No. 24-363

In the Supreme Court of the United States

PENNSYLVANIA STATE CONFERENCE OF THE NAACP, ET AL.,
Petitioners,

v.

AL SCHMIDT, SECRETARY OF PENNSYLVANIA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

PHILADELPHIA, ALLEGHENY, AND MONTGOMERY COUNTY BOARDS OF ELECTIONS' RESPONSE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented by the Petition is whether, under the Materiality Provision of the Civil Rights Act of 1964 (52 U.S.C. § 10101(a)(2)(B)), voters who cast a mail ballot may have their ballots excluded and not counted because of an error or omission on a required paper form accompanying their mail ballot, where the error or omission is undisputedly irrelevant in determining the voter's identity or their qualifications or the timely receipt of their ballot.

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INTRODUCTION

Respondents—the Allegheny, Montgomery, and Philadelphia County Boards of Elections ("County Respondents")—respectfully urge this Court to grant the Petition and resolve the question of exceptional importance presented here: whether the Civil Rights Act's protection against arbitrary election paperwork laws extends to all parts of voting—from registering to casting a ballot.

The "Materiality Provision" of the Civil Rights Act of 1964 prohibits States from denying any individual's right to vote due to immaterial paperwork omissions or errors. 52 U.S.C. § 10101(a)(2)(B). Despite this clear mandate, the panel majority incorrectly confined the Materiality Provision to voter registration paperwork. The panel thus found States may deny qualified voters the right to vote based on immaterial errors on paperwork accompanying the mail ballot on the incorrect premise that the Materiality Provision "stops at the door of the voting place." Pet. App. 17a.

County Respondents agree with Petitioners that the panel majority's opinion cannot be squared with the plain text of the Materiality Provision. To fall within the Materiality Provision, five distinct requirements must be satisfied. There must be (1) a denial of the "right . . . to vote" (2) "because of an error or omission" (3) "on any record or paper" (4) "relating to any . . . act requisite to voting" (5) that is "not material in determining whether such individual is qualified . . . to vote." 52 U.S.C. § 10101(a)(2)(B). These requirements were satisfied here, where in the 2022 General Election (under orders of the Supreme Court of Pennsylvania), County Respondents set aside and thus invalidated thousands of timely ballots from

eligible voters solely because those voters did not include a "correct," handwritten date for the declaration on the mail ballot's outer return envelope.

First, when the State invalidates a ballot because the voter failed to handwrite a date on the return envelope, it denies the "right . . . to vote." *Second*, when a voter does not handwrite a date, or does so illegibly or incorrectly, that voter has committed an "error or omission." *Third*, the return envelope is a "paper." *Fourth*, the paper relates to an "act requisite to voting"—*i.e.*, the return of a mail ballot. *Fifth*, the missing or incorrect date is "not material" in determining the voter's qualifications. This straightforward analysis is faithful to the statutory text and confirms that county boards violate federal law if they exclude timely cast mail ballots with dating errors on the outer envelope.

Yet the panel majority reversed the district court and incorrectly held that the Materiality Provision applies only to errors on registration forms. The panel majority misread the statute by departing from normal rules of syntax and settled principles of statutory construction. It also wrongly deemphasized the statute's text in favor of the panel majority's own policy preference. And it misinterpreted the statute's purpose and history.

Now is the time for the Court to take up the question of the scope of the Materiality Provision. The right to vote is the cornerstone of American democracy, serving as the safeguard that protects all other rights. County Respondents are charged with protecting the right to vote by administering fair and orderly elections and ensuring that voters in their counties are

meaningfully able to exercise the elective franchise. The enforcement of an immaterial dating requirement undermines that charge by needlessly disenfranchising hundreds of voters each election. County Respondents' experience shows that the dating requirement primarily disenfranchises elderly voters. It also requires County Respondents to pointlessly expend significant additional time and labor—all to enforce an obsolete technical paperwork requirement that provides no benefit to the integrity of elections and that certainly is "not material" to determining the qualification of any voter. County Respondents urge the Court to grant the petition for a writ of certiorari.

STATEMENT OF THE CASE

County Respondents agree with Petitioners' description of the Statutory and Factual Backgrounds of the matter. County Respondents make two additional points.

First, County Respondents do not use the date on the mail ballot outer return envelope declaration for any purpose, including to determine the timeliness of the ballot. Pet. App. 21a, 24a-25a. The only meaningful date is when the ballot is received, as ballots must be received by 8:00 p.m. on Election Day to be counted. Pet. App. 25a. To ensure ballots are timely received, County Respondents time stamp each mail ballot return envelope upon receipt and electronically record that information. Pet. App. 20a-21a.

County Respondents cannot and do not use the outer envelope declaration date to determine whether the ballot was timely received. Pet. App. 163a, 165a. A ballot signed early but received late is still untimely. *Id.* The date on the mail ballot declaration is thus immaterial to the timeliness of a ballot, as the panel majority acknowledged. Pet. App. 21a.

County Respondents also do not rely on the declaration date to assess voter qualifications. Pet. App. 24a-25a. To vote by absentee or mail-in ballot, prospective voters must first submit a voter registration application, which County Respondents review to determine voter eligibility. Pet. App. 20a-21a. If County Respondents approve a voter registration application, the voter must then apply for a mail-in or absentee ballot. If that application is approved, County Respondents provide a mail ballot package to the approved voter. Pet. App 21a. This process confirms the voter's qualifications to vote. The date requirement is irrelevant to the process. Pet. App. 21a, 24a.

As the panel majority below acknowledged, the "date requirement, it turns out, serves little apparent purpose." Pet. App. 17a. In fact, the undisputed record shows the date serves *no* purpose. Pet. App. 21a-22a, 163a-166a.

Second, County Respondents need to spend time and labor to check for a handwritten date that is otherwise entirely irrelevant. *See* Declaration of Nick Custodio, *Pa. State Conf. of the NAACP v. Schmidt*, No. 1:22-cv-00339-SBP, (2022) ECF 312 at 72-75. For example, Respondent Philadelphia County receives many absentee and mail-in ballots each election cycle—

nearly 134,000 in the 2022 General Election that gave rise to this matter. *Id.* at 74-75. Given the volume, County Respondents generally use automated sorting machines, not manual review, to identify ballots lacking a handwritten signature or the required internal secrecy envelope. *Id.* at 73-74. These machines cannot also be configured to simultaneously detect a missing or incorrect date on the return envelope. *Id.* at 74. Thus, enforcing the date requirement demands considerable extra time and labor to manually identify non-compliant ballots. *Id.* at 75. Moreover, a manual process risks introducing human error and subjective decision making, leading to inconsistencies in the way ballots are rejected for dating errors. Pet. App. 166a-167a, 169a.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW WAS WRONG

County Respondents agree with Petitioners that the panel majority's decision clashes with the statutory text and Congress's aims. For the sake of brevity—and to avoid repetition of arguments—County Respondents focus solely on how the panel majority's interpretation ignores the plain statutory text by violating basic rules of syntax and statutory interpretation.

The Materiality Provision of the 1964 Civil Rights Act has two parts:

> [1] No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper

> relating to any application, registration, or other act requisite to voting,
>
> [2] if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election[.]

52 U.S.C. § 10101(a)(2)(B).

Altogether, the Materiality Provision has five elements: four requirements in the main clause and a fifth condition in the subordinate "if" clause. The main clause prohibits (1) vote-denial (2) based on errors (3) on any paperwork (4) that relates to an application, registration, or other required acts of voting. The subordinate "if" clause then sets a condition: (5) the "error or omission" discussed in the main clause cannot be "material" when determining a voter's qualifications.

Applying the two clauses here is straightforward. The main clause applies because the failure to correctly date the declaration on the outer return envelope is an error on paperwork that relates to a required act of voting. The subordinate "if" clause is satisfied because the error on a return envelope declaration is not material in determining voter qualifications.

The panel majority misinterpreted the statute's clear language by breaking normal syntax rules and "ordinary English grammar." *See Rehaif v. United States*, 588 U.S. 225, 230 (2019) (citations and quotations omitted). It incorrectly interpreted the subordinate "if" clause as if it were setting a condition on (or modifying) the kinds of paperwork discussed in

the main clause, claiming the paperwork "must itself relate to ascertaining a person's qualifications to vote." Pet. App. 30a.

Under normal English rules of syntax, there is no way to read the phrase "in determining" in the subordinate "if" clause as modifying the kinds of paperwork described in the main clause. "When the syntax involves something other than a parallel series of nouns or verbs, a . . . postpositive modifier normally applies only to the nearest reasonable referent." *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 152 (2012). Here, the "paper or record" in the main clause is not grammatically parallel to the "error or omission" in the subordinate clause; the latter is part of a conditional phrase modifying the main clause. Accordingly, the post-positive modifier in the subordinate clause of "not material in determining" applies only to "error or omission."

What is more, the subordinate clause starts with the phrase "*if such error or omission*." It does not begin with the phrase "*if such paper or record*." The subordinate "if" clause does not even mention "paper or record" at all. In other words, the subordinate clause itself spells out that the postpositive modifier applies only to errors or omissions—"*if such error or omission is not material in determining whether such individual is qualified . . . to vote*." 52 U.S.C. § 10101(a)(2)(B). The panel majority was wrong to interpret "in determining" as setting a condition on the "paper or record" phrase from the main clause. That is not how a reasonable reader would understand the Materiality Provision.

The panel majority admitted that its reading of the phrase "in determining" in the subordinate "if " clause drove its interpretation of the rest of the statute. That misreading violates basic syntax rules. For this reason, among others, the panel majority's decision below was wrong, as it cannot be squared with a viable reading of the statutory text.

II. THIS CASE IS AN IDEAL VEHICLE TO RESOLVE THIS QUESTION OF EXCEPTIONAL NATIONAL IMPORTANCE

County Respondents agree with Petitioners that the panel majority's interpretation of the Materiality Provision threatens to disenfranchise thousands of Pennsylvania voters in every election, and if applied more broadly could strip federal protections from millions of voters nationwide. Pet. 24-26. This interpretation could also lead to the proliferation of immaterial, technical paperwork requirements on ballots—both mail and in-person—which the panel majority excludes from the statute's protection. County Respondents also agree with Petitioners that the panel majority's misreading of the Materiality Provision is contrary to recent federal court decisions and will cause confusion and disagreement among lower courts. Pet. 24-25. All these considerations counsel in favor of granting the Petition.

This case is an ideal vehicle for resolving the statutory interpretation issue presented. Unlike many election litigation cases that are decided on emergency motions, this case was decided on a fully developed factual record on summary judgment. The lack of any factual disputes or uncertainty is uncommon in

election litigation, where courts often make decisions in emergency postures without the benefit of a comprehensive record.

The thoroughness of the record shows that Pennsylvania county boards of elections do not use the date on mail ballot outer declaration envelopes. Accordingly, the error or omission is not "material" as defined by the statute: the date is irrelevant to the voter's qualifications and, in fact, cannot be used to determine the timeliness of a ballot. This clarity makes this case an excellent candidate for resolving whether the scope of the statute applies in the mail ballot context; this might not be the case in future litigation, where the parties might contest the "materiality" of some other requirement at issue. This Court should grant the petition for a writ of certiorari and correct the panel majority's fundamental misinterpretation of the Materiality Provision of the Civil Rights Act of 1964.

* * *

CONCLUSION

For all these reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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