

[J-80-2024]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

DAVID H. ZIMMERMAN AND KATHY L.
RAPP,

Appellants

v.

AL SCHMIDT, IN HIS OFFICIAL CAPACITY
AS ACTING SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
STATE, 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

: No. 63 MAP 2024
:
: Appeal from the Order of the
: Commonwealth Court at No. 33 MD
: 2024 dated August 23, 2024.
:
: SUBMITTED: September 9, 2024

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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, :
LYCOMING 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, :
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, :

Appellees :

ORDER

PER CURIAM

AND NOW, this 25th day of September, 2024, the Order of the Commonwealth Court is **VACATED** and this case is **REMANDED** to the Commonwealth Court with direction to dismiss the suit with prejudice. The Commonwealth Court lacked original subject matter jurisdiction to adjudicate the matter because neither the Secretary of State, Al Schmidt, nor the Department of State is an indispensable party, as required by the Judicial Code. See 42 Pa.C.S. § 761(a)(1); *Penn State Educ. Ass’n v. Commonwealth, Dept. of Community & Econ. Dev.*, 50 A.3d 1263, 1277 (Pa. 2012) (“In determining whether a party is indispensable, the basic inquiry remains whether justice can be done in the absence of a third party.” (internal quotation marks omitted)); *Sprague v. Casey*, 550 A.2d 184, 189 (Pa. 1988) (“A party is indispensable when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights. . . . In this connection, if the merits of a case can be determined without prejudice to the rights of an absent party, the court may proceed.”). The Petition for Review, as further elaborated in the Appellants’ brief before this Court, seeks relief that, if warranted, could be granted solely by and through the County Boards of Elections.

However, the County Boards of Elections are not Commonwealth parties, and therefore provide no basis for the Commonwealth Court's original jurisdiction. See 42 Pa.C.S. §§ 102 (defining "Commonwealth government" to exclude any political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision or authority").

The Joinder of Appellee Cambria County Board of Elections to Brief of Appellees Secretary of State Al Schmidt and Department of State is **DENIED** as moot.

Justice Brobson files a concurring statement.

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