

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LEIGH M. CHAPMAN, Acting
Secretary of the Commonwealth of
Pennsylvania, and the
PENNSYLVANIA DEPARTMENT
OF STATE,

Petitioners,

v.

BERKS COUNTY BOARD OF
ELECTIONS, FAYETTE
COUNTY BOARD OF
ELECTIONS, and LANCASTER
COUNTY BOARD OF
ELECTIONS,

Respondents.

) No. 355 MD 2022
)
) **ORIGINAL JURISDICTION**
)
) **MEMORANDUM IN**
) **OPPOSITION TO**
) **PETITIONERS' EMERGENCY**
) **APPLICATION FOR**
) **PEREMPTORY JUDGMENT**
) **AND SUMMARY RELIEF**
)
) Filed on behalf of Respondents
) Berks County Board of Elections and
) Lancaster County Board of Elections
)
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LEIGH M. CHAPMAN, et al.,)
)
 Petitioners,)
) No. 355 MD 2022
v.)
)
BERKS COUNTY BOARD OF)
ELECTIONS, et al.,)
)
 Respondents.)

**MEMORANDUM OF RESPONDENTS BERKS COUNTY BOARD OF
ELECTIONS AND LANCASTER COUNTY BOARD OF ELECTIONS IN
OPPOSITION TO PETITIONERS' EMERGENCY APPLICATION FOR
PEREMPTORY JUDGMENT AND SUMMARY RELIEF**

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I. INTRODUCTION

Pursuant to the Court’s July 13, 2022 Order, respondents Berks County Board of Elections (“Berks County”) and Lancaster County Board of Elections (“Lancaster County”) (collectively, “Berks & Lancaster Boards”), submit their memorandum in opposition to the Emergency Application for Peremptory Judgment and Summary Relief (“Emergency Application”) filed by Petitioners Leigh M. Chapman, Acting Secretary of the Commonwealth, and the Pennsylvania Department of State (collectively, “Petitioners”). Berks & Lancaster Boards incorporate by reference their separately filed Answer to Petitioners’ Emergency Application as though set forth at length here. For the reasons set forth below and in their Answer, Petitioners’ Emergency Application should be denied and Petitioners’ Petition for Review should be dismissed with prejudice.

Under circumstances where no candidate and no voter is challenging the final certified returns timely submitted by Berks & Lancaster Boards, Petitioners are seeking a writ of mandamus and declaratory and injunctive relief from this Court to enforce Petitioners’ directive—based on no statutory authority—to the Berks & Lancaster Boards to re-certify the returns of their 2022 Primary Election to include the votes from timely received absentee and mail-in ballots that lack a date on the return envelope. By their directive, Petitioners attempt to fabricate a “case or controversy” and a ground for a writ of mandamus where none exists.

Petitioners also seek to usurp the plenary power of the Berks & Lancaster Boards (and all other county boards of elections) to administer the Election Code, and to exercise their sound discretion in doing so. To what end? To achieve Petitioners' preferred policy result that is inconsistent with the mandatory language of the Election Code and decisions interpreting its requirements by the Pennsylvania Supreme Court and this Court.

In overreaching in this manner, Petitioners assert themselves as overseers of Pennsylvania elections who can enact policies outside of the legislative process that arguably favor certain candidates and dictate election results to the various county boards of elections. If one imagines this kind of unfettered power in a future administration controlled by the opposite party, one can see the dangerous precedent of Petitioners' action. Meanwhile, it is not Berks & Lancaster Boards that are holding up final certification of the 2022 Primary Election. Petitioners misleadingly ignore the fact that Berks & Lancaster Boards timely certified their election returns, which requires the Acting Secretary to perform her ministerial duty to tabulate and certify the statewide results of the 2022 Primary Election.

II. COUNTERSTATEMENT OF THE CASE

Berks & Lancaster Boards conducted the 2022 Primary Election in accordance with the Election Code. In Berks County, the election included provisional ballots cast when the polls were ordered to remain open an extra hour

due to technical issues, and challenges to the counting of the provisional ballots cast during the final hour. Statewide, the election was the subject of a mandatory statewide recount of the results of the Republican Party primary for United States Senator.

During the recount, one of the candidates in that race, David McCormick and his campaign, McCormick for Senate, separately challenged the refusal by county boards of election to count votes from timely received absentee and mail-in ballots that lacked a date on the elector's return envelope. McCormick filed an emergency Petition for Review in this Court, which ultimately was voluntarily discontinued when he conceded the race. *McCormick v. Chapman*, No. 286 MD 2022.

This Court's June 2, 2022 Order in *McCormick* required all county boards of elections to segregate timely received absentee and mail in ballots that lack a dated exterior envelope, to canvass those ballots (assuming they were not otherwise defective), "report two vote tallies" to the Acting Secretary, "one that includes the votes from ballots that lack dated exterior envelopes and one that does not, and to report a total vote tally which includes the votes from ballots that had both dated and undated exterior envelopes as the total votes cast."

The Court's June 2, 2022 Order does not mention "certification" or require county boards of election to include the votes from undated absentee and mail in

ballots in their certified returns. The Court’s rationale for requiring the reporting of two vote tallies was so that, “when a final decision on the merits of whether the ballots that lack a dated exterior envelope must be counted or not, the Acting Secretary will have the necessary reports from the County Boards.” *McCormick*, Mem. Opinion, at 37.

Berks & Lancaster Boards complied with this Court’s Order and timely provided Petitioners with separate vote tallies that included and excluded votes from undated absentee and mail in ballots. When the statutory deadline to certify the election results arrived, this Court in *McCormick* had not made a final decision on the merits of this issue because McCormick for Senate had conceded the election and voluntarily discontinued his challenge. Accordingly, on June 6, 2022, Berks & Lancaster Boards certified their election results without including votes from the undated absentee and mail-in ballots as required by the Election Code, as interpreted by the Pennsylvania Supreme Court and this Court, and Berks County certified additional results to the Acting Secretary on June 8, 2021.¹

¹ Because of a challenge to counting the provisional ballots cast in Berks County between 8:00 and 9:00 PM, Berks County could not touch those ballots until that challenge was dismissed on June 6, 2022. Therefore, Berks County submitted a second certified result including the results of the provisional ballots on June 8, 2022, within the time allotted to complete the recount.

Following receipt of the certified results from Berks & Lancaster Boards, Petitioners sent correspondence to Berks & Lancaster Boards, and followed up with identical letters dated June 29, 2022, which stated, in relevant part:

On June 17, 2022, and again on June 27, 2022, the Department of State reminded all county election officials of their obligation to canvass, tabulate, and certify the votes from *all* valid absentee and mail-in ballots that were timely received on or before May 17, 2022, at 8 P.M. *See* 25 P.S. § 3146.8.

It is now clear that the lack of a handwritten date on the exterior envelope of a timely received absentee or mail-in ballot cannot be the basis for invalidating a ballot and disenfranchising eligible voters. Both the Commonwealth Court, while resolving a dispute about the very ballots your county refuses to include in its certification, and the Third Circuit recently held as much. *See* Memorandum Opinion, *McCormick v. Chapman*, No. 286 M.D. 2022 (Pa. Commw. Ct. June 2, 2022); *see also Migliori v. Cohen*, 36 F.4th 153, 164 (3d Cir. 2022) (holding that failure to date a ballot return envelope cannot justify denying the right to vote). The County is therefore legally obligated to certify election results that include timely received absentee and mail-in ballots that lack a voter's handwritten date.

The failure of your county to submit accurate certified results disenfranchises voters in your county and is preventing the Acting Secretary from certifying *all* legally cast votes. Please respond indicating that you intend to send the Department certified vote totals that include votes from *all* legally valid absentee and mail-in ballots. If we do not hear from you by July 1, the Acting Secretary intends to pursue all necessary and appropriate legal action, including seeking a writ of mandamus, emergency relief, injunctive and declaratory relief, and other remedies.

See Letter from Timothy E. Gates, Chief Counsel, Pennsylvania Department of State, dated June 29, 2022. Berks & Lancaster Boards responded to Petitioners'

letter by communicating that they would not be re-certifying their election returns of the 2022 Primary Election as requested.

Petitioners commenced this action by filing their Petition for Review with this Court on July 11, 2022.

III. SUMMARY OF COUNTERARGUMENT

Petitioners do not meet the standards for mandamus or declaratory or injunctive relief in this action. Therefore, their emergency application must be denied and their petition for review must be dismissed with prejudice. Petitioners are not entitled to a writ of mandamus because the canvassing and computing of election returns is discretionary, making mandamus against county boards of elections inappropriate. *Appeal of McCracken*, 370 Pa. 562, 565, 88 A.2d 787, 788 (Pa. 1952). Petitioners are not entitled to declaratory or injunctive relief because there is no “actual case or controversy,” which is required for any court to issue a declaratory judgment. *Brouillette v. Wolf*, 213 A.3d 341, 357 (Pa. Commw. Ct. 2019) (Declaratory Judgments Act, 42 Pa. C.S.A. §§ 7531-7541, requires a petition praying for declaratory relief to state an actual controversy between the petitioner and the named respondent). Petitioners have unsuccessfully attempted to create an actual “case or controversy by directing, without legal authority, Berks & Lancaster Boards to re-certify their election results to include votes from undated absentee and mail-in ballots, and then suing when they refused to comply.

The Election Code provision on which Petitioners rely defeat, not support, Petitioners' claims because they demonstrate that Berks & Lancaster Boards have discretion to "canvass and compute" election returns. It is the Acting Secretary who has the ministerial duty of certifying the statewide election results upon receipt from the county boards of elections their certified results, which Berks & Lancaster Boards timely submitted for the 2022 Primary Election. Yet Petitioners argue that Berks & Lancaster Boards are holding up statewide certification.

Pennsylvania and federal law do not require including votes from undated absentee and mail-in ballots to be included in certified election returns. Petitioners misconstrue the legal effect of the Third Circuit panel's decision in *Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022). Moreover, the decision in *Migliori* was not in effect on the deadline for submitting certified returns to Petitioners.

Petitioners ignore the decision of the Pennsylvania Supreme Court in *In re Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, 241 A.3d 1058 (Pa. Nov. 24, 2020), which is binding precedent. The fractured decision in *In re Canvass* expressed the will of the majority of Justices of the Pennsylvania Supreme Court on the question before this Court: For all elections after the 2020 General Election, votes from undated absentee and mail-in ballots should be excluded from the certified results.

III. LEGAL STANDARD AND COUNTERARGUMENT

A. PETITIONERS DO NOT MEET THE STANDARDS FOR MANDAMUS OR DECLARATORY OR INJUNCTIVE RELIEF IN THIS ACTION; THUS, THEIR EMERGENCY APPLICATION MUST BE DENIED AND THEIR PETITION FOR REVIEW MUST BE DISMISSED WITH PREJUDICE.

Claim I of Petitioners' Petition for Review seeks a writ of mandamus compelling Berks & Lancaster Boards to re-certify their election returns for the 2022 Primary Election to include votes from all timely received absentee and mail-in ballots, even those ballots that fail to include a date on the return envelope.

Claim II of the Petition for Review seeks a declaratory judgment from this Court that boards of elections may not exclude from certified election returns transmitted to Petitioners votes from timely received absentee and mail-in ballots that fail to include a date on the return envelope. Petitioners also seek an injunction prohibiting Berks & Lancaster Boards from excluding from their certified returns votes from undated absentee and mail-in ballots.

Petitioners are not entitled to a writ of mandamus or declaratory or injunctive relief.

[M]andamus is an extraordinary writ which will only issue to compel performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other adequate and appropriate remedy.” *Dotterer v. Sch. Dist. of Allentown*, 92 A.3d 875, 880 (Pa. Cmwlth. 2014) (internal quotation marks omitted). “If any one of the foregoing elements is absent, mandamus does not lie.” *Id.* at 881. However,

while a court in a mandamus proceeding may not compel a public official to exercise discretionary power in a specific manner that the court would deem wise or desirable, “a writ of mandamus can be used to compel a public official to exercise discretion where the official has a mandatory duty to perform a discretionary act and has refused to exercise discretion.” *Seeton v. Adams*, 50 A.3d 268, 274 (Pa. Cmwlth. 2012).

Konieczny v. Zappala, 941 C.D. 2020, 2022 WL 2028246, at *2 (Pa. Commw. Ct. June 7, 2022).

“Where the action sought to be compelled is discretionary, mandamus will not lie to control that discretionary act, . . . but courts will review the exercise of the actor's discretion where it is arbitrary or fraudulently exercised or is based upon a mistaken view of the law.” *County of Fulton v. Secretary of Commw.*, 277 M.D. 2021, 2022 WL 1609574, at *9 (Pa. Commw. Ct. May 23, 2022) (quoting *Pennsylvania State Association of County Commissioners v. Commonwealth*, 545 Pa. 324, 681 A.2d 699, 701-02 (Pa. 1996)).

For over seventy years, the Pennsylvania Supreme Court has recognized, “***Canvassing and computing***” election returns “necessarily embrace acts of discretion,” *Appeal of McCracken*, 370 Pa. 562, 565, 88 A.2d 787, 788 (Pa. 1952) (emphasis in original), thereby defeating Petitioners’ claim for a writ of mandamus. *Id.*; *County of Fulton*, 277 M.D. 2021, 2022 WL 1609574, at *9.

Petitioners are not entitled to declaratory or injunctive relief because there is no “actual case or controversy,” which is required for any court to issue a

declaratory judgment. *Brouillette v. Wolf*, 213 A.3d 341, 357 (Pa. Commw. Ct. 2019). Thus, the Declaratory Judgments Act, 42 Pa. C.S.A. §§ 7531-7541, requires a petition praying for declaratory relief to state an actual controversy between the petitioner and the named respondent. *Id.*

Here, no candidate or voter has challenged the certified returns timely submitted by the Berks & Lancaster Boards on June 6, 2022 and June 8, 2022 that do not include votes from undated absentee and mail-in ballots. Therefore, there is no actual “case or controversy” that would support a claim for declaratory judgment. Similarly, no aggrieved person filed an appeal challenging the certified results submitted by the Berks & Lancaster Boards. The only 2022 Primary Election candidate that, at one point, challenged the refusal to include votes from undated absentee and mail-in ballots in the certified results, David McCormick and his campaign, McCormick for Senate, conceded that race and voluntarily dismissed his challenge in this Court prior to the Berks & Lancaster Boards submitting their certified results to Petitioners.

To get around this requirement, Petitioners seek to manufacture a “case or controversy” by directing, under threat of litigation, the Berks & Lancaster Boards to submit re-certified election returns that include votes from undated absentee and mail-in ballots—without any statutory authority to do so—and then suing for

mandamus and declaratory relief when the Berks & Lancaster Boards refuse to comply with Petitioners' unlawful order.

B. The Election Code Provisions on which Petitioners Rely Do Not Support the Requested Relief.

Petitioners rely on three separate sections of the Election Code to support their claims. These statutory provisions defeat, not support Petitioners' claims.

First, 25 Pa. Stat. § 2642 (“Powers and duties of county boards”) vests in county boards of elections the power and responsibility, within their respective counties, to perform all the duties imposed upon them by the Election Code, including the duty to “receive from district election officers the returns of all primaries and elections, *to canvass and compute the same*, and to certify, no later than the third Monday following the primary or election, the results thereof to the Secretary of the Commonwealth, as may be provided by law, and to such other authorities as may be provided by law.” 25 Pa. Stat. § 2642(k) (emphasis added).

Next, 25 Pa. Stat. § 3154 (“Computation of returns by county board; certification; issuance of certificates of election”) establishes, among other things, deadlines for county boards of elections to submit unofficial election returns to the Secretary of the Commonwealth and for certifying returns under various circumstances.

Finally, 25 Pa. Stat. § 3158 (“Copy of certified returns to be filed; copy to be forwarded to the Secretary of the Commonwealth; duplicate copies”) requires

county boards of elections, in the case of certain enumerated elections (including, without limitation, elections for United States Senators, Representatives in Congress, and Governor) to “forward a separate certificate (of the election returns), showing totals of the returns cast for each of such offices respectively, to the Secretary of the Commonwealth on forms furnished by the Secretary of the Commonwealth.”

As explained above, Significantly for purposes of Petitioners’ Emergency Application, over seventy years ago, the Pennsylvania Supreme Court recognized, “The Legislature has entrusted the County Board of Elections with plenary powers in the administration of the election code.” *Appeal of McCracken*, 370 Pa. 562, 565, 88 A.2d 787, 788 (Pa. 1952). “**Canvassing and computing**” election returns necessarily embrace acts of discretion. *Id.* (emphasis in original).

Ten years before *McCracken*, the Pennsylvania Supreme Court observed, “The Election Code makes the County Board of Elections more than a mere ministerial body. It clothes [it] with quasi-judicial functions” *Id.* (quoting *Boord v. Maurer*, 343 Pa. 309, 312, 22 A.2d 902, 904 (Pa. 1941)). Berks & Lancaster Boards have complied in all respects with their discretionary duties to canvass ballots and compute election returns in the 2022 Primary Election under the Election Code, as interpreted by the Pennsylvania Supreme Court and this

Court. Having done so, they timely submitted a copy of their certified returns to Petitioners on June 6, 2022 and June 8, 2022.

The Acting Secretary is required under the Election Code—which is a ministerial duty—immediately upon receipt of certified returns of any primary or election from the various county boards, “to tabulate, compute and canvass the votes cast” and “certify and file in [her] office the tabulation thereof.” 25 Pa. Stat. § 2159.

The Election Code provides methods for candidates and electors to challenge the decision by a County Board of Elections to disqualify a ballot. No one has challenged any decision by the Berks & Lancaster Boards to not include votes from undated absentee and mail-in ballots in their certified election results submitted to Petitioners. Thus, the Acting Secretary is duty-bound to certify the statewide results based on the certified results from Berks & Lancaster Boards.

This Court’s June 2, 2022 Order in *McCormick v. Chapman*, No. 286 MD 2022, does not support Petitioners’ claims. That Order required all county boards of elections to segregate timely received absentee and mail-in ballots that lack a dated exterior envelope, to canvass those ballots (assuming they were not otherwise defective), “report two vote tallies” to the Acting Secretary, “one that includes the votes from ballots that lack dated exterior envelopes and one that does

not, and to report a total vote tally which includes the votes from ballots that had both dated and undated exterior envelopes as the total votes cast.” *Id.*

This Court’s June 2, 2022 Order does not mention “certification” or require county boards of election to include the votes from undated absentee and mail-in ballots in their certified returns. The Court’s rationale for requiring the reporting of two vote tallies was so that, “when a final decision on the merits of whether the ballots that lack a dated exterior envelope must be counted or not, the Acting Secretary will have the necessary reports from the County Boards.”

Berks & Lancaster Boards complied with this Court’s Order and timely provided Petitioners with separate vote tallies that included and excluded votes from undated absentee and mail-in ballots. When the statutory deadline to certify the election results arrived, this Court in *McCormick* had not made a final decision on the merits of this issue because McCormick for Senate had conceded the election and voluntarily discontinued his challenge.² Accordingly, Berks & Lancaster Boards certified their election results without including votes from the undated absentee and mail-in ballots as required by the Election Code, as interpreted by the Pennsylvania Supreme Court and this Court.

² This Court in *McCormick* never issued a final decision on the merits of whether to include votes from undated absentee and mail-in ballots in certified election results.

C. Pennsylvania and Federal Law Do Not Require Counting Votes from Undated Absentee and Mail-in Ballots.

Contrary to Petitioners' assertions, Pennsylvania and federal law do not require timely received absentee and mail-in ballots to be counted when a qualified voter neglects to write the date on the declaration printed on the ballot's return envelope.

As to federal law, the Third Circuit panel's decision in *Migliori v. Lehigh County Bd. Of Elections (Migliori v. Cohen)*, 36 F.4th 153, 162-164 (3d Cir. 2022) did not involve the 2022 Primary Election. Even if it had, it is not binding precedent on Pennsylvania courts. *Breckline v. Metro. Life Ins. Co.*, 406 Pa. 573, 578–79, 178 A.2d 748, 751 (Pa. 1962) (even though a federal question is involved, a federal court of appeals decision is not binding “in the absence of a ruling on the question by the United States Supreme Court”); *see also Cambria-Stoltz Enterprises v. TNT Invs.*, 2000 PA Super 52, ¶ 20, 747 A.2d 947, 952 (Pa. Super. Ct. 2000) (citing *Martin v. Hale Products, Inc.*, 699 A.2d 1283, 1287 (Pa.Super.1997)). Nor is the Third Circuit's interpretation of state law binding on Pennsylvania courts. *Cambria-Stoltz*, ¶ 20, 747 A.2d at 952 (citing *Martin*). Here, the Third Circuit panel decision required interpretation of both federal and state law. The panel got it wrong.

More importantly, for purposes of his action, the Third Circuit panel's decision in *Migliori* was not in effect at the deadline for the county boards of

elections to certify their election results. The Third Circuit’s mandate was stayed by the United States Supreme Court until June 9, 2022, when the stay was lifted.

Additionally, the Third Circuit panel’s decision in *Migliori* was wrongly decided. Three justices of the United States Supreme Court opined that the Third Circuit panel’s decision in *Migliori* is “very likely incorrect.” *Ritter v. Migliori*, 142 S. Ct. 1824, 1826 (U.S. Jun. 9, 2022) (Alito, J. dissenting).³

The Third Circuit panel’s decision in *Migliori* requiring counting votes from undated absentee and mail-in ballots conflicts with the Pennsylvania Supreme Court’s decision in *In re Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, 241 A.3d 1058 (Pa. Nov. 24, 2020), which is binding precedent. In the fractured decision in *In re Canvass*, the will of the majority of Justices of the Pennsylvania Supreme Court was expressed in terms of the validity of the undated absentee and mail-in ballots: For all elections after the 2020 General Election, votes from undated absentee and mail-in ballots should be excluded from the certified results. *See Ritter v. Lehigh County Board of Elections*, No. 1322 C.D. 2021, 272 A.3d 989, 2022 WL 16577, at *9 & n.8 (unpublished disposition) (McCullough, J.) (interpreting *In re Canvass* to be

³ At last check, the Third Circuit panel decision in *Migliori* is the subject of a petition for a writ of certiorari to the United States Supreme Court.

binding precedent). “[A] at this moment, a majority of the Justices agree the undated mail-in ballots are invalid.” *Id.*

Alternatively, even assuming the collective result in *In re Canvass* of Justice Dougherty’s concurring and dissenting opinion (“CDO Opinion”) and Justice Wecht’s opinion concurring in the result (“CIR Opinion”) were not binding, this Court’s same panel majority adopted the reasoning of the CDO and CIR as persuasive authority, concluding that one or the other should be adopted by this Court. *Id.* Ironically, this Court’s decision in *Ritter* involves the very same judicial election that was later collaterally challenged in federal court in *Migliori*. This Court got it right in *Ritter*; the Third Circuit panel got it wrong in *Migliori*. Finally, this Court’s decision in *McCormick v. Chapman* was a preliminary decision, not a final decision on the merits, and did not reach the ultimate question of whether undated absentee and mail-in ballots should be included in the certified election returns.

Accordingly, the certified election returns that were timely submitted by Berks & Lancaster Boards for the 2022 Primary Election, which do not include undated absentee and mail-in ballots, fully comply with the Election Code, as interpreted by the Pennsylvania Supreme Court and this Court in *Ritter v. Lehigh County Board of Elections*. This Court never rendered a final decision on the merits in *McCormick*. Therefore, the preliminary order is not binding.

Berks & Lancaster Boards incorporate by reference the additional arguments raised in the separate Memorandum in Opposition filed by respondent Fayette County Board of Elections as though set forth at length here.

IV. CONCLUSION

This Honorable Court should deny Petitioners' Emergency Application. This Court should also enter judgment in favor of respondents Berks County Board of Elections and Lancaster County Board of Elections and against Petitioners on Claims I and II of Petitioners' Petition for Review and dismiss with prejudice Petitioners' Petition for Review.

Dated: July 19, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE: WORD COUNT

I, Jeffrey D. Bukowski, Esquire, certify under Pa. R.A.P. 2135(d) that this document complies with the type-volume limit of Pa. R.A.P. 2135(a)(1) because, excluding parts of the document exempted by Pa. R.A.P. 2135(b), this document contains 4,125 words.

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CERTIFICATE OF COMPLIANCE

I, Jeffrey D. Bukowski, Esquire, certify that this filing complies with the provisions of the *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: January 19, 2022

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date below, a true and correct copy of the foregoing **MEMORANDUM IN OPPOSITION TO EMERGENCY APPLICATION** has been served upon the below counsel of record through the Court's PACFile system and/or by electronic mail:

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