

**TO: JORDAN SEKULOW**  
**FROM: BEN SISNEY, NATHAN MOELKER, and GARRETT TAYLOR**  
**RE: PENNSYLVANIA ELECTION CASES**  
**DATE: NOVEMBER 20, 2024**

## MEMORUNDUM

### I. The Pennsylvania Supreme Court’s Decisions in *New PA Project Educ. Fund v. Schmidt and Baxter v. Phila. Bd. of Elections*

Pennsylvania has proved to be the locus of crucial election fights. Before the election, the Pennsylvania Supreme Court issued rulings mandating compliance with election laws, including specific prohibitions on the counting of undated mail-in ballots and ordering that county boards of elections and Pennsylvania courts *shall* enforce the General Assembly’s mandatory date requirement for mail ballots in the 2024 General Election.<sup>1</sup> The *Baxter* decision in particular paused a decision of the Pennsylvania intermediate court, striking down the date requirement.<sup>2</sup> The Republican Party has [filed an application](#) to appeal that decision.

In [open rebellion](#) against the Pennsylvania Supreme Court, and after the election was already concluded, some county election boards decided to count mail ballots that do not comply with the date requirement anyway, as well as to flout other mandatory election requirements.

Accordingly, while still litigating other existing lawsuits, on November 14, 2023, U.S. Senate Candidate David McCormick, the Republican National Committee and the Republican Party of Pennsylvania (the “Republicans”) filed an [application for extraordinary relief](#) in the Pennsylvania Supreme Court. On November 18, 2024, in a [4-3 decision](#), the Court granted the application and ordered, in no uncertain terms, that all counties “including the Boards of Elections in Bucks County, Montgomery County, and Philadelphia County, **SHALL COMPLY** with the prior rulings of this Court in which we have clarified that mail-in and absentee ballots that fail to comply with the requirements of the Pennsylvania Election Code **SHALL NOT BE COUNTED** for purposes of the election held on November 5, 2024.”<sup>3</sup>

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<sup>1</sup> *New PA Project Educ. Fund v. Schmidt*, No. 112 MM 2024, 2024 Pa. LEXIS 1478M, at \*1 (Pa. Oct. 5, 2024) (per curiam) (“This Court will neither impose nor countenance substantial alterations to existing laws and procedures during the pendency of an ongoing election.”); *Baxter v. Phila. Bd. of Elections*, Nos. 76 EM 2024 & 77 EM 2024, 2024 Pa. LEXIS 1628, at \*1 (Pa. Nov. 1, 2024) (staying a Commonwealth Court order that had required a county election board to canvass undated ballots for purposes of the 2024 general election). The third circuit has also rejected challenges to the mail-in ballot requirements. *Pa. State Conf. of NAACP Branches v. Sec’y Pa.*, 97 F.4th 120, 125 (3rd Cir. 2024).

<sup>2</sup> *Baxter v. Phila. Bd. of Elections*, 2024 Pa. Commw. Unpub. LEXIS 582, \*1.

<sup>3</sup> *Republican Nat’l Comm. v. All 67 County Bds. Bd. of Elections*, 2024 Pa. LEXIS 1696, \*9 (Nov. 18, 2024).

## II. Eleven Additional Cases Still in Litigation

### 1. [McCormick, RNC, & the Republican Party of PA v. Bucks County Board of Elections](#)

On November 15, 2024, the Republicans filed a [petition for review](#) against the Bucks County Board of Elections in Pennsylvania trial court. This lawsuit challenges the decision to count provisional ballots in the General Election. This case, numbered 2024-07272, is [set for hearing](#) on November 20, 2024 at 1:30 PM.

The Republicans seek reversal of two decisions made by the Bucks County Board of Elections: (1) the Board voted 2-1 to accept 16 provisional ballots that were missing affidavit signatures despite state law requiring the board to reject ballots when the affidavit is missing the voter's signature; and (2) the Board voted 3-0 to accept 84 provisional ballots that did not contain signatures of election officials as required by state law. Further, the Republicans argue that when a county uses different standards to count a vote rather than following uniform standards that apply to all counties within the state, the county violates the U.S. Constitution's Equal Protection Clause and the PA Constitution.

### 2. [McCormick, RNC, & the Republican Party of PA v. Bucks County Board of Elections](#)

In a different [lawsuit](#) filed on November 13, 2024, the Republicans challenge the decision to count undated mail ballots in the General Election. A hearing was held in this case, numbered 2024-07228, on November 19, 2024, resulting in a consent order declaring that “the Bucks County Board of Elections shall not count any undated and/or misdated absentee and /or mail in ballots.”

In this case, the Republicans sought reversal of the decision by the Bucks County Board of Elections to accept 405 mail-in and absentee ballots (mail ballots) that violated the date requirement set forth in PA statutory and case law. For mail ballots to be counted, they must be dated. Although the date requirement for mail ballots was challenged prior to the November 5 election, the PA Supreme Court stepped in and ruled that the date requirement would remain in effect.

### 3. [McCormick, RNC, & the Republican Party of PA v. Philadelphia County Board of Elections](#)

Another Republican [lawsuit](#), this one filed in Philadelphia County on November 17, 2024, as case number 24113557, challenged the County's decision to count ballots missing one or more signatures or with incomplete voter affidavits.<sup>4</sup> On November 19, 2024, the lower court rejected the Republican's arguments and will allow the 966 provisional ballots at issue to be counted. The ACLJ will monitor to see whether an appeal is filed.

The counted ballots were missing either the signature of an election official, a required check mark indicating a reason for the provisional ballot, or they contained incomplete or incorrect

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<sup>4</sup> Also on November 15, 2024, the Republicans filed another [lawsuit](#), this one in Center County, challenging the County's decision to count three mail-in ballots with wrongly dated envelopes. The [docket](#) shows the case was dismissed as untimely. We will monitor for an appeal.

information. Additionally, the Republicans had challenged the unequal treatment of voters based on County applying different standards to votes.

4. [\*McCormick, RNC, & the Republican Party of PA v. Philadelphia County Board of Elections\*](#)

Another Republican [lawsuit](#), this one filed in Philadelphia County on November 15, 2024, as case number 24113232, challenged the County’s decision to count undated or misdated mail-in ballots. The Republicans argue that the decision violates Pennsylvania election law and the Pennsylvania Supreme Court’s decision — which prohibited the counting of undated or wrongly dated mail-in ballots in the November 2024 general election.

5. [\*McCormick, RNC, & the Republican Party of PA v. Montgomery County Board of Elections\*](#)

On November 16, 2024, the Republicans filed a [lawsuit](#) against Montgomery County. This one, numbered 2024-26283, challenges the County’s decision to count provisional ballots missing the signature of voters or election officials. The Montgomery County Board of Elections decided to count 414 ballots with missing signatures. 251 ballots missing voter signatures, 163 ballots missing election official signatures). The lawsuit argues both a violation of election law and unequal treatment of voters based on the voters’ county, a violation of both the U.S. and PA Constitutions.

In another [lawsuit](#) filed against Montgomery County, this one also filed on November 16, 2024, and numbered 2024-26306, the Republicans raise another challenge to defective provisional ballots.

6. [\*McCormick, RNC, & the Republican Party of PA v. Monroe County Board of Elections\*](#)

Then, on November 16, 2024, the Republicans filed [a lawsuit](#) in Monroe County (case number 007-CV-2024), challenging the decision to count provisional ballots lacking either the signature of voters or with wrongly dated envelopes, requirements set forth in Pennsylvania law. Monroe County Board of Elections had allowed 66 mail-in ballots to be counted (42 ballots had undated or wrongly dated outer envelopes and 24 provisional ballots were missing the voters’ signatures). The lawsuit argues that allowing these ballots to be counted violates state law and a PA Supreme Court decision.

7. [\*McCormick, RNC, & the Republican Party of PA v. Berks County Board of Elections\*](#)

Another Republican [lawsuit](#) filed in Berks County on November 16, 2024, numbered 24-17027, challenges the decision to count provisional ballots missing the signature of at least one or both election officials. Like the Republicans’ Lackawanna County lawsuit, this lawsuit argues the County violated ballot signature requirements as well as the U.S. and the PA Constitutions.

8. [McCormick, the RNC, & the Republican Party of PA v. Chester County Board of Elections](#)

Also on November 16, 2024, the Republicans [sued](#) Chester County, challenging its decision to count provisional ballots missing the signature of election officials. Interestingly, the Casey Campaign and DSCC filed a Motion to intervene on November 18, 2024. In this lawsuit, the Republicans challenge 58 provisional ballots being counted by the County but which are missing signatures as a violation of state law. State law requires both the judge of elections and the minority inspector's signatures on provisional ballots, yet the 58 ballots were missing one or both signatures and should be found invalid.

9. [McCormick, RNC, & the Republican Party of Pennsylvania v. Erie County Board of Elections](#)

The Republicans also filed a [lawsuit](#) against Erie County on November 16, challenging the County's decision to count provisional ballots missing the signature of election officials. This case is similar to the one filed in Chester County, alleging violations of the same law. The Erie County Board of Elections allowed 120 provisional ballots to be counted. The 120 ballots were also missing the judge of election's signature, the minority inspector signature, or both. The lawsuit contends the County's actions violate both the U.S. and PA Constitutions.

10. [McCormick, RNC, & the Republican Party of PA v. Northampton County Election Commission](#)

On November 17, 2024, the Republicans [sued](#) Northampton County, challenging its decision to count provisional ballots missing the signature of voters or election officials. This is case number C-48-CV-2024-11346, and it is set for hearing scheduled on November 21, 2024. The Northampton County Election Commission accepted 22 provisional ballots missing voters' signatures on the affidavits and 73 provisional ballots missing the signatures of one or both election officials. State law requires a voter's signature on the affidavit and requires the signatures of both election officials for the ballot to be counted. Further, the Republicans argue that when a county uses different standards to count a vote, rather than following uniform standards that apply to all counties within the state, it violates the U.S. Constitution's Equal Protection Clause and the PA Constitution.

11. [McCormick, RNC, & the Republican Party of PA v. Lackawanna County Board of Elections](#)

On November 18, 2024, the Republicans filed a [lawsuit](#) in Lackawanna County, case number 24-CV-7858, challenging the County's decision to count provisional ballots missing the signature of election officials. The Republicans seek reversal of the 2-1 decision by the Lackawanna County Board of Elections to accept 122 provisional ballots lacking the signature of one or both election officials required to sign provisional ballots. State law requires the provisional ballots to be signed by two elected officials. They also raise arguments that the County's actions violate the U.S. and the PA Constitutions.