

**COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

DAVID McCORMICK; REPUBLICAN NATIONAL COMMITTEE; and REPUBLICAN PARTY OF PENNSYLVANIA,	:	NO. 00007-CV-2024
	:	
	:	
	:	
Petitioners	:	
	:	
vs.	:	
	:	
MONROE COUNTY BOARD OF ELECTIONS,	:	
	:	
	:	
Respondent	:	
	:	
and	:	
	:	
DSCC and BOB CASEY FOR SENATE, INC.,	:	
	:	
	:	
Intervenor	:	PETITION FOR REVIEW AND STATUTORY APPEAL

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OPINION

This matter is before the Court on a Petition for Review and Statutory Appeal of a decision of the Monroe County Board of Elections. DSCC and Bob Casey for Senator, Inc. filed a Petition to Intervene, which will be granted. A hearing/argument was held on November 20, 2024, or within three (3) business days after the filing of the Petition.¹

¹ The Petition was filed timely within two (2) days after the Board's decision. It was filed electronically on Saturday, November 16, 2024.

The first issue raised concerns 42 mail-in ballots that were undated or misdated. Initially, the Board of Elections voted on November 14, 2024 to count those ballots. Petitioner filed a timely Petition objecting to those ballots being counted. The Board of Elections subsequently met again on November 18, 2024 and voted to rescind their prior vote, deciding not to count the 42 ballots at issue. The Board asserts the issue is now moot and we agree.

In the event it is deemed not to be moot, since this appeal was filed prior to the Board rescinding their prior action, we find the 42 ballots cannot be counted under 25 P.S. Sections 3146.6(a) and 3150.16(a). The legality of this statute as it pertains to not counting undated or misdated mail-in ballots passed by the Pennsylvania Legislature has recently been upheld by the Pennsylvania Supreme Court in The Republican National Committee and The Republican Party of Pennsylvania v. All 67 County Boards of Elections, et al, No. 136 MM 2024 (Pa., Nov. 18, 2024). We also rely on Ball v. Chapman, 289 A.3d 1 (Pa. 2023); New PA Project Educ. Fund v. Schmidt 2024 WL 4410884 (Pa. Oct. 5, 2024) (per curiam); and Baxter v. Phil. Bd. of Elections, 2024 WL 4650792 (Pa. Nov. 1, 2024) (staying a Commonwealth Court order that had required a county election board to canvass undated ballots for the 2024 general election). Although the act of misdating or not dating an envelope may have no impact on the act of voting, and the voting rights of every citizen is paramount, it is the requirement set forth by the legislature. The independent legislature in Pennsylvania passed the law and the independent judiciary sitting as the Pennsylvania Supreme Court has deemed the law valid. As such, any issues with the effect of this law on the voters of Monroe County and on all voters in Pennsylvania, must be directed to the Pennsylvania Legislature.

The next issue concerns 23 Provisional Ballots the Board of Elections chose to count.² We note that 25 P.S. Section 3050(a.4)(2) requires an elector (voter) to sign an affidavit prior to voting the provisional ballot. That affidavit appears on the front of the Provisional Ballot envelope obtained at the polling site. 25 P.S. Section 3050(a.4)(3) requires that the individual (voter) shall sign the front of the Provisional Ballot envelope after casting their ballot and placing the completed ballot in a secrecy envelope inside the Provisional Ballot envelope. 25 P.S. Section 3050(a.4)(5)(ii) states that if either the Provisional Ballot envelope or the affidavit are not signed, the provisional ballot shall not be counted (emphasis added). On 21 of the provisional ballots in question, the affidavit on the Provisional Ballot envelope provided to local election offices by the Pennsylvania Department of State was not signed. In one of the provisional ballots in question, the voter signature section was not signed after placing the voted ballot into the Provisional Ballot envelope. And, one other provisional ballot at issue lacked a signature in the affidavit section and the section required after receiving and voting the ballot. All 23 Provisional Ballots lacked the required signatures on either the affidavit or on the ballot envelope after inserting the ballot therein. These violations of the statute require that all 23 ballots not be counted. *See* 25 P.S. Section 3050(a.4)(5)(ii).

Intervenor and the Board of Elections assert that the ballots should be counted because it is clear that the judge of elections at the polling location must have made a mistake in either not requiring the affidavit be signed before giving a ballot to the voters, or in accepting the returned ballots in envelopes that were not signed. The signatures required are in Section 2 and Section 4 of the Provisional Ballot envelopes. Both the Intervenor and the Board assert a due

² Petitioner first alleged that 24 ballots should not be counted. However, all parties agree the actual number is 23 as one of the provisional ballots at issue was rejected by the Board of Elections on other grounds.

process violation to the voters due to a mistake on the part of election officials, and not the voters themselves. The Board of Elections took reasonable steps to allow these votes to be counted that they believed were due to fault of election officials. However, the Provisional Ballot envelope has clear instructions on it for the voter that states in Section 2: "Voter must complete and sign in front of election officials BEFORE receiving ballot" and in Section 4: "Voter must sign in front of election officials AFTER receiving and voting ballot." In all of the ballots at issue, the voters filled out Section 1 which contains similar language requiring the voter to supply information, but then failed to sign for some reason. Some of the ballots even had information filled out by them in Section 2, but then failed to sign in the same location. It is only speculation that the failure to sign was the poll workers' fault when the voters filled out other required areas of the Provisional Ballot envelopes. There was no proof the fault was on the part of election workers for the voters failing to sign as required. As such, we cannot find equal protection clause violations, nor any issues with the clear language of the statute.

The legality of this statute as it pertains to not counting unsigned provisional ballots passed by the Pennsylvania Legislature has been upheld by the Pennsylvania Supreme Court. *See In re: Cavass of Provisional Ballots in 2024 Primary Election*, 322 A.3d 900 (Pa. 2024). This is also an issue to be raised with the Pennsylvania Legislature and its members as the statute has been found to be legally valid by the Pennsylvania Supreme Court. The statute requires that both the affidavit be signed before voting, and the Provisional Ballot envelope be signed again after voting. The above cited case supports a finding that because the voters failed to do that, the votes cannot be counted. The Intervenor and Board of Elections argue this issue is distinguishable from the above case, but the language of the statute is clear and the ruling cited

above would seem to apply here as well. Absent a contrary ruling specific to this issue, we are inclined to follow the prior ruling of the Pennsylvania Supreme Court as we believe it applies here as well.

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ORDER

AND NOW, this 20th day of November, 2024, this matter having come before the Court on a Petition for Review and Statutory Appeal of a decision of the Monroe County Board of Elections brought by the Petitioners, it is ORDERED and DECREED as follows:

1. The Petition of DSCC and Bob Casey for Senate, Inc. to Intervene in this matter is GRANTED.

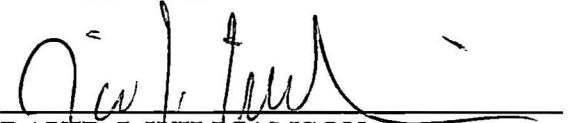
2. The request to prohibit from including 42 mail-in ballots toward the electoral count that either contained an incorrect date or were missing a date is DISMISSED as moot as

the Board of Elections has decided not to count those ballots. To the extent the matter is not deemed moot, the petition is GRANTED and the Monroe County Board of Elections is prohibited from including the 42 mail-in ballots toward the electoral count that either contained an incorrect date or were missing the date entirely, as it violates requirements of the Pennsylvania Elections Code at 25 P.S. Sections 3146.6(a) and 3150.16(a).

3. The request to prohibit counting 23 provisional ballots (amended by the parties) is GRANTED and the Monroe County Board of Elections is prohibited from including the 23 provisional ballots toward the electoral count which lacked the required voter signatures, as it violates requirements of the Pennsylvania Election Code at 25 P.S. Sections 3050(a.4)(1), (2), (3) and (5) (ii).

4. The Prothonotary shall immediately serve a copy of this order on all counsel electronically and by mail.

BY THE COURT:



DAVID J. WILLIAMSON, J.

cc: Micah Brown, Esquire
McKenzie O'Donnell, Esquire
Uzoma N. Nkwonta, Esquire
Patrick J. Best, Esquire
Deborah L. Huffman, Esquire and Todd W. Weitzmann, Esquire
Monroe County Board of Elections
Prothonotary

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