

No. 25-1644

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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BETTE EAKIN, *et al.*,  
*Plaintiffs-Appellees*,

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,  
*Defendants-Appellants*.

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Appeal from the United States District Court for the Western District of  
Pennsylvania, Case No. 1:22-cv-00340 (Hon. Susan Paradise Baxter)

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**BRIEF OF AMICI CURIAE PENNSYLVANIA STATE  
CONFERENCE OF THE NAACP; LEAGUE OF WOMEN VOTERS  
OF PENNSYLVANIA; BLACK POLITICAL EMPOWERMENT  
PROJECT; POWER INTERFAITH; COMMON CAUSE  
PENNSYLVANIA; AND MAKE THE ROAD PENNSYLVANIA**

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## INTRODUCTION AND STATEMENT OF INTEREST<sup>1</sup>

*Amici* are non-partisan groups dedicated to safeguarding the right to vote for all and ensuring civic engagement and participation across Pennsylvania, including for their thousands of members and in traditionally disenfranchised communities. *Amici* are the organizational plaintiffs in a companion case to this one, *Pennsylvania State Conference of the NAACP v. Schmidt*, No. 22 Civ. 339 (W.D. Pa.) (“*PA NAACP*”), challenging the unjustified disenfranchisement of voters for failure to comply with the meaningless envelope-date requirement at issue here.

In the *PA NAACP* litigation, *amici* obtained full discovery from all 67 county boards of elections. That discovery record was incorporated into the *Eakin* case and forms the underlying evidentiary record in this appeal. *Amici* also litigated, in this Court, a federal statutory claim against enforcement of the envelope-date requirement. In that appeal, this Court reversed the district court’s grant of summary judgment on statutory interpretation grounds, but agreed in light of the record that

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<sup>1</sup> Counsel for *amici* certifies that no other person or entity, including counsel for any party, has authored this brief, in whole or in part, or paid for the preparation or submission of this brief.

the handwritten date “is immaterial” to voters’ qualifications and “serves little apparent purpose.” *Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.*, 97 F.4th 120, 125, 129 (3d Cir. 2024); *id.* at 139-140 (Shwartz, J., dissenting) (date is “not used to (1) evaluate a voter’s statutory qualifications to vote, (2) determine the ballot’s timeliness, or (3) confirm that the voter did not die before Election Day or to otherwise detect fraud”); *see also Migliori v. Cohen*, 36 F.4th 153, 164 (3d Cir.) (“Ignoring ballots because the outer envelope was undated, even though the ballot was indisputably received before the deadline for voting serves no purpose other than disenfranchising otherwise qualified voters.”), *vacated as moot*, 143 S. Ct. 297 (2022).

The constitutional question now before the Court centers on the nature of the burden on voters from enforcing the envelope-date requirement and the state interests that do (or, as here, do not) justify the burden. *See Const. Party of Pa. v. Cortes*, 877 F.3d 480, 484 (3d Cir. 2017) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)); *see also Burdick v. Takushi*, 504 U.S. 428, 434 (1992). *Amici* have spent years litigating over the envelope-date requirement, which needlessly disenfranchises thousands of qualified Pennsylvania voters in election



after election. There is no justification—*none*—for this mass disenfranchisement. The envelope-date requirement has not served any cognizable election-administration function since the late 1960s, and now “serves little apparent purpose,” *Pa. State Conf. of NAACP*, 97 F.4th at 125, “other than disenfranchising otherwise qualified voters,” *Migliori*, 36 F.4th at 164.

The record amassed in the *PA NAACP* case (and in subsequent litigation around the issue) confirms this in vivid detail, strongly supporting the district court’s grant of summary judgment. It shows that thousands were disenfranchised in 2022 and in subsequent elections, even when they attempted to comply with the envelope-date requirement, including for obvious typos like adding or transposing a digit. It shows that local officials knew and acknowledged that every impacted voter had voted within the proper period notwithstanding any errors on the envelope but refused to count voters’ ballots anyway. It shows that, despite years in the crucible of litigation, no one has ever identified any real purpose for this mass-disenfranchising practice. To the contrary, government officials acknowledged in their discovery responses and in their sworn depositions here that the envelope-date

requirement serves no purpose other than disenfranchising qualified voters.

The *Anderson-Burdick* balancing analysis is “fact intensive.” *E.g.*, *Cortes*, 877 F.3d at 486. Here, the evidence conclusively shows that the mass-disenfranchising envelope-date requirement violates the constitutional right to vote of Pennsylvania voters. It cannot continue.

## BACKGROUND

### A. Mail Ballot Voting in Pennsylvania

Pennsylvania allows all registered, eligible voters to vote by mail. SMF ¶ 2<sup>2</sup>; *see also* Act of Oct. 31, 2019, P.L. 552, No. 77 (“Act 77”), § 8. A

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<sup>2</sup> Citations to “SMF” refer to the Statement of Material Facts filed in conjunction with *amici*’s pending motion for summary judgment. *See* Pls.’ Rule 56(B)(1) Stmt., *Pa. State Conf. of NAACP v. Schmidt*, No. 22 Civ. 339 (W.D. Pa) (“*NAACP Dkt.*”), ECF No. 401. The SMF incorporates the appendix (cited as “APP\_”) filed in connection with *amici*’s initial 2023 summary judgment motion, *see* ECF Nos. 277-282 & 288, *NAACP Dkt.*, which compiles interrogatory responses, examples of rejected envelopes, and county officials’ deposition testimony.

This discovery record was incorporated wholesale into the *Eakin* evidentiary record. *See* Case Mgmt. Order at 2, *Eakin v. Adams Cty. Bd. of Elections*, No. 22 Civ. 340 (W.D. Pa) (“*Eakin Dkt.*”), ECF No. 227. *See also* Concise Stmt. of Material Facts and Appx. of Exs., ECF Nos. 289 & 290, *Eakin Dkt.* (partially reproduced in Pls.’-Appellees’ Supp. Appendix 21-197, ECF No. 96).

A copy of the SMF is appended to this brief for ease of reference.

voter seeking to vote by mail must complete an application and provide proof of identity to their county board of elections. SMF ¶ 5; 25 P.S. §§ 3146.2, 3150.12; *see also* 25 P.S. § 2602(z.5)(3), APP\_01036-01037. County boards then verify applicants' qualifications and identities. SMF ¶¶ 4-8; 25 P.S. §§ 3146.2b, 3150.12b, 3146.8(g)(4).

The counties then send verified voters a package containing a ballot, a "secrecy envelope," and a pre-addressed outer return envelope, on which a "voter declaration form" is printed. SMF ¶¶ 7-9; 25 P.S. §§ 3146.6(a), 3150.16(a).

At "any time after receiving" the package, voters mark their ballot, put it inside the secrecy envelope, and place the secrecy envelope in the return envelope. SMF ¶ 10; 25 P.S. §§ 3146.6(a), 3150.16(a). They then "fill out, date and sign the declaration printed on [the return] envelope." 25 P.S. §§ 3146.6(a), 3150.16(a). SMF ¶ 13.

The voter then delivers the ballot, in the envelopes, to county elections officials by 8 p.m. on Election Day. SMF ¶ 11; 25 P.S. §§ 3146.6(c), 3150.16(c). Upon receipt, counties must date-stamp or otherwise mark the envelope to confirm its timeliness and enter this information in the Statewide Uniform Registry of Electors ("SURE")

system. SMF ¶ 12. The ballot’s timeliness is determined by when it was received and stamped, not any handwritten date. SMF ¶¶ 11, 12; *see also* SMF ¶¶ 53-54.

### **B. The *PA NAACP* and *Eakin* Cases**

This case and the *PA NAACP* case involve the stringent enforcement of the statutory requirement that voters casting a mail ballot correctly “date ... the declaration printed on [the return] envelope,” 25 P.S. §§ 3146.6(a), 3150.16(a). That enforcement practice stems from a state-court lawsuit brought by Republican Party entities less than a month before the 2022 election, in which the Pennsylvania Supreme Court held, as a matter of state statutory interpretation, that the “shall ... date” language was mandatory rather than permissive and thus required voters to write a correct date on the envelope. *See generally Ball v. Chapman*, 289 A.3d 1 (Pa. 2023); *see* SMF ¶¶ 17-21.

Immediately after the *Ball* decision changed the rules (days before the November 2022 election), *amici* filed suit challenging enforcement of the envelope-date requirement to disenfranchise voters on federal statutory and Equal Protection grounds. *See generally* Compl., *Pa. State Conf. of NAACP v. Schmidt*, No. 22 Civ. 339 (WD. Pa 2024) (“*NAACP*

Dkt.”), ECF No. 1. The *Eakin* action, filed shortly thereafter, was marked as related, and the Republican Intervenor-Appellants (“RNC Intervenor”) intervened in both actions. See Mem. Order, *NAACP Dkt.*, ECF No. 167.; see also Order, *Eakin v. Adams Cty. Bd. of Elections*, No. 22 Civ. 340 (W.D. Pa 2024) (“*Eakin Dkt.*”), ECF No. 165. The district court handled the initial stages of the cases in tandem. See Order, ECF No. 147, *Eakin Dkt.* (coordinated conference); Order, ECF No. 212, *Eakin Dkt.* (coordinated deadlines).

*Amici* obtained full discovery in the *PA NAACP* case from all sixty-seven counties. This record was incorporated into the *Eakin* case by order of the district court, and thus served as the basis for the summary judgment records in both cases. See Case Mgmt. Order at 2, ECF No. 227, *Eakin Dkt.*; see also *supra* n.2.

*Amici* propounded document requests and requests for admission on the counties, obtaining information on the voters disenfranchised in 2022, including copies of return envelopes deemed insufficient. *E.g.*, SMF ¶¶ 36, 65-97. These responses confirmed that the counties received approximately 1.2 million mail ballots in the 2022 general election and that they rejected approximately 10,500 of them (close to 1%) based on

missing or purportedly “incorrect” handwritten dates on the voter declaration on the outer return envelopes. *E.g.*, SMF ¶¶ 3, 33, 35-39.; *accord* RNC Appendix (“App.”) 13, ECF No. 76.

*Amici* also propounded interrogatories regarding the use of the handwritten date. In response, every county specifically acknowledged that it did not use the handwritten date for any purpose related to determining a voter’s age (SMF ¶ 47), citizenship (SMF ¶ 48), residence (SMF ¶ 49), or felony status (SMF ¶ 50), or whether their ballot was timely received by Election Day (SMF ¶¶ 51-52). They all confirmed that the 10,000-plus disenfranchised voters had been determined eligible and qualified to vote before being issued a mail ballot. SMF ¶ 42. They confirmed that these voters necessarily filled out their ballots at the proper time, which by law is “any time” after receiving the mail-ballot package, and timely returned their ballots by 8 p.m. on Election Day. SMF ¶¶ 10, 37-39, 53-55. Indeed, they conceded it was literally impossible to have signed the form outside that window. SMF ¶¶ 53-55, 65, 73.

The undisputed facts established in discovery demonstrated that, in 2022, voters were required to write a complete date, on the right place

on the envelope, using the county’s date-formatting preferences, and that they were required to avoid any unintentional slips of the pen, misprints or mistakes, like writing their birthdate. Any deviation could result in disenfranchisement:

- Over 100 voters were disenfranchised for writing a date that was correct but missing a term, such as “10 - - 2022,” or “Oct. 25,” SMF ¶¶ 71, 76, 80.
- At least 12 were disenfranchised for writing a “correct” date but on the wrong place on the envelope. SMF ¶ 83.
- At least 34 voters were disenfranchised for writing a date that was correct under the international date format (day/month/year). SMF ¶¶ 86-88.
- Hundreds of voters (at least 1,734 in all) were disenfranchised for obviously unintentional slips of the pen (such as a voter writing “2021,” or “2033,” or “2202” instead of “2022,” or “10/11/2022” instead of “10/11/2022”). SMF ¶¶ 67, 70, 74, 75, 77.
- At least 50 voters were disenfranchised for mistakenly writing their birthdate on the envelope. SMF ¶¶ 68-69.

The record also shows that the burden from the rigid enforcement of the envelope-date requirement fell hardest on older voters. SMF ¶ 45; *see also* APP\_01188.

In November 2023, the district court granted *amici*’s motion for summary judgment on their statutory claim under the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B). *See* Mem.

Op. at 77, *NAACP* Dkt., ECF No. 347. RNC Intervenors appealed, and this Court reversed in a split ruling. The panel majority agreed based on the record that the handwritten envelope-date requirement “serves little apparent purpose[,]” and indeed “bears no relation—it is immaterial—to whether a voter is qualified under Pennsylvania law to vote,” but held as a matter of statutory construction that the Materiality Provision’s protections did not apply to the envelope form. *See Pa. State Conf. of NAACP*, 97 F.4th at 125, 131.

The Court then remanded for consideration of *amici*’s Equal Protection claim.

### **C. This Appeal**

On remand, *amici* amended their pleadings to add an *Anderson-Burdick* claim based on the existing record and sought summary judgment on both their constitutional claims.<sup>3</sup> *See* Order, *NAACP* Dkt., ECF No. 412; Pls.’ MSJ, *NAACP* Dkt., ECF No. 402. The *Eakin* plaintiffs meanwhile renewed their motion for summary judgment on their

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<sup>3</sup> That motion remains pending. After the grant of summary judgment in *Eakin*, *amici* moved for a Rule 54(b) judgment as to their *Anderson-Burdick* claim. *See* Mot. for Rule 54(b) Judgment & MIL, ECF Nos. 475 & 476, *NAACP* Dkt. That motion also remains pending.



*Anderson-Burdick* claim on the same record. See Second Suppl. Mem. ISO Mot. for S.J., ECF No. 380, *Eakin* Dkt.

On March 31, 2025, the district court granted the motion for summary judgment in *Eakin*. The court concluded that, based on the record, and consistent with this Court’s statements in the *Pennsylvania State Conference* decision, “the weight of the burden on the citizens['] right to vote is not counterbalanced by evidence of any governmental interest” and accordingly that enforcement of the envelope-date requirement to needlessly disenfranchise voters was unconstitutional. App.28.

The district court rejected the few attempted justifications for rigidly enforcing the envelope-date requirement proffered by RNC Intervenors as unsupported by the record. The court noted that no party had provided any evidence that the handwritten date furthers any purported interest in fraud prevention. App.23-24. It held that there was no evidentiary support for the “supposition” that the handwritten date promotes “solemnity” in the act of voting. App.24-25. Nor was there any support for the “speculative assertion” that the handwritten envelope date might serve as a “useful backstop” to all of the other methods of

determining whether a mail ballot was received on time. App.25.

#### **D. Additional Developments**

Since the close of discovery in 2022, mass disenfranchisement of qualified voters due to envelope-dating mistakes has continued. In 2024 alone, despite massive efforts by *amici* and other civic groups to educate voters, and despite efforts by the Pennsylvania Department of State to improve the envelope declaration, including by pre-printing “2024” on the form, envelope-date mistakes disenfranchised approximately 4,700 voters in the November general election.<sup>4</sup>

Meanwhile, parallel state court litigation of state law claims (in which RNC Intervenors have also intervened) has not uncovered any use for the envelope date, either. No party in those cases has identified any practical purpose for the handwritten date or disputed that the thousands who are disenfranchised by the envelope-date requirement’s

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<sup>4</sup> Mark Scolforo, *Pennsylvania Elections Chief Touts Progress In Reducing Mail Ballot Rejection Rate*, Associated Press (Jan. 31, 2025), <https://apnews.com/article/pennsylvania-mail-ballots-election-voting-f51bfba8910686eb0f63c15fb6757f20>; *Shapiro Administration Announces 57% Decrease in Mail Ballots Rejected in 2024 General Election*, PA DOS (Jan. 24, 2025), <https://www.pa.gov/agencies/dos/newsroom/shapiro-administration-announces-57--decrease-in-mail-ballots-re.html>.

enforcement are qualified or submitted their ballots on time. *See Black Pol. Empowerment Project v. Schmidt*, 325 A.3d 1046 (table), 2024 WL 4002321 at \*32 (Pa. Commw. Ct.) (“As has been determined in prior litigation involving the dating provisions, the date on the outer absentee and mail-in ballot envelopes is not used to determine the timeliness of a ballot, a voter's qualifications/eligibility to vote, or fraud. It is therefore apparent that the dating provisions are virtually meaningless and, thus, serve no compelling government interest.”), *vacated on other grounds*, 322 A.3d 221 (Pa. 2024); *Baxter v. Philadelphia Bd. of Elections*, 329 A.3d 483 (Pa. Commw. Ct. 2024) (“It is apparent that the trial court determined, as we did in *BPEP II* under similar factual circumstances, that the dating provisions are virtually meaningless and, thus, serve no compelling government interest.”), *appeal granted in part*, 332 A.3d 1183 (Pa. 2025).

## ARGUMENT

“[V]oting is of the most fundamental significance under our constitutional structure.” *Burdick*, 504 U.S. at 433 (citation omitted). To balance the fundamental importance of the right to vote with the reality that elections necessarily must be regulated, the question whether a

particular election rule unduly burdens the constitutional right to vote is subject to a “flexible standard.” *Id.* at 434. That is the so-called *Anderson-Burdick* framework.

*Anderson-Burdick* is about balance. Courts must, based on the record before them, consider “the character and magnitude of the asserted injury” from a challenged election rule and then weigh these against the “precise interests put forward by the State as justifications for the burden imposed by its rule,” *Cortes*, 877 F.3d at 484 (quoting *Anderson*, 460 U.S. at 789), “taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Burdick*, 504 U.S. at 434 (citation omitted).

“Evidence is key to the balancing of interests at the heart of the *Anderson-Burdick* framework.” *Mazo v. New Jersey Sec’y of State*, 54 F.4th 124, 152 (3d Cir. 2022); *accord Cortes*, 877 F.3d at 486. Here, on the record developed in the district court in coordinated discovery, the *Anderson-Burdick* balance is heavily, indeed uncommonly, lopsided. Enforcement of the envelope-date requirement imposes a significant burden on voters—complete disenfranchisement for anything but perfect compliance—with a stunning lack of governmental justification.

## **I. THE RECORD DEMONSTRATES A SUBSTANTIAL BURDEN ON VOTERS**

The first question in the *Anderson-Burdick* balance is the severity of the burden on voters’ right to cast a ballot and have it counted. “There is no ‘litmus test for measuring the severity of a burden that a state [election] law imposes.” *Mazo*, 54 F.4th at 146 (quoting *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (plurality op.)). But considerations that this Court has identified as important indicate that the burden here is substantial—indeed, severe.

1. Rules and practices that “effectively exclude” some voters from the ballot have been held to “impose[] a severe burden,” especially where those excluded have little alternative to ensure that they can exercise their rights. *Mazo*, 54 F.4th at 151 (collecting cases). Enforcement of the envelope date rule does just that.

The envelope-date requirement is stringently enforced: Voters must correctly input the month, date, and year, in the right place on the envelope, legibly, completely, and without any typos or slips of the pen, and, at least in some instances, precisely use the American (rather than international) month-day-year format and adhere to their county’s other formatting preferences. See SMF ¶¶ 38-39; 65-68; 70-71; 73-77, 80; 83-

88. Even minor deviations resulted in the voter’s ballot being set aside and not counted—*i.e.*, with the voter *completely losing their right to vote*. *Id.*

A few examples, reproduced below, of qualified voters who attempted to complete the date line but were *still* disenfranchised, illustrate the burden here.<sup>5</sup> It is worth seeing them with one’s own eyes.

Hundreds of voters were disenfranchised for writing the “wrong” month or year, often with obvious typos, such as writing the year “2024” or “2122” instead of “2022,” or writing “September” instead of “October,” even though it is undisputed that they only could have completed their mail ballot packages during the proper pre-election period in 2022:

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<sup>5</sup> The clips reproduced below are from documents that were included in a sealed volume of the *PA NAACP* summary judgment appendix, ECF No. 282 (APP\_01290-APP\_01522), because some of the envelopes and other documents therein were designated as “Confidential” pursuant to the protective order in *PA NAACP* (ECF No. 230) and *Eakin* (ECF No. 224). These materials were also supplied to this Court in the *Pennsylvania State Conference* appeal, *see* Sealed Supp.Appx, No. 23-3166 (3d Cir. 2024), ECF No. 150.

For the avoidance of doubt, none of the clips reproduced herein are taken from documents designated as “Confidential” and none of them includes any voter’s personal identifying information.

Voter, sign or mark here (REQUIRED)

[Redacted Signature]

10-22-2022  
Today's Date (REQUIRED)

APP\_01427 (date stamp says "10/25/22").

[Redacted Signature]

10/24/2024  
Today's Date (Required)

APP\_01431 (date stamp says "10/25/22").

October 15, 2020  
Today's Date (REQUIRED)

APP\_01466 (date stamp says "10/17/2022").

OCT. 18. 2012  
Today's Date (Required)

APP\_01470 (date stamp says "2022 OCT 20").

[Redacted Signature]

Sept. 10, 2022  
Today's Date (Required)

APP\_01464 (date stamp says "10/14/22").

Others were disenfranchised because they wrote dates that were correct but missing a term, like “10/ / 2022” or “October 8” (no year):

[REDACTED]  
10/ / 2022<sup>8</sup>  
Today's Date (Required)

APP\_01439 (date stamp says “10/11/2022”).

[REDACTED]  
October 8  
Today's Date (REQUIRED)

APP\_01446 (date stamp says “10/13/2022”).

[REDACTED]  
Wednesday Oct. 26  
Today's Date (REQUIRED)

APP\_01447 (date stamp says “10/31/2022”).

[REDACTED]  
Nov. 2<sup>nd</sup> 8  
Today's Date (REQUIRED)

APP\_01452 (date stamp says “11/3/2022”).

Others simply were disenfranchised for simple slips of the pen, like the voter who wrote “10/111/2022.”:

0  
10/111/2022  
Today's Date (Required)



APP\_01486 (date stamp says “2022 OCT 13”).

In addition to the 8,000-plus voters who forgot to include the meaningless date, *almost 2,000 voters in 2022 alone* were disenfranchised for typos like those above, even though they attempted to handwrite a date in satisfaction of the requirement. SMF ¶¶ 65-96.

These issues have persisted in more recent elections, too—despite the Department of State’s prefilling of the year on the envelope date line. Among the thousands disenfranchised for envelope-dating mistakes in the 2024 general election, the below examples show how qualified voters who tried to comply were again disenfranchised for trivial errors, such as placing a “2” in the tens column rather than the ones column,

Today's date here (REQUIRED)							
1	0	2		2	0	2	4
Month		Day		Year			

or transposing the “Month” and the “Day” (*i.e.*, using the international dating convention),

Today's date here (REQUIRED)							
2	8	1	0	2	0	2	4
Month		Day		Year			

or because they attempted to squeeze in the year along with the month and the day,

Today's date here (REQUIRED)				Today's date here (REQUIRED)			
10	12	24		10	14	24	
Month		Day		Month		Day	
2	0	2	4	2	0	2	4
Year				Year			

Br. of Appellees at 6 n.4, *Baxter v. Phila. Bd. of Elections*, Nos. 1 EAP 2025 & 2 EAP 2025 (Pa. Mar. 31, 2025).

Importantly, voters often lack any opportunity to fix such mistakes, no matter how trivial. *Mazo*, 54 F.4th at 151. In 2022, about half of the counties provided *no notice or opportunity* for voters to cure mistakes on the mail ballot envelope. See SMF ¶¶ 40-41, 115-116. That was the case for the individual voters who are plaintiffs along with *amici* in the *PA NAACP* case, none of whom were notified of any opportunity to cure any defect prior to Election Day. See SMF ¶¶ 22-26.

Moreover, even when voters are theoretically able to receive notice, they often lack the practical ability to fix mistakes, because they did not find out in time, or because they lack the ability to physically come to the board of elections office. Stark examples of this come from Clearfield County. For instance, the county set aside the ballot of a voter who mistakenly omitted the handwritten date, although the county's stamp indicates the ballot was received on "OCT 24 2022." An election official wrote a note on the envelope, dated several days before the election,

indicating they had contacted the voter. The note says, “can not fix[,] in Florida.”

Can not fix  
not  
11/3/22

**Voter's declaration**

I hereby declare that I am qualified to vote in this election; that I have not already voted in this election; and I further declare that I marked my ballot in secret. I am qualified to vote the enclosed ballot. I understand I am no longer eligible to vote at my polling place after I return my voted ballot. However, if my

APP\_01434. The envelope of another voter, who forgot the date but whose ballot was timely received on “OCT 11 2022,” bears a similar note: “Can’t come in[,] disabled.”

Can't come in  
disabled

**Voter's declaration**

I hereby declare that I am qualified to vote in this election; that I have not already voted in this election; and I further declare that I marked my ballot in secret. I am qualified to vote the enclosed ballot. I understand I am no longer eligible to vote at my polling place after I return my voted ballot. However, if my ballot is not received by the county, I understand I may only vote by provisional ballot at my polling

APP\_01433.

For many of the thousands of voters who forgot or otherwise made some minor error in handwriting the date on the envelope—voters who, again, already went through the process of applying for, obtaining, filling out, and timely submitting a mail ballot—the cost of making such a trivial mistake was thus *total disenfranchisement*, with no effective

notice and no possibility of a cure or an alternative. *See, e.g., Mazo*, 54 F.4th at 151; *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318-1322 (11th Cir. 2019) (“serious” burden where signature match policy disenfranchised voters with little chance to cure). This effective exclusion from the franchise for failure to perfectly comply with an irrelevant paperwork requirement, depriving thousands of the basic American right “to cast a ballot and to have it counted,” *United States v. Classic*, 313 U.S. 299, 318 (1941), is a significant burden.

2. This Court has also emphasized “the importance of considering the real-world impact of voting rights restrictions” in assessing the severity of the burden on voters under the *Anderson-Burdick* framework. *Cortes*, 877 F.3d at 486; *accord Mazo*, 54 F.4th at 152 (considering whether plaintiffs pleaded they “themselves faced any burdens” under challenged rule). The inquiry, into “the extent to which a challenged regulation *actually* burdens constitutional rights, ... is ‘fact intensive.’” *Cortes*, 877 F.3d at 486. The discovery record here speaks volumes.

For one, the *magnitude* of the disenfranchisement confirms that the burden is significant. In 2022, over 10,000 qualified Pennsylvania voters

across nearly every county who completed and cast mail ballots were disenfranchised because of the envelope-date requirement—roughly .8% of all mail ballot voters in that year. *See* SMF ¶¶ 3, 35-36; *see also* App.13. Thousands more were disenfranchised in 2024, despite enormous efforts by the Department of State and civil society groups like *amici*. *See supra* 12. Those burdens fall especially heavily on older voters, who are more likely to use (and to need) mail ballot voting. *See Pub. Integrity All. v. City of Tucson*, 836 F.3d 1019, 1024 n.2 (9th Cir. 2016) (en banc) (“impact on subgroups” relevant).

Such mass-disenfranchising effects indicate a much greater burden than with those “ordinary and widespread” inconveniences of rule compliance that do not actually hinder large numbers of persons from voting. *Compare Crawford*, 553 U.S. at 206 (Scalia, J., concurring) (noting “a single plaintiff” cannot “claim a severe burden” and suggesting broader effects required) *with Frank v. Walker*, 819 F.3d 384, 386 (7th Cir. 2016) (even a “single” voter can claim constitutional violation). Indeed, the Sixth Circuit, in an analogous case, held that the rejection of approximately 1,800 absentee ballots across two elections, based on a failure “to accurately complete birthdate and address fields,” was an

unconstitutional burden under *Anderson-Burdick*. *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 631-34 (6th Cir. 2016). The burden there, from requiring “technical precision” in completing a required form, is uncannily similar to this one: Voters were “disenfranchised based only on a technicality” like “transposing the location of the month and year numerals of a birthdate, writing the current date by mistake, and inverting digits in an address.” *Id.* at 632. But here, *over 10,000 voters were disenfranchised in one election*, indicating an even heavier burden on voters.

The examples highlighted above, *supra* 16-20, of voters who tried to handwrite the date on the envelope but suffered total disenfranchisement for obvious, trivial errors, highlights the grossly unfair “real-world impact” of enforcing the envelope-date requirement to mass-disenfranchise Pennsylvania voters. *Cortes*, 877 F.3d at 486; *see* SMF ¶¶ 67, 70, 74, 75, 77.

And as the situation of one voter in Westmoreland County, illustrates, the burden is especially galling because county officials know exactly what voters mean to write in such circumstances. That voter wrote “10/23/2033” on their envelope, leading to their

disenfranchisement for mistakenly writing “2033” instead of “2022.” APP\_00929n-00929o, \_01432. Of course, the voter could not have cast their ballot from ten years in the future; indeed, county officials uniformly admitted that it was literally impossible for a voter in the 2022 general election to have signed the voter declaration form in any year other than 2022. *E.g.*, SMF ¶ 65. Rather, because the voter’s ballot was date-stamped on October 25, 2022, the county official knew what the voter was trying to write. APP\_01432. Asked whether he had “*any doubt that this voter was trying to write 10/23/2022*” on the form rather than 2033, the county’s chief election official said, in a sworn deposition, “I agree.” APP\_00929n-00929o.

The voter was disenfranchised anyway. That is the “real-world impact” of the utterly arbitrary, mass-disenfranchising practice at issue here. *Cortes*, 877 F.3d at 486.

## **II. THE RECORD REVEALS ZERO JUSTIFICATION FOR THE BURDEN**

Even if the burden on voters were only minimal (and here it is not), “important regulatory interests” would still be needed to “justify reasonable, nondiscriminatory restrictions.” *E.g.*, *Anderson*, 460 U.S. at 788. But there are no “important” interests at stake here, and the

restriction at issue is not “reasonable.” *Id.* It therefore does not matter in the end how precisely the Court characterizes the severity of the burden on voters from enforcement of the envelope-date rule. Whatever the severity, the record reveals an utter lack of “relevant and legitimate state interests ‘sufficiently weighty to justify [it].’” *Ohio State Conf. of NAACP v. Husted*, 768 F.3d 524, 538 (6th Cir. 2014), *vacated on other grounds*, No. 14-3877, 2014 WL 10384647 (6th Cir. Oct. 1, 2014) (quoting *Crawford*, 553 U.S. at 191 (plurality op.)); *see Ne. Ohio Coalition*, 837 F.3d at 631-34; *accord Mazo*, 54 F.4th at 153; *see also Price v. N.Y. State Bd. of Elections*, 540 F.3d 101, 109-10 (2d Cir. 2008). For this mass-disenfranchising practice to survive constitutional review, there must be state interests that go beyond “mere[] speculative concern[s].” *Soltysik v. Padilla*, 910 F.3d 438, 448-49 (9th Cir. 2018). Such interests must be “specific,” not “abstract,” and Appellants must “explain why the particular restriction imposed ... actually addresses[] the interest put forth.” *Ohio State Conf. of NAACP*, 768 F.3d at 545 (citation omitted).

Appellants can point to no such thing on this record.

1. It was completely and uniformly conceded in discovery that the envelope date has no role in determining a voter’s qualifications or



eligibility, SMF ¶ 47-50, or in determining whether a ballot was completed or submitted on time, *see* SMF ¶¶ 12, 51-52; *see also Pa. State Conf. of NAACP*, 97 F.4th at 127 (handwritten date “plays no role in determining a ballot’s timeliness”). It was specifically conceded that the thousands of disenfranchised voters all submitted identification, had their qualifications confirmed, and were properly issued mail ballots. *E.g.*, SMF ¶ 42. It was conceded that they all completed their ballots during the proper time—*i.e.*, “any time” between when they received it and 8 p.m. on Election Day, 25 P.S. §§ 3146.6(c), 3150.16(c)—as confirmed by the date-stamp and the SURE system. *E.g.*, SMF ¶ 12; *see also* 25 P.S. §§ 3146.9(b)(5), 3150.17(b)(5) (mandating scanning of mail ballots using voter-specific bar codes). Indeed, it was conceded that it would be *literally impossible* for voters to have completed and submitted their ballot at any time except during the proper period, irrespective of any date written on the envelope. SMF ¶¶ 10, 54, 56, 65, 73.

If it has nothing to do with timeliness (or qualifications), what other legitimate and sufficiently weighty purpose could the handwritten date have? Before 1968, the handwritten date *did* relate to timeliness—for a time, absentee ballots were allowed to arrive after Election Day, and the

handwritten date was used as a check to confirm that the ballot had been completed during the proper period (*i.e.*, by Election Day). *See* Act of Dec. 11, 1968, P.L. 1183, No. 375, sec. 8, §§ 1308(a) & (c). But in 1968, the Pennsylvania General Assembly amended the Election Code to require that absentee ballots be received by the close of the polls, and it eliminated the canvassing provision that had previously required county boards to set aside absentee ballots bearing a date after the election. *Id.* Thus, although the instruction to “fill out, date and sign” absentee ballot return envelopes remained in the Election Code—and was copied verbatim from the Code’s absentee ballot provisions into its mail ballot provisions in 2019 as part of Act 77, *compare* 25 P.S. § 3150.16(a) with § 3146.6(a)<sup>6</sup>—the 1968 changes rendered the voter-written date completely irrelevant for any election-administration purpose and utterly vestigial. Consistent with that, in discovery, no party identified any

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<sup>6</sup> Republican legislative leaders acknowledged this in a state court amicus filing, stating that the General Assembly reused the absentee-ballot language verbatim in Act 77 “to minimize the complexities of legislative drafting,” *not* because the voter-written date served any particular purpose in contemporary election administration. Br. of Amici Curiae Cutler, et al., at 24, *Black Political Empowerment Project v. Schmidt*, No. 283 MD 2024 (Pa. Commw. Ct. June 24, 2024).

purpose for the envelope-date rule relating to election administration under current Pennsylvania law. SMF ¶¶ 57-60; *see also, e.g.*, APP\_00915-00916 (“Q: [S]o apart from determining compliance with the date requirement itself, does the [county] use the handwritten date on the ballot return envelope for any other purpose that you can think of? A: We do not.”).

2. In discovery, RNC Intervenors and two out of 67 counties tried to suggest that the handwritten date might serve some anti-fraud function relating to deceased voters. *See* SMF ¶ 60. In the end, though, the undisputed facts debunked that theory. SMF ¶¶ 43, 61-64; *accord* App.23-24. Appellants try again here (RNC Br. 55-57, 61-62; PA AG Br. 26-27) but cannot make something out of nothing.

In 2022, *none* of the approximately 10,500 disqualified general election voters was ever accused of any fraud or misconduct. No party or amicus has ever suggested or asserted that any missing or “incorrect” dates indicated any fraud in the 2022 general election. SMF ¶ 43.

Appellants rely here (as they did below) on a single instance of apparent mail ballot fraud from Lancaster County from the 2022 primary election. But when questioned about this incident under oath, Lancaster

County's designee readily admitted that it was not the handwritten date that led authorities to uncover the fraud, and that the ballot at issue would have been disqualified regardless of the envelope date.

The incident involved Cheryl Mihaliak, who attempted to vote her mother's mail ballot in the primary after her mother had died. The county's chief election official testified that the county knew not to count the ballot without having to consult the envelope date—indeed, it had *already removed* the mother from the rolls before it even received her ballot because it had learned of her death through its normal checks. *See* APP\_00895-00896; 25 P.S. § 3146.8(d); *see also* 25 Pa. C.S. § 1505. The county knew the vote was invalid and potentially suspect, no matter what date was written on the envelope, because it arrived weeks after the voter's death. APP\_00888-00892. The Lancaster official testified, specifically:

Q. But just focusing on whether this was a valid vote, the date written on the envelope didn't matter one way or the other?

A. Correct. When we received it back, as we had already removed her, that ballot would have been set to the side.

APP\_00892:10-15.

Notably, all of this occurred in connection with an election—the May 2022 primary—when ballots with envelope-date errors or omissions *were required to be counted* pursuant to this Court’s subsequently-vacated decision in *Migliori*, 36 F.4th 153. Lo and behold: Even though voters were *not* required to be disenfranchised for envelope-dating errors at the time, county officials and law enforcement were still fully able to detect, stop, and prosecute Ms. Mihaliak’s fraud. *That* is the only relevant “point of *Mihaliak*.” PA AG Br. 52.

No one has even tried to point to any other incident from any election cycle. Nor, more fundamentally, has anyone explained how disenfranchising qualified voters for mistakes in complying with the envelope-dating rule serves a government interest in detecting or preventing fraud. Sheer speculation about an amorphous “fraud interest” cannot “offset [a] burden of technical perfection” that disenfranchises thousands. *Ne. Ohio Coalition*, 837 F.3d at 633.

3. There is similarly no authority or evidence for the “nebulous contention” that the handwritten date serves a supposed interest in “solemnity,” App.25. *See* RNC Br. 60-61. This supposed interest—which was never suggested below by any government entity during discovery

and was posited by RNC Intervenors in a legal brief without any citation to the record—simply ignores the actual process that voters must go through to vote by mail.

In Pennsylvania, a voter must submit an application and have their identification and qualifications verified to obtain their mail ballot materials. *See supra* 5; SMF ¶¶ 4-9, 42. Before submitting their mail ballot, they must sign a declaration stating, “I am qualified to vote the enclosed ballot and I have not already voted in this election.” *E.g.*, APP\_01172; 25 P.S. §§ 3146.4, 3146.6, 3150.14, 3150.16. Signing the application and the envelope form subjected them to criminal penalties for any false signatures. *See* 25 P.S. § 3553 (penalties for falsely “sign[ing]” an application or declaration, regardless of handwritten date). All the disenfranchised voters signed their applications and their envelopes. SMF ¶ 36. And voters were required to complete and return their ballots by 8 p.m. on Election Day—and again, all of them did so. SMF ¶¶ 36-39.

It is not only factually baseless but also insulting to these voters to suggest that, after taking all these steps, a minor mistake in writing the meaningless date somehow negates the “solemnity” of their conduct or

suggests they did not adequately contemplate their actions, such that they can justifiably be deprived of the right to an effective ballot.

4. Making local election workers pore over envelopes to find irrelevant dating errors in submissions they already know were received on time, solely to disqualify otherwise valid ballots, can hardly be said to serve any interest in the “orderly administration of elections,” either. *E.g.*, RNC Br. 59; PA AG Br. 29-30. Rather, enforcement of the envelope-date requirement has led to arbitrary treatment, disuniformity, and confusion.

As described already, enforcement of the envelope-date requirement has disenfranchised thousands of voters who timely completed and submitted their ballots, including voters who affirmatively wrote a date but had it deemed “incorrect,” often due to obvious, factually impossible typos like writing “2202” or “2222” instead of “2022.” *See* SMF ¶ 65-70, 74-75; *see also* APP\_01426, 01430.

The arbitrariness and absurdity of these instances is magnified by the fact that, in the same election, counties also *counted* ballots where the dates were necessarily *incorrect*. For example, Berks County counted ballots if a voter wrote any date after September 19 on the envelope, even

though the county did not begin sending ballot packages to voters *until seventeen days later* on October 7, 2022 and thus earlier-dated ballots were unquestionably “incorrect.” SMF ¶ 92. Lancaster County similarly counted ballots whenever a voter wrote some date after September 19, even though it did not begin sending ballot packages to voters until September 26. SMF ¶ 93.<sup>7</sup> At least one county, Luzerne, voted to count a person’s ballot where they wrote September 31 on the date line—*even though that date literally does not exist*—while other counties penalized this typo with disenfranchisement. SMF ¶¶ 77-78.

Counties also took inconsistent approaches on date formatting. Eighteen county boards strictly applied the American dating convention of writing the month, day, and year (MM/DD/YYYY) in that order. SMF ¶ 86. At least thirty-one others tried to account for both the American and international dating conventions, but even then they admitted that they did so inconsistently. SMF ¶¶ 87-88; *see* APP\_00929a-00929b,

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<sup>7</sup> Counties used the September 19 date because it was chosen by the Pennsylvania Supreme Court to clarify which dates could be considered “correct.” *Ball*, 289 A.3d at 23 & n.130. However, in 2022, more than half of counties began sending mail ballot packages to voters in October. SMF ¶ 34.



00929m-00929n. Thus, notwithstanding the fact that no county actually used the handwritten date for any purpose, a voter using the international format could write the date and have their ballot counted in some parts of the Commonwealth, but the same submission would lead them to be disqualified elsewhere.

Does any of this sound remotely like the “orderly administration of elections”? It does not—and Appellants never even try to point to any record evidence to demonstrate an actual administrative purpose served by enforcing the envelope-date requirement other than denying the right to vote. The chaos and arbitrariness manifest in the discovery record are the unsurprising result of turning a vestigial, irrelevant line of paperwork with no practical election-administration purpose into a rigid rule requiring strict compliance on pain of disenfranchisement.

It is time for this injustice to end.

## **CONCLUSION**

The district court’s grant of summary judgment should be affirmed.

Dated: June 9, 2025

Respectfully submitted,

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## COMBINED CERTIFICATIONS

The undersigned is a member of the bar of this Court.

This brief complies with the word limit of Fed. R. App. P. 27(d)(2) because this document contains fewer than 6,500 words.

The text of this electronic brief is identical to the text in any paper copies that will be filed with the Court.

A virus detection program, Microsoft Word from the Microsoft Office Professional Plus 2010 suite, has been run on this electronic brief and no virus was detected.

Dated: June 9, 2025

Respectfully submitted,

/s/ Ari J. Savitzky  
Ari J. Savitzky

## CERTIFICATE OF SERVICE

I herby certify that on June 9, 2025, I caused a true and correct copy of the foregoing Motion to be served on all parties via the Court's CM/ECF system.

Dated: June 9, 2025

Respectfully submitted,

/s/ Ari J. Savitzky  
Ari J. Savitzky

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA STATE  
CONFERENCE OF THE NAACP, *et al.*,

*Plaintiffs,*

v.

AL SCHMIDT, in his official capacity as  
Secretary of the Commonwealth, *et al.*,

*Defendants*

Case No. 1:22-cv-00339-SPB

and

REPUBLICAN NATIONAL  
COMMITTEE, *et al.*,

*Intervenor-Defendants*

**PLAINTIFFS' LOCAL CIVIL RULE 56(B)(1) STATEMENT**

Pursuant to Local Civil Rule 56(B)(1), Plaintiffs submit the following concise statement setting forth the undisputed and material facts essential for the Court to decide the motion for summary judgment. To avoid duplication of filings, Plaintiffs incorporate and rely on the Appendix ("APP\_") filed on April 21, 2023 in connection with their prior summary judgment motion (ECF Nos. 277-282 & 288).

**I. BACKGROUND**

**A. History and Practice of Mail Ballot Voting in Pennsylvania**

1. Pennsylvania has long provided absentee-ballot options for voters who cannot attend a polling place on Election Day. APP\_00954 (Marks Dep.); 25 P.S. § 3146.1–3146.9.

2. In 2019, Pennsylvania enacted new mail-in voting provisions, which allow all registered, eligible voters to vote by mail. APP\_00954 (Marks Dep.); APP\_01180 (Greenburg Report); Act of Oct 31, 2019, P.L. 552, No. 77, § 8.

3. More than 2.6 million Pennsylvanians voted by absentee or mail ballot in the November 2020 general election, and more than 1.2 million Pennsylvanians voted by absentee or mail ballot in the November 2022 general election. APP\_01181 (Greenburg Report); *see also* APP\_00981-982 (Marks Dep.).

4. A voter seeking to vote by mail must complete an application and have their identity and qualifications verified before receiving a mail ballot. Voters provide all the information necessary for county boards of elections to verify that they are qualified to vote in Pennsylvania—namely, that on the day of the next election, they will have been a U.S. citizen for at least one month, will be at least 18 years old, will have resided in the election district for at least 30 days, and have not been confined in a penal institution for a conviction of a felony within the last five years—at the time of registration, at which time the county board of elections first determines their eligibility to vote. 25 Pa. C.S. §§ 1301, 1327(b); *see also* APP\_00893 (Lancaster Dep.); APP\_00995-997 (Marks Dep.).

5. To apply to receive a mail ballot, voters must submit an application that contains information relevant to their qualifications—including their date of birth, address, and length of time as a resident of the voting district—as well as proof of identification (a Pennsylvania driver's license number or, if the voter does not have

one, the last four digits of the voter's social security number). APP\_01036-1037 (mail ballot application); 25 P.S. §§ 3150.12, 2602(z.5)(3).

6. After the application is submitted, county boards of elections verify the voter's proof of identification and compare the information in the mail ballot application to the information provided at the time of registration, using the data housed in the Statewide Uniform Registry of Electors ("SURE") system. 25 P.S. § 3150.12b; *see also* APP\_01136 (Pa. Dep't of State Guidance); APP\_00894 (Lancaster Dep.); APP\_00916-917 (Westmoreland Dep.); APP\_00957-961 (Marks Dep.); APP\_01182 (Greenburg Report); APP\_001015, APP\_001020-1025 (Greenburg Dep.).

7. County boards of elections issue mail ballot packages to voters only after verifying their qualifications to vote, based on the information provided in their voter registration records and mail ballot applications. 25 P.S. § 3150.12b; *see also* APP\_00917 (Westmoreland Dep.).

8. The county board's determination that an individual is qualified to vote is conclusive unless the voter's eligibility is challenged prior to Election Day. 25 P.S. §§ 3150.12b, 3146.8(g)(3)-(4); *see also* APP\_01182 (Greenburg Report); APP\_01136 (Pa. Dep't of State Guidance).

9. Once the county board verifies the voter's identity and eligibility, it sends a mail-ballot package that contains a ballot, a "secrecy envelope" marked with the words "Official Election Ballot," and the pre-addressed outer return envelope, on which a voter declaration form is printed (the "Return Envelope"). 25 P.S.

§§ 3146.6(a), 3150.16(a); *see also* APP\_00965-966 (Marks Dep.); APP\_01182-1183 (Greenburg Report).

10. A voter can mark their ballot, put it inside the secrecy envelope, and place the secrecy envelope in the Return Envelope, and complete the form declaration on the return envelope at “any time” between receiving their mail-ballot package from the county board of elections and 8:00 P.M. on Election Day. 25 P.S. §§ 3146.6(a), 3150.16(a); *see also* APP\_00977 (Marks Dep.); APP\_01183, APP\_01189-1190 (Greenburg Report).

11. The voter must then deliver their ballot, in the requisite envelopes, by mail or in person to their county board of elections. To be considered timely under the Election Code, a county board of elections must receive a voter’s mail ballot by 8:00 P.M. on Election Day. 25 P.S. §§ 3146.6(c), 3150.16(c); *see also* APP\_00974-76 (Marks Dep.); APP\_01183 (Greenburg Report).

12. Upon receipt of a mail ballot, county boards of elections stamp or otherwise mark the Return Envelope with the date of receipt to confirm its timeliness and log it in the SURE system. APP\_01183, APP\_01189 (Greenburg Report); APP\_01136-1137 (Pa. Dep’t of State Guidance); APP\_00977-978 (Marks Dep.), 70:5–8; APP\_00834 (Berks Dep.).

## **B. Previous Litigation over the Date Requirement**

13. The Election Code provides that a voter “shall ... fill out, date and sign the declaration printed on” the mail ballot Return Envelope. *See* 25 P.S. §§ 3146.6(a), 3150.16(a). The voter declaration forms that accompany paper mail and absentee



ballots include a line for the voter to sign and date the declaration.<sup>1</sup> *See, e.g.*, APP\_01290 (Berks mail ballot envelope); APP\_01291 (Bucks military ballot envelope).

14. This envelope-dating provision has been the subject of repeated litigation. APP\_00824 (Berks Dep.).

15. In the months leading up to the 2022 election, the Secretary of the Commonwealth advised counties to count otherwise valid and timely-received mail ballots even where voters omitted a handwritten date, or wrote a plainly wrong date like a birthdate, on the Return Envelope. APP\_01139-1142 (Sept. 26, 2022 Pa. Dep't of State Guidance); APP\_00824a-824c (Berks Dep.); APP\_00869-870 (Lancaster Dep.); APP\_00920-921 (Westmoreland Dep.); APP\_00986-989, APP\_00991-992 (Marks Dep.).

16. The Secretary reaffirmed that guidance after the U.S. Supreme Court vacated on mootness grounds the Third Circuit's *Migliori v. Cohen* decision regarding the envelope-date rule. APP\_01143 (Oct. 11, 2022 Pa. Dep't of State email).

17. On October 16, 2022, a group of petitioners including political party entities brought a King's Bench petition in the Supreme Court of Pennsylvania seeking to invalidate mail ballots based on voter errors or omissions with respect to the envelope date on the Return Envelope. APP\_01202.

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<sup>1</sup> UOCAVA voters have the option to submit their absentee ballots electronically, or they can return a paper ballot by mail. *See* APP\_00998-00999 (Marks Dep.). This case focuses solely on the treatment of *paper* mail and absentee ballots.

18. On November 1, 2022, the Supreme Court of Pennsylvania issued an order directing that the mail ballots at issue should be segregated and not counted. APP\_01147-1148.

19. Following that decision, on November 1, 2022, the Department of State’s Deputy Secretary for Elections and Commissions, Jonathan Marks, sent an email to counties advising elections officials of the Supreme Court of Pennsylvania’s order to “refrain from counting any absentee and mail-in ballots received for the November 8, 2022 general election that are contained in undated or incorrectly dated outer envelopes,” and to “**segregate** and **preserve** any ballots contained in undated or incorrectly dated outer envelopes.” Deputy Secretary Marks instructed that the elections officials “**must remember to do two things** as [they] pre-canvass and canvass absentee and mail-in ballots: Segregate AND preserve these undated and incorrectly dated ballots; and Do not count the votes cast on ballots with undated or incorrectly dated ballots.” APP\_01149 (all emphasis in original email).

20. On November 3, Acting Secretary Chapman issued new guidance, instructing counties that “ballots which are administratively determined to be undated or incorrectly dated” should be coded as “CANC – NO SIGNATURE within the SURE system” (*i.e.*, should be cancelled and not accepted) and “segregated from other ballots.” APP\_01006-1007.

21. On November 5, 2022, the Supreme Court of Pennsylvania issued a supplemental order stating that “incorrectly dated outer envelopes” include “(1) mail-in ballot outer envelopes with dates that fall outside the date range of September 19,

2022 through November 8, 2022; and (2) absentee ballot outer envelopes with dates that fall outside the date range of August 30, 2022 through November 8, 2022.” APP\_01150-1151.

## II. PLAINTIFFS

22. Laurence Smith is a Montgomery County voter who sought to vote in the November 2022 election. *See* APP\_01047-1051 (Smith Decl.); APP\_01392 (Montgomery voter list).

- a. At the close of discovery, Smith was 78 years old. Before his retirement, he worked as an entrepreneur in the medical services industry. APP\_01047.
- b. He has been a registered voter for decades, and he has been voting regularly in Montgomery County since moving there in 1991, including voting by mail since 2020. APP\_01047.
- c. For the November 8, 2022 election, Smith properly requested a mail-in ballot, marked his ballot, and inserted it into the secrecy envelope and then into an outer envelope on which he signed the declaration. APP\_01048; APP\_01392.
- d. The Montgomery County Board of Elections did not count Smith’s ballot on the basis of a missing date. APP\_01392.
- e. Smith believed he had followed all of the necessary steps to complete the declaration, and he was unaware of what the Montgomery County Board of Elections concluded was wrong with the date form. APP\_01048-1049.

- f. Mr. Smith was not notified of any opportunity to cure any defect prior to Election Day. APP\_01049.
- 23. Joel Bencan is a Montgomery County voter who sought to vote in the November 2022 election. *See* APP\_01052-1056 (Bencan Decl.); APP\_01392 (Montgomery voter list).
  - a. At the close of discovery, Bencan was 71 years old and is a retired pharmacist. APP\_01052.
  - b. He has been a registered voter for decades and has participated regularly in elections since the Nixon Administration. Bencan began voting by mail in 2020 because of the COVID-19 pandemic and has continued since then to vote by mail. APP\_01052.
  - c. For the November 8, 2022 election, Bencan properly requested a mail-in ballot, marked his ballot, and inserted it into the secrecy envelope and then into an outer envelope on which he signed the declaration. APP\_01052; APP\_01392.
  - d. The Montgomery County Board of Elections did not count Bencan's ballot on the basis of a missing date. APP\_01392.
  - e. Bencan believed he had followed all of the necessary steps to complete the declaration, and he was unaware of why the Montgomery County Board of Elections rejected the date he wrote as "incorrect." APP\_01052-1053.

- f. Bencan was not notified of any opportunity to cure any defect prior to Election Day. APP\_01053.
24. Aynne Pleban Polinski is a York County voter who sought to vote in the November 2022 election. *See* APP\_01057-1058 (Polinski Decl.); APP\_01400 (York voter list).
- a. At the close of discovery, Polinski was 71 years old and is a retired art educator, art therapist, and professional artist. APP\_01057.
  - b. Polinski is a qualified voter who participates regularly in elections: she has been a registered voter in York County since 2016 and a registered voter in the Commonwealth of Pennsylvania since she was 18 years old. Polinski has been voting by mail since the June 2020 presidential primary because of the COVID-19 pandemic. APP\_01057.
  - c. For the November 8, 2022 election, Polinski properly requested a mail-in ballot, marked her ballot, and inserted it into the secrecy envelope and then into an outer envelope on which she signed the declaration. APP\_01057-1058; APP\_01400.
  - d. The York County Board of Elections has confirmed that it did not count Polinski's ballot on the basis of a missing date. APP\_01400.
  - e. Polinski was not notified of any opportunity to cure any defect prior to Election Day and only learned after Election Day that her vote was not counted. APP\_01058.

25. Marlene Gutierrez is a York County voter who sought to vote in the November 2022 election. APP\_01059-1061 (Gutierrez Decl.); APP\_01400 (York voter list).

- a. At the close of discovery, Gutierrez was 64 years old and works as a corporate travel agent. APP\_01059.
- b. She first registered to vote in York County when she was 18 years old, and after residing elsewhere for several years, she most recently registered to vote in York County when she moved back in September 2020. She has been regularly voting by mail for at least twenty years. APP\_01059.
- c. For the November 8, 2022 election, Gutierrez properly requested a mail-in ballot, marked her ballot, and inserted it into the secrecy envelope and then into an outer envelope on which she signed the declaration. APP\_01059-1060.
- d. Gutierrez believed she had followed all of the instructions but learned on Election Day that her ballot would not be counted, and she did not have time to cure her ballot. APP\_01060.
- e. The York County Board of Elections has confirmed that it did not count Gutierrez's ballot on the basis of a missing date. APP\_01400.
- f. Gutierrez was not notified of any opportunity to cure any defect prior to Election Day. APP\_01060.

26. Barry Seastead is a Warren County voter who sought to vote in the November 2022 election. *See* APP\_01062-1064 (Seastead Decl.); APP\_01394 (Warren voter list).

- a. As of the close of discovery, Seastead was 68 years old. He is a retired welder. APP\_01062.
- b. He has been a registered voter in Warren County for decades, ever since he was legally eligible to vote. He votes regularly, and has been voting by mail for the past few years. APP\_01062.
- c. For the November 8, 2022 election, Seastead properly requested a mail-in ballot, marked his ballot, and inserted it into the secrecy envelope and then into an outer envelope on which he signed the declaration. APP\_01063.
- d. The Warren County Board of Elections has confirmed that it did not count Seastead's ballot on the basis of an "invalid" date. APP\_01394.
- e. Seastead believed he wrote the date on which he filled out the ballot, and he is unaware of why the Warren County Board of Elections rejected the date he wrote as "incorrect." APP\_01063.
- f. Mr. Seastead was not notified of any opportunity to cure any defect prior to Election Day. APP\_01063; APP\_01394.
- g. Because Warren County did not provide him with any notice of its determination that the date he wrote was incorrect, he had no opportunity to cure any defect regarding the date on his outer return

envelope prior to Election Day and only learned after Election Day that his vote was not counted. APP\_01063.

27. The Pennsylvania State Conference of the NAACP (the “State Conference”) is a non-profit, non-partisan organization that works to improve the political, educational, social, and economic status of African-Americans and other racial and ethnic minorities, to eliminate racial prejudice, and to take lawful action to secure the elimination of racial discrimination, among other objectives. APP\_01065-1081 (State Conf. Decl.).

- a. The State Conference has thousands of members who live and/or work in Pennsylvania, many of whom are registered to vote in Pennsylvania. APP\_01065.
- b. Every election cycle, the State Conference engages in efforts to get out the vote, including by educating voters in Pennsylvania on different methods of voting, providing educational guides on local candidates to increase voter engagement, and focusing on strategies to encourage new voters to participate in elections in Pennsylvania. For example, in the 2022 election cycle, the State Conference coordinated Souls to the Polls efforts, solicited poll monitor volunteers, and organized phone- and text-banking to generate voter engagement and remind voters of the importance of the election. APP\_01065-1066.
- c. During the 2022 election, the State Conference reassigned volunteers and staff from its existing voter education and mobilization efforts



towards contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their vote set aside. APP\_01066-1067.

- d. For example, the time and attention of the State Conference's Philadelphia branch field director, as well as volunteers (including approximately 17 volunteer law students from Howard University) were all diverted from their intended mission—conducting election protection at the polls on Election Day in Philadelphia—toward coordinating and manning the phone lines in order to contact and/or assist mail ballot voters affected by the envelope-date rule. APP\_01067-1068.
- e. In the days leading up to the election in November 2022, multiple local branches of the State Conference also created and shared social media posts alerting the public, and especially those who had already submitted mail ballots, that “thousands of voters” had “accidentally left off or wrote the incorrect date on the outside of their absentee/mail-in ballots,” and that “those ballots CAN be cured, and the votes counted” if the affected voters took urgent action. APP\_01078-1081. The time and attention of each of these branches that was spent on those efforts in the last few days before the election would otherwise have been used to engage and educate people who had not already voted. APP\_01068-1069.
- f. The State Conference anticipates that, in future elections, it will similarly need to divert its staff and volunteer resources from their

intended mission—engaging, educating, and mobilizing new voters—toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope. APP\_01069.

28. The League of Women Voters of Pennsylvania (“the League”) is a non-partisan statewide non-profit formed in 1920. APP\_01082-1106.

- a. The League encourages informed and active participation in government, works to increase understanding of major public policy issues, and seeks to influence public policy through education and advocacy. APP\_01082.
- b. The League is a predominantly volunteer organization and has 31 member chapters and one Inter-League Organization operating in 29 counties around the Commonwealth. LWVPA has more than 2,500 individual members, many of whom who are registered voters and regularly vote in state and federal elections using, among other methods, absentee and mail ballots. APP\_01082.
- c. During every election cycle, the League conducts voter-registration drives, staffs nonpartisan voter-registration tables, educates incarcerated and formerly incarcerated individuals about their voting rights, and works with local high schools and universities to register young voters. The League maintains voter

information resources on its website in English and Spanish.  
APP\_01082-1083.

- d. During the November 2022 election, the League reassigned its members' and volunteers' time and efforts from these core activities towards contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their ballot set aside. APP\_01083.
- e. Three staff members and approximately 30 volunteers spent time scouring publicly available lists of affected voters and contacting hundreds of Pennsylvania voters to provide them with information to help them cure their ballot or vote provisionally. In particular, the Lower Merion & Narberth league directly emailed more than 250 members with explicit instructions on how to vote if their mail ballots were cancelled. APP\_01083-1087.
- f. The League (and many of its local leagues) shared information on social media channels and the League's websites to alert voters of the risk that their vote would not be counted and instruct voters about how to correct their mail ballot envelopes. The League also attended county board of elections meetings, especially in Montgomery, Allegheny, and Lancaster Counties, to advocate for notice and cure opportunities for voters whose ballots were set

aside due to an error or omission of the handwritten date on the mail ballot return envelope. APP\_01084-1087.

- g. The Lower Merion and Narberth League also worked in coalition with civic and community groups to spread the word about correcting errors on mail ballot envelopes and participated in an event with the Bethel AME Church in Ardmore to help congregants check their mail ballot status and instruct them on how to correct paperwork errors. APP\_01086-1087.
- h. The League anticipates that, in future elections, it will similarly need to divert staff, member and volunteer resources from their core activities toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope. For example, in advance of the 2023 municipal primary, the League has developed a webinar featuring mail voting and how to apply and correctly submit a mail ballot. Similarly, its social media posts, website content and public statements will need to focus on helping voters avoid disenfranchisement for errors on mail ballot envelopes. APP\_01087-1088.

29. Philadelphians Organized to Witness, Empower and Rebuild (“POWER”) is a Pennsylvania non-profit organization of more than 100 congregations

of various faith traditions, cultures and neighborhoods committed to civic engagement and organizing communities so that the voices of all faiths, races and income levels are counted and have a say in government. APP\_01107-1110 (POWER Decl.).

- a. POWER's civic engagement efforts include civic engagement efforts include voter education programs, voter registration drives, and "Souls to the Polls" efforts to encourage congregants to vote. In the weeks leading up to the November 2022 election, POWER launched a bus tour focused on engaging voters who were not already participating in the political process. APP\_01107-1108.
- b. During the 2022 election, POWER reassigned volunteers and staff from its existing voter education and mobilization efforts towards contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their vote set aside. APP\_01108-1109.
- c. For example, when Philadelphia published a list of over 3,000 voters who were at risk of having their November 2022 general election ballots thrown out over technical errors, including a missing or incorrect date on the return envelope, POWER's members and volunteers made more than 1,200 manual calls and sent more than 2,900 texts to the voters whose names appeared on Philadelphia's at-risk list to provide them with information to help them cure their ballot or vote provisionally.

POWER also stationed volunteers at City Hall to ensure voters returning their mail ballots to that location had correctly dated their return envelopes. APP\_01108-1109.

- d. The time and attention that POWER devoted to ensuring voters who had already submitted their mail ballots would have their votes counted would otherwise have been used to engage and educate people who had not already attempted to vote. APP\_01109.
- e. POWER anticipates that, in future elections, it will similarly need to divert its member and volunteer resources from their intended mission—engaging, educating, and mobilizing new voters—toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope. APP\_01109.

30. Common Cause Pennsylvania (“Common Cause PA”) is a non-profit, non-partisan organization, and a chapter of the national Common Cause organization. APP\_01111-1124 (Common Cause PA Decl.).

- a. Common Cause PA is a non-partisan good government organization with approximately 36,000 members and supporters who live in all 67 counties of Pennsylvania. One of Common Cause PA’s core functions is to increase the level of voter registration and voter participation in Pennsylvania elections, especially in communities that are historically

underserved and whose populations have a low propensity for voting.  
APP\_01111.

- b. In preparation for every election cycle, and most significantly in even-year elections, Common Cause PA leads the Election Protection Coalition field program which recruits and trains volunteers to visit polling places and assist voters. As part of its Election Protection Coalition work, Common Cause PA disseminates accurate information about voting and instructions for navigating the voting process on its website, on social media, and through outreach to traditional media.  
APP\_01112.
- c. During the 2022 election, Common Cause PA reassigned its volunteers' time and efforts from Common Cause PA's existing efforts toward contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their vote set aside. APP\_01113.
- d. When defendants announced that they would segregate and not count ballots with an incorrect or missing date, Common Cause PA ensured that accurate information was available for voters. Additionally, Common Cause PA organized a press briefing with Make the Road PA, All Voting is Local PA and Pennsylvania Voice to remind voters to date their mail ballot envelopes and to alert them that their ballot would not count if the date was missing. Common Cause PA issued the press

advisory, held the press briefing and issued a press statement within the span of 24 hours, with the goal of alerting as many voters as possible as quickly as possible. APP\_01113-1114.

- e. To protect voters from having their ballot set aside due to an error or omission of the handwritten date on their mail ballot return envelope, Common Cause PA also created and sent an email to all of its members and supporters immediately after the November 2022 election advising them that, if they cast a provisional ballot, to check and make sure the ballot was counted. APP\_01114.
- f. Common Cause PA anticipates that, in future elections, it will continue to divert its volunteer resources from its intended mission—educating and mobilizing voters—toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope. For example, in advance of the 2023 municipal primary, Common Cause PA is developing a new webinar on mail voting, specifically focusing on the impact of the enforcement of the date requirement. This webinar is part of a series, but it diverts resources away from providing other important voter education information. APP\_01114-1115.



31. Black Political Empowerment Project (“B-PEP”) is a non-profit, non-partisan organization that has worked since 1986 to ensure that the Pittsburgh African-American community votes in every election. APP\_01125.

- a. B-PEP has numerous supporters, of various ages and races, throughout the Pittsburgh Region, working with numerous community organizations to empower Black and brown communities. APP\_01125.
- b. During every election cycle, B-PEP’s work includes voter registration drives, get-out-the-vote activities, education and outreach about the voting process, and election-protection work. B-PEP focuses these activities in predominantly Black neighborhoods in Allegheny County, with some efforts in Westmoreland and Washington Counties. For the November 2022 election, B-PEP conducted outreach to members and constituent communities about the importance of voting in person or by mail. APP\_01125-1126.
- c. When it was announced that county boards of elections would not count timely-submitted mail ballots based solely on missing or supposedly incorrect dates on return envelopes, many B-PEP members and others served by its mission had already submitted mail ballots. This abrupt change in voting rules just before Election Day caused B-PEP to redirect its limited resources,

including staff and volunteer time, to efforts to inform voters of this change and educate them as to how to avoid disenfranchisement. APP\_01126.

- d. Specifically, in the days leading up to the election in November 2022, B-PEP's staff and volunteers also expended time and money developing, printing and distributing hundreds of flyers and other educational materials to dozens of churches for the purpose of informing prospective voters of the envelope dating issues generated by the Ball decision. APP\_01126, APP\_01129-1131.
- e. B-PEP staff and volunteers also spent valuable time in discussion with county election directors seeking clarity and guidance about their handling of mail ballots, and then working with other voting rights and community organizations to maximize voters' understanding of the county election boards' procedures. APP\_01126.
- f. B-PEP's time and resources dedicated by B-PEP staff and volunteers would otherwise have been available for the organization's other "get out the vote" efforts and other initiatives serving BPEP's mission, including its Greater Pittsburgh Coalition Against Violence. APP\_01126-1127.
- g. B-PEP anticipates that, in future elections, it will similarly need to divert its staff and volunteer resources from voter engagement

and community initiatives toward preventing the disenfranchisement of voters who have already submitted their ballots. APP\_01127.

32. Make the Road Pennsylvania (“Make the Road PA”) is a not-for-profit, member-led organization formed in 2014 that builds the power of the working class in Latino and other communities to achieve dignity and justice through organizing, policy innovation, and education services. APP\_01132.

- a. Make the Road PA’s more than 10,000 members are primarily working-class residents of Pennsylvania, many in underserved communities. Many members of Make the Road PA are registered voters in Pennsylvania. APP\_01132.
- b. Make the Road PA’s work includes substantial field work aimed at voter protection, voter advocacy and voter education on, for example, how to register to vote, how to apply for mail-in/absentee ballots, how to return mail-in/absentee ballots, and where to vote. Its get-out-the-vote efforts in the 2022 General Election alone included knocking on over 300,000 doors and speaking directly with over 29,000 people in Berks, Bucks, Lehigh, Northampton and Philadelphia Counties. APP\_01132-1133.
- c. When defendants announced that they would not count timely-submitted mail ballots based solely on missing or supposedly incorrect dates on return envelopes, many Make the Road PA

members and others served by its mission had already submitted mail ballots. This abrupt change in voting rules just before Election Day caused Make the Road PA to redirect its limited resources, including staff and volunteer time, to efforts to inform voters of this change and educate them as to how to avoid disenfranchisement. Moreover, because Make the Road's efforts are focused on communities where many voters are not native English speakers, the risk that some voters may make a minor paperwork mistake in filling out various forms related to mail or absentee ballot voting is heightened. Accordingly, Make the Road PA's staff and volunteers directed time and resources in the critical time before Election Day to contacting county election officials to determine how, if at all, they would inform non-English speakers of any problems with the dating of their mail ballot envelopes. APP\_01133.

- d. Make the Road PA's staff and volunteers conducted extensive phone and text message outreach, on an emergency basis, to its members informing prospective voters of the envelope dating issues generated. APP\_01133. Make the Road PA contacted thousands of Pennsylvania voters to provide them with information to help them cure their ballot or vote provisionally to prevent the counties' actions from disenfranchising them. Make

the Road PA's staff and volunteers also spent valuable time in discussion with county election directors seeking clarity and guidance about their handling of mail ballots. But for application of the rule at issue in this case, such time and resources dedicated by Make the Road PA staff and volunteers would have been available for the organization's other "get out the vote" efforts and other initiatives serving Make the Road PA's mission, including its Immigrant Rights, Education Justice, Housing Justice, Climate Justice and Worker Rights initiative. APP\_01134.

- e. Make the Road PA anticipates that, in future elections, it will similarly need to divert its staff and volunteer resources from voter engagement and community initiatives toward preventing the disenfranchisement of voters who have already submitted their ballots. APP\_01134.

### **III. THE 2022 ELECTION**

33. The November 2022 general election involved elections for the U.S. Senate, U.S. House of Representatives, Pennsylvania Governor, and Pennsylvania House and Senate offices. APP\_01194.

34. For the November 2022 election, different counties sent out their mail-ballot packages at different times:

- a. Adams County began sending mail ballot packages to voters on September 28, 2022. APP\_00005 (Adams Interrog. Resp.).

- b. Allegheny County began sending mail ballot packages to voters on September 30, 2022. APP\_00027 (Allegheny Interrog. Resp.).
- c. Armstrong County began sending mail ballot packages to voters on October 10, 2022. APP\_00041 (Armstrong Interrog. Resp.).
- d. Beaver County began sending mail ballot packages to voters on September 26, 2022. APP\_00062 (Beaver Interrog. Resp.).
- e. Berks County began sending mail ballot packages to voters on October 7, 2022. APP\_00078 (Berks Interrog. Resp.).
- f. Blair County began sending mail ballot packages to voters on October 14, 2022. APP\_00097 (Blair Interrog. Resp.).
- g. Bradford County began sending mail ballot packages to voters on September 27th, 2022. APP\_00108 (Bradford Interrog. Resp.).
- h. Bucks County began sending mail ballot packages to voters on October 5, 2022 and military/overseas ballots on September 22, 2022. APP\_00117 (Bucks Interrog. Resp.).
- i. Butler County began sending mail ballot packages to voters on October 12, 2022. APP\_00131 (Butler Interrog. Resp.).
- j. Cambria County began sending mail ballot packages to voters on October 6, 2022. APP\_00140 (Cambria Interrog. Resp.).
- k. Cameron County began sending mail ballot packages to voters on October 12, 2022. APP\_00150 (Cameron Interrog. Resp.).

- l. Chester County began sending mail ballot packages to voters on October 10, 2022. APP\_00169 (Chester Interrog. Resp.).
- m. Clarion County began sending mail ballot packages to voters on October 4, 2022. APP\_00185 (Clarion Interrog. Resp.).
- n. Clearfield County began sending mail ballot packages to voters on October 3, 2022. APP\_00294 (Clearfield Interrog. Resp.).
- o. Clinton County began sending mail ballot packages to voters on September 30, 2022. APP\_00216 (Clinton Interrog. Resp.).
- p. Crawford County began sending mail ballot packages to voters on September 26, 2022. APP\_00233 (Crawford Interrog. Resp.).
- q. Cumberland County began sending mail ballot packages to voters on October 3, 2022. APP\_00252 (Cumberland Interrog. Resp.).
- r. Delaware County began sending mail ballot packages to voters on October 8, 2022. APP\_00267 (Delaware Interrog. Resp.).
- s. Elk County began sending mail ballot packages to voters on September 16, 2022. APP\_00279 (Elk Interrog. Resp.).
- t. Erie County began sending mail ballot packages to voters on October 6, 2022. APP\_00292 (Erie Interrog. Resp.).
- u. Fayette County began sending mail ballot packages to voters on October 11, 2022. APP\_00309 (Fayette Interrog. Resp.).
- v. Forest County began sending mail ballot packages to voters on October 6, 2022. APP\_00321 (Forest Interrog. Resp.).

- w. Franklin County began sending mail ballot packages to voters on October 3, 2022. APP\_00336 (Franklin Interrog. Resp.).
- x. Fulton County began sending mail ballot packages to voters on October 21, 2022. APP\_00347 (Fulton Interrog. Resp.).
- y. Greene County began sending mail ballot packages to voters on September 30, 2022. APP\_00355 (Greene Interrog. Resp.).
- z. Juniata County began sending mail ballot packages to voters on September 27, 2022. APP\_00363 (Juniata Interrog. Resp.).
- aa. Lackawanna County began sending mail ballot packages to voters on October 3, 2022. APP\_00373 (Lackawanna Interrog. Resp.).
- bb. Lancaster County began sending mail ballot packages to voters on September 26, 2022. APP\_00389 (Lancaster Interrog. Resp.).
- cc. Lehigh County began sending mail ballot packages to voters on September 23, 2022. APP\_00401 (Lehigh Interrog. Resp.).
- dd. Luzerne County began sending mail ballot packages to voters on October 13, 2022. APP\_00417 (Luzerne Interrog. Resp.).
- ee. Lycoming County began sending mail ballot packages to voters on September 22, 2022. APP\_00439 (Lycoming Interrog. Resp.).
- ff. McKean County began sending mail ballot packages to voters on September 30, 2022. APP\_00453 (McKean Interrog. Resp.).
- gg. Mercer County began sending mail ballot packages to voters on October 7, 2022. APP\_00461 (Mercer Interrog. Resp.).



- hh. Mifflin County began sending mail ballot packages to voters on October 10, 2022. APP\_00468 (Mifflin Interrog. Resp.).
- ii. Montgomery County began sending mail ballot packages to voters on October 6, 2022. APP\_00481 (Montgomery Interrog. Resp.).
- jj. Northampton County began sending mail ballot packages to voters on October 3, 2022. APP\_00495 (Northampton Interrog. Resp.).
- kk. Perry County began sending mail ballot packages to voters on October 3, 2022. APP\_00511 (Perry Interrog. Resp.).
- ll. Philadelphia County began sending mail ballot packages to voters on October 10, 2022. APP\_00530 (Philadelphia Interrog. Resp.).
- mm. Pike County began sending mail ballot packages to voters on October 3, 2022. APP\_00541 (Pike Interrog. Resp.).
- nn. Potter County began sending mail ballot packages to voters on September 26, 2022. APP\_00575 (Potter Interrog. Resp.).
- oo. Schuylkill County began sending mail ballot packages to voters on October 13, 2022. APP\_00587 (Schuylkill Interrog. Resp.).
- pp. Somerset County began sending mail ballot packages to voters on October 5, 2022. APP\_00599 (Somerset Interrog. Resp.).
- qq. Sullivan County began sending mail ballot packages to voters on October 4, 2022. APP\_00609 (Sullivan Interrog. Resp.).

- rr. Susquehanna County began sending mail ballot packages to voters on October 19, 2022. APP\_00619 (Susquehanna Interrog. Resp.).
- ss. Tioga County began sending mail ballot packages to voters on September 21, 2022. APP\_00629 (Tioga Interrog. Resp.).
- tt. Union County began sending mail ballot packages to voters on September 23, 2022. APP\_00635 (Union Interrog. Resp.).
- uu. Warren County began sending mail ballot packages to voters on October 5, 2022. APP\_00646 (Warren Interrog. Resp.).
- vv. Washington County began sending military overseas ballots on September 23, 2022 and mail ballot packages to voters on October 4, 2022. APP\_00667 (Washington Interrog. Resp.).
- ww. Wayne County began sending mail ballot packages to voters on August 23, 2022. APP\_00691 (Wayne Interrog. Resp.).
- xx. Westmoreland County began sending mail ballot packages to voters on October 5, 2022. APP\_00706 (Westmoreland Interrog. Resp.).
- yy. Wyoming County began sending mail ballot packages to voters on September 19, 2022. APP\_00714. (Wyoming Interrog. Resp.).
- zz. Bedford County began sending mail ballot packages to voters on October 7, 2022. APP\_00732 (Bedford Interrog. Resp.).

- aaa. Carbon County began sending mail ballot packages to voters on September 27, 2022. APP\_00733 (Carbon Interrog. Resp.).
- bbb. Centre County began sending mail ballot packages to voters on September 27, 2022. APP\_00733 (Centre Interrog. Resp.).
- ccc. Columbia County began sending mail ballot packages to voters on September 27, 2022. APP\_00733 (Columbia Interrog. Resp.).
- ddd. Dauphin County began sending mail ballot packages to voters on September 2, 2022. APP\_00733 (Dauphin Interrog. Resp.).
- eee. Jefferson County began sending mail ballot packages to voters on September 12, 2022. APP\_00733 (Jefferson Interrog. Resp.).
- fff. Huntington County began sending mail ballot packages to voters on October 4, 2022. APP\_00733 (Huntingdon Interrog. Resp.).
- ggg. Indiana County began sending mail ballot packages to voters on October 3, 2022. APP\_00733 (Indiana Interrog. Resp.).
- hhh. Lawrence County began sending mail ballot packages to voters on September 26, 2022. APP\_00733 (Lawrence Interrog. Resp.).

iii. Lebanon County began sending mail ballot packages to voters on October 7, 2022. APP\_00733 (Lebanon Interrog. Resp.).

jjj. Monroe County began sending mail ballot packages to voters on October 7, 2022. APP\_00733 (Monroe Interrog. Resp.).

kkk. Montour County began sending mail ballot packages to voters on September 23, 2022. APP\_00733 (Montour Interrog. Resp.).

lll. Northumberland County began sending mail ballot packages to voters on September 21, 2022. APP\_00733 (Northumberland Interrog. Resp.).

mmm. Snyder County began sending mail ballot packages to voters on September 23, 2022. APP\_00733 (Snyder Interrog. Resp.).

nnn. Venango County began sending mail ballot packages to voters on September 27, 2022. APP\_00733 (Venango Interrog. Resp.).

ooo. York County began sending mail ballot packages to voters on September 28, 2022. APP\_00733 (York Interrog. Resp.).

35. The county boards of elections reported receiving 1,238,522 mail and absentee ballots in the November 2022 election. APP\_00005 (Adams Interrog. Resp.); APP\_00035 (Allegheny Interrog. Resp.); APP\_00040 (Armstrong Interrog. Resp.); APP\_00060 (Beaver Interrog. Resp.); APP\_00077 (Berks Interrog. Resp.); APP\_00096

(Blair Interrog. Resp.); APP\_00107 (Bradford Interrog. Resp.); APP\_00116 (Bucks Interrog. Resp.); APP\_00130 (Butler Interrog. Resp.); APP\_00140 (Cambria Interrog. Resp.); APP\_00149 (Cameron Interrog. Resp.); APP\_00168 (Chester Interrog. Resp.); APP\_00185 (Clarion Interrog. Resp.); APP\_00209 (Clearfield Interrog. Resp.); APP\_00215 (Clinton Interrog. Resp.); APP\_00232 (Crawford Interrog. Resp.); APP\_00251 (Cumberland Interrog. Resp.); APP\_00266 (Delaware Interrog. Resp.); APP\_00278 (Elk Interrog. Resp.); APP\_00291 (Erie Interrog. Resp.); APP\_00308 (Fayette Interrog. Resp.); APP\_00320 (Forest Interrog. Resp.); APP\_00335 (Franklin Interrog. Resp.); APP\_00347 (Fulton Interrog. Resp.); APP\_00354 (Greene Interrog. Resp.); APP\_00363 (Juniata Interrog. Resp.); APP\_00371 (Lackawanna Interrog. Resp.); APP\_00388 (Lancaster Interrog. Resp.); APP\_00400 (Lehigh Interrog. Resp.); APP\_00416 (Luzerne Interrog. Resp.); APP\_00438 (Lycoming Interrog. Resp.); APP\_00452 (McKean Interrog. Resp.); APP\_00461 (Mercer Interrog. Resp.); APP\_00468 (Mifflin Interrog. Resp.); APP\_00481 (Montgomery Interrog. Resp.); APP\_00494 (Northampton Interrog. Resp.); APP\_00510 (Perry Interrog. Resp.); APP\_00529 (Philadelphia Interrog. Resp.); APP\_00541 (Pike Interrog. Resp.); APP\_00573 (Potter Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00598 (Somerset Interrog. Resp.); APP\_00609 (Sullivan Interrog. Resp.); APP\_00619 (Susquehanna Interrog. Resp.); APP\_00629 (Tioga Interrog. Resp.); APP\_00634 (Union Interrog. Resp.); APP\_00645 (Warren Interrog. Resp.); APP\_00666 (Washington Interrog. Resp.); APP\_00690 (Wayne Interrog. Resp.);

APP\_00705 (Westmoreland Interrog. Resp.); APP\_00714 (Wyoming Interrog. Resp.); APP\_00729-30 (Babst Calland<sup>2</sup> Interrog. Resp.).

36. In the November 2022 general election, the county boards of elections segregated at least 10,506 mail ballots solely based on missing or incorrect dates on their outer return envelopes:

- a. Adams County segregated 4 ballots with undated return envelopes and 0 ballots with misdated envelopes. APP\_00005-6 (Adams Interrog. Resp.).
- b. Allegheny County segregated 1,009 ballots with undated or misdated return envelopes. APP\_00026-27 (Allegheny Interrog. Resp.).
- c. Armstrong County segregated 15 ballots with undated or misdated return envelopes. APP\_00040 (Armstrong Interrog. Resp.).
- d. Beaver County segregated 182 ballots with undated or misdated return envelopes. APP\_00060 (Beaver Interrog. Resp.).
- e. Berks County segregated 782 ballots with undated or misdated return envelopes. APP\_00078 (Berks Interrog. Resp.).

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<sup>2</sup> Cites to the “Babst Calland” Responses to Requests for Admissions and Interrogatories refer to the collective responses filed by the Bedford, Carbon, Centre, Columbia, Dauphin, Huntingdon, Indiana, Jefferson, Lawrence, Lebanon, Monroe, Montour, Northumberland, Snyder, Venango, and York County Boards of Elections. *See generally* APP\_00723-775.

- f. Blair County segregated 55 ballots with undated or misdated return envelopes. APP\_00096 (Blair Interrog. Resp.).
- g. Bradford County segregated 22 ballots with undated return envelopes and 1 ballot with misdated envelopes. APP\_00107-108 (Bradford Interrog. Resp.).
- h. Bucks County segregated 357 ballots with undated or misdated return envelopes. APP\_00116 (Bucks Interrog. Resp.).
- i. Butler County segregated 66 ballots with undated or misdated return envelopes. APP\_00130 (Butler Interrog. Resp.).
- j. Cambria County segregated 38 ballots with undated or misdated return envelopes. APP\_00140 (Cambria Interrog. Resp.).
- k. Cameron County segregated 5 ballots with undated return envelopes and 0 ballots with misdated envelopes. APP\_00150 (Cameron Interrog. Resp.).
- l. Chester County segregated 67 ballots with undated return envelopes and 68 ballots with misdated envelopes. APP\_00168 (Chester Interrog. Resp.).
- m. Clarion County segregated 9 ballots with undated return envelopes and 3 ballots with misdated envelopes. APP\_00185 (Clarion Interrog. Resp.).
- n. Clearfield County segregated 12 ballots with undated or misdated return envelopes. APP\_00204 (Clearfield Interrog. Resp.).

- o. Clinton County segregated 20 ballots with undated or misdated return envelopes. APP\_00216 (Clinton Interrog. Resp.).
- p. Crawford County segregated 51 ballots with undated or misdated return envelopes. APP\_00233 (Crawford Interrog. Resp.).
- q. Cumberland County segregated 100 ballots with undated or misdated return envelopes. APP\_00252 (Cumberland Interrog. Resp.).
- r. Delaware County segregated 49 ballots with undated return envelopes and 65 ballots with misdated envelopes. APP\_00267 (Delaware Interrog. Resp.).
- s. Elk County segregated 10 ballots with undated or misdated return envelopes. APP\_00278 (Elk Interrog. Resp.).
- t. Erie County segregated 168 ballots with undated return envelopes and 51 ballots with misdated envelopes. APP\_00292 (Erie Interrog. Resp.).
- u. Fayette County segregated 137 ballots with undated or misdated return envelopes. APP\_00309 (Fayette Interrog. Resp.).
- v. Forest County segregated 38 ballots with undated or misdated return envelopes. APP\_00320 (Forest Interrog. Resp.).
- w. Franklin County segregated 114 ballots with undated or misdated return envelopes. APP\_00336 (Franklin Interrog. Resp.).



- x. Fulton County segregated 5 ballots with undated or misdated return envelopes. APP\_00347 (Fulton Interrog. Resp.).
- y. Greene County segregated 11 ballots with undated or misdated return envelopes. APP\_00354 (Greene Interrog. Resp.).
- z. Juniata County segregated 5 ballots with undated or misdated return envelopes. APP\_00363 (Juniata Interrog. Resp.).
- aa. Lackawanna County segregated 160 ballots with undated or misdated return envelopes. APP\_00372 (Lackawanna Interrog. Resp.).
- bb. Lancaster County segregated 232 ballots with undated or misdated return envelopes. APP\_00388 (Lancaster Interrog. Resp.).
- cc. Lehigh County segregated 176 ballots with undated return envelopes and 237 ballots with misdated envelopes. APP\_00400 (Lehigh Interrog. Resp.).
- dd. Luzerne County segregated 166 ballots with undated or misdated return envelopes. APP\_00416 (Luzerne Interrog. Resp.).
- ee. Lycoming County segregated 36 ballots with undated or misdated return envelopes. APP\_00438 (Lycoming Interrog. Resp.).
- ff. McKean County segregated 35 ballots with undated or misdated return envelopes. APP\_00453 (McKean Interrog. Resp.).

- gg. Mercer County segregated 63 ballots with undated or misdated return envelopes. APP\_00461 (Mercer Interrog. Resp.).
- hh. Mifflin County segregated 10 ballots with undated or misdated return envelopes. APP\_00468 (Mifflin Interrog. Resp.).
- ii. Montgomery County segregated 460 ballots with undated or misdated return envelopes. APP\_00481 (Montgomery Interrog. Resp.).
- jj. Northampton County segregated 230 ballots with undated return envelopes and 50 ballots with misdated envelopes. APP\_00495 (Northampton Interrog. Resp.).
- kk. Perry County segregated 27 ballots with undated return envelopes and 8 ballots with misdated envelopes. APP\_00511 (Perry Interrog. Resp.).
- ll. Philadelphia County segregated 2,617 ballots with undated or misdated return envelopes. APP\_00529 (Philadelphia Interrog. Resp.).
- mm. Pike County segregated 55 ballots with undated or misdated return envelopes. APP\_00541 (Pike Interrog. Resp.).
- nn. Potter County segregated 14 ballots with undated return envelopes and 0 ballots with misdated envelopes. APP\_00574 (Potter Interrog. Resp.).

- oo. Schuylkill County segregated 59 ballots with undated or misdated return envelopes. APP\_00587 (Schuylkill Interrog. Resp.).
- pp. Somerset County segregated 63 ballots with undated or misdated return envelopes. APP\_00598 (Somerset Interrog. Resp.).
- qq. Sullivan County segregated 4 ballots with undated or misdated return envelopes. APP\_00609 (Sullivan Interrog. Resp.).
- rr. Susquehanna County segregated 0 ballots with undated or misdated return envelopes. APP\_00619 (Susquehanna Interrog. Resp.).
- ss. Tioga County segregated 4 ballots with undated or misdated return envelopes. APP\_00629 (Tioga Interrog. Resp.).
- tt. Union County segregated 23 ballots with undated or misdated return envelopes. APP\_00634 (Union Interrog. Resp.).
- uu. Warren County segregated 10 ballots with undated return envelopes and 8 ballots with misdated envelopes. APP\_00646 (Warren Interrog. Resp.).
- vv. Washington County segregated 66 ballots with undated or misdated return envelopes. APP\_00666 (Washington Interrog. Resp.).

- ww. Wayne County segregated 40 ballots with undated return envelopes and 15 ballots with misdated envelopes. APP\_00691 (Wayne Interrog. Resp.).
- xx. Westmoreland County segregated 95 ballots with undated or misdated return envelopes. APP\_00705 (Westmoreland Interrog. Resp.).
- yy. Wyoming County segregated 17 ballots with undated return envelopes and 0 ballots with misdated envelopes. APP\_00714. (Wyoming Interrog. Resp.).
- zz. Bedford County segregated 0 ballots with undated or misdated return envelopes. APP\_00731 (Bedford Interrog. Resp.).
- aaa. Carbon County segregated 27 ballots with undated or misdated return envelopes. APP\_00731 (Carbon Interrog. Resp.).
- bbb. Centre County segregated 115 ballots with undated or misdated return envelopes. APP\_00731 (Centre Interrog. Resp.).
- ccc. Columbia County segregated 29 ballots with undated or misdated return envelopes. APP\_00731 (Columbia Interrog. Resp.).
- ddd. Dauphin County segregated 95 ballots with undated or misdated return envelopes. APP\_00731 (Dauphin Interrog. Resp.).

eee. Jefferson County segregated 23 ballots with undated or misdated return envelopes. APP\_00731 (Jefferson Interrog. Resp.).

fff. Huntingdon County segregated 34 ballots with undated or misdated return envelopes. APP\_00731 (Huntingdon Interrog. Resp.).

ggg. Indiana County segregated 107 ballots with undated or misdated return envelopes. APP\_00731 (Indiana Interrog. Resp.).

hhh. Lawrence County segregated 15 ballots with undated or misdated return envelopes. APP\_00731 (Lawrence Interrog. Resp.).

iii. Lebanon County segregated 24 ballots with undated or misdated return envelopes. APP\_00731 (Lebanon Interrog. Resp.).

jjj. Monroe County segregated 462 ballots with undated or misdated return envelopes. APP\_00731 (Monroe Interrog. Resp.).

kkk. Montour County segregated 8 ballots with undated or misdated return envelopes. APP\_00731 (Montour Interrog. Resp.).

lll. Northumberland County segregated 14 ballots with undated or misdated return envelopes. APP\_00731 (Northumberland Interrog. Resp.).

mmm. Snyder County segregated 9 ballots with undated or misdated return envelopes. APP\_00732 (Snyder Interrog. Resp.).

nnn. Venango County segregated 42 ballots with undated or misdated return envelopes. APP\_00732 (Venango Interrog. Resp.).

ooo. York County segregated 1,061 ballots with undated or misdated return envelopes. APP\_00732 (York Interrog. Resp.).

37. In administering the November 2022 general election, the county boards of elections did not count mail ballots that were timely received and submitted in signed envelopes but without a handwritten date on the outer return envelope. APP\_00004 (Adams RFA Resp.); APP\_00021 (Allegheny RFA Resp.); APP\_00038 (Armstrong RFA Resp.); APP\_0050 (Beaver RFA Resp.); APP\_00073 (Berks RFA Resp.); APP\_00091 (Blair RFA Resp.); APP\_00106 (Bradford RFA Resp.); APP\_00114 (Bucks RFA Resp.); APP\_00126 (Butler RFA Resp.); APP\_00137 (Cambria RFA Resp.); APP\_00160 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00194 (Clearfield RFA Resp.); APP\_00212 (Clinton RFA Resp.); APP\_00226 (Crawford RFA Resp.); APP\_00247 (Cumberland RFA Resp.); APP\_00262 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00282 (Erie RFA Resp.); APP\_00303 (Fayette RFA Resp.); APP\_00318 (Forest RFA Resp.); APP\_00330 (Franklin RFA Resp.); APP\_00348 (Fulton RFA Resp.); APP\_00352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00368 (Lackawanna RFA Resp.); APP\_00383 (Lancaster RFA Resp.); APP\_00397 (Lehigh RFA Resp.); APP\_00411 (Luzerne RFA Resp.);

APP\_00431 (Lycoming RFA Resp.); APP\_00450 (McKean RFA Resp.); APP\_00466 (Mifflin RFA Resp.); APP\_00476 (Montgomery RFA Resp.); APP\_00489, APP\_00490 (Northampton RFA Resp.); APP\_00505 (Perry RFA Resp.); APP\_00524 (Philadelphia RFA Resp.); APP\_00544 (Pike RFA Resp.); APP\_00550 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00593 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA Resp.); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA. Resp.); APP\_00642 (Warren RFA Resp.); APP\_00655 (Washington RFA Resp.); APP\_00681 (Wayne RFA Resp.); APP\_00698 (Westmoreland RFA Resp.); APP\_00719 (Wyoming RFA Resp.); *see also* APP\_00822-823 (Berks Dep.); APP\_00867-868 (Lancaster Dep.); APP\_00918-919 (Westmoreland Dep.).

38. Thousands of ballots were set aside and not counted solely based on a missing handwritten date on the return envelope in the November 2022 election. *See* APP\_01494-1496, APP\_01572 (Tetro Decl.) (summarizing manual review of certain counties' ballot envelopes); APP\_01162a (Philadelphia meeting minutes stating 2,143 ballots were excluded based on a missing handwritten date on the return envelope in Philadelphia alone).

- a. For example, Clearfield County set aside the ballot of a voter who omitted the handwritten date on their return envelope, even though the stamp on the envelope indicates the ballot was received by the county board of elections on "OCT 11 2022." An election official wrote a note on this envelope that says "can't come in disabled." APP\_01433.

- b. Clearfield County also set aside the ballot of another voter who omitted the handwritten date on their return envelope, even though the stamp on the envelope indicates the ballot was received by the county board of elections on “OCT 24 2022.” An election official wrote a note on that envelope that says “can not fix[,] in Florida.” APP\_01434.
- c. Cumberland County set aside the ballot of a voter who omitted the handwritten date on the “Today’s Date (Required)” line of the voter declaration form of their return envelope, even though the date “30 OCT 2022” appears in another signed and dated portion of the envelope that was completed by a witness, who assisted the voter because the voter was unable to sign their declaration because of illness or physical disability. APP\_01435.

39. In administering the November 2022 general election, the county boards of elections did not count mail ballots that were timely received and submitted in signed envelopes, but had a handwritten date on the outer return envelope that appeared to pre-date September 19, 2022, or to post-date November 8, 2022. APP\_00022 (Allegheny RFA Resp.); APP\_00038 (Armstrong RFA Resp.); APP\_00051 (Beaver RFA Resp.); APP\_00074 (Berks RFA Resp.); APP\_00091 (Blair RFA Resp.); APP\_00106 (Bradford RFA Resp.); APP\_00114 (Bucks RFA Resp.); APP\_00126 (Butler RFA Resp.); APP\_00137 (Cambria RFA Resp.); APP\_00161 (Chester RFA Resp.); 00182 (Clarion RFA Resp.); APP\_00194 (Clearfield RFA Resp.); APP\_00212



(Clinton RFA Resp.); APP\_00226 (Crawford RFA Resp.); APP\_00262 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00282 (Erie RFA Resp.); APP\_00304, APP\_00305 (Fayette RFA Resp.); APP\_00318 (Forest RFA Resp.); APP\_00330 (Franklin RFA Resp.); APP\_00348 (Fulton RFA Resp.); APP\_00352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00369 (Lackawanna RFA Resp.); APP\_00384 (Lancaster RFA Resp.); APP\_00398 (Lehigh RFA Resp.); APP\_00412 (Luzerne RFA Resp.); APP\_00431 (Lycoming RFA Resp.); APP\_00450 (McKean RFA Resp.); APP\_00466 (Mifflin RFA Resp.); APP\_00477 (Montgomery RFA Resp.); APP\_00490 (Northampton RFA Resp.); APP\_00505 (Perry RFA Resp.); APP\_00525 (Philadelphia RFA Resp.); APP\_00544 (Pike RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00593 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA Resp.); APP\_00642 (Warren RFA Resp.); APP\_00681 (Wayne RFA Resp.); APP\_00699 (Westmoreland RFA Resp.); APP\_00719 (Wyoming RFA Resp.); APP\_00727 (Babst Calland RFA Resp.); *see also* APP\_00822-823 (Berks Dep.); APP\_00868 (Lancaster Dep.); APP\_00918-919 (Westmoreland Dep.).<sup>3</sup>

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<sup>3</sup> The only counties that did not admit this are those that did not report receiving any mail ballots in incorrectly dated envelopes. APP\_00004 (Adams RFA Resp.) (“Adams did not receive any such ballots and therefore no admission is made.”); APP\_00248 (Cumberland RFA Resp.) (“The Cumberland BOE did not receive any mail ballots in connection with the 2022 General Election that were timely received in signed envelopes that showed a date on the outer return envelope predating September 19, 2022, or post-dating November 8, 2022.”); APP\_00562 (Potter Suppl. RFA Resp.) (“As understood the request is DENIED as all ballots set aside by Defendant regarding date issues were ballots which had a blank date on the outer envelope. SUPPLEMENTAL ANSWER: As an additional response the request is DENIED because no ballots were received with dates pre or post the dates mentioned.”); APP\_00146 (Cameron RFA Resp.) (“No such mail ballots were received in connection with the 2022 General Election.”); APP\_00616 (Susquehanna RFA Resp.)

40. At least 21 counties admitted that they provided voters with no notice that their ballot had been set aside because of a missing or incorrect date on the outer return envelope. APP\_00043 (Armstrong Interrog. Resp.); APP\_00100 (Blair Interrog. Resp.); APP\_00109 (Bradford Interrog. Resp.); APP\_00152 (Cameron Interrog. Resp.); APP\_00187 (Clarion Interrog. Resp.); APP\_00219 (Clinton Interrog. Resp.); APP\_00255 (Cumberland Interrog. Resp.); APP\_00323 (Forest Interrog. Resp.); APP\_00356 (Greene Interrog. Resp.); APP\_00375 (Lackawanna Interrog. Resp.); APP\_00391 (Lancaster Interrog. Resp.); APP\_00456 (McKean Interrog. Resp.); APP\_00513 (Perry Interrog. Resp.); APP\_00611 (Sullivan Interrog. Resp.); APP\_00621 (Susquehanna Interrog. Resp.); APP\_00636 (Union Interrog. Resp.); APP\_00648 (Warren Interrog. Resp.); APP\_00671 (Washington Interrog. Resp.); APP\_00692 (Wayne Interrog. Resp.); APP\_00708 (Westmoreland Interrog. Resp.); APP\_00716 (Wyoming Interrog. Resp.); *see also* APP\_00870-871 (Lancaster Dep.); APP\_00921 (Westmoreland Dep.); APP\_00980 (Marks Dep.).

41. At least 20 additional counties admitted that they provided voters with no notice that their ballot had been set aside because of a missing or incorrect date on the outer return envelope, except that they uploaded that information into the SURE system, which sends an automatic notification to voters who provided the

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(“Defendant denies the first clause of the preceding statement insofar as no such ballots had been received”); APP\_00626 (Tioga RFA. Resp.) (“Defendant objects to the preceding request as it assumes events contrary to fact. Subject to this objection, no envelopes bearing dates were uncounted.”); APP\_00655 (Washington RFA Resp.) (“Upon reasonable review of information in Defendant’s possession and control, Defendant is without sufficient knowledge and/or information to admit or deny this Request.”).

county with their email address. APP\_00738-739 (Bedford Interrog. Resp.); APP\_00132 (Butler Interrog. Resp.); APP\_00738-739 (Carbon Interrog. Resp.); APP\_00738-739 (Centre Interrog. Resp.); APP\_00738-739 (Columbia Interrog. Resp.); APP\_00738-739 (Dauphin Interrog. Resp.); APP\_00738-739 (Jefferson Interrog. Resp.); APP\_00364 (Juniata Interrog. Resp.); APP\_00738-739 (Huntingdon Interrog. Resp.); APP\_00738-739 (Indiana Interrog. Resp.); APP\_00738-739 (Lebanon Interrog. Resp.); APP\_00462 (Mercer Interrog. Resp.); APP\_00738-739 (Montour Interrog. Resp.); APP\_00738-739 (Northumberland Interrog. Resp.); APP\_00542 (Pike Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00738-739 (Snyder Interrog. Resp.); APP\_00601 (Somerset Interrog. Resp.); APP\_00738-739 (Venango Interrog. Resp.); APP\_00738-739 (York Interrog. Resp.).

42. All of the voters whose ballots were set aside in the November 2022 election solely because of a missing or incorrect handwritten date on the outer return envelope had previously been determined to be eligible and qualified to vote in the election by their county board of elections. APP\_00008 (Adams Interrog. Resp.); APP\_00029 (Allegheny Interrog. Resp.); APP\_00042 (Armstrong Interrog. Resp.); APP\_00064-65 (Beaver Interrog. Resp.); APP\_00080 (Berks Interrog. Resp.); APP\_00099 (Blair Interrog. Resp.); APP\_00109 (Bradford Interrog. Resp.); APP\_00118 (Bucks Interrog. Resp.); APP\_00132 (Butler Interrog. Resp.); APP\_00141 (Cambria Interrog. Resp.); APP\_00152 (Cameron Interrog. Resp.); APP\_00171 (Chester Interrog. Resp.); APP\_00186 (Clarion Interrog. Resp.); APP\_00205 (Clearfield Interrog. Resp.); APP\_00219 (Clinton Interrog. Resp.); APP\_00238

(Crawford Interrog. Resp.); APP\_00255 (Cumberland Interrog. Resp.); APP\_00269 (Delaware Interrog. Resp.); APP\_00279 (Elk Interrog. Resp.); APP\_00294 (Erie Interrog. Resp.); APP\_00311 (Fayette Interrog. Resp.); APP\_0032 (Forest Interrog. Resp.); APP\_00338 (Franklin Interrog. Resp.); APP\_00347 (Fulton Interrog. Resp.); APP\_00356 (Greene Interrog. Resp.); APP\_00363 (Juniata Interrog. Resp.); APP\_00375 (Lackawanna Interrog. Resp.); APP\_00391 (Lancaster Interrog. Resp.); APP\_00419 (Luzerne Interrog. Resp.); APP\_00440 (Lycoming Interrog. Resp.); APP\_00455 (McKean Interrog. Resp.); APP\_00462 (Mercer Interrog. Resp.); APP\_00470 (Mifflin Interrog. Resp.); APP\_00482 (Montgomery Interrog. Resp.); APP\_00497 (Northampton Interrog. Resp.); APP\_00513 (Perry Interrog. Resp.); APP\_00533 (Philadelphia Interrog. Resp.); APP\_00542 (Pike Interrog. Resp.); APP\_00577 (Potter Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00600 (Somerset Interrog. Resp.); APP\_00611 (Sullivan Interrog. Resp.); APP\_00620 (Susquehanna Interrog. Resp.); APP\_00630 (Tioga Interrog. Resp.); APP\_00636 (Union Interrog. Resp.); APP\_00647 (Warren Interrog. Resp.); APP\_00670 (Washington Interrog. Resp.); APP\_00692 (Wayne Interrog. Resp.); APP\_00708 (Westmoreland Interrog. Resp.); APP\_00715 (Wyoming Interrog. Resp.); APP\_00736-737 (Babst Calland Interrog. Resp.); *see also* APP\_01165-1168 (Philadelphia meeting minutes).

43. The county boards of elections did not identify or raise any fraud concerns with respect to any November 2022 general election mail ballot that was signed and timely received but set aside because of a missing or incorrect handwritten

date on the outer return envelope. APP\_00009 (Adams Interrog. Resp.); APP\_00029 (Allegheny Interrog. Resp.); APP\_00043 (Armstrong Interrog. Resp.); APP\_00064 (Beaver Interrog. Resp.); APP\_00080 (Berks Interrog. Resp.); APP\_00099 (Blair Interrog. Resp.); APP\_00109 (Bradford Interrog. Resp.); APP\_00118 (Bucks Interrog. Resp.); APP\_00132 (Butler Interrog. Resp.); APP\_00141 (Cambria Interrog. Resp.); APP\_00152 (Cameron Interrog. Resp.); APP\_00172 (Chester Interrog. Resp.); APP\_00187 (Clarion Interrog. Resp.); APP\_00205 (Clearfield Interrog. Resp.); APP\_00219 (Clinton Interrog. Resp.); APP\_00239 (Crawford Interrog. Resp.); APP\_00255 (Cumberland Interrog. Resp.); APP\_00270 (Delaware Interrog. Resp.); APP\_00279 (Elk Interrog. Resp.); APP\_00294 (Erie Interrog. Resp.); APP\_00311 (Fayette Interrog. Resp.); APP\_0323 (Forest Interrog. Resp.); APP\_00338 (Franklin Interrog. Resp.); APP\_00347 (Fulton Interrog. Resp.); APP\_00356 (Greene Interrog. Resp.); APP\_00364 (Juniata Interrog. Resp.); APP\_00375 (Lackawanna Interrog. Resp.); APP\_00391 (Lancaster Interrog. Resp.); APP\_00403 (Lehigh Interrog. Resp.); APP\_00417 (Luzerne Interrog. Resp.); APP\_00440 (Lycoming Interrog. Resp.); APP\_00455 (McKean Interrog. Resp.); APP\_00462 (Mercer Interrog. Resp.); APP\_00471 (Mifflin Interrog. Resp.); APP\_00482 (Montgomery Interrog. Resp.); APP\_00497 (Northampton Interrog. Resp.); APP\_00513 (Perry Interrog. Resp.); APP\_00542 (Pike Interrog. Resp.); APP\_00533 (Philadelphia Interrog. Resp.); APP\_00578 (Potter Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00601 (Somerset Interrog. Resp.); APP\_00611 (Sullivan Interrog. Resp.); APP\_00647 (Warren Interrog. Resp.); APP\_00620 (Susquehanna Interrog. Resp.);

APP\_00630 (Tioga Interrog. Resp.); APP\_00636 (Union Interrog. Resp.); APP\_00670 (Washington Interrog. Resp.); APP\_00692 (Wayne Interrog. Resp.); APP\_00708 (Westmoreland Interrog. Resp.); APP\_00716 (Wyoming Interrog. Resp.); APP\_00737 (Babst Calland Interrog. Resp.); APP\_00929g, APP\_00929q, APP\_00929r (Westmoreland Dep.); Phila Bd. Transcript at 14-15.

44. The voters whose ballots were set aside based on a missing or incorrect handwritten date include voters who identify as Democrats, Republicans, and Independents, as well as unaffiliated voters. APP\_01292-1400 (Beaver, Berks, Blair, Butler, Centre, Erie, Franklin, Indiana, Lancaster, Lawrence, Luzerne, Venango, Wayne, and Westmoreland voter lists).

45. The voters whose ballots were set aside based on a missing or incorrect handwritten date ranged in age from 18 to at least 101 years old, and the date requirement had a significant impact on voters who were 65 or older. APP\_01292-1400. In a subset of 13 counties that had reported age data related to affected voters as of February 2023, more than half of those whose ballots were not counted in 2022 were age 65 or older. *E.g.*, APP\_01188 (Greenburg Report). For example:

- a. In Beaver County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 96. Approximately 70 percent of the affected voters in Beaver County were at least 65 years old, and approximately 30 percent of the affected voters were at least 80 years old. APP\_01292-01296.

- b. In Berks County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 101. Approximately 43 percent of the affected voters in Berks County were at least 65 years old, and 16 percent of the affected voters were at least 80 years old. APP\_01298-01353.
- c. In Blair County, the youngest voter affected by the date requirement was 25, and the oldest voter affected by the date requirement was 95. Approximately 69 percent of the affected voters in Blair County were at least 65 years old, and 18 percent of the affected voters were at least 80 years old. APP\_01357-01358.
- d. In Butler County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 96. Approximately 48 percent of the affected voters in Butler County were at least 65 years old, and 16 percent of the affected voters were at least 80 years old. APP\_01359-01360.
- e. In Centre County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 100. Approximately 56 percent of the affected voters in Centre County were at least 65 years old, and 24 percent

of the affected voters were at least 80 years old. APP\_01361-01364.

- f. In Erie County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 92. Approximately 66 percent of the affected voters in Erie County were at least 65 years old, and 25 percent of the affected voters were at least 80 years old. APP\_01367-01372.
- g. In Franklin County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 96. Approximately 60 percent of the affected voters in Franklin County were at least 65 years old, and 30 percent of the affected voters were at least 80 years old. APP\_01373-01375.
- h. In Indiana County, the youngest voter affected by the date requirement was 20, and the oldest voter affected by the date requirement was 94. Approximately 42 percent of the affected voters in Indiana County were at least 65 years old, and 10 percent of the affected voters were at least 80 years old. APP\_01376-01379.
- i. In Lancaster County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date



requirement was 99. Approximately 61 percent of the affected voters in Lancaster County were at least 65 years old, and 22 percent of the affected voters were at least 80 years old. APP\_01380-01386.

j. In Lawrence County, the youngest voter affected by the date requirement was 19, and the oldest voter affected by the date requirement was 92. Approximately 66 percent of the affected voters in Lawrence County were at least 65 years old, and 26 percent of the affected voters were at least 80 years old. APP\_01387.

k. In Luzerne County, the youngest voter affected by the date requirement was 18, and the oldest voter affected by the date requirement was 97. Approximately 61 percent of the affected voters in Luzerne County were at least 65 years old, and 15 percent of the affected voters were at least 80 years old. APP\_01388-01391.

l. In Venango County, the youngest voter affected by the date requirement was 24, and the oldest voter affected by the date requirement was 97. Approximately 77 percent of the affected voters in Venango County were at least 65 years old, and 30 percent of the affected voters were at least 80 years old. APP\_01393.

- m. In Wayne County, the youngest voter affected by the date requirement was 19, and the oldest voter affected by the date requirement was 97. Approximately 59 percent of the affected voters in Wayne County were at least 65 years old, and 25 percent of the affected voters were at least 80 years old. APP\_01395-01396.
- n. In Westmoreland County, the youngest voter affected by the date requirement was 19, and the oldest voter affected by the date requirement was 94. Approximately 67 percent of the affected voters in Westmoreland County were at least 65 years old, and 28 percent of the affected voters were at least 80 years old. APP\_01397-01398.
- o. In Philadelphia County, one of the commissioners reported: “the median age of voters who submitted undated ballots is 64 years old and the median age of voters who submitted misdated ballots is 66 years old. By comparison, the median age of registered voters in Philadelphia is 43. Looked at more closely, 74.5% of undated ballots were submitted by voters age 50 or older and 77.2% of misdated ballots were submitted by voters age 50 or older. At age 60 or older, those numbers are 60.9% for undated ballots and 64.1% for misdated ballots. Over a third of the undated and misdated ballots were submitted by voters over 70

years of age. 37.5% for the undated, and 40.9% for the misdated. 14.1% of the undated ballots were submitted by voters 80 years or older and 13.9% of the misdated ballots were submitted by voters in this age group. Voters age 90 or older submitted 57 undated ballots and 15 misdated ballots. Importantly, these percentages all are significantly higher than the percentage of Philadelphia's registered voters that these age groups represent.... In addition, the Board has reviewed the distribution of these ballots across Philadelphia and that analysis suggests that the issue disproportionately impacts certain Philadelphia communities. These include areas with higher poverty rates, lower rates of educational attainment, and minority communities.” APP\_01163-1164 (Philadelphia meeting minutes).

#### **IV. THE DATE REQUIREMENT**

46. The voter declaration forms that accompany paper mail and absentee ballots include a line for the voter to sign and date the declaration. *See, e.g.*, APP\_01298 (Berks mail envelope); APP\_01299 (Bucks military envelope). The exact phrasing of the label under the date line varies by county—for example, some counties employ the label “Today’s date (required) / Fecha de hoy (obligatorio),” while others use “Today’s date (MM/DD/YYYY (required)).” APP\_01298 (Berks envelope); APP\_01486 (Lancaster envelope).

47. In administering the November 2022 general election, the county boards of elections did not use the handwritten date on the outer return envelope containing

a mail or absentee ballot for any purpose related to determining or confirming the mail ballot voter's age. APP\_00003 (Adams RFA Resp.); APP\_00019-20 (Allegheny RFA Resp.); APP\_00037-38 (Armstrong RFA Resp.); APP\_00049-50 (Beaver RFA Resp.); APP\_00072-73 (Berks RFA Resp.); APP\_00088-90 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_00113 (Bucks RFA Resp.); APP\_00124, APP\_00125 (Butler RFA Resp.); APP\_00136-137 (Cambria RFA Resp.)<sup>4</sup>; APP\_00145-146 (Cameron RFA Resp.); APP\_00158-159 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193-194 (Clearfield RFA Resp.); APP\_0211-212 (Clinton RFA Resp.); APP\_00225-226 (Crawford RFA Resp.); APP\_00245-246 (Cumberland RFA Resp.); APP\_00261 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00281-282 (Erie RFA Resp.); APP\_00301-303 (Fayette RFA Resp.); APP\_00317-318 (Forest RFA Resp.); APP\_00328-329 (Franklin RFA Resp.); APP\_00351-352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00367-368 (Lackawanna RFA Resp.); APP\_00396-397 (Lehigh RFA Resp.); APP\_00410-411 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA Resp.); APP\_00448-449 (McKean RFA Resp.); APP\_00465 (Mifflin RFA Resp.); APP\_00475-476 (Montgomery RFA Resp.); APP\_00488-489 (Northampton RFA Resp.); APP\_00503-504 (Perry RFA Resp.); APP\_00523-524 (Philadelphia RFA Resp.); APP\_00543 (Pike RFA Resp.);

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<sup>4</sup> Cambria County responded to this request (and others) with a simple "No," which can only be interpreted to mean that this county, like all others, never used or referred to the handwritten date to determine or confirm the mail ballot voter's age. Cambria County consistently responded to Plaintiffs' interrogatory requests that it does not contend the handwritten date on Return Envelope is "material in determining whether a mail ballot voter is qualified to vote" (Interrogatory No. 14) and agreed not to oppose Plaintiffs' requested relief in this action (ECF No. 157).

APP\_00548-549 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA Resp.); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA. Resp.); APP\_00641-642 (Warren RFA Resp.); APP\_00653-654 (Washington RFA Resp.); APP\_00680-681 (Wayne RFA Resp.); APP\_00697-698 (Westmoreland RFA Resp.); APP\_00718-719 (Wyoming RFA Resp.); APP\_00725-726 (Babst Calland RFA Resp.); *see also* APP\_00814-816 (Berks Dep.); APP\_00861-862, APP\_00866 (Lancaster Dep.); APP\_00906-910 (Westmoreland Dep.); APP\_00983-984, APP\_00995-997 (Marks Dep.); APP\_01190-1191 (Greenburg Report).

48. In administering the November 2022 general election, the county boards of elections did not use the handwritten date on the outer return envelope containing a mail or absentee ballot for any purpose related to determining or confirming the mail ballot voter's citizenship. APP\_00003 (Adams RFA Resp.); APP\_00019-20 (Allegheny RFA Resp.); APP\_00037-38 (Armstrong RFA Resp.); APP\_00049-50 (Beaver RFA Resp.); APP\_00072-73 (Berks RFA Resp.); APP\_00088-90 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_00113 (Bucks RFA Resp.); APP\_00124-125 (Butler RFA Resp.); APP\_00136-137 (Cambria RFA Resp.); APP\_00145-146 (Cameron RFA Resp.)<sup>5</sup>; APP\_00158-159 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193-194 (Clearfield RFA Resp.);

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<sup>5</sup> Cambria County responded to this request with a simple "No," which can only be interpreted to mean that this county, like all others, never used or referred to the handwritten date to determine or confirm the mail ballot voter's citizenship. *See supra* n.4.

APP\_00211-212 (Clinton RFA Resp.); APP\_00225-226 (Crawford RFA Resp.); APP\_00245-246 (Cumberland RFA Resp.); APP\_00261 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00281-282 (Erie RFA Resp.); APP\_00301, APP\_00303 (Fayette RFA Resp.); APP\_00317-318 (Forest RFA Resp.); APP\_00328-329 (Franklin RFA Resp.); APP\_00351-352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00367-368 (Lackawanna RFA Resp.); APP\_00396-397 (Lehigh RFA Resp.); APP\_00410-411 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA Resp.); APP\_00448-449 (McKean RFA Resp.); APP\_00465 (Mifflin RFA Resp.); APP\_00475-476 (Montgomery RFA Resp.); APP\_00488-489 (Northampton RFA Resp.); APP\_00503-504 (Perry RFA Resp.); APP\_00523-524 (Philadelphia RFA Resp.); APP\_00543 (Pike RFA Resp.); APP\_00548-549 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA. Resp.); APP\_00641-642 (Warren RFA Resp.); APP\_00653-654 (Washington RFA Resp.); APP\_00680-681 (Wayne RFA Resp.); APP\_00697-698 (Westmoreland RFA Resp.); APP\_00718-719 (Wyoming RFA Resp.); APP\_00725-726 (Babst Calland RFA Resp.); *see also* APP\_00814-816 (Berks Dep.); APP\_00861-862, APP\_00866 (Lancaster Dep.); APP\_00906-910 (Westmoreland Dep.); APP\_00983-984, APP\_00995-997 (Marks Dep.); APP\_01190-1191 (Greenburg Report).

49. In administering the November 2022 general election, the county boards of elections did not use the handwritten date on the outer return envelope containing a mail or absentee ballot for any purpose related to determining or confirming the

mail ballot voter's county or duration of residence. APP\_00003 (Adams RFA Resp.); APP\_00019-20 (Allegheny RFA Resp.); APP\_00037-38 (Armstrong RFA Resp.); APP\_00049-50 (Beaver RFA Resp.); APP\_00072-73 (Berks RFA Resp.); APP\_00088-90 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_00113 (Bucks RFA Resp.); APP\_00124-125 (Butler RFA Resp.); APP\_00136-137 (Cambria RFA Resp.)<sup>6</sup>; APP\_00145-146 (Cameron RFA Resp.); APP\_00158-159 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193-194 (Clearfield RFA Resp.); APP\_00211-212 (Clinton RFA Resp.); APP\_00225-226 (Crawford RFA Resp.); APP\_00245-246 (Cumberland RFA Resp.); APP\_00261 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00281-282 (Erie RFA Resp.); APP\_00301, APP\_00303 (Fayette RFA Resp.); APP\_00317-318 (Forest RFA Resp.); APP\_00328-329 (Franklin RFA Resp.); APP\_00351-352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00367-368 (Lackawanna RFA Resp.); APP\_00396-397 (Lehigh RFA Resp.); APP\_00410-411 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA Resp.); APP\_00448-449 (McKean RFA Resp.); APP\_00465 (Mifflin RFA Resp.); APP\_00475-476 (Montgomery RFA Resp.); APP\_00488-489 (Northampton RFA Resp.); APP\_00503-504 (Perry RFA Resp.); APP\_00523-524 (Philadelphia RFA Resp.); APP\_00543 (Pike RFA Resp.); APP\_00548-549 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan

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<sup>6</sup> Cambria County responded to this request with a simple “No,” which can only be interpreted to mean that this county, like all others, never used or referred to the handwritten date to determine or confirm the mail ballot voter's county or duration of residence. *See supra* n.4.

RFA); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA Resp.); APP\_00641-642 (Warren RFA Resp.); APP\_00653-654 (Washington RFA Resp.); APP\_00680-681 (Wayne RFA Resp.); APP\_00697-698 (Westmoreland RFA Resp.); APP\_00718-719 (Wyoming RFA Resp.); APP\_00725-726 (Babst Calland RFA Resp.); *see also* APP\_00814-816 (Berks Dep.); APP\_00861-862, APP\_00866 (Lancaster Dep.); APP\_00906-910 (Westmoreland Dep.); APP\_00983-984, APP\_00995-997 (Marks Dep.); APP\_01190-1191 (Greenburg Report).

50. In administering the November 2022 general election, the county boards of elections did not use the handwritten date on the outer return envelope containing a mail or absentee ballot for any purpose related to determining or confirming the mail ballot voter's felony status. APP\_00003 (Adams RFA Resp.); APP\_00019-20 (Allegheny RFA Resp.); APP\_00037-38 (Armstrong RFA Resp.); APP\_00049-50 (Beaver RFA Resp.); APP\_00072-73 (Berks RFA Resp.); APP\_00088-90 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_00113 (Bucks RFA Resp.); APP\_00124-125 (Butler RFA Resp.); APP\_00136-137 (Cambria RFA Resp.);<sup>7</sup> APP\_00145-146 (Cameron RFA Resp.); APP\_00158-159 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193-194 (Clearfield RFA Resp.); APP\_00211-212 (Clinton RFA Resp.); APP\_00225-226 (Crawford RFA Resp.); APP\_00245-246 (Cumberland RFA Resp.); APP\_00261 (Delaware RFA Resp.);

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<sup>7</sup> Cambria County responded to this request with a simple "No," which can only be interpreted to mean that this county, like all others, never used or referred to the handwritten date to determine or confirm the mail ballot voter's county or duration of residence. *See supra* n.4.



APP\_00276 (Elk RFA Resp.); APP\_00281-282 (Erie RFA Resp.); APP\_00301, APP\_00303 (Fayette RFA Resp.); APP\_00317-318 (Forest RFA Resp.); APP\_00328-329 (Franklin RFA Resp.); APP\_00351-352 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00367-368 (Lackawanna RFA Resp.); APP\_00396-397 (Lehigh RFA Resp.); APP\_00410-411 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA Resp.); APP\_00448-449 (McKean RFA Resp.); APP\_00465 (Mifflin RFA Resp.); APP\_00475-476 (Montgomery RFA Resp.); APP\_00488-489 (Northampton RFA Resp.); APP\_00503-504 (Perry RFA Resp.); APP\_00523-524 (Philadelphia RFA Resp.); APP\_00543 (Pike RFA Resp.); APP\_00548-549 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA. Resp.); APP\_00641-642 (Warren RFA Resp.); APP\_00653-654 (Washington RFA Resp.); APP\_00680-681 (Wayne RFA Resp.); APP\_00697-698 (Westmoreland RFA Resp.); APP\_00718-719 (Wyoming RFA Resp.); APP\_00725-726 (Babst Calland RFA Resp.); *see also* APP\_00814-816 (Berks Dep.); APP\_00861-862, APP\_00866 (Lancaster Dep.); APP\_00906-910 (Westmoreland Dep.); APP\_00983-984, APP\_00995-997 (Marks Dep.); APP\_01190-1191 (Greenburg Report).

51. In administering the November 2022 general election, the county boards of elections did not use the handwritten date on the outer return envelope containing a mail ballot to establish whether they received the ballot by 8:00 P.M. on November 8, 2022. APP\_00003 (Adams RFA Resp.); APP\_00020 (Allegheny RFA Resp.); APP\_00037 (Armstrong RFA Resp.); APP\_00049 (Beaver RFA Resp.); APP\_00073

(Berks RFA Resp.); APP\_00090 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_0013 (Bucks RFA Resp.); APP\_00125 (Butler RFA Resp.); APP\_00136 (Cambria RFA Resp.)<sup>8</sup>; APP\_00145 (Cameron RFA Resp.); APP\_00158 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193 (Clearfield RFA Resp.); APP\_00211 (Clinton RFA Resp.); APP\_00225 (Crawford RFA Resp.); APP\_00246 (Cumberland RFA Resp.); APP\_00261 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00281 (Erie RFA Resp.); APP\_00302 (Fayette RFA Resp.); APP\_00317 (Forest RFA Resp.); APP\_00329 (Franklin RFA); APP\_00351 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00368 (Lackawanna RFA Resp.); APP\_00396 (Lehigh RFA Resp.); APP\_00410 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA Resp.); APP\_00449 (McKean RFA Resp.); APP\_00465 (Mifflin RFA Resp.); APP\_00476 (Montgomery RFA Resp.); APP\_00488 (Northampton RFA Resp.); APP\_0504 (Perry RFA Resp.); APP\_00523 (Philadelphia RFA Resp.); APP\_00543 (Pike RFA Resp.); APP\_00549 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA Resp.); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA. Resp); APP\_00641 (Warren RFA Resp.); APP\_00653 (Washington RFA Resp.); APP\_00680 (Wayne RFA Resp.); APP\_00697 (Westmoreland RFA Resp.); APP\_00718 (Wyoming RFA Resp.); APP\_00725 (Babst Calland RFA Resp.); *see also* APP\_00886-887 (Lancaster Dep.);

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<sup>8</sup> Cambria County responded to this request with a simple “No,” which can only be interpreted to mean that this county, like all others, never used or referred to the handwritten date to establish whether they received the ballot by the applicable deadline. *See supra* n.4.

APP\_00993-995, APP\_01001 (Marks Dep.); APP\_01165-1166 (Philadelphia meeting minutes).

52. Setting aside military-overseas ballots, in administering the November 2022 general election, the county boards of elections did not use or refer to the date handwritten on the outer return envelope containing an absentee ballot to establish whether they received the ballot by the applicable deadline. APP\_00003 (Adams RFA Resp.); APP\_00020-21 (Allegheny RFA Resp.); APP\_00037-38 (Armstrong RFA Resp.); APP\_00049-50 (Beaver RFA Resp.); APP\_00073 (Berks RFA Resp.); APP\_00091 (Blair RFA Resp.); APP\_00105 (Bradford RFA Resp.); APP\_00113-14 (Bucks RFA Resp.); APP\_00125-26 (Butler RFA Resp.); APP\_00136 (Cambria RFA Resp.)<sup>9</sup>; APP\_00145-46 (Cameron RFA Resp.); APP\_00158-59 (Chester RFA Resp.); APP\_00181 (Clarion RFA Resp.); APP\_00193-94 (Clearfield RFA Resp.); APP\_00211-12 (Clinton RFA Resp.); APP\_00225-26 (Crawford RFA Resp.); APP\_00247 (Cumberland RFA Resp.); APP\_00261 (Delaware RFA Resp.); APP\_00276 (Elk RFA Resp.); APP\_00281-82 (Erie RFA Resp.); APP\_00302-03 (Fayette RFA Resp.); APP\_00317-18 (Forest RFA Resp.); APP\_00329 (Franklin RFA Resp.); APP\_00351-52 (Greene RFA Resp.); APP\_00360 (Juniata RFA Resp.); APP\_00368 (Lackawanna RFA Resp.); APP\_00396-97 (Lehigh RFA Resp.); APP\_00410-11 (Luzerne RFA Resp.); APP\_00430 (Lycoming RFA Resp.); APP\_00449 (McKean RFA Resp.); APP\_00465-66 (Mifflin RFA Resp.); APP\_00476 (Montgomery RFA Resp.); APP\_00488-89 (Northampton RFA Resp.); APP\_00504 (Perry RFA Resp.); APP\_00543 (Pike RFA

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<sup>9</sup> See *supra* n.8.

Resp.); APP\_00549-50 (Potter RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00592 (Somerset RFA Resp.); APP\_00607 (Sullivan RFA Resp.); APP\_00615 (Susquehanna RFA Resp.); APP\_00625 (Tioga RFA. Resp.); APP\_00641-42 (Warren RFA Resp.); APP\_00653-54 (Washington RFA Resp.); APP\_00680-81 (Wayne RFA Resp.); APP\_00697-98 (Westmoreland RFA Resp.); APP\_00718-19 (Wyoming RFA Resp.); APP\_00725-26 (Babst Calland RFA Resp.); *see also* APP\_00886-887 (Lancaster Dep.); APP\_00993-995, APP\_01001 (Marks Dep.); APP\_01165 (Philadelphia meeting minutes).

53. A voter could not have signed the voter declaration form on the 2022 general election mail ballot outer return envelope on any date before their county board of elections sent the mail ballot materials for the 2022 election to voters, because the voter would not yet have the mail ballot materials in their possession. For example, if a county board of elections did not send mail ballots to voters until October 1, 2022, then a voter in that county could not have filled out their mail ballot before October 1, 2022, regardless of what if any date the voter wrote on the outer return envelope. APP\_00827, APP00831-832, APP\_00840-41 (Berks Dep.); APP\_00876-877, APP\_00880-881 (Lancaster Dep.); APP\_00928-929 (Westmoreland Dep.); APP\_01000, APP\_01002-1003 (Marks Dep.); APP\_01189-1190 (Greenburg Report).

54. If a county board of elections received and date-stamped a 2022 general election mail ballot before 8:00 P.M. on Election Day (November 8, 2022), then that

ballot was timely received under the Election Code. 25 P.S. §§ 3146.6(c), 3150.16(c); *see also, e.g.*, APP\_00834 (Berks Dep.); APP\_01189 (Greenburg Report).

55. If a county board of elections received a 2022 general election mail ballot by 8:00 P.M. on Election Day (November 8, 2022), then the voter who submitted that ballot could not have filled out that ballot *after* 8:00 P.M. on Election Day, regardless of what if any date the voter wrote on the outer return envelope. APP\_00830 (Berks Dep.); APP\_00874-875 (Lancaster Dep.); APP\_00925-926 (Westmoreland Dep.); APP\_01000 (Marks Dep.).

56. If a county board of elections received a 2022 general election mail ballot *after* 8:00 P.M. on Election Day (November 8, 2022), then the board of elections did not count that ballot, regardless of what if any date the voter wrote on the outer return envelope. APP\_00830a (Berks Dep.); APP\_00875-876 (Lancaster Dep.); APP\_00926-927 (Westmoreland Dep.); APP\_01000-1001 (Marks Dep.).

57. More than 20 county boards of elections have stated that they do not contend that the handwritten date is material in determining whether a mail ballot voter is qualified to vote in the election in which they have cast a ballot. APP\_00010 (Adams Interrog. Resp.); APP\_00031-32 (Allegheny Interrog. Resp.); APP\_00100 (Blair Interrog. Resp.); APP\_00118 (Bucks Interrog. Resp.); APP\_00142 (Cambria Interrog. Resp.); APP\_00174 (Chester Interrog. Resp.); APP\_00220 (Clinton Interrog. Resp.); APP\_00271 (Delaware Interrog. Resp.); APP\_00295 (Erie Interrog. Resp.); APP\_00312 (Fayette Interrog. Resp.); APP\_00324 (Forest Interrog. Resp.); APP\_00364 (Juniata Interrog. Resp.); APP\_00392 (Lancaster Interrog. Resp.);

APP\_00404 (Lehigh Interrog. Resp.); APP\_00456 (McKean Interrog. Resp.); APP\_00483 (Montgomery Interrog. Resp.); APP\_00535 (Philadelphia Interrog. Resp.); APP\_00602 (Somerset Interrog. Resp.); APP\_00612 (Sullivan Interrog. Resp.); APP\_00637 (Union Interrog. Resp.).

58. An additional ten counties have taken no position on this contention. APP\_00043 (Armstrong Interrog. Resp.); APP\_00066 (Beaver Interrog. Resp.); APP\_00187 (Clarion Interrog. Resp.); APP\_00240 (Crawford Interrog. Resp.); APP\_00256 (Cumberland Interrog. Resp.); APP\_00357 (Greene Interrog. Resp.); APP\_00462 (Mercer Interrog. Resp.); APP\_00472 (Mifflin Interrog. Resp.); APP\_00631 (Tioga Interrog. Resp.); APP\_00716 (Wyoming Interrog. Resp.).

59. Of those county boards of elections that identified any purported use for the voter-written date in their discovery responses, 30 counties identified that the only reason for looking at this date was to ensure compliance with the Election Code and the Supreme Court of Pennsylvania's Ball decision. APP\_00080 (Berks Interrog. Resp.); APP\_00110 (Bradford Interrog. Resp.); APP\_00153 (Cameron Interrog. Resp.); APP\_00339 (Franklin Interrog. Resp.); APP\_00348 (Fulton Interrog. Resp.); APP\_00376 (Lackawanna Interrog. Resp.); APP\_00418 (Luzerne Interrog. Resp.); APP\_00499 (Northampton Interrog. Resp.); APP\_00514 (Perry Interrog. Resp.); APP\_00579 (Potter Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00672 (Washington Interrog. Resp.); APP\_00693 (Wayne Interrog. Resp.); APP\_00709 (Westmoreland Interrog. Resp.); APP\_00740 (Babst Calland Interrog.

Resp.); *see also* APP\_00817, APP\_00820-821 (Berks Dep.); APP\_00863-865 (Lancaster Dep.); APP\_00914-916 (Westmoreland Dep.).

60. The only other purported use for the voter-written date identified in discovery by any county is that considering the date written on a voter declaration might aid in prosecution of voter fraud relating to deceased voters. No county mentioned this use of the voter-written date in their interrogatory responses, but both Lancaster County and Westmoreland County addressed it when deposed. APP\_00910-915 (Westmoreland Dep.); APP\_00888-892 (Lancaster Dep.).

61. If a county board of elections learns that a registered voter died before 8:00 P.M. on Election Day, the board of elections removes the deceased person from the voter rolls. 25 P.S. § 3146.8(d); APP\_01191 (Greenburg Report); APP\_01016-1019, APP\_01026-1029 (Greenburg Dep.); APP\_00888-892, APP\_00895-896 (Lancaster Dep.).

62. County boards of elections determine whether a voter died before 8:00 P.M. on Election Day by reviewing Department of Health records, local obituaries, and/or death certificates. APP\_00895-896 (Lancaster Dep.); APP\_00911-912 (Westmoreland Dep.); APP\_01032 (Greenburg Dep.).

63. If a county board of elections learns that a registered voter died before 8:00 P.M. on Election Day, the county board of elections will not count that person's vote, even if the vote was timely submitted before the voter's death. APP\_00818 (Berks Dep.); APP\_00890-891 (Lancaster Dep.); APP\_00911-914 (Westmoreland Dep.); APP\_01016-1019, APP\_01026-1029 (Greenburg Dep.).

64. If a county board of elections learns that a registered voter died before 8:00 P.M. on Election Day, the county board of elections will not count that person’s vote, regardless of what if any handwritten date appears on the outer return envelope of the deceased voter’s ballot. 25 P.S. § 3146.8(d); APP\_00819 (Berks Dep.); APP\_00890-891 (Lancaster Dep.); APP\_00914 (Westmoreland Dep.); APP\_01016-1019, APP\_01026-1029 (Greenburg Dep.).

- a. For example, the Beaver County Board of Elections set aside the ballot of a deceased voter who also happened to write the date on the wrong line of their return envelope. On the return envelope, an elections official wrote “Voter passed away[,] DOH notification 11/3/22[,] moot on date.” APP\_01485.

## **V. Defendants’ Arbitrary and Inconsistent Applications of the Date Requirement**

### **A. Missing or incorrect year**

65. A voter whose mail ballot was timely received by their county board of elections could only have signed the voter declaration form in the year 2022, because the county boards of elections did not begin sending the relevant mail ballot materials to voters until August 2022 or later (*see supra* ¶ 34), and the ballots must have been received by November 8, 2022 to be considered timely. APP\_00835-81 (Berks Dep.); APP\_00878-879, APP\_00884-885 (Lancaster Dep.); APP\_00923-924, APP\_00929g, APP\_00929l-929q (Westmoreland Dep.).



*i. Past year*

66. At least 530 voters' ballots were set aside because their handwritten date included a year earlier than 2022. APP\_01494-1496, APP\_01572 (Tetro Decl.).

67. Of those voters whose ballots were set aside for writing a past year, at least 474 voters wrote a day and month within the Supreme Court of Pennsylvania's date range, but wrote a past year (*e.g.*, 2020 or 2021). APP\_01494-1496, APP\_01572 (Tetro Decl.).

- a. For example, one voter whose ballot was set aside wrote "October 15, 2020" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/17/22." APP\_01466.
- b. Another voter whose ballot was set aside wrote "10/31/21" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "11/02/22." APP\_01467.
- c. Another voter whose ballot was set aside wrote "11-06-2021" on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on "NOV 08 2022." APP\_01468.
- d. Another voter whose ballot was set aside wrote "10/7/1922" on the date line. A stamp on the envelope indicates the ballot was

received by the county board of elections on “2022 OCT 12.”  
APP\_01469.

- e. Another voter whose ballot was set aside wrote “Oct. 18, 2012” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 20.” APP\_01470.
- f. Another voter whose ballot was set aside wrote “10-26-2002” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “2022 OCT 31.” APP\_01471.
- g. Another voter whose ballot was set aside wrote “October 26, 2002” on the date line. APP\_01472.
- h. Another voter whose ballot was set aside wrote “11-2-2002” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/27/22.” APP\_01473.

68. Of those voters whose ballots were set aside for writing a past year, at least 50 voters wrote their birth date instead of the date they signed the declaration. APP\_01494-1496, APP\_01572 (Tetro Decl.).<sup>10</sup> See, e.g., APP\_01474-1484 (11 envelopes with examples of this pattern).

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<sup>10</sup> This total reflects only those birth dates that Plaintiffs could confirm via the lists of voter date of birth that certain counties produced. Additional ballots in other counties looked like possible birth dates, but those counties did not produce complete

- a. For example, one voter whose ballot was set aside wrote “9/25/22” on the date line—the date five days before the ballot was date stamped by the county board of elections on “09/30/2022”—but then crossed out that date (“~~9/25/22~~”) and wrote his date of birth beneath it. APP\_01474; APP\_01365 (Dauphin voter list).

69. Conversely, at least one county board of elections—Montgomery—ultimately decided to count ballots if they determined the voter had written their birth date instead of the date they signed the declaration on the outer return envelope. APP\_01286-1289.

**ii. Future year**

70. At least 228 voters’ ballots were set aside because their handwritten date included a year later than 2022 (*e.g.*, “2023” or “2202”). APP\_01494-1496, APP\_01572 (Tetro Decl.).

- a. For example, one voter whose ballot was set aside wrote “11/3/2023” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/07/22.” APP\_01423.
- b. Another voter whose ballot was set aside wrote “November 7 2023” on the date line. A stamp on the envelope indicates the

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dates of birth against which Plaintiffs could compare the envelopes. APP\_01494-1496, APP\_01572 (Tetro Decl.).

ballot was processed by the county board of elections on “11/08/22.” APP\_01424.

- c. Another voter whose ballot was set aside wrote “11/03/2023” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “2022 NOV 04.” APP\_01425.
- d. Another voter whose ballot was set aside wrote “10/12/2222” on the date line. APP\_01426.
- e. Another voter whose ballot was set aside wrote “10/22/2122” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/25/22.” APP\_01427.
- f. Another voter whose ballot was set aside wrote “10-17-2200” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/29/22.” APP\_01428.
- g. Another voter whose ballot was set aside wrote “10/21/31” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/27/22.” APP\_01429.
- h. Another voter whose ballot was set aside wrote “10-20-2202” on the date line. A stamp on the envelope indicates the ballot was

processed by the county board of elections on “10/23/22.”  
APP\_01430.

- i. Another voter whose ballot was set aside wrote “10/24/2024” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/25/22.” APP\_01431.
- j. Another voter whose ballot was set aside wrote “10-23-2033” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 25.” APP\_01432.

**iii. Omitted year**

71. At least 60 voters’ ballots were set aside because they wrote a handwritten date that was between September 19 and November 8, but omitted the year. APP\_01494-1496, APP\_01572 (Tetro Decl.); *see also* APP\_01153 (meeting minutes reflecting that Luzerne Board voted to reject ballots dated “10/26” and “Oct 2nd”).

- a. For example, one voter whose ballot was set aside wrote “October 8” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/13/22.” APP\_01446.
- b. Another voter whose ballot was set aside wrote “Wednesday Oct. 26” on the date line. A stamp on the envelope indicates the ballot

was processed by the county board of elections on “10/31/22.”  
APP\_01447.

- c. Another voter whose ballot was set aside wrote “11/2” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/04/22.” APP\_01448.
- d. Another voter whose ballot was set aside wrote “Thu. Oct. 6” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/11/22.” APP\_01449.
- e. Another voter whose ballot was set aside wrote “Thursday October 6” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/11/22.” APP\_01450.
- f. Another voter whose ballot was set aside wrote “Oct. 25” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/31/22.” APP\_01451.
- g. Another voter whose ballot was set aside wrote “Nov. 2<sup>nd</sup>” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/03/22.” APP\_01452.

- h. Another voter whose ballot was set aside wrote “10/15” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/18/22.” APP\_01453.
- i. Another voter whose ballot was set aside wrote “10/04” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 7.” APP\_01454.

72. Conversely, at least three county boards of elections—Blair, Fayette, and Montgomery—ultimately decided to count ballots with “partial dates” if the “information in the date line [wa]s sufficient to determine that the ballot was returned within the appropriate date range.” APP\_01286-1289 (Montgomery County voted to count ballots with “partial dates” if the “information in the date line [wa]s sufficient to determine that the ballot was returned within the appropriate date range”); *see also* APP\_01177 (Blair County’s “canvassing board instructions” includes a list of “VALID DATING FORMATS,” which includes month and day without a year); APP\_01161 (meeting minutes reflecting that Fayette Board voted to count ballots dated “Friday November 4th, no year” and “November 3rd, no year”).

## **B. Missing or incorrect month**

73. A voter whose mail ballot was timely received by 8:00 P.M. on November 8, 2022 could only have signed the voter declaration form in the time period between the date that their county boards of elections sent mail ballot packages to voters and

Election Day. APP\_00878-879 (Lancaster Dep.); APP\_00929g-929j, APP\_00929o-929p (Westmoreland Dep.).

74. At least 605 voters' timely-received ballots were set aside because their handwritten date included an incorrect month that indicated that they signed their ballot earlier than September 19, 2022. APP\_01494-1496, APP\_01572 (Tetro Decl.).

- a. For example, one voter whose ballot was set aside wrote "9/13/22" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/14/22." APP\_01455.
- b. Another voter whose ballot was set aside wrote "9-17-2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/18/22." APP\_01456.
- c. Another voter whose ballot was set aside wrote "09/14/2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/17/22." APP\_01457.
- d. Another voter whose ballot was set aside wrote "9/14/2022" on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on "10/16/22." APP\_01458.



- e. Another voter whose ballot was set aside wrote “9-13-2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/20/22.” APP\_01459.
- f. Another voter whose ballot was set aside wrote “9/14/2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/16/22.” APP\_01460.
- g. Another voter whose ballot was set aside wrote “Sept 12, 2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10 16 22.” APP\_01461.
- h. Another voter whose ballot was set aside wrote “9/11/2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/16/22.” APP\_01462.
- i. Another voter whose ballot was set aside wrote “9/17/22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/18/22.” APP\_01463.
- j. Another voter whose ballot was set aside wrote “Sept. 10, 2022” on the date line. A stamp on the envelope indicates the ballot was

processed by the county board of elections on “10/14/22.”  
APP\_01464.

- k. Another voter whose ballot was set aside wrote “9-6-2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/07/22.” APP\_01465.

75. At least 427 voters’ ballots were set aside because their handwritten date included an incorrect month that indicated that they signed their ballot after November 8, 2022 (e.g., “11/28/22”). APP\_01494-1496, APP\_01572 (Tetro Decl.).

- a. For example, one voter whose ballot was set aside wrote “11/23/2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/25/22.” APP\_01414.
- b. Another voter whose ballot was set aside wrote “11/27/2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/31/22.” APP\_01415.
- c. Another voter whose ballot was set aside wrote “11/12/2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/15/22.” APP\_01416.

- d. Another voter whose ballot was set aside wrote “11/19/2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/24/22.” APP\_01417.
- e. Another voter whose ballot was set aside wrote “11-13-2022” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 13.” APP\_01418.
- f. Another voter whose ballot was set aside wrote “11-23-2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/26/22.” APP\_01419.
- g. Another voter whose ballot was set aside wrote “11/14/22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10-17.” APP\_01420.
- h. Another voter whose ballot was set aside wrote “11-25-22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/27/2022.” APP\_01421.
- i. Another voter whose ballot was set aside wrote “11-17-2022” on the date line. A stamp on the envelope indicates the ballot was

received by the county board of elections on “2022 OCT 20.”  
APP\_01422.

76. At least three voters’ ballots were set aside because their handwritten date omitted the month. APP\_01494-1496, APP\_01572 (Tetro Decl.).

- a. For example, one voter whose ballot was set aside wrote “Friday 7 2022” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 12.” APP\_01443.
- b. Another voter whose ballot was set aside wrote “20/2022” on the date line. APP\_01444.
- c. Another voter whose ballot was set aside wrote “14/2022” on the date line. APP\_01445.

**C. Missing or incorrect day**

77. At least four voters’ ballots were set aside because their handwritten date included a day that does not exist. APP\_01494-1496, APP\_01572 (Tetro Decl.).

- a. For example, one voter whose ballot was set aside wrote “10/111/22” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 13.” APP\_01486.
- b. Another voter whose ballot was set aside wrote “11/0/22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/02/22.” APP\_01487.

- c. Another voter whose ballot was set aside wrote “09/31/22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/06/22.” APP\_01488.

78. Conversely, Luzerne County voted to *count* a ballot dated “09/31/22.” APP\_01153 (Luzerne meeting minutes).

79. A voter could not have signed the voter declaration form on the outer return envelope on a date that does not exist.

80. At least 40 voters’ ballots with a handwritten date that omitted the day were set aside. APP\_01494-1496, APP\_01572 (Tetro Decl.).

- a. The majority of these 29 ballots indicated “10,” “Oct,” or “October” for the month, with the remaining indicating “11,” “Nov,” or “November” for the month. APP\_01494-1496, APP\_01572 (Tetro Decl.).
- b. All 29 of these ballots indicated 2022 for the year. APP\_01494-1496, APP\_01572 (Tetro Decl.).
- c. For example, one voter whose ballot was set aside wrote “10- -22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “OCT 28 2022.” APP\_01436.
- d. Another voter whose ballot was set aside wrote “10- -2022” on the date line. A stamp on the envelope indicates the ballot was

processed by the county board of elections on “10/28/2022.”  
APP\_01437.

e. Another voter whose ballot was set aside wrote “10- -2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/19/2022.” APP\_01438.

f. Another voter whose ballot was set aside wrote “10/ /2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/11/22.” APP\_01439.

g. Another voter whose ballot was set aside wrote “10- -2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “OCT 11 2022.” An election official wrote a note on the envelope that reads: “Left message 11/3/22. . . can’t come in to fix 11/4/22.” APP\_01440.

h. Another voter whose ballot was set aside wrote “10/ /2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/31/22.” APP\_01441.

i. Another voter whose ballot was set aside wrote “10- -22” on the date line. A stamp on the envelope indicates the ballot was

processed by the county board of elections on “10/11/22.”  
APP\_01442.

81. Conversely, at least two county board of elections—Bucks and Fayette—voted unanimously to count a mail ballot “dated October 2022 with no day listed,” because the board was “able to ascertain what day the ballot was mailed and what day it was received,” and the “entire month of October is included in the date range in the [Pennsylvania Supreme] Court’s Order.” APP\_01157 (Bucks meeting minutes); *see also* APP\_01161 (Fayette Board voted to count ballot dated “10-no day -2022”).

82. Any day within October 2022 would have been within the range provided by the Supreme Court’s supplemental order in *Ball v. Chapman*. APP\_01150-1151.

#### **D. Wrong line**

83. At least twelve ballots were set aside for having a missing or incorrect date on the voter declaration form, even though the voter had written a date that was within the Supreme Court of Pennsylvania’s date range elsewhere on the outer return envelope. APP\_01494-1496, APP\_01572 (Tetro Decl.).

- a. For example, one voter whose ballot was set aside wrote “Nov 4, 2022” *underneath* the date line instead of on it. APP\_01489.
- b. Another voter whose ballot was set aside wrote their name on the “Today’s Date (Required)” line of the voter declaration, and wrote “10-24-2022” on a different “Today’s Date” line intended for voters who were unable to sign their declaration because of illness or physical disability. APP\_01490.

- c. Another voter whose ballot was set aside wrote “10-15-22” in a box beneath the date line that is intended for county election use only, rather than on the date line. APP\_01491.

**E. “Election Day” as “Today’s Date”**

84. At least 16 ballots were set aside because the voter wrote November 8, 2022 (Election Day) as “Today’s Date” instead of writing the (earlier-in-time) date that they signed the voter declaration form. APP\_01494-1496, APP\_01572 (Tetro Decl.).

- a. For example, one voter whose ballot was set aside wrote “10-12-22” on the date line—the same date the ballot was date stamped “2022 OCT 12” by the county board of elections—but then crossed out that date (“10-12-22”) and wrote “11-8-22” beneath it, accompanied by their initials. APP\_01407.

85. Election Day was within the Supreme Court of Pennsylvania’s date range. APP\_01150-1151.

**F. International dating convention**

86. 18 county boards of elections determined whether the date written on the outer envelope was within the “correct” date range based on only the American dating convention of writing the month, then day, then year (MM/DD/YYYY), and set aside ballots if the voter used a European dating convention of writing the day, then month, then year (*e.g.*, if a voter wrote 1/11/2022 to indicate November 1, 2022). APP\_00039 (Armstrong RFA Resp.); APP\_00051 (Beaver RFA Resp.); APP\_00213 (Clinton RFA Resp.); APP\_00106 (Bradford RFA Resp.); APP\_00277 (Elk RFA Resp.);



APP\_00283 (Erie RFA Resp.); APP\_00319 (Forest RFA Resp.); APP\_00331 (Franklin RFA Resp.); APP\_00353 (Greene RFA Resp.); APP\_00369 (Lackawanna RFA Resp.); APP\_00412 (Luzerne RFA Resp.); APP\_00451 (McKean RFA Resp.); APP\_00467 (Mifflin RFA Resp.); APP\_00506 (Perry RFA Resp.); APP\_00584 (Schuylkill RFA Resp.); APP\_00594 (Somerset RFA Resp.); APP\_00682 (Wayne RFA Resp.); *see also* APP\_00877a, APP\_00882-883 (Lancaster Dep.). Citizens who have spent time overseas may write the date using the day-month-year format rather than the month-day-year format. APP\_01185 (Greenburg Report).

87. Conversely, at least 31 other counties tried to account for both the American and International dating conventions in determining whether the outer return envelope had been correctly dated. APP\_00023, APP\_00024 (Allegheny RFA Resp.); APP\_00074 (Berks RFA Resp.); APP\_00114 (Bucks RFA Resp.); APP\_00127, APP\_00128 (Butler RFA Resp.); APP\_00195 (Clearfield RFA Resp.); APP\_00227 (Crawford RFA Resp.); APP\_00249 (Cumberland RFA Resp.); APP\_00263 (Delaware RFA Resp.); APP\_00305 (Fayette RFA Resp.); APP\_00348 (Fulton RFA Resp.); APP\_00398, APP\_00399 (Lehigh RFA Resp.); APP\_00432 (Lycoming RFA Resp.); APP\_00492 (Northampton RFA Resp.); APP\_00700 (Westmoreland RFA Resp.); APP\_00728-729 (Babst Calland RFA Resp.); *see also* APP\_01146 (citizen comment at Oct. 20, 2022 Berks Board meeting, asking “whether the Election office is checking dates on ballots that may be flipped citing that some people’s country of origin may write a date differently”); APP\_01177 (Blair County’s “canvassing board instructions” includes a list of “VALID DATING FORMATS,” which includes day-month-year).

88. At least 34 ballots were set aside for having “incorrect” dates, even though the handwritten date on the outer return envelope could be read as within the Supreme Court of Pennsylvania’s date range, assuming the voter used the International dating convention (DD-MM-YYYY, rather than MM-DD-YYYY APP\_01494-1496, APP\_01572 (Tetro Decl.); APP\_00841-843 (Berks Dep.); APP\_00929k-n (Westmoreland Dep.).

- a. For example, one voter whose ballot was set aside wrote “1/11/22” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/02/22.” APP\_01408.
- b. Another voter whose ballot was set aside wrote “3-10-2022” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 5.” APP\_01409.
- c. Another voter whose ballot was set aside wrote “4-10-22” on the date line. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT-6.” APP\_01410.
- d. Another voter whose ballot was set aside wrote “06/10/2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/13/22.” APP\_01411.

- e. Another voter whose ballot was set aside wrote “06-10-2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/07/22.” APP\_01412.
- f. Another voter whose ballot was set aside wrote “5/11/2022” on the date line. A stamp on the envelope indicates the ballot was processed by the county board of elections on “11/06/22.” APP\_01413.

**G. Adherence to date range in *Ball* supplemental order**

89. The Supreme Court of Pennsylvania’s supplemental order in *Ball v. Chapman* defined “incorrectly dated outer envelopes” to mean “mail-in ballot outer envelopes with dates that fall outside the date range of September 19, 2022, through November 8, 2022,” and “absentee ballot outer envelopes with dates that fall outside the date range of August 30, 2022, through November 8, 2022.” APP\_01150-1151.

90. At least 17 counties set aside and did not count mail-in or absentee ballot envelopes that bore a handwritten date *within* the court’s prescribed date range (September 19–November 8) if that handwritten date was before the county started sending out mail ballots. For example, because Westmoreland County did not begin sending mail ballots to voters until September 30, 2022, it would not have counted mail ballots that were dated within the *Ball* date range if the handwritten date on the outer return envelope was between September 19 and September 29, 2022. APP\_921a-921c (Westmoreland Dep.). *See also* APP\_00141 (Cambria Interrog. Resp.); APP\_00150 (Cameron Interrog. Resp.); APP\_00185 (Clarion Interrog. Resp.);

APP\_00234 (Crawford Interrog. Resp.); APP\_00321 (Forest Interrog. Resp.); APP\_00336 (Franklin Interrog. Resp.); APP\_00347 (Fulton Interrog. Resp.); APP\_00363 (Juniata Interrog. Resp.); APP\_00454 (McKean Interrog. Resp.); APP\_00469 (Mifflin Interrog. Resp.); APP\_00575 (Potter Interrog. Resp.); APP\_00610 (Sullivan Interrog. Resp.); APP\_00619-620 (Susquehanna Interrog. Resp.); APP\_00629-630 (Tioga Interrog. Resp.); APP\_00635 (Union Interrog. Resp.); APP\_00646 (Warren Interrog. Resp.); APP\_00706 (Westmoreland Interrog. Resp.).

91. At least 25 other counties followed the date range in the Supreme Court of Pennsylvania’s supplemental order in *Ball v. Chapman*, even where the handwritten date on the mail-in or absentee ballot envelope was “incorrect” inasmuch as it occurred before the counties sent 2022 general election mail ballot materials to voters, or after the date that the voter’s ballot was received by their county board of elections. APP\_00826-828 (Berks Dep.); APP\_00872-873 (Lancaster Dep.); APP\_00027-28 (Allegheny Interrog. Resp.); APP\_00062 (Beaver Interrog. Resp.); APP\_00078 (Berks Interrog. Resp.); APP\_00097 (Blair Interrog. Resp.); APP\_00204 (Clearfield Interrog. Resp.); APP\_00268 (Delaware Interrog. Resp.); APP\_00292, APP\_00293 (Erie Interrog. Resp.); APP\_00417 (Luzerne Interrog. Resp.); APP\_00530-531 (Philadelphia Interrog. Resp.); APP\_00733-34 (Babst Calland Resp.); *see also* APP\_01159 (Fayette meeting minutes).

92. For example, Berks County counted ballots if the handwritten date on the outer return envelope was September 20, 2022, even though it did not begin

sending mail ballots to voters until October 7, 2022. APP\_00826-829, APP\_00831 (Berks Dep.).

93. Likewise, Lancaster County counted ballots if the handwritten date on the outer return envelope was September 20, 2022, even though it did not begin sending mail ballots to voters until September 26, 2022. APP\_00872-873 (Lancaster Dep.).

94. At least one county—Fayette—counted ballots where the voter had written an envelope date that was after the date that the board of elections had already received and time-stamped the package. APP\_01159 (Fayette Board voted to count all ballots that fell within the Supreme Court of Pennsylvania’s date range, including “incorrectly dated ballots within the date range of September 19, 2022, through November 8, 2022”).

95. Other counties did not count ballots where the voter had written an envelope date that was after the date that the board of elections had already received and time-stamped the package, even if the voter’s handwritten date was within the Supreme Court of Pennsylvania’s date range.

96. At least two counties took different approaches to mail-in and absentee ballots. The county boards of elections in both Elk and Somerset County counted absentee ballots if the outer return envelope contained any date within the full *Ball* date range (*i.e.*, even before the board had sent the ballot materials to voters), but counted mail-in ballots only if the handwritten date was *after* the date on which the

board had sent out the ballot materials. APP\_00279 (Elk Interrog. Resp.); APP\_00599 (Somerset Interrog. Resp.).

#### **H. Date appears correct**

97. At least 47 ballots were set aside for having “incorrect” dates, even though the voter included a handwritten date on the outer return envelope that appeared correct and was within the Supreme Court of Pennsylvania’s date range. APP\_01494-1496, APP\_01572 (Tetro Decl.); *see also, e.g.*, APP\_00844 (Berks Dep.).

- a. For example, one voter whose ballot was set aside wrote “10/17/2020” on the date line, then crossed out the year (“~~2020~~”), and wrote the year “2022” beneath it. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 19.” APP\_01402.
- b. Another voter whose ballot was set aside wrote “10/23/2023” on the date line, then crossed out the last digit of the year and wrote a 2 next to it on the date line (“~~2023~~2”), and wrote their initials beneath the crossed-out digit. A stamp on the envelope indicates the ballot was processed by the county board of elections on “10/26/22.” APP\_01403.
- c. Another voter whose ballot was set aside wrote the date “9-8-22,” then crossed out that date (“~~9-8-22~~”) and wrote “10-8-22” next to it. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 13.” APP\_01404.

- d. Another voter whose ballot was set aside wrote “10/14/2023” on the date line, then crossed that date out (“~~10/14/2023~~”), and wrote the date “10/14/2022” next to it on the date line. The postmark on that ballot reads: “14 OCT 2022.” APP\_01405.
- e. Another voter whose ballot was set aside wrote “10/4/21” on the date line, then crossed out the year (“~~21~~”), and wrote the year “22” next to it on the date line, along with their initials. A stamp on the envelope indicates the ballot was received by the county board of elections on “2022 OCT 5.” APP\_01406.

## **VI. UNEQUAL TREATMENT AS COMPARED TO MILITARY/OVERSEAS BALLOTS**

98. The Secretary of State provides envelope templates that prescribe the form of the envelopes that county boards of elections must use for mail and absentee ballots. APP\_00963-964 (Marks Dep.).

99. The templates for both the mail ballot and the absentee ballot include a voter declaration form that the voter must sign and date on the return envelope that contains the voter’s secrecy envelope and ballot. APP\_00966-973 (Marks Dep.).

100. The county boards of elections vary the form and layout of the return envelopes that they submit to voters, but each county’s mail ballot materials include an outer return envelope (inside which the voter places their secrecy envelope and, in turn, their ballot) bearing a voter declaration that voters are instructed to sign and date. APP\_00966-973 (Marks Dep.); *see, e.g.*, APP\_01290 (Berks mail ballot envelope).

101. Each county’s absentee ballot materials also include a voter declaration that voters are instructed to sign and date. APP\_00966-973 (Marks Dep.); APP\_00933-936 (Westmoreland Dep.). When UOCAVA voters request a paper ballot from their county board of elections (rather than opting to submit their ballot electronically), that declaration appears on the envelope containing the voter’s secrecy envelope and ballot. APP\_00933-936 (Westmoreland Dep.); *see, e.g.*, APP\_01291 (Bucks military-overseas ballot envelope).

102. The instructions that Berks County provided to domestic voters submitting mail ballots in the November 2022 general election told the voters to “Sign and date the pre-addressed return envelope,” and told voters that “YOUR BALLOT WILL NOT COUNT IF IT IS NOT SIGNED AND DATED.” APP\_01170.

103. The instructions that Berks County provided to UOCAVA voters submitting absentee ballots in the November 2022 general election told the voters to ““Fill out the absentee elector’s declaration on the back of this envelope with your name and address. Be sure to sign where indicated. Your ballot will not be counted without a signature,” but did not indicate that the ballot would not be counted if the declaration on the return envelope lacked a handwritten date. APP\_01169.

104. Berks County did not set aside any absentee ballots submitted by UOCAVA voters in the November 2022 general election on the basis of a missing or incorrect handwritten date on the ballot’s return envelope. APP\_00103 (Berks Dep.); Berks ROG Resp. at 6.



105. The envelopes that Westmoreland County provided to domestic voters submitting mail ballots in the November 2022 general election instructed voters that “YOUR BALLOT WILL NOT BE COUNTED UNLESS: You sign and date the voter’s declaration in your own handwriting[.]” APP\_01401.

106. The envelopes that Westmoreland County provided to UOCAVA voters did not instruct those voters that their ballots would not be counted if the voter failed to date the voter’s declaration. APP\_01201.

107. Westmoreland County did not set aside any absentee ballots submitted by UOCAVA voters in the November 2022 general election on the basis of a missing or incorrect handwritten date on the ballot’s return envelope. APP\_00936-937 (Westmoreland Dep.); Westmoreland ROG Resp. at 7.

108. At least three county boards of elections—Bucks, Philadelphia, and Tioga—counted timely-received military-overseas ballots in the November 2022 general election if the voter failed to date their voter declaration or included a date that the county deemed to be incorrect. APP\_00118-119 (Bucks Interrog. Resp., Bucks counted 11 ballots with reflecting that undated or misdated declarations); APP\_00535-536 (Philadelphia Interrog. Resp., reflecting that Philadelphia counted 13 ballots with undated or misdated declarations); APP\_00632 (Tioga Interrog. Resp., reflecting that Tioga counted 10 ballots with undated or misdated declarations).

109. At least one additional county board of elections—Lehigh—did not check the date on the voter declaration for timely-received military-overseas ballots in the November 2022 general election. APP\_00405 (Lehigh Interrog. Resp.).

110. At least five additional county boards of elections did not segregate or set aside any timely-received military-overseas ballots in the November 2022 general election based on a missing or incorrect date on the voter declaration. APP\_00579 (Potter Interrog. Resp.); APP\_00716 (Wyoming Interrog. Resp.); APP\_00673 (Washington Interrog. Resp.); APP\_00484 (Montgomery Interrog. Resp.); APP\_00499 (Northampton Interrog. Resp.).

111. Over half of the county boards of elections—37 in total—indicated that they did not receive any military-overseas ballots in the November 2022 general election that had a missing or incorrect date on the voter declaration, and so they did not have to determine whether to set aside or count such ballots. APP\_00010 (Adams Interrog. Resp.); APP\_00031 (Allegheny Interrog. Resp.); APP\_00044 (Armstrong Interrog. Resp.); APP\_00066 (Beaver Interrog. Resp.); APP\_00082 (Berks Interrog. Resp.); APP\_00101 (Blair Interrog. Resp.); APP\_00110 (Bradford Interrog. Resp.); APP\_00133 (Butler Interrog. Resp.); APP\_00142 (Cambria Interrog. Resp.); APP\_00153-54 (Cameron Interrog. Resp.); APP\_00206 (Clearfield Interrog. Resp.); APP\_00220 (Clinton Interrog. Resp.); APP\_00240-41 (Crawford Interrog. Resp.); APP\_00256 (Cumberland Interrog. Resp.); APP\_00271 (Delaware Interrog. Resp.); APP\_00279 (Elk Interrog. Resp.); APP\_00296 (Erie Interrog. Resp.); APP\_00313 (Fayette Interrog. Resp.); APP\_00324 (Forest Interrog. Resp.); APP\_00339 (Franklin Interrog. Resp.); APP\_00348 (Fulton Interrog. Resp.); APP\_00357 (Greene Interrog. Resp.); APP\_00377 (Lackawanna Interrog. Resp.); APP\_00421 (Luzerne Interrog. Resp.); APP\_00442 (Lycoming Interrog. Resp.); APP\_00462 (Mercer Interrog. Resp.);

APP\_00472 (Mifflin Interrog. Resp.); APP\_00542 (Pike Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00602 (Somerset Interrog. Resp.); APP\_00612 (Sullivan Interrog. Resp.); APP\_00621 (Susquehanna Interrog. Resp.); APP\_00637 (Union Interrog. Resp.); APP\_00649 (Warren Interrog. Resp.); APP\_00692 (Wayne Interrog. Resp.); APP\_00709 (Westmoreland Interrog. Resp.).

## **VII. RELIEF**

112. County boards of elections are responsible for creating and retaining official records of election results, including a copy of the returns that must be available for public inspection at the county election board's office. APP\_01183 (Greenburg Report); 25 P.S. § 3152.

113. County boards of elections maintain digital and paper records of the total number of votes received by each candidate in past elections. APP\_00846 (Berks Dep.); APP\_00930-931 (Westmoreland Dep.); APP\_01183 (Greenburg Report).

114. County boards of elections are capable of updating records of the total number of votes received by each candidate in past elections if ordered to do so by a court. APP\_01183-1184 (Greenburg Report); APP\_00931-932 (Westmoreland Dep.).

## **VIII. CURE**

115. At least 35 counties provided no opportunities to cure ballots in 2022. APP\_00043 (Armstrong Interrog. Resp.); APP\_00739 (Bedford Interrog. Resp.); APP\_00099-100 (Blair Interrog. Resp.); APP\_00132 (Butler Interrog. Resp.); APP\_00152-53 (Cameron Interrog. Resp.); APP\_00739 (Carbon Interrog. Resp.); APP\_00739 (Centre Interrog. Resp.); APP\_00187 (Clarion Interrog. Resp.); APP\_00219 (Clinton Interrog. Resp.); APP\_00739 (Columbia Interrog. Resp.);

APP\_00255 (Cumberland Interrog. Resp.); APP\_00739 (Dauphin Interrog. Resp.); APP\_00338 (Franklin Interrog. Resp.); APP\_00356 (Greene Interrog. Resp.); APP\_00739 (Huntingdon Interrog. Resp.); APP\_00739 (Indiana Interrog. Resp.); APP\_00739 (Jefferson Interrog. Resp.); APP\_00456 (Juniata Interrog. Resp.); APP\_00391 (Lancaster Interrog. Resp.); APP\_00739 (Lebanon Interrog. Resp.); APP\_00462 (Mercer Interrog. Resp.); APP\_00739 (Montour Interrog. Resp.); APP\_00739 (Northumberland Interrog. Resp.); APP\_00513 (Perry Interrog. Resp.); APP\_00739 (Snyder Interrog. Resp.); APP\_00601 (Somerset Interrog. Resp.); APP\_00611 (Sullivan Interrog. Resp.); APP\_00587 (Schuylkill Interrog. Resp.); APP\_00636-37 (Union Interrog. Resp.); APP\_00739 (Venango Interrog. Resp.); APP\_00648 (Warren Interrog. Resp.); APP\_00671-72 (Washington Interrog. Resp.); APP\_00708-09 (Westmoreland Interrog. Resp.); APP\_00716 (Wyoming Interrog. Resp.); APP\_00739 (York Interrog. Resp.).

116. At least eight additional counties provided opportunities to cure ballots only if voters affirmatively reached out about their ballots, as no notice was provided to voters on an individual basis. APP\_00064-65 (Beaver Interrog. Resp.); APP\_00110 (Bradford Interrog. Resp.); APP\_00323 (Forest Interrog. Resp.); APP\_00376 (Lackawanna Interrog. Resp.); APP\_00471 (Mifflin Interrog. Resp.); APP\_00533-34 (Philadelphia Interrog. Resp.); APP\_00578 (Potter Interrog. Resp.); APP\_00693 (Wayne Interrog. Resp.).

Dated: May 29, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that, on the date set forth below, I caused a true and correct copy of the foregoing L.R. 56(B)(1) Statement to be served via the Court's electronic filing system upon all counsel of record.

Dated: May 29, 2024  
/s/ Ari Savitzky