

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 283 MD 2024

BLACK POLITICAL EMPOWERMENT PROJECT, *et al.*,
Petitioners,

v.

AL SCHMIDT, SECRETARY OF THE COMMONWEALTH, *et al.*,
Respondents.

**THE SECRETARY OF THE COMMONWEALTH'S BRIEF IN SUP-
PORT OF PETITIONERS' APPLICATION FOR RELIEF**

Kathleen M. Kotula (No. 86321)

Pennsylvania Department of State
306 North Office Bldg.
401 North Street
Harrisburg, PA 17120-0500

June 24, 2024

Michael J. Fischer (No. 322311)

Jacob B. Boyer (No. 324396)

Aimee D. Thomson (No. 326328)

Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17101
(717) 460-6786
jacobboyer@pa.gov

*Counsel for Secretary of the
Commonwealth Al Schmidt*

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTRODUCTION	1
BACKGROUND.....	3
I. Mail Voting in Pennsylvania	3
II. Relevant Litigation History	8
STANDARD OF REVIEW.....	11
SUMMARY OF THE ARGUMENT.....	12
ARGUMENT.....	13
I. Pennsylvania’s Constitution Confers Robust Protections of the Right to Vote.....	13
II. Rejecting Mail Ballots Because a Voter Failed to Correctly Write a Declaration Date Is Unconstitutional	18
A. Rejecting Mail Ballots Because a Voter Failed to Write a Declaration Date Significantly Burdens the Right to Vote	18
B. Rejecting Mail Ballots Because a Voter Failed to Write a Declaration Date is Unreasonable	21
1. Declaration Dates Have No Election Function	21
2. Declaration Dates are a Vestige of Different Voting Rules	28
3. Requiring Officials to Review Declaration Dates Impedes Effective Election Administration	33
CONCLUSION	35

TABLE OF AUTHORITIES

Cases

<i>Ball v. Chapman</i> , 284 A.3d 1189 (Pa. 2022)	10
<i>Ball v. Chapman</i> , 289 A.3d 1 (Pa. 2023)	<i>passim</i>
<i>Banfield v. Cortes</i> , 110 A.3d 229 (Pa. 2015)	13, 16, 17, 35
<i>Burdick v. Takushi</i> , 504 U.S. 428 (1992).....	17
<i>Chapman v. Berks Cnty. Bd. of Elections</i> , No. 355 MD 2022, 2022 WL 4100998 (Pa. Cmwlth. Aug. 19, 2022)	<i>passim</i>
<i>Chelsea Collaborative, Inc. v. Sec’y of Commonwealth</i> , 100 N.E.3d 326 (Mass. 2018)	17, 32
<i>Craig v. Peterson</i> , 233 N.E.2d 345 (Ill. 1968)	17
<i>DeWalt v. Bartley</i> , 24 A. 185 (Pa. 1892).....	16
<i>Guare v. New Hampshire</i> , 117 A.3d 731 (N.H. 2015)	17
<i>In re Canvass of Absentee and Mail-in Ballots of Nov. 3, 2020 Gen. Election</i> , 241 A.3d 1058 (Pa. 2020).....	<i>passim</i>
<i>In re Nov. 3 Gen. Election</i> , 240 A.3d 591, 610 (Pa. 2020)	32
<i>In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71</i> , 740 N.W.2d 444 (Mich. 2007)	17
<i>Independence Party Nomination</i> , 57 A. 344 (Pa. 1904)	1, 16
<i>Jubelirer v. Rendell</i> , 953 A.2d 514 (Pa. 2008)	11
<i>League of Women Voters of Wisconsin Educ. Network, Inc. v. Walker</i> , 851 N.W.2d 302 (Wisc. 2014)	17
<i>League of Women Voters v. Commonwealth</i> , 178 A.3d 737 (Pa. 2018)	15, 16, 18, 34

<i>Lycoming Cnty. v. Pa. Labor Relations Bd.</i> , 943 A.3d 333 (Pa. Cwmlth. 2007)	5
<i>Migliori v. Cohen</i> , 36 F.4th 153 (3d Cir. 2022).....	8, 25
<i>Mixon v. Commonwealth</i> , 759 A.2d 442 (Pa. Cwmlth. Ct. 2000)	3
<i>Montana Democratic Party v. Jacobsen</i> , 545 P.3d 1074 (Mt. 2024).....	17
<i>Moss v. Pa. Board of Probation and Parole</i> , 193 A.3d 1130 (Pa. Cwmlth. 2018)	5
Order, <i>Ball v. Chapman</i> , No. 102 MM 2022 (Pa. Nov. 5, 2022)	11
<i>Pa. Democratic Party v. Boockvar</i> , 238 A.3d 345 (Pa. 2020)	<i>passim</i>
<i>Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.</i> , 97 F.4th 120 (3d Cir. 2024).....	5, 24
<i>Pa. State Conf. of NAACP v. Schmidt</i> , No. 22-339, 2023 WL 8091601 (W.D. Pa. Nov. 21, 2023)	<i>passim</i>
<i>Shankey v. Staisey</i> , 257 A.2d 897 (Pa. 1969).....	16
<i>Winston v. Moore</i> , 91 A. 526 (Pa. 1914)	16
Constitutions	
Pa. Const. art. I, § 26.....	13
Pa. Const. art. I, § 5.....	14
Pa. Const. art. VII, § 1.....	3, 13
Pa. Const. art. VII, § 4.....	22
Pa. Const. of 1776, art. I, § VII	14
Pa. Const. of 1776, art. II, § 6	14
Pa. Const. of 1790, art. III § 1.....	14

Pa. Const. of 1790, art. IX, § 5	14
Pa. Const. of 1838, art. III § 1	14
Pa. Const. of 1838, art. IX, § 5	14
Pa. Const. of 1874, art. I, § 5.....	14
Pa. Const. of 1874, art. VIII, § 1	14
U.S. Const. amend. XXVI.....	3
Statutes	
25 P.S. § 2642.....	8, 33
25 P.S. § 2811.....	3, 27
25 P.S. § 3050.....	28
25 P.S. § 3146.2.....	4
25 P.S. § 3146.2b.....	4
25 P.S. § 3146.4.....	4
25 P.S. § 3146.6.....	5, 28
25 P.S. § 3146.8.....	6, 7, 8
25 P.S. § 3146.9.....	6
25 P.S. § 3150.12.....	4
25 P.S. § 3150.12b.....	4
25 P.S. § 3150.14.....	4
25 P.S. § 3150.16.....	5, 28
25 P.S. § 3150.17.....	6

25 P.S. § 3154.....	8
25 P.S. § 3158.....	8
25 P.S. § 3159.....	8, 33
25 P.S. § 3553.....	22
25 Pa.C.S. § 1301.....	3, 27
Act of Aug. 1, 1941, P.L. 672, No. 273.....	30
Act of Aug. 13, 1963, P.L. 707, No. 379.....	31
Act of Dec. 11, 1968, P.L. 1183, No. 375.....	31, 32
Act of June 3, 1937, P.L. 1333, No. 320.....	29
Act of Mar. 9, 1945, P.L. 29, No. 17.....	30
Act of Oct. 31, 2019, P.L. 552, No. 77.....	3, 6
Other Authorities	
1972 Op. Atty. Gen. No. 121.....	3
<i>Guidance Concerning Examination of Absentee and Mail-in Ballot</i>	
<i>Return Envelopes, Version 1.0 (Sept. 11, 2020)</i>	6
<i>Guidance Concerning Examination of Absentee and Mail-in Ballot</i>	
<i>Return Envelopes, Version 4.0 (Apr. 3, 2023)</i>	6
Pa.R.A.P. 1532.....	11
Pa.R.E. 201(b)(2).....	5

INTRODUCTION

Since 1776, every version of Pennsylvania's Constitution has guaranteed its citizens the right to vote. This right is so fundamental to our system of government that, for over a century, our courts have held that the right to vote can be burdened only by regulations "necessary for the peaceable and orderly exercise of the same right in other electors." *Independence Party Nomination*, 57 A. 344, 345 (Pa. 1904). It is now beyond dispute that rejecting mail ballots because a voter failed to correctly write a date on the declaration returned with the ballot serves no purpose but to unfairly disenfranchise thousands of qualified Pennsylvania voters each election. Under settled caselaw, election officials therefore cannot constitutionally reject mail ballots because of declaration-date errors.

While the Pennsylvania Supreme Court held that the Election Code requires election officials to reject mail ballots from voters who failed to correctly write a date—a holding the Secretary continues to believe incorrectly interpreted the Election Code—that Court did not decide the issue raised in this case. *Ball v. Chapman*, 289 A.3d 1, 20-22 (Pa. 2023).¹

¹ This Court is bound by the Supreme Court's decision in *Ball*, but if this case advances to the Supreme Court the Secretary will urge the Supreme Court to revisit its interpretation of the Election Code.

The question before this Court is whether an election official's rejection of a mail ballot because of an inconsequential declaration-date error violates constitutional rights protected under Article I, Section 5, as well as Article I, Section 26 and Article VII, Section 1, of the Pennsylvania Constitution.

The answer to this question is yes. This Court should declare that election officials may not reject timely submitted mail ballots from qualified voters merely because the voter failed to correctly write a declaration date. That relief is necessary so that thousands of indisputably legal, qualified Pennsylvania voters are not disenfranchised in each election for failing to perform a meaningless act. Accordingly, this Court should enter judgment for Petitioners so that the harm is not repeated in any more elections.

BACKGROUND

I. Mail Voting in Pennsylvania

People are qualified to vote in Pennsylvania if they: (1) are at least 18 years old on the day of the election; (2) have been a U.S. citizen for at least one month prior to the election; (3) have lived in Pennsylvania and in their election district for at least 30 days prior to the election; and (4) are not imprisoned for a felony conviction. Pa. Const. art. VII, § 1; 25 P.S. § 2811; 25 Pa.C.S. § 1301(a).² Information on registered voters is housed in county-specific voter rolls within the Statewide Uniform Registry of Electors (“SURE”) system.

Historically, registered Pennsylvanians voted in person, with limited exceptions allowing absentee voting. In 2019, however, Pennsylvania passed Act 77, which expanded mail voting to all registered voters. Act of Oct. 31, 2019, P.L. 552, No. 77. As a result, registered, eligible

² See also *Mixon v. Commonwealth*, 759 A.2d 442, 451 (Pa. Cmwlth. 2000), *aff'd*, 783 A.2d 763 (Pa. 2001) (holding that individuals with felony convictions, other than those currently incarcerated, may register to vote); 1972 Op. Atty. Gen. No. 121 (concluding that *Dunn v. Blumstein*, 405 U.S. 330 (1972), prohibits the enforcement of certain durational residency requirements longer than 30 days); U.S. Const. amend. XXVI (prohibiting denial of right to vote to citizens 18 years of age or older on account of age).

Pennsylvanians may now submit a ballot: (i) in person; (ii) absentee; or (iii) through no-excuse mail-in voting.

When creating no-excuse mail voting, the General Assembly adopted nearly wholesale the existing procedures governing absentee voting. In relevant form and function, the procedures to return an absentee ballot or a no-excuse mail ballot (collectively, “mail ballots”) are identical.

To vote by mail ballot, a registered voter must apply to their county board of elections and provide proof of their eligibility to vote. 25 P.S. §§ 3146.2, 3150.12; *see also id.* §§ 3146.2b, 3150.12b. Shortly before an election, county boards send anyone approved to vote by mail a package with a ballot, a secrecy envelope, and a larger pre-addressed return envelope specific to that election. *Id.* §§ 3146.4, 3150.14. Each return envelope has a pre-printed declaration stating that the voter is qualified to vote in the election and has not already voted. *Id.* §§ 3146.4, 3150.14. It also has a pre-printed SURE system barcode unique both to the voter requesting the mail ballot and the election. *Pa. State Conf. of NAACP v. Schmidt* (“*NAACP I*”), No. 22-339, 2023 WL 8091601, at *20 (W.D. Pa.

Nov. 21, 2023), *rev'd and remanded Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.* (“*NAACP II*”), 97 F.4th 120 (3d Cir. 2024).³

Voters are instructed to complete their ballot, place it in the secrecy envelope, and then place the secrecy envelope in the return envelope. 25 P.S. §§ 3146.6(a), 3150.16(a). The Election Code directs that voters “shall then fill out, date and sign the [return-envelope] declaration.” *Id.* §§ 3146.6(a), 3150.16(a). Voters must complete their ballot before 8 p.m. on Election Day. *Id.* §§ 3146.6(a), 3150.16(a).

³ The Court may take notice of the factual findings from *NAACP I*, and the other cases cited later in this brief. Those facts are “not subject to reasonable dispute” because they “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Pa.R.E. 201(b)(2). Indeed, it is “well settled that [Commonwealth Court] may take judicial notice of pleadings and judgments in other proceedings where appropriate. That is particularly so where [] the other proceedings involve the same parties.” *Moss. v. Pa. Board of Probation and Parole*, 193 A.3d 1130, 1137 n.11 (Pa. Cmwlth. 2018); *see also Lycoming Cnty. v. Pa. Labor Relations Bd.*, 943 A.3d 333, 335 n.8 (Pa. Cmwlth. 2007).

Here, the parties opposing Petitioners’ requested relief were also parties in *NAACP I* and active participants in building the extensive record compiled in that case. While the Third Circuit reversed the district court decision in *NAACP I*, it was not because the appellate court questioned any of the district court’s determinations of undisputed fact. Rather, the Third Circuit noted its agreement that declaration dates “serve little apparent purpose.” *Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.* (“*NAACP II*”), 97 F.4th 120, 125 (3d Cir. 2024).

Act 77 did not create a new statutory section to govern election officials' review of no-excuse mail ballots. Rather, pre-existing canvassing procedures for absentee ballots now apply to no-excuse mail ballots as well. *See generally id.* § 3146.8; Act of Oct. 31, 2019, P.L. 552, No. 77, § 7.

Under the text of the pre-existing canvassing section, county boards are directed to set aside mail ballots received after 8 p.m. on Election Day. 25 P.S. § 3146.8(g)(1)(ii).⁴ Counties must maintain records of when each mail ballot was received. *Id.* §§ 3146.9(b)(5), 3150.17(b)(5).

The Department of State has advised counties, in guidance first issued in September 2020,⁵ and last updated in April 2023,⁶ to “stamp the date of receipt on the ballot-return envelope” and “record the receipt of absentee and mail-in ballots daily in the [SURE] system.”

⁴ Before Act 77, the deadline was on the Friday before Election Day.

⁵ *Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes*, Version 1.0 (Sept. 11, 2020), available at: <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf>.

⁶ *Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes*, Version 4.0 (Apr. 3, 2023), available at: <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2023-04-03-Examination-Absentee-Mail-In-Ballot-Return-Envelopes-4.0.pdf>.

Counties follow this guidance. Upon receipt of a mail-ballot package, county boards stamp or mark each return envelope with the date and time the ballot was received. See *NAACP I*, No. 22-339, 2023 WL 8091601, at *20-21; *Chapman v. Berks Cnty. Bd. of Elections*, No. 355 MD 2022, 2022 WL 4100998, at *6 (Pa. Cmwlth. Aug. 19, 2022) (describing county commissioners' testimony); see also *Ball*, 289 A.3d at 16 n.77; *In re Canvass of Absentee and Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1077 (Pa. 2020) (announcing judgment).

Counties also scan the barcode on the return envelope into the SURE system, which creates an electronic record of the date and time the ballot was received. *NAACP I*, No. 22-339, 2023 WL 8091601, at *20-21; *Berks*, No. 355 MD 2022, 2022 WL 4100998, at *6, *19; see also *Ball*, 289 A.3d at 16 n.77; *In re Canvass*, 241 A.3d at 1077. During the canvassing process, county boards use these independent means of verifying that a mail ballot was received by the statutory deadline.

When canvassing timely mail ballots, county election officials must be satisfied that a voter's "declaration is sufficient." 25 P.S. § 3146.8(g)(3); see also *In re Canvass*, 241 A.3d at 1064-65, 1076 (announcing judgment) (explaining counties' review declarations for their

sufficiency). If a county is satisfied that the declaration is sufficient (and other conditions not relevant here are met), the ballots “shall be counted and included with the returns of the applicable election.” 25 P.S. § 3146.8(g)(4).

After the county has completed its canvassing, it must submit its final and accurate returns to the Secretary. *Id.* §§ 3154(f), 3158. Counties must certify their final and accurate results to the Secretary within 20 days of Election Day. *Id.* § 2642(k). The Secretary must then complete his own tabulation, computation, and canvassing of the votes cast for all federal offices, all statewide Pennsylvania offices, all state Senators and Representative, and judicial offices. *Id.* § 3159.

II. Relevant Litigation History

Before 2020, county boards routinely counted mail ballots returned with a missing handwritten declaration date. When there was a date, officials were unconcerned with what date had been written. *Migliori v. Cohen*, 36 F.4th 153, 163-64 (3d Cir. 2022) *vacated as moot by Ritter v. Migliori*, 143 S.Ct. 297 (2022); *Berks*, No. 355 MD 2022, 2022 WL 4100998, at *18. Only after the General Assembly expanded the availability of mail-in voting did anyone seek to force election officials to

exclude ballots with missing or incorrect dates from the returns that they submit to the Secretary for his final certification. As a result, there has been litigation about this issue in almost all subsequent elections.

Relevant to this case, the Pennsylvania Supreme Court has addressed declaration dates twice.

It first did so shortly after the 2020 general election, when it considered challenges to the decisions of the Allegheny and Philadelphia County boards of elections to count mail ballots returned without a handwritten date on the return-envelope declaration. *See generally In re Canvass*, 241 A.3d 1058. Five days after granting applications to exercise extraordinary jurisdiction, the Supreme Court issued a 3-3-1 decision concluding that those ballots should be counted in 2020.

Justice Donahue, joined by Justices Baer and Todd, concluded that a signed but undated declaration was “sufficient” under the Election Code and so the accompanying ballot should be canvassed. *Id.* at 1076-78 (announcing judgment). Justice Wecht disagreed with that statutory interpretation but agreed that omitting a date should not disqualify voters for that election. *Id.* at 1085-89 (Wecht, J., concurring). Justice Dougherty, joined by Chief Justice Saylor and Justice Mundy, would

have found that counties could not canvass ballots returned with signed but undated declarations in any election. *Id.* at 1090-91 (Dougherty, J., dissenting).

One week before the 2022 general election, the Supreme Court again addressed whether, under the Election Code, election officials could canvass mail ballots if the voter neglected to write a date on their declaration or wrote an incorrect date. *Ball v. Chapman*, 284 A.3d 1189, 1192 (Pa. 2022). In *Ball*, the six-member Court issued an order that county boards must “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.”⁷

The *Ball* order did not explain how election officials were to determine if a declaration was “incorrectly dated.” This omission led to widespread confusion among election officials.⁸ Four days later, the Supreme Court issued a supplemental order, directing that, for the 2022 general

⁷ Chief Justice Baer had passed away a few weeks before the *Ball* order.

⁸ *E.g.*, Bethanie Rodgers, ‘Utter chaos’: Pa. counties hustle after Supreme Court order on mail-in ballots, (Nov. 5, 2022), <https://www.goerie.com/story/news/politics/2022/11/05/pennsylvania-dealing-court-order-undated-ballots-election-day-voting/69620980007/>.

election, dates (1) before September 19, 2022 (which was around the time counties began sending mail-ballot packages for that election) or (2) after Election Day were “incorrect.” Order, *Ball v. Chapman*, No. 102 MM 2022 (Pa. Nov. 5, 2022).

Several months later, the Supreme Court issued opinions in *Ball*, explaining that *In re Canvass* was binding precedent holding that the Election Code requires a handwritten date on the declaration for counties to canvass a mail ballot. *See generally Ball*, 289 A.3d 1. The Court also concluded the date a voter must write is “the date upon which an elector signs the declaration.” *Id.* at 22. How counties figure out if a date is “correct” was a question “beyond [the court’s] purview.” *Id.* at 23 (opinion of the court).

STANDARD OF REVIEW

In an original jurisdiction matter, the Court may grant summary relief at “any time after the filing of a petition for review” if “the right of the applicant thereto is clear.” Pa.R.A.P. 1532(b). An application for summary relief “may be granted if a party’s right to judgment is clear and no material issues of fact are in dispute.” *Jubelirer v. Rendell*, 953 A.2d 514, 521 (Pa. 2008) (internal quotation marks omitted). Because “all the

parties agreed that there are no outstanding questions of fact, nor factual stipulations required, and that this matter involves purely legal questions,” Scheduling Order (June 10, 2024), this matter is ripe for resolution on summary relief.

SUMMARY OF THE ARGUMENT

Rejecting mail ballots because a voter failed to correctly write an inconsequential declaration date violates the Pennsylvania Constitution’s guarantee of free and equal elections. Three of the six Justices that resolved *Ball* already have signaled that the Constitution forbids counties from rejecting ballots based on a voter’s inconsequential declaration-date error. *Ball*, 289 A.3d at 27 n.156 (announcing judgment).

Pennsylvanians can be deprived of their constitutionally guaranteed right to vote only if doing so reasonably ensures free, honest, and fair elections. Requiring that election officials treat undated or wrongly dated declarations as insufficient when canvassing mail ballots flunks that standard because the date written on a return-envelope declaration serves no function in administering Pennsylvania’s elections. In fact, declaration dates are a relic of voting rules that have not existed since 1968. Requiring election officials to review declaration dates, and reject ballots

returned with a missing or incorrect declaration date, affirmatively harms election administration.

Because of the rule announced in *Ball*, thousands of indisputably qualified Pennsylvanians are excluded from the democratic process in every election for failing to perform an act that serves no purpose. This result cannot be reconciled with Pennsylvania's constitutional protections for the right to vote.

The Court should enter judgment in Petitioner's favor and hold that the Constitution does not permit disenfranchising voters solely for failing to handwrite a meaningless date on the mail-ballot return envelope.

ARGUMENT

I. **Pennsylvania's Constitution Confers Robust Protections of the Right to Vote**

In Pennsylvania, "the right to vote is fundamental and pervasive of other basic civil and political rights." *Banfield v. Cortes*, 110 A.3d 229, 265 (Pa. 2015) (cleaned up). Our Constitution grants every resident the right to vote if they meet the age, citizenship, and residency requirements and have followed rules governing voter registration. Pa. Const. art. VII, § 1. It also directs that no Commonwealth actor "shall deny to any person the enjoyment of any civil right." Pa. Const. art. I, § 26.

Qualified individuals' right to vote has been guaranteed in every version of Pennsylvania's Constitution. Pa. Const. of 1776, art. II, § 6; Pa. Const. of 1790, art. III § 1; Pa. Const. of 1838, art. III § 1; Pa. Const. of 1874, art. VIII, § 1.

The Pennsylvania Constitution declares that "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. art. I, § 5. This guarantee also has been a part of the Constitution in some form since 1776. Pennsylvania's original Constitution commanded that "all elections ought to be free." Pa. Const. of 1776, art. I, § VII. And the specific guarantee "That elections shall be free and equal" has been enshrined in every Constitution since 1790, with the remainder of the current provision having been added in 1874. Pa. Const. of 1790, art. IX, § 5; Pa. Const. of 1838, art. IX, § 5; Pa. Const. of 1874, art. I, § 5.

Together, the constitutional provisions provide robust protections for the right to vote.

The free and equal clause's assurance of both the "free exercise" of the right to vote and also that elections be "equal" requires that: "[1] all aspects of the electoral process, to the greatest degree possible, be kept

open and unrestricted to the voters of our Commonwealth, and, also, [2] conducted in a manner which guarantees, to the greatest degree possible, a voter's right to equal participation in the electoral process for the selection of his or her representatives in government." *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018). By protecting the freedom to vote and the equality of elections, the clause strikes "at all regulations of law which shall impair the right of suffrage rather than facilitate or reasonably direct the manner of its exercise." *Id.* at 809 (quoting Charles R. Buckalew, *An Examination of the Constitution of Pennsylvania. Exhibiting The Derivation and History of Its Several Provisions*, Article I at 10 (1883)).

The Supreme Court has been "consistent over the years" about "what constraints Article I, Section 5 places on the legislature." *Id.* Section 5 demands, at a minimum, that elections must be "public and open to all qualified electors alike"; that every voter must have "the same right as every other voter"; that every voter must have "the right to cast his ballot and have it honestly counted"; that regulations "of the right to exercise the franchise [may] not deny the franchise itself, or make it so difficult as to amount to a denial"; and that "no constitutional right of the

qualified elector [may be] subverted or denied him.” *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914).

In addition to these protections, Pennsylvania’s Constitution requires that all regulations that burden the right to vote must be “reasonable, non-discriminatory regulations to ensure honest and fair elections that proceed in an orderly and efficient manner.” *Banfield*, 110 A.3d at 176-77; accord *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 369 (Pa. 2020). The right to vote is subject only to regulations “necessary for the peaceable and orderly exercise of the same right in other electors.” *Independence Party Nomination*, 57 A. 344, 345 (Pa. 1904). Burdens on the right to vote beyond those needed to maintain order (*e.g.*, the time, place, and manner of voting) or an election’s integrity are an “unconstitutional restriction.” *Id.* The Pennsylvania Supreme Court has long tested election regulations against this standard. *Pa. Democratic Party*, 238 A.3d at 384-85; *Shankey v. Staisey*, 257 A.2d 897, 901 (Pa. 1969); *Winston*, 91 A. at 523-24; *DeWalt v. Bartley*, 24 A. 185, 187 (Pa. 1892).

Although Pennsylvania’s strong constitutional protections of the right to vote have no equally forceful federal counterpart, *see League of Women Voters*, 178 A.3d at 804, some of the protections that exist in the

Pennsylvania Constitution resemble those that exist under the U.S. Constitution. Just as the Pennsylvania Constitution, the U.S. Constitution demands that burdens on voting rights be justified by sufficient regulatory interests. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *see also Pa. Democratic Party*, 238 A.3d at 384-85 (comparing protections under Pennsylvania Constitution to those described in *Burdick*); *Banfield*, 110 A.3d at 177 (same).

Pennsylvania's constitutional protection against unreasonable regulations of the right to vote resembles guarantees enshrined in other state constitutions. *E.g., Montana Democratic Party v. Jacobsen*, 545 P.3d 1074, 1091-93 (Mt. 2024); *Chelsea Collaborative, Inc. v. Sec'y of Commonwealth*, 100 N.E.3d 326, 331-32 (Mass. 2018); *Guare v. New Hampshire*, 117 A.3d 731, 736 (N.H. 2015); *League of Women Voters of Wisconsin Educ. Network, Inc. v. Walker*, 851 N.W.2d 302, 309 (Wisc. 2014); *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 740 N.W.2d 444, 463 (Mich. 2007); *Craig v. Peterson*, 233 N.E.2d 345, 348 (Ill. 1968).

II. Rejecting Mail Ballots Because a Voter Failed to Correctly Write a Declaration Date Is Unconstitutional

Requiring election officials to reject mail ballots returned with an undated, or wrongly dated, declaration is plainly unconstitutional. Such a rule denies the right to vote for failing to comply with an arbitrary requirement that serves no purpose under the Election Code and has no relationship to ensuring free, honest, and fair elections.

A. Rejecting Mail Ballots Because a Voter Failed to Write a Declaration Date Significantly Burdens the Right to Vote

Cancelling mail ballots because of declaration date errors significantly “impairs the right of suffrage.” *League of Women Voters*, 178 A.3d at 809 (quoting Charles R. Buckalew, *An Examination of the Constitution of Pennsylvania. Exhibiting The Derivation and History of Its Several Provisions*, Article I at 10 (1883)). For an individual voter, it leads to disenfranchisement. *Ball*, 289 A.3d at 20-22.

Across the Commonwealth, cancelling ballots for declaration date errors produces a constitutionally “intolerable ratio of rejected ballots.” *Pa. Democratic Party*, 238 A.3d at 389 (Wecht, J., concurring). As the participation of both the state and national arm of each major political party in this case reflects, the error rate is significant enough to attract

intense political attention. In fact, the RNC and Republican Party of Pennsylvania specifically averred in their application to intervene that they have an interest here because the number of voters who fail to write a correct date has been greater than the margin separating candidates in certain contests. RNC Appl. to Intervene ¶ 22 (June 7, 2024).

Indeed, since Act 77 created no-excuse mail voting, thousands of registered, eligible electors in every election fail to write a correct date on the declaration returned with their timely mail ballot.

Although mail ballots with declaration date errors could be counted for the 2020 general election, in Allegheny County alone 2,349 eligible voters returned a mail ballot by the statutory deadline with a signed but undated declaration. *In re Canvass*, 241 A.3d at 1063 (announcing judgment). In Philadelphia County, 8,329 eligible voters returned a mail ballot by the statutory deadline with a signed declaration on which the voter had neglected to handwrite either a date or the voter's name or address (the last two of which are no longer required). *Id.*

For the 2022 general election, around 1,244,000 people returned a mail ballot. And counties set aside about 10,500 timely returned mail ballots from eligible voters solely because the declaration returned with

the ballot was not correctly dated. *NAACP I*, No. 22-339, 2023 WL 8091601, at *22 (W.D. Pa. Nov. 21, 2023).

For the 2023 primary election, about 597,000 voters returned a mail ballot. Using SURE, counties reported cancelling about 4,918 of those ballots because of date errors.⁹

For the 2023 general election, about 613,746 voters returned a mail ballot. Because of the timing of the ruling in *NAACP I* some, but not all, counties canvassed mail ballots in the 2023 general election with declaration-date errors. At least 15 counties did so: Adams, Allegheny, Beaver, Berks, Bucks, Chester, Dauphin, Delaware, Lancaster, Lebanon, Lehigh, Luzerne, Montgomery, Philadelphia, and York. See Reply Br. at 17 n.6, *Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, No. 23-3166 (3d Cir. Jan. 10, 2024). Among the remaining 52 counties, 1,354

⁹ Counties track the status of mail ballots in the SURE system. Starting with the 2023 primary, the Department adjusted the SURE system to allow counties to indicate a mail ballot was cancelled because of a declaration date error (as well as other error types). Even where data comes from SURE entries, that data underreports the number of date errors. Counties can assign a ballot only one error type. So if, for example, a voter neither signed nor dated the declaration, that may be reported in SURE as a ballot cancelled for a signature error or some other error type.

ballots were reported as being cancelled because of date errors out of about 250,580 mail ballots returned.

For the 2024 primary election, around 715,811 people returned a mail ballot. Counties reported cancelling about 4,468 of those ballots because of date errors.

B. Rejecting Mail Ballots Because a Voter Failed to Write a Declaration Date is Unreasonable

Requiring election officials to deny the right to vote to anyone who fails to properly write a declaration date does not advance any countervailing interest in free, honest, and fair elections. In fact, tracing the history of the Election Code confirms that, since 1968, there has been no reason for officials to review a voter's declaration date or to reject a ballot based on the content (or absence) of that date. Even worse, making a correctly dated declaration a prerequisite to having a mail ballot counted affirmatively hinders sound election administration.

1. Declaration Dates Have No Election Function

The Election Code creates detailed rules for Pennsylvania's qualified, registered electors who opt to vote by mail. Most significant here, everyone who votes by mail must complete their ballot, place the ballot in a secrecy envelope, and place the secrecy envelope in a larger pre-

addressed return envelope. *Supra* at 4-5. Each return envelope has printed on it a declaration that requires the voter to attest they are qualified to vote in the election and have not already voted. *Supra* at 4-5. Voters are directed to “fill out, date and sign the declaration.” *Supra* at 5. And voters must complete their ballot before 8 p.m. on Election Day. *Supra* at 5.

Most of these rules have a reasonable connection to advancing the administration of Pennsylvania’s election. By signing the declaration, the voter swears, under penalty of perjury, that they are qualified to vote the ballot being returned. 25 P.S. § 3553. The secrecy envelope can reasonably be understood to further a constitutional interest in secret ballots. Pa. Const. art. VII, § 4. Return deadlines allow election officials to timely perform their responsibilities so that winning candidates can assume office without delay.

Declaration dates, however, do not have a legal or factual purpose. The lack of purpose has been conclusively and repeatedly demonstrated, most compellingly in two cases with extensive evidence about the date’s function.

In the first case, the Department of State's Deputy Secretary of Elections and county commissioners from three counties that refused to canvass mail ballots with undated declarations—Berks, Fayette, and Lancaster—testified about declaration dates and the canvassing of mail ballots. *See Berks*, No. 355 MD 2022, 2022 WL 4100998, at *5-6. After hearing the commissioners' testimony, President Judge Cohn Jubelirer concluded that they had not shown that the date is used to determine a voter's qualifications, determine whether they already voted, or preserve confidentiality. *Id.* at *19, *20. It was also undisputed that the date was not needed to establish if a mail ballot was returned by the statutory deadline. *Id.* at *18. Nor did the Election Code suggest any purpose for writing a date or how the date is used. *Id.* at *18. As a result, President Judge Cohn Jubelirer correctly concluded that "the parties have not identified a specific purpose served by dating the declaration on the return envelope, and the Court cannot discern any." *Id.* at *20; *see also id.* at *18 ("[T]here is **no factual or legal basis** for concluding that the dating provision serves [any identified] interest." (emphasis in original)).

In the second case, discovery was taken from every county board of elections, the Department of State, and expert witnesses about the date's

function. The undisputed facts showed that counties do not rely on the declaration date to track whether a ballot was returned on time. *NAACP I*, No. 22-339, 2023 WL 8091601, at *20-21, *32. Instead, counties independently track whether ballots were received on time through measures such as scanning the ballot envelope into the SURE system or time stamping. *Id.* at *20-21, *32. Further, the evidence showed and the parties agreed “that the county boards of elections did not use the handwritten date on the Return Envelope for any purpose related to determining a voter’s age, citizenship, county or duration of residence, or felony status.” *Id.* at *29. In fact, the undisputed record—compiled after taking discovery from the Department and every county board of election in Pennsylvania—established that the declaration date is “wholly irrelevant.” *Id.* at *31. The date a voter signs the declaration “is untethered from any other requirement on the ballot” because the only significant date under the Election Code is the date the ballot is received. *Id.* at *31-32.

Other courts that have reviewed Pennsylvania’s date requirement also have readily concluded that the declaration date serves no function. *NAACP II*, 97 F.4th at 125 (“The date requirement, it turns out, serves little apparent purpose.”); *Migliori v. Cohen*, 36 F.4th 153, 163-64 (3d Cir.

2022) *vacated as moot by Ritter v. Migliori*, 143 S.Ct. 297 (2022) (explaining that the handwritten declaration date serves no function); *In re Canvass*, 241 A.3d at (Pa. 2020) (announcing judgment) (calling the declaration date “unnecessary and, indeed, superfluous”).

In fact, before *Ball* required otherwise, counties would count ballots no matter what date a voter wrote. *Migliori*, 36 F.4th at 163-64; *Berks*, No. 355 MD 2022, 2022 WL 4100998, at *18. That it did not matter what a voter wrote further confirms that the date itself serves no purpose.

Even in *Ball*, five of the six Justices expressly recognized that there is no connection between the handwritten date on the return envelope and a voter’s qualifications. 289 A.3d at 24 & n.139 (Wecht, J., announcing judgment, joined by Todd, C.J., and Donahue, J.); *see also id.* at 39 (Brobson, J., dissenting, joined by Mundy, J.) (observing that the declaration date would not “have any bearing on determining voter qualification at all.”).

Justice Dougherty did not address this issue in his own *Ball* opinion but had in his dissent from the Court’s 2020 *In re Canvass* decision. There, he envisioned several purposes the date might fulfill. *In re Canvass*, 241 A.3d at 1090-91 (Dougherty, J., dissenting). But in litigation

since *In re Canvass*—all of which has occurred with the benefit of time not available to the Supreme Court in *In re Canvass*—the Department has repeatedly explained none of those purposes is consistent with the Election Code or the way elections are administered in Pennsylvania.¹⁰

To summarize, it is wrong that “[t]he date ... ensures the elector completed the ballot within the proper time frame.” *In re Canvass*, 241 A.3d at 1091 (Dougherty, J., dissenting). Ballots and ballot return envelopes are unique to each election; a voter has access to complete a mail ballot only in the several weeks before election day. Moreover, because the deadlines to complete and return a ballot are the same, if a ballot is timely received by a county board, it necessarily was timely completed by the voter. And the date written by the voter does not assist county boards in determining whether the board received the ballot before that deadline. Rather, county boards keep timely and untimely ballots separate and independently track timeliness by stamping mail ballot envelopes based on when the county board in fact received them and by logging them in SURE. *NAACP I*, No. 22-339, 2023 WL 8091601, at *20-21, *32;

¹⁰ Notably, in a portion of the Supreme Court’s *Ball* decision joined by Justice Dougherty, that Court recognized that the Department has rebutted each of Justice Dougherty’s theories. *Ball*, 289 A.3d at 16 n.77.

see also *Ball*, 289 A.3d at 16 n.77; *In re Canvass*, 241 A.3d at 1077; *Berks*, No. 355 MD 2022, 2022 WL 4100998, at *6, *19.

Nor does the date “establish[] a point in time against which to measure the elector’s eligibility to cast the ballot.” *In re Canvass*, 241 A.3d at 1090 (Dougherty, J., dissenting). Election Day—not the day the voter dated the return envelope—is the date against which a voter’s qualifications are measured. See 25 P.S. § 2811; 25 Pa.C.S. § 1301; see also *Ball*, 289 A.3d at 16 n.77.

Next, because the handwritten date does not identify any meaningful point in time, it also does not prevent fraud. *Contra In re Canvass*, 241 A.3d at 1091 (Dougherty, J., dissenting). Any notion that the date “prevents the counting of potentially fraudulent back-dated votes,” *id.*, has the issue backwards. There is no point in “fraudulently back-dat[ing]” a ballot envelope if the date is not used to determine whether the ballot was timely received and carries no weight. It is only where the date affects whether the ballot will be counted that a motivation to alter it could possibly exist. Back-dating an envelope cannot lead to a ballot being counted if it has not been delivered by the statutory deadline.

And a declaration date does not help election officials determine if an elector intended to vote by mail ballot “in lieu of appearing in person at a polling place.” *Contra In re Canvass*, 241 A.3d at 1091 (Dougherty, J., dissenting). Anyone who has requested a mail ballot cannot vote at a polling place on election day unless they bring their mail ballot to the polls and surrender it. 25 P.S. §§ 3146.6(b)(3), 3150.16(b)(3). Someone who arrives at their polling place on election day having requested a mail ballot but without that ballot in hand can vote only provisionally. 25 P.S. §§ 3146.6(b)(1)-(2), 3150.16(b)(1)-(2). And if the voter both successfully returns a mail ballot and casts a provisional ballot at the polling place, only the absentee or mail-in ballot may count. 25 P.S. § 3050(a.4)(5)(ii)(F); *see also Ball*, 289 A.3d at 16 n.77.

2. Declaration Dates are a Vestige of Different Voting Rules

Tracing the Election Code’s history confirms what is evident from current practices: requiring officials to reject mail ballots returned without a correctly dated declaration does not have any relationship to protecting free, honest, and fair elections.

When the Election Code was enacted in 1937, most voters could vote only in person. Some active military members—referred to as “detached”

electors—could vote absentee. Act of June 3, 1937, P.L. 1333, No. 320, §§ 1327-1330 (attached as Exhibit 1). Those voters had to complete their ballot “on or before the day of the election.” *Id.* § 1329. Absentee ballots, however, could be counted even if they arrived after Election Day. *Id.* § 1317.

Absentee ballots were returned in an envelope printed with “the affidavit of the [voter], together with the jurat of the officer in whose presence the ballot is marked and before whom the affidavit is made.” *Id.* § 1328. Voters had to “subscribe and swear to the affidavit” and the jurat had to “be subscribed by the [witnessing] officer,” but neither the affidavit nor jurat had to be dated. *Id.* § 1329. During canvassing, county boards were required to “compare the signature of such absent voter with his signature upon any register or other record in their possession.” *Id.* § 1330. If a county board was “satisfied that the signatures correspond and that the affidavit and jurat are sufficient,” it was supposed to process the ballot. *Id.*

Because there was no instruction to date either the affidavit or jurat, the boards’ determination of whether the affidavit and jurat were “sufficient” did not include any assessment of whether either was dated.

The General Assembly amended the Code in 1941. The amended Code directed county boards to “set aside” during canvassing any ballot with a return envelope that “bear[s] a postmark later than the date of the particular Election Day involved.” Act of Aug. 1, 1941, P.L. 672, No. 273, sec. 4, § 1307 (attached as Exhibit 2). After setting aside those untimely ballots, county boards were to review whether the “affidavit and jurat are sufficient.” *Id.* The separate section that instructed absentee voters how to complete their absentee ballot and the included declaration remained unchanged. *Id.* sec. 4, § 1306.

In 1945, the General Assembly added to the Code language stating that voters’ jurat “shall be ... dated.” Act of Mar. 9, 1945, P.L. 29, No. 17, sec. 10, § 1306 (attached as Exhibit 3). Consistent with the new dating language, counties were specifically directed to “set aside” all ballots in which the “jurat bears a date later than the date of the election.” *Id.*, sec. 10, § 1307. The written date, then, replaced the postmark as the necessary evidence a ballot was timely completed. After setting aside ballots based on the jurat date, counties were to review the remaining ballots to determine whether “the affidavit and jurat are sufficient.” *Id.*

As part of 1963 amendments permitting certain categories of civilians to vote absentee, the requirement of a separate affidavit and jurat was replaced with the single declaration that is still in use today. Act of Aug. 13, 1963, P.L. 707, No. 379, sec. 22, § 1304 (attached as Exhibit 4). Reflecting this consolidation, the previous instruction to date the jurat became an instruction to date the declaration: “The elector shall ... fill out, date and sign the declaration printed on [the outer ballot-return] envelope.” *Id.*, sec. 22, § 1306. The Code’s canvassing section was amended to instruct counties to set aside ballots returned with declarations bearing a date after the election. *Id.*, sec. 24, § 1308(c). After setting aside ballots based on the declaration date, counties were to review whether the “declaration is sufficient.” *Id.*, sec. 24, § 1308(e).

In 1968, the General Assembly aligned, for the first time, the deadline for absentee voters to complete their ballot, and for county boards to receive those ballots. Act of Dec. 11, 1968, P.L. 1183, No. 375, sec. 8, § 1308(a) (attached as Exhibit 5).¹¹ After creating a single deadline, the General Assembly *removed* the requirement that counties set aside

¹¹ The single deadline used to be 5 p.m. on the Friday before Election Day but in 2019 was changed to 8 p.m. of Election Day.

ballots based on the date appearing on the ballot-return declaration. *Id.*, sec. 8, § 1308(c). In all other ways, the Code was materially unchanged. *Id.*, sec. 8, § 1306.

When the General Assembly passed Act 77 of 2019, giving all registered, qualified voters the option to vote by mail, it adopted wholesale the pre-existing text and procedures for absentee voting, which had been materially unchanged since 1968. The General Assembly likewise simply incorporated no-excuse mail-in ballots into the existing canvassing procedures for absentee ballots. *Id.*, sec. 7, § 1308.

As this history shows, the declaration date is among the “vestiges remaining in the Election Code” of prior voting rules. *In re Nov. 3 Gen. Election*, 240 A.3d 591, 610 n.24 (Pa. 2020). But while the date remains, the requirement to set aside ballots based on the date has not existed since 1968. Therefore, while rejecting absentee ballots based on a declaration date once served a permissible function, it is now the case that a rule “once considered constitutionally permissible may come to significantly interfere with the fundamental right to vote in light of conditions existing in contemporary society.” *Chelsea Collaborative*, 100 N.E.3d at 334.

3. Requiring Officials to Review Declaration Dates Impedes Effective Election Administration

Not only is there no reasonable basis for requiring mail ballots returned without a declaration date to be rejected, requiring that county boards reject mail ballots returned in envelopes they deem to have a date error impairs free, honest, and fair elections in at least three discrete ways.

First, election officials have significant and demanding responsibilities between Election Day and the deadline to certify an election's returns to the Secretary, which is just 20 days after an election. 25 P.S. § 2642(k). The Secretary has his own certification obligations that follow those of the counties. 25 P.S. § 3159. If officials must reject mail ballots because of declaration date errors, they must engage in the laborious process of reviewing voters' handwritten dates and determining if they are correct. Forcing already burdened election officials to engage in this time-intensive but gratuitous work occupies resources that can, and should be spent, performing tasks that actually further the free, honest, and fair administration of an election.

Second, as experience has shown, requiring counties to review and reject mail ballots based on declaration dates leads to inconsistent and

varying practices within and across counties, specifically as to what qualifies as a sufficient date. *NAACP I*, No. 22-339, 2023 WL 8091601, at *32-33. There is no benefit to those inconsistencies. Requiring election officials reject ballots to do so also demands excluding undisputedly qualified individuals from the electoral process even where the county is absolutely certain their ballot was completed and returned on time, as happened in the 2022 general election. *Id.* at 33. These variations and acts of disenfranchisement do not advance voter confidence, confidence that “is essential to the functioning of our participatory democracy.” *Pa. Democratic Party*, 238 A.3d at 387 (Wecht, J., concurring); see also *League of Women Voters*, 178 A.3d at 814 (recognizing the importance of election rules that do not discourage participation in election). Ruling for Petitioners will provide a return to uniformity that has been disrupted since *Ball*.

Third, ascribing importance to the date requirement introduces risks that would not otherwise exist. If counties need not review the handwritten date, there is no incentive for anyone to manipulate it. But requiring that voters write a correct date for their declaration to be “sufficient” makes the date a piece of information that can be manipulated such that a timely completed, properly returned ballot is not counted.

While the Secretary is not aware of any evidence that such manipulation has occurred, no similar risk exists if counties simply count timely-received ballots cast by registered voters regardless of whether the voter wrote the correct date on the ballot envelope.

* * *

Depriving thousands of qualified electors of their right to vote for failing to perform what is now an entirely meaningless act is not a reasonable regulation needed to ensure a free, honest, and fair election. *Banfield*, 110 A.3d at 176-77; accord *Pa. Democratic Party*, 238 A.3d at 369. Nor is erecting gratuitous roadblocks and then disenfranchising eligible voters who stumble over them consistent with constitutional imperative that “all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth.” *Pa. Democratic Party*, 238 A.3d at 369.

CONCLUSION

For the reasons set forth above, this Court should declare that election officials may not reject mail ballots merely because a voter failed to correctly write a date on the declaration returned with their mail ballot and grant judgment in Petitioners’ favor.

June 24, 2024

Kathleen M. Kotula (No. 86321)
Chief Counsel
Pennsylvania Department of
State
306 North Office Bldg.
401 North Street
Harrisburg, PA 17120

Respectfully submitted,

Michael J. Fischer (No. 322311)
Executive Deputy General Counsel

/s/ Jacob B. Boyer

Jacob B. Boyer (No. 324396)
Aimee D. Thomson (No. 326328)
Governor's Office of General Counsel
Deputy General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17101
(717) 460-6786
jacobboyer@pa.gov

*Counsel for Secretary of the
Commonwealth Al Schmidt*

RETRIEVED FROM DEMOCRACYDOCS.COM

CERTIFICATE OF COMPLIANCE

I 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.

Dated: June 24, 2024

/s/ Jacob B. Boyer

Jacob B. Boyer

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF LENGTH

I certify that this brief complies with the word count requirement set forth in Pennsylvania Rule of Appellate Procedure 2135(a)(1). Excluding matters identified in Pennsylvania Rule of Appellate Procedure 2135(b), this brief is 7,156 words. I have relied on Word's word count function to determine the length of this brief.

Dated: June 24, 2024

/s/ Jacob B. Boyer

Jacob B. Boyer

RETRIEVED FROM DEMOCRACYDOCKET.COM