

**No. 25-1644**

---

In the United States Court of Appeals  
for the Third Circuit

BETTE EAKIN, *et al.*,

*Plaintiff-Appellees*

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,

*Defendant-Appellees*

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

*Intervenor-Defendant-Appellants.*

---

**On Appeal from the United States District Court for the  
Western District of Pennsylvania  
No. 1:22-cv-340 (Baxter, J.)**

---

**INTERVENOR-DEFENDANTS-APPELLANTS' UNOPPOSED  
MOTION TO EXPEDITE**

---

Thomas E. Breth  
Thomas W. King, III  
DILLON MCCANDLESS KING  
COULTER & GRAHAM  
128 W Cunningham Street  
Butler, PA 16001  
tbreth@dmkcg.com  
tking@dmkcg.com

Kathleen A. Gallagher  
GALLAGHER FIRM  
436 Seventh Avenue  
30th Floor  
Pittsburgh, PA 15219  
Phone: 412-308-5512  
kag@gallagherlawllc.com

John M. Gore  
E. Stewart Crosland  
Louis J. Capozzi, III  
JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001  
Phone: (202) 879-3939  
jmgore@jonesday.com  
scrosland@jonesday.com  
lcapozzi@jonesday.com

*Counsel for Intervenor-Appellants*

## INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 27 and Local Appellate Rule 4.1, Intervenor-Appellants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania (“Appellants”) respectfully request that the Court expedite the briefing, argument, and disposition of this appeal concerning the constitutionality of Pennsylvania’s longstanding requirement that voters date their absentee and mail-in ballot envelopes.

Expedition is needed to ensure clear and stable rules in advance of Pennsylvania’s 2025 general election. Pennsylvanians begin casting absentee and mail-in ballots on September 16—about five months from today. At some reasonable point before that date, “the rules [for the election] should be clear and settled.” *Democratic Nat’l Comm. v. Wis. State. Leg.*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurral); *see Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam); *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (per curiam).

Moreover, it would be highly prejudicial to Appellants, their candidates and voters, and all Pennsylvanians to withhold review until after the 2025 general election in which Pennsylvanians will cast their ballots for a host of offices, including statewide judicial offices. The General Assembly’s date requirement has governed Pennsylvania’s elections for decades. It has even governed recent

elections despite serial litigation challenging it in state and federal court. *See, e.g., Ball v. Chapman*, 289 A.3d 1 (Pa. 2023); *Baxter v. Philadelphia Bd. of Elections*, 325 A.3d 645 (Pa. 2024).

The District Court previously enjoined enforcement of the date requirement before the 2023 general election. Although this Court eventually reversed and *upheld* the date requirement, *Pa. State Conf. of NAACP Branches v. Secretary Commonwealth of Pa.*, 97 F.4th 120, 135 (3d Cir. 2024), a Republican incumbent lost his office because undated mail ballots were counted in compliance with the District Court’s order and defiance of the General Assembly’s duly enacted date requirement, *In re Contest of Nov. 7, 2023 Election of Towamencin Twp.*, No. 1482 C.D. 2023, 2024 WL 1515769, at \*8–9 (Pa. Commw. Ct. Apr. 8, 2024). Indeed, three Republican candidates since 2020 have lost elections solely because undated mail ballots were counted in defiance of Pennsylvania law. *See* Anderson Decl. ¶¶ 32–36.

To preserve the General Assembly’s clear election rules in advance of the 2025 general election, Appellants could ask this Court for a stay—which the Court granted the last time the District Court enjoined the date requirement. *See* Order Granting Stay Pending Appeal, *Pa. State Conf. of NAACP v. Secretary Commonwealth of Pa.*, No. 23-3166, ECF 43 (3d Cir. Dec. 13, 2023). However, Appellants believe that all parties and the Court would benefit instead from orderly

but expedited merits proceedings. Therefore, Appellants respectfully ask this Court to grant their motion to expedite this appeal and to adopt the following briefing schedule:

Appellants' Opening Briefs: May 19, 2025

Appellees' Response Briefs: June 18, 2025

Appellants' Reply Briefs: July 2, 2025

Appellants are available to appear for oral argument at the Court's earliest convenience following the conclusion of the briefing.

Undersigned counsel for Appellants contacted counsel for the other parties on April 14, 2025. Plaintiffs-Appellees Bette Eakin, DSCC, DCCC, and AFT Pennsylvania do not object to this motion and agree to the proposed briefing schedule. The Lancaster County and York County boards of election consent to this motion. The Clarion County, Potter County, Susquehanna County, and Tiago County boards of elections have no objection to this motion. Twenty-seven county boards of election take no position on this motion or the proposed briefing schedule.<sup>1</sup> Counsel for the remaining parties did not state a position prior to the filing of this motion.

---

<sup>1</sup> Allegheny, Adams, Bedford, Berks, Bucks, Carbon, Centre, Columbia, Dauphin, Franklin, Greene, Huntington, Indiana, Jefferson, Lackawanna, Lawrence, Lebanon, Lehigh, Luzerne, Monroe, Montour, Northumberland, Perry, Philadelphia, Snyder, Venago, and Westmoreland.

## BACKGROUND

Pennsylvania's General Assembly has required absentee voters to date their envelopes for decades. *E.g.*, Pa. Stat. § 3146.6(a) (1998 ed.). When the General Assembly adopted universal mail-in voting in 2019, it extended the requirement to mail-in voters. *See Pa. State Conf. of NAACP*, 97 F.4th at 126. The date requirement is straightforward: It merely mandates that voters date their envelope before returning the completed ballot. 25 Pa. Stat. §§ 3146.6(a), 3150.16(a). When that date is missing or incorrect, the ballot is “invalid as a matter of Pennsylvania law.” *Ball*, 289 A.3d at 28. This is a neutral, nondiscriminatory ballot-casting rule, and the burden that it imposes is negligible compared to the “usual burdens of voting.” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 678 (2021).

The date requirement has been the subject of incessant litigation in recent years. In multiple cases, including before this Court, litigants maintained that the date requirement violated the federal Materiality Provision, 52 U.S.C. § 10101(a)(2)(B). The Pennsylvania Supreme Court rejected that contention. *Ball v. Chapman*, 284 A.3d 1189, 1192 (Pa. 2022); *see Ball*, 289 A.3d 1. And this Court did too, while also holding that the date requirement cannot violate any right to vote because it is “implausible that federal law bars a State from enforcing vote-casting rules that it has deemed necessary to administer its elections.” *Pa. State Conf. of NAACP*, 97 F.4th at 135.

After this Court remanded in *Pennsylvania NAACP*, the District Court enjoined the date requirement again in a parallel case. *See* Order, *Eakin v. Adams Cnty. Bd. of Elections*, No. 1:22-cv-340, 1–2 (W.D. Pa. 2025) (ECF No. 439) (“Order”). *First*, it concluded that this mail-voting regulation violates the constitutional right to vote—even though the Supreme Court has held that there is *no* constitutional right to vote by mail in the first place. *See* Memorandum Opinion, No. 1:22-cv-340, 11–12 (W.D. Pa. 2025) (ECF No. 438) (“Op.”); *McDonald v. Bd. of Election Comm’rs*, 394 U.S. 802, 809–11 (1969). *Second*, although the District Court acknowledged that the date requirement imposes “only a minimal burden” on the right to vote, it concluded that a rule imposing “even the slightest burden” must be subject to a judicial “balancing” test. Op. 10, 15, 20. And *third*, the District Court rejected the interests advanced by the date requirement and refused to defer to the General Assembly’s policy judgment to maintain the date requirement. *Id.* at 16–19.

Appellants quickly filed a notice of appeal. *See* Notice of Appeal, *Eakin v. Adams Cnty. Bd. of Elections*, No. 25-1644 (3rd Cir. Apr. 3, 2025).

### ARGUMENT

This Court may “expedite the consideration of any action . . . if good cause therefor is shown.” 28 U.S.C. § 1657(a); *see* L.A.R. 4.1 (a motion to expedite shall

“set[] forth the exceptional reason that warrants expedition”). Good cause exists here for several reasons.<sup>2</sup>

*First*, a speedy ruling is necessary to ensure that courts are not altering Pennsylvania’s election rules too close to the 2025 general election. *See Purcell*, 549 U.S. 1, 4–5; *Reynolds v. Sims*, 377 U.S. 533, 585 (1964); *Merrill v. Milligan*, 142 S. 879, 880 (2022) (Kavanaugh, J., concurral). During the 2024 general election, the Pennsylvania Supreme Court likewise recognized that the date requirement’s legality must be settled shortly before an election, which is why it stayed a lower-court order setting aside the date requirement. *See Baxter*, 325 A.3d 645. This Court should avoid last-minute confusion and ensure, through expedited proceedings, that “the rules [for Pennsylvania’s elections] [are] clear and settled” in advance. *Democratic Nat’l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurral).

*Second*, a speedy ruling is necessary to avoid irreparable harm to Appellants, their candidates, and their voters. If the District Court’s invalidation of the date requirement stands for the 2025 general election, Appellants will have to expend nonrecoverable financial resources to reeducate their candidates, poll watchers, candidates, and voters about the status of the date requirement. *See Anderson Decl.* ¶¶ 22–26; *see Ohio v. EPA*, 603 U.S. 279, 292 (2024) (recognizing nonrecoverable

---

<sup>2</sup> Intervenor-Appellants also reserve the right to seek a stay of the District Court’s order should one become needed to preserve the integrity of the 2025 general election or any other election.

compliance costs are irreparable harm). And lest the Court think that re-education is not necessary, the Commonwealth Court previously acknowledged that voters failed to comply with the date requirement because they were confused by prior judicial rulings against it in 2024. *See Baxter v. Philadelphia Bd. of Elections*, No. 1305 C.D. 2024, 2024 WL 4614689, at \*3 (Pa. Commw. Ct. Oct. 30, 2024) (“Designated Appellee Kinniry . . . did not attempt to fix her mail-in ballot because she read the news about this Court’s decision” enjoining the date requirement before decision was vacated).

*Third*, Appellants and all Pennsylvanians face a continued risk that elections will wrongfully turn on the counting of undated ballots that are “invalid as a matter of Pennsylvania law.” *Ball*, 289 A.3d at 28. To start, a State suffers irreparable injury any time a court enjoins one of its statutes. *Del. State Sportsmen’s Ass’n, Inc. v. Del. Dep’t of Safety & Homeland Sec.*, 108 F.4th 194, 206 (3d Cir. 2024) (citing *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).

But this harm is particularly grave when a State’s election law is enjoined for an election and an appellate court subsequently rules that the law should have been in effect. Everyone—the State, voters, political parties—suffers irreparable injury whenever an improperly elected representative exercises the powers of office. *Marks v. Stinson*, 19 F.3d 873, 878–89 (3d Cir. 1994). And that has happened *three times* in Pennsylvania since 2020 because courts have wrongfully enjoined the date



requirement. Republican candidates for a state senate seat, a judicial office, and a township position lost their elections solely because undated mail ballots were counted in compliance with prior judicial orders that were eventually reversed or vacated. *See* Anderson Decl. ¶¶ 32–36.

Because “good cause” exists, this Court should expedite proceedings. 28 U.S.C. § 1657(a); *see* L.A.R. 4.1. Mail voting begins in Pennsylvania on September 16. *See* 25 Pa. Stat. § 3150.12a. The District Court’s order directs election officials to count ballots that do not comply with the date requirement. Order at 1–2. To give Pennsylvania time to notify its officials and voters that they should continue to comply with the requirement, a ruling is needed by August 16, 2025—one month before the mail-voting period begins.

### **CONCLUSION**

For these reasons, Appellants respectfully request that the Court grant the motion to expedite, adopt the proposed briefing schedule, and issue a decision in this matter no later than August 16, 2025.

April 17, 2025

Respectfully submitted,

*s/John M. Gore*

John M. Gore  
*Counsel of Record*

Thomas E. Breth  
Thomas W. King, III  
DILLON McCANDLESS KING  
COULTER & GRAHAM  
128 W Cunningham Street  
Butler, PA 16001  
tbreth@dmkcg.com  
tking@dmkcg.com

Kathleen A. Gallagher  
GALLAGHER FIRM  
436 Seventh Avenue  
30th Floor  
Pittsburgh, PA 15219  
Phone: 412-308-5512  
kag@gallagherlawllc.com

E. Stewart Crosland  
Louis J. Capozzi, III  
JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001  
Phone: (202) 879-3939  
jmgore@jonesday.com  
scrosland@jonesday.com  
lcapozzi@jonesday.com

*Counsel for Intervenor-Defendant-Appellants*

### **COMBINED CERTIFICATIONS**

1. Pursuant to Third Circuit L.A.R. 28.3(d), at least one of the attorneys whose names appear on this motion is a member in good standing of the bar of this Court.
2. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 1,749 words, excluding the parts of the documented exempted by Fed. R. App. P. 32(f).
3. This motion complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because it has been prepared in a 14-point proportionally spaced typeface (Times New Roman) using Microsoft Word.
4. That on April 17, 2025, I caused the foregoing to be filed with the Clerk of Court using the CM/ECF System, and all counsel of record in this case is a Filing User who will receive notice of such filing.

Dated: April 17, 2025

/s/ John M. Gore  
John M. Gore

**IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD  
CIRCUIT**

BETTE EAKIN, <i>et al.</i> ,	)	
	)	
Plaintiff-Appellees,	)	
	)	
v.	)	No. 25-1644
	)	
ADAMS COUNTY BOARD OF	)	
ELECTIONS, <i>et al.</i> ,	)	
	)	
Defendant-Appellees	)	
	)	
REPUBLICAN NATIONAL	)	
COMMITTEE, <i>et al.</i> ,	)	
	)	
Intervenor-Defendant-Appellants.	)	

**DECLARATION OF ERIC ANDERSON**

Pursuant to 28 U.S.C. § 1746, I, Eric Anderson, declare as follows:

1. I am over the age of 18 and am otherwise competent to testify.
2. I have personal knowledge of the matters in this declaration.
3. I am currently the Executive Director of the Republican Party of Pennsylvania (the “RPP”).
4. The RPP is a major political party, 25 P.S. § 2831(a), and the “State committee” for the Republican Party in Pennsylvania, 25 P.S. § 2834, as well as a federally registered “State Committee” of the Republican Party as defined by 52 U.S.C. § 30101(15).

5. The RPP supports and seeks to uphold free and fair elections for all Pennsylvanians.

6. The RPP has a substantial and particularized interest in ensuring that Pennsylvania carries out free and fair elections consistently throughout the Commonwealth.

7. The RPP's members include all registered Republican voters, candidates, and officeholders in Pennsylvania.

8. The RPP's mission includes supporting Republican candidates for federal, state, and local office in Pennsylvania and preserving and promoting a free and fair electoral environment in which Republican candidates can win election.

9. Accordingly, the RPP, on behalf of itself and its members, including its voters, nominates, promotes, and assists Republican candidates seeking election or appointment to federal, state, and local office in Pennsylvania.

10. Additionally, the RPP devotes substantial resources toward educating, mobilizing, assisting, and turning out voters in Pennsylvania.

11. RPP has statutory rights to appoint poll watchers to observe casting, counting, and canvassing of ballots at the polling place, 25 P.S. § 2687(a), an "authorized representative" to "remain in the room" at the county board of elections and observe the pre-canvass and canvass of "absentee ballots and mail-in ballots," *id.* §§ 3146.8(g)(1.1)-(2), and an "authorized representative" to "remain in the room"

and to “challenge any determination of the county board of elections with respect to the counting or partial counting of” a provisional ballot, *id.* § 3050(a.4)(4).

12. RPP has exercised these statutory rights in the past several election cycles and is doing so again for the 2025 elections.

13. In conjunction with its Election Day Operations (“EDO”), the RPP devotes substantial time and resources toward the recruitment and training of poll workers, poll watchers, and volunteers throughout the 67 counties of the Commonwealth to assist voters on election day, to observe the casting and counting of ballots at the polling place, to observe the pre-canvass and canvass of absentee and mail-in ballots at the county board of elections, and to observe and make appropriate and lawful challenges to the counting or partial counting of invalid provisional ballots.

14. As part of its EDO, the RPP also devotes substantial time and resources toward the recruitment and training of a “ground team” of lawyers throughout the Commonwealth who stand ready on Election Day to assist poll workers, poll watchers, and volunteers should questions arise as to elections laws or the voting process within the Commonwealth.

15. The RPP has devoted substantial time and resources in mobilizing and educating voters in Pennsylvania in the past many election cycles and will do so again in 2025.

16. Each of the RPP's EDO, training, and voter education programs relies upon, utilizes, and is built upon the clear language of the Election Code.

17. In particular, following the enactment of Act 77, which fundamentally changed the manner in which Pennsylvanians are permitted to vote, most notably by providing a new universal mail-in voting regime, RPP significantly updated and altered its EDO, training, and voter education programs.

18. Following the enactment of Act 77, RPP substantially increased the amount of its time and resources dedicated to educating voters, poll workers, poll watchers, volunteers, and its legal teams throughout Pennsylvania's 67 counties regarding the provisions of Act 77.

19. RPP's EDO, training, and voter education programs include training and information regarding the requirements for voters to cast lawful and valid ballots, and the governing rules delineating unlawful and invalid ballots and preventing election officials from pre-canvassing, canvassing, or counting such ballots.

20. I am aware that, in a case brought by the RPP and other parties, the Pennsylvania Supreme Court held that General Assembly's date requirement for absentee and mail-in ballots is mandatory and that non-compliant ballots may not be counted. *See Ball v. Chapman*, No. 102 MM 2022 (Pa. Nov. 1, 2022) (per curiam).

21. I am aware that, on April 1, 2025, the United States District Court for

the Western District of Pennsylvania held that all county boards of elections may not enforce the date requirement and must count undated or incorrectly dated absentee and mail-in ballots.

22. RPP's EDO, training, and voter education programs include training and information regarding the General Assembly's date requirement.

23. The change in the governing law around the date requirement that the Court's summary judgment order has purported to make harms the RPP by rendering its EDO, training, and voter education programs less effective, wasting the resources they have devoted to such programs, and requiring them to expend new resources to update those programs.

24. In particular, so long as the Court's summary judgment order is not promptly stayed or reversed, the RPP will be required to alter its statewide EDO, training, and voter education programs to specify that the date requirement is no longer mandatory.

25. If the RPP alters its EDO, training, and voter education programs to reflect the Western District's order, it will again have to alter those materials if that court's order is stayed or reversed in the future.

26. Altering its statewide EDO, training, and voter education programs will require the RPP to divert resources from its intended mission of nominating, promoting, and assisting Republican candidates in Pennsylvania and of educating,



mobilizing, assisting, and turning out voters in Pennsylvania.

27. The RPP also has a strong interest in preserving its victory in *Ball v. Chapman*, which upheld uniform, mandatory application of the General Assembly's date requirement across all Pennsylvania counties and, thus, contributes to free and fair elections on behalf of all Pennsylvanians.

28. The Western District's summary judgment order undermines this interest by rendering the Pennsylvania Supreme Court's decision practically pointless, and undermining free and fair elections on behalf of all Pennsylvanians.

29. Moreover, if left uncorrected, the Western District's summary judgment order threatens to create voter confusion, to reduce voter confidence in the integrity of Pennsylvania's elections, and to decrease voter turnout in Pennsylvania, including by members of the RPP.

30. The Western District's summary judgment order also alters the competitive environment surrounding elections in Pennsylvania in which the RPP, its members, its voters, and its candidates exercise their constitutional rights to vote and to participate.

31. The Western District's summary judgment order harms the electoral prospects of Republican candidates in Pennsylvania; makes it more difficult for the RPP, its members, its voters, and its candidates to win elections; and may change the outcome of elections in Pennsylvania.

32. Including in the official vote total ballots that did not comply with the date requirement has flipped the result in three elections in Pennsylvania since 2020. In each of those elections, the Republican candidate would have prevailed if the noncompliant ballots had not been included in the vote total. In other words, in each of those elections, including the noncompliant ballots in the vote total flipped the outcome and resulted in a Democratic candidate being declared the winner and a Republican candidate being declared the loser.

33. The first was the State Senate race involving Republican Nicole Zicarelli in 2020. *See In re Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, 241 A.3d 1058 (Pa. 2020).

34. The second was the Court of Common Pleas race involving Republican David Ritter in 2021. *See Migliori v. Cohen*, 36 F.4th 153, *cert. granted and judgment vacated*, *Ritter v. Migliori*, 143 S. Ct. 297 (2022)

35. The third was the November 2023 election for Towamencin Township Board of Supervisors (Montgomery County). The Republican candidate, Richard Marino, prevailed by 4 votes over his Democratic challenger, Kofi Osei, with all ballots counted under the rules in effect on election day, November 7, 2023. The Western District’s prior order—enjoining enforcement of the date requirement under the Materiality Provision of the 1964 Civil Rights Act in the companion case of *Pa. State Conf. of NAACP v. Schmidt*—led the Montgomery County Board of Elections

under the Materiality Provision of the 1964 Civil Rights Act in the companion case of *Pa. State Conf. of NAACP v. Schmidt*—led the Montgomery County Board of Elections to count six ballots that did not comply with the date requirement.

36. Although this Court ultimately reversed the Western District’s order under the Materiality Provision, supporters of Mr. Marino failed in an attempt to persuade the state courts to undo the damage caused by the Western District’s order. See *In re Contest of Nov. 7, 2023 Election of Towamencin Twp.*, No. 1482 C.D. 2023, 2024 WL 1515769, at \*8-9 (Pa. Commw. Ct. Apr. 8, 2024). Thus, Mr. Marino lost his position and the RPP suffered irreparable harm as a result of the Western District’s prior order.

37. I declare under penalty of perjury that the foregoing is true and correct.

Date: 4/14/25

  
Eric Anderson