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) FILED ON BEHALF
) Centre County Board
)
)
) COUNSEL OF RECORD
) PARTY:
) Elizabeth A. Dupuis

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

DAVID MCCORMICK, <i>et al.</i> ,)	
)	
Appellants,)	Docket No. 2024-CV-3025-CI
)	
v.)	
)	
CENTRE COUNTY BOARD OF)	
ELECTIONS,)	
)	
Appellee.)	

**RESPONSE TO PETITION FOR REVIEW IN THE
NATURE OF A STATUTORY APPEAL**

Appellee Centre County Board of Elections (the “Board”), by and through its attorneys, Babst, Calland, Clements, and Zomnir, P.C., submits this Response to the Petition for Review in the Nature of a Statutory Appeal (“Appeal”) filed by Appellants David McCormick, Republican National Committee, Republican Party of Pennsylvania (“Appellants”) on November 14, 2024. Because the Appeal is jurisdictionally time-barred, the Court should dismiss it.

SUMMARY OF APPELLEE’S ARGUMENTS

On Thursday, November 7, 2024, the Board decided—over challenges—to count three issue mail-in/absentee ballots that had “date” issues as determined by the canvass of ballots at the vote by mail room (“VBM”) on election day (“Challenged

Ballots”) and not count eleven (11) ballots in the same “category.” The Board was not presented with *any* issue¹ mail-in/absentee ballots that were “*no date*” ballots. To appeal the Board’s decision, Appellants were required to file their Appeal no later than “two days after [the] . . . decision [was] . . . made.” *See* 25 P.S. § 3157(a). Therefore, omitting the following Saturday and Sunday (November 9th and 10th)—as well as Monday, November 11, 2024, which was a state and federal holiday (Veteran’s Day), *see* 1 Pa.C.S.A. § 1908—Appellants were required to file the Appeal by Tuesday, November 12, 2024. Because they did not file their Appeal until two days later (on Thursday, November 14th), their Appeal is untimely under 25 P.S. § 3157(a). And because § 3157(a)’s two-day filing requirement is jurisdictional, *In re Contest of Nov. 7, 2023 Election of Towamencin Twp.*, No. 1482 C.D. 2023, 2024 WL 1515769, at *4 (Pa. Commw. Ct. Apr. 8, 2024) (collecting cases), the Appeal is *jurisdictionally* time-barred. *See id.*

Further, the Board’s decision to count the Challenged Ballots was in accordance with Pennsylvania Department of State Guidance Concerning Civilian Absentee and Mail-in Ballot Procedures, 9/10/24, at 13 (“A ballot should be considered ‘incorrectly dated’ only if the date written on the envelope cannot reasonably be interpreted to be ‘the day upon which [the voter] completed the

¹ The term “issue ballots,” as used in this submission, denotes ballots that were flagged for further review due to some *potential* irregularity.

declaration.”” (alteration in original) (quoting *Ball v. Chapman*, 289 A.3d 1, 23 (Pa. 2023))), available at <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2024-guidance-civilian-absentee-mail-in-ballot-procedures-v3.1.pdf> (last accessed Nov. 14, 2024).

ANSWERS TO “INTRODUCTION”

1. Admitted in part, denied in part. The Board did not count any “undated” ballots regarding the November 5, 2024 General Election. By way of further answer, Appellants’ Appeal is jurisdictionally time-barred under 25 P.S. § 3157(a) because the Board’s decision to reject the challenge² and count the three Challenged Ballots occurred on November 7, 2024, and Appellants did not file their Appeal until one week later, on November 14, 2024. A publicly accessible video recording of the November 7, 2024 Centre County Board of Elections Meeting is available at https://www.youtube.com/live/hEZqn7_5HF0. The video clearly shows (1) the challenge raised as to counting the three Challenged Ballots (01:08:10 – 01:08:36; 01:09:20 – 01:09:41; 01:09:57 – 01:10:01); and (2) the Board’s decision to count the Challenged Ballots (01:11:40 – 1:12:04).³

² Notably the challenge was raised by Michelle Schellberg, not a Petitioner herein.

³ Incidentally, an additional challenge was also filed by Attorney Jeffrey Stover, on behalf of the Centre County and Pennsylvania Democratic Party, which challenge was to the eleven (11) ballots which the Board voted to not count.

2. Denied. This Paragraph of the Appeal states a conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer, the Board did not count any *undated* ballots regarding the November 5, 2024 General Election—and the Board’s decision to count the three Challenged Ballots was in accordance with Pennsylvania Department of State Guidance Concerning Civilian Absentee and Mail-in Ballot Procedures, 9/10/24, at 13 (“A ballot should be considered ‘incorrectly dated’ only if the date written on the envelope cannot reasonably be interpreted to be ‘the day upon which [the voter] completed the declaration.’” (alteration in original) (quoting *Ball v. Chapman*, 289 A.3d 1, 23 (Pa. 2023))). By way of further answer, Appellants’ Appeal is jurisdictionally time-barred.

3. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer see response to Paragraph 1. Further, Appellants’ Appeal is jurisdictionally time-barred.

4. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer see response to Paragraph 1. Further, Appellants’ Appeal is jurisdictionally time-barred.

5. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer see response to Paragraph 1. Further, Appellants' Appeal is jurisdictionally time-barred.

6. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer, Appellants' Appeal is jurisdictionally time-barred.

7. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure.

8. Denied. The Board does not have sufficient knowledge to address the allegation that "[o]ther county boards of elections have correctly decided *not* to count mail ballots." By way of further answer, this Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer see response to Paragraph 1. Further, Appellants' Appeal is jurisdictionally time-barred.

9. Denied. This Paragraph of the Appeal states a conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer see response to Paragraph 1. Further, Appellants' Appeal is jurisdictionally time-barred.

10. Denied. This Paragraph of the Appeal states a conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer, Appellants' Appeal is jurisdictionally time-barred.

ANSWER TO "JURISDICTION"

1. Denied. The Court lacks jurisdiction over this Appeal. The Appeal is time-barred under 25 P.S. § 3157(a) because the Board's decision, over challenge, to count the three Challenged Ballots occurred on November 7, 2024, and Appellants did not file their Appeal until one week later, on November 14, 2024. A publicly accessible video recording of the November 7, 2024 Centre County Board of Elections Meeting is available at https://www.youtube.com/live/hEZqn7_5HF0. The video clearly shows (1) the challenge raised to counting the three Challenged Ballots Appellants argue the Board should not have counted (01:08:10 – 01:08:36; 01:09:20 – 01:09:41; 01:09:57 – 01:10:01); and (2) the Board's decision to count the three Challenged Ballots that Appellants argue should not have been counted (01:11:40 – 1:12:04). Because the two-day deadline to file an appeal under § 3157(a) is jurisdictional, the Appeal is jurisdictionally time-barred. *See In re Contest of Nov. 7, 2023 Election of Towamencin Twp.*, 2024 WL 1515769, at *4.

ANSWERS TO “PARTIES”

2. Admitted.

3. Denied. The Board has no personal knowledge of the operations of the Republican National Committee.

4. Denied. The Board has no personal knowledge of the operations of the Republican Party of Pennsylvania.

5. Admitted.

ANSWER TO “DECISION OF THE BOARD AT ISSUE”

6. Denied. Despite some initial confusion at the November 12, 2024 Centre County Board of Elections Meeting, the undersigned as the Board’s Solicitor clarified that the Board “counted [the] three [Challenged] [B]allots” and “rejected 11. So, the three ballots [the Board] counted were counted.” *See* Centre County Board of Elections Meeting held November 12, 2024, <https://www.youtube.com/watch?v=-bnyKXCjVMA> (01:33:28 – 01:33:43). Because the Board had already decided to count the three Challenged Ballots on November 7, 2024, the Board could not (and did not) again decide to count them. *Id.* (01:33:43 – 01:39:50). Further, the record for the November 12, 2024 meeting does not reflect that **any** challenge was leveled as to an issue mail-in/absentee ballots. All challenges, both as to three Challenged Ballots and the eleven (11) other

ballots subject to a challenge for *not* being counted, occurred on November 7, 2024, and the Board took official action at that meeting.

ANSWERS TO “FACTUAL BACKGROUND”

7. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure.

8. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure.

9. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure.

10. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure.

11. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure.

12. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure.

13. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure.

14. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure.

15. Admitted in part, denied in part. Admitted to the extent that the Board held a meeting on November 12, 2024, and made a decision concerning one issue mail-in/absentee ballot as well as decisions related to military and overseas ballots and provisional ballots. Denied to the extent that the Board made no decision regarding the three Challenged Ballots, as the Board had decided to count those Challenged Ballots and not count the other eleven (11) rejected ballots, over challenges made on the record, one week earlier, on November 7, 2024.

16. Denied. This Paragraph of the Appeal states a conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer, the Board did not count any *undated* ballots regarding the November 5, 2024 General Election—and the Board’s decision to count the three Challenged Ballots complied with Pennsylvania Department of State Guidance Concerning Civilian Absentee and Mail-in Ballot Procedures, 9/10/24, at 13 (“A ballot should be considered ‘incorrectly dated’ only if the date written on the envelope cannot reasonably be interpreted to be ‘the day upon which [the voter] completed the declaration.’” (alteration in original) (quoting *Ball v. Chapman*, 289 A.3d 1, 23 (Pa. 2023))). By way of further answer, Appellants’ Appeal is jurisdictionally time-barred.

ANSWERS TO “GROUNDS FOR APPEAL”

17. Denied. This Paragraph of the Appeal states a conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer see response to Paragraph 1. Further, Appellants’ Appeal is jurisdictionally time-barred.

18. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer, Appellants’ Appeal is jurisdictionally time-barred.

19. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure.

20. Denied. This Paragraph of the Appeal states a conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer, Appellants’ Appeal is jurisdictionally time-barred.

21. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure.

22. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure. Further, the Board does not have sufficient knowledge to address the allegation about the specific decisions of other county boards of election. By way of further answer, Appellants’ Appeal is jurisdictionally time-barred.

23. Denied. This Paragraph of the Appeal states conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure. Further, the Board does not have sufficient knowledge to address the allegation about the specific decisions of other county boards of election. By way of further answer, Appellants' Appeal is jurisdictionally time-barred.

24. Denied. This Paragraph of the Appeal states a conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. By way of further answer, the Board did not count any *undated* ballots regarding the November 5, 2024 General Election—and the Board's decision to count the three Challenged Ballots was in accordance with Pennsylvania Department of State Guidance Concerning Civilian Absentee and Mail-in Ballot Procedures, 9/10/24, at 13 ("A ballot should be considered 'incorrectly dated' only if the date written on the envelope cannot reasonably be interpreted to be 'the day upon which [the voter] completed the declaration.'" (alteration in original) (quoting *Ball v. Chapman*, 289 A.3d 1, 23 (Pa. 2023))). By way of further answer, Appellants' Appeal is jurisdictionally time-barred.

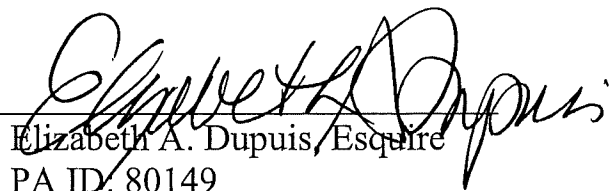
WHEREFORE, your Appellee, Centre County Board of Elections, prays that this Honorable Court dismiss Appellants' Appeal and enter judgment in its favor and against Appellants, together with costs and all other relief the Court deems just and equitable given Appellants' misrepresentation of the date on which the Board

decided to count the Challenged Ballots. *See, e.g.*, 25 P.S. § 3157(b) (“The court of common pleas . . . may compel the appellant or any opposing party, other than the county board, to pay all the witness fees, if any, or other legal costs of the hearing, which costs may be taxed by the prothonotary in the usual manner.”).

Date:

11/15/2024

By:


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Michael Libuser, Esquire
PA ID: 332676

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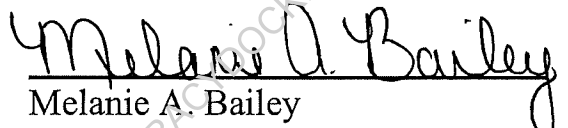
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Attorneys for Appellee

VERIFICATION

I, Melanie A. Bailey, Director of Elections, Centre County, verify that the information contained in the foregoing document is true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.


Melanie A. Bailey
Centre County Director of Elections

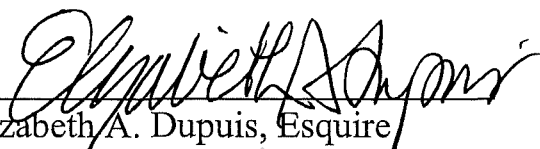
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CERTIFICATE OF COMPLIANCE

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.

By: _____


Elizabeth A. Dupuis, Esquire

*Attorney for the Centre County Board of
Elections*

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Board of Elections