion prior to the dissent below in this case. This proposed new constitutional carveout is irreconcilable with this Court’s unequivocal mandate that the Free and Equal Elections Clause be “given the broadest interpretation, one which governs *all aspects* of the electoral process[.]” *LWV*, 178 A.3d at 814 (emphasis added).

The majority below faithfully applied controlling precedent requiring that a restriction on fundamental rights satisfy strict scrutiny. And the majority correctly recognized that no party has identified any compelling government interest to justify repeated mass disenfranchisement based on whether voters handwrite a purposeless date on return envelopes.

Appellants ignore the uncontroverted facts in continuing to advance disproven theories about how the voter-written date might have some use to someone. But

Appellants were unable to support those theories when provided a full opportunity to develop a record in *NAACP*. The federal courts have already confirmed, based on that record, that Appellants' justifications are unfounded, and that the voter-written date is "wholly irrelevant" to election administration. *NAACP I*, 703 F. Supp. at 678; *see also NAACP II*, 97 F.4th at 125. As the majority did below, this Court should reject Appellants' invitation to relitigate these theories without any new reasoning or factual basis. And given the abject lack of reason for disenfranchising voters who trip over the date requirement, the finding of a Free and Equal Elections Clause violation may be upheld under any standard.

Alternatively, the Court may uphold the result below based on statutory interpretation grounds. *See* Op. 82-83 n.61. Under the doctrine of constitutional avoidance, and given the subsequent evidence extinguishing the "weighty interests" presented to this Court in 2020, Appellees respectfully suggest this Court can revisit its interpretation of the date provision and hold instead that "dating the declaration is a directory, rather than a mandatory, instruction." *In re 2020*, 241 A.3d at 1076. Adopting this interpretation would avoid the constitutional violation inevitably triggered by mandatory disenfranchisement of thousands of Pennsylvanians for noncompliance with a rule that serves no purpose.

In all events, the Free and Equal Elections Clause cannot tolerate the mass disenfranchisement at issue here, and the Commonwealth Court correctly rejected Appellants’ efforts to avoid that conclusion with specious procedural arguments:

- *This Court has already rejected challenges to the constitutionality of the date requirement.* Br. 1-2, 26-29. This is false. No Pennsylvania court previously decided the constitutional question raised in this case.
- *The Commonwealth Court lacked original jurisdiction.* *Id.* 4, 10-17. Appellants rely on a misreading of the unreported Commonwealth Court decision in *Republican National Committee v. Schmidt* (“RNC II”), No. 447 MD 2022 (Pa. Cmwlth. Mar. 23, 2023). Unlike the petitioners there, Appellees challenge a state-wide rule that the Secretary is statutorily responsible for enforcing.
- *Petitioners failed to name indispensable parties.* Br. 4,17-22. Appellants’ position is based on a flawed premise, rejected by this Court in *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 582–83 (Pa. 2003), that plaintiffs must join every party who may be impacted by declaratory judgment actions challenging statewide legislation.
- *The relief granted requires invalidation of Act 77.* Br. 55-59. The court below correctly recognized that Appellees seek to halt the unconstitutional **enforcement** of the envelope dating provision in a way that disenfranchises

voters for non-compliance; they do not seek to excise “shall ... date,” or any other language, from Act 77. Including a date line on mail ballot return envelopes and asking voters to fill it out is not the problem; disenfranchising voters when they make a meaningless error in filling it out is. *See In re 2020*, 241 A.3d at 1079 (citing *PDP*, 238 A.3d at 378). The nonseverability provision is not implicated.

None of Appellants’ arguments support reversal. This Court should affirm.

V. ARGUMENT

A. Disenfranchising Voters Due to Noncompliance with the Date Provision Violates the Free and Equal Elections Clause.

1. Appellants’ Proposed Limitations on the Right to Vote Are Irreconcilable with the Free and Equal Elections Clause.

In Pennsylvania, the right to vote is enshrined in and protected by the Free and Equal Elections Clause, which states: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, § 5. The Clause means not only that voters must have “the same free and equal opportunity to select his or her representatives,” Br. 29, but also that: “each voter under the law has the right to cast [their] ballot and have it honestly counted,” *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914); that “the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial,” *id.*; that “no constitutional right of the

qualified elector is subverted....,” *LWV*, 178 A.3d at 810; and that elections must “be kept open and unrestricted to the voters of our Commonwealth,” *id.*, 804.

Any rule that requires disqualification of votes for noncompliance is, on its face, a restriction on voting. Yet Appellants’ principal merits argument is that the Free and Equal Elections Clause—perhaps the signal achievement of our Commonwealth’s Constitution—is toothless in the face of a pointless rule driving mass disenfranchisement in every election. Such a radical diminishment of the Clause’s ambit cannot be squared with this Court’s longstanding jurisprudence, and if accepted, would invite sinister applications. This Court should reject Appellants’ parched and parsimonious view of this noble provision.

The Free and Equal Elections Clause is uniquely broad in scope and powerful in its protective force. As this Court detailed in *LWV*, the right to vote in this Commonwealth emanates from a proud tradition that predates the country’s founding and guarantees broader protections than the federal Constitution:

Pennsylvania’s Constitution, when adopted in 1776, was widely viewed as “the most radically democratic of all the early state constitutions.” Ken Gormley, “Overview of Pennsylvania Constitutional Law,” as appearing in Ken Gormley, ed., *The Pennsylvania Constitution A Treatise on Rights and Liberties*, 3 (2004). Indeed, our Constitution, which was adopted over a full decade before the United States Constitution, served as the foundation—the template—for the federal charter. *Id.* Our autonomous state Constitution, rather than a “reaction” to federal constitutional jurisprudence, stands as a self-contained and self-governing body of constitutional law, and acts as a wholly independent protector of the rights of the citizens of our Commonwealth.

LWV, 178 A.3d at 802. Our framers envisioned the right to vote as “that most central of democratic rights[.]” *Id.*, 741; *see also PDP*, 238 A.3d at 386-87 (Wecht, J. concurring) (“No right is more precious....Other rights, even the most basic, are illusory if the right to vote is undermined.”).

Accordingly, the “plain and expansive sweep of the words ‘free and equal’” is “indicative of the framers’ intent that *all aspects* of the electoral process, to *the greatest degree possible*, be kept open and *unrestricted* to the voters of our Commonwealth....” *Id.*, 804 (emphases added). It “strike[s]...at *all* regulations of law which shall impair the right of suffrage rather than facilitate or reasonably direct the manner of its exercise.” *Id.*, 809 (citation omitted) (emphasis added).

Ignoring this text, history, and precedent, Appellants posit massive new carveouts from the Clause’s protections. Their arguments represent an extreme departure from first principles.

First, Appellants suggest—and the dissent endorsed—a novel exemption from the Clause’s protection for the invented category of “ballot-casting” rules. Such an exception does not exist. Indeed, the idea of some separate category of “ballot-casting” rules is not grounded in the Election Code or found anywhere in 250 years of precedent.¹⁰ Adopting this exemption now would require the Court to overturn

¹⁰ The Election Code undercuts the concept of a “ballot-casting” stage that includes dating the return envelope. Based on a plain reading of the Code’s mail ballot procedures, completion of the

longstanding jurisprudence applying the Free and Equal Elections Clause to “all aspects of the electoral process,” *Id.*, 804, and would render the Clause impotent even against Jim Crow-era requirements like literacy tests, or a requirement to write the voter’s paternal grandfather’s name on the return envelope. Appellants’ theories would immunize such blatant infringements on the right to vote from any constitutional scrutiny so long as they involve “ballot-casting.”

Appellants’ radical carveout is irreconcilable with this Court’s recognition that the Clause must apply in a “broad and robust” manner.” *Id.*, 814. And their misrepresentation that Pennsylvania courts have never applied the Clause to a “ballot-casting rule” ignores a history of cases protecting the right to vote against unwarranted restrictions. For example, this Court applied the Clause to the mail-ballot-receipt deadline—clearly a “ballot-casting” rule—during the November 2020 election. *PDP*, 238 A.3d at 371–72. The Commonwealth Court, following remand instructions from this Court, also previously applied the Clause to invalidate a statute requiring people casting ballots in person to show photo identification. *Applewhite v. Commonwealth*, No. 330 MD 2012, 2012 WL 4497211, at *6 (Pa. Cmwlth. Oct.

envelope declaration is not itself “ballot casting.” The Code provides separate sets of rules that apply to the ballot on one hand and the return envelope declaration on the other. *Compare* 25 P.S. § 3146.3(b) (concerning the form of ballots), *with id.* § 3164.14 (concerning the form of return envelope with voter declaration). Lumping the envelope dating requirement together with “ballot-casting” is a novel concept coined earlier this year by two federal judges in *NAACP II*, which finds no support in the Code or any Pennsylvania case.

2, 2012). This Court also affirmed a ruling that a registration ban on people released from prison within the previous five years violates the Clause. *Mixon v. Commonwealth*, 759 A.2d 442, 452 (Pa. Cmwlth. 2000) (*en banc*), *aff'd without opinion*, 783 A.2d 763 (Pa. 2001). These decisions build on older cases applying the Clause to invalidate statutes that barred certain categories of people *from casting ballots*. See, e.g., *McCafferty v. Guyer*, 59 Pa. 109, 112 (1868) (there is no “power of the legislature to disfranchise one to whom the Constitution has given the rights of an elector”); *Page v. Allen*, 58 Pa. 338, 353 (1868) (enjoining enforcement of statute that added ten days to constitutional residency requirement for voting).

All of this is consistent with this Court’s recent emphasis that “the words ‘free and equal’ as used in Article I, Section 5, have a broad and wide sweep.” *LWV*, 178 A.3d at 809.¹¹

Second, Appellants deploy partial quotes from this Court to claim that voting rules are only subject to any constitutional scrutiny when they “make it so difficult [to vote] as to amount to a denial” of the franchise. Br. 3, 30, 32. But this Court’s decisions, in cases like *Berg* and *Applewhite II*, make clear that voting rules or practices that “affect” or “infringe upon” the right to vote must all be consistent with

¹¹ Meanwhile, *PDP* is the only authority Appellants cite for their incorrect assertion that Pennsylvania courts “routinely upheld ballot-casting rules—such as the declaration mandate and the secrecy-envelope rule—against challenges under the Clause.” Br.31. As explained below, however, *PDP* did not address the constitutionality of the declaration mandate or secrecy envelope requirement. See *infra*, 23-24.

the Free and Equal Elections Clause’s basic requirements. *See infra*, 26-27. Notably, Appellants’ (and the dissent’s, at 24-25) argument repeats a partial quote from *Winston* (Br. 3, 4, 30), but omits critical language that the Clause extends to restrictions that “effectively” deny the right to vote *or* “deny the franchise itself” *or* “subvert” that right. *LWV*, 178 A.3d at 810 (quoting *Winston*, 91 A. at 523). Here, enforcement of the date provision actually *and* effectively denies voters the right to have their ballots included—or at minimum subverts the right. Op. 77.

Third, Appellants wrongly suggest (Br. 31) that the Clause protects “only” the “opportunity to cast a vote in the election, not that every voter will successfully avail himself or herself of that opportunity.”¹² But the Clause applies broadly, to “*all* aspects of the electoral process.” *LWV*, 178 A.3d at 804 (emphasis added). The fundamental right to vote under the Pennsylvania Constitution extends beyond just the right to register or fill out a ballot; it encompasses “the right to cast [a] ballot *and*

¹² The dissent’s supposition that “[n]o reasonable person would find the obligation to sign and date a declaration to be difficult or hard or challenging,” Dissent 34, ignores the undisputed facts that the date line trips thousands of people in every election, including over 10,000 eligible voters in the 2022 general election. While the dissent downplays the constitutional significance of excluding 0.85% of all ballots cast, Dissent 40, discarding 10,000 votes is constitutionally problematic. *LWV*, 178 A.3d at 813 n.71 (an election is not “free and equal” when “**any substantial number** of legal voters are, from any cause, denied the right to vote.”) (emphasis added). This is more than the entire population of Sullivan and Cameron Counties combined; surely disenfranchising enough people to fill two counties constitutes “a constitutionally intolerable ratio of rejected ballots.” *PDP*, 238 A.3d at 389 (Wecht, J., concurring).

have it honestly counted.” *Winston*, 91 A. at 523 (emphasis added). The date requirement obviously impairs the right to have a ballot “counted.”¹³

The majority thus correctly rejected Appellants’ invitation to neuter the Free and Equal Elections Clause and thereby abandon this Commonwealth’s traditions and a century of jurisprudence. A voting rule that serves no purpose other than to disenfranchise thousands every election cannot be immune from all scrutiny under the Free and Equal Elections Clause.

2. *This Court Has Not Addressed Constitutionality of Disenfranchising Voters Due to Envelope-Dating Errors.*

Appellants’ arguments also hinge on the fiction that this Court rejected Free and Equal Elections Clause challenges to the date provision in *Ball* and *PDP*. Br. 27-28. *Ball* involved no Free and Equal Elections Clause challenge—this Court reaffirmed statutory interpretation from *In re 2020*. Indeed, half of the Justices in *Ball* acknowledged that “failure to comply with the date requirement would not compel discarding votes in light of the Free and Equal Elections Clause....” 289 A.2d at 27 n.156. That footnote was the only mention of the Free and Equal Elections

¹³ While Appellants dismiss as “nonsense” the idea that enforcing the dating requirement to reject votes denies the right to vote, Br. 32, it is an idea that has been endorsed by at least three of the six Justices who presided in *Ball*, who expressly found that rejecting a ballot based on non-compliance with the envelope-dating rule “denies the right of an individual to vote....” *Ball*, 289 A.3d at 25 (quoting 52 U.S.C. § 10101(a)(2)(B)). The Commonwealth Court also agreed in *Chapman*, 2022 WL 4100998, *27. Additionally, four out of the six federal circuit judges considering the question under federal law in the *Migliori* and *NAACP* cases concluded likewise. That is a lot of judicial firepower supporting what Appellants dismiss as “nonsense.”

Clause in the *Ball* Court’s analysis.¹⁴ Even the dissent below did not entertain Appellants’ strained reading of *Ball*. And the majority correctly found Appellees “raise[] an issue of first impression[.]” Op. 59.

Nor does *PDP* foreclose Appellees’ constitutional claim. *Id.*, 67-68. The petitioners in *PDP* raised no constitutional challenge to enforcement of the date provision. Petitioners there claimed only that the Free and Equal Elections Clause affirmatively requires that voters be given **“notice and an opportunity to cure”** minor errors before mail ballots were rejected. 238 A.3d at 372 (emphasis added). They did not seek a ruling on the antecedent question, namely, whether enforcing the date provision to reject timely ballots is unconstitutional. This Court decided only that “the Boards are not required to implement a ‘notice and opportunity to cure’ procedure” because the petitioners had “cited no constitutional or statutory basis” for imposing such a requirement on all counties. *Id.*, 374. This case raises an entirely different issue. Op. 68 (“notice and opportunity to cure procedures are **not** at issue in this case” (emphasis in original)).¹⁵

¹⁴ Appellants rely on a fleeting reference in the portion of the *Ball* opinion describing the parties’ respective positions, which noted an assertion in the Secretary’s brief that the RNC’s interpretation of the statute “**could** implicate the Free and Equal Elections Clause.” *Ball*, 289 A.3d at 16 (emphasis added). The Court was not describing any claim or defense under the Free and Equal Elections Clause, nor did it conduct any constitutional analysis.

¹⁵ *PDP* petitioners separately raised a Free and Equal Elections argument against enforcement of the secrecy envelope requirement. *See* 238 A.3d at 376. As in *Ball*, however, this Court analyzed only a statutory construction of this separate Election Code requirement, *id.*, 378-80.

In sum, there has been substantial litigation regarding *statutory interpretation* of the date provision in the Election Code, and *different* constitutional challenges involving *other* Election Code provisions, but before this case no court has addressed whether disenfranchising voters for noncompliance with the date provision is unconstitutional.¹⁶

3. *Strict Scrutiny Applies to the Date Requirement’s Restriction on the Fundamental Right to Vote.*

Appellants do not dispute, and this Court has repeatedly reaffirmed, that the right to vote guaranteed by the Free and Equal Elections Clause is fundamental. *See, e.g., PDP*, 238 A.3d at 361 (employing a construction of the Election Code that “favors the fundamental right to vote and enfranchises, rather than disenfranchises, the electorate”); *Banfield v. Cortés*, 110 A.3d 155, 176 (Pa. 2015) (observing that “the right to vote is fundamental and ‘pervasive of other basic civil and political rights’”) (citing *Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999)).

Accordingly, the majority applied strict scrutiny “because the date provisions impose a significant burden on one’s constitutional right to vote, in that they restrict the right to have one’s vote counted to only those voters who *correctly* handwrite

¹⁶ The Third Circuit, in *NAACP II*, did not and could not opine on the enforceability of the date requirement under the Free and Equal Elections Clause. The court held only that enforcing the date requirement does not violate a *federal statute*, relying on a novel theory that the statute categorically does not apply to mail ballot-related paperwork. There was no state constitutional claim in *NAACP* and there is no reference to the Free and Equal Elections Clause anywhere in the federal court’s opinions. *Cf. Pennhurst*, 465 U.S. 89.

the date on their mail ballots and effectively deny the right to all other qualified electors who seek to exercise the franchise by mail...but make minor mistakes regarding the handwritten date on their mail ballots' declarations." Op. 75 (emphasis in original). That is correct—as was the conclusion that, by “effectively deny[ing]” the right to vote, enforcement of the date provision to exclude a person’s ballot from being counted imposes a “severe” and “significant” burden on that right. Op. 75.

But this Court need not conclude that the burden on a fundamental right is “severe” to apply strict scrutiny. *In re Nader*, 858 A.2d 1167, 1181 (Pa. 2004) (“[W]here the fundamental right to vote is at issue, a strong state interest must be demonstrated”). Laws that “infringe upon,” “affect,” or “burden” the fundamental right to vote may trigger such review, even absent a “severe” burden. *See, e.g., Petition of Berg*, 712 A.2d 340, 342 (Pa. Cmwlth.), *aff’d*, 552 Pa. 126 (1998) (“It is well settled that laws which affect a fundamental right, such as the right to vote...are subject to strict scrutiny.”)¹⁷; *James v. SEPTA*, 477 A.2d 1302, 1306 (Pa. 1984) (where a “fundamental right has been burdened, another standard of review is applied: that of strict scrutiny”)¹⁸; *see also LWV*, 178 A.3d at 810 (quoting *Winston*,

¹⁷ While Appellants note that *Berg* “declined to apply strict scrutiny” (Br., 40), it expressly did so upon finding that the case did not involve denial of fundamental right to vote, and not because strict scrutiny does not apply when the right to vote is at issue. 712 A. 2d at 342-44.

¹⁸ Neither Appellants nor the dissent explain why infringements on the fundamental right to vote should be subject a lower level of scrutiny, while infringements on any other fundamental right triggers strict scrutiny. *See, e.g., Allegheny Reprod. Health Ctr. v. Pennsylvania Dep't of Hum.*

91 A. at 523) (elections are “free and equal” when “the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; *and when no constitutional right of the qualified elector is subverted or denied him.*” (emphasis added)); *Applewhite v. Commonwealth* (“*Applewhite II*”), No. 330 M.D. 2012, 2014 WL 184988, at *20 (Pa. Cmwlth. Jan. 17, 2014) (laws that “infringe[] upon qualified electors’ right to vote” are analyzed “under strict scrutiny.”) Regardless what terminology one uses to describe the harsh result here, losing the right to have one’s vote included due to a meaningless mistake is an “extremely serious matter” that triggers strict scrutiny under Pennsylvania law. *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 202 A.2d 538, 540 (Pa. 1964) (“The disfranchisement of even one person validly exercising his right to vote is an extremely serious matter.”); *see supra*, 25-26.

As the majority held, under strict scrutiny, Appellants “bear the heavy burden of proving that the law in question, i.e., the dating provision, is ‘narrowly drawn to advance a state interest of compelling importance.’” Op. 75 (quoting *PDP*, 238 A. 3d at 385); *see also, e.g., Appeal of Gallagher*, 41 A.2d at 632-33 (the power to

Servs., 309 A.3d 808, 945 (Pa. 2024)(“the right to reproductive autonomy, like other privacy rights, is fundamental Accordingly, we would remand to the Commonwealth Court to apply strict scrutiny based on the framework of the Section 26 analysis); *William Penn Sch. Dist. v. Pennsylvania Dep’t of Educ.*, 294 A.3d 537, 957 (Pa. Cmwlth. 2023) (“Petitioners’ equal protection claim is based on a fundamental right to education, the alleged impingement of which should be reviewed under strict scrutiny”).

throw out ballots based on minor irregularities “must be exercised *very sparingly* and with the idea in mind that either an individual voter or a group of voters are not to be disfranchised at an election *except for compelling reasons*” (emphasis added)).¹⁹

Appellants cannot show that enforcing the envelope-dating rule on pain of disenfranchisement clears that bar. The majority thus correctly held, “the date on the outer absentee and mail-in ballot envelopes is not used to determine the timeliness of a ballot, a voter’s qualifications/eligibility to vote, or fraud. It is therefore apparent that the dating provisions are virtually meaningless and, thus, serve no compelling government interest.” Op.76. Indeed, Appellants *nowhere* dispute that the dating provision would fail strict scrutiny.

Appellants’ rhetoric about the majority’s view—that it “would imperil every ‘reasonable, non-discriminatory restriction[]’ the General Assembly has enacted ‘to ensure honest and fair elections’ in Pennsylvania,” Br. 41—is alarmist and overblown. The dating provision has nothing to do with “ensur[ing] honest and fair

¹⁹ The dissent’s refrain that legislative enactments enjoy a presumption of constitutionality misses the point. The presumption of constitutionality gives way to a strict scrutiny analysis where, as here, a fundamental right is at stake. *See Berg* 712 A.2d at 342; *see also LWV*, 178 A.3d at 803 (“Although plenary, ...legislative power is subject to restrictions enumerated in the Constitution”; “the people have delegated general power to the General Assembly, with the express exception of certain fundamental rights reserved to the people in Article I”).

elections,” and the majority’s opinion is concerned only with one meaningless restriction that serves no purpose other than mass disenfranchisement.

4. *Enforcement of the Irrelevant Date Provision Cannot Survive Even Lesser Constitutional Scrutiny.*

A mandatory date requirement cannot survive even a lower level of scrutiny because it serves no purpose. Even under federal law, burdens on the right to vote “[h]owever *slight* that burden may appear...must be justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’” *Crawford*, 553 U.S. at 191 (emphasis added). Indeed, Appellants conceded below that the date provision is in fact a “burden” on the right to vote that must serve the “State’s important regulatory interests” to survive. GOP Br. 52. It does not.

The majority correctly held: “as has been determined in prior litigation involving the dating provisions, the date on the outer absentee and mail-in ballot envelopes is not used to determine the timeliness of a ballot, a voter’s qualifications/eligibility to vote, or fraud. It is therefore apparent that the dating provisions are virtually meaningless and, thus, serve no compelling government interest.” Op. 76.

Appellants wrongly claim that a majority of this Court has “recognized” that the dating provision serves an “unquestionable purpose.” Br. 45 (citing *In re 2020*, 241 A.3d at 1090 (Dougherty, J.)). But the OAJC in *In re 2020* stated the opposite: “a signed but undated declaration is sufficient and ***does not implicate any weighty***

interest.” 241 A.3d at 1078 (emphasis added). A *minority* of the Court viewed the dating provision as serving such interests.

Moreover, *In re 2020* had no record. The case was filed and quickly decided immediately after Election Day in 2020—the first election with expanded mail voting. Consequently, the Court decided the issues in a vacuum, based only on the political campaigns’ *theories* about how the date *might* be used. Since then, however, we have history in the form of multiple elections and subsequent decisions, including a comprehensive discovery process—involving the Secretary, all 67 counties and Appellants in this case. That discovery produced a record disproving all the hypothetical “weighty interests.” See also *NAACP II*, 97 F.4th at 125 (agreeing that the date provision “serves little apparent purpose”); *NAACP I*, 703 F. Supp. 3d at 678 (agreeing after a review of the full record that the voter-written date on the outer return envelope is “wholly irrelevant”); Op. 76 (“[C]ounsel for the Secretary confirmed that none of the county boards of elections use the handwritten date for any purpose, and he further relayed that the only reason the date is included on absentee and mail-in ballot envelope declarations is because such requirement is in the Election Code.”).

While failing to address, much less refute, the record and admissions generated since this Court decided *PDP* and *Ball*, Appellants again repackage three theoretical purposes served by the date provision. None survive any level of scrutiny.

First, Appellants fail to cite a single example to support their claim that the date provision serves as a “useful backstop” for determining whether a ballot is timely. Br. 45. Nor do they refute the majority or the Third Circuit’s conclusion that the handwritten date is not “used to determine the ballot’s timeliness because a ballot is timely if received before 8:00 p.m. on Election Day, and counties’ timestamping and scanning procedures serve to verify that.” *NAACP II*, 97 F.4th at 129. Appellants’ pure conjecture—that the handwritten date *might* be used to determine timeliness, *if* there were *both* a failure to timestamp *and* a failure of the SURE scanning procedure, is far too speculative to qualify as an “important regulatory interest.” *See* Op. 76-78.²⁰

Second, Appellants cite no authority, from Pennsylvania or anywhere else, for the claim that the date provision serves some supposed interest in “solemnity.” Br. 45-46. This is not even a legitimate government interest that might theoretically justify a voting restriction. *See In re 2020*, 241 A.3d at 1089, n.54 (Wecht, J.) (“It is inconsistent with protecting the right to vote to insert more impediments to its exercise than considerations of fraud, election security, and voter qualifications require.”). None of Appellants’ cited cases involves requirements to date or sign

²⁰ *Cf. In re 2020 Canvass*, 241 A.3d at 1086 n.40 (“The date stamp and the SURE system provide a clear and objective indicator of timeliness, making any handwritten date unnecessary and, indeed, superfluous.”).

documents.²¹ And whatever purported interest might exist in “solemnity” is accounted for by the other requirements for successfully submitting a mail-in ballot—including that the voter submit an application, have their identification verified, and that they sign a declaration stating, “I am qualified to vote the enclosed ballot and I have not already voted in this election.”²² See 25 P.S. §§ 3146.4, 3146.6, 3150.14, 3150.16. The voters who were disenfranchised here did all of that. Appellants offer no reason to think that, after completing all these steps, a voter’s failing to handwrite a date on the envelope (or for that matter, making a minor mistake in handwriting the date, as thousands have done) shows that those voters did

²¹ The cases Appellants cite for their “solemnity” point are strikingly off-topic. *Minnesota Voters All. v. Manseky* is a case about a Minnesota law banning voters from wearing political buttons inside polling places and does not mention signatures, dates, or even any variation of the root word “solemn.” 585 U.S. 1 (2018). *Davis v. G N Mortg. Corp.*, is a parol evidence rule decision in a case involving mortgage prepayment penalties, which addresses the value of “legal formalities” generally and again does not mention signature and date requirements. 244 F. Supp. 2d 950 (N.D. Ill. 2003). *Thomas A. Armburuster, Inc. v. Barron* is a statute of frauds case involving a corporate shareholder’s alleged oral guarantee of the corporation’s debt, which addressed the requirement that a guarantee be in writing, not the purpose of any sign-and-date requirements. 491 A.2d 882 (Pa. Super. Ct. 1985). *Thatcher’s Drug Store v. Consol. Supermarkets* is another case about the validity of an oral agreement, which did not mention sign-and-date requirements. 636 A.2d 156 (Pa. 1994). *Vote.org v. Callanen*, the **only** case cited by Appellants to mention the concept of “solemnity,” is a federal Materiality Provision case that ruled on the materiality of a wet signature requirement but did not mention a handwritten date requirement. 89 F.4th 459 (5th Cir. 2023).

²² Indeed, a missing or incorrect date commonly does *not* deprive a document of its legal effect. For example, with respect to declarations signed under penalty of perjury in accordance with federal law (28 U.S.C. 1746), “the absence of a date does not render the declaration invalid if extrinsic evidence could demonstrate the period when the document was signed.” *Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 475–76 (6th Cir. 2002). Here, the “period when the [envelope] was signed” is known and undisputed, because mail-in ballots were sent to voters on a date certain and are not accepted by county boards after 8:00 p.m. on Election Day.

not “contemplate their choices” and “reach considered decisions about their government and laws.” Br. 45-46.

Third, Appellants invoke the repeatedly debunked talking point that the date provision helps detect voter fraud because, in a single instance in the 2022 primary, a ballot was submitted with a date twelve days after the voter had died, and the fraudster was convicted. Br. 46-47. But as the undisputed record in *NAACP* shows, the Lancaster County Board of Elections had learned of the death of the voter and had ***already removed*** her from the rolls long before it received the ballot, and accordingly would not have counted the ballot regardless of the handwritten date on it. *See NAACP I*, 703 F. Supp. at 679 n.39 (“[T]he county board’s own Rule 30(b)(6) designee testified that the fraudulent ballot was first detected by way of the SURE system and Department of Health records, rather than by using the date on the return envelope.”).²³ This is consistent with this Court’s determination that the date

²³ Appellants have repeatedly misrepresented the Lancaster County example by characterizing the date written on the envelope as the “only evidence” of fraud “on the face of the fraudulent ballot.” Br. 47. *See also* Op. 36, n.33. They should not be permitted to relitigate this point, which has been squarely rejected based on the Lancaster Board’s admissions. *NAACP I*, 703 F. Supp. at 679, n.39. It is undisputed that the Lancaster Board learned of the voter’s death weeks earlier and removed her from the voter rolls even before receiving a ballot in her name. A.507-509 (Miller Tr.), 87:18-94:15. The receipt of a ballot so long after the voter’s death was itself evidence of fraud, as was her daughter’s admission to law enforcement that she completed the ballot and signed her mother’s name after her death. Police Criminal Complaint, A395. In any event, to the extent the government has an interest in preventing election fraud, the fraud is prevented in the case of deceased voters by reliance on SURE data and Department of Health records, without the need to reference a handwritten envelope date. A510-A511, 100:25-102:18.

provision is not used to determine whether a ballot was “fraudulently back-dated.” *In re 2020*, 241 A.3d at 1077 (no danger of fraudulent backdating because ballots received after 8:00 p.m. on Election Day are not counted).²⁴

In sum, the lack of any *bona fide* government interest served by the date provision, Op. 77, means enforcement of the date provision to disenfranchise cannot satisfy intermediate, or even rational basis, scrutiny. *Cf. Morrison Informatics, Inc. v. Members 1st Fed. Credit Union*, 139 A.3d 1241, 1252 n.6 (Pa. 2016) (Wecht, J., concurring) (“Where stops the reason, there stops the rule.”).

5. Appellants’ Reliance on Law Extrinsic to the Pennsylvania Constitution Is Misplaced.

In searching for authority to support their arguments, Appellants ultimately leave Pennsylvania behind. They urge the Court to adopt their proposed new limits on the Free and Equal Elections Clause based on inapposite federal cases, or cases from other states. Br. 48-54. That cannot be right.

The federal cases Appellants cite (Br .50-54) are entirely irrelevant to this Court’s analysis under the Pennsylvania Constitution. This Court has expressly held that the Free and Equal Elections Clause, with its special purpose and unique history,

²⁴ Appellants also assert that “States do not need to point to evidence of election fraud within their borders in order to adopt rules designed to deter and detect it.” Br.47. The problem with this argument is there is zero evidence the date requirement was “designed to deter and detect” fraud in the first place – and a wealth of evidence in the record showing that the date requirement does not serve this purpose in any event.

requires “a separate analysis” from any federal constitutional claims. *See LWV*, 178 A.3d at 812. And in any event, even federal case law would not support the constitutionality of completely meaningless restrictions on voting. As the U.S. Supreme Court held in *Crawford v. Marion County Election Board* (a case cited nine times in Appellants’ brief): “***However slight*** that burden may appear...***it must be justified*** by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’” 553 U.S. 181, 191 (2008) (emphasis added).²⁵

And Appellants’ reliance on constitutional decisions from other states, (Br. 48-50), are irrelevant to the protections afforded by Pennsylvania’s Constitution. They cite no case that has rejected a claim that a similarly pointless restriction on mail-in ballots violates the other states’ respective Free and Equal Elections Clause. Instead, they announce that they “are aware of *zero* cases applying any other State’s ‘free and equal election’ clause to invalidate a neutral ballot-casting rule.” Br. 50 (emphasis in original).

²⁵ The other federal cases cited by Appellants do not bolster the suggestion that “minor” voting regulations escape any level of review. In *McDonald v. Board of Election Commissioners* for example, the Court reviewed the bases for a state’s decision to deny the ability to vote by absentee ballot to “judicially incapacitated” individuals awaiting trial and concluded the policy was “reasonable.” 394 U.S. 802, 809 (1969). The Court did not stop at the determination that this restriction did not “absolutely prohibit[]” voters “from exercising the franchise.” *Id.*, 809. Similarly, in *Timmons v. Twin Cities Area New Party*, the Court applied a “less exacting review” (not no review) of the reasons underlying a restriction on voting that it deemed to be less “severe,” but still required the state in that case to demonstrate an “important regulatory interest” to support the “lesser burdens.” 520 U.S. 351, 358 (1997).

But such cases certainly exist. For instance, the Kentucky Supreme Court held that, although a statute required each write-in voter to write the “name of his choice” on the ballot, the Kentucky Constitution required counting votes from 148 voters who wrote the candidate’s initials instead. *McIntosh v. Helton*, 828 S.W.2d 364, 365–67 (Ky. 1992).²⁶ Similar examples can be found in rulings from Missouri and Delaware.²⁷

In any event, though they may have pale imitations of our Clause, other states do not share “[o]ur Commonwealth’s centuries-old and unique history [that] has influenced the evolution of the text of the Free and Equal Elections Clause, as well as [this] Court’s interpretation of that provision.” *LWV*, 178 A.3d at 804. What matters here is the right to vote as guaranteed by this Commonwealth’s singular charter and this Court’s cases safeguarding that right from any and all unjustified burdens.

²⁶ Appellants discount *McIntosh* as “applying” rather than “invalidating” a rule. Br. 50 n.3. That distinction is nonsensical. *McIntosh* held that the Clause required counting voter submissions that did not strictly comply with a statute, just as Appellees here seek.

²⁷ See, e.g., *Weinschenk v. State*, 203 S.W.3d 201, 211 (Mo. 2006) (invalidating a voter ID law under a state constitutional provision guaranteeing “[t]hat all elections shall be free and open”); *Young v. Red Clay Consolidated School*, 159 A.3d 713, 799 (Del. Ch. 2017) (holding that family-focused events at polling places violated the Free and Equal Elections Clause because the events created congested parking lots and impeded elderly voters from reaching the polls). Appellants urge that *Weinschenk* is distinguishable because it applied to in-person voting and impacted “hundreds of thousands of people,” Br. 50, n.3, but the Clause’s application is not limited to in-person voting, nor does it require six-figure disenfranchisement to spring into action. Appellants say *Young* is not “apt,” *id.*, but like the instant case it involved “inhibit[ing] voting,” including by “the elderly.” 159 A.3d at 766.

B. The Date Provision Should Be Reinterpreted Under the Canon of Constitutional Avoidance.

Alternatively, this Court may affirm the relief granted below on statutory-interpretation grounds. In particular, this case presents compelling reasons for the Court to re-interpret the date provision as “directory,” which would avoid the constitutional violation of disenfranchising thousands of Pennsylvanians for a trivial mistake. In *Ball*, the Court applied a bottom-line conclusion pieced together from the multiple *In re 2020* opinions—that, as a matter of statutory interpretation, the date provision should be construed as mandatory. 289 A.3d at 21-22 (citing *In re 2020*, 241 A.3d at 1086-87 (Wecht, J.) & 1090-91 (Dougherty, J.)). The Court should now revisit that conclusion for three reasons.

First, as shown herein and confirmed by the majority, mandatory application of the date provision to disqualify timely ballots unavoidably leads to mass disenfranchisement in violation of the Free and Equal Elections Clause. The constitutional claim was not raised or addressed in *Ball* or *In re 2020*. Revisiting the statutory interpretation in light of the constitutional violation established here aligns with the Court’s overarching mandate to interpret provisions of the Election Code “in order to favor the right to vote,” so as “to enfranchise and not to disenfranchise.” *Wieskerger*, 290 A.2d at 109 (citing *Appeal of James*, 105 A.2d 64 (Pa. 1954)); see also *Ball*, 289 A.3d at 27 n.156 (citing Pa. Const. art. I, § 5 and *PDP*, 238 A.3d at 361) (“[F]ailure to comply with the date requirement would not compel the

discarding of votes in light of the Free and Equal Elections Clause, and our attendant jurisprudence that ambiguities are resolved in a way that will enfranchise, rather than disenfranchise”).

Second, the theoretical “weighty interests” credited by several Justices in *In re 2020* have not been borne out by the facts. *See In re 2020*, 241 A.3d at 1090-91 (Dougherty, J.)); *see also Ball*, 289 A.3d at 21-22. Three Justices concluded in *In re 2020* that the “shall...date” language in the Election Code is mandatory rather than merely directory based on the existence of supposed “weighty interests” like the need to prevent the “backdating” of envelopes. 241 A.3d at 1090-91. These posited weighty interests were necessary to those Justices’ conclusion under the applicable legal framework, which then became the basis of the *Ball* ruling. *Ball*, 289 A.3d at 21-22 (citing *In re 2020*, 241 A.3d at 1086-87 (Wecht, J.) & 1090-91 (Dougherty, J.)).

Justice Dougherty (joined by then-Chief Justice Saylor and Justice Mundy) reasoned that the Code’s “shall...date” language is mandatory ***because it is supported by so-called “weighty interests.”*** *In re 2020*, 241 A.3d at 1090-91 (emphasis added). In so doing, these three Justices engaged with the same analysis as the OAJC and every previous case considering rejection of ballots for “minor irregularities.” *Compare Weiskerger*, 290 A.2d at 109 (“shall” language in the Code requiring use of “blue, black or blue-black ink” to mark ballots was “merely

directory” absent sufficiently weighty interests), and *Appeal of Norwood*, 116 A.2d 552, 555 (Pa. 1955) (ballot with a stray check mark must be counted despite Code provision that ballots “marked by any other mark than an (X)...shall be void”; voters “are not to be disenfranchised” based on such “minor irregularities...except for compelling reasons”), with *Pierce*, 843 A.3d at 1231-32 (Code provision requiring in-person ballot delivery was mandatory because it was “supported by a weighty interest”). But as discussed above, *supra*, 6-8, subsequent litigation has shown that concerns about “backdating” envelopes and other interests cited in *In re 2020* are inconsistent with the counties’ purposes and practices. *Supra*, 8-11. Simply put: The premise for the statutory interpretation from *In re 2020* (which was subsequently accepted as settled in *Ball*) no longer holds.

Third, Appellees’ proposed interpretation is consistent with the overall structure of the Election Code. The Code’s canvassing provision, 25 P.S. § 3146.8, requires county boards to review voter declarations on mail and absentee ballot return envelopes for sufficiency. 25 P.S. § 3146.8(g)(3). Such ballots must be canvassed and counted once the board confirms that the declaration is signed by the appropriate person who is entitled to vote and “is satisfied that the declaration is sufficient.” *Id.* This provision contains no reference to the voter-written date in connection with the sufficiency determination.

Consistent with the canon of constitutional avoidance,²⁸ and in order to avoid the persistent violation of the Free and Equal Elections Clause, the Court should hold as a matter of statutory construction that the date provision is merely directory, and not mandatory, such that an undated or misdated declaration duly signed by the relevant eligible voter may still be deemed “sufficient” at the canvassing stage pursuant to § 3146.8(g)(3).

C. Appellants’ Procedural Arguments Fail.

Appellants raised a plethora of procedural arguments below, and the majority below properly rejected each of them. None of those arguments provides a basis to undo the majority's reasoned decision on the merits.

1. The Commonwealth Court and This Court Have Subject-Matter Jurisdiction.

The majority correctly concluded that it had subject matter jurisdiction and that the Secretary is an indispensable party to this litigation. Op. 48. And it correctly rejected Appellants’ assertions that the Secretary’s issuance of guidance is the sole basis for jurisdiction in this case. It is not.

Appellees did not simply challenge the substance of the Secretary’s guidance, but rather the enforcement of a statutory requirement that the Secretary is

²⁸ See, e.g., *Hartford Accident & Indem. Co. v. Ins. Comm’r of Commonwealth*, 482 A.2d 542, 549 (Pa. 1984).

legislatively charged with implementing.²⁹ *See* Op. 47 (noting Appellees named the Secretary “based on his duties under the Election Code with respect to...**the form of absentee and mail-in ballots and the form of the ballots’ declarations**”) (emphasis in original).

The Secretary is an indispensable party because the Secretary implements the mandatory statutory provision whose enforcement is challenged as unconstitutional—sections 1306 and 1306-D of the Election Code—by prescribing the form of the declaration and uniform instructions. 25 P.S. §§ 3146.6, 3150.16. Under those, it is incumbent on the Secretary to prescribe forms that contain a date field just as much as it is incumbent upon the counties to ensure, under current law, that the voter fills out the date field.

Consistent with these statutory duties, the Secretary’s recent July 1, 2024 Mail Ballot Directive relies on Sections 201, 1304, and 1304-D of the Election Code, 25 P.S. §§ 2621, 3146.4, 3150.14 as authority for its issuance. Because the Mail Ballot Directive was issued pursuant to the Secretary’s statutory authority, it is not mere “guidance” and counties ***must*** follow it. Among other things, this Directive includes a new requirement that counties are not free to ignore: The form of the outer

²⁹ The majority referenced the Secretary’s guidance to provide context regarding the enforcement of the date provision. Op. 47. The importance of the majority’s discussion of the guidance is 1) the Secretary continues to instruct counties not to count ballots with missing or incorrect dates; and 2) counties are applying the Secretary’s instruction and enforcing the date provision inconsistently.

declaration envelope that contains the disputed date field must be edited by the counties to include the current year pre-filled. A154-A155. None other than the Secretary may decide the text, content, shape, size or form of the declaration envelope. The counties' implementation role is on the "back end." They make sure that the voters comply by inserting the date.

Further, the outcome of this case impacts the Secretary's duties to receive from county boards the returns of primaries and elections, to canvass and compute the votes cast for candidates, to proclaim the results of such primaries and elections, and to issue certificates of election to successful candidates. Op. 47. (citing 25 P.S. § 2621(f)). Enforcement of the date provision directly bears on whether the Secretary's performance of such certification duties complies with law. Both the Secretary and the boards named in this suit are responsible for carrying out—in different ways—the unconstitutional enforcement of the envelope-dating requirement, and therefore are proper parties in this constitutional challenge.

Appellants' contrary arguments fail. *First*, they argue that jurisdiction is foreclosed by the holding in *RNC II*, No. 447 MD 2022 (Pa. Cmwlth. Mar. 23, 2023), which involved county boards' adoption of "notice and cure" programs. Br. 12-13. The Commonwealth Court's unpublished opinion in *RNC II* is obviously distinguishable because the Election Code is ***completely silent*** on whether and to what extent county boards must adopt "notice and cure" program and equally silent

about the Secretary's role around such a program. Interpreting its own prior case, the majority correctly held that, unlike this lawsuit, the Secretary had no legislatively mandated duty with respect to the "notice and cure" issues before it in *RNC II*. *Id.* Instead, petitioners in *RNC II* (represented by the same lawyers as Appellants) attempted to conjure jurisdiction based exclusively on the Secretary's general responsibilities. Fundamentally unlike this case, petitioners in *RNC II* did not "make any claims implicating the limited duties and responsibilities of the Acting Secretary under the Election Code," Op. 46.

Second, Appellants focus on the remedy that the majority ordered prohibiting enforcement of the date provision and contend that it has no effect on the Secretary's statutory duties. Br. 16. Appellants' focus on the relief ordered is misplaced because subject matter jurisdiction depends on the grant of statutory authority to the Secretary regarding the challenged provision and his duties to certify the election results.³⁰ The Secretary must ensure that he does not certify election results where

³⁰ Appellants abandoned their organizational standing arguments below after they and the Democratic Party intervenors were permitted to participate in the case as parties. *Cf. Albert v. 2001 Legislative Reapportionment Comm'n*, 790 A.2d 989, 995 n.6 (Pa. 2002) (where some petitioners established standing, "the claims raised in the[ir] petitions are properly before the Court," despite other co-petitioners' standing issues). Appellants now hint that the organizational plaintiffs here are not sufficiently "aggrieved" by the Secretary's challenged conduct because "his actions bear no 'causal connection' to their alleged harm from enforcement of the requirement." Br. 15. If it mattered, the Commonwealth Court correctly held that the organizational plaintiffs all have standing, because the continued implementation of the envelope-date requirement by both the Secretary and the county boards is causing them concrete harms. Op. 59-62. The majority examined the extensive, unchallenged declarations from each organization establishing its

counties unconstitutionally exclude certain mail ballots. And the outcome of this lawsuit will also inform the Secretary's future performance of his statutory authority.

None of Appellants' cases require a different result.³¹ Pennsylvania courts have consistently held that the heads of administrative agencies responsible for implementing a statute and defending it against constitutional challenges are necessary parties in a suit challenging the constitutionality of a statute. *See, e.g., Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1217 (Pa. Cmwlth. 2018) (Secretaries of Revenue and Agriculture were proper parties in constitutional challenge to statute); *cf. Allegheny Reprod. Health*, 309 A.3d at 848 (DHS was appropriate necessary party because constitutional challenge to Abortion Control Act implicated its "administrative functions"); *Allegheny Sportsmen's League v. Ridge*, 790 A.2d 350, 355 (Pa. Cmwlth. 2002) (State Police Commissioner, as government official charged with ultimate responsibility of enforcing and

"substantial, direct, and immediate interest in the outcome of the litigation," *Allegheny Reproductive Health*, 309 A.3d at 832, including the diversion of resources as a result of the envelope-date requirement's continued enforcement. A443-A484 (Petitioner Declarations).

³¹ For example, in *Foreman v. Chester-Upland School District*, 941 A.2d 108, 113 (Pa. Cmwlth. 2008), the Department of Education was not an indispensable party because the suit was brought against a local school district and the department's statutory authority was not at issue. And in *Pennsylvania State Education Association v. Department of Community and Economic Development*, 50 A.3d 1263, 1277 (Pa. 2012), the Office of Open Records was an indispensable party in a suit challenging the constitutionality of OOR's statutory adjudicatory process. *Scherbick v. Community College of Allegheny County*, 387 A.2d 1301, 1303 (Pa. 1978) is inapposite because it did not involve constitutional challenges to enforcement of a statute at all.

administering provisions of the Firearms Act, was proper party). Consistent with this authority, the Secretary, as the chief election official in Pennsylvania, has been a proper party in every other action presenting issues of statewide practice under the Election Code—including in *Ball*, where *Appellants named the Secretary* in their suit regarding the envelope-date provision.³²

In sum, the Secretary has specific “duties and responsibilities” to enforce the date provision in an unconstitutional manner. The majority’s determinations that the Secretary is a proper and indispensable party, and accordingly that the court had subject matter jurisdiction, must be affirmed. Alternatively, if this Court has any remaining doubts as to the original subject matter jurisdiction of the Commonwealth Court in this case, this Court can, and should, reach the merits of this dispute by exercising its own extraordinary jurisdiction pursuant to 42 Pa.C.S. § 726, because this case presents an issue of immediate public importance.

³² See e.g. *Banfield v. Cortes*, 922 A.2d 36, 44 (Pa. Cmwlth. 2007) (Secretary was indispensable party due to duties outlined in Election Code), *aff’d*, 631 Pa. 229 (2015); *Applewhite v. Commonwealth*, 617 Pa. 563, 567 (2012) (Secretary was indispensable party when statutory provision was challenged under the Free and Equal Election Clause); *McLinko v. Commonwealth*, 270 A.3d 1243, 1266 (Pa. Cmwlth. 2022) (Secretary was indispensable party due to duties of certifying and administering elections in constitutional challenges regarding legality of mail-in ballots), *rev’d on other grounds* *McLinko v. Dept. of State*, 279 A.3d 539 (Pa. 2022); *Bonner v. Chapman*, 298 A.3d 153, 159 (Pa. Cmwlth. 2023) (Secretary was indispensable party due to Secretary’s duty to implement provisions of Election Code).

2. Non-party County Boards of Elections Are Not Indispensable.

Appellants do not dispute that the County Respondents are proper defendants. They claim, however, that the case should be dismissed for failure to name all 67 county boards as indispensable parties. Br. 21-24. That is wrong.

As an initial matter, Appellants overstate the extent to which non-party county boards may be interested in the outcome of this litigation. In this case, none of the other 65 boards have sought to intervene, which “militates against finding that any of those county boards are indispensable to this case.” Op. 53. And with all 67 boards named in the *NAACP* litigation, the vast majority either signed stipulations agreeing not to contest the requested relief or did not substantively respond to the litigation. *NAACP I*, W.D. Pa. No. 1:22-cv-00339, ECF Nos. 157 (Order approving stipulation with 33 boards), 192 (Order approving stipulation with 8 additional boards), 243 (stipulation with 22 additional county boards); 445 (stipulation with Westmoreland County Board).

In any event, none of the 65 non-party boards is so indispensable that their non-joinder might support reversal. In determining whether an absent party is indispensable, Pennsylvania courts focus on the relief sought and whether the absent party’s “rights are so connected with the claims of the litigants” that the relief requested could not be granted “without impairing those rights.” *Polydyne, Inc. v. City of Phila.*, 795 A.2d 495, 496 (Pa. Cmwlth. 2002) (quotation marks and citation

omitted). Here, the 65 unnamed Pennsylvania counties are not indispensable to either of the forms of relief sought. *See* Op. 52.

As to Appellees' request for injunctive relief, Appellees obtained an order enjoining the boards in the Pennsylvania counties with the most impacted voters from continuing to enforce the date provision to disenfranchise voters. No other board is indispensable to adjudicating this request for relief.

Appellees also obtained a declaration on the generally applicable question of what the Free and Equal Elections Clause requires. This Court's decision reviewing *that* determination will be statewide precedent. And this practical reality resolves the argument about supposedly "varying standards" from county to county, Dissent 7; Br. 5, 20 (citing *Bush v. Gore*, 531 U.S. 98, 106-07 (2000)).³³ Should this Court affirm the declaration as a matter of law, its holding would have precedential force for all county boards (and would provide clarity for all counties and all voters as to

³³ *Bush v. Gore* is inapposite. There, the Court held that "the absence of specific standards" in the "recount mechanisms implemented in response to the decisions of the Florida Supreme Court" failed to "satisfy the minimum requirement for nonarbitrary treatment of voters" under the Equal Protection Clause. 531 U.S. 98, 105-106 (2000). Here, the majority's decision does lack for specific standards that would lead to arbitrary treatment; it declares that disenfranchising voters for a meaningless paperwork error violates the Pennsylvania Constitution. Implementing that decision is straightforward: count timely mail ballots notwithstanding the trivial mistake. Indeed, the invocation of *Bush v. Gore* is especially misguided because thousands of voters are *currently* being subjected to arbitrary treatment due to inconsistent enforcement of the envelope-dating rule announced in *Ball*. *See infra*, 12-13. To advance the "nonarbitrary treatment of voters," 531 U.S. at 105-106, this Court should affirm.

what the law requires. That would not impair any non-party's "rights," because they have no right to deviate from what the Constitution requires.

The basic fact that boards are generally required to follow this Court's decisions on questions of constitutional law does not make them indispensable parties to any particular suit. If the Declaratory Judgments Act required joinder of all persons affected by a challenge to legislation, "the valuable remedy of declaratory judgment would be rendered impractical and indeed often worthless for determining the validity" of state actions that commonly affect the interests of large numbers of people. *City of Phila. v. Commonwealth*, 838 A.2d 566, 582–83 (Pa. 2003). And future voting litigation would unnecessarily be choked with burdensomely large numbers of parties. That is not the law.

3. The Relief Granted Below Does Not Implicate the Federal Elections Clause.

Appellants suggest (Br.54-55) that the U.S. Constitution prohibits Pennsylvania courts from exercising their basic judicial functions, including reviewing state action or the application of state law for compliance with the provisions of the state constitution. The U.S. Supreme Court reached ***exactly the opposite conclusion*** in *Moore v. Harper*, 600 U.S. 1 (2023).

There, the Court firmly "rejected the contention that the Elections Clause vests state legislatures with exclusive and independent authority when setting the

rules governing federal elections.” *Id.*, 26. This Court rejected the same Elections Clause argument in *LWV*, 178 A.3d at 811.

Moore expressly held that “state legislatures remain bound by state constitutional restraints” when they make the rules that apply in federal elections, 600 U.S. at 32, reaffirming that “[s]tate courts retain the authority to apply state constitutional restraints” via the power of judicial review accorded to them by their state constitutions, *id.*, 37; *see also id.*, 38 (Kavanaugh, J., concurring) (“[S]tate laws governing federal elections are subject to ordinary state court review, including for compliance with the relevant state constitution.”).

This is not the highly exceptional case where a state court has acted so far outside its normal ambit as to “transgress the ordinary bounds of judicial review” in a manner that implicates the federal Elections Clause. *Moore*, 600 U.S. at 36. Here, the majority applied the Pennsylvania Constitution consistent with decades of prior cases reviewing state election rules and practices, including ones that affect federal elections, for compliance with the Free and Equal Elections Clause. *Supra*, 17-23; *see also, e.g., PDP*, 238 A.3d at 371–72; *Page*, 58 Pa. at 364–65; *Mixon*, 759 A.2d at 452; *Applewhite II*, 2014 WL 184988, at *62-64.

Indeed, this is an *easier* case than *Moore*, which involved the North Carolina Supreme Court’s rejection of a congressional districting plan on the grounds that partisan gerrymandering was inconsistent with principles of state constitutional law,

including North Carolina’s version of a Free and Equal Elections Clause. 600 U.S. at 7–14. Even in that context—where the state court essentially fashioned a new right of action against partisan gerrymandering based on broad principles of state constitutional law—the Supreme Court had no trouble confirming that state courts may exercise judicial review to ensure that the enactments of the state legislature comport with the state constitution.

Here, unlike in *Moore*, no legislative body is even a party in this case, and the RNC has no standing to assert whatever rights might be granted to the General Assembly by the U.S. Constitution. And even if the issue were properly presented, this case fits easily within the capacious “ordinary bounds of judicial review” standard. Enforcement of the Free and Equal Clause is part of the Pennsylvania courts’ ancient and inalienable role in safeguarding the fundamental rights independently guaranteed by the Pennsylvania Constitution through judicial review. *See LWV*, 178 A.3d at 812. Appellees seek no more and no less in this case.

4. The Relief Appellees Seek Does Not Require Invalidation of any Part of Act 77, Much Less Its Entirety.

The Commonwealth Court correctly held that the relief sought here does not implicate Act 77’s nonseverability provision and, contrary to the ominous claims by the dissent and Appellants, would not require striking “no-excuse” mail voting in Pennsylvania “on the eve of the 2024 general election.” Br. 57-58; Dissent 51. Appellees sought an order directing the Secretary and boards to cease treating the

date provision as a reason to disenfranchise thousands of voters and a declaration that it is unconstitutional to reject timely mail ballots based on that basis. Such rulings do not invalidate “any provision of [the] act or its application” triggering the Act’s nonseverability provisions, as Appellants argue, Br. 56, 58.

For starters, Appellees do not ask this Court to re-write, amend, or strike any provision of Act 77. In other words, the Court need not invalidate or excise “shall...date” from section 3146.6 to grant the relief sought. Nor do Appellees seek an order barring voters from being directed to date mail ballot declaration forms, or continuing to include a date field next to the signature line. Appellees seek a ruling that enforcement of the date provision cannot, consistent with the Free and Equal Elections Clause, result in rejecting timely mail ballots. That does not invalidate any provision or application of Act 77, let alone all of it, particularly given that the provision addressing the sufficiency of the voter declaration on the return envelope—section 3146.8(g)—predates Act 77. *Cf. Bonner v. Chapman*, 298 A.3d 153, 168-69 (Pa. Cmwlth. 2023) (*en banc*) (finding that Act 77 nonseverability clause was not implicated by prior successful challenges to the dating requirement).

Moreover, even a holding that the date provision or its application is invalid would not require the Court to invalidate all of Act 77. Pennsylvania courts regularly deem it appropriate to sever provisions in statutes containing similar nonseverability clauses, because “it is not for the legislature to ‘dictate the effect of a judicial finding

that a provision in an act is ‘invalid,’” *PDP*, 238 A.3d at 397 n.4 (Donohue, J., concurring and dissenting) (citations and quotations marks omitted). It is the province of the courts to determine constitutionality, and to fashion legal and equitable relief. *See generally Stilp v. Commonwealth*, 905 A.2d 918, 970-981 (Pa. 2006) (declining to enforce identical nonseverability provision and noting significant “separation of powers concerns”).

In *Stilp*, the Court confronted a “boilerplate” nonseverability provision identical to the one in Act 77. 905 A.2d at 973. The Court ultimately severed the provision of the legislation at issue that “plainly and palpably violated...the Pennsylvania Constitution” from “the otherwise-constitutionally valid remainder of [the legislation].” *Id.*, 980-81. As *Stilp* observed, the Court “has never deemed nonseverability clauses to be controlling in all circumstances.” *Id.*, 980. Indeed, the Court had previously severed a statutory provision that contained a nonseverability clause in *Pennsylvania Federation of Teachers v. School District of Philadelphia*, 484 A.2d 751, 754 (Pa. 1984), which was significantly more specific than the one in *Stilp* and in Act 77; it “render[ed] sections 2, 3 and 4 of the [challenged] Act void ‘[i]n the event a court of competent jurisdiction rules finally that the salary deductions mandated in these sections are legally or constitutionally impermissible.’” *Id.* In holding that those deductions were indeed constitutionally impermissible, *see id.*, 753, the Court nonetheless severed them from the broader

act, finding that a strict application of the nonseverability provision would not be sensible in light of the nature of the Court’s specific constitutional holding. *Id.*, 754; *cf. Stilp*, 905 A.2d at 979-80 (a nonseverability clause that “‘serve[s] an in terrorem function’ or operates to ‘guard against judicial review altogether by making the price of invalidation too great’...‘intrude[s] upon the independence of the Judiciary and impair[s] the judicial function.’”).

Likewise, the application of Act 77’s nonseverability provision is neither required nor sensible here. The undisputed facts are that the date provision serves no purpose, benefits nobody, and disenfranchises thousands. It is easily severed from the rest of Act 77. Accordingly, even an order striking the date provision from the text of Act 77—relief that, to be clear, Appellees ***do not seek***—would not require the rest of Act 77 to be disturbed.

Nor is there any evidence to support Appellants’ claim, repeated by the dissent, that the date provision “was a crucial compromise that led to Act 77’s passage. Br. 56; Dissent 53-54. Their reliance on a two-person colloquy on the House floor discussing the severability clause of Act 77 (Br.57) does not prove that the dating provisions “were non-negotiable sections of Act 77 that were essential to those compromises and, accordingly, are not severable.” Dissent 54.

The colloquy itself focuses on discrimination relating to the availability of braille ballots, not on enforcement of the date requirement to reject timely-returned

mail ballots. And cherry-picking an exchange between two members of the House is no way to interpret a statute because “remarks and understanding of individual legislators are not relevant in ascertaining the meaning of a statute.” *McCormick v. Columbus Conveyer Co.*, 564 A.2d 907, 910 n.1 (Pa. 1989); *see also, e.g., In re Martin’s Estate*, 74 A.2d 120, 122 (Pa. 1950) (“[I]n ascertaining the legislative meaning...what is said in debate is not relevant....”).

To the contrary, invalidating the entire Act, as called for by the dissent and Appellants, would effectively override the General Assembly’s intent to open no-excuse mail voting to all eligible Pennsylvania voters, simply because a single pointless provision in a single section of the Act has been enforced in an unconstitutional manner. Millions of Pennsylvania voters have come to rely on the mail-in voting option created by Act 77, and millions of dollars in public funds have been spent to facilitate this option in the years since its passage. Moreover, the dissent and Appellants would have this Court invalidate *all* of the other provisions of Act 77, including those that have nothing to do with voting by mail, such as provisions eliminating straight party ticket voting or providing 90 million dollars of financing for the purchase of new voting equipment (which has already been spent). Invalidating the entire Act would needlessly nullify “years of careful [legislative] consideration and debate...on the reform and modernization of elections in Pennsylvania.” *McLinko v. Commonwealth*, 279 A.3d 539, 543 (Pa. 2022). Such an

outcome would be unreasonable if not absurd, and it should be presumed that “the General Assembly does not intend a result that is absurd[]...or unreasonable.” 1 Pa.C.S. § 1922(1).

The relief ordered by the Commonwealth Court vindicates Act 77’s larger aims to expand mail ballot voting to all and harmonizes that aim with the requirements of the Free and Equal Elections Clause. This Court should affirm.

CONCLUSION

The decision below should be affirmed.

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Dated: September 4, 2024

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Stephen Loney

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CERTIFICATION OF WORD COUNT

I hereby certify, pursuant to Pa.R.A.P. 2135 that this Memorandum does not exceed 14,000 words. I certify that this Memorandum contains 13,960 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

/s/ Stephen Loney

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APPENDIX

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**DECLARATION OF ARIEL SHAPELL
IN SUPPORT OF PETITIONERS' PETITION FOR REVIEW**

1. I, Ariel Shapell, am an attorney at the American Civil Liberties Union of Pennsylvania ("ACLU-PA") and have a background in data analytics.

2. I received a B.S.B.A. with majors in mathematics and finance from Washington University in St. Louis in 2011 and a J.D. from the University of Pennsylvania Carey Law School in 2021.

3. In 2014 and 2015, I served as the Director of Business Intelligence at Beatport LLC, a digital music and entertainment company, where I was responsible for organizing, analyzing, and reporting the company's business data. In my role, I performed data analyses and visualizations and developed systems to extract, transform, and load data. I also supervised a team of three data scientists and analysts.

4. From 2015 until 2018, I served as the lead product manager at Postlight LLC, a technology consultancy. At Postlight LLC, I oversaw data analytics and digital product development projects for large entertainment, finance, and cultural institutions.

5. From 2019 through the present, I have worked as a volunteer, intern, and now legal fellow at the ACLU-PA. During my time with the ACLU-PA, I have conducted numerous analyses of large data sets for both litigation and advocacy.

6. During my time with the ACLU-PA, I have conducted numerous analyses of large data sets for both litigation and advocacy.

7. I have been asked by the ACLU-PA, Arnold & Porter Kaye Scholer LLP, and the Public Interest Law Center (collectively, “Petitioners’ Counsel” or “Counsel”) to apply my training and expertise to assess the number of mail-ballots that were coded as canceled or pending because the voter neglected to write the date on the outer envelope or because the voter wrote a date that was deemed “incorrect.”

8. I have been informed and understand that on August 21, 2023, ACLU-PA attorney Kate Steiker-Ginzberg received access from the Pennsylvania Department of State to the “Pennsylvania Statewide Mail-Ballot File,” which contains point-in-time public information about each mail-ballot application and mail-ballot recorded in Pennsylvania’s Statewide Uniform Registry of Electors (“SURE”) system.

9. Attorney Steiker-Ginzberg made two versions of the Pennsylvania Statewide Mail-Ballot File available to me: (1) a version of the file generated on November 17, 2023 based on Department of State data from the SURE system corresponding to mail-ballots submitted in the November 2023 municipal election, under the file name VR_SWMailBallot_External 20231117.TXT; and (2) a version of the file generated on May 14, 2024 based on Department of State data from the SURE system corresponding to mail-ballots received in the April 2024 Pennsylvania

presidential primary election, under the file name VR_SWMailBallot_External 20240514.TXT.

10. For the May 14, 2024 SURE file, I identified mail ballots that were coded as canceled or pending because the voter neglected to write the date on the outer envelope by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - NO DATE” or “PEND – NO DATE.” For the November 17, 2023 SURE file, I identified mail ballots that were coded as canceled because the voter neglected to write the date on the outer envelope by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - NO DATE.” No “PEND – NO DATE” “Ballot status reason” values were present in the November 17, 2023 SURE file.

11. Similarly, for the May 14, 2024 SURE file, I identified mail ballots that were coded as canceled or pending because the voter wrote a date that was deemed “incorrect” by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - INCORRECT DATE” or “PEND – INCORRECT DATE”. For the November 17, 2023 SURE file, I identified mail ballots that were coded as canceled because the voter wrote a date that was deemed “incorrect” by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - INCORRECT DATE.” No “PEND – INCORRECT DATE” “Ballot status reason” values were present in the November 17, 2023 SURE file.

12. Based on the methodology described above, I determined that:

- a. As of November 17, 2023, **6,804 mail-ballots** submitted in the November 2023 municipal election had been coded in the SURE file as canceled because the voter neglected to write the date on the outer envelope or because the voter wrote a date that was deemed “incorrect.” Of that total, 4,849 ballots were coded as canceled because the voter neglected to write the date on the outer envelope, and 1,955 were coded as canceled because the voter wrote a date that was deemed “incorrect.”
- b. As of May 14, 2024, **4,421 mail-ballots** submitted in the April 2024 Pennsylvania presidential primary election had been coded in the SURE file as canceled or pending because the voter neglected to write the date on the outer envelope or because the voter wrote a date that was deemed “incorrect.” Of that total, 1,216 ballots were coded as canceled or pending because the voter neglected to write the date on the outer envelope, and 3,205 were coded as canceled or pending because the voter wrote a date that was deemed “incorrect.”

13. My conclusions, and the bases for my conclusion, are presented in this declaration. My work on these matters is ongoing, and I may make necessary

revisions or additions to the conclusions in this declaration should new information become available or to respond to any opinions and analyses proffered by Respondents. I am prepared to testify on the conclusions in this declaration, as well as to provide any additional relevant background. I reserve the right to prepare additional exhibits to support any testimony.

The statements made in this Declaration are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

A handwritten signature in blue ink, appearing to read "Ariel Shapell", is positioned above a horizontal line.

Ariel Shapell

5/27/2024

DECLARATION OF OTIS KEASLEY

I, Otis Keasley, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am 73 years old and am otherwise competent to testify.
3. I am a resident of Pittsburgh, Pennsylvania, located in Allegheny County. I have lived in Pittsburgh for nearly my entire adult life.
4. I am a veteran of the United States Marine Corps. It was my honor to serve in Vietnam 1969-1970.
5. I am a registered voter in Allegheny County. I have been a registered voter since I got out of the service.
6. I vote regularly. It is rare for me to miss a primary or general election. I try to vote in every single one.
7. Voting is important to because I truly believe in democracy. I believe in fair play and in the majority having its way.
8. As I have become older, I have been glad to have the opportunity to vote by mail. I usually vote by mail instead of voting at my polling place.
9. Ahead of the April 23, 2024 primary election, I applied for and received a mail ballot from Allegheny County.
10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.

11. I returned my ballot by putting it in the mailbox, well in advance of April 23. I usually take it to the county office in person, but I was dealing with a family member's health situation and it was important for me to be around the house. I decided just to mail it instead of taking it personally to the county.

12. I did not learn until after the election that my ballot was rejected because I had written the incorrect date.

13. I am very upset that my ballot will not count. I mailed my ballot in on time, so I do not understand why a date on the envelope was a reason to reject it.

14. It bothers me when people say they are not planning to vote because "my vote doesn't count." Every qualified voter should participate in our democracy, and everyone's vote should be tabulated. If you do not vote, you are wasting your privilege of living in a free democracy.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 23 of May, 2024 in Pittsburgh, Pennsylvania.


Otis Keasley

DECLARATION OF JOANNE SOWELL

I, Joanne Sowell, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am 76 years old and am otherwise competent to testify.
3. I am a resident of Pittsburgh, Pennsylvania, located in Allegheny County. I have lived in Allegheny County for nearly my entire life.
4. I am presently retired. During my career, I worked as a seamstress, first for a company that made slip covers and upholstery, and later for a company that made bumper pads for the trucking industry.
5. I am a registered voter in Allegheny County, and have been for more than 30 years.
6. I vote regularly. It is rare for me to miss an election.
7. Voting is important to because I wanted to have my view and perspective included. If you don't make an effort to vote, you can't say anything about the politicians in office.
8. I started voting by mail in 2020, when Pennsylvania first began allowing people to vote by mail even if they would not qualify for an absentee ballot.
9. Ahead of the April 23, 2024 primary election, I applied for and received a mail ballot from Allegheny County.
10. After I received my ballot, I marked it, inserted it into the secrecy

envelope and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.

11. I returned my ballot early because we were preparing to travel on a cruise, and I wanted to get my ballot in before we left.

12. On April 13, 2024, I received an email informing me that my mail ballot would not count because I wrote an incorrect date. The email said that they were sending the ballot back to me if I wanted to fix the mistake. A true and correct copy of the email dated April 13 is attached hereto as Exhibit A.

13. I did not see this email until the next day, April 14, at which time I was already boarding a flight to New York. I was on my way to travel on a cruise. I boarded the cruise on April 15, and did not return to Allegheny County until April 26, three days after the primary election.

14. Because of my travel, it was not possible for me to cure the date problem on my mail ballot, nor could I go to my polling place on April 23, nor could I timely receive and send voting materials by mail while traveling on a cruise ship. When I returned from my trip, the returned ballot was waiting at my house, but it was too late to fix it.

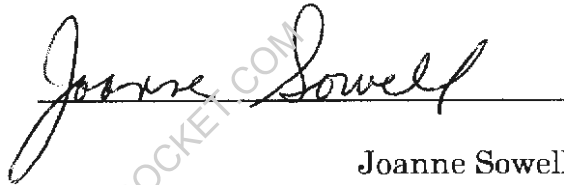
15. I am very upset that my ballot will not count because nobody's ballot should get rejected for a trivial paperwork mistake. When I received the email, it really bothered me for a few days because the date shouldn't matter; it's what's inside the ballot that counts.

16. I was so disappointed to learn that my ballot wouldn't be counted in

this election. I believe that it's important to vote and have a voice in selecting the politicians.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 23 of May, 2024 in Pittsburgh, Pennsylvania.


Joanne Sowell

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EXHIBIT

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Your Ballot Status Has Changed – Check for Updates

RA-voterregstatcert@state.pa.us <RA-voterregstatcert@state.pa.us>

Sat 4/13/2024 12:46 PM

To: HOTGRANNYJ@MSN.COM <HOTGRANNYJ@MSN.COM>

Dear JOANNE M SOWELL,

After your ballot was received by ALLEGHENY County, it received a new status.

The county has noticed that the date written on your ballot return envelope is incorrect. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot return envelope, and you should go to <https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx> to get more information.

If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.

You can get more information on your ballot's new status by going to <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions or need more information after checking your ballot's status, please contact ALLEGHENY County at (412) 350-4500.

Para leer esta información en español, vaya a

<https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>。

Thank you.

****Please do not reply to this email.****

DECLARATION OF EUGENE IVORY

I, Eugene Ivory, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am 74 years old and am otherwise competent to testify.
3. I am a resident of Philadelphia, Pennsylvania. I have lived in Philadelphia for 57 years. I am now retired, but was an educator for many years.
4. I am a registered voter in Philadelphia. I have been a registered voter in Pennsylvania since the early 1970s.
5. I vote regularly and have voted in every election, from local to presidential, for as long as I can remember.
6. Voting is important because it ensures that we are working to make a better country. Voting protects my rights and the rights of others and serves as an accountability measure for our elected officials.
7. I started voting by mail out of convenience four years ago. Ahead of the 2024 primary election, I applied for and received a mail ballot from the Philadelphia elections office.
8. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. On April 22, I returned my ballot by mail via the Official Mail-In Dropbox located at the Eastwick Library on Island Ave.

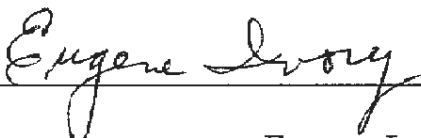
9. On Election Day, I received notice that my ballot had been received, but may not be counted due to an incorrect date on my envelope. The notice informed me that I could vote via a provisional ballot at my in-person polling location. My wife, who also voted by mail, received the same notice. At the time of notice, we were experiencing a family emergency and did not have the time nor capacity to vote via a provisional ballot. so neither of us were able to go to our polling place on primary day..

10. I am disappointed that my ballot did not count because I fully intended to participate in the primary. I had many personal matters occurring around that time and still set aside time to cast my mail ballot, only for it not to count due to a meaningless error.

11. I believe that these ballots should count because every eligible voter who completes a mail ballot and returns it on time should have their vote counted. Whether or not a ballot should be counted should not come down to a small detail like dating the envelope.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this th24 of May, 2024 in Philadelphia, Pennsylvania.


Eugene Ivory

DECLARATION OF BRUCE WILEY

I, Bruce Wiley, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am 71 years old and am otherwise competent to testify.
3. I am a resident of Philadelphia, Pennsylvania. I have lived in Philadelphia for eight years.
4. I am now retired, but was a trailer truck driver for many years.
5. I am a registered voter in Philadelphia. I have been a registered voter in Pennsylvania since 2016. I vote regularly and have voted in every presidential election.
6. Due to my health, I started voting by mail in the 2024 Primary Election. I previously only voted in-person to ensure there were no errors with counting my ballot. However, my health now limits me to the constraints of my home. I rarely leave the house, except for doctors' visits. Thus, it was necessary to vote by mail.
7. I voted by mail this year. Ahead of the 2024 primary election, I applied for and received a mail ballot from the Philadelphia elections office.
8. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I posted the ballot from my personal mailbox. I thought I had done everything correctly.

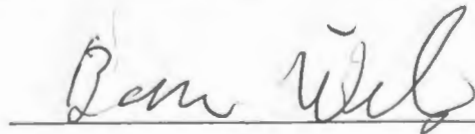
9. I was informed on May 21, 2024 that my ballot was not counted in the primary election because I forgot to write the date on the outer envelope. A person from the ACLU of Pennsylvania contacted me and informed me about this date issue. I do not regularly check my email and was unaware that I should monitor my email for updates regarding my mail ballot. Regardless, due to my health, it would not have been possible for me to correct the error on my ballot in person.

10. I am very upset that my ballot will not count because I am very passionate about Presidential elections.

11. This process lowered my confidence in voting by mail procedures because these ballots should be counted and not thrown out due to a meaningless error. I believe the state should be targeting fraudulent election practices, instead of invalidating ballots from eligible voters.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this ____ of May, 2024 in Philadelphia, Pennsylvania.

A handwritten signature in dark ink, appearing to read "Bruce Wiley", is written over a horizontal line.

Bruce Wiley

DECLARATION OF STEPHEN ARBOUR

I, Stephen Arbour, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 51 years old and am otherwise competent to testify.

3. I am a resident of Elkins Park, Pennsylvania, located in Montgomery County. I have lived in Montgomery County since 2006.

4. I am the Chief Technology Officer for a company that creates software for the wealth management industry. Our software helps keep markets honest by ensuring that our clients are in compliance with regulations.

5. I am naturalized United States citizen. I was born in Ecuador to a Canadian father and Salvadoran mother, and moved to the United States at eight years old.

6. When I received my citizenship in 2010, I immediately registered to vote in Montgomery County. I have voted in every primary and general election since becoming a citizen.

7. Voting is very important to me. For most of my adult life, I did not have the rights of citizenship. I have children in the United States, and I need to be able to participate in developing the best community possible for them.

8. I started voting by mail during the COVID pandemic in 2020 to avoid being around large groups of people. I continued voting by mail in the years since because I found this to be a very convenient system for our busy

family and complicated schedules.

9. I voted by mail this year. Ahead of the 2024 primary election, I applied for and received a mail ballot from Montgomery County.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I signed the outer envelope. I thought I had done everything correctly.

11. I returned my mail ballot to Montgomery County before Election Day. On Monday, April 22, 2024, I received an email saying that I had made a mistake when completing the date on the declaration form. A true and correct copy of the email dated April 22 is attached hereto as Exhibit A.


12. When I received the email right before Election Day, I had meetings scheduled all day and did not have time to get to Norristown by 4:00pm to fix the mistake. On Election Day, I was unable to cast a provisional ballot due to my busy work and family schedule.

13. I am very frustrated that my ballot will not be counted over this date issue. I do not know the point of the date other than to catch people making minor mistakes and to disqualify ballots. The post office and the county put a date on it, so whether the voter has dated it seems superfluous.

14. I am very upset that my ballot will not count. Voting gives me a voice that I did not otherwise have in this country for most of my adult life. I believe that voting is a responsibility of every American citizen.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this ²² ___ of May, 2024 in Elkins Park, Pennsylvania.



Stephen Arbour

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EXHIBIT

A

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FW: Important Message Regarding Your Ballot - Incomplete Declaration

1 message

Montco Votes <MontcoVotes@montgomerycountypa.gov>

Mon, Apr 22, 2024 at 10:51 AM

Dear Montgomery County Voter,

We have received your ballot for the 2024 Primary election. However, our sorting machine has indicated that the Voter Declaration field included an invalid date (not between the date range of 4/5/2024 to 4/23/2024) on your return envelope has not been fully completed. The Montgomery County Voter Services office is open on the dates and times below for voters that wish to cancel the pending ballot, and receive a new ballot. The outer return envelope must be signed and dated. Without the completed Voter Declaration ballots may not be counted.

To correct this issue, you can:

- 1. Physically come into One Montgomery Plaza, located at 425 Swede Street in Norristown, to cancel your current ballot and request a replacement.

Our office is open Monday through Friday from 8AM until 4:30PM. We are located at **425 Swede St (Suite 602), Norristown PA 19401**. **Ballot replacement can either be done in-person at One Montgomery Plaza or by mail.**

The last day to cure your ballot in-person is Monday, April 22nd, 2024.

You may still vote at your polling location by casting a provisional ballot. To find your polling location, please visit: <https://www.pavoterservices.pa.gov/Pages/PollingPlaceInfo.aspx>

Respectfully,
Voter Services Team
Montgomery County Voter Services
425 Swede St Ste 602
Norristown, PA 19401-3447
Phone: 610-278-3280 Opt. #2
www.montcopa.org/VoteByMail

Sarah Piening
Senior Mail-In Balloting Clerk
Voters Services

P: (610) 278-3433
X: 3433

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

DECLARATION OF KENNETH HICKMAN

I, KENNETH HICKMAN, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration, and this is what I would testify to if called as a witness in Court.
2. I am 89 years old and am otherwise competent to testify.
3. I am a resident of York, located in York County, Pennsylvania. I have lived in York County since 1973.
4. I am a retired mechanical engineer, but I continue to work part-time as a mechanical engineer for a building technologies company.
5. I am a registered voter in York County. I have been a registered voter in Pennsylvania since 1973.
6. I vote regularly in primary and national elections.
7. Voting is important to me because I believe it is a person's civic duty, and it is the only opportunity you have to change government representatives.
8. I started voting by mail as soon as it was allowed in 2020.
9. I voted by mail this year. Ahead of the 2024 primary election, I applied for and received a mail ballot from York.
10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.
11. I returned my ballot to the post office within a week or two of receiving it, well in advance of election day.

12. I did not receive any notice or a confirmation of receiving my ballot.

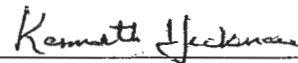
13. I found out that my vote was not counted when a person from the ACLU of Pennsylvania called me and told me my ballot was not counted because of an incorrect date.

14. I am surprised and upset that my ballot will not count. My vote should be counted if at all possible. If the counties do not use the date for any purpose, I believe it is unreasonable to not count my vote because of this issue.

15. I believe that voting is important because it is my chance to change who is in government.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 27th of May, 2024 in York, Pennsylvania.



Kenneth Hickman

DECLARATION OF JANET NOVICK

I, Janet Novick, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 80 years old and am otherwise competent to testify.

3. I am a resident of Washington Crossing, located in Bucks County, Pennsylvania. My family moved from New Jersey to Pennsylvania in 1979, and we have lived in Bucks County ever since.

4. I am presently retired. During my career, I was a schoolteacher and mostly taught high school English. My husband was a professor at The College of New Jersey. For many decades, my husband and I owned a small antiquarian bookshop in Lambertville, New Jersey. We decided to close the shop in 2013 due to health issues.

5. I have been a registered voter in Pennsylvania since moving to Bucks County in 1979.

6. I vote regularly. We take voting very seriously and always put lots of time and care into deciding who we are going to select. We vote in nearly every primary and general election, including in local elections.

7. I started voting by mail during the pandemic. I never had an issue regarding my mail-in ballot until this primary election.

8. My husband and I vote by mail because of the convenience and security it provides, given our health and mobility issues. I have spinal pain

and severe arthritis. I can still drive locally, but we typically stay close to home. My husband does not drive anymore. He has been diagnosed with neuropathy and typically gets around with a cane or walker.

9. I voted by mail this year. Ahead of the 2024 primary election, I applied for and received a mail-in ballot from Bucks County.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope, and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.

11. A short time later, I received a voicemail and an email from Bucks County letting me know that I had made an error when completing my ballot and that my ballot would not be counted if I did not correct it. My husband, Barry, was also informed that he had made a mistake and his ballot would not be counted. It turns out that both of us had written an **“incorrect” date on the** outer return envelope.

12. I was very surprised when I received this email because we are always very careful when completing our mail-in ballot. I called the election office and asked what my mistake had been. I was told that I wrote my birthday **next to “2024.”** I was dumbfounded when I heard this, and thought it must be have been a momentary lapse when I was completing the outer envelope. I asked the election worker if it was possible to fix it over the phone, and she said the only way to correct the ballot was to come in person to Doylestown and complete another ballot, or to cast a provisional ballot on Election Day. I

explained that I was the only driver in our household, and that I would be physically unable to drive 45 minutes each way to Doylestown due to my health constraints.

13. When we learned that our ballots would not be counted, we felt terrible. I never imagined I would have made a mistake that could result in my ballot not being counted. Everyone has a momentary lapse and makes a mistake, and this should not disqualify my right to vote.

14. I consider voting to be a right and a privilege. It is my civic duty to vote and make my voice heard, and it is very unfair that my vote and my husband's vote will not be counted in this election.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 26 of May, 2024 in Washington Crossing, Pennsylvania.


Janet Novick

DECLARATION OF JOSEPH M. SOMMAR

I, Joseph Sommar, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 71 years old and am otherwise competent to testify.

3. I am a resident of Glenmoore, Pennsylvania, located in Chester County.

4. I grew up in Philadelphia. After attending university and working in Arizona, I decided to move back to Pennsylvania because my parents were getting older and have been living in Chester County since the 1980s. I am the proud father of two children – one is a public school teacher and the other is an army officer.

5. I am presently retired. Early in my career, I worked as a computer service technician. Later, I became an electrician and was a member of the IBEW local. At one time I was the union representative for the Chester County branch of the AFL-CIO.

6. I have been a registered voter in Chester County since moving back to Pennsylvania. I vote in nearly every primary and general election. I may have missed one or two, **but can't remember the last time I missed an election.**

7. When I was a young person, I was a conservative Republican voter. I am now a registered Democrat, after being exposed to many different perspectives while working in the union.

8. Voting is very important to me and **I believe that it's everyone's duty** to vote. In my opinion, if **you don't vote, you have no right to complain about our** politicians. I also believe that the more people vote, the better government we will have and the more active role that people will take in our society.

9. I started voting by mail during the COVID pandemic. I prefer to vote by mail because of the convenience and privacy. **I don't like people trying to tell** me who to vote for outside of the polling place.

10. I voted by mail this year. A few weeks before the April 2024 primary election, I received a mail-in ballot from Chester County.

11. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I signed the declaration on the outer envelope. I thought I had done everything correctly.

12. In prior elections when I voted by mail, I never made a mistake that disqualified my ballot. I was just going through the motions **quickly and didn't** take as much care as I should have when completing the mail-in ballot.

13. After I returned my ballot, I received an email on April 19, informing me that there was an error with my mail-in ballot and that it might not be **counted if I didn't take additional steps to rectify it. I learned later that I had** forgotten to include a date on the outer envelope. A true and correct copy of the email dated April 19 is attached hereto as Exhibit A.

14. When I learned that my ballot would not be counted because I forgot the date, I was very annoyed. I felt stupid for making this mistake, but also

angry that it would disqualify my vote.

15. I am ashamed to say that I didn't follow up on the County's instructions to fix my ballot. At the time I was frustrated and didn't think the situation was fair.

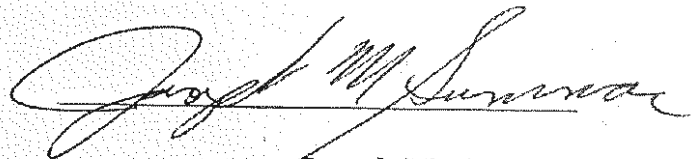
16. I believe that my vote should count. I am a citizen of this country who wants to participate in electing our government representatives.

17. I believe that everyone should vote because the more people who participate, then better candidates are more likely to get elected.

18. I don't believe that the date serves any purpose. The county knows that my ballot was received on time, and I don't know why the date is necessary. It seems like an arbitrary thing, just another step to allow people to mess up and have their votes not counted. I believe our election turnout is so low because people don't think that their vote will make a difference. If everyone's vote were counted and people thought their voices would be heard, more people would participate in the process and we would have a stronger democracy.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 22nd of May, 2024 in Glenmoore, Pennsylvania.

A handwritten signature in cursive script, appearing to read "Joseph M. Sommar".

Joseph M. Sommar

EXHIBIT

A

RETRIEVED FROM DEMOCRACYDOCKET.COM

Your Ballot Status Has Changed – Check for Updates

From: RA-voterregstatcert@state.pa.us (ra-voterregstatcert@state.pa.us)

To: joe.sommar@yahoo.com

Date: Friday, April 19, 2024 at 01:00 PM EDT

Dear JOSEPH M SOMMAR,

After your ballot was received by CHESTER County, it received a new status.

The county has noticed an error with your ballot envelopes, which means your ballot may not be counted. If you cannot fix the errors in time, you can go to your polling place on election day and cast a provisional ballot.

You can get more information on your ballot's new status by going to <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions or need more information after checking your ballot's status, please contact CHESTER County at (610) 344-6410.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.
要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

Thank you.

****Please do not reply to this email.****

RETRIEVED FROM DEMOCRACYDOCS.COM

DECLARATION OF PHYLLIS SPRAGUE

I, Phyllis Sprague hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 80 years old and am otherwise competent to testify.

3. I am a resident of Chalfont, located in Bucks County, Pennsylvania.

I have lived in Bucks County for 48 years.

4. I am currently retired. Previously, I worked as an administrative assistant in the aerospace industry at GE Aerospace and Lockheed Martin.

5. I am a registered voter in Bucks County. I have been a registered voter in Pennsylvania since becoming eligible to vote.

6. I vote regularly. I have never missed a presidential election since I moved to Pennsylvania.

7. Voting is important to me because it is my right as a citizen to participate in democracy. My mother was a lifelong voter advocate. During my childhood in Virginia, I witnessed how she paid poll taxes in order to vote. She helped others to register to vote and instilled in her children the importance of voting.

8. I started voting by mail in the last few years. A few months before the election, I decided to vote by mail-in ballot.

9. I voted by mail this year. Before the 2024 primary election, I applied for and received a mail ballot from Bucks County.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.

11. I returned my ballot at the post office a week before my surgery scheduled for April 18, 2024.

12. A few days before Election Day, I received an e-mail and letter notification that my ballot would not be counted due to an incorrect date. I was instructed to go to the county office or local polling place on Election Day and vote with a provisional ballot. I chose to go to the polling place because no one was available to drive me to the county office.

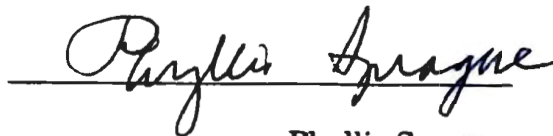
13. I was unable to vote with a provisional ballot at a polling place on Election Day because I experienced an accident while recovering from my cervical spine surgery. On April 19, 2024, I was discharged from the hospital following surgery. On April 23, 2024, while I was preparing to walk to the polling place, I fell down, injuring myself. My husband and granddaughter cautioned me from going to the polling station due to my pain from the recent surgery. Had I been given a safer option to vote with a provisional ballot, I would have voted.

14. I am very upset that my ballot will not count because I was unable to go to the polling place due to my injury and illness.

15. I believe that voting is important because it is an opportunity to allow your voice to be heard. I hope my vote is counted in the next election.

I understand that false statements herein are subject to the penalties of 18
Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 26th of May, 2024 in Chalfont, Pennsylvania.

A handwritten signature in cursive script, reading "Phyllis Sprague", is written over a horizontal line.

Phyllis Sprague

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECLARATION OF MARY STOUT

I, Mary Stout hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 77 years old and am otherwise competent to testify.

3. I currently live in Douglassville, PA, located in Berks County, Pennsylvania. I have lived in Berks County for 10 years.

4. I am a retired nurse.

5. I am a registered voter in Berks County. I have lived in Pennsylvania for my entire life, and have been a registered voter in Pennsylvania since I first became eligible to vote.

6. I vote regularly. I have voted in nearly every primary and general election since I was 21 years old.

7. Voting is important to me because my parents raised me with the belief that we have an obligation to vote in every election. Both my father and my husband were veterans who were on 100% disability. I believe that our right to vote is important and that we therefore have an obligation to exercise the right to vote.

8. I started voting by mail two or three years ago. I got back surgery around that time and as a result I have a hard time moving around and need to use a walker. Because of this, I can't wait in line to vote. Voting by mail-in ballot makes things much easier for me, and I've never had a problem with voting by mail in past elections.

9. I voted by mail this year. Before the 2024 primary election, I applied for and received a mail ballot from Berks County.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I thought I had done everything correctly.

11. I returned my ballot about two weeks before the April 2024 election. I posted my ballot from the mailbox at my residence.

12. Approximately a week before the election, Berks County sent me a notice by mail that my ballot would not be counted because it was missing a date on the envelope. The notice informed me I would have to go in-person to Reading in order to have my vote counted.

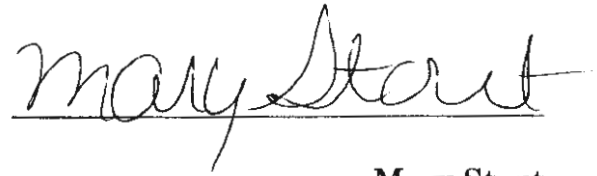
13. I was unable to go to Reading because of my mobility issues. As a result, my vote was not counted in the recent primary election.

14. I am very upset that my ballot will not count because I take my obligation to vote very seriously. I don't think that my vote should be discounted simply because I didn't include the date on the envelope when everything else about my ballot was correct.

15. I have been voting in Pennsylvania for almost my entire life and believe that voting is important because voting is both a right and an obligation.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 26 of May, 2024 in Douglassville, Pennsylvania.

A handwritten signature in cursive script, reading "Mary Stout", written over a horizontal line.

Mary Stout

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECLARATION OF LORINE WALKER

I, Lorine Walker hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 74 years old and am otherwise competent to testify.

3. I am a resident of Harrisburg, located in Dauphin County, Pennsylvania. I have lived in Dauphin County for 58 years.

4. I am currently retired. I was a school librarian and media specialist before retirement.

5. I am a registered voter in Dauphin County. I have been a registered voter in Pennsylvania since I first became eligible to vote.

6. I vote regularly. I vote in most primary and general elections ever since I became eligible to vote.

7. Voting is important to me because people died so I could have the right to vote. I am doing what everyone should be able to do, and I am exercising my rights when I vote. I believe voting is important for the democratic process and I want to cast my vote for who I want to be in office.

8. I started voting by mail in 2020 during the pandemic because it was more convenient. I used to drive myself to vote, but I cannot drive anymore because of pain in my leg. After I stopped driving, my neighbor used to take me to vote, but now they vote by mail as well. Voting by mail is my best option to make my voice heard.

9. I voted by mail this year. Before the 2024 primary election, I applied for and received a mail ballot from Dauphin County.

10. After I received my ballot, I marked it, inserted it into the secrecy envelope and the outer return envelope. I also signed the envelope. I tried to be careful because of concerns on the news about voting by mail during the last election. I thought I had done everything correctly.

11. I returned my ballot by mail a few weeks ahead of the 2024 primary election date.

12. On April 18, 2024, I received an email notice that my mail ballot had been "received by Dauphin County." I did not receive any other notice, calls, or emails from Dauphin County that there was an issue with my mail ballot or that my ballot would not be counted. A true and correct copy of the email dated April 18 is attached hereto as Exhibit A.

13. If I had received notice that there was an issue with my mail ballot, I would have fixed it prior to Election. I had enough time to correct any issue or mistake with my mail ballot because it was received by the county almost a week before Election Day.

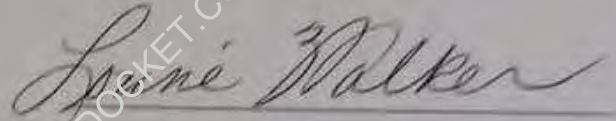
14. I am very upset that my ballot will not count because voting is important to me, and I have voted since I was able to cast a ballot. I am an eligible voter and took the time to apply for and complete a mail ballot, so to learn that my ballot was not counted is very frustrating.

15. I believe that voting is important because voting matters in a

democratic process. I believe it is important for people to choose who they think should be in office even if there are disagreements. It matters and affects our democratic process if votes are not counted.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 24th of May, 2024 in Harrisburg, Pennsylvania.

A handwritten signature in cursive script, appearing to read "Lorine Walker", written over a horizontal line.

Lorine Walker

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT

A

RETRIEVED FROM DEMOCRACYDOCKET.COM

ra-voterregistcert@state.pa.us

4/18/2024 1:13 PM

Your Ballot Has Been Received

To hwalkerje2300@comcast.net

Dear LORINE C WALKER,

Your ballot has been received by DAUPHIN County as of April 18, 2024. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if DAUPHIN County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact DAUPHIN County at (717) 780-6360.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>

要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>

Thank you.

****Please do not reply to this email ****

RETRIEVED FROM DEMOCRACYDOCKET.COM

Marybeth Kuznik

From: ST, Elections <RA-Elections@pa.gov>
Sent: Friday, April 19, 2024 12:23 PM
Cc: Marks, Jonathan
Subject: DOS Email: Department Response to Inquiries on Ballot Envelope Dates

CAUTION

This message originated from an external source. Verify the legitimacy before clicking links or opening attachments.

Sent on behalf of Deputy Secretary Marks

Dear County Election Official:

The Department has received questions from several county boards of elections about the handwritten date on the redesigned mail ballot return. Specifically, counties have asked whether they should consider certain handwritten dates to be “incorrect” under the Supreme Court’s decision in *Ball v. Chapman*.^[1]

It is the Department’s view that, if the date written on the ballot can reasonably be interpreted to be “the day upon which [the voter] completed the declaration,”^[2] the ballot should not be rejected as having an “incorrect” date or being “undated.”

Therefore, the following would not justify rejecting a ballot as having an “incorrect” date or being “undated”:

- If the voter entered the month and day but did not write “24” in the year field.
- Use of the European dating convention (D/M/Y)
- Use of slashes in empty boxes (for example, “/4-17-2024” or “4/-17-2024”)

This list is not intended to be exhaustive, but is based on examples provided by county boards of elections.

As always, you should consult your solicitor on these matters.

^[1] 289 A.3d 1 (Pa. 2023).

^[2] *Ball*, 289 A.3d at 23.

Rachel R. Hadrick (*she/her/hers*)

Chief of Elections Administration

PA Department of State

401 North Street | 210 North Office Building

Harrisburg, PA 17120

Phone (desk): 717.409.3242 | Fax: 717.787.1734

www.dos.pa.gov

[f PA Department of State](#) | [t @PAStateDept](#)

**Declaration of Tim Stevens on behalf of
The Black Political Empowerment Project (B-PEP)**

I, Tim Stevens, hereby declare as follows:

1. I am over the age of eighteen and otherwise competent to testify.
2. I am the Chairman & CEO of The Black Political Empowerment Project (“B-PEP”).
3. 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. B-PEP and its supporters throughout the Pittsburgh Region work with community organizations to empower Black and brown communities, including by promoting voting rights and get-out-the vote efforts.
4. 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.
5. Respondent Schmidt’s direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects B-PEP and its members and interferes with the organization’s ability to carry out its mission of increasing voter turnout and participation.

6. The failure to count mail ballots without dates or with “incorrect” dates will force B-PEP to divert resources in the upcoming November 2024 election from its other voter education and mobilization efforts, as well as other critical work unrelated to elections. Instead, B-PEP will be required to educate voters about any available cure processes, advocate to develop new processes to ensure that voters who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake, and assist voters with curing of submitted mail ballots determined to be defective.

7. For the November 2022 election, B-PEP was forced to engage in activities similar to what we expect will be required for the November 2024 election.

8. For the November 2022 election, B-PEP conducted outreach to members and constituent communities about the importance of voting in person or by mail. 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, B-PEP redirected 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.

9. 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 prior court decisions.

10. 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 B-PEP's mission, including its Greater Pittsburgh Coalition Against Violence and Corporate Equity & Inclusion Roundtable.

11. B-PEP anticipates that, leading up to the November 2024 General Election and other 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.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 14 of May, 2024, in Pittsburgh, Pennsylvania.

A handwritten signature in black ink, appearing to read 'Tim Stevens', is written over a horizontal line.

Tim Stevens, Chairman & CEO, The Black Political Empowerment Project (B-PEP)

Declaration of Dwayne Royster on behalf of POWER Interfaith

I, Dwayne Royster, hereby declare as follows:

1. I am over the age of eighteen and otherwise competent to testify.
2. I am the Executive Director of POWER Interfaith (“POWER”).
3. POWER is a non-profit, non-partisan organization of more than 100 congregations of various faith traditions, cultures and neighborhoods in and around Philadelphia 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.
4. During every election cycle, POWER’s civic engagement efforts include voter education programs and voter registration drives within Philadelphia County. These efforts include “Souls to the Polls” initiatives during which Black church leaders encourage their congregants to vote. *See, e.g.* Daniels, III, D. “The Black Church has been getting “souls to the polls” for more than 60 years,” *The Conversation*, Oct. 30, 2020, available at <https://theconversation.com/the-black-church-has-been-getting-souls-to-the-polls-for-more-than-60-years-145996>. In connection with the November 2022 election, for example, POWER launched a bus tour focused on engaging Philadelphia County voters who were not already participating in the political process.

5. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects POWER and its members and interferes with the organization's ability to carry out its mission of increasing voter turnout and participation.

6. The failure to count mail ballots received in envelopes without dates, or with "incorrect" dates, will force POWER to divert resources in the upcoming November 2024 election from its other voter education and mobilization efforts, as it did in past elections. When the Philadelphia County Board of Elections published a list of over 3,000 voters who were at risk of having their November 2022 general election ballots thrown out over such 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. POWER will again reassign volunteers and staff from its other voter education and mobilization efforts towards contacting and educating voters in connection with the 2024 General Election if

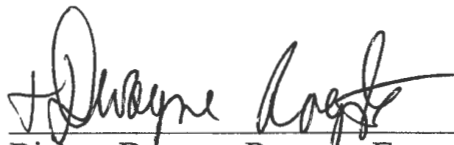
the Philadelphia County Board of Elections is again unable or unwilling to open and count ballots received in undated and/or “incorrectly” dated return envelopes.

7. 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.

8. POWER anticipates that, leading up to the November 2024 General Election and other 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.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 28 of May, 2024, in Philadelphia, Pennsylvania.

A handwritten signature in black ink, appearing to read "Bishop Dwayne Royster", written over a horizontal line.

Bishop Dwayne Royster, Executive Director
POWER Interfaith

DECLARATION OF DIANA ROBINSON

I, Diana Robinson, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am over eighteen years of age and am otherwise competent to testify.
3. I am a resident of and registered voter in Philadelphia County, Pennsylvania.
4. I am the Co-Deputy Director of Make the Road Pennsylvania. I have held this position since January 1, 2024.
5. 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. Make the Road PA's approximately 13,000 members are primarily working-class residents of Pennsylvania, many in underserved communities.
6. Many members of Make the Road PA are registered voters in Pennsylvania and are at risk of disenfranchisement if Respondents fail to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope.
7. **Make the Road PA's work includes 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. Make the Road PA has run active programs to register voters in historically

underserved communities of color, especially in Berks, Bucks, Lehigh, Luzerne, Northampton, and Philadelphia Counties.

8. **Respondents' failure to count timely**-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope will disenfranchise **potentially thousands of voters, thus directly affecting Make the Road PA's** members and interfering with Make the Road PA's **ability to carry out its** mission of increasing voter turnout and participation.
9. **Because Make the Road PA's efforts are** focused on communities where some 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.
10. For example, if a voter followed the date sequencing convention used by many other countries, they may have transposed the day before the month in dating their outer return envelope—and, on information and belief, that **would constitute an "incorrect" date under Respondents' standards.**
11. **Respondents' failure to count timely**-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope in recent and future elections also has forced and will force Make the Road PA to divert resources from its existing efforts toward focusing voters on trivial, technical mail ballot rules and toward investigating and educating voters about any available cure processes that might be available for the thousands who will invariably be disenfranchised by a paperwork mistake under Respondents'

current policy. **For example, Make the Road's** staff and volunteers had to direct time and resources in the critical time before Election Day in 2022 to contacting voters about the date provision and contacting county election officials to address the need to inform non-English speakers of any problems with the dating of their mail ballot envelopes. If the envelope dating rule remains in place, Make the Road PA anticipates needing to engage in similar efforts during the 2024 general election.

12. If Make the Road PA did not have to devote the time, staff, and financial resources to educating voters about this issue, it could instead focus on other important forms of voter engagement and participation, including its Immigrant Rights, Education Justice, Housing Justice, Climate Justice and Worker Rights initiative.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 25th day of May, 2024 in Philadelphia County, Pennsylvania.

A handwritten signature in black ink, appearing to read 'Diana Robinson', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

Diana Robinson

DECLARATION OF STEVE PAUL

1. I have personal knowledge of the matters in this declaration, and this is what I would testify to if called as a witness in Court.
2. I am over eighteen years of age and am otherwise competent to testify.
3. I am a resident of and registered voter in Philadelphia, Pennsylvania.
4. I am the Executive Director of One PA Activists United (d/b/a One PA For All). One PA For All is a nonpartisan, nonprofit 501 (c)(3) organization based in Pennsylvania.
5. One PA For All is a community organizing and voter engagement group that fights for racial, economic and environmental justice. We build multiracial, working-class progressive power in Pennsylvania with a deep focus on Black liberation. At One PA For All, we are on a mission to empower Black and working class communities through voter education, and leadership development.
6. One PA For All has offices in Pittsburgh and Philadelphia, and does voter engagement work in Philadelphia, Allegheny, Delaware, and Dauphin Counties.
7. One PA For All's mission and program include a variety of activities, such as:
 - a. Boosting voter registration and turnout within Black communities in Pennsylvania;
 - b. Educating and mobilizing community members for active participation in democratic processes, including city council, school board, zoning hearings, and PA General Assembly meetings;
 - c. Uniting the community against exploitative corporate landlords, labor law violators, and health-threatening industrial polluters;

- d. Transforming the media narrative around community needs, enabling residents to share their stories for non-partisan direct action and civic engagement.

8. One PA For All runs an ambitious and comprehensive strategy to engage marginalized communities through door-to-door canvassing, phone calls, relational organizing, text messaging, digital ads, and earned media, with a goal to increase civic participation in 2024.

9. In 2024, One PA plans to register more than 35,000 voters and make more than 2.14 million contacts with voters:

10. In just the last two years, One PA has registered 28,000 voters in working class Black communities in Philadelphia, Delaware, and Allegheny Counties. One PA has also had tens of thousands of conversations with voters about switching to Vote by Mail (VBM) and helped 1000+ voters correct mistakes on their mail ballot envelopes.

11. One of our most empowering moments of 2022 concerned Ms. Phyllis, a woman in her 70s who has voted every year since she was 18. Our canvassers knocked on Ms. Phyllis' door after we learned that her mail-in ballot was in danger of not being counted because she had forgotten to write the date on the return envelope. Our rapid response team jumped into action: our canvasser explained the situation to Ms. Phyllis, took her to her polling place, and helped her obtain a provisional ballot, ensuring that her vote would count. While these are the moments that count most—helping a respected elder exercise her right to choose her elected representatives—such a monumental effort would not have been necessary if not for the decision to set aside mail ballots submitted without a voter written date on the return envelope.

12. One PA For All has, in past election cycles, expended scarce resources to help voters, like Ms. Phyllis, correct an error on a mail ballot envelope. This work is labor intensive and prevents our staff and volunteers from carrying out other aspects of our civic engagement work.

13. One PA For All plans to continue its work instructing voters on how to correctly fill out a mail ballot return envelope. This work includes:

- a. Digital video that we will distribute via social media channels walking voters through how to properly vote by mail;
- b. Organizing staff and volunteers to perform a “ballot chase” program that involves calling voters who have not turned in their mail ballots;
- c. Deploying staff and volunteers to mount a “ballot envelope curing” program that includes getting a copy of the list of voters in Allegheny and Philadelphia counties, contacting those voters and helping them correct the error on the envelope or helping them cast a provisional ballot in person.

14. The effort to contact voters who have made a mistake on their mail ballot envelopes, include date errors, is labor intensive. In addition to contacting voters through the telephone or text message, One PA For All also sends staff and volunteers to the voters’ homes and provides rides to the polling location for those voters who need a ride.

15. For 2024, One PA For All plans to deploy a five-person staff for the purpose of contacting voters who have made a mistake on their mail ballot envelope.

16. Counties’ rejection of mail ballots with a missing or incorrect date on the return envelope harms One PA For All because the staff engaged in reaching out to

voters with mistakes on their envelopes could be doing other work to advance our mission, such as knocking on additional doors, covering more territory in canvassing voters, calling or texting newly-registered voters.

17. Instead of expending resources on voters who thought they already voted, our staff could be engaged in calling people who have not yet returned their mail ballot or encouraging those voters to vote in person.

18. One PA For All's broader civic engagement and voter education program includes:

- a. Canvassing in neighborhoods;
- b. Text messaging and calls;
- c. Producing and distributing content in-house for publication on social media channels;
- d. Coordinating messaging with micro influencers who have followings on Instagram and TikTok. Target micro-influencers have between 5,000 and 10,000 people and One PA For All helps them craft messages aligned with our mission.

19. For the general election in 2024, we plan to create various media pieces on mistakes on mail ballot envelopes and distribute them via social media.

20. If we did not have to expend so many resources on creating content for mail ballot envelope mistakes, we could focus our educational materials on voter registration, we could reach out to more first-time voters to encourage them to vote in the first place, and we could focus our communications more on participation in the election in general.

21. Our staff who is engaged in reaching out to voters with mistakes on the date field of the mail ballot envelopes could instead be doing more volunteer recruitment and development and training of volunteers.

22. Spending scarce resources on the date requirement education harms our efforts to focus on racial equity in voting and to increase participation in the election by chronically excluded populations.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 27 of May, 2024 in Philadelphia, Pennsylvania.



Steve Paul, Executive Director
One PA For All

DECLARATION OF KADIDA KENNER

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am over eighteen years of age and am otherwise competent to testify.

3. I am a resident of and registered voter in Chester County, Pennsylvania.

4. I am the founding Chief Executive Officer of New PA Project Education Fund ("NPPEF"). NPPEF is a nonpartisan, nonprofit 501 (c)(3) organization based in Pennsylvania. NPPEF and its affiliated organization have offices in West Chester, Norristown, Harrisburg, Pittsburgh and will be opening an office in the city of Chester, this year.

5. NPPEF is led by community leaders across the Commonwealth dedicated to centering underrepresented and underserved communities to embrace their power. NPPEF ensures full participation in the democratic process through civic education and year-round engagement by centering Black, Indigenous, and other people of color, immigrant communities and the youth - with intention - as they are the least represented and most impacted by decisions our government is making.

6. NPPEF conducts civic engagement and voter education in Philadelphia, Chester, Delaware, Montgomery, Bucks, Monroe, Lehigh, Northampton, Dauphin, Cumberland, Lebanon, York, Allegheny and Berks County.

In 2024, NPPEF will expand its operations into Erie, Beaver, Lawrence, Centre and Lackawanna counties.

7. NPPEF has registered our fellow Pennsylvanians in urban, suburban, exurban and rural PA. In the past two years, NPPEF and its affiliated organization registered nearly 40,000 Pennsylvanians to vote in Pennsylvania. More than 70% of those we've registered to vote in 2024 are under the age of 36 and 68% of the newly registered, who self-identified, belong to a community of color. Our efforts are nonpartisan and 28% of the voters we have registered have chosen not to affiliate with any major political party.

8. NPPEF's voter registration, voter education and mobilization programs combine traditional and digital methods to reach voters. Core components of our program include:

- a. Engaging voters multiple times in their communities to share information and to register unregistered voters
- b. Canvassing or door knocking in our centered neighborhoods
- c. Sending "social pressure" mailings to targeted voters
- d. Preparing and distributing voter information guides in the form of tri-fold pamphlets that include detailed information about how to cast a ballot.
- e. creating digital media, radio ads and emailed newsletters for voters to register, become more civically engaged and vote.

- f. reaching out to voters on social media platforms such as Facebook, X, and Instagram to provide civic education and voter information.

9. Another integral part of our program is called “Community Conversations.” As the name suggests, our staff travels the Commonwealth attending events and setting up informational tables. During these events, we are able to engage voters in conversations about what issues are most important to them and what change they would like to see. At all of these kinds of events, we provide nonpartisan information on how to register to vote, how to vote by mail and instructions for properly completing the vote by mail return envelope.

10. Since the Pennsylvania Department of State added a check box on the voter registration form, we have routinely helped voters request a mail ballot at the time of registration by checking the box on the voter registration form - especially on college campuses, and within the counties where these newer forms are available for use

11. Although we have our own materials that instruct voters on how to fill out mail ballot envelopes, we also share with voters instructions from the Pennsylvania Department of State about mail voting procedures.

12. Once we have registered a voter, our program requires our team to contact that voter multiple times by telephone. On the second of at least three phone calls, our team asks whether the voter received a registration card and also provides information on voting by mail or in person.

13. On the third call, our callers help voters understand how to vote, how to request vote by mail ballot, how to properly fill it out and return it or direct voters to their proper polling location

14. Our voter registration and outreach programs are labor intensive. We we spend portions of our time debunking false narratives around mail voting, and persuading voters that their mail ballot will be counted.

15. Because we are a partner organization with the Pennsylvania Voice 501(c)(3) civic engagement table, we share the database of voters we have collected with other table partners, including information on voters we have registered and those who have requested a mail ballot. Using the fruits of our labor, other table partners are also able to work towards ensuring that registered voters are notified of any mistakes on the mail ballot envelope, such as missing and incorrect dates, and provide information on how to make sure their vote counts.

16. We will continue and expand our program for the general election in 2024. Using all of the methods of voter outreach described above, our goal is to register approximately 60,000 voters in Pennsylvania and provide them with trusted and accurate information about the mechanics of voting.

17. Because of the confusion around proper dates on ballots, in 2024, we will be adding information on the consequences of failing to handwrite the date or writing the wrong date on the mail ballot envelope into our revised voter information guide tri-fold pamphlet.

18. Given the number of voters we aim to contact in 2024, any time we have to spend discussing with voters the consequences of failing to date their mail ballot envelopes means we have that much less time to discuss other issues, and register additional Pennsylvanians to vote. If we did not need to educate voters about the date requirement on mail ballot envelopes, we would have more opportunities to discuss other issues with our centered communities instead of spending precious resources instructing them on how to properly fill out the mail ballot envelope.

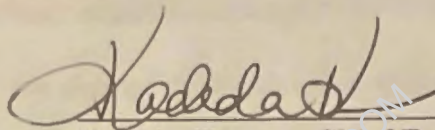
19. In our experience with engaging Pennsylvania's electorate, the confusion around mail voting has increased voter apathy and fatigue, and casts doubts about the accuracy of our free and fair elections. The ever-changing and inconsistent communication around correctly completing and returning vote by mail ballots tends to result in an electorate that is often misinformed and susceptible to misinformation. As a statewide organization that centers particular counties in our work, it is still paramount that we are able to share accurate information with Pennsylvanians in all 67 counties, so clarity and finality in the law will ensure more uniformity among counties.

20. The inconsistencies and confusion require our organization to spend additional resources to more thoroughly train our staff, produce additional content and literature, more often than planned or budgeted, and requires more staff capacity away from our primary focus of registering Pennsylvanians to vote. The more time and resources our organization is forced to spend providing civic

education around mail voting, the less time and resources our organization has to meet our organizational goals, and the expectations of our funders and donors.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this ____ of May 2024 in Chester County, Pennsylvania.

A handwritten signature in dark ink, appearing to read 'Kadida Kenner', is written over a horizontal line.

Kadida Kenner, Chief Executive Officer
New PA Project Education Fund

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DECLARATION OF MONICA RUIZ, MSW

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am over eighteen years of age and am otherwise competent to testify.

3. I am a resident of and registered voter in Allegheny County, Pennsylvania.

4. I am the Executive Director of Casa San José, a nonpartisan, nonprofit 501(c)(3) organization based in Pittsburgh, Pennsylvania. Casa San José employs a staff of 24, is supported by three members of the order of the Sisters of St. Joseph and more than 100 volunteers.

5. Casa San José, connects, supports, and advocates with and for the Latino community. We envision a Pittsburgh region that celebrates Latino culture, welcomes immigrants, and embraces inclusion, dignity, and respect.

6. Casa San José, serves as a base of support for the Latino community where we provide a variety of resources including weekly clinics, food pantries, summer camps, community meetings, Know Your Rights sessions, among other services.

7. Casa San José's mission and programs include a variety of activities such as:

- a. Social services and resource mapping
- b. Mental health and medical service coordination

- c. Youth programming in schools and community centers
- d. Voter engagement for the Latino community
- e. Community meetings

8. Casa San José is located in Pittsburgh, Pennsylvania, and connects with voters in Allegheny, Beaver, Butler, Erie, Indiana, Lawrence, Washington, and Westmoreland counties. Casa San Jose plans to engage the rapidly growing Latino community through phone calls, relational organizing, text messaging, and digital ads with a goal to increase the civic participation of the Latino communities in 2024.

9. In 2022, Casa San José, conducted three phone call campaigns and three text campaigns. The phone calls and texts were completed by our Community Policy Organizer and six volunteers from either Casa San Jose or the Hispanic Federation. Casa San José's staff and volunteers are bilingual so that they can carry out their mission for voters who speak either English or Spanish.

10. The first campaign of the 22,841 phone call attempts was conducted to explain voting by mail. In our vote by mail campaign, we would ensure that voters knew they had the option to vote by mail and if they did not, we would help them over the phone to fill out the application to vote by mail.

11. The second of the 22,841 phone call attempts consisted of calls in regard to ballot chasing. In our ballot chase campaign, we would call voters who had applied for their mail in ballot. We would inquire whether they had received their ballot or not. If they had not received their ballot, we provided them with resources

to help ascertain its location. If they had received their mail in ballot at the time of the phone call, we would help guide them through the steps to fill it out correctly and seal it in the secrecy envelope before returning it.

12. Also in 2022, Casa San José sent nearly 15,000 texts regarding voting by mail. In our vote by mail text campaign, we would ensure that voters knew of the option to vote by mail and if they did not, we would help them by text to fill out the application to vote by mail.

13. Similar to our phone campaign, we also sent nearly 15,000 texts to voters to check to see if they had applied for a vote by mail ballot, if they had received the ballot, and if so, we would guide them through the steps to properly return the voted ballot by inserting it in the secrecy envelope, and then inserting it into the outer return envelope, and instructing them on how to correctly fill out the declaration on the mail ballot return envelope, especially inserting the date in the proper area.

14. In 2024, Casa San José, plans to engage 9,500 registered voters in Allegheny and surrounding counties to assist them in finding their appropriate polling places, send voter ballot guides, and educate them on how to vote by mail, and help Latino voters navigate voting at the polls.

15. Our plans for 2024 mirror our efforts during the 2020 presidential election cycle. In September and October 2020, Casa San José printed and mailed 13,772 postcards to households throughout southwestern PA providing information on: registering to vote, voting registration deadlines, and voting by mail. Casa San

José targeted areas with known Latinx populations to encourage participation in the 2020 Election.

16. Casa San José provided voter education information through our social media sites, including Spanish videos with information on the importance of voting and the impact on local communities, published photos of events, and pushed information reminding people to register to vote and to vote by mail. Casa San Jose also published voter information banner ads in *Presente* Magazine, a Spanish language Latinx magazine with distribution in Pittsburgh and surrounding areas. Casa's Communications Specialist spent 150 hours working on developing and managing voter engagement content.

17. Contacting voters and spending time and effort on the correct way to fill out the mail ballot envelope is time consuming and requires us to carefully train our callers to make sure they emphasize the need for the date and the consequences for omitting it.

18. Instead of spending labor and resources on voters who thought they already voted properly, our staff could be using their capacity for a multitude of activities including but not limited to:

- a. Create educational material to help voters understand the importance of elections;
- b. Engage with more voters through phone calls and text messages;
- c. Canvass in predominantly Latino neighborhoods;

d. Register voters, especially first time voters;

19. If the mail ballot dating rule continues to be enforced in a way that disenfranchises voters in future elections, Casa San José will have to continue diverting its time and resources away from these activities and toward addressing mail ballot envelope dating issues with voters who thought they already voted properly, as we did in 2022, in connection with the November 2024 general election.

The statements made in this Declaration are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 27th of May 2024 in Allegheny County, Pennsylvania.

Monica Ruiz, MSW

Monica Ruiz, Executive Director
Casa San José

DECLARATION OF ALEX WALLACH HANSON

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am over eighteen years of age and am otherwise competent to testify.

3. I am a resident of and registered voter in Allegheny County, Pennsylvania.

4. I am the Executive Director of Pittsburgh United, a nonpartisan, nonprofit 501 (c)(3) organization based in Pittsburgh, Pennsylvania.

5. Pittsburgh United strives to advance social and economic justice in the Pittsburgh region by working to ensure that working families and low and moderate-income communities share in the prosperity that is generated by economic growth and development. We promote strategies that will build healthy and sustainable communities, raise standards for low wage workers, and forge a fair economy for all. We use innovative community organizing, research, advocacy and communications methods to win policy and organizing campaigns.

6. Pittsburgh United is a membership and coalition organization with 31 staff members. We have six offices, one each in Pittsburgh, Ambridge, Meadville, Erie, Greensburg and State College. Over the last 15 years, Pittsburgh United - a coalition of community, faith, environment, and labor - has become one of the most effective forces for poor and working people in the region, winning over \$1.2 billion in economic and community benefits. Together, coalition members are working to create a more just and equitable Western Pennsylvania.

7. Pittsburgh United's work has always been defined by the intersection of economic development and community benefit. Our public policy advocacy has strived to create a community where all workers are able to care for themselves and raise their families, sharing in the prosperity generated by economic growth and development. Our campaigns include:

- a. "Clean Rivers Campaign" to establish an environmentally sustainable plan to remedy the region's sewer problem;
- b. "Our Water Campaign" focusing on access to safe, affordable, public water in Pittsburgh;
- c. Worker campaigns advocating for paid sick days, higher wages, union representation, better unemployment benefits and safer working conditions;
- d. Affordable housing campaigns that advocate for residents to benefit from increased investment in communities. Recent wins include, among others, better protections for renters, passage of the Housing Opportunity Fund, and increases in funding for Whole Home Repairs;

8. Pittsburgh United staff and volunteers work to increase civic engagement in the communities we serve. We seek to increase voter turnout and expand access to mail voting in Black, low-income, and white working class communities across our six chapters in Allegheny, Beaver, Erie, Crawford, Centre,

and Westmoreland Counties, while strengthening our relationships in our communities.

9. We engage with voters in a variety of ways, including door to door canvassing, phone, text, and digital outreach, and other community outreach methods. We provide nonpartisan information on the election process, and how elections directly impact the issues that matter to us most, such as jobs, housing, racial justice, and climate equity. We use a variety of methods to reach voters and distribute information via social media platforms many times using content created by our coalition partners.

10. Our team has made hundreds of thousands of calls to voters over the past four years to help voters apply to vote by mail and encourage them to return their mail ballots. We have also knocked on hundreds of thousands of doors, talking to voters about the issues that matter most to people in their communities. Across both of these forms of voter contact, we have had to spend time with voters explaining the numerous steps required to accurately complete a mail ballot, including the date field, and talked to voters who have had their ballot fail to be counted.

11. Our staff has devoted significant resources to calling voters whose mail ballots were rejected because of an error on the outer envelope and advising them to contact their county or go to their local polling place and cast a provisional ballot on election day.

12. In 2024, we expect to expand our programs as described above and launch a Rural Civic Engagement Voting Program. In this effort, we will build on our deep relationships in small cities and towns across Western Pennsylvania to ensure that all communities of color and working class communities are engaged in the process of voting.

13. There are over a dozen small cities and towns with concentrations of people of color, making up tens of thousands of people, that live about a half an hour outside of Pittsburgh. These communities are often left out of public policy conversations because they live in majority white counties.

14. Pittsburgh United will run a comprehensive program with our members to do relational outreach, community events, and canvassing to ensure people of color in these communities have access to mail voting, including “over the counter” mail voting at the county election office, and election day voting to give them every chance to participate in the election.

15. Our voter education and outreach in these rural communities will include specific information on the proper way to fill out a mail ballot envelope including the date, and the consequences for not following the instructions.

16. Pittsburgh United has extremely limited resources to reach people who are typically left out of the process of voting. The time necessary to explain the steps of correctly filling out a mail ballot, including the dating requirement, slows our staff down because they have to take more time in each conversation with a voter.

17. The reality of the time involved in our contacts requires that we choose between either 1) engaging fewer people in the process of voting; or 2) spending more organizational resources explaining the process. Pittsburgh United does not have the resources available to reach as many voters as we could if we did not have to spend the time explaining the dating process to voters.

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The statements made in this Declaration are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities

Executed this 27th of May 2024 in Allegheny County, Pennsylvania.

A handwritten signature in black ink, appearing to read 'Alex Wallach Hanson', written over a horizontal line.

Alex Wallach Hanson, Executive Director
Pittsburgh United

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECLARATION OF AMY WIDESTROM

I, Amy Widestrom, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am over eighteen years of age and am otherwise competent to testify.
3. I am a resident of and registered voter in Montgomery County, Pennsylvania.
4. I am the Executive Director of the League of Women Voters of Pennsylvania ("the League" or "LWVPA"). I have held this position since January 2024.
5. The League is a nonpartisan statewide non-profit organization that was formed in 1920 (incorporated in 1923). The League and its members are dedicated to helping the people of Pennsylvania exercise their right to vote, as protected by the law. 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. The League is a predominantly volunteer organization and has 30 member chapters and one Inter-League Organization operating in 28 counties around the Commonwealth. LWVPA has nearly 2,500 individual members who are registered voters and regularly vote in state and federal elections using, among other methods, absentee and mail ballots.
6. The League's mission is to empower voters and defend democracy, which includes voter registration, education, and get-out-the-vote drives. 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. It also maintains an online database called VOTE411, a nonpartisan and free digital voter resource with information available in both English and Spanish, including registration information, voter guides, mail-in ballot information, candidate information, polling rules and locations.

7. Following the Pennsylvania Supreme Court's November 1, 2022 decision in *Ball v. Chapman, et al.*, No. 102 MM 2022, county boards of elections segregated and did not count mail ballots that arrived in envelopes missing the voter-written date or showing a date that was deemed "incorrect." This abrupt change in voting rules just before Election Day, after many LWVPA members and others served by LWVPA's mission had already submitted mail ballots, caused LWVPA to redirect its limited resources, including staff and volunteer time, to efforts to inform voters of this change and educate them about how to avoid disenfranchisement. For instance:

- a. League staff members and volunteers spent time contacting voters directly through any means possible, including via email, in person, and through social media, to alert them that their ballot would not be counted because of the missing or incorrect date and provided steps that voters could take to rectify the error.

- b. The League also enlisted staff members and volunteers from its local chapters and coordinated the chapters' efforts to broadcast the potential to cure ballots on social media channels, sharing available information including, when possible, direct links to undated ballot lists. The League developed and issued a statement about the Pennsylvania court's ruling.
 - c. The League's members spent time creating content for its websites, posting information on social media, and attending Board of Elections meetings urging counties to provide notice and cure opportunities for mail-ballot voters.
8. The date requirement continues to frustrate LWVPA's ability to fulfill its mission of increasing voter participation and engagement in the electoral process. League staff and volunteers have devoted significant time and resources to educating voters about the intricacies of the mail-ballot process, with particular emphasis on the date requirement. This work has been underway since 2022 and has continued with the 2024 primary election season and in preparation for the 2024 general election season. For example:
- a. As a direct result of the uncertainty around mail ballots, LWVPA developed and hosts a webinar—"Ballot Box Basics"—to educate voters about the steps to successfully vote by mail. LWVPA has had to spend resources developing this series to inform voters of the required steps—especially the date requirement—to ensure a ballot does not get

rejected for a dating error. Most recently, LWVPA presented this webinar on March 28 and April 16, 2024.

- b. League staff publish written materials to educate voters on how to avoid a ballot being rejected, including through social media posts, emails, and postcards and flyers about the intricacies of voting by mail and the importance of the date requirement to have one's ballot counted.
 - c. League staff do media appearances to educate voters about the date requirement and the potential for disenfranchisement if a voter makes minor mistakes when completing a mail-in ballot. For instance, in late February 2024, ahead of the most recent primary election, I was invited to do a radio interview about the redesigned ballot envelope, in which I spent significant airtime reminding voters how to correctly date the outer envelope declaration.
 - d. The local League chapters host dozens of voter registration and education events across the Commonwealth in every election cycle, during which energy is devoted to informing voters about administrative details of completing a mail ballot, especially the date requirement.
9. If the LWVPA didn't have to devote the time, staff, and financial resources to educating voters about the *logistics* of completing a mail ballot, the importance of properly filling in the date, and checking to ensure that ballots

are ultimately counted, it could instead focus on other important forms of voter engagement and participation, including:

- a. Helping individuals make a personalized plan to vote and developing creative solutions to eliminate voters' personal obstacles to voting;
- b. Outreach and voter registration efforts with new voters, younger voters, and voters from marginalized communities;
- c. Educating voters about substantive issues that affect their lives and communities, and generally directing resources toward making Pennsylvanians more efficacious and informed voters; and

10. The date requirement further hinders LWVPA's mission by generating confusion around mail-in ballots and mistrust around the electoral process, which in turn decreases voter participation. Any aspect of the voting process that makes it harder for voters to successfully cast a ballot and have it counted—such as not counting ballots over a dating error—harms the League's efforts to increase voter participation and confidence in the electoral process.

11. The League has already diverted numerous resources toward responding to the date requirement. Absent the relief requested in this case, LWVPA will again need to divert resources for the November 2024 election toward similar voter education and outreach efforts so that voters will not be disenfranchised due to mail ballot envelope dating problems. For instance:

- a. The newly hired Voter Services Coordinator will need to focus on issues such as mail-ballot “curing” and providing detailed educational materials on the mechanics of voting, rather than exploring innovative voter engagement strategies and developing new partnerships to increase voter participation.
 - b. League staff will continue to expend financial resources and personnel to create educational publicity materials, participate at local meetings to advocate for “cure” procedures, and do media appearances to educate voters about the date requirement.
 - c. LWVPA has issued and plans to continue issuing statements, social media posts and other communications about the correct way to submit a mail-in ballot.
12. In the April 2024 primary election, the League identified at least one member in Lancaster County whose ballot was rejected because of the date requirement.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S.
§ 4904 relating to unsworn falsification to authorities.

Executed this 24th day of May, 2024 in Montgomery County, Pennsylvania.

A handwritten signature in blue ink, consisting of a large loop followed by a horizontal stroke that tapers off to the right.

Amy Widestrom

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DECLARATION OF PHILIP HENSLEY-ROBIN

I, Philip Hensley-Robin, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am over eighteen years of age and am otherwise competent to testify.
3. I am a resident of and registered voter in Philadelphia County, Pennsylvania.
4. I am the Executive Director of Common Cause Pennsylvania. I have held this position since October, 2023.
5. Common Cause Pennsylvania is a non-profit political advocacy organization and a chapter of the national Common Cause organization. Common Cause Pennsylvania (hereinafter "Common Cause") has approximately 36,000 members and supporters in Pennsylvania. These members live in all 67 counties of Pennsylvania, and many members are registered voters in Pennsylvania who are at risk of disenfranchisement if Respondents fail to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope.
6. Common Cause seeks 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. Many of these communities are communities of color.

7. In preparation for each major statewide election, Common Cause mobilizes hundreds of volunteers to help fellow Pennsylvanians navigate the voting process and cast their votes without obstruction, confusion, or intimidation.
8. As part of these efforts, Common Cause is a leader of the nonpartisan Election Protection volunteer program in Pennsylvania, which works to ensure voters have access to the ballot box, to provide voters with necessary voting information and answer their questions, to quickly identify and correct any problems at polling places, and to gather information to identify potential barriers to voting.
9. Because of Respondents' refusal to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope, in recent and future elections Common Cause was required and will be required to divert resources from its existing efforts toward educating voters about the drastic consequences of failing to comply with a trivial paperwork requirement that was previously understood (including by numerous federal judges) to be superfluous, and about any available processes in each county for curing mail-in ballots or casting provisional ballots to prevent the disenfranchisement of its members and other Pennsylvania voters.
10. For example, during the 2022 election, Common Cause had to reassign its volunteers' time and efforts from Common Cause's other 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. And when the Department of State announced that ballot envelopes with an incorrect or missing date would be segregated and not counted, Common Cause redirected resources to ensuring that accurate information was available for voters, including those in Allegheny and Philadelphia Counties. Additionally, Common Cause issued press advisories, held press briefings, and issued press statements with the goal of alerting as many voters as possible to the Commonwealth's requirements. If the envelope dating rule remains in place, Common Cause anticipates engaging in similar efforts during the 2024 general election.

11. If Common Cause did not have to devote the time, staff, and financial resources to educating voters about the *logistics* of completing a mail ballot, the importance of properly filling in the date, and checking to ensure that ballots are ultimately counted, it could instead focus on other important forms of voter engagement and participation, including informing eligible citizens about how to register to vote, debunking election-related misinformation, and conducting additional voter education efforts targeted towards communities that face particular challenges in exercising their right to vote, including voters with limited English language proficiency, voters with disabilities, and voters in pretrial detention or on probation.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 24th of May, 2024 in Philadelphia County, Pennsylvania.


Philip Hensley-Robin

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1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

4 -----
5 PENNSYLVANIA STATE CONFERENCE

6 OF THE NAACP, et al.,

7 Plaintiffs,

8 v.

9 LEIGH M. CHAPMAN, in her official capacity as
10 Acting Secretary of the Commonwealth, et al.,

11 Defendants.

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

13 -- and --

14 BETTY EAKIN, et al.

15 Plaintiffs,

16 v.

17 ADAMS COUNTY BOARD OF ELECTIONS, et al.

18 Defendants.

19 Case No. 1:22-cv-340

20 -----
21 Remote Deposition of Crista Miller

22 Monday, February 13, 2023

23 11:00 a.m.

24 Recorded Stenographically by:
Jennifer Miller, RMR, CRR, CCR
25 Job No.:222617

Page 2

1
2 A P P E A R A N C E S
3
4 Counsel for Plaintiffs:
5 ACLU of Pennsylvania
6 Hogan Lovells US LLP
7 Stephen Loney, Jr., Esq.
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12 Daniel Cohen, Esq.
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14 Elias Law Group
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20 American Civil Liberties Union
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24 Counsel for Plaintiff:
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Pittsburgh, PA 15222

Page 4

1
2 Appearances Cont'd
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4 Elections:
5 Melissa Guidy, Esquire
6 Office of County Solicitor
7 Westmoreland County
8 2 North Main Street
9 Greensburg, PA 15601
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11 Counsel on behalf of Chester County Board of
12 Elections:
13 Faith Mattox-Baldini, Esq.
14 County of Chester Solicitor's Office
15 313 W. Market Street, Suite 6702
16 West Chester, PA 19380
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18 Counsel for Defendant, Bucks County:
19 Amy Fitzpatrick, Esq.
20 First Assistant County Solicitor
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22 55 E. Court Street
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24
25 Counsel for Acting Secretary of the
Commonwealth Al Schmidt:
Robert Wiygul, Esq.
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Page 3

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4 matter:
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6 Luis Manuel Rico Román, Esq.
7 American Civil Liberties Union
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12 Commonwealth Leigh Chapman:
13 Elizabeth Lester-Abdalla, Esq.
14 Honors Deputy Attorney General
15 Pennsylvania Office of Attorney General
16 1600 Arch Street
17 Philadelphia, PA 19103
18
19 Counsel for behalf of the Lancaster County
20 Board of Elections and the Deponent:
21 Walter Zimolong, Esq.
22 James Fitzpatrick, Esq.
23 Zimolong Law, LLC
24 353 West Lancaster Avenue
25 Wayne, PA 19087
Counsel for Allegheny County BOE:
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Page 5

1
2 Appearances Cont'd
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4 and Registration:
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6 Selingo Guagliardo LLC
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13 Berks County Solicitor's Office
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18 County, Carbon County Centre County, Columbia
19 County, Dauphin County, Huntingdon County,
20 Indiana County, Jefferson County, Lawrence
21 County, Lebanon County, Monroe County, Montour
22 County, Northumberland County, Snyder County,
23 Venango County, and York County Board of
24 Elections:
25 Jessica Barnes, Esq.
Two Gateway Center
Pittsburgh, PA 15222
Counsel on behalf of Defendant Philadelphia
Board of Elections:
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	Page 6
1	
2	Appearances Cont'd
3	Counsel on behalf of defendant, the Delaware
4	County Board of Elections:
5	J. Manly Parks, Esq.
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10	Counsel on behalf of the Defendant Butler
11	County Board of Elections:
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13	Solicitor for the County of Butler
14	Butler County Commissioners' Office
15	124 West Diamond Street
16	P.O. Box 1208
17	Butler, PA 16003
18	
19	Counsel for Intervenor-Defendants, the
20	Republican National Committee, National
21	Republican Congressional Committee, and
22	Republican Party of Pennsylvania:
23	John Gore, Esq.
24	Jones Day
25	51 Louisiana Avenue, N.W.
	Washington, D.C. 20001
	Counsel for Berks County Board of Elections:
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	Smith Bukowski
	14133 Kutztown Road
	Fleetwood, PA 19522

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1	
2	Exhibits Cont'd
3	Exhibit 10 Document Bates-stamped 78
4	DAUPHIN000001_5
5	Exhibit 11 Document Bates-stamped 80
6	DAUPHIN000001_7
7	Exhibit 12 Mihaliak police report 90
8	Exhibit 13 Answers and Objections of 109
9	Defendant Lancaster County
10	Board of Elections to
11	Plaintiffs' First Set of
12	Requests for Productions of
13	Documents
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2	I N D E X
3	WITNESS PAGE
4	BY MR. LONEY 10
5	BY MR. OSHER 98
6	E X H I B I T S
7	
8	Exhibit 1 Notice of Deposition 17
9	Exhibit 2 Answers of Defendant 20
10	Lancaster County Board of
11	Elections to Plaintiffs'
12	First Set of Requests for
13	Admission
14	Exhibit 3 Answers and Objections of 21
15	Defendant Lancaster County
16	Board of Elections to
17	Plaintiffs' First Set of
18	Interrogatories
19	Exhibit 4 Answers and Objections of 23
20	Defendant Lancaster County
21	Board of Elections to
22	Plaintiffs' First Set of
23	Requests for Production of
24	Documents
25	Exhibit 5 Ball order granting in part 48
	and denying in part
	injunction
	Exhibit 6 Chapman supplemental order 49
	Exhibit 7 Document Bates-stamped 66
	DAUPHIN000001
	Exhibit 8 Document Bates-stamped 73
	DAUPHIN000001_2
	Exhibit 9 Document Bates-stamped 75
	DAUPHIN000001_3

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1	C. Miller
2	P R O C E E D I N G S
3	CHRISTA MILLER, after
4	having been first duly sworn, was
5	examined and testified as follows:
6	MR. OSHER: Before Mr. Loney
7	begins his questioning, I'd like to put on
8	the record an agreement that was reached
9	before we went on the record here, which
10	is that we are here appearing in two
11	different cases, the NAACP case, which is
12	the 22-cv-339 case; and the Eakin case,
13	which is 22-cv-340.
14	The parties have agreed that the
15	questioning that is elicited by the
16	plaintiffs in the 339 case will be usable
17	in the 340 case and vice versa. And the
18	Eakin plaintiffs have agreed that the time
19	used by the 339 plaintiffs will count
20	against their seven hours under the rules.
21	Mr. Zimolong, is that sufficient
22	for you?
23	MR. ZIMOLONG: That's accurate.
24	Thank you.
25	MR. OSHER: And, Mr. Loney, is

Page 10

1 C. Miller
2 that good for you?
3 MR. LONEY: Yeah. That works
4 for plaintiffs in 339.
5 Thanks for putting that on the
6 record.
7 MR. OSHER: Okay. And my
8 understanding is that there's no objection
9 from any other party, but they should
10 speak up now if that is the case.
11 Thanks, all.
12 - - -
13 E X A M I N A T I O N
14 - - -
15 BY MR. LONEY:
16 Q. Okay. Good morning, Ms. Miller.
17 Thank you for taking the time today.
18 Just for the record, my name is
19 Steve Loney. I'm an attorney with the ACLU of
20 Pennsylvania, and I represent the plaintiffs in
21 the 339 case. That's the Pennsylvania State
22 Conference of the NAACP and all of the other
23 plaintiffs in that case.
24 Have you been deposed before?
25 A. I have not.

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1 C. Miller
2 counsel. But it's always helpful to make sure
3 we're on the same page.
4 So we have a Court Reporter on
5 the Zoom here. Everything we're saying is
6 being transcribed. So it's important for us to
7 speak as clearly as possible and to avoid
8 speaking over each other.
9 And I should ask: Can you hear
10 me clearly in the room where you're sitting?
11 A. Yes.
12 Q. Okay. And it's important to make
13 sure your responses are verbal, like the one
14 you just gave, because the Court Reporter can't
15 take down gestures or nods and the like.
16 Also there are a lot of lawyers
17 here attending for a lot of different parties,
18 including your counsel for the Lancaster board.
19 They have the right to object to
20 my questions as we go. I've been known to ask
21 some questions that trigger some objections
22 every once in a while.
23 So if your lawyer or anybody
24 else on the Zoom starts to speak when I am
25 completing a question, it's a little difficult

Page 11

1 C. Miller
2 Q. Okay. Have you ever given testimony
3 at a trial, you know, in a witness box in a
4 courtroom?
5 A. I have.
6 Q. How many times have you done that?
7 A. A few. I don't know the exact
8 number.
9 Q. And have any of those been in
10 connection with your role with the Lancaster
11 County Board of Elections?
12 A. Yes.
13 Q. And when was the last time that you
14 gave trial testimony in that capacity?
15 A. A few weeks ago.
16 Q. Okay. Do you remember what the case
17 was?
18 A. It was a hearing with the Department
19 of State.
20 Q. Did that case involve mail-in
21 ballots?
22 A. No.
23 Q. Okay. Well, I'm just going to go
24 through a couple of the basics of depositions,
25 some of which you may have heard from your

Page 13

1 C. Miller
2 over Zoom, but we just ask that you do what you
3 can to give whoever chimes in a moment to get
4 their objection on the record before you give
5 your answer.
6 But once the objection is
7 stated, you should generally answer the
8 question posed unless I withdraw the question.
9 Does that make sense?
10 A. Yes.
11 Q. The one exception to answering the
12 question posed is if your counsel objects on
13 the basis of privilege. So we don't want you
14 to disclose any information covered by the
15 attorney-client privilege, so you should let us
16 hash out any privilege objections before
17 answering my question if you hear one of those
18 objections.
19 If you don't understand a
20 question I ask, feel free to let me know. And
21 I'll do what I can to explain the question or
22 rephrase.
23 If you need a break at any time,
24 just say the word. We'll try to take breaks
25 around every hour, maybe a little bit more than

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1 C. Miller
2 that. And I'll do my best to accommodate a
3 request for a break unless there's a question
4 pending. We always ask that the question be
5 answered unless we're taking a break for one of
6 those privilege objections.
7 So, with that, can you think of
8 any reason why you might not be able to
9 understand or respond accurately to any of my
10 questions today?
11 A. No.
12 - - -
13 (Whereupon, there was an
14 off-the-record discussion.)
15 - - -
16 BY MR. LONEY:
17 Q. Okay. Ms. Miller, so I should note
18 for the record that this is a remote
19 deposition. We are in separate rooms.
20 It looks like you have
21 Mr. Zimolong there in the same room with you;
22 is that right?
23 A. That's correct.
24 Q. Is there anybody else in that room
25 with you?

Page 16

1 C. Miller
2 A. I am the chief clerk and chief
3 registrar of the Lancaster County Board of
4 Elections and Registration Commission.
5 Q. How long have you held -- how long
6 have you had that position?
7 A. Two years.
8 Q. What did you do before that?
9 A. I worked for USA Field Hockey as the
10 women's team manager.
11 Q. And so you've been in your current
12 position for two years.
13 So you were in that position
14 also during the November 2022 general election,
15 right?
16 A. Correct.
17 Q. And also during the primary election
18 in the spring of 2022?
19 A. Correct.
20 Q. Prior to your role with the -- strike
21 that.
22 Prior to your current role, did
23 you ever have any other position with the
24 Lancaster County Board of Elections?
25 A. I did not.

Page 15

1 C. Miller
2 A. No.
3 Q. And, obviously, you all are on a
4 computer to link into this Zoom.
5 Can you tell me how many screens
6 you have in front of you?
7 A. Two.
8 Q. And is there anything other than this
9 Zoom program open on any of those computer
10 screens?
11 A. No.
12 Q. Do you have a smartphone with you in
13 the room?
14 A. Yes.
15 Q. Okay. So I'm just going to ask that,
16 while we're on the record -- so other than
17 during breaks -- that you leave your phone to
18 the side and keep all of the windows, other
19 than this Zoom screen, closed on your computer
20 while we're on the record.
21 Can we agree to that for the
22 day?
23 A. Yes.
24 Q. Okay. So what is your current
25 position?

Page 17

1 C. Miller
2 Q. And prior to your current role, had
3 you ever had any other roles dealing with
4 elections?
5 A. I did not.
6 MR. LONEY: I'm going to share
7 my screen and ask that the document I'm
8 putting up be marked as Exhibit
9 Lancaster 1.
10 - - -
11 (Whereupon, there was an
12 off-the-record discussion.)
13 - - -
14 MR. LONEY: I'm about to show
15 what is in that folder as Tab Number 1.
16 - - -
17 (Whereupon, Exhibit 1 was marked
18 for identification.)
19 - - -
20 MR. LONEY: Hopefully I can do
21 this correctly.
22 BY MR. LONEY:
23 Q. Ms. Miller, do you see on your screen
24 right now a document with a court caption and a
25 title Notice of Deposition?

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1 C. Miller

2 A. Yes, I do.

3 Q. Do you see anything else on that

4 shared screen?

5 A. No.

6 Q. So I'm showing you on the screen

7 what's being marked as Exhibit Lancaster 1.

8 It's the notice of today's deposition.

9 Have you seen this deposition

10 notice before?

11 A. I have.

12 Q. And do you understand that you've

13 been designated to testify on behalf of the

14 Lancaster board --

15 A. Yes.

16 Q. -- concerning the topics in this

17 deposition notice?

18 A. Yes.

19 Q. So I'm going to scroll to the second

20 page, which is a list of topics.

21 Did you review these topics

22 before today's deposition?

23 A. I did.

24 Q. And what, if anything, did you do to

25 prepare yourself to speak about these topics on

Page 20

1 C. Miller

2 caption on them like this notice of deposition

3 does?

4 A. Yes.

5 Q. Did you review any other documents

6 without a court caption on them in preparation

7 for this deposition?

8 A. Just any documents that had been sent

9 over that we would be looking at today.

10 Q. So anything that you reviewed has

11 been produced to -- in this case?

12 A. From the best of my knowledge, yes.

13 MR. LONEY: Okay. Let's take

14 this down and put up -- for the Court

15 Reporter's benefit, it's Tab 2.

16 - - -

17 (Whereupon, Exhibit 2 was marked

18 for identification.)

19 - - -

20 MR. LONEY: And I'll ask that

21 this be marked as Exhibit Lancaster 2.

22 I'll share that now.

23 BY MR. LONEY:

24 Q. So, Ms. Miller, I'm showing on the

25 screen a document that's been marked as -- or

Page 19

1 C. Miller

2 the board's behalf?

3 A. I just reviewed the questions with my

4 lawyer.

5 Q. Did you speak with any other -- any

6 of the board members in preparation for this

7 deposition?

8 A. I did not.

9 Q. And you said that you met with your

10 lawyer. And I don't want to get into what was

11 discussed between you and your lawyer, but how

12 many times did you meet about this deposition?

13 A. Once.

14 Q. And for how long?

15 A. I believe an hour.

16 Q. Did you review any documents to get

17 ready for this deposition, other than the

18 notice that's up on the screen right now?

19 A. I did.

20 Q. What other documents did you review?

21 A. We reviewed -- I reviewed the

22 documents that we had submitted previously with

23 answers to questions.

24 Q. And we'll go through those in a

25 second, but did those also have a -- a court

Page 21

1 C. Miller

2 is being marked as Exhibit Lancaster 2. It's

3 the Lancaster board's answers to plaintiffs'

4 first set of requests for admissions.

5 Is this one of the documents you

6 reviewed in preparation for your deposition?

7 A. Yes.

8 Q. Did you personally review the

9 plaintiffs' request for admission before they

10 were submitted in this case on January 20th?

11 A. Yes.

12 Q. And did you approve the responses

13 before they were served on the other side?

14 A. I did.

15 MR. LONEY: I'll take that down

16 for now and move on to the next one,

17 which, for the Court Reporter, is Tab 3.

18 - - -

19 (Whereupon, Exhibit 3 was marked

20 for identification.)

21 - - -

22 MR. LONEY: And I'll ask that

23 this be marked as Lancaster 3.

24 BY MR. LONEY:

25 Q. Ms. Miller, I'm showing on the screen

Page 22

1 C. Miller
2 a document that is being marked as Lancaster 3.
3 It's the Lancaster board's answers and
4 objections to the plaintiffs' first set of
5 interrogatories.
6 Is this also one of the
7 documents that you reviewed in preparation for
8 your deposition today?
9 A. I did.
10 Q. And I'm going to scroll -- please
11 stop me if you feel the need to look at any
12 part of this document that I'm sort of going
13 past quickly, but I'm going to go to the last
14 page for now, which is a declaration page.
15 Is that your signature on the
16 declaration page?
17 A. It is.
18 Q. And did you review the answers to
19 these interrogatories before they were served
20 on January 20th?
21 A. Yes.
22 Q. And you approved the substance of the
23 answers?
24 A. I did.
25 MR. LONEY: I'm taking

Page 24

1 C. Miller
2 that were served in response to the plaintiffs'
3 request for production?
4 A. I did.
5 Q. So I'm going to -- again, let me know
6 if you feel the need to review the full
7 document, but I'm going to jump to Request
8 Number 2.
9 Hopefully, you can see me
10 highlighting that on the screen.
11 So this is a request for copies
12 of the mail ballot return envelopes that were
13 set aside because they either lacked a
14 handwritten date or showed a date that the
15 board deemed to be incorrect.
16 Do you see the request that I'm
17 referring to?
18 A. I do.
19 MR. ZIMOLONG: Objection to
20 form.
21 You can answer.
22 THE WITNESS: I do.
23 BY MR. LONEY:
24 Q. And just below the request is an
25 answer which includes some objections. And

Page 23

1 C. Miller
2 Lancaster 3 down.
3 I'm going to do one more before
4 we get into some more questions.
5 For the Court Reporter's
6 benefit, this is Tab 4.
7 - - -
8 (Whereupon, Exhibit 4 was marked
9 for identification.)
10 - - -
11 BY MR. LONEY:
12 Q. Ms. Miller, I'm showing on the screen
13 a document that is being marked as Lancaster 4.
14 It's the Lancaster board's
15 answers and objections to plaintiffs' first set
16 of requests for production of documents.
17 Is this also a document you
18 reviewed in preparation for your testimony
19 today?
20 A. Yes.
21 Q. And did you review the plaintiffs'
22 requests for production of documents before the
23 Lancaster board responded on January 20th?
24 A. Yes.
25 Q. And did you approve the responses

Page 25

1 C. Miller
2 scrolling a bit down to page 3 now where the
3 Lancaster board responded, notwithstanding the
4 objections, that the board "will produce copies
5 of the ballots, redacted where appropriate, for
6 inspection and review pursuant to an acceptable
7 confidentiality order and other order of the
8 Court."
9 Am I reading that correctly?
10 A. Yes.
11 Q. So were you aware that the board had
12 agreed to provide copies of the mail ballot
13 envelopes at issue pursuant to an acceptable
14 confidentiality order?
15 MR. ZIMOLONG: Objection.
16 That's not what it says.
17 BY MR. LONEY:
18 Q. Did the board not agree to produce
19 copies of the envelopes pursuant to an
20 acceptable confidentiality order?
21 MR. ZIMOLONG: Objection. Goes
22 to attorney-client work product litigation
23 strategy.
24 Don't answer.
25

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1 C. Miller

2 BY MR. LONEY:

3 Q. Are you going to follow your

4 counsel's instruction not to answer my last

5 question?

6 A. I am.

7 Q. Okay. Are you aware that the

8 Lancaster board consented to an acceptable

9 confidentiality order on February 3rd?

10 MR. ZIMOLONG: Objection.

11 BY MR. LONEY:

12 Q. You can answer.

13 MR. ZIMOLONG: Calls for

14 speculation.

15 BY MR. LONEY:

16 Q. Are you -- are you aware of that

17 fact?

18 MR. ZIMOLONG: Objection. Calls

19 for speculation. There's no acceptable

20 confidentiality order.

21 BY MR. LONEY:

22 Q. Okay. You can answer.

23 MR. ZIMOLONG: If you understand

24 it.

25 THE WITNESS: Yeah. I'm not

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1 C. Miller

2 representation in the exhibit marked

3 Lancaster 4.

4 So we're going to have to hold

5 this deposition open and come back to

6 complete it, if necessary, after the board

7 completes its production.

8 MR. ZIMOLONG: Well, no. And

9 we're not -- you can state whatever you

10 want for the record.

11 We're not agreeing to produce

12 another designee here.

13 The answers were served on

14 January 20th. It's January -- it's

15 February 13th. You've had these for

16 23 days.

17 On Friday night --

18 MR. LONEY: We've had the

19 enveloped for 23 days?

20 MR. ZIMOLONG: You've had the

21 answers for 23 days.

22 On Friday night you sent an

23 email to me stating produce the mail

24 ballot envelopes, which I've never agreed

25 to produce, because you believed that we

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1 C. Miller

2 sure exactly what you're asking. I never

3 saw -- I've not seen anything or -- or I

4 should say our board has not shown me

5 anything that they would have received.

6 BY MR. LONEY:

7 Q. Okay. So you're not aware that the

8 Court entered a confidentiality order in this

9 case on February 7th? That hasn't been shown

10 to you?

11 A. Not to my knowledge.

12 Q. Okay. Has the board or have you

13 prepared envelope copies for production and

14 inspection in this case?

15 A. I have not.

16 Q. Do you know if anybody has?

17 A. I do not.

18 Q. Have you or anybody else working for

19 the Lancaster board provided counsel with

20 copies of the envelopes at issue?

21 A. We did not.

22 MR. LONEY: All right. So I'll

23 note for the record that we also have not

24 received any requests for envelope copies,

25 despite our repeated requests and the

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1 C. Miller

2 agreed to produce them pursuant to our

3 answer to Request for Production Number 2.

4 You're wrong.

5 MR. LONEY: So can I just --

6 instead of your objection --

7 MR. ZIMOLONG: No. You can just

8 put something on the record. I'm not

9 speaking objection anything.

10 You just went on the record and

11 stated what you're going to do. And I'm

12 stating in response to that. That's not a

13 question. That's a statement. So I can

14 make a statement back.

15 MR. LONEY: All right. Go for

16 it.

17 MR. ZIMOLONG: And what I'm

18 saying is you've misrepresented what this

19 says. You've made a statement on the

20 record as if it were a fait accompli.

21 Ms. Miller is here as a designee

22 pursuant to Rule 30(b)(6). She's here for

23 seven hours. You agreed to it. She's not

24 coming back.

25 There's absolutely nothing wrong

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1 C. Miller
2 with this answer. You believe it's
3 incorrect. You believe that we made
4 something -- we have produced -- not
5 produced something has been agreed to be
6 produced or there was an unreasonable
7 objection.
8 Well, we can take that up. We
9 can meet and confer about it, and you can
10 advise the Court if you need it.
11 But to say here today,
12 February 13th, after having these answers
13 for 23 days, that you're going to bring
14 her back because you don't think the
15 production is full or complete, that
16 doesn't work -- it doesn't work that way.
17 So I'll let you keep continuing
18 your questioning.
19 MR. LONEY: Okay. So -- just so
20 that we're all clear, what I'm putting on
21 the record now is a reservation of rights
22 to hold this deposition open and also to
23 file a motion to compel now that I'm
24 hearing Lancaster County is now refusing
25 to produce the envelope copies requested

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1 C. Miller
2 So now you're in a deposition,
3 and you're making a statement that we're
4 refusing to produce it.
5 I have a difference of opinion.
6 MR. LONEY: Are you?
7 MR. ZIMOLONG: What's that?
8 MR. LONEY: Are you refusing to
9 produce them?
10 MR. ZIMOLONG: Yeah. We have an
11 objection to producing them.
12 MR. LONEY: Okay. So you're
13 refusing --
14 MR. ZIMOLONG: As stated in the
15 request for production, we have an --
16 Lancaster County Board of Elections has a
17 objection, as we've told you repeatedly.
18 Not us, not just us, Mr. Loney.
19 Multiple counties have an objection to it.
20 As we told you, when we were
21 negotiating the confidentiality order, we
22 have an objection to it. As we told you
23 in negotiating the confidentiality order,
24 it didn't alleviate our objection.
25 You agreed to it. You agreed to

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1 C. Miller
2 in Request for Production Number 2.
3 MR. ZIMOLONG: I never refused
4 that. I've objected to it.
5 MR. LONEY: So can I -- can I
6 ask you --
7 MR. ZIMOLONG: No.
8 MR. LONEY: Can I ask you just
9 for the record --
10 MR. ZIMOLONG: I'm not going to
11 have a deposition where you state
12 something on the record because you heard
13 they refused to produce --
14 MR. LONEY: Okay. So --
15 MR. ZIMOLONG: The answer is
16 on -- the answer is on the screen before
17 you. Okay?
18 MR. LONEY: Correct. And it
19 says --
20 MR. ZIMOLONG: The proper way --
21 and if you had a problem with that, up
22 until any of the previous 23 days, you
23 could have met and conferred with me about
24 that. Perhaps we could have broached that
25 impasse. Perhaps we couldn't.

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1 C. Miller
2 it.
3 MR. LONEY: I didn't.
4 MR. ZIMOLONG: Yeah, you agreed.
5 MR. LONEY: Can we stop making
6 speeches on the record? Can we do that?
7 MR. ZIMOLONG: You started it.
8 MR. LONEY: Okay.
9 MR. ZIMOLONG: I will be happy
10 for you to continue with your questioning.
11 MR. LONEY: So --
12 MR. ZIMOLONG: This colloquy is
13 a statement. And if you're going to make
14 statements on the record and make
15 misrepresentations on the record, I'm
16 going to make statements back.
17 MR. LONEY: Okay.
18 MR. ZIMOLONG: So if you want to
19 continue with your questioning, you're
20 free. I haven't interrupted your
21 questioning at all.
22 MR. LONEY: Okay.
23 MR. ZIMOLONG: But you started
24 making a statement on the record, and now
25 you don't like that I'm making a statement

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1 C. Miller
2 back.
3 So would you like to question
4 the witness, Mr. Loney?
5 MR. LONEY: Okay. So I'm going
6 to question the witness subject to our
7 ongoing objection to the refusal to
8 produce these envelopes.
9 And just to make sure there are
10 no open misstatements on the record, we
11 did meet and confer after receiving a
12 response on January 20th. We engaged in
13 lengthy meet-and-confers about an
14 acceptable confidentiality order. One was
15 entered, six days ago, and we are awaiting
16 the production that we asked for.
17 Now, given that you're not
18 providing it and you are standing on an
19 objection, despite the entry of a
20 confidentiality order, I'm noting for the
21 record that we may go to the Court.
22 There's no misrepresentation of
23 any of that. I'm telling you what we may
24 do after this.
25 Now, I'm going to continue with

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1 C. Miller
2 vote in the election in which they have cast a
3 ballot?" If so, what is the basis for that
4 contention?"
5 Did I read that correctly?
6 A. You did.
7 Q. And can you take a moment to read
8 over the Lancaster board's response?
9 A. Yeah, I will.
10 Q. Let me know when you're finished
11 reading.
12 A. Okay.
13 Q. So the response that you just read,
14 you reviewed that and approved it before it was
15 served in this case, right?
16 A. Yes.
17 Q. And so you agree, in the first
18 instance, looking at the first line of the
19 response, that the dates written on envelopes
20 are not material to the question of whether a
21 person is qualified to vote?
22 The date written on the
23 envelope, for example, doesn't tell you whether
24 the person is over 18 years old, right?
25 A. Correct.

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1 C. Miller
2 my questioning.
3 MR. ZIMOLONG: Well, you have
4 misrepresented it, but I'll let you --
5 I'll let you continue.
6 MR. LONEY: Okay. So I'm going
7 to take the document production responses
8 off the screen and go back to the
9 interrogatory responses, which are Exhibit
10 Lancaster 3.
11 BY MR. LONEY:
12 Q. And I have jumped here, Ms. Miller,
13 to Interrogatory Number 14.
14 Do you see that on your -- on
15 your screen?
16 A. I do.
17 Q. And, again, if you feel the need to
18 flip through this and look at anything else to
19 contextualize your answer, let me know. But,
20 otherwise, I'm just going to ask about Question
21 Number 14 for a moment.
22 So plaintiffs' interrogatory
23 reads: "Do you contend that the handwritten
24 date is material in determining whether a
25 ballot" -- "a mail ballot voter is qualified to

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1 C. Miller
2 Q. And the date written on the envelope
3 doesn't tell you whether the voter is or has
4 been a U.S. citizen for at least a month,
5 right?
6 A. Correct.
7 Q. And the date written on the envelope
8 doesn't tell you whether the voter has resided
9 in Lancaster County for at least 30 days, does
10 it?
11 A. Correct.
12 Q. And it also doesn't tell you whether
13 the person voting is incarcerated on a felony
14 conviction, right?
15 A. Correct.
16 Q. For all of those other things I just
17 went through -- citizenship, age, residence in
18 the county, whether the person is
19 incarcerated -- the Lancaster board has other
20 methods of confirming all of those things that
21 are relevant to qualification, right? You
22 don't need the -- the -- the date on the
23 envelope?
24 MR. ZIMOLONG: Objection to
25 form.

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1 C. Miller
2 You can answer.
3 THE WITNESS: That is correct.
4 BY MR. LONEY:
5 Q. But it's the Lancaster board's
6 position that -- and looking again at
7 Interrogatory Number 14 -- that the date is,
8 nevertheless, material in determining whether
9 the ballot was cast in compliance with the
10 election code; is that right?
11 A. That is correct.
12 Q. Okay. So can you help me understand
13 how that is?
14 Is it because the voter who
15 didn't write the correct date next to their
16 signature didn't comply with the election code
17 and its requirement to sign and date the outer
18 envelope?
19 A. Correct. The election code says that
20 it must be dated, and so we are looking to see
21 if there is a date or not to determine whether
22 we can open to count the ballot or not.
23 Q. Okay. So you've used the date or the
24 absence of a date to determine whether the
25 voter complied with the dating requirements.

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1 C. Miller
2 board's perspective; is that right?
3 A. Correct.
4 Q. Okay. So I'm going to flip back to
5 Exhibit Lancaster 2, which is the requests for
6 admission.
7 Do you have that on your screen
8 now?
9 A. I do.
10 Q. And I'm going to focus on the first
11 one, Request for Admission Number 1, on that
12 first page.
13 The request is -- or the
14 statement that we've asked the counties to
15 admit is: "You have never used or referred to
16 the date handwritten on the outer envelope
17 containing a mail ballot for any purpose
18 related to determining or confirming the mail
19 ballot voter's eligibility (that is, their age,
20 citizenship, county, and duration of residence
21 and felony status)."
22 Did I read that correctly?
23 A. Yes.
24 Q. And the Lancaster board replied to
25 that with one word, simply saying "Denied."

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1 C. Miller
2 Do I have that right?
3 A. Correct.
4 Q. And that's the only way a
5 voter-written date is relevant to whether the
6 vote is counted, right, to determine if the
7 voter complied with that requirement to date
8 and sign?
9 MR. ZIMOLONG: Objection to
10 form.
11 You can answer.
12 THE WITNESS: We use that date.
13 We follow the court order, if there is
14 one, for that election to give us the date
15 range and if there is a date there at all.
16 BY MR. LONEY:
17 Q. Right. If they don't include the
18 date, it's a noncompliant vote, based on the
19 most recent court order. And if they did
20 provide a date within a particular range, it's
21 a compliant vote.
22 Do I have that right?
23 A. That is correct.
24 Q. And that's -- that's the end of the
25 analysis of the date, from the Lancaster

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1 C. Miller
2 Can you help me square that with
3 the first sentence from the interrogatory
4 response we just saw that said the handwritten
5 date is not material to determining whether a
6 mail ballots voter is qualified to vote?
7 MR. ZIMOLONG: Objection to
8 form.
9 You can answer.
10 THE WITNESS: We have not used
11 it to determine someone's eligibility.
12 BY MR. LONEY:
13 Q. Okay. So the board's only basis for
14 denying this request is -- this overlaps with
15 Interrogatory 14.
16 Am I right that Interrogatory 14
17 tells us how the Lancaster board uses the date
18 on the envelopes?
19 A. Correct.
20 MR. ZIMOLONG: Go ahead.
21 THE WITNESS: Correct.
22 BY MR. LONEY:
23 Q. Is there anything else -- any other
24 way in which the date is relevant to the
25 board's decision whether to open and canvas the

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1 C. Miller
2 mail ballot inside an envelope other than what
3 we've already discussed and what's in these
4 written responses?
5 A. There is not.
6 MR. LONEY: I'm going to stop
7 sharing this.
8 BY MR. LONEY:
9 Q. So if we're talking about what -- the
10 election code requirement that the envelope be
11 signed and dated, does Lancaster County or the
12 Lancaster County Board of Elections take the
13 same position with respect to any provision in
14 the election code? If the code requires it,
15 then you require it to count the vote?
16 A. Yes.
17 Q. Would that include the requirement to
18 use blue, black, or blue-black ink in fountain
19 pen or ballpoint pen or black lead pencil or
20 indelible pencil to mark a ballot?
21 A. Yes.
22 Q. So that requirement for the -- either
23 using pencil or a particular color ink is on
24 the same level, from your perspective, as the
25 date requirement?

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1 C. Miller
2 we would have to follow it.
3 BY MR. LONEY:
4 Q. And if there's a requirement in the
5 election code, and the Court says follow it,
6 that says every voter has to draw a
7 self-portrait on their return envelope on their
8 mail ballot, would drawing the self-portrait be
9 material as to whether the ballot is eligible
10 to be counted?
11 MR. ZIMOLONG: Objection. Calls
12 for improper opinion testimony. Also
13 beyond the scope of the Rule 30(b)(6)
14 notice.
15 BY MR. LONEY:
16 Q. You can answer.
17 A. If there was a court order that we
18 were to follow that said it, we would have to
19 follow it.
20 Q. So I'll get back to the facts in this
21 case.
22 So you agree that, if a voter
23 returns a ballot or returned a ballot in
24 connection with the November 2022 election
25 without a handwritten date on it at all on the

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1 C. Miller
2 MR. ZIMOLONG: Objection to
3 form.
4 You can answer.
5 THE WITNESS: Yes. The scanners
6 will not scan it.
7 BY MR. LONEY:
8 Q. But did the Lancaster board
9 disqualify any ballots for using a color ink
10 other than black, blue, or blue-black?
11 A. Not that I can think of.
12 Q. Let's say the legislature added a
13 provision to the election code requiring every
14 voter to write the name of their first pet or
15 their mother's maiden name on a return
16 envelope.
17 Would the mother's maiden name
18 be material to whether the ballot is eligible
19 to be counted, in your view?
20 MR. ZIMOLONG: Objection to
21 form. Calls for speculation.
22 THE WITNESS: Yeah, I mean, in
23 my opinion, there's -- I don't know that
24 that would ever happen. But if there was
25 a court order requiring it, we would be --

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1 C. Miller
2 outer envelope, then Lancaster County did not
3 count their ballot.
4 Is that -- do I understand that
5 correctly?
6 A. That is correct.
7 Q. And if a voter returned a ballot with
8 a handwritten date that was outside of the
9 range defined by the Pennsylvania Supreme
10 Court, again, Lancaster board did not count
11 that ballot?
12 A. That is correct.
13 Q. I'm going to put back up the
14 interrogatories, which is Exhibit Lancaster 3.
15 And I'm going to jump to page 3 and the answer
16 to Interrogatory Number 2.
17 Do you see that Interrogatory
18 Number 2 on your screen?
19 A. I do.
20 Q. So in response to Interrogatory
21 Number 2, the Lancaster board offered some
22 objections and then, after that, stated that
23 the Lancaster board "set aside 232 mail ballots
24 under the orders of the Supreme Court of
25 Pennsylvania dated November 1st and

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1 C. Miller
2 November 5th, 2022, and the guidance of the
3 secretary of state."
4 Did I read that correctly?
5 I think I might have missed the
6 word "respectively" in there.
7 A. Yes, that is correct.
8 Sorry. I was just trying to
9 find it.
10 Q. Yeah. And to your knowledge, is that
11 number correct, 232? Was that the total number
12 of mail ballots envelopes set aside by the
13 Lancaster board in the November 2022 election?
14 A. That had to do with this Supreme
15 Court order, yes.
16 Q. Okay. Thanks for that clarification.
17 And that includes both the
18 envelopes received with no handwritten date and
19 envelopes with -- received with something
20 written in the date line but it was deemed
21 incorrect; is that right?
22 A. Correct.
23 Q. Of those 232, how many were set aside
24 because they had no voter-written date at all?
25 A. Off the top of my head, I don't know.

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1 C. Miller
2 - - -
3 (Whereupon, Exhibit 5 was marked
4 for identification.)
5 - - -
6 MR. LONEY: I'll share that on
7 my screen now.
8 BY MR. LONEY:
9 Q. Ms. Miller, do you have on your
10 screen a Supreme Court of Pennsylvania document
11 with a caption starting "David Ball"?
12 A. I do.
13 Q. Okay. So this is being marked as
14 Exhibit Lancaster 5. It's a November 1st,
15 2022, per curiam order of the Pennsylvania
16 Supreme Court in Ball versus Chapman, Case
17 Number 102 MM 2022.
18 And my only question on this,
19 Ms. Miller: Is this the November 1st order you
20 referenced in response to Interrogatory
21 Number 2?
22 A. Yes.
23 MR. LONEY: I'll ask the Court
24 Reporter to mark as Lancaster 6 Tab
25 Number 6 in the folder I sent.

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1 C. Miller
2 Q. And I'll ask the other way.
3 Do you know how many of those
4 were set aside because they had something
5 written in the date line that was deemed
6 incorrect?
7 A. Off the top of my head, I do not
8 know.
9 Q. But if we had those -- copies of the
10 ballot envelopes, we could see for ourselves,
11 right?
12 A. Correct.
13 Q. Do you have a sense for what the --
14 so I don't want you to guess. I'd like you to
15 estimate, if you can, based on your knowledge
16 of the -- of the numbers you've seen.
17 Do you think it was -- more than
18 200 of those 232 were completely undated?
19 A. No.
20 Q. Was it the majority?
21 A. It was approximately 50 percent.
22 MR. LONEY: Okay. I'm going to
23 ask the Court Reporter to mark as Exhibit
24 Lancaster 5 the document I previously sent
25 as Tab 5.

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1 C. Miller
2 - - -
3 (Whereupon, Exhibit 6 was marked
4 for identification.)
5 - - -
6 MR. LONEY: I'll share that now.
7 BY MR. LONEY:
8 Q. Ms. Miller, do you see on your screen
9 another Supreme Court of Pennsylvania document
10 with a caption starting "David Ball"?
11 A. I do.
12 Q. So this document on your screen is
13 being marked as Exhibit Lancaster 6. It is a
14 November 5th, 2022, supplemental order of the
15 Pennsylvania Supreme Court in Ball versus
16 Chapman, same case number as Exhibit 5.
17 Is this the November 5th order
18 you referenced in response to Interrogatory
19 Number 2?
20 A. Yes.
21 Q. Prior to these orders from the
22 Pennsylvania Supreme Court, the secretary of
23 state had instructed county boards to open and
24 canvass ballots received in envelopes without a
25 handwritten date on them, right?

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1 C. Miller

2 A. Correct.

3 Q. And the Lancaster board was going to

4 follow that guidance had the Supreme Court not

5 weighed in in November; is that right?

6 A. That is correct.

7 Q. In other words, had these orders not

8 come in the week before the election, Lancaster

9 board would have canvassed and opened the mail

10 ballot envelopes received without a handwritten

11 date on them?

12 A. Correct.

13 Q. And when these orders came out, did

14 the Lancaster board give anyone the opportunity

15 to -- strike that.

16 When the orders came out, did

17 the Lancaster board notify Lancaster County

18 voters of this change in approach?

19 A. We did not.

20 Q. Did the Lancaster board give anybody

21 the opportunity to correct any problems with

22 the missing or incorrect dates on their mail

23 ballot envelopes?

24 A. No.

25 Q. Did the Lancaster board notify

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1 C. Miller

2 A. No, not that I can remember.

3 Q. No, you don't know one way or the

4 other? Or, no, that didn't happen?

5 A. I am not sure.

6 Q. Okay. So I'm going to turn back to

7 Exhibit Lancaster 6, the November 5th order.

8 Spanning the first and second

9 page, the Supreme Court stated that for the

10 purposes of the November 8th, 2022, general

11 election, incorrectly dated ballots or --

12 strike that -- incorrectly dated outer

13 envelopes are those with dates that fall

14 outside the date range of September 19th, 2022,

15 through November 8th, 2022.

16 Did I read that correctly?

17 A. Yes, for mail ballots.

18 Q. So if somebody -- strike that.

19 And is this the instruction that

20 the Lancaster board followed in connection with

21 mail ballots submitted in the 2022 election?

22 A. Yes.

23 Q. So if somebody wrote a date on their

24 mail ballot envelope that preceded

25 November 19th, 2022, you would have set it

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1 C. Miller

2 anybody that their ballot was going to be set

3 aside on this basis?

4 A. No.

5 Q. If anybody had separately learned,

6 you know, by reading the news or following the

7 secretary of state's website, if they had

8 separately learned that this issue had come up,

9 could they have come in and cast a provisional

10 ballot on Election Day if they chose to do so?

11 MR. ZIMOLONG: Objection. Asks

12 the witness to guess.

13 BY MR. LONEY:

14 Q. Do you know whether that was an

15 option?

16 A. Any voter could vote a provisional

17 ballot on Election Day at their precinct.

18 - - -

19 (Stenographer clarification.)

20 - - -

21 BY MR. LONEY:

22 Q. Do you know if anybody, in fact, cast

23 a provisional ballot who also had their prior

24 attempt at voting by mail set aside based on

25 the Supreme Court's orders in Ball?

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1 C. Miller

2 aside?

3 A. Correct.

4 Q. And if somebody wrote September 20th,

5 2022, and everything else appeared in order,

6 that would have been in compliance with the

7 election code, as interpreted by the

8 Pennsylvania Supreme Court, and so the

9 Lancaster board would have opened that envelope

10 and canvassed the ballot?

11 A. If the date was within what the

12 order gave us, yes, we would have counted it.

13 Q. Including September 20th, in

14 particular?

15 A. I believe the order was from the 19th

16 through the 8th. So the 20th would have been

17 included.

18 Q. So am I correct, though, that

19 Lancaster County did not even start issuing

20 mail ballot packets until September 26th?

21 A. Correct.

22 Q. So nobody could have actually been

23 signing that envelope as early as

24 September 20th?

25 A. Correct.

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1 C. Miller

2 Q. But if they wrote "September 20th,

3 2022," the envelope would not have been set

4 aside on the basis of the Ball order?

5 A. Correct.

6 Q. If somebody wrote a date after

7 November 8th, 2022, you also would have set

8 that aside pursuant to the court order?

9 A. Correct. Except for a military

10 ballot was a different deadline.

11 Q. And what was the military ballot

12 deadline?

13 A. The military -- sorry.

14 Military ballots are due back to

15 county boards of elections one week

16 postelection. So this past election would have

17 been November 15th.

18 Q. Okay. So if a military ballot voter

19 got their ballot back by November 15th but

20 wrote a date on the envelope that postdated

21 November 15th, that would have been set aside?

22 A. Yes, that would have been set aside.

23 Q. What about somebody who wrote

24 "October 2022" but didn't provide the exact

25 day?

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1 C. Miller

2 Q. Why? Didn't that person date the

3 envelope, and isn't October 1st in the range?

4 A. Again, that would have been set aside

5 to be looked at at the canvass as part of the

6 election.

7 I do not believe that we had any

8 like that, though. So I would be speculating

9 what we would have done.

10 Q. Okay. And all of the -- just so I'm

11 clear, all of the ballots at issue in this case

12 were submitted for the 2022 general election,

13 right?

14 A. Correct.

15 Q. And you know for sure that nobody

16 submitting any of these ballots filled them out

17 earlier in the year than September 26th because

18 that's when you first started issuing the

19 ballot packages, right?

20 A. Military ballots are different from

21 that. But all normal mail-in or absentee

22 ballots, that is correct.

23 Q. Will you agree with me that the date

24 line on the voter declaration on the return

25 envelope doesn't actually specify that the

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1 C. Miller

2 A. I don't remember. I believe we would

3 have set those aside as it was not a full date.

4 Q. Okay. But the entire month of

5 October is within the range provided by the

6 Supreme Court, right?

7 A. Correct.

8 Q. But if they said "October 2022," you

9 still would have set that aside?

10 A. I don't remember that we had anything

11 like that to actually have looked at. Those

12 would have just been set aside to look at at

13 the canvassing, and then a decision would have

14 been made.

15 Q. Okay. And if we could look at the

16 copies of the mail ballot envelopes, we might

17 find some in there that say "October 2022"?

18 A. I don't know off the top of my head.

19 Q. What about if somebody wrote the

20 month and day that was between September 19th

21 and November 8th but didn't write a year?

22 So if somebody just wrote

23 "October 1st" with no year, would you have set

24 that aside?

25 A. Yes.

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1 C. Miller

2 voter has to write the year or, as you put it,

3 the full date?

4 MR. ZIMOLONG: Objection to

5 form. Calls for speculation.

6 THE WITNESS: I would need to

7 see one in front of me to look at how we

8 have it.

9 BY MR. LONEY:

10 Q. But sitting here right now, you don't

11 recall whether it says full date, month, day,

12 year?

13 A. I believe that it does, but I would

14 just need to see one to confirm that.

15 Q. Now, the November 5th supplemental

16 order of the Supreme Court said the envelopes

17 could be dated through November 8th, 2022.

18 Did the Lancaster board apply

19 that literally to mean, if somebody wrote

20 "November 8th, 2022," that was within the range

21 because it's through November 8th and that

22 ballot would be counted?

23 A. Yes.

24 Q. And we're only talking about

25 envelopes that were received by 8:00 p.m. on

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1 C. Miller
2 Election Day, right, leaving aside what -- the
3 qualification you gave earlier about military
4 votes?
5 A. Correct.
6 Q. Now, if an envelope comes in with a
7 postmark on it, you know that it was mailed and
8 not placed in a drop box by the voter, right?
9 A. Correct.
10 Q. And we know -- would you agree with
11 me that any ballot received through the U.S.
12 mail by 8:00 p.m. on Election Day must have
13 been placed in a mailbox sometime before
14 Election Day?
15 MR. ZIMOLONG: Objection to
16 form.
17 You can answer.
18 THE WITNESS: Correct.
19 BY MR. LONEY:
20 Q. Which must mean that anybody who
21 mailed their ballot in time for it to be
22 received on November 8th could not have been
23 signing the envelope on November 8th?
24 MR. ZIMOLONG: Objection.
25 Beyond the scope of the Rule 30(b) (6)

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1 C. Miller
2 else appeared to be in order, the Lancaster
3 board would have counted it, period, full stop,
4 right? There's no further evaluation as to
5 whether or not the person signed it on
6 November 8th?
7 MR. ZIMOLONG: Objection to
8 form.
9 THE WITNESS: As long as it was
10 received by 8:00 p.m. on Election Day.
11 BY MR. LONEY:
12 Q. And because that's what the Supreme
13 Court instructed, not because you're using the
14 voter-written date to make a determination as
15 to when the voter actually signed their
16 envelope, right?
17 A. Correct. We would not know that.
18 Q. Let's talk a bit about dates falling
19 after November 8th, and I'm going to limit
20 these questions to domestic mail-in ballots,
21 right. So leaving aside the military ballots
22 that might have come in by the 15th.
23 If you receive an envelope by
24 8:00 p.m. on Election Day, you know for a fact
25 that the voter didn't fill out their ballot

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1 C. Miller
2 notice.
3 She's here as a fact witness.
4 You're getting into opinion testimony.
5 You can answer to the extent you
6 understand it.
7 BY MR. LONEY:
8 Q. Do you understand my question?
9 A. I do.
10 We do work with our local postal
11 service, and they do deliver on Election Day.
12 Multiple carriers come in. So there is a
13 chance that, if someone put one in a mailbox on
14 the 8th, we would still receive it on the 8th.
15 Q. Fair enough.
16 So the Lancaster board didn't do
17 anything to evaluate when somebody put
18 "November 8th, 2022," on their mail-in envelope
19 to see whether they could have actually signed
20 it on the same day?
21 A. I'm not sure I understand that
22 question.
23 Q. I'll ask a different question.
24 If the date showing on the outer
25 envelope was November 8th, 2022, and everything

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1 C. Miller
2 after November 8th, regardless of what they
3 wrote on the envelope, right?
4 A. Correct.
5 Q. But pursuant to the court order, you
6 still would have set aside any envelope where
7 the voter wrote a date that falls after
8 November 8th, 2022, even if it was received by
9 8:00 p.m. on Election Day, right?
10 A. Correct.
11 Q. And that's because you're
12 following -- strictly following the court
13 order, not because you're using the
14 voter-written date to determine when the voter
15 actually filled out the ballot, right?
16 A. Correct.
17 Q. What about envelopes received after
18 Election Day?
19 Leaving aside for a second the
20 date issue on what's written on the envelope,
21 what does the Lancaster board do with mail
22 ballots received after Election Day?
23 A. They are time-stamped in to show when
24 we received them, and then they are set aside
25 and not -- and not counted.

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1 C. Miller

2 Q. And they're set aside and not counted

3 regardless of the date the voter writes on

4 them, right?

5 A. Correct.

6 Q. So if the voter doesn't get their

7 mail ballot to the board by 8:00p.m.

8 on Election Day, they couldn't possibly get

9 their late vote counted by backdating the

10 signature on the envelope, right?

11 A. Correct.

12 Q. So whether or not you receive a

13 ballot before 8:00 p.m. on Election Day has

14 nothing to do with whether the voter wrote

15 "November 8th, 2022," or some earlier date on

16 the envelope?

17 A. Correct.

18 Q. Now, going to the other end of the

19 timeline, envelopes dated before

20 September 19th, 2022. Again, I'll focus on

21 domestic mail ballots, leaving aside the

22 military ballots.

23 There is no way anybody in

24 Lancaster County could have actually filled out

25 the 2022 general election paperwork before

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1 C. Miller

2 A. Military ballots are absentee

3 ballots.

4 Q. So the Pennsylvania Supreme Court

5 said on November 5th, 2022, that an incorrectly

6 dated outer envelope for absentee ballots would

7 be one with a date falling outside the range of

8 August 30th, 2022, through November 8th, 2022.

9 But you still would have counted

10 a military absentee ballot received and dated

11 up through November 15th?

12 A. Received by the 15th. It still would

13 have to be dated by the 8th.

14 Q. Understood.

15 So if you receive a military

16 absentee ballot on November 14th, that met the

17 submission deadline; but if the date the voter

18 wrote on that envelope was November 9th, you

19 would have set it aside pursuant to the court

20 order?

21 A. Correct.

22 Q. Got it.

23 Would the same thing be true of

24 people who might have flipped the day and the

25 month in their -- in how they write their date?

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1 C. Miller

2 September 19th, right?

3 A. Correct.

4 Q. So even if somebody wrote "9/1/2022"

5 on their envelope, you knew for a fact they

6 could not have actually tried to vote using

7 this paperwork on 9/1/2022?

8 A. Correct.

9 Q. But you would have set aside that

10 envelope anyway because that's what the Supreme

11 Court instructed, right?

12 A. For mail ballots, yes. Absentees had

13 a different date range.

14 Q. Do you know what the date range was

15 for absentee?

16 A. August 30th through November 8th.

17 Q. And so I can put up the document

18 again, but I just read it. And good memory;

19 that's exactly what the document said in the

20 next part. It wasn't intended to be a memory

21 test.

22 But it said August 30th, 2022,

23 through November 8th, 2022, and did not set

24 forth a different deadline for military

25 ballots, right?

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1 C. Miller

2 So, for example, some people who

3 wish to indicate November 4th might write

4 4/11 instead of 11/4?

5 MR. ZIMOLONG: Objection to

6 form.

7 You can answer.

8 BY MR. LONEY:

9 Q. Is that something you're aware of

10 people doing out in the world?

11 MR. ZIMOLONG: Calls for

12 speculation as to what people out in the

13 world do.

14 THE WITNESS: If somebody did,

15 we -- yes. I mean, I'm sure that

16 happened. But that would be seen as

17 month, date, year in our office.

18 BY MR. LONEY:

19 Q. So your office would not have done

20 anything to evaluate whether flipping the day

21 and the month in the order would have actually

22 cured a problem? You just did not count it if

23 it didn't hit the range, assuming everybody is

24 writing month then day then year?

25 A. Correct.

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1 C. Miller

2 MR. LONEY: I think now would be

3 a good time to take five minutes before I

4 get into the next stretch.

5 Can we go off the record.

6 - - -

7 (Whereupon, a short recess was

8 taken.)

9 - - -

10 MR. LONEY: Ms. Miller, I'm

11 going to show the next exhibit and ask the

12 Court Reporter to mark Tab 7 as Exhibit

13 Lancaster 7.

14 - - -

15 (Whereupon, Exhibit 7 was marked

16 for identification.)

17 - - -

18 MR. LONEY: I'm sharing my

19 screen now.

20 BY MR. LONEY:

21 Q. Ms. Miller, do you see on the screen

22 a mail-in ballot envelope sample?

23 A. I do, yes.

24 MR. LONEY: Okay. And for the

25 record, I'll note that, in order to orient

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1 C. Miller

2 right now, from what Lancaster County voters

3 got?

4 A. Again, I would have to see ours

5 directly next to it in order to compare.

6 Q. Okay. Well, this exhibit shows a

7 date line. It says "today's date" and, in

8 parentheses, "required."

9 Do you see where I'm looking?

10 A. I do.

11 Q. And there's nothing there that

12 requires -- to our earlier conversation --

13 requires that month, day, and year be provided

14 in that order, is there?

15 MR. ZIMOLONG: Objection to

16 form.

17 You can answer.

18 THE WITNESS: Not for Dauphin

19 County. But, again, I would need to see

20 Lancaster's county next to it.

21 BY MR. LONEY:

22 Q. Do the counties have different forms

23 for these declarations and outer envelopes

24 within the Commonwealth of Pennsylvania?

25 A. Yes.

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1 C. Miller

2 my next line of questioning, I'm using a

3 couple of examples from Dauphin County's

4 production because we don't have any

5 produced by Lancaster County. And Dauphin

6 is a neighboring county to Lancaster that

7 redacted all of the personal identifying

8 information of any voter on any of these

9 envelopes.

10 I understand that the plaintiffs

11 in the 340 case have also received the

12 same production pursuant to protective

13 order.

14 BY MR. LONEY:

15 Q. So this Exhibit Number 7,

16 Lancaster 7, does this show the same

17 declaration form that voters in Lancaster

18 County would have gotten for the 2022 general

19 election?

20 A. I would need to see one of ours with

21 it to confirm, but it looks similar.

22 Q. You don't see anything on here

23 that -- other than the markings at the very

24 bottom for this case, you don't see anything on

25 here that would distinguish it, as you sit here

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1 C. Miller

2 Q. Okay. So we would need to see one of

3 the Lancaster envelopes to know whether there's

4 a month, day, year requirement?

5 A. Correct.

6 Q. Also, in Exhibit Lancaster 7, there

7 is a date stamp -- date and time stamp near the

8 top. I've just highlighted it.

9 Do you see that?

10 A. Yes.

11 Q. Did the Lancaster board also apply a

12 date stamp to incoming mail ballot envelopes?

13 A. Yes.

14 Q. And the date stamp on the return

15 envelope stamped by the Lancaster board would

16 reflect the day the envelope was received by

17 the board, right?

18 A. Correct.

19 Q. So if the date stamp applied by the

20 Lancaster board was before 8:00 p.m. on 1/8/22,

21 that envelope was received in time under the

22 election code, right?

23 A. Correct.

24 Q. Now, looking specifically at the

25 document marked Lancaster 7, there's a

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1 C. Miller
2 handwritten date on this envelope that reads
3 "11/7/2012."
4 Do you see that?
5 A. I do.
6 Q. Now, if this were received in
7 Lancaster County, it couldn't possibly be
8 somebody who actually tried to vote in 2012,
9 right?
10 A. Correct.
11 Q. And nobody -- none of us knew that
12 Dr. Oz was running for Senate in 2012.
13 So had you received an envelope
14 in Lancaster County where somebody, similarly,
15 wrote "2012" as the year instead of "2022,"
16 would that have indicated to you that the voter
17 was engaging in any sort of fraud?
18 A. Not fraud.
19 Q. But you would have set aside this
20 vote because it's incorrectly dated because it
21 falls outside the date range ordered by the
22 Supreme Court, right?
23 A. Correct.
24 Q. And that's because you were following
25 the Supreme Court's instructions, not because

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1 C. Miller
2 If the stamp on the envelope
3 indicates the mail ballot was received in time,
4 right -- so the stamp is on or before
5 November 8th, right?
6 A. Yes.
7 Q. And you know that nobody voted before
8 September 26th, 2022, because nobody could have
9 gotten the mail ballot forms before that,
10 right, in Lancaster County?
11 A. Correct.
12 Q. And so you know everybody who
13 submitted one of these envelopes between the
14 time you issued the mail ballot packages and
15 the November 8th stamp voted -- actually filled
16 out their envelope during that window, right?
17 MR. ZIMOLONG: Objection to
18 form. Calls for speculation.
19 THE WITNESS: One would have to
20 assume that.
21 BY MR. LONEY:
22 Q. I mean, there's no way they could
23 have voted before September 26th, right?
24 A. Correct.
25 Q. And there's no way they could have

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1 C. Miller
2 you would look at this 2012 date to determine
3 when the voter actually filled out their
4 ballot, right?
5 A. We would have been following the
6 order from the Court.
7 Q. But you wouldn't have viewed this
8 2012 date as any indication that somebody was
9 attempting to mark their ballot outside of the
10 allowable date, right?
11 A. I'm not sure I completely understand
12 that question.
13 Q. I'll ask a different question.
14 Does it matter to the Lancaster
15 County board whether somebody was actually
16 marking their ballot within the date range if
17 they got the wrong date on the envelope?
18 MR. ZIMOLONG: Objection to
19 form.
20 To the extent you understand the
21 question.
22 THE WITNESS: Yeah, I -- can you
23 rephrase that.
24 BY MR. LONEY:
25 Q. Sure. If somebody -- strike that.

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1 C. Miller
2 voted after November 8th if you stamped the
3 envelope "received" on or before November 8th,
4 right?
5 A. Correct.
6 Q. So in those situations, does any of
7 that matter once you see that somebody
8 mistakenly put "2012" instead of "2022" on
9 their envelope?
10 A. For this election, it did not because
11 the Supreme Court order gave us date ranges to
12 use.
13 MR. LONEY: I'm going to ask the
14 Court Reporter to mark the next exhibit,
15 which is Tab 8, as Lancaster 8.
16 - - -
17 (Whereupon, Exhibit 8 was marked
18 for identification.)
19 - - -
20 MR. LONEY: Share that on my
21 screen.
22 BY MR. LONEY:
23 Q. This is another example from Dauphin
24 County.
25 Do you have another mail ballot

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1 C. Miller
2 envelope sample up on your screen?
3 A. I do.
4 Q. And there's also a stamp on this
5 example near the top, similar to the date
6 stamps that the Lancaster board applied when it
7 received incoming mail ballots, right?
8 A. Correct.
9 Q. And there's also a handwritten date
10 on this envelope that reads "1/1/22," right?
11 A. Correct.
12 Q. And just like the last example, we
13 know nobody filled out a mail-in ballot for the
14 November '22 election as early as New Year's
15 Day 2022, right?
16 A. Correct.
17 Q. But if the person had just put an
18 extra 1 in front of the 1 that's currently
19 there for the month so that it would read
20 11/1/22 instead of 1/1/22, that would have been
21 in compliance with the dating rule, right?
22 A. If it said 11/1, yes.
23 Q. Right. So if the Lancaster board
24 didn't inquire as to whether that was a simple
25 mistake, that somebody wrote 1 instead of 11,

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1 C. Miller
2 BY MR. LONEY:
3 Q. Do you have another mail ballot
4 envelope sample up on your screen?
5 A. I do.
6 Q. And, again, this envelope has a
7 handwritten date on it that reads "8/11/22,"
8 right?
9 A. Correct.
10 Q. Now, this could be an example, could
11 it not, of what we were talking about before?
12 If somebody switched month and day, they wrote
13 day/month, then they were actually writing
14 Election Day on this envelope, right?
15 MR. ZIMOLONG: Objection to
16 form. Calls for speculation.
17 THE WITNESS: It's not up to our
18 office to assume what someone is writing.
19 We can only look at exactly what's in
20 front of us and what is submitted.
21 BY MR. LONEY:
22 Q. But you did assume that everybody
23 wrote month/day/year, and that was their
24 intent, right?
25 A. Again, I would have to look at our

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1 C. Miller
2 they would have set this aside based on what
3 appears on the face of the envelope, right?
4 MR. ZIMOLONG: Objection to
5 form.
6 You can answer.
7 THE WITNESS: Yes. We take the
8 date that is written by the voter.
9 BY MR. LONEY:
10 Q. And that's, again, because that's
11 what the Supreme Court instructed you to do,
12 not because you would look at a January date
13 and think that the person actually tried to
14 vote in January, right?
15 A. Correct.
16 MR. LONEY: I'm going to ask the
17 Court Reporter to mark the next one, which
18 is Tab 9, as Exhibit Lancaster 9.
19 - - -
20 (Whereupon, Exhibit 9 was marked
21 for identification.)
22 - - -
23 MR. LONEY: I'll share that up
24 on my screen now.
25

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1 C. Miller
2 envelope to see if that is actually on our
3 envelope.
4 Q. And we would also have to look at
5 your envelopes to see if they are actually on
6 your envelope, right?
7 A. Correct.
8 Q. But in any event, if somebody wrote a
9 date that -- assuming it's month/day/year and
10 that didn't fall within the range ordered by
11 the Supreme Court, the Lancaster board didn't
12 inquire as to whether it could have been
13 someone intending to write day/month/year?
14 A. We did not.
15 Q. And this example up on the screen,
16 this is one that you would have set aside
17 without further inquiry, right?
18 A. Correct.
19 MR. LONEY: I'll ask the Court
20 Reporter to mark the next one, which is
21 Tab 11, as Exhibit Lancaster 10, if that
22 makes sense.
23 - - -
24 (Whereupon, Exhibit 10 was
25 marked for identification.)

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1 C. Miller
2 - - -
3 MR. LONEY: And I'm sharing that
4 on the screen now.
5 BY MR. LONEY:
6 Q. Ms. Miller, do you see another sample
7 ballot envelope on your screen?
8 A. I do.
9 Q. And on this one, again, there's a
10 stamp near the top similar to the stamps that
11 the Lancaster board applied when it received
12 incoming mail ballots, right?
13 A. Yes.
14 Q. And that stamp is, in this example,
15 October 27th, 2022.
16 Do you see that?
17 A. I do.
18 Q. And there's also a handwritten date
19 on this envelope which reads "11/25/22," right?
20 A. Correct.
21 Q. Now, if you had received or seen an
22 envelope in Lancaster County dated
23 November 25th, 2022, would that have indicated
24 to you that somebody tried to vote after
25 Election Day?

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1 C. Miller
2 - - -
3 (Whereupon, Exhibit 11 was
4 marked for identification.)
5 - - -
6 BY MR. LONEY:
7 Q. Do you see another example mail
8 ballot envelope on your screen?
9 A. I do.
10 Q. So this document that's being marked
11 as Lancaster 11 actually has two dates written
12 on it. One reads "9/25/22." It looks like
13 somebody put an X through at least part of
14 that. And then there's another date written
15 below it that's "3/6/1944."
16 Do you see that?
17 A. I do.
18 Q. Now, did you -- do you remember, in
19 Lancaster County, receiving any mail ballot
20 envelopes and setting them aside that had dates
21 that were long in the past?
22 A. Yes.
23 Q. Did you look to see if any of those
24 ballots came from people who wrote their birth
25 dates on the envelopes instead of the day they

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1 C. Miller
2 A. No.
3 Q. And if you look at the comparison
4 between the date written and the date stamped,
5 if the person had put 10/25 instead of 11/25,
6 that would have been in compliance and signed
7 just two days before the board received it,
8 right?
9 A. Correct.
10 Q. But in Lancaster County's approach,
11 if you had seen this, you would set it aside
12 without further inquiry as to whether or not
13 the person intended to write "October" instead
14 of "November," right?
15 A. Correct.
16 Q. And, again, that's because that's
17 what the Supreme Court ordered and not because
18 you had any inclination that somebody mailed in
19 a ballot in October but actually filled it out
20 in November?
21 A. Correct.
22 MR. LONEY: I'm going to ask the
23 Court Reporter to mark as Exhibit
24 Lancaster 11 what we previously sent over
25 as Tab 12.

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1 C. Miller
2 were voting?
3 A. We did not go back to look at that.
4 We took just what the date was written.
5 Q. So in this example, you would have
6 set it aside because the date that's not
7 crossed out is from 1944, which is obviously
8 outside of the date range ordered by the
9 Supreme Court, right?
10 A. I would be speculating on that,
11 without seeing this unredacted, to see what
12 else was on this envelope and why there were
13 two dates.
14 Q. Ah. So you're saying -- so there are
15 a couple of things redacted here, not just the
16 signature.
17 Are you saying that you might --
18 if somebody wrote some sort of explanation
19 underneath, that might have weighed into your
20 thinking?
21 A. Again, I would just need to see it
22 unredacted to know what we would have done.
23 Q. Now, if the Lancaster board had seen
24 an envelope or if you had seen an envelope
25 submitted with just "3/6/1944" in the date line

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1 C. Miller
2 and nothing else other than the signature, you
3 would have set that aside, right?
4 A. Correct.
5 Q. And not because you thought somebody
6 had actually filled out a ballot in 1944 and
7 saved it until 2022, right? It's just because
8 you were following the Supreme Court's order
9 as -- as written, right?
10 A. Correct.
11 Q. Now, does this indicate to you, if
12 somebody wrote a date long in the past, that
13 the voter was engaging in any sort of voter
14 fraud?
15 A. No.
16 Q. And did the Lancaster board initiate
17 any investigations of any voters who wrote
18 dates from the 1900s on their outer envelopes
19 to see if they were committing voter fraud?
20 A. No.
21 Q. Did you refer anybody to the police
22 from the November 2022 general election for
23 putting dates long in the past in the 1900s?
24 A. No.
25 MR. LONEY: Is anybody else as

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1 C. Miller
2 Do you see where I'm reading
3 from?
4 A. Yes.
5 Q. And then the Lancaster board
6 responded: "Denied to the extent that the
7 request is referring to the deadline referenced
8 in Section 3150.16(c)." REVIEWED FROM DEMOCRATIC PETITION
9 Do I have that right?
10 A. Yes, I see that.
11 Q. Now, do you happen to know whether
12 3150.16(c) is the provision requiring mail
13 ballots to be received at the county Board of
14 Elections by 8:00 p.m. on Election Day?
15 A. Without it in front of me, I would be
16 speculating on that. But I believe that it is.
17 Q. Okay. So if we -- and I will
18 represent, for the purpose of the next
19 question, that that was our intent in writing
20 this request, right?
21 The question is asking the
22 Lancaster board to admit that it has never
23 referred to the date handwritten on the mail
24 ballot envelope to establish whether the ballot
25 was received on Election Day or before.

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1 C. Miller
2 disturbed as I am by continuing to say
3 "the 1900s" like it's three centuries ago?
4 You don't have to answer that.
5 MR. ZIMOLONG: No. I think
6 maybe people just aren't as disturbed as
7 you by it.
8 MR. LONEY: I'm going to go back
9 for a moment to the requests for
10 admission, which I believe are Exhibit
11 Lancaster 2.
12 I'm putting that back up on the
13 screen.
14 BY MR. LONEY:
15 Q. So do you have the requests for
16 admissions back up on the screen?
17 A. Yes.
18 Q. I'm going to focus in on the second
19 request and denial here.
20 Plaintiffs asked for an
21 admission that the Lancaster board had never
22 referred to the date handwritten on a mail
23 ballot return envelope to establish whether
24 you, the Lancaster board, received the ballot
25 by the applicable deadline.

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1 C. Miller
2 So with that understanding, can
3 you help me understand why this statement is
4 denied?
5 MR. ZIMOLONG: Objection.
6 BY MR. LONEY:
7 Q. It doesn't sound like, from our prior
8 conversation -- like the Lancaster board
9 actually uses the date written to determine the
10 date received.
11 MR. ZIMOLONG: Objection to
12 form.
13 BY MR. LONEY:
14 Q. Is that right?
15 A. We don't use -- can you rephrase
16 that. I'm sorry.
17 Q. Sure. I'll just ask it separate from
18 the request for admission.
19 The Lancaster board doesn't
20 actually use the date written on the envelope
21 to establish when the ballot is received by the
22 board, does it?
23 A. No.
24 Q. I mean, it stamps the date received
25 on the envelope.

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1 C. Miller
2 It doesn't adjust the date on
3 the stamp according to the date written by the
4 voter, right?
5 A. Correct.
6 Q. So if we had written this statement
7 more cleanly to say that -- to say exactly
8 that, that the Lancaster board does not use the
9 date written by the voter to determine whether
10 the envelope was received by Election Day, it
11 shouldn't be a denial, right? That should be
12 admitted?
13 MR. ZIMOLONG: Objection to
14 form.
15 You can answer.
16 THE WITNESS: I would be
17 speculating what the board would agree to
18 for that answer. But for my own self, I
19 would say correct.
20 BY MR. LONEY:
21 Q. So I asked a second ago about whether
22 anybody was referred to the police or
23 investigated for fraud.
24 Of the 232 voters whose mail
25 ballots were set aside in the 2022 general

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1 C. Miller
2 A. Correct. To the district attorney.
3 Q. To the district attorney. Okay.
4 Now, that person was referred
5 for voting another person's ballot, right? It
6 was their mother's ballot?
7 A. Correct.
8 Q. And that person was caught because
9 their mother was deceased by Election Day,
10 right?
11 A. Their mother was deceased when we
12 received the ballot back.
13 Q. And did that -- those are mail ballot
14 envelopes, right -- or it was a mail ballot
15 envelope that purported to come from the
16 deceased person, right?
17 A. Correct.
18 Q. Did that mail ballot envelope have a
19 date on it under the signature?
20 A. It did.
21 Q. Was the date within the range that --
22 strike that.
23 Did it have a correct date on
24 it?
25 MR. ZIMOLONG: Objection to

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1 C. Miller
2 election based on this envelope dating issue,
3 how many of those are being investigated for
4 voter fraud?
5 A. None.
6 Q. And are you aware of any other cases
7 involving alleged fraud in connection with this
8 mail ballot envelope-dating issue?
9 MR. ZIMOLONG: Objection to
10 form.
11 What do you mean "this mail
12 ballot dating envelope issue"?
13 BY MR. LONEY:
14 Q. Did you understand my question?
15 A. No.
16 Q. Okay. So I'll ask a different
17 question.
18 Are you aware of a Lancaster
19 County voter being referred to the police in
20 connection with the 2022 primary election --
21 A. Yes.
22 Q. -- for alleged voter fraud?
23 A. Yes.
24 Q. And you were the person who reported
25 this voter to the police, right?

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1 C. Miller
2 form.
3 You can answer.
4 THE WITNESS: It had a date on
5 it. There was -- there was not a Supreme
6 Court order for the primary with the date
7 range.
8 BY MR. LONEY:
9 Q. Do you know whether it had a date
10 that was many years in the past, into the
11 1900s?
12 A. No. The date on it was August 26th,
13 2022.
14 Q. August 26th or April 26th?
15 A. Sorry. April 26th.
16 Q. Have you seen the police report from
17 that referral of -- well, strike that. I'll
18 ask this first.
19 The voter who was referred to
20 the DA's office is named Cheryl Mihaliak; is
21 that right?
22 A. Correct.
23 Q. And have you seen the police report
24 or the criminal complaint against Cheryl
25 Mihaliak before today?

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1 C. Miller

2 A. Yes.

3 MR. LONEY: I'm going to ask the

4 Court Reporter to mark as Exhibit

5 Lancaster 12 the document that we

6 previously emailed over as Tab 13.

7 - - -

8 (Whereupon, Exhibit 12 was

9 marked for identification.)

10 - - -

11 MR. LONEY: I'll share my

12 screen.

13 BY MR. LONEY:

14 Q. Do you have the police criminal

15 complaint up on your screen?

16 A. I do.

17 Q. And is this -- I'm going to scroll

18 through it. Tell me to slow down if I need to.

19 My first question, as I scroll

20 through, is: Is the document on your screen,

21 Exhibit Lancaster 12, the criminal complaint

22 against Cheryl Mihaliak --

23 A. Yes.

24 Q. -- that we were just talking about?

25 A. Yes, it is.

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1 C. Miller

2 Q. Ah. Thank you very much.

3 It also says that Teresa

4 Mihaliak was removed from the voter roles on

5 April 25th, 2022, right?

6 A. Correct.

7 Q. And that was before you received any

8 mail-in ballot for her?

9 A. Yes, the day before -- or three days

10 before.

11 Q. Got it.

12 So Lancaster -- the Lancaster

13 board has some mechanism for removing people

14 who die before Election Day from the voter

15 rolls, right?

16 A. Correct.

17 Q. And you would have done that in this

18 case for Teresa Mihaliak before any mail-in

19 ballot had been submitted on her behalf, right?

20 A. Correct.

21 Q. So as soon as you or the system saw

22 that Teresa Mihaliak had submitted a mail-in

23 vote after she had been removed from the voters

24 rolls because she had died, you knew that this

25 was an invalid vote, right?

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1 C. Miller

2 Q. And on the affidavit of probable

3 cause -- do you see where I am?

4 A. Yep.

5 Q. It appears to be written by Detective

6 Larry Martin.

7 Do you know who Larry Martin is?

8 A. I do.

9 Q. And did you provide a report of what

10 you knew about Ms. Mihaliak and her alleged

11 voter fraud to Detective Martin?

12 A. I did.

13 Q. Okay. In the second paragraph, it

14 says the ballot for the Democrat primary was

15 received on April 28th, 2022, by your office,

16 right?

17 A. Correct.

18 Q. And the mother, Teresa Mihaliak, had

19 been deceased since April 14th, right?

20 A. Correct.

21 Q. Now, the criminal complaint here does

22 not indicate what date, if any, was written on

23 Ms. Mihaliak's mail-in vote, right?

24 A. It was dated April -- it says it. It

25 says it was dated April 26th, 2022.

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1 C. Miller

2 A. Yes.

3 Q. You didn't need to look at the date

4 written on the envelope to determine that this

5 was an invalid vote?

6 A. We did.

7 Q. You did need to look at the envelope

8 to determine if this was an invalid vote?

9 A. Yes, because of when -- because of

10 how the dates lined up for all of it to have

11 happened.

12 She could have received -- she

13 did -- she would have received a ballot before

14 she died as well as the request. However, once

15 it was returned, she had already been deceased

16 for, I believe, almost two weeks.

17 Q. Right. And dying two weeks before

18 the ballot comes in makes the vote invalid as a

19 matter of course, right?

20 A. Oh, yes. It would have been

21 invalidated it either way.

22 Q. Right. So regardless of the date

23 written on the envelope, that vote would not

24 have counted?

25 A. Correct.

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1 C. Miller

2 Q. Because you had already caught that

3 Teresa Mihaliak had died and removed her from

4 the voter rolls before Election Day?

5 A. Yes.

6 Q. And I understand that the police are

7 interested in how the dates line up because

8 they're, presumably, going for a fraud case

9 against Cheryl Mihaliak.

10 But just focusing on whether

11 this was a valid vote, the date written on the

12 envelope didn't matter one way or the other?

13 A. Correct. When we received it back,

14 as we had already removed her, that ballot

15 would have been set to the side.

16 MR. LONEY: We can put this

17 aside for a second. I want to get back

18 for a moment to military and overseas

19 ballots.

20 And I'd like to go back to

21 Exhibit Lancaster 3, the interrogatory

22 responses.

23 If everybody would just bear

24 with me for a second while I'm chopping

25 things out of my outline to get us out of

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1 C. Miller

2 Interrogatory Number 1.

3 Is that back up on your screen?

4 A. Yes.

5 Q. In interrogatory Number 1, we asked

6 for the numbers, how many ballots and how many

7 military-overseas ballots voters returned to

8 the Lancaster board in the 2022 general

9 election.

10 And in response, the Lancaster

11 board stated that it had received 34,202 mail

12 ballots and 188 military-overseas ballots.

13 Do I have that right?

14 A. Yes.

15 Q. Now, I'm going to scroll down to

16 Interrogatory Number 15.

17 Please, again, let me know if

18 you feel like you need to read anything in

19 between to contextualize.

20 A. Okay.

21 Q. But in Number 15, we asked whether

22 the Lancaster board counted timely received

23 military-overseas ballots in the 2022 general

24 election where the voter failed to write a date

25 on the voter declaration or included a date

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1 C. Miller

2 here sooner.

3 BY MR. LONEY:

4 Q. Okay. So I'm sharing, again, Exhibit

5 Lancaster 3. And I've jumped to page 3, the

6 response to Interrogatory Number 1.

7 Do you see where I am?

8 A. I do.

9 Q. Actually, I'm going to ask to go off

10 the record for a few minutes.

11 - - -

12 (Whereupon, a short recess was

13 taken.)

14 - - -

15 BY MR. LONEY:

16 Q. Ms. Miller, we were talking right

17 before the break about Cheryl Mihaliak, if I

18 pronounced that correctly.

19 Are you aware of any other

20 Lancaster County voters being investigated for

21 voter fraud since your time working with the

22 Lancaster board?

23 A. I am not.

24 Q. Let me go back to sharing Exhibit

25 Lancaster 3. We were just about to talk about

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1 C. Miller

2 that was incorrect.

3 Do you see where I'm reading

4 from?

5 A. Yes.

6 Q. And the answer here from the

7 Lancaster board is no.

8 So the first question I have is:

9 Is that right that the -- of the 188

10 military-overseas ballots there were none set

11 aside because of a missing date or incorrect

12 date on the return envelope?

13 A. Correct.

14 Q. Now, is that because all 188 of those

15 voters wrote a correct date under their

16 signature on the return envelope, or is it

17 because the Lancaster board counted some

18 that -- strike that.

19 I'll just ask the first part of

20 that.

21 Is that because all 188 -- I'm

22 going to strike the last question or partial

23 question and just ask a new one, which is: Is

24 this answer to Interrogatory Number 15 because

25 all 188 military-overseas voters wrote a date

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1 C. Miller
2 that the Lancaster board deemed to be correct
3 on their outer envelopes?
4 A. Correct.
5 MR. LONEY: Those are all of my
6 questions for now. Thank you very much.
7 - - -
8 (Whereupon, there was an
9 off-the-record discussion.)
10 - - -
11 E X A M I N A T I O N
12 - - -
13 BY MR. OSHER:
14 Q. Good afternoon, Ms. Miller. My name
15 is Dan Osher. I represent the plaintiffs in
16 the second of these two cases, and I only have
17 a few questions for you to add on here.
18 Can you remind me? What is your
19 position at the county?
20 A. I am the -- sorry.
21 I am the chief clerk, chief
22 registrar of the Lancaster County Board of
23 Elections and Registration Commission.
24 Q. So how -- can you describe what the
25 relationship is between your position and the

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1 C. Miller
2 mean both mail-in ballots and absentee
3 ballots -- does the board make a determination
4 of whether that person is eligible to
5 participate in the election?
6 A. I'm not sure I understand.
7 Q. Sure. So you said -- in response to
8 my question of after the person successfully
9 registers to vote, I asked you does the board
10 make any future determinations about that
11 person's eligibility to participate in
12 elections, and you said the board does roll
13 maintenance.
14 And so my question was: When a
15 person submits an application to vote by mail,
16 whether mail-in or absentee, does the board
17 make a determination again as to whether that
18 voter is eligible to vote?
19 A. Yes. The first thing we do is to
20 make sure that that person is actually a
21 registered voter first before we process any
22 mail ballot applications.
23 Q. Okay. And -- okay. That answered my
24 question. Thank you.
25 So does the Board of Elections

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1 C. Miller
2 Board of Elections?
3 A. The Board of Elections directly
4 oversees my position at our office.
5 Q. Understood. Okay.
6 So in terms of when the board
7 actually determines when a person is eligible
8 to vote, when does that occur in the process of
9 a person -- let's say a person moves to
10 Pennsylvania, wants to register to vote and
11 participate in Pennsylvania's elections.
12 When does the Board of Elections
13 determine that that person is eligible to cast
14 a ballot in one of their elections?
15 A. When we are registering them to vote.
16 Q. Okay. After that point, let's say
17 that the person successfully registers to vote,
18 does the board determine whether that voter is
19 eligible to cast the ballot at any point in the
20 future?
21 A. There are many voter roll maintenance
22 programs that we do throughout every single
23 year, so yes.
24 Q. When a person submits a mail ballot
25 application -- and when I say "mail ballot," I

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1 C. Miller
2 use the date that is written on the mail ballot
3 return envelope to determine that person's
4 eligibility to vote?
5 A. In a way, yes. Because sometimes,
6 when they come back, if it's a deceased voter,
7 then we have to remove it.
8 Q. Okay. And when is that person's
9 eligibility to vote determined?
10 Is it based on when they
11 submitted the ballot? Is it based on Election
12 Day?
13 What is the date by which you
14 determine that person's eligibility to vote in
15 a particular election?
16 A. We pull deceased voter ballots up
17 through Election Day.
18 Q. So if a person passes away before the
19 election, you say you pull the ballot.
20 What does that mean?
21 A. If we received their ballot -- their
22 voted ballot already, we would then pull that
23 from those received ballots and set aside.
24 Q. And how do you determine whether a
25 person has passed away?

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1 C. Miller

2 A. We receive Department of Health

3 records, as all counties do. And we also use

4 local obituaries or if someone has a death

5 certificate that they have submitted to us.

6 Q. So if a person passes away before

7 Election Day and they -- and their ballot is

8 received for a particular election, that

9 person's ballot will not be counted?

10 A. Correct.

11 Q. And that is regardless of whether

12 there's a date on their return envelope,

13 whether the date is incorrect?

14 A. If there is not a date on the

15 envelope, we would have already pulled it for

16 it being no date. But, yes, otherwise, looking

17 at the date, yes, we still would pull it at

18 that point.

19 Q. So in response to Mr. Loney's

20 questions, you said that before the

21 Pennsylvania Supreme Court's order in November

22 of 2022 the Board of Elections was prepared to

23 count ballots regardless of whether they

24 contained a date on the envelope or whether

25 that date was correct; is that right?

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1 C. Miller

2 A. Yes.

3 Q. Okay. Are you familiar with those

4 opinions? Did you review them?

5 A. Very briefly. I wouldn't say I'm

6 super familiar with them.

7 Q. Has the board reviewed them?

8 A. I -- I know they have been sent them.

9 I can't speak to whether they have actually

10 reviewed them themselves or not.

11 Q. Okay. I'm going to now ask you

12 questions about what the board is intending to

13 do in future elections with respect to dates

14 written on the envelopes containing mail-in and

15 absentee ballots.

16 How is the Board of Elections

17 going to handle mail ballots contained in

18 envelopes in which there are no written dates

19 in future elections?

20 A. We have not spoken -- I've not spoken

21 with the Board of Elections to determine what

22 we will be doing going forward.

23 Q. You have not spoken to the Board of

24 Elections?

25 A. Since those orders have come out

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1 C. Miller

2 A. Correct.

3 Q. Okay. Prior to that, has the Board

4 of Elections ever rejected a ballot solely

5 because it was contained in an envelope that

6 did not contain a date written on the envelope

7 or the date was incorrect?

8 A. Previous to that, yes. We did set

9 ballots aside that did not have a date, and we

10 did not count them.

11 Q. And can you give me the time periods

12 for that?

13 A. This fall would have been the first

14 election that we would have counted ballots

15 with no date.

16 All other elections before that,

17 we would have set those aside. But per court

18 orders that came out -- or court cases, I

19 should say, that had determinations and updated

20 guidance by the Department of State, we were

21 following that for the fall election only.

22 Q. Got it. Thank you.

23 Are you aware that the Supreme

24 Court of Pennsylvania issued its opinions in

25 that Ball case last week?

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1 C. Miller

2 for -- to determine what we're doing going

3 forward, we have not met to speak about that

4 yet.

5 Q. Okay. Are you aware that, in the

6 notice -- the deposition notice that we sent

7 for this deposition, Topic Number 3 was "the

8 criteria that the Lancaster Board of Elections

9 will use during future elections to determine

10 whether the date written on the mail ballot

11 return envelope is correct"?

12 A. I believe that's what that said, yes.

13 Q. So were you aware that this

14 deposition was supposed to cover what the Board

15 of Elections was planning to do in future

16 elections?

17 A. I do. But those court orders also

18 just came out, and we have not had a chance to

19 meet to go over that yet.

20 Q. When will that determination be made?

21 A. I don't know if we have a date that

22 we have set yet. I assume it would be sometime

23 in March, though, but I would be guessing.

24 Q. Okay. You answered some questions by

25 Mr. Loney about the format of the date that's

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1 C. Miller
2 written on the mail ballot return envelope.
3 And you said that -- that you
4 rejected -- when I say "you," I mean the Board
5 of Elections -- you rejected -- you rejected
6 on -- ballots contained in envelopes where the
7 date was written in a format that suggested
8 that the -- let's say the date predated the
9 first date of the range set by the Pennsylvania
10 Supreme Court; is that right?
11 A. I believe.
12 Q. And you presumed that the format was
13 month, date, then year.
14 Did I hear that right?
15 A. I did. And, again, I would need to
16 see our ballot -- our ballot return envelope,
17 not Dauphin County's, because I believe that is
18 on our actual ballot return envelopes so people
19 have the right format.
20 Q. And can you tell me why you think
21 that?
22 A. I was -- I'm trying to remember
23 exactly what they look like, and I believe that
24 it is on there. But, again, without seeing it
25 in front of me, I cannot confirm that.

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1 C. Miller
2 I assume they're the same, but I
3 don't think there's any reason to risk it.
4 Thank you. I appreciate it.
5 And let's go to -- so this
6 doesn't actually contain the documents
7 that were produced, does it?
8 Okay. No problem. I will --
9 I'll offer a new exhibit then. If you
10 wouldn't mind just giving me one second.
11 All right. Jennifer, I did not
12 send an email before the deposition
13 containing our possible exhibits.
14 So I'm just going to put it in
15 the chat, if that works.
16 THE COURT STENOGRAPHER: That
17 works for me. Thank you.
18 MR. OSHER: Thanks.
19 THE COURT STENOGRAPHER: And
20 what are we marking this as?
21 MR. OSHER: I don't know what we
22 finished on.
23 MR. LONEY: The next one should
24 probably be Lancaster 13.
25 MR. OSHER: 13. Great. Thanks.

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1 C. Miller
2 Q. And what's your recollection about
3 what those instructions said?
4 A. I believe that it says today's date
5 required. And then after it, it says --
6 MM/DD/YYYY. But, again, without seeing it in
7 front of me, I can't confirm.
8 Q. Do you know whether you -- whether
9 the board did that for envelopes for overseas
10 and military ballots?
11 A. Off the top of my head, I cannot
12 remember.
13 Q. Would there have been any reason for
14 the board to provide that guidance in domestic
15 ballots but not military and overseas ballots?
16 A. Not that I can think of.
17 MR. OSHER: Mr. Loney, did you
18 mark already the board's responses to your
19 RFPs?
20 MR. LONEY: I did. Those should
21 be Lancaster 4.
22 MR. OSHER: Okay. I apologize.
23 Would you mind pulling that up? I think
24 it would be easier for you to do it rather
25 than me use a different document.

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1 C. Miller
2 - - -
3 (Whereupon, Exhibit 13 was
4 marked for identification.)
5 - - -
6 MR. OSHER: So I've just put in
7 the chat feature of Zoom a document that
8 we're going to mark as -- I'm sorry.
9 Mr. Loney, did you say 13 or 14?
10 THE COURT STENOGRAPHER: 13.
11 MR. OSHER: 13. Thank you.
12 So this will be Exhibit 13, and
13 I'm going to share my screen.
14 BY MR. OSHER:
15 Q. Can you see what I'm showing on the
16 screen here?
17 A. I can.
18 Q. And does this appear to you to be the
19 Lancaster Board of Elections response to the
20 NAACP plaintiffs request for production of
21 documents?
22 A. Yes.
23 Q. Okay. And is there any way -- can
24 you read this okay? Do I need to zoom in at
25 all?

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1 C. Miller

2 A. It's fine.

3 Q. Okay. Thanks.

4 I'm going to move down to page 9

5 of this document. And it looks like -- and

6 this is listed as Exhibit A to the responses to

7 the request for production.

8 I'm going to show you page 9,

9 which looks like half of a ballot envelope.

10 Does that look right?

11 A. Yes.

12 Q. Okay. And if -- you said before that

13 you recall that there might have been guidance

14 as to the format by which people should write

15 their date; is that right?

16 A. Correct.

17 Q. Would that have been -- so it looks

18 like, towards the bottom of this envelope, you

19 have the absentee -- it's cut off, so we can't

20 see everything that it says. But it appears to

21 be the absentee elector's declaration.

22 Where in this would the guidance

23 as to date, month, year have been or month,

24 date, year?

25 A. This -- these are used specifically

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1 C. Miller

2 A. No.

3 Q. Will the Board of Elections make that

4 assumption in future elections?

5 MR. ZIMOLONG: Objection to

6 form.

7 THE WITNESS: I can't speak to

8 what the Board of Elections will determine

9 without meeting with them first.

10 BY MR. OSHER:

11 Q. Does the Board of Elections provide

12 training to its workers about how to determine

13 whether the date written on a ballot is

14 correct?

15 A. We go over it with the staff, yes.

16 But I don't know that there's direct training

17 about dates specifically.

18 Q. Aside from your recollection that

19 there might have been guidance as to format of

20 the date that should be written on envelopes,

21 putting that aside, does the board provide

22 guidance to voters as to how they should format

23 the date written on the envelope?

24 A. I can't recall at the moment without

25 seeing something in front of me.

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1 C. Miller

2 for military ballots, not all of our absentee

3 and regulatory mail-in ballots. So this one

4 does not appear that it has it, but it would be

5 next to the date.

6 Q. But before, when I asked you if there

7 was any reason why the board would have

8 different instructions as to the format of the

9 dates between absentee ballots, domestic mail

10 ballots, and military ballots, you could not

11 think of any; is that right?

12 A. No, I couldn't think of any.

13 MR. OSHER: Okay. I am going to

14 stop sharing my screen.

15 BY MR. OSHER:

16 Q. So going back to the assumption that

17 the date written on the envelope would be

18 month, date, year.

19 Why did you make that

20 assumption?

21 A. Again, without seeing our -- for

22 domestic mail-in absentee ballots, without

23 seeing that in front of me, I believe that it

24 is on there, which is why we use that.

25 Q. Any other reason?

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1 C. Miller

2 Q. You're not aware of any?

3 A. I can't recall. I don't -- I just

4 don't remember what's exactly in our

5 instructions.

6 Q. Okay. I think in response to

7 Mr. Loney's questions you said that the board

8 does not provide notice to voters if their

9 ballot is rejected because of a missing or

10 incorrect date.

11 Do I have that right?

12 A. Correct.

13 Q. To your knowledge, does the board

14 have any intention of providing such notice in

15 the future?

16 A. I can't speak to what the board will

17 decide going forward.

18 Q. Sure. But to your knowledge, you

19 don't know of any intent to do that in the

20 future?

21 A. I am not sure what they will do with

22 that going forward.

23 Q. Earlier, in response to Mr. Loney's

24 questions, you said that the board uses the

25 date written on the envelope to determine

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1 C. Miller
2 whether the ballot is compliant with
3 election -- with the election code.
4 Do I have that right?
5 A. Correct.
6 Q. Does the board use the written date
7 on the envelope for any other purpose?
8 A. We do not.
9 Q. I have a few questions about the SURE
10 system.
11 So can you just explain what the
12 SURE system is?
13 A. It's the voter registration system
14 for Pennsylvania.
15 Q. Okay. And can you describe to me the
16 process by which the Board of Elections
17 interacts with the SURE system when a mail
18 ballot is returned to them?
19 A. So we have to -- all ballots have to
20 be scanned into the system to say that --
21 basically saying -- I was trying to think what
22 the exact wording is that it uses.
23 But it's basically saying that
24 we received that ballot. And then there are
25 rejection codes, should a rejection code be

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1 C. Miller
2 Q. What happens if the board receives a
3 mail ballot from the voter and then the voter
4 appears at a voting place and tries to vote in
5 person?
6 A. They would have to do a provisional
7 ballot.
8 Q. And if they submit a provisional
9 ballot and nothing else happens, what happens?
10 A. If we received their mail ballot,
11 their provisional ballot would not count.
12 Q. And is that because the mail ballot
13 was received first?
14 A. Correct.
15 Q. How does the election official at the
16 polling place know that the voter has submitted
17 their mail ballot?
18 A. It shows them in the poll book.
19 Q. And when it comes time to tabulate
20 the votes, how does the Board of Elections
21 know -- I'm sorry.
22 When it comes time to tabulate
23 the votes, the Board of Elections will always
24 know whether a mail ballot was submitted prior
25 to any provisional ballot submitted by the

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1 C. Miller
2 needed.
3 Q. And what are those rejection codes
4 reflecting?
5 A. I don't, off the top of my head, know
6 all of them. But that could be no secrecy
7 envelope, no signature or date. Things to that
8 nature.
9 Q. Does the rejection code differentiate
10 between missing signature and missing date?
11 A. I don't believe that it did. I
12 believe that has been changed going forward,
13 though.
14 Q. Do you know when that change was
15 made?
16 A. I do not. Again, I don't remember if
17 it actually updated that or not yet. I just
18 know there was talk of it.
19 Q. So am I correct that, when the mail
20 ballot is received by the Board of Elections,
21 it is time-stamped, and then that time and date
22 is entered into the SURE system?
23 A. Yes. They are scanned into the SURE
24 system that day so that the voter knows that we
25 have received their ballot.

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1 C. Miller
2 voter; is that right?
3 A. Correct.
4 Q. What happens if a mail -- if a -- if
5 a voter requests a mail ballot, the board sends
6 it out, and the voter then appears at a polling
7 place and it does not appear that they have
8 returned their mail ballot?
9 A. If they bring back their ballot as
10 well as their return envelope, there is a form
11 that they have to fill out. They turn that in
12 to the judge of elections, and then they may
13 vote at the polls.
14 If they do not have those two
15 pieces, then they must vote provisionally.
16 Q. And if they submit a provisional
17 ballot and the mail ballot comes in after that
18 and it's before the deadline, the 8:00 p.m.
19 deadline of Election Day, what happens then?
20 A. I don't know if we've ever had a case
21 of that, so I can't speak to what would happen.
22 Q. But in all events here, the board
23 will know when the mail ballot is returned and
24 when the provisional ballot has been cast,
25 correct?

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1 C. Miller

2 A. Correct.

3 Q. Aside from the incident that you

4 discussed with Mr. Loney regarding the 2022

5 primary, has the board identified any credible

6 fraud concerns relating to ballots,

7 specifically with respect to the date written

8 on their ballot, in any other instance besides

9 that one that you referred to?

10 A. No.

11 Q. If a mail envelope is missing a

12 written date, is that a reason to suspect voter

13 fraud?

14 MR. ZIMOLONG: Objection to the

15 form. Calls for speculation.

16 THE WITNESS: No, we would not

17 assume that.

18 MR. OSHER: All right. Can we

19 go off the record for about five minutes.

20 Let me just make sure that I don't have

21 any other questions.

22 - - -

23 (Whereupon, a short recess was

24 taken.)

25 - - -

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1 C. Miller

2 In preparing for this

3 deposition, as the representative of the Board

4 of Elections, you are not aware of that?

5 A. Correct.

6 Q. We went through a few formulations of

7 what happens when a voter submits a mail

8 ballot, comes to the polls, and variations of

9 that.

10 What if the mail ballot is

11 received by the Board of Elections and is

12 rejected because of a missing or incorrect date

13 and the voter then appears at the polling

14 place? What happens then?

15 A. Again, I'm not aware of any instances

16 that that has happened. So I would be

17 speculating as to how we would handle that

18 because we have not had to.

19 Q. Based on your preparation as a

20 representative of the board and your position,

21 how -- based on your understanding of how the

22 election code works, what is your understanding

23 of how the board would treat that voter?

24 MR. ZIMOLONG: Objection to

25 form.

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1 C. Miller

2 BY MR. OSHER:

3 Q. Ms. Miller, does the Lancaster board

4 coordinate at all with the boards of other

5 counties to ensure uniformity in the way that

6 they interpret the election code?

7 MR. ZIMOLONG: Objection to the

8 form.

9 You can answer.

10 THE WITNESS: I would be

11 speculating if I said I knew if the board

12 members were reaching out directly to

13 other boards.

14 BY MR. OSHER:

15 Q. Is there any formal system for that

16 that you're aware of?

17 A. Not that I'm aware of.

18 Q. Are you aware of any communication

19 between the boards of elections regarding how

20 they will deem dates to be correct or

21 incorrect?

22 A. No. Again, I would be speculating as

23 to what they sent to other people or talks

24 amongst themselves.

25 Q. But you're not aware of any of that?

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1 C. Miller

2 I don't believe that was one of

3 the topics that she was asked to prepare

4 for, but -- and also calls for

5 speculation.

6 But with those objections, you

7 can answer the question as best you can.

8 THE WITNESS: Again, it would be

9 speculation as to how the board would

10 choose to move forward on those

11 provisional ballots.

12 BY MR. OSHER:

13 Q. Do you have any reason to believe

14 that the voter's in-person ballot would not be

15 counted because of the rejected mail ballot

16 that was received before?

17 MR. ZIMOLONG: Objection to

18 form.

19 You can answer.

20 THE WITNESS: I would truly be

21 speculating if I gave an answer on that.

22 MR. OSHER: All right. I don't

23 have any more questions. Thank you.

24 THE COURT STENOGRAPHER: Does

25 anybody else have any questions?

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1 C. Miller

2 This is Jeff Bukowski on behalf

3 of Berks County. We have no questions.

4 MR. ZIMOLONG: If no one else

5 has any questions -- going once, going

6 twice -- then we'll let Ms. Miller go.

7 Okay. Thank you very much.

8 - - -

9 (Whereupon, the deposition

10 was concluded at 1:22 p.m.)

11 - - -

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ERRATA SHEET

1

2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg.	No.	Now Reads	Should Read	Reason
6	___	___	___	___
7	___	___	___	___
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18	___	___	___	___
19	___	___	___	___
20				
21				
22				

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

23 THIS ___ DAY OF ___, 2023.

24 _____

25 (Notary Public) MY COMMISSION EXPIRES: _____

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1 C. Miller

2 CERTIFICATE

3 I HEREBY CERTIFY that the

4 proceedings, evidence and objections are

5 contained fully and accurately in the

6 stenographic notes taken by me upon the

7 deposition of Crista Miller, taken on

8 February 13, 2023 and that this is

9 a true and correct transcript of same.

10 Date, February 23, 2023

11

12

13 *Jennifer Billstein-Miller*

14 Jennifer Miller, RMR, CCR, CRR

15 and Notary Public

16

17

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21 (The foregoing certification of

22 this transcript does not apply to any

23 reproduction of the same by any means

24 unless under the direct control and/or

25 supervision of the certifying reporter.)

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ERRATA SHEET

1

2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg.	No.	Now Reads	Should Read	Reason
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19	___	___	___	___
20				
21				
22				

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

23 THIS ___ DAY OF ___, 2023.

24 _____

25 (Notary Public) MY COMMISSION EXPIRES: _____