May 28, 2021

Lisa Deeley, Chairwoman
Philadelphia City Commissioner's Office
1400 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19107

*** CERTIFIED MAIL DELIVERY ***

Dear Chairwoman Deeley,

We are writing in response to published reports that you, along with City Commissioner Omar Sabir, recently voted to accept mailed-in ballots for the Primary Election held on May 18, 2021 that were returned without being dated.

Pennsylvania's Election Code, which governs the conduct of elections in the Commonwealth, is clear with regard to these strict requirements, which exist to promote voter integrity and prevent voting fraud:

> Section 1306. Voting by Absentee Electors.--(a) Except as provided in paragraphs (2) and (3), at any time after receiving an official absentee ballot, but on or before eight o'clock P.M. the day of the primary or election, the elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. **The elector shall then fill out, date and sign the declaration printed on such envelope.** Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election. ((a) intro. par. amended Mar. 27, 2020, P.L.41, No.12)

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> Section 1306-D. Voting by mail-in electors.

(a) General rule.--At any time after receiving an official mail-in ballot, but on or before eight o'clock P.M. the day of the primary or election, the mail-in elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. **The elector shall then fill out, date and sign the declaration printed on such envelope.** Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election. ((a) amended Mar. 27, 2020, P.L.41, No.12)

As you are aware, this provision was the subject of litigation in the General Election of 2020.

A majority of the Pennsylvania Supreme Court ruled in *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058 (Pa. 2020) that the unambiguous requirement of including a date on a returned ballot would be set aside, *but only for the 2020 General Election.*

The controlling position in that case was created by Justice Wecht, who wrote:

> But I part ways with the conclusion reflected in the Opinion Announcing the Judgment of the Court ("OAJC") that a voter's failure to comply with the statutory requirement that voters date the voter declaration should be overlooked as a "minor irregularity." **This requirement is stated in unambiguously mandatory terms, and nothing in the Election Code suggests that the legislature intended that courts should construe its mandatory language as directory.** Thus, in future elections, I would treat the date and sign requirement as mandatory in both particulars, with the omission of either item sufficient without more to invalidate the ballot in question..."

We have had the opportunity to view the livestream video of a recent meeting of the City Commissioners.[1] In particular, your comment that "because of one Justice's opinion, the date is still on the envelope" demonstrates a knowing and intentional decision to ignore binding Supreme Court precedent in order to impose your own personal preference concerning the counting of improperly cast ballots.

This is a very serious matter and as elected leaders of the General Assembly, who have the responsibility under Article I § 4 of the United States Constitution to prescribe the, "times, place and manner of holding elections," we will not tolerate this action.

No elected official, officer of the Commonwealth, or appointed official has the authority to plainly ignore, or worse, openly violate the laws that direct the administration of elections.

To allow you – or any other official – to do so would directly undermine our rule of law and invite continued mistrust in the process of holding free and fair elections.

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[1] *See* https://streaming.philadelphiavotes.com/#_ga=2.86449432.1478343697.1622124937-168020412.1579877990.

As such, we are demanding that you immediately rescind your endorsement of this unlawful action.

So there can be no misunderstanding - failure to promptly conform to Pennsylvania law will leave us no choice but to seek your removal from office using the authority vested to the House of Representatives under Article XI § 4 of the Constitution of Pennsylvania (*relating to power of impeachment*).

Article I § 5 of the Constitution of Pennsylvania guarantees all Pennsylvanians, including those who reside in Philadelphia, to elections that are free and equal. By and through your unlawful actions, you manifestly abridged this solemn promise and instead exchanged your own personal judgement for lawfully enacted requirements.

Sincerely,

BRYAN D. CUTLER
Speaker

KERRY BENNINGHOFF
Majority Leader

STAN SAYLOR
Majority Appropriations Chairman

DONNA OBERLANDER
Majority Whip

GEORGE DUNBAR
Majority Caucus Chair

KURT MASSER
Majority Caucus Administrator

MARTIN CAUSER
Majority Policy Chairman
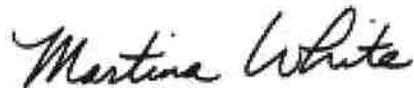
MARTINA WHITE
Majority Caucus Secretary

SETH GROVE
Majority Chairman
State Government Committee