

E-FILED
11/20/24

**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CIVIL DIVISION**

DAVID McCORMICK, : **NO. 2024-07272**
REPUBLICAN NATIONAL COMMITTEE :
and :
REPUBLICAN PARTY OF PENNSYLVANIA :
 :
v. :
 :
BUCKS COUNTY BOARD OF ELECTIONS :

ORDER

Presently before the Court is the Petition for Review in the Nature of a Statutory Appeal (the "Petition") filed by David McCormick, the Republican National Committee, and the Republican Party of Pennsylvania (together "McCormick") on November 15, 2024. By agreement of the parties, the Court has granted the Petition to Intervene filed by the Democratic Senatorial Campaign Committee ("DSCC") and Bob Casey for Senate, Inc.

The Petition seeks a reversal of the Bucks County Board of Election's (the "Board") November 14th, 2024, decision to count two categories of provisional ballots cast in the November 5, 2024, General Election. Specifically, McCormick requests that the Court reverse the Board's decision to count: 1) provisional ballots without a signed voter affidavit; and 2) provisional ballots without the signature of the Judge of Elections and/or the minority inspector.

The Court conducted a hearing on November 20, 2024, at which the parties presented argument regarding the Board's decision. Considering the short deadlines under which the Board of Elections is working, we provide this brief explanation today, with a more thorough analysis to follow at a later date.

On the first issue, we understand that the Board now agrees that provisional ballots missing a signed elector affidavit should not have been counted. In any event, the relevant

provisions of the Election Code clearly and unambiguously mandate that voters sign an affidavit and that provisional ballots that are missing the voter's signed affidavit "shall not be counted." See 25 P.S. §§ 3050(a.4)(2) and 3050(a.4)(5)(i), (ii) ("shall not be counted"). Further, the Pennsylvania Supreme Court has clearly spoken on this issue. See *In Re Canvass of Provisional Ballots in the 2024 Primary Election* (PA Supreme Court, Sept. 13, 2024) (signature requirement does not deny the franchise or make it so difficult to amount to a denial); See also, *In re Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election*, 241 A.3d 1058 (Pa. 2020) (Wecht, J., concurring) (omission of voter declaration is not a minor irregularity and is sufficient to invalidate ballot).

On the second issue, McCormick seeks to disqualify otherwise eligible voters from having their vote counted solely on account of the failure of precinct-level election officials (Judges of Elections and Minority Inspectors) to countersign the voter's affidavit. McCormick has not identified any mandatory language in the Election Code that would justify this result. The Election Code does not contain any clear mandate that precinct-level election officials sign the voter's affidavit. Furthermore, unlike the discussion above, there is no mandate that the Board reject provisional ballots missing precinct-level election officials' signatures. See 25 P.S. § 3050(a.4)(5)(ii). If the General Assembly thought it appropriate to disenfranchise eligible voters based solely on the errors of precinct-level election officials, it would have stated as much explicitly. We decline McCormick's invitation to read something so significant into the Election Code that simply is not there. We also worry that such a ruling would effectively empower precinct-level election officials to single-handedly disenfranchise voters, something that would run counter to the Election Code's provision making it a felony for election officials to interfere with the right of eligible voters to vote. See, 25 P.S. § 3523; § 3525.

The Court finds further guidance in a long line of decisions from the Pennsylvania Supreme Court. *See Genser v. Butler Cnty. Bd. of Elections*, No. 26 WAP 2024, 2024 WL 4553285, *18 (Pa. Oct. 23, 2024) (the provisions of Sec. 3050 (a.4)(5)(ii) “conclusively establish that the General Assembly knows” how to distinguish between different pieces of the provisional ballot voting requirements and if it “intended to trigger disqualification of a provisional ballot” in a certain way, “it would have said so.”); *In Re Canvass of Provisional Ballots in the 2024 Primary Election*, 322 A.3d 900 (Pa. 2024) (efforts to vigilantly protect against fraud in the enforcement of the Election Code should not thwart the Code’s primary purpose of enabling citizens to vote); *In re Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election*, 241 A.3d 1058 (Pa. 2020) (“all things being equal, the law will be construed liberally in favor of the right to vote” particularly in cases where the words of the statute are ambiguous); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018) (the framers’ intent was to keep all aspects of the electoral process open and unrestricted to the voters of the Commonwealth).

AND NOW, this 20th day of November, 2024, it is hereby **ORDERED** and **DECREED** as follows:

1. The McCormick Petition for Review in the Nature of a Statutory Appeal is **GRANTED** in part and **DENIED** in part, as set forth below.
2. The November 14, 2024 Decision of the Bucks County Board of Elections, is **OVERRULED** to the extent that the Board decided to count provisional ballots without a signed voter affidavit.

3. The November 14, 2024 Decision of the Bucks County Board of Elections, is **AFFIRMED** to the extent that the Board decided to count provisional ballots without the signature of the Judge of Elections and/or the minority inspector.

BY THE COURT:



JORDAN B. YEAGER, J.

N.B. It is the responsibility of all parties to notify all interested parties of the content of this order/action

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IN THE SUPREME COURT OF PENNSYLVANIA

IN RE: TEMPORARY MODIFICATION AND : NO. 622
SUSPENSION OF THE RULES OF :
APPELLATE PROCEDURE AND JUDICIAL : JUDICIAL ADMINISTRATION DOCKET
ADMINISTRATION FOR APPEALS ARISING:
UNDER THE PENNSYLVANIA ELECTION :
CODE :

ORDER

PER CURIAM

AND NOW, this 27th day of August, 2024, upon consideration of the requirements of the Electoral Count Reform Act of 2022, see 3 U.S.C. § 5, to expedite appeals in matters arising under the Pennsylvania Election Code with respect to the November 5, 2024 General Election, and pursuant to Article V, Section 10 of the Pennsylvania Constitution, it is **ORDERED** as follows:

Rule 903(c)(1)(ii) of the Pennsylvania Rules of Appellate Procedure, which provides for a 10-day appeal period from an order in any matter arising under the Pennsylvania Election Code, is **TEMPORARILY MODIFIED** to provide for a 3-day appeal period; further, Pa.R.A.P. 1113(c)(1), which provides for a 10-day period for filing a petition for allowance of appeal from an order in any matter arising under the Pennsylvania Election Code, is **TEMPORARILY MODIFIED** to provide for a 3-day period. All cross-appeals and cross-petitions for allowance of appeal must also be filed within 3 days of the challenged order.

Additionally, Pa.R.A.P. 107 and Pa.R.J.A. 107 are **TEMPORARILY SUSPENDED** to the extent they specify that weekends and holidays are to be excluded in calculating the above 3-day periods.

Answers to jurisdictional statements and petitions for allowance of appeal, and separate motions to quash or dismiss appeals, will not be received in these matters. Any objection to the propriety of the appeal, including questions surrounding the appellate court's jurisdiction, are to be raised in the appellees' merits briefs.

In appeals that fall within the purview of this order, appellants shall file briefs within 24 hours of the filing their notice of appeal and, where applicable, jurisdictional statement. Appellees' briefs are due within 24 hours of the filing of appellants' briefs. Further, Pa.R.A.P. 2113 (regarding reply briefs) is **TEMPORARILY SUSPENDED** in these matters; no reply briefs will be permitted absent order of court.

All filings related to matters encompassed by this order shall be filed electronically when counsel or the litigants have a PACFile account. Otherwise, counsel or the litigants shall contact the relevant filing office to make alternative arrangements to ensure that the filing office receives the submissions by the applicable deadline.

Pa.R.A.P. 1931(a) and (c) (regarding the deadline for transmittal of the record when complete) are **TEMPORARILY SUSPENDED** in matters subject to this order, and the record shall be transferred as soon as practicable. The lower court may transmit partially completed records in the interest of facilitating prompt resolution of any appeal in these matters.

Applications for reconsideration or reargument will not be received on matters falling under this order.

Any court deciding a matter that arises under the Pennsylvania Election Code in relation to the November 5, 2024 General Election shall append a copy of this order to its decision.

This order shall be effective August 29, 2024, and shall apply to appeals or petitions for allowance of appeal filed from orders entered after that date.

This order shall remain in effect pending further order of this Court.

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