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IN THE SUPREME COURT OF PENNSYLVANIA

REPUBLICAN NATIONAL
COMMITTEE, et al.,

Petitioners/Appellants

v.

LEIGH M. CHAPMAN, in her official capacity as
Acting Secretary of the Commonwealth of
Pennsylvania, et al.,

Respondents/Appellees.

No. 100 MAP 2022

**COMMONWEALTH RESPONDENTS' ANSWER
TO PETITIONERS' JURISDICTIONAL STATEMENT**

Respondents/Appellees, Leigh M. Chapman, in her official capacity as
Acting Secretary of the Commonwealth of Pennsylvania, and Jessica Mathis, in her
official capacity as Director of the Bureau of Elections (collectively,

“Commonwealth Respondents”), submit this Answer to Petitioners/Appellants’ Jurisdictional Statement.

Petitioners’ Jurisdictional Statement contends that the Commonwealth Court had original jurisdiction over this action pursuant to 42 Pa.C.S. § 761(a)(1). *See* Jurisdictional Statement at 1. That is incorrect. Because the court below lacked subject matter jurisdiction over this case, as Commonwealth Respondents argued below,¹ this Court’s jurisdiction is limited to declaring that jurisdictional defect and directing that the case be dismissed.

For the Commonwealth Court to exercise jurisdiction under 42 Pa.C.S. § 761(a)(1), “the Commonwealth must be an indispensable party to the action.” *In re Petition for Enf’t of Subpoenas*, 214 A.3d 660, 664 (Pa. 2019). A Commonwealth party is indispensable only if the specific “claim and the relief sought” implicates a “right or interest” of the Commonwealth party that is “essential to the merits of the issue.” *Centolanza v. Lehigh Valley Diaries, Inc.*, 658 A.2d 336, 339 (Pa. 1995). The Commonwealth Court has stated that “a Commonwealth agency should not be declared an indispensable party unless meaningful relief cannot conceivably be afforded without the sovereign itself becoming involved.” *Pa. State Educ. Ass’n v. Dep’t of Educ.*, 516 A.2d 1308, 1310

¹ In its Memorandum Opinion denying Petitioners’ application for a preliminary injunction, the Commonwealth Court acknowledged this jurisdictional argument, *see* Memorandum Opinion at 20, but did not expressly rule on it.

(Pa. Commw. Ct. 1986). And “neither naming nor serving a Commonwealth party alone is sufficient to establish indispensability.” *In re Petition for Enf’t of Subpoenas*, 214 A.3d at 667.

The two Commonwealth officials named by Petitioners in this lawsuit—the Acting Secretary of the Commonwealth and Director of the Bureau of Elections—are not indispensable parties. The Petition for Review does not allege any unlawful action by the Department of State. Nor do Petitioners challenge any Department of State requirement or any statewide practice. Instead, they contest discretionary, county-level practices, alleging that “several County Boards of Elections . . . , *acting on their own initiative*, are [allegedly] departing from [purported statutory] rules” by providing electors in their respective counties with notice of certain technical deficiencies in absentee or mail-in ballot submissions and an opportunity to cast a timely, fully compliant ballot. Pet. ¶ 1 (emphasis added).² For her part, the Acting Secretary does not seek to enforce any law or obtain any judicial relief against the county boards, and she does not contend that the notice-and-cure procedures at issue are either prohibited or required.

Moreover, Petitioners can plainly obtain adequate relief without the involvement of the Department of State. Their own prayer for relief effectively concedes that point. *See id.* at p. 29 (seeking “permanent injunction prohibiting the

² *Accord*, e.g., Pet. ¶¶ 7, 8, 19, 33, 92.

Boards from developing and implementing cure procedures”). The only indispensable parties in this case are the particular county boards whose discretionary actions Petitioners seek to enjoin.

In response to this jurisdictional argument, Petitioners asserted below that *the county boards of elections themselves* are Commonwealth agencies for purposes of 42 Pa.C.S. § 761(a)(1). That assertion contravenes decades of well-established law. Indeed, this Court has made clear that county boards are *not* part of the Commonwealth government. *See, e.g., In re Voter Referendum Petition Filed Aug. 5, 2008*, 981 A.2d 163, 170 (Pa. 2009) (explaining that a county board of election is “a local agency”). That conclusion makes sense. County boards of elections are not bureaus within the Department of State, but rather separate agencies, each responsible for administering elections within its own county. 25 P.S. § 2641(a). And county boards are composed “of the county commissioners of [each] county.” 25 P.S. § 2641(b). “Where [a respondent] entity operates [only] within a single county ... and is governed in large part by that county ..., the entity must be characterized as a local agency and sued in the trial courts.” *Blount v. Phila. Parking Auth.*, 965 A.2d 226, 232 (Pa. 2009) (internal quotation marks omitted).

This Court’s recent decision in *In re Canvassing Observation*, 241 A.3d 339 (Pa. 2020), only underscores this point. That case, like this one, challenged

discretionary procedures and regulations adopted by a county board of elections pursuant to its delegated legislative authority under 25 P.S. § 2642(f). *See Canvassing Observation*, 241 A.3d at 350. That case was brought against the Philadelphia Board of Elections in the Court of Common Pleas of Philadelphia County. *Id.* at 343. If Petitioners were correct that county boards are Commonwealth agencies, this Court would have dismissed the case for lack of subject matter jurisdiction because the Commonwealth Court has *exclusive* original jurisdiction (subject to exceptions not pertinent here) over cases brought against Commonwealth parties. 42 Pa.C.S. § 761(b). But not only did this Court *not* find a lack of jurisdiction; it vacated the Commonwealth Court’s order and reinstated the order entered by the Court of Common Pleas. *Canvassing Observation*, 241 A.3d at 351.

Indeed, accepting Petitioners’ jurisdictional argument would have the effect of voiding hundreds, if not thousands, of previous judicial decisions. As this Court is well aware, for decades, the courts of common pleas have, consistent with *Canvassing Observation*, heard and decided cases in which the board of elections of that county is named as a respondent. If county boards are Commonwealth agencies, all those cases were decided without jurisdiction, and each of those judgments is therefore void. *Domus, Inc. v. Signature Building Systems of Pa., LLC*, 252 A.3d 628, 640 (Pa. 2021) (“A judgment is void if the issuing court

lacked jurisdiction of the subject matter”). Moreover, going forward, the Commonwealth Court would be required to hear, in its exclusive original jurisdiction, every single case brought against any county board of elections. That cannot be—and is not—the law.

Because the Commonwealth Court lacked jurisdiction over Petitioners’ claims, this case must be dismissed.

HANGLEY ARONCHICK SEGAL
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Dated: October 3, 2022

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I certify that this Answer to Petitioners' Jurisdictional Statement was prepared in word-processing program Microsoft Word 2016 (for Windows), and I further certify that, as counted by Microsoft Word 2016, this Answer to Petitioners' Jurisdictional Statement contains 990 words.

Dated: October 3, 2022

/s/ Robert A. Wiygul
Robert A. Wiygul

CERTIFICATION REGARDING 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.

Dated: October 3, 2022

/s/ Robert A. Wiygul
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