

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**BLACK POLITICAL
EMPOWERMENT PROJECT,
POWER INTERFAITH, MAKE THE
ROAD PENNSYLVANIA, ONEPA
ACTIVISTS UNITED, NEW PA
PROJECT EDUCATION FUND,
CASA SAN JOSÉ, PITTSBURGH
UNITED, LEAGUE OF WOMEN
VOTERS OF PENNSYLVANIA,
AND COMMON CAUSE
PENNSYLVANIA,**

Petitioners,

v.

**AL SCHMIDT, in his official capacity
as Secretary of the Commonwealth,
PHILADELPHIA COUNTY BOARD
OF ELECTIONS, AND
ALLEGHENY COUNTY BOARD OF
ELECTIONS,**

Respondents.

**No. _____
Original Jurisdiction**

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NOTICE TO PLEAD

To Al Schmidt, in his official capacity as Secretary of the Commonwealth, the Philadelphia County Board of Elections, and the Allegheny County Board of Elections: You are hereby notified to file a written response to the Petitioners' enclosed Petition for Review within twenty (30) days from service hereof, or such other time as the Court prescribes, or judgment may be entered against you.

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days, or within the time set by order of the court, after this petition for review and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Dauphin County Bar Association
Lawyer Referral Service
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**BLACK POLITICAL
EMPOWERMENT PROJECT,
PHILADELPHIANS ORGANIZED
TO WITNESS, EMPOWER AND
REBUILD, MAKE THE ROAD
PENNSYLVANIA, ONEPA
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**No. _____
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**PETITION FOR REVIEW
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION**

I. SUMMARY OF THE LAWSUIT

1. Pennsylvania election officials, including Secretary of the Commonwealth Al Schmidt (“Secretary Respondent”) and officials at the Philadelphia and Allegheny County Board of Election (“County Respondent”) have arbitrarily disqualified thousands of plainly eligible voters’ timely-submitted mail-in ballots in every primary and general election since 2020 merely because the voters neglected to write a date, or wrote an “incorrect” date, on the ballot-return envelope. Such conduct violates the Pennsylvania Constitution’s Free and Equal Elections Clause, Pa. Const. art. I, § 5.

2. Petitioners, nonpartisan organizations dedicated to promoting American democracy and the participation of Pennsylvania voters in our shared civic enterprise, bring this Petition for Review to ensure that their members, the people they serve, and other qualified Pennsylvania voters do not again lose their constitutional right to vote based on a meaningless requirement.

3. The refusal to count timely mail ballots submitted by otherwise eligible voters because of an inconsequential paperwork error violates the fundamental right to vote recognized in the Free and Equal Elections Clause, which provides that “no power, civil or military, shall at any time interfere to prevent the free exercise of the right to suffrage.” Pa. Const. art. 1, § 5. *See Ball v. Chapman*, 289 A.3d 1, 27 n.156 (Pa. 2023) (plurality opinion) (acknowledging that

the “failure to comply with the date requirement would not compel the discarding of votes in light of the Free and Equal Elections Clause, and our attendant jurisprudence that ambiguities are resolved in a way that will enfranchise, rather than disenfranchise, the electors of this Commonwealth”).

4. Enforcement of the dating provision disenfranchised at least 10,000 voters in the 2022 general election and thousands more¹ voters in the 2024 Presidential primary whose ballots were timely received by election day. These include individuals like Allegheny County voters Joanne Sowell and Otis Keasley, Philadelphia County voters Bruce Wiley and Eugene Ivory, and other impacted individuals from across the Commonwealth like Stephen Arbour (Montgomery County), Kenneth Hickman (York County), Janet Novick (Bucks County), Joe Sommar (Chester County), Phyllis Sprague (Bucks County), Mary Stout (Berks

¹ Petitioners note that the precise number of votes impacted by this issue in the 2024 primary election is currently unknown, as several counties still have not entered all ballot cancelations in the SURE system. It is already clear as of the date of this filing, however, that the meaningless envelope dating provision again impacted several thousand Pennsylvania voters even in this low-turnout election. In any event, recent history has proven that not counting even a relatively small number of mail ballots based on this provision can be outcome determinative in close races. *See, e.g.*, Katherine Reinhard and Robert Orenstein, “Cohen wins Lehigh County judicial election by 5 votes,” *Pennsylvania Capital-Star* (June 17, 2022) (noting impact on municipal election results after counting 257 mail ballots received in undated envelopes following *Migliori v. v. Cohen*, 36 F.4th 153, 162-64 (3d Cir. 2022), *vacated as moot*, 2022 WL 6571686 (U.S. Oct. 11, 2022)); Dan Sokil, “Towamencin supervisors race tied after Montgomery County election update,” *The Reporter Online* (Nov. 27, 2023) (noting impact on Towamencin Township supervisor results after counting 6 impacted mail ballots following *NAACP, et al. v. Schmidt, of NAACP v. Schmidt*, No. 1:22-CV-00339, 2023 WL 8091601 (W.D. Pa. Nov. 21, 2023), *rev’d* 97 F.4th 120 (2024)); Borys Krawczeniuk, “Court says six mail-in ballots in state 117th House District race should count,” *WVIA News* (May 8, 2024) (noting potential impact on outcome of state house race if six outstanding mail ballots are counted in Luzerne County).

County), and Lorine Walker (Dauphin County), whose timely ballots, as described herein, were rejected for arbitrary and trivial reasons.

5. Absent declaratory and injunctive relief by this Court enjoining enforcement of the date requirement, Petitioners, their members and thousands of qualified Pennsylvania voters will suffer the irreparable harm of having their timely-submitted mail-in ballots rejected in this year's general election and at every election thereafter.

6. As multiple courts have found in recent prior lawsuits, the voter-written date is meaningless, necessary neither to establish voter eligibility or timely ballot receipt. While the date requirement has nevertheless survived previous court challenges, none of the lawsuits thus far have tested the date requirement under the Pennsylvania Constitution's Free and Equal Elections Clause, Pa. Const. art. I, § 5. Until now.

II. JURISDICTION

7. This Court has original jurisdiction over this Petition for Review pursuant to 42 Pa.C.S. § 761(a)(1).

III. PARTIES

8. Black Political Empowerment Project ("B-PEP") is a non-profit, non-partisan organization that has worked since 1986 to ensure that the Pittsburgh African-American community votes in every election. B-PEP's and its supporters

throughout the Pittsburgh Region, including in Allegheny County, work with community organizations to empower Black and brown communities, including by promoting voting rights and get-out-the vote efforts.

9. During every election cycle, B-PEP's work includes voter registration drives, get-out-the-vote activities, education and outreach about the voting process, and election-protection work. B-PEP focuses these activities in predominantly Black neighborhoods in Allegheny County, with some efforts in Westmoreland and Washington Counties.

10. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects B-PEP's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. Respondent Allegheny County Board of Elections' failure to count such ballots will also obligate B-PEP to continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. In connection with the 2024 general election, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters B-PEP will have to divert its resources towards educating voters about the risk of disenfranchisement due to the envelope dating requirement and about any available cure processes. B-PEP

will also divert resources toward continued advocacy for new processes to ensure that voters who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake, as it has in other prior election cycles since at least 2022.

b. In connection with the November 2022 election, for example, B-PEP conducted outreach to members and constituent communities in Allegheny County about the importance of voting in person or by mail. When it was announced that county boards of elections would not count timely-submitted mail ballots based solely on missing or supposedly incorrect dates on return envelopes, B-PEP redirected its limited resources, including staff and volunteer time, to efforts to inform voters of this change and educate them as to how to avoid disenfranchisement.

c. In the days leading up to the election in November 2022, B-PEP's staff and volunteers also expended time and money developing, printing and distributing hundreds of flyers and other educational materials to dozens of churches for the purpose of informing prospective voters of the envelope dating issues generated by prior court decisions.

d. B-PEP's time and resources dedicated by B-PEP staff and volunteers would otherwise have been available for the organization's other

“get out the vote” efforts and other initiatives serving BPEP’s mission, including its Greater Pittsburgh Coalition Against Violence.

e. Leading up to the November 2024 General Election and other future elections, B-PEP plans similarly to divert its staff and volunteer resources from voter engagement and community initiatives toward preventing the disenfranchisement of voters who have already submitted their ballots.

11. POWER Interfaith (“POWER”) is a Pennsylvania non-profit organization of more than 100 congregations of various faith traditions, cultures and neighborhoods committed to civic engagement and organizing communities so that the voices of all faiths, races and income levels are counted and have a say in government.

12. During every election cycle, POWER’s civic engagement efforts include voter education programs, voter registration drives, and “Souls to the Polls” efforts² within Philadelphia County to encourage congregants to vote. In the weeks leading up to the November 2022 election, for example POWER launched a

²“Souls to the Polls” refers to the efforts of Black church leaders to encourage their congregants to vote *See, e.g.* Daniels, III, D. “The Black Church has been getting “souls to the polls” for more than 60 years,” *The Conversation*, Oct. 30, 2020, <https://theconversation.com/the-black-church-has-been-getting-souls-to-the-polls-for-more-than-60-years-145996>

bus tour focused on engaging Philadelphia County voters who were not already participating in the political process.

13. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects POWER's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. Respondent Philadelphia County Board of Elections' failure to count such ballots will also compel POWER to continue diverting resources in this and future elections from its other voter education and mobilization efforts towards investigating and educating voters about any available cure processes or to advocate that new processes be developed to ensure that voters who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, POWER will reassign volunteers and staff from its other voter education and mobilization efforts towards contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their vote set aside, as it has in prior election cycles since at least 2022.

b. In one prior example, when Philadelphia published a list of over 3,000 voters who were at risk of having their November 2022 general election ballots thrown out over technical errors, including a missing or incorrect date on the return envelope, POWER's members and volunteers made more than 1,200 manual calls and sent more than 2,900 texts to the voters whose names appeared on Philadelphia's at-risk list to provide them with information to help them cure their ballot or vote provisionally. POWER also stationed volunteers at City Hall to ensure voters returning their mail ballots to that location had correctly dated their return envelopes.

c. The time and attention that POWER devoted to ensuring voters who had already submitted their mail ballots would have their votes counted would otherwise have been used to engage and educate people who had not already attempted to vote.

d. Leading up to the 2024 General Election and other future elections, POWER plans to similarly divert its member and volunteer resources from their intended mission—engaging, educating, and mobilizing new voters—toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope.

14. Make the Road Pennsylvania (“Make the Road PA”) is a not-for-profit, member-led organization formed in 2014 that builds the power of the working class in Latino and other communities to achieve dignity and justice through organizing, policy innovation, and education services. Make the Road PA’s more than 10,000 members are primarily working-class residents of Pennsylvania, many in underserved communities. Many members of Make the Road PA are registered voters in Pennsylvania.

15. Make the Road PA’s work includes voter protection, voter advocacy and voter education on, for example, how to register to vote, how to apply for mail-in/absentee ballots, how to return mail-in/absentee ballots, and where to vote. Its get-out-the-vote efforts have included knocking on doors and speaking directly with eligible voters in historically underserved communities of color, especially in Berks, Bucks, Lehigh, Northampton and Philadelphia Counties.

16. Many members of Make the Road PA are registered voters in Pennsylvania and are at risk of disenfranchisement if Respondents fail to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope. Because Make the Road PA’s efforts are focused on communities where some voters are not native English speakers, the risk that some voters may make a minor paperwork mistake in filling out various forms related to mail or absentee ballot voting is heightened.

17. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects Make the Road PA's members and interferes with its ability to carry out its mission of increasing voter turnout and participation.

Respondent Philadelphia County Board of Elections' failure to count such ballots will also compel Make the Road PA to continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. In connection with the 2024 general election, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, Make the Road PA will have to divert its resources towards investigating and educating voters about any available cure processes or to advocate that new processes be developed to ensure that voters who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake, as it has in prior election cycles since at least 2022.

b. During the 2024 election cycle, Make the Road PA will reassign volunteers and staff from its other voter education and mobilization efforts, redirecting its limited resources to efforts to inform voters of the risk of disenfranchisement from the envelope dating rule and to educate them as to how to avoid disenfranchisement.

c. Similarly, in connection with the 2022 General Election, Make the Road PA contacted thousands of Pennsylvania voters, including Philadelphia County voters, to provide them with information to help them cure their ballot or vote provisionally to prevent the counties' actions from disenfranchising them.

d. Leading up to the November 2024 General Election and other future elections, Make the Road PA plans to similarly divert its staff and volunteer resources from voter engagement and community initiatives toward preventing the disenfranchisement of voters who have already submitted their ballots.

e. But for application of the rule at issue in this case, such time and resources dedicated by Make the Road PA staff and volunteers would have been available for the organization's other "get out the vote" efforts and other initiatives serving Make the Road PA's mission, including its Immigrant Rights, Education Justice, Housing Justice, Climate Justice and Worker Rights initiative.

18. OnePA Activists United (d/b/a "One PA For All") is a community organizing and voter engagement group that fights for racial, economic and environmental justice. It builds multiracial, working-class progressive power in Pennsylvania with a deep focus on Black liberation, with offices in Pittsburgh and

Philadelphia, and does voter engagement work in Philadelphia, Allegheny, Delaware, and Dauphin Counties.

19. One PA For All's mission and program include a variety of voting- and election-related activities, including boosting voter registration and turnout within Black communities in Pennsylvania and educating and mobilizing community members for active participation in democratic processes, including city council, school board, zoning hearings, and PA General Assembly meetings. In connection with every election cycle, One PA For All runs an ambitious and comprehensive strategy to engage marginalized communities through door-to-door canvassing, phone calls, relational organizing, text messaging, digital ads, and earned media, with a goal to increase civic participation. In 2024, One PA plans to register more than 35,000 voters and make more than 2.14 million contacts with voters. In just the last two years, One PA has registered 28,000 voters in working class Black communities in Philadelphia, Delaware, and Allegheny Counties.

20. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects One PA For All's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. The County Respondents' failure to count such ballots will also compel One PA For All to

continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. Since Respondents began strictly enforcing the envelope date requirement to disenfranchise people, One PA For All has helped 1000+ voters correct mistakes on their mail ballot envelopes. In one striking instance in 2022, One PA For canvassers knocked on door of Ms. Phyllis, a voter in her 70s, after learning that her mail-in ballot was in danger of not being counted because she had forgotten to write the date on the return envelope. Canvassers took her to her polling place and helped her obtain a provisional ballot, ensuring that her vote would count. Such a monumental effort requiring the resources of One PA For All and its staff and volunteers would not have been necessary if not for the decision to set aside mail ballots submitted without a voter written date on the return envelope.

b. One PA For All has, in past election cycles, expended scarce resources to help voters, like Ms. Phyllis, correct errors on mail ballot envelopes. This work is labor intensive and prevents its staff and volunteers from carrying out other aspects of its civic engagement work. In addition to contacting voters through the telephone or text message, One PA For All also sends staff and volunteers to the voters' homes and provides rides to the polling location for those voters who need a ride.

c. If the envelope dating requirement remains in place to disenfranchise mail-ballot voters who do not handwrite a date on the return envelope, or who write an “incorrect” date, One PA For All will continue its work instructing voters on how to correctly fill out a mail ballot return envelope. This work includes: distribution of a digital video via social media channels walking voters through how to properly vote by mail; organizing staff and volunteers to perform a “ballot chase” program that involves calling voters who have not turned in their mail ballots; and deploying staff and volunteers to mount a “ballot envelope curing” program that includes getting a copy of the list of voters in Allegheny and Philadelphia counties, contacting those voters and helping them correct the error on the envelope or helping them cast a provisional ballot in person.

d. In connection with the 2024 general election, One PA For All plans to deploy a five-person staff for the purpose of contacting voters who have made a mistake on their mail ballot envelope.

e. But for application of the rule at issue in this case, resources and staff deployed to reach out to voters with mistakes on their envelopes could be spent doing other work to advance One PA For All’s mission, such as knocking on additional doors, covering more territory in canvassing voters, calling or texting newly-registered voters, and recruiting and training

more volunteers. One PA For All is also diverting resources away from broader civic engagement and voter education program, which includes producing and distributing content publication on social media channels and coordinating messaging with micro influencers who have followings on Instagram and TikTok. If One PA For All did not have to expend resources on creating content about mail ballot envelope dating mistakes, it could focus educational materials more on voter registration, reach out to more first-time voters to encourage them to vote in the first place, and produce more communications focused on participation in the election in general. One PA For All would also have more resources to dedicate to its other civic engagement efforts, including its efforts to unite the community against exploitative corporate landlords, labor law violators, and health-threatening industrial polluters, and to transform the media narrative around community needs, enabling residents to share their stories for non-partisan direct action and civic engagement.

21. New PA Project Education Fund (“NPPEF”) is a nonpartisan, nonprofit organization based in Pennsylvania. NPPEF and its affiliated organization have offices in West Chester, Norristown, Harrisburg, and Pittsburgh. NPPEF is led by community leaders across the Commonwealth dedicated to centering underrepresented and underserved communities to embrace their power.

NPPEF works to ensure full participation in the democratic process through civic education and year-round engagement by centering Black, Indigenous, and other people of color, immigrant communities and the youth.

22. In connection with every election cycle, NPPEF conducts civic engagement and voter education in Philadelphia, Chester, Delaware, Montgomery, Bucks, Monroe, Lehigh, Northampton, Dauphin, Cumberland, Lebanon, York, Allegheny and Berks Counties. In 2024, NPPEF seeks to expand its operations into Erie, Beaver, Lawrence, Centre and Lackawanna counties. In the past two years, NPPEF and its affiliated organization registered nearly 40,000 Pennsylvanians to vote in Pennsylvania. More than 70% of those NPPEF registered to vote in 2024 are under the age of 36 and 68% of the newly registered, who self-identified, belong to a community of color. NPPEF’s voter registration, voter education and mobilization programs include repeat phone and email outreach to voters, door knocking, canvassing, mailings, preparing and distributing voter information guides, creating digital media, radio ads and emailed newsletters, and reaching out to voters on social media platforms. NPPEF also engages in “Community Conversations,” whereby staff travels the Commonwealth attending events and setting up informational tables to engage voters and potential voters and we provide nonpartisan information on how to register to vote, how to vote by mail and instructions for properly completing the vote by mail return envelope.

23. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects NPPEF's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. The County Respondents' failure to count such ballots will also compel NPPEF to continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, NPPEF will have to divert volunteers and staff from its other voter education and mobilization efforts to help ensure people are not disenfranchised by the envelope date requirement. Working in coalition with partner organizations, NPPEF expends resources towards ensuring that registered voters are notified of any mistakes on the mail ballot envelope, such as missing and incorrect dates, and provide information on how to make sure their vote counts. NPPEF will continue and expand this program for the general election in 2024. Because of the confusion around proper dates on mail ballot envelopes, in 2024, NPPEF anticipates adding information on the consequences of failing to handwrite the date or writing

the wrong date on the mail ballot envelope into its revised voter information guide tri-fold pamphlet.

b. Given the number of voters NPPEF aims to contact in 2024, any time spent discussing with voters the consequences of failing to date their mail ballot envelopes means staff and volunteers have that much less time to discuss other issues, and register additional Pennsylvanians to vote. NPPEF staff and volunteers are also forced to spend time and resources addressing inconsistent communication around correctly completing and returning vote by mail ballots and the resulting misinformation and voter fatigue around mail-in voting. NPPEF has thus had to spend additional resources to more thoroughly training staff, producing additional content and literature, more often than planned or budgeted, and redirecting staff capacity away from the organization's primary focus of registering Pennsylvanians to vote.

c. If NPPEF staff and volunteers did not need to spend time and resources educating voters about the dangers of being disenfranchised due to the envelope dating requirement, they would have more opportunities to discuss other issues with their centered communities instead of spending precious resources instructing them on how to properly date the mail ballot envelope. The more time and resources NPPEF is forced to spend providing

civic education around mail voting, the less time and resources it has to meet its organizational goals, and the expectations of its funders and donors.

24. Casa San José is a nonpartisan, nonprofit organization based in Pittsburgh, Pennsylvania, employing a staff of 24 and supported by three members of the order of the Sisters of St. Joseph and more than 100 volunteers. Casa San José connects, supports, and advocates with and for the Latino community toward a Pittsburgh region that celebrates Latino culture, welcomes immigrants, and embraces inclusion, dignity, and respect. In addition to voter engagement for the Latino community, Casa San José provides a variety of resources including weekly clinics, food pantries, summer camps, community meetings, and Know Your Rights sessions, among other services.

25. In connection with every election cycle, Casa San José does voter outreach in Allegheny, Beaver, Butler, Erie, Indiana, Lawrence, Washington, and Westmoreland counties. Casa San José engages the rapidly growing Latino community through phone calls, relational organizing, text messaging, and digital ads with a goal to increase the civic participation of the Latino communities. In 2022, for example, Casa San José conducted three phone call campaigns and three text campaigns, in addition to holding civic engagement events and distributing voter education information through social media sites, including Spanish videos with information on the importance of voting and the impact on local communities.

26. Respondent Schmidt’s direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects Casa San José’s members and interferes with its ability to carry out its mission of increasing voter turnout and participation. Respondent Allegheny County Board of Elections’ failure to count such ballots will also compel Casa San José to continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, Casa San José will have to divert volunteers and staff from its other voter education and mobilization efforts to help ensure people are not disenfranchised by the envelope date requirement. As in past elections since at least 2022, Casa San José will need to spend time making thousands of “ballot chasing” calls and text messages educating voters on the danger of being disenfranchised based on envelope dating issues.

b. In the 2022 election, phone calls and texts that included information on envelope dating issues were completed by a Community Policy Organizer and six volunteers.

c. Contacting voters and spending time and effort on the correct way to fill out the mail ballot envelope is time consuming and requires Casa

San José to carefully train callers and volunteers to make sure they emphasize the need for the date and the consequences for omitting it.

d. But for application of the rule at issue in this case, resources and staff deployed to reach out to voters who thought they already voted properly could be used for a multitude of other activities core to Casa San José's mission, including but not limited to: creating educational material to help voters understand the importance of elections; engaging with more voters through phone calls and text messages; additional canvassing in predominantly Latino neighborhoods; and registering more voters, especially first time voters.

e. If the mail ballot dating rule continues to be enforced in a way that disenfranchises voters in future elections, Casa San José will have to continue diverting its time and resources away from these activities and toward addressing mail ballot envelope dating issues with voters who thought they already voted properly, as it did in 2022, in connection with the November 2024 general election.

27. Pittsburgh United is a nonpartisan organization that strives to advance social and economic justice in the Pittsburgh region. It is a membership and coalition organization employing 31 staff members in six offices, one each in Pittsburgh, Ambridge, Meadville, Erie, Greensburg and State College.

28. Among its other community-based initiatives, Pittsburgh United staff and volunteers work to increase civic engagement in the communities it serves, including through work to increase voter turnout and expand access to mail voting in Black, low-income, and white working class communities across its six chapters in Allegheny, Beaver, Erie, Crawford, Centre, and Westmoreland Counties.

29. In connection with each election cycle, Pittsburgh United engages with voters in a variety of ways, including door-to-door canvassing, phone, text and digital outreach. Over the past four years, Pittsburgh United has made hundreds of thousands of phone calls and knocked on hundreds of thousands of doors. Its staff and volunteers provide nonpartisan information on the election process, and how elections directly impact the issues that matter most to the organization and its members, such as jobs, housing, racial justice, and climate equity. Pittsburgh United uses a variety of methods to reach voters and distribute information via social media platforms many times using content created by its coalition partners.

30. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects Pittsburgh United's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. Respondent Allegheny County Board of Elections' failure to count such ballots

will also compel Pittsburgh United to continue diverting resources in this and future elections from its other voter education and mobilization efforts.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, Pittsburgh United will have to divert volunteers and staff from its other voter education and mobilization efforts to help ensure people are not disenfranchised by the envelope date requirement.

b. In their direct voter outreach, Pittsburgh United staff and volunteers will have to continue spending time with voters explaining the numerous steps required to accurately complete a mail ballot, including the date field, and talking to voters who have had their ballot fail to be counted. They will also have to continue devoting significant resources to calling voters whose mail ballots were rejected because of a handwritten date error on the outer envelope and advising them to contact their county or go to their local polling place and cast a provisional ballot on election day.

c. Pittsburgh United has extremely limited resources to reach people who are typically left out of the process of voting. The time necessary to explain the steps of correctly filling out a mail ballot, including the dating requirement, slows down its staff because they have to take more

time in each conversation with a voter, ultimately reducing the number of voters Pittsburgh United can reach leading up to the 2024 election.

d. But for application of the rule at issue in this case, the additional resources and staff spent with voters who thought they already voted properly could be used both for more voter outreach and for a multitude of other activities core to Pittsburgh United’s mission, including but not limited to its “Clean Rivers Campaign,” its “Our Water Campaign,” its worker campaigns, and its affordable housing campaigns.

31. The League of Women Voters of Pennsylvania (“the League”) is a non-partisan statewide non-profit formed in 1920. The League and its members are dedicated to helping the people of Pennsylvania exercise their right to vote, as protected by the law. The League encourages informed and active participation in government, works to increase understanding of major public policy issues, and seeks to influence public policy through education and advocacy. The League is a predominantly volunteer organization and has 30 member chapters and one Inter-League Organization operating in 28 counties around the Commonwealth. The League has nearly 2,500 individual members who are registered voters and regularly vote in state and federal elections using, among other methods, absentee and mail ballots.

32. The League's mission is to empower voters and defend democracy, which includes voter registration, education, and get-out-the-vote drives. During every election cycle, the League conducts voter-registration drives, staffs nonpartisan voter-registration tables, educates incarcerated and formerly incarcerated individuals about their voting rights, and works with local high schools and universities to register young voters. The League maintains voter information resources on its website in English and Spanish. It also maintains an online database called VOTE411, a nonpartisan and free digital voter resource with information available in both English and Spanish, including registration information, voter guides, mail-in ballot information, candidate information, polling rules and locations.

33. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects the League's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. The County Respondents' failure to count such ballots will also force the League to continue diverting resources in this and future elections from its other voter education and mobilization efforts towards investigating and educating voters about any available cure processes or to advocate that new processes be developed to ensure that voters

who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, the League will have to divert volunteers and staff from its other voter education and engagements efforts to help ensure people are not disenfranchised by the envelope date requirement, as it has in prior election cycles since at least 2022.

b. In 2022, for example, the League had to reassign its members' and volunteers' time and efforts from its core activities towards contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their ballot set aside. Following the Pennsylvania Supreme Court's decision in *Ball v. Chapman, et al.*, 284 A.3d 1189 (Pa. 2022) just before Election Day and after many LWVPA members and others served by LWVPA's mission had already submitted mail ballots, the League was forced to redirect its limited resources, including staff and volunteer time, to efforts to inform voters of this change and educate them about how to avoid disenfranchisement. League staff members and volunteers spent time contacting voters directly through any means possible, including via email,

in person, and through social media, to alert them that their ballot would not be counted because of the missing or incorrect date and provided steps that voters could take to rectify the error. The League also enlisted staff members and volunteers from its local chapters and coordinated the chapters' efforts to broadcast the potential to cure ballots on social media channels, sharing available information including, when possible, direct links to undated ballot lists. The League developed and issued a statement about the Pennsylvania court's ruling, and the League's members spent time creating content for its websites, posting information on social media, and attending Board of Elections meetings urging counties to provide notice and cure opportunities for mail-ballot voters.

c. Similar work continued into the 2024 primary election season and in preparation for the 2024 general election season. For example, as a direct result of the uncertainty around the mail ballot envelope dating requirement, the League developed and hosts a webinar—"Ballot Box Basics"—to educate voters about the steps to successfully vote by mail. The League has had to spend resources developing this series to inform voters of the required steps—especially the date requirement—to ensure a ballot does not get rejected for a dating error. League staff also publish written materials to educate voters on how to avoid a ballot being rejected, including through

social media posts, emails, and postcards and flyers about the intricacies of voting by mail and the importance of the date requirement to have one's ballot counted. And League staff do media appearances to educate voters about the date requirement and the potential for disenfranchisement if a voter makes minor mistakes when completing a mail-in ballot. Local League chapters also dedicate time and resources to informing voters about the date requirement during the dozens of voter registration and education events they host across the Commonwealth.

d. If the LWVPA didn't have to devote the time, staff, and financial resources to educating voters about the logistics of completing a mail ballot, the importance of properly filling in the date, and checking to ensure that ballots are ultimately counted, it could instead focus on other important forms of voter engagement and participation, including: helping individuals make a personalized plan to vote and developing creative solutions to eliminate voters' personal obstacles to voting; conducting more outreach and voter registration efforts with new voters, younger voters, and voters from marginalized communities; educating more voters about substantive issues that affect their lives and communities, and generally directing resources toward making Pennsylvanians more efficacious and informed voters.

e. The envelope dating requirement further hinders the League’s mission by generating confusion around mail-in ballots and mistrust around the electoral process, which in turn decreases voter participation. Any aspect of the voting process that makes it harder for voters to successfully cast a ballot and have it counted—such as not counting ballots over a dating error—harms the League’s efforts to increase voter participation and confidence in the electoral process. Absent the relief requested in this case, the League will continue in the 2024 General Election and other future elections to divert staff, member and volunteer resources from their core activities toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope.

34. Common Cause Pennsylvania (“Common Cause PA”) is a non-profit, non-partisan organization, and a chapter of the national Common Cause organization. Common Cause PA is a non-partisan good government organization with approximately 36,000 members and supporters who live in all 67 counties of Pennsylvania, including Allegheny and Philadelphia Counties.

35. One of Common Cause PA’s core functions is to increase the level of voter registration and voter participation in Pennsylvania elections, especially in communities that are historically underserved and whose populations have a low

propensity for voting. In preparation for every major state-wide election, Common Cause PA mobilizes hundreds of volunteers to help fellow Pennsylvanians navigate the voting process and cast their votes without obstruction, confusion, or intimidation. As part of these efforts, Common Cause PA is a leader of the nonpartisan Election Protection volunteer program in Pennsylvania, which works to ensure voters have access to the ballot box, to provide voters with necessary and accurate information about voting and answer their questions, to quickly identify and correct any problems at polling places, and to gather information to identify potential barriers to voting.

36. Respondent Schmidt's direction to set aside and not count timely-submitted mail ballots based solely on a missing or incorrect date on the return envelope directly affects Common Cause PA's members and interferes with its ability to carry out its mission of increasing voter turnout and participation. The County Respondents' failure to count such ballots will also force Common Cause PA to continue diverting resources in this and future elections from its other voter education and mobilization efforts towards investigating and educating voters about any available cure processes or to advocate that new processes be developed to ensure that voters who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake.

a. During the 2024 election cycle, as it has in prior elections since Respondents began enforcing the envelope dating requirement to disenfranchise voters, Common Cause PA will have to divert volunteers and staff from its other voter education and engagements efforts to help ensure people are not disenfranchised by the envelope date requirement, as it has in prior election cycles since at least 2022.

b. During the 2022 election, for example, Common Cause PA had to reassign its volunteers' time and efforts from Common Cause PA's other efforts toward contacting and educating voters who had already submitted their mail ballots about how to fix problems with the mail ballot envelope date and avoid having their vote set aside. When Respondent Schmidt's predecessor announced that ballot envelopes with an incorrect or missing date would be segregated and not counted, Common Cause PA ensured that accurate information was available for voters, including those in Allegheny and Philadelphia Counties. Additionally, Common Cause PA issued the press advisories, held press briefings and issued press statements with the goal of alerting as many voters as possible to the Commonwealth's requirements.

c. Heading into the 2024 General Election and other future elections, Common Cause PA will continue to divert its volunteer resources

from its intended mission—educating and mobilizing voters—toward addressing the risk that voters who have already submitted their mail ballots may have their ballot set aside due to an error or omission of the handwritten date on the mail ballot return envelope.

d. If Common Cause PA did not have to devote time, staff, and financial resources to educating voters about the *logistics* of completing a mail ballot, the importance of properly filling in the date, and checking to ensure that ballots are ultimately counted, it could instead focus on other important forms of voter engagement and participation, including informing additional eligible citizens about how to register to vote, working to debunk election-related misinformation, and conducting additional voter education efforts.

37. Respondent Al Schmidt is the Secretary of the Commonwealth. The Pennsylvania Election Code confers authority upon the Secretary to implement absentee and mail voting procedures throughout the Commonwealth.

38. Specifically, the absentee and mail-in ballots must be in a form as provided by statute which form “shall be determined and prescribed by the secretary of the commonwealth.” 25 P.S. § 3146.3(b) (absentee ballots); *id.* § 3150.13(b) (mail-in ballots).

39. Similarly, the Election Code mandates that the form of the declaration printed on absentee and mail ballot envelopes, which includes a place for voters to insert the date, must be “as prescribed” by the secretary of the commonwealth. 25 P.S. § 3146.4 (absentee ballots); *id.* § 3150.14 (mail-in ballots).

40. In accordance with its specific statutory authority, before the 2024 primary election, Respondent Schmidt redesigned the mail ballot return envelope. Among other things, he included a field that pre-populated “20” at the beginning of the year on the outer return envelope. *Shapiro Administration Introduces Redesigned Mail Ballot Materials To Give Votes Clearer Instructions, Decrease Number Of Rejected Ballots, And Ensure Every Legal Vote Is Counted*, Pennsylvania Pressroom, Nov. 29, 2023, <https://www.media.pa.gov/pages/state-details.aspx?newsid=584>. Nevertheless, voters across the Commonwealth continued to make inconsequential envelope dating mistakes even on the DOS redesigned envelope. See Carter Walker, *Pennsylvania’s redesigned mail ballot envelopes trip up many voters who left date incomplete*, Votebeat Pennsylvania, Apr. 23, 2024, <https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>; <https://ny1.com/nyc/all-boroughs/politics/2024/04/24/pennsylvania-voters-ballot-envelopes>

41. In Respondent Schmidt’s official capacity, he has the duty “[t]o receive from county boards of elections the returns of primaries and elections, to

canvass and compute the votes cast for candidates and upon questions as required by the provisions of this act; to proclaim the results of such primaries and elections, and to issue certificates of election to the successful candidates at such elections. . . .” 25 P.S. § 2621(f).

42. Respondent Schmidt and his predecessors have issued guidance to county boards of elections that timely-submitted mail-in ballots with a missing or incorrect date on the return envelope must be segregated and excluded from tabulation. Specifically, on November 3, 2022, the Secretary issued guidance instructing counties that “ballots which are administratively determined to be undated or incorrectly dated” should be coded as “CANC – NO SIGNATURE within the SURE system” (*i.e.*, should be canceled and not accepted) and “segregated from other ballots.” *Guidance on Undated and Incorrectly Dated Mail-in and Absentee Ballot Envelopes Based on the Pennsylvania Supreme Court’s Order in Ball v. Chapman*, at 1, Pa. Dep’t of State, Nov. 3, 2022 (Archived),

<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2022-11-03-Guidance-UndatedBallot.pdf>. On April 3, 2023, Respondent Schmidt issued guidance stating, in relevant part, “A ballot-return envelope with a declaration that is not signed *or dated* is not sufficient and must be set aside, declared void, and may not be counted”; and any declarations “that contain a date deemed by the

county board of elections to be incorrect should be set aside and segregated.”

Guidance Concerning Civilian Absentee And Mail-In Ballot Procedures, at 6, Pa.

Dep’t of State, Updated Apr. 3, 2023,

<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2023-04-03-DOS-Guidance-Civilian-Absentee-Mail-In-Ballot-Procedures-v3.pdf>

43. Following the Third Circuit’s decision in *NAACP v. Schmidt*, the Department of State continued to instruct counties not to count ballots arriving in undated or incorrectly-date declaration envelopes. For instance, in an April 19, 2024 email, Deputy Secretary Jonathan Marks provided “the Department’s view” that certain handwritten dates that can “reasonably be interpreted” as the date in which the voter completed the declaration—such as omitting “24” in the year field—“should not be rejected.”³ However, the Department did otherwise not modify its previous guidance that envelopes that lack a date or have an otherwise “incorrect” date should not be counted.

44. The Boards of Elections of Allegheny and Philadelphia Counties are responsible for administering elections in their respective counties. Section 301 of the Election Code, 25 P.S. § 2641. County Boards are also charged with ensuring

³ A true and correct copy of the April 19, 2024 DOS email to county election officials is attached hereto as Exhibit 13.

elections are “honestly, efficiently, and uniformly conducted.” 25 P.S. § 2642(g).

As relevant to absentee ballots, County Boards are responsible for:

- a. reviewing and processing applications for absentee and mail ballots. 25 P.S. § 3146.2b, 3150.12b;
- b. confirming an absentee applicant’s qualifications by verifying their proof of identification and comparing the information on the application with information contained in the voter’s record. 25 P.S. §§ 3146.2b, 3150.12b; *see also id.* § 3146.8(g)(4).
- c. sending a mail-ballot package that contains a ballot, a “secrecy envelope” marked with the words “Official Election Ballot,” and the pre-addressed outer return envelope, on which a voter declaration form is printed (the “Return Envelope”). *Id.* §§ 3146.6(a), 3150.16(a).
- d. maintaining poll books that track which voters have requested mail ballots and which have returned them. *Id.* §§ 3146.6(b)(3), 3150.16(b)(3).
- e. Upon return of an absentee ballot, stamping the Return Envelope with the date of receipt to confirm its timeliness. *See Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* at 2–3, Pa. Dep’t of State, (Sept. 11, 2020), <https://campaignlegal.org/sites/default/files/2020->

[09/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf](#)

f. Logging returned absentee ballots in the Department of State’s Statewide Uniform Registry of Electors (“SURE”) system, the voter registration system. *See* Pa. Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* at 2–3, Pa. Dep’t of State, (Sept. 11, 2020),

<https://campaignlegal.org/sites/default/files/2020-09/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf>

g. Keeping returned absentee ballots in sealed or locked containers until they are canvassed by the County Board. 25 P.S. § 3146.8(a)

h. Pre-canvassing and canvassing absentee ballots, including examining the voter declaration. 25 P.S. § 3146.8(g).

i. Conducting a formal hearing to hear challenges as to all challenged absentee ballot applications and challenged absentee ballots. 25 P.S. § 3146.8(g)(5).

IV. FACTS

Pennsylvania's Mail Ballot Rules

45. Pennsylvania has long provided absentee ballot options for voters who cannot attend a polling place on Election Day. *See* 25 P.S. § 3146.1–3146.9. In 2019, Pennsylvania enacted new mail-in voting provisions, extending the vote-by-mail option to *all* registered, eligible voters. Act of Oct 31, 2019, P.L. 552, No. 77, § 8.

46. A voter seeking to vote by mail must complete an application and send it to their county board of elections that includes their name, address, and proof of identification. 25 P.S. §§ 3146.2, 3150.12. Such proof of identification must include, a Pennsylvania driver's license number, or non-driver identification number, if the voter has one. If the voter does not have a PennDOT-issued identification, they must provide the last four digits of the voter's social security number. 25 P.S. § 2602(z.5)(3). As part of the application process, voters provide all the information necessary for county boards of elections to verify that they are qualified to vote in Pennsylvania, namely, that they are at least 18 years old, have been a U.S. citizen for at least one month, have resided in the election district for at least 30 days, and are not currently incarcerated on a felony conviction. *See* 25 Pa.C.S. § 1301.

47. After the application is submitted, the county board of elections confirms applicants' qualifications by verifying their proof of identification and comparing the information on the application with information contained in a voter's record. 25 P.S. §§ 3146.2b, 3150.12b; *see also id.* § 3146.8(g)(4).⁴ The county board's determinations on that score are conclusive as to voter eligibility unless challenged prior to Election Day. *Id.*

48. Once the county board verifies the voter's identity and eligibility, it sends a mail-ballot package that contains a ballot, a "secrecy envelope" marked with the words "Official Election Ballot," and the pre-addressed outer return envelope, on which a voter declaration form is printed (the "Return Envelope"). *Id.* §§ 3146.6(a), 3150.16(a). Poll books kept by the county show which voters have requested mail ballots and which have returned them. *Id.* §§ 3146.6(b)(3), 3150.16(b)(3).

49. At "any time" after receiving their mail-ballot package, the voter marks their ballot, puts it inside the secrecy envelope, and places the secrecy envelope in the Return Envelope. 25 P.S. §§ 3146.6(a), 3150.16(a). The voter

⁴ *See also* Pa. Dep't of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* at 2 (Sept. 11, 2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf>.

delivers the ballot, in the requisite envelopes, by mail or in person, or by other designated method, to their county board of elections.

50. The Election Code provides that the voter “shall...fill out, date and sign the declaration” printed on the outer envelope used to return their mail ballots. *See* 25 P.S. §§ 3146.6(a), 3150.16(a).

51. However, the date written on the envelope is not used to establish whether the mail ballot was submitted on time. Indeed, lawsuits in both state and federal court have conclusively demonstrated that the date is meaningless, necessary neither to establish voter eligibility nor timely ballot receipt. *See, e.g., NAACP*, 97 F.4th 120, 129 (3d Cir. 2024) (“Nor is [the handwritten date] used to determine the ballot’s timeliness because a ballot is timely if received before 8:00 p.m. on Election Day, and counties’ timestamping and scanning procedures serve to verify that. Indeed, not one county board used the date on the return envelope to determine whether a ballot was timely received in the November 2022 elections.”). *See also Pennsylvania State Conf. of NAACP v. Schmidt*, No. 1:22-CV-00339, 2023 WL 8091601, at *32 (W.D. Pa. Nov. 21, 2023) (Baxter, J.) (“Whether a mail ballot is timely, and therefore counted, is not determined by the date indicated by the voter on the outer return envelope, but instead by the time stamp and the SURE system scan indicating the date of its receipt by the county board”).

52. A mail ballot is timely so long as the county board of elections receives it by 8 p.m. on Election Day. *Id.* §§ 3146.6(c), 3150.16(c). Upon receipt of a mail ballot, county boards of elections stamp the Return Envelope with the date of receipt to confirm its timeliness and log it in the Department of State’s Statewide Uniform Registry of Electors (“SURE”) system, the voter registration system used to generate poll books.⁵

53. A voter whose mail ballot was timely received could have signed the voter declaration form *only* in between the date their county board sent the mail-ballot packages and the Election-Day deadline. Ballots received by county boards *after* 8 p.m. on Election Day are not counted regardless of the handwritten envelope date. *See NAACP*, 2023 WL 8091601, at *32 (“Irrespective of any date written on the outer Return Envelope’s voter declaration, if a county board received and date-stamped a . . . mail ballot before 8:00 p.m. on Election Day, the ballot was deemed timely received . . . [I]f the county board received a mail ballot after 8:00 p.m. on Election Day, the ballot was not timely and was not counted, despite the date placed on the Return Envelope”), *rev’d on other grounds*, *NAACP*, 97 F.4th 120 (3d Cir. 2024).

⁵ See, e.g., *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* at 2–3, Pa. Dep’t of State, (Sept. 11, 2020).

54. Timely absentee and mail-in ballots are then verified consistent with procedures set forth in § 3146.8(g)(3). Any ballot that has been so verified by the county board of elections and has not been challenged is counted and included with the election results. *Id.* § 3146.8(d), (g)(4).

55. Pennsylvania’s adoption of mail voting has been a boon for voter participation in the Commonwealth. For example, in 2020, 2.7 million Pennsylvanians voted by absentee or mail ballot.⁶

56. In the 2024 primary election, approximately 714,315 Pennsylvania voters returned mail ballots.⁷

57. But the enforcement of the dating provision again resulted in the arbitrary and baseless rejection of thousands timely ballots.

58. On information and belief, in the 2024 Presidential primary election, several thousand timely absentee and mail-in ballots were rejected because of the envelope dating provision.

⁶ *Report on the 2020 General Election* at 9, Pa. Dep’t of State, (May 14, 2021), <https://www.dos.pa.gov/VotingElections/Documents/2020-General-Election-Report.pdf>. For ease of reference, the term “mail ballots” is used herein to encompass both absentee and mail ballots. The relevant rules governing the treatment of absentee and mail ballots are identical.

⁷ The number of returned ballots is alleged based on data provided by the Pennsylvania Department of State. Turnout in the 2024 primary has not been fully reported, but approximately 1.9 million voters voted based on the number of votes cast in the statewide U.S. Senate race *See* 2024 Presidential Primary (Unofficial Returns) Statewide, Apr. 23, 2024, accessed May 17, 2024 <https://www.electionreturns.pa.gov/>

59. This is not new. In the 2022 election, over 10,000 timely absentee and mail-in ballots were rejected because of the dating provision. In the 2023 municipal elections, nearly 7,000 eligible Pennsylvania voters' absentee and mail ballots were initially⁸ rejected due to application of the envelope dating provision. *See* Ex. 1 (5/27/24 Decl. of A. Shapell (“Shapell Decl.”)) at ¶ 12(a).

Previous Litigation over the Envelope-Date Requirement

60. Despite the date requirement's complete irrelevance to the electoral process and its devastating impact on the fundamental right to vote, it has withstood prior court challenges based on state-law statutory-interpretation principles and the Materiality Provision of the Civil Rights Act. Specifically, between 2020 and 2022, several courts addressed statutory construction of the Election Code concerning the envelope-dating provision -- reaching different conclusions. *Compare In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1062 (Pa. 2020), *cert. denied*, 141 S. Ct. 1451 (2021) (concluding they would be counted for 2020 election only but not in future) *with Ritter v. Lehigh Cnty. Bd. of Elections*, 272 A.3d 989 (Pa. Commw. Ct. Jan. 3, 2022), *appeal denied*, 271 A.3d 1285 (Pa. 2022) (ruling statute required

⁸ County boards ultimately counted many of the votes that were initially set aside in the 2023 General Election, following the U.S. District Court's December 2023 determination in *NAACP, et al. v. Schmidt*, 2023 WL 8091601, that the envelope dating provision violates the federal Materiality Provision. That decision was later reversed on the merits by the Third Circuit in 2024, after several counties had already counted initially rejected ballots from the 2023 election.

undated envelopes should not be counted). Additional courts considered whether the dating provision violated the Materiality Clause of the Civil Rights Act, also reaching different conclusions. *Compare Migliori v. Cohen*, 36 F.4th 153, 162-64 (3d Cir.), *vacated as moot*, 143 S. Ct. 297 (2022) (concluding immaterial) and *NAACP v. Schmidt*, 2023 WL 8091601 (W.D. Pa. Nov. 21, 2023) (same) and *Chapman v. Berks Cnty. Bd. of Elections*, No. 355 M.D. 2022, 2022 WL 4100998, at *12–*29 (Pa. Commw. Ct. Aug. 19, 2022) (same) and *McCormick for U.S. Senate v. Chapman*, No. 286 M.D. 2022, 2022 WL 2900112, at *9–*15 (Pa. Commw. Ct. June 2, 2022) (same) *with Ball v. Chapman*, 289 A.3d 1, 33-34 (Pa. 2023) (deadlocking 3-to-3 as to materiality) *with NAACP v. Schmidt*, 97 F.4th 120 (3rd Cir. 2024) (concluding material).

61. However, no court has decided whether applying this provision to disenfranchise voters violates their fundamental right to vote under the Pennsylvania Constitution’s Free and Equal Elections Clause. Pa. Const. art. I, § 5.

62. In a previous case concerning the Materiality Clause, three of the six Pennsylvania Supreme Court justices in *Ball v. Chapman* expressly acknowledged that, even if the federal Materiality Provision does not require canvassing of mail ballots received in undated envelopes:

[F]ailure to comply with the date requirement would not compel the discarding of votes in light of the Free and Equal Elections

Clause, and our attendant jurisprudence that ambiguities are resolved in a way that will enfranchise, rather than disenfranchise, the electors of this Commonwealth.

Ball, 289 A.3d at 27 n.156 (emphasis added) (citing Pa. Const. art. I, § 5; *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020)), *cert. denied*, 141 S. Ct. 732 (2021).

63. Meanwhile, evidence adduced in prior litigation over the envelope dating provision reflects that enforcement of this provision has been arbitrary and has disenfranchised a significant number of Pennsylvania voters. For example, the evidence in the *Ritter* litigation found that of the 257 timely-received mail ballots based on mail-ballot voters' inadvertent failure to handwrite a date on the Return Envelope, three-quarters of the affected voters were over 65 years old, and fifteen of them were older than 90.⁹

64. Similarly, evidence in the *NAACP v. Schmidt* case indicated that over 10,000 ballots had been rejected in the 2022 general election alone based on the envelope dating requirement, and that the requirement was inconsistently and arbitrarily enforced. The plaintiffs obtained discovery from all 67 counties and found dramatic inconsistencies in how voters had been treated. *See NAACP*, 2023 WL 8091601, at *32 (Baxter, J.) (“[T]he record is replete with evidence that the

⁹ These and other facts relating to the 2021 Lehigh County election are drawn from the Joint App'x in *Migliori v. Cohen*, No. 22-1499 (3d Cir.), Dkt.33-2.

county boards' application of the *Ball* order in the November 2022 general election created inconsistencies across the Commonwealth in the way 'correctly dated' and 'incorrectly dated' ballots were rejected or counted by different counties.”). For example:

a. Many county boards refused to count ballots where the envelope date was correct but missing one term, such as “Oct. 25” with no year provided, even though they only could have been signed during 2022. *Id.* at *33 (“[A]cross the Commonwealth other timely-received ballots were set aside because the voter declaration omitted the year; omitted the month; omitted the day”). But others counted such ballots. *Id.* at *33, n. 43-45.

b. Some county boards set aside ballots where the voter put the date elsewhere on the envelope, or included “a cross-out to correct an erroneous date.” *Id.*

c. County boards took varying approaches to dates that appeared to use the international format (*i.e.*, day/month/year), with some counties basing the date range “strictly on the American dating convention” and others “try[ing] to account for both the American and European dating conventions. . . .” *Id.* at *33. *See also Id.* (“Ballots were set aside for having incorrect dates which, if construed using the European dating convention, would have been within the *Ball* date range”) (footnote omitted).

d. Many county boards counted ballots with necessarily “incorrect” envelope dates—*e.g.*, the handwritten date was before the county sent out the mail-ballot package, or after the elections board received it back from the voter—because the date written nevertheless fell within the date range that the Pennsylvania Supreme Court identified in its supplemental order in *Ball*. *Id.* (“The record reveals that some counties precisely followed the *Ball* date range even where the date on the return envelope was an impossibility because it predated the county's mailing of ballot packages to voters”).

e. At least one county board counted a ballot marked September 31—a date that does not exist. *Id.* at *33, n. 45.

f. County boards also took inconsistent approaches to voters who mistakenly wrote their birthdates on the date line, with most refusing to do so. *Id.* at *33.

65. In addition, “[s]imple voter error and partial omissions related to the date declaration also resulted in rejection of mail ballots that were timely received. . . .” *Id.* For instance:

a. More than 1,000 *timely-received* ballots were set aside and not counted because of “an obvious error by the voter in relation to the date,” such as writing a month prior to September or a month after November 8. *Id.*

The *NAACP* district court found that this “shows the irrelevance of any date written by the voter on the outer envelope.” *Id.*

b. On information and belief, counties also refused to count an hundreds of timely-received ballots with obviously unintentional slips of the pen, such as a voter writing a year prior to the election (e.g. “2021”) or a year in the future (e.g. “2023”). Yet the *NAACP* district court agreed that it was a “factual impossibility” for a voter to have signed the mail-ballot envelope any year before the election. *Id.* In other instances of rejected ballots, voters made simple typos such as “2033” or “2202” instead of “2022.”

c. On information and belief, county boards attempting to apply the directive to set aside envelopes bearing “incorrect” dates ultimately failed to count many ballots where it turned out the voter had actually written a correct date.

66. Moreover, in *NAACP v. Schmidt* the district court confirmed that the handwritten-date requirement serves absolutely no purpose and concluded in granting the plaintiffs’ motion for summary judgment that it was beyond dispute that the Date Requirement was “wholly irrelevant” in determining when the voter filled out the ballot or whether the ballot was timely received by 8:00 p.m. on Election Day. *See NAACP*, 2023 WL 8091601, at *29 (Baxter, J.). Further, the

evidence at the district court “show[ed], and the parties either agree . . . or admit . . .” that county boards did not use the date “*for any purpose* related to determining a voter’s age, citizenship, county or duration of residence, felony status, or timeliness of receipt.” *Id.* at *22, *29. In fact, the undisputed record before the district court revealed that the 10,000-plus mail ballots that were not counted in the November 2022 elections were all timely submitted by otherwise qualified voters and the *only* basis for rejecting those votes was the failure to write a date or writing a date that was deemed “incorrect.”

67. These findings were confirmed on appeal. *NAACP*, 97 F.4th at 125 (“The date requirement, it turns out, serves little apparent purpose”); *id.* at 127 (“[I]t may surprise, the date on the declaration plays no role in determining a ballot’s timeliness”); *id.* at 131 (The Materiality Provision does not “preempt state requirements . . . regardless what (if any) purpose those rules serve”); *id.* at 139-40 (Shwartz, J., dissenting) (In the November 2022 election, “10,000 timely-received ballots were not counted because they did not comply” with the Date Requirement “even though the date on the envelope is not used to (1) evaluate a voter’s statutory qualifications to vote, (2) determine the ballot’s timeliness, or (3) confirm that the voter did not die before Election Day or to otherwise detect fraud”).

The 2024 Primary Election

68. Throughout all of the foregoing cases, Respondent Schmidt and his predecessors had consistently taken the position that eligible voters who timely submit mail ballots should have their ballots counted regardless of the envelope-dating rule. *See, e.g., Ball*, 289 A.3d at 16 (“the Acting Secretary argues that none of the proffered justifications for the date requirement withstand scrutiny, and that if the Court finds any ambiguity in the Election Code, such ambiguity should be resolved in favor of the exercise of the franchise”) (footnote omitted).

69. Following the Third Circuit’s decision in *NAACP v. Schmidt*, however, the Department of State’s instruction to counties – i.e., that they segregate and not count ballots that were received in envelopes that lacked the date or had a handwritten date that was deemed “incorrect” – remained in place. *See Ex. 13* (April 19, 2024 email from Deputy Secretary Jonathan Marks, instructing counties not to reject ballots where the handwritten date can “reasonably be interpreted” as the date the voter signed the declaration, but not otherwise modifying its prior guidance that ballots arriving in undated or incorrectly dated envelopes must be set aside and not counted).

70. On information and belief, as of the date of this Petition, Pennsylvania county boards of elections had recorded their receipt of 714,315 mail ballots in the Department of State’s Statewide Uniform Registry of Electors (“SURE”) system

for the 2024 Primary Election. That number represents more than 37% of all ballots cast in the primary.

71. Pursuant to Respondent Schmidt’s guidance, no county boards of elections canvassed any mail ballot received in an outer return envelope that is missing a voter-written date or has a date that the county board deemed “incorrect.”

72. As a result, thousands of mail-ballot envelopes have been set aside and segregated—and the ballots contained therein were not counted—pursuant to Respondent’s guidance because they were received in return envelopes with missing or incorrect handwritten dates next to the voters’ signatures.

73. On information and belief, more than 4,000 such ballots were marked as canceled in the SURE system for 2024 primary election due to a missing or incorrect handwritten date as of the date of this Petition. *See* Ex. 1 (Shapell Decl.) at ¶ 12(b).

74. Voters across the Commonwealth continued to make envelope dating mistakes even on the DOS redesigned envelopes in 2024. *See*

<https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>; <https://ny1.com/nyc/all-boroughs/politics/2024/04/24/pennsylvania-voters-ballot-envelopes>

75. Even in a low-turnout election, application of the envelope dating rule resulted in rejection of thousands of timely submitted mail and absentee ballots submitted by eligible Pennsylvania voters.

76. As noted above, thousands of voters were impacted by the date requirement in the 2024 primary – this impacted eligible Pennsylvania voters of all walks of life and across the political spectrum who were disenfranchised by this rule in the 2024 primary election. These are some of the impacted individuals:

a. Allegheny County voter Otis Keasley, a 73-year-old Vietnam veteran who rarely misses an opportunity to vote. Mr. Keasley timely applied for and received a mail ballot package from Respondent Allegheny County Board of Elections, marked his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and mailed it to the elections office rather than dropping it off in person because he was dealing with a family health issue. Respondent Allegheny County Board of Elections timely received Mr. Keasley's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Keasley's timely mail ballot submission, and he believed he had done everything correctly. Mr. Keasley did not learn until after the date

of the primary that there was a problem with his mail ballot submission, and his primary vote was not counted. *See* Ex. 2 (Keasley Decl.).

b. Allegheny County voter Joanne Sowell, a 76-year-old Pittsburgh resident who rarely misses an opportunity to vote. Ms. Sowell timely applied for and received a mail ballot package from Respondent Allegheny County Board of Elections, marked her ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. She then signed the envelope and returned it to the elections office early because she had travel plans on the day of the 2024 primary, believing she had done everything correctly. Respondent Allegheny County Board of Elections timely received Ms. Sowell's mail ballot well in advance of 8pm on April 23, 2024, but decided to set her ballot aside due to a purported envelope dating error. There were no other errors with Ms. Sowell's timely mail ballot submission. Ms. Sowell was boarding a flight when she saw an email notifying her that her ballot would not be counted because of the date issue, and she was unable to correct the purported issue with her ballot submission as she did not return home until after April 23. Ms. Sowell's primary vote was not counted. *See* Ex. 3 (Sowell Decl.).

c. Philadelphia voter Eugene Ivory, a 74-year-old retired Philadelphia educator who has been voting regularly for more than 50 years.

Mr. Ivory timely applied for and received a mail ballot package from Respondent Philadelphia County Board of Elections, marked his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and returned the ballot package at a dropbox located at the Eastwick Library on or about April, 22, 2024. Respondent Philadelphia County Board of Elections timely received Mr. Ivory's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Ivory's timely mail ballot submission, and he believed he had done everything correctly. Mr. Ivory received a notice on the date of the primary election that his ballot may not be counted due to an incorrect date on the envelope, but he was unable to correct the error or cast a provisional ballot in person that day due to a family emergency. Respondent Philadelphia County Board of Elections did not count Mr. Ivory's primary vote. *See Ex. 4 (Ivory Decl.)*.

d. Philadelphia voter Bruce Wiley, a 71-year-old home-bound voter who voted by mail for the first time in the 2024 primary due to health limitations that prevent him from leaving the home except for doctor appointments. Mr. Wiley timely applied for and received a mail ballot package from Respondent Philadelphia County Board of Elections, marked

his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and mailed it to the elections office in advance of primary day. Respondent Philadelphia County Board of Elections timely received Mr. Wiley's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Wiley's timely mail ballot submission, and he believed he had done everything correctly. Mr. Wiley did not learn until after the date of the primary that there was a problem with his mail ballot submission, and his primary vote was not counted. *See Ex. 5 (Wiley Decl.)*.

e. Montgomery County Stephen Arbour, a Chief Technology Officer who has dutifully voted in every election since becoming a naturalized U.S. citizen in 2010. Mr. Arbour timely applied for and received a mail ballot package from the Montgomery County Board of Elections, marked his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and returned it prior to the primary election day. The Montgomery County Board of Elections timely received Mr. Arbour's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Arbour's timely mail ballot

submission, and he believed he had done everything correctly. Mr. Arbour received an email notification on April 22, 2024, that his ballot may not count due to a mistake in the date on the declaration form but could not go in person to cure the error or cast a provisional ballot on election day due to work and family commitments. His primary vote was not counted. *See Ex. 6 (Arbour Decl.)*.

f. York County voter Kenneth Hickman, an 89-year-old retired mechanical engineer who has been voting since 1973. Mr. Hickman timely applied for and received a mail ballot package from the York County Board of Elections, marked his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and mailed it to the elections office within a week or two of receiving it. The York County Board of Elections timely received Mr. Hickman's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Hickman's timely mail ballot submission, and he believed he had done everything correctly. Mr. Hickman did not learn until after the date of the primary that there was a problem with his mail ballot submission, and his primary vote was not counted. *See Ex. 7 (Hickman Decl.)*.

g. Bucks County voter Janet Novick, an 80-year-old retired high school English teacher with mobility issues who has voted regularly since registering in 1979. Ms. Novick timely applied for and received a mail ballot package from the Bucks County Board of Elections, marked her ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. She then signed the envelope and mailed it to the elections office in advance of the primary election date. The Bucks County Board of Elections timely received Ms. Novick's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Ms. Novick's timely mail ballot submission, and she believed she had done everything correctly. Ms. Novick and her husband received voicemails indicating that their mail ballots would not be counted due envelope dating errors. When they returned the call, the elections office informed Ms. Novick that she had written her birthdate in the date line next to "2024," which Ms. Novick attributes to "a momentary lapse when I was completing the outer envelope." The elections office also informed Ms. Novick that the only way to correct these errors would be to go in person to the office in Doylestown. The Novicks could not appear in person due to their mobility issues, and their primary votes were not counted. *See Ex. 8 (Novick Decl.)*.

h. Chester County voter Joseph Sommar, a 71-year-old retired electrician and union representative who has voted in nearly every Pennsylvania election since the 1980s. Mr. Sommar timely applied for and received a mail ballot package from the Chester County Board of Elections, marked his ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. He then signed the envelope and returned it to the elections office in advance of the primary election date. The Chester County Board of Elections timely received Mr. Sommar's mail ballot prior to 8pm on April 23, 2024, but decided to set his ballot aside due to a purported envelope dating error. There were no other errors with Mr. Sommar's timely mail ballot submission, and he believed he had done everything correctly. Mr. Sommar was surprised and frustrated to receive a notice on or about April 19 that his vote may not count due to an envelope dating error. Mr. Sommar's 2024 primary vote was not counted. *See* Ex. 9 (Sommar Decl.).

i. Bucks County voter Phyllis Sprague, an 80-year-old regular voter who has never missed a presidential election in over 50 years. Ms. Sprague timely applied for and received a mail ballot package from the Bucks County Board of Elections, marked her ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope.

She then signed the envelope and returned it to the elections office prior to a cervical spine surgery she had scheduled for April 18th. The Bucks County Board of Elections timely received Ms. Sprague's mail ballot prior to 8pm on April 23, 2024, but decided to set her ballot aside due to a purported envelope dating error. There were no other errors with Ms. Sprague's timely mail ballot submission, and she believed he had done everything correctly. After Ms. Sprague was discharged from the hospital following her surgery, she received an email notice that her ballot may not count due to an envelope dating issue. Not wanting to miss the opportunity to vote, Ms. Sprague got ready to go to her polling place to cast a provisional ballot on Election Day but had a fall and injured herself before she had the chance to do so. Ms. Sprague's 2024 primary vote was not counted. *See Ex. 10 (Sprague Decl.)*.

j. Berks County voter Mary Stout, a 77-year old retired nurse who started voting by mail a few years ago after getting back surgery. Ms. Stout timely applied for and received a mail ballot package from the Berks County Board of Elections, marked her ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. She then signed the envelope and returned it to the elections office about two weeks before the primary election date. The Berks County Board of Elections timely

received Ms. Stout's mail ballot prior to 8pm on April 23, 2024, but decided to set her ballot aside due to a purported envelope dating error. There were no other errors with Ms. Stout's timely mail ballot, and she believed she had done everything correctly. Ms. Stout received a notice about a week before the primary that her ballot would not count because of a missing date on the envelope, but she was unable to go in person to fix it because of her mobility issues. Ms. Stout's 2024 primary vote was not counted. *See Ex. 11 (Stout Decl.)*.

k. Dauphin County voter Lorine Walker, a 74-year-old retired school librarian who started voting by mail in 2020 during the pandemic and can no longer drive because of mobility issues. Ms. Walker timely applied for and received a mail ballot package from the Dauphin County Board of Elections, marked her ballot, placed it in the secrecy envelope, and inserted the secrecy envelope into the outer return envelope. She then signed the envelope and mailed it to the elections office a few weeks ahead of the 2024 primary election date. The Dauphin County Board of Elections timely received Ms. Walker's mail ballot prior to 8pm on April 23, 2024, but decided to set her ballot aside due to a purported envelope dating error. There were no other errors with Ms. Walker's timely mail ballot submission, and she believed she had done everything correctly. Ms. Walker did not

learn until after the date of the primary that there was a problem with her mail ballot submission, and her primary vote was not counted. *See* Ex. 12 (Walker Decl.).

77. These and many other Pennsylvania voters will continue to lose their right to vote unless this Court declares application of the date requirement unconstitutional and enjoins the continued rejection of timely submitted ballots from eligible voters simply because they omitted a meaningless date, or wrote the wrong date, on the Return Envelope. In a high-turnout election, where Petitioners anticipate based on recent history that more than 37% of votes are cast by mail ballot, even a 1% error rate will result in the rejection of tens of thousands of mail ballots.

78. Impacted voters are disproportionately senior citizens, many of whom have voted dutifully for decades. They hail from throughout the Commonwealth and include voters registered Republican, Democrat and independent. These are all duly registered, eligible Pennsylvania voters who filled out their mail ballots, returned them on time, and signed the declaration on the Return Envelope, but simply made a mistake on the Return Envelope by omitting a handwritten date or writing an incorrect date. The challenged envelope-date rule ensnares even voters who reasonably believed they were complying with all of the proper requirements to cast their ballot.

79. Absent court intervention, the County Respondents and other county boards of election will continue to follow Respondent Schmidt’s guidance, setting aside mail ballot envelopes with missing or incorrect voter-written dates in the November 2024 General Election and subsequent elections.

80. The Pennsylvania Constitution requires that ballots with missing or incorrect dates be counted. The disenfranchisement of the affected voters in this and future elections constitutes irreparable harm for which there is no adequate remedy at law and for which this Court’s intervention is required.

V. CLAIMS

**COUNT I
(Violation of Pennsylvania’s Free and Equal Elections Clause,
Pa. Const. art. I, § 5)**

81. Petitioners hereby incorporate and adopt each and every allegation set forth in the foregoing paragraphs of the Petition for Review.

82. Pennsylvania citizens enjoy a fundamental right to vote, as recognized by the command of the Pennsylvania Constitution’s Free and Equal Elections Clause: “no power, civil or military, shall at any time interfere to prevent the free exercise of the right to suffrage.” Pa. Const. art. 1, § 5.

83. Pursuant to that mandate, the Pennsylvania Supreme Court has consistently held that election law must be applied in a way so as to enfranchise, rather than disenfranchise. *See, e.g., Boockvar*, 238 A.3d at 361; *see also, e.g.,*

Shambach v. Bickhart, 845 A.2d 793, 798-99 (Pa. 2004) (“we have held that ballots containing mere minor irregularities should only be stricken for compelling reasons”) (citations omitted); *Petition of Cioppa*, 626 A.2d 146, 148 (Pa. 1993) (noting the “longstanding and overriding policy in this Commonwealth to protect the elective franchise”) (citations omitted); *In re Luzerne Cnty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972) (citing *Appeal of James*, 105 A.2d 64 (Pa. 1954) (“[T]he power to throw out a ballot for minor irregularities should be sparingly used . . . In construing election laws . . . [o]ur goal must be to enfranchise and not to disenfranchise.”); *cf. Ball*, 289 A.3d at 27 n.156.

84. Respondent’s application of the Election Code’s envelope dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), to reject timely mail ballots submitted by eligible voters based solely on the inadvertent failure to add a meaningless, superfluous handwritten date next to their signature on the mail ballot Return Envelope is an unconstitutional interference with the exercise of the right to suffrage in violation of the Free and Equal Elections Clause.

85. Continued application of this requirement will result in the disenfranchisement of eligible Pennsylvania voters who submit timely mail ballots in the 2024 General Election and all future elections, unless and until enjoined by this Court.

COUNT II
**(Violation of Pennsylvania’s Free and Equal Elections Clause,
Pa. Const. art. I, § 5))**

86. Petitioners hereby incorporate and adopt each and every allegation set forth in the foregoing paragraphs of the Petition for Review.

87. Under Pennsylvania’s canon of constitutional avoidance, a statute must be given a construction that is consistent with the Pennsylvania Constitution. *See, e.g., Atlantic-Inland, Inc. v. Board of Supervisors of West Goshen Township*, 410 A.2d 380, 382 (Pa. Commw. Ct. 1980) (courts have an “obligation to adopt a reasonable construction which will save the constitutionality of the ordinance”) (citation omitted).

88. Moreover, Pennsylvania courts have consistently held that provisions of the Election Code must be interpreted “in order to favor the right to vote,” interpreting the statute so as “to enfranchise and not to disenfranchise.” *In re Luzerne Cnty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972) (citing *Appeal of James*, 105 A.2d 64 (Pa. 1954)); *see also, e.g., Ball v. Chapman*, 289 A.3d 1, 27 n.156 (2022) (plurality opinion) (citing Pa. Const. art. I, § 5; *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020)) (“failure to comply with the date requirement would not compel the discarding of votes in light of the Free and Equal Elections Clause, and our attendant jurisprudence that ambiguities are resolved in a way that will enfranchise, rather than disenfranchise”); *Shambach v.*

Bickhart, 845 A.2d 793, 798-99 (Pa. 2004) (“To that end, we have held that ballots containing mere minor irregularities should only be stricken for compelling reasons.”) (citations omitted).

89. Since the Pennsylvania Supreme Court’s decision in *Ball v. Chapman* in 2022, Respondent Schmidt, the county boards of election in all 67 counties, and federal courts in the Western District of Pennsylvania and the Third Circuit have all confirmed beyond a shadow of a doubt that the envelope dating provision serves no purpose whatsoever, and it has been applied to disenfranchise thousands of eligible Pennsylvania voters in each and every primary and general election since 2022.

90. Since the Pennsylvania Supreme Court’s decision in *Ball v. Chapman* in 2022, the record in the other court cases establishes that the envelope dating rule has been inconsistently and arbitrarily enforced.

91. Accordingly, Petitioners claim in the alternative that, because Respondents’ application of the Election Code’s meaningless envelope dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), imposing a mandatory requirement to disenfranchise eligible mail and absentee voters, triggers a violation of voters’ fundamental constitutional right to vote, the statutory envelope dating requirement must be reinterpreted and applied as a “directory” provision such that Respondents cannot use noncompliance with this entirely meaningless provision as a basis to

disenfranchise eligible voters to submit timely absentee and mail ballots. *Cf. In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 General Election*, 241 A.3d 1058 (Pa. 2020) (plurality opinion).

PRAYER FOR RELIEF

92. Petitioners have no adequate remedy at law to redress the wrongs suffered as set forth in this petition. Petitioners have suffered and will continue to suffer irreparable harm as a result of the unlawful acts, omissions, policies, and practices of Respondent, as alleged herein, unless this Court grants the relief requested.

WHEREFORE, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Secretary of State and:

- a. Declare pursuant to Pennsylvania's Declaratory Judgments Act, 42 Pa.C.S. § 7531. et seq., that enforcement of the Election Code's envelope dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), to reject timely mail ballots submitted by eligible voters, based solely on the absence of a handwritten date on the mail ballot return envelope is unconstitutional under the Free and Equal Elections Clause, Pa. Const. art. I, § 5;
- b. Declare pursuant to Pennsylvania's Declaratory Judgments Act, 42 Pa.C.S. § 7531. et seq., that enforcement of the Election Code's

envelope dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), to reject timely mail ballots submitted by eligible voters, based solely on the determination that the voter wrote an incorrect date on the mail ballot return envelope is unconstitutional under the Free and Equal Elections Clause, Pa. Const. art. I, § 5;

- c. Preliminarily and permanently enjoin further enforcement of the Election Code’s envelope dating provisions, 25 P.S. §§ 3146.6(a), 3150.16(a), to reject timely mail ballots submitted by eligible voters, based either on (i) the absence of a handwritten date on the mail ballot return envelope or (ii) the determination that the voter-written date is “incorrect”;
- d. Award Petitioners costs; and
- e. Provide such other and further relief as this Honorable Court deems just and appropriate.

Dated: May 28, 2024

Respectfully submitted,

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* *Pro hac vice* applications to be filed

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