

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TIMOTHY R. BONNER, P.
MICHAEL JONES, DAVID H.
ZIMMERMAN, BARRY J.
JOZWIAK, KATHY L. RAPP,
DAVID MALONEY, BARBARA
GLEIM, ROBERT BROOKS,
AARON J. BERNSTINE, TIMOTHY
F. TWARDZIK, DAWN W. KEEFER,
DAN MOUL, FRANCIS X. RYAN,
and DONALD “BUD” COOK,

Petitioners,

v.

LEIGH M. CHAPMAN, in her official
capacity as Acting Secretary of the
Commonwealth of Pennsylvania, and
COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF STATE,

Respondents.

Docket No. ____ M.D. 2022

**PETITION FOR REVIEW IN THE
NATURE OF AN ACTION FOR A
DECLARATORY JUDGMENT**

Filed on behalf of Petitioners,
Timothy R. Bonner, P. Michael Jones,
David H. Zimmerman, Barry J.
Jozwiak, Kathy L. Rapp, David
Maloney, Barbara Gleim, Robert
Brooks, Aaron Bernstine, Timothy F.
Twardzik, Dawn W. Keefer, Dan
Moul, Francis X. Ryan, and Donald
“Bud” Cook

Counsel of Record for Petitioners:

Gregory H. Teufel
Pa. Id. No. 73062
Robert Cowburn
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OGC Law, LLC
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Pittsburgh, PA 15216
412-253-4622
412-253-4623 (facsimile)
gteufel@ogclaw.net

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TIMOTHY R. BONNER, P. MICHAEL
JONES, DAVID H. ZIMMERMAN,
BARRY J. JOZWIAK, KATHY L. RAPP,
DAVID MALONEY, BARBARA GLEIM,
ROBERT BROOKS, AARON J.
BERNSTINE, TIMOTHY F. TWARDZIK,
DAWN KEEFER, DAN MOUL,
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“BUD” COOK,

Docket No. ____ M.D. 2022

Petitioners,

v.

LEIGH M. CHAPMAN, in her
official capacity as Acting Secretary of the
Commonwealth of Pennsylvania, and COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF STATE,

Respondents.

NOTICE TO DEFEND

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 twenty (20) days after this petition 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 petition or for any claim or relief requested by the petitioner. 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. TIDS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MidPenn Legal Services
213-A North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-0581

and

Dauphin County Lawyer Referral Service
Dauphin County Bar Association
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-7536

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TIMOTHY R. BONNER, P. MICHAEL
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BERNSTINE, TIMOTHY F. TWARDZIK,
DAWN KEEFER, DAN MOUL,
FRANCIS X. RYAN, and DONALD
“BUD” COOK,

Docket No. ____ M.D. 2021

Petitioners,

v.

LEIGH M. CHAPMAN, in her
official capacity as Acting Secretary of the
Commonwealth of Pennsylvania, and COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF STATE,

Respondents.

**PETITION FOR REVIEW IN THE NATURE OF AN ACTION FOR
A DECLARATORY JUDGMENT**

Petitioners Timothy R. Bonner, P. Michael Jones, David H. Zimmerman,
Barry J. Jozwiak, Kathy L. Rapp, David Maloney, Barbara Gleim, Robert Brooks,
Aaron J. Bernstine, Timothy F. Twardzik, Dawn W. Keefer, Dan Moul, Francis X.
Ryan, and Donald “Bud” Cook hereby file the following Petition for Review
against Respondents, Leigh M. Chapman, in her official capacity as Acting
Secretary of the Commonwealth of Pennsylvania, and the Commonwealth of
Pennsylvania, Department of State, in support thereof avers as follows:

Introduction

1. This is an action seeking a declaration that, pursuant to Section 11 of Act 77 (Laws of the General Assembly of the Commonwealth of Pennsylvania, Act of October 31, 2019, P.L. 552, No. 77 (“Act 77”), because provisions of Sections 6 and 8 of Act 77 and/or their application to a person or circumstance has been held invalid by a court of competent jurisdiction, the remaining provisions and applications of Act 77 are now void.

2. Specifically, Sections 6 of Act 77 at Section 1306(a) (25 Pa.Stat. § 3146.6(a)) and Section 8 of Act 77 at Section 1306-D(a) (25 Pa.Stat. § 3150.16(a)), both provide in relevant part that “The elector shall then fill out, date and sign the declaration printed on such envelope.” (underlining added, hereafter the “dating provisions”).

3. Section 11 of Act 77 (“the nonseverability provision”) provides as follows:

Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.

4. In Migliori v. Cohen, 36 F.4th 153, 2022 U.S. App. LEXIS 14655, *3 (3rd Cir. 2022), the court held that the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101, prohibited the application of the dating provisions of 25

Pa.Stat. §§ 3146.6(a) and 3150.16(a) and directed the District Court to enter an order that the undated ballots in that case be counted.

5. The Migliori decision invalidated the provisions of Section 6 and Section 8 of Act 77 of 2019, which require absentee and mail-in voters to date their secrecy envelopes.

6. The Migliori decision invalidated the application of provisions of Section 6 and Section 8 of Act 77 of 2019, the requirements that absentee and mail-in voters date their secrecy envelopes, to “any person” voting by absentee or mail-in ballot who does not date his or her secrecy envelope prior to returning his or her ballot.

7. The Migliori decision invalidated the application of provisions of Section 6 and Section 8 of Act 77 of 2019, the requirements that absentee and mail-in voters date their secrecy envelopes, to “circumstances” where absentee or mail-in ballots are sent without a date on the secrecy envelope.

8. Accordingly, the remaining provisions of Act 77 are now void pursuant to the nonseverability provision and this Court should now declare Act 77 void.

Parties

9. Petitioner Timothy R. Bonner (hereinafter “Bonner”) is an adult individual who is a qualified registered elector residing in Mercer County and a member of the Pennsylvania House of Representatives (“the House”) serving Mercer County (Part) and Butler County (Part).

10. Petitioner P. Michael Jones (hereinafter “Jones”) is an adult individual who is a qualified registered elector residing in York County and a member of the House serving Lancaster County.

11. Petitioner David H. Zimmerman (hereinafter “Zimmerman”) is an adult individual who is a qualified registered elector residing in Lancaster County and a member of the House serving Lancaster County (Part).

12. Petitioner the Barry J. Jozwiak (hereinafter “Jozwiak”) is an adult individual who is a qualified registered elector residing in Berks County and a member of the House serving Berks County (Part).

13. Petitioner Kathy L. Rapp (hereinafter “Rapp”) is an adult individual who is a qualified registered elector residing in Warren County and a member of the House serving Warren County, Crawford County (Part), and Forest County (Part).

14. Petitioner David Maloney (hereinafter “Maloney”) is an adult individual who is a qualified registered elector residing in Berks County and a member of the House serving Berks County (Part).

15. Petitioner Barbara Gleim (hereinafter “Gleim”) is an adult individual who is a qualified registered elector residing in Cumberland County and a member of the House serving Cumberland County (Part).

16. Petitioner Robert Brooks (hereinafter “Brooks”) is an adult individual who is a qualified registered elector residing in Westmoreland County and a member of the House serving Westmoreland County (Part) and Allegheny County (Part).

17. Petitioner Aaron J. Bernstine (hereinafter “Bernstine”) is an adult individual who is a qualified registered elector residing in Beaver County and a member of the House serving Beaver County (Part), Butler County (Part) and Lawrence County (Part).

18. Petitioner Timothy F. Twardzik (hereinafter “Twardzik”) is an adult individual who is a qualified registered elector residing in Schuylkill County and a member of the House serving Schuylkill County (Part).

19. Petitioner Dawn W. Keefer (hereinafter “Keefer”) is an adult individual who is a qualified registered elector residing in York County and a member of the House serving York County (Part) and Cumberland County (Part).

20. Petitioner Dan Moul (hereinafter “Moul”) is an adult individual who is a qualified registered elector residing in Adams County and a member of the House serving Adams County (Part).

21. Petitioner Francis X. Ryan (hereinafter “Ryan”) is an adult individual who is a qualified registered elector residing in Lebanon County and a member of the House serving Lebanon County (Part).

22. Petitioner Donald “Bud” Cook (hereinafter “Cook”) is an adult individual who is a qualified registered elector residing in Washington County and a member of the House serving Fayette County (Part) and Washington County (Part).

23. The Petitioners do not bring this action in their official capacities as House members, but rather in their personal capacities. Each of the Representatives constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code Section 102(a) and (t), 25 P.S. § 2602(a) & (t). The Representatives brings this suit in their capacities as past and likely future¹ candidates for office and as private citizens and registered Pennsylvania voters.

24. Respondents are Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania (“Acting Secretary Chapman”) and the Commonwealth of Pennsylvania, Department of State.

¹ Ryan is not seeking reelection once his term expires in November.

Jurisdiction

25. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 761(a)(1) (“Against the Commonwealth government, including any officer thereof, acting in his official capacity”).

26. The Declaratory Judgment Acts grants this Court “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.” 42 Pa.Cons.Stat. § 7532.

COUNT I Declaratory Judgment

27. Petitioners hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

28. Because provisions of Section 6 and Section 8 of Act 77 and/or their application to a person or circumstance has been held invalid by a court of competent jurisdiction, the remaining provisions and applications of Act 77 and all amendments thereto, such as Act No. 12 of 2020, are now void pursuant to the nonseverability provision and Act 77 must be struck down in its entirety.

29. Subsequent to the decision in Migliori, Acting Secretary Chapman, in her role as Secretary of the Commonwealth and acting under color of state law, has continued to implement the provisions of the Pennsylvania Election Code that were

enacted pursuant to Act 77 and has further urged this Court to follow the Third Circuit’s interpretation of federal law in Migliori (see Chapman v. Berks County Board of Elections, No. 355 MD 2022, MEMORANDUM IN SUPPORT OF PETITIONERS’ EMERGENCY APPLICATION FOR PEREMPTORY JUDGMENT AND SUMMARY RELIEF).

30. On May 24, 2022, six days after the Migliori decision, Acting Secretary Chapman, in her role as Secretary of the Commonwealth and acting under color of state law, issued election guidance to county board of elections directing them to count “ballots with an undated return envelope ... for the May 17, 2022, Primary.” See GUIDANCE CONCERNING EXAMINATION OF ABSENTEE AND MAIL-IN BALLOT RETURN ENVELOPES, <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2022-05-24-Guidance-Segregated-Undated-Ballots.pdf>.

31. The Pennsylvania Department of State has, accordingly, taken the official position that absentee and mail voters do not need to follow the express envelope dating requirements of Section 6 and Section 8 of Act 77, rendering that provision effectively invalid.

32. Though a petition for writ of certiorari has been filed in the Migliori case in the United States Supreme Court (see www.supremecourt.gov/DocketPDF/22/22-

[30/229591/20220707140738344_Ritter%20Petition.pdf](#)), the United States

Supreme Court denied an application for a stay (see Ritter v. Migliori, 2022 U.S. LEXIS 2668 *; ___ S.Ct. ___; 2022 WL 1743146) and has not yet either granted or denied a writ of certiorari in that case.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Honorable Court enter a declaratory judgment declaring that the provisions of the Pennsylvania Election Code enacted pursuant to Act 77 and all amendments thereto, such as Act No. 12 of 2020 are void and providing such other and further legal and equitable relief as this Court deems just and proper.

Respectfully submitted,



Gregory H. Teufel
Robert Cowburn
Attorney for Petitioners

VERIFICATION

Timothy R. Bonner, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

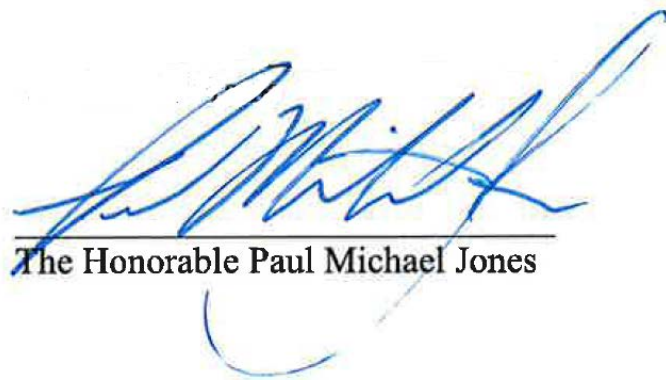
Date: July 20, 2022



Timothy R. Bonner

VERIFICATION

P. Michael Jones, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.



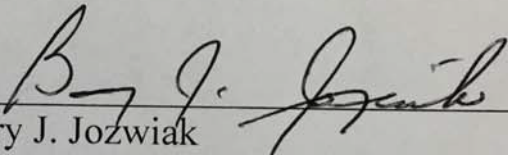
The Honorable Paul Michael Jones

Date: July 20, 2022

VERIFICATION

The Honorable Barry J. Jozwiak, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: July 20, 2022



Barry J. Jozwiak

VERIFICATION

David H. Zimmerman, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: July 20, 2022

A handwritten signature in black ink, appearing to read 'David H. Zimmerman', with a long horizontal flourish extending to the right.

David H. Zimmerman

VERIFICATION

Kathy L. Rapp, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: July 20, 2022

Kathy L. Rapp

VERIFICATION

David Maloney, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and reads "David M. Maloney".

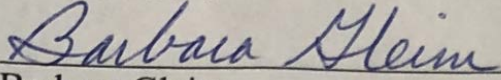
Date: July 20, 2022

David Maloney

VERIFICATION

Barbara Gleim, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: July 20, 2022



Barbara Gleim

VERIFICATION

Robert Brooks, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Robert Brooks", written in a cursive style.

Date: July 20, 2022

Robert Brooks

VERIFICATION

Timothy F. Twardzik, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

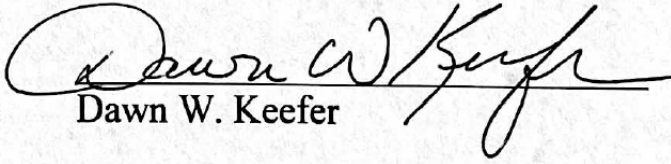


Timothy F. Twardzik

Date: July 20, 2022

VERIFICATION

Dawn W. Keefer, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.



Dawn W. Keefer

Date: July 20, 2022

VERIFICATION

Aaron J. Bernstine, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: July 20, 2022



Aaron J. Bernstine

VERIFICATION

Francis X. Ryan, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

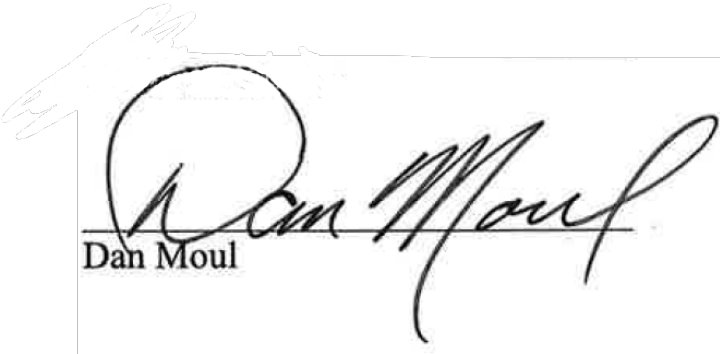
Date: July 20, 2022



Francis X. Ryan

VERIFICATION

Dan Moul, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.



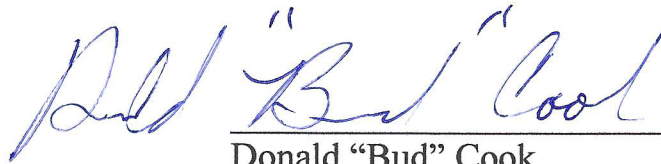
Dan Moul

Date: July 20, 2022

VERIFICATION

Donald "Bud" Cook, the undersigned individual, deposes and says that the averments in the foregoing Petition for Review are true and correct to the best of his knowledge, information, and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: July 20, 2022



Donald "Bud" Cook

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TIMOTHY R. BONNER, P. MICHAEL
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LEIGH M. CHAPMAN, in her
official capacity as Acting Secretary of the
Commonwealth of Pennsylvania, and COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF STATE,

Respondents.

NOTICE TO PARTICIPATE

TO: Josh Shapiro, Esq.
Attorney General
Office of the Attorney General
1600 Strawberry Square
Harrisburg, PA 17120

If you intend to participate in this proceeding in the Commonwealth Court of Pennsylvania, you must serve and file a notice of or application for intervention under Pa.R.A.P. 1531 within thirty days.

Date: July 20, 2022



Gregory H. Teufel
Attorney for Petitioners

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Date: July 20, 2022



Gregory H. Teufel, Esq.