

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

BLACK POLITICAL EMPOWERMENT
PROJECT, POWER INTERFAITH,
MAKE THE ROAD PENNSYLVANIA,
ONEPA ACTIVISTS UNITED, NEW
PA PROJECT EDUCATION FUND,
CASA SAN JOSÉ, PITTSBURGH
UNITED, LEAGUE OF WOMEN
VOTERS OF PENNSYLVANIA, AND
COMMON CAUSE PENNSYLVANIA,

Petitioners,

v.

AL SCHMIDT, in his official capacity as
secretary of the commonwealth,
PHILADELPHIA COUNTY BOARD OF
ELECTIONS, and ALLEGHENY
COUNTY BOARD OF ELECTIONS,

Respondents.

Civil Action No. 283 MD 2024
Original Jurisdiction

**RESPONDENTS ALLEGHENY AND PHILADELPHIA COUNTY BOARDS
OF ELECTIONS’ STATEMENT OF POSITION REGARDING SUMMARY
RELIEF**

The right to vote is the cornerstone of our democracy, the right from which all other rights ultimately flow. The Allegheny and Philadelphia County Boards of Elections (“Responding Counties”) protect this fundamental right through the fair and orderly administration of elections in their respective counties. Responding Counties are committed to safeguarding the elective franchise by ensuring that all

qualified voters can cast their ballots and that all legitimate, timely cast ballots are counted.

Responding Counties take no position on the constitutional claims raised by Petitioners in this action, and they do not dispute Petitioners' factual allegations in the underlying Petition for Review. Nor do they seek summary relief. But Responding Counties respond here to highlight the lack of any meaningful purpose served by the dating requirement, the disparate impact enforcement of that requirement has had on elderly and disadvantaged voters, the administrative burdens associated with enforcing it, and their commitment to ensuring the integrity and fairness of elections in Allegheny County and Philadelphia County.

First, Responding Counties are currently required by law to enforce the pointless instruction in the Pennsylvania Election Code that voters handwrite a date on the outer return envelope of an absentee or mail-in ballot. *See Ball v. Chapman*, 289 A.3d 1 (Pa. 2023); *see also* 25 P.S. §§ 3146.6(a), 3150.16(a). But this dating requirement serves no purpose in the administration of elections by Responding Counties. The handwritten date is not used to determine a voter's qualification or the timeliness of the ballot, nor is it relied upon to prevent or detect fraud. When Responding Counties receive an absentee or mail ballot, the ballot envelope is stamped with the date and time of receipt to confirm its timeliness. PFR ¶ 52. Only

ballots stamped before 8:00 p.m. on Election Day may be counted.¹ PFR ¶ 53. Therefore, if an absentee or mail ballot is timely received by a county board of elections, it could *only* have been marked and dated between the time it was sent to a qualified voter and 8:00 p.m. on Election Day.² PFR ¶ 53. In sum, Responding Counties do not use the handwritten date on a ballot's outer return envelope for any purpose when administering elections other than to reject the timely ballots of otherwise qualified voters. This requirement to handwrite a date is merely a paperwork-related technicality that imposes a burden on voters' fundamental right to vote without offering any benefit to Responding Counties in the administration of elections in Pennsylvania.

Second, Responding Counties' experience establishes that the dating requirement—which led to the rejection of more than 10,000 Pennsylvania ballots (PFR ¶ 59)—disproportionately affects elderly Pennsylvania voters. For example, when Philadelphia County analyzed its own data for the 2022 General Election, it found: (i) 60.9% of undated ballots and 64.1% of misdated ballots were submitted

¹ This does not include military overseas ballots, which may be counted as timely if submitted for delivery no later than 11:59 p.m. the day before the election and received by a County Board of Elections by 5:00 p.m. on the seventh day following an election. *See* 25 P.S. §§ 3509(2), 3511(a).

² Moreover, a voter's qualifications are determined at the application stage, not by reference to a handwritten date. *See* 25 P.S. §§ 3146.2, 3146.6(a), (c), 3146.8(g)(3)-(4), 3150.12, 3150.16(c).

by voters who were 60- years old or older, (ii) 37.5% of undated ballots and 40.9% of misdated ballots were submitted by voters who were 70 years old or older; (iii) 14.1% of undated ballots and 13.9% of misdated ballots were submitted by voters who were 80 years old or older; and (iv) 57 undated ballots and 15 misdated ballots were submitted by voters who were 90 years old or older.³ “The percentages all are significantly higher than the percentage of Philadelphia’s registered voters that these age groups represent.”⁴

Third, even though the handwritten dates serve no meaningful purpose, Responding Counties must expend considerable time, labor, and resources to enforce the dating requirement. To process the large volume of absentee and mail-in ballots received each election,⁵ Responding Counties rely on automated sorting machines to recognize when ballot envelopes are returned without handwritten signatures or without the internal secrecy envelope that is required by the Pennsylvania Election

³ Transcript from November 18, 2022, Meeting of the Philadelphia County Board of Elections at 4-6, available at https://vote.phila.gov/media/111822_Meeting_Transcript.pdf (Nov. 18, 2022).

⁴ *Id.*

⁵ In the 2022 General Election, for example, Philadelphia County received over 129,000 absentee and mail-in ballots before the Election Day deadline, and Allegheny County received over 160,000 absentee and mail-in ballots. See Pennsylvania Department of State, Pennsylvania 2022 General Election Ballot Counting Status, available at https://www.vote.pa.gov/About-Elections/Documents/2022-11-11-PADOS_BEST_ENRSupplementalBoard_2022General.pdf (Nov. 11, 2022).

Code. These machines, however, cannot be configured to determine whether the date on the ballot's outer return envelope is "correct." As a result, Responding Counties must devote additional time and labor to manually inspect, identify, and set aside noncompliant ballots. This labor-intensive and time-consuming review offers no benefit to Responding Counties, and its only purpose is to invalidate otherwise valid and legitimate ballots.

Fourth, Responding Counties are committed to ensuring the integrity and fairness of elections in Allegheny County and Philadelphia County. They have made and will continue to make good-faith efforts to verify that the outer return envelopes of mail ballots are dated and to set aside those that are improperly dated. Responding Counties have previously maintained that Pennsylvania law does not mandate invalidating a qualified voter's ballot based solely on the voter's failure to handwrite a correct date on the ballot's outer return envelope. *See Ball*, 289 A.3d at 13 n.52.⁶ And Responding Counties believe that the Pennsylvania Supreme Court erred when

⁶ In state and federal court, Responding Counties have also taken the position that the Materiality Provision of the Federal Civil Rights Act prohibited county election boards from invalidating ballots solely because the voter failed to handwrite a correct date on the ballot's outer return envelope. *See* Brief of Respondents Allegheny, Bucks, Chester, Delaware, Montgomery, and Philadelphia County Boards of Elections, *Ball v. Chapman*, No. 102 MM 2022 (Pa. Oct. 25, 2022); Brief of Defendants Allegheny, Bucks, Chester, Montgomery, and Philadelphia County Boards of Elections, *Pennsylvania State Conference of the NAACP, et al. v. Schmidt, et al.*, No. 1:22-CV-339 (W.D. Pa. May 5, 2023).

it read the Pennsylvania Election Code to require Responding Counties to invalidate ballots based on noncompliance with this insignificant dating instruction. *See id.* at 20-23. Nonetheless, in compliance with the Pennsylvania Supreme Court's order in *Ball*, Responding Counties have set aside and not counted absentee and mail-in ballots that arrive in undated or misdated outer return envelopes. Responding Counties will continue to do so, absent an order from this Court or the Pennsylvania Supreme Court directing Responding Counties to handle such ballots in a different manner.

* * * * *

In sum, the handwritten date requirement serves no meaningful purpose, consumes scarce resources, and operates to disenfranchise thousands of Pennsylvanians, particularly older voters.

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Respectfully submitted,

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