

**IN THE SUPREME COURT OF PENNSYLVANIA**

---

**No. 76 EM 2024 & No. 77 EM 2024**

---

**BRIAN BAXTER and SUSAN KINNIRY,**  
**Plaintiffs-Respondents,**

**v.**

**PHILADELPHIA BOARD OF ELECTIONS,**  
**Defendant-Respondent,**

**REPUBLICAN NATIONAL COMMITTEE and REPUBLICAN**  
**PARTY OF PENNSYLVANIA**  
**Intervenor-Petitioners.**

---

On Emergency Application for Extraordinary Relief

---

**APPLICATION FOR LEAVE TO FILE AMICUS BRIEF**

Kathleen M. Kotula (No. 86321)  
Kathleen A. Mullen (No. 84604)  
Pennsylvania Department of State  
306 N. Office Bldg.  
401 North St.  
Harrisburg, PA 17120-0500

Michael J. Fischer (No. 322311)  
Aimee D. Thomson (No. 326328)  
Jacob B. Boyer (No. 324396)  
Office of General Counsel  
333 Market St., 17th Floor  
Harrisburg, PA 17101  
mjfischer@pa.gov  
(717) 831-2847

November 1, 2024

*Counsel for Amici Curiae Pennsylvania Department of State and  
Secretary of the Commonwealth Al Schmidt*

The Department of State and Secretary of the Commonwealth Al Schmidt respectfully move, pursuant to Pennsylvania Rule of Appellate Procedure 531, to file the amicus brief attached to this application as Exhibit A. In support of this application, proposed amici curiae state as follows:

1. Secretary Schmidt is Pennsylvania's chief election officer. He and the Department have essential responsibilities for the administration of Pennsylvania's elections.

2. Among other statutory obligations, Secretary Schmidt has the duty "[t]o receive from county boards of elections the returns of primaries and elections, to canvass and compute the votes cast for candidates and upon questions as required by the provisions of this act; to proclaim the results of such primaries and elections, and to issue certificates of election to the successful candidates at such elections." 25 P.S. § 2621(f); *see also id.* § 3159 ("Upon receiving the certified returns of any primary or election from the various county boards, the Secretary of the Commonwealth shall forthwith proceed to tabulate, compute and canvass the votes cast for all candidates enumerated in section 1408, and upon

all questions voted for by the electors of the State at large, and shall thereupon certify and file in his office the tabulation thereof.”).

3. Similarly, the Department “shall have the power, and its duty shall be, to care for, compile, publish, and certify, returns of elections.” 71 P.S. § 273.

4. As such, Secretary Schmidt and the Department have a strong interest in ensuring that counties are canvassing ballots and certifying election results consistent with the requirements of the Election Code and the Pennsylvania Constitution, and in ensuring that election results in Pennsylvania reflect the will of the voters.

5. Intervenor-Appellants the Republican National Committee and the Republican Party of Pennsylvania (collectively, “the RNC”) have filed an emergency application for extraordinary relief, seeking a stay or modification of Commonwealth Court’s decision of October 30, 2024, affirming a decision of the Philadelphia Court of Common Pleas directing the Philadelphia Board of Elections to count certain ballots with errors relating to the handwritten date from two recent special elections.

6. The RNC’s application directly bears on the proper execution and resolution of Pennsylvania’s elections under the Pennsylvania

Election Code and the Pennsylvania Constitution, and thus the proper functioning of Pennsylvania's government.

WHEREFORE, the Department and Secretary Schmidt respectfully request that this application be granted and that the amicus brief attached as Exhibit A be docketed.

November 1, 2024

Respectfully submitted,

Kathleen M. Kotula (No. 86321)  
Kathleen A. Mullen (No. 84604)  
Pennsylvania Department of State  
306 North Office Bldg.  
401 North Street  
Harrisburg, PA 17120-0500

*/s Michael J. Fischer*  
\_\_\_\_\_  
Michael J. Fischer (No. 322311)  
Aimee D. Thomson (No. 326328)  
Jacob B. Boyer (No. 324396)  
Office of General Counsel  
333 Market St., 17th Floor  
Harrisburg, PA 17101  
mjfischer@pa.gov  
(717) 831-2847

*Counsel for Amici Curiae Pennsylvania Department of State and  
Secretary of the Commonwealth Al Schmidt*

## CERTIFICATE 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.

Date: November 1, 2024

*/s Michael J. Fischer*  
Michael J. Fischer