

Docket Sheet

Case Description

Case ID: 201100874
Case Caption: IN RE: CANVASS OF ABSENTEE & MAIL-IN BALLOTS 2020
Filing Date: Tuesday , November 10th, 2020
Court: PETITIONS
Location: City Hall
Jury: NON JURY
Case Type: ELECTION MATTERS
Status: ACTIVE CASE

Related Cases

No related cases were found.

Case Event Schedule

No case events were found.

Case Motions

Motion	Assign/Date	Control No	Date/Received	Judge
PETITION FILED	11-NOV-2020	20110895	11-NOV-2020	CRUMLISH, JAMES

Case Parties

Seq #	Assoc	Expn Date	Type	Name
1			ATTORNEY FOR PETITIONER	KERNS ESQ, LINDA A
Address:		Aliases:		
1420 LOCUST STREET SUITE 200 PHILADELPHIA PA 19102 (215)731-1400		none		
2	1		PETITIONER	DONALD J. TRUMP FOR PRESIDENT, INC.
Address:		Aliases:		
C/O LINDA A. KERNS, ESQUIRE 1420 LOCUST STREET SUITE 200 PHILADELPHIA PA 19102		none		
3	1		PETITIONER	ELKIN, ELIZABETH J.
Address:		Aliases:		
2047 NAUDAIN STREET PHILADELPHIA PA 19146		none		
4			RESPONDENT	BOARD OF ELECTIONS
Address:		Aliases:		
CITY HALL PHILADELPHIA PA 19102		none		
5			RESPONDENT	DEELEY, LISA
Address:		Aliases:		
CITY HALL PHILADELPHIA PA 19102		none		
6			RESPONDENT	SCHMIDT, AL
Address:		Aliases:		
CITY HALL PHILADELPHIA PA 19102		none		
7			RESPONDENT	SABIR, OMAR
Address:		Aliases:		
CITY HALL PHILADELPHIA PA 19102		none		
8			JUDGE	CRUMLISH III, JAMES
Address:		Aliases:		
CITY HALL PHILADELPHIA PA 19107		none		

Docket Entries

Filing Date/Time	Docket Type	Filing Party	Disposition Amount	Approval/Entry Date
10-NOV-2020 10:56 PM	ACTIVE CASE			11-NOV-2020 08:15 AM
Docket Entry: E-Filing Number: 2011016977				
10-NOV-2020 10:56 PM	1 - COMMENCEMENT BY PETITION	KERNS ESQ, LINDA A		11-NOV-2020 08:15 AM
Documents: CIVIP_2.pdf				
Docket Entry: PETITION FOR ELECTION MATTERS FILED.				
10-NOV-2020 10:56 PM	2 - PETITION FILED	KERNS ESQ, LINDA A		11-NOV-2020 08:15 AM
Documents: Notice of Appeal via Petition for Review of County BOE Decision - Category 3.pdf Elections, Meeting of the Commissioners -transcript.pdf				

Docket Entry: 95-20110895 (FILED ON BEHALF OF DONALD J. TRUMP FOR PRESIDENT, INC., ELIZABETH J. ELKIN.)			
11-NOV-2020 08:39 AM	MOTION ASSIGNED		11-NOV-2020 08:39 AM
Docket Entry: 95-20110895 PETITION FILED ASSIGNED TO JUDGE: CRUMLISH, JAMES . ON DATE: NOVEMBER 11, 2020			

Court of Common Pleas of Philadelphia County
Trial Division

Civil Cover Sheet

For Prothonotary Use Only (Docket Number)

NOVEMBER 2020

000874

E-Filing Number: 2011016977

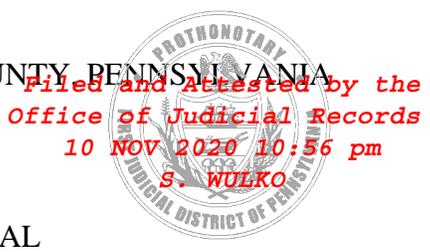
0001_COMMENCEMENT_BY_PETITION

PLAINTIFF'S NAME DONALD J. TRUMP FOR PRESIDENT, INC.		DEFENDANT'S NAME PHILADELPHIA COUNTY BOARD OF ELECTIONS	
PLAINTIFF'S ADDRESS C/O LINDA A. KERNS, ESQUIRE 1420 LOCUST STREET SUITE 200 PHILADELPHIA PA 19102		DEFENDANT'S ADDRESS CITY HALL JFK BLVD PHILADELPHIA PA 19102	
PLAINTIFF'S NAME ELIZABETH J.. ELKIN		DEFENDANT'S NAME LISA DEELEY	
PLAINTIFF'S ADDRESS 2047 NAUDAIN STREET PHILADELPHIA PA 19146		DEFENDANT'S ADDRESS CITY HALL JFK BLVD PHILADELPHIA PA 19102	
PLAINTIFF'S NAME		DEFENDANT'S NAME AL SCHMIDT	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS CITY HALL JFK BLVD PHILADELPHIA PA 19102	
TOTAL NUMBER OF PLAINTIFFS 2	TOTAL NUMBER OF DEFENDANTS 0	COMMENCEMENT OF ACTION <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other: _____		
CASE TYPE AND CODE 8E - ELECTION MATTERS			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		<p style="text-align: center;">FILED PRO PROTHY NOV 10 2020 S. WULKO</p>	
		IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
<p>TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>DONALD J. TRUMP FOR PRESIDENT, INC.</u> <u>, ELIZABETH J. ELKIN</u> Papers may be served at the address set forth below.</p>			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY LINDA A. KERNS ESQ		ADDRESS 1420 LOCUST STREET SUITE 200 PHILADELPHIA PA 19102	
PHONE NUMBER (215) 731-1400	FAX NUMBER (215) 701-4154		
SUPREME COURT IDENTIFICATION NO. 84495	E-MAIL ADDRESS linda@lindakernslaw.com		
SIGNATURE OF FILING ATTORNEY OR PARTY LINDA KERNS ESQ		DATE SUBMITTED Tuesday, November 10, 2020, 10:56 pm	

COMPLETE LIST OF DEFENDANTS:

1. PHILADELPHIA COUNTY BOARD OF ELECTIONS
CITY HALL JFK BLVD
PHILADELPHIA PA 19102
2. LISA DEELEY
CITY HALL JFK BLVD
PHILADELPHIA PA 19102
3. AL SCHMIDT
CITY HALL JFK BLVD
PHILADELPHIA PA 19102
4. OMAR SABIR
CITY HALL JFK BLVD.
PHILADELPHIA PA 19102

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA



IN RE: CANVASS OF ABSENTEE AND
MAIL-IN BALLOTS OF NOVEMBER 3,
2020 GENERAL ELECTION

STATUTORY APPEAL
No. _____

(Election Appeal)

**NOTICE OF APPEAL VIA PETITION
FOR REVIEW OF DECISION BY THE
PHILADELPHIA COUNTY BOARD OF
ELECTIONS**

**FILED ON BEHALF OF PETITIONER,
DONALD J. TRUMP FOR PRESIDENT,
INC.**

Counsel of Record for this Party:

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*Counsel for Appellant
Donald J. Trump for President, Inc.*

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

IN RE: CANVASS OF ABSENTEE AND
MAIL-IN BALLOTS OF NOVEMBER 3,
2020 GENERAL ELECTION

STATUTORY APPEAL

No. _____

(Election Appeal)

**NOTICE OF APPEAL VIA PETITION
FOR REVIEW OF DECISION BY THE
PHILADELPHIA COUNTY BOARD OF
ELECTIONS**

**NOTICE OF APPEAL VIA PETITION FOR REVIEW OF DECISION BY THE
PHILADELPHIA COUNTY BOARD OF ELECTIONS REGARDING 1,211 BALLOTS
DESCRIBED AS CATEGORY 3**

NOW COMES Donald J. Trump for President, Inc. and Elizabeth J. Elkin (the “Petitioners”), pursuant to Section 3146.8 and 3157(a) of the Pennsylvania Election Code, 25 P.S. §§ 3146.8 & 3157(a), by their undersigned counsel, hereby file this notice of appeal via a petition for this Court to review and reverse the decision of the Philadelphia County Board of Elections in denying Petitioners’ objection to the counting of statutorily prohibited absentee and mail-in ballots cast by Voters of Philadelphia County, Pennsylvania, in the November 3, 2020 General Election. In support thereof, Petitioners state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this statutory appeal and venue is proper in this Court pursuant to Section 3157 of the Election Code, 25 P.S. § 3157(a).

PARTIES

2. Petitioner Donald J. Trump for President, Inc. (hereinafter, the “Trump Campaign”), is the principal committee for the reelection campaign of Donald J. Trump, the 45th

President of the United States of America (hereinafter, “President Trump”). President Trump is the Republican candidate for the office of the President of the United States of America in the ongoing November 3, 2020 General Election. The Trump Campaign brings this action for itself and on behalf of its candidate, President Trump. President Trump is a “candidate” as that term is defined in Election Code Section 102(a), 25 P.S. § 2602(a). *See Rowland v. Smith*, 83 Pa. D. & C. 99, 101-2 (Pa. Ct. Com. Pl. Dauphin 1952) (“candidate” under the Election Code includes one who is a candidate for nomination for President of the United States). The Trump Campaign is a “political body” as that term is defined in 25 P.S. § 1102. *See In re Canvass of Absentee Ballots of November 4, 2003*, 839 A.2d 451, 457 (Pa. Commw. Ct. 2003) (Under Election Code, status given to political bodies grants standing regarding watchers), *rev’d on other grounds* 843 A.2d 1223 (Pa. 2004); *In re General Election-1985*, 531 A.2d 836, 838 (Pa. Commw. Ct. 1987) (a candidate for office in the election at issue suffers a direct and substantial harm sufficient for standing to contest the manner in which an election will be conducted).

3. Petitioner Elizabeth J. Elkin is a properly qualified and duly registered voter of the Commonwealth of Pennsylvania and Philadelphia County. She resides at the address of 2037 Naudain Street, Philadelphia, PA. She voted in the November 2020 General Election.

4. Respondent Philadelphia County Board of Elections (“Board”) is responsible for overseeing the conduct of elections in Philadelphia County, including but not limited to the administration of the pre-canvass and canvass sessions of the Board during which absentee and mail-in ballots are opened, reviewed and counted, which is required to be done in accordance with the Election Code. Its principal place of business is located at Philadelphia City Hall, Room 142, 1400 John F. Kennedy Boulevard, Philadelphia, PA 19107.

5. Respondents Lisa M. Deeley, Al Schmidt and Omar Sabir are the members of the

Philadelphia County Board of Elections. These Respondents are being sued in their official capacity as members of the Philadelphia County Board of Elections. Their official address is Philadelphia City Hall, 1400 John F. Kennedy Boulevard, Philadelphia, PA 19107.

FACTS AND PROCEDURAL BACKGROUND

6. Codified Sections 3146.1 – 3146.9 of the Pennsylvania Election Code provides for the voting by electors through official absentee ballots in any primary or election held in the Commonwealth of Pennsylvania. *See* 25 P.S. §§ 3145.1-3146.9.

7. Section 3145.6 specifically addresses how an absentee elector shall complete their absentee ballot, while section 3146.6a details the assistance permitted in voting by certain absentee electors. *See* 25 P.S. §§ 3145.6 and 3146.6a.

8. In Pennsylvania, absentee voting has been held to be “an extraordinary procedure” in which the “ordinary safeguards of a confrontation of the voter by the election officials and watchers for the respective parties and candidates at the polling place are absent.” *Canvass of Absentee Ballots of April 28, 1964, Primary Election*, 34 Pa.D.&C.2d 419, 420 (C.C.P. Phila. 1964). Although it is “a salutary feature in our democratic processes of government,” *Absentee Ballots Case (No. 1)*, 245 A.2d 258, 261 (Pa. 1968); absentee voting is a privilege that is “fraught with evils and frequently results in voided votes.” *Decision of County Board of Election*, 29 Pa.D.&C.2d 499, 504 (C.C.P. Lebanon 1964). Thus, it has been recognized by the Pennsylvania courts that “the provisions of the law regarding absentee voting must be strictly construed and the rights created thereunder not extended beyond the plain and obvious intention of the act.” *Decision of County Board of Election*, 29 Pa.D.&C.2d at 504; *see also In re: April 10, 1984 Election of E. Whiteland Twp., Chester Co.*, 483 A.2d 1033, 1035 (Pa. Commw. Ct. 1984); *Canvass of Absentee Ballots of April 28, 1964, Primary Election*, 34

Pa.D.&C.2d at 421.

9. On October 31, 2019, the Pennsylvania General Assembly enacted Act 77. *See* Act 2019-77 (S.B. 421), § 8, approved October 31, 2019, eff. October 31, 2019. Act 77 made significant changes to Pennsylvania's elections, including the adoption of no excuse mail-in voting for all qualified electors. *See, e.g.*, 25 P.S. §§ 3150.11-3150.17.

10. In extending the right to vote to include absentee voting and now no-excuse mail-in voting, the Pennsylvania General Assembly has properly provided in the Pennsylvania Election Code various safeguards to insure that the exercise of the absentee and mail-in voting privilege is not abused either directly or indirectly, inadvertently or maliciously. *See* 25 P.S. §§ 3146.1-9 (voting by qualified absentee electors) and 3150.11-3150.18 (voting by qualified mail-in electors).

11. The public has a strong interest in ensuring that the election is conducted in a free and fair manner and that all duly qualified and properly registered voters have equal and adequate opportunity to vote, whether they vote in person, by absentee or mail-in ballot.

12. On November 3, 2020, a general election was held in which Petitioner Donald J. Trump for President, Inc. was a candidate and Elizabeth J. Elkin was a registered voter who did in fact cast her vote.

13. The November 3, 2020 general election was the first general election following the enactment of Act 77 in 2019 which made significant changes to Pennsylvania's elections, including the adoption of no excuse mail-in voting for all qualified electors. *See, e.g.*, 25 P.S. §§ 3150.11-3150.17. Presumably knowing of all the risks associated with mail-in voting, the General Assembly enacted no excuse mail-in voting with certain restrictions designed to ensure the ballot's secrecy and to prevent fraud. One of those restrictions, for example, forbidding

third-party delivery, was replicated in Act 77 and was confirmed by the Pennsylvania Supreme Court as recently as September 17, 2020. *See* 25 P.S. § 3150.16(a); *Crossey v. Boockvar*, No. 108 MM 2020, 2020 Pa. LEXIS 4868, at *4 (Pa., Sept. 17, 2020) (“It has long been the law of this Commonwealth, per 25 P.S. § 3146.6(a), that third-person delivery of absentee ballots is not permitted. Act 77 adds a substantially identical provision for mail-in ballots, which we likewise conclude forbids third-party delivery of mail-in votes.”) (citations omitted).

14. In *Pa. Democratic Party v. Boockvar*, 2020 WL 5554644, 2020 Pa. LEXIS 4872 (Pa., Sept. 17, 2020), the PA Supreme Court declared that absentee and mail-in ballots cast in violation of Election Code’s mandatory requirements are void and cannot be counted. *Id.*, 2020 Pa. LEXIS 4872, at *66-*74.

15. At issue in this appeal is Section 3146.6(a) of the Election Code, which states in pertinent part:

Except as provided in paragraphs (2) and (3), at any time after receiving an official absentee ballot, but on or before eight o’clock P.M. the day of the primary or election, the elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed “Official Election Ballot.” This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector’s county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

25 P.S. § 3146.6(a)

16. Act 77 duplicated this section for mail-in ballots, as codified at 25 P.S. § 3150.16(a):

At any time after receiving an official mail-in ballot, but on or before eight o'clock P.M. the day of the primary or election, the mail-in elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

25 P.S. § 3150.16(a)

17. The requirements set forth in Election Code Sections 3146.6(a) and 3150.16(a) are mandatory. *See* 25 P.S. §§ 3146.6(a) & 3150.16(a). Those sections mandate that the elector fold the ballot, enclose it, and secure it in the smaller envelope on which is printed "Official Election Ballot," and then place the inner secrecy envelope into the second envelope on which is printed the form of declaration of the elector, the elector's local election district, and the address of the elector's county board of election. Accordingly, the PA Supreme Court ruled that a mail-in or absentee ballot that is not enclosed in the statutorily-mandated inner secrecy envelope must be disqualified and not counted. 2020 Pa . LEXIS 4872, at *73.

18. The law is clear that during the counting at any pre-canvass and/or canvass meeting of absentee and mail-in ballots, those ballots which suffer from the following deficiencies are void and may not be counted: (i) without inner secrecy envelopes, (ii) with inner secrecy envelopes that have marks, text, or symbols which identify the elector, the elector's political affiliation or the elector's candidate preference, and/or (iii) with the declaration envelopes not filled out, dated, and/or signed. 25 P.S. §§ 3146.6(a) & 3150.16(a).

19. Under 25 P.S. § 3146.8, ballots challenged by 5:00 p.m., on the Friday before the

election (in this case October 30, 2020) are to be set aside and not counted as part of the pre-canvass or canvass. *See* 25 P.S. § 3146.8(g)(4).

20. Under 25 P.S. § 3146.8(d), “[whenever it shall appear by due proof that any absentee elector or mail-in elector who has returned his ballot in accordance with the provisions of this act *has died prior to the opening of the polls on the day of the primary or election, the ballot of such deceased elector shall be rejected* by the canvassers but the counting of the ballot of an absentee elector or a mail-in elector thus deceased shall not of itself invalidate any nomination or election. 25 P.S. § 3146.8(d)(emphasis added).

21. Under 25 P.S. § 3146.8(g)(3) and (h), the ballots of absentee and/or mail-in voters whose identification has not been verified by election officials are not to be counted during any pre-canvass and canvass meeting. 25 P.S. § 3146.8(g)(3) and (h).

22. At the November 9, 2020 Meeting of the Philadelphia City Commissioners, Board of Elections employee stated that he had subjected absentee and mail in ballots to a “secondary review.” There is no authority in the Pennsylvania Election Code for a “secondary review” of absentee and mail in ballots after those ballots are rejected during the canvass.

23. On November 9, 2020, the Philadelphia County Board of Elections held a hearing as to the subject statutorily prohibited absentee and mail-in ballots. Attached hereto and made part hereof as Exhibit A is a true and correct copy of the Transcript of the Hearing.

24. All three individually named Respondents, the Commissioners, presided over the hearing and participated in the Board’s decision.

25. At the hearing before the Philadelphia County Board of Elections, Garrett Dietz presented the results of his “secondary review” of mail in and absentee ballots in several categories, which he stated were received by the Board of Elections prior to the close of the polls

on Election Day.

26. The Philadelphia County Board of Elections then voted to “COUNT” or “NOT COUNT” each category of ballot.

27. Mr. Dietz advised the Commissioners of a category of ballots that numbered 1,211 that he described as those “where the voter affixed their signature to the Declaration Envelope, but no other information was provided.” Mr. Dietz also stated that “[p]er the directions from the Department of State, we cannot verify the signatures against the system.” Mr. Dietz described these ballots as Category 3. See Exhibit A, page 7. The Commissioners voted to count these 1,211 ballots.

28. It is believed and therefore averred that by mistake, error, defiance of the Pennsylvania Election Code or other irregularity, the Philadelphia County Board of Elections has improperly construed the Pennsylvania Election Code to permit the counting of the 1,211 absentee and mail in ballots at issue in this appeal, which are void as a matter of law and should be prohibited from being counted pursuant to 25 P.S. §§ 3146.6(a) 25 P.S. § 3150.16(a).

29. The November 9, 2020 decision of the Board which counted the aforementioned 1,211 of statutorily prohibited absentee and mail-in ballots constitutes an abuse of discretion and involve errors of law.

30. The Philadelphia County Board of Elections is not empowered to re-write the Election Code or adopt rules, regulations, instructions or decisions that are inconsistent with the Election Code. *See* 25 P.S. § 2642.

31. It is undisputed that the 1,211 aforementioned ballots were not completed by the voters pursuant to the requirements of the Pennsylvania Election Code.

32. Accordingly, the decision of the Philadelphia County Board of Elections voting to

count the absentee and mail-in ballots as outlined above is based on a clear error of law and must be reversed.

33. This Notice of Appeal via Petition for Review has been timely made.

WHEREFORE, Petitioners respectfully request this Honorable Court to enter an order that reverses the decision of the Philadelphia County Board of Elections and directs that the 1,211 ballots as described in Exhibit A, page 6 and 7 not be counted in the November 3, 2020 General Election, and for such other and further relief as provided by the Pennsylvania Election Code and/or as this Court deems just and appropriate.

Dated: November 10, 2020

Respectfully submitted,

/s/ Linda A. Kerns

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/s/ Ronald L. Hicks

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*Counsel for Appellant
Donald J. Trump for President, Inc.*

VERIFICATION

I, Linda A. Kerns, Esquire hereby swear or affirm that I am counsel of record for Petitioners in the within action; that the verification of the Petitioners could not be obtained within the time allowed for filing this Petition; and that the facts contained in the attached Petition are true and correct based on information supplied to be by others.

This statement is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: November 10, 2020

/s/ Linda A. Kerns
Linda A. Kerns, Esquire

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.

/s/ Linda A. Kerns
Linda A. Kerns, Esquire

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

IN RE: CANVASS OF ABSENTEE AND
MAIL-IN BALLOTS OF NOVEMBER 3,
2020 GENERAL ELECTION

STATUTORY APPEAL
No. _____

(Election Appeal)

**NOTICE OF APPEAL VIA PETITION
FOR REVIEW OF DECISION BY THE
PHILADELPHIA COUNTY BOARD OF
ELECTIONS**

ORDER OF COURT

AND NOW, to-wit, this _____ day of November, 2020, upon consideration of Petitioners' Notice of Appeal via Petition for Review and finding that an error of law occurred, it is hereby ORDERED, ADJUDGED and DECREED that the decision of the Philadelphia Board of Elections in counting 1,211 statutorily prohibited absentee and mail-in ballots of voters who affixed their signature to the Declaration Envelope but no other information was provided, described as "Category Three" is reversed. The identified absentee and mail-in ballots were not completed / returned / filled out correctly by the electors in accordance with the Pennsylvania Election Code; thus, they are invalid, void and cannot be counted.

BY THE COURT:

_____ J.

Meeting of the Commissioners - Elections
November 9, 2020

Filed and Attested by the
Office of Judicial Records
10 NOV 2020 10:56 pm
S. WULKO

BOARD OF ELECTIONS
MEETING OF COMMISSIONERS

- - -

HELD ON: November 9, 2020

COMMISSIONERS: LISA M. DEELEY
AL SCHMIDT
OMAR SABIR

REPORTED BY: Angela M. King, RPR
(Via Zoom telephone)

- - -

STREHLOW & ASSOCIATES, INC.
FULL SERVICE COURT REPORTING AGENCY
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(215) 504-4622

Exhibit A

Case ID: 201100874
Control No.: 20110895

1 (At this time, the proceedings commenced
2 at approximately 9:00 a.m.)

3 - - -

4 COMMISSIONER DEELEY: This is
5 November 9, 2020.

6 First, I have an announcement, the
7 Philadelphia City Commissioners met
8 virtually in Executive Session on Friday,
9 November 6, 2020 to meet with the Council
10 in order to discuss ongoing litigation
11 regarding the election.

12 We will now move to Public
13 Comments. Commenters shall state where
14 they live. Or if they are not a resident
15 in Philadelphia, that they are a
16 Philadelphia approximate. Public Comments
17 is not an opportunity for dialogue or Q and
18 A. It is Public Comments, a chance for you
19 to tell us what you think.

20 Each speaker shall have two
21 minutes. However, I may extend this time
22 at my discretion. All Public Comments must
23 be relevant or germane towards business.

24 Finally, it is my responsibility to

1 preserve order and decorum of the meeting.
2 As such, profane, slanderous,
3 discriminatory or personal attacks will not
4 be tolerated.

5 Anyone wishing to offer Public
6 Comments, please, step forward.

7 Step forward.

8 MS. KERNS: My name is Linda Kerns.
9 I represent Donald Trump -- (audio fades
10 out.)

11 THE STENOGRAPHER: I can't hear at
12 all.

13 COMMISSIONER DEELEY: Wait, one
14 second.

15 THE CLERK: I'm going to go over to
16 the speaker so you can hear better.

17 THE STENOGRAPHER: Please.

18 Thank you.

19 COMMISSIONER DEELEY: Ms. Kerns,
20 can you please repeat your comment.

21 MS. KERNS: Sure. My name is Linda
22 Kerns. I represent Donald Trump. I just
23 needed to know the name of the court
24 reporter. I asked Mr. Bluestein. And he

1 told me to direct my questions to you.

2 COMMISSIONER DEELEY: Thank you.

3 We will give you that information
4 after the meeting.

5 We will now hear a report from
6 Supervisor of Elections, Mr. Garrett Dietz.

7 MR. DIETZ: Good morning,
8 Commissioners.

9 COMMISSIONER DEELEY: Good morning,
10 Garrett.

11 COMMISSIONER SCHMIDT: Good
12 morning, Garrett.

13 MR. DIETZ: Before I get into the
14 ballots that I performed a secondary review
15 on, I just want to note that per the court
16 order from Election Day, we have confirmed
17 that Verna Phillips of Ward 36 Division 15,
18 did not submit a valid ballot.

19 THE STENOGRAPHER: Can you, please,
20 move closer to the speakers. I'm having a
21 hard time hearing.

22 THE CLERK: Okay. I'll put it
23 right up to the speaker.

24 MR. DIETZ: Now I will go through

1 the various categories per my second level
2 review.

3 The first category is ballots with
4 a blank Declaration Envelope where it does
5 not appear that the voter attempted to
6 complete any of the information including
7 signature on the Declaration Envelope of
8 the ballot. There are 472 ballots in this
9 category.

10 COMMISSIONER DEELEY: I vote no
11 count.

12 COMMISSIONER SCHMIDT: I vote not
13 to count.

14 COMMISSIONER SABIR: I vote not to
15 count.

16 MR. DIETZ: Okay.

17 Category number two are ballots
18 where it appears that the voter did not
19 sign the Declaration Envelope.

20 COMMISSIONER DEELEY: How many of
21 those, Mr. Dietz?

22 MR. DIETZ: There are 225 ballots
23 in this category.

24 COMMISSIONER DEELEY: Thank you.

1 I vote not to count.

2 COMMISSIONER SCHMIDT: I vote not
3 to count.

4 COMMISSIONER SABIR: I vote not to
5 count.

6 MR. DIETZ: Okay.

7 Category number three. There are
8 1,211 ballots in this category. This is a
9 category where the voter affixed their
10 signature to the Declaration Envelope, but
11 no other information was provided.

12 I should add that every ballot --
13 every ballot category I am going through
14 today was timely received by close of polls
15 on Election Day.

16 COMMISSIONER SCHMIDT: And how many
17 ballots are in this universe?

18 MR. DIETZ: 1,211 ballots.

19 COMMISSIONER DEELEY: Garrett, the
20 voters did sign -- there is a signature on
21 the Dec?

22 MR. DIETZ: Correct. The voter did
23 affix their signature.

24 COMMISSIONER DEELEY: I vote to

1 count.

2 COMMISSIONER SCHMIDT: I vote not
3 to count.

4 COMMISSIONER SABIR: Garrett, can I
5 have a question.

6 Did the signatures match the list?
7 Did we check that?

8 MR. DIETZ: Per the directions from
9 the Department of State, we cannot verify
10 signatures against the system.

11 COMMISSIONER SABIR: I vote to
12 count.

13 MR. DIETZ: Okay.

14 Category number four. This is
15 where ballots were completed except for the
16 date of signature. So, the Declaration had
17 a signature. And they had the printed name
18 of the elector and the street address of
19 the elector.

20 COMMISSIONER DEELEY: And, Garrett,
21 how many of these ballots?

22 MR. DIETZ: 1,259 ballots.

23 COMMISSIONER DEELEY: And these
24 ballots were received timely?

1 MR. DIETZ: Correct.

2 COMMISSIONER DEELEY: I vote to
3 count.

4 COMMISSIONER SCHMIDT: I vote not
5 to count.

6 COMMISSIONER SABIR: I vote to
7 count.

8 MR. DIETZ: Okay.

9 Category number five. Ballots in
10 this category were complete with signature,
11 date and street address and are missing the
12 printed name of the voter.

13 COMMISSIONER DEELEY: And how many
14 ballots were these, Garrett, in this
15 category?

16 MR. DIETZ: 533 ballots in this
17 category.

18 COMMISSIONER DEELEY: I vote to
19 count.

20 COMMISSIONER SCHMIDT: I vote to
21 count.

22 COMMISSIONER SABIR: I vote to
23 count.

24 MR. DIETZ: Category number six.

1 Ballots in this category had the signature
2 of the voter as well as the date of
3 signature and the printed name of the
4 elector. It's missing the street address
5 of the voter.

6 COMMISSIONER DEELEY: And how many
7 of these were in this category?

8 MR. DIETZ: I should clarify when I
9 say missing street address, printed by the
10 voter specifically.

11 COMMISSIONER SCHMIDT: But the
12 street address is on the label?

13 MR. DIETZ: Correct. That's why I
14 wanted to make that distinction.

15 COMMISSIONER DEELEY: And,
16 Mr. Dietz, they are signed and dated?

17 MR. DIETZ: Correct.

18 COMMISSIONER DEELEY: And the
19 number?

20 MR. DIETZ: 860.

21 COMMISSIONER DEELEY: I vote to
22 count.

23 COMMISSIONER SCHMIDT: I vote to
24 count.

1 COMMISSIONER SABIR: I vote to
2 count.

3 MR. DIETZ: Category number seven.
4 This is where the voter affixed
5 their signature to the Declaration Envelope
6 and provided the date of signing. However,
7 it is missing the printed name and the
8 street address specifically written in, in
9 hand, by the voter.

10 COMMISSIONER DEELEY: Garrett,
11 these ballots were received timely?

12 MR. DIETZ: Correct.

13 COMMISSIONER DEELEY: And the
14 number in this category?

15 MR. DIETZ: 4,466.

16 COMMISSIONER DEELEY: I vote to
17 count.

18 COMMISSIONER SCHMIDT: I vote to
19 count.

20 COMMISSIONER SABIR: So, these were
21 signed by the voter?

22 MR. DIETZ: Correct.

23 COMMISSIONER SABIR: I vote to
24 count.

1 MR. DIETZ: Category number eight.
2 Ballots where the individual that
3 completed the Declaration appears different
4 than the elector who was assigned the
5 ballot. Using the label on the Declaration
6 Envelope to decide that.

7 There are 112 ballots in this
8 category.

9 COMMISSIONER DEELEY: Garrett, do
10 they indicate on this Declaration Envelope
11 a need for assistance?

12 MR. DIETZ: No.

13 COMMISSIONER DEELEY: Could you
14 repeat the number, please?

15 MR. DIETZ: 112.

16 COMMISSIONER DEELEY: I vote to not
17 count.

18 COMMISSIONER SCHMIDT: I vote not
19 to count.

20 COMMISSIONER SABIR: I vote to not
21 count.

22 MR. DIETZ: Category number nine.
23 Ballots that were not included in a
24 Secrecy Envelope.

1 COMMISSIONER DEELEY: And, Garrett,
2 what is the number of ballots that did
3 not -- were not included in the Secrecy
4 Envelope?

5 MR. DIETZ: 4,027.

6 COMMISSIONER DEELEY: And were
7 those 4,027 received timely?

8 MR. DIETZ: Yes.

9 COMMISSIONER DEELEY: Were the Dec
10 Envelopes filled out accurately? Properly?

11 MR. DIETZ: It varies.

12 COMMISSIONER DEELEY: Thank you.

13 The naked ballot is a difficult one
14 for me. Since I have been a Commissioner,
15 we have always counted naked ballots.

16 I am aware of the recent Supreme
17 Court ruling concerning them and our
18 legislators failure to correct the matter.
19 I am pleased that the awareness campaign
20 leading up to the election, including the
21 work done by myself, Commissioners Sabir
22 and Schmidt. What we were expecting to be
23 tens of thousands of ballots became just
24 over 4,000.

1 But still, these are 4,000
2 Philadelphia voters, 4,000 people who did
3 nothing wrong behind failing to put their
4 ballots into a second envelope. I cannot
5 with a good conscious count these.

6 I, therefore, vote no count.

7 COMMISSIONER SCHMIDT: I vote not
8 to count.

9 COMMISSIONER DEELEY: To count.
10 I'm sorry. I apologize. I read the wrong
11 thing. Let me correct myself.

12 I vote to count the 4,027 ballots
13 not enclosed in the Secrecy Envelope.

14 COMMISSIONER SCHMIDT: I vote not
15 to count.

16 COMMISSIONER SABIR: I vote not to
17 count.

18 MR. DIETZ: Okay.

19 That is all the categories I have
20 today.

21 COMMISSIONER DEELEY: This
22 business having con -- I'm sorry.

23 Does anybody have any New Business?

24 COMMISSIONER SCHMIDT: I have none.

1 COMMISSIONER SABIR: I'd just like
2 to thank the Election Board Staff, the
3 Commissioners, the Deputies for the timely
4 hard work that leads to this election.

5 COMMISSIONER DEELEY: Thank you,
6 Commissioner Sabir.

7 The business having concluded, we
8 will stand in recess to the call of the
9 Chair.

10 (At this time, the Meeting
11 concluded at 9:12 a.m.)

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C E R T I F I C A T I O N

I, hereby certify that the proceedings and evidence noted are contained fully and accurately in the stenographic notes taken by me in the foregoing matter, and that this is a correct transcript of the same.

ANGELA M. KING, RPR,
Court Reporter, Notary Public

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

Meeting of the Commissioners - Elections
November 9, 2020

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