

**IN THE 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  
Secretary of the Commonwealth, *et al.*,

*Defendants*

and

REPUBLICAN NATIONAL  
COMMITTEE, *et al.*,

*Intervenor-Defendants*

Case No. 1:22-cv-00339-SPB

**SUPPLEMENTAL MEMORANDUM REGARDING THE STATUS OF THE  
PENDING CROSS-MOTIONS FOR SUMMARY JUDGMENT**

On September 13, Plaintiffs submitted a response to the Court's September 3, 2024 Order (ECF No. 454) addressing the impact of the Pennsylvania Commonwealth Court's decision in *Black Political Empowerment Project v. Schmidt*, 2024 WL 400321 (Pa. Commw. Ct. Aug. 30, 2024) ("*B-PEP*").

However, after the parties submitted their responses, the Supreme Court of Pennsylvania issued a short, one-page order vacating the Commonwealth Court's decision on procedural grounds. *See* Ex. A.

In light of that vacatur, the *B-PEP* decision no longer protects voters from disenfranchisement, and absent some other judicial ruling on the matter, the envelope-date rule will be enforced to disenfranchise voters. Plaintiffs maintain their

request that this Court rule on the pending cross-motions in order to ensure the protection of their federal constitutional rights.

In light of the fast-moving nature of state court litigation on this issue, and unless instructed otherwise, Plaintiffs will file a further supplemental memorandum if further state court litigation on this issue is initiated or renewed.

### CONCLUSION

Plaintiffs' motion for summary judgment should be granted.

Dated: September 16, 2024

Respectfully submitted,

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Pleban Polinski, Joel Bencan, and  
Laurence M. Smith*

**CERTIFICATE OF SERVICE**

I hereby certify that, on the date set forth below, I caused a true and correct copy of the foregoing Supplemental Memorandum to be served via the Court's electronic filing system upon all counsel of record.

Dated: September 16, 2024

Respectfully submitted,

/s/ Ari J. Savitzky  
Ari J. Savitzky

*Counsel for Plaintiffs*

Exhibit A

**[J-79-2024]  
IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

BLACK POLITICAL EMPOWERMENT	:	No. 68 MAP 2024
PROJECT, POWER INTERFAITH, MAKE	:	
THE ROAD PENNSYLVANIA, ONEPA	:	Appeal from the Order of the
ACTIVISTS UNITED, NEW PA PROJECT	:	Commonwealth Court at No. 283
EDUCATION FUND, CASA SAN JOSÉ,	:	MD 2024 dated August 30, 2024.
PITTSBURGH UNITED, LEAGUE OF	:	
WOMEN VOTERS OF PENNSYLVANIA,	:	SUBMITTED: September 4, 2024
AND COMMON CAUSE PENNSYLVANIA	:	

v.

AL SCHMIDT, IN HIS OFFICIAL CAPACITY	:
AS SECRETARY OF THE	:
COMMONWEALTH, PHILADELPHIA	:
COUNTY BOARD OF ELECTIONS, AND	:
ALLEGHENY COUNTY BOARD OF	:
ELECTIONS	:

APPEAL OF: REPUBLICAN PARTY OF	:
PENNSYLVANIA AND REPUBLICAN	:
NATIONAL COMMITTEE	:

**ORDER**

**PER CURIAM**

**AND NOW**, this 13th day of September, 2024, the order of the Commonwealth Court is VACATED. The Commonwealth Court lacked subject matter jurisdiction to review the matter given the failure to name the county boards of elections of all 67 counties, and because the joinder of Al Schmidt, in his official capacity as Secretary of the Commonwealth, did not suffice to invoke the Commonwealth Court's original jurisdiction. See 42 Pa.C.S. § 761(a)(1); *see also Penn. State Educ. of Ass'n ex rel.*

*Wilson v. Com., Dept. of Comm. and Econ. Dev.*, 50 A.3d 1263, 1277 (Pa. 2012) (“In determining whether a party is indispensable, the basic inquiry remains ‘whether justice can be done in the absence of a third party.’”); *Sprague v. Casey*, 550 A.2d 184, 189 (Pa. 1988) (“[U]nless all indispensable parties are made parties to an action, a court is powerless to grant relief. . . . Thus, the absence of such a party goes absolutely to the court’s jurisdiction.”) (citation omitted). The request for extraordinary jurisdiction pursuant to 42 Pa.C.S. § 726 is DENIED.

Justice Wecht files a dissenting statement in which Chief Justice Todd and Justice Donohue join.

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NATIONAL COMMITTEE	:

**DISSENTING STATEMENT**

**JUSTICE WECHT**

**Decided: September 13, 2024**

I respectfully dissent from today's Order vacating the Commonwealth Court's decision below, which held that strict enforcement of the Election Code's requirement that electors write the date on the envelope of their absentee or mail-in ballot violates the Free and Equal Elections clause of the Pennsylvania Constitution.<sup>1</sup> A prompt and definitive ruling on the constitutional question presented in this appeal is of paramount public

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<sup>1</sup> See PA. CONST. art. I, § 5.

importance inasmuch as it will affect the counting of ballots in the upcoming general election. Therefore, I would exercise this Court's King Bench authority over the instant dispute and order that the matter be submitted on the briefs.<sup>2</sup>

I respectfully dissent.

Chief Justice Todd and Justice Donohue join this dissenting statement.

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<sup>2</sup> 42 Pa.C.S. § 502 (setting forth this Court's King's Bench authority); *Commonwealth v. Chimenti*, 507 A.2d 79 (Pa. 1986) (discussing this Court's authority to *sua sponte* exercise King's Bench jurisdiction).