

**IN THE SUPREME COURT OF PENNSYLVANIA EASTERN DISTRICT**  
Nos. 1 EAP 2025, 2 EAP 2025 (consolidated)

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BRIAN T. BAXTER and SUSAN T. KINNIRY,

*Respondents/Appellees,*

*v.*

PHILADELPHIA COUNTY BOARD OF ELECTIONS,

*Respondent,*

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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Appeal from the October 30, 2024 Memorandum Opinion and Order of the  
Pennsylvania Commonwealth Court at Consolidated Case Nos. 1305 C.D. 2024 &  
1309 C.D. 2024, affirming the September 26, 2024 and September 27, 2024 Orders  
of the Court of Common Pleas of Philadelphia County, No. 2024-02481

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## I. STATEMENT OF INTEREST

*Amici* are county commissioners, councilmembers, and election officials who have been elected to represent voters in counties across Pennsylvania.<sup>1</sup> Most *amici* serve on county boards of elections, which are tasked with overseeing federal, state, and local elections, and oversee or fund county Area Agencies on Aging (“AAAs”), which address a wide array of issues that impact older residents differently than other constituents.<sup>2</sup> This case brings together two of *amici*’s critical responsibilities in county government: administering elections and serving the needs of older residents. *Amici* ask this Court to affirm the decision of the Commonwealth Court that rejecting mail-in ballots<sup>3</sup> for meaningless dating issues is a violation of the constitutional rights of *amici*’s constituents, especially older voters.

As officials who are constitutionally charged with protecting equal and fair elections for their constituents, *amici* have an interest in ensuring that all eligible

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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 *amici* represent counties where the county commissioners constitute the board of elections as well as the executive branch of a government that includes and/or funds an AAA. Those *amici* who represent home rule counties also support and oversee the administration of elections and the AAA, albeit often in more of a legislative capacity.

<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, and “mail-in voting” to refer to the voting process for both, unless otherwise specified.

electors in their counties 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. While Appellants strain to ascribe value to the date that voters write on the outer envelopes of their mail-in ballots, *amici* are uniquely positioned to articulate, without equivocation, that there is no benefit to disqualifying voters who err in writing that date. Thus, rejecting ballots due to a meaningless dating error needlessly denies electors their right to have their validly cast ballot counted.

Most of *amici* advanced similar arguments in the Commonwealth Court in this case, *Baxter v. Philadelphia Bd. of Elections*, Nos. 1305 C.D. 2024, 1309 C.D. 2024, 2024 WL 4614689 (Pa. Commw. Ct. Oct. 30, 2024), and in the *BPEP* litigation considered by this Court, *Black Pol. Empowerment Project v. Schmidt*, 322 A.3d 221 (Pa. 2024). After yet another election in which thousands of Pennsylvania voters have been disenfranchised, *amici* write again to agree with the Commonwealth Court's opinion that enforcing these provisions is a violation of the Pennsylvania Constitution.

## **II. SUMMARY OF ARGUMENT**

When county boards of elections must enforce purposeless provisions of the Pennsylvania Election Code that require electors to date the declaration on the outer



envelope of mail-in ballots, voters who have returned otherwise valid ballots are disenfranchised. *See* 25 P.S. § 3146.8(g)(3) (describing the county board of elections review of the sufficiency of the declaration at the pre-canvass and canvass meetings); *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023). This result violates the free and equal elections clause of the Pennsylvania Constitution. Pa. Const. art. I, § 5. Following the disenfranchisement of 69 voters in Philadelphia’s September 17, 2024 Special Election, Commw. Ct. Op. at 3, the Commonwealth Court correctly determined that enforcement of those provisions requiring electors to date the outer envelope of mail-in ballots, 25 P.S. §§ 3146.6(a) and 3150.16(a) (hereinafter, the “dating provisions”), violates those voters’ constitutional rights. Commw. Ct. Op. at 41-42.

Despite Appellants’ assertions that the dating provisions are important to election administration and not burdensome to voters, the facts of this case are clear: enforcement of the dating provisions disenfranchised dozens of highly motivated electors in a low turnout special election while burdening, rather than facilitating, election administration. In practice, the dating provisions play no role in detecting voter fraud, have no bearing on whether the ballot was received in a timely manner, and do nothing to support public perception of election integrity. Now that technological advancements have made obsolete the dating provisions (which have applied to absentee ballots long before the enactment of Act 77), 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*. Meanwhile, this purposeless disenfranchisement continues to affect voters statewide, and constituents disproportionately affected by enforcement include older electors like Mr. Baxter,<sup>4</sup> a group that relies more often on their right to vote by mail.

*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 ‘pervasive 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. Because the disenfranchisement of *amici*’s constituent electors that results from enforcement is not supported by any government interest, *amici* ask the Court to affirm the Commonwealth Court’s decision that enforcement of the dating provisions is a violation of the free and equal elections clause.

### III. ARGUMENT

Because the government no longer has an interest in enforcing the dating requirement, the Commonwealth Court correctly concluded that Philadelphia’s

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<sup>4</sup> Mr. Baxter, a petitioner in this case, is an 81-year-old elector who has been voting by mail for two years. Pet. for Review, Ex. 1, Decl. of Brian Baxter ¶¶ 2, 8.

refusal to count mail-in ballots due to dating errors on the return envelopes violated the free and equal elections clause of the Pennsylvania Constitution. Commw. Ct. Op. at 41; *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)). Elections are “free and equal” under the Pennsylvania Constitution when, among other requirements:

each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied him.

*League of Women Voters v. Commonwealth of Pa.*, 178 A.3d 737, 810 (Pa. 2018) (quoting *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914)). While serving no purpose under any standard of constitutional review, enforcement of the dating provisions prevents otherwise valid ballots from being counted, effectively denying the franchise and subverting Pennsylvanians’ right to vote. *Amici* know that continued enforcement of the dating provisions will accomplish nothing other than the disenfranchisement of voters, especially older voters, who are disproportionately impacted by this ongoing constitutional violation.

**A. The Dating Provisions Serve No Government Interest and Only Burden Election Administration**

The primary consequence of enforcing the dating provisions is to disenfranchise voters, which is neither a legitimate purpose nor a compelling government interest. Notwithstanding Appellants' speculation about justifications for the dating provisions, it is clear to *amici* that the government has no interest in enforcing a purposeless directive for the sake of disqualifying ballots. None.

*Amici* know from experience that county boards of elections do not use the handwritten date for any purpose other than the disqualification of otherwise valid ballots. *Amici* understand the technological advancements that have not only made election administration more efficient but also have made the dating provisions redundant and obsolete. While it may have been drafted with good intentions, the date requirement is now a vestigial relic that has no bearing on the authenticity or timeliness of the vote cast.<sup>5</sup> Thus, the Commonwealth Court reached the same conclusion as other judges who have examined the dating provisions: they are “meaningless.” Commw. Ct. Op. at 41. *See also Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.*, 97 F.4<sup>th</sup> 120, 125, 127, 137 (3d Cir. 2024).

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<sup>5</sup> Enforcement of the dating provisions, and the dating provisions themselves, did not begin with the passage of no-excuse mail-in voting but have been a longtime aspect of absentee ballots. As Republican Legislative Leaders point out, the language requiring voters to date the outer envelopes of Act 77’s *mail-in* ballots mirrors the requirements of *absentee* ballots, a stricter regime that has been in place since before Act 77. Rep. Leg. *Amicus* Br. at 23 (citing 25 P.S. § 3150.16(a) and 25 P.S. § 3146.6(a)).

**1. The handwritten date on the outer envelope of mail-in ballots is not used to detect fraud.**

First and foremost, despite assertions to the contrary, *see* Appellant Br. at 16, the handwritten date is not used by county boards of elections to stop fraud. This is a plain fact, recognized by courts and known to *amici*, who have collectively led the counting of millions of ballots. *See 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 is no danger of fraudulent back-dating); *see also Pa. State Conf. of NAACP Branches*, 97 F.4<sup>th</sup> at 139-40 (Shwartz, J., dissenting) (the handwritten date is “not used to . . . detect fraud.”). When conducting their review of mail-in ballots, *amici* do not review the date on the outside of the envelope for evidence of fraud; they review it for sufficiency of the declaration. *See* 25 P.S. § 3146.8(g)(3) (describing the pre-canvass and canvass without any mention of fraud detection).

Increasingly, *amici* have administered elections against an endless torrent of misinformation about “voter fraud” in Pennsylvania.<sup>6</sup> Here, Appellants and *amici* Republican Legislative Leaders exaggerate the facts of a real case to perpetuate the myth that election officials rely on dating provisions to detect fraud. Appellant Br.

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<sup>6</sup> Josh Kelety, *Separating fact from fiction in Pennsylvania’s election process*, ASSOCIATED PRESS (Oct. 29, 2024), <https://apnews.com/article/pennsylvania-election-misinformation-noncitizen-voting-dead-voters-34004d5c892ebd39101adb86533c469e> (“Pennsylvania, a crucial swing state, is often the subject of election-related misinformation. Social media users have falsely suggested that large numbers of migrants are illegally registering to vote in Pennsylvania, incorrectly asserted that the time it takes to count votes in the state is a smokescreen for fraud, and made baseless claims about foul play involving deceased voters.”)

at 14 (“[T]he date requirement was used to detect voter fraud.”) (citing *Commonwealth v. Mihaliak*, MJ-02202-CR-0000126-2022 (Lancaster Cnty. 2022)); Rep. Leg. *Amicus* Br. at 24-25 (“the date on the ballot declaration helped to detect fraud.”) (also citing *Mihaliak*, MJ-02202-CR-0000126-2022). But a review of that case, where a Lancaster County woman attempted to return her recently deceased mother’s ballot, reveals that it was the SURE system, not the handwritten date, that “detected” that the voter had died. The record cited by Appellants and Republican Legislative Leaders does not support their interpretation of events; the charging document clearly states that the deceased voter was removed from the voter rolls *before* the fraudulent ballot arrived at the election office, and there is no suggestion that the handwritten date had anything to do with detecting the problem. Affidavit of Probable Cause (attached in Appellants’ appendix at 220a). The fact that a handwritten date did not actually expose fraud in this case tracks not only common sense, but also the collective experience of *amici* over many elections. Despite tens of thousands of mail-in ballots being rejected for dating issues since 2020, and the longstanding use of the handwritten date on absentee ballots before the passage of Act 77, Appellants do not identify a single case of voter fraud that was detected because of a date written on an envelope. That is because Pennsylvania’s county governments do not rely on the dating provisions to detect fraud.

## **2. The handwritten date no longer serves any other purpose.**

Moreover, despite Appellants' and other *amici*'s claims to the contrary, App. Br. at 16, the dating provisions do not otherwise advance the government's interests in election administration. It is telling that none of the purposes offered up by Appellants and their supporters are backed by any real instances, but instead are contrived suppositions grounded in hypotheticals.

To begin, *amici* know that timeliness is determined not 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).<sup>7</sup> Nor does the handwritten date assist in “tracking” or “record keeping” of ballots, as suggested by other *amici* Center for Election Confidence, Inc. (“CEC”). CEC *Amicus* Br. at 3. *Amici* rely on actual timekeeping records, not the handwriting of electors, to track when ballots arrive—a fact that Appellants appear to acknowledge. *See* Appellant Br. at 42 (“election officials are required to timestamp a ballot and scan the barcode into the Statewide Uniform Registry of Electors (‘SURE’) upon receipt,” citing *Pa. State Conf. of NAACP v. Schmidt*, 703 F. Supp. 3d 632, 665 (W.D. Pa. 2023), rev’d 97 F.4th 120 (3d Cir. 2024)). The fact that the handwritten date does not have any bearing on timeliness should be the end

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<sup>7</sup> Additionally, a voter's qualifications are determined when she applies for a mail-in ballot, not when she handwrites the date on a ballot envelope. 25 P.S. §§ 3146.2, 3146.6(a), 3146.8(g)(3)-(4), 3150.12, 3150.16(a).

of the argument. Nonetheless, Appellants and other *amici* continue to strain to identify other justifications for continuing to enforce a requirement that disenfranchises voters in every election. None of these reasons are credible.

For example, Appellants posit that the date requirement advances “solemnity” in voting, Appellant Br. at 23, but *amici*, who interact with voters regularly, see no correlation between the seriousness with which voters take the act of voting and the accuracy of the date they write on the outer envelope. To the contrary, the facts of this case reinforce the experience of *amici*—that even the most dedicated and serious voters make mistakes with the dating line. As noted in Section III(A)(3), *infra*, the voters who were disenfranchised in this case were in the small and dedicated group of approximately 7% of registered voters who made the effort to turn out to the local special election.<sup>8</sup> Their participation in the instant litigation only underscores how seriously Mr. Baxter and Ms. Kinniry took the act of voting. *Amici* cannot fathom how disenfranchising them for a meaningless error would enhance the “solemnity” of their experience.<sup>9</sup>

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<sup>8</sup> *Infra* n.15.

<sup>9</sup> Further, Appellants cite several cases to support the argument that a signature, or a signature-and-date requirement, furthers “solemnity.” Appellant Br. at 42-43. But the requirement that voters sign the declaration on their mail-in ballot, 25 P.S. §§ 3146.6(a) and 3150.16(a), is not at issue. The act of filling out declaration, and thus any conceivable impression signing their name makes on the voter, remain intact if the enforcement of the dating provisions is found to be unconstitutional.



*Amici* also emphatically reject the proposition by Appellants, *amici* Republican Legislative Leaders, and *amici* CEC that enforcing the dating requirement advances confidence in election integrity. Appellant Br. at 44; Rep. Leg. *Amicus* Br. at 24; CEC *Amicus* Br. at 3. As this Court has recently stated, “we are at a loss to identify what honest voting principle is violated by recognizing the validity of one ballot cast by one voter.” *Genser v. Butler Cnty. Bd. of Elections*, 325 A.3d 458, 485 (Pa. 2024) (addressing similar arguments that “election integrity” principles are advanced by denying Pennsylvanians the right to have a provisional ballot counted). When *amici* have been required to throw out otherwise valid ballots because of minor errors, voters generally respond not with an enhanced level of confidence in the election system but rather with disappointment, frustration and even outrage. Indeed, those sorts of reactions are what prompted two dedicated voters to bring the litigation now before this Court.<sup>10</sup>

An *amicus curae* brief signed by the Attorney General offers further speculation about the dating requirement becoming purposeful if the SURE system were to fail or run out of funding. AG Br. at 23; *see also* Appellant Br. at 42. Yet even in the event of a hypothetical “natural disaster or other unforeseen emergency,”

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<sup>10</sup> Similarly, *amici* disagree that such disenfranchisement “enhances [freedom]” as the Center for Election Confidence, Inc. claims. CEC *Amicus* Br. at 3. *Amici* believe that disenfranchised voters would also disagree that they are more free for having lost their vote to a meaningless error.

AG Br. at 24, the handwritten date would not help counties administer elections. As explained above, counties use other non-electronic methods to track timely ballot arrival. *See Pa. State Conf. of NAACP Branches*, 97 F. 4<sup>th</sup> 120, 127 (timeliness is “established both by a receipt stamp placed on the envelope by the county board and separately through scanning of the unique barcode on the envelope”). Many of *amici* administered mail-in voting during the emergency disaster of COVID-19 and not one of them sees untapped value in the dating provisions.

### **3. Enforcement of the dating provisions is inefficient and burdensome.**

Republican Legislative Leaders posit that enforcement of the dating provisions makes elections “efficient,” Rep. Leg. *Amicus* Br. at 24 (citing *Migliori*, 2022 U.S. Dist. LEXIS 46352, at \*38-39), but the opposite is true: enforcement of the dating provisions is burdensome and an inefficient use of *amici*’s time. Election officials are busy. Overturning the Commonwealth Court’s decision would mean that, on top of their other duties, *amici* would be forced to continue to spend countless hours and dollars to try to minimize the inevitable disenfranchisement that comes from enforcing the dating provisions because “[t]he disenfranchisement of even one person validly exercising his right to vote is an extremely serious matter.” *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 202 A.2d 538, 540 (Pa. 1964). *Amici* would be required to continue to spend precious time in the midst of election administration analyzing the meaningless handwritten dates and

responding to any challenges or litigation that arises from their decisions about each ballot.

The additional time and cost of having to enforce the dating provisions begins before Election Day. *Amici* expend considerable time and resources to craft policies to ensure that mail-in ballot options are accessible and clear to all constituents, and as necessary adjust those policies in response to updated guidance from the Commonwealth and the courts.<sup>11</sup> *Amici* respond to elector questions and train clerks and poll workers extensively on procedures, among the countless duties required to administer an election. When the outer envelope of mail-in ballots display apparent defects, the election workers accepting the ballots segregate the ballots for consideration by the boards of elections during the pre-canvass. 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, an operation that requires significant staff time, and all counties staff the polls to fulfil their

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<sup>11</sup> Indeed, the state government has also devoted significant time and resources to attempt to prevent this type of disenfranchisement. Among the efforts it has taken are: “[i]ntroducing redesigned mail ballot instruction materials,” “[p]artnering with the Pennsylvania Department of Aging to provide older voters with trustworthy information about voting by mail,” and “[e]ducating all Pennsylvanians on voting by mail and on election security through a digital ad campaign.” See *Shapiro Administration Announces 57% Decrease in Mail Ballots Rejected in 2024 General Election*, COMMONWEALTH OF PENNSYLVANIA (Jan. 14, 2025), <https://www.pa.gov/agencies/dos/newsroom/shapiro-administration-announces-57--decrease-in-mail-ballots-re.html>.

constituents' right to cast a provisional ballot when their mail-in ballot has been flagged for rejection. *See Genser*, 325 A.3d 458.<sup>12</sup>

Next, following the pre-canvass that cannot begin before Election Day, 25 P.S. § 3146.8(g)(1.1) and 25 P.S. § 2602(q.1), boards of elections in all counties must meet to adjudicate mail-in ballots with errors like dating issues, as the Philadelphia Board did in this case. Pet. for Review at 13. Each of these steps demands administrative effort, legal oversight, and additional staffing.<sup>13</sup> These are resources that *amici* could otherwise use, *inter alia*, to ensure the timely administration of the election.

Notwithstanding *amici's* efforts, disenfranchisement over dating errors persists year after year: data from the 2024 General Election showed that roughly 1% of the over 1.9 million returned mail-in ballots were rejected, and 23% of those

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<sup>12</sup> While now afforded the statewide right to cast a provisional ballot, voters whose mail-in ballots are flagged for rejection are not always able to take advantage of opportunities to cure their ballot or cast a provisional ballot. 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 Project v. Schmidt*, 2024 WL 4002321, at \*34 n.56 (Pa. Commw. Ct. Aug 30, 2024), or because of health or mobility challenges preventing polling place attendance.

<sup>13</sup> Pa. Dep't. of State, *Administration of Voter Registration in Pennsylvania* (Jun. 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).

were cancelled for having an incorrect or missing date.<sup>14</sup> In other words, for thousands of Pennsylvanians in the 2024 General Election, the “regulation of the right to exercise the franchise” ultimately did “deny the franchise itself,” thus violating the free and equal clause of the Pennsylvania Constitution. *League of Women Voters*, 178 A.3d at 810 (quoting *Winston*, 91 A. at 523).<sup>15</sup> While Appellants note that the rate of disenfranchisement for dating provisions decreased in the 2024 General Election, Appellant Br. at 34, this reduction does not mean that disenfranchisement is a fading concern. The progress on reducing these rates reflects the intensive efforts of *amici*, state government officials, and voter organizations who have devoted significant resources to preventing errors. The fact that thousands of voters continue to have their otherwise valid ballots rejected in each election despite significant expenditure of time and resources on the part of local and state

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<sup>14</sup> *Shapiro Administration Announces 57% Decrease in Mail Ballots Rejected in 2024 General Election*, *supra* n.11. Facts established in prior litigation show that enforcement of the dating provisions disenfranchised nearly 10,000 Pennsylvanian voters in the 2022 General Election, *Schmidt*, 703 F. Supp. 3d at 668 (reversed on other grounds), and thousands more in the 2024 primary. *Black Pol. Empowerment*, 2024 WL 4002321 at \*6.

<sup>15</sup> The facts of this case demonstrate that these provisions disenfranchised even the most motivated electors. Approximately 93% of Philadelphia’s registered voters did not participate in the September 17, 2024 special election. Philadelphia City Commissioners, *Unofficial 2024 Special Election Results* (Sept. 24, 2024), <https://phillyvotes-historical-results.s3.amazonaws.com/index.html/>. Only the most dedicated voters, like Mr. Baxter and Ms. Kinniry, take the time to cast a ballot in such low-turnout “off cycle” elections. Indeed, Ms. Kinniry takes special care “to vote in every election and especially in off-cycle, low turnout elections.” Pet. For Review at 6. The fact that dozens of such voters were disqualified under these circumstances illustrates that any voter—even the most committed to casting their ballots—can be disenfranchised by enforcing the dating provisions.

governments shows that, notwithstanding *amici*'s efforts, commonplace human errors will persist.

*Amici* do not administer elections in a hypothetical world where the dating requirement has acquired unforeseen value. *Amici* serve real constituents in the real world, where enforcing the dating provisions consumes a significant amount of time, labor, and resources that *amici* cannot afford to waste. As the dating provisions have become obsolete, protecting voters and their rights has become more difficult. In the course of election administration, they increasingly face threats of intimidation or violence,<sup>16</sup> extensive litigation (including many frivolous lawsuits),<sup>17</sup> and disingenuous attacks on their constituents' eligibility to vote in free and equal elections.<sup>18</sup> At a time when the boards of elections are stressed more than ever,

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<sup>16</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>17</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), [https://www.rules.senate.gov/imo/media/doc/schmidt\\_testimony.pdf](https://www.rules.senate.gov/imo/media/doc/schmidt_testimony.pdf).

<sup>18</sup> On the eve of the 2024 General Election, activist groups forced county boards of elections—including several of the boards on which *amici* serve—to hold hearings by taking advantage of a statutory mechanism (meant to challenge legitimate claims of individual voter eligibility) by filing baseless mass-challenges against thousands of voters statewide, compromising election officials' time and attention during the week of the election. Hansi Lo Wang, *Mail ballot challenges are dropped in Pennsylvania shortly after Election Day*, NPR (Nov. 9, 2024), <https://www.npr.org/2024/11/09/nx-s1-5183227/pennsylvania-mail-ballot-voter-challenges->

invalidating the dating provision would provide much-needed clarity as well as a welcome reprieve from the onslaught of litigation over what constitutes an incorrect date under the dating provisions.<sup>19</sup> Overturning the decision, by contrast, would only ensure that the taxpayers will have to foot the bill for even more litigation over a technical requirement that has outlived any usefulness it once had.

**B. Rejection Of Mail-In Ballots With Dating Issues Violates The Free And Equal Elections Clause Of The Pennsylvania Constitution By Disenfranchising Voters, Especially Older Voters.**

Accordingly, the Commonwealth Court was correct to determine that disenfranchisement over the meaningless dating requirement is unconstitutional. Commw. Ct. Op. at 41-42. Whether through traditional absentee voting or the no-excuse option provided by Act 77, mail-in voting provides a lifeline for voters who are disabled or ill, poll workers who are attending to election administration duties

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republican (describing “public hearings [that county boards of elections] scrambled to add to calendars amid running polling sites, counting ballots and reporting results”). Tellingly, boards of elections that held hearings to examine evidence about the challenges found all of them to be meritless, and following the election results, the challenging groups withdrew the remaining challenges before hearings could be held. *Id.*

<sup>19</sup> Ever since the 2023 decision in *Ball v. Chapman*, 289 A.3d 1 at 21, that the Election Code requires counties to reject misdated and undated mail-in ballots, 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 has 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). And 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.

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 Pennsylvania, and elderly voters. Appellants are wrong to suggest that the burden of disenfranchisement based on paperwork errors is eliminated simply because electors have the legal right to vote in person. Their claim that “voters do not need to comply with the requirement at all,” Appellant Br. at 14, ignores the populations of electors who, as a practical matter, rely on mail-in voting to be able to vote at all.

*Amici*’s older constituents are more reliant on mail-in voting and more impacted as a group when ballots are disqualified for minor errors. Affirming the decision below is important because of the obsolete dating provisions’ disproportionate impact on older voters like Mr. Baxter. 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 were over the age of 65 as of the 2020 U.S. Census, making up 19.1% of the Commonwealth’s population.<sup>20</sup> In Cameron County, which one of *amici* represents, more than 29%

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<sup>20</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 Mar. 24, 2025).



of the population is over 65.<sup>21</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.

In the experience of *amici*, elderly voters are significantly more likely than younger adults to have a disability that makes it challenging to vote or cast a provisional ballot in person. According to the Census Bureau's 2022 American Community Survey, 45.3% of Americans aged 75 and older, and 23.9% 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>22</sup> Declining physical mobility can make getting in and out of polling places a particular challenge. In one example relevant to polling place attendance, 14.5% of adults aged 65 to 74 and 29.2% of adults aged 75 or older have an ambulatory difficulty, compared with 4.3% of adults aged 18-64.<sup>23</sup>

Distance from the designated polling place can be a challenge as well, especially for the constituents of *amici* who generally live too far away to walk to

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<sup>21</sup> U.S. Census, *Cameron County, Pennsylvania*, [https://data.census.gov/profile/Cameron\\_County,\\_Pennsylvania?g=050XX00US42023](https://data.census.gov/profile/Cameron_County,_Pennsylvania?g=050XX00US42023) (last visited Mar. 24, 2025).

<sup>22</sup> U.S. Census Bureau, *Disability Characteristics*, <https://data.census.gov/table?q=disability> (last visited Mar. 24, 2025).

<sup>23</sup> *Id.*

their polling place. The “declining need or ability to drive” of *amici*’s older constituents can make travel to polling places “difficult or impossible.” *Applewhite v. Commonwealth*, No. 330 M.D.2012, 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>24</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>25</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.<sup>26</sup> An expert declaration in another ongoing Pennsylvania case involving the dating provisions provided research and data about

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<sup>24</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>25</sup> *Id.*

<sup>26</sup> The dissenting opinion in *BPEP* 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 *amici*’s counties in recent elections.

older voters’ likelihood to vote by mail. Hopkins Decl., *Eakin v. Adams County Board of Elections*, No. 1:22-cv-340-SPB (W.D. Pa. 2023), ECF No. 314-1. Dr. Daniel Hopkins<sup>27</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-in voting. *Id.* ¶¶ 15, 17-18. Thus, even though voters have a right to cast a provisional ballot on Election Day, *Genser*, 325 A.3d 458, not all have the ability to do so.

Data also supports the trend that many of the *amici* see in election administration year after year: elderly voters can be disproportionately represented in the share of mail-in ballots with dating issues. It is no coincidence that Mr. Baxter, one of the Philadelphia voters who was disenfranchised here, was an octogenarian. In the *BPEP* litigation, Philadelphia presented the following data about its electors who had submitted undated or misdated ballots in the 2022 General Election:

- (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

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<sup>27</sup> Daniel Hopkins, Ph.D., is “a tenured Professor of Political Science at the University of Pennsylvania.” Hopkins Decl. ¶ 3.

old or older; and (iv) 57 undated ballots and 15 misdated ballots were submitted by voters who were 90 years old or older.<sup>28</sup>

Similarly, in Montgomery County, where two *amici* serve as county commissioners, over 490 mail-in ballots were rejected during that same 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. And in the 2024 General Election in that county, the median age of voters who returned mail-in ballots with dating errors or omissions in the 2024 General Election was 67. The Department of State noted in its brief in the Commonwealth Court in this case, “In every election in which the relevant data has been analyzed, the rejection rate based on dating errors among older voters has been meaningfully higher than that among younger voters.” *Amicus* Br. of Dep’t of State and Sec’y of the Commonwealth at 4, *Baxter v. Philadelphia*, No. 1305 C.D. 2024 and 1309 C.D. 2024 (Pa. 2024).

*Amici*’s experience that older voters are disproportionately impacted by enforcement of the dating provisions is borne out not only by the data but also by the facts of this case. Mr. Baxter testified before the trial court that his age is making him “more forgetful,” which may have contributed to his mistake in the step of dating the mail-in ballot envelope even though he exemplifies the dedicated

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<sup>28</sup> See Allegheny and Philadelphia Cnty. Bds. of Elections Statement of Position Re. Sum. Relief. at 2-3, *Black Pol. Empowerment Project v. Schmidt*, No. 283 M.D. 2024, (Pa. Commw. Ct. Jun. 24, 2024).

elector who endeavors to vote in every election. Pet. For Review, Ex. 1 Decl. of Brian Baxter ¶¶ 6-11. *Amici* all represent constituents like Mr. Baxter and hearing them share their experiences of disenfranchisement has called *amici* to action.

In *BPEP*, several of *amici*'s constituents submitted declarations to this Court which detailed the needless disenfranchisement that the dating requirements caused in the 2024 primary. These stories are consistent with *amici*'s experience with election administration and implementation of the dating provisions. In Bucks County, an 80-year-old retired schoolteacher and 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, (Pa. Commw. Ct. May 28, 2024). 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. *Id.*, 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.” *Id.*, 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. *Id.*, Ex. 10 ¶¶ 2-12. 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. *Id.*, 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. *Id.*, Ex. 9 ¶¶ 2-13. Frustrated and believing that the situation was unfair, he did not make the trip to the county office to rectify it. *Id.*, 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. *Id.*, Ex. 12 ¶¶ 2-14.<sup>29</sup>

It is clear to *amici* that their elderly constituents are disproportionately disenfranchised when ballots are disqualified for handwritten dating errors. 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

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<sup>29</sup> The stories of older voters from Allegheny, Berks, Philadelphia, and York Counties are further summarized in the Commonwealth Court’s opinion in *BPEP. Black Pol. Empowerment*, 2024 WL 4002321 at \*34, n. 56 & 58.

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.

Ultimately, *amici* believe that an elector's decision to exercise the right to vote using a mail-in ballot should not 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.

#### **IV. CONCLUSION**

While the requirement for a handwritten date may have served a purpose at one time, “technical violations of the Election Code[] do not warrant the wholesale disenfranchisement . . . of Pennsylvania voters.” *In re Canvass 2020*, 241 A.3d at 1076-77, 1079. Accordingly, enforcement of “meaningless” dating provisions “violates the free and equal elections clause of our Constitution.” Commw. Ct. Op. at 41-42. Enforcement of an obsolete requirement has proven to disenfranchise voters, disproportionately impacting certain electors who rely on mail-in voting, like

the elderly. Far from serving a compelling or legitimate government interest, such enforcement is burdensome and costly to election administration.

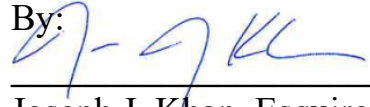
In considering election-related matters, Pennsylvania courts’ “goal must be to enfranchise and not to disenfranchise [the electorate].” *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020) (quoting *In re Luzerne Cnty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972)). *Amici*, who share the same goal, ask this Court to affirm the decision of the Commonwealth Court and provide the clarity that will help boards of elections run free, fair, and orderly elections.



Dated: March 27, 2025

Respectfully submitted,  
CURTIN & HEEFNER LLP

By:



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*Commissioner, Berks County*

Diane Ellis-Marseglia  
*Commissioner, Bucks County*

Bob Harvie  
*Commissioner-Chair, Bucks County*

Kevin Boozel  
*Commissioner, Butler County*

Josh Zucal  
*Commissioner, Cameron County*

Amber Concepcion  
*Commissioner, Centre County*

Mark Higgins  
*Commissioner-Chair, Centre County*

Josh Maxwell  
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Angela Harding  
*Commissioner, Clinton County*

Christopher Seeley  
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Justin Douglas  
*Commissioner-Chair, Dauphin  
County*

Dr. Monica Taylor  
*Council Chair, Delaware County*

Rock Copeland  
*Council Member, Erie County*

Chris Drexel  
*Council Member, Erie County*

Vince Vicites  
*Commissioner, Fayette County*

Sherene Hess  
*Commissioner, Indiana County*

Jeff Pisarcik  
*Commissioner, Jefferson County*

Jo Ellen Litz  
*Commissioner, Lebanon County*

Geoff Brace  
*Commissioner-Chair, Lehigh County*

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*Commissioner, Montgomery County*

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*Council Member, Northampton County*

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*County Executive, Northampton County*

Lori Vargo Heffner  
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## **CERTIFICATE OF WORD COUNT**

I hereby certify that this brief contains 6,558 words, as determined by the word-count feature of Microsoft Word, the word-processing program used to prepare this petition.


Dated: March 27, 2025

  
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: March 27, 2025

  
\_\_\_\_\_  
Joseph Khan

**IN THE SUPREME COURT OF PENNSYLVANIA**

Brian T. Baxter and Susan T. Kinniry : 1 EAP 2025  
v. :  
Philadelphia Board of Elections, Republican National :  
Committee, and Republican Party of Pennsylvania :

Appeal of: Republican National Committee and  
Republican Party of Pennsylvania

**PROOF OF SERVICE**

I hereby certify that this 27th day of March, 2025, I have served the attached document(s) to the persons on the date(s)  
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IN THE SUPREME COURT OF PENNSYLVANIA

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## IN THE SUPREME COURT OF PENNSYLVANIA

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