

REPUBLICAN

NATIONAL COMMITTEE

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VIA EMAIL AND MAIL

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Secretary Al Schmidt
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Re: Board Of Elections' Unlawful Counting Of Invalid And Defective Ballots

Dear Montgomery County Board of Elections:

The Republican National Committee (“RNC”) and the Republican Party of Pennsylvania (“RPP”) seek to uphold the will of all Pennsylvanians as expressed in free and fair elections. In the November 5, 2024 General Election, millions of Pennsylvanians made their voices heard and elected Republican Dave McCormick to represent the Commonwealth in the United States Senate.

Senator-elect McCormick carries an insurmountable lead in the statewide tally of votes. Regrettably, after a long and distinguished career in public service, his Democratic opponent, Bob Casey, has chosen to deny the election results and refused to concede the race. Outgoing Senator Casey’s unfortunate decision has inflicted unnecessary costs and an erosion of public trust on the Commonwealth at a time when all Pennsylvanians should be coming together to forge a better future.

Unfortunately, the Montgomery County Board of Elections has chosen to support outgoing Senator Casey’s election denial—and has even broken the law to do so. In particular, the Board has now included invalid ballots in its official tally of votes—including defective mail ballots that the Pennsylvania Supreme Court has repeatedly declared may not be counted in the 2024 General Election.

The Pennsylvania Supreme Court could not have been clearer. As it has reaffirmed many times, the General Assembly’s date requirement for mail ballots is mandatory, and undated or misdated mail ballots may not be counted or included in the official tally of votes. *See New Pa. Project Education Fund v. Schmidt*, No. 112 MM 2024, 2024 WL 4410884, at *1 (Pa. Oct. 5, 2024); *Baxter v. Philadelphia Board of Elections*, Nos. 76 EM 2024 & 77 EM 2024, 2024 WL 4650792, at *1 (Pa. Nov. 1, 2024); *Black Political Empowerment Project v. Schmidt*, 322 A.3d 221, 222 (Pa. 2024) (per curiam); *Ball v. Chapman*, 289 A.3d 1, 14-16 & n.77 (Pa. 2022); *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020); *see also Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.*, 97 F.4th 120 (3d Cir. 2024).

The Board thus violated the law when it voted to count undated and misdated ballots in the 2024 General Election earlier this week. That action left RNC and RPP with no choice but to file

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two lawsuits asking Pennsylvania’s courts to reaffirm—yet again—that undated and misdated ballots may not be counted.

Despite that pending litigation, the Board has now doubled down on its violation of the law and *included invalid undated and misdated ballots in its official tally of votes*. The Board’s recalcitrant refusal to obey the law and the Pennsylvania Supreme Court’s orders can serve only one purpose: to bolster outgoing Senator Casey’s election denial and to erode public confidence in Pennsylvania voters’ election of Senator-elect McCormick.

Enough is enough. RNC and RPP call upon all Pennsylvanians to join them in insisting that the Board comply with the law and not manipulate the Commonwealth’s elections for partisan purposes.

As if that violation of law were not enough, the Board has also violated the law by including in the official tally provisional ballots that are invalid under the Election Code and are also the subject of litigation filed by RNC and RPP. The Election Code, and yet another ruling of the Pennsylvania Supreme Court, are once again conclusive: provisional ballots that lack a voter’s signature are invalid and cannot be counted. *See* 25 P.S. § 3050(a.4)(5)(ii); *In re: Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d 900, 904-09 (Pa. 2024). The Election Code also directs that provisional ballots that lack a signature from the Judge of Elections or Minority Inspector are also invalid and cannot be counted. *See* 25 P.S. § 3050(a.4)(2).

Once again, however, the Board voted to count provisional ballots with those defects, and has now included those defective ballots in its official tally. Once again, there is no explanation for these actions other than an effort to bolster outgoing Senator Casey and to undermine Senator-elect McCormick.

RNC and RPP request that the Board comply with the law and take the following actions immediately. RNC and RPP further request that the Board confirm that it has taken these actions through a written response to this letter no later than Monday, November 18, 2024.

1. Remove all undated or misdated mail ballots and all disputed provisional ballots from the official tally of votes;
2. Identify, mark, and separate all undated or misdated ballots from all other ballots cast in the 2024 General Election;
3. Identify, mark, and separate all disputed provisional ballots from all other ballots cast in the 2024 General Election; and
4. Preserve the following categories of documents:
 - a. All documents—including all emails and text messages on both official and personal email accounts and phones—generated by or in the possession of the Board, its commissioners, employees, or agents, regarding the decision to count undated and misdated mail ballots cast in the 2024 General Election;

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- b. All documents—including all emails and text messages on both official and personal email accounts and phones—generated by or in the possession of the Board, its commissioners, employees, or agents, regarding the decision to include undated and misdated mail ballots cast in the 2024 General Election in the official tally of votes;
- c. All documents—including all emails and text messages on both official and personal email accounts and phones—generated by or in the possession of the Board, its commissioners, employees, or agents, regarding the decision to count disputed provisional ballots cast in the 2024 General Election; and
- d. All documents—including all emails and text messages on both official and personal email accounts and phones—generated by or in the possession of the Board, its commissioners, employees, or agents, regarding the decision to included disputed provisional ballots cast in the 2024 General Election in the official tally of votes.

We thank you for your prompt attention to this important matter.

Respectfully,



Mandy Lester
Chief Counsel
Republican National Committee



Thomas W. King III
General Counsel
Republican Party of Pennsylvania