

SUPREME COURT OF PENNSYLVANIA

In Re: Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election

No. 31 EAP 2020, 32 EAP 2020, 33 EAP 2020, 34 EAP 2020, 35 EAP 2020, 29 WAP 2020, Supreme Court of Pennsylvania (November 23, 2020)

SUMMARY

****Key Legal Topics:**** Election law; absentee and mail-in ballot validity; mandatory vs. directory statutory interpretation; prospective application of judicial rulings. ****Holdings/Rules:**** The Pennsylvania Supreme Court held that (1) ballots cannot be invalidated solely because the voter failed to handprint their name or address on the declaration envelope, as those requirements are prescribed by the Secretary of the Commonwealth under delegated authority, not by statute; and (2) the statutory requirement that voters date the declaration is mandatory, but because the law was unclear and voter guidance was confusing, the court applied its interpretation only prospectively, so ballots lacking dates in the 2020 election were not invalidated. Justice Wecht's concurring/dissenting opinion emphasized that "shall" in the Election Code must be read as mandatory, but agreed that prospective application was appropriate.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Wecht
JURISDICTION	Pennsylvania
DECIDED	November 23, 2020
DOCKET	31 EAP 2020, 32 EAP 2020, 33 EAP 2020, 34 EAP 2020, 35 EAP 2020, 29 WAP 2020
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Order of the Commonwealth Court entered November 19, 2020 at No. 1162 CD 2020, reversing the Order of the Court of Common Pleas of Allegheny County entered November 18, 2020 at No. GD 20-011654 and remanding
PRECEDENTIAL VALUE	published
PARTIES	Donald J. Trump for President, Inc.; Allegheny County Board of Elections

TOPICS

statutory interpretation

constitutional law

civil rights

voting rights

PRACTICE AREAS

Election law

Statutory interpretation

Constitutional law

QUESTIONS PRESENTED

1. Whether failure to handwrite the voter's name and address on the declaration form on the ballot mailing envelope requires disqualification of the ballot.
2. Whether failure to handwrite the date on the declaration form on the ballot mailing envelope requires disqualification of the ballot.

HOLDINGS

1. A voter's failure to hand print his or her name and/or address on the declaration form on the ballot mailing envelope should not alone deny an elector his or her vote because these items are prescribed by the Secretary under delegated authority, not by statute, and absent evidence of legislative intent, omission should not invalidate.
2. The date requirement is mandatory; failure to date should invalidate the ballot, but only prospectively due to lack of adequate notice and confusion in guidance.

KEY QUOTATIONS

“the elector shall . . . fill out, date and sign the declaration printed on such envelope.” (at 3)

“shall means shall” (at 10)

“if we are to maintain a principled approach to statutory interpretation that comports with the mandate of [the SCA], if we are to maximize the likelihood that we interpret statutes faithfully to the drafters' intended effect, we must read mandatory language as it appears, and we must recognize that a mandate without consequence is no mandate at all.” (at 11)

“We must prefer the sometimes-unsatisfying clarity of interpreting mandatory language as such over the burden of seeking The Good in its subtext.” (at 15)

FACTUAL BACKGROUND

The case concerns the validity of mail-in and absentee ballots from the November 3, 2020 general election where voters failed to handwrite their name, address, and/or date on the declaration form on the ballot mailing envelope. The Secretary of the Commonwealth issued guidance on the requirements, and the issue was whether such ballots should be disqualified. The appeals were consolidated from multiple dockets involving similar questions.

PROCEDURAL HISTORY

The Commonwealth Court reversed the order of the Court of Common Pleas of Allegheny County which had ruled on the validity of certain ballots. The Supreme Court of Pennsylvania consolidated the appeals.

DISPOSITION

affirmed

CASES CITED

- Appeal of Weiskerger, 290 A.2d 108 (Pa. 1972)
- Appeal of Pierce, 843 A.2d 1223 (Pa. 2004)
- Shambach v. Bickhart, 845 A.2d 793 (Pa. 2004)
- Pennsylvania Democratic Party v. Boockvar, Pennsylvania Democratic Party v. Boockvar, 238 A.3d 345 (Pa. 2020)
- In re Scroggin, 237 A.3d 1006 (Pa. 2020)
- Appeal of Zentner, 626 A.2d 146 (Pa. 1993)
- Appeal of James, 105 A.2d 64 (Pa. 1954)
- Appeal of Norwood, 116 A.2d 552 (Pa. 1955)
- Appeal of Gallagher, 41 A.2d 630 (Pa. 1945)
- In re Petitions to Open Ballot Boxes, 188 A.2d 254 (Pa. 1963)
- Appeal of Urbano, 190 A.2d 719 (Pa. 1963)
- In re Beyer, 115 A.3d 835 (Pa. 2015)
- In re Fish's Election, 117 A. 85 (Pa. 1922)
- Knight v. Borough of Coudersport, 92 A. 299 (Pa. 1914)
- Andino v. Middleton, No. 20A55, ___ U.S. ___, 2020 WL 5887393 (Oct. 5, 2020)
- In re 2,349 Ballots in the 2020 General Election, 1162 C.D. 2020 (Pa. Cmwlth. Nov. 19, 2020)