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LOWEL

**BRIAN T. BAXTER and SUSAN T.  
KINNIRY,**

**Petitioners,**

**v.**

**PHILADELPHIA BOARD OF  
ELECTIONS,**

**Respondent,**

**And**

**REPUBLICAN NATIONAL  
COMMITTEE and REPUBLICAN  
PARTY OF PENNSYLVANIA,**

**Intervenors.**

**COURT OF COMMON  
PLACES  
OF PHILADELPHIA**

**SEPTEMBER TERM, 2024**

**No. 02481**

**ELECTION MATTER**

**NOTICE OF APPEAL**

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Notice is hereby given that Intervenor-Respondents Republican National Committee and Republican Party of Pennsylvania hereby appeal to the Commonwealth Court of Pennsylvania from the following:

- The September 26, 2024 Order granting the Petition for Review and reversing the decision of the Philadelphia County Board of Elections not to count undated and incorrectly dated mail ballots submitted in the September 17, 2024 Special Election; and directing the Board to count undated and incorrectly dated mail ballots submitted in that Special Election “[b]ecause the refusal to count a ballot due to a voter’s failure to ‘date ... the declaration printed on [the outer] envelope’ used to return his/her mail-in ballot, as directed in 25 P.S. §§ 3146.6(a) and 3150.16(a), violates Art. I, § 5 of the Constitution of the Commonwealth of Pennsylvania, which states 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.’” September 26, 2024 Order Paragraph 1(b). The September 26, 2024 Order and its exhibit, the transcript of the hearing held on September 25, 2024, are attached collectively as Exhibit A; and

- The September 27, 2024 Final Disposition Order—docketed on September 28, 2024—that *inter alia*, denied Intervenor-Respondents’ Motion to Dismiss, attached as Exhibit B.

The appealed Judgment and Orders were entered in this matter by the Honorable James C. Crumlish, III, Court of Common Pleas of Philadelphia County, and are attached as Exhibit A and B respectively. They have been entered on the docket, attached here as Exhibit C.

On August 27, 2024, the Supreme Court of Pennsylvania entered an Order to “expedite appeals in matters arising under the Pennsylvania Election Code with respect to the November 5, 2024 General Election, and pursuant to Article V, Section 10 of the Pennsylvania Constitution.” That Order is inapplicable to this notice of appeal and Intervenor-Respondents’ appeal for two main reasons.

*First*, this case does not relate to the November 2024 General Election, but rather to the decision of the Philadelphia Board of Elections not to count certain undated mail ballots cast in the September 17, 2024, Special Election. Moreover, while the underlying action was styled as Petition for Review in the Nature of A Statutory Appeal pursuant to 25 Pa. CS.A. § 3157, Petitioners sought “an order declaring the Commissioners’ decision unlawful under the Pennsylvania Constitution,” not the Election Code. *See* Petition for Review n.1 (attached as Ex. D). A “declaratory judgment action” raising constitutional claims “does not

‘arise under’ the Election Code.” *Working Families Party v. Commonwealth*, 209 A.3d 270, 278 (2019). Rather, where a party brings a declaratory judgment action alleging that a provision of the Election Code or its implementation violates the Constitution, “the thirty-day appeal period for a declaratory judgment matter is appropriate.” *Id.*

*Second*, the Order of the Supreme Court of Pennsylvania further provides that “[a]ny court deciding a matter that arises under the Pennsylvania Election Code in relation to the November 5, 2024 General Election shall append a copy of this order to its decision.” The Court of Common Pleas of Philadelphia did not append a copy of the Supreme Court’s Order to either the September 26, 2024 Order or the September 27, 2024 Final Disposition Order, which are the orders at issue in this appeal. That omission makes perfect sense because this action does not implicate the Supreme Court’s Order.

Dated: October 3, 2024

Respectfully submitted,

/s/ Kathleen A. Gallagher

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