

**IN THE SUPREME COURT OF PENNSYLVANIA**  
No. 68 MAP 2024

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BLACK POLITICAL EMPOWERMENT PROJECT, *et al.*,

*Petitioners/ Appellees,*

*v.*

AL SCHMIDT, SECRETARY OF THE COMMONWEALTH, *et al.*,

*Respondents,*

REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF  
PENNSYLVANIA,

*Intervenors/ Appellants.*

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***AMICI CURIAE* BRIEF OF COUNTY OFFICIALS IN SUPPORT OF  
APPELLEES**

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## I. STATEMENT OF INTEREST

*Amici* are Pennsylvania county commissioners, councilmembers, and election officials.<sup>1</sup> This case brings together two critical duties of county government: oversight of the administration of elections and responsibility for older residents through Area Agencies on Aging (“AAAs”).<sup>2</sup> County boards of elections are tasked with overseeing federal, state, and local elections, including in-person and mail-in voting procedures. As officials deeply invested in the democratic process, *amici* have an interest in ensuring that all eligible electors in their districts can exercise the right to vote, including older voters, who are among the groups that disproportionately rely on mail-in voting. This commitment extends to safeguarding the integrity of the electoral process and the rights of electors by ensuring that all timely-submitted ballots from qualified voters are counted.

*Amici* include county commissioners, councilmembers, and election officials who have advocated against enforcement of the dating requirements in other litigation. Rejecting ballots with undated or misdated outer envelopes needlessly

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<sup>1</sup> A list of all *amici* joining this brief in their respective capacities as independently elected officials is included at Appendix A. No party or counsel for any party authored this brief in whole or in part, and no monetary contribution intended to fund the preparation or submission of this brief was made by such counsel or any party.

<sup>2</sup> Most of *amici* represent counties where the county commissioners constitute the Board of Elections as well as the executive branch of a government that includes an AAA. Those *amici* who represent home rule counties also support and oversee the administration of elections and the AAA, albeit in more of a legislative capacity.

burdens the fundamental rights of all electors who choose to exercise their right to vote via absentee or mail-in ballot, and especially burdens the rights of older electors. The dating requirements do not advance any important interests in the administration of elections, and thus *amici* agree with the Commonwealth Court’s opinion that enforcing these provisions is a violation of the Pennsylvania Constitution.

## II. SUMMARY OF ARGUMENT

In a thorough and detailed opinion, the Commonwealth Court correctly decided that enforcement of the provisions of the Pennsylvania Election Code requiring electors to date the outer envelope of absentee and mail-in ballots, 25 P.S. §§ 3146.6(a) and 3150.16(a) (hereinafter, the “dating provisions”), violates the free and equal elections clause of the Pennsylvania Constitution. Pa. Const. art. I, § 5. *Amici* agree with this conclusion.

The Commonwealth Court properly applied strict scrutiny in its analysis, because the burden that electors face when the dating provisions are enforced is severe. Despite *amici*’s best efforts to ensure that their constituents’ votes are counted, that burden—disenfranchisement based on a meaningless error—deprives thousands of Pennsylvanians of their fundamental right to have their vote counted each year. Moreover, enforcement of the provisions can impact some groups of

*amici*'s constituents disproportionately, including and especially elderly electors, a group that relies more often on their right to vote by mail.<sup>3</sup>

The Commonwealth Court then correctly determined that the dating provisions fail strict scrutiny because government no longer has a meaningful interest—let alone a compelling government interest—in enforcement.<sup>4</sup> Among other things, the dating provisions have no bearing on whether the ballot was received in a timely manner and play no role in the determination of voter fraud. Instead, now that technological advancements have made the dating provisions obsolete, their enforcement results only in the disenfranchisement of voters, costly and perpetual litigation over lingering ambiguities in the law, and a pointless burden on *amici*.

Because the severe burden on *amici*'s constituent electors that results from enforcement is not supported by any government interest, *amici* ask the Court to uphold both the Commonwealth Court's declaration that enforcement of the dating provisions is a violation of the free and fair elections clause and the permanent injunction against enforcing the dating provisions.

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<sup>3</sup> Because the dating provisions apply to both absentee and mail-in ballots, this brief will use "mail-in ballots" to refer to both unless otherwise specified.

<sup>4</sup> *Amici* do not believe that the dating provisions can survive the permissive analysis of rational basis review, either. As explained below, they do not advance any governmental interest.



### III. ARGUMENT

#### A. **The Commonwealth Court Correctly Concluded That The Burden Of Disenfranchisement Based On Meaningless Error Was Severe, Requiring Strict Scrutiny Review.**

The Commonwealth Court correctly concluded that the burden of disenfranchisement imposed on electors by enforcement of the dating provisions was severe, triggering strict scrutiny review. *Black Pol. Empowerment Project, et al., v. Schmidt, et al.*, No. 283 M.D. 2024, 2024 WL 4002321, at \*32 (Pa. Commw. Ct. Aug. 30, 2024). “Where a state election regulation imposes a ‘severe’ burden on a plaintiff’s right to vote, strict scrutiny applies and requires that the regulation is ‘narrowly drawn to advance a state interest of compelling importance.’” *Id.* at \*31 (quoting *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 384-85 (Pa. 2000) (citing *Burdick v. Takushi*, 504 U.S. 428, 434 (1992))); *see also Appeal of Norwood*, 116 A.2d 552, 555 (Pa. 1955) (“The power to throw out a ballot for minor irregularities...must be exercised very sparingly[.]”) (quoting *Appeal of Gallagher*, 41 A.2d 630, 632 (Pa. 1945)). In Pennsylvania, an elector’s simple mistake in filling out the date, unless adequately cured in time, completely invalidates their vote. In the experience of *amici*, most undated or misdated ballots are disqualified rather than cured, such that the votes of otherwise qualified electors—many of whom are older voters—are not counted at all.

**1. The severe burden of disenfranchisement affects many of amici's constituents.**

*Amici* are deeply committed to ensuring that all eligible voters can cast votes and have their votes counted, because the right to vote is “fundamental and ‘preservative of other basic civil and political rights.’” *Banfield v. Cortés*, 110 A.3d 155, 176 (Pa. 2015) (quoting *Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999)). Not only is that right enshrined in the Constitution of Pennsylvania, but *amici* each took an oath to “support, obey and defend” it. Pa. Const. art. VI, § 3 (Public Officers; oath of office). Accordingly, even one instance of unfair and pointless disenfranchisement is too many.

*Amici* expend considerable time and resources to craft policies to ensure that polling places and mail-in ballot options are accessible to all constituents, and as necessary adjust those policies in response to updated guidance and results of election litigation. *Amici* also respond to elector questions, educate the media and voters about election security, train poll workers extensively on procedures, and accurately canvas ballots, among the countless duties required to administer an election. Several *amici* administer elections in counties that employ notice and cure procedures to ensure that voters can fix curable errors when identified before deadlines pass.<sup>5</sup> Voters and their rights remain a priority to county election officials,

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<sup>5</sup> Counties are not required to provide notice to voters of dating errors or opportunities to cure ballots, *Pa. Democratic Party*, 238 A.3d at 364, but even where counties are able to muster the resources to attempt to operate notice and cure procedures, voters are not always able to take

who increasingly face threats of intimidation or violence<sup>6</sup> and extensive litigation (including many frivolous lawsuits)<sup>7</sup> in their pursuit of operating free and fair elections.

Despite these efforts and public education, the dating provisions result in many disqualified ballots in Pennsylvania. The undisputed facts show that enforcement of the dating provisions disenfranchised nearly 10,000 Pennsylvanian voters in the 2022 general election, and thousands more in the 2024 primary. *Black Pol. Empowerment*, 2024 WL 4002321 at \*6. To *amici*, these thousands of voters are more than the “raw numbers” or “raw data” cited in the dissent’s reductive characterization. *Id.* at \*55, \*57 (McCullough, P., dissenting). Rather, they are constituents and neighbors who made the effort to exercise a constitutional right but had their ballots thrown out because of harmless errors. These inadvertent errors have included filling in an incorrect date, a birthdate rather than the date of signing,

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advantage of them. This is common sense; voters who chose to vote by mail may be doing so because they are working or not home around the time of the election, *Black Pol. Empowerment*, 2024 WL 4002321 at \*34, n. 56, or because of health challenges preventing polling place attendance.

<sup>6</sup> Ruby Edlin and Lawrence Norden, *Poll of Election Officials Finds Concerns About Safety, Political Interference*, THE BRENNAN CENTER (May 1, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/poll-election-officials-finds-concerns-about-safety-political>.

<sup>7</sup> “In addition to threats of physical violence, these election officials also have been subjected to frivolous lawsuits intended to harass or financially ruin them as they perform the public service of counting votes. Such stresses have, undoubtedly, contributed to the remarkable turnover in local election officials that we’ve seen across the nation since 2020.” Ongoing Threats to Election Administration: Hearing Before the Comm. on Rules and Admin. Of the United States Senate (Nov. 1, 2023) (Statement of Al Schmidt, Secretary of the Commonwealth of Pennsylvania).

or “forget[ing] to include the date altogether.” *Id.* at \*34, n. 56-58 (documenting individual voters’ experiences). The factual record is consistent with *amici*’s experience administering elections in Pennsylvania, as many have had the misfortune of disqualifying voters due to these errors.

State and county officials have made efforts to reduce rates of disenfranchisement of voters who make these human errors, but such errors persist. For example, in the 2024 primary the Department of State required counties to pre-print the first two digits of “2024” on the outer envelope in the hopes that it would help voters avoid misdating or omitting the date.<sup>8</sup> While overall rejection rates for mail-in ballots were down in the 2024 primary compared to the 2023 primary, rejection rates because of misdating went *up* following the envelope re-design.<sup>9</sup> Despite the dissent’s belief that “no reasonable person would find the obligation to [date the envelope] to be hard or challenging,” *Black Pol. Empowerment*, 2024 WL 4002321 at \*54 (McCullough, P., dissenting), *amici* have encountered many “reasonable” people who have made this mistake across various design

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<sup>8</sup> Carter Walker, *Redesigned envelope leads to fewer rejected Pa. mail ballots, but a new type of error sticks out*, WESA (June 5, 2024), <https://www.wesa.fm/politics-government/2024-06-05/pennsylvania-redesigned-mail-ballot-envelope-fewer-rejections>.

<sup>9</sup> *Id.*

methodologies. The minor and “meaningless”<sup>10</sup> human error is common enough to warrant the Commonwealth Court’s conclusion in the decision below.

The burden of disenfranchisement based on this paperwork error is not eliminated simply because electors have the legal right to vote in person.<sup>11</sup> As a practical matter, many voters rely on mail-in voting to be able to vote at all. The fact that the legislature made it easier for electors to vote by mail without excuse in 2019 does not negate the reliance that many of *amici*’s constituents place on mail-in voting. To the extent that the dissent presumes that every mail ballot is cast by an elector who can vote in person on Election Day, the experiences of *amici* prove otherwise. In addition to the lifeline that mail-voting provides for elderly voters, mail-in voting is important for poll workers who are attending to election administration duties on Election Day, workers whose work schedules or travel obligations may keep them away from the polls on Election Day, students who may be away from polling places, and voters who are disabled or ill. Moreover, an elector’s decision to exercise the right to vote using a mail-in ballot should not

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<sup>10</sup> *Black Pol. Empowerment*, 2024 WL 4002321 at \*35 (calling the error “meaningless”).

<sup>11</sup> The dissent asserts that a court must examine the “totality of the circumstances” of electors’ ability to vote, reasoning that because voters can either vote by mail or in person in Pennsylvania, rejecting a voter’s timely-cast ballot by enforcing the dating provisions “does not constitute an abridgment of the right to vote when the voter could have easily avoided the requirement” by voting in person. *Black Pol. Empowerment*, 2024 WL 4002321 at \*46-47 (McCullough, P., dissenting) (relying on a United States Supreme Court decision concerning Section 2 of the Voting Rights Act rather than relying on Pennsylvania constitutional law).

diminish the likelihood that their timely-submitted ballot is counted. The Pennsylvania Constitution grants qualified electors the right to vote by absentee ballot. Pa. Const. art. VII, § 14. The Election Code not only affirms that right for absentee voters, 25 P.S. § 3146.1, but also, as of 2019, extends the right to vote by mail to all voters. 25 P.S. § 3150.11. Once granted, that right should be protected, not impeded, by this Commonwealth.

**2. *Amici's* older constituents are more reliant on mail-in voting and more impacted by disenfranchisement based on enforcement of a meaningless dating requirement.**

The decision below is particularly important because of the dating requirement's disproportionate impact on older voters. This is of particular concern to *amici* because Pennsylvania has one of the highest populations of older voters in the United States. Over 2.4 million Pennsylvanians are over the age of 65 as of the 2020 U.S. Census, making up 19.1% of the Commonwealth's population.<sup>12</sup> In Cameron County, which one of *amici* represents, 28% of the population is over 65.<sup>13</sup> *Amici's* older constituents often rely on mail-in voting to cast their ballot, increasing their risk of disenfranchisement because of errors relating to the dating provisions.

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<sup>12</sup> Population Reference Bureau, *Which U.S. States Have the Oldest Populations?*, <https://www.prb.org/resources/which-us-states-are-the-oldest/> (last visited Sept. 4, 2024).

<sup>13</sup> United States Census, *Cameron County, Pennsylvania*, [https://data.census.gov/profile/Cameron\\_County,\\_Pennsylvania?g=050XX00US42023#populations-and-people](https://data.census.gov/profile/Cameron_County,_Pennsylvania?g=050XX00US42023#populations-and-people) (last visited Sept. 4, 2024).

The dissenting opinion identified “waiting in long lines and traveling distances” as barriers to attending polling places, *Black Pol. Empowerment*, 2024 WL 4002321 at \*54 (McCullough, P., dissenting), and both of those can be challenges to elderly electors. These factors have, among other things, increased reliance on mail-in voting by older voters in recent elections.

In the experience of *amici*, elderly voters are significantly more likely than younger adults to have a disability that makes it challenging to vote in person. Physical mobility can make getting in and out of polling places a particular challenge. According to the Census Bureau’s 2022 American Community Survey, 45.9% of Americans aged 75 and older, and 24.3% of those aged 65 to 74, report having a disability, while only 12.6% of adults ages 35 to 64, and 8.3% of adults under 35, report the same.<sup>14</sup> In one example relevant to polling place attendance, 14.7% of adults aged 65 to 74 and 29.7% of adults aged 75 or older have an ambulatory difficulty, compared with 4.4% of adults aged 18-64.<sup>15</sup>

Getting to the polling place can be a challenge as well, especially for the constituents of *amici* who generally live too far away to walk to their polling place. The “declining need or ability to drive” of *amici*’s older constituents can make travel

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<sup>14</sup> U.S. Census Bureau, *Disability Characteristics*, <https://data.census.gov/table?q=disability> (last visited Sept. 4, 2024).

<sup>15</sup> *Id.*

to polling places “difficult or impossible.” *Applewhite v. Commonwealth*, 2014 WL 184988, at \*54 (Pa. Commw. Ct. Jan. 17, 2014) (McGinley, J.) (single-Judge op.), (in litigation over voter ID requirements, the court found that elderly voters were less likely to have a voter ID due to the challenge of traveling to a PennDOT Driver License Center). A 2022 study by the U.S. Department of Transportation estimated that 11.2 million Americans aged 65 and older have travel-limiting disabilities.<sup>16</sup> As age increases, so does the rate of people reporting travel-limiting disabilities. Before age 50, the rate is less than 10%. By age 70, the rate is 18%, and by age 80 it is nearly 32%.<sup>17</sup> While *amici* work hard to ensure that polling places are accessible for people with disabilities, mail-in voting is the preference of many seniors who, for a variety of reasons, have difficulty getting around.

Other data supports the trend that many of the *amici* see in election administration: elderly voters can be disproportionately represented in the share of mail-in ballots with dating issues. An expert declaration in another Pennsylvania case involving the dating provisions provided research and data about older voters’ likelihood to vote by mail. Hopkins Decl., *Eakin et al. v. Adams County Board of Elections et al.*, No. 1:22-cv-340-SPB (W.D. Pa. 2023), ECF No. 314-11. Dr. Daniel

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<sup>16</sup> U.S. Dep’t of Transp., Bureau of Transp. Statistics, *Travel Patterns of American Adults with Disabilities* (Jan. 3, 2022), <https://www.bts.gov/travel-patterns-with-disabilities>.

<sup>17</sup> *Id.*



Hopkins<sup>18</sup> opined that “subtle changes in the costs and frictions involved in undertaking certain activities can influence their completion,” *id.* ¶ 11, and that older voters are more likely to vote by mail because in-person voting has higher costs and friction than mail voting. *Id.* ¶¶ 15, 17-18. This report bolsters systematic evidence presented by Respondents Allegheny County and Philadelphia County:

when Philadelphia County analyzed its own data for the 2022 general election, it found: (i) 60.9% of undated ballots and 64.1% of misdated ballots were submitted by voters who were 60 years old or older, (ii) 37.5% of undated ballots and 40.9% of misdated ballots were submitted by voters who were 70 years old or older; (iii) 14.1% of undated ballots and 13.9% of misdated ballots were submitted by voters who were 80 years old or older; and (iv) 57 undated ballots and 15 misdated ballots were submitted by voters who were 90 years old or older.

Respondents Allegheny and Philadelphia Cnty. Bds. of Elections June 24 Statement of Position Regarding Summary Relief. Statement at 2-3, *Black Pol. Empowerment Project, et al., v. Schmidt, et al.*, No. 283 M.D. 2024, 2024 WL 4002321 (Pa. Commw. Ct. Aug. 30, 2024), (hereinafter, “Respondent Cnty. Statement”). All of these findings are consistent with *amici*’s experience with election administration and implementation of the dating provisions.

Several of *amici*’s constituents submitted declarations to the Commonwealth Court detailing the needless disenfranchisement that the dating requirements caused in the 2024 primary. In Bucks County, an 80-year-old retired schoolteacher and

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<sup>18</sup> Daniel Hopkins, Ph.D., is “a tenured Professor of Political Science at the University of Pennsylvania.” Hopkins Decl. ¶ 3.

former bookshop owner who votes by mail due to spinal pain and severe arthritis, accidentally wrote her birthdate in the month and year spot. Pet. App. for Prelim. Injunction, Ex. 8 ¶¶ 2-12, *Black Pol. Empowerment Project, et al., v. Schmidt, et al.*, No. 283 M.D. 2024, 2024 WL 4002321 (Pa. Commw. Ct. Aug. 30, 2024), (hereinafter, “Pet. App. for P.I.”); *see also Black Pol. Empowerment*, 2024 WL 4002321 at \*34, n. 57.

Her husband, a former professor who has been “diagnosed with neuropathy and typically gets around with a cane or walker,” and who cannot drive, also wrote the wrong date. Pet. App. for P.I., Ex. 8 at ¶¶ 4-11. Although Bucks County devotes time and resources to notifying voters of errors and enabling them to complete a new ballot, the retired schoolteacher—the only driver in the household—was unable to drive 45 minutes each way to fix the error; when the couple “learned that [their] ballots would not be counted, [they] felt terrible.” Pet. App. for P.I., Ex. 8 at ¶¶ 12-14. Another 80-year-old resident of Bucks County, a former administrative assistant in the aerospace industry who has never missed a presidential election since moving to Pennsylvania, was informed by email and letter from the county that she wrote the incorrect date on her ballot and her ballot would not be counted. Pet. App. for P.I., Ex. 10 ¶¶ 2-12; *see also Black Pol. Empowerment*, 2024 WL 4002321 at \*34, n. 56. Recovering from spinal surgery she had several days before the cure deadline, the elector fell and injured herself while preparing to walk to the polling place and

did not feel safe completing the journey, so was disenfranchised. Pet. App. for P.I., Ex. 10 at ¶ 13. A 71-year-old elector in Chester County, a retired computer service technician, electrician, and union representative who has voted as both a Republican and Democrat, was disenfranchised when he forgot to include the date on the outer envelope of his ballot. Pet. App. for P.I., Ex. 9 ¶¶ 2-13; *see also Black Pol. Empowerment*, 2024 WL 4002321 at \*34, n. 58. Frustrated and believing that the situation was unfair, he did not make the trip to the county office to rectify it. Pet. App. for P.I., Ex. 9 ¶ 15. A 74-year-old retired school librarian and media specialist in Dauphin County, who votes by mail because she cannot drive anymore, learned after the election that her ballot was not counted, without an opportunity to cure the error. Pet. App. for P.I., Ex. 12 ¶¶ 2-14; *see also Black Pol. Empowerment*, 2024 WL 4002321 at \*34, n. 59.<sup>19</sup>

While the dissent dismissed the majority’s acknowledgement of the disproportionate impact on the elderly as an “intimation...insulting to that group of voters,” *Black Pol. Empowerment*, 2024 WL 4002321 at \*61 (McCullough, P., dissenting), it is clear to *amici* that their elderly constituents are disproportionately disenfranchised when ballots are disqualified for handwritten dating errors. For example, in Montgomery County, over 490 mail-in ballots were rejected during the

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<sup>19</sup> The stories of older voters from York and Berks Counties, and from Respondent Counties Allegheny and Philadelphia, are further summarized in the Commonwealth Court’s opinion. *Black Pol. Empowerment*, 2024 WL 4002321 at \*34, n. 56 & 58.

2022 general election in whole or in part for failure to comply with the dating provisions; at least two-thirds of the disqualified voters were aged 65 or older. The list of *amici curae* attached to this brief includes election administrators, countywide officials, and in some cases, voters over 65. Each of them has seen that enforcing the dating requirements has had a disproportionate impact on elderly voters and all of them submit this brief in accordance with their sworn duty to protect the constitutional rights of their constituents.

**B. The Commonwealth Court Correctly Determined That Enforcing The Dating Provisions Serves No Interest At All, Let Alone A Compelling Governmental Interest.**

Having correctly determined that enforcement of the dating provisions results in a severe burden, the Commonwealth Court was also correct to conclude that such enforcement “cannot survive strict scrutiny, as [it] serve[s] no compelling interest.” *Black Pol. Empowerment*, 2024 WL 4002321 at \*32. “Where a state election regulation imposes a ‘severe’ burden on a plaintiff’s right to vote, strict scrutiny applies and requires that the regulation is ‘narrowly drawn to advance a state interest of compelling importance.’” *Pa. Democratic Party*, 238 A.3d at 385 (citing *Burdick*, 502 U.S. at 434). The handwritten date on the outside of the ballot is meaningless in determining whether the vote was received in a timely manner, and therefore cannot serve a compelling interest, let alone any legitimate interest at all. Instead,

enforcement of the dating provisions is burdensome on election administrators, drawing *amici* away from other pressing duties.

**1. The handwritten date on the outer envelope of mail-in ballots serves no purpose and cannot advance a compelling government interest.**

County boards of elections do not use the handwritten date for any purpose outside of enforcement of the dating provisions. It is a technical requirement that otherwise has no bearing on the validity or timeliness of the vote cast. Voters' qualifications are determined when they apply for a mail-in ballot, 25 P.S. §§ 3146.2, 3146.6(a), (c), 3146.8(g)(3)-(4), 3150.12, 3150.16(c). Timeliness is not determined by when the elector filled out the mail-in ballot, but by when the county receives the ballot. 25 P.S. §§ 3146.6(c), 3150.16(c). Nor is the handwritten date is used by county boards of elections to identify fraud. *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1077 (Pa. 2020) (because timeliness is determined by when the county receives the ballot, there was no danger of fraudulent back-dating); *see also Pennsylvania State Conference of NAACP Branches v. Sec'y Commonwealth of Pennsylvania*, 97 F.4th 120, 139-40 (3d Cir. 2024) (Shwartz, J., dissenting) (the handwritten date is "not used to...detect fraud.").

In sum, the Commonwealth Court and courts in "prior litigation" have all correctly determined that that "the date on the outer absentee and mail-in ballot envelopes is not used to determine the timeliness of a ballot, a voter's qualifications

[or] eligibility to vote, or fraud.” *Black Pol. Empowerment*, 2024 WL 4002321 at \*32. Indeed, its primary consequence is to disenfranchise voters, which is neither a legitimate nor a compelling government interest.

**2. Enforcement of the dating provisions is burdensome, drawing *amici* away from other pressing election administration duties.**

Rather than serving a compelling government interest, enforcement of the meaningless dating provisions consumes “considerable time, labor, and resources” that *amici*’s constituents cannot afford to waste. *See* Respondent Cnty. Statement at 4. The envelope-dating requirement introduces an unnecessary layer of complexity to the process of returning mail-in ballots. For *amici* in counties which have developed procedures to alert voters of errors and provide them with an opportunity to fix the error, the administrative steps required to prevent the meaningless error from causing disenfranchisement may include setting aside ballots flagged for errors, formally notifying voters of these discrepancies, and processing corrected ballots. Each of these steps demands administrative effort, legal oversight, and additional staffing.<sup>20</sup> These are resources that *amici* could otherwise use, *inter alia*,

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<sup>20</sup> Pa. Dep’t. of State, Administration of Voter Registration in Pennsylvania, 2022 Annual Report to the Pennsylvania General Assembly (June 30, 2023), [https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/reports/voter-registration/DOS\\_Voter\\_Registration\\_Report\\_2022\\_FINAL.pdf](https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/reports/voter-registration/DOS_Voter_Registration_Report_2022_FINAL.pdf) (describing County Boards of Elections’ initiatives related to voter roll maintenance, voter outreach, and other improvements to election administration).

to ensure the integrity of the voting process and advance the work of their programmatic support for senior citizens.

The Commonwealth Court’s opinion creates clarity in election administration. Following the decision in *Ball v. Chapman*, 289 A.3d 1, 21 (Pa. 2023), that the Election Code requires voters to handwrite the date, there has been variance among counties concerning what is a disqualifying dating error, leading to confusing changes in guidance and costly litigation. As the Commonwealth Court pointed out, “the Secretary...concedes that he has changed his guidance regarding the mail ballot declaration **twice in the past year.**” *Black Pol. Empowerment*, 2024 WL 4002321 at \*26 (emphasis in original). Most recently, when the Deputy Secretary for Elections issued a new interpretation of the dating requirement just days before the primary election in 2024, Pennsylvania’s counties split on whether to follow such last-minute guidance.<sup>21</sup> The Commonwealth Court’s decision puts an end to this perpetual confusion and promotes the government interest in efficient administration of elections. This order should be maintained in advance of the general election.

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<sup>21</sup> Carter Walker, *supra* n. 8 (Beaver County Election Director Colin Sisk’s reaction to the guidance was, “[A] lot of us [directors] were like ‘Holy crap, this is late’ and ‘Holy crap, this change is something that can be litigated.’”)

#### IV. CONCLUSION

While the requirement for a handwritten date may have served a purpose at one time, “neither the Election Code nor the Legislature have kept up with...new technology [which] renders the dating provisions meaningless.” *Black Pol. Empowerment*, 2024 WL 4002321 at \*38. Accordingly, the “refusal to count undated or incorrectly dated but timely received mail ballots submitted by otherwise eligible voters because of meaningless and inconsequential paperwork errors violates the fundamental right to vote recognized in and guaranteed by the free and equal elections clause of the Pennsylvania Constitution.” *Id.* at 82. Enforcement of an obsolete requirement has proven to disenfranchise voters, disproportionately impacting certain groups that rely on mail-in voting, like the elderly. Rather than serving a compelling or legitimate government interest, such enforcement is burdensome and costly to election administration.

In considering election-related matters, Pennsylvania courts’ “goal must be to enfranchise and not to disenfranchise [the electorate].” *Pa. Democratic Party*, 238 A.3d at 36 (quoting *In re Luzerne Cnty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972)). *Amici*, who share the same goal, ask this Court to uphold the Commonwealth Court’s decision.



Dated: September 4, 2024

Respectfully submitted,

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## CERTIFICATE OF WORD COUNT

I hereby certify that this brief contains 4,921 words, as determined by the word-count feature of Microsoft Word, the word-processing program used to prepare this petition.


Dated: September 4, 2024

  
Joseph Khan

**CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY**

I hereby certify, pursuant to Pa.R.A.P. 127, that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: September 4, 2024

  
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Joseph Khan