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76 EM 2024

IN THE SUPREME COURT OF PENNSYLVANIA

Nos. 76 EM 2024, 77 EM 2024

BRIAN T. BAXTER and SUSAN T. KINNIRY,

Respondents,

v.

PHILADELPHIA BOARD OF ELECTIONS,

Respondent,

REPUBLICAN NATIONAL COMMITTEE and REPUBLICAN PARTY OF PENNSYLVANIA,

Intervenor-Petitioners,

BRIEF OF *AMICUS CURIAE* RESTORING INTEGRITY AND TRUST IN ELECTIONS, INC. IN SUPPORT OF APPELLANTS' EMERGENCY APPLICATION

Appeal from October 30, 2024 Order of the
Commonwealth Court of Pennsylvania, No. 1305 C.D. 2024,
Affirming the September 26, 2024 Order of the
Court of Common Pleas of Philadelphia County, No. 2024 No. 02481

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STATEMENT OF INTEREST

Restoring Integrity and Trust in Elections, Inc. ("RITE") is a 501(c)(4) non-profit organization with the mission of protecting the rule of law in the qualifications for, process and administration of, and tabulation of voting throughout the United States. RITE has a particular interest in ensuring that courts do not legislate election rules from the bench—especially right before an election. RITE supports laws and policies that promote secure elections and enhance voter confidence in the electoral process. Its expertise and national perspective on voting rights, election law, and election administration will assist the Court in reaching a decision consistent with the Constitution and the rule of law.[1]

SUMMARY OF THE ARGUMENT

Regardless of what this Court thinks about the merits of this case, it should vacate the Commonwealth Court's decision. The trial court required the counting of undated and misdated ballots in an uncontested special election in Philadelphia. Even though counting those ballots couldn't possibly change the result of that *uncontested* election, the Commonwealth Court rushed to a decision holding—over two dissents—that the dating requirement for mail ballots violates the Pennsylvania Constitution. The ruling is problematic for many reasons, but the Court need not rush

[1] No counsel for a party authored this brief in whole or in part, and no person or entity, other than *amicus curiae*, its members, or its counsel, made a monetary contribution to its preparation or submission.

to its own decision on these issues just yet. Instead, it should vacate the Commonwealth Court's decision and set this case on an ordinary schedule to allow full briefing on the issues.

First, the Court should vacate the decision because the Commonwealth Court lacked subject matter jurisdiction. Barely a month ago, this Court vacated a similar decision by the Commonwealth Court for lack of subject matter jurisdiction. *See Zimmerman v. Schmidt*, __ A.3d __, No. 63 MAP 2024, 2024 WL 4284202, at *1 (Pa. Sept. 25, 2024) (per curiam). This case is *Zimmerman* part two. Here, the Commonwealth Court assumed that it had "exclusive appellate jurisdiction" under 42 Pa. Stat. §762(a). Maj. Op. 22. But it failed to acknowledge the exception in that statute, which gives this Court "exclusive jurisdiction of appeals" involving the constitutionality of state statutes. 42 Pa. Stat. §722. The Commonwealth Court's failure even to acknowledge the jurisdictional issues is the result of its rush to issue a decision in this case. This Court should assume jurisdiction of the appeal, vacate the Commonwealth Court's decision, and stay the trial court's judgment pending appeal.

Next, this Court should set this appeal on the ordinary briefing calendar, or at least one scheduled after the November 5 election. As Judge McCullough explained in dissent, "[t]here simply was and is no reason to decide this question now, and the Majority certainly has not done so in ordinary course. Both the trial court and this

Court should have declined to issue rushed and novel constitutional rulings that surely will confuse the expectations of both voters and county boards of elections alike." McCullough Dis. Op. 2. "[P]roceeding on an unnecessarily expedited track" is bad for the law, bad for Pennsylvania, and bad for the country. Wolf Dis. Op. 2. The Court should consider these issues under ordinary circumstances and procedures with the benefit of full briefing.

ARGUMENT

I. The Court should vacate the Commonwealth Court's decision and stay the judgment of the Court of Common Pleas.

Under Pennsylvania law, this Court has exclusive jurisdiction over the issues in this appeal. 42 Pa. Stat. §762(a). The Commonwealth Court assumed otherwise, but it didn't address the statute that vests this Court with jurisdiction. Had it considered that statute, it would have been obligated to transfer the case. Instead, the Commonwealth Court ignored the jurisdictional issues to reach its rushed merits decision. This Court should take jurisdiction of the appeal, vacate the Commonwealth Court's premature decision, and stay the judgment of the Court of Common Pleas.

A. The Commonwealth Court abused its discretion by failing to transfer the appeal to this Court.

This Court and the Commonwealth Court both have jurisdiction over appeals from the courts of common pleas. The Judicial Code carefully lays out the rules that determine which court should decide any given appeal. In this case, the

Commonwealth Court failed to consider those rules. But they unambiguously show that this Court, not the Commonwealth Court, should have heard the appeal.

Generally, the Commonwealth Court has "exclusive jurisdiction of appeals from final orders of the courts of common pleas" governing specific subjects. 42 Pa. Stat. §762(a). One of those subjects is the "interpretation or enforcement of any … statute relating to elections, campaign financing or other election procedures." *Id.* §762(a)(4)(i). That subject-matter authority would satisfy the court's jurisdiction in most ordinary election suits. And that's where the majority stopped its analysis. *See* Maj. Op. 20-21. But that same jurisdictional statute contains an "[e]xception." *Id.* §762(b). "The Commonwealth Court *shall not* have jurisdiction of such classes of appeals from courts of common pleas as are by section 722 (relating to direct appeals from courts of common pleas) within the exclusive jurisdiction of the Supreme Court." *Id.* (emphasis added).

Section 722 sets rules for this Court's "exclusive jurisdiction of appeals" in certain "classes of cases." *Id.* §722. One class consists of "[m]atters where the court of common pleas has held invalid as repugnant to the Constitution, treaties or laws of the United States, or to the Constitution of this Commonwealth, any treaty or law of the United States or any provision of the Constitution of, or of any statute of, this Commonwealth, or any provision of any home rule charter." *Id.* §722(7). In other words, "the Pennsylvania Supreme Court has exclusive jurisdiction of appeals where

the common pleas court has ruled a state statute unconstitutional." *Lutz v. Commonwealth*, 577 A.2d 957, 959 n.6 (Pa. Commw. Ct. 1990) (citing Pa. Stat. §722(7)).

If there were any doubt about whether this Court's jurisdiction is paramount, Section 762(b) puts it to rest by carving out an "[e]xception" to the Commonwealth Court's jurisdiction in this circumstance. "[I]t is a commonplace of statutory construction that the specific governs the general…." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). And Section 762(b) places appeals of constitutional issues—even on the subject of elections—in this Court alone.

This case concerns the constitutionality of a Pennsylvania statute, so this Court has exclusive jurisdiction over the appeal from the trial court. In this case, "the trial court determined" that not counting "a mail-in ballot due to a voter's failure to date the declaration printed on the outer envelope … as required by the Election Code's dating provisions, violates the free and equal elections clause set forth in article I, section 5 of the Pennsylvania Constitution." Maj. Op. 3 (cleaned up). And the ruling was a facial takedown of the statute: under the Commonwealth Court's reasoning, there is "no set of circumstances exist under which the statute would be valid." *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1222 (Pa. 2009). Unless this Court intervenes, the date requirement is "invalid." 42 Pa. Stat. §722(7). And that means this Court had "exclusive jurisdiction" over the appeal from that decision. *Id.* §722.

Because this Court has "exclusive" jurisdiction over this appeal, the Commonwealth Court abused its discretion in failing to transfer the case. When "the Supreme Court ha[s] exclusive jurisdiction" over a matter, the Commonwealth Court "transfer[s] the entire case to the Pennsylvania Supreme Court." *In re Warren*, 692 A.2d 1178, 1181 (Pa. Commw. Ct. 1997); *see also Lutz*, 577 A.2d at 959 n.6 (noting the court had "transferred to the Pennsylvania Supreme Court" an appeal "where the common pleas court ha[d] ruled a state statute unconstitutional" and the "Pennsylvania Supreme Court ha[d] exclusive jurisdiction").

Indeed, state law makes transfer *mandatory*. "If an appeal" is filed in a court that "does not have jurisdiction of the appeal or other matter, the court or magisterial district judge … shall transfer the record thereof to the proper tribunal of this Commonwealth." 42 Pa. Stat. §5103(a). And in cases such as this one, where the matter "is within the exclusive jurisdiction" of one court but was "commenced in any other tribunal of this Commonwealth," the matter "shall be transferred by the other tribunal to the proper court or magisterial district of this Commonwealth." *Id.* The Commonwealth Court has thus transferred cases *sua sponte*, without waiting for the parties to raise the issue. *See In re Mancuso*, 657 A.2d 136, 137 (Pa. Commw. Ct. 1995). But in this case, the majority refused even to consider these defects to its jurisdiction.

When the "Commonwealth Court" lacks "subject matter jurisdiction," the proper remedy is vacatur of the court's ruling. *Zimmerman*, 2024 WL 4284202, at *1. Barely a month ago, this Court corrected the Commonwealth Court for a similarly overzealous exercise of jurisdiction in which the court had declared state canvassing laws unconstitutional. *See Zimmerman v. Schmidt*, No. 33 M.D. 2024, 2024 WL 3979110, at *1 (Pa. Commw. Ct. Aug. 23, 2024), *vacated and remanded*, 2024 WL 4284202. This Court held that the Commonwealth Court "lacked original subject matter jurisdiction" because the petitioners had failed to join an indispensable party. *Zimmerman*, __ A.3d __, 2024 WL 4284202, at *1. What *Zimmerman* is to the Commonwealth Court's original jurisdiction, this case is to the Commonwealth Court's appellate jurisdiction. The Commonwealth Court has again overstepped its bounds on the eve of an election, and its decision should be vacated.

B. No other rule justifies the Commonwealth Court's failure to transfer this case.

Had the Commonwealth Court considered these jurisdictional issues, it might have raised several counterarguments to transferring the appeal to this Court. None would have justified keeping the case.

First, that the parties didn't object to the Commonwealth Court's jurisdiction does not insulate its decision from review by this Court. The parties apparently "[did] not dispute" that the Commonwealth Court had "subject matter jurisdiction over the appeals under Section 762(a)(4)(i)(C) of the Judicial Code." Maj. Op. 20. Ordinarily,

that agreement would satisfy the Commonwealth Court's jurisdiction. *See* 42 Pa. Stat. §704. But waiver doesn't apply if "the appellate court otherwise orders" a transfer. *Id.* §704(a). And "[b]efore" a court can "entertain the merits of Appellant's underlying claim," it "must first determine" whether it "has jurisdiction to consider the appeal." *Commonwealth v. Blystone*, 119 A.3d 306, 311 (Pa. 2015). The parties' agreement on jurisdiction does not absolve the Commonwealth Court from its obligation to assess its jurisdiction. Although waiver might arguably justify the Commonwealth Court's decision to retain jurisdiction in a close case, it cannot justify its failure to transfer a case, like this one, over which this Court clearly has exclusive jurisdiction.

Here, the majority didn't even consider whether this Court had exclusive jurisdiction. And it's not because the issue wasn't presented. In dissent, Judge Wolf explained why the Commonwealth Court lacked jurisdiction over the appeal. *See* Wolf Dis. Op. 4. And he pointed out that the majority was "obligated to ensure jurisdiction *sua sponte*," even though "the parties do not raise that jurisdictional question." Wolf Dis. Op. 4. The majority abused its discretion by failing to acknowledge these issues in an important case where its jurisdiction was so clearly lacking.

In any event, vacatur is appropriate so long as this Court concludes that it has jurisdiction over the appeal. That the Commonwealth Court has issued an

intermediate opinion does not vitiate this Court's jurisdiction. "Every court of general jurisdiction has power to determine whether the conditions essential to its exercise exist." *Tex. & P. Ry. v. Gulf, C. & S.F. Ry.*, 270 U.S. 266, 274 (1926). Put simply, a court always has "inherent jurisdiction to determine its own jurisdiction." *McGowen v. Harris*, 666 F.2d 60, 66 (4th Cir. 1981); *cf. In re Bruno*, 101 A.3d 635, 677 (Pa. 2014) ("[D]etermining whether the Court had the capacity to issue such an order is a necessary predicate to determining whether the Court has the competency to decide matters in the general class of controversies to which the dispute now before the Court belongs."). And there can be no question that this Court has exclusive jurisdiction over this appeal: "The Supreme Court shall have exclusive jurisdiction of appeals" involving the constitutionality of state statutes. 42 Pa. Stat. §722.

In other words, the Commonwealth Court cannot strip this Court of jurisdiction to decide this appeal in the first instance. *See Mercury Trucking, Inc. v. Pa. Pub. Util. Comm'n*, 55 A.3d 1056, 1066 (Pa. 2012) ("We are similarly unpersuaded by Mercury's argument that the Commonwealth Court's action of transferring the matter to its original jurisdiction is dispositive and forecloses plenary review of the jurisdictional question before the Court."). Regardless of whether the parties agreed to the Commonwealth Court's jurisdiction, or whether the court erred in failing to transfer the case, this Court has mandatory jurisdiction over this appeal.

And in exercising that jurisdiction, the Court should first vacate the Commonwealth Court's decision.

Second, the majority's only support for its jurisdictional statement doesn't address the issue here. Citing *Dayhoff v. Weaver*, 808 A.2d 1002 (Pa. Commw. Ct. 2002), the majority concluded that "[t]his is such a case over which we have exclusive appellate jurisdiction." Maj. Op. 20-21 n.22. But *Dayhoff* addressed only the general rule of jurisdiction in election cases under Section 762(a). 808 A.2d at 1005-06. It didn't address the "[e]xception" to that general rule that applies in constitutional cases. 42 Pa. Stat. §762(b). In *Dayhoff*, the appellant "initially appealed to the Supreme Court, which transferred the case" to the Commonwealth Court. 808 A.2d at 1005 n.5. But the Supreme Court's basis for jurisdiction in that case was discretionary, not exclusive. The Court could have "on its own motion or upon petition of any party," assumed "plenary jurisdiction of such matter at any stage" if it involved "an issue of immediate public importance." 42 Pa. Stat. §726. The Court declined to exercise that authority and sent the case back to the Commonwealth Court. *Dayhoff*, 808 A.2d at 1005 n.5. But *Dayhoff* does not discuss what to do when the Section 762(b) exception applies, and the Supreme Court has "exclusive jurisdiction" over the appeal. 42 Pa. Stat. §722.

Third, the majority's efforts to frame its decision as an "application" to only "the 69 voters in the Special Election" does not make this any less of a constitutional

case under Section 722. Maj. Op. 41. To start, the decision is not narrow. The trial court ruled that the date requirement facially violates the Free and Equal Elections Clause. The court's decision did not turn on the unique facts of the "69 voters in the Special Election," Maj. Op. 41, which means that all future applications of the dating requirement are just as unlawful. *See Clifton*, 969 A.2d at 1222 (discussing facial invalidation of statutes). The Commonwealth Court even engaged in a severability analysis that applies when "any provision of this act or its application to any person or circumstance is held invalid." Maj. Op. 40 (quoting Section 11, 2019 Pa. Legis. Serv. 2019-77). That the Court of Common Pleas held the dating requirement "invalid as repugnant to the Constitution" triggers this Court's exclusive jurisdiction. 42 Pa. Stat. §722(7).

Even if the trial court's ruling were an as-applied decision limited to the facts of this case, that wouldn't deprive this Court of exclusive jurisdiction. As Judge Wolf noted, "[t]he jurisdictional rule of Section 722(7) appears to apply regardless whether the underlying constitutional holding is facial or as applied." Wolf Dis. Op. 4 n.2 (citing *Commonwealth v. Torsilieri*, 316 A.3d 77, 97 (Pa. 2024)). The Superior Court has thus transferred cases in which the trial court declared the Sexual Offender Registration and Notification Act "unconstitutional as applied to [the defendant]," noting that the "Supreme Court has exclusive jurisdiction … under section 722(7)." *Commonwealth v. Gruver*, 248 A.3d 461 (Pa. Super. Ct. 2021) (table op.). This Court

has mandatory jurisdiction in cases in "[m]atters where the court of common pleas has held invalid as repugnant to the Constitution" any statute of "this Commonwealth," regardless of whether the invalidity is facial or as applied. 42 Pa. Stat. §722(7).

Finally, any distinction between finding the dating provision unconstitutional as opposed to its application or enforcement unconstitutional falls into a classic fallacy. When a court reviews the constitutionality of a statute, it considers whether to "decline to enforce a statute in a particular case or controversy," or whether "to enjoin executive officials from taking steps to enforce a statute—though only while the court's injunction remains in effect." Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 936 (2018). That's what happened here: the trial court "order[ed] the County Board to count the 69 undated and incorrectly dated absentee and mail-in ballots cast in the September 17, 2024 Special Election." Maj. Op. 42. It issued that order "on the basis that not counting those ballots violates the free and equal elections clause of the Pennsylvania Constitution." Maj. Op. 42. But distinguishing between an order holding a statute unconstitutional and an order holding *enforcement* of the statute unconstitutional commits the "writ-of-erasure fallacy." Mitchell, *supra*, at 937. It confuses the claim (unconstitutionality) for the remedy (an injunction). This Court's mandatory jurisdiction under Section 722 is triggered when the Court of Common Pleas issues a "final order[]" based on a claim

that a law is "invalid as repugnant to the Constitution." 42 Pa. Stat. §722; *see also Dep't of Trans. v. Hettich*, 669 A.2d 323 (Pa. 1995). "Debating whether the trial court found the dating provision itself unconstitutional, or only its application or enforcement unconstitutional," is thus "a distinction without a difference, at least for jurisdictional purposes." Wolf Dis. Op. 4 n.2.

Fourth, concerns of judicial economy cannot support the Commonwealth Court's failure to transfer the case. The Commonwealth Court has on occasion determined that an "appeal is not properly encompassed within [its] appellate jurisdiction," but decided to "retain jurisdiction and address the merits" anyway "in the interest of judicial economy and in light of the fact that neither party objected to Superior Court's transfer of the appeal." *In re Est. of Getz*, 611 A.2d 778, 780 (Pa. Commw. Ct. 1992). There's good reason to doubt whether that rule satisfies the General Assembly's instruction to transfer a case in which the court lacks jurisdiction. *See* 42 Pa. Stat. §5103(a). This Court has held, for example, that "the parties by agreement, may not vest subject matter jurisdiction in a court which does not have it otherwise." *Mercury Trucking*, 55 A.3d at 1066; *see also Domus, Inc. v. Signature Bldg. Sys. of PA, LLC*, 252 A.3d 628, 636 (Pa. 2021) ("Subject matter jurisdiction is a question that is not waivable and may be raised by a court on its own motion." (cleaned up)). Willfully retaining a case is particularly problematic where another court has exclusive jurisdiction, as is true here. *See* 42 Pa. Stat. §5103(a).

And it's even more troublesome where at least two members of the court believed that "a strong argument can be made that transfer was appropriate here." McCullough Dis. Op. 3 n.2; Wolf Dis. Op. 2-5.

Even if the Commonwealth Court can retain a case where it concludes it lacks jurisdiction, that limited rule doesn't apply here. For one, the court didn't invoke the rule. That is, the court didn't conclude that it *lacked* jurisdiction but should retain the case as a prudential matter. Instead, it concluded that "[t]his is such a case" over which it has "exclusive appellate jurisdiction." Maj. Op. 21 n.22. The majority then relied on that conclusion to support its analysis of the equities and timing of the appeal. *See* Maj. Op. 22-23 (reasoning that *Purcell* doesn't apply because the appeal was "filed in our *exclusive appellate* jurisdiction"). But the majority's jurisdictional conclusion is incorrect, as this brief has explained. *See supra* Section I.A. And a court "abuse[s] its discretion … when it overrides or misapplies the law." *Am. C.L. Union of Pa. v. Pa. State Police*, 232 A.3d 654, 665 (Pa. 2020).

Moreover, even if the court had determined that it should retain the case as a prudential matter, it made no findings about whether keeping the case would benefit judicial economy. Indeed, the Commonwealth Court curtailed its jurisdictional analysis precisely because it unnecessarily rushed to a decision. *See* McCullough Dis. Op. 3 n.2 ("Nevertheless, given the thin record, the curt analysis below, and no express holding from the trial court as to the Provisions' validity, I leave the ultimate

question of this Court's jurisdiction to our Supreme Court for a final determination."). The Commonwealth Court's decision has hindered judicial economy, not helped it. The lower courts "should have declined to issue rushed and novel constitutional rulings that surely will confuse the expectations of both voters and county boards of elections alike." McCullough Dis. Op. 2.

* * *

These jurisdictional rules are not mere technicalities. They are important constitutional safeguards that make good sense. "[L]egislative exactments are presumed constitutional, and the party challenging the constitutionality of a statute bears a heavy burden of persuasion." *Commonwealth v. Rollins*, 292 A.3d 873, 879 (Pa. 2023). Those safeguards are even more critical when the only governmental defendants in the case agree with the petitioners that the statute is unconstitutional. Maj. Op. 3. *Cf. Zimmerman*__ A.3d __, 2024 WL 4284202, at *1 (Brobson, J., concurring) (citing 71 Pa. Stat. §732-204(a)(3)). For all of these reasons, this Court should vacate the Commonwealth Court's decision.

II. This Court should hear the case in the ordinary course after the election.

After vacating the Commonwealth Court's decision, this Court should set briefing and argument on an ordinary schedule after the November 5 election. The majority acknowledged that it was deciding a "constitutional issue of first impression regarding whether the application of certain provisions of our Election

Code, held to be unambiguous and mandatory but found to be otherwise meaningless, violates the free and equal elections clause of our Constitution." Maj. Op. 41-42. Regardless of the merits of that question, "[t]here simply was and is no reason to decide this question now." McCullough Dis. Op. 2.

In its efforts to evade the *Purcell* principle, the Commonwealth Court missed the forest for the trees. "Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so." *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016). Rushing to a decision on this issue days before an election "surely will confuse the expectations of both voters and county boards of elections alike." McCullough Dis. Op. 2. The Commonwealth Court suggested that its decision poses no risk of voter confusion because this case applies to a previous election, not to upcoming elections. But judges, boards of elections, and voters will read the Commonwealth Court's decision as *the law*. Even if the court's decision is limited to the special election, voters might justifiably wonder why the upcoming election is operating under rules that the Commonwealth Court has declared "meaningless" and unconstitutional. Maj. Op. 41-42. The decision sows the ground for confusion, doubt, and discontent about the procedures and results of the upcoming election.

Even if the Commonwealth Court's decision poses "no risk" of disruption, Maj. Op. 16, its rushed decision should be vacated. The special election at issue in

this case was uncontested. All parties thus agree that counting the undated ballots would not change the outcome of the election. *See* Maj. Op. 9 ("It is impossible that the at-issue ballots would be outcome determinative in the Special Election." (cleaned up)). That's usually reason enough to *dismiss* an election contest. *See Pfuhl v. Coppersmith*, 253 A.2d 271, 273 (Pa. 1969) ("[I]t is absolutely essential that [such] a petition 'aver plainly and distinctly such facts which if sustained by proof would require the court to set aside the result.'"). But the majority couldn't explain why its ruling was necessary for the special election, let alone why it couldn't wait one more week to issue its "sweeping constitutional decision." Wolf Dis. Op. 6. Indeed, that its inexplicably hurried ruling has no effect on the special election suggests that the majority was hoping it would affect the November 5 election.

Finally, the Commonwealth Court "deprive[d] the Pennsylvania Supreme Court of a *reasonable* opportunity to review." Wolf Dis. Op. 2. But this Court need not accept those terms. It should vacate the decision below, set this appeal on an ordinary briefing schedule, and consider the briefs and issues on a timeline that facilitates careful decisionmaking. "When embarking on considering a challenge to the constitutionality of a statute, we must be standing on firm terrain." *New PA Project Educ. Fund v. Schmidt*, No. 112 MM 2024, 2024 WL 4410884, at *2 (Pa. Oct. 5, 2024) (table op.) (Donohue, J., statement in support of denial). The Court,

the parties, and the Commonwealth would benefit from a developed record and fully briefed issues. *See id.* at *2 (Brobson, J., concurring).

Setting this case on an ordinary briefing schedule would aid this Court's review of the important issues in this appeal. It would permit the parties time to fully brief the issues. It would permit election officials time to prepare election procedures. It would permit Pennsylvania voters time to understand the law. And it's the only way to ensure that the Commonwealth Court's decision doesn't sow doubt in the November election that will culminate in five days.

CONCLUSION

This Court should vacate the judgment of the Commonwealth Court, stay the trial court's judgment, and set this appeal for a schedule in the ordinary course.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

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

/s/ Walter S. Zimolong III
Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE WITH PA.R.A.P. 531

I certify that this brief contains 4,268 words and complies with the word count limit under Pa. R. App. P. 531(b)(3) and Pa. R. App. P.

2135(a)(1)

/s/ Walter S. Zimolong III
Counsel for Amicus Curiae