

ELECTION MATTER

M.D. Appeal Dkt.
63 MAP 2024

Filed 8/26/2024 6:21:43 PM Commonwealth Court of Pennsylvania
33 MD 2024

Filed 08/26/2024 Supreme Court Middle District

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David H. Zimmerman and Kathy L.
Rapp,

Petitioners,

v.

Al Schmidt, in his official
capacity as Acting Secretary of
the Commonwealth of Pennsylvania,
et. al.,

Respondents.

No. 33 M.D. 2024

**PETITIONERS'
JURISDICTIONAL STATEMENT**

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JURISDICTIONAL STATEMENT

Petitioners David H. Zimmerman and Kathy L. Rapp (“Petitioners”) respectfully submit this Jurisdictional Statement in support of their Notice of Appeal.

I. OPINION BELOW

Petitioners appeal from the August 23, 2024 Order and Unpublished Memorandum Opinion of the Commonwealth Court, sitting *en banc* in a five-member panel,¹ with one Judge issuing a concurring and dissenting opinion.² See Zimmerman, et al. v. Al Schmidt, in his official capacity as Secretary of the Commonwealth of Pennsylvania, et al., ___ A.3d ___ (Pa. Cmwlth., 33 M.D. 2024, filed August 23, 2024) (unpublished opinion).

II. BASIS OF THIS COURT’S JURISDICTION

On January 30, 2024, Petitioners, proceeding under 42 Pa.Cons.Stat. § 761(a)(1), filed a Petition for Review in the Nature of an Action for Declaratory and Injunctive Relief (the “Petition”) in the original jurisdiction of the Commonwealth Court of Pennsylvania. On August 23, 2024, the Commonwealth Court entered an order that disposed of all claims and parties: (1) granting the Application for Summary Relief filed by Al Schmidt, the Secretary of the

¹ The Honorable Renee Cohn Jubelirer, the Honorable Patricia A. McCullough, the Honorable Michael Wojcik, the Honorable Ellen Ceisler, and the Honorable Mathew S. Wolf, convened as a five-judge panel, presiding.

² The Honorable Patricia A. McCullough. On August 26, 2024, Judge McCullough filed an amending order making minor language modifications to her concurring and dissenting opinion.

Commonwealth, the Commonwealth of Pennsylvania, Department of State, and all 67 County Boards of Elections (collectively, “Respondents”), (2) denying the Application for Summary Relief filed by Petitioners, and (3) dismissing the Preliminary Objections of Respondent as moot. In this direct appeal, the Supreme Court of Pennsylvania has exclusive jurisdiction over the matter pursuant to 42 Pa.Cons.Stat. § 723(a). See 42 Pa.Cons.Stat. § 723(a) (“The Supreme Court shall have exclusive jurisdiction of appeals from final orders of the Commonwealth Court entered in any matter which was originally commenced in the Commonwealth Court”).

III. TEXT OF THE ORDER BELOW

The substantive text of the Commonwealth Court’s August 23, 2024 Order reads as follows:

NOW, August 23, 2024, the Application for Summary Relief filed by Al Schmidt, in his official capacity as Secretary of the Commonwealth of Pennsylvania and the Commonwealth of Pennsylvania, Department of State, and the Application for Summary Relief filed by Adams County Board of Elections, both of which are joined in by various other County Boards of Elections (collectively, Respondents), are **GRANTED**, the Application for Summary Relief filed by David H. Zimmerman and Kathy L. Rapp (Petitioners) is **DENIED**, the Petition for Review filed by Petitioners is **DISMISSED WITH PREJUDICE**, and the Preliminary Objections of Respondents are **DISMISSED** as moot.

IV. CONCISE STATEMENT OF PROCEDURAL HISTORY

On January 30, 2024, Petitioners filed their Petition in the Commonwealth Court, seeking declaratory and injunctive relief decreeing as unconstitutional and enjoining the enforcement of two statutory provisions in the Pennsylvania Election Code, 25 Pa.Stat. §§ 3146.6, 3146.8, the official guidance provided by Respondent Department of State, (“Guidance”) and/or the practice and policy that has been adopted by each of the 67 counties in Pennsylvania. Petitioners asserted that 25 Pa.Stat. §§ 3146.6 and 3146.8 and the Guidance, on their face or as applied by County Boards of Election, violate Article VII, Section 14 of the Pennsylvania Constitution.

Subsequently, Respondents filed preliminary objections (“PO”) and briefs in support, Petitioners filed the PO Brief in response, and Respondents filed reply briefs. On June 10, 2024, the Commonwealth Court entered a per curiam Order directing the parties to file Applications for Summary Relief no later than Monday, June 24, 2024.

Beginning on June 21, 2024, Respondents Department of State and Secretary of State filed an Application for Summary Relief and brief in support, which was joined by various other Respondents and some other Respondents filed their own Applications for Summary Relief.

On June 24, 2024, Petitioners filed their own Application for Summary Relief and brief in support.

On July 7, 2024, Respondents Department of State and Secretary of State filed a brief in opposition to Petitioners' Application for Summary Relief, which was joined by various other Respondents.

On July 8, 2024, Petitioners filed an omnibus brief in opposition to the Applications for Summary Relief filed by Respondents.

On July 11, 2024, the Commonwealth Court entered a per curiam order directing the prothonotary to submit the case for disposition on the briefs and without oral argument to a special en banc panel.

By order and accompanying unpublished memorandum opinion dated August 23, 2024, the Commonwealth Court, per President Judge Cohn Jubelirer, denied Petitioners' Application for Summary Relief, granted the Cross-Applications for Summary Relief filed by Respondents, dismissed the Petition with prejudice, and dismissed Respondents' preliminary objections as moot.

V. QUESTIONS PRESENTED

A. Whether the Commonwealth Court erred in failing to grant Petitioners summary relief because the plain and unambiguous language of Article VII, Section 14 requires absentee votes to be returned and canvassed in the local election districts in which the absentee voters respectively reside, while 25 Pa. Stat. § 3146.6(a), 25

Pa. Stat. § 3146.8(a), and the Guidance issued by Respondent Department of State, as applied by Respondents County Boards of Election, mandate that absentee ballots must be returned and canvassed at the office of the county board of elections, and not the local election district.

B. Whether this Court should overrule In re Absentee Ballots Case (No.2), 245 A.2d 265 (Pa. 1969) (“Absentee Ballots No. 2”), and/or reject the legal reasoning of Absentee Ballots No. 2 and In re Absentee Ballots Case (No.1), 245 A.2d 258 (Pa. 1969) (plurality).

Filed: August 26, 2024

Respectfully submitted,

/s/ Gregory H. Teufel
Gregory H. Teufel
Adam G. Locke
Attorneys for Petitioners

CERTIFICATION OF COMPLIANCE

Pursuant to Rule 127(a) of the Pennsylvania Rules of Appellate Procedure, 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.

Filed: August 26, 2024

/s/ Gregory H. Teufel
Gregory H. Teufel

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CERTIFICATION OF WORD COUNT

Pursuant to Rule 2135 of the Pennsylvania Rules of Appellate Procedure, I certify that this Jurisdictional Statement contains 875 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

Filed: August 26, 2024

/s/ Gregory H. Teufel
Gregory H. Teufel

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CERTIFICATE OF SERVICE

I certify that this filing was served via PACFile upon all counsel of record on the date listed below.

Filed: August 26, 2024

/s/ Gregory H. Teufel
Gregory H. Teufel

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