

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA  
CIVIL ACTION – LAW

MICHELLE M. SCHELLBERG,  
*et al.*,

Petitioners,

v.

CENTRE COUNTY BOARD OF  
ELECTIONS,

Respondent.

:  
:  
: Docket No. 2024-CV-1220-CI  
:  
:  
: Type of Pleading:  
: **BRIEF IN SUPPORT OF**  
: **PETITION**  
:  
:  
: Filed on Behalf of:  
: MICHELLE M. SCHELLBERG,  
: Petitioner  
:  
:  
: Counsel of Record for this Party:  
: Louis T. Glantz, Esquire  
: PA ID 31657  
: GLANTZ, JOHNSON & ASSOCS.  
: 1901 E College Ave  
: State College, PA 16801  
: 814-238-2491  
: louis.glantz@gmail.com

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA  
CIVIL ACTION – LAW

MICHELLE M. SCHELLBERG, *et* :  
*al.*, :  
 : Docket No. 2024-CV-1220-CI  
Petitioners, :  
 :  
v. :  
 :  
CENTRE COUNTY BOARD OF :  
ELECTIONS, :  
 :  
Respondent. :

**BRIEF IN SUPPORT OF PETITION**

Petitioner Michelle Schellberg, by and through her undersigned counsel, hereby submits this Brief in Support of Petition, supported by the following:

**I. STATEMENT OF THE CASE**

On May 5, 2024, Petitioner Michelle M. Schellberg timely filed, pursuant to 25 P.S. § 3456, a petition against the Centre County Board of Elections (herein “CCBOE”), seeking to stop the certification of 95 mail-in votes cast in the April 23, 2024, primary election and asserting, among other things, that the CCBOE’s prior vote to accept and count the 95 ballots, as well the certification of election results containing those 95 votes, is illegal and in direct violation of Pennsylvania statutory and case law. Ms. Schellberg’s petition is joined by eighteen other registered Centre

County voters, all of whom were eligible to vote in the April 23, 2024, primary election.

On April 25, 2024, the CCBOE voted to pre-certify 95 votes from the April 23, 2024, primary election that have incomplete, incorrect, or missing dates on the outer envelope enclosing the ballots. *See* Pet. Ex. 1, § “G”; *see also* Resp’s mot. Ex. “A,” § VII.A.4. The counting and certification of these 95 ballots would be a direct violation of the statutory requirement that mail-in ballots be dated. 25 P.S. § 3146.6(a)<sup>1</sup> (absentee ballots) and 25 P.S. § 3150.16(a)<sup>2</sup> (no-excuse mail-in). Specifically, on 57 of the mail-in ballots, the elector did not write the year at all; on 23 of the ballots, the elector wrote the “wrong date”; on 13 of the ballots, the elector failed to write a day and/or month; and on two ballots, the CCBOE failed to specify the issue with the date on the ballot. *See* Pet. Ex. 1, § “G.” The outer envelope upon which the elector is required to, among other things, date, has a large, hard-to-miss section for the date and multiple instructions on various places on the envelope reminding electors that the date requirement is mandatory. *See* Ex. “A.” Despite recognizing the deficiency of the ballots prior to accepting the votes, due to incorrect or incomplete dates on the outer envelope, the CCBOE still voted to pre-certify the ballots.

---

<sup>1</sup> “The elector **shall** then ... date ... such envelope.” (emphasis added)

<sup>2</sup> “The elector **shall** then ... date ... such envelope.” (emphasis added)

The CCBOE had prior knowledge that ballots contained in both incorrectly-dated envelopes and those envelopes missing dates should **not** be counted. In the case Ball v. Chapman, 284 A.3d 1189, 1192 (Pa. 2022) (herein, “Ball I”), the Pennsylvania Supreme Court in a *per curiam* opinion ordered all state County Boards of Elections to refrain from counting any mail-in ballots received, which had incorrect or incomplete dates on the outer envelope, for the November 2022 general election, citing the date requirements found in 25 P.S. §§ 3146.6(a) and 3150.16(a). Id. Furthermore, the Court also ordered all state County Board of Elections to segregate and preserve these incorrect or incompletely dated ballots and envelopes for the November 2022 general election. Id. The CCBOE is a listed party to this case, and its current solicitor is counsel of record for the CCBOE on this case, too.

While Ball I’s order only covered the November 2022 general election, Ball v. Chapman, 289 A.3d 1 (Pa. 2022) (herein “Ball II”) held that undated ballots are not to be counted in any elections. Ball II at 22. Likewise, the Court also held that incorrectly-dated ballots are not in compliance with the statutory requirements and, therefore, invalid as a matter of Pennsylvania law. Id. at 22, 28. Just like Ball I, CCBOE is a listed party and its current solicitor is counsel of record for the CCBOE on Ball II, as well. The holding in Ball II is not limited to any specific election, unlike the holding in Ball I.



Since the Ball Court was equally divided on whether enforcing this date requirement found in Pennsylvania statutes, discussed and cited *supra*, violated 52 U.S.C. Section 10101(a)(2)(B) (Civil Rights Act of 1964) (herein “materiality provision”), a challenge regarding the date requirement, among other things, was filed in federal court. By opinion dated March 27, 2024, almost a month before the April 2024 primary, the Third Circuit recognized the mandatory nature of the date requirements for Pennsylvania mail-in ballots, held that the date requirements do not violate the materiality provision, and remanded to the district court for further consideration of whether the date requirement violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, consideration of which has not concluded in the District Court. Pa. State Conf. of NAACP Branches v. Sec’y Pa., 97 F.4th 120, 139 (3d Cir. 2024). A judgment and order memorializing such was filed on the same day. “Judgment,” Id. (3d Cir. 2024) (No. 23-3166). Just like both Ball cases, CCBOE was a party to this federal litigation and its current solicitor is its counsel of record on this case, too.

At the April 25, 2024, meeting of the CCBOE, the undersigned made public comments informing the CCBOE of the legal requirements that ballots contained within incorrectly- and incompletely-dated envelopes should not be counted, specifically referencing the 95 ballots at issue in this instant case. Furthermore, the undersigned delivered to the Board a legal memorandum reiterating the statutory law

and the Ball and NAACP cases, discussed *supra*. Despite the public comment presented to the CCBOE and the reasonably-imputed knowledge upon each CCBOE member of the results of the litigation the CCBOE is a party to, a CCBOE member and County Commissioner still made a motion to pre-certify the unofficial results for the April 2024 primary, including the 95 ballots at issue in this instant case. The motion passed unanimously, and the Petition in this instant action was filed as a result, seeking to save the sanctity of the vote in Centre County.

## II. STATEMENT OF QUESTIONS INVOLVED

A. *Whether the CCBOE violated Pennsylvania law by counting the 95 ballots with incomplete or incorrect dates on the outer envelopes, in direct contravention with 25 P.S. §§ 3146.6(a) and 3150.16(a), and Ball v. Chapman?*

Suggested Answer: YES

B. *Whether the CCBOE should be enjoined from certifying the results of the April 2024 primary and ordered to remove the 95 offending votes before certifying the April 23, 2024 primary election results?*

Suggested Answer: YES

C. *Whether the Court should enjoin CCBOE from counting ballots with incorrect or incomplete dates on the outer envelopes, in direct violation of established law, in future elections?*

Suggested Answer: YES

### III. LEGAL ARGUMENT

**A. Counting the 95 ballots with incomplete or incorrect dates on the outer envelope, as well the certification of election results containing those 95 votes, would be illegal and in direct violation of Pennsylvania statutory and case law, because ballots contained within an envelope with an incomplete or incorrect date are invalid as a matter of law. Therefore, declaratory judgment is appropriate.**

Petitioners seek declaratory judgment, pursuant to the Declaratory Judgments Act, 42 Pa.C.S. § 7531 *eq seq*, to confirm that both absentee and no-excuse mail-in ballots contained within an envelope that has an incomplete or incorrect date on it are invalid as a matter of law and shall not be counted by the CCBOE.<sup>3</sup> As discussed *supra*, Pennsylvania statutes are clear regarding the date requirement for both an absentee mail-in ballot and a no-excuse mail-in ballot: “The elector **shall** then ... date ... such envelope.” 25 P.S. §§ 3146.6(a) and 3150.16(a), respectively (emphasis added). The Pennsylvania Supreme Court has made it clear that ballots contained within an outer envelope containing an incomplete or incorrect date are “invalid as a matter of Pennsylvania law,” and that such deficient ballots will not be counted. Ball II at 22, 28. The Court cannot ignore or bypass the clear mandates of the Election Code. Appeal of Pierce, 843 A.2d at 1231 (Pa. 1976) (internal citations omitted).

---

<sup>3</sup> See, e.g., Pa. Democratic Party v. Bockvar, 662 Pa. 39 (Pa. 2020), applying the Declaratory Judgments Act to an election statute.



While the NAACP litigation is still ongoing as to the federal Equal Protection issue, the Third Circuit recognizes and upholds the dating requirement, noting that is not a restriction on who can vote, but rather a requirement of how one votes. On April 30, 2024, the Third Circuit also denied appellees' petition to hear the case *en banc*. "Order," docket entry 265, NAACP (3d Cir. 2024) (No. 23-3166).

The date requirement is no different than the requirement that you show up to the polls on time. If one arrives at the polls after 8 p.m. or on a day after the election, he or she will not be able to vote, and this is no different. As a practical matter, the envelope itself states in three separate places the requirement to date, including on a checklist at the bottom. Ex. "A." The Commonwealth's own online mail-in voting instructions note that if you fail to complete the declaration (which includes the date) on the return envelope, "your ballot will not be counted."<sup>4</sup> It is clear from statutes, caselaw, and the instructions and guidance promulgated by Commonwealth's own Secretary, that an incomplete or incorrectly-dated outer envelope will result in an invalid ballot that shall not be counted. CCBOE's decision to count these ballots is in direct conflict with every legitimate legal authority, guidance, and instructions. Therefore, declaratory judgment is appropriate.

---

<sup>4</sup> <https://www.vote.pa.gov/Voting-in-PA/Pages/Mail-and-Absentee-Ballot.aspx>



**B. Because the 95 ballots are invalid as a matter of law, the Respondent should be enjoined from counting them in the April 2024 primary election results.**

Pursuant to Rule 1532(a) of the Pennsylvania Rules of Civil Procedure, Petitioners seek injunctive relief to prevent the CCBOE from counting the 95 invalid ballots contained in envelopes with incomplete or incorrect dates. The Court, when deciding whether to issue injunctive relief, considers whether: 1) the injunction will restore the parties to the status quo from immediately prior to the wrongful conduct; 2) an injunction is necessary to prevent immediate and irreparable harm; 3) greater injury would result from refusing to enjoin than granting the injunction and issuance of an injunction will not harm other parties to the proceeding; 4) the injunction will not harm the public interest; 5) the petitioner is likely to succeed on the merits and has a clear right to relief; and 6) the injunction is reasonably suited to stop the wrongful conduct. SEUI Healthcare Pa. v. Commonwealth, 104 A.3d 495, 501 (Pa. 2014).

First, by stopping the CCBOE from counting the 95 invalid ballots, the Court will be enforcing current law and ensuring the CCBOE follows such, just as every one of the other 66 county board of elections should be doing. As discussed herein, the law is clear that these ballots are not valid and should not be counted. Therefore, an injunction restores the parties to the same situation they were in prior to the CCBOE's illegal vote to preliminarily accept the 95 invalid ballots.

Second, were the Court to refuse to enjoin the CCBOE from counting the 95 invalid ballots, those who voted legitimately, including the Petitioners, in the April 2024 primary will have their votes diluted by unverified ballots. Once the offending ballots are counted, should they later be determined to be illegitimate, it will be impossible to tell which candidates benefitted, and which candidates were hurt by, illegitimate ballots, as the ballots have no way of being identified with their respective envelopes once separated, as the ballots have no personal identifying information on them. The date requirement is part of the declaration process, which helps ensure the security of the election. This also goes to the third prong: the dilution of legitimate votes by unverified votes is a greater injury than following the General Assembly's requirement that ballots be dated.

Fourth, following the law, especially when voters are reminded multiple times on the very ballot to date the envelope, is always in the public interest. It is also in the public interest to have our elected officials follow the law, especially when it is affirmed multiple times by the courts.

As discussed above, it is clear that the 95 invalid ballots should not be counted – according to statute, state and federal caselaw, and the Commonwealth Secretary's own guidance. Therefore, the Petitioners are likely to succeed on the merits of their claim that these 95 ballots should not be counted. Finally, the Petitioners' requested remedy of simply not counting the 95 ballots is as narrowly-tailored of a remedy as

they can seek. Therefore, the Court should enjoin the CCBOE from counting and certifying the 95 ballots.

**C. Because ballots contained within an outer envelope having an incomplete or incorrect date are invalid as a matter of law, the Respondent should be enjoined from counting such invalid ballots in future elections, including the November 2024 general election.**

As discussed *supra*, enjoining the CCBOE from counting mail-in ballots with incomplete or incorrect dates on the outer envelope is appropriate in the April 2024 primary election, and this rationale extends into enjoining the CCBOE from counting such invalid ballots in all future elections. That the CCBOE knew of the legal developments regarding this requirement – from the state Supreme Court, to the Federal Courts, to the Commonwealth Secretary’s own guidance, of which said the votes should not be counted – because it was a party to such or likely received such guidance, and was informed by the citizenry of such prior to the vote to pre-certify, but still unanimously voted to pre-certify the 95 invalid ballots, shows that this conduct is reasonably likely to occur in November and subsequent elections.

Once taken out of the envelope, it is impossible to determine which ballot is invalid, because the ballot has no personal identifying information on it to tie it back to the envelope. Therefore, irreparable harm is likely to occur without a permanent injunction stopping the CCBOE from counting invalid ballots. And by failing to adhere to the envelope requirements in the upcoming November general



election, which includes a presidential contest that historically sees large turnouts, it is reasonable to conclude that the number of invalid ballots will increase accordingly. It is entirely reasonable to think that the number of invalid ballots in November's general election could be the difference in some or even all races. Therefore, greater harm will occur from not granting the injunction than from granting it. All the Petitioners want the CCBOE to do is follow the law.

#### **IV. CONCLUSION**

For the reasons set forth above and in the Petition, Petitioners respectfully request that this Court:

- A. declare that the Respondent's counting of the 95 mail-in ballots with incomplete or incorrect dates is a violation of Pennsylvania law;
- B. enjoin the Respondent from certifying the results of the 2024 primary election until the 95 ballots that have incorrect or incomplete dates on their envelopes are removed from the vote totals; and
- C. enjoin the Respondent from counting any ballots contained within envelopes that are incorrectly or incompletely dated in future elections, including the November 2024 general election.



Respectfully submitted,



Louis T. Glantz, Esquire

PA ID 31657

GLANTZ, JOHNSON & ASSOCS.

1901 E College Ave

State College, PA 16801

[louis.glantz@gmail.com](mailto:louis.glantz@gmail.com)

814-238-2491

*Counsel for Petitioner, Michelle M.  
Schellberg*

RETRIEVED FROM DEMOCRACYDOCKET.COM

**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.

GLANTZ, JOHNSON & ASSOCS.



Date:

Louis T. Glantz, Esquire  
PA ID 31657

1901 E College Ave

State College, PA 16801

[louis.glantz@gmail.com](mailto:louis.glantz@gmail.com)

814-238-2491

*Counsel for Petitioner, Michelle M.  
Schellberg*

RETRIEVED FROM DEMOCRATIC DOCKET.COM



RETRIEVED FROM DEMOCRACYDOCKET.COM

# EXHIBIT “A”



ANY PERSON WHO IS CONVICTED OF WILLFULLY VIOLATING PROVISIONS OF THE VOTER REGISTRATION ACT IS SUBJECT TO A PENALTY: MISDEMEANOR FINE OF \$10,000 OR IMPRISONMENT FOR UP TO FIVE (5) YEARS, OR

**Voter's declaration**

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

**For your witness only**

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

**Witness, sign here**

**Witness address**

Street \_\_\_\_\_  
City \_\_\_\_\_ Zip \_\_\_\_\_

Sign and date



Sign or mark here (REQUIRED)					
X					
Today's date here (REQUIRED)					
			2	0	
Month		Day		Year	

REDACTED

REDACTED

CENTRE

A

**Before returning your ballot!**

DID YOU....

- SEAL your ballot inside the yellow envelope that says "Official Election Ballot" and place the yellow envelope inside this envelope with the purple strip?
- SIGN & DATE the voter's declaration in your OWN handwriting?

IF your ballot is not inside the yellow envelope PLEASE contact 814-355-6703 to be corrected.

TO ABSENTEE VOTERS, WITH

BALLOT