

**IN THE SUPREME COURT OF PENNSYLVANIA**

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**No. 112 MM 2024**

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NEW PA PROJECT EDUCATION FUND, NAACP PENNSYLVANIA STATE  
CONFERENCE, COMMON CAUSE PENNSYLVANIA, LEAGUE OF WOMEN  
VOTERS OF PENNSYLVANIA, BLACK POLITICAL EMPOWERMENT  
PROJECT, POWER INTERFAITH, MAKE THE ROAD PENNSYLVANIA,  
ONEPA ACTIVISTS UNITED, CASA SAN JOSE, AND  
PITTSBURGH UNITED,

*Petitioners,*

v.

AL SCHMIDT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE  
COMMONWEALTH, AND ALL 67 COUNTY BOARDS OF ELECTIONS,

*Respondents.*

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**PROPOSED REPUBLICAN INTERVENORS'  
APPLICATION FOR LEAVE TO INTERVENE**

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**APPLICATION FOR LEAVE TO INTERVENE**

Proposed Intervenor-Respondents the Republican National Committee (“RNC”) and the Republican Party of Pennsylvania (“RPP”) (collectively, “Proposed Republican Intervenors”), by and through undersigned counsel, respectfully submit the following Application for Leave to Intervene as Respondents in this original jurisdiction matter under Pennsylvania Rules of Appellate

Procedure 106, 123, and 1531(b) and Pennsylvania Rules of Civil Procedure 2326 through 2329, and aver the following in support thereof:

### **PRELIMINARY STATEMENT**

The Proposed Republican Intervenors support and seek to uphold free and fair elections for all Pennsylvanians and for all voters across the country.

In order for elections to be free and equal, elections must have rules. Such rules emanate from the General Assembly’s constitutionally mandated power to set the time and manner of elections. U.S. Const. art I, § 4. Indeed, as this Court held over a century ago (and recently reaffirmed in *Pennsylvania Democratic Party v Boockvar*, 238 A.3d 345 (Pa. 2020) (“*Pa. Dems.*”), “[t]he power to regulate elections is legislative.” 238 A.3d at 373 (quoting *Winston v. Moore*, 91 A. 520, 522 (Pa. 1914)).

In 2019, after much debate and compromise, a bipartisan majority of the General Assembly adopted universal mail voting in Pennsylvania for the first time in history.<sup>1</sup> Act of Oct. 31, 2019, P.L. 552, No. 77, sec. 8 (“Act 77”); see 25 P.S. § 3150.11(a). Five years after its passage – and mere weeks before the November 2024 General Election – the most fundamental provisions of Act 77 remain under attack via litigation. These attacks include litigation which has resulted in two Commonwealth

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<sup>1</sup> This Application uses “mail ballot” to refer to both absentee ballots and mail-in ballots. See 25 P.S. §§ 3146.6, 3150.16.

Court decisions which, in contravention of this Court’s holding in *Pa. Dems.*, multiple provisions of the Election Code and the separation of powers doctrine (Pa. Const. art II, § 1; Pa. Const. art IV, § 2; Pa. Const. art. V, § 1) require at least one county board of elections to implement, via the SURE system, a notice and cure procedure for timely received but otherwise defective mail ballots and allow voters to cure the same via provisional voting (*Center for Coalfield Justice v. Washington Cnty Bd of Elections*, No. 1172 C.D. 2024 (Pa. Commw. Sept. 24, 2024)) (“CCJ”) and force a second county board to count such provisional ballots (*Genser v. Butler Cnty Bd of Elections*, No. 1074 C.D. 2024; 1085 C.D. 2024 (Pa. Commw. Sept. 5, 2024) (“Genser”))<sup>2</sup>. While cloaked in claims of constitutional deprivations purportedly protecting the “right to vote” and prevention of “imminent mass disenfranchisement,” the claims underlying each of those cases and the instant King’s Bench Application have one goal - to dismantle and re-write Act 77 in accordance with the preferred election scheme of the various Petitioners. See King’s Bench Application, *New PA Project Education Fund v. Schmidt*, No. 112 MM 2024 (Pa. Sept. 25, 2024) (hereinafter “Application”). In contravention of the political

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<sup>2</sup> The Commonwealth Court entered its opinion in CCJ on September 24, 2024 and the Proposed Republican Intervenors are in the process of filing a Petition for Allowance of Appeal with the Pennsylvania Supreme Court. The Commonwealth Court entered its opinion in Genser on September 5, 2024, and Proposed Republican Intervenors have already filed a Petition for Allowance of Appeal, which the Pennsylvania Supreme Court accepted in part. Republican Intervenors filed their brief on September 24, 2024.

bargains that led to the passage of Act 77, that preferred election scheme would reduce Act 77 from “no excuse” mail voting to “no rules” mail voting.

The instant Application is the latest of many attempts to dismantle Act 77. In that regard, it is the most recent iteration of a longstanding quest to invalidate one of Act 77’s neutral ballot casting rules, the Pennsylvania General Assembly’s date requirement for mail ballots.

A mere two weeks ago, this Court **declined** to exercise its extraordinary jurisdiction or King’s Bench authority in order to hear the exact issue presented in the Application, namely that the date requirement violates the Free and Equal Election Clause of the Pennsylvania Constitution. Application p.3; *Black Political Empowerment Project, et al. v. Schmidt*, No. 68 MAP 2024, (Pa. Sept 13, 2024). Yet, undeterred by that Order, Petitioners presently ask the Court to invoke that same jurisdiction to address the same issue.

Complicit in the attempted dismantling of Act 77 is Al Schmidt, the Secretary of the Commonwealth (the “Secretary”), a political appointee of the Executive Branch who whose delegated powers do not extend to interpreting the Election Code. See 25 P.S. § 2621. Even more concerning than the politically motivated actions of the Secretary are those of the Attorney General of Pennsylvania who in her absence in these cases, has abandoned her constitutionally mandated duties to defend the duly enacted laws of the Commonwealth, including Act 77. *Rapp v.*

*Schmidt*, 2024 Pa. Lexis 1404, \*9 (Pa. Sept. 25, 2024) (Justice Brobson concurring opinion) (“As many know, the Commonwealth Attorneys Act imposes a mandatory duty on the Pennsylvania Attorney General ‘to uphold and defend the constitutionality of all statutes so as to prevent their suspension or abrogation in the absence of a controlling decision by a court of competent jurisdiction.’ See Section 204(a)(3) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a)(3)”).

Hence, the Proposed Republican Intervenors, on behalf of themselves, their voters, and their candidates alone have stepped into the void and led the successful defense of the legality of the date requirement in several prior cases. *See Ball v. Chapman*, 289 A.3d 1 (Pa. 2023); *Ball v. Chapman*, 284 A.3d 1189 (Pa. 2022); *Pa. State Conf. of NAACP Branches v. Sec’y of Commonwealth of Pa.*, 97 F.4th 120 (3d Cir. 2024) and *Black Political Empowerment Project, et al. v. Schmidt*, No. 68 MAP 2024.

Petitioners now ask the Court to not only ignore its own recent refusal to address this issue but to also undercut decisions by both this Court and the Third Circuit Court of Appeals that have adopted the Proposed Republican Intervenors’ position and upheld the date requirement. In 2022, this Court upheld the date requirement as mandatory under state law. *See Ball*, 289 A.3d 1; *Ball*, 284 A.3d 1189. It did so in the face of arguments raising the Free and Equal Elections Clause. *See Ball*, 289 A.3d at 14. Earlier this year, the Third Circuit rejected a challenge to

the date requirement brought under the Materiality Provision of the Civil Rights Act of 1964. *See Pa. State Conf. of NAACP Branches*, 97 F.4th 120 (3<sup>rd</sup> Cir. 2024).

Those decisions eliminated two key grounds on which Petitioners here have sought to invalidate the date requirement. In particular, four Petitioners in this action—Black Political Empowerment Project, Make The Road Pennsylvania, League of Women Voters of Pennsylvania, and Common Cause Pennsylvania—participated as *amici* in *Ball*. Those four Petitioners are also federal-court plaintiffs whose Materiality Provision claim the Third Circuit recently rejected and who continue to pursue federal constitutional challenges to the date requirement. *See* Am. Compl., ECF No. 121, *NAACP v. Schmidt*, No. 22 CV 339 (W.D. Pa. filed Nov. 4, 2022) and Compl., ECF No. 1, *Eakin v. Adams Cnty. Bd. of Elections*, No. 22 CV 340 (W.D. Pa. filed Nov. 7, 2022).

Those Petitioners were also the plaintiffs in *Black Political Empowerment Project v. Schmidt*, No. 68 MAP 2024 (the “*BPEP* Litigation”) that the Court elected not to take on King’s Bench authority just a few weeks ago. Rather than raise their claims under the Pennsylvania Constitution in their pending federal cases, many of the Petitioners here filed the *BPEP* Litigation in Commonwealth Court in an attempt to circumvent the prior decisions upholding the date requirement won by the RNC

and the RPP. *Black Political Empowerment Project v. Schmidt*, No. 283 MD 2024.<sup>3</sup> The RNC and the RPP as well as the Democratic National Committee and the Pennsylvania Democratic Party were granted leave to intervene in the *BPEP* Litigation. Because the three named Respondents in the *BPEP* Litigation, the Secretary and the Boards of Election of Allegheny County and Philadelphia County refused to defend the date requirement as did the Attorney General, the RNC and the RPP alone did so. Following briefing, a divided Commonwealth Court panel held that the date requirement is unconstitutional under the Free and Equal Elections Clause.

Proposed Republican Intervenors appealed to this Court, which VACATED the Commonwealth Court order on September 13, 2024. No. 68 MAP 2024, Order at 1. Justice Wecht filed a Dissenting Statement that was joined by Justices Todd and Donohue. Both the Court’s Order and the Dissenting Statement indicate that, despite the procedural issues, the Court considered exercising its extraordinary powers to hear the substantive issue raised in the *BPEP* Litigation. Order at 2 (“The request for extraordinary jurisdiction pursuant to 42 Pa.C.S. §726 is DENIED.”); Dissenting Statement at 2 (“I would exercise this Court’s King Bench authority over

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<sup>3</sup> As another party in the *BPEP* Litigation pointed out, “Petitioners and their counsel” have “treat[ed] the Pennsylvania and federal judiciary like a roulette wheel, constantly testing out novel theories hoping they will eventually win something.” Legislators’ Br. 26.



the instant dispute and order that the matter be submitted on the briefs.”). The Court declined to exercise its plenary jurisdiction even though it had clear authority to do so and clearly considered doing so. *Id.*

In light of the foregoing, the RNC and the RPP have an obvious interest, and right, to intervene in this case to prevent circumvention of the various court decisions upholding the date requirement and to preserve those decisions in their favor.

More generally, political parties such as the RNC and the RPP have a recognized interest in securing election of their supported candidates, in asserting and protecting the rights of their members in upcoming elections, and in protecting their own agendas and resources from such changes to election laws. In addition, the RNC and the RPP have made significant investments in support of Republican candidates up and down the ballot and in connection with voter mobilization and education efforts in Pennsylvania for the past many election cycles, and continue to do so again in 2024. They thus have a substantial and particularized interest in defending this action to preserve the structure of the competitive environment in which their supported voters and candidates participate and seek to win elections, and to ensure that Pennsylvania carries out free and fair elections.

Indeed, in recent years, the illegal non-enforcement of the date requirement has changed the outcome of elections to the detriment of the Proposed Republican Intervenors, their voters, and their candidates. In 2022, court rulings invalidating

the date requirement flipped the outcome of a Lehigh County Court of Common Pleas election and resulted in Republican David Ritter losing the election. *See* Cert. Pet. at 7-12, *Ritter v. Migliori*, No. 22-30 (U.S. July 7, 2022).<sup>4</sup> In 2023, the federal district court ruling- subsequently reversed- nonetheless resulted in Montgomery County election officials flipping the outcome of a Towamencin Township Board of Supervisors Election and declaring Republican Richard Marino—who received the highest number of votes under the rules in effect on Election Day—the loser to a Democratic challenger. *See* North Penn Now, “Towamencin candidates address latest ruling on 2023 race” (Apr. 17, 2024).<sup>5</sup>

No other party to this action represents Proposed Republican Intervenors’ interests. Petitioners, who seek invalidation of the date requirement, obviously do not represent those interests. Neither do Respondents: as set forth above, the Secretary and certain of the County Boards of Election have previously opposed Proposed Republican Intervenors’ position in upholding the date requirement and have asked this Court, the Commonwealth Court and the Third Circuit to invalidate the same and the Application itself indicates that the other county boards may not vigorously litigate the issue raised in the Application. *See* Resp’t Allegheny Ctny.

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<sup>4</sup> [https://www.supremecourt.gov/DocketPDF/22/22-30/22951/20220707140738344\\_Ritter%20Petition.pdf](https://www.supremecourt.gov/DocketPDF/22/22-30/22951/20220707140738344_Ritter%20Petition.pdf).

<sup>5</sup> *See* <https://northpennnow.com/news/2024/apr/17/towamencin-candidates-ruling-2023-race/>.

Bd. of Elections Br. and Resp't Phila. Cnty. Bd. of Elections Br., *Ball v. Chapman*, No. 102 MM 2022 (Pa. filed Oct. 16, 2022); Defs.-Appellee Resp. Br., *NAACP v. Schmidt*, No. 23-3166 (3d Cir. filed Dec. 7, 2023); Statement of Position Regarding Summary Relief of Allegheny and Philadelphia County Boards of Elections, *Black Political Empowerment Project v. Schmidt*, No. 283 MD 2024 (July 8, 2024); New PA Project Education Fund v. Schmidt, No. 112 MM 2024. If the Court grants the Application, it is most likely that the Secretary and several (if not many) of the County Boards of Election will again decline to defend the date requirement. Moreover, given the Attorney General's historic abdication of her duties to defend Act 77 in these cases, it is likewise unlikely that she will do so in this case. As a result, there will be no party before the Court to appropriately defend the lawful and lawfully enacted and repeatedly upheld date requirement absent intervention by the Proposed Republican Intervenors.

Further, Respondents, as Commonwealth and county officials, do not share the Proposed Republican Intervenors' objectives with regard to promoting and securing the election of Republican candidates.

For all of these reasons, and as explained more fully below, this timely application for intervention should be granted. The RNC and the RPP respectfully request that the Court grant their application to intervene as Respondents, and permit them to file of record the Answer attached hereto.

## **I. BACKGROUND**

### **A. The Proposed Republican Intervenors.**

1. The RNC is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14). The RNC manages the Republican Party's business at the national level, including development and promotion of the Party's national platform and fundraising and election strategies; supports Republican candidates for public office at all levels across the country, including those on the ballot in Pennsylvania; and assists state parties throughout the country, including the Republican Party of Pennsylvania, to educate, mobilize, assist, and turn out voters.

2. The RPP is a major political party, 25 P.S. § 2831(a), and the "State committee" for the Republican Party in Pennsylvania, 25 P.S. § 2834, as well as a federally registered "State Committee" of the Republican Party as defined by 52 U.S.C. § 30101(15). The RPP on behalf of itself and its members nominates, promotes, and assists Republican candidates seeking election or appointment to federal, state, and local office in Pennsylvania.

3. The RNC and the RPP each have made significant contributions and expenditures in support of Republican candidates up and down the ballot and in mobilizing and educating voters in Pennsylvania in past election cycles and are doing so again in 2024. These efforts include devoting substantial time and resources towards monitoring the voting and vote counting processes in

Pennsylvania and ensuring those processes are conducted lawfully. The RNC and the RPP make expenditures to ensure they and their voters understand the rules governing the elections process, including applicable dates, deadlines, and requirements for voting absentee or by mail. These efforts require a uniform application of the law and a clear and transparent understanding of absentee and mail-in voting requirements, including the date requirement.

4. The Proposed Republican Intervenors have a substantial and particularized interest in ensuring that Pennsylvania administers free and fair elections.

**B. Procedural History.**

5. On September 25, 2024 Petitioners filed their Application against Al Schmidt, in his official capacity as the Secretary of the Commonwealth, and each of Pennsylvania's 67 county boards of election. *See* Application.

6. This lawsuit is the latest salvo in a long line of attempts to persuade the courts to undo the General Assembly's date requirement for absentee and mail-in ballots. *See McCormick for U.S. Senate v. Chapman*, No. 286 M.D. 2022, 2022 WL 2900112 (Pa. Commw. Ct. June 2, 2022); *In re Election in Region 4 for Downingtown Sch. Bd. Precinct Uwchlan 1*, 272 A.3d 993 (Pa. Commw. 2022) (unpublished); *Ritter v. Lehigh Cnty Bd. of Elections*, 272 A.3d 989 (Pa. Commw. 2022) (unpublished); *NAACP v. Schmidt*, No. 22 CV 339 (W.D. Pa. filed Nov. 4, 2022);

*Eakin v. Adams Cnty. Bd. of Elections*, No. 22 CV 340 (W.D. Pa. filed Nov. 7, 2022); *Black Power Empowerment Project v. Schmit*, No. 68 MAP 2024 (Pa. Sept. 13, 2024) (unpublished).

7. On November 1, 2022, the Pennsylvania Supreme Court ruled in a case brought by Proposed Republican Intervenors and voters that the date requirement is lawful and mandatory under state law. *See Ball*, 289 A.3d 1; *Ball*, 284 A.3d 1189. The court ordered county boards of elections “to refrain from counting any absentee and mail-in ballots received for the November 8, 2022 general election that are contained in undated or incorrectly dated outer envelopes.” 284 A.3d at 1192.

8. The Pennsylvania Supreme Court’s November 2022 order aligned with the view of three Justices of the U.S. Supreme Court. In addressing an application for a stay following Pennsylvania’s 2022 primary election, three Justices concluded that the notion that the date requirement violates the federal Materiality Provision is “very likely wrong.” *Ritter v. Migliori*, 142 S. Ct. 1824, 1824 (2022) (Mem.) (Alito, J., dissenting from the denial of the application for stay). No other Justices addressed the merits in the stay posture of that litigation.

9. Earlier this year, the Third Circuit endorsed the view espoused in the *Ritter* dissent. Siding with the Proposed Republican Intervenors, the Third Circuit reversed the district court’s grant of summary judgment and held that the date

requirement does not violate the Materiality Provision. *See Pa. State Conf. of NAACP Branches*, 97 F.4th 120. The Third Circuit denied a petition for rehearing.

10. More recently, four of the Petitioners here whom participated in both *Ball* and the ongoing federal-court litigation—sought to circumvent those decisions in the *BPEP* litigation filing yet another action, this time in Commonwealth Court, raising a Free and Equal Elections challenge and argued that the date requirement is a violation of Pennsylvania’s Free and Equal Elections Clause, Pa. Const. art. I, § 5. The *BPEP* litigation asked the Commonwealth Court to invalidate the General Assembly’s duly enacted date requirement and to preliminarily and permanently enjoin further enforcement of the requirement. The Commonwealth Court did so. *Black Political Empowerment Project v. Schmidt*, 283 MD 2024 (Pa. Commw. August 30, 2024)(unpublished).

11. On appeal of the Commonwealth Court’s decision, this Court vacated that ruling. No. 68 MAP 2024, Order at 1. Justice Wecht filed a Dissenting Statement that was joined by Justices Todd and Donohue.

12. Both the Court’s Order and the Dissenting Statement indicate that, despite the procedural issues, the Court considered exercising its extraordinary powers to hear the substantive issue raised in the *BPEP* Litigation. Order at 2 (“The request for extraordinary jurisdiction pursuant to 42 Pa.C.S. §726 is DENIED.”);

Dissenting Statement at 2 (“I would exercise this Court’s King Bench authority over the instant dispute and order that the matter be submitted on the briefs.”).

13. Less than two weeks after this Court’s order in the BPEP litigation, Petitioners filed the Application raising the same substantive issues that were before the Court in the *BPEP* Litigation at No. 68 MAP 2024, specifically that the date requirement violates the Free and Equal Elections Clause of the Pennsylvania Constitution and seeking to enjoin the enforcement of the same. See App. p.3.

14. This case is still in its infancy, having just been filed on September 25, 2024. As of the filing of this Application for Leave to Intervene, Answers to the Application are due by 4:00 pm today, September 26, 2024. Proposed Republican Intervenors have complied with Court’s deadline for answering, and therefore their intervention will not cause any undue delay in the proceedings.

## **II. THE GOVERNING INTERVENTION STANDARD**

15. In an original jurisdiction petition for review, a nonparty may file an application for leave to intervene. Pa. R.A.P. 1531(b). Insofar as “the exercise of King’s Bench authority is not limited by prescribed forms of procedure” and that “the Court may employ any type of process necessary for the circumstances,” the Proposed Republican Intervenors’ application for leave to intervene in compliance



with the rules governing original jurisdiction petitions for review is an appropriate vehicle for the timely intervention of these interested parties.

16. “The right to intervention should be accorded to anyone having an interest of his own which no other party on the record is interested in protecting.” *Keener v. Zoning Hearing Bd. of Millcreek Twp.*, 714 A.2d 1120, 1123 (Pa. Commw. Ct. 1998) (citing *Bily v. Bd. of Property Assessment, Appeals and Review of Allegheny Cty.*, 44 A.2d 250 (Pa. 1945)).

17. The standards for intervention under Pennsylvania Rules of Civil Procedure 2326 to 2329 apply to an original jurisdiction petition for review because Pennsylvania Rule of Appellate Procedure 106 (“Original Jurisdiction Matters”) applies the “general rules” for practice in the courts of common pleas—namely, the Rules of Civil Procedure—“so far as they may be applied.”

18. Pennsylvania Rule of Civil Procedure 2327(4) is permissive and provides in pertinent part:

At any time during the pendency of an action, a person not a party thereto *shall be permitted to intervene therein*, subject to these rules if . . . *the determination of such action may affect any legally enforceable interest of such person* whether or not such person may be bound by a judgment in the action.

Pa. R.C.P. No. 2327(4) (emphasis added); *see also Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Human Servs.*, No. 26 M.D. 2019, 2020 Pa. Commw. LEXIS 104, 2020 WL 424866, at \*5 (Pa. Commw. Ct. Jan. 28, 2020) (“Pennsylvania Rule of Civil

Procedure No. 2327(4) . . . permits intervention where the determination ‘*may affect any legally enforceable interest*’ of a proposed intervenor.” (quoting Pa. R.C.P. No. 2327(4) and emphasis in original)).

19. If the determination may affect the intervenor’s legally enforceable interest, and no exception applies, approving intervention is mandatory, not discretionary. *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999).

20. Moreover, the Court may, in its discretion, allow intervention even if it determines that one of the Rule 2329 exceptions applies. *See* Pa. R.C.P. 2329 (instructing that “an application for intervention *may* be refused” if an exception applies (emphasis added)); *see also* 7 Goodrich Amram 2d § 2329:7 (“Even though the petitioner’s interest is adequately represented in the pending action, this fact does not mandate the refusal of intervention since the refusal of intervention on the ground of the adequacy of the representation is permissive in nature.”).

21. The Court should grant the Proposed Republican Intervenors’ application to intervene because the Court’s determination of this action may affect the Proposed Republican Intervenors’ legally enforceable interests, no exception applies under Pennsylvania Rule of Civil Procedure 2329, and the Proposed Republican Intervenors’ participation will aid the Court.

### **III. BASIS FOR THE PROPOSED REPUBLICAN INTERVENORS' INTERVENTION**

#### **A. The Proposed Republican Intervenors have substantial interests in this action.**

22. The Proposed Republican Intervenors, on behalf of their voters, supported candidates, and own institutional interests, have a substantial and particularized interest in preserving the date requirement challenged in this action, which was enacted to ensure the structure and integrity of Pennsylvania's elections.

23. The Proposed Republican Intervenors have led the defense of the date requirement in prior cases, including *Ball*, *Pennsylvania State Conference of the NAACP* and *BPEP*, and have an obvious interest in protecting the decisions upholding the date requirement in those cases. Petitioners' suit directly implicates that interest because it seeks to circumvent those decisions and secure a new judicial decision that the date requirement is invalid and unenforceable. *See* Pet. Prayer for Relief ¶¶ a-b.

24. More generally, there can be no question that the Proposed Republican Intervenors have an obvious interest in the continued enforcement of Pennsylvania's laws governing absentee and mail-in ballots as those laws are designed to ensure "the integrity of [the] election process," *Eu v. San Fran. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989), and the "orderly administration" of elections, *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008) (op. of Stevens, J.).

Were these validly enacted laws to be cast aside, the current competitive electoral environment in Pennsylvania, in which the Proposed Republican Intervenors invest substantial resources in support of Republican candidates to try to win elections, would be altered or impaired. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 n.5, 800 (Pa. 2018). Courts around the country routinely recognize that political parties have an interest in defending against suits seeking judicial changes to election laws and procedures.<sup>6</sup> Most recently the Commonwealth

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<sup>6</sup> *See, e.g., Pa. State Conf. of the NAACP v. Chapman*, No. 1:22-cv-00339-SPB (W.D. Pa. Jan. 6, 2023) (granting intervention of right to the RNC, National Republican Congressional Committee, and the Republican Party of Pennsylvania); *La Union Del Pueblo Entero v. Abbott*, 29 F.4th 299 (5th Cir. 2022) (granting intervention of right to county party committees, Republican National Committee, National Republican Senatorial Committee, and National Republican Congressional Committee); *United States v. Georgia*, No. 1:21-cv-2575 (N.D. Ga. July 12, 2021) (granting intervention to the RNC, NRSC, and Georgia Republican Party); *Concerned Black Clergy of Metro. Atlanta, Inc. v. Raffensperger*, No. 1:21-cv-1728 (N.D. Ga. June 21, 2021) (granting intervention to the RNC, NRSC, NRCC, and Georgia Republican Party); *Coalition for Good Governance v. Raffensperger*, No. 1:21-cv-02070 (N.D. Ga. June 21, 2021) (same); *New Georgia Project v. Raffensperger*, No. 1:21-cv-1229, 2021 WL 2450647 (N.D. Ga. June 4, 2021) (same); *Ga. State Conf. of the NAACP v. Raffensperger*, No. 1:21-cv-1259 (N.D. Ga. June 4, 2021) (same); *Sixth Dist. of the African Methodist Episcopal Church v. Kemp*, No. 1:21-cv-1284 (N.D. Ga. June 4, 2021) (same); *Asian Ams. Advancing Justice-Atlanta v. Raffensperger*, No. 1:21-cv-1333 (N.D. Ga. June 4, 2021) (same); *VoteAmerica v. Raffensperger*, No. 1:21-cv-1390 (N.D. Ga. June 4, 2021) (same); *Wood v. Raffensperger*, No. 1:20-cv-5155 (N.D. Ga. Dec. 22, 2020) (granting intervention to the DSCC and Democratic Party of Georgia); *Alliance for Retired American's v. Dunlap*, No. CV-20-95 (Me. Super. Ct. Aug. 21, 2020) (granting intervention to the RNC, NRSC, and Republican Party of Maine); *Mi Familia Vota v. Hobbs*, Doc. 25, No. 2:20-cv-1903 (D. Ariz. June 26, 2020) (granting intervention to the RNC and NRSC); *Ariz. Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-1143-DLR (D. Ariz. June 26, 2020) (granting intervention to the RNC and Arizona

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Republican Party); *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459-wmc (W.D. Wis. June 23, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Edwards v. Vos*, Doc. 27, No. 20-cv-340-wmc (W.D. Wis. June 23, 2020) (same); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 ECT/TNL (D. Minn. June 23, 2020) (granting intervention to the RNC and Republican Party of Minnesota); *Issa v. Newsom*, 2020 WL 3074351, at \*4 (E.D. Cal. June 10, 2020) (granting intervention to the DCCC and Democratic Party of California); *Nielsen v. DeSantis*, Doc. 101, No. 4:20-cv-236-RH (N.D. Fla. May 28, 2020) (granting intervention to the RNC, NRCC, and Republican Party of Florida); *Priorities USA v. Nessel*, 2020 WL 2615504, at \*5 (E.D. Mich. May 22, 2020) (granting intervention to the RNC and Republican Party of Michigan); *Thomas v. Andino*, 2020 WL 2306615, at \*4 (D.S.C. May 8, 2020) (granting intervention to the South Carolina Republican Party); *Corona v. Cegavske*, Order Granting Mot. to Intervene, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020) (granting intervention to the RNC and Nevada Republican Party); *League of Women Voters of Va. v. Va. State Bd. of Elections*, Doc. 57, No. 6:20-cv-24-NKM (W.D. Va. Apr. 29, 2020) (granting intervention to the Republican Party of Virginia); *Paher v. Cegavske*, 2020 WL 2042365, at \*2 (D. Nev. Apr. 28, 2020) (granting intervention to four Democratic Party entities); *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at \*5 (W.D. Wis. Mar. 28, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Gear v. Knudson*, Doc. 58, No. 3:20-cv-278 (W.D. Wis. Mar. 31, 2020) (same); *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020) (same); see also *Democratic Exec. Cmte. of Fla. v. Detzner*, No. 4:18-cv-520-MW-MJF (N.D. Fla. Nov. 9, 2018) (granting intervention to the NRSC); *Citizens United v. Gessler*, No. 14-002266, 2014 U.S. Dist. LEXIS 128669, 2014 WL 4549001, at \*2 (D. Colo. Sept. 15, 2014) (granting intervention to the Colorado Democratic Party); *Libertarian Party of Mich. v. Johnson*, No. 12-12782, 2012 U.S. Dist. LEXIS 126096 (E.D. Mich. Sept. 5, 2012) (granting intervention to the Republican Party of Michigan); *Radogno v. Ill. State Bd. of Elections*, No. 1:11-cv-4884, 2011 U.S. Dist. LEXIS 134520, 2011 WL 5868225, \*1 (N.D. Ill. Nov. 22, 2011) (granting intervention to the Illinois Republican Party); *Siegel v. LePore*, 234 F.3d 1163, 1169 n.1 (11th Cir. 2001) (acknowledging that the district court granted a motion by the Florida Democratic Party to intervene); *Trinsey v. Pennsylvania*, 941 F.2d 224, 226 (3d Cir. 1991) (acknowledging that the district court permitted Republican Party officials and the Republican State Committee of Pennsylvania to intervene and granting intervention to the Pennsylvania Democratic State Committee on appeal); *Hastert v. State Bd. of Elections*, 777 F. Supp. 634, 639 (N.D. Ill. 1991) (granting intervention to a political party organized under the Illinois

Court granted Proposed Republican Intervenors the right to intervene in the *BPEP* litigation. Indeed, courts generally recognize that political parties have “an interest in the subject matter of [a] case,” when “changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the . . . Republican Party.” *See Ohio Democratic Party v. Blackwell*, No. 04-1055, 2005 WL 8162665, at \*2 (S.D. Ohio Aug. 26, 2005).

25. This interest is not a hypothetical one. The courts’ failure to enforce the date requirement in *Migliori v. Cohen* actually changed the outcome of an election in which a Republican candidate prevailed. *See supra* n.2. Similarly, in 2023, the Montgomery County Board of Elections’ decision to count misdated ballots flipped the election against Republican incumbent, Richard Marino. *See supra* n.3. Such an outcome is possible in the 2024 election cycle, and the Proposed Republican Intervenors’ interest in preventing it is obvious.

26. If Petitioners’ action succeeds, the orderly administration of Pennsylvania’s elections will be upended shortly before a critical general election.

27. Invalidating the date requirement would not only undercut the prior court rulings in the Proposed Republican Intervenors’ favor and the democratically

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Election code); *Anderson v. Babb*, 632 F.2d 300, 304 (4th Cir. 1980) (acknowledging that the district court granted the DNC’s motion to intervene).

enacted laws that protect voters and candidates (including the Proposed Republican Intervenors and their members), *Caba v. Weaknecht*, 64 A.3d 39, 50 (Pa. Commw. Ct. 2013) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008)), but also change the “structur[e] of [the] competitive environment” in Pennsylvania’s elections and “fundamentally alter the environment in which [the Proposed Republican Intervenors] defend their concrete interests (e.g. their interest in . . . winning [elections]),” *Shays v. Fed. Elec. Comm’n*, 414 F.3d 76, 86 (D.C. Cir. 2005).

28. Such changes also risk confusing voters and undermining confidence in the electoral process. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (“Court orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.”). The Proposed Republican Intervenors will be forced to spend substantial resources informing their Republican voters of changes in the law, fighting inevitable confusion, and galvanizing participation in the election as a result of such a change.

29. Such interference with Pennsylvania’s election scheme—and with the Proposed Republican Intervenors’ electoral activities—would impair the Proposed Republican Intervenors’ interests on behalf of their candidates, their members, and themselves, and thus warrants intervention.

**B. There is no basis to refuse the Proposed Republican Intervenors' application for intervention.**

30. Pennsylvania Rule of Civil Procedure 2329 provides that an application for intervention may be refused if: (1) the petitioner's claim or defense "is not in subordination to and in recognition of the propriety of the action"; (2) the petitioner's interest is already adequately represented; or (3) "the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties."

31. None of these factors applies to the Proposed Republican Intervenors.<sup>7</sup>

32. First, the Proposed Republican Intervenors' defense in this action is in subordination to and in recognition of the action's propriety.

33. Second, no existing party adequately represents the Proposed Republican Intervenors' particularized interests. *See* Pa. R.C.P. No. 2329(2). That Petitioners do not represent the Proposed Republican Intervenors' interests is clear, since they seek invalidation of the date requirement the Proposed Republican Intervenors seek to uphold. Moreover, four Petitioners here opposed the Proposed Republican Intervenors' position as *amici* in *Ball* and as plaintiffs in the ongoing federal-court challenges to the date requirement. *See supra* p. 5.

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<sup>7</sup> As explained above, the Court retains discretion to allow the Proposed Republican Intervenors to intervene even if it concludes that an exception under Rule 2329 applies. Pa. R.C.P. 2329; 7 Goodrich Amram 2d § 2329:7.



34. Respondents also do not represent the Proposed Republican Intervenors' interests in this case. As noted, the Secretary along with two of the county boards of election all have taken positions opposed to the positions taken by the Proposed Republican Intervenors and have sought invalidation of the date requirement in prior litigation, including *Ball*, the federal-court litigation and the *BPEP* litigation. The Application also indicates a strong likelihood that other county boards may not vigorously defend against Petitioners' claims. Application, pp. 22-24. If Respondents decline to defend the date requirement in this case, there will be no party before the Court to defend it absent intervention by the Proposed Republican Intervenors.

35. Moreover, Respondents, as Commonwealth and county officials, do not represent the private interests of the Proposed Republican Intervenors at stake in this litigation, which are fundamentally different from, and far narrower than, the broad public interests represented by Respondents. Indeed, "the government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a [private movant] merely because both entities occupy the same posture in the litigation." *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1255-56 (10th Cir. 2001); see also, e.g., *Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 321 (D.C. Cir. 2015) ("[W]e look skeptically on government entities serving as adequate advocates for

private parties.” (citing *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003)).

36. Whereas the Proposed Republican Intervenors have particularized interests in securing election of Republicans and in maintaining the competitive electoral environment adopted through the Election Code, Respondents have no interest in the election of particular candidates. *See, e.g., Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996) (holding that the government’s representation of the general public interest did not adequately represent the intervenor’s narrower private interests, despite the similarity in their goals). Instead, in acting on behalf of all Pennsylvania citizens and the Commonwealth, Respondents must consider “a range of interests likely to diverge from those of the intervenors.” *Meek v. Metro. Dade Cty.*, 985 F.2d 1471, 1478 (11th Cir. 1993). Indeed, “[i]n litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of [a private party] intervenor.” *Utah Ass’n of Ctys.*, 255 F.3d at 1256. These considerations may include “the expense of defending the current [laws] out of [state] coffers,” *Clark v. Putnam Cty.*, 168 F.3d 458, 461–62 (11th Cir. 1999), “the social and political divisiveness of the election issue,” *Meek*, 985 F.2d at 1478, “their own desires to remain politically popular and effective leaders,” *id.*, and the interests of opposing parties, *In re Sierra Club*, 945 F.2d 776, 779–80 (4th Cir. 1991). Given that

Respondents may take these other interests into account, their interests may diverge with the Proposed Republican Intervenors' interests throughout this litigation.

37. Third, the Proposed Republican Intervenors have not unduly delayed in submitting their application to intervene in this action, which remains in its infancy. The Application was filed only yesterday. Intervention by the RNC and the RPP will not cause any undue delay, embarrassment, or prejudice to any party, but it will aid the Court in resolving the important legal and factual questions before it.

#### **IV. CONCLUSION**

38. For the reasons set forth above, the Proposed Republican Intervenors have a clear right to intervene in this case challenging an important state law governing the administration of Pennsylvania's elections.

39. Pursuant to Pennsylvania Rule of Civil Procedure 2328, the Proposed Republican Intervenors have attached as Exhibit A, a copy of the Proposed Answer which they will file in this action if permitted to intervene.

**WHEREFORE**, for the foregoing reasons, the Republican National Committee and the Republican Party of Pennsylvania respectfully request that this Honorable Court GRANT this Application for Leave to Intervene, and DIRECT the Commonwealth Court Prothonotary to enter the names of the Republican National Committee and the Republican Party of Pennsylvania on the docket in this matter as

Intervenor-Respondents, and DOCKET the Republican Intervenor-Respondents’  
Answer to the Application attached as Exhibit A.

Dated: September 26, 2024

Respectfully submitted,

/s/ Kathleen A. Gallagher

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*\*Pro hac vice application forthcoming*

**CERTIFICATION REGARDING PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

THE GALLAGHER FIRM, LLC

Dated: September 26, 2024


/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

*Counsel for Proposed Republican Intervenors*

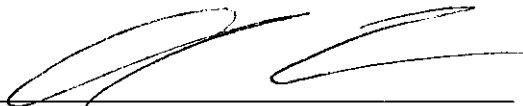
**VERIFICATION**

I hereby aver that the statements of fact contained in the attached *Application for Leave to Intervene* are true and correct to the best of my knowledge and belief and are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

By:   
Alex Latcham  
Senior Deputy Political Director  
Republican National Committee

**VERIFICATION**

I hereby aver that the statements of fact contained in the attached *Application for Leave to Intervene* are true and correct to the best of my knowledge and belief and are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

By:   
\_\_\_\_\_  
Republican Party of Pennsylvania

**IN THE SUPREME COURT OF PENNSYLVANIA**

NEWPAPROJECT EDUCATION  
FUND, NAACP PENNSYLVANIA  
STATE CONFERENCE, COMMON  
CAUSE PENNSYLVANIA,  
LEAGUE OF WOMEN VOTERS OF  
PENNSYLVANIA, BLACK  
POLITICAL EMPOWERMENT  
PROJECT, POWER INTERFAITH,  
MAKE THE ROAD PENNSYLVANIA,  
ONEPA ACTIVISTS UNITED,  
CASA SAN JOSE, AND  
PITTSBURGH UNITED,

*Petitioners,*

v.

AL SCHMIDT, IN HIS OFFICIAL  
CAPACITY AS SECRETARY OF THE  
COMMONWEALTH, AND ALL 67  
COUNTY BOARDS OF ELECTIONS,

*Respondents.*

Case No. 112 MM 2024

**PROPOSED ORDER**

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2024, upon consideration of the Application for Leave to Intervene filed by the Republican National Committee and the Republican Party of Pennsylvania, it is hereby ORDERED, ADJUDGED, AND DECREED that the Petition is GRANTED. The Republican National Committee and the Republican Party of Pennsylvania are permitted to intervene in the above-captioned matter. The Court hereby DIRECTS the Commonwealth Court Prothonotary to enter the names of the Republican National Committee and the Republican Party of Pennsylvania on the



docket in this matter as Intervenor-Respondents and DOCKET the Intervenor-Respondents' Answer.

BY THE COURT:

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# **EXHIBIT A**

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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**No. 112 MM 2024**

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New PA Project Education Fund, NAACP Pennsylvania State Conference,  
Common Cause Pennsylvania, League of Women Voters of Pennsylvania, Black  
Political Empowerment Project, POWER Interfaith, Make The Road Pennsylvania,  
OnePA Activists United, Casa San Jose, and Pittsburgh United,  
Petitioners,

v.

Al Schmidt, in his official capacity as Secretary of the Commonwealth,  
and All 67 County Boards of Elections  
(See back of cover for list of County Board Respondents),  
Respondents,

Republican National Committee and Republican Party of Pennsylvania,  
Intervenors/Respondents.

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**INTERVENOR-RESPONDENTS' ANSWER TO PETITIONERS'  
APPLICATION FOR EXTRAORDINARY RELIEF UNDER THE  
COURT'S KING'S BENCH JURISDICTION**

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Respondents*

*\* pro hac vice motion  
forthcoming*

Adams County Board of Elections; Allegheny County Board of Elections;  
Armstrong County Board of Elections; Beaver County Board of Elections;  
Bedford County Board of Elections; Berks County Board of Elections;  
Blair County Board of Elections; Bradford County Board of Elections;  
Bucks County Board of Elections; Butler County Board of Elections;  
Cambria County Board of Elections; Cameron County Board of Elections;  
Carbon County Board of Elections; Centre County Board of Elections;  
Chester County Board of Elections; Clarion County Board of Elections;  
Clearfield County Board of Elections; Clinton County Board of Elections; Columbia  
County Board of Elections; Crawford County Board of Elections; Cumberland  
County Board of Elections; Dauphin County Board of Elections; Delaware County  
Board of Elections; Elk County Board of Elections;  
Erie County Board of Elections; Fayette County Board of Elections;  
Forest County Board of Elections; Franklin County Board of Elections;  
Fulton County Board of Elections; Greene County Board of Elections;  
Huntingdon County Board of Elections; Indiana County Board of Elections;  
Jefferson County Board of Elections; Juniata County Board of Elections;  
Lackawanna County Board of Elections; Lancaster County Board of Elections;  
Lawrence County Board of Elections; Lebanon County Board of Elections;  
Lehigh County Board of Elections; Luzerne County Board of Elections;  
Lycoming County Board of Elections; McKean County Board of Elections;  
Mercer County Board of Elections; Mifflin County Board of Elections;  
Monroe County Board of Elections; Montgomery County Board of Elections;  
Montour County Board of Elections; Northampton County Board of Elections;  
Northumberland County Board of Elections; Perry County Board of Elections;  
Philadelphia County Board of Elections; Pike County Board of Elections;  
Potter County Board of Elections; Schuylkill County Board of Elections;  
Snyder County Board of Elections; Somerset County Board of Elections;  
Sullivan County Board of Elections; Susquehanna County Board of Elections; Tioga  
County Board of Elections; Union County Board of Elections;  
Venango County Board of Elections; Warren County Board of Elections;  
Washington County Board of Elections; Wayne County Board of Elections;  
Westmoreland County Board of Elections; Wyoming County Board of Elections;  
and York County Board of Elections,

Respondents.

This Court has repeatedly upheld the General Assembly’s mandatory date requirement for mail ballots in prior cases, including against challenges brought under the Free and Equal Elections Clause. *See, e.g., Ball v. Chapman*, 289 A.3d 1 (Pa. 2022); *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 372-74 (Pa. 2020); *Black Political Empowerment Project et al. v. Schmidt et al.*, 68 MAP 2024 (Pa. Sept. 13, 2024 & Sept. 19, 2024).<sup>1</sup> This Court has thus made clear that mandatory application of the date requirement is the law in Pennsylvania. In fact, the date requirement’s lawfulness is so well established that—less than two weeks ago in a case brought by virtually the identical list of Petitioners who now ask the Court to exercise King’s Bench jurisdiction—the Court declined to exercise extraordinary jurisdiction to revisit its constitutionality under the Free and Equal Elections Clause. *See* Sept. 13, 2024 Order 2, *Black Political Empowerment Project*.

Regrettably, some people have not gotten the message. Earlier this week, many of the same counsel who represent Petitioners filed a new Free and Equal Elections challenge to the date requirement in the Court of Common Pleas. *See Baxter v. Phila. Bd. of Elecs.*, September Term, 2024 No. 02481 (Phila. Ct. Comm. Pl. Sept. 23, 2024). Petitioners have now returned to this Court, with a reordered case caption and one new party in tow, presenting the exact same challenge.

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<sup>1</sup> This Response uses “mail ballot” to refer to both absentee ballots and mail-in ballots. *See* 25 P.S. §§ 3146.6, 3150.16.

Petitioners' litigation assault on the date requirement spans beyond this Court, and even the Pennsylvania courts. Several Petitioners first filed suit in November 2022, when they challenged the date requirement under the federal Materiality Provision in federal court. They lost that challenge. *See Pa. State Conf. of NAACP Branches v. Sec'y*, 97 F.4th 120 (3d Cir. 2024). Only thereafter, they amended their federal complaint to add claims under the U.S. Constitution, but not the Free and Equal Elections Clause. *See* Second Am. Compl., ECF No. 413, *Pa. State Conf. of NAACP v. Schmidt*, No. 22-CV-339 (W.D. Pa. filed June 14, 2024). And it was not until May 28, 2024—more than 18 months after filing their first suit—that those Petitioners brought the *Black Political Empowerment* action raising a Free and Equal Elections claim.

Petitioners' and their counsel's strategy is therefore clear: They will continue to file piecemeal lawsuits until they have exhausted every conceivable challenge to the date requirement. This strategy not only needlessly clogs the courts with redundant litigation; it also threatens to unleash chaos in the aftermath of the ongoing 2024 general election in which Commonwealth voters have begun to receive mail ballots, *see* 25 P.S. § 3146.2a, and millions of Pennsylvanians will cast their votes for President, U.S. Senator, U.S. Representative, and scores of state and local offices. Unless the Court puts a stop to this strategy now, Petitioners and their counsel can be counted on to bring post-election challenges to the date requirement in November.

The consequences are foreseeable—and untenable. Those post-election challenges would create voter “confusion” and widespread “chaos,” *Kuznik v. Westmoreland Cnty. Bd. of Elecs.*, 902 A.2d 476, 504-07 (Pa. 2006), and an erosion of the public “[c]onfidence in our election system [that] is essential to the function of our participatory democracy,” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). They could even delay counting and certification of results. This Court would inevitably be drawn into the fray—and the U.S. Supreme Court might be, too. *See, e.g., Bush v. Gore*, 531 U.S. 98 (2000). Not only Pennsylvania, but the entire country, could be dragged into uncertainty following a hotly contested election at a critical moment for the Nation’s democracy.

Intervenors-Respondents Republican National Committee and Republican Party of Pennsylvania therefore believe that Petitioners have left the Court with no choice: the Court should exercise its King’s Bench jurisdiction and enter a final judgment reiterating, once and for all, that the date requirement is constitutional under the Free and Equal Elections Clause. Intervenors-Respondents ask the Court to set a briefing schedule that will permit it to resolve this question far enough in advance of Election Day and the counting of mail ballots to allow any party to seek further review in the U.S. Supreme Court, if necessary. Intervenors-Respondents will adhere to any schedule the Court sets and respectfully request the opportunity to submit briefs and to participate in oral argument, if any.

When it reaches the merits, the Court should reaffirm that the date requirement is lawful and constitutional, for all the reasons Intervenors-Respondents recently explained. See Intervenors-Appellants Principal Br. 23-59, *Black Political Empowerment Project et al. v. Schmidt et al.*, 68 MAP 2024 (Pa. filed Sept. 3, 2024) (“Principal Br.”). The date requirement does not even apply to in-person voting, the most popular form of voting across the Commonwealth. Even when it comes to mail voting, the date requirement is a routine ballot-casting rule that does not make voting “so difficult as to amount to a denial . . . of the franchise.” *Winston v. Moore*, 91 A. 520, 523-24 (Pa. 1914); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 810 (Pa. 2018); see Principal Br. 29-48. Indeed, more than 99% of mail voters comply with the date requirement—and that compliance rate is only expected to continue to increase now that Secretary Schmidt’s July 1, 2024 Directive has made complying with the requirement easier than ever. See Principal Br. 36-38.

The date requirement is thus well within the General Assembly’s “power to regulate elections.” *Winston*, 91 A. at 522. And enjoining any application of the date requirement would violate the Electors and Elections Clauses of the U.S. Constitution and strike universal mail voting in Pennsylvania under Act 77’s non-severability provision. See Principal Br. 54-59.

The Court should exercise its King’s Bench jurisdiction and declare that the date requirement is constitutional under the Free and Equal Elections Clause.



Dated: September 26, 2024

Respectfully submitted,

/s/ Kathleen A. Gallagher

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*Counsel for Intervenors-Respondents*

**CERTIFICATION OF WORD COUNT**

Pursuant to Rule 2135 of the Pennsylvania Rules of Appellate Procedure, I certify that this Response contains 969 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

*/s/ Kathleen A. Gallagher*  
\_\_\_\_\_  
*Counsel for Intervenors-Respondents*

**CERTIFICATION REGARDING PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

THE GALLAGHER FIRM, LLC

Dated: September 26, 2024

/s/ Kathleen A. Gallagher  
Kathleen A. Gallagher  
*Counsel for Intervenors-Respondents*