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26 WAP 2024 and additional consolidated case(s)

IN THE SUPREME COURT OF PENNSYLVANIA

Nos. 26 WAP 2024 and 27 WAP 2024

FAITH A. GENSER; FRANK P. MATIS; and THE PENNSYLVANIA DEMOCRATIC PARTY,
Appellees,

v.

BUTLER COUNTY BOARD OF ELECTIONS; REPUBLICAN NATIONAL COMMITTEE; and REPUBLICAN PARTY OF PENNSYLVANIA
Appellants

VOTER-APPELLEES' ANSWER TO APPLICATION FOR STAY OF APPELLANTS REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF PENNSYLVANIA

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INTRODUCTION

This litigation involves the interpretation of the Election Code's provisional ballot rules. Most of the Pennsylvania courts and election administrators that have examined the Code provisions at issue—including the Commonwealth Court in this litigation, courts of common pleas in Delaware and Washington Counties, the Secretary of Commonwealth, and many county boards of elections across Pennsylvania—have concluded that the Election Code requires the counting of provisional ballots cast by voters who had mailed in naked ballots or made other disqualifying mistakes on their mail-ballot packets. Last week, this Court affirmed.

Republican Intervenors now argue that this Court's completely ordinary act of state statutory interpretation amounted to conduct so far beyond the ordinary bounds of judicial review as to implicate the U.S. Constitution, necessitating a stay pending a forthcoming petition for certiorari. Controlling precedent, common sense, and foundational separation-of-powers and federalism principles foreclose their position. They have no chance at obtaining U.S. Supreme Court review in this state law case, much less emergency relief from that Court days before a quadrennial election. Nor does any principle of equity require this Court to issue a stay, let alone to enact Republican Intervenors' sweeping proposed "alternative" relief against non-parties, both of which would replace the uniformity, simplicity, and clarity of this Court's recent ruling with uncertainty and disorder. And a stay this late in the day,

after state and county election officials have conformed operations to last week's decision and voters have made plans to use provisional voting to fix mail-ballot defects, would sow chaos on the eve of a big election. This Court should deny the Application.

ARGUMENT

I. *Purcell* Does Not Apply Here, and *Purcell* Considerations in Any Case Cut Against a Stay

Republican Intervenors wrongly invoke *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) and the "*Purcell* Doctrine" as grounds for a stay in this Court in light of "the ongoing 2024 General Election." *See* App. at 6-7. Their misguided argument is that, even though this case involves voting in Butler County in the April 2024 primary, the precedential effect of the Court's decision here on future elections is grounds for a stay under *Purcell*. *Purcell* doesn't work that way—indeed, it doesn't even apply here.

Purcell is an equitable doctrine grounded in federalism that limits the power of *federal courts* to grant relief. *See, e.g.*, *Moore v. Harper*, 142 S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring in stay denial) ("*[F]ederal courts* ordinarily should not alter state election laws in the period close to an election.") (emphasis added); *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in stay grant) ("It is one thing for a State on its own to toy with its election laws close

to a State's elections. But *it is quite another thing for a federal court to swoop in and re-do a State's election laws* in the period close to an election." (emphasis added)); *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 28 (2020) (Roberts, C.J., concurring) (*Purcell* is a limitation on "*federal intrusion[s]* on state lawmaking processes" (emphasis added)); *id.* at 30 (Kavanaugh, J., concurring) (the "*Purcell* principle" counsels that "*federal courts* ordinarily should not alter state election laws in the period close to an election" (emphasis added)).

But while the *Purcell* principle limits "*federal intrusion[s]* on state lawmaking processes," it has no bearing on the "authority of state courts to apply their own constitutions to election regulations." *Democratic Nat'l Comm.*, 141 S. Ct. at 28 (Roberts, C.J., concurring) (emphasis added). Thus, while the U.S. Supreme Court has sometimes "stayed lower *federal court* injunctions" that are issued close in time to an election, *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J.) (emphasis added), *state court* actions have not been subject to the same limitation. *E.g.*, *Moore*, 142 S. Ct. at 1089 (declining to stay North Carolina Supreme Court decision ordering redrawing of congressional lines because "it [was] too late *for the federal courts* to order that the district lines be changed for the 2022 primary and general elections" (emphasis added)).

Republican Intervenors' reference to this Court's "recent decisions adopting the *Purcell* doctrine," App. at 6, is puzzling because there are no such "decisions." Their only citation is to this Court's non-precedential order denying a King's Bench petition in *New PA Project Education Fund v. Schmidt*. App. at 2, 5, 6, 7. But this Court did not "adopt the *Purcell* doctrine" in that case. Rather, it made clear that, even if *Purcell*-type considerations may be relevant in the discretionary decision whether to allow a King's Bench petition seeking prospective relief in advance of an election, such considerations are no barrier at all to merits resolution of appeals that raise important election issues "in the ordinary course." *New PA Project Educ. Fund v. Schmidt*, No. 112 MM 2024, 2024 WL 4410884, at *3-4 n.2 (Pa. Oct. 5, 2024).[1] Indeed, the Court then pointed to *this very case* as an example of such an ordinary-course appeal where *Purcell*-type considerations do *not* prevent this Court from playing its "appellate role." *Id.*

[1] Pennsylvania courts have in fact repeatedly resolved disputes about the conduct of elections even while elections or canvassing are underway. *See, e.g., Ball v. Chapman*, 289 A.3d 1 (Pa. Oct. 19, 2022) (resolving King's Bench petition filed by Republican Intervenors); *In re Canvass of Absentee & Mail-in Ballots of November 3, 2020 Gen. Election*, 241 A.3d 1058 (Pa. Nov. 23, 2020) (resolving issues arising during post-election canvass); *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2012 WL 4497211 (Pa. Cmwlth. Oct. 2, 2012) (entering a preliminary injunction against enforcement of a voter ID law after remand from this Court, 54 A.3d 1, 5 (Pa. Sept. 18, 2012)).

That makes sense—and Republican Intervenors' attempt to graft a federal-courts-specific doctrine onto the body of Pennsylvania law does not. A generally applicable *Purcell*-type principle would be in nearly insoluble tension with 25 P.S. § 3157, which provides for the rapid adjudication of election-related legal challenges. The entire point of this statutory provision and the judicial process it creates is to furnish a vehicle for election challenges to be quickly decided after Election Day—specifically requiring that challengers initiate the action within two days of a decision of a board of elections, and that the court schedule a hearing within three days of the filing of the challenge. *See* 25 P.S. § 3157(a). Such actions necessarily arise *only* while the county boards are in the throes of an election, and yet Pennsylvania courts can, must, and do decide them.

Moreover, even if *Purcell* were theoretically relevant here, Republican Intervenors are especially ill-suited to invoke it. They are partisan actors, not government officials. The *Purcell* principle is premised on the "*State's* extraordinarily strong interest in avoiding . . . changes to its election laws and procedures." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring) (emphasis added).

In the end, it is Republican Intervenors who seek to change election rules in Pennsylvania. While they fly the banner of a stay petition, Republican Intervenors

eventually ask the Court, App. at 16, for an order requiring *all counties*—even non-party counties that have long counted the provisional ballots of voters whose mail-ballot return packets contained defects—to segregate such provisional ballots in the upcoming election. Their suggestion that *Purcell* principles might apply here to justify a stay but that, in the alternative, this Court should wantonly violate those same principles and order sweeping, election-eve rules-changes even against non-parties betrays the unseriousness of their position.

Nor, even if *Purcell* applied here in full, would it matter. If anything, the applicable analysis cuts against a stay. The touchstone question is whether the relief at issue is "feasible" "without significant cost, confusion, or hardship," *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). Here, county boards have long allowed voters whose mail ballots have been set aside as defective to *cast* provisional ballots. The decision in this case merely clarifies that those mail ballots must be *counted*. That decision eliminates a source of confusion and disuniformity in the law, alleviates much of the burden and uncertainty of adjudicating the status of those provisional ballots, and ameliorates the hardship and injustice for voters whose voices might otherwise be excluded. The stay and the alternative relief that Republican Intervenors now seek is comparatively infeasible, burdensome,

confusing, and unjust. If anything, the principles they attempt to invoke are an independent reason to deny their application.

II. Republican Intervenors Have Not Presented a "Substantial Case on the Merits" Warranting a Stay Pending U.S. Supreme Court Review

Republican Intervenors argue they are entitled to a stay because they plan to present a "substantial case on the merits" to the U.S. Supreme Court as to why this Court's decision violated the U.S. Constitution's Elections and Electors Clauses. App. at 7-8. But this Court's decision involved nothing more than the routine exercise of judicial review by the Commonwealth's highest court to resolve a question of state statutory interpretation. There is no federal question to review at all, much less a "substantial" one.

Straining to create a federal issue, Republican Intervenors argue that the Court's interpretation of the Election Code was so anomalous as to fall into the narrow exception to federal review of state court election law decisions articulated in *Moore v. Harper*. App. at 8-9, citing *Moore*, 600 U.S. 1, 36 (majority opinion) & 38-39 (Kavanaugh, J. concurring). But there is nothing unusual about this case, which involved a close reading of statutory text and a workaday application of Pennsylvania's rules of statutory construction—let alone something so transgressive as to exceed the Court's judicial role. As Justice Dougherty stated, far from venturing

outside the boundaries of judicial review, resolving the statutory question before this Court was "quite literally, our job." Concurring Op. at 2.

A. This Court's Decision Reflects Normal Judicial Review and Does Not Fall Within the Narrow *Moore* Exception

Moore forecloses Republican Intervenors' argument that this Court's decision somehow raises an issue of federal law. The narrow exception the Supreme Court identified in *Moore* simply does not apply here.

Moore involved an appeal from a North Carolina Supreme Court decision striking down a gerrymandered congressional districting plan under the state constitution. 600 U.S. at 9. In an effort to create a federal issue, Petitioners argued that the North Carolina Supreme Court had violated the federal Elections Clause, which provides that "the Legislature" in each State makes rules governing the "[t]he Times, Places and Manner of" federal elections. *Id.* (citing U.S. Const., Art. I, § 4, cl. 1); *see also* U.S. Const., Art. II, § 1, cl. 2 (similar use of "Legislature" in Electors Clause). The Court rejected the challengers' expansive view of federal jurisdiction, noting the fundamental principle of federalism that "state courts are the appropriate tribunals . . . for the decision of questions arising under their local law, whether statutory or otherwise." *Id.* at 34 (citation omitted). The Court then squarely held that is no less true when it comes to the interpretation of local election laws. *Id.* at 37 ("State courts retain the authority to apply state constitutional restraints when

legislatures act under the power conferred upon them by the Elections Clause."); *id.* at 38 (Kavanaugh, J., concurring) ("[S]tate laws governing federal elections are subject to ordinary state court review.").

The U.S. Supreme Court left open a narrow window to review state courts that "transgress the ordinary bounds of judicial review such that they arrogate to themselves power vested in state legislatures to regulate federal elections." *Moore*, 600 U.S. at 36. Republican Intervenors argue that this case falls within that exceedingly narrow exception, where a state court essentially ceases to behave like a court at all.

Nothing of the sort happened here. The Opinion reflects the exercise of ordinary statutory review. The Election Code contains more than a few undefined terms and ambiguous or obsolete provisions. *E.g.*, *In re November 3, 2020 Gen. Election*, 240 A.3d 591, 610 n.24 (Pa. 2020) ("Admittedly, there are some vestiges remaining in the Election Code of the prior, now eliminated, system for time-of-canvassing ballot challenges."); *In re 2003 Gen. Election for Office of Prothonotary*, 849 A.2d 230, 237 (Pa. 2004) (applying Statutory Construction Act because "the Election Code does not define the term 'verified'"). Pennsylvania courts interpreting the Election Code can and sometimes must apply traditional statutory construction

tools to "ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S. § 1921(a).

The addition of provisional voting to the Election Code in 2002, combined with the adoption of mail-in balloting in Act 77 of 2019, created issues of statutory interpretation that required careful parsing of relevant Election Code sections to resolve ambiguous language related to provisional ballots. Lower court judges disagreed with one another, and this Court stepped in to settle the matter "[a]s dictated by our Statutory Construction Act," Op. at 33. This Court did not "arrogate to [itself] the power vested in state legislatures to regulate federal elections," *Moore*, 600 U.S. at 36. To the contrary, consistent with the Constitution and laws of this Commonwealth, the Court performed a function expressly vested in it *by the Legislature*. *See* 1 Pa.C.S. § 1921(a).

Republican Intervenors argue that the relevant statutory provisions are so clear on their face that disagreeing with their position amounts to a violation of the U.S. Constitution and a transgression of the judicial function itself. That claim is unsupportable. In fact, lower court judges across the Commonwealth who considered this provisional-ballot issue reached different and varying conclusions. *Compare* Op. A.29, *and Ctr. for Coalfield Justice v. Wash. Cnty. Bd. of Elections*, No. 1172 CD 2024 (Pa. Cmwlth. Sept. 10, 2024), *and Ctr. for Coalfield Justice v.*

Wash. Cnty. Bd. of Elections, No. 2024-3953 (Pa. Ct. Com. Pl. Wash. Cnty. Aug. 23, 2024), *and Keohane v. Del. Cnty. Bd. of Elections*, No. CV-2023-4458 (Del. Cnty. Ct. Com. Pl. Sept. 21, 2023) (favoring Voter-Appellees' interpretation), *with* Trial Court Op. A.57 (opposite interpretation). Similarly, while certain boards of elections, including Butler County's, have interpreted 25 P.S. § 3050 the same way as Republican Intervenors do, many other county boards have consistently read it as requiring the counting of provisional ballots cast by voters who had submitted flawed mail-ballot return packets. *See Amici Curiae* Brief of County Officials in Support of Appellees (Sept. 26, 2024), at 2. When as here a statute can reasonably be read in at least two different ways, it is ambiguous; and reviewing courts should apply familiar tools of statutory interpretation to resolve the ambiguity and render a decision. *E.g.*, *Pearlstein v. Commonwealth*, __ A.3d __, No. 21 MAP 2023, 2024 WL 4293988, at *8 (Pa. Sept. 26, 2024).

Whether or not one agrees with the result (and losing litigants rarely do), that is the traditional judicial role in a nutshell. Republican Intervenors have no likelihood of convincing the U.S. Supreme Court that the decision here was anything else. There is no "substantial case on the merits" that this Court transgressed the bounds of judicial review and engaged in such lawless behavior as to trigger the narrow exception postulated in *Moore*. A stay can be denied on that basis alone.

B. The Court Properly Interpreted the Election Code

Republican Intervenors spend the bulk of their application not identifying any federal law issue under *Moore* but rather just rehashing their statutory interpretation arguments. App. at 8-13. The fact that they disagree with this Court does not create an issue of federal law. And in any case, they are still wrong about state law, too.

This Court correctly concluded that because Voter-Appellees submitted naked ballots, their mail ballots were "void" and therefore could not be "ballots" that trigger the prohibition on provisional voting in 25 P.S. § 3050(a.4)(5)(ii)(F). Op. at 35-36. That is consistent with this Court's precedent, which establishes that a voter's failure to include a secrecy envelope in the return packet, a mandatory statutory requirement under 25 P.S. § 3150.16(a), renders the ballot "void," or of no legal effect. Op. 30-31, 35 (citing *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa 2020)). The Court concluded that the Butler County Board's decision to reject Voter-Appellees' provisional ballots incorrectly gave their invalid mail ballots legal effect. Op. 36. It directed the Board to count their provisional ballots under Subsection 3050(a.4)(5)(i). *Id.*

Republican Intervenors disagree, based on conclusory assertions about the meaning of Subsection 3050(a.4)(5)(ii)(F) and on Justice Brobson's dissenting opinion about the meaning of "void" (App. at 11-14, citing Dissenting Op. at 18).

But they cite nothing that would place this Court's decision outside the allowable bounds of a state supreme court's power to review state election law under *Moore*.

Moreover, Republican Intervenors do not address the fact that the Court also recognized the soundness of the Commonwealth Court's alternative analytical approach. *See* Op. at 42 ("Our interpretation also dovetails with other provisions of the Election Code that interact with Subsection (a.4)(5)(ii)(F)"). As the Commonwealth Court recognized, a commonsense interpretation of Pennsylvania's Election Code leads to the conclusion that a voter who makes a mistake that prevents the voter's mail ballot from counting "did not cast any other ballot in the election" under 25 P.S. § 3050(a.4)(5)(i), and did not have a "mail-in ballot" "timely received" by the board under 25 P.S. § 3050(a.4)(5)(ii)(F) where the voter's submission did not meet the requirements set forth in 25 P.S. § 3150.16. Thus, a provisional ballot voted in this circumstance must be counted. This reading of the relevant Election Code provisions, which are ambiguous, is consistent with "[t]he occasion and necessity for the statute," 1 Pa.C.S. § 1921(c); avoids absurd results; and, most importantly, enfranchises, not disenfranchises, voters. This reading is also consistent with the obvious purpose of Section 3050: to ensure that each voter gets to vote once and only once.

Reviewing this Court's Opinion makes it abundantly clear that the Court engaged in a careful and thoughtful analysis of complex statutory provisions, using the standard tools of statutory construction and legal reasoning. Republican Intervenors' assertion that this Court is acting in a lawless and transgressive fashion is unworthy.

III. Staying the Judgment or Reversing the Opinion is Unwarranted and Would Cause Disenfranchisement and Disruption

To obtain a stay, Republican Intervenors would need to show not only a substantial case on the merits, but also that they will suffer "irreparable injury" without a stay, and that the balance of harms and the public interest support a stay. *Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz*, 573 A.2d 1001, 1003 (Pa. 1990). As set forth above, they cannot make out any case on the merits with respect to their supposed issue of federal law, let alone a substantial case. On the other elements they fare no better.

Denying a stay will not cause "irreparable injury," or indeed any injury, to Republican Intervenors. The Court's judgment requires nothing more than that the Butler County Board of Elections count two provisional ballots and add them to the totals for the April 23, 2024 primary election. It is undisputed that the two provisional ballots of Voter-Appellees cannot change the outcome of any race from the primary election. Staying the counting of these two provisional ballots and the

amendment of the certified vote totals would thus not prevent any injury to Republican Intervenors.[2] In contrast, a stay would "substantially harm other interested parties in the proceedings," namely Appellees, by continuing to deprive them of their right to have their primary election votes counted. And Republican Intervenors' exceedingly broad request to modify county board operations statewide would do incalculable harm to voters, who now have made plans to use this Election Day provisional ballot option, and to elections officials who have already incorporated the Court's ruling into their operational plans.

Although Republican Intervenors have requested *stay* of the *judgment*, what they really want is *withdrawal* of the *Opinion*. No such remedy lies from this posture. And even if it were possible to obtain reconsideration of the Opinion via a stay application, Republican Intervenors are conspicuously equivocal about how a stay would impact future elections, including next month's general election.

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[2] Republican Intervenors insist that "without a stay, their request for review in the U.S. Supreme Court will become moot and they will forever lose their ability to obtain such review." App. at 14. However, in the improbable event the U.S. Supreme Court vacates this Court's judgment, the Butler County Board of Elections could readily undo the counting of the two ballots at issue by re-amending the 2024 primary vote totals to show the same numbers they showed before the orders of the Commonwealth Court and this Court.

In some places, they soothingly ask the Court to "refrain from substantially altering the rules and procedures governing county boards' counting of ballots in the [2024 general] election." App. at 2 (cleaned up). This implies a gentle preservation of the status quo ante. But under the status quo ante, most county boards would accept and count provisional ballots cast by voters whose return packets were fatally defective, while a minority of boards (including the Butler County Board) would not count them.

Elsewhere Republican Intervenors reveal their true goal: jettisoning the status quo ante and immediately instituting a statewide *ban* on counting such provisional ballots. *E.g.*, App. at 6 ("That is the rule that should apply to this election."). This would not be a mere stay of the judgment, preserving the status of Appellees' two ballots. Nor would it return the state of the law to where it lay before this case, with each board deciding how to handle provisional ballots. Rather, this would be a full reversal of the Opinion, and would sweepingly impose a new, disenfranchising rule on all sixty-seven counties. Some "stay."

Aside from blocking the counting of potentially thousands of Pennsylvanians' provisional ballots in less than two weeks, such a change would "adversely affect the public interest" in other ways. Since this Court decided this case on October 23,

the Department of State has issued updated guidance to reflect this Court's Opinion,[3] and boards of elections and voter activation groups across the Commonwealth have been actively notifying voters who had submitted flawed packets of their option to salvage their franchise via provisional voting. Many of these voters have accordingly made plans to go to their polling places on November 5 to take advantage of this option, and in counties that allow curing, some voters have by now forgone opportunities to cure their return packets by traveling to their county seats, choosing instead to cast a provisional ballot closer to home. In addition, counties have responded to this Court's decision by training board of elections staff and poll workers on how to handle voter inquiries; forcing counties to re-train them in the final push toward Election Day would add new burdens to already-stretched personnel.

Republican Intervenors claim that denying their application would "seriously and irreparably harm the State, the General Assembly, and the Commonwealth's voters." Application at 15 (internal quotation marks and citation omitted). Neither the State nor the General Assembly has alleged any such harm, and this Court should

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[3] Pa. Dep't of State, *Pennsylvania Provisional Voting Guidance* (Oct. 24, 2024), at 5 & n.2, *available at* https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2024-provisionalballots-guidance-v2.2.pdf

not take Republican Intervenors' word for it. As for the "Commonwealth's voters," insofar as Republican Intervenors may act as an advocate for voters from their political party, they have not explained how denying a stay would specifically harm those voters. Voters of all parties and persuasions make mistakes in complying with the Election Code's technical rules for mail voting. Indeed, the claim that counting the provisional ballots of two unquestionably eligible voters who would otherwise have no vote counted somehow constitutes irreparable harm is absurd, illogical, and dangerous.

IV. Republican Intervenors' Request to Modify the Judgment Should be Rejected

Republican Intervenors ask in the alternative that the Court modify the judgment to require that the "county board" or "county boards" segregate provisional ballots cast by mail-in voters for the upcoming election. App. at 16-17. Citing two inapposite cases involving appeals from a FOIA request and an international child custody dispute,[4] Republican Intervenors ask for relief that they did not request during the proceedings below, namely, a judicial modification to the Election Code that would require Butler County—and apparently non-party

[4] *John Doe Agency v. John Doe Corp.*, 488 U.S. 1306 (1989) (stay of order requiring compliance with FOIA request that would have mooted appeal); *Chafin v. Chafin*, 568 U.S. 165 (2013) (international child custody case discussing relationship between stay of proceedings and mootness if child at issue leaves the country).

counties—to implement a special counting procedure for provisional ballots cast by voters who had submitted defective mail-in ballots. This late request is procedurally defective and unwarranted, and it would interfere with the orderly administration of the upcoming election.

Importantly, this is an appeal under 25 P.S. § 3157, arising out of the vote tabulation in a single county following the April 2024 primary. Voter-Appellees requested an order requiring the Butler County Board of Elections to count their provisional ballots after they had mistakenly mailed in naked ballots. This Court has now ordered the requested relief, and there is nothing to stay with respect to the judgment. All the Butler County Board of Elections must do to carry out the judgment is simply to update its voting records to reflect an amended tally including Appellee-Voters' votes.

Through the artifice of a stay request, Republican Intervenors now seek what is effectively a statewide preliminary injunction against not only the Butler County Board but also its counterparts in the other 66 counties, compelling them all to create a new procedure for counting provisional ballots. Those boards of elections were not parties to this litigation, and such an order would upend the status quo, not preserve it. For years, many county boards have been counting the provisional ballots of voters who submitted defective mail-ballot return packets. Republican Intervenors

cannot backdoor a request to change that settled practice in this litigation after they have lost and on the eve of an election.

Republican Intervenors cite Justice Alito's order in *Republican Party of Pennsylvania v. Boockvar*, No. 20A84, 2020 WL 6536912 (U.S. Nov. 6, 2020). But they fail to describe the salient facts. The issue in dispute was the validity of a decision of this Court extending the Election Code's received-by deadline for mail ballots and mandating a presumption of timeliness for non-postmarked ballots. This Court had found that, unlike the statutory language at issue in the present case, the relevant Election Code provision has "no ambiguity," and it granted a one-time extension to the received-by deadline under the Pennsylvania Constitution. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 369, 371 (Pa. 2020). All Pennsylvania county boards of elections were parties to the action. As reflected in the cited order of Justice Alito, the Secretary of the Commonwealth had issued non-binding guidance to all county boards encouraging them to segregate ballots received after 8:00 P.M. on election day pending disposition of the litigation. 2020 WL 6536912, at *1. There was significant doubt as to whether all county boards were following the guidance, so on request, Justice Alito ordered all of them to do so. There are no similar facts here. This Court has not issued an order that conflicts with the Election Code, and only one of the 67 county boards is a party.

In short, this is a Section 3157 appeal addressing a mundane issue of statutory construction. Having lost the case, Republican Intervenors are in no position to request modification of the judgment, much less to use their loss as a springboard to change voting procedures statewide for the election set for nine days from now. This Court should reject Republican Intervenors' modification gambit.

CONCLUSION

This Court should deny the Application in its entirety.

Dated: October 27, 2024 Respectfully submitted,

/s/ Benjamin D. Geffen

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CERTIFICATION 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.

Dated: October 27, 2024

/s/ Benjamin D. Geffen
Benjamin D. Geffen