

Is This the End for PA's Undated Ballots?

Judges in Pennsylvania have been arguing for four years about whether election officials must count undated mail ballots, since some voters always fail to fill in the required date field. The latest answer, issued by a federal appeals court on Wednesday, is no. The good news is that this could help stabilize a wild 2024 election that is now only months away.

Pennsylvania's election law, upheld by the state Supreme Court, clearly tells mail voters to "fill out, date and sign the declaration." Last year, though, a federal judge ruled that the date field was effectively optional, citing the Civil Rights Act. That law prohibits states from denying a person the right to vote based on a nonmaterial "error or omission" on paperwork that is "related to any application, registration, or other act requisite to voting."

But if that interpretation is correct, where does it stop? States have all kinds of neutral, de minimis rules for voting. Pennsylvania also rejects unsigned mail votes, as well as "naked ballots" that are returned without their mandatory "secrecy" envelopes. Other states require absentee ballots to have witness signatures and addresses. What else might judges deem to be immaterial, if Donald Trump leads President Biden by 1,000 votes in one state, or vice versa? That's the national nightmare.

A panel of the Third Circuit U.S. Court of Appeals ruled 2-1 this week that the lower judge's view is wrong. Her position, the majority says, "cannot be reconciled with the text and historic backdrop of the statute, nor cabined to the date requirement while leaving intact other vote-casting rules that serve valid state interests." All three of the judges on this panel are Democratic appointees.

The majority argues that the Civil Rights

Act provisions in question were aimed at ending literacy tests and other Jim Crow efforts to keep black citizens off the voting rolls in the South. "No longer could States block ballot box access to an applicant who misspelled a State's name or failed to calculate correctly his birthday to the day," the ruling says. This obviously

isn't what Pennsylvania is doing.

"Once inside the voting place (where, in the 1960s, nearly all voting took place), all voters must follow the same rules for casting a valid ballot," the majority opinion adds. A mail ballot in Pennsylvania might be void if it's filled out half in pencil and half in pen. But a state that sets aside defective ballots isn't denying the right to vote. "We find it implausible," the majority says, "that federal law bars a State from enforcing vote-casting rules that it has deemed necessary to administer its elections."

Justice Samuel Alito, joined by two conservative colleagues, said much the same in 2022, when a separate dispute over Pennsylvania's undated ballots reached the Supreme Court on the emergency docket. In that case, a different Third Circuit panel went the opposite direction, saying such votes must be tallied. But its ruling was eventually vacated as moot, setting up this week's heartening correction.

The dissenting judge says that two years ago "10,000 timely-received ballots" were rejected under Pennsylvania's date rule. Such errors are regrettable, and the possibility of making one is a reason to prefer voting in person. But the way to build trust in the fairness of elections is to run them by the book.

After Election Day, losing candidates will always plead to count a few more invalid votes. Judges shouldn't be standing by to rewrite state law to do it.

**A Third Circuit ruling
could stabilize 2024
voting, right on time.**
