

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

IN RE: RECOUNT OF BERKS COUNTY : No. 68 MAL 2023
GENERAL ELECTION OF NOVEMBER 8, :
2022 : Petition for Allowance of Appeal
: from the **Unpublished**
LIMITED TO: EXETER TOWNSHIP : **Memorandum Opinion and Order**
PRECINCT NO. 6 ROBESONIA BOROUGH : of the Commonwealth Court at No.
RUSCOMBMANOR TOWNSHIP NO. 1 : 1426 CD 2022 entered on January
: 31, 2023, **affirming** the Order of the
: Berks County Court of Common
PETITION OF: BERKS COUNTY : Pleas at No. 22-15660 (Lillis, J.),
REPUBLICAN COMMITTEE : entered on December 6, 2022
:

IN RE: RECOUNT OF BERKS COUNTY : No. 69 MAL 2023
GENERAL ELECTION OF NOVEMBER 8, :
2022 : Petition for Allowance of Appeal
: from the **Unpublished**
LIMITED TO: BERN TOWNSHIP : **Memorandum Opinion and Order**
PRECINCT NO. 1 BETHEL TOWNSHIP, : of the Commonwealth Court at No.
CENTRE TOWNSHIP PRECINCT NO. 1, : 1427 CD 2022 entered on January
CUMRU TOWNSHIP PRECINCT NO. 2, : 31, 2023, **affirming** the Lower Court
EARL TOWNSHIP PRECINCT NO. 2, : Order of the Berks County Court of
EXETER TOWNSHIP PRECINCT NO. 3, : Common Pleas at No. 22-15661
EXETER TOWNSHIP PRECINCT NO. 8, : (Lillis, J.), entered on December 6,
GREENWICH TOWNSHIP PRECINCT NO. : 2022
1, HAMBURG BOROUGH PRECINCT NO. :
2, KUTZTOWN BOROUGH WARD NO. 1, :
KUTZTOWN BOROUGH WARD NO. 2, :
LEESPORT BOROUGH, LOWER :
HEIDELBERG PRECINCT NO. 1, LOWER :
HEIDELBERG PRECINCT NO. 2, LOWER :
HEIDELBERG PRECINCT NO. 3, :
MAIDENCREEK TOWNSHIP PRECINCT :
NO. 3, MAXATAWNY TOWNSHIP :
PRECINCT NO. 3, MOHNTON BOROUGH, :
NORTH HEIDELBERG TOWNSHIP, :
PERRY TOWNSHIP, CITY OF READING :
PRECINCT NO. 16-5, ROCKLAND :
TOWNSHIP PRECINCT NO. 2, :
RUSCOMBMANOR TOWNSHIP :

PRECINCT NO. 2, SPRING TOWNSHIP :
PRECINCT NO. 7, TILDEN TOWNSHIP, :
WASHINGTON TOWNSHIP PRECINCT :
NO. 2, WYOMISSING BOROUGH :
PRECINCT NO. 2 :

PETITION OF: BERKS COUNTY :
REPUBLICAN COMMITTEE, HEATHER M. :
BOUCHARD, LINDA J. BRANCADORA, :
SAMUEL F. BRANCADORA, RONALD E. :
BUSH, JR., CAROLINE L.CABLE, ROBERT :
S. CABLE, MARY BETH CLARKE, HEIDI :
FIEDLER, GWYNETH P. FOWLER, SCOTT :
D. FOWLER, KYRA GENELL, KIMBERLY :
A. GESICKI-GIAMBRONE, DAVID :
GOLOWSKI, DENNIS E. GRETH, SALLY :
ANN GRETH, MICHELE HAMLIN, :
RANDALL J. HAMLIN, EDWARD C. KEHS, :
KIM LOUISE KEHS, NANCY M. :
LEATHERMAN, DEBORA M. LETZ, :
DONNA LEA MERRITT, GARRET A. :
MILLER, WILLIAM HENRY MOODY, JR., :
WILLIAM J.P. MULGREW, III, BOBBI :
ORTIZ, TERRY ORTIZ, MARIE G. PERRY, :
BRET SARGE, DEREK SARGE, LUCAS :
CHARLES SARGE, JERI K. SIEVERT, :
RALPH SIEVERT, MARLENE A. :
SKOLODA, VICTORIA B. SOLBERG, :
ERICKA M. THOMAS-ERNST, DWIGHT D. :
WEGMAN, SHAWNEE M. WILSON, STEVE :
WILSON, JOHN A.WOJCIK, FREDERICK :
W. ZENTGRAF, SR., RUTH ZENTGRAF :

IN RE: PETITION TO OPEN BALLOT BOX :
PURSUANT TO 25 P.S. §3261(A) AND :
FOR A CORRECT ACCOUNT OF THE :
GENERAL ELECTION FOR THE :
GOVERNOR AND LIEUTENANT :
GOVERNOR OF PENNSYLVANIA, :
UNITED STATES SENATOR FOR :
PENNSYLVANIA, UNITED STATES :
REPRESENTATIVE FOR THE 6TH :

No. 80 MAL 2023 :
Petition for Allowance of Appeal :
from the **Unpublished** :
Memorandum Opinion and Order :
of the Commonwealth Court at No. :
1489 CD 2022 entered on February :
10, 2023, **vacating and remanding** :
the Lower Court Order of the

DISTRICT OF PENNSYLVANIA STATE REPRESENTATIVE FOR THE 157TH LEGISLATIVE DISTRICT : Chester County Court of Common Pleas at No. No. 2022-09182-EL (Sommer, J.), entered on December 9, 2022

PETITION OF: CHESTER COUNTY BOARD OF ELECTIONS

IN RE: PETITION TO OPEN BALLOT BOX PURSUANT TO 25 P.S. §3261(A) AND FOR A CORRECT ACCOUNT OF THE GENERAL ELECTION FOR THE GOVERNOR AND LIEUTENANT GOVERNOR OF PENNSYLVANIA : No. 81 MAL 2023 : Petition for Allowance of Appeal from the **Unpublished Memorandum Opinion and Order** of the Commonwealth Court at No. 1490 CD 2022 entered on February 10, 2023, **vacating and remanding**

PETITION OF: CHESTER COUNTY BOARD OF ELECTIONS : the Lower Court Order of the Chester County Court of Common Pleas at No. No. 2022-09186-EL (Sommer, J.), entered on December 9, 2022

IN RE: PETITION TO OPEN BALLOT BOX PURSUANT TO 25 P.S. §3261(A) AND FOR A CORRECT ACCOUNT OF THE GENERAL ELECTION FOR THE GOVERNOR AND LIEUTENANT GOVERNOR OF PENNSYLVANIA : No. 82 MAL 2023 : Petition for Allowance of Appeal from the **Unpublished Memorandum Opinion and Order** of the Commonwealth Court at No. 1491 CD 2022 entered on February 10, 2023, **vacating and remanding**

PETITION OF: CHESTER COUNTY BOARD OF ELECTIONS : the Lower Court Order of the Chester County Court of Common Pleas at No. 2022-09188-EL (Sommer, J.), entered on December 9, 2022

IN RE: PETITION TO OPEN BALLOT BOX PURSUANT TO 25 P.S. §3261(A) AND FOR A CORRECT ACCOUNT OF THE GENERAL ELECTION FOR THE GOVERNOR AND LIEUTENANT GOVERNOR OF PENNSYLVANIA : No. 83 MAL 2023 : Petition for Allowance of Appeal from the **Unpublished Memorandum Opinion and Order** of the Commonwealth Court at No.

PETITION OF: CHESTER COUNTY
BOARD OF ELECTIONS

: 1492 CD 2022 entered on February
: 10, 2023, **vacating and remanding**
: the Lower Court Order of the
: Chester County Court of Common
: Pleas at No. 2022-09189-EL
: (Sommer, J.), entered on December
: 9, 2022
:

IN RE: PETITION TO OPEN BALLOT BOX
PURSUANT TO 25 P.S. §3261(A) AND
FOR A CORRECT ACCOUNT OF THE
GENERAL ELECTION FOR THE
GOVERNOR AND LIEUTENANT
GOVERNOR OF PENNSYLVANIA

: No. 84 MAL 2023
:
: Petition for Allowance of Appeal
: from the **Unpublished**
: **Memorandum Opinion and Order**
: of the Commonwealth Court at No.
: 1493 CD 2022 entered on February
: 10, 2023, **vacating and remanding**

PETITION OF: CHESTER COUNTY
BOARD OF ELECTIONS

: the Lower Court Order of the
: Chester County Court of Common
: Pleas at No. 2022-09190-EL
: (Sommer, J.), entered on December
: 9, 2022
:

IN RE: PETITION TO OPEN BALLOT BOX
PURSUANT TO 25 P.S. §3261(A) AND
FOR A CORRECT ACCOUNT OF THE
GENERAL ELECTION FOR THE
GOVERNOR AND LIEUTENANT
GOVERNOR OF PENNSYLVANIA

: No. 85 MAL 2023
:
: Petition for Allowance of Appeal
: from the **Unpublished**
: **Memorandum Opinion and Order**
: of the Commonwealth Court at No.
: 1494 CD 2022 entered on February
: 10, 2023, **vacating and remanding**

PETITION OF: CHESTER COUNTY
BOARD OF ELECTIONS

: the Lower Court Order of the
: Chester County Court of Common
: Pleas at No. 2022-09193-EL
: (Sommer, J.), entered on December
: 9, 2022
:

CONCURRING AND DISSENTING STATEMENT

JUSTICE MUNDY

FILED: May 12, 2023

Although I agree that we should grant allocatur in these matters, I dissent to disposing them in *per curiam* orders affirming the nonprecedential opinion of Judge Wallace and vacating the order of Judge Fizzano Cannon. In these cases, this Court was presented with petitions for allowance of appeal primarily regarding two nonprecedential single-judge decisions of the Commonwealth Court, which differed on the interpretation of the requirements of Sections 1701 and 1703 of the Election Code, 25 P.S. §§ 3261, 3263, to obtain a recount based on general averments of error or fraud. No prior decision of our Court has addressed this issue.

When confronted with petitions for allowance of appeal concerning a holding of an intermediate appellate court that conflicts with another intermediate appellate court opinion or presenting a question of first impression for this Court, our standard procedure is to grant discretionary review. See Pa.R.A.P. 1114(b)(1) and (3). I see no reason to forgo that procedure here. Instead, following our standard procedure would enable the Court to receive developed briefing, hear oral argument, and issue a precedential decision resolving the issue. It is particularly appropriate in these cases as we are confronted with two reasonable, albeit differing, single-judge opinions concerning the proper interpretation of Sections 1701 and 1703. Accordingly, I dissent to resolving these cases through *per curiam* orders adopting a nonprecedential single-judge opinion of the Commonwealth Court instead of following our traditional procedure of granting discretionary review, receiving briefs, hearing oral argument, and issuing an opinion.