

IN THE SUPREME COURT OF PENNSYLVANIA

No. 67 MAP 2022

DAVE McCORMICK FOR U.S. SENATE and DAVID H. McCORMICK,

Petitioners,

v.

LEIGH M. CHAPMAN, IN HER OFFICIAL CAPACITY AS SECRETARY OF
THE COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Respondents.

**DOCTOR OZ FOR SENATE & DR. MEHMET OZ'S
ANSWER IN SUPPORT OF EMERGENCY APPLICATION TO STAY**

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And Dr. Mehmet Oz*

Intervenor-Respondents Doctor Oz for Senate and Dr. Mehmet Oz support and seek to uphold the will of Pennsylvania's voters, Pennsylvania's free and fair elections, and the General Assembly's duly enacted laws governing those elections.

For that reason, Doctor Oz for Senate and Dr. Oz support and join the Emergency Application to Stay filed by the Republican National Committee and the Republican Party of Pennsylvania, and respectfully ask the Court for a partial stay of its June 2, 2022 Order, to the extent that order directs election officials "to canvass" undated mail-in and absentee ballots and to report to the Acting Secretary vote tallies that include such undated mail-in and absentee ballots.

A stay is warranted on multiple grounds. *First*, the Commonwealth Court's order is void due to Petitioners' failure to join indispensable parties, namely 7 of the county boards of election who are tasked with administering elections. *Second*, due to Petitioner David H. McCormick's concession on June 3, 2022, the issues raised in the Petition for Review are moot. *Third*, the Commonwealth Court's decision is likely to be overturned, particularly in view of this Court's ruling on the same issue less than two years ago. *Fourth*, no party would be substantially harmed by the issuance of a stay. *Finally*, the issuance of a stay would prevent harm, most prominently by preserving the integrity of elections in Pennsylvania.

I. The Order Should Be Stayed Because It Is Void For Failure To Join Indispensable Parties

The Order should be deemed void because Petitioners failed to join indispensable parties. Petitioners named only 60 of the 67 county boards of elections as respondents in this action, despite seeking a declaration that would affect each county's administration of this and all future elections. Accordingly, an immediate stay is appropriate in the interim.

“[T]he failure to join an indispensable party deprives the court of subject matter jurisdiction.” *Church of the Lord Jesus Christ of the Apostolic Faith v. Shelton*, 740 A.2d 751, 755 (Pa. Commw. 1998). “In the interest of justice, Pennsylvania law allows this objection to be raised at any time during the proceedings, even on appeal.” *Id.* (citing Pa.R.C.P. No. 1032; *DeCoatsworth v. Jones*, 639 A.2d 792 (1994)). Thus, “[i]f all necessary and indispensable parties are not parties to an action in equity, the court is powerless to grant relief.” *Id.* at 756 (quoting *Huston v. Campanini*, 346 A.2d 258, 259 (Pa. 1975)). “An order of the court rendered in the absence of an indispensable party is null and void.” *Id.* (citing *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 346 A.2d 788 (1975)). “Such a judgment is entitled to no authority or respect, and is subject to impeachment in collateral proceedings at any time by one whose rights it purports to affect.” *Id.* (quoting *Moskowitz's Registration Case*, 196 A. 498, 502 (Pa. 1938)).

In *Orman v. Mortgage I.T.*, 118 A.3d 403 (Pa. Super. 2015), a property owner sought to reform a mortgage and note and to quiet title. But the property owner failed to join her husband, who was listed on the disputed mortgage. After finding that the property owner failed to join an indispensable party, the trial court granted the defendants' motion for summary judgment. On appeal, the Superior Court held that the failure to include an indispensable party meant the trial court lacked subject matter jurisdiction to enter judgment in favor or against *any party*. *Id.* at 407. Thus, the Superior Court held that proper remedy was to dismiss the complaint without prejudice, rather than to enter any form of judgment. Accordingly, the Superior Court vacated the trial court's judgment and orders and remanded the case to the trial court with instructions for the trial court to dismiss the complaint without prejudice. *Id.* at 408. Pennsylvania courts have routinely held similarly. *See, e.g., Davis v. Palmisani*, 237 A.3d 464 (Pa. Super. 2019) (in action for prescriptive easement, failure to join indispensable party rendered judgment following bench trial void, even though the defense was not raised via preliminary objections or new matter); *Kunkle v. Poydence*, 216 A.3d 381 (Pa. Super. 2018) (vacating trial court order granting summary judgment because indispensable parties were not joined).

The posture of this case requires the same result. Petitioners sought declaratory relief to affect this election and all future elections with respect to the validity of undated absentee and mail-in ballots. But they named only 60 of the 67

county boards of elections. Even after this defect was brought to the Petitioners' attention during the hearing on May 31, 2022, Petitioners made no effort to join the remaining 7 county boards of election.

It is plain that all of the county boards of election are indispensable parties.

Under the Pennsylvania Declaratory Judgment Act:

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

42 Pa.C.S. § 7540(a). Failure to include indispensable parties to a declaratory judgment action deprives a court of subject matter jurisdiction. *Vale Chemical Co. v. Hartford Accident & Indemnity Co.*, 516 Pa. A.2d 684, 685 (Pa. 1986).

Here, Petitioners sought a declaration regarding the constitutionality and application of a provision of the Election Code but included less than 90% of Pennsylvania's county boards of election to the action. Most glaringly, Petitioners left off Philadelphia County, the largest county in the Commonwealth. Petitioners' "belief that those [omitted] boards are already providing the relief sought by Petitioners in this matter," *see* Mem. Op. at 3 n.1, is immaterial. It is plain that *all* county boards of elections have an "interest which would be affected by the declaration," are indispensable, and that the absence of some of these county boards deprives the court of subject matter jurisdiction. Accordingly, the Commonwealth

Court's decision is "null and void," and should be stayed pending this appeal. *See Church of the Lord Jesus Christ*, 740 A.2d at 755.

II. The Order Should Be Stayed Because This Action is Moot.

On June 3, 2022, Petitioner David H. McCormick conceded the election of the Republican nominee for the United States Senate was over. *See* Application for Withdrawal of Proceedings, 301 MD 2022, attached as Ex. 1. Accordingly, the Commonwealth Court's Order has been rendered moot. Thus, the Commonwealth Court's order should be stayed.

"The mootness doctrine requires that there is an actual case or controversy at all stages of review." *Selective Way Ins. Co. v. Hospitality Grp. Servs.*, 119 A.3d 1035 (Pa. Super. 2015) (citing *Pilchesky v. Lackawanna Cnty.*, 88 A.3d 954, 964 (Pa. 2014)). "It is well established in this jurisdiction that this Court will not decide moot questions." *In re Gross*, 382 A.2d 116, 119 (Pa. 1978) (citing *Wortex Mills v. Textile Workers*, 85 A.2d 851 (1952)). Courts have applied the mootness doctrine to cases involving elections. *See, e.g., Bognet v. Degraffenreid*, 141 S. Ct. 2508 (U.S., No. 20-740, Apr. 19, 2021) ("The Petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Third Circuit with instructions to dismiss the case as moot. *See United States v. Munsingwear, Inc.*, 340 U.S., 71 S. Ct. 104, 95 L. Ed. 36 (1950).").

“This Court has repeatedly recognized two exceptions to the mootness doctrine: (1) for matters of great public importance and (2) for matters capable of repetition, which are likely to elude review.” *Pilchesky*, 88 A.3d at 964. Neither of these exceptions apply. This Court has already declined an opportunity to review the merits of Petitioners’ claims when it declined to exercise extraordinary jurisdiction or King’s Bench jurisdiction. *See* Order, 46 MM 2022 (Pa. May 31, 2022), and twice denied petitions for allowance of appeal regarding the same issue, *see In re Election in Region 4 for Downingtown Sch. Bd. Precinct Uwchlan 1*, No. 1381 CD 2021, 2022 WL 96156 (Pa. Commw. Ct. Jan. 10, 2022), *appeal denied* 2022 WL 536196 (Pa. Feb. 23, 2022); *Ritter v. Lehigh Cnty. Bd. of Elecs.*, No. 1322 CD 2021, 2022 WL 16577, at *8 (Pa. Commw. Ct. Jan. 3, 2022), *appeal denied* 2022 WL 244122 (Pa. Jan. 27, 2022). This Court previously ruled on the issues raised in the Petition just 18 months ago, *see In re Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election*, 241 A.3d 1058 (Pa. 2020). There is no compelling reason for this Court to address the same question again so soon, especially when it can do so again should the issue arise in another close election.

Because the outcome of the primary election for the Republican nomination for the United States Senate will not be affected by the Court’s decision, the claims raised in the Petition for Review are moot, and the enforcement of the Commonwealth Court’s order should be stayed.

III. The Order Should Be Stayed Because The Commonwealth Court's Decision Is Likely To Be Overturned

The Appellants have “a substantial case on the merits.” *Com. v. Martin*, 79 A.3d 1195, 1200 (Pa. 2013); *see also* Doctor Oz for Senate & Dr. Mehmet Oz’s Brief in Opposition to Petitioners’ Motion for Immediate Special Injunction 2-6 (“Br.”). On the state law question, *see* Op. 31-34, a majority of the Pennsylvania this Court has held that any mail-in or absentee ballot that lacks a voter-completed date is invalid under Pennsylvania law and may not be counted in any post-2020 election. *See In re Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election*, 241 A.3d 1058, 1079-80 (2020) (Opinion of Justice Wecht); *id.* at 1090-91 (Opinion of Justices Dougherty, Saylor, and Mundy). Since then, the Commonwealth Court twice has recognized that it is bound by this holding and rejected claims to count such ballots. *See In re Election in Region 4 for Downingtown Sch. Bd. Precinct Uwchlan 1*, No. 1381 CD 2021, 2022 WL 96156 (Pa. Commw. Ct. Jan. 10, 2022), *appeal denied* 2022 WL 536196 (Pa. Feb. 23, 2022); *Ritter v. Lehigh Cnty. Bd. of Elecs.*, No. 1322 CD 2021, 2022 WL 16577, at *8 (Pa. Commw. Ct. Jan. 3, 2022), *appeal denied* 2022 WL 244122 (Pa. Jan. 27, 2022). On each occasion, this Court denied leave to appeal and allowed the Court’s decision to stand. The Pennsylvania Supreme Court even took that action in *Ritter*, where this Court upheld the General Assembly’s date requirement for mail-in and absentee ballots under both Pennsylvania law and the federal materiality statute, 52 U.S.C.

§ 10101(a)(2)(B). *See Ritter*, 2022 WL 16577, at *8-*9, *appeal denied* 2022 WL 244122 (Pa. Jan. 27, 2022).

The Commonwealth Court suggested that it is not bound by those prior precedents because, in its view, “the fact that ballots that had exterior envelopes with incorrect dates were counted” was not before the Pennsylvania Supreme Court in *In re Canvass of November 3, 2020*. Op. 33. But on October 25, 2020—before this Court’s decision in that case—the Secretary of the Commonwealth advised county boards of elections that “there is no basis to reject a ballot for putting the ‘wrong’ date on the envelope” and that such ballots should be “process[ed] . . . normally.” *See Marks E-mail* (Ex. 2). And, of course, the Free and Equal Elections Clause upon which the Commonwealth Court relied, *see* Op. 31-34, *also* was before the Pennsylvania Supreme Court in 2020. Accordingly, there was no valid basis for the Commonwealth Court to deviate from the binding holding that the date requirement is valid under state law.

The Appellants also have “a substantial case on the merits” that the federal materiality provision does not preempt the date requirement. *Martin*, 79 A.3d at 1200. That provision prohibits states from “deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting” if the error is “immaterial in determining whether such individual is qualified under State law to

vote in the election.” 52 U.S.C. § 10101(a)(2)(B). On its face, this statute is inapplicable to the date requirement. The date requirement results in election officials declining to count a *ballot*, not *disqualifying* an individual from voting or denying their right to vote. *See* Br. 3-6; *Ritter*, 2022 WL 16577, at *9.¹

The Third Circuit’s decision in *Migliori v. Lehigh County Board of Elections*, No. 22-1499 (3d Cir. May 27, 2022), does not warrant, much less authorize, a departure from these binding holdings. *See* Br. 3-6; Op. 25. That decision is not final and is the subject of a pending stay in the United States Supreme Court. *See Ritter v. Migliori*, No. 21A772 (U.S. May 31, 2022).

There is good reason to believe that further review of *Migliori* will result in reversal. *See* Br. 3-6. For one thing, the Third Circuit finds a private right of action to enforce the federal materiality statute where none exists. *See id.* at 4.

For another, the Third Circuit’s construction of the federal materiality statute is counter-textual and breathtakingly broad. Under the Third Circuit’s reading, the statute would preempt state laws even in the absence of a showing that any individual has been “den[ied] the right . . . to vote,” and even where state laws regulate the *manner of voting* (i.e., requirements for mail-in or absentee ballots) rather than the determination of whether an individual “*is qualified* under State law to vote.” 52

¹ Like this Court’s decision in *In re Canvass of Nov. 3, 2020*, the Commonwealth Court’s decision in *Ritter* was issued after the Secretary’s guidance that ballots with the wrong date should be counted. *See* Marks Email (Ex. 2).

U.S.C. § 10101(a)(2)(B) (emphasis added); *see also* Br. 3-6. Indeed, the Third Circuit missed the crucial distinction between a state law that results in declining to count a *ballot* and a state law that results in disqualification of a *voter*. *See, e.g., Ritter*, 2022 WL 16577, at *9. The Third Circuit’s reading thus would federalize State election laws nationwide, contravening the rule that “[s]tates may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.” *Timmons v. Twin City Area New Party*, 520 U.S. 351, 358 (1997) (emphasis added).

Moreover, the Third Circuit’s application of the federal materiality statute to invalidate the General Assembly’s date requirement raises serious constitutional questions—and may even violate the Constitution. Congress enacted the materiality statute and the broader § 10101 of which it is part “to enforce th[e] [Fifteenth] Amendment[,]” *United States v. Mississippi*, 380 U.S. 128, 138 (1965), which guarantees that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude,” U.S. Const. amend. XV, § 1; *see also* § 2 (“The Congress shall have power to enforce this article by appropriate legislation.”). Congress’s purpose in enacting the materiality statute was to “forbid[] the practice of *disqualifying voters* for their failure to provide information irrelevant to their eligibility to vote.” *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003) (emphasis

added). In particular, Congress addressed “the practice of requiring unnecessary information for voter registration”—such as listing the registrant’s “exact number of months and days in his age”—“with the intent that such requirements would increase the number of errors or omissions on the application forms, thus providing an excuse to disqualify potential voters.” *Id.*; *see also* H. Rep. No. 88-914, pt. 2, at 5 (1963) (“[R]egistrars [would] overlook minor misspelling errors or mistakes in age or length of residence of white applicants, while rejecting” an application from a black applicant “for the same or more trivial reasons.”).

The federal materiality statute thus functions as a safeguard against racially discriminatory application of state voter qualification and eligibility standards. *See, e.g., Schwier*, 340 F.3d at 1294; *see also* H. Rep. No. 88-914, pt. 1, at 19 (recognizing that Title I of the Civil Rights Act, now codified in § 10101, was part of an effort “by which the Congress took steps to guarantee to all citizens the right to vote without discrimination as to race or color”). The other two subsections of § 10101(a)(2) further underscore this point: those subsections require election officials to apply uniform “standard[s], practice[s], [and] procedure[s] . . . in determining whether any individual is qualified to vote under state law,” 52 U.S.C. § 10101(a)(2)(A), and restrict the use of literacy tests “as a qualification for voting in any election,” *id.* § 10101(a)(2)(C).

Application of the federal materiality statute to invalidate the General Assembly’s date requirement (or other neutral rules governing the manner of voting and validity of ballots, such as the prohibitions on voting for two candidates for the same office and on making identifying marks on a secrecy envelope) thus strays far afield of Congress’s Fifteenth Amendment enforcement powers. *Cf. Shelby Cnty., Ala. v. Holder*, 570 U.S. 529 (2013) (limiting Fifteenth Amendment enforcement powers to laws that remedy current discriminatory practices); *City of Boerne v. Flores*, 521 U.S. 507 (1997) (requiring, in the exercise of Fourteenth Amendment enforcement powers, “a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end”). Indeed, the Third Circuit’s decision invalidates a state law that has nothing to do with “disqualifying voters,” *Schwier*, 340 F.3d at 1294, but instead involves a “reasonable regulation[]” of the manner in which *already qualified* voters cast a particular “ballot,” *Timmons*, 520 U.S. at 358. Moreover, there is no indication—in the record of this case or otherwise—that the General Assembly’s date requirement has been wielded to “den[y] or abridge[]” the right to vote “on account of race, color, or previous condition of servitude.” U.S. Const. amend. XV, § 1. To the contrary, election officials do not even know the race of the voter when they apply the date requirement to mail-in and absentee ballots.

Thus, extending the federal materiality statute to invalidate the date requirement may exceed Congress’s authority under the Fifteenth Amendment (or any other constitutional provision)—and, at a minimum, raises serious constitutional questions on that score. For this reason as well, there is “a substantial case on the merits” that the Third Circuit’s construction of the materiality statute should be avoided. *Melvin*, 79 A.3d at 1200; *Gomez v. United States*, 490 U.S. 858, 864 (1989) (“It is our settled policy to avoid interpretation of a federal statute that engenders constitutional issues if a reasonable alternative poses no constitutional question.”).²

IV. No Party Would Be “Substantially Harmed” By A Stay

No party would be “substantially harmed” by the grant of a stay. *Melvin*, 79 A.3d at 1200. Mr. McCormick has already conceded the election, and Dr. Oz will be the Republican nominee for the United States Senate. The ballots at issue will not have any impact on the outcome of the election between these parties. Accordingly, a stay is appropriate.

² The Acting Secretary suggested at the hearing that, as applied to congressional elections, the materiality provision might be a proper exercise of Congress’s authority under the Elections Clause. *See* U.S. Const. art. I, § 4, cl. 1. That is incorrect because the Constitution vests states with plenary authority to establish the “Qualifications” for their voters. *Id.* art. I, § 2, cl. 1.

V. The Order Should Be Stayed Due To The Risk Of Irreparable Injury.

The Commonwealth Court’s injunction directing counting of mail-in and absentee ballots that lack a voter-completed date threatens “irreparable injury.” *Melvin*, 79 A.3d at 1200. The “issue[]” presented is “precisely whether the votes that have been ordered to be counted” under the Court’s injunction are “legally cast vote[s]” under federal law. *Bush v. Gore*, 531 U.S. 1046, 1046 (2000) (Scalia, J., concurring). “The counting of votes that are of questionable legality . . . threaten[s] irreparable harm” to all Pennsylvanians and even “the country, by casting a cloud upon . . . the legitimacy of the election.” *Id.* The requested relief should be “granted” for this reason alone. *Id.* (per curiam op.).

More generally, barring the State “from conducting this year’s elections pursuant to . . . a statute enacted by the Legislature”—where no party has shown that statute to be invalid—“would seriously and irreparably harm the State,” the General Assembly, and its voters. *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). In other words, it “serves the public interest” to “giv[e] effect to the will of the people by enforcing the laws that they and their representatives enact.” *Thompson v. DeWine*, 959 F.3d 804, 812 (2020).

A stay would advance the “public interest” because it would prevent “harm” to voters and the public that otherwise would result from the Court’s injunction. *Melvin*, 79 A.3d at 1200. Indeed, a stay would promote “[c]onfidence in the integrity

of our electoral processes” and “the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006); see also *Husted v. Ohio State Conference of N.A.A.C.P.*, 573 U.S. 988 (2014); *Merrill v. Milligan*, 142 S. Ct. 879 (2022).

Changing election rules on the eve of an election is “bad enough”—and generally warrants a stay, *Republican Party of Penn. v. Degraffenreid*, 141 S. Ct. 732, 735 (2021) (Thomas, J., dissenting)—because “[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others,” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). But changing the rules “after election day” is even worse: it risks “severely damag[ing] the electoral system on which our self-governance so heavily depends,” *Republican Party of Penn.*, 141 S. Ct. at 734–35 (Thomas, J., dissenting), by engendering “the chaos and suspicions of impropriety” that follow when invalid ballots are counted “after election day and potentially flip the results of an election,” *Democratic Nat’l Comm. v. Wisconsin State Legislature*, 141 S. Ct. 28, 33 (Mem.) (Kavanaugh, J., concurring). Such post-election judicial changes to election rules also undercut the finality vital to functioning democracy because they encourage losing candidates to invoke the judicial process “to undo the ballot results.” *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (9th Cir. 1988). The Court should uphold

the free and fair May 2022 primary election on behalf of all Pennsylvanians, safeguard the integrity of Pennsylvania's elections, and grant a stay.

CONCLUSION

The Court should stay its June 2, 2022 Order to the extent that Order directs election officials to canvass undated mail-in and absentee ballots and to report to the Acting Secretary vote tallies that include such undated mail-in and absentee ballots.

Dated: June 6, 2022

Respectfully submitted,

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EXHIBIT 1

**IN THE
COMMONWEALTH COURT OF PENNSYLVANIA**

IN RE MAY 17, 2022 GENERAL)
PRIMARY FOR THE)
REPUBLICAN NOMINEE FOR) CASE NO. 301 MD 2022
THE OFFICE OF THE UNITED)
STATES SENATE)

**APPLICATION FOR RELIEF
IN THE NATURE OF A WITHDRAWAL OF PROCEEDINGS**

Petitioners, by and through their undersigned counsel, file the within Application for Relief in the nature of a Withdrawal of Proceedings. On June 3, 2022, David H. McCormick conceded the election of the Republican nominee for the United State Senate was over. Accordingly, as the proceedings are now moot, Petitioners seek leave to withdraw and terminate the proceedings in this matter, with all parties to bear their own fees and costs, and with the posted \$8,700.00 cash deposit returned to Petitioners.

The Acting Secretary of the Commonwealth, the Respondent County Boards of Elections (except for Cumberland County), and Intervenor Dr. Mehmet C. Oz have no objection to this Application, as evidenced by their counsels' signatures below. Although its Director of Elections and Voter Registration and/or solicitor or assistant solicitor were included in several email communications that were sent last night and today, and Petitioners' counsel attempted to reach its assistant

solicitor by email and telephone today, the Cumberland County Board of Elections has not advised what position it has to the application as of the date and time of this filing. Nevertheless, Petitioners request this Court to grant their Application and requested relief in order to save the parties and this Court from the time and expense of traveling to and attending an unnecessary hearing.

WHEREFORE, Petitioners respectfully request this Honorable Court to dismiss this proceeding as moot. A proposed order is attached.

Dated: June 4, 2022

Respectfully submitted,

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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.

Dated: June 4, 2022

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Counsel for Petitioners

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within
Application was served this 4th day of June, 2022, via email to the following:

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*Attorneys for Dr. Mehmet C. Oz
and Doctor Oz for Senate*

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr. (PA #49520)
Jeremy A. Mercer (PA #86480)
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Counsel for Petitioners

**IN THE
COMMONWEALTH COURT OF PENNSYLVANIA**

IN RE MAY 17, 2022 GENERAL)
PRIMARY FOR THE)
REPUBLICAN NOMINEE FOR) CASE NO. 301 MD 2022
THE OFFICE OF THE UNITED)
STATES SENATE)

ORDER OF COURT

AND, NOW, to-wit, this _____ day of _____, 20____, upon consideration of Petitioners' Application for Relief in the Nature of a Withdrawal of Proceedings, and finding that there is no objection to the application and requested relief, it is hereby ORDERED, ADJUDGED and DECREED that said Application is GRANTED.

This case is dismissed as moot, and the June 6, 2022 hearing is cancelled. All parties are to bear their own fees and costs. The Prothonotary of this Court is ordered to return to Petitioners the posted \$8,700 cash deposit.

BY THE COURT:

J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: May 17, 2022 General Primary : 301 MD 2022
for the Republican Nominee for the :
Office of the United States Senate :

Petition of: Shirley Skiviat, Robert Skiviat,
Avery Oron Skiviat, Mary S. Roderick,
Richard Tems, Linda T. Mannherz,
Errica Darragh, Anne N. Layng, Kathy Elaine
Evey, Tracey K. Massaglia, Bruce K. Trimmer,
Ellen K. Kraus, John W. Kraus, Bryan Andrew
Gembusia, Deborah Keys, Denise Darlene
Bernatos, Robert L. Bernatos, Jr., Troy L.
Ingram, II, Alan Brink, Austin Barry Hepburn, Jr.,
Hannah Wood Hepburn, Maryan Brink,
Bradley Alan Peganoff, Carol E. Peganoff,
Jason Douglas Peganoff, Joseph Peganoff,
Charlotte Mae Charles, James N. Charles,
J. Mathew Charles, Erica Renee Charles,
Josephine Ferro, John Ferro, Farley Carvalho,
Eugene Bonkoski, Carolyn L. Bonkoski,
R. Kathi Grate, Keith D. Maginsky, Lisa L.
Maginsky, Thomas J. Wubben, Beverly Jean
Reihart, Chris DelVecchio, David Lamar Bush,
Gary Daniel Reihart, Gregory C. Blymire,
Nick DelVecchio, and Roberta Lynn Bush

PROOF OF SERVICE

I hereby certify that this 4th day of June, 2022, I have served the attached document(s) to the persons on the date(s) and
in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Service

Served: Allan Joseph Opsitnick
Service Method: Email
Email: aopsitnick@opsitnickslaw.com
Service Date: 6/4/2022
Address:
Phone: 412-391-3299
Representing: Respondent Allegheny County Board of Elections

Served: Allan Joseph Opsitnick
Service Method: eService
Email: aopsitnick@opsitnickslaw.com
Service Date: 6/4/2022
Address: 564 Forbes Avenue
#1301
Pittsburgh, PA 15219
Phone: 412-.39-1.3299
Representing: Respondent Allegheny County Board of Elections

Served: Amy Melaugh Fitzpatrick
Service Method: Email
Email: amyfitz01@gmail.com
Service Date: 6/4/2022
Address:
Phone: 215-348-6464
Representing: Respondent Bucks County Board of Elections

Served: Andrew Francis Szefti
Service Method: Email
Email: aszefti@alleghenycounty.us
Service Date: 6/4/2022
Address:
Phone: 412-350-1128
Representing: Respondent Allegheny County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Andrew Francis Szefi
Service Method: eService
Email: Andrew.Szefi@alleghenycounty.us
Service Date: 6/4/2022
Address: 445 Ft Pitt Blvd
Suite 300
Pittsburgh, PA 15219
Phone: 412--35-0-1128
Representing: Respondent Allegheny County Board of Elections

Served: Anna Skipper Jewart
Service Method: Email
Email: skipper.jewart@gmail.com
Service Date: 6/4/2022
Address:
Phone: 814-867-8055
Representing: Respondent Centre County Board of Elections

Served: Anna Skipper Jewart
Service Method: eService
Email: askipper@babstcalland.com
Service Date: 6/4/2022
Address: 603 Stanwix Street
6th Floor
Pittsburgh, PA 15222
Phone: 412-699-6118
Representing: Respondent Centre County Board of Elections

Served: Colleen Mary Frens
Service Method: Email
Email: hughesck@gmail.com
Service Date: 6/4/2022
Address:
Phone: 610-344-6195
Representing: Respondent Chester County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Colleen Mary Frens
Service Method: eService
Email: hughesck@gmail.com
Service Date: 6/4/2022
Address: 702 Owen Road
West Chester, PA 19380
Phone: 215-694-4164
Representing: Respondent Chester County Board of Elections

Served: Daniel Donovan Grieser
Service Method: Email
Email: ddgrieser@buckscounty.org
Service Date: 6/4/2022
Address:
Phone: 215-348-6548
Representing: Respondent Bucks County Board of Elections

Served: Daniel Donovan Grieser
Service Method: eService
Email: ddgrieser@buckscounty.org
Service Date: 6/4/2022
Address: 55 East Court Street, 5th Floor
DOYLESTOWN, PA 18901
Phone: 215-348-6548
Representing: Respondent Bucks County Board of Elections

Served: Elizabeth A. Dupuis
Service Method: Email
Email: bdupuis@babstcalland.com
Service Date: 6/4/2022
Address:
Phone: 814-867-8055
Representing: Respondent Centre County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Elizabeth A. Dupuis
Service Method: eService
Email: bdupuis@babstcalland.com
Service Date: 6/4/2022
Address: 330 Innovation Boulevard
Suite 302
State College, PA 16803
Phone: 814--86-7-8055
Representing: Respondent Centre County Board of Elections

Served: Glenn T. Roth Jr.
Service Method: Email
Email: groth@co.schuylkill.pa.us
Service Date: 6/4/2022
Address:
Phone: 570-628-1129
Representing: Respondent Schuylkill County Board of Elections

Served: Glenn T. Roth Jr.
Service Method: eService
Email: Pantherg90@yahoo.com
Service Date: 6/4/2022
Address: 842 Water Street
Pottsville, PA 17901
Phone: 570-622-7535
Representing: Respondent Schuylkill County Board of Elections

Served: Jacquelyn Pfursich
Service Method: Email
Email: JEPfursich@co.lancaster.pa.us
Service Date: 6/4/2022
Address:
Phone: --
Representing: Respondent Lancaster County Board of Elections

Served: James Manly Parks
Service Method: Email
Email: jmparks@duanemorris.com
Service Date: 6/4/2022
Address:
Phone: 215-979-1342
Representing: Respondent Delaware County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: James Manly Parks
Service Method: eService
Email: JMParks@duanemorris.com
Service Date: 6/4/2022
Address: 30 south 17th street
philadelphia, PA 19103
Phone: 215--97-9-1342
Representing: Respondent Delaware County Board of Elections

Served: James V. Fareri
Service Method: Email
Email: jfareri@newmanwilliams.com
Service Date: 6/4/2022
Address:
Phone: 570-421-9090
Representing: Respondent Monroe County Board of Elections

Served: James V. Fareri
Service Method: eService
Email: JFareri@newmanwilliams.com
Service Date: 6/4/2022
Address: 712 Monroe Street
Stroudsburg, PA 18360
Phone: 570--42-1-9090
Representing: Respondent Monroe County Board of Elections

Served: Kathleen A. Gallagher
Service Method: Email
Email: kag@glawfirm.com
Service Date: 6/4/2022
Address:
Phone: 412-717-1920
Representing: Possible Intervenor Doctor Oz for Senate
Respondent Dr. Mehmet C. Oz

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Kathleen A. Gallagher
Service Method: eService
Email: kag@glawfirm.com
Service Date: 6/4/2022
Address: 436 Seventh Avenue
31st Floor
Pittsburgh, PA 15219
Phone: 412-717-1900
Representing: Possible Intervenor Doctor Oz for Senate
Respondent Dr. Mehmet C. Oz

Served: Keith Orr Brenneman
Service Method: Email
Email: k.brenneman@verizon.net
Service Date: 6/4/2022
Address:
Phone: 717-697-8528
Representing: Respondent Cumberland County Board of Elections

Served: Keith Orr Brenneman
Service Method: eService
Email: k.brenneman@verizon.net
Service Date: 6/4/2022
Address: 5808 Stephens Xing
PA
Mechanicsburg, PA 17050
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Representing: Respondent Cumberland County Board of Elections

Served: Melissa Ann Guiddy
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Email: mguiddy@co.westmoreland.pa.us
Service Date: 6/4/2022
Address:
Phone: 724-244-7200
Representing: Respondent Westmoreland County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Melissa Ann Guiddy
Service Method: eService
Email: mguiddylaw@outlook.com
Service Date: 6/4/2022
Address: 527 Austin Street
Greensburg, PA 15601
Phone: 724-244-7200
Representing: Respondent Westmoreland County Board of Elections

Served: Michelle Pokrifka
Service Method: Email
Email: mpokrifka@gmail.com
Service Date: 6/4/2022
Address:
Phone: 717-887-7506
Representing: Respondent York County Board of Elections

Served: Michelle Pokrifka
Service Method: eService
Email: apuleo@yorkcountypa.gov
Service Date: 6/4/2022
Address: 28 East Market Street
York, PA 17401
Phone: 717--77-1-9745
Representing: Respondent York County Board of Elections

Served: Nicholas Michael Centrella Jr.
Service Method: Email
Email: centrellan@gmail.com
Service Date: 6/4/2022
Address:
Phone: 215-979-1850
Representing: Respondent Delaware County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Nicholas Michael Centrella Jr.
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Email: NMCentrella@duanemorris.com
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Phone: 215--97-9-1850
Representing: Respondent Delaware County Board of Elections

Served: Nicole R. Forzato
Service Method: Email
Email: nforzato@chesco.org
Service Date: 6/4/2022
Address:
Phone: 610-344-6056
Representing: Respondent Chester County Board of Elections

Served: Nicole R. Forzato
Service Method: eService
Email: nforzato@chesco.org
Service Date: 6/4/2022
Address: Chester County Solicitor's Office
313 W. Market St., Suite 6702
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Phone: 610-344-6195
Representing: Respondent Chester County Board of Elections

Served: Russell David Giancola
Service Method: Email
Email: rdg@glawfirm.com
Service Date: 6/4/2022
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Phone: 412-717-1900
Representing: Respondent Dr. Mehmet C. Oz

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

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Phone: 412-717-1921
Representing: Respondent Dr. Mehmet C. Oz

Served: William Spyro Speros
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Service Date: 6/4/2022
Address:
Phone: 814-870-7764
Representing: Respondent Erie County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

Served: Kathleen Ann Mullen
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Representing: Amicus Curiae Leigh M. Chapman

Served: Kathleen Ann Mullen
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Phone: 717--70-5-2331
Representing: Amicus Curiae Leigh M. Chapman

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Ronald Lee Hicks Jr.

(Signature of Person Serving)

Person Serving: Hicks, Ronald Lee, Jr.
Attorney Registration No: 049520
Law Firm: Porter Wright Morris & Arthur, LLP
Address: Porter Wright Morris & Arthur Llp
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Pittsburgh, PA 15222

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Representing:

- Petitioner Bernatos, Denise Darlene
- Petitioner Bernatos, Jr., Robert L.
- Petitioner Blymire, Jr., Gregory C.
- Petitioner Bonkoski, Carolyn L.
- Petitioner Bonkoski, Eugene F.
- Petitioner Brink, Alan
- Petitioner Brink, Maryan
- Petitioner Bush, David Lamar
- Petitioner Bush, Roberta Lynn
- Petitioner Carvalho, Farley
- Petitioner Charles, Charlotte Mae
- Petitioner Charles, Erica Renee
- Petitioner Charles, J. Mathew
- Petitioner Charles, James N.
- Petitioner Darragh, Erica A.
- Petitioner DelVecchio, Chris
- Petitioner DelVecchio, Nick
- Petitioner Evey, Kathy Elaine
- Petitioner Ferro, John
- Petitioner Ferro, Josephine
- Petitioner Gembusia, Bryan Andrew
- Petitioner Grate, R. Kathi
- Petitioner Hepburn, Hannah Wood
- Petitioner Hepburn, Jr., Austin Barry
- Petitioner Ingram, II, Troy L.
- Petitioner Keys, Deborah
- Petitioner Kraus, Ellen K.
- Petitioner Kraus, John W.
- Petitioner Layng, Anne N.
- Petitioner Maginsky, Keith D.
- Petitioner Maginsky, Lisa L.
- Petitioner Mannherz, Linda
- Petitioner Massaglia, Tracy K.
- Petitioner Peganoff, Bradley Alan
- Petitioner Peganoff, Carol E.
- Petitioner Peganoff, Jason Douglas
- Petitioner Peganoff, Joseph
- Petitioner Reihart, Beverly Jean
- Petitioner Reihart, Gary Daniel
- Petitioner Roderick, Mary S.
- Petitioner Skiviat, Avery
- Petitioner Skiviat, Robert Frank
- Petitioner Skiviat, Shirley Louise
- Petitioner Tems, Richard
- Petitioner Trimmer, Bruce
- Petitioner Wubben, Thomas J.

EXHIBIT 2

From: Marks, Jonathan <jmarks@pa.gov>
Sent: Tuesday, June 1, 2021 9:21 AM
To: Marks, Jonathan <jmarks@pa.gov>
Subject: DOS Email: Reminder Regarding Requirement to Sign AND Date Declaration Envelopes

County of Lehigh Warning: This is an external email. Please exercise caution.

Good morning everyone.

Since the Municipal Primary on May 18, the department has seen several news articles suggesting that some counties are continuing to accept and count ballots that do not contain both a signature and a date on the voter's declaration.

As you know, the department updated the content and the instructions on the declaration envelope to ensure that voters know they must **sign and date** the envelope for their ballot to be counted. Furthermore, our updated guidance is consistent with the Supreme Court's ruling last September in *In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, wherein the Court held that in future elections a voter's declaration envelope must be both signed and dated for the ballot to count. Though we share your desire to prevent the disenfranchisement of any voter, particularly when it occurs because of a voter's inadvertent error, we must strongly urge all counties to abide by the Court's interpretation of this statutory requirement.

We also believe that it is prudent to again remind you of our previous clarification of 10/25/2020. As noted in that communication, there is no basis to reject a ballot for putting the "wrong" date on the envelope, nor is the date written used to determine the eligibility of the voter. You should process these ballots normally.

If you have any questions about the guidance posted on the department's website, please contact us and please consult with your solicitor.

Thank you for everything that you do.

Kind Regards,

Jonathan M. Marks

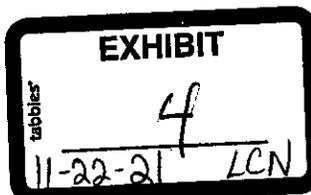
Deputy Secretary for Elections & Commissions

PA Department of State

302 North Office Building

Harrisburg, PA 17120

Phone: 717-783-2035



VERIFICATION

I, Casey Contres, hereby aver that I am the campaign manager of Doctor Oz for Senate and that the statements of fact contained in the attached Answer in Support of Emergency Application to Stay are true and correct to the best of my knowledge and belief, and are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: 6/6/2022

By: Casey Contres
Casey Contres

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2022, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Counsel for Intervenor-Respondents Doctor

Oz for Senate and Dr. Mehmet Oz

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Kathleen A. Gallagher

*Counsel for Intervenor-Respondents Dr.
Oz for Senate and Dr. Mehmet Oz*