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IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 102 MM 2022

DAVID BALL, et al.,

Petitioners,

v.

LEIGH M. CHAPMAN, ACTING SECRETARY OF THE COMMONWEALTH, et al.,

Respondents.

RESPONDENT ADAMS COUNTY BOARD OF ELECTIONS' BRIEF

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Respondent Adams County Board of Elections joins the well-reasoned and well-researched Answer to the Application to Exercise King's Bench Power or Extraordinary Jurisdiction submitted by the Acting Secretary of the Commonwealth on October 19th, 2022, but submits this brief to underscore the arguments from the County's perspective as they relate to the three questions raised by this Honorable Court in its October 21st, 2022 Order.

I. INTRODUCTION

This lawsuit is a variation on the same theme that has been played out since the 2020 election cycle, namely, that political actors opposed to mail-in voting have not been able to end it by proper legislative means, and so they hope the courts will disenfranchise mail-in voters on their behalf. Regardless of the form of the variation, the Act 77-related lawsuits have all similarly asked the courts to force elections boards to void legitimate mail-in ballots. Absent *any* evidence of widespread voter fraud or vote dilution, these political spats have only acted to sow division, undermine the diligent efforts of election staff, and threaten the voice of the electorate.

The Adams County Board of Elections once again urges this Honorable Court to resist these partisan attempts to disenfranchise voters based on irrelevant technicalities.

II. SUMMARY OF ARGUMENT

The Court should dismiss this suit on the basis that none of the Petitioners have a "substantial, direct, and immediate" interest in the claims asserted. Neither the individual Voter Petitioners nor the Republican committees have asserted interests beyond those of the common interests of all citizens in ensuring obedience to the law and desiring clarity in the application of the law. Therefore, they have not established standing.

If this Court finds that Petitioners have standing, this Court should determine that the Election Code does not require disenfranchising voters who forget to include a date on the return envelope of their mail-in ballot or include an "incorrect" date. The Election Code does not define what "date" is supposed to be included on the declaration, nor does it prescribe penalties for its lack of inclusion. Additionally, the date requirement serves no legitimate purpose in determining the qualifications of the voter or any other justifications asserted by Petitioners (e.g., preventing "back-dating" or providing proof when a ballot was executed).

Even if the Election Code requires setting aside mail-in ballots that are missing a date or have the "incorrect" date, the Civil Rights Act prevents elections officials from discounting those ballots. Specifically, the "materiality provision" of the Civil Rights Act prohibits county boards from denying the right to vote on the basis of omissions or errors on records and papers unless such omissions or errors are material in determining a voter's qualifications to vote. Section 10101 plainly applies to the date requirement on the return envelope as it constitutes "any application, registration, or other act requisite to voting," and all parties agree that the date requirement is not material to determining a voter's qualifications to vote.

III. ARGUMENT

A. No Petitioners have standing in this suit.

Petitioners do not have any interest in their claims beyond that of the general electorate. The doctrine of standing "stems from the principle that judicial intervention is appropriate only where the underlying controversy is real and concrete, rather than abstract." *City of Philadelphia v. Commonwealth,* 838 A.2d 566, 577 (Pa. 2003). Standing depends upon whether a party is aggrieved. *William Penn Parking Garage, Inc. v. Pittsburgh,* 346 A.2d 269 (Pa. 1975). As this Court has recognized, the established formulation to determine whether a petitioner is aggrieved requires a "substantial, direct, and immediate" interest in the claim sought to be litigated. *Firearm Owners Against Crime v. Papenfuse,* 261 A.3d 467, 481-482 (Pa. 2021). An interest is "substantial" if the party's interest "surpasses the common interest of all citizens in procuring obedience to the law." *Firearm Owners Against Crime v. City of Harrisburg,* 218 A.3d 497, 506 (Pa.Cmwlth. 2019). A "direct" interest requires a causal connection between the matter complained of and the party's interest. *Id.* An "immediate" interest requires a causal connection that is neither remote nor speculative. *Id.*

The Petitioners are (1) several Pennsylvania voters who "consistently vote in each election" and (2) Republican committees that give money and other support to Republican candidates. See Petitioners' Application for Extraordinary Relief ("Petitioners' Application"), pg. 5-9. Neither the individual voters nor the Republican committees can claim a "substantial, direct, and immediate" interest in disenfranchising voters that forget to include a date or write an "incorrect" date on the declaration envelope.

The Petitioners have no interest that "surpasses the common interest of all citizens in procuring obedience to the law" so as to be considered "substantial, direct, and immediate." See *Firearm Owners,* 261 at 481-2. The "Voter Petitioners" only assert that they "consistently vote" and fear that "votes validly cast … have been and will be canceled out and diluted by the counting of undated or incorrectly dated ballots." Petitioners' Application, pg. 6. However, the courts have roundly rejected the idea that blanket claims of vote dilution constitute more than a generalized grievance. Indeed, this Court previously rejected a challenge to absentee ballots premised on a speculative theory of vote dilution:

> In our opinion, the interest of appellants is not peculiar to them, is not direct, and is too remote and too speculative to afford them, either in their individual capacities or in their claimed class representative capacity, a standing to attack these statutory provisions. Basic in appellants' position is the *assumption* that those who obtain absentee ballots, by virtue of statutory provisions which they deem invalid, will vote for candidates at the November election other than those for whom the appellants will vote and thus will cause a dilution of appellants' votes. This assumption, unsupported factually, is unwarranted and cannot afford a sound basis upon which to afford appellants a standing to maintain this action. While the voter-appellants in *Baker v. Carr* [citation omitted] were able to demonstrate injury distinct from other voters in the state, the interest which appellants claim is nowise peculiar to them but rather it is an interest common to that of all other qualified electors. In the absence of any showing of a legal standing or a justiciable interest to maintain this action, we cannot permit their challenge to the validity of this statute.

Kauffman v. Osser, 271 A.2d 236, 239-40 (Pa. 1970); see also, *In re Gen. Election 2014*, 111 A.3d 785, 793 (Pa.Cmwlth. 2015) (quoting *Kauffman* at 239-40); *Bognet v. Sec'y Comm. Of Pa.,* 980 F.3d 336, 356-60 (3d Cir. 2020). What distinguishes these Petitioner Voters from every other voter in Pennsylvania? Nothing.

Similarly, the Republican Committees have no "substantial, direct, and immediate" interest in this case. The best argument the Committees seem to muster is that they spend money in ensuring that Republican voters know the election rules and such efforts "require uniform application of the law." Petitioners' Application, pg. 9. Every county election board, political action committee, public school, and a host of political interest groups similarly spend money and dedicates resources to educate voters. And, of course, every voter naturally wants to understand the election rules impacting their vote. The Republican Committees are therefore not in any way unique in their desire to have a "transparent understanding of mail voting requirements." Id. However, that desire alone is not sufficient to establish an interest beyond that of a typical voter or political action group. To hold otherwise would effectively grant *every* voter and every political action group the opportunity to speculate about future "harms" caused by the Election Code and to sue the 67 counties every election cycle before this Court.

For those reasons, Adams County urges this Honorable Court to dismiss this suit for lack of standing.

B. The Election Code does not require county boards to void undated or "incorrectly" dated ballots.

With respect to the processing of completed mail-in ballots, the only date that matters to a county board of elections is the date a mail-in ballot is actually received by the board. The Election Code requires that counties independently verify that a ballot is received by 8pm on Election Day *regardless* of any date written on the outer return envelope with the declaration. See 25 P.S. §§ 3146.6(c), 3150.16(c). Several members of this Court once opined that the date

on the envelope "provides proof of when the elector actually executed the ballot in full," that "the presence of the date also establishes a point in time against which to measure the elector's eligibility to cast the ballot," and that the date "ensures the elector completed the ballot within the proper time frame and prevents tabulation of potentially fraudulent back-dated votes." *In re Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election,* 241 A.3d 1058 (Pa. 2020) (Opinion of Justices Dougherty, Saylor, and Mundy). Those justifications are now adopted by Petitioners. Respectfully, none of those justifications make sense within the context of the plain language of the Election Code or in practice, as shown below.

i. *The date to be included on the declaration envelope is undefined by the Code and therefore does not "provide proof of the date of ballot execution."*

The Election Code does not define what date voters are supposed to write on the outer envelope of mail-in ballots and therefore cannot provide evidence of the date of ballot execution (or any other date). The applicable statutes only require that electors "shall then fill out, date and sign" the declaration printed on the ballot envelope. 25 P.S. §§ 3146.6(a), 3150.16(a). Is it the date the ballot is received by the voter?[1] Is it the date the ballot is completed? Is it the date the ballot is placed in the secrecy envelope? Is it the date that the secrecy envelope is placed in the outer envelope? Is it the date that the voter agrees with the declaration? Is it the date that the ballot and envelopes are actually delivered to the post office/election board? Is it a date unrelated to execution of the ballot itself, such as the voter's birth date? Again, the Election Code does not tell us, nor do Petitioners in their Application for Relief or their 76-page Brief.

[1] With provisional ballots, for example, a signed declaration must be submitted *before* a ballot is filled out. 25 P.S. § 3050(a.4)(2)

The General Assembly's decision not to include more precise language regarding the date and not to include any enforcement mechanism (including disenfranchisement) makes sense in the context of the statute outlining the requirements for the declaration itself. The Election Code grants wide discretion to the Secretary of State to determine the specific contents of the declaration, only requiring that it contain "a statement of the elector's qualifications, together with a statement that the elector has not already voted in the primary or election." 25 P.S. § 3150.14(b). *Neither* of these substantive requirements necessitate a date of signature or date of execution of the ballot. Qualifications of an elector and prior voting records are both determined by county boards without reference to the date of signature.

Additionally, whether a declaration is "sufficient" is left to the discretion of the 67 boards of elections, not the Acting Secretary or the General Assembly. 25 P.S. § 3146.8(3). Upon receipt of a mail-in ballot, the county boards must determine whether a "declaration is sufficient" during pre-canvass or canvass and must compare the information "thereon with that contained in the 'Registered Absentee and Mail-in Voters File,' the absentee voters' list and/or the 'Military Veterans and Emergency Civilians Absentee Voters File', whichever is applicable." *Id*. In exercising that discretion, a date of signature or date of execution does not assist the boards in making these comparisons. For purposes of comparison with existing registration lists, a date of birth would have far greater evidentiary value in establishing the *identity* and *qualifications* of the signatory than some random date of ballot execution.

In the absence of a specific legislative directive as to which "date" is appropriate and necessary, Petitioners (and more importantly, boards of elections) cannot determine what dates are "incorrect" to be set aside. And, if any date might suffice, then so too should the lack of a

date. In any case, the date requirement as it currently stands provides no evidence of any particular date.

ii. *"Back-dating" is not possible where the Code requires that all ballots be received by 8pm on Election Day.*

"Back-dating" a ballot (i.e., handwriting a date that complies with the deadline, but submitting it after the deadline) does not obviate the Election Code's requirement that all mail-in ballots be *received* by the county boards on or before Election Day at 8pm. See 25 P.S. §§ 3146.6(c), 3150.16(c). In other words, if a voter realizes his ballot is going to be late, he cannot simply back-date the ballot, turn it in after Election Day, and expect to have it counted. It is akin to the filing requirements with this Court. Undersigned counsel would not be able to skirt this Court's filing deadlines by simply "back-dating" this brief and submitting it via PACFile or by mail sometime after the deadline. Similarly, the "received by" requirements in the Election Code rule out this type of "back-dating" maneuver feared by Petitioners. County boards are tasked with tracking all ballots as they are received with time stamps and the scanning of bar codes uniquely associated with the voter into the SURE system. Boards do not track those ballots according to the date written on the declaration, nor is there any established procedure for doing so. Therefore, the prevention of "back-dating" is not likely a justification relied upon by General Assembly, as it poses no threat to the "received by" requirements.

It should also be noted that when this Court extended the "received by" date in the 2020 General Election to the following Friday due to extraordinary circumstances, it tellingly did *not* rely on the voters' own handwritten dates. Rather, it ordered that counties verify a *postmark* date

by the United States Postal Service prior to 8pm on Election Day in order for ballots to be counted. *Pennsylvania Democratic Party v. Boockvar,* 238 A.3d 345, 371, 386 (Pa. 2020). A postmark is a far better determination of the voter's timeliness in "casting" a mail-in ballot than a self-reported date on the declaration. After all, there is no law which prevents a voter from dating the envelope a month in advance of the election and deciding to mail it a week before or hand-delivering it to the board on Election Day at 7:59pm (or deciding not to cast it at all). When this Court decided to rely on the postmark in 2020, it ostensibly did so because the date of the declaration does not evidence the date of intended delivery.

iii. *The date on the declaration is not used to determine elector's eligibility to vote.*

The handwritten date is *not* used by the boards to determine an elector's eligibility to vote or "establish a point in time against which to measure the elector's eligibility to cast the ballot." Eligibility to vote is solely based on an elector's qualification as of Election Day. Pa.Const. art. VII, § 1; 25 P.S. 2811. If a voter is 18, has been a citizen and lived in their PA election district for at least 30 days prior to election day, and is not imprisoned for a felony conviction, then they are legally qualified to vote. *Id.* The same goes for the ability to register ahead of Election Day:

> (a) **Eligibility.** – An individual who will be at least 18 years of age on the day of the next election, who has been a citizen of the United States for at least one month prior to the next election and who has resided in this Commonwealth and the election district where the individual offers to vote for at least 30 days prior to the next ensuing election and has not been confined in a penal institution for a conviction of a felony within the last five years shall be eligible to register as provided in this chapter.

25 Pa.C.S. § 1301(a). Thus, the date on the return envelope is wholly irrelevant to determining any of those constitutional or statutory qualifications for voting or for registering to vote, as Petitioners themselves acknowledge in their Application and Brief. See Petitioners' Application, pg. 22 ("The date requirement has nothing to do with whether the individual satisfies the four qualifications to vote in Pennsylvania…"); Petitioners' Brief, pg. 47.

iv. *Where the General Assembly intends to require a date of signing, it has done so expressly.*

When the General Assembly requires a particular date to be added, it does so expressly and provides an express enforcement mechanism. Regarding nomination petitions, for example, the Election Code requires that signers "shall legibly print his name and add *the date of signing,* expressed in words or numbers." 25 P.S. § 2868 (emphasis added). Reflecting its desire to enforce that specific date requirement relating to nomination petitions, the General Assembly also provides penalties to persons who knowingly and willfully affix "a date other than *the actual date such signature was affixed thereto*…". 25 P.S. § 3512 (emphasis added). The Election Code also explicitly requires the statement of candidates for delegates to national conventions to include the "date of signing." 25 P.S. § 2871.

Aside from the absentee and mail-in provisions of Act 77, the only other occasion the phrase "date and sign" is used in the Election Code is with regard to voter assistance cards. See 25 P.S. § 3146.6a. However, that section does not enforce the necessity for *any* date to be included. Though the statute states that "[t]he person rendering the assistance in voting shall complete, date and sign the declaration in such form approved by the Secretary of the

Commonwealth," it also allows for declarations "substantially in the form set forth below" which notably does *not* include a date line:

> *Declaration of Person Rendering Assistance*
>
> *I,* _____ ,
> *(Name of Person rendering assistance)*
> *Hereby declare that I have witnessed the aforesaid elector's signature or mark and that I have caused the aforesaid elector's ballot to be marked in accordance with the desires and instructions of the aforesaid elector.*
>
> *(Signature of Person Rendering Assistance)*
>
> _____
> *(Address)*

Id. Therefore, the only other section in which the General Assembly uses the phrase "shall…date and sign" in the Election Code does *not* make the effectiveness of the declaration dependent on the date. See *id.* Rather, the form designed by the General Assembly itself only includes the signature and the address. *Id.*

Additionally, as the Acting Secretary's Answer argues, the General Assembly explicitly identifies omissions that are disqualifying, such as ballots that are not received by the county boards of elections by Election Day at 8pm and ballots contained in secrecy envelopes that contain identifying markings. Acting Secretary's Answer, pg. 27-29 (citing 25 P.S. §§ 3146.8(g)(1)(ii), (g)(4)(ii)).

Therefore, in the absence of express language requiring that the voter handwrite the "date of signature" and in the absence of express penalties for failing to do so, the Election Code cannot be reasonably read to impose legal barriers to the right of franchise for mail-in voters.

v. *Disenfranchisement is not the appropriate remedy for undated or "misdated" envelopes.*

As the date on the declaration offers no evidence of a voter's identification, their qualification to vote, or the voter's intent, disenfranchisement is an utterly inappropriate "remedy" for providing an "incorrect" date or failing to include a date. Disenfranchisement is extreme, antithetical to our democratic system, and should be viewed only as a remedy of last resort. This Court has recognized, in no uncertain terms, that "the Election Code should be liberally construed so as not to deprive, *inter alia,* electors of their right to elect a candidate of their choice." *Pennsylvania Democratic Party v. Boockvar,* 238 A.3d 345, 356 (Pa. 2020). And yet, for the past several years, Petitioners and their associates have attempted to find any means by which to deprive Pennsylvania mail-in voters of their right to elect a candidate of their choice. Such efforts are motivated by the political ambitions of a few and are hostile toward the constitutional rights of all. As the 3rd Circuit Court aptly put it, "ignoring ballots because the outer envelope was undated, even though the ballot was indisputably received before the deadline for voting, serves no purpose other than disenfranchising otherwise qualified voters." *Migliori v. Cohen,* 36 F.4th 153, 164 (3d Cir. 2022) (vacated as moot).

So, what is the purpose of the "date" requirement? As the Acting Secretary rightly argues, the date requirement is merely an "artifact of an older version of the Election Code, no

longer serving any relevant purpose." Acting Secretary's Answer, pg. 32. And as the Commonwealth Court similarly noted in an unpublished opinion, "the parties have not identified a specific purpose served by dating the declaration on the return envelope, and the Court cannot discern any." *Chapman v. Berks Cty. Bd. Of Elections,* 2022 WL 4100998, at *20. Though it is a principle of statutory construction that the General Assembly does not intend any words to be mere surplusage, 1 Pa.C.S. § 1922, it does not therefore follow that this Court must provide relevance to an undefined term on the General Assembly's behalf and disenfranchise those who understood differently.

For the above reasons, the County urges this Court to DENY Petitioners' request for relief on the basis that doing so would violate the Election Code and the state and federal constitutions.

C. Disenfranchising voters who do not comply with the "shall…date" provision of the Election Code violates the materiality provision of the Civil Rights Act of 1964.

The materiality provision of the Civil Rights Act prohibits election officials from disenfranchising voters who forget to date the return envelope or write in an "incorrect" date. It states plainly that "no person acting under color of law shall…deny 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 such error or omission is not material in determining whether such individual is qualified under State law to vote." 52 U.S.C. § 10101(a)(2)(B). Petitioners seemingly ignore the first part of that prohibition and attempt to limit the scope of this provision by arguing that it only applies to "determinations of whether an

individual is *qualified* to vote, not 'requirements that must be met in order to cast a ballot that will be counted.'" See Petitioners' Application, pg. 21 (citing *Ritter v. Migliori,* 142 S.Ct. 1824, 1825-6 (Mem.) (Alito, J., dissenting from the denial of the application for stay). According to Petitioners' novel theory, "casting a ballot constitutes the *act* of voting, not an application, registration, or other act *requisite* to voting." Petitioners' Application, pg. 22 (citing *Ritter,* 142 S.Ct. at n.2 (Mem.) (Alito, J. dissenting)). In Petitioners' own words, "[v]oting is voting; it is not an act requisite to voting." Id. As shown below, that twisted interpretation is neither supported by the plain text of the statute nor the historical justification for its passage.

a. The materiality provision covers the act of dating the declaration on the outer envelope.

Petitioners assert that the materiality provision only applies to errors or omissions affecting a "determination whether an individual is qualified to vote under state law" and "denies the right of an individual to vote." Petitioners' Brief, pg. 51. This myopic interpretation twists the plain language of the statute. The materiality provision is not difficult to comprehend and is only one sentence. The section requires that no person be denied the right to vote because of an error or omission on "*any* record or paper relating to *any* application, registration, or other act requisite to voting," if that error or omission is not useful to determining a voter's qualifications. 52 U.S.C. § 10101(a)(2)(B). Simple enough. Put another way, if the information that the voter omitted or erroneously added is needed to determine a voter's qualifications, then a voter could lawfully be denied the right to vote without violating the materiality provision.

Petitioners concede that the date requirement at issue is not relevant to determining a voter's qualifications, see Petitioners' Brief, pg. 48, so in order to avoid application of the Civil

Rights Act, they instead ask this Court to find that the date requirement does not fall within "other act[s] requisite to voting." Id., 47. In support of this request, Petitioners argue that writing the date on the return envelope is the actual *act* of voting, and not an "act requisite to voting." Id. This is a distinction without a difference for purposes of the Civil Rights Act. Petitioners' argument requires that the reader wholly ignore the rest of Section 10101, which defines the word "vote" as follows:

> ...the word "vote" includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election…

52 U.S.C. § 10101(e). Thus, voting within the context of the Civil Rights Act not only covers prerequisites to voting, but also the actual act of casting a ballot and any other act that is required to have that ballot counted. *Id.* This broad definition expressly applies to the materiality provision. 52 U.S.C. § 10101(3) ("For purposes of this subsection, the term "vote" shall have the same meaning as in subsection (e) of this section"). The materiality provision includes almost identical language as subsection (e), preventing the denial of voting rights based on "other act[s] requisite to voting" that are immaterial to determining qualification to vote. 52 U.S.C. § 10101(a)(2)(B), (e). So, while Petitioners make a distinction between casting a ballot and acts requisite to casting a ballot, the Civil Rights Act does not. *Id.*

Even if the materiality provision did draw the arbitrary distinction that Petitioners make between "casting a ballot" and "other acts requisite to voting", the mere signing of the declaration does not amount to the act of "casting a ballot," as Petitioners suggest. See Petitioners' Brief, pg. 47. As noted earlier in this brief, a voter who completes a ballot, places it

into the security and outer envelopes and then signs the declaration has *not* yet completed all acts necessary to vote or cast that ballot. Rather, those are merely requisite steps necessary to vote by mail in Pennsylvania. That voter is still required to timely mail the ballot and ensure that it is received by the board of elections by Election Day at 8pm in order to make the casting of that ballot effective. 25 P.S. §§ 3146.6(c), 3150.16(c). These statutory requirements for mail-in ballots in Pennsylvania are all subject to Section 10101's broad inclusion of "all action necessary to make a vote effective" and are therefore covered by the materiality provision in that same Section. See 52 U.S.C. § 10101(a)(2)(B), (e).

Moreover, to hold that the materiality provision does not cover acts related to voting would ignore the plain language of the Civil Rights Act and its historical context. As this Court is undoubtedly aware, the Civil Rights Act was passed in response to the discriminatory practices imposed by states (particularly in the South) to prevent African Americans from exercising their right to vote, such as literacy tests, poll taxes, and other "Jim Crow" laws.[2] Given that context, it simply defies any logic that Congress would only seek to ensure that African Americans were registered to vote, but *not* additionally require that they were able to exercise that right at the polls. Congress did not believe that African Americans should only have the right to vote in name only. Indeed, the Act underscores its intent to protect the right to vote itself, and not merely the ability to register:

> (a)(1) All citizens of the United States who are other qualified by law to vote…*shall be entitled and allowed to vote* at all such elections…
> (a)(2) *No person acting under color of law shall deny the right of any individual to vote*…
>
> …
>
> (b) *No person…shall intimidate, threaten, coerce…any other person for the purpose of interfering with the right of such other person to vot*e or to vote as he may choose…

[2] https://www.history.com/topics/black-history/civil-rights-act

…

(e) …an applicant so declared qualified to vote *shall be permitted to vote* in any such election.

See 52 U.S.C. § 10101(a),(b),(e) (emphasis added). And, to the extent that Petitioners complain about the broad application of the statute to state regulations, well, that was the point of the Civil Rights Act. Congress, in helping to realize the promise of the Reconstruction Amendments, sought to enact sweeping prohibitions against this kind of attack on voting rights based on arbitrary and pretextual justifications at the state level. We can see that Act at work in this case.

b. The date on the declaration is immaterial in determining whether such individual is qualified under State law to vote in elections.

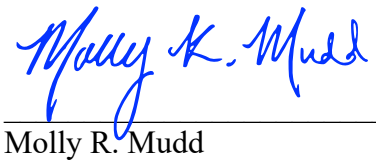
All parties agree that the date requirement is wholly irrelevant in determining a voter's qualifications. See Petitioners' Brief, pg. 48. The Civil Rights Act prohibits county boards from disenfranchising voters on the basis of errors or omissions on papers relating to acts requisite to voting if those errors or omissions are immaterial to determining whether an individual is qualified to vote under State law. 52 U.S.C. § 10101(a)(2)(B). Because all parties concede that the date requirement has no relevance to determining an individual's qualifications to vote, it cannot be reasonably argued that it is "material" for purposes of the Civil Rights Act. Section 10101(a)(2)(B) therefore prohibits election officials from discounting ballots on that basis alone, even if State law requires otherwise. 52 U.S.C. § 10101(a)(2)(B); U.S. Const. art. IV, Cl. 2 ("Supremacy Clause").

The County therefore urges this Court to DENY Petitioners' request for relief to the extent that it seeks to prevent election officials from including undated or "incorrectly dated" ballots in the pre-canvass or canvass in plain violation of the Civil Rights Act.

IV. CONCLUSION

For the reasons stated above, the Adams County Board of Elections strongly opposes Petitioners' Application for Extraordinary Relief, and respectfully urges this Court to DENY any and all relief which requires election boards to set aside mail-in ballots that are undated or "incorrectly" dated.

Respectfully submitted,



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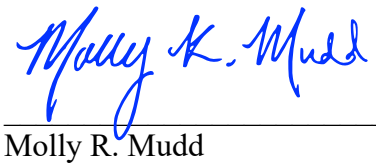
CERTIFICATE OF WORD COUNT COMPLIANCE

I hereby certify that pursuant to Pa.R.A.P. 2135(d) that this brief contains fewer than 14,000 words, as determined by the word count function within Microsoft Word.

Dated: October 25, 2022



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