

IN RE: PETITION TO OPEN BALLOT BOX : No. 83 MAL 2023
PURSUANT TO 25 P.S. §3261(A) AND :
FOR A CORRECT ACCOUNT OF THE : Petition for Allowance of Appeal
GENERAL ELECTION FOR THE : from the **Unpublished**
GOVERNOR AND LIEUTENANT : **Memorandum Opinion and Order**
GOVERNOR OF PENNSYLVANIA : of the Commonwealth Court at
 : No. 1492 CD 2022 entered on
 : February 10, 2023, **vacating and**
PETITION OF: CHESTER COUNTY : **remanding** the Order of the Chester
BOARD OF ELECTIONS : County Court of Common Pleas at
 : No. 2022-09189-EL (Sommer, J.),
 : entered on December 9, 2022

IN RE: PETITION TO OPEN BALLOT BOX : No. 84 MAL 2023
PURSUANT TO 25 P.S. §3261(A) AND :
FOR A CORRECT ACCOUNT OF THE : Petition for Allowance of Appeal
GENERAL ELECTION FOR THE : from the **Unpublished**
GOVERNOR AND LIEUTENANT : **Memorandum Opinion and Order**
GOVERNOR OF PENNSYLVANIA : of the Commonwealth Court at
 : No. 1493 CD 2022 entered on
 : February 10, 2023, **vacating and**
PETITION OF: CHESTER COUNTY : **remanding** the Order of the Chester
BOARD OF ELECTIONS : County Court of Common Pleas at
 : No. 2022-09190-EL (Sommer, J.),
 : entered on December 9, 2022

IN RE: PETITION TO OPEN BALLOT BOX : No. 85 MAL 2023
PURSUANT TO 25 P.S. §3261(A) AND :
FOR A CORRECT ACCOUNT OF THE : Petition for Allowance of Appeal
GENERAL ELECTION FOR THE : from the **Unpublished**
GOVERNOR AND LIEUTENANT : **Memorandum Opinion and Order**
GOVERNOR OF PENNSYLVANIA : of the Commonwealth Court at
 : No. 1494 CD 2022 entered on
 : February 10, 2023, **vacating and**
PETITION OF: CHESTER COUNTY : **remanding** the Order of the Chester
BOARD OF ELECTIONS : County Court of Common Pleas at
 : No. 2022-09193-EL (Sommer, J.),
 : entered on December 9, 2022

CONCURRING AND DISSENTING STATEMENT

JUSTICE BROBSON

FILED: May 12, 2023

Petitioner the County of Chester Board of Elections (Board) has raised an important issue worthy of this Court's consideration, namely the proper construction and application of Sections 1701 and 1703 of the Election Code, 25 P.S. §§ 3261, 3263, relating to the initiation of a recount upon the petition of qualified electors. I thus agree with the majority's decision to grant the Petition for Allowance of Appeal. I, however, respectfully disagree with the majority's decision to dispose of the merits summarily through a *per curiam* order vacating the Commonwealth Court's decision below based solely on the contents of the Board's Petition. By doing so, this Court has deprived Respondents, who prevailed below, the opportunity to be heard by this Court on the Board's challenge to the Commonwealth Court's unpublished, single-judge Memorandum Opinion and Order. As I would have given the parties the opportunity to brief fully and argue their respective positions before this Court, I dissent from the majority's summary disposition.

Justice Mundy joins this concurring and dissenting statement.