

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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**No. 1172 CD 2024**

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**CENTER FOR COALFIELD JUSTICE, WASHINGTON BRANCH NAACP,  
BRUCE JACOBS, JEFFREY MARKS, JUNE DEVAUGHN HYTHON,  
ERIKA WOROBEC, SANDRA MACIOCE, KENNETH ELLIOTT,  
AND DAVID DEAN,**

*Appellees,*

**v.**

**WASHINGTON COUNTY BOARD OF ELECTIONS,  
REPUBLICAN NATIONAL COMMITTEE AND  
REPUBLICAN PARTY OF PENNSYLVANIA,**

*Appellants.*

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**BRIEF OF APPELLANT WASHINGTON COUNTY BOARD OF  
ELECTIONS JOINING IN THE BRIEF OF APPELLANTS REPUBLICAN  
NATIONAL COMMITTEE AND REPUBLICAN PARTY OF  
PENNSYLVANIA**

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**Appeal from the August 23, 2024 Opinion and Order of the Court of Common  
Pleas of Washington County Civil Division, No. 2024-3953**

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David J. Berardinelli, Pa. I.D. N0. 79204  
DeForest Koscelnik & Berardinelli  
436 Seventh Ave., 30<sup>th</sup> Fl.  
Pittsburgh, PA 15219  
Email: berardinelli@deforestlawfirm.com  
*Counsel for Appellant  
Washington County Board of Elections*

## **TABLE OF CONTENTS**

<b>STATEMENT OF JURISDICTION .....</b>	<b>1</b>
<b>ORDER IN QUESTION.....</b>	<b>3</b>
<b>STATEMENT OF SCOPE AND STANDARD OF REVIEW.....</b>	<b>4</b>
<b>QUESTION FOR REVIEW .....</b>	<b>5</b>
<b>STATEMENT OF THE CASE.....</b>	<b>6</b>
<b>SUMMARY OF ARGUMENT .....</b>	<b>7</b>
<b>ARGUMENT.....</b>	<b>8</b>
<b>CONCLUSION .....</b>	<b>9</b>

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## **TABLE OF AUTHORITIES**

### **CASES**

<i>Brewington v. City of Phila.</i> , 149 A.3d 901 (Pa. Commw. Ct. 2016).....	4
<i>Pyeritz v. Commonwealth</i> , 32 A. 3d 687 (Pa. 2011) .....	4
<i>Seda-Cog Joint Rail Auth. v. Carload Express, Inc.</i> , 185 A.3d 1232 (Pa. Commw. Ct. 2017) .....	4
<i>Working Families Party v. Commonwealth</i> , 209 A.3d 270 (2019) .....	1, 2

### **STATUTES**

Election Code, 25 P.S. Chapter 14 .....	1, 2
25 P.S. § 3150.16.....	3
42 Pa. C.S.A. § 762 .....	1

### **RULES**

Pa. R. Civ. P. 1035.2.....	4
Pa.R.A.P. 903(a).....	2
Pa.R.J.A. 108(c)(1) .....	2
Pa.R.J.A. 109(b).....	2
Pa.R.J.A. 109(e) .....	2

## STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to 42 Pa. C.S.A. § 762(a)(4).

On September 9, 2023, the Trial Court took the unusual step of issuing a 1925 Opinion advocating that Intervenor-Appellants' appeal be dismissed. The Trial Court suggested that this appeal is governed by the ten-day deadline for appeals of matters "arising under the Pennsylvania Election Code" and, thus, that Intervenor-Appellants' notice of appeal was untimely. *See* Sept. 9, 2024 1925 Opinion. The Trial Court is wrong.

As the Pennsylvania Supreme Court has explained, an appeal in a "declaratory judgment action" raising constitutional claims "does not 'arise under' the Election Code." *Working Families Party v. Commonwealth*, 209 A.3d 270, 278 (2019). Rather, where a party brings a declaratory judgment action alleging that a provision of the Election Code or its implementation violates the Constitution, "the thirty-day appeal period for a declaratory judgment matter is appropriate," and the appeal is not governed by the ten-day deadline applicable to matters that "arise under" the Election Code. *Id.*

That holding squarely applies here. Plaintiffs-Appellees filed a Complaint for Declaratory Judgement alleging only a violation of the Pennsylvania Constitution's Procedural Due Process guarantee. *See* Compl. ¶¶ 148-160. The Complaint is not

predicated upon any violation of the Election Code. Rather, the Complaint is expressly predicated on alleged constitutional violations arising out of the Board's policy. Hence the Court's Order and Opinion regardless of its basis does not arise under the Election Code. Accordingly, "the instant appeal [is] timely" because it was filed within thirty days of the Trial Court's August 23, 2024 Opinion and Order. *Working Families Party*, 209 A.3d at 278; Pa.R.A.P. 903(a). And if there is any doubt whether the 10-day or 30-day appeal deadline applies—which there cannot be under *Working Families Party*—the Rules of Judicial Administration dictate in favor of the more liberal result. *See* Pa.R.J.A. 108(c)(1) and 109(b) and (e).

## **ORDER IN QUESTION**

This is an appeal from the Order entered by the Honorable Brandon P. Neuman of the Court of Common Pleas of Washington County, Pennsylvania on August 23, 2024, which states:

AND NOW, this 23rd day of August, 2024 upon consideration of the cross-filed motions for Summary Judgment, the materials attached thereto, the Parties' Joint Stipulation of Facts, the deposition transcripts provided to the Court, and the arguments of Counsel, the Court ORDERS, ADJUDGES, and DECREES that the Plaintiff's Motion for Summary Judgment against Defendant Washington County Board of Elections is GRANTED in part and DENIED in part and Plaintiff's request for a permanent injunction is GRANTED in part. Defendant Washington County Board of Elections' and Intervenor Republican National Committee and Republican Party of Pennsylvania's Motions for Summary Judgment are DENIED. Defendant Washington County Board of Elections is hereby ordered to notify any elector whose mail-in packet is segregated for a disqualifying error, so the voter has an opportunity to challenge (not cure) the alleged defects. The Washington County Board of Elections shall input the accurate status of the mail-in packet in the SURE system and provide the status to the elector if requested.

Defendant Washington County Board of Elections is hereby ordered to properly document in the poll books that the elector has not "voted" when an elector's mail in packet is segregated for a disqualifying defect in accordance with 25 P.S. § 3150.16 (which will allow the elector the opportunity to cast a provisional ballot) and choose the most appropriate selection in the SURE system to reflect as such.

## STATEMENT OF SCOPE AND STANDARD OF REVIEW

On appeal from a trial court's order granting or denying summary judgment, the "standard of review is de novo and [the] scope of review is plenary." *Seda-Cog Joint Rail Auth. v. Carload Express, Inc.*, 185 A.3d 1232, 1235 n.3 (Pa. Commw. Ct. 2017) (citing *Brewington v. City of Phila.*, 149 A.3d 901 (Pa. Commw. Ct. 2016)). Summary judgment is appropriate only if the "evidentiary record . . . entitles the moving party to judgment as a matter of law." Pa. R. Civ. P. 1035.2. Accordingly, summary judgment is properly entered only when, "after examining the record in the light most favorable to the non-moving party and resolving all doubts as to the existence of a genuine issue of material fact against the moving party, the moving party is clearly entitled to judgment as a matter of law." *Seda-Cog Joint Rail*, 185 A.3d at 1235 n.3 (quoting *Pyeritz v. Commonwealth*, 32 A. 3d 687, 692 (Pa. 2011)).

## **QUESTION FOR REVIEW**

The Washington County Board of Elections agrees with, adopts and hereby joins in the Questions for Review submitted by the Republican National Committee (“RNC”) and the Republican Party of Pennsylvania (“RPP”) in their merits Brief.

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## **STATEMENT OF THE CASE**

The Washington County Board of Elections agrees with, adopts and hereby joins in the Statement of the Case submitted by the RNC and RPP in their merits Brief.

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## **SUMMARY OF ARGUMENT**

The Washington County Board of Elections agrees with, adopts and hereby joins in the Summary of Argument submitted by the RNC and RPP in their merits Brief.

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## **ARGUMENT**

The Washington County Board of Elections agrees with, adopts and hereby joins in the Argument in the merits Brief submitted by the RNC and RPP. For the reasons stated therein, the Trial Court's Opinion should be reversed.

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## CONCLUSION

Based on the law and record evidence, as discussed in the merits Brief filed by the RNC and RPP, this Court should reverse the Trial Court's Opinion.

Respectfully submitted,

Dated: September 10, 2024

/s/ David J. Berardinelli

David J. Berardinelli (Pa. I.D. No. 79204)  
DEFOREST KOSCELNIK & BERARDINELLI  
436 Seventh Ave., 30th Fl.  
Pittsburgh, PA 15219  
Phone: (412) 227-3100  
Email: berardinelli@deforestlawfirm.com

*Counsel for Appellant*  
*Washington County Board of Elections*

## CERTIFICATION

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 nonconfidential information and documents.

/s/ David J. Berardinelli

David J. Berardinelli (Pa. I.D. No. 79204)

DEFOREST KOSCELNIK &

BERARDINELLI

436 Seventh Ave., 30th Fl.

Pittsburgh, PA 15219

Phone: (412) 227-3100

Email: berardinelli@deforestlawfirm.com

*Counsel for Appellant*

*Washington County Board of Elections*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the ***BRIEF OF APPELLANT WASHINGTON COUNTY BOARD OF ELECTIONS JOINING IN THE BRIEF OF APPELLANTS REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF PENNSYLVANIA*** was served via PACFile, this 10th day of September 2024, on the following counsel of record:

Witold J. Walczak  
Marian K. Schneider  
Kate I. Steiker-Ginzberg  
American Civil Liberties Union of Pennsylvania  
P.O. Box 60173  
Philadelphia, PA 19103  
vwalczak@aclupa.org  
mschneider@aclupa.org  
msteiker-ginzberg@aclu.org  
*Counsel for Appellees*

Mary M. McKenzie  
Claudia De Palma  
Public Interest Law Center  
1500 JFK Boulevard, Suite 802  
Philadelphia, PA 19102  
mmckenzie@pubintl.org  
cdepalma@pubintl.org  
*Counsel for Appellees*

Martin J. Black  
Jeffrey S. Edwards  
Luke M. Reilly  
Christopher J. Merken  
Steven F. Oberlander  
Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808  
Martin.black@dechert.com  
Jeffrey.edwards@dechert.com  
Luke.reilly@dechert.com  
Christopher.merken@dechert.com  
Steven.oberland@dechert.com  
*Counsel for Appellees*

Kathleen A. Gallagher  
Brian M. Adrian  
The Gallagher Firm, LLC  
436 Seventh Avenue, 30<sup>th</sup> Fl.  
Pittsburgh PA 15219  
kag@gallagherlawllc.com  
bma@gallagherlawllc.com  
*Counsel for Appellants*

Thomas W. King  
Thomas E. Breth  
Dillon, McCandless, King, Coulter & Graham, LLP  
128 W. Cunningham Street  
Butler, PA 16001  
tking@dmkcg.com  
tbreth@dmkcg.com  
*Counsel for Appellants*

Dated: September 10, 2024

/s/ David J. Berardinelli  
\_\_\_\_\_  
David J. Berardinelli