

IN THE SUPREME COURT OF PENNSYLVANIA

No. 102 MM 2022

David Ball, James D. Bee, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Lynn Marie Kalcevic, Vallerie Siciliano-Biancaniello, S. Michael Streib, Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania,

Petitioners,

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth, *et al.*,

Respondents.

PROPOSED INTERVENORS' APPLICATION FOR INTERVENTION

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TABLE OF CONTENTS

INTRODUCTION	1
PROPOSED INTERVENORS.....	5
FACTUAL AND PROCEDURAL BACKGROUND	8
LEGAL STANDARD.....	13
ARGUMENT	15
I. Proposed Intervenors satisfy the requirement for intervention under Pennsylvania law.....	15
II. None of the exceptions to granting intervention apply.....	18
CONCLUSION.....	22
CERTIFICATE OF COMPLIANCE WITH WORD LIMIT	24
CERTIFICATE OF COMPLIANCE WITH P.a. R.A.P. 127	25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.</i> , 225 A.3d 902 (Pa. Cmwlth. 2020)	14
<i>In re Appointment of Dist. Att’y</i> , 756 A.2d 711 (Pa. Cmwlth. 2000)	15
<i>In re Barlip</i> , 428 A.2d 1058 (Pa. Cmwlth. 1981)	15, 19
<i>Berger v. N.C. State Conf. of the NAACP</i> , 142 S. Ct. 2191 (2022)	20, 21
<i>Bognet v. Boockvar</i> , No. 3:20-cv-215 (W.D. Pa. Oct. 22, 2022).....	2
<i>Bonner v. Chapman</i> , No. 364 MD 2022 (Pa. Cmwlth. July 20, 2022)	3
<i>In re Canvass of Absentee and Mail-In Ballots</i> , 241 A.3d 1058 (Pa. 2020)	9, 10
<i>In re: Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election</i> , No. 2011-00874 (Pa. C.C.P. Phila. Cty. Nov. 9, 2020).....	2
<i>In re: Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election</i> , No. 2020-18680 (Pa. C.C.P. Montg. Cty. Nov. 5, 2020).....	2
<i>In re Canvassing Observation</i> , 241 A.3d 339 (Pa. 2020)	2
<i>Chapman v. Berks Cnty. Bd. of Elections</i> , No. 355 MD 2022, 2022 WL 4100998 (Pa. Cmwlth August 19, 2022)	11, 12

<i>Commonwealth ex rel. Chidsey v. Keystone Mutual Casualty Co.</i> , 76 A.2d 867 (Pa. 1950)	19
<i>D.G.A. v. Dep't of Human Servs.</i> , No. 1059 C.D. 2018, 2020 WL 283885 (Pa. Cmwlt. Jan. 21, 2020)	20
<i>Donald J. Trump for President, Inc. v. Boockvar</i> , 502 F. Supp. 3d 899 (M.D. Pa. 2020).....	4
<i>Donald J. Trump for President, Inc. v. Boockvar</i> , No. 2:20-cv-00966-NR (W.D. Pa. June 28, 2020)	2
<i>Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania</i> , 830 F. App'x 377 (3d Cir. 2020)	4
<i>Feller v. Brock</i> , 802 F.2d 722 (4th Cir. 1986)	21
<i>Issa v. Newsom</i> , No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351 (E.D. Cal. June 10, 2020)	15, 17, 19
<i>Kelly v. Pennsylvania</i> , No. 620 MD 2020 (Pa. Cmwlt. Nov. 20, 2020)	3
<i>Kleissler v. U.S. Forest Serv.</i> , 157 F.3d 964 (3d Cir. 1998)	20
<i>Larock v. Sugarloaf Twp. Zoning Hearing Bd.</i> , 740 A.2d 308 (Pa. Cmwlt. 1999)	14, 20
<i>Letendre v. Currituck Cnty.</i> , 261 N.C. App. 537, 817 S.E.2d 920, 2018 WL 4440587 (2018) (unpublished)	21
<i>In re Major</i> , 248 A.3d 445 (Pa. 2021)	8
<i>McLinko v. Degraffenreid</i> , 244 MD 2021 (Pa. Cmwlt. July 26, 2021).....	3

<i>McLinko v. Dep’t of State</i> , 279 A.3d 539 (Pa. 2022)	8
<i>Migliori v. Cohen</i> , 36 F.4th 153 (3d Cir. 2022)	10, 11
<i>Pa. Democratic Party v. Republican Party of Pa.</i> , No. 16-5664, 2016 WL 6582659 (E.D. Pa. Nov. 7, 2016)	15, 17
<i>Paher v. Cegavske</i> , No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365 (D. Nev. Apr. 28, 2020).....	18
<i>Parnell v. Allegheny Bd. of Elections</i> , No. 20-cv-01570 (W.D. Pa. Oct. 22, 2020), ECF No. 34.....	15
<i>Republican Nat’l Comm. v. Chapman</i> , No. 447 M.D. 2022 (Pa. Cmwlth. 2022).....	4, 17, 20
<i>Ritter v. Migliori</i> , 142 S. Ct. 1824 (2022)	9, 11, 12
<i>U.S. v. Munsingwear, Inc.</i> , 340 U.S. 36 (1950)	12
<i>Wells Fargo Bank N.A. v. James</i> , 90 A.3d 813 (Pa. Cmwlth. 2014)	19
<i>Zicarelli v. Allegheny Cnty. Bd. of Elections</i> , No. 2:20-cv-1831-NR (W.D. Pa. Nov. 25, 2020)	3
<i>Zicarelli v. Allegheny Cnty. Bd. of Elections</i> , No. GD-20-011654 (Pa. C.C.P. Allegheny Cty. Nov. 12, 2020)	2

Statutes

25 P.S. § 3146.2a	13
25 P.S. § 3146.6(a).....	9
25 P.S. § 3150.11	8
25 P.S. § 3150.16(a).....	9

52 U.S.C. § 10101(a)(2)(B).....	10
52 U.S.C. § 30101.....	6
52 U.S.C. § 30101(14)	5, 6
Pa. Stat. § 2601	7
Pa. Stat. § 2831	7

APPLICATION OF DSCC, DCCC, DEMOCRATIC NATIONAL COMMITTEE, AND PENNSYLVANIA DEMOCRATIC PARTY FOR LEAVE TO INTERVENE AS RESPONDENTS

DSCC, DCCC, Democratic National Committee (“DNC”), and the Pennsylvania Democratic Party (“PDP”) (collectively, “Proposed Intervenors”) submit this Application for Leave to Intervene as Respondents in the above-captioned action pursuant to Pennsylvania Rules of Appellate Procedure 106, 1517, and 1531(b), and Pennsylvania Rules of Civil Procedure Chapter 2320 *et seq.*

INTRODUCTION

Proposed Intervenors seek to protect access to the franchise and ensure free and equal elections, particularly for Democratic voters—who in the 2020 elections were disproportionately more likely to cast ballots by mail than Republicans—and the candidates they support.

In 2019, the General Assembly approved amendments to the Election Code to allow all qualified electors to vote by mail. The underlying legislation—Act 77—received unanimous Republican support in the Senate and suffered only two Republican defections in the House. According to the Republican House Majority Leader, Act 77 was written to “lift the voice of

every voter in the Commonwealth.”¹ But after the 2020 elections, where Democrats cast nearly three times as many mail ballots as Republicans, and more than three out of every five mail ballots were cast by registered Democrats,² Republican party committees, candidates, and legislators turned against Act 77 and mail voting in general. In 2020 alone, Republicans (1) challenged Pennsylvania’s three-day extension of its mail-in ballot receipt deadline, see *Bognet v. Boockvar*, No. 3:20-cv-215 (W.D. Pa. Oct. 22, 2022); (2) challenged the Pennsylvania Election Code’s provisions governing poll observer access during ballot canvassing activities, see *In re Canvassing Observation*, 241 A.3d 339 (Pa. 2020); (3) sought to throw out thousands of validly cast mail-in ballots, see, e.g., *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-cv-00966-NR (W.D. Pa. June 28, 2020); *In re: Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, No. 2020-18680 (Pa. C.C.P. Montg. Cty. Nov. 5, 2020); *In re: Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, No. 2011-00874 (Pa. C.C.P. Phila. Cty. Nov. 9, 2020); *Zicarelli v. Allegheny Cnty. Bd. of*

¹ House Republican Caucus, Historic Election Reform, <https://www.pahousegop.com/electionreform> (last visited Sept. 6, 2022).

² Holly Otterbein, *Democrats return nearly three times as many mail-in ballots as Republicans in Pennsylvania*, POLITICO (Nov. 3, 2020) (hereinafter “Otterbein”), available at <https://www.politico.com/news/2020/11/03/democrats-more-mail-in-ballots-pennsylvania-433951>.

Elections, No. GD-20-011654 (Pa. C.C.P. Allegheny Cty. Nov. 12, 2020); and (4) moved to exclude mail-in ballots entirely from Pennsylvania and various counties' certification of the presidential election, *see, e.g., Kelly v. Pennsylvania*, No. 620 MD 2020 (Pa. Cmwlt. Nov. 20, 2020); *Ziccarelli v. Allegheny Cnty. Bd. of Elections*, No. 2:20-cv-1831-NR (W.D. Pa. Nov. 25, 2020).

More recently, in 2021, Republican legislators challenged the *entire* mail-in voting process as unconstitutional, *see McLinko v. Degraffenreid*, 244 MD 2021 (Pa. Cmwlt. July 26, 2021). And this past July, fourteen Republican members of the Pennsylvania House of Representatives filed suit to eliminate Act 77 and mail-in voting entirely. *Bonner v. Chapman*, No. 364 MD 2022 (Pa. Cmwlt. July 20, 2022).

This action, filed three weeks before the November 8, 2022 general election, and after Pennsylvania voters have begun voting and counties have commenced the vote-by-mail and absentee ballot process, is just the latest chapter in the relentless attack on mail voting, this time targeting the Acting Secretary's guidance to include undated or incorrectly dated mail-in and absentee ("mail") ballots—*that were timely received by the county*—in the pre-canvass and canvass. To be sure, this is not the first time that high profile Republicans have sought to disenfranchise lawful Pennsylvania voters when

their mail ballot suffers a defect unrelated to their qualifications. In 2020, then-President Donald Trump's campaign filed suit in federal court challenging Pennsylvania election officials' ability to implement cure procedures that allowed lawful voters to resolve minor, correctable errors on mail ballots and avoid disenfranchisement. The district court dismissed that lawsuit, and the Third Circuit thoroughly affirmed. *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899, 923 (M.D. Pa. 2020); *Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania*, 830 F. App'x 377, 384, 391 (3d Cir. 2020). And just last month, the Republican National Committee sued to enjoin county boards of elections from developing and implementing cure procedures for mail ballots. *Republican Nat'l Comm. v. Chapman*, No. 447 M.D. 2022 (Pa Cmwth. 2022). Proposed Intervenors were granted intervention in that case, see Order Granting Applications for Intervention (Sept. 22, 2022), *id.*, which continues to be litigated before this Court.

DSCC, DCCC, and DNC are political committees with the mission to elect Democratic candidates nationwide, including to the U.S. Senate and House of Representatives. PDP has a mission of electing Democrats to state, local, and federal office in Pennsylvania, is the official state affiliate of DNC and a major political party under Pennsylvania law. The Proposed

Intervenors' participation in this action is imperative to protect the rights of Democratic voters to vote by mail and have those votes counted, to preserve the ability of Democratic candidates to be elected with the support of said votes, and to defend their own interests. If Petitioners succeed in invalidating the Acting Secretary's guidance directing county boards to count undated (or incorrectly dated) but timely received ballots, Proposed Intervenors will have to redirect substantial resources away from other critical initiatives to re-educate Democratic voters and candidates about the changing rules in an effort to minimize the inevitable disenfranchisement that will result, and to ensure their members' ballots are counted in order to advance their candidates' overall electoral prospects.

As such, Proposed Intervenors have legally enforceable interests in the Pennsylvania election processes implicated by this lawsuit and have the right to intervene.

PROPOSED INTERVENORS

DSCC is the Democratic Party's national senatorial committee, as defined by 52 U.S.C. § 30101(14). Its mission is to elect candidates of the Democratic Party across the country, including in Pennsylvania, to the U.S. Senate. DSCC works to accomplish its mission by, among other things, assisting state parties throughout the country. In 2022, DSCC will provide

millions of dollars in contributions and expenditures to persuade and mobilize voters to support U.S. Senate candidates who affiliate with the Democratic Party. For the 2022 election for U.S. Senate in Pennsylvania, DSCC has worked (and will continue to work) to elect the Democratic candidate, Lt. Gov. John Fetterman, and has made (and will continue to make) substantial contributions and expenditures to support Lt. Gov. Fetterman in his candidacy.

DCCC is the Democratic Party's national congressional committee as defined by 52 U.S.C. § 30101(14). Its mission is to elect candidates of the Democratic Party from across the country, including those running in Pennsylvania's congressional districts, to the U.S. House of Representatives. DCCC works to accomplish its mission by, among other things, assisting state parties throughout the country, including in Pennsylvania. In 2022, DCCC will provide millions of dollars in contributions and expenditures to persuade and mobilize voters to support congressional candidates who affiliate with the Democratic Party.

The DNC is a national committee (as that term is defined in 52 U.S.C. § 30101), dedicated to electing local, state, and federal candidates of the Democratic Party to public office throughout the United States, including in Pennsylvania.

PDP is the political party of all Democrats within the Commonwealth and is the largest political party by registration in Pennsylvania. Recent registration data indicates that 4,014,812 registered voters in Pennsylvania are Democrats.³ The PDP is a “political party” as defined in the Pennsylvania Election Code (25 Pa. Stat. § 2601) and is statutorily created. See 25 Pa. Stat. §§ 2831 *et seq.* In each primary election, the PDP nominates individuals for Pennsylvania’s federal, state, and local offices, who then run as candidates in the general election. The DNC’s and PDP’s members in the Commonwealth include qualified voters as well as candidates for offices across the Commonwealth, hundreds of which are before the voters at this time. The DNC and PDP have dedicated significant resources to encourage their supporters and constituents to vote, including by mail. These efforts have been successful. 2020 election turnout in the Commonwealth was the highest in decades, with more than 2.6 million voters casting a ballot by mail. See Affidavit of Corey Pellington, Executive Director of the Pennsylvania Democratic Party (Ex. D).

³ See *Voting & Election Statistics*, PENNSYLVANIA DEP’T OF STATE, available at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Pages/VotingElectionStatistics.aspx> (visited October 17, 2022).

FACTUAL AND PROCEDURAL BACKGROUND

In 2019, the General Assembly enacted Act 77, an omnibus election bill that “effected major amendments to the Pennsylvania Election Code.” *McLinko v. Dep’t of State*, 279 A.3d 539, 543 (Pa. 2022). The Act introduced no-excuse mail voting, see 25 P.S. § 3150.11 (providing that any qualified voter in Pennsylvania “shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth”), and added other lesser-known changes like the requirement that individuals signing a nomination petition include their registration address. See *In re Major*, 248 A.3d 445, 447 (Pa. 2021), *reargument denied* (Apr. 12, 2021).

Act 77 also included a series of instructions and procedures for voting by mail, which largely mirror preexisting absentee ballot instructions:

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

postage prepaid, except where franked, or deliver it in person to said county board of election.

Act 77 § 8 (codified at 25 P.S. § 3150.16(a)); *compare with* Act 77 § 6 (amending 25 P.S. § 3146.6(a)) (similar preexisting instructions and procedures for voting absentee).

The present action concerns a line of cases analyzing the provision buried in Act 77’s mail balloting instructions that directs voters to “date” their signature under the declaration on the outer envelope containing their mail ballot. Act 77 §§ 6, 8. As Pennsylvania Republican House and Senate legislative leaders recently explained in an *amicus* brief to the Supreme Court of the United States, this provision is not of recent vintage, but has “remained constant” within the Election Code since absentee voting was extended beyond military voters in 1963.⁴

After the 2020 general election, Donald Trump’s campaign committee challenged the decision of several county boards of elections to count timely received mail ballots that arrived in envelopes on which voters had failed to handwrite some of the prescribed information, including, in some instances, a date. *In re Canvass of Absentee and Mail-In Ballots*, 241 A.3d 1058, 1062

⁴ See Brief of Speaker of the Pennsylvania House of Representatives, Bryan Cutler, et al., as Amici Supporting Petitioner, at 3-4, *Ritter v. Migliori*, No. 22-30, available online at https://www.supremecourt.gov/DocketPDF/22/22-30/233169/20220810121620703_SCOTUS%20amicus%20Ritter.pdf.

(Pa. 2020). Consistent with opinions of the Courts of Common Pleas, Justice Donohue announced the judgment of this Court that ballots in undated envelopes were to be counted in the elections at issue. *Id.* at 1079.

A similar controversy arose after the November 2021 election for Judge of the Court of Common Pleas of Lehigh County. There, the Court of Common Pleas (on remand from the Commonwealth Court) ordered the Lehigh County Board of Elections not to count 257 timely received ballots from registered, eligible voters where the voters did not date the return envelope. In the ensuing federal litigation, the Third Circuit ultimately held, in a unanimous decision, that refusing to count undated ballots would violate the “Materiality Provision” of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B), and directed the trial court “to enter an order that the undated ballots be counted.” *Migliori v. Cohen*, 36 F.4th 153, 164 (3d Cir. 2022), *stay denied sub nom. Ritter v. Migliori*, 142 S. Ct. 1824 (2022), *cert granted, vacated as moot, Ritter v. Migliori*, ___ S. Ct. ___, No. 22-30, 2022 WL 6571686 (U.S. Oct. 11, 2022).

The Third Circuit determined the Date Provision was not material to a voter’s qualifications because there was no conceivable way in which it helped to “determin[e] age, citizenship, residency, or current imprisonment for a felony.” *Migliori*, 36 F.4th at 163. And while that alone was enough to

preclude the rejection of ballots in undated envelopes, “[t]he nail in the coffin” was that “ballots were only to be set aside if the date was missing—not incorrect,” revealing that the content of what a voter supplied on the date line was meaningless. *Id.* at 164. After this ruling, the Supreme Court denied a stay sought by the losing candidate. *Ritter*, 142 S. Ct. 1824.

Following those cases and now-vacated (on mootness grounds) federal litigation, this Summer the Acting Secretary challenged the failure of three county boards of elections to include otherwise-valid undated ballots in their certified results of the May 17, 2022, primary election. *See Chapman v. Berks Cnty. Bd. of Elections*, No. 355 MD 2022, 2022 WL 4100998, at *1 (Pa. Cmwlth August 19, 2022). In a 69-page opinion scrutinizing the Date Provision’s text, context, history, and purpose—and with the benefit of a full evidentiary record—the Commonwealth Court concluded: “[T]he General Assembly’s intent was for the ‘shall’ used in the dating provisions to be directory, not mandatory, such that timely received absentee and mail-in ballots of qualified Pennsylvania electors are not invalid only because they lack a handwritten date on the return envelope declaration.” *Id.* at *25. The court noted that the Date Provision does not “provide that [undated] ballots should not be counted, unlike other provisions of the Election Code,” *id.* at *16; does not support a particular purpose, *id.* at *17-20, 25; was not

“designed to prevent fraud, or to protect the privacy and secrecy of voting,” *id.* at *20-22; and that interpreting the Date Provision as mandatory would violate the Materiality Provision, *id.* at *25-29. The court also noted that other jurisdictions interpret similar statutory language to be directory, *id.* at *22. Thus, the Court interpreted Act 77 to *require* counties to include undated ballots in their certified election results. *Id.* at *25.

On October 11, 2022, the U.S. Supreme Court vacated on mootness grounds—without addressing the merits—the Third Circuit’s decision in *Ritter*, 2022 WL 6571686, which held that the refusal to count undated ballots violated the “Materiality Provision” of the Civil Rights Act. See *U.S. v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950) (“The established practice of the Court in dealing with a civil case . . . which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss.”). Soon after, the Secretary issued guidance consistent with the Third Circuit’s decision and the Commonwealth Court’s ruling in *Berks County* directing counties to include undated or incorrectly dated ballots that were timely received in their pre-canvass and canvass.

Petitioners filed the instant Application on October 16, 2022, just over three weeks before election day, and weeks after county boards began

distributing mail ballots to voters; many voters have already returned their ballots.⁵ Petitioners' last-minute attempt to disrupt and inject chaos into an active electoral process would not only nullify months of preparation by elections officials and political campaigns for the November election, but it would disenfranchise entirely lawful voters. In any event, Petitioners misread the law and invite this Court to adopt an interpretation of the Election Code that would violate the federal rights of Pennsylvania voters, as is briefly discussed in Proposed Intervenors' Response to Petitioners' Application for King's Bench Jurisdiction, attached herein as Exhibit A, and will be more fully developed in the substantive briefing if the Court exercises extraordinary jurisdiction.

For the reasons stated above and herein, Proposed Intervenors file this Application for Leave to Intervene as Respondents in accordance with Pennsylvania Rules of Appellate Procedure 106, 1517, and 1531(b), and Pennsylvania Rules of Civil Procedure Chapter 2320 *et seq.*

LEGAL STANDARD

A person not named as a respondent in an original jurisdiction petition

⁵ Mail ballots were sent out to voters beginning September 19, 2022, and voters can return ballots as soon as they receive them. See 25 P.S. § 3146.2a (setting deadline for county boards of elections to receive applications for absentee ballots no earlier than 50 days before the election, or September 19, 2022).

for review can seek leave to intervene in the action by filing an application with the court. Pa. R.A.P. 1531(b). The practices and procedures for original jurisdiction petitions for review must conform to the Pennsylvania Rules of Civil Procedure. Pa. R.A.P. 106; Pa. R.A.P. 1517. Intervenor must satisfy one of four requirements to intervene in an action. Relevant here is the requirement that the intervenor show that “the determination of [the] action may affect any legally enforceable interest of” the intervenor, regardless of whether they “may be bound by a judgment in the action.” Pa. R.C.P. 2327(4).

If the intervenor satisfies one of the four requirements, the court *must* grant intervention. Pa. R.C.P. 2327. Courts have discretion to refuse intervention, after a hearing, *only* if (1) the intervenor’s “claim or defense . . . is not in subordination to and in recognition of the propriety of the action;” (2) the intervenor’s interest is adequately represented by the existing parties; or (3) the intervenor unduly delayed in moving to intervene or intervention would unduly delay the action. Pa. R.C.P. 2329; *see also Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 225 A.3d 902, 908 (Pa. Cmwlth. 2020); *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Cmwlth. 1999).

ARGUMENT

I. Proposed Intervenors satisfy the requirement for intervention under Pennsylvania law.

Proposed Intervenors' interests will be affected by a judgment in this action, warranting intervention. Pa. R.C.P. 2327(4). "[B]ecause a political party, by statutory definition, is an organization representing qualified electors, it maintains the same interest as do its members in" fair and accessible elections. *In re Barlip*, 428 A.2d 1058, 1060 (Pa. Cmwlth. 1981). Courts therefore routinely find that political party committees like DSCC, DCCC, and DNC, and political parties like PDP, are entitled to intervene in cases where election administration practices are being challenged. See, e.g., *In re Appointment of Dist. Att'y*, 756 A.2d 711, 713 n.5 (Pa. Cmwlth. 2000) (granting intervention to Lackawanna County Democratic Party to intervene in support of board of elections); *Parnell v. Allegheny Bd. of Elections*, No. 20-cv-01570 (W.D. Pa. Oct. 22, 2020), ECF No. 34 (granting intervention to DCCC); *Pa. Democratic Party v. Republican Party of Pa.*, No. 16-5664, 2016 WL 6582659, *3 (E.D. Pa. Nov. 7, 2016) (recognizing Democratic party committee had standing "to protect the interests of both Democratic candidates running for office and Democratic voters"); *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (finding a political party has a "significant protectable interest"

in intervening to defend its voters' interests in vote-by-mail and its own resources spent in support of vote-by-mail).

Proposed Intervenors expend substantial resources on educating and assisting voters in navigating the voting process. Affidavit of Pavitra Abraham, National Organizing Director of DCCC (Ex. B) at ¶¶ 4–8; Affidavit of Andrea Young, Voter Protection Advisor of DSCC (Ex. C) at ¶¶ 4–6; Ex. D, Pellington Aff. ¶¶ 21–25. This includes the process through which voters submit mail ballots. *Id.* Indeed, the majority of mail ballots cast in Pennsylvania elections are cast by Democrats. Ex. B, Abraham Aff. ¶¶ 8, 11; Ex. C, Young Aff. ¶¶ 5, 9; Ex. D, Pellington Aff. ¶¶ 17–19. In the 2020 general election, for example, registered Democrats returned nearly three times as many mail ballots as registered Republicans, and more than three out of every five mail ballots in Pennsylvania were cast by registered Democrats.⁶ Accordingly, Proposed Intervenors and their members and constituents have a heightened interest in the procedures surrounding mail ballots and in ensuring that votes cast using these ballots are counted.

Petitioners' requested relief imperils Proposed Intervenors' significant protectable interests in ensuring their members' ballots are counted and in

⁶ See Otterbein, *supra* note 2.

“advancing [their candidates’] overall electoral prospects.” *Issa*, 2020 WL 3074351, at *3; *Pa. Democratic Party*, 2016 WL 6582659, at *3. Because of the high proportion of registered Democrats who vote using mail ballots,⁷ Proposed Intervenors have a cognizable interest in protecting the rights of these voters who have relied on mail voting in prior elections, including those who have already voted in this election. Indeed, that was the basis for Proposed Intervenors’ protectable interests as recognized by the Commonwealth Court in granting intervention last month in litigation challenging county boards of elections’ ability to implement cure procedures for mail ballots. See, e.g., *Application of DSCC and DCCC For Leave to Intervene* (Sept. 9, 2022) at 8–9, *Republican Nat’l Comm.*, No. 447 M.D. 2022 (noting a “heightened interest in the procedures surrounding mail-in ballots and in ensuring that votes cast using these ballots are counted”); *Order Granting Applications for Intervention* (Sept. 22, 2022), *id.* These and other Democratic voters risk disenfranchisement in November’s general

⁷ As of May 10, 2022, 70% of the 959,794 mail-in ballot requests for the 2021 General Election came from registered Democrats. See *Mail Ballot Request Application Statistics*, PENNSYLVANIA DEP’T OF STATE, available at <https://data.pa.gov/Government-Efficiency-Citizen-Engagement/2021-General-Election-Mail-Ballot-Requests-Departm/mksf-6xzy> (visited October 17, 2022). And 77% of the 866,182 mail-in ballot requests for the 2022 Primary Election similarly came from registered Democrats. See *2022 Primary Election Mail Ballot Requests*, PENNSYLVANIA DEP’T OF STATE, available at <https://data.pa.gov/Government-Efficiency-Citizen-Engagement/2022-Primary-Election-Mail-Ballot-Requests-Departm/8qup-ffkc> (visited October 17, 2022).

election if Petitioners' challenge succeeds, which would impair Proposed Intervenors' missions of electing Democratic candidates and ensuring that Democrats in Pennsylvania are not unfairly disenfranchised. See, e.g., *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (proposed Intervenors, Democratic organizations, had significant protectable interests in ensuring election of Democratic Party candidates).

Further, if Petitioners are successful, Proposed Intervenors will have to redirect their limited resources from other programs to address the impacts of the judgment on voters. Ex. B, Abraham Aff. ¶ 9; Ex. C, Young Aff. ¶ 7, Ex. D, Pellington Aff. ¶ 30. This includes diverting additional staff and funds to educating voters about the requirements of the mail voting procedures and developing new programs to mobilize in person voting to minimize potential disenfranchisement. *Id.*

II. None of the exceptions to granting intervention apply.

Because Proposed Intervenors satisfy the requirements set forth under Rule 2327(4), intervention is mandatory unless the grounds for denial under Rule 2329 apply—and they do not.

First, Proposed Intervenors' claims are "in subordination to and in recognition of the propriety of the action." Pa. R.C.P. No. 2329(1). The

purpose of this requirement is to ensure an intervenor takes the suit as they find it, *Commonwealth ex rel. Chidsey v. Keystone Mutual Casualty Co.*, 76 A.2d 867, 870 (Pa. 1950), and to prevent an intervenor from “becom[ing] a party to the suit merely to review what the court has done and to require demonstration of the legality and propriety of its action.” *Wells Fargo Bank N.A. v. James*, 90 A.3d 813, 822 (Pa. Cmwlth. 2014) (Covey, J., dissenting) (quoting *Chidsey*, 76 A.2d at 870).

The requirement is met. Proposed Intervenors do not object to the Court’s exercise of jurisdiction over this Application, and—because the Court has yet to render any substantive rulings and there were no lower court rulings—do not seek to “review what the court has done.” 90 A.3d at 822.

Second, none of Proposed Intervenors’ interests in the rights of Democratic voters, the electoral prospects of Democratic candidates, or the resources they must expend to mobilize voters and enhance turnout are adequately represented by any of the parties to this action. *See, e.g., In re Barlip*, 428 A.2d at 1060 (recognizing interest of political party in preventing “impair[ment of] its effectiveness”); *Issa*, 2020 WL 3074351, at *3 (recognizing political party’s unique interests in “ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and

allocating their limited resources to inform voters about the election procedures”); Order Granting Applications for Intervention (Sept. 22, 2022), *Republican Nat’l Comm.*, No. 447 M.D. 2022.

Where an original party to the suit is a government entity, whose position is “necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it,” the burden of establishing inadequacy of representation by existing parties is “comparatively light.” *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998); see also *D.G.A. v. Dep’t of Human Servs.*, No. 1059 C.D. 2018, 2020 WL 283885, at *7 (Pa. Cmwlth. Jan. 21, 2020) (reversing denial of intervention where intervenors were aligned with the government’s litigation position but possessed unique and personal interests not adequately represented by government respondents); *Larock*, 740 A.2d at 314 (similar).

The U.S. Supreme Court’s decision in *Berger v. North Carolina State Conference of the NAACP*, 142 S. Ct. 2191, 2203 (2022), confirms the point. In that case, the Supreme Court explained that the burden of demonstrating a lack of adequate representation “presents proposed intervenors with only a minimal challenge.” *Id.* at 2195. The Supreme Court also explained that while state agents may pursue “related” interests to political actors, those

interests are not “identical.” *Berger*, 142 S. Ct. at 2204 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 (1972)). In particular, the Court noted that state actors must “bear in mind broader public-policy implications” than those with more partisan or private interests. *Id.*

The same is true here. Even if Respondents’ position aligns with Proposed Intervenors—an uncertainty as there have been no filings in this action to indicate what position Respondents will take—their interests will not be “identical.” *Id.* Respondents’—all state actors— “position [will be] defined by the public interest.” *Feller v. Brock*, 802 F.2d 722, 730 (4th Cir. 1986); accord *Letendre v. Currituck Cnty.*, 261 N.C. App. 537, 817 S.E.2d 920 (Table), 2018 WL 4440587, *4 (2018) (unpublished). But Proposed Intervenors’ interests are defined by their mission and the interests of themselves, their members, and their candidates and, as such, Proposed Intervenors’ interests are not adequately represented by any of the parties to this action. Ex. B, Abraham Aff. ¶¶ 10–11; Ex. C, Young Aff. ¶¶ 8–9; Ex. D, Pellington Aff. ¶¶ 8, 10–14.

Third, Proposed Intervenors timely sought Intervention only three days after Petitioners filed their Application, and within the Court-ordered deadline for responses. Permitting this intervention will neither delay the resolution of this matter nor prejudice any party, especially since Respondents have yet

to meaningfully litigate this case. Nor will any party be prejudiced by Proposed Intervenors' participation, which will aid the Court in understanding the factual and legal issues involved.

Because Proposed Intervenors meet the requirement for intervention under Pennsylvania Rule of Civil Procedure 2327 and because none of the exceptions to granting intervention apply, intervention is mandatory. In any event, even if an exception under Rule 2329 applied, the Court retains discretion to grant intervention and should allow Proposed Intervenors to join this action for the reasons set forth in this application.

CONCLUSION

For the reasons stated above, the Court should grant Proposed Intervenors' application to intervene in this case. Pursuant to Pennsylvania Rule of Civil Procedure 2328, Proposed Intervenors are attaching a copy of the pleading that they will file in the action if permitted to intervene. Proposed Intervenors request a Hearing on this Application if deemed necessary.

WHEREFORE, Proposed Intervenors respectfully request this Honorable Court to grant their Application to Intervene in this matter, and accept their Response to Petitioners' Application attached hereto as their first filing.

Dated: October 19, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I, Adam Bonin, certify that this filing contains fewer than 14,000 words as prescribed by Pa.R.A.P. 2135.

Submitted by:

Adam Bonin

Signature:

Handwritten signature of Adam C. Bonin in blue ink.

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Date:

October 19, 2022

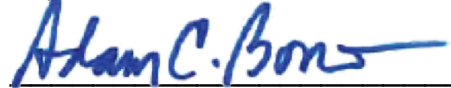
CERTIFICATE OF COMPLIANCE WITH Pa. R.A.P. 127

I, Adam Bonin, 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.

Submitted by:

Adam Bonin

Signature:



Attorney No. (if applicable):

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Date:

October 19, 2022

Exhibit A

IN THE SUPREME COURT OF PENNSYLVANIA

No. 102 MM 2022

David Ball, James D. Bee, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Lynn Marie Kalcevic, Vallerie Siciliano-Biancaniello, S. Michael Streib, Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania,

Petitioners,

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth, *et al.*,

Respondents.

**INTERVENORS DSCC, DCCC, DEMOCRATIC NATIONAL COMMITTEE,
AND PENNSYLVANIA DEMOCRATIC PARTY'S RESPONSE TO
APPLICATION FOR INVOCATION OF KING'S BENCH POWER**

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TABLE OF CONTENTS

INTRODUCTION 1

COUNTER-STATEMENT OF THE CASE 2

ARGUMENT 7

I. THE COURT SHOULD EXERCISE ITS KING’S BENCH POWERS. 7

**II. THE COURT SHOULD NOT PERMIT PETITIONERS TO BYPASS THE
 EVIDENTIARY RECORD DEVELOPED IN *BERKS COUNTY*. 10**

**III. THE RECORD IN *BERKS COUNTY* MAKES CLEAR THAT PETITIONERS
 CANNOT PREVAIL ON THE MERITS AND SHOULD BE INCORPORATED
 INTO THIS PROCEEDING. 12**

CONCLUSION 14

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT 16

CERTIFICATE OF COMPLIANCE WITH PA. R.A.P. 127 17

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election, 241 A.3d 1058 (Pa. 2020)</i>	<i>passim</i>
<i>Chapman v. Berks County Board of Elections, No. 355 M.D. 2022, 2022 WL 4100998 (Pa. Cmwlth. Aug. 19, 2022)</i>	<i>passim</i>
<i>Friends of Danny DeVito v. Wolf, 227 A.3d 872 (Pa. 2020)</i>	11
<i>Migliori v. Cohen, 36 F.4th 153 (3d Cir. 2022)</i>	<i>passim</i>
<i>Pa. Democratic Party v. Boockvar, 238 A.3d 345, 391 (Pa. 2020)</i>	3
<i>Republican Nat’l Comm. v. Chapman, No. 100 MAP 2022 (Pa. Oct. 6, 2022)</i>	9
<i>Ritter v. Migliori, 142 S. Ct. 1824 (2022)</i>	9
<i>Ritter v. Migliori, No. 22-30, 2022 WL 6571686 (U.S. Oct. 11, 2022)</i>	9
<i>U.S. v. Munsingwear, Inc., 340 U.S. 36 (1950)</i>	6
Statutes	
1 P.S. § 1922	12
25 P.S. § 3146.5	8
25 P.S. § 3146.6	2
25 P.S. § 3146.8	2, 15

25 P.S. § 3150.15	8
52 U.S.C. § 10101	5

INTRODUCTION

The 2022 general election has been underway for weeks. Yet, on Sunday, Petitioners filed an Application seeking relief relating to mail ballots already sent to thousands of Pennsylvanians—specifically, they seek to relitigate whether ballots returned with no date handwritten on the envelope declaration should be counted. And this Court is once again confronted with a last-minute attempt by Republican party committees and their supporters to disqualify timely-submitted mail ballots. Recognizing that multiple courts with full evidentiary records have recently concluded that the handwritten date provision is directory and not mandatory, Petitioners chose not to intervene in those other cases, but to invoke this Court’s extraordinary jurisdiction with no evidentiary record, and under the deadline of an already ongoing election.

The Court should take this opportunity to clarify that the Legislature did not intend to disqualify votes due to misdated or undated ballot envelopes. In doing so, the Court should reject Petitioners’ invitation to bypass critical evidence and issue drive-by rulings on important questions of statutory (and constitutional) interpretation; instead, the Court should adopt and consider the extensive evidentiary record developed in *Chapman v. Berks County Board of Elections*, No. 355 M.D. 2022, 2022 WL 4100998 (Pa. Cmwlth. Aug.

19, 2022), which bears directly on the questions raised in Petitioners' Application, and which led the President Judge of the Commonwealth Court, applying settled principles of statutory interpretation, to conclude that the Election Code provisions instructing voters to date their mail-in and absentee ballots (collectively, "mail ballots") are directory, not mandatory.

COUNTER-STATEMENT OF THE CASE

The Legislature has instructed that an elector voting by mail "shall . . . fill out, date and sign the declaration printed" on the ballot envelope. 25 P.S. §§ 3146.6(a); 3150.16(a) (collectively, "date provision"). It also has instructed that the appropriate board of elections "shall examine the declaration" and, "[i]f the county board has verified the proof of identification . . . and is satisfied that the declaration is sufficient" and that the voter has the right to vote, the ballot "shall be counted and included with the returns of the applicable election district." 25 P.S. § 3146.8(g)(3). The date on the ballot declaration serves no discernible purpose. But because of the Legislature's "contextually ambiguous use of the word 'shall,'" *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 391 (Pa. 2020) (Wecht, J., concurring), this Court must determine whether the Legislature intended to prohibit county boards of elections from determining that an undated or misdated declaration "is sufficient" and counting the vote.

The Court last confronted this question shortly after election day in 2020. In *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058 (Pa. 2020), the judgment of the Court was that undated ballots must be counted for the 2020 election, but no opinion obtained majority support. Six justices applied this Court’s longstanding framework for determining whether the Legislature intended its use of “shall” to be mandatory or directory, which turns on whether failure to date the declaration represented “weighty interests.” See *id.* at 1073 (“To determine whether the Election Code’s directive that the voter handwrite . . . the date of signing the voter declaration on the back of the outer envelope is a mandatory or directory instruction requires us to determine . . . whether the failure to handwrite the information constitutes ‘minor irregularities’ or instead represent ‘weighty interests,’ . . . that the General Assembly considered to be critical to the integrity of the election.”); *id.* at 1090 (Dougherty, J., dissenting in part) (“I cannot agree that the obligation of electors to set forth the date they signed the declaration on that envelope does not carry ‘weighty interests.’”). A plurality opinion by three justices concluded that the Legislature intended the date requirement to be directory, because “a signed but undated declaration is sufficient and does not implicate any weighty interest,” *id.* at 1078; a dissent in relevant part by three justices concluded

that there *were* weighty interests implicated, and that the Legislature therefore intended the date requirement to be mandatory, *see id.* at 1090 (Dougherty, J., dissenting in part); and a concurrence by one justice questioned whether the Court should move entirely beyond its existing mandatory/directory jurisprudence by construing “shall” as mandatory—while recognizing that it would be unfair to apply that new rule to the 2020 elections.

In the two years since *In re Canvass*, 241 A.3d 1058, there have been new developments which confirm the plurality’s conclusion that the Election Code does not require undated ballots to be discarded and, more importantly, a fuller record has been developed which should guide the Court’s analysis. In May 2022, the U.S. Court of Appeals for the Third Circuit concluded—based on a full evidentiary record—that the date on a mail ballot envelope served no purpose, and that disqualifying undated ballots would violate the Materiality Provision of the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(B). *See Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022). “The nail in the coffin,” according to the court, was the undisputed evidence that “ballots were only to be set aside if the date was *missing*—not incorrect,” revealing that the content of what a voter supplied on the date line was meaningless. *Id.* at 164.

In August, after reviewing extensive evidence revealing the absence of any weighty interests advanced by the date provision, the President Judge of the Commonwealth Court, in a thorough and well-reasoned 67-page opinion, agreed that the Legislature’s use of the word “shall” in the date provision was directory rather than mandatory because, among other reasons, no interests would be served by discarding undated or misdated mail ballots. See *Berks County*, 2022 WL 4100998.¹ Consistent with these rulings, the Secretary has directed county boards to accept and count undated or misdated mail ballots. See Pet. Ex. A (Department of State Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes, updated September 26, 2022) (“Any ballot-return envelope that is undated or dated with an incorrect date but that has been timely received by the county shall be included in the pre-canvass and canvass.”).

Last week, the U.S. Supreme Court vacated as moot the Third Circuit’s decision in *Migliori* but did not comment on the merits. See *U.S. v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950) (“The established practice of the Court in dealing with a civil case . . . which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the

¹ This decision was issued under the laws of the Commonwealth and not federal law.

judgment below and remand with a direction to dismiss.”).² As a result, *Migliori*’s reasoning is still persuasive authority. The Supreme Court’s vacatur of *Migilori* also has no effect on the Commonwealth Court’s ruling in *Berks*. And the Secretary of the Commonwealth has reaffirmed that county boards cannot reject ballots because of missing or incorrect dates on the voter’s declaration. See Pet. Ex. B. Petitioners, however, have asked this Court to exercise its King’s Bench jurisdiction to adopt an interpretation of the Election Code that would disenfranchise voters and potentially violate federal law, all while injecting uncertainty and confusion into the ongoing election.

Intervenors strongly disagree with Petitioners’ interpretation of the Election Code, which contradicts evidentiary-based decisions of the Third Circuit and Commonwealth Court, and further believe that this Court should not take any action that could disenfranchise voters so close to an election. However, because the issues raised are of surpassing importance, Intervenors agree that this Court should invoke its King’s Bench powers to

² The issue came before the Third Circuit in *Migliori* on a suit by voters whose mail-in ballots—all of which were received by county election officials prior to 8 p.m. on election day—were nevertheless rejected in a 2021 local judicial race in LeHigh County, simply because handwritten dates on the ballot envelopes were missing. By the time the Supreme Court considered the petition for certiorari, the 2021 election for which those voters had sought relief was long over.

put the intensely destabilizing potential of Petitioners' claims to rest as soon as possible by conclusively holding that undated or misdated ballots must be counted.

ARGUMENT

I. The Court should exercise its King's Bench powers.

Intervenors agree that with the benefit of existing and incorporable record evidence, which makes clear how boards of election receive ballots and scan in the date through the SURE system, it is appropriate for the Court to exercise its King's Bench powers to address the question of whether counties may reject mail ballots on the sole ground that they lack a written, accurate date. Such action is prudent and appropriate because the 2022 general election is already well underway: Counties began distributing mail ballots weeks ago, see 25 P.S. §§ 3146.5(a), 3150.15, and at this very moment, voters are returning those ballots. Indeed, according to Acting Secretary Chapman, more than 20,000 voters had returned their mail ballots as of October 6³; it is likely that tens of thousands more have done so since then.

³ Br. for Appellees Leigh M. Chapman & Jessica Mathis at 46 n.12, *Republican Nat'l Comm. v. Chapman*, No. 100 MAP 2022 (Pa. Oct. 6, 2022).

These voters and election officials have been operating pursuant to the guidance of two court decisions directing that the absence of a written, accurate date is not a proper basis for excluding a mail ballot from the canvass. The Commonwealth Court issued this instruction two months ago in *Chapman v. Berks County Board of Elections*, 2022 WL 4100998 (Pa. Cmwlth. Aug. 19, 2022). The U.S. Court of Appeals for the Third Circuit issued the same instruction in late May of this year, *Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022), and the U.S. Supreme Court denied an application to stay that decision two weeks later, *Ritter v. Migliori*, 142 S. Ct. 1824 (2022). While the U.S. Supreme Court ultimately vacated the Third Circuit's opinion a week ago, it did so on mootness grounds, offering no view on the merits. *Ritter v. Migliori*, No. 22-30, 2022 WL 6571686 (U.S. Oct. 11, 2022).

Petitioners' claim, which seeks a reversal of the guidance just discussed, threatens to throw the ongoing 2022 election into chaos. Voters who have already submitted their mail ballots could have their votes thrown out due to their failure to comply with an instruction they (along with county officials) had been told was not mandatory, a deeply inequitable result. Voters needlessly have become fearful of voting by mail with the relentless threats that an inadvertent oversight could somehow disqualify their ballots. Candidates and party committees would suddenly need to shift their

strategies during the final weeks of their campaigns to devote significant resources towards warning voters that the failure to include a written, accurate date will result in their ballots being thrown out (despite prior guidance saying the opposite). Boards of elections, who are currently in the midst of accepting mail ballots and preparing for the final stages of election day, will need to take time out from those preparations to develop new procedures for determining whether the written date on a mail ballot is accurate. And to the extent boards of elections have already trained their canvassers, those canvassers would have to be retrained.

The destabilizing threat posed by Petitioners' application for relief warrants "timely intervention" by this Court that will "avoid the deleterious effects arising from delays incident to the ordinary process of law." *Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 884 (Pa. 2020) (quoting *Commonwealth v. Williams*, 129 A.3d 1199, 1205–06 (Pa. 2015)). While not every election case merits extraordinary jurisdiction, in this case, in light of the mass potential confusion and the inevitable chaos of 67 parallel accelerated litigations, it would be prudent for the to address—and conclusively reject—Petitioners' claims.

II. The Court should not permit Petitioners to bypass the evidentiary record developed in *Berks County*.

Petitioners' Application relies heavily on arguments made on a very limited record in 2020 before this Court in *In re Canvass*, 241 A.3d, while seeking to sidestep the extensive evidentiary record considered this summer by President Judge Cohn Jubelirer in *Berks County*, 2022 WL 4100998. That record, however, was indispensable to the full evaluation of the date requirement.

The *Berks County* court determined that Pennsylvania courts have “[f]or decades ... recognized both a mandatory and directory meaning of ‘shall,’” and that because “[t]he General Assembly is presumed to know the state of the law when it enacts statutes,” the rules of statutory construction compel the conclusion that “the word ‘shall’ is regularly used by the General Assembly to denote different meanings,” both within and outside of the Election Code, resulting in courts needing to determine legislative intent. *Berks County*, 2022 WL 4100998 at *15; see also 1 P.S. § 1922(4) (directing courts to presume that “when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language”). Full determination of the Legislature’s intent in turn can be

informed by evidence related to relevant interests served by interpreting “shall” as either mandatory or directory.

The record before the *Berks County* court showed that “there is no factual or legal basis for concluding that the dating provisions serve” discernible legislative interests that justify disenfranchisement nor that the provision can be interpreted to unequivocally require undated or incorrectly dated ballots to be discarded. *Berks County*, 2022 WL 4100998 at *18. For example, the “undisputed record” in *Berks County* revealed that during the 2020 election “all but a few of [Pennsylvania’s] 67 county boards” counted ballots in return envelopes with incorrect dates and included those votes in their certified results, thereby suggesting that the date did not serve a significant purpose. *Id.* at *18, *28; *see also Migliori*, 36 F.4th at 163 (noting that record revealed “that ballots that were received [by Pennsylvania county boards during the 2020 election] with an erroneous date were counted”).

The record also allowed President Judge Cohn Jubelirer to distinguish the date provision from other requirements that served meaningful purposes; “[u]nlike requiring an elector to personally deliver their absentee or mail-in ballot to a county board or enclose their ballot in the secrecy envelope without any identifying marks, the date on the declaration does not relate to a ballot’s confidentiality or the privacy of the elector’s vote,” nor does it

protect against backdating or fraud deterrence “because the ballots are unique to each election, can only be completed between the time they are mailed and 8:00 p.m. on primary or election day, and are, at a minimum, date stamped when they are received by the county boards.” *Berks County*, 2022 WL 4100998 at *20, *21. In sum, the now-developed evidentiary record demonstrated that the previously asserted fraud-prevention justifications are “unsupported.” *Id.* at *18. This Court should not adopt any process that would allow Petitioners to avoid engaging with those facts.

III. The record in *Berks County* makes clear that Petitioners cannot prevail on the merits and should be incorporated into this proceeding.

As established in the Commonwealth Court’s decision in *Berks*, the Petitioners cannot succeed on the merits in light of the abundant evidence that has been presented below and before the Third Circuit. See *Berks County*, 2022 WL 4100998; *Migliori*, 36 F.4th at 163.

This Court did not have the benefit of a fully developed evidentiary record in the *In re Canvass* proceeding, and as a result the dissenting justices credited unsupported arguments regarding the importance of the declaration date. For example, the dissent explained that “the date on the ballot envelope provides proof of when the elector actually executed the ballot in full, ensuring their desire to cast it in lieu of appearing in person at a

polling place,” 241 A.3d at 1090 (Dougherty, J., concurring and dissenting), but the evidentiary record since developed shows that county boards do not consult the declaration date when determining whether to count a mail ballot or a provisional ballot cast at a polling place. See 25 P.S. § 3146.8; see also *Berks County*, 2022 WL 4100998 at *18, *28; *Migliori*, 36 F.4th at 163.

Similarly, the dissent in *In re Canvass* reasoned that “[t]he presence of the date also establishes a point in time against which to measure the elector’s eligibility to cast the ballot,” but the record in *Berks* and *Migliori* established that county boards give no weight to the declaration date when considering voter eligibility, which is determined at the date of the election. *Berks*, 2022 WL 4100998 at *18, *28 (Pa. Cmwlth. Aug. 19, 2022); *Migliori*, 36 F.4th at 163; see also 25 P.S. § 3146.8

Rather than relying on under-developed arguments and a scant record, this Court should invite submission of the evidence presented to the Commonwealth Court in *Berks County*, which simply reflects how boards of election treat and consider undated ballots, along with any additional, relevant evidence that the parties may submit in an expedited fashion, so that this Court can reach a conclusive determination as to whether there are legitimate interests served by disqualifying undated or misdated mail ballots. Doing so would allow the Court to definitively resolve whether the Legislature

intended to treat a missing handwritten date on a ballot declaration as sufficient reason to deprive a voter of the right to participate in the electoral process.

CONCLUSION

The Court should exercise its King's Bench authority, adopt the record evidence from *Berks County* and allow the parties to submit evidence pertinent to the issues presented by Petitioners' application, and provide the parties the opportunity to submit full briefing on the merits enabling a thorough exploration of those issues.

Dated: October 19, 2022

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* *Pro Hac Vice motion
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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I, Adam Bonin, certify that this filing contains fewer than 14,000 words as prescribed by Pa.R.A.P. 2135.

Submitted by:

Adam Bonin

Signature:



Attorney No. (if applicable):

80929

Date:

October 19, 2022

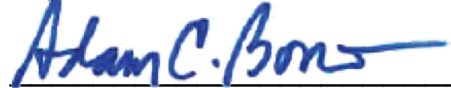
CERTIFICATE OF COMPLIANCE WITH Pa. R.A.P. 127

I, Adam Bonin, 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.

Submitted by:

Adam Bonin

Signature:



Attorney No. (if applicable):

80929

Date:

October 19, 2022

Exhibit B

IN THE SUPREME COURT OF PENNSYLVANIA

No. 102 MM 2022

David Ball, James D. Bee, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Lynn Marie Kalcevic, Vallerie Siciliano-Biancaniello, S. Michael Streib, Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania,

Petitioners,

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth, *et al.*,

Respondents.

AFFIDAVIT OF PAVITRA ABRAHAM

I, Pavitra Abraham, declare and affirm under the penalties of 18

Pa.C.S. § 4904 that:

1. I am over the age of 18. I have personal knowledge of all the facts to which I attest in this declaration, and I affirm that they are true to the best of my knowledge.

2. I am the National Organizing Director for DCCC, also known as the Democratic Congressional Campaign Committee.

3. DCCC is the Democratic Party's national congressional committee as defined by 52 U.S.C. § 30101(14). Its mission is to elect

candidates of the Democratic Party from across the country, including those running in Pennsylvania's congressional districts, to the U.S. House of Representatives.

4. DCCC accomplishes its mission by, among other things, expending substantial resources on educating and assisting voters in navigating the voting process. This includes the process through which voters submit mail-in and absentee ("mail") ballots.

5. In 2022, DCCC will provide hundreds of thousands of dollars in contributions and millions of dollars in expenditures to persuade and mobilize voters to support congressional candidates in Pennsylvania who affiliate with the Democratic Party.

6. DCCC has also hired staff and recruited volunteers to conduct educational and organizing operations in Pennsylvania in advance of the 2022 election. DCCC expects to carry out similar efforts in future elections.

7. DCCC also focuses its efforts on groups that face barriers to participating in the political process and historically have voted at lower rates. This includes voters whose socioeconomic statuses, work schedules, health conditions, family care responsibilities, or lack of transportation (among many factors) make voting in person difficult or impossible. Many of these voters tend to support Democratic congressional candidates.

8. Relatedly, the majority of mail ballots cast in Pennsylvania elections are cast by Democratic voters. Encouraging and assisting these voters to vote by mail, and ensuring that their votes are actually counted, is therefore central to DCCC's mission.

9. If Petitioners are successful, a greater number of mail ballots with immaterial defects will be thrown out, many of which would have resulted in votes for Democratic candidates. DCCC will therefore have to redirect its limited resources from other programs to address the impacts of the judgment on voters. These efforts will include diverting additional staff, volunteers, and funds to voter education in an effort to mobilize in-person voting and minimize potential disenfranchisement of voters who erroneously date or fail to date their mail ballot envelopes.

10. DCCC's interests are not represented by any other party to the suit. Its interests are defined by, and are therefore unique to, its mission, as well as the interests of its members and candidates.

11. Petitioners' challenge to the Secretary's guidance to include timely received but undated or incorrectly dated mail ballots in the pre-canvass and canvass imperils DCCC's interests and mission. It is almost certain that at least some of DCCC's members, constituents, or voters will

be disenfranchised given their disproportionate use of mail ballots, which directly threatens DCCC's mission if Petitioners' requested relief is granted.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the facts set forth in this Affidavit are true and correct. I understand that this Affidavit is made subject to the penalties for unsworn falsification to authorities set forth in 18 Pa.C.S. § 4904.

Executed on October 18, 2022.

Pavitra Abraham

Pavitra Abraham

Exhibit C

IN THE SUPREME COURT OF PENNSYLVANIA

No. 102 MM 2022

David Ball, James D. Bee, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Lynn Marie Kalcevic, Vallerie Siciliano-Biancaniello, S. Michael Streib, Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania,

Petitioners,

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth, *et al.*,

Respondents.

AFFIDAVIT OF ANDREA YOUNG

I, Andrea Young, declare and affirm under the penalties of 18 Pa.C.S. § 4904 that:

1. I am over the age of 18. I have personal knowledge of all the facts to which I attest in this declaration, and I affirm that they are true to the best of my knowledge.

2. I am the Voter Protection Advisor for the DSCC, also known as the Democratic Senatorial Campaign Committee.

3. DSCC is the national senatorial committee of the Democratic Party. Its mission is to elect candidates of the Democratic Party across the country to the U.S. Senate. Thus, DSCC has a vested interest in ensuring

that voters can cast ballots for Democratic Senate candidates, including in Pennsylvania, where DSCC is actively working to elect Lt. Gov. John Fetterman to the U.S. Senate.

4. DSCC accomplishes its mission by, among other things, expending substantial resources on educating and assisting voters in navigating the voting process. This includes the process through which voters submit mail-in and absentee (“mail”) ballots.

5. In fact, DSCC has made mail voting a central part of its Pennsylvania strategy each election. DSCC’s field staff encourage and assist voters to vote by mail, which allows the field staff to organize more efficient and effective turnout campaigns leading up to, and on, election day. Many of the voters DSCC seeks to mobilize have already requested a mail ballot for this November’s general election and even more have used mail ballots in prior elections at disproportionately higher rates than voters from other political parties.

6. For the November 2022 election, DSCC will spend millions of dollars on efforts to persuade and mobilize voters and to support Democratic candidate Lt. Gov. John Fetterman’s candidacy for the U.S. Senate in Pennsylvania.

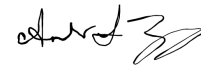
7. If Petitioners are successful, a greater number of mail ballots will be thrown out, at least some of which would have resulted in votes for Lt. Gov. Fetterman. This will imperil DSCC's ability to achieve its mission and force it to redirect its limited resources from other programs to address the impacts of the judgment on voters, including educating voters. These efforts will include diverting staff, volunteers, and funds to educating voters and developing new programs to mobilize in-person voting and minimize potential disenfranchisement from undated or incorrectly dated ballots.

8. DSCC's interests are not represented by any other party to the suit. Its interests are defined by, and are therefore unique to, its mission, as well as the interests of its members and candidates.

9. Because Democratic voters in Pennsylvania disproportionately rely on vote-by-mail, the specific changes that Petitioners seek would impair DSCC's ability to achieve its goal of electing Democratic candidates in Pennsylvania to the U.S. Senate in the November election and beyond.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the facts set forth in this Affidavit are true and correct. I understand that this Affidavit is made subject to the penalties for unsworn falsification to authorities set forth in 18 Pa.C.S. § 4904.

Executed on October 18, 2022.



Andrea Young

Exhibit D

IN THE SUPREME COURT OF PENNSYLVANIA

No. 102 MM 2022

David Ball, James D. Bee, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Lynn Marie Kalcevic, Vallerie Siciliano-Biancaniello, S. Michael Streib, Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania,

Petitioners,

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth, *et al.*,

Respondents.

DECLARATION OF COREY PELLINGTON

I, Corey Pellington, hereby declare and state upon personal knowledge as follows:

I. Professional Experience

1. I currently serve as the Executive Director of the Pennsylvania Democratic Party (“PDP”). I have held that position since June of 2022.
2. Before that, I was the Deputy Executive Director of the PDP, starting in December of 2015.
3. Additionally, I have been the Chief Operations Officer since April of 2018.
4. As Executive Director of the PDP, I work with PDP officers and oversee the administration of the State Democratic Committee and state party activities, including the endorsement of statewide candidates.

5. Additionally, I oversee the operation of the Coordinated Campaign, a program that links all Democratic candidates on the ballot and conducts political, digital, communications, and field activities for all Democratic candidates running that cycle. I manage the full financial apparatus of the PDP coming to bear on each election cycle.
6. I also supervise campaign expenditures to help county-level parties and candidates, including mail programs.

II. PDP Generally

7. The Democratic National Committee (“DNC”) is the national umbrella organization for state parties. The PDP is the official state affiliate of DNC; what that means in practice is that nothing in our bylaws can contradict anything in the DNC bylaws (with the exception of primary endorsements in certain states). The PDP oversees 67 subsidiary county committees, whose bylaws in turn cannot contradict anything in the PDP bylaws.
8. The DNC has an interest in electing Democratic candidates and invests significant resources in state parties, including the PDP.
9. Among other things, the PDP communicates with voters concerning the timing of and how to participate in upcoming elections; encourages them to participate in the selection of the party’s nominees; and encourages them to support the party’s nominees during the general election.
10. The PDP represents the interests of Democratic voters in Pennsylvania by supporting candidates who share these voters’ values. As of August 4, 2022, there were roughly three and a half million registered Democrats throughout the Commonwealth.
11. The PDP also represents the interests of Democratic candidates by providing campaign resources, logistical support, and coordination with other candidates. The number of Democratic candidates varies by year and cycle.
12. In 2020, for example, the PDP represented the interests of Democratic nominees for President and Vice President; four Democratic candidates for statewide row offices; 18 Democratic congressional candidates; 25 Democratic State Senate candidates; and roughly 203 Democratic State House candidates.

13. In 2018, the PDP represented the interests of Democratic candidates for Governor and United States Senate; 18 Democratic congressional candidates; 25 Democratic candidates for State Senate; and roughly 203 Democratic State House candidates.
14. This year, the PDP represents the interests of Democratic nominees for Governor and Lieutenant Governor, United States Senate, 17 Democratic Congressional candidates, 25 Democratic candidates for State Senate, and roughly 203 Democratic State House candidates.

III. Increasing the Availability of Mail Voting Raises (And In Pennsylvania Has Raised) Voter Participation

15. The DNC and the PDP share the goal of universal voter participation. That means that we take steps to facilitate safe, secure, and convenient voting so that any eligible voter may exercise their right to vote. In our experience, allowing any qualified voter to vote by mail increases participation.
16. Using two recent state-run Democratic primaries as examples—one prior to no-excuses mail-in voting under Act 77, and one after Act 77 took effect—illustrates the point: In 2019, before Act 77 took effect, the Democratic primary participation was approximately 835,000; in 2021, by contrast, in a primary with similar offices, the turnout was over 1.1 million, a 32% increase. I believe that Act 77 is one of the principal reasons for this increase in voter participation.
17. In the 2020 general election, roughly 2.6 million voters voted by mail. Of these voters, roughly 65% or 1.7 million were registered Democrats.
18. As of October 4, 2021, over 700,000 voters had requested to be placed on the “permanent” vote by mail application list for 2021, which allows them to receive a mail-in ballot automatically for both elections this year. Of these voters, roughly 72% or 500,000 are registered Democrats. According to the Department of State, nearly 1.4 million voters have exercised this option in 2020 and 2021 combined.

19. Based on the above, it is clear that Democrats utilize vote by mail at a higher rate than Republicans.

IV. PDP Encourages its Voters to Vote By Mail

20. Consistent with its goal to elect Democrats to public office, the PDP shifted its strategy around voting by mail gradually after Act 77's passage, in response to changes on the ground and the law's interpretation in the courts.

21. In particular, as a result of Act 77, the PDP invested vastly more resources than before in a robust set of programs, including digital outreach, communications, field, and get-out-the-vote ("GOTV") that both encourage our voters to vote by mail and support their efforts to do so.

22. These programs consume an enormous amount of time, money, and effort. For example, our digital and communications teams educated voters on (1) the availability of mail voting for all qualified voters and (2) how to vote by mail in accordance with the requirements of the law. These efforts are conducted by mail and online.

23. Our field efforts have similarly shifted to conducting substantial voter contact around voting by mail.

24. Finally, PDP's GOTV program has fundamentally changed. Before Act 77, we conducted that program only in the four days preceding any election. Now, we work the entire *month* before the election, from when voters first receive their mail-in ballots to the receipt deadline for ballots. This vast expansion in the scope of the GOTV program has required wholesale revisions in the allocation of our resources.

25. In short, the PDP has invested significant time and money encouraging its voters to utilize the vote by mail option.

26. If Pennsylvania courts were to disenfranchise voters who fail to provide a handwritten date on their outer ballot envelope, that would negatively and disproportionately affect Democratic voters.

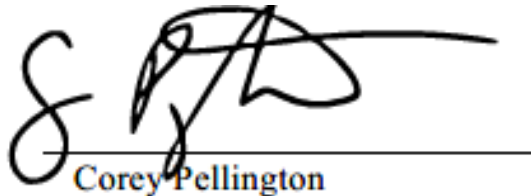
27. In addition, PDP has an interest in preserving the confidence and trust it has built with voters over the four full election cycles Act

77 has been in effect and increased mail-in voting has become available.

28. Specifically, there are many voters who did not vote until they realized the simplicity of voting by mail. Many voters took advantage of the safety of voting by mail during the pandemic. The PDP put significant resources into educating and convincing these voters that mail-in voting was safe, secure, and effective through digital advertising, social media, media interviews, and online events. These voters would be put at increased risk of disenfranchisement should minor and correctible errors with their ballots become disqualifying.
29. My experience with the PDP makes me believe that discarding undated ballots and disenfranchising those voters would do damage to civic participation. It would throw up an additional barrier to using a method of voting that has become very popular with voters.
30. The DNC and the PDP would also have to invest resources in overcoming heightened voter confusion if their voters could be disenfranchised over the immaterial omission of a voter-provided date.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 19, 2022



Corey Pellington