

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DAVID H. ZIMMERMAN
and KATHY L. RAPP,

Docket No. ____ M.D. 2024

Petitioners,

v.

**PETITION FOR REVIEW IN THE
NATURE OF AN ACTION FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

AL SCHMIDT, in his official capacity
as Acting Secretary of the
Commonwealth of Pennsylvania, the
COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF STATE, 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

Filed on behalf of Petitioners:
David H. Zimmerman and Kathy L.
Rapp

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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

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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.

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NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this petition and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the petition or for any claim or relief requested by the petitioner. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. TIDS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MidPenn Legal Services
213-A North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-0581

and

Dauphin County Lawyer Referral Service
Dauphin County Bar Association
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-7536

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AL SCHMIDT, *et al.*,
Respondents.

**PETITION FOR REVIEW IN THE NATURE OF AN ACTION FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Petitioners David H. Zimmerman and Kathy L. Rapp (collectively, “Petitioners”) hereby file the following Petition for Review against Respondents, Al Schmidt, in his official capacity as Acting Secretary of the Commonwealth of Pennsylvania (“Respondent Secretary”), the Commonwealth of Pennsylvania, Department of State (“Respondent Department of State”), 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 (collectively, “Respondent County Boards of Elections”). In support thereof, Petitioners aver as follows:

Introduction

1. In this election case involving absentee voting, Petitioners seek declaratory and injunctive relief to restore the supremacy of a constitutional mandate in Article VII, Section 14 of the Pennsylvania Constitution, which plainly requires that absentee ballots be canvassed in the election districts in which the absentee voters respectively reside.

2. Article VII, Section 14 supersedes incongruous statutory provisions in the Pennsylvania Election Code (“Election Code”),¹ 25 Pa.Stat. §§ 3146.6, 3146.8, the official guidance provided by Respondent Department of State, and/or the practice and policy that has been adopted by each of the 67 counties in Pennsylvania.

3. Contrary to Article VII, Section 14, these statutes, official guidance, and/or practices and policies require that absentee votes be delivered to and canvassed on a county-wide basis at the offices of the relevant county boards of elections.

4. This Court should declare 25 Pa.Stat. § 3146.6 and 25 Pa.Stat. § 3146.8 unconstitutional on their face and as applied, and enjoin Respondent Secretary,

¹ Act of June 3, 1937, P.L. 1333, *as amended*, 25 Pa.Stat. §§2600-3591.

Respondent Department of State, and Respondent County Board of Elections from enforcing these statutes or implementing their official guidance and practices and policies in such a way as to conduct canvassing of absentee ballots elsewhere than in the election districts in which the absentee voters respectively reside.

Parties

5. Petitioner David H. Zimmerman (“Petitioner Zimmerman”) is an adult individual and a member of the Pennsylvania House of Representatives serving the 99th District, which consists of townships and/or boroughs that are located in Lancaster County.

6. In 2022, Petitioner Zimmerman was reelected, and he intends to run for reelection in 2024.

7. In previous elections, the Lancaster County Board of Elections reported that candidates for the House of Representatives seat for the 99th District, other than Petitioner Zimmerman, received absentee votes from qualified electors.

8. To ensure the integrity and legitimacy of the electoral franchise, including his next reelection, Petitioner Zimmerman requests that the absentee votes be delivered to and canvassed at the local polling place or precinct of each absentee voter in accordance with Article VII, Section 14 of the Pennsylvania Constitution.

9. Petitioner Kathy L. Rapp (“Petitioner Rapp”) is an adult individual and member of the Pennsylvania House of Representatives serving the 65th District,

which consists of Warren County, Forest County, and townships and/or boroughs located in Crawford County.

10. In 2022, Petitioner Rapp was reelected, and she intends to run for reelection in 2024.

11. In previous elections, the Warren, Forest, and/or Crawford County Board of Elections reported that candidates for the House of Representatives seat for the 65th District other than Petitioner Rapp absentee votes from qualified electors.

12. To ensure the integrity and legitimacy of the electoral franchise, including her next reelection, Petitioner Rapp requests that the absentee votes be delivered to and counted at the local polling place or precinct in accordance with Article VII, Section 14 of the Pennsylvania Constitution.

13. Petitioners possess standing to maintain and pursue this action. See Bonner v. Chapman, 298 A. 3d 153, 162-63 (Pa. Cmwlth. 2023) (*en banc*).

14. Respondent Al Schmidt is the Acting Secretary of the Commonwealth of Pennsylvania (“Respondent Secretary”).

15. Respondent Department of State is a state governmental agency within the executive branch whose statutory duties include, among other matters, the general oversight of the electoral process and the administration of certain provisions of the Election Code, including those that relate to absentee voting. See 25 Pa.Stat. §§ 1108, 1201.

16. Respondent County Boards of Elections are local governmental entities that are statutorily vested with the duty to oversee and administer the registration of qualified electors and effectuate other provisions of the Election Code within the borders of their respective counties, including the receipt and canvassing of absentee votes. See 25 Pa.Stat. §§ 1203-1204.

Jurisdiction

17. Pursuant to 42 Pa.Stat. § 761(a)(1), this Court has original jurisdiction over this action to the extent that Petitioners assert their claims for declaratory and injunctive relief against Respondent Department of State and Respondent Secretary in his official capacity. See 42 Pa.Stat. § 761(a)(1).

18. This Court has ancillary jurisdiction over this action to the extent that Petitioners assert their claims for declaratory and injunctive relief against Respondents, the 67 County Board of Elections, because these claims are, in large part, duplicative of the claims that Petitioners assert against Respondent Department of State and Respondent Secretary in his official capacity. See 42 Pa.Stat. § 761(c).

19. The Declaratory Judgment Acts grants this Court “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.” 42 Pa.Stat. § 7532.

20. Further, “[i]t is the province of the Judiciary to determine whether the Constitution or laws of the Commonwealth require or prohibit the performance of certain acts,” McLinko v. Commonwealth, 279 A.3d 539, 564 (Pa. 2022) (internal citation omitted) (“McLinko II”), and courts have the inherent power to enjoin the enforcement of unconstitutional statutes or unconstitutional policies and procedures. See Robinson Township v. Commonwealth, 83 A.3d 901, 999-1000 (Pa. 2013); Lynch v. Owen J. Roberts School District, 244 A.2d 1, 3-4 (Pa. 1968).

Material Facts

21. In the 2020 general election, Respondent County Boards of Elections reported that they counted 2,637,065 mail in and absentee ballots.²

22. With respect to absentee voting, the Pennsylvania Constitution was “amended in 1864 in response to [Chase v. Miller, 41 Pa. 403 (Pa. 1862)] to allow qualified electors in active military service to exercise their right of suffrage in a manner prescribed by law as if they were present in their usual place of election,” namely by establishing “the ability to cast a vote from outside of his designated election district.” McLinko II, 279 A.3d at 581.

23. “Subsequent amendments to the absentee voting provision of the Constitution made accommodations for qualified voters unable to vote in their district due to their ‘unavoidable’ absence because of their duties, occupation or

² <https://www.dos.pa.gov/VotingElections/BEST/Pages/BEST-Election-Stats.aspx>

business or because of illness or physical disability, see Pa. Const. Art. VIII, § 19 (1874) (amended in 1957), and later, eliminated the ‘unavoidable’ nature of the absence for work-related absence and added the additional classification of absentee voters that appears in our current Constitution.” Id.

24. Titled, “Absentee voting,” Article VII, Section 14 of the Pennsylvania Constitution states, in relevant part, as follows:

(a) The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

Pa. Const. Art. VII, § 14(a) (emphasis added).

25. In construing the Pennsylvania Constitution, “[e]very word employed in the constitution is to be expounded in its plain, obvious and commonsense meaning,” Commonwealth v. Gaige, 94 Pa. 193 (1880), for the “ultimate touchstone is the actual language of the Constitution itself,” Stilp v. Commonwealth, 905 A.2d 918, 939 (Pa. 2006). See McLinko II, 279 A.3d at 577 (“In ascertaining the meaning of a word in accordance with its common and approved usage, this Court has found it helpful to consult dictionaries.”).

26. “The fundamental rule of constitutional construction is that the Constitution’s language controls and must be interpreted in its popular sense, as understood by the people when they voted on its adoption,” Scarnati v. Wolf, 173 A.3d 1110, 1118 (Pa. 2017) (internal citations omitted), and the Court “should also consider the circumstances attending its formation.” Commonwealth v. Harmon, 366 A.2d 895, 897 (Pa. 1976).

27. According to its plain language, Article VII, Section 14 unambiguously dictates that all absentee ballots must be submitted to (“returned”) and counted at (“canvassed”) the local polling place or precinct (“election district”). See MIRRIAM-WEBSTER ONLINE DICTIONARY (defining “return” to mean “to bring, send, or put back to a former or proper place”); *id.* (defining “canvass” as the process “to examine (votes) officially for authenticity”); see also 25 Pa.Stat. § 2602(a.1) (“The word ‘canvass’ shall mean the gathering of ballots after the final pre-canvass meeting and the counting, computing and tallying of the votes reflected on the ballots.”).

28. For purposes of the Pennsylvania Constitution, an “election district” is a local polling place or precinct, and any given county is comprised of multiple “election districts,” polling places, or precincts—all of which are interchangeable terms. See Pa. Const. Art. VII, § 9 (“Townships and wards of cities or boroughs shall form or be divided into election districts of compact and contiguous territory and their boundaries fixed and changed in such manner as may be provided by law.”);

25 Pa.Stat. § 2602(a.1) (“The words “election district” shall mean a district, division or precinct, established in accordance with the provisions of this act, within which all qualified electors vote at one polling place.”); 25 Pa.Stat. § 2726(a) (“The county board of elections shall select and fix the polling place within each new election district and may . . . change the polling place within any election district.”).

29. For example, in the 2023 general election, Respondent Department of State represented that Allegheny County has 1,324 precincts, Bucks County has 306 precincts, Erie County has 149 precincts, and Sullivan County has 15 precincts. A true and correct copy of the November 8, 2023 Pennsylvania 2023 General Election Ballot Counting Status, issued by Respondent Department of State, is attached hereto as **Exhibit A**.

30. Under Article VII, Section 14, an absentee ballot must not only be returned to and canvassed at the local polling place, precinct, or election district, but, more specifically, the absentee ballot must also be returned and canvassed “**in** the election district in which [the voters] respectively reside.” Pa. Const. Art. VII, § 14(a) (emphasis added). See MIRRIAM-WEBSTER DICTIONARY (defining “in,” when used as a preposition, “as a function word to indicate inclusion, location, or position within limits”).

31. Stated differently, the verbs describing positive action in Article VII, Section 14, “return” and “canvass,” have to occur in the municipality(ies) that comprise the area or “election district” where the voter resides.

32. The phrase, “for the return and canvass of their votes in the election district in which they respectively reside,” did not appear in the Pennsylvania Constitution until 1949, when Section 18 was added to Article VIII of the Pennsylvania Constitution to expand the opportunity for absentee voting, see McLinko v. Commonwealth, 270 A.3d 1243, 1258-59 & n.22 (Pa. Cmwlth. 2022) (*en banc*) (“McLinko I), reversed on other grounds by McKlinko II, 279 A.3d 539 (Pa. 2022) (reproducing text of Pa. Const. Art. VIII, §18), or 1957, when Article VIII, Section 19 was amended and eventually replaced and renumbered, see McLinko II, 279 A.3d at 581 & n.51 (reproducing text of Pa. Const. Art. VIII, § 19). See also In re Franchise of Hospitalized Veterans, 77 Pa.D.&C. 237, 238 (C.C.P. 1951) (discussing the 1949 constitutional amendment that added then Article VIII, Section 18 to the Pennsylvania Constitution).

33. At its core, “Article VII, Section 14 guarantees that regardless of the legislature’s exercise of its authority to determine the way that votes may be cast, those classes of absentee voters designated within it will be guaranteed the ability to participate in the electoral process.” McKlinko II, 279 A.2d at 581.

34. Importantly, in 1949 or 1957, when then Article VIII was enacted, and later was removed and renumbered to its current iteration in Article VII, Section 14, the then precedential case law from the Supreme Court of Pennsylvania established, as a constitutional matter, that individuals must vote in person at the local polling place or precinct where their votes would be canvassed. See McKlinko II, 279 A.2d at 565-72; id. at 575 (“[T]he rationale for the Chase Court’s imposition of an in-person voting requirement was the need for other voters in a voting district to verify the bona fides of an individual appearing to cast a ballot.”); Chase, 41 Pa. at 419, 421 (“To ‘offer to vote’ by ballot, is to present oneself, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it. . . . [T]he constitution prescribes a place for the exercise of the right of suffrage, to wit, an election district.”) (emphasis in original); see also In re Canvassing Observation, 241 A.3d 339, 347 (Pa. 2020) (recounting the practice of an election board, where “absentee ballots received by a board of elections were taken to the electors’ local polling places to be canvassed”); In re November 3, 2009 Election for Council of Borough, 2009 Pa. Dist. & Cnty. Dec. LEXIS 208, *4 (C.C.P. 2009) (unpublished) (noting that an absentee ballot “was misplaced and not at the polling place to be canvassed and tabulated on the day of the election.”).

35. While absentee voting, as authorized by the Pennsylvania Constitution, permitted absentee ballots to be cast from outside the local polling place or precinct, the concept of absentee voting did not upset the longstanding legal requirements and prevailing notion that ballots must be returned to and canvassed at the local polling place or precinct. See McLinko II, 279 A.3d at 569 (recounting that the Chase Court “invalidated Section 43 of the Military Absentee Act on the basis that it impermissibly authorized voting in locations other than an elector’s designated election district” and stating that the “dispositive holding of the case [was] that voting can only take place in a voter’s election district”); McLinko I, 270 A.3d at 1260, reversed on other grounds by McLinko II, (“Since 1838, the Pennsylvania Constitution has required a qualified elector to appear at a polling place in the election district where he resides and on Election Day. . . . In 1864, an exception to the place requirement was introduced to the Constitution with the introduction of ‘absentee voting.’ Its very name, ‘absentee,’ relates back to the Section 1 requirement that electors vote in person at a polling place.”); id. at 1264 (“It is striking how many times Article VII, Section 14, and its antecedents, refer to ‘proper polling places.’ Pa. Const. Art. VII, §14. The 1864 Constitution used the phrase that soldiers voting in absentia would treat their ballots ‘as if they were present at their usual places of election.’ Pa. Const. Art. III, § 4 (1864). . . . Section 14 can only be understood as an exception to the rule established in Article VII, Section 1 that a

qualified elector must present himself or herself at her proper polling place to vote on Election Day, unless he or she must ‘be absent’ on Election Day for the reasons specified in Article VII, Section 14(a). Pa. Const. Art. VII, § 14(a.)”); see also In re Contested Election, 126 A. 199, 201 (Pa. 1924) (“The residence required by the Constitution must be within the election district where the elector attempts to vote, hence a law giving to voters the right to cast their ballots at some place other than the election district in which they reside [is] unconstitutional.”).

36. Therefore, at the time Article VII, Section 14 was founded in 1949 or 1957, the overriding intent behind Article VII, Section 14 was to ensure that absentee ballots, although potentially cast from outside the voters’ election district, were collected and counted on the same level and footing as ballots that were cast in person at the local polling place, precinct, or election district.

37. That is, both in-person voting and absentee voting have always contained the same legal requirements with respect to the place (the local polling place, precinct, or election district) where the ballots are received, assimilated, and initially tabulated. See 22 P.L.E. ELECTIONS § 101 (“After the closing of the polls, votes must be counted and returned in districts in which ballots are used, or canvassed and returned in districts in which voting machines are used The returns are to be forwarded from the various districts to the county board.”). Ultimately, this is the original and historical understanding of Article VII, Section

14, and such a construction is strongly supported by the plain language of Article VII, Section 14.

38. Consequently, in the original and historical context of Article VII, Section 14, and the common laypersons' understanding of its language at the time of ratification, Article VII, Section 14 provided an exception to in-person voting, but only with respect to the manner in which the ballot was cast or delivered. However, Article VII, Section 14 dictates (and has always dictated) that an absentee ballot must still be delivered to and canvassed at the local election district in the same manner as an in-person ballot that is completed at, submitted, to, and canvassed in the first instance at the local election district.

39. Ultimately, this reading of Article VII, Section 14 safeguards against obvious due process concerns, ensuring that the ballots of similarly situated people are received, processed, and counted in an identical manner. The above reading also preserves the foundational, constitutional concept of an "election district" and the geographical limitations regarding the right of local individuals to vote for their own local representatives in matters involving purely a local concern, e.g., the governing bodies of township or boroughs, such as school boards, boards of supervisors, boards of commissioners, etc. See Pa. Const. Art. VII, § 1 (Qualifications of electors) ("He or she shall have resided in the election district where he or she shall offer to vote at least 60 days immediately preceding the election").

40. Notwithstanding the above, at a point prior to the inclusion of the above-mentioned language in Article VII, Section 14—“for the return and canvass of their votes in the election district in which they respectively reside”—the Election Code appears to have been amended in 1945 to include two provisions related to absentee voting that would (perhaps inadvertently) run directly counter to the constitutional requirements in Article VII, Section 14 that absentee ballots be submitted to (“returned”) the local polling place or precinct (“election district”) and be counted at (“canvassed”) the local polling place or precinct (“election district”). See 25 Pa.Stat. §§ 3146.6, 3146.8, Act 1945-17, P.L. 29, § 10, approved Mar. 9, 1945, eff. immediately.

41. First, titled, “Voting by absentee electors,” 25 Pa.Stat. § 3146.6(a) pertinently states:

[A]t any time after receiving an official absentee ballot . . . the elector shall . . . mark the ballot . . . and then fold the ballot, enclose and securely seal the same in the envelope The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

(emphasis added).

42. Second, titled, “Canvassing of official absentee ballots and mail-in ballots,” 25 Pa.Stat. § 3146.8(a) presently provides, in relevant part, as follows:

The county boards of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under

this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D, **shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections.** An absentee ballot, whether issued to a civilian, military or other voter during the regular or emergency application period, shall be canvassed in accordance with subsection (g).

(emphasis added).

43. Further, 25 Pa.Stat. § 3146.8(g) pertains to when and how “the county board of elections” conducts the “pre-canvass” and “canvassing” of the absentee ballots. 25 Pa.Stat. § 3146.8(g)(1.1)-(3).

44. Based on their operative language, 25 Pa.Stat. § 3146.6(a) and 25 Pa.Stat. § 3146.8(a)&(g) collectively require voters to send their absentee ballots to the relevant county board of election, and the county board of election stores the ballots and then opens and canvasses the ballots.

45. The official act of receiving or tallying an absentee ballot does not occur inside the local polling place or election district where the elector resides except in those situations where the county board of elections happens to be within the same precinct where the absentee voter resides.

46. Accordingly, 25 Pa.Stat. § 3146.6(a) and 25 Pa.Stat. § 3146.8(a), on their face, violate Article VII, Section 14 and are unconstitutional.

47. Moreover, 25 Pa.Stat. § 3146.6(a) and 25 Pa.Stat. § 3146.8(a), as applied by Respondent Department of State and/or Respondents County Boards of Elections, also violate Article VII, Section 14.

48. On its official, governmental website, Respondent Department of State directs voters to return their absentee ballots directly to their county board of elections:

Where do I return my ballot?

Voters may return their completed mail-in or absentee ballot to their county election board of election office during that office's business hours, or another officially designated location. **Ballots must be received by your county election board before 8 pm on Election Day.**

Available at: https://www.vote.pa.gov/Voting-in-PA/Pages/Mail-and-Absentee-Ballot.aspx?utm_source=dos_email&utm_medium=email&utm_campaign=May5_reminder01

49. On this same webpage, when the viewer clicks the link, “More information about return locations,” Respondent Department of State directs the viewer to another webpage and clarifies that some counties may have county drop boxes, county dropoff sites, or satellite county election offices.

50. The webpage also contains a “List of All Mail Ballot Return Locations,” which include the “County Election Office” for each county and various

locations for a “Drop Box.” See <https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx>

51. Also on the same webpage, under the heading for “Frequently Asked Questions,” a designated question is: “Can I return my completed mail-in or absentee ballot at my polling place?” When the viewer clicks on the link, Respondent Department of State unequivocally instructs “No,” and then warns voters about the illegality of voting twice:

1. No.
2. If you received a mail ballot but did not complete it, you may surrender your incomplete mail ballot, along with both envelopes, at your [polling place](#) and vote a regular ballot.
3. If you did vote your mail ballot and returned it to your county board of elections, you are not eligible to vote at your polling place. If you believe that you are eligible to vote in person, you can vote by [provisional ballot](#). Your provisional ballot will be reviewed by the county board of elections after Election Day.
4. If you requested a mail ballot but did not receive it, or you do not have it to surrender at your polling place, you may vote by [provisional ballot](#) at your polling place.
5. Remember that it is unlawful to fraudulently vote more than once in the same election.

Available at: <https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx>

A true and correct copy of the above-mentioned webpages links are attached hereto as **Exhibit B**.

52. In its “Guidance Concerning Civilian Absentee and Mail-In Ballot Procedures,” (“Guidance”) Section 4.1, Respondent Department of State has instructed Respondent County Boards of Elections that “voters must return their own

completed absentee or mail-in ballot by 8:00 pm on Election Day to the county board of elections or other county-designated drop-off location.” A copy of the Guidance is attached hereto as **Exhibit C**.

53. Further, on its standardized form to “Authorize a Designated Agent to Help [a Voter] Obtain and/or Return Your Mail-In or Absentee Ballot,” Respondent Department of State requires the voter and the designated agent to authorize and agree to “deliver or mail the completed ballot to the Board of Elections.” A copy of this form is attached hereto as **Exhibit D**.

54. As such, according to Respondent Department of State, absentee ballots must be submitted to the relevant county board of elections, or a designated place for direct transmission of the ballots to the county board of elections. Through necessary implication, the county board of elections—and not the election officials at the local policing place, precinct, or election district—will originally and solely canvass the absentee ballots.

55. Similarly, Respondent County Boards of Elections require absentee votes to be submitted to them for canvassing.

56. In responding to written inquiries regarding where an absentee ballot should be sent and who will count the absentee ballot and where will it be counted, election officials from twenty-one (21) counties—Adams, Beaver, Bucks, Bradford, Cameron, Chester, Columbia, Cumberland, Erie, Forest, Fulton, Indiana,

Lackawanna, Lawrence, Lebanon, Montour, Monroe, Montgomery, Venango, Warren, and Wayne—indicated that the county’s board of elections receives and canvasses the absentee votes, as opposed to the local polling place or precinct. A true and correct copy of these written correspondences are collectively attached as **Exhibit E**.

57. In responding to telephonic inquiries regarding where an absentee ballot should be sent and who will count the absentee ballot and where will it be counted, election officials from twenty (29) counties—Armstrong, Berks, Butler, Cambria, Carbon, Clarion, Clearfield, Crawford, Dauphin, Delaware, Elk, Fayette, Franklin, Greene, Huntingdon, Lancaster, Lehigh, Luzerne, Lycoming, McKean, Northumberland, Potter, Schuylkill, Snyder, Somerset, Susquehanna, Tioga, Washington, and Westmoreland—verified that the county’s board of elections receives and canvasses the absentee votes.

58. In responding to requests under the Right-to-Know Law (“RTKL”),³ five (5) counties—Clinton, Mercer, Perry, Sullivan, Wyoming confirmed that the county’s board of elections receives and canvasses the absentee votes. A true and correct copy of the counties’ responses to the RTKL requests are collectively attached hereto as **Exhibit F**.

³ 65 Pa.Stat. §§ 67.101-67.3104.

59. Upon information and belief, especially given the plain language of 25 Pa.Stat. § 3146.6(a) and 25 Pa.Stat. § 3146.8(a) and the guidance from Respondent Department of State, it is averred that the remaining twelve (12) counties are engaged in the same practice and policy, whereby absentee votes are sent to, received by, and canvassed at the relevant county board of elections. *See McIntosh Road Materials Co. v. Woolworth*, 74 A.2d 384, 394 (Pa. 1950) (stating that public officials and governmental agencies are presumed to follow the law).

60. Upon information and belief, Respondent County Board of Elections have engaged in the above-mentioned practice and policy in the past and will continue to implement and enforce said practice and policy for the foreseeable future.

61. Accordingly, 25 Pa.Stat. § 3146.6(a) and 25 Pa.Stat. § 3146.8(a), as applied by Respondent Department of State and/or Respondent County Board of Directors, violate Article VII, Section 14 and are unconstitutional.

COUNT I

Pa. Const. Art. VII, § 14; 25 Pa.Stat. § 3146.6(a) and 25 Pa.Stat. § 3146.8(a) (Facial Challenge)

62. Petitioners incorporate by reference the above paragraphs as if fully restated herein.

63. At the time of its enactment and ratification, the original meaning of Article VII, Section 14 of the Pennsylvania Constitution comported with the plain

language of Article VII, Section 14, based on the historical tradition surrounding Pennsylvania's in-person voting requirement.

64. Article VII, Section 14 explicitly curtails and circumscribes any exercise of legislative authority with regard to the mode and manner of voting, in the specific area of absentee voting, commanding that the ballot must be delivered to, received by, and canvassed at the local polling place or precinct.

65. Per their plain language, 25 Pa.Stat. § 3146.6(a) and 25 Pa.Stat. § 3146.8(a) contravene and are inherently incompatible with Article VII, Section 14.

WHEREFORE, Petitioners request that the Court enter judgment in their favor and grant Petitioners relief as set forth in the *ad damnum* clause of this Petition for Review, *infra*.

COUNT II

Pa. Const. Art. VII, § 14; Official Guidance, Practices and Polices (As-Applied Challenge)

66. Petitioners incorporate by reference the above paragraphs as if fully restated herein.

67. As averred above, Respondent Secretary and/or Respondent Department of State have issued official guidance (“Official Guidance”) to the public, instructing them not to return absentee ballots to the local polling place, precinct, or election district.

68. Instead, Respondent Secretary and/or Respondent Department of State have directed the public to return absentee ballots to the relevant county board of elections.

69. The Official Guidance issued by Respondent Secretary and/or Respondent Department of State flout the constitutional commands in Article VII, Section 14.

70. As averred previously, fifty-five (55) of the 67 Respondent County Boards of Elections have affirmed that, as a matter of policy and practice (“Policy and Practice”), their residents must submit absentee ballots to the relevant county board of elections.

71. Upon information and belief, the remaining counties have officially or unofficially adopted and/or enforced the same Policy and Practice.

72. The Policy and Practice that has been effectuated by Respondent County Boards of Elections violates the precepts Article VII, Section 14.

WHEREFORE, Petitioners request that the Court enter judgment in their favor and grant Petitioners relief as set forth in the *ad damnum* clause of this Petition for Review, *infra*.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against Respondent Secretary, Respondent

Department of State, and/or Respondent County Boards of Elections and grant and them relief as follows:

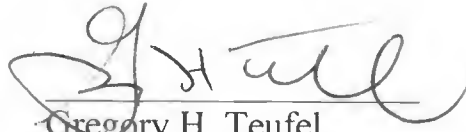
A. **DECLARATORY JUDGMENT:** a declaratory judgment decreeing that (1) 25 Pa.Stat. § 3146.6(a) and 25 Pa.Stat. § 3146.8(a) are unconstitutional on their face and/or (2) the Official Guidance and/or the Policy and Practice described above are an unconstitutional application of 25 Pa.Stat. § 3146.6(a) and 25 Pa.Stat. § 3146.8(a) or other law;

B. **PROHIBITORY INJUNCTION:** an order, declaration, and/or injunction that prohibits Respondent Secretary, Respondent Department of State, and/or Respondent County Boards of Election from (1) enforcing 25 Pa.Stat. § 3146.6(a) and 25 Pa.Stat. § 3146.8(a); (2) issuing or otherwise enforcing the Official Guidance and/or Policy; (3) and canvassing absentee ballots at the county boards of elections or anywhere other than in the election districts in which the absentee voters respectively reside; AND

C. **FURTHER RELIEF:** awarding Petitioners' nominal damages; reasonable costs and expenses of this action, and providing such other and further legal and equitable relief as this Court deems just and proper.

Dated: January 30, 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. H. Teufel", written over a horizontal line.

Gregory H. Teufel

Adam G. Locke

Attorneys for Petitioners

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