

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

NEW PA PROJECT EDUCATION FUND, : No. 112 MM 2024
NAACP PENNSYLVANIA STATE :
CONFERENCE, COMMON CAUSE :
PENNSYLVANIA, LEAGUE OF WOMEN :
VOTERS OF PENNSYLVANIA, BLACK :
POLITICAL EMPOWERMENT PROJECT, :
POWER INTERFAITH, MAKE THE ROAD :
PENNSYLVANIA, ONE PA ACTIVISTS :
UNITED, CASA SAN JOSE, AND :
PITTSBURGH UNITED, :

Petitioners

v.

AL SCHMIDT, IN HIS OFFICIAL CAPACITY :
AS SECRETARY OF THE :
COMMONWEALTH, AND ALL 67 COUNTY :
BOARDS OF ELECTIONS (ADAMS :
COUNTY BOARD OF ELECTIONS; :
ALLEGHENY COUNTY BOARD OF :
ELECTIONS; ARMSTRONG COUNTY :
BOARD OF ELECTIONS; BEAVER :
COUNTY BOARD OF ELECTIONS; :
BEDFORD COUNTY BOARD OF :
ELECTIONS; BERKS COUNTY BOARD OF :
ELECTIONS; BLAIR COUNTY BOARD OF :
ELECTIONS; BRADFORD COUNTY :
BOARD OF ELECTIONS; BUCKS COUNTY :
BOARD OF ELECTIONS; BUTLER :
COUNTY BOARD OF ELECTIONS; :
CAMBRIA COUNTY BOARD OF :
ELECTIONS; CAMERON COUNTY BOARD :
OF ELECTIONS; CARBON COUNTY :
BOARD OF ELECTIONS; CENTRE :
COUNTY BOARD OF ELECTIONS; :
CHESTER COUNTY BOARD OF :
ELECTIONS; CLARION COUNTY BOARD :
OF ELECTIONS; CLEARFIELD COUNTY :
BOARD OF ELECTIONS; CLINTON :

COUNTY BOARD OF ELECTIONS; :
COLUMBIA COUNTY BOARD OF :
ELECTIONS; CRAWFORD COUNTY :
BOARD OF ELECTIONS; CUMBERLAND :
COUNTY BOARD OF ELECTIONS; :
DAUPHIN COUNTY BOARD OF :
ELECTIONS; DELAWARE COUNTY :
BOARD OF ELECTIONS; ELK COUNTY :
BOARD OF ELECTIONS; ERIE COUNTY :
BOARD OF ELECTIONS; FAYETTE :
COUNTY BOARD OF ELECTIONS; :
FOREST COUNTY BOARD OF :
ELECTIONS; FRANKLIN COUNTY BOARD :
OF ELECTIONS; FULTON COUNTY :
BOARD OF ELECTIONS; GREENE :
COUNTY BOARD OF ELECTIONS; :
HUNTINGDON COUNTY BOARD OF :
ELECTIONS; INDIANA COUNTY BOARD :
OF ELECTIONS; JEFFERSON COUNTY :
BOARD OF ELECTIONS; JUNIATA :
COUNTY BOARD OF ELECTIONS; :
LACKAWANNA COUNTY BOARD OF :
ELECTIONS; LANCASTER COUNTY :
BOARD OF ELECTIONS; LAWRENCE :
COUNTY BOARD OF ELECTIONS; :
LEBANON COUNTY BOARD OF :
ELECTIONS; LEHIGH COUNTY BOARD OF :
ELECTIONS; LUZERNE COUNTY BOARD :
OF ELECTIONS; LYCOMING COUNTY :
BOARD OF ELECTIONS; MCKEAN :
COUNTY BOARD OF ELECTIONS; :
MERCER COUNTY BOARD OF :
ELECTIONS; MIFFLIN COUNTY BOARD :
OF ELECTIONS; MONROE COUNTY :
BOARD OF ELECTIONS; MONTGOMERY :
COUNTY BOARD OF ELECTIONS; :
MONTOUR COUNTY BOARD OF :
ELECTIONS; NORTHAMPTON COUNTY :
BOARD OF ELECTIONS; :
NORTHUMBERLAND COUNTY BOARD OF :
ELECTIONS; PERRY COUNTY BOARD OF :
ELECTIONS; PHILADELPHIA COUNTY :
BOARD OF ELECTIONS; PIKE COUNTY :
BOARD OF ELECTIONS; POTTER :
COUNTY BOARD OF ELECTIONS; :
SCHUYLKILL COUNTY BOARD OF :
:

ELECTIONS; SNYDER COUNTY BOARD OF ELECTIONS; SOMERSET COUNTY BOARD OF ELECTIONS; SULLIVAN COUNTY BOARD OF ELECTIONS; SUSQUEHANNA COUNTY BOARD OF ELECTIONS; TIOGA COUNTY BOARD OF ELECTIONS; UNION COUNTY BOARD OF ELECTIONS; VENANGO COUNTY BOARD OF ELECTIONS; WARREN COUNTY BOARD OF ELECTIONS; WASHINGTON COUNTY BOARD OF ELECTIONS; WAYNE COUNTY BOARD OF ELECTIONS; WESTMORELAND COUNTY BOARD OF ELECTIONS; WYOMING COUNTY BOARD OF ELECTIONS; AND YORK COUNTY BOARD OF ELECTIONS),

Respondents

STATEMENT IN SUPPORT OF DENIAL

JUSTICE DONOHUE

FILED: October 5, 2024

There are two cases pending on this Court’s election docket¹ that, depending on our resolution, may impact the extent of the disenfranchisement of voters who do not date, or incorrectly date, the outer envelopes of their mail-in ballots. This King’s Bench petition presents a challenge to the constitutionality of a provision of the Election Code as interpreted by this Court in *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023), that mandates this disenfranchisement. Petitioners contend that, as interpreted, that statutory provision violates Article I, Section 5² of our Charter because it needlessly deprives voters of a

¹ *Genser v. Butler Cnty. Bd. of Elections*, 26 & 27 WAP 2024; *Center for Coalfield Justice v. Washington Cnty.*, 259 WAL 2024.

² “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” PA. CONST. art. I, § 5.

voice in an election when they make this mistake when filling out the outer envelopes containing their mail-in ballots.

Considering whether to declare an act of the General Assembly unconstitutional is serious business. It requires an analysis of the statute as a whole. Decisions in the pending cases may be critical in any such analysis. In my view, it is inappropriate to grant King's Bench jurisdiction in this matter when the legal landscape may be in flux. When embarking on considering a challenge to the constitutionality of a statute, we must be standing on firm terrain. We currently are not, and therefore, I believe it is necessary to deny this King's Bench petition. Time will tell if there is a future challenge, in the ordinary course, in a court of common pleas.

Justice McCaffery joins this statement in support of denial.