

IN THE SUPREME COURT OF PENNSYLVANIA

No. 102 MM 2022

DAVID BALL, *et al.*,

Petitioners,

v.

LEIGH M. CHAPMAN, in her official capacity as
Acting Secretary for the Commonwealth, *et al.*,

Respondents.

**BRIEF OF AMICUS CURIAE LAWYERS DEMOCRACY FUND
IN SUPPORT OF PETITIONERS**

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STATEMENT OF INTEREST OF AMICUS CURIAE¹

Lawyers Democracy Fund (LDF) is a non-profit organization established to promote the role of ethics, integrity, and legal professionalism in the electoral process. To accomplish this, LDF primarily conducts, funds, and publishes research and in-depth analysis regarding the effectiveness of current and proposed election methods, particularly those that fail to receive adequate coverage in the national media. Robust defense of reasonable, validly-enacted election laws is essential to achieve these goals. As part of its mission, LDF is a resource for lawyers, journalists, policy-makers, courts, and others interested in elections.

LDF has filed numerous *amicus curiae* briefs in federal and state courts around the country in an effort to edify courts and assist them in reaching just and accurate decisions in cases concerning issues of election administration. LDF recently filed an amicus brief in the United States Supreme Court in *Moore v. Harper*, No. 21-1271 (U.S. S. Ct.), in defense of the authority of state legislatures to set the rules of federal elections, pursuant to Article I, Sec. 4, cl. 1 of the U.S. Constitution, without being countermanded by other branches of state government. *See* Brief for Lawyers Democracy Fund And State Legislators As *Amicus Curiae* In Support of Petitioners, *Moore v. Harper*, No. 21-1271 (U.S. Sept. 6, 2022), . That

¹ No person other than the *amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief or authored in whole or in part this brief.

issue is present here as the Pennsylvania General Assembly utilized its constitutional powers to prescribe election rules concerning mail voting in Pennsylvania and enacted safeguards it deemed necessary or beneficial to promote integrity and confidence in elections.

LDF also recently filed an amicus brief at the United States Supreme Court in *Ritter v. Migliori*, No. 22-30 (U.S. S. Ct.), where petitioners sought the application of the Materiality Provision of the Civil Rights Act of 1964² to invalidate the thoughtful safeguards enacted by the Pennsylvania General Assembly, namely the requirement that mail ballots be dated by the voter to be valid. As LDF made clear, this was an “unprecedented and erroneous theory that would invalidate an array of quotidian ballot-casting rules and open a Pandora’s Box of novel challenges to reasonable election administration methods.” See *Brief for Lawyers Democracy Fund As Amicus Curiae In Support of Petitioner* (U.S. Supreme Ct., Case No. 22-30). The United States Supreme Court granted *certiorari* and vacated the Third Circuit’s decision. *Ritter v. Migliori*, No. 22-30, 2022 WL 6571686 (U.S. Oct. 11, 2022) (Mem.). However, this question is once again before the courts, and this Court now has the opportunity to resolve this dispute once and for all.

² 52 U.S.C. § 10101(2)(B).

The effort by Petitioners to prevent Secretary Chapman from encouraging every County Board of Elections (“Boards”) to count undated mail ballots in the upcoming election in violation of the law prescribed by the General Assembly is of utmost importance. LDF supports efforts to ensure the upcoming 2022 general election and future elections are conducted in accordance with the rules that the General Assembly has prescribed, or has declined to prescribe, by law. For these reasons, LDF has an interest in Petitioners’ King’s Bench Petition.

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SUMMARY OF ARGUMENT

As set forth in Petitioners' King's Bench Petition filed on October 16, 2022, the Election Code, which was duly passed by the General Assembly and signed into law by the Governor, expressly requires voters who elect to vote by mail to date and sign their ballots. See 25 P.S. §§ 3146.6(a), 3150.16(a) (the elector "*shall . . . fill out, date and sign the declaration*" on the outer envelope of the ballot) (emphasis added). Flouting the textual clarity of this requirement, as well as precedent of this Court and other Pennsylvania courts ruling the requirement to be mandatory, Respondent Pennsylvania Secretary of the Commonwealth Leigh Chapman advised the County Boards of Elections (Boards) to ignore the law and to count undated or wrongly dated mail ballots. See Pa. Dep't of State, *Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes* (Sept. 26, 2022).

The Secretary's guidance countermands election rules set by the General Assembly and substitutes her policy judgments for the legislature's. This amounts to a usurpation of legislative authority in violation of the Elections Clause of the U.S. Constitution.

The Framers of the United States Constitution delegated the federal power to "prescribe[]" the "Times, Places, and Manner of holding Elections for Senators and Representatives" "in each State" to "the Legislature thereof." U.S. Const. Art. I, § 4, cl. 1. The United States Constitution endows Pennsylvania's General Assembly with

exclusive authority concerning what rules are to be followed in Pennsylvania elections. This Court and other Pennsylvania courts have affirmed the General Assembly's authority to set election rules and likewise have respected the statutory requirement that voters date their mail ballots for them to be valid. *See In re Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, 241 A.3d 1058, 1079-80 (Pa. 2020) (Opinion of Justice Wecht); *id.* at 1090-91 (Opinion of Justices Dougherty, Saylor, and Mundy); *Ritter v. Lehigh Cnty. Bd. of Elecs.*, 272 A.3d 989 (Pa. Commw. 2022), *appeal denied* 271 A.3d 1285 (Pa. 2022) ("Upon review, we conclude that the 257 ballots that do not contain a date must be set aside and not counted in the Municipal Election."); *In re Election in Region 4 for Downingtown Sch. Bd. Precinct Uwchlan 1*, 272 A.3d 993 (Pa. Commw. 2022), *appeal denied*, 273 A.3d 508 (Pa. 2022).

Only the Secretary has arrogated authority to herself to substitute her judgments for the legislature's. Unless this Court enforces the General Assembly's constitutional authority, there is little chance to restrain the Secretary of State and other state agencies from usurping the legislative role and politicizing election administration in the future. This Court should declare the Secretary's guidance unlawful and grant Petitioners' request to enforce the General Assembly's law requiring undated and wrongly dated mail ballots to be invalidated.

Pursuant to this Court's order of October 21, 2022, *amicus curiae* Lawyers Democracy Fund files this brief to answer question b. in the affirmative and question c. in the negative.

ARGUMENT

I. The United States Constitution assigns the sole responsibility of setting time, place, and manner rules for federal elections in Pennsylvania to the General Assembly.

The Framers of the United States Constitution intentionally delegated the authority to prescribe election rules and procedures to “the Legislature” of each state and no other body. U.S. Const. Art. I, § 4, cl. 1 (“Elections Clause”). This Court now has the opportunity to affirm this express and exclusive delegation of power and prevent what will inevitably be the transformation of state agencies and officials into super-legislatures selected for their eagerness to achieve political ends, just as the Secretary has done in the case at hand by directing Boards to count undated mail ballots.

The Elections Clause provides clearly:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Const. art. I, § 4, cl. 1.

The Elections Clause makes only one body in each state responsible for adopting the rules and regulations of federal elections: the state legislature. U.S. Const. art. I, § 4, cl. 1 (“the Legislature thereof.”). This means that “state legislatures—not federal judges, not state judges, not state governors, not other state officials—bear primary responsibility for setting election rules.” *DNC v. Wis. State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring). The Elections Clause imposes “the duty” on states legislatures “to provide for the election of representatives to the Federal Congress,” *Arizona v. Inter-Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013), and in particular the responsibility to set the rules for conducting elections.

When a state legislature enacts a statute regulating the time, place, and manner of a federal election, it acts by virtue of an “exclusive delegation of power under the Elections Clause.” *Cook v. Gralike*, 531 U.S. 510, 523 (2001). Such delegation “convey[s] the broadest power of determination” to the legislature and is subject only to another constraint expressed in the Federal Constitution. *Chiafalo v. Washington*, 140 S. Ct. 2316, 2324 (2020). Adhering to this, the United States Supreme Court rejected the idea “that the right to vote in any manner” is “absolute,” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992), for “there must be a substantial regulation of elections if they are to be fair and honest.” *Id.* (quoting

Storer v. Brown, 415 U.S. 724, 730 (1974)). This substantial regulation is only precluded where it enacts “excessively burdensome requirements.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 202 (2008) (plurality opinion) (citation omitted). In *Crawford*, six Justices easily held that a photo-identification requirement—a voting safeguard that has overwhelming support among voters—is a reasonable voting requirement. *Id.* at 202–03; *see also id.* at 204–09 (Scalia, J., concurring in the judgment).

The freedom of state legislatures to enact the voting methods they deem appropriate comes from the Framers’ strong “preference for the democratic process” in regulating elections. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 416 (2006) (opinion of Kennedy, J.). This is evident in the Elections Clause and elsewhere in the United States Constitution where the Framers provided that federal elections would be principally regulated by “the political branches.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506 (2019); *see* U.S. Const. art. I, § 4, cl. 1; art. II, § 1, cl. 2. There is a well-established “presumption ... that ... the legislature is more directly amenable to the people,” *Morrison v. Lamarre*, 65 A.2d 217, 222–23 (R.I. 1949). Therefore, the Framers recognized that delegating the power to prescribe election rules to state legislatures ensured utmost democratic accountability.

Furthermore, the Elections Clause acknowledges a state “legislature’s expertise” in enacting election regulations. *League of United Latin Am. Citizens*, 548 U.S. at 415. This is evident in the Framers’ understanding that state legislatures are best equipped to prescribe proper election rules in accordance “to the peculiar local, or political convenience of the states.” 2 Joseph Story, *Commentaries on the Constitution of the United States* 287 (1833). Prescribing election rules is entirely political and requires considering countless competing considerations to arrive at an effective result. Such result cannot be honorably achieved by another body, and the Elections Clause ensures the state legislatures exercise this role alone.

If the Elections Clause means anything, it means the legislature of each state alone has the power to prescribe federal election rules. Where another state official, such as the Secretary, seeks to usurp this authority, that official’s action is most certainly invalid and void.

II. The Pennsylvania General Assembly expanded absentee voting while also prescribing valid requirements to vote by mail.

Acting pursuant to its constitutionally derived authority under the Elections Clause, the General Assembly procured a bipartisan compromise in 2019 to allow “all qualified electors to vote by mail, without requiring the electors to demonstrate their absence from the voting district on Election Day.” *Pa. Democratic Party v.*

Boockvar, 238 A.3d 345, 352 (Pa. 2020) (citing Act 77 of 2019, 25 P.S. §§ 3150.11- 3150.17). This compromise included several important and material regulations that dictate the process for voting by mail, including the requirements voters must satisfy for their mail ballot to be counted. The compromise was so delicate that the General Assembly even included a non-severability provision invalidating the entire act if any provision were later invalidated. *See* Act of October 31, 2019, P.L. 552, No. 77, § 11.

The General Assembly mandated that mail voters “shall...fill out, *date* and sign the declaration” on the outer envelope of the mail ballot for it to be valid. *See* 25 P.S. §§ 3146.6(a), 3150.16(a) (emphasis added). The General Assembly intentionally and validly exercised their constitutional authority in deciding to require voters to date their mail. *See generally, In re 2020 Canvass*, 241 A.3d at 1079-80, 1082 (Opinion of Justice Wecht); *id.* at 1090-91 (Opinion of Justices Dougherty, Saylor, and Mundy). The text of the statute demonstrates the General Assembly’s intention for strict adherence, for the General Assembly’s use of “shall” to mandate the voter satisfy the date requirement “carries an imperative or mandatory meaning[,]” particularly when used in the Election Code. *In re Canvass of Absentee Ballots of Nov. 4, 2003 General Election*, 843 A.2d 1223, 1231 (Pa. 2004); *In In re 2020 Canvass*, 241 A.3d 1087 (Opinion of Justice Wecht) (“The

only practical and principled alternative is to read ‘shall’ as mandatory.”); *id.* at 1090 (Opinion of Justice Dougherty) (“the meaning of the terms ‘date’ and ‘sign’ — which were included by the legislature — are self-evident, they are not subject to interpretation, and the statutory language expressly requires that the elector provide them.”).

Indeed, a majority of Justices on this Court have affirmed that the General Assembly’s duly enacted date requirement for mail ballots was intended to be mandatory and not discretionary. *See In re 2020 Canvass*, 241 A.3d at 1079-80 (Opinion of Justice Wecht) (“I would treat the date and sign requirement as mandatory in both particulars, with the omission of either item sufficient without more to invalidate the ballot in question.”); *see also id.* at 1082 (“A court’s only ‘goal’ should be to remain faithful to the terms of the statute that the General Assembly enacted, employing only one juridical presumption when faced with unambiguous language: that the legislature meant what it said.”); *id.* at 1090-91 (Opinion of Justices Dougherty, Saylor, and Mundy). The General Assembly meant what it said in the case at hand, namely that the date requirement is mandatory. *See id.* at 1089 (“[T]he Election Code should be interpreted with unstinting fidelity to its terms, and...election officials should disqualify ballots that do not comply with unambiguous statutory requirements.”).

As a majority of Justices on this Court have validated, the date requirement serves important, indeed “weighty interests.” *In re 2020 Canvass*, 241 A.3d 1058, 1087 (Pa. 2020) (Opinion of Justice Wecht) (“Only by [reading ‘shall’ as mandatory] may we restore to the legislature the onus for making policy judgments about what requirements are necessary to ensure the security of our elections against fraud and avoid inconsistent application of the law, especially given the certainty of disparate views of what constitute ‘minor irregularities’ and countervailing ‘weighty interests.’”); *id.* at 1090 (Pa. 2020) (Dougherty, J., dissenting in part) (“I cannot agree that the obligation of electors to set forth the date they signed the declaration on that envelope does not carry ‘weighty interests.’”). In *In re 2020 Canvass*, Justices Dougherty, joined by Justices Saylor and Mundy, understood the date requirement served “an unquestionable purpose.” *Id.* (Opinion of Justices Dougherty, Saylor, and Mundy). The date requirement “provides proof of when the elector actually executed the ballot in full, ensuring their desire to cast it in lieu of appearing in person at the polling place.” *Id.* Beyond this important reason, “[t]he presence of the date also establishes a point in time against which to measure the elector’s eligibility to cast the ballot.” *Id.* Lastly, the date requirement “ensures the elector completed the ballot within the proper time

frame and prevents tabulation of potentially fraudulent back-dated votes.” *Id.* at 1091. Clearly, any one of these alone would constitute a “weighty interest” for finding the General Assembly intended this requirement to be necessary to the integrity of the election. *Id.* at 1090. But together, they bolster the intention of the General Assembly in exercising its constitutional authority to prescribe mail voting rules and requirements.

While Defendant Intervenors attack these legislative judgments and ask this Court to adopt the evidentiary record in *Chapman v. Berks County Board of Elections*, No. 355 M.D. 2022, 2022 WL 4100998 (Pa. Cmwlth. Aug. 19, 2022), *see* Proposed Intervenors DSCC, et al. Response to Application for Invocation of King’s Bench Power, No. 122 MM 2022, neither the Secretary nor this Court has authority to substitute their policy judgments for the General Assembly’s judgments with respect to federal elections.

Furthermore, requiring that voters date their mail ballots is not an “excessively burdensome requirement” that would be prohibited under the federal Constitution. *Crawford*, 553 U.S. at 202 (plurality opinion) (citation omitted). Rules required to lawfully vote are inevitable. “States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.” *Timmons v. Twin City Area New Party*, 520 U.S.

351, 358 (1997); *Brnovich v. Dem. Nat'l Comm.*, 141 S. Ct. 2321, 2338 (2021)

(“Casting a vote, whether by following the directions for using a voting machine or completing a paper ballot, requires compliance with certain rules.”). Because “there must be a substantial regulation of elections if they are to be fair and honest,” *Burdick*, 504 U.S. at 433 (quoting *Storer*, 415 U.S. at 730), the General Assembly determined the date requirement was a necessary and permissible regulation to bolster election integrity. For these reasons, the date requirement is a valid and mandatory requirement enacted by the General Assembly through its constitutional authority; it cannot be usurped by the Secretary of State.

III. The Secretary of State intentionally countermanded and replaced the General Assembly's election rules in violation of the Elections Clause of the United States Constitution.

As detailed above, the Elections Clause of the United States Constitution delegates authority to regulate the times, places, and manner of holding federal elections in Pennsylvania to the General Assembly alone, not the Secretary of State. U.S. Const. art. I, § 4, cl. 1; *see Wis. State Legislature*, 141 S. Ct. at 29 (Gorsuch, J., concurring) (“The Constitution provides that state legislatures—not federal judges, not state judges, not state governors, not other state officials—bear primary responsibility for setting election rules.”). By intentionally countermanding and replacing the General

Assembly's date requirement through guidance directing Boards to count undated and wrongly dated mail ballots, the Secretary violated the Elections Clause of the United States Constitution.

The practical effect of the Secretary's guidance is to legislate by directing Boards to count undated and wrongly dated mail ballots, which directly conflicts with the General Assembly's clear and duly enacted statute. Rather than have Boards follow the law, which expressly requires voters to date their mail ballots, the Secretary seeks for her own "rule" to be followed by the Boards, namely that ballots lacking a valid date are to be counted.

To resolve this case, it is sufficient for the Court to recognize the Secretary's guidance as embodying "hallmarks of legislation," *Moore v. Harper*, 142 S. Ct. 1089, 1091 (2022) (Alito, J., dissenting from denial of stay application), and find it to be *ultra vires* usurpation of "powers over the election of federal officers," which "had to be delegated to, rather than reserved by, the States." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804 (1995). The Secretary's guidance violates one of the "few exceptional cases in which the Constitution imposes a duty or confers a power on a particular branch of a State's government," and "the text of the election law itself, and not just its interpretation by the courts of the States, takes on

independent significance.” *Bush v. Gore*, 531 U.S. 98, 112 (2000) (Rehnquist, J., concurring).

The Secretary’s guidance is an affront to the democratic accountability the Framers sought, for rather than trying to convince the General Assembly to amend the law to allow undated and improperly dated mail ballots to be counted, the Secretary of the Commonwealth seeks to change the rules of voting herself by simply legislating through the form of guidance. This offends the Elections Clause of the United States Constitution, which expressly mandates that such election rules “shall be prescribed in each State by the Legislature” of the state, not the Secretary of State. U.S. CONST. art. I, § 4, cl. 1. The Secretary wrongly substituted her own preferences in place of the “the clearly expressed intent of the legislature.” *Bush*, 531 U.S. at 120 (Rehnquist, C.J., concurring). Therefore, this is a patent violation of the Elections Clause.

While the “[Elections] Clause could have said that these rules are to be prescribed ‘by each State,’ which would have left it up to each State to decide which branch, component, or officer of the state government should exercise that power, as States are generally free to allocate state power as they choose[,]” *Moore*, 142 S. Ct. at 1090 (2022) (Alito, J., dissenting from the denial of

application for stay), it does not. Rather, it tasks this duty to a “particular organ” of a state government—the legislature. *Id.*

The Secretary’s guidance must be invalidated in respect for the General Assembly’s exclusive authority to prescribe the requirements for mail voting in federal elections.

IV. The Secretary’s guidance intentionally ignores precedent of this Court, other Pennsylvania courts, and the United States Supreme Court.

Not only has the Secretary usurped the General Assembly’s authority under the Elections Clause, but she also has flouted the rulings of federal and state courts affirming the date requirement.

A majority of the Justices on this Court have determined the date requirement is both valid and mandatory. *See In re 2020 Canvass*, 241 A.3d at 1079-80 (Opinion of Justice Wecht); *id.* at 1090-91 (Opinion of Justices Dougherty, Saylor, and Mundy). This Court also has denied appeals of lower court rulings enforcing the date requirement. *See, e.g., Ritter v. Lehigh Cnty. Bd. of Elecs.*, 272 A.3d 989 (Pa. Commw. 2022), *appeal denied* 271 A.3d 1285 (Pa. 2022); *In re Election in Region 4 for Downingtown Sch. Bd. Precinct Uwchlan 1*, 272 A.3d 993 (Pa. Commw. 2022), *appeal denied*, 273 A.3d 508 (Pa. 2022).

The Secretary briefly found support for her preferred policy in the U.S. Third Circuit Court of Appeals’ decision ruling that the date requirement was

preempted by the Materiality Provision of the Civil Rights Act of 1964, but just as quickly, the U.S. Supreme Court vacated that decision. *See Migliori v. Cohen*, No. 22-1499 (3d Cir. May 27, 2022), *cert. granted and judgement vacated*, *Ritter v. Migliori*, No. 22-30, 2022 WL 6571686 (U.S. Oct. 11, 2022) (Mem.). And as Petitioners make clear, the Secretary can in no degree rely on recent and faulty decisions by the Commonwealth Court that relied almost entirely on the Third Circuit's reasoning in *Migliori v. Cohen* to enjoin the date requirement. *See* Petitioners' Application for the Exercise of King's Bench Power, No. 122 MM 2022 at 16-19; *see also*, *McCormick for U.S. Senate v. Chapman*, 2022 WL 2900112 (Pa. Commw. Ct. June 2, 2022); *Berks County Bd. of Elecs.*, 2022 WL 4100998.

As a result, the Secretary of State's guidance is without sound legal basis and directly conflicts with the precedent of this Court and other Pennsylvania courts. The Secretary is acting as a law unto herself, and her baseless guidance cannot replace the rules of election set by the General Assembly.

V. The Secretary's guidance will inevitably lead to non-uniform treatment of ballots across Pennsylvania while the law is clear and would provide uniformity.

While the Secretary's guidance is not binding on Boards, Boards may nevertheless follow the Secretary's guidance and count undated and wrongly dated

mail ballots. *See* 25 P.S. §§ 2621, 2642; *see, e.g.*, Answers to Petitioners’ King’s Bench Petition by Philadelphia, Lehigh, and Chester County Boards of Elections.

What results is the risk of Boards adhering to non-uniform procedures.

Pennsylvania law is clear in that the elector “shall . . . fill out, date and sign the declaration” on the outer envelope of the mail ballot. *See* 25 P.S. §§ 3146.6(a), 3150.16(a). Despite this clarity, the Secretary’s guidance muddies the water and advises Boards to nevertheless accept and count ballots that fail to satisfy the date requirement. *See* Pa. Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes* (Sept. 26, 2022). Under this guidance, deficient ballots under the election code would be counted, even though the clear language of the statute requires otherwise.

The Secretary’s guidance leaves Boards conflicted between adhering to the clear text of the law or following the Secretary’s baseless misguidance. While some Boards might faithfully comply with the law enacted by the General Assembly, the same cannot be said of every Board so long as the Secretary’s guidance stands. The Secretary’s dilemma needlessly creates a quagmire when the law is clear and would otherwise prevent this non-uniform treatment of deficient mail ballots and safeguard voter confidence, which would be severely damaged if deficient ballots are counted.

As mentioned above, the Secretary is powerless under the Elections Clause to substitute her own preferences in place of the “the clearly expressed intent of the legislature.” *Bush*, 531 U.S. at 120 (Rehnquist, C.J., concurring). If the Secretary desires undated mail ballots to be counted, she can pursue the democratic process and convince the General Assembly to provide for these ballots to be counted. She may not, however, take it upon herself to direct so. The solution is clear: this Court should strike the Secretary’s guidance to ensure uniformity in election administration across the state, just as the General Assembly thoughtfully prescribed.

CONCLUSION

The Secretary’s guidance directing Boards to count undated mail ballots conflicts with the clear text of Pennsylvania’s duly enacted mail voting rules, usurps the exclusive power of the General Assembly to prescribe federal election rules under the Elections Clause, and circumvents meaningful precedent by this Court and other Pennsylvania courts holding the date requirement to be mandatory. This Court should grant relief for Petitioners.

Date: October 24, 2022

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I, Linda A. Kerns, hereby certify that the within Brief was prepared in word processing program Microsoft Word (Microsoft Office Professional Plus 2016), and I hereby certify that, as counted by Microsoft Word (Microsoft Office Professional Plus 2016), this Brief contains 3,729 words, excluding the parts of the brief exempted by Pa.R.A.P. 2135(b).

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