

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

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**No. 75 MAP 2023**

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**TIMOTHY R. BONNER, *et al.*,**  
**Petitioners/Appellants**  
**v.**  
**SECRETARY AL SCHMIDT, *et al.*,**  
**Respondents/Appellees**

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Appeal from the Order of the Commonwealth Court entered on June 27, 2023 in  
No. 364 MD 2022

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**Answer to the Jurisdictional Statement for Secretary Al Schmidt, the  
Commonwealth of Pennsylvania, and the Department of State**

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For the reasons described in this answer to Appellants' jurisdictional statement, this Court lacks jurisdiction over this appeal. And, as will be described in more detail in the Secretary of the Commonwealth's forthcoming motion under Pennsylvania Rule of Appellate Procedure 1972, this Court should quash the appeal.

This is the second time that this group of 14 past and present legislators—11 of whom voted in favor of Act 77 of 2019, *see McLinko v. Dep't of State*, 279 A.3d 539, 546 n.7 (Pa. 2022)—are seeking a judicial order invalidating the entirety of that landmark, bipartisan piece of election legislation. *See generally id.* Several courts, the legislators observe in this case, have held that 52 U.S.C. § 10101(a)(2)(B) prohibits county boards of election from setting aside absentee and mail-in ballots during canvassing merely because the declaration printed on the envelope used to return the ballot was not properly dated. The legislators argue (incorrectly) that those holdings require voiding all of Act 77 based on its non-severability provision.

On June 27, a unanimous *en banc* panel of the Commonwealth Court granted the Secretary's application for summary relief and entered judgment for him. Because that was an order entered in a "matter arising under the Pennsylvania Election Code," Pa. R.A.P. 903(c)(1)(ii), the legislators were required to file their

notice of appeal within 10 days (so, by July 7).<sup>1</sup> The legislators missed that deadline by two weeks, waiting until July 21 to file their notice of appeal.

A timely notice of appeal is prerequisite to this Court's exercise of appellate jurisdiction. *See, e.g., Commonwealth v. Williams*, 106 A.3d 583, 587 (Pa. 2014) ("The timeliness of an appeal and compliance with the statutory provisions granting the right to appeal implicate an appellate court's jurisdiction and its competency to act."); *Day v. Civ. Serv. Comm'n of Borough of Carlisle*, 931 A.2d 646, 651 (Pa. 2007) ("The timeliness of an appeal involves jurisdiction."); *see also* Pa. R. A. P. 902(b)(2) ("The failure to file a notice of appeal within the time allowed by Pa. R. A. P. 903 (time for appeal) renders an appeal invalid.").

Thus, because the legislators failed to file their notice of appeal on time, and because a timely notice of appeal is a jurisdictional predicate, this Court lacks jurisdiction.

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<sup>1</sup> Rule 903 governs an appeal to this Court from an order that, as here, Commonwealth Court entered in its original jurisdiction. *See* Pa. R.A.P. 1101(b).

Dated: July 28, 2023

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

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: July 28, 2023

*/s/ Jacob Boyer*

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Jacob Boyer

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**CERTIFICATE OF LENGTH**

I certify that this answer is 403 words and complies with the word count requirement set forth in Pennsylvania Rule of Appellate Procedure 911(a). I have relied on Word's word count function to determine the length of this answer.

Dated: July 28, 2023

*/s/ Jacob Boyer*

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Jacob Boyer

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