

IN THE SUPREME COURT OF PENNSYLVANIA

No. 102 MM 2022

David Ball, James D. Bee, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Lynn Marie Kalcevic, Vallerie Siciliano-Biancaniello, S. Michael Streib, Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania,

Petitioners

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth, *et al.*,

Respondents.

**INTERVENORS DCCC, DEMOCRATIC NATIONAL COMMITTEE, AND
PENNSYLVANIA DEMOCRATIC PARTY'S OPPOSITION TO
APPLICATION FOR RECONSIDERATION/MOTION TO CLARIFY
ORDER OF NOVEMBER 5, 2022**

The Court should deny Blair County's request to issue a last-minute order that will sow chaos and inject confusion into the canvassing process. The November 5, 2022, Supplemental Order provides logical, straightforward guidance to counties on how to evaluate the date written on mail-in and absentee ballots. *Cf. Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 371 (Pa. 2020) (noting the need to provide "clarity as to the timeline for the 2020 General Election mail-in ballot process"). The Court's guidance

comes directly from the provisions of the Election Code that set forth the earliest date that a mail ballot may be distributed to a voter, and the latest date a voter may return it. See Supplemental Order at 2 (citing 25 P.S. §§ 3150.12a, 3150.15, 3146.2a(a), 3146.5(a)).

The Court's Supplemental Order is thus fully consistent with the Election Code. By contrast, Blair County's requested alteration to the Supplemental Order finds no basis in the Election Code and would needlessly complicate the counties' approach by forcing county boards to engage in individualized investigations specific to each ballot, each of which would carry its own applicable period of permissible dates. In other words, instead of the uniform window of permissible dates set forth in the Court's Supplemental Order which can be evenly applied across every mail ballot in the Commonwealth, Blair County's requested approach would have *every single ballot* carry its own window of permissible dates.

Nothing in the Election Code imposes this massively burdensome investigatory and adjudicatory obligation upon the counties. The "Election Code enumerates only three duties of the county boards of elections during the pre-canvassing and canvassing process": (1) confirm that the voter has not died and compare the voter's information with the appropriate list of mail voters, (2) verify the voter's "proof of identification," and (3) determine

whether it is “satisfied that the declaration is sufficient.” *In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 605 (Pa. 2020) (quoting 25 P.S. § 3146.8(g)(3)). None of these three criteria requires counties to dedicate significant staff resources to hunt through the SURE system to determine the date on which each and every ballot was distributed and received. In fact, since enacting Act 77, the General Assembly has taken *additional* steps to ensure the canvassing process is completed as quickly as possible. See 25 P.S. § 3260.2-A(j)(1)–(2) (making election-administration grant funds contingent upon an agreement by the receiving county to begin pre-canvassing and canvassing as soon as the Election Code allows and to continue pre-canvassing and canvassing “without interruption until each [mail] ballot” has been processed); see *also* 25 P.S. § 3154(a) (requiring that county boards of elections “publicly commence the computation and canvassing of the returns,” on the third day after the election, at 9:00 a.m., “and continue the same from day to day until completed.”).

This Court has correctly rejected prior suggestions that counties must engage in such an investigation when processing absentee or mail-in ballots. In *In re November 3, 2020 General Election*, this Court held that the Election Code does not permit counties to reject ballots based on a perceived “signature mismatch” between the signature on the ballot envelope and the

voter's signature on file. 240 A.3d at 611. Rejecting an argument that a ballot envelope's declaration is not "sufficient" under § 3146.8(g)(3) if the signature it contains does not match the one on file, this Court explained that § 3146.8(g)(3) requires only that the county "ascertain whether the declaration on the return envelope has been filled out, dated, and signed"; thus, "there is nothing in this language which allows or compels a county board to compare signatures." *Id.* at 608. Perhaps more importantly, the Court also reasoned that such a signature-matching investigation would directly conflict with the General Assembly's efforts in Act 77 "to *streamline* the process for canvassing such ballots." *Id.* at 611 (emphasis added).

The same applies to Blair County's suggested modification of this Court's Supplemental Order, which would bog counties down in an exceptionally burdensome individualized inquiry at precisely the time they can least afford it. Because nothing in the Election Code requires that result, there is no reason for the Court to produce it.

The Court should decline Petitioners' request to modify its Supplemental Order a day before the general election.

Dated: November 7, 2022

Uzoma N. Nkwonta*
Justin Baxenberg*
Daniel C. Osher*
Daniela Lorenzo*
Dan Cohen*
ELIAS LAW GROUP LLP
10 G St. NE, Suite 600
Washington, D.C. 20002
Telephone: (202) 968-4490
unkwonta@elias.law
jbaxenberg@elias.law
dosher@elias.law
dlorenzo@elias.law
dcohen@elias.law

Counsel for DCCC

Clifford B. Levine
Emma F.E. Shoucair
**DENTONS COHEN & GRIGSBY
P.C.**
625 Liberty Avenue, 5th Floor
Pittsburgh, PA 15222-3152
(412) 297-4900
clifford.levine@dentons.com
emma.shoucair@dentons.com

*Counsel for DNC and Pennsylvania
Democratic Party*

M. Patrick Moore, Jr.*
Massachusetts BBO #670323
HEMENWAY & BARNES LLP
75 State Street
Boston, MA 02109
(617) 227-7940
pmoore@hembar.com

Counsel for DNC

Respectfully submitted,

By: Adam C. Bonin
Adam C. Bonin
**THE LAW OFFICE OF ADAM C.
BONIN**
121 South Broad Street, Suite 400
Philadelphia, PA 19107
Telephone: (267) 242-5014
Facsimile: (215) 827-5300
adam@boninlaw.com

Counsel for DCCC

Kevin M. Greenberg
PA I.D. 082311
Adam Roseman
PA I.D. No. 313809
1717 Arch Street, Suite 400
Philadelphia, PA 19103
(215) 988-7800
greenbergk@gtlaw.com
rosemana@gtlaw.com

*Counsel for Pennsylvania
Democratic Party*

* Admitted *Pro Hac Vice*

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I, Adam Bonin, certify that this filing contains fewer than 14,000 words as prescribed by Pa.R.A.P. 2135.

Submitted by: Adam C. Bonin, Esq.

Signature:

Adam C. Bonin

Attorney No. (if applicable):

80929

Date:

Nov 7, 2022

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF COMPLIANCE WITH Pa. R.A.P. 127

I, Adam Bonin, certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Adam C. Bonin, Esq.

Signature:

_____

Attorney No. (if applicable):

___80929_____

Date:

___Nov 7, 2022_____

RETRIEVED FROM DEMOCRACYDOCS.COM