

IN THE SUPREME COURT OF PENNSYLVANIA

100 MAP 2022

Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee, Republican Party of Pennsylvania, David Ball, James D. Bee, Debra A. Biro, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Connor R. Gallagher, Lynn Marie Kalcevic, Linda S. Kozlovich, William P. Kozlovich, Vallerie Siciliano-Biancaniello, and S. Michael Streib,

Petitioners

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth; Jessica Mathis, in her official capacity as Director of the Pennsylvania Bureau of Election Services and Notaries; 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

**CITY OF PHILADELPHIA RESPONSE TO PETITIONERS’
JURISDICTIONAL STATEMENT**

Pursuant to Pa. R. App. P. 911, Respondent Philadelphia County Board of Elections (“Philadelphia”) contests Petitioners’ Statement of Jurisdiction. Contrary to Petitioners’ claims, the Supreme Court of Pennsylvania does not have jurisdiction here under 42 Pa. C.S. § 723(a), because the Commonwealth Court did not have jurisdiction.

Petitioners sued in Commonwealth Court based on 42 Pa. C.S. § 761(a)(1). They argued in Commonwealth Court that the court had jurisdiction because they alleged that (1) the Commonwealth of Pennsylvania was an indispensable party; and (2) County boards of election are “Commonwealth Agencies.” Both arguments fail.

As argued by the Commonwealth Respondents below, 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 Commonwealth. Nor do Petitioners challenge any Commonwealth or Department of State requirement or 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.” Pet. ¶ 1.

Petitioners also claim original jurisdiction in the Commonwealth Court based on county board involvement. Petitioners make the novel argument that county boards of elections are part of the Commonwealth government for purpose of this Court’s original jurisdiction as defined by 42 Pa. C.S. § 761 (giving this Court jurisdiction over, among others, civil actions “[a]gainst the Commonwealth government”). But Petitioners identify no court decision reaching that conclusion and the Court should not countenance the argument.

Petitioners wholly misconstrue the definition of “Commonwealth government.” This defined term excludes “any political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision or local authority.” 42 Pa. C.S. § 102. Petitioners fixate on “local authority,” but this

ignores that the statute also excludes “any . . . agency of any such political subdivision.” The Statutory Construction Act defines a “political subdivision” to include a “county” and a “city.” 1 Pa. C.S. § 1991. The plain language of the Election Code makes clear that county boards of election are agencies of their counties. 1 Pa. C.S. § 1921(b). They exist “in and for each county,” 25 P.S. § 2641(a); have jurisdiction only over elections “in such county,” *id.*; are composed of “county commissioners,” *id.*; and are represented not by the Attorney General but by the county solicitor, *compare* 71 Pa. Stat. Ann. § 732-204 (c) (“The Attorney General shall represent the Commonwealth and all Commonwealth agencies[.]”), *with* 25 P.S. § 2646 (“The county solicitor shall serve as counsel for the county board[.]”).

As a city and county agency, Philadelphia’s Board of Elections is therefore not a part of the Commonwealth government. *See also, e.g., In re Voter Referendum Petition Filed Aug. 5, 2008*, 981 A.2d 163, 170 (Pa. 2009) (referring to the Allegheny County Board of Elections as a “local agency”); *Kerrigan v. Philadelphia Bd. of Election*, No. 07-687, 2008 WL 3562521, at *29 (E.D. Pa. Aug. 14, 2008) (“We find that Defendants have submitted ample authority to support their argument that the Board is a department of the Philadelphia city government and not a separate entity and that the City of Philadelphia, through its Commissioners, administer voter registration and elections.”).

Moreover, even if the Court finds that county boards of election can fall only under the exception for “local authority” as defined by *Philadelphia Parking Auth. v. Am. Fed’n of State, Cnty., Mun. Emps., Dist. Council 33, Loc. 1637*, 845 A.2d 245, 248 (Pa. Cmwlth. 2004), the City of Philadelphia’s Board of Elections qualifies. Pursuant to the authority granted by the First Class City Home Rule Act, 53 P.S. § 13101, the City of Philadelphia has created three City Commissioners and granted them the “powers, duties and functions of . . . the County Board of Elections relating to the conduct of primaries and elections.” Phila. Home Rule Charter § 2-112(4). The City of Philadelphia has therefore “created . . . by statute” the local authority that carries out the functions of the board of elections. *See* 1 Pa. C.S. § 1991.

Respectfully submitted,

CITY OF PHILADELPHIA LAW
DEPARTMENT
DIANA P. CORTES, CITY SOLICITOR

DATE: October 3, 2022

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I certify that this Jurisdictional Statement Response was prepared in word-processing program Microsoft Word for Microsoft 365 MSO (Version 2208), and I further certify that, as counted by Microsoft Word, this Jurisdictional Statement contains 718 words.

Dated: October 3, 2022

/s/ Zachary G. Strassburger

Zachary G. Strassburger

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.

/s/ Zachary G. Strassburger
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City of Philadelphia Law Department

Date: October 3, 2022