

IN THE SUPREME COURT OF PENNSYLVANIA

No. ____ MM 2024

The Republican National Committee and the Republican Party of Pennsylvania,

Petitioners,

v.

All 67 County Boards of Elections
(See back of cover for list of County Respondents),

Respondents.

**PETITIONERS' APPLICATION FOR THE EXERCISE OF
KING'S BENCH POWER OR EXTRAORDINARY JURISDICTION**

Kathleen A. Gallagher
(PA #37950)
THE GALLAGHER FIRM, LLC
436 7th Avenue, 30th Fl.
Pittsburgh, PA 15219
412.308.5512 (Phone)

John M. Gore*
E. Stewart Crosland
Louis J. Capozzi III
(PA #327261)
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001
202.879.3939 (Phone)

**Pro hac vice
forthcoming*

Counsel for Petitioners

Thomas W. King, III
(PA #21580)
Thomas E. Breth
(PA #66350)
DILLON, McCANDLESS,
KING, COULTER &
GRAHAM, LLP
128 W. Cunningham St.
Butler, PA 16001
724.283.2200 (Phone)

Adams County Board of Elections; Allegheny County Board of Elections; Armstrong County Board of Elections; Beaver County Board of Elections; Bedford County Board of Elections; Berks County Board of Elections; Blair County Board of Elections; Bradford County Board of Elections; Bucks County Board of Elections; Butler County Board of Elections; Cambria County Board of Elections; Cameron County Board of Elections; Carbon County Board of Elections; Centre County Board of Elections; Chester County Board of Elections; Clarion County Board of Elections; Clearfield County Board of Elections; Clinton County Board of Elections; Columbia County Board of Elections; Crawford County Board of Elections; Cumberland County Board of Elections; Dauphin County Board of Elections; Delaware County Board of Elections; Elk County Board of Elections; Erie County Board of Elections; Fayette County Board of Elections; Forest County Board of Elections; Franklin County Board of Elections; Fulton County Board of Elections; Greene County Board of Elections; Huntingdon County Board of Elections; Indiana County Board of Elections; Jefferson County Board of Elections; Juniata County Board of Elections; Lackawanna County Board of Elections; Lancaster County Board of Elections; Lawrence County Board of Elections; Lebanon County Board of Elections; Lehigh County Board of Elections; Luzerne County Board of Elections; Lycoming County Board of Elections; McKean County Board of Elections; Mercer County Board of Elections; Mifflin County Board of Elections; Monroe County Board of Elections; Montgomery County Board of Elections; Montour County Board of Elections; Northampton County Board of Elections; Northumberland County Board of Elections; Perry County Board of Elections; Philadelphia County Board of Elections; Pike County Board of Elections; Potter County Board of Elections; Schuylkill County Board of Elections; Snyder County Board of Elections; Somerset County Board of Elections; Sullivan County Board of Elections; Susquehanna County Board of Elections; Tioga County Board of Elections; Union County Board of Elections; Venango County Board of Elections; Warren County Board of Elections; Washington County Board of Elections; Wayne County Board of Elections; Westmoreland County Board of Elections; Wyoming County Board of Elections; and York County Board of Elections,

Respondents.

INTRODUCTION

This Court has been here before—recently, in fact. Just last month, this Court ordered, in no uncertain terms, that it “will neither impose nor countenance substantial alterations to existing laws and procedures during the pendency of an ongoing election.” *New Pa. Project Education Fund v. Schmidt*, No. 112 MM 2024, 2024 WL 4410884, at *1 (Pa. Oct. 5, 2024). In so ordering, the Court held that county boards of elections and Pennsylvania courts must enforce the General Assembly’s mandatory date requirement for mail ballots in the 2024 General Election, which the *New Pennsylvania* petitioners sought to challenge. *See id.*¹

If *that* order were not clear enough, on November 1—less than two weeks ago—the Court *again* ordered that the date requirement “shall ... be applied to the November 5, 2024 General Election.” *Baxter v. Philadelphia Board of Elections*, Nos. 76 EM 2024 & 77 EM 2024, 2024 WL 4650792, at *1 (Pa. Nov. 1, 2024). As Justice Donohue explained in a concurrence, entering a stay in *Baxter* was necessary to prevent “county boards” from relying on the Commonwealth Court’s opinion during “canvassing . . . in the upcoming election,” which would improperly “disturb[] the status quo.” *Id.* at *1 (Donohue, J., concurring). Justice Dougherty also concurred and sharply criticized the continuing last-minute efforts of courts and

¹ This Application uses “mail ballot” to refer to both absentee ballots and mail-in ballots. *See* 25 P.S. §§ 3146.6, 3150.16.

litigants to invalidate the date requirement for the 2024 General Election, accusing them of defying this Court's clear orders. *Id.* at *2-8 (Dougherty, J., concurring) (recounting full history of such efforts).

Unfortunately, some county boards still have not gotten the message. Instead, they have voted to change election rules a week *after* the November 5, 2024 Election Day and to count mail ballots that do not comply with the date requirement. These decisions violate both the Court's recent orders and its unbroken line of precedent upholding mandatory application of the date requirement. *See Black Political Empowerment Project v. Schmidt*, 322 A.3d 221, 222 (Pa. 2024) (per curiam) (vacating order striking down date requirement under state constitution); *Ball v. Chapman*, 289 A.3d 1, 14-16 & n.77 (Pa. 2022) (rejecting host of challenges to date requirement); *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020) (rejecting state constitutional challenge to sign-and-date mandate, of which date requirement is a part); *In re: Canvass of Absentee and Mail-in Ballots of Nov. 3, 2020 General Election*, 241 A.3d 1058, 1085-89 (Pa. 2020) (Wecht, J., concurring in part) (deciding vote making clear date requirement is mandatory and enforceable for all elections after 2020); *New Pa.*, 2024 WL 4410884, at *1-2 (Brobson, J., concurring) (explaining that well-established law in Pennsylvania is that undated and misdated mail ballots cannot be counted); *see also Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, 97 F.4th 120 (3d Cir. 2024) (rejecting

challenge to date requirement under federal Materiality Provision), *reh'g denied*, 2024 WL 3085152 (Apr. 30, 2024).

Moreover, those boards are running afoul of the *Purcell* principle, which recognizes that changes in election rules adopted close in time to Election Day “themselves result in voter confusion and consequent incentive to remain away from the polls.” *New Pa.*, 2024 WL 4410884, at *1 n.1 (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam)). The *Purcell* principle thus precludes changes to such rules shortly before Election Day. *See id.* And that principle applies even “with much more force on the back end of elections.” *Trump v. Wis. Elections Comm’n*, 983 F.3d 919, 925 (7th Cir. 2020); *see League of United Latin Am. Citizens Ariz. v. Reagan*, 2018 WL 5983009, at *4 (D. Ariz. Nov. 14, 2018) (applying *Purcell* after an election). After all, changes before Election Day are made behind the veil of ignorance; neither election officials, courts, nor the public know what effect, if any, they will have on the outcome. By contrast, changes to election rules “after election day” create suspicions that election officials and courts are interfering with the election results. *Republican Party of Pa. v. Degraffenreid*, 141 S. Ct. 732, 735 (2021) (mem.) (Thomas, J., dissenting); *see also Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003) (“Interference with impending elections is extraordinary . . . and interference with an election after voting has begun is unprecedented.”).

Petitioners the Republican National Committee and the Republican Party of Pennsylvania do not believe that the Court should have to repeat itself. Regrettably, however, the recalcitrant rulings of these county boards, issued in the wake of a hotly contested election in which millions of Pennsylvanians cast their ballots and made their voices heard, require the Court to do so. Petitioners therefore respectfully ask the Court to reaffirm yet again that the date requirement is mandatory, that it remains in full force and effect for the 2024 General Election, and that county boards of elections may not count any mail ballots that fail to comply with it.

Because county boards are continuing to count ballots in the 2024 General Election—including in the U.S. Senate race in which Republican Dave McCormick currently leads his Democrat opponent, Bob Casey, by an insurmountable margin of nearly 30,000 votes, *see* <https://www.electionreturns.pa.gov/>—time is of the essence. Petitioners therefore request that the Court today enter a temporary administrative order reaffirming that the date requirement applies to the 2024 General Election, issue an expedited briefing schedule, and issue a final order granting the relief requested within 48 hours.

For the reasons explained more fully below, the Court should grant this Application.

PARTIES

I. Petitioners

Petitioner Republican National Committee (RNC) is a national committee of the Republican Party as defined by 52 U.S.C. § 30101(14). The RNC manages the Republican Party's business at the national level, including development and promotion of the Party's national platform and fundraising and election strategies; supports Republican candidates for public office at all levels across the country, including those on the ballot in Pennsylvania; and assists state parties throughout the country, including the Republican Party of Pennsylvania, to educate, mobilize, assist, and turn out voters.

Petitioner Republican Party of Pennsylvania (RPP) is a major political party, 25 P.S. § 2831(a), and the "State committee" for the Republican Party in Pennsylvania, 25 P.S. § 2834, as well as a federally registered "State Committee" of the Republican Party as defined by 52 U.S.C. § 30101(15). The RPP on behalf of itself and its members nominates, promotes, and assists Republican candidates seeking election or appointment to federal, state, and local office in Pennsylvania.

II. Respondents

All 67 Pennsylvania county boards of elections are named as Respondents. County boards are responsible for implementing the Election Code and administering elections in their respective counties. *See* 25 P.S. § 2642.

STATEMENT OF THE CASE

I. Legal Background.

In 2019, a bipartisan majority of the General Assembly adopted universal mail voting for the first time in Pennsylvania’s history. Act of Oct. 31, 2019, P.L. 552, No. 77 § 8 (“Act 77”). As part of that compromise in the historic Act 77, the General Assembly maintained the longstanding requirement that mail voters “shall . . . fill out, date and sign the declaration” on the mail-ballot return envelope. Act 77 §§ 6, 8; *see also* 25 P.S. §§ 3146.6, 3150.16.

Consistent with the text of that requirement, a majority of the Justices of this Court agreed that “shall” means “shall,” and that a mail ballot that is not properly dated cannot be counted. *In re: Canvass of Absentee & Mail-In Ballots of November 3, 2020 Gen. Election*, 241 A.3d at 1090 (Dougherty, J., concurring and dissenting) (“the absence of a date” is not “a mere technical insufficiency we may overlook”); *id.* at 1079 (Wecht, J., concurring and dissenting) (the date requirement “is stated in unambiguously mandatory terms”). Less than two years later, this Court “reaffirm[ed]” that the date requirement is mandatory, and that “failure to provide” a proper date “would result in disqualification.” *Ball*, 289 A.3d at 21-23.

Various plaintiffs continued to lob challenges at the date requirement—with no success. Having failed to convince this Court that the date requirement violates federal law, a group of plaintiffs challenged the date requirement in federal court,

only for the Third Circuit to reject their claim. *See Pa. State Conf. of NAACP*, 97 F.4th 120. The next challenge was under state law, when another group of plaintiffs sued the Secretary of State and two county boards of elections on the theory that the date requirement violates the Free and Equal Elections Clause. The Commonwealth Court held in favor of the plaintiffs, but this Court vacated that decision as entered without jurisdiction. *See Black Political Empowerment Project*, 322 A.2d 221.

Undeterred, plaintiffs renewed their challenge to the date requirement, this time in a King's Bench Application filed on September 25, 2024. And again, this Court declined the invitation, this time adopting the *Purcell* doctrine and declaring that it will “neither impose nor countenance substantial alterations to existing laws and procedures during the pendency of an ongoing election.” *New Pa.*, 2024 WL 4410884, at *1. As Justice Brobson pointed out, this order was designed to “discourage” anyone from “chang[ing] the rules in the middle of an ongoing election.” *Id.* at *2 (Brobson, J., concurring). Thus, *at least* as of September 25 of this year, it was too late to eliminate the General Assembly's longstanding mandatory date requirement.

Nonetheless, litigants did not give up on their efforts to invalidate the date requirement for the 2024 General Election. In a lawsuit related to the Philadelphia Board of Elections' compliance with the date requirement in a 2024 special election,

the Commonwealth Court again struck down the date requirement. *See Baxter v. Philadelphia Bd. of Elections*, 2024 WL 4614689 (Pa. Commw. Ct. Oct. 30, 2024). True to its order in *New Pennsylvania Project*, this Court promptly stayed that ruling, and made clear that the Commonwealth Court’s decision “shall not be applied to the November 5, 2024 General Election.” *Baxter*, 2024 WL 4650792, at *1. In a concurrence, Justice Donohue explained that the stay was necessary to prevent “county boards” from relying on the opinion during “canvassing . . . in the upcoming election,” which would improperly “disturb[] the status quo.” *Id.* at *1 (Donohue, J., concurring). Justice Dougherty also concurred and sharply criticized the continuing last-minute efforts of courts and litigants to invalidate the date requirement for the 2024 General Election, accusing them of defying this Court’s clear orders. *Id.* at *2-8 (Dougherty, J., concurring) (recounting full history of such efforts).

II. Factual Background.

That should have been the end of the matter, but various county boards are seeking to alter the rules of the election at the thirteenth hour. By counting undated and misdated mail ballots for the 2024 General Election, they are disobeying this Court’s commands many times over. At best, they are confused; at worst, they are openly defying the authority of this Court.

The proceedings in Bucks County are emblematic of the noncompliant county boards of elections. On November 12, 2024, the Bucks County Board of Elections met to adjudicate disputes over mail ballots. A video of the Board’s meeting is available online. *See* Bucks County Meeting Portal, Board of Elections – November 12, 2024, <https://bucksopa.portal.civicclerk.com/event/505/media> (“Video”).

At that meeting, the Board decided to count 405 undated and misdated mail ballots. Video at 1:11:45-1:22:00. It did so even though its legal advisors recommended, “based on the current state of law,” rejecting those ballots. *Id.* at 1:13:00-1:14:00. That warning fell on deaf ears. The Chair of the Board, Diane Ellis-Marseglia, said, “I just can’t vote to reject [these ballots]. I just can’t.” *Id.* Vice Chair Robert Harvie then criticized the General Assembly’s decision to maintain the date requirement, arguing “the law needs to be changed.” *Id.* at 1:15:00-1:15:20. A majority of the Board then voted to count all ballots that violated the date requirement. *Id.* at 1:21:00-1:22:00. Commissioner DiGirolamo voted no, relying on this Court’s admonition that the date requirement’s enforceability could not be changed for the 2024 General Election. *Id.* at 1:16:00-1:22:00.

The boards of elections in Centre County and Philadelphia have similarly decided to count undated and misdated mail ballots cast in the 2024 General Election, notwithstanding this Court’s instructions and the Election Code’s plain text. *See* Centre County Board of Elections Meeting (Nov. 12, 2024),

<https://www.youtube.com/watch?v=-bnyKXCjVMA>; Philadelphia Board Meeting (Nov. 13, 2024), <https://youtu.be/-AP-NFjtA1Q>. Petitioners are appealing from each of those decisions in the respective Courts of Common Pleas, under 25 P.S. § 3157. Because time is of the essence, Petitioners now ask this Court to exercise its King’s Bench power over this matter and order all 67 county boards of elections not to count undated or misdated mail ballots cast in the 2024 General Election.

BASIS FOR EXERCISE OF KING’S BENCH POWER OR EXTRAORDINARY JURISDICTION

This Court possesses authority to “exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King’s Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722.” 42 Pa. C.S. § 502. That authority includes the “power of general superintendency over inferior tribunals even when no matter is pending.” *Bd. of Revision of Taxes, City of Phila. v. City of Philadelphia*, 4 A.3d 610, 620 (Pa. 2010); *see also Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 884 (Pa. 2020); *Commonwealth v. Williams*, 129 A.3d 1199, 1206 (Pa. 2015). Additionally, this Court possesses the power to exercise extraordinary jurisdiction under 42 Pa. C.S. § 726, which allows this Court to “assume plenary jurisdiction” over “any matter pending before any court or magisterial district judge of this Commonwealth.”

“King’s Bench authority is generally invoked to review an issue of public importance that requires timely intervention by the court of last resort to avoid the

deleterious effects arising from delays incident to the ordinary process of law.” *Friends of Danny DeVito*, 227 A.3d at 884 (quoting *Williams*, 129 A.3d at 1206); *In re Bruno*, 101 A.3d 635, 672 (Pa. 2014). “[T]he power of King’s Bench allow[s] the Court to innovate a swift process and remedy appropriate to the exigencies of the event.” *In re Bruno*, 101 A.3d at 672. Similarly, extraordinary jurisdiction is appropriate when the matter “involv[es] an issue of immediate public importance,” and authorizes this Court to “enter a final order or otherwise cause right and justice to be done.” 42 Pa. C.S. § 726.

The Court should grant the Application and exercise its King’s Bench authority or extraordinary jurisdiction here. Election Day has come and gone, and this Court has said for years that the date requirement is mandatory and has said twice in the last month that it must be applied to the 2024 General Election. Nonetheless, multiple county boards of elections seek to chart their own path, and even now are altering the rules of the road for an election more than a week old. The question presented is whether “the votes that” the county boards have “ordered to be counted are . . . legally cast votes.” *Bush v. Gore*, 531 U.S. 1046, 1046-47 (2000) (Scalia, J., concurring). That question must be definitively answered, and soon, to “produc[e] election results that have the public acceptance democratic stability requires.” *Id.* at 1047.

This case obviously presents “issue[s] of public importance.” *Friends of Danny DeVito*, 227 A.3d at 884. Voting is among the “most central of democratic rights,” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 (Pa. 2018), and the right to vote is jeopardized when the votes of individuals who follow the rules are diluted by the votes of individuals who do not. After all, “[v]oters who fear their legitimate votes will be outweighed” by illegitimate ones “will feel disenfranchised.” *Purcell*, 549 U.S. at 4. Furthermore, this case affects not only the Commonwealth, but the entire country. Whether the votes tallied in the race for a seat in the U.S. Senate are legitimate is a matter of national importance.

This case requires “a swift process and remedy appropriate to the exigencies of the event.” *In re Bruno*, 101 A.3d at 672. Jurisdictions such as Bucks County, Centre County, and Philadelphia have *already* in a public meeting decided to illegally count hundreds of noncompliant ballots. Other counties may well follow if this Court does not intervene. “The counting of votes that are of questionable legality . . . threaten[s] irreparable harm” to the Petitioners, “and to the country, by casting a cloud upon what he claims to be the legitimacy of his election.” *Bush v. Gore*, 531 U.S. 1046, 1047 (2000) (Scalia, J., concurring). “Count first, and rule upon legality afterwards”—like what Bucks County and others are requiring courts in the Commonwealth to do—“is not a recipe for producing election results that have the public acceptance democratic stability requires.” *Id.* Rather than wait for other

counties to follow Bucks County’s example, this Court should head off this illegal exercise. If other counties continue to follow the lead of Bucks, Philadelphia, and Centre Counties, Applicants will be forced to incur considerable, non-recoverable legal costs. Given this Court’s clear instruction that the date requirement is enforceable in the 2024 General Election, there is no reasonable justification for imposing those costs or denying an immediate remedy. This case requires “a swift process and remedy appropriate to the exigencies of the event.” *In re Bruno*, 101 A.3d at 672.

Situations like these are what the King’s Bench power and the power of extraordinary jurisdiction are for. The Commonwealth and the nation cannot afford the “delays incident to the ordinary process of law.” *Williams*, 129 A.3d at 1206. The Court should grant the Application.

ARGUMENT

This is a straightforward case that should never have been necessary. This Court has repeatedly upheld the date requirement against legal challenge—first, from attempts to read the date requirement out of the statute entirely, and second, from attempts to frame the date requirement as somehow violating the Pennsylvania Constitution. Even putting the merits to the side, this Court has also repeatedly emphasized—in the last few weeks, no less—that the date requirement *must* be enforced as to the 2024 General Election. And if plowing ahead and counting

undated and misdated ballots *anyway* in contravention of this Court’s and the General Assembly’s express commands was not bad enough, the county boards of elections who are taking this wayward course are also introducing constitutional violations in the process and threatening to invalidate the entirety of Act 77 and universal mail voting in the Commonwealth. This Court should grant the Application and enter an order directing all counties not to count undated and misdated ballots.

First, there is no basis—none—for county boards to question the validity of the date requirement. This Court has repeatedly affirmed that the General Assembly meant what it said when it provided that “[t]he elector *shall* ... fill out, date and sign” the mail ballot declaration. 25 P.S. §§ 3146.6, 3150.16. A majority of the Justices of this Court first made that clear in *In re Canvass of Absentee & Mail-In Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, and this Court then “reaffirm[ed] that conclusion” in *Ball*, 289 A.3d at 22. And before *either* of those decisions, this Court had upheld the *entire* mail ballot declaration requirement—of which the date requirement is part—against legal challenge, finding “no constitutional or statutory basis” for evading the Election Code’s demands. *Pa. Democratic Party*, 238 A.3d at 374.

These decisions are years-old, and merely confirm the obvious. The date requirement is mandatory, and there is no basis in law for ignoring it. The county boards of elections’ decisions to toss it aside anyway are egregious.

Second, even if the merits were not entirely clear-cut (they are), this Court has been explicit that the date requirement *must* be enforced in the 2024 General Election. In fact, it has done so *twice*. In September, various plaintiffs sought to invalidate the date requirement on state constitutional grounds. Just last month, this Court rejected the invitation because it would “neither impose nor countenance substantial alterations to existing laws and procedures during the pendency of an ongoing election.” *New Pa.*, 2024 WL 4410884, at *1. The 2024 General Election was already pending; this Court was crystal-clear that the longstanding date requirement could not be discarded at that juncture—*regardless* of the merits. *See Baxter*, 2024 WL 4650792, at *2 (Dougherty, J., concurring) (noting that the Court “carefully chose[]” its words in the *New Pennsylvania* order, and that it “said what [it] meant and meant what [it] said”).

Where this Court shut the door, other plaintiffs attempted to open a window by seeking to invalidate the date requirement as to a September special election in Philadelphia. The Commonwealth Court obliged that request, but not this Court. This Court stayed the Commonwealth Court’s decision, and declared that it “shall not be applied to the November 5, 2024 General Election.” *Id.* at *1 (per curiam). Two justices filed concurring statements, each emphasizing that the date requirement must be enforced for the upcoming general election. Justice Donohue “agree[d] that the decision and order” of the Commonwealth Court invalidating the

date requirement “must be stayed until after the General Election on November 5, 2024.” *Id.* at *1 (Donohue, J., concurring). Otherwise, reasoned Justice Donohue, “county boards of election[s] might look to it for guidance in canvassing and pre-canvassing mail in ballots in the upcoming election,” which would “disturb[] the status quo.” *Id.* Justice Dougherty also concurred and criticized the Commonwealth Court for “not hear[ing]” this Court’s “carefully chosen words” in the *New Pennsylvania Project* order. *Id.* at *2-8 (Dougherty, J., concurring).

What the Commonwealth Court did in *Baxter* is nothing compared to what the county boards are doing now. It is hard to imagine a more obvious defiance of this Court’s and the General Assembly’s commands than for county boards—in express derogation of multiple opinions of this Court and the plain text of the Election Code—to vote to count whatever ballots they please. The Bucks County Board, for example, counted undated and misdated mail ballots even though its legal advisors said the law did not permit them to do so. *See* Video at 1:13:00-1:14:00. This Court should not tolerate that behavior.

Third, the county boards that have voted to count noncompliant mail ballots are purporting to “impose” this “substantial alteration[]” to mandatory application of the date requirement, *New Pa.*, 2024 WL 4410884, at *1, days *after* Election Day when the results of the 2024 General Election are clear. In so doing, these county boards are engaging in the worst kind of *Purcell* violation and threatening to

undermine public “[c]onfidence in the integrity” of the Commonwealth’s “electoral processes [that] is essential to the functioning of our participatory democracy.” *Purcell*, 549 U.S. at 4.

Fourth, the county boards of elections that are flouting the date requirement are not merely violating this Court’s commands and the Election Code—they are introducing a new constitutional error of their own making. Under the Equal Protection Clause of the U.S. Constitution, a “State may not, by . . . arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). Accordingly, at least where a “statewide” rule governs, such as in a statewide election, there must be “adequate statewide standards for determining what is a legal vote, and practicable procedures to implement them.” *Id.* at 110. Consistent with the Equal Protection Clause, different “counties [cannot] use[] varying standards to determine what [i]s a legal vote.” *Id.* at 107.

Likewise, the Pennsylvania Constitution decrees that “[a]ll laws regulating the holding of elections . . . shall be uniform throughout the State,” Pa. Const. art. VII, § 6, and the Free and Equal Elections Clause requires voting laws to “treat[] all voters alike” in “the same circumstances,” *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914).

Other county boards have correctly decided to enforce the date requirement and *not* to count noncompliant ballots in the 2024 General Election. Thus, allowing

some county boards *to count* such ballots would unconstitutionally create “varying standards to determine what [i]s a legal vote,” *Bush*, 531 U.S. at 104-05, and interject *disuniformity* into the administration of the General Election across the Commonwealth, *see* Pa. Const. art. VII, § 6; *Winston*, 91 A. at 523.

Finally, by holding “invalid” the date requirement’s application to the 2024 General Election, these boards are “void[ing]” *all* of Act 77 and universal mail voting in the Commonwealth under Act 77’s binding non-severability provision. Act 77 § 11. As “a general matter, nonseverability provisions are constitutionally proper.” *Stilp v. Commonwealth*, 905 A.2d 918, 978 (Pa. 2006). Act 77’s non-severability provision states: “Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.” Act 77 § 11. The date requirement is part of the universal mail voting established in section 8, so invalidating “its application to any person or circumstance” voids the entire Act. *Id.*; *see McLinko v. Dep’t of State*, 279 A.3d 539, 609-610 (Pa. 2022) (Brobson, J., dissenting); *McLinko v. Dep’t of State*, 270 A.3d 1243, 1277-78 (Pa. Commw. Ct. 2022) (Wojcik, J., concurring in part and dissenting in part); *BPEP*, 2024 WL 4002321, at *62-64 (McCullough, J., dissenting).

That is precisely what county boards are purporting to do here. By declining to enforce the mandatory date requirement, the boards are unilaterally invalidating “its application to [the] circumstance” of the 2024 General Election—and invalidating universal mail voting in the Commonwealth in the process. Act 77 § 11.

Enough is enough. The county boards of elections that have voted to count undated and misdated ballots have violated the Election Code and disobeyed this Court many times over. This Court should put an end to this illegal and unconstitutional action, grant this Application, and once again (and hopefully for the last time) order counties to enforce the date requirement as to the 2024 General Election.

RELIEF REQUESTED

Petitioners respectfully request that this Honorable Court:

- a. Grant this Application for the Court to exercise its King’s Bench power or extraordinary jurisdiction;
- b. Enter an order directing the county boards of elections not to count undated or misdated mail ballots submitted in the 2024 General Election;
- c. Grant any other relief this Court deems necessary and appropriate.

Dated: November 14, 2024

Respectfully submitted,

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

PA I.D. #37950

THE GALLAGHER FIRM, LLC

436 Seventh Avenue, 30th Floor

Pittsburgh, PA 15219

Phone: (412) 308-5512

kag@gallagherlawllc.com

John M. Gore (*pro hac vice*)

E. Stewart Crosland

Louis J. Capozzi III

JONES DAY

51 Louisiana Avenue, N.W.

Washington, D.C. 20001

Phone: (202) 879-3939

jmgore@jonesday.com

scrosland@jonesday.com

lcapozzi@jonesday.com

Thomas W. King, III

Thomas E. Breth

DILLON, McCANDLESS, KING,

COULTER & GRAHAM, LLP

128 W. Cunningham St.

Butler, PA 16001

Phone: (724) 283.2200

tking@dmkcg.com

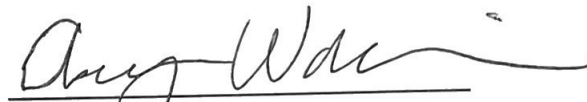
tbreth@dmkcg.com

Counsel for Petitioners

VERIFICATION OF REPUBLICAN NATIONAL COMMITTEE

I, Ashley Walukevich, Pennsylvania State Director at the Republican National Committee, am authorized to make this verification on behalf of the Republican National Committee. I hereby verify that the factual statements set forth in the foregoing Application For The Exercise Of King's Bench Power Or Extraordinary Jurisdiction are true and correct to the best of my knowledge or information and belief.

I understand that verification is made subject to the penalties of 18 Pa. Cons. Stat. 4904, relating to unsworn falsifications to authority.



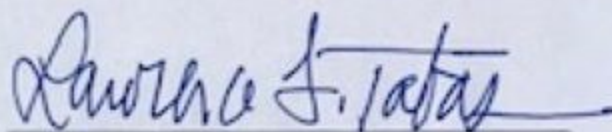
Ashley Walukevich
Pennsylvania State Director
Republican National Committee

Date: 11/13/2024

VERIFICATION OF REPUBLICAN PARTY OF PENNSYLVANIA

I, Lawrence Tabas, Chairman of the Republican Party of Pennsylvania, am authorized to make this verification on behalf of the Republican Party of Pennsylvania. I hereby verify that the factual statements set forth in the foregoing Application For The Exercise Of King's Bench Power Or Extraordinary Jurisdiction are true and correct to the best of my knowledge or information and belief.

I understand that verification is made subject to the penalties of 18 Pa. Cons. Stat. 4904, relating to unsworn falsifications to authority.



Lawrence Tabas
Chairman
Republican Party of Pennsylvania

Date: 11/13/2024

CERTIFICATION OF WORD COUNT

Pursuant to Rule 2135 of the Pennsylvania Rules of Appellate Procedure, I certify that this Memorandum contains 4436 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

/s/ Kathleen A. Gallagher
Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

I hereby 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 non-confidential information and documents.

/s/ Kathleen A. Gallagher
Counsel for Petitioners