

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

1136 C.D. 2020, 1137 C.D. 2020, 1138 C.D. 2020,
1139 C.D. 2020, 1140 C.D. 2020 (Consolidated)

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

Appeal of:
Donald J. Trump for President, Inc.

APPELLANT'S BRIEF

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STATEMENT OF JURISDICTION

This Court has jurisdiction to review the lower court's November 13, 2020 orders of the Court of Common Pleas of Philadelphia County pursuant to Judicial Code Section 762(a)(4)(i)(C) which grants the Commonwealth Court of Pennsylvania exclusive jurisdiction over appeals from final orders of the Court of Common Pleas in matters involving statutes relating to elections or other election procedures. *See* 42 Pa. C.S. § 762(a)(4)(i)(C); *Dayhoff v. Weaver*, 808 A.2d 1002, 1006 (Pa. Cmwlth. Ct. 2002), *aff'd* 819 A.2d 548 (Pa. 2003).

ORDERS OR OTHER DETERMINATION IN QUESTION

The text of the orders or other determinations from which this appeal has been taken or which are otherwise sought to be reviewed is set forth verbatim as follows:

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

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
NOVEMBER TERM, 2020

No. 201100874

ORDER

AND NOW, to-wit, this 13th day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenors, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's

Objection to the consideration of the appeal as an “eligibility challenge” pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 3, those being 1,211 ballots on which the outer envelope contains only the Elector’s signature but which do not have the date, printed name or the elector’s address filled out in the space provided.
2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
3. The Election Code provides that a voter shall “fill out, date and sign the declaration” on the outer envelope.
4. The term “fill out” in the Code is not a defined term and is ambiguous.
5. The pre-printed ballot already contains the elector’s name and address on the pre-printed exterior envelope.
6. Neither a date nor the elector’s filling out of the printed name or of the address are requirements necessary to prevent fraud.
7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require. 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is DENIED. The Court further ORDERS AND DECREES that the decision of the Philadelphia

County Board of Elections in canvassing and counting 1,211 absentee and mail-in ballots containing the elector's signature on the Declaration envelope but missing the date and other "fill-out" information is AFFIRMED as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,

/s/ Crumlish, J.
Crumlish, J

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

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
NOVEMBER TERM, 2020

No. 201100875

ORDER

AND NOW, to-wit, this 13th day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenor, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was

issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 4, those being 1,259 ballots on which the outer envelope contains only the Elector's signature and hand-printed address but which do not have the date on which the Elector signed the envelope.
2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
3. The Election Code provides that a voter shall "fill out, date and sign the declaration" on the outer envelope.
4. The term "fill out" in the Code is not a defined term and is ambiguous.
5. The pre-printed ballot already contains the elector's name and address on the pre-printed exterior envelope.
6. Neither a date nor the elector's filling out of the printed name or of the address are requirements necessary to prevent fraud.
7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require. 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is DENIED. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 1,259 absentee and mail-in ballots containing the elector's signature, hand-printed name and address on the Declaration envelope but missing the date is AFFIRMED as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,

/s/ Crumlish, J.
Crumlish, J

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

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
NOVEMBER TERM, 2020

No. 201100876

ORDER

AND NOW, to-wit, this 13th day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenors, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is

evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 5, those being 533 ballots on which the outer envelope contains the Elector's signature, the date and the elector's address filled out in the space provided but do not have the Elector's name printed under the signature.
2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
3. The Election Code provides that a voter shall "fill out, date and sign the declaration" on the outer envelope.
4. The term "fill out" in the Code is not a defined term and is ambiguous.
5. The pre-printed ballot already contains the elector's name and address on the pre-printed exterior envelope.
6. Neither a date nor the elector's filling out of the printed name or of the address are requirements necessary to prevent fraud.
7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of

Elections to make such decree as right and justice may require. 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is DENIED. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 533 absentee and mail-in ballots containing the elector's signature, hand-written address and date on the Declaration envelope but missing the hand-printed name under the signature is AFFIRMED as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,

/s/ Crumlish, J.

Crumlish, J

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

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
NOVEMBER TERM, 2020

No. 201100877

ORDER

AND NOW, to-wit, this 13th day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenor, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of

the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 3, those being 860 ballots on which the outer envelope contains the Elector's signature, hand-printed name and date but which do not have the elector's address filled out in the space provided.
2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
3. The Election Code provides that a voter shall "fill out, date and sign the declaration" on the outer envelope.
4. The term "fill out" in the Code is not a defined term and is ambiguous.
5. The pre-printed ballot already contains the elector's name and address on the pre-printed exterior envelope.
6. Neither a date nor the elector's filling out of the printed name or of the address are requirements necessary to prevent fraud.
7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.

8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require. 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is DENIED. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 860 absentee and mail-in ballots containing the elector's signature, hand-printed name and date on the Declaration envelope but missing the hand-written address is AFFIRMED as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,

/s/ Crumlish, J.
Crumlish, J

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

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
NOVEMBER TERM, 2020

No. 201100878

ORDER

AND NOW, to-wit, this 13th day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of

Intervenors, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 3, those being 4,466 ballots on which the outer envelope contains the Elector's signature and the date but which do not have the printed name or the elector's address filled out in the space provided.
2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
3. The Election Code provides that a voter shall "fill out, date and sign the declaration" on the outer envelope.
4. The term "fill out" in the Code is not a defined term and is ambiguous.
5. The pre-printed ballot already contains the elector's name and address on the pre-printed exterior envelope.

6. Neither a date nor the elector's filling out of the printed name or of the address are requirements necessary to prevent fraud.

7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.

8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require. 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is DENIED. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 4,466 absentee and mail-in ballots containing the elector's signature and the date on the Declaration envelope but missing the other "fill out" information (hand-printed name and address) is AFFIRMED as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,

/s/ Crumlish, J.
Crumlish, J

STATEMENT OF SCOPE AND STANDARD OF REVIEW

This appeal “requires this Court to engage in statutory interpretation of the Election Code, which, as a question of law, is subject to a de novo standard of review and a plenary scope of review.” *Banfield v. Cortés*, 110 A.3d 155, 166 (Pa. 2015) (citing *Sch. Dist. of Philadelphia v. Dep’t of Educ.*, 92 A.3d 746, 751 (Pa. 2014)).

STATEMENT OF THE QUESTIONS INVOLVED

1. Does this Court have exclusive jurisdiction over an appeal of orders entered by a court of common pleas affirming the Philadelphia County Board of Elections' decision to count absentee and mail-in ballots that fail to conform to the mandatory legislative requirements set forth in Election Code Sections 1306(a) and 3150.16(a), codified at 25 P.S. §§ 3146.6(a) and 3150.16(a)?

Answer of the Court of Common Pleas: *Not answered*

Suggested Answer: *Yes*

2. Are absentee and mail-in ballots that fail to conform to the mandatory legislative requirements set forth in Election Code Sections 1306(a) and 3150.16(a) void and not subject to being counted?

Answer of the Court of Common Pleas: *No*

Suggested Answer: *Yes*

STATEMENT OF THE CASE

I. FORM OF ACTION AND PROCEDURAL HISTORY.

This is an appeal from five orders of the Court of Common Pleas of Philadelphia County denying Appellant's appeals in the nature of petitions for review under Election Code Section 1407(a), codified at 25 P.S. § 3157(a). In accordance with Pa. R.A.P. 2111(b), copies of the November 13, 2020 Orders are appended hereto in Appendix A ("App. A").

On November 10, 2020, Appellant Donald J. Trump for President, Inc. (the "Campaign") appealed the Philadelphia Board of Elections' decision to count 8,329 absentee and mail-in ballots that were cast in the November 3, 2020 General Election and failed to conform to the mandatory legislative requirements set forth in Election Code Sections 1306(a) and 3150.16(a), codified at 25 P.S. §§ 3146.6(a) and 3150.16(a). The Campaign's appeals were docketed in five (5) different cases in the Philadelphia Court of Common Pleas before the Honorable James Crumlish at Case Numbers 201100874, 201100875, 201100876, 201100877, and 201100878. The Campaign brought similar challenges in other counties as well.

On November 13, 2020, the trial court issued its orders denying the Campaign's appeals. The next day, the Campaign appealed to this Court. On November 15, 2020, the Philadelphia County Board of Elections moved to transfer

the Campaign's appeals to the Pennsylvania Supreme Court. The next day, this Court entered a briefing and oral argument schedule.

II. PRIOR DETERMINATIONS.

The only prior determinations in this matter for which the Campaign is seeking this Court's review are the November 13, 2020 Orders affirming the Philadelphia County Board of Elections' decision to count 8,329 absentee and mail-in ballots that were cast in the November 3, 2020 General Election and failed to conform to the mandatory legislative requirements set forth in Election Code Sections 1306(a) and 3150.16(a). *See* App. A.

III. NAME OF THE JUDGE WHOSE DETERMINATION IS TO BE REVIEWED.

The Honorable James Crumlish of the Philadelphia Court of Common Pleas issued the November 13, 2020 Orders sought to be reviewed.

IV. CHRONOLOGICAL STATEMENT OF FACTS.

A. The Parties.

The 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 upcoming November 3, 2020 General Election. The Campaign brought 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 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. Cmwlth. Ct. 2003) (en banc) (under Pennsylvania’s Election Code, the status given to political bodies grants them standing regarding watchers and their ability “to raise objections to the allowance or disallowance of votes, including the right to be present when envelopes containing the official absentee ballots are opened, counted and recorded.”), *rev’d on other grounds*, 843 A.2d 1223 (Pa. 2004); *In re General Election-1985*, 531 A.2d 836, 838 (Pa. Cmwlth. Ct. 1987) (panel decision) (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).¹

Appellee, the Philadelphia County Board of Elections, has responsibility for elections in Philadelphia County and one of its principal places of business is

¹ In accordance with Pa. IOP Cmwlth. Ct. 414(c), because the cited decision in *In re Canvass of Absentee Ballots of November 4, 2003* was issued by this Court en banc, it is binding precedent. The *In re General Election-1985* decision is similarly binding as it was issued by a three-Judge panel of this Court. *See* Pa. IOP Cmwlth. Ct. 414(c) (“A reported opinion of the Court en banc or panel may be cited as binding precedent.”).

located at Philadelphia City Hall, Room 142, 1400 John F. Kennedy Blvd., Philadelphia, PA 19107. Appellees, Lisa M. Deeley, Al Schmidt, and Omar Sabir, are Philadelphia City Commissioners. The Philadelphia City Commissioners are elected by the citizens of the County of Philadelphia to four-year terms and are responsible for voter registration and conducting elections. Appellees Philadelphia County Board of Elections and Commissioners Lisa M. Deeley, Al Schmidt, and Omar Sabir are hereinafter referred to collectively as the “Philadelphia Board of Elections.

B. Pennsylvania Enacts No-Excuse Mail-In Voting.

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 fundamentally changed the administration of elections in the Commonwealth of Pennsylvania in that, for the first time in its history, qualified Pennsylvania electors now have the choice to vote by mail, rather than in person on Election Day, without providing a reason or excuse. *See, e.g.*, 25 P.S. §§ 3150.11-3150.17; *see also Pa. Dem. Party v. Boockvar*, 238 A.3d 345 (Pa. 2020). Previously, the law offered electors who could not vote in person on the designated Election Day the ability to apply for and receive an absentee ballot, verifying they qualified based on a limited number of excuses outlined in the statute. Under Act 77, any registered voter could apply for a mail-in ballot and vote by submitting the

same to the appropriate county board of elections even though the voter did not have an excuse to not vote in person on Election Day.

The absentee and mail-in voting statutory regime established under the Pennsylvania Election Code, as amended by Act 77, contains certain safeguards to ensure the integrity of the electoral process. Specifically—and of particular relevance to this matter—Sections 1306.6(a) and 3150.16(a) impose the following requirements to properly cast an absentee or mail-in ballot:

- a. At any time after receiving an official mail-in ballot, but on or before eight o'clock p.m. on the day of the election, the elector casting the absentee or mail-in ballot must mark the ballot “in secret”;
- b. The marked ballot then must be placed and securely sealed in the secrecy envelope bearing the official stamp “Official Election Ballot,” and then placed inside a second envelope (the “Outer Envelope”), on which must be 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”;
- c. Then, “the elector shall ... fill out, date and sign the declaration printed on [the Outer Envelope]”; and
- d. “[The Outer 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) & 3150.16(a).

C. Philadelphia Board of Elections Votes to Count 8,329 Non-Conforming Absentee and Mail-In Ballots.

On November 3, 2020, the General Election in Pennsylvania was held. As part of that election, 8,329 absentee and mail-in ballots were cast that failed to conform to the mandatory legislative requirements set forth in Election Code Sections 1306(a) and 3150.16(a). Specifically, the 8,329 ballots fell into the following categories:

- a. 1,211 ballots on which the outer envelope contained the elector's signature but which did not have the date, printed name ,or the elector's address filled out in the space provided;
- b. 1,259 ballots on which the outer envelope contained the elector's signature and hand-printed address but which did not have the date on which the elector signed the envelope;
- c. 533 ballots on which the outer envelope contained the elector's signature, the date, and the elector's address filled out in the space provided but did not have the elector's name printed under the signature;
- d. 860 ballots on which the outer envelope contained the Elector's signature, hand-printed name, and date but which did not have the elector's address filled out in the space provided; and
- e. 4,466 ballots on which the outer envelope contains the Elector's signature and the date but which did not have the printed name or the elector's address filled out in the space provided.

See App. A.

During the pre-canvass on Election Day, the Philadelphia Board of Elections set aside the 8,329 absentee and mail-in ballots because they failed to conform to Election Code Sections 1306(a) and 3150.16(a). Then, seven (7) days after the Election, the Philadelphia Board of Elections voted to count the non-conforming ballots. In making its decision, the Board of Elections did not dispute that the ballots failed to conform with Election Code Sections 1306(a) and 3150.16(a). (11/13/2020 Hrg. Tr., p. 25.) Nor was any evidence offered that the electors' signatures on the ballots' Outside Envelopes matched the signatures that appeared on the voters' registration records. (*Id.* at pp. 36-38.) Nevertheless, because there was no evidence of actual fraud, the Philadelphia Board of Elections voted to count all 8,329 non-conforming absentee and mail-in ballots.

D. The Trial Court Affirms the Philadelphia Board of Elections' Decision.

On November 13, 2020, the Honorable James C. Crumlish held oral argument on the Campaign's appeal. Thereafter, the trial court entered five orders affirming the Philadelphia Board of Elections' decision to count the 8,329 absentee and mail-in ballots. In its orders, the trial court concluded that although Election Code Sections 1306(a) and 3150.16(a) require an elector to "fill out, date, and sign" the declaration on the Outside Envelope, the term "fill out" was undefined and ambiguous. Consequently, the trial court denied the Campaign's appeal and affirmed the Philadelphia Board of Elections' decision.

SUMMARY OF ARGUMENT

Pursuant to Judicial Code Section 762(a)(4)(i)(C), 42 Pa. C.S. § 762(a)(4)(i)(C), exclusive jurisdiction over appeals from orders of the courts of common pleas entered under Election Code Section 1407, 25 P.S. 3157, rests exclusively in this Court. *Dayhoff*, 808 A.2d at 1006, n.7. This conclusion is consistent with Article 5, Section 9 of the Pennsylvania Constitution, and case law which has held that this Court has jurisdiction over appeals involving election processes.

Moreover, because these appeals do not involve the qualification, eligibility, regularity of the electoral or appointive process, and other preconditions to the holding of a particular office, jurisdiction over these appeals does not lie with the Pennsylvania Supreme Court under Judicial Code Section 722(2) , 42 Pa. C.S. § 722(2), involving appeals from common plea court orders involving the right to public office. Instead, jurisdiction rests solely in this Court as the appeals concern solely questions involving the election process.

Finally, the General Assembly set forth in the Election Code the requirements for how a qualified elector can cast a valid absentee and mail-in ballot, and one of those requirements is for each elector to “fill out, date, and sign” the declaration on the Outside Envelope. *See* 25 P.S. §§ 3146.6(a) & 3150.16a. The Pennsylvania Supreme Court has repeatedly held that the requirements of

Election Sections 1306(a) and 3150.16(a) are mandatory and that ballots cast in contravention of the requirements of such sections are void and cannot be counted. Accordingly, the trial court erred in affirming the Philadelphia Board of Elections' decision to count the 8,329 non-conforming absentee and mail-in ballots.

ARGUMENT

I. JUDICIAL CODE SECTION 762(a)(4)(i)(C) PROVIDES THIS COURT WITH EXCLUSIVE JURISDICTION OVER THE CAMPAIGN'S APPEALS.

The first issue for review concerns the scope of this Court's appellate jurisdiction. "Chapter Seven of the Judicial Code sets forth the 'legislatively ordained division of labor' between appellate courts in Pennsylvania." *Mohn v. Bucks Cty. Republican Comm.*, 218 A.3d 927, 930 (Pa. Super. Ct. 2019) (quoting *Valley Forge Indus., Inc. v. Armand Constr., Inc.*, 374 A.2d 1312, 1316 (Pa. Super. Ct. 1977)). Pursuant to Section 742 of the Judicial Code, appeals from final orders of the courts of common pleas shall vest exclusively in the Superior Court, "except such classes of appeals as are by any provision of this chapter within the exclusive jurisdiction of the Supreme Court or the Commonwealth Court." 42 Pa. C.S. § 742.

Section 762(a) of the Judicial Code enumerates seven specific categories of appeal from the courts of common pleas over which the Commonwealth Court has exclusive jurisdiction. Of importance to these appeals, Section 762(a) provides:

(a) **General rule.**—Except as provided in subsection (b) [which is inapplicable herein], *the Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas in the following cases:*

...

(4) Local government civil and criminal matters.

(i) *All actions or proceedings* arising under any municipality, institution district, public school, planning or zoning code or under which a municipality or other political subdivision or municipality authority may be formed or incorporated or *where is drawn in question the application, interpretation or enforcement of any:*

...

(C) *statute relating to elections, campaign financing or other election procedures.*

42 Pa. C.S. § 762(a)(4)(i)(C) (emphasis added). “Thus, pursuant to our statutory scheme, appeals from final orders of the courts of common pleas involving the application, interpretation or enforcement of any statute relating to elections or election procedures fall within the exclusive jurisdiction of the Commonwealth Court.” *Mohn*, 218 A.3d at 931.

The Philadelphia Board of Elections argues that an appeal to this Court is not authorized by Section 1407(b) of the Election Code, 25 P.S. § 3157(b). However, enacted in 1937, Section 1407(b) “no longer has force since the passage in 1976 of the Judicial Code, which grants this Court exclusive jurisdiction over appeals in Election Code cases.” *Dayhoff*, 808 A.2d at 1006, n.7. Additionally,

“Section 1407(b) existed prior to the passage in 1968 of Article 5, Section 9 of the Pennsylvania Constitution, which provides that there ‘shall be a right of appeal from ... an administrative agency to a court of record or to an appellate court....’” *Dayhoff*, 808 A.2d at 1006, n. 7. Finally, as the Pennsylvania Supreme Court held in *In re Petition to Contest Gen. Election for Dist. Justice*, 670 A.2d 629 (Pa. 1996), this Court has jurisdiction over appeals involving elections when it was created in 1970. *Id.*, 670 A.2d at 631 n.1 (“Although [the Pennsylvania Supreme] Court had previously entertained appeals from the courts of common pleas in election matters ... jurisdiction over such appeals was given to the Commonwealth Court when that court was created in 1970.”)). Accordingly, despite Section 1407(b)’s no appeal language, this Court has exclusive jurisdiction over appeals in Election Code cases. *In re Nomination in re Warren*, 692 A.2d 1178, 1181 (Pa. Cmwlth. Ct. 1997).

Additionally, the Philadelphia Board of Elections argues that jurisdiction over these appeals vests in the Pennsylvania Supreme Court under Judicial Code Section 722(2), 42 Pa. C.S. § 722(2), which provides that that “[t]he Supreme Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas [involving]: ... (2) [t]he right to public office.” However, as the Pennsylvania Supreme Court has explained, “the right to public office” focuses on questions of “qualification, eligibility, regularity of the electoral or appointive

process, and other preconditions to the holding of a particular office.” *Smethport Area School District v. Bowers*, 269 A.2d 712, 716 (Pa. 1970). “The right to public office” does not “involve issues arising from the election process.” *Warren*, 692 A.2d at 1181. Consequently, since these appeals involve “issues arising from the election process” as opposed to “qualification, eligibility, regularity of the electoral or appointive process, and other preconditions to the holding of a particular office,” this Court, and not the Supreme Court, has exclusive jurisdiction over the Campaign’s appeals.

II. ABSENTEE AND MAIL-IN BALLOTS THAT FAIL TO CONFORM TO THE MANDATORY LEGISLATIVE REQUIREMENTS SET FORTH IN ELECTION CODE SECTIONS 1306(a) AND 3150.16(a) ARE VOID AND NOT SUBJECT TO BEING COUNTED.

When the Pennsylvania General Assembly enacted Act 77 nearly a year ago, it provided voters access to no excuse mail-in voting. In doing so, our legislature described the process for absentee and mail-in voters to follow in completing their ballots. Specifically, Election Code Sections 1306(a) and 3150.16(a) state that “the [absentee/mail-in] elector *shall*, in secret, proceed to mark the ballot ...” 25 P.S. §§ 3146.6(a) & 3150.16(a). Sections 1306(a) and 3150.16(a) then describe the process whereby an absentee/mail-in voter “shall” place his/her ballot inside a secrecy envelope marked “Official Mail-in Ballot”, and then place that ballot-filled envelope inside another outer envelope which has a printed declaration for the elector to sign. *Id.* The sections then specify: “the elector *shall ... fill out, date*

and sign the declaration printed on [the Outer Envelope].” *Id.* (emphasis added). Finally, the Sections 1306(a) and 3150.16(a) provide that “[s]uch 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.” *Id.* See also *Pa. Democratic Party v. Boockvar*, 238 A.3d at ___, 2020 Pa. LEXIS 4872, at *59.

Consistent with the dictates of the Statutory Construction Act, the Pennsylvania Supreme Court has declared the use of the term “shall” in Election Code Sections 1306(a) and 3150.16(a) is mandatory not directory. *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1231-1232, & 1234 (Pa. 2004); *Pa. Democratic Party v. Boockvar*, 2020 Pa. LEXIS 4872, at *70-*74. Moreover, the Supreme Court has recognized that the “so-called technicalities of [Election Code Sections 1306(a) and 3150.16(a)] are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed -- particularly where, as here, they are designed to reduce fraud.” *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d at 1234. Accordingly, absentee or mail-in ballots cast in contravention of the requirements of Election Code 1306(a) and 3150.16(a) are “void” and cannot be counted. *Id.*

Here, there is no dispute that the 8,329 ballots were not filled out as mandated by Election Code Sections 1306(a) and 3150.16(a). Moreover, the

Philadelphia Board of Elections offered no evidence that the electors' signatures that were affixed to the declaration envelopes matched the signatures which appeared on the voters' registration records. Nor did the Board of Elections proffer any testimony of any voter which revealed that the qualified elector made a mistake by not including their printed name, street address, and date on the declaration envelopes. Instead, the Board of Elections simply inferred that a mistake had been made, despite the fact that it is equally plausible that someone other than the identified electors may have completed the ballots which is why the printed names, addresses, and dates are missing in contravention of the mandates of Election Code Sections 1306(a) and 3150.16(a). Because the General Assembly has clearly stated what an elector must do to cast an absentee and mail-in ballot and there is no affirmative evidence in the record which proves that the elector at issue were misled by the Philadelphia Board of Elections when completing their absentee and mail-in ballots, all non-conforming ballots received by the Philadelphia Board of Elections are void and cannot be counted.

Further, our Supreme Court has rejected the notion that absentee or mail-in ballots can be counted despite their failure to comply with the mandates of Election Code Sections 1306(a) and 3150.16(a). Specifically, in *Pa. Democratic Party v. Boockvar*,, our Supreme Court recognized that “[w]hile the Pennsylvania Constitution mandates that elections be “free and equal,” it leaves the task of

effectuating that mandate to the Legislature.” *Pa. Democratic Party v. Boockvar*, 2020 Pa. LEXIS 4872, at *56 (citing *Winston v. Moore*, 91 A. 520, 522 (Pa. 1914)). Moreover, “although the Election Code provides the procedures for casting and counting a vote by mail, it does not provide for [a] ‘notice and opportunity to cure’ ... [and] [t]o the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, ... the decision to provide a ‘notice and opportunity to cure’ procedure to alleviate that risk is one best suited for the Legislature[,] ... particularly in light of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Pennsylvania's government.” *Pa. Democratic Party v. Boockvar*, 2020 Pa. LEXIS 4872, at *56. Accordingly, there is nothing in the Election Code that authorizes a county board of elections to accept and count non-conforming absentee and mail-in ballots. In fact, to do so creates a “notice and opportunity to cure” procedure which the Pennsylvania Supreme Court has expressly held does not exist in the Election Code.

Furthermore, concluding that the term “shall” in Election Code Sections 1306(a) and 3150.16(a) is merely directory rather than mandatory raises serious

equal protection concerns. *See, e.g., Pierce v. Allegheny County Bd. of Elections*, 324 F. Supp. 2d 684, 699 (W.D. Pa. 2003). As the Western District of Pennsylvania noted years ago when addressing the “in person” delivery requirement in Election Code Section 3146.6(a): “If the state courts hold that the phrase “in person” is merely directory, then different standards have been employed in different counties across the Commonwealth of Pennsylvania to determine whether an absentee ballot should be counted. That kind of disparate treatment implicates the equal protection clause because uniform standards will not be used statewide to discern the legality of a vote in a statewide election.” *Id.* The same conclusion applies to Election Code Sections 1306(a) and 3150.16(a)’s “fill out” requirement. Voters in Philadelphia County whose non-conforming ballots the Philadelphia Board of Elections has decided to count are being afforded greater voting strength than similarly-situated voters in counties which have decided to follow Election Code Sections 1306(a) and 3150.16(a)’s mandatory “fill out” requirement and not count such non-conforming ballots.

Finally, the trial court determined that the non-conforming ballots could be counted because the term “fill out” was an undefined term and thus ambiguous. But in reaching this conclusion, the trial court failed to identify what two or more fairly susceptible constructions led to its conclusion that the term “fill out” is ambiguous. *See, e.g., Ottavi v. Timothy Burke Stripping Co.*, 14 A.2d 188, 191

(Pa. Super. Ct. 1940) (“When the design of the legislature is not clearly apparent, it is always to be presumed that a statute was intended to have the most reasonable and beneficial operation that its language permits. And when a statute is ambiguous in terms or fairly susceptible of two constructions, the injustice, unreasonableness, absurdity, hardship, or even the inconvenience which may follow one construction may properly be considered and a construction of which the statute is fairly susceptible may be placed on it that will avoid all such objectionable consequences and advance what must be presumed to be its true object and purpose[.]”). Indeed, the trial court never identify the common and approved usage of the term “fill out,” and instead relied solely on the Election Code’s perceived purpose and intent to support its conclusion that the non-conforming ballots should be counted. This was error.

As the Pennsylvania Supreme Court has consistently declared, “the polestar of statutory construction is to determine the intent of the General Assembly.” *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d at 1230 (citing 1 Pa.C.S. § 1921(a) (court’s sole objective in construing or interpreting a statute remains to “ascertain and effectuate the intention of the General Assembly”)); *Hannaberry HVAC v. Workers' Compensation Appeal Bd. (Snyder)*, 834 A.2d 524, 531 (Pa. 2003)). “Generally speaking, the best indication of legislative intent is the plain language of a statute.” *Gilmour Manufacturing*, 822

A.2d at 679. Furthermore, in construing statutory language, “words and phrases shall be construed according to rules of grammar and according to their common and approved usage. ...” *Id.*, (quoting 1 Pa.C.S. § 1903). Thus, “when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b). Accordingly, “all things being equal, the law will be construed liberally in favor of the right to vote but, at the same time, [the courts] cannot ignore the clear mandates of the Election Code.” *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d at 1231 (citing *In re Nomination Petition of Gallagher*, 359 A.2d 791, 792 (Pa. 1976) (“we cannot permit a resort to sophistry in an effort to avoid the clear mandates of the Election Code.”)).

Here, the common and approved usage of the term “fill out” in the context of Election Code Sections 1306(a) and 3150.16(a) is “to add information such as your name or address in the empty spaces on an official document.” MacMillan Dictionary, definition of “fill out,” available online at <https://www.macmillandictionary.com/us/dictionary/american/fill-out>. *See also* Cambridge Dictionary, definition of “fill out,” available online at <https://dictionary.cambridge.org/us/dictionary/english/fill-out> (“fill out” means “to write or type information in spaces that are provided for it”). Thus, the term “fill out” in Election Code Sections 1306.6(a) and 3150.16(a) is not ambiguous, and the

trial court erred by not using its common and approved usage which requires an elector to add, write, or type in one's printed name, address, and date in order to properly cast an absentee or mail-in ballot.

CONCLUSION

This Court has exclusive jurisdiction over the Campaign's appeals as they involve issues related to the election process and not the right to public office. Moreover, the trial court erred by affirming the Philadelphia Board of Elections' decision to count the 8,329 absentee and mail-in ballots that admittedly failed to conform to the legislative mandates of Election Code Sections 1306(a) and 3150.16(a). To hold otherwise violates the plain and ordinary meaning of the sections mandatory language and creates serious equal protection concerns for voters throughout the Commonwealth who properly cast absentee and mail-in ballots in the November 3, 2020 General Election.

Accordingly, the Campaign respectfully requests that this Court reverse the trial court's five orders and remand these appeals with instructions that the Campaign's appeals to the Philadelphia Board of Elections' decisions be sustained and that the 8,329 non-confirming absentee and mail-in ballots not be counted as void.

Date: November 18, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I hereby certify that the foregoing Brief of Appellant complies with the length requirements of Pa. R.A.P. 2135. According to the word count of the word processing system used to prepare this Brief, the brief contains 7,348 words, not including the supplementary matter as described in Pa. R.A.P. 2135(b).

Date: November 18, 2020

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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.

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PROOF OF SERVICE

I hereby certify that on the 18th day of November, 2020, two true and correct copies of the foregoing Brief were served upon counsel of record by email which satisfies the requirements of Pa.R.A.P. 121:

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

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 2020

No. 201100874

ORDER

AND NOW, to-wit, this 13th day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenors, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 3, those being 1,211 ballots on

which the outer envelope contains only the Elector's signature but which do not have the date, printed name or the elector's address filled out in the space provided.

2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
 3. The Election Code provides that a voter shall "fill out, date and sign the declaration" on the outer envelope.
 4. The term "fill out" in the Code is not a defined term and is ambiguous.
 5. The pre-printed ballot already contains the elector's name and address on the pre-printed exterior envelope.
 6. Neither a date nor the elector's filling out of the printed name or of the address are requirements necessary to prevent fraud.
 7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
 8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require.
- 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is **DENIED**. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 1,211 absentee and mail-in ballots containing the elector's signature on the Declaration envelope but missing the date and other "fill out" information is

AFFIRMED as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,


Crumlish, J.

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

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 2020

No. 201100875

ORDER

AND NOW, to-wit, this 13th day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenors, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 4, those being 1,259 ballots on which the outer envelope contains only the Elector's signature and hand-printed address but which do not have the date on which the Elector signed the envelope.

2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
 3. The Election Code provides that a voter shall “fill out, date and sign the declaration” on the outer envelope.
 4. The term “fill out” in the Code is not a defined term and is ambiguous.
 5. The pre-printed ballot already contains the elector’s name and address on the pre-printed exterior envelope.
 6. Neither a date nor the elector’s filling out of the printed name or of the address are requirements necessary to prevent fraud.
 7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
 8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require.
- 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is **DENIED**. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 1,259 absentee and mail-in ballots containing the elector’s signature, hand-printed name and address on the Declaration envelope but missing the date is

AFFIRMED as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,


Crumlish, J.

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

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 2020

No. 201100876

ORDER

AND NOW, to-wit, this 13th day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenor, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 5, those being 533 ballots on which the outer envelope contains the Elector's signature, the date and the elector's

address filled out in the space provided but do not have the Elector's name printed under the signature.

2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
 3. The Election Code provides that a voter shall "fill out, date and sign the declaration" on the outer envelope.
 4. The term "fill out" in the Code is not a defined term and is ambiguous.
 5. The pre-printed ballot already contains the elector's name and address on the pre-printed exterior envelope.
 6. Neither a date nor the elector's filling out of the printed name or of the address are requirements necessary to prevent fraud.
 7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
 8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require.
- 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is **DENIED**. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 533 absentee and mail-in ballots containing the elector's signature, hand-written address and date on the Declaration envelope but missing the hand-

printed name under the signature is **AFFIRMED** as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,


Crumlish, J.

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

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 2020

No. 201100876

ORDER

AND NOW, to-wit, this 13th day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenors, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 5, those being 533 ballots on which the outer envelope contains the Elector's signature , the date and the elector's

address filled out in the space provided but do not have the Elector's name printed under the signature.

2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
 3. The Election Code provides that a voter shall "fill out, date and sign the declaration" on the outer envelope.
 4. The term "fill out" in the Code is not a defined term and is ambiguous.
 5. The pre-printed ballot already contains the elector's name and address on the pre-printed exterior envelope.
 6. Neither a date nor the elector's filling out of the printed name or of the address are requirements necessary to prevent fraud.
 7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
 8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require.
- 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is **DENIED**. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 533 absentee and mail-in ballots containing the elector's signature, hand-written address and date on the Declaration envelope but missing the hand-

printed name under the signature is **AFFIRMED** as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,


Crumlish, J.

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

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 2020

No. 201100878

ORDER

AND NOW, to-wit, this 13th day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenor, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 3, those being 4,466 ballots on which the outer envelope contains the Elector's signature and the date but which do not have the printed name or the elector's address filled out in the space provided.

2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
 3. The Election Code provides that a voter shall “fill out, date and sign the declaration” on the outer envelope.
 4. The term “fill out” in the Code is not a defined term and is ambiguous.
 5. The pre-printed ballot already contains the elector’s name and address on the pre-printed exterior envelope.
 6. Neither a date nor the elector’s filling out of the printed name or of the address are requirements necessary to prevent fraud.
 7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
 8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require.
- 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is **DENIED**. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 4,466 absentee and mail-in ballots containing the elector’s signature and the date on the Declaration envelope but missing the other “fill out” information

(hand-printed name and address) is **AFFIRMED** as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,

 Crumlish, J.