

IN THE SUPREME COURT OF PENNSYLVANIA

136 MM 2024

**THE REPUBLICAN NATIONAL COMMITTEE AND THE
REPUBLICAN PARTY OF PENNSYLVANIA,
Petitioners,**

v.

**ALL 67 COUNTY BOARDS OF ELECTIONS,
Respondents.**

On Application for the Exercise of King's Bench Power or
Extraordinary Jurisdiction

APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

Kathleen M. Kotula (No. 86321)
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 15, 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 is required to prescribe the form of the declaration that appears on mail-ballot envelopes, and all counties are required to use the declaration he prescribes. *See* 25 P.S. §§ 3146.4, 3150.14(b). In addition, the Secretary has broad authority to prescribe the form of the return envelope that carries the declaration as well as the form of the enclosed instructions. *See id.* §§ 3146.4, 3150.14(b) & (c). The Secretary has used this authority to redesign mail ballot materials to reduce the frequency of inadvertent voter errors, including dating errors.

3. In addition, the Secretary 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.

4. 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.

5. 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.

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 15, 2024

Respectfully submitted,

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

/s/ Jacob B. Boyer

Michael J. Fischer (No. 322311)
Aimee D. Thomson (No. 326328)
Jacob B. Boyer (No. 324396)
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333 Market St., 17th Floor
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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 15, 2024

/s/ Jacob B. Boyer

Exhibit A

IN THE SUPREME COURT OF PENNSYLVANIA

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**AMICUS BRIEF OF THE DEPARTMENT OF STATE AND
SECRETARY OF THE COMMONWEALTH AL SCHMIDT**

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INTERESTS OF AMICI CURIAE

The Department of State and the Secretary of the Commonwealth respectfully submit this amicus brief in response to the RNC’s application.¹ The Secretary and the Department have an interest in this matter based on their responsibilities related to the administration, and final certification, of Pennsylvania’s elections.

DISCUSSION

Every six months, county boards of elections convene after Election Day to canvass and count the ballots cast in that election. During that process, the county boards determine which ballots to count in accordance with the statutes and constitutional provisions that bind them. This sometimes requires county boards—after the election has concluded and the possibility of voter confusion no longer exists—to interpret statutory provisions, apply constitutional principles, and navigate circumstances in which the law may be unsettled.

If any person is “aggrieved” by a county board’s computation or canvassing decision, the Election Code establishes a process for that

¹ This brief was not authored or paid for, in whole or in part, by any person or entity other than *amici* and their counsel.

person to file an appeal with a court of common pleas. *See* 25 P.S. § 3157. This happens regularly because voters, political candidates, and political parties may disagree with a county board’s legal interpretations. *E.g.*, *Genser v. Butler Cnty. Bd. of Elections*, No. 26 WAP 2024, 2024 WL 4553285 (Pa. Oct. 23, 2024); *In re Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d 900 (Pa. 2024). These challenges necessarily arise between Election Day and final certification of the election results.

This procedure is playing out right now for the 2024 general election. Aggrieved parties, including the RNC, are challenging the decisions of county boards in the ordinary course. *E.g.*, *McCormick, et al. v. Philadelphia City Commissioners*, No. 241101877 (Phila. Cnty. C.C.P. filed Nov. 15, 2024); *McCormick, et al. v. Bucks County Board of Elections*, No. 2024-07228 (Bucks Cnty. C.C.P. filed Nov. 13, 2024).²

² The RNC alleges that the Centre County Board of Elections “decided to count undated and misdated mail ballots.” *See* App. at 9-10. But the cited board meeting video, from November 12, shows only that Centre County voted on November 7 to count three ballots with unspecified “date issues.” Centre County Board of Elections Meeting (Nov. 12, 2024), <https://www.youtube.com/watch?v=-bnyKXCjVMA> (at 1:32:44-1:33:44). The absence of any details about what these “date issues” are underscores the importance of developing a record through the § 3157 appeals process.

Rather than let these appeals proceed, the RNC has asked this Court to issue a blanket rule that, for the 2024 general election, the General Assembly's statutory appeal process does not apply to a single issue: the constitutionality of not counting mail ballots with declaration-date errors.³

When this Court declined to exercise jurisdiction over *New Pennsylvania Project Education Fund v. Schmidt*, No. 112 MM 2024 (Pa. Oct. 5, 2024), and ruled that Commonwealth Court lacked jurisdiction over *B-PEP v. Schmidt*, No. 68 MAP 2024 (Pa. Sept. 4, 2024), it left one path for resolving the constitutional question presented here: an action under 25 P.S. § 3157. Such an action is always filed in response to a recently completed election and will always seek an order addressing whether certain ballots will be counted for that election. Using that process to litigate disputes over canvassing decisions is the status quo. There is no basis for determining that the 2024 general election is

³ The Department has previously explained its view that the handwritten date serves no purpose under the Election Code and is not used by counties in the administration of elections. But the question presented by the current petition is simply whether the ordinary process for resolving questions relating to the decisions of county boards of elections as to whether to count ballots should be permitted to play out in the ordinary course.

excluded from the ordinary post-election canvassing decisions that must be made and can be contested.

CONCLUSION

For the reasons set forth above, this Court should deny the RNC's application and allow the issues presented by this case to be resolved under the statutory procedures set forth in the Election Code.

November 15, 2024

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Date: November 15, 2024

/s/ Jacob B. Boyer

CERTIFICATE OF LENGTH

I certify that this brief complies with the word count requirement set forth in Pennsylvania Rule of Appellate Procedure 531(b)(3). Excluding matters identified in Pennsylvania Rule of Appellate Procedure 2135(b), this brief is 685 words. I have relied on Word's word count function to determine the length of this brief.

Date: November 15, 2024

/s/ Jacob B. Boyer