

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA STATE CONFERENCE OF
THE NAACP, *et al.*,

Plaintiffs,

v.

AL SCHMIDT, *in his official capacity as Acting
Secretary of the Commonwealth, et al.*,

Defendants.

No. 1:22-cv-339

Judge Susan Paradise Baxter

**RESPONSE OF ACTING SECRETARY OF THE COMMONWEALTH AL
SCHMIDT TO THE AMICUS BRIEF OF RESTORING INTEGRITY AND
TRUST IN ELECTIONS**

Acting Secretary of the Commonwealth Al Schmidt submits this response to RITE's amicus brief ([ECF No. 284-1](#)).

RITE, like the Republican National Committee, urges the Court to ignore what 52 U.S.C. § 10101(a)(2)(B) says. At times, RITE does so explicitly. It insists that the Court should interpret § 10101(a)(2)(B) based not on its text, but instead based on the text of § 10101's *other* paragraphs. *See* [Amicus Br. at 10](#). Doing so would be anathema to basic principles of statutory interpretation. *See, e.g., Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020) (“[W]hen the meaning of the statute’s terms is plain, our job is at an end.”). RITE also maintains that the Acting Secretary’s interpretation would invalidate scores of Pennsylvania’s election laws, but—like the RNC—RITE lists only voting laws that unquestionably fall beyond § 10101(a)(2)(b)’s narrow scope. [Amicus Br. at 10-11, 16-17](#). The Acting Secretary does not need to recite for a third time why following § 10101(a)(2)(B)’s clear language here would not jeopardize Pennsylvania’s signature requirement, secrecy envelope requirement, deadlines, or ballot rules. *See* [Response to Mots. for Summ. J. at 21-22 \(ECF No. 298\)](#) (explaining reasons); [Opp’n to Mot. to Dismiss at 15-17 \(ECF No. 224\)](#) (same).

RITE’s only engagement with § 10101(a)(2)(B)’s text is an effort to rewrite it so that it applies only when an individual is prevented from registering to vote. RITE rearranges the statutory language to suggest § 10101(a)(2)(B) is limited to

errors made on a paper or record only if that paper or record is used “in determining whether such individual is qualified under state law to vote.” *Amicus Br.* at 9 (quoting 52 U.S.C. § 10101(a)(2)(B)); *see also id.* at 11-14. But the quoted language does not modify the *papers or records* that fall within the statute’s scope. Rather, it modifies the *errors or omissions* that may not be used to deny the right to vote.

As § 10101(a)(2)(B) is written, errors or omissions may not be used to deny the right to vote if they meet two conditions. The statute’s first clause requires that the error or omission be “on any record or paper relating to any application, registration, or other act requisite to voting.” The voter declaration that must be completed before a mail-in ballot is canvassed qualifies. The statute’s second clause requires that the “error or omission is not material in determining whether such individual is qualified under State law to vote in such election.” Failing to correctly write a date that has no purpose in administering Pennsylvania’s elections qualifies.

Nothing in § 10101(a)(2)(B) establishes a relationship between the “record[s] or paper[s]” and the specific process of “determining whether such individual is qualified under State law to vote.” As the Eleventh Circuit has held, § 10101(a)(2)(B)’s actual text is easily understood and applied: Courts must ask if “accepting the error *as true and correct*, the information contained in the error is material to determining the eligibility of the applicant.” *Fla. State Conf. of NAACP*

v. Browning, 522 F.3d 1153, 1175 (11th Cir. 2008) (emphasis in original). If it is not, the error cannot justify refusing to count a ballot. That is the case here.

Further, and again like the RNC, RITE fabricates a distinction between errors that result in supposed forfeitures of the right to vote and errors that result in denials of the right to vote. *Amicus Br. at 15-16*. Only someone deemed not qualified to vote in any election, RITE maintains, is denied the right to vote. *Id.* But nothing in the statute silently creates this distinction. Indeed, RITE does not point to anything in the statute that remotely contemplates it. Instead, RITE cites only to cases that do not relate to § 10101(a)(2)(B) and then claims that its position is self-evident. *Id.* And while RITE believes disqualifying errors made before registration may be considered denials of the right to vote while disqualifying errors made after registration somehow are merely forfeitures of the right, § 10101(a)(2)(B)'s text repeatedly and explicitly states that it is not confined to errors that prevent someone from registering. *See Response to Mots. for Summ. J. at 16-20*.

RITE also makes the wild assertion that no state law can violate § 10101(a)(2)(B) because every state law voting requirement is a “qualification to vote.” *Amicus Br. at 17-19*. If that is right, § 10101(a)(2)(B) does not stop any state from denying anyone's right to vote for any reason so long as the state enacts a statute permitting such disenfranchisement. Not even state-imposed literacy tests or demands that voters list their age in month and days before registering—

“paradigmatic violation[s]” of the statute, *see NAACP*, 522 F.3d at 1173; *Condon v. Reno*, 913 F. Supp. 946, 950 (D.S.C. 1995)—would be forbidden. There would have been no need for Jim Crow states to be “relentlessly creative,” *Amicus Br. at 14*, if they could have just enshrined their efforts in law.¹

RITE’s amicus brief disregards not only § 10101(a)(2)(B)’s text, but also facts about the administration of elections in Pennsylvania. It describes a voter’s handwritten date as needed “to ensure mail-in votes are valid, timely submissions from qualified voters,” *Amicus Br. at 1*, which is a refrain that need not be corrected again, *see Response to Mots. to Summ. J. at 9-15* (explaining why date is immaterial); *Opp’n to Mot. to Dismiss at 9-14* (same). RITE also goes back to the well and claims that the criminal complaint from Lancaster County’s 2022 primary election is an instance when the handwritten date was “the only evidence on the face of the envelope that the vote was not valid.” *Amicus Br. at 1*. That claim—which not even the RNC makes—is indisputably wrong. *See Response to Mots. to Summ. J. at 11-13*; *DOS Response to RNC’s SOF ¶¶ 48, 52* (ECF No. 299).

RITE’s amicus brief provides no reason for the Court to grant summary judgment to the RNC on Count I. Like the RNC, RITE curiously promotes itself as

¹ Pennsylvania, in both its Constitution and Election Code, is explicit about the “qualifications” to vote. *Pa. Const. art. VII, § 1* (“Qualifications of electors”); *25 P.S. § 2811* (“Qualifications of electors”).

protecting the integrity of Pennsylvania’s elections while simultaneously asking this Court to find that thousands of indisputably qualified individuals shall have their ballots thrown out if they fail to include an immaterial date on an outer envelope—a date that absolutely no one can defend as needed for any part of Pennsylvania’s election administration. And just like the RNC, RITE pushes an interpretation of 52 U.S.C. § 10101(a)(2)(B) that is utterly divorced from the statute’s text.

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Respectfully submitted,

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