

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DAVE McCORMICK FOR U.S.)	CIVIL ACTION
SENATE AND DAVID H.)	
McCORMICK,)	
)	
Petitioners,)	
)	CASE NO. 286MD2022
v.)	
)	
LEIGH M. CHAPMAN, et al.,)	
)	
Respondents.)	

ANSWER TO MOTION FOR SPECIAL INJUNCTION AND POSITION STATEMENT BY UNION COUNTY BOARD OF ELECTION

Respondent Union County Board of Elections denies that it has refused to count absentee or mail-in ballots that lack a handwritten date on the exterior mailing envelope. To the contrary, Union County received no absentee or mail-in ballots that lacked a voter-provided date on the exterior envelope during the May 17, 2022 primary election. Accordingly, it is the position of the Union County Board of Elections that it should be removed as a Respondent in above-captioned proceedings, as the outcome of such proceedings will not implicate Union County’s official or unofficial results for the May 17, 2022 primary election.

The undersigned counsel has made counsel for the Petitioner aware of the same on May 23, 2022 via e-mail, which is attached as Exhibit “A.”

UNION COUNTY
BOARD OF ELECTIONS

A handwritten signature in blue ink, appearing to be 'Jonathan L. DeWald', written over a horizontal line.

Dated: May 26, 2022

By: _____
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

McCORMICK et al, :
Petitioners : No. 286 MD 2022
 :
v. :
 :
CHAPMAN et al :
Respondents :

CERTIFICATE OF COMPLIANCE

I, Jonathan L. DeWald, Esquire, 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.

McNERNEY, PAGE, VANDERLIN & HALL

BY: 

Jonathan L. DeWald, Esquire
I.D. No. 314791
Attorney for Respondent, Union
County Board of Elections

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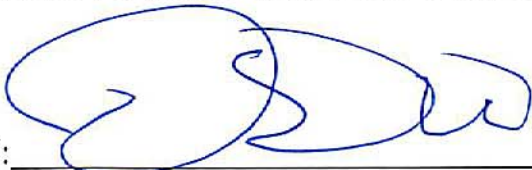
IN THE COMMONWEALTH COURT OF PENNSYLVANIA

McCORMICK et al, :
Petitioners : No. 286 MD 2022
 :
v. :
 :
CHAPMAN et al :
Respondents :

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of May, 2022, I electronically filed and served the foregoing Answer of Respondent Union County Board of Elections to Petitioners' Motion for Special Injunction with the Commonwealth Court of Pennsylvania via PACFile.

McNERNEY, PAGE, VANDERLIN & HALL

BY: 

Jonathan L. DeWald, Esquire
I.D. No. 314791
Attorney for Respondent, Union
County Board of Elections

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DeWald, Jonathan

From: DeWald, Jonathan
Sent: Monday, May 23, 2022 11:30 AM
To: 'Hicks, Ronald L., Jr.'
Subject: RE: May 17, 2022 Primary - Undated Absentee/Mail-In/Overseas/Military Ballots [MPVH-Legal.FID291108]

Good morning, Attorney Hicks:

I serve as the solicitor for Union County and its Board of Elections.

In Union County, I can confirm that there were no instances of an absentee ballot or a mail-in ballot received where the outer envelope failed to have a voter-provided date. I can also confirm that there were no instances of a ballot contained in a secrecy envelope that was not otherwise sealed. Therefore, the instruction as to counting either occurrence has no factual application in Union County.

Should you have any remaining questions, please let me know.

Thank you,

Jon

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From: Hicks, Ronald L., Jr. <RHicks@porterwright.com>
Sent: Friday, May 20, 2022 7:15 PM
To: 'tgate@pa.gov' <tgate@pa.gov>; 'mmudd@adamscounty.us' <mmudd@adamscounty.us>; 'andrew.szefi@alleghenycounty.us' <andrew.szefi@alleghenycounty.us>; 'aopsitnick@opsitnickslaw.com' <aopsitnick@opsitnickslaw.com>; 'sslaw@windstream.net' <sslaw@windstream.net>; 'gfedeles@beavercountypa.gov' <gfedeles@beavercountypa.gov>; 'nmorgan@beavercountypa.gov' <nmorgan@beavercountypa.gov>; 'dcrabtree.kclaw@comcast.net' <dcrabtree.kclaw@comcast.net>; 'csadler@countyofberks.com' <csadler@countyofberks.com>; 'cschnee@countyofberks.com' <cschnee@countyofberks.com>; 'nkarn@blairco.org' <nkarn@blairco.org>; 'Jonathan.Jr@fosterslawfirm.com' <Jonathan.Jr@fosterslawfirm.com>; 'WWhite@co.butler.pa.us' <WWhite@co.butler.pa.us>; 'wgbarbin@atlanticbb.net' <wgbarbin@atlanticbb.net>; 'ewtompkinslaw@gmail.com' <ewtompkinslaw@gmail.com>; 'dam@gmlawoffices.com' <dam@gmlawoffices.com>; 'bdupuis@babstcalland.com' <bdupuis@babstcalland.com>; 'cgabriel@cfwwg.com' <cgabriel@cfwwg.com>; 'Info@VariLaw.com' <Info@VariLaw.com>; 'lec@crwlaw.net' <lec@crwlaw.net>; 'ajm@mmkllp.com'



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Cc: McGee, Carolyn B. <CBMcGee@porterwright.com>; Mercer, Jeremy A. <JMercer@porterwright.com>; 'Jonathan Goldstein' <jgoldstein@goldsteinlp.com>; 'Britain Henry' <bhenry@goldsteinlp.com>
Subject: RE: May 17, 2022 Primary - Undated Absentee/Mail-In/Overseas/Military Ballots

Dear Counsel,

We have heard that some counties do not count absentee and mail-in ballots where they are contained in inner secrecy envelopes that are not sealed at the time the outer envelopes are opened for counting, while others do count them. We are writing to advise you that we read the Third Circuit's judgment in *Migliori* to also apply to that situation as well. In other words, any argument that those ballots should not be counted would violate federal law as the sealing provision as to that envelope is immaterial and results in voter disenfranchisement.

We trust that in light of the Third Circuit's judgment you will advise your respective Boards to count any and all ballots that were timely received but were set aside/not counted simply because the inner secrecy envelope may not have been sealed at the time outer envelope was opened. To the extent you are not willing to provide this advice, we ask for a formal hearing before your Boards on this issue.

Again, please let me know by response email whether your respective Boards will be counting the aforementioned ballots so that I may advise my clients accordingly. Should you wish to discuss, please feel free to contact me or my colleagues Jeremy Mercer (jmercerc@porterwright.com or 724-816-2309) or Carolyn McGee (cbmcgee@porterwright.com or 412-867-0722).

Best regards,

Ron

RONALD L. HICKS, JR.

Pronouns: he / him / his

Porter Wright Morris & Arthur LLP

Bio / RHicks@porterwright.com

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From: Hicks, Ronald L., Jr. <RHicks@porterwright.com>

Sent: Friday, May 20, 2022 5:45 PM

To: 'tgates@pa.gov' <tgates@pa.gov>; 'mmudd@adamscounty.us' <mmudd@adamscounty.us>; 'andrew.szefi@allegHENYcounty.us' <andrew.szefi@allegHENYcounty.us>; 'aopsitnick@opsitnickslaw.com' <aopsitnick@opsitnickslaw.com>; 'sslaw@windstream.net' <sslaw@windstream.net>; 'gfedeles@beavercountypa.gov' <gfedeles@beavercountypa.gov>; 'nmorgan@beavercountypa.gov' <nmorgan@beavercountypa.gov>; 'dcrabtree.kclaw@comcast.net' <dcrabtree.kclaw@comcast.net>; 'csadler@countyofberks.com' <csadler@countyofberks.com>; 'cschnee@countyofberks.com' <cschnee@countyofberks.com>; 'nkarn@blairco.org' <nkarn@blairco.org>; 'Jonathan.Jr@fosterslawfirm.com' <Jonathan.Jr@fosterslawfirm.com>; 'WWhite@co.butler.pa.us' <WWhite@co.butler.pa.us>; 'wgbarbin@atlanticbb.net' <wgbarbin@atlanticbb.net>; 'ewtompkinslaw@gmail.com' <ewtompkinslaw@gmail.com>; 'dam@gmlawoffices.com' <dam@gmlawoffices.com>; 'bdupuis@babstcalland.com' <bdupuis@babstcalland.com>; 'kmayock@chesco.org' <kmayock@chesco.org>; 'cgabriel@cfwwg.com' <cgabriel@cfwwg.com>; 'Info@VariLaw.com' <Info@VariLaw.com>; 'lec@crwlaw.net' <lec@crwlaw.net>; 'ajm@mmkllp.com' <ajm@mmkllp.com>; 'kbutton@shaferlaw.com' <kbutton@shaferlaw.com>; 'solicitor@ccpa.net' <solicitor@ccpa.net>; 'jcurcillo@dauphinc.org' <jcurcillo@dauphinc.org>; 'martinw@co.delaware.pa.us' <martinw@co.delaware.pa.us>; 'info@mwbklaw.com' <info@mwbklaw.com>; 'rperhacs@eriecountypa.gov' <rperhacs@eriecountypa.gov>; 'ttalarico@nwpalawyers.com' <ttalarico@nwpalawyers.com>; 'jackpurcell146@gmail.com' <jackpurcell146@gmail.com>; 'attorneys@sbglawoffice.com' <attorneys@sbglawoffice.com>; 'Jerroldsulcove@blackanddavisson.com' <Jerroldsulcove@blackanddavisson.com>; 'dsslw@dsslwlawyers.com' <dsslw@dsslwlawyers.com>; 'rgrimm@co.greene.pa.us' <rgrimm@co.greene.pa.us>; 'pmcmanamon@penn.com' <pmcmanamon@penn.com>; 'mtb@bwlaw120.com' <mtb@bwlaw120.com>; 'cjz@zwick-law.com' <cjz@zwick-law.com>; 'dzagurskie@juniataco.org' <dzagurskie@juniataco.org>; 'RuggieroF@lackawannacounty.org' <RuggieroF@lackawannacounty.org>; 'Fredericksond@lackawannacounty.org' <Fredericksond@lackawannacounty.org>; 'chausner@co.lancaster.pa.us' <chausner@co.lancaster.pa.us>; 'tleslie@co.lawrence.pa.us' <tleslie@co.lawrence.pa.us>; 'warner@bugzondavis.com' <warner@bugzondavis.com>; 'Romilda.Crocamo@luzernecounty.org' <Romilda.Crocamo@luzernecounty.org>; 'dsmith@mcclaw.com' <dsmith@mcclaw.com>; 'theciarkefirm@yahoo.com' <theciarkefirm@yahoo.com>; 'wjmpc1@gmail.com' <wjmpc1@gmail.com>; 'ssnook@bmzlaw.com' <ssnook@bmzlaw.com>; 'john@matergiadunn.com' <john@matergiadunn.com>; 'jstein1@montcopa.org' <jstein1@montcopa.org>; 'pnewcome@montcopa.org' <pnewcome@montcopa.org>; 'info@mmdplaw.com' <info@mmdplaw.com>;

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Cc: McGee, Carolyn B. <CBMcGee@porterwright.com>; Mercer, Jeremy A. <JMercer@porterwright.com>; 'Jonathan Goldstein' <jgoldstein@goldsteinlp.com>; 'Britain Henry' <bhenry@goldsteinlp.com>
Subject: May 17, 2022 Primary - Undated Absentee/Mail-In/Overseas/Military Ballots

Dear Counsel,

Our firm represents the Dave McCormick for U.S. Senate committee and its candidate David H. McCormick. We are writing to advise you of a decision issued today by the United States Court of Appeals for the Third Circuit which impacts the counting of ballots in the May 2022 Primary.

In *Migliori v. Lehigh County Board of Elections*, Case No. 22-1499, the Third Circuit determined that the lack of a voter-provided date on the outside of an absentee or mail-in ballot envelope cannot prevent that ballot's counting because the lack of that date on an indisputably-timely ballot is immaterial under federal law. As the Third Circuit summarized: "[I]t is further ORDERED and ADJUDGED that, the dating provisions contained in 25 Pa. Cons. Stat. §§ 3146.6(a) and 3150.16(a) are immaterial under [52 U.S.C.] § 10101(a)(2)(B). Accordingly, there is no basis on this record to refuse to count undated ballots that have been set aside" For your convenience, a copy of the Third Circuit's judgment is attached.

We trust that in light of the Third Circuit's judgment you will advise your respective Boards to count any and all absentee or mail-in ballots that were timely received but were set aside/not counted simply because those ballots lacked a voter-provided date on the outside of the envelope. To the extent you are not willing to provide this advice, we ask for a formal hearing before your Boards on this issue.

Please let me know by response email whether your respective Boards will be counting the aforementioned ballots so that I may advise my clients accordingly. Should you wish to discuss, please feel free to contact me or my colleagues Jeremy Mercer (jmercer@porterwright.com or 724-816-2309) or Carolyn McGee (cbmcgee@porterwright.com or 412-867-0722)

Best regards,

RONALD L. HICKS, JR.

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