

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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

Plaintiffs,

v.

AL SCHMIDT, Secretary of the
Commonwealth, *et al.*,

Defendants.

Case No. 1:22-cv-339

BETTE EAKIN, *et al.*,

Plaintiffs,

v.

ADAMS COUNTY BOARD OF
ELECTIONS, *et al.*,

Defendants.

Case No. 1:22-cv-340

**ALLEGHENY AND PHILADELPHIA COUNTY BOARDS OF ELECTIONS’
STATEMENT OF POSITION IN RESPONSE TO PENNSYLVANIA
COMMONWEALTH COURT’S DECISION IN *BLACK POLITICAL
EMPOWERMENT PROJECT V. SCHMIDT***

Defendants Allegheny County Board of Elections and Philadelphia County Board of Elections (collectively, “the County Boards”) submit this statement of position in response to this Court’s September 3, 2024 Orders directing the parties in the above-captioned cases “to submit briefs addressing the impact of the decision in *Black Political Empowerment Project v. Schmidt*, 2024 WL 400321 (Pa. Commw. Ct. Aug. 30, 2024), on the pending summary judgment motions.”

The County Boards have not taken a position on the merits of Plaintiffs' constitutional claims or the pending cross-motions for summary judgment. But the County Boards write to advise the Court that, in the *Black Political Empowerment Project* case, the Commonwealth Court entered a permanent injunction that prohibits the County Boards from strictly enforcing the dating provisions of the Election Code under state law. A copy of the injunction is attached as Exhibit A to this Statement of Position, and the language of the injunction is reproduced below for ease of reference:

It is further ORDERED that Respondents Al Schmidt, in his official capacity as Secretary of the Commonwealth, the Philadelphia County Board of Elections, and the Allegheny County Board of Elections are PERMANENTLY ENJOINED from strictly enforcing the dating provisions of the Election Code, which require that electors of the Commonwealth of Pennsylvania date the declaration of the elector printed on the second, or outer, envelope of absentee and mail-in ballots. However, nothing in this Order permanently enjoining strict enforcement of the dating provisions to disenfranchise voters shall preclude the enforcement of the remaining provisions contained within the dating provisions in Sections 1306 and 1306-D of the Election Code that are unrelated to the handwritten date requirement.

As long as this injunction remains in effect, the County Boards are prohibited under state law from disqualifying or otherwise refusing to count mail-in or absentee ballots received in undated or incorrectly dated outer return envelopes. The County Boards intend to comply with this injunction in connection with upcoming elections,¹ absent an order lifting or vacating the injunction issued by the Commonwealth Court, the Pennsylvania Supreme Court, or the U.S. Supreme Court.

¹ This includes the Special Election Philadelphia County Board of Elections will administer on September 17, 2024, to fill recent vacancies in the 195th and 201st Legislative Districts.

Respectfully submitted,

Dated: September 13, 2024

By: /s/ Ilana H. Eisenstein

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By: /s/ Lisa G. Michel

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*Attorney for Defendant Allegheny
County Board of Elections*

CERTIFICATE OF CONSENT

I hereby certify that I have obtained the consent of the non-filing signatories to this Statement of Position—the above-listed counsel for Defendant Allegheny County Board of Elections.

Dated: September 13, 2024

By: /s/ Ilana H. Eisenstein

*Counsel for Defendant Philadelphia
County Board of Elections*