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** Pro hac vice application
forthcoming*

**IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA**

David McCormick; Republican
National Committee; and Republican
Party of Pennsylvania,

Petitioners,

v.

Chester County Board of Elections,

Respondent.

Civil Division

No. 2024-10291-EL

Election Appeal

PROPOSED ANSWER

Proposed Intervenor-Respondents DSCC and Bob Casey for Senate, Inc. (“Proposed Intervenor”), by and through their attorneys, submit the following Proposed Answer to Petitioners’ Petition for Review of the decision of the Chester County Board of Elections on November 14, 2024, to count fifty-eight (58) provisional ballots that were missing signatures of the Judge of Elections, the Minority Inspector, or both, in the November 5, 2024, General Election. Proposed Intervenor responds to the allegations in the Petition as follows:

1. Proposed Intervenor admits that the Board voted to count in the November 5, 2024 General Election a total of fifty-eight (58) provisional ballots that were missing the signature of the Judge of Elections, the Minority Inspector, or both. Proposed Intervenor does not have sufficient information to either admit or deny the specific counts of provisional ballots that were missing the signature of the Judge of Elections, those missing the signature of the Minority Inspector, and those missing both the signature of the Judge of Elections and that of the Minority Inspector.

2. Paragraph 2 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

3. Paragraph 3 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

4. Proposed Intervenorors admit that the Pennsylvania Department of State sent the email attached to the Petition as Exhibit A, which states that the lack of a signature by the Judge of Elections or Minority Inspector is not a valid basis for refusing to count a provisional ballot. Otherwise, Paragraph 4 and its corresponding footnote contain mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenorors deny those allegations.

5. Proposed Intervenorors admit the allegations in Paragraph 5.

6. Paragraph 6 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenorors deny the allegations.

7. Proposed Intervenorors deny the allegations in Paragraph 7.

JURISDICTION

8. Paragraph 8 contains legal conclusions to which no response is required.

PARTIES

9. Proposed Intervenorors admit the allegations in Paragraph 9.

10. Proposed Intervenorors admit the allegations in Paragraph 10.

11. Proposed Intervenorors admit the allegations in Paragraph 11.

12. Proposed Intervenorors admit the allegations in Paragraph 12.

DECISION OF THE BOARD AT ISSUE

13. Proposed Intervenors admit the allegations in Paragraph 13.
14. Proposed Intervenors admit the allegations in Paragraph 14.

GROUND FOR APPEAL

15. Proposed Intervenors admit that the Election Code requires an elector voting a provisional ballot to sign an affidavit. The remaining allegations in Paragraph 15 are denied.

16. Paragraph 16 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors admit only that Paragraph 16 reproduces an excerpt of 25 P.S. § 3050, adding emphasis to one portion. Proposed Intervenors deny all remaining allegations.

17. Paragraph 17 contains mere characterizations, legal contentions, and conclusions to which no response is required.

18. Paragraph 18 and its corresponding footnote contain mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors admit only that Paragraph 18 reproduces an excerpt of 25 P.S. § 3050. Proposed Intervenors deny all remaining allegations.

19. Paragraph 19 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

20. Paragraph 20 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

21. Paragraph 21 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

22. Paragraph 22 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

23. Paragraph 23 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

24. Paragraph 24 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

25. Paragraph 25 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

26. Paragraph 26 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admit only that a copy of the Instructions for Voting a Provisional Ballot is attached as Exhibit B to the Petition. Proposed Intervenor deny all remaining allegations.

27. Paragraph 27 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admit only Paragraph 27 reproduces and quotes an excerpt from Exhibit B. Proposed Intervenor deny all remaining allegations.

28. Paragraph 28 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

29. Paragraph 29 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

30. Paragraph 30 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

31. Paragraph 31 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

32. Paragraph 32 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

33. Paragraph 33 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

PRAYER FOR RELIEF

Proposed Intervenor deny that Petitioners are entitled to any relief.

GENERAL DENIAL

Proposed Intervenor deny every allegation in the Complaint that is not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Petitioners' claim is barred because they seek relief inconsistent with the plain text of the Pennsylvania Election Code.

2. Petitioners' claim is barred because they seek relief inconsistent with the Free and Equal Elections Clause of the Pennsylvania Constitution.

3. Petitioners' claim is barred because they seek relief inconsistent with the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

4. Petitioners' claim is barred because, contrary to Petitioners' allegations, the decision of the Board to count the provisional ballots at issue is not inconsistent with the U.S. Constitution or the Pennsylvania Constitution.

Dated: November 18, 2024

Respectfully submitted,

/s/ Joel E. Benecke

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Counsel for Proposed Intervenors DSCC and Bob Casey for Senate, Inc.

**CERTIFICATE OF COMPLIANCE WITH CASE RECORDS PUBLIC
ACCESS POLICY**

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.

/s/ Joel E. Benecke

Joel E. Benecke (PA 210099)

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2024, I caused a true and correct copy of this document to be served on all counsel of record via the Chester County electronic filing system, pursuant to C.C.R.C.P. 205.4.

/s/ Joel E. Benecke

Joel E. Benecke (PA 210099)