

IN THE SUPREME COURT OF PENNSYLVANIA

<p>David Ball, <i>et al.</i>,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>LEIGH M. CHAPMAN, in her official capacity as Acting Secretary of the Commonwealth, <i>et al.</i>,</p> <p style="text-align: center;">Respondents.</p>	<p>No. 102 MM 2022</p>
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**PETITIONERS' ANSWER IN SUPPORT OF BLAIR COUNTY BOARD OF
ELECTIONS' APPLICATION FOR RECONSIDERATION/MOTION TO
CLARIFY SUPPLEMENTAL ORDER OF NOVEMBER 5, 2022**

The Petitioners support and join in Blair County Board of Elections' Application for Reconsideration/Motion to Clarify Supplemental Order of November 5, 2022.

Although the Election Code provides deadlines by which Boards must begin delivering or mailing absentee and mail-in ballots to voters, many counties, not just Blair, were unable to meet those deadlines due to delays in the Acting Secretary's certification of the results of the 2022 primary.¹ *See, e.g., Chapman, et al. v. Berks County Board of Elections, et al.*, No. 355 MD 2022 (Pa. Commw.) (involving a dispute over certification of the 2022 primary, and resulting in an order dated August

¹ For example, upon information and belief, absentee and mail-in ballots were not available in Philadelphia County until October 10, 2022.

19, 2022 that the respondent Boards were required to certify the results to the Acting Secretary by August 24, 2022). This delay, in turn, means that the earliest end of the Court’s definition—August 30 for absentee ballots and September 19 for mail-in ballots—does not comport with reality. As noted by the Blair Board, it would be impossible for a Blair County voter to “correctly” date his or her ballot with a date between August 30 and October 11, 2022, as the Blair Boards’ ballots were not available until October 12, 2022. Upon information and belief, similar issues arise in many other counties as a result of this year’s unique delays in the certification of the primary results.

Similarly, an outer envelope cannot be “correctly” dated *after* the date the mailed ballot is received by a Board, absent evidence of curing. Unless the Board has evidence that the voter returned to cure the incorrect date on the outer envelope, any absentee or mail-in ballot whose outer envelope bears a handwritten date *after* the date such ballot was returned to the Board should also be deemed “incorrectly dated,” and likewise should be segregated and not counted.

Petitioners thus join in the Blair Boards’ Application and request that the Court’s definition of “incorrectly dated outer envelopes” to mean:

Absentee or mail-in ballots with dates that fall outside the date range of: (i) the date on which absentee and mail-in ballots for the 2022 general election were available to be delivered or mailed by the county board of elections and (ii) the date on which officials received the completed absentee or mail-in ballot from the voter.

WHEREFORE, Petitioners join in Blair Board's Application and respectfully request that the Court reconsider or clarify its November 5, 2022 Supplemental Order.

Respectfully submitted,

Dated: November 7, 2022

/s/ Kathleen A. Gallagher
Kathleen A. Gallagher
PA I.D. #37950
Russell D. Giancola
PA. I.D. #200058
GALLAGHER GIANCOLA LLC
436 Seventh Avenue, 31st Floor
Pittsburgh, PA 15219
Phone: (412) 717-1900
kag@glawfirm.com
rdg@glawfirm.com

John M. Gore *
E. Stewart Crosland
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Phone: (202) 879-3939
jmgore@jonesday.com
msowardsnewton@jonesday.com
scrosland@jonesday.com

* *Pro hac vice application forthcoming*

Thomas W. King, III
Thomas E. Breth
DILLON, McCANDLESS, KING,
COULTER & GRAHAM, LLP
128 W. Cunningham St.
Butler, PA 16001
Phone: (724) 283.2200
tking@dmkcg.com
tbreth@dmkcg.com

Counsel for Petitioners

**CERTIFICATE OF COMPLIANCE
WITH PUBLIC ACCESS POLICY**

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

GALLAGHER GIANCOLA LLC

Dated: November 7, 2022

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Russell D. Giancola

Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2022, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

GALLAGHER GIANCOLA LLC

Dated: November 7, 2022

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Russell D. Giancola

Counsel for Petitioners