

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE M. SCHELLBERG, et al.  
Petitioners  
vs.  
CENTRE COUNTY BOARD OF  
ELECTIONS,  
Respondent

No. 2024 - CV - 1220 - CI  
PETITIONERS' BRIEF IN RESPONSE TO  
CENTRE COUNTY BOARD OF  
ELECTIONS SECOND MOTION TO  
QUASH AND MOTION TO PREVENT  
DISCLOSURE OF BALLOT OUTER  
ENVELOPES  
**File on Behalf of Petitioner:**  
Michelle M. Schellberg, et al.  
**Counsel of Record For this Party:**  
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**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA**  
**CIVIL ACTION - LAW**

MICHELLE M. SCHELLBERG, et al.,

**No. 2024 - CV - 1220 - CI**

## Petitioners

**vs.**

**CENTRE COUNTY BOARD OF  
ELECTIONS,**

Respondent

**PETITIONERS' BRIEF IN RESPONSE TO RESPONDENT, CENTRE COUNTY  
BOARD OF ELECTIONS, SECOND MOTION TO QUASH AND MOTION TO  
PREVENT DISCLOSURE OF BALLOT OUTER ENVELOPES**

AND NOW COMES Louis T. Glantz of Glantz Johnson and Associates, attorney for Michelle M. Schellberg and 18 additional Petitioners and replies as follows:

First, I was surprised by the type of pleading filed by the Centre County Board of Elections as a second Motion to Quash especially when, during the Court hearing on May 16, 2024, a few items had been stipulated to, specifically:

1. It would be no problem, paraphrasing Attorney Dupuis on the transcribed record, to provide to the Court and me copies of the 95, misdated or undated ballot envelopes with the names blacked out and the bar codes blacked out. Now the CCBOE is attempting to block providing these envelopes.

2. No request for bond was requested by the Court or Attorney Dupuis.

3. No objection was made to supplementing the record with the formally verified signatures of eight petitioners, eight of which, according to Attorney Dupuis, were signed by eight of the original Petitioners (eight including Michelle Schellberg).

4. Attorney Dupuis's statement, on the record, that if the Court found any of the misdated or undated ballot envelopes to be invalid they should all be found to be invalid.

5. Attorney Dupuis requested until Tuesday, May 21, 2024 to file an Answer or Responsive Brief to the actual Petition. Instead, she's filed a 2<sup>nd</sup> Motion to Quash and no response to the actual Petition.

**STIPULATIONS:**

**COUNSEL FOR RESPONDENT HAS ALREADY STIPULATED TO THE ADMISSION OF THE BALLOT ENVELOPES INTO EVIDENCE AND, THEREFORE, ANY OBJECTION RESPONDANT MAY NOW HAVE TO THE PRODUCTION AND ADMISSION OF THE ENVELOPES IS PRECLUDED**

At the May 16, 2024, hearing, the issue of the production and admission into evidence of the 95 envelopes housing invalid ballots was at issue and discussed among parties' counsel and the Judge. At no time did counsel for the Respondent object to the production or admission into evidence of the 95 envelopes housing invalid ballots nor raise the issue that the envelopes were not material to the instant case. In fact, counsel for the Respondent agreed, on the record, to both produce redacted versions of the 95 envelopes housing the invalid ballots to the Judge, as well as to enter the 95 envelopes into evidence. Now, a mere four days later, Respondent seeks to renege on that agreement, moving to prevent the production, and entrance into evidence, of the 95 envelopes housing illegal ballots, claiming Petitioners' request for the 95 ballot envelopes is only to "unduly burden, annoy, or harass" the Respondent.

The agreement between parties' counsel at the May 16 hearing constitutes a binding agreement between attorneys, as it was made in open court and on the record. Pa. R.C.P. 201. It is well recognized in Pennsylvania that parties may bound themselves by statements made in open court. Tyler v. King, 496 A.2d 16, 21 (Pa. Super. Ct. 1985). In fact, stipulations concerning the admissibility of evidence are common. Id. And the Court is to hold a party to their stipulations made in open court, because such stipulations are binding judicial admissions that cannot be subsequently contradicted by the party who made them. Id.

In addition to the agreement made on the record, counsel for the Petitioners issued a subpoena for, among other things, the production of the 95 envelopes at the May 16 hearing. Despite numerous filings in this case, including a motion to quash the petition itself, Respondents have failed to file timely a motion to quash the subpoena.

Respondent's new argument against the production and admission of the 95 ballot envelopes because it is only to "unduly burden, annoy, or harass" the Respondent first appears in its May 20 brief, but is absent from any responsive pleading to the Petition, which clearly set forth the 95 ballot envelopes as the issue in this election. It is also missing from the Respondent's May 13 brief (filed after service of the subpoena to produce the 95 ballot envelopes was served). The Pennsylvania Election Code recognizes that these envelopes are at issue and provides that certified copies of such are competent evidence.<sup>1</sup> Most importantly, had Respondent followed the law regarding ballot

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<sup>1</sup> "Certified copies of all election papers, registers of voters, and records, duly authenticated by the person having custody thereof, shall be competent evidence and prima facie proof of their contents; but the party against whom the same shall be produced shall have the right to compel the attendance of the person who certified them for cross-examination..." 25 P.S. § 3466

envelopes as established by Ball,<sup>2</sup> this Court would not be hearing this dispute, the election results would be certified, and no ballot envelopes would be requested by the Petitioners. Instead, the Respondent decided to pre-certify 95 ballots that are invalid as a matter of law because of deficiencies on the envelope and declaration. Therefore, it is preposterous to suggest that these 95 ballot envelopes are not relevant nor admissible as evidence in this action; indeed, they are the very focal point of this illegal election and Petitioners' efforts to correct such.

## **DISCUSSION**

In reading the Centre County Board of Elections, hereinafter referred to as "CCBOE," documents as a whole, I am initially confused by their mixing the law on a two day appeal for a contested race on a right to recount. The Petition actually filed in this case alleges violations of Pennsylvania law which constitutes illegality. Section 25 P.S. §3456 grants electors 20 days to petition, as was done here, with no requirement any of the petitioners be a candidate affected by the result.

In this instance, the Petition was brought by Michelle M. Schellberg, Chairman of the Center County GOP. As chairman of a political party she has a special interest in how votes are counted in determining how to allocate funds to educate voters to ensure votes are counted properly. In addition, at least 18 other petitioners, all 18 of whom have signed Exhibit 3 to the Petition, which provides: "the following join in this Petition all being qualified registered voters in Centre County" and the subsequent Verification verifying the entire Petition, which includes

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<sup>2</sup> "The Election Code commands absentee and mail-in electors to date the declaration that appears upon ballot return envelopes, and failure to comply with that command renders a ballot invalid as a matter of Pennsylvania law." Ball v. Chapman, 289 A.3d 1, 28 (Pa. 2022).

Exhibit 3 and all of the specific sections and numbers of the Petition itself. This clearly satisfies the requirements of 25 P.S. §3457 which provides “the Petitioner shall be registered electors who voted at the primary election so contested.” The fact that they voted is a record possessed by the Respondent and, therefore, known to the Respondent and no challenge has been made to the fact they voted. The same section (3457) also provides at least five of the petitioners sign an affidavit taken and subscribed before some person authorized by law to administer oaths setting forth “they believe the facts stated therein are true, that according to the best of their knowledge and belief, the primary or election was illegal and the return thereof not correct...”

By signing the Verification and Exhibit 3, a sample affidavit is attached as Exhibit “A” includes the required language for a sworn statement and, in fact, is notarized.<sup>3</sup>

The allegations of illegality appear throughout the Petition, for example, number 4, “ On April 25, 2024 the CCBOE, contrary to Pennsylvania law and the ruling of the Pennsylvania Supreme Court, counted 95 mail-in ballots.....” Number 5, “None of the 95 votes were permitted to be counted as set forth in Pennsylvania law 3156 P.S. §3146.6 (a)....”. In number eight, “despite actual knowledge, the State statute was upheld by the Pennsylvania Supreme Court and the Federal Third Circuit Court, 95 votes which were not eligible to be counted were counted by the Respondent.”. In number 11, “Respondents were advised in person of their error by the Petitioners’ attorney at the Respondent’s meeting on April 30, 2024, at which time the Petitioners’ attorney provided the Respondent with Exhibit 2, which is attached and made part by

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<sup>3</sup>The example is signed by Teresa Hollen who is not only a registered voter but is also a candidate.

this reference. In number 12, “despite actual knowledge of the law in the Commonwealth of Pennsylvania, 95 invalid votes were counted by the Respondent by confirming the vote count on May 6, 2024 thereby depriving or diminishing the value of voters who voted in conformance with Pennsylvania law.” In number 13, “Respondent has not agreed they will not continue to violate Pennsylvania law by continuing to count improperly dated mail in ballots in violation of the Pennsylvania Statute...” And in number 14, “if allowed to continue, the lawful actions of the respondent will deprive future lawful Pennsylvania voters from having their vote count against only those who properly voted.”

Even the ‘wherefore’ paragraph of the Petition refers to illegality by restating request for the “Respondent will reject all mail-in ballots not in compliance with Pennsylvania law...”

All of the arguments referring to Section 3402 of the Code do not apply as this is not a two day appeal by a contestant. A two day challenge might follow in the future when, and if, the CCBOE officially certifies the results including improperly dated ballots. They have not yet done so as stated on the record.

All of the Petitioners signed the Petition alleging to be qualified registered voters as set forth on Exhibit 3. The supplements are mere verifications of their oaths with the Petition they are verifying made part of their verification. In other words, they’re alleging everything included within the Petition to be true, including the illegality of counting improperly dated votes by the CCBOE.

The Commonwealth Court held, In Re Contest of 2003 General Election For the Office of Prothonotary, 841 A.2d 606 (2003), a motion to quash was denied due to improper verification

which was later amended and made to be proper pursuant to County Court order. The Commonwealth Court held “.... After filing may be amended with leave of court so as to include additional specifications of the complaint. After any such amendment, a reasonable time shall be given to the other party to answer.” In Re Contest of 2003 General Election For the Office of Prothonotary, 841 A.2d 614 (2003).

*In re Election of School Directors*, 393 Pa. 396, 400, 143A.2d 18, “An election contest is a method to insure the honesty and validity of elections. While the statutory requirements must be followed, mere technicalities should never thwart the inherent and basic purpose of a proceeding to test the validity of an election.”

It is the Petitioners’ view the original signed verification, Exhibit 3 to the Petition, met the requirements of Section 3457 and, if they did not, were cured by the supplemental verifications signed by the same persons (according to CCBOE seven, plus Michelle Schellberg, of the supplemental verifications were signed by the same persons who signed the original Petition). It should also be noted 25 P.S. §3456 contemplates amendments by allowing amendments provided the respondent has an opportunity to respond. “The commencement of proceedings in the case of contests of the second, third, fourth and fifth classes shall be by petition which shall be made and filed as herein required, within 20 days after the day of the primary or election, as the case may be. The petition shall concisely set forth the cause of complaint, showing where and it is claimed that the primary or election is illegal and after filing may be amended with leave of court, so as to include additional specifications of complaint.



After any such amendment, a reasonable time shall be given to the other party to answer.” At this point CCBOE has not filed an answer to the Petition.

### **STANDING**

The explicit language of 25 P.S. §3457 indicates the petitioners “shall be registered electors,” it does not require candidates. In a 2022 Commonwealth Court decision, *McLinko vs. Commonwealth*, 270 A.3d 1278 (2022), the Commonwealth Court held, on page 1282 of the same decision, .... “The Pennsylvania Supreme Court has established that a grant of taxpayer standing is appropriate where 1) governmental action would otherwise go unchallenged; 2) those directly affected are beneficially affected; 3) judicial relief is appropriate; 4) redress through other channels is not appropriate; and 5) no one else is better positioned to assist the claim citing application of *Biester*, 487 Pa. 438, 409 A.2d 848, 852 (Pa. 1979).”

### **TIMING:**

25 P.S. §3456 clearly states a petition in the form of an appeal may be filed within 20 days of the primary or election. The bulk of the CCBOE’s Motion to Quash is based on a different Section of the Election Code which applies to individual contest to be filed within two days of the event. While the door remains open for a future two day challenge as the election board has not yet certified its results with or without the improperly dated ballots, this challenge is not based on the sections cited by CCBOE. 25 P.S. §3157<sup>4</sup>

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<sup>4</sup>Counsel for CCBOE repeatedly, inadvertently or intentionally attempts to confuse the number of petitioners required under 25 P.S. §3157 with the five required under section 25 P.S. §3457. Section 3457 clearly sets the requirement at five not 20. It should be noted there are actually 20 as Exhibit 3 to the Petition is signed by 18 electors, the Petition itself is signed and verified by Michelle Schellberg and myself, all of whom are registered electors.

**NO RESPONSE BY CCBOE:**

During the Court hearing on May 15, 2024, the attorney for the CCBOE asked for leave of Court to file an amended brief or response to the Petition as at that point, they had filed a Motion to Quash but no response to the Petition. On Monday May 20, 2024, the CCBOE filed a second Motion to Quash and Brief but no response to the Petition. The CCBOE is attempting to dismiss the Petition without ever admitting or denying the accuracy of the claims of illegality and counting undated, misdated or date out of range ballots on the outer envelopes in direct contravention of the Pennsylvania Statute, Pennsylvania Supreme Court decision in Chapman and Federal Third Circuit decision.

It appears to the Petitioners', the intent of the CCBOE is to use procedural technicalities to dismiss this Petition and enable the CCBOE to continue to violate Pennsylvania law. The Court has an obligation to direct the CCBOE to reject all of the misdated, out of date range and undated mail in ballots. It should also be noted by Stipulation, the attorney for the CCBOE stated on the record that if the Court finds any of the 95 ballots listed on line G (Pet Exhibit 1 and Respondent's Motion Exhibit A) should be rejected, then all of 95 of the ballots should be treated as rejected.

**REQUESTED RELIEF:**

1. Both of the CCBOE's Motions to Quash be dismissed.
2. The Board be required to provide the redacted outer envelopes of the 95 ballots at issue in this action to the Court and to counsel for the Petitioners/the Appellants.
3. The Court find all of the misdated or undated outer envelope ballots not be counted in

this primary election and in future elections unless there is a subsequent conflicting Order of Court or change in the Statute by the Legislature.

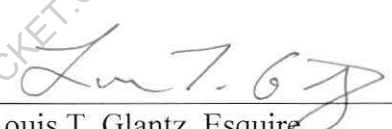
4. As the Petition and subsequent court hearing was made necessary by the failure of the CCBOE to follow Pennsylvania law, Petitioners' attorneys fees and court costs should be assessed against the CCBOE.

Respectfully submitted:

GLANTZ, JOHNSON & ASSOCIATES

Dated: May 21, 2024

BY:

  
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Attorney for Petitioners  
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<b>CENTRE COUNTY BOARD OF</b>	:	
<b>ELECTIONS,</b>	:	
<b>Respondent</b>	:	

**CERTIFICATE OF COMPLIANCE**

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

Submitted by: Glantz Johnson & Associates

Signature: 

Name: Louis T. Glantz, Esquire

Attorney No.: 31657

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I hereby certify that a true and correct copy of the foregoing Petitioners' Brief in Response to Respondent's Motion to Quash and Motion to Prevent Disclosure of Ballot Outer Envelopes was served via First Class US Mail, Postage Prepaid and E-Mail, on the 21<sup>st</sup> day of May 2024, upon the following:

Elizabeth A. Dupuis, Esquire  
330 Innovation Blvd., Suite 302  
State College, PA 16803  
*BDupuis@babstcalland.com*  
Of Counsel for Respondent

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**VERIFICATION**

I, Therese Hollen, hereby states that he/she is one of the petitioners in this action and that the statements of fact made in the foregoing document are true and correct to the best of his/her knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. §4904 relating to unsworn falsification to authorities.

Dated: 5/15/2024

Therese Hollen  
Therese Hollen

SWORN to and subscribed  
before me this 15 day  
of May 2024.

[Signature]  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
Linda D. Neff, Notary Public  
Centre County  
My commission expires November 25, 2024  
Commission number 1119558  
Member, Pennsylvania Association of Notaries

