IN THE SUPREME COURT OF PENNSYLVANIA

No. 1 WAP 2026

ROBERT ROSSMAN, in his official capacity as member of the Potter County Board of Elections,

Appellant,

v.

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

Appellees.

BRIEF FOR APPELLANT

Appeal from the Order entered December 8, 2025 of the Commonwealth Court of Pennsylvania at No. 516 MD 2024

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I. INTRODUCTION

This appeal concerns whether the Department of State may, by unpromulgated executive edict, compel county registration officials to process voter registration applications in a manner that Pennsylvania law forbids. In 2018, the Department issued a "Directive" declaring that voter registration applications "may *not* be rejected" based on a mismatch between the applicant's identifying number and the relevant government database, "must be processed like all other applications," and, if placed in pending status while follow-up occurs, "MUST be accepted" unless some other reason to decline the application can be found. *See* Directive at 1 (Appendix 2). But the Registration Act and the Department's own SURE Regulations require the opposite course: where an application has not been properly completed and, after "reasonable efforts" to resolve the problem, remains "incomplete or inconsistent," it must be rejected. 25 Pa.C.S. § 1328(b)(2)(i); 4 Pa. Code § 183.5(c)(f).

The Commonwealth Court nevertheless upheld the Directive. In doing so, however, the majority never meaningfully confronted the Directive's operative language or the integrated statutory-and-

regulatory framework governing voter registration in Pennsylvania. Instead, the court appears to have accepted the Department's sanitized recharacterization of the Directive formulated in the midst of litigation, treated the Department's own regulations as though they were immaterial, and effectively invented a system of provisional acceptance that appears nowhere in Pennsylvania law.[1]

The Directive's legal foundation is no firmer under federal law. Although the Directive proclaimed that "Pennsylvania and federal law are clear" that applications may not be rejected based on a mismatch, the Department has effectively retreated from that federal-law premise, now acknowledging that the Help America Vote Act leaves it to the States to determine whether the information provided by an individual is "sufficient," "in accordance with State law."

[1] *See, e.g.*, *Ball v. Chapman*, 289 A.3d 1, 22 & n.129 (Pa. 2023) (rejecting hyperliteral reading untethered from statutory context); *In re Amazon.com, Inc.*, 255 A.3d 191, 203 (Pa. 2021) ("When 'interpreting an administrative regulation, as in interpreting a statute, the plain language of the regulation is paramount.'" (citation omitted)); *Bailey v. Zoning Bd. of Adjustment of City of Philadelphia*, 801 A.2d 492, 501 (Pa. 2002) ("Where an administrative agency is specifically authorized to adopt rules under a statute, the rules adopted by an agency are binding upon a reviewing court as part of the statute . . . .").

52 U.S.C. § 21083(a)(5)(A)(iii). That concession is fatal to any suggestion that federal law compelled the Directive's commands.[2]

In the end, this case presents a straightforward choice. Either the Court enforces the integrated statutory-and-regulatory scheme enacted by the General Assembly and codified by the Department itself, or it allows an unpromulgated directive—issued without notice, comment, or rulemaking—to override that scheme by fiat. Because the Directive both conflicts with Pennsylvania law and functions as a binding norm never properly promulgated as a regulation, this Court should declare it unlawful and enjoin its enforcement.

[2] *See Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1168, 1172 (11th Cir. 2008) (holding HAVA does not preempt state pre-registration matching rules and describing HAVA as establishing a federal minimum); *see also generally Hall v. Pennsylvania Bd. of Prob. & Parole*, 851 A.2d 859, 865 (Pa. 2004) (noting that this decisions of federal district courts and circuit courts of appeals are not binding on this Court).

II. STATEMENT OF JURISDICTION

This appeal concerns a final order entered in a matter commenced in the Commonwealth Court. As such, the Supreme Court has subject matter jurisdiction under 42 Pa.C.S. § 723. *See also* Pa.R.A.P. 1101(a)(1). By Order dated February 3, 2026, this Court noted probable jurisdiction.

III. ORDER IN QUESTION

The Commonwealth Court's December 8, 2025 Order states as follows:

> AND NOW, this 8th day of December, 2025, the preliminary objection filed by the Pennsylvania Department of State and Al Schmidt in his official capacity as Secretary of the Commonwealth (Respondents) regarding standing is OVERRULED. Respondents' Cross-Application for Summary Relief is GRANTED and the petition for review filed by Robert Rossman, in his official capacity as a member of the Potter County Board of Elections (Petitioner) is DISMISSED. Respondents' remaining preliminary objection and Petitioner's Application for Summary Relief are DISMISSED as moot.

The Order as well as the related unpublished majority and concurring/dissenting opinions are attached in Appendix 1. *See also Rossman v. Dep't of State*, No. 516 MD 2024, 2025 WL 3514275 (Pa. Cmwlth. Dec. 8, 2025).

IV. STATEMENT OF SCOPE OF REVIEW AND STANDARD OF REVIEW

This is an appeal from an order dismissing as moot Rossman's application for summary relief under Pa.R.A.P. 1532 and granting the Department's cross-application for summary relief. The denial of summary relief is reviewed for "an error of law or a manifest abuse of discretion." *Scarnati v. Wolf*, 173 A.3d 1110, 1118 (Pa. 2017). With questions of law posed by applications for summary relief, the Court's standard of review is *de novo* and its scope of review is plenary. *Id.* (citing *Brittain v. Beard*, 974 A.2d 479, 483 (Pa. 2009)).

V. STATEMENT OF THE QUESTIONS INVOLVED

1. Did the Commonwealth Court err in finding the Directive is not contrary to Pennsylvania law?

Commonwealth Court answer: no.

Suggested answer: yes.

2. Is the Directive a *de facto* legislative rule where it contains mandatory language, has been fully implemented, and compels specific actions?

Commonwealth Court answer: no.

Suggested answer: yes.

VI. STATEMENT OF THE CASE

A. Statement of Form of Action and Procedural History

This is a civil action. On November 4, 2024, Appellant-Petitioner Robert Rossman, in his official capacity as a member of the Potter County Board of Elections, filed a petition for review in the Commonwealth Court's original jurisdiction, seeking declaratory and injunctive relief. Rossman's petition challenged the "Directive Concerning HAVA-Matching Drivers' Licenses or Social Security Numbers for Voter Registration Applications" (the Directive) published by the Pennsylvania Department of State (attached in Appendix 2). Appellees-Respondents Department of State and Secretary Al Schmidt (collectively, the "Department") filed preliminary objections, which Rossman answered. The parties briefed the preliminary objections.

Rossman also filed an application for summary relief. The Commonwealth Court, upon finding no factual issues in dispute, ordered the Department to file a cross-application for summary relief. Upon full briefing on both applications, a three-judge panel of the Commonwealth Court heard oral argument on October 7, 2025, and then entered its final order on December 8, 2025. In support of the

Order, the Court issued an unpublished majority opinion and a concurring/dissenting opinion.

Rossman filed a notice of appeal and jurisdictional statement on January 6, 2026. The Department filed a no-answer letter to the jurisdictional statement. This Court noted probable jurisdiction by Order dated February 3, 2026. The Department did not file a cross-appeal from the Commonwealth Court's denial of its preliminary objections.

B. Statement of Prior Determinations

This civil action commenced in the Commonwealth Court's original jurisdiction; hence, the only material prior determination is the Order entered December 8, 2025.

C. Names of Judges whose Determinations are to be Reviewed

The matter below was heard by Judges Patricia A. McCullough, Anne E. Covey, and Matthew S. Wolf.

D. Statement of Facts

Appellant Robert Rossman is a duly elected county commissioner in Potter County, Pennsylvania. By statute, he is a designated member of the "commission" that oversees the registration of electors in the

county. Rossman is also a "commissioner," vested with various powers and duties related to voter registration.

1. Pennsylvania's voter registration law

On January 31, 2002, the Governor signed into law Act 3 of 2002 (the Registration Act),[3] which substantially amended Pennsylvania's voter registration laws by, among other things, establishing the Statewide Uniform Registry of Electors (the SURE System).[4] Shortly thereafter, in December 2002, the Secretary promulgated the requisite regulations (the SURE Regulations), which have remained unchanged since their inception.[5] And together with the Registration Act, the SURE Regulations established a comprehensive set of legally binding requirements governing voter registration. Of relevance here are the strictures pertaining to the submission, review, and disposition of voter registration applications.

[3] Act of Jan. 31, 2002, P.L. 18, No. 3; 25 Pa.C.S. § 1101, *et seq*.

[4] As this Court recently recognized, through the SURE System, the General Assembly established a "'single, uniform integrated computer system' maintained by the Pennsylvania Department of State which is 'a database of all registered electors in this Commonwealth.'" *In re Doyle*, 304 A.3d 1091, 1096 n.3 (Pa. 2023) (citing 25 Pa.C.S. § 1222(c)(1)).

[5] *See* Pa. Bull., Vol. 32, No. 52, at 6340-59 (Dec. 28, 2002) (citing 25 Pa.C.S. § 1222(f) (directing the Department to promulgate regulations necessary to administer the SURE System)); *see also* 4 Pa. Code. Ch. 183.

2. The form and substance of the voter registration application

In keeping with its overarching aim of uniformity, Section 1327 of the Registration Act directs the Secretary to "prescribe the form of an official voter registration application[,]" 25 Pa.C.S. § 1327(a), which must "provide space for" certain basic information about the applicant. *See* 25 Pa.C.S. §§ 1327(a)(1)(i)-(viii). That provision makes no mention of either applicants' drivers' license numbers (DLNs), or the last four digits of their Social Security numbers (Partial SSNs). However, 4 Pa. Code § 183.1 of the SURE Regulations provides that the voter registration application form contemplated by Section 1327 of the Registration Act—which it refers to as the "VRMA"—must include, among other things, a request for the applicant's DLN, and Partial SSN.[6] Moreover, 4 Pa. Code § 183.5 of the SURE Regulations identifies

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[6] The relevant portion of 4 Pa. Code § 183.1 provides:

VRMA--Voter registration mail application form--The Statewide voter registration application form, in accordance with section 1327(a) of the act (relating to preparation and distribution of applications), which contains:

(i) The following requests for information from applicants:

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(M) A driver's license number.

(N) The last four digits of the applicant's Social Security number.

(O) A registrant's unique identifier.

the "items on a VRMA and any other approved voter registration form [that] are additional or optional information and may not be considered when determining the acceptance or rejection of the application[.]" 4 Pa. Code § 183.5(f). An applicant's DLN is not included in the list of "additional or optional information." *Id.* Similarly, an applicant's Partial SSN may be optional, but only "if the applicant's driver's license number is provided." *Id.* at § 183.5(f)(8).[7]

3. Reviewing and processing voter registration applications

The Registration Act also sets forth the parameters for reviewing and approving voter registration applications. Specifically, Section 1328 provides that, "[u]pon receiving a voter registration application, a commissioner, clerk or registrar of a commission shall . . . [e]xamine the application to determine[,]" *inter alia*, "[w]hether the application is complete," 25 Pa.C.S. § 1328(a)(2)(i), and "[w]hether the applicant is a qualified elector." *Id.* at § 1328 (a)(2)(ii). If, upon such examination, it appears that the application, *inter alia*, "contains the required

[7] The current version of the Pennsylvania official voter registration application form created by the Department, *see* PFR, Ex. A (R. 49a–53a), as well as the National Voter Registration Form, *see* PFR, Ex. B (R.54a-81a) confirm that an applicant's correct DLN or Partial SSN is a necessary datapoint. *See* PFR, ¶¶ 26-30 (R. 8a-48a).

information indicating that the applicant is a qualified elector of the county[,]" the application must be approved and the information contained therein logged into the SURE System. *See Id.* at § 1328(b)(3)(ii), (4)(ii), (5)(ii), (6)(ii), (7)(ii), (8)(iii).[8]

If, on the other hand, the "examination under subsection (a)" reveals that "[t]he application was *not properly completed*," it may not be accepted and processed and, instead, the county registration commission must use "reasonable efforts . . . to ascertain the necessary information[.]" 25 Pa.C.S. § 1328(b)(2)(i) (emphasis added); *accord* 4 Pa. Code § 183.5(c) ("[A] commission shall use reasonable efforts to ascertain information that is necessary for voter registration and is incomplete, inconsistent or unclear on an applicant's application form.").

The Registration Act provides no guidance on what specific steps must be taken to gather the "necessary information." 25 Pa.C.S. § 1328(b)(2)(i). But the SURE Regulations explain that, in the context of an incomplete or inconsistent application, "reasonable effort," includes

[8] Once the information is entered, the applicant is also assigned a unique identification number and added to the county's general register. *See* 25 Pa.C.S. §§ 1328(c), 1328.1; *see also* 25 Pa.C.S. § 1222(c)(3), (6), (10).

"mailing a notice to the applicant or contacting the applicant by phone, if available[,]" 4 Pa. Code § 183.5(c), and also requires counties to "notify the applicant of the reason the application could not be accepted and provide the opportunity for the applicant to complete the form." *Id.*

After such "reasonable efforts" have been made, if "the application remains *incomplete or inconsistent*[,]" the county must "reject" it. 25 Pa.C.S. § 1328(b)(2)(i) (emphasis added).

4. The Federal Help America Vote Act of 2002 (HAVA)

Approximately ten months after the Registration Act was enacted, President George W. Bush signed into law the Help America Vote Act of 2002 (HAVA), 52 U.S.C. §§ 20901-21145 (formerly 42 U.S.C. §§ 15301-15545). As relevant here, HAVA generally provides that "an application for voter registration for an election for Federal office may not be accepted or processed by a State unless" it contains either the applicant's: (1) DLN, or (2) Partial SSN. *See* 52 U.S.C. § 21083(a)(5)(A)(i). Furthermore, under HAVA, states must "match" and "verify" that information with information from the "State motor vehicle authority" and the Social Security Administration. *Id.* § 21083(a)(5)(B)(i)-(ii) (citing 42 U.S.C. § 405(r)(8)). Notably, HAVA's

plain language does not mandate rejection of applications in the event of a mismatch, or if a voter's identity cannot be confirmed. It does, however, expressly provide that states "shall determine whether the information provided by an individual is sufficient to meet the [matching] requirements . . . *in accordance with State law*." *Id.* § 21083(a)(5)(A)(iii) (emphasis added).[9]

5. The Department's multiple interpretations of HAVA

In December 2003 (approximately a year after promulgating the SURE Regulations), the Department published a Notice in the Pennsylvania Bulletin, providing that election officials must determine the validity of numbers supplied on a registration application:

> For applications for voter registration received on and after January 1, 2006, section 303(a)(5) of HAVA will prohibit the acceptance or processing of the application unless (i) the application includes the driver's license number of an applicant who has been issued a current and valid driver's license, or if the applicant does not have a current and valid driver's license, the last four digits of the applicant's social security number (except for an applicant who declares in his

[9] *See also id.* at § 21084 ("The requirements established by this subchapter are minimum requirements and nothing in this subchapter shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this subchapter so long as such State requirements are not inconsistent with the Federal requirements under this subchapter or any law described in section 21145 of this title." (citing 52 U.S.C. § 21145)).

> application that he has neither a current and valid driver's license nor a social security number); *and* (ii) elections officials determine that the number provided by the applicant is valid.

Pa. Bull., Vol. 33, No. 50, at 6120 (Dec. 13, 2003) (emphasis added).

In contrast, on August 9, 2006, the Department issued a document directed to counties entitled, "*Alert re: Driver's License and Social Security Data Comparison Processes Required by the Help America Vote Act (HAVA)*" (hereafter, the 2006 Alert), stating that a "failure to achieve a match between a voter registration application and a record in the Commonwealth's driver's license database or the database of the Social Security Administration *is not a reason to reject the application*." *Id.* at 5 (emphasis added). The 2006 Alert purported to recognize—in bolded, underlined, and italicized language—that "**the disposition of an application for voter registration must be made solely by the county voter registration commission under the standards and procedures prescribed by *Pennsylvania* law**." *Id.* (emphasis in original). The 2006 Alert did not explain why such a mismatch was "not a reason" to reject an application under Pennsylvania law. *Id.* Further, the 2006 Alert did not cite any Pennsylvania legal authority; instead, it

cited the federal district court opinion in *Washington Ass'n of Churches v. Reed*, 492 F.Supp.2d 1264 (W.D. Wash. 2006) (*Reed*).

Then in 2018, the Department issued a document to counties entitled, "*Directive Concerning HAVA-Matching Drivers' Licenses or Social Security Numbers for Voter Registration Applications*" (hereafter, the Directive). The Directive was not published in the Pennsylvania Bulletin or made part of the Pennsylvania Code. The Directive relayed the same basic message as the 2006 Alert—*i.e.*, a mismatch resulting from cross-checking the DLN or Partial SSN is not a basis for rejecting a new voter registration application. Unlike the 2006 Alert, however, the Department issued the Directive pursuant to Section 1803(a) of Registration Act,[10] and stated that "**Pennsylvania and federal law are clear that voter registrations may *not* be rejected based**

[10] Section 1803(a) provides that "The department shall have the authority to take any actions, including the authority to audit the registration records of a commission, which are necessary to ensure compliance and participation by the commissions." 25 Pa.C.S. § 1803(a). Notably, Section 1803(a) permits the Department to "take any actions, . . . necessary to ensure" a commission's compliance with Registration Act, *see id.* at § 1803(b), including recourse to Section 1804, which requires the State Treasurer, upon notice from the Secretary, to withhold all money appropriated to a county by the Commonwealth. *See id.* at § 1804(b) (providing that, upon receiving the requisite notification "the State Treasurer shall . . . withhold any part or all of the State appropriations to which a county is entitled, including funding for the court of common pleas but excluding funding for human services").

solely on a non-match between the applicant's identifying numbers on their application and the comparison database numbers." *Id.* (emphasis in original). Thus, according to the Directive, such applications "**may *not* be rejected and must be processed like all other applications.**" (Emphasis in original).[11] The Directive—much like the 2006 Alert—does not contain any legal analysis. Rather, like its predecessor, the Directive rests entirely on *Reed*.[12]

E. Statement of the Order under Review

The December 8, 2025 Order overruled in part and dismissed in part the Department's preliminary objections. The Order granted the

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[11] The Secretary has never attempted to promulgate either the 2006 Alert or the Directive as a final-form regulation. In fact, neither document has ever even been published in the Pennsylvania Bulletin. As explained by the Pennsylvania Supreme Court:

> The Pennsylvania Bulletin is the official gazette of the Commonwealth of Pennsylvania. It is published weekly and, is, inter alia, the temporary supplement to the Pennsylvania Code, which is the official codification of agency rules and regulations and other statutorily authorized documents. Courts are required to take judicial notice of the Pennsylvania Bulletin.

Kuznik v. Westmoreland Cnty. Bd. of Comm'rs, 902 A.2d 476, 483 (Pa. 2006).

[12] The Directive's reliance solely on the district court opinion in *Reed* makes less sense than the same reliance in the 2006 Alert because a full decade before the Directive issued in 2018, the Eleventh Circuit Court of Appeals rejected the *Reed* court's interpretation of federal law in *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153 (11th Cir. 2008) (*Browning*). The Directive does not distinguish or even cite *Browning*.

Department's application for summary relief and dismissed as moot Rossman's application for summary relief and dismissed his petition for review. Rossman appeals the grant of the Department's application and the dismissal of his application and petition for review.

F. Statement of Place of Raising or Preservation of Issues

Rossman raised the issues presented for review in the petition for review, the answer to the preliminary objections, the application for summary relief, the brief in opposition to the Department's preliminary objections, and the brief in opposition to the Department's application for summary relief. (R. 8a., 484a, 362a, 284a, 517a).

VII. SUMMARY OF ARGUMENT

The Commonwealth Court erred in two independent but closely related respects. *First*, it upheld a Directive that is irreconcilable with Pennsylvania's voter registration law. *Second*, it sustained that Directive even though it functions as a binding norm that was never promulgated through the rulemaking procedures the General Assembly requires. Either error warrants reversal. Together, they underscore the lawlessness of the Department's position.

In holding that the Directive is consistent with Pennsylvania law, the majority's analysis went off track at the threshold and never recovered. Most fundamentally, the panel majority did not analyze the Directive as written. Instead, it appears to have accepted the Department's litigation rewrite of the Directive into something its text does not bear. But the Directive itself is categorical: applications with mismatched identifying information "may *not* be rejected," "must be processed like all other applications," and, if placed in pending status while follow-up occurs, "MUST be accepted." *See* Directive at 1 (Appendix 2). In accepting the Department's recharacterization, the majority further assumed an investigative framework the Directive

does not contain, invented a system of interim or "provisional" acceptance the Registration Act does not recognize, and effectively narrowed Section 1328's command to duplicate registrations only, even though the statute broadly requires rejection where an application remains "incomplete or inconsistent." 25 Pa.C.S. § 1328(b)(2)(i).

Once Pennsylvania law is read as an integrated whole, however, the Directive's conflict with that law is unmistakable. The Registration Act requires officials to examine whether an application is complete and whether the applicant is qualified. The SURE Regulations supply the binding details that the majority ignored. Those regulations require the statewide voter-registration form to request, among other things, the applicant's driver's license number and the last four digits of the applicant's Social Security number, and they make clear that one of those two data points is mandatory—not optional. *See* 4 Pa. Code §§ 183.1(a), 183.5(f). Thus, if that mandatory information remains unresolved and inconsistent after reasonable efforts, the application must be rejected. *See* 25 Pa.C.S. § 1328(b)(2)(i); *see also Ball*, 289 A.3d at 22 & n.129 (rejecting context-free interpretation that would produce absurd result). The Directive forbids that result and instead commands

acceptance first and investigation later. Pennsylvania law does not permit that.

The Directive is an unlawful *de facto* regulation and not a mere "interpretive regulation." It establishes a binding norm because it restricts discretion with specific mandatory rules and commands not found in the Registration Act or the SURE Regulations. The majority below committed errors of law by not applying the binding norm rubric and by not identifying the non-discretionary commands in the Directive. Even if the Court agrees the Directive accurately reflects Pennsylvania law, it is still unlawful because it contains a binding norm, which requires formal promulgation. At a minimum, the Directive is unlawful as an alleged interpretive regulation because it does not genuinely track the Registration Act and existing regulations.

VIII. ARGUMENT

The Commonwealth Court erred in two ways. First, it concluded that the Directive accurately states Pennsylvania law. Second, it concluded that the Directive may nonetheless be enforced even though it was never promulgated through the rulemaking procedures required for binding agency norms. Because both conclusions are wrong, the order below should be reversed. The more fundamental point, however, is this: the Directive's procedural and substantive defects are not unrelated. The Department's need to defend the Directive through litigation-driven recharacterizations, rather than through its text and the law as promulgated, only underscores why the Directive cannot stand under either theory.

A. The Directive Is Contrary to Pennsylvania Law.

Given the paucity of analysis in the majority opinion, it is helpful to begin by reiterating the precise legal question implicated by Commissioner Rossman's lead claim: does the Directive violate Pennsylvania's voter registry law, as set forth in the Registration Act and the SURE Regulations? Thus, despite its public import, the legal issue before the Commonwealth Court required a straightforward application of familiar principles of statutory construction. This

interpretive exercise involves a two-step process, requiring the Court to examine the relevant text and, in the event of ambiguity, discern legislative intent by considering the various factors prescribed in the Statutory Construction Act.

Yet the majority took an altogether different approach, offering a rationale that is so cursory as to be virtually nonexistent—a point underscored by Judge McCullough's thorough and well-reasoned responsive opinion. And what is more, the minimal explanation that the majority does manage to offer is based on either a misstatement of the law or a misunderstanding of the underlying claims. In short, the decision below is of little help.

That being said, although the Commonwealth Court's flawed analysis makes this Court's task more difficult, it does not pose a jurisprudential obstacle, since this Court owes no deference to the decision below on the pure questions of law presented for review in this appeal. And examining the present issue in accordance with settled interpretive principles, this Court should have little difficulty in concluding that the Directive is unlawful and contravenes Pennsylvania law. Indeed, that result is required not only by a plain-language

analysis, but to the extent there is an aspect of the text that is materially ambiguous, the Directive plainly conflicts with the General Assembly's clear intent.

1. The Commonwealth Court's Decision Is Predicated on a Distorted Construct That Bears No Resemblance to the Legal Dispute the Parties Actually Presented.

As noted above, given that this case presents a pure question of law, the Commonwealth Court's assessment of the law is—strictly speaking—entirely irrelevant. Nevertheless, from a practical standpoint, the rationale offered by the tribunal whose decision is under review is often the starting point of the analysis. Accordingly, before turning to the statutory analysis at the core of this matter, the depth of the Commonwealth Court majority's decision warrants attention. As set forth below, the opinion was flawed from its inception and, proceeding within a fundamentally warped conception of this case, never recovered. The resulting analysis is therefore of little assistance.

Begin with what the Commonwealth Court majority did not do. Specifically, despite holding that the Directive was "not inconsistent with Pennsylvania law, the competing legal principles and theories—as framed and presented by the parties—were largely ignored.

Commissioner Rossman's state-law claim followed a clear analytical sequence: *one*, subject to certain limited exceptions not in dispute,[13] a DLN or Partial SSN constitutes "necessary information" under the Registration Act. *See* 25 Pa.C.S. § 1328(b)(2)(i); 4 Pa. Code §§ 183.1(a), 183.5(f); *two*, inasmuch as either a DLN or a Partial SSN is "necessary information," if there is a mismatch in that data—meaning the identifying number on the application does not correspond to the applicant's record in the relevant government database—the application has not been "properly completed;" and, *three*, because an application that has not been "properly completed" may not be accepted and processed unless and until the defect has been resolved (*i.e.*, the application is no longer "incomplete" or "inconsistent," the Directive's unmistakable mandate violates Pennsylvania law.

The Department, for its part, also purported to ground its argument in statute. Specifically, it maintained that Pennsylvania law says nothing whatsoever about either a DLN or Partial SSN and, thus,

[13] Specifically, this requirement does not apply to applications submitted through the "Motor Voter" program. *See* 25 Pa.C.S. § 1323. Furthermore, as Commissioner Rossman has noted from the outset, his challenge has nothing to do with applicants who do not possess either form of identification in question—provided, of course, that they make an attestation to that effect (as required by statute). (*See* R. 8a.).

not being governed by the Registration Act at all, a mismatch or non-match in those numbers cannot trigger the rejection procedure set forth in statute. (*See* R. 410a, 434a-438a.).[14]

Yet the majority never discussed either of the interpretive theories advanced by the parties and, instead, decided this case without ever interpreting any of the provisions in question. Indeed, without the benefit of Judge McCullough's responsive opinion—which methodically dissects the relevant statutory provisions and their attendant regulations—a casual reader of the majority opinion would have no way of knowing that this case turns chiefly on principles of statutory interpretation.

The majority's refusal to meaningfully examine the Directive is equally troubling. Specifically, aside from quoting some of its language in reciting the background facts, the majority never analyzed a single word in the Directive. *See* Majority Op. at 11–12. To summarize, the majority held that a set of instructions contained in one written document (the Directive) were consistent with the written instructions

[14] That was the entirety of the Department's substantive merits argument. And critically, it offered no alternative theory of statutory interpretation that could somehow support the conclusion that an application containing mismatching identifying information has been "properly completed."

provided in statute and its accompanying regulations, without confronting the operative language in any of this. This is extraordinary.

Finally, the majority's failure to mention the Directive's federal-law premise bears highlighting. Recall the Directive's stated premise: "Pennsylvania ***and federal law*** are clear" that mismatched applications may not be rejected. (R.**). That pronouncement, underscored with bold and italicized language, which reiterated a position the Department first articulated in 2006, rested entirely on *Reed*—a single, non-binding, out-of-state district court opinion the Eleventh Circuit had already repudiated a full decade before the Directive was issued. *See supra*.

Yet when finally called to account for that legal construct in this action—one that the Department had described as "clear" for twenty years—it offered not a single word in defense of the Directive's federal-law predicate. To the contrary, it effectively abandoned the premise, conceding Commissioner Rossman's foundational point—that HAVA leaves it to the States to determine whether the information provided is sufficient, "in accordance with State law." 52 U.S.C. § 21083(a)(5)(A)(iii); (*see also* R. 420a–421a.).

That evolution — from "HAVA prohibits rejection" to "HAVA defers to state law" — is not just a concession about HAVA; it is an implicit acknowledgment that DOS was wrong for seven years and that the Directive's legal basis has now been narrowed to a pure state-law question. The majority, however, says nothing about the fact that the legal foundation emblazoned on the Directive's face was baseless. And critically, the Department has now essentially admitted that the Directive's articulation of federal law was baseless, as of the date of the present filing it continues to be propagated on the Department's website.

The minimal analysis the majority did provide exacerbated the errors further. To begin, although the Directive—as written—is never analyzed or discussed, the majority's decision creates the specter that the Directive was, in fact, assessed. But whatever document the majority examined, it was not the same one the Department issued. Instead, the majority based its decision on a sanitized version of the Directive that appears to closely track the post hoc reinterpretation the

Department manufactured mid-litigation—one that is unmoored from the Directive's text and exists nowhere outside of this litigation.[15]

Moving beyond a Directive that does not exist, the majority then analyzed a claim that was never made. Specifically, the majority suggests that Commissioner Rossman was seeking an interpretation or declaration that would allow rejection of applications based on a mismatch "without investigation." Majority Op. at 12. But the filings below tell a different story. Far from advocating for a legal principle that would permit a county to reflexively reject applications upon a mismatch without any effort to resolve the discrepancy, in nearly every filing, Commissioner Rossman expressly emphasized that the review process is properly grounded in Section 1328, [16] which allows rejection only after a county's reasonable efforts to ascertain the missing

[15] To the extent the majority adopted the Department's reimagined version of the Directive based on its conception of administrative deference principles, it erred in doing so. To begin, the Department never raised any argument along such lines. And in any event, this Court has repeatedly cautioned that no deference is owed to interpretation advanced for the first time in the context of litigation. *See, e.g.*, *Harmon v. Unemployment Comp. Bd. of Review*, 207 A.3d 292, 300 (Pa. 2019) ("[T]he Commonwealth Court erred in according any deference to the Board's arguments contained in litigation-related filings.").

[16] *See*, *e.g.*, (R.8a.), , his Application for Summary Relief, (*see* R.362a.), the Brief in Opposition to the Department's Preliminary Objections, finally, in the Brief in Opposition to the Department's Cross-Application for Summary Relief. (*See* R.517a.).

information prove unsuccessful. In short, his position has been straightforward from the beginning: the Registration Act and the SURE Regulations undoubtedly prohibit "out-of-hand rejection" on the basis of a mismatch, but those very same provisions also prohibit counties from registering such applicants in the meantime.[17]

And finally, the only other bit of analysis the majority offers is similarly flawed, presenting an understanding of the law that is only partially accurate. Specifically, in response to Commissioner Rossman's purported argument in favor of "out-of-hand rejection"—which, again, belies the record—the majority explained that "state law requires a different response: the commissioner must *investigate* to determine if the mismatch relates to a duplicate registration." *Id.* (emphasis in original). [18] But identifying and preventing duplicate registration is

[17] The absence of any genuine disagreement on this point is underscored by Judge McCullough's concurrence: "I agree with the Majority that the Voter Registration Act does not require an initial, facial rejection of an application merely because an applicant's DLN or SSN cannot be matched." Concurring/Dissenting Op. at 7–8.

[18] The majority's description of the procedural framework similarly suggests that DLN or SSN data is reviewed solely for duplicate-registration purposes. *See* Majority Op. at 4 (citing 4 Pa. Code § 183.6(a)(2)–(3)). But Section 183.6 is a separate provision governing duplicate-registration checks; it does not define—or limit—the scope of the completeness and consistency review required by Section 1328. *See* 25 Pa.C.S. § 1328(a)(2) (requiring an examination of the to determine, *inter alia*, whether the application is "complete," the applicant is a "qualified elector," whether the applicant has an "existing registration record," and whether

only part of the reason for examining the DLN—or, in its absence, the Partial SSN. The majority's suggestion that the only circumstance in which a mismatch could warrant rejection is if it reveals a duplicate registration engrafts a limitation that exists in neither the Registration Act, nor the SURE Regulations—a point aptly made by Judge McCullough in her responsive opinion is found nowhere in the law. *See* Majority Op. at 12. Rather, the principal inquiry revolves around whether the application is properly completed, consistent (at least with regard to the information an application is required to provide), and submitted by a qualified elector. [19] Preventing and eliminating duplicate registrations is certainly part of this exercise, but it is far from the sole function of the DLN and Partial SSN.

In sum, the majority did not analyze the claim and reach an erroneous conclusion; it declined to analyze the claim at all, rendering

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the requested "transfer or change" is permissible). Moreover, even on the majority's own terms, a true duplicate registration would more naturally trigger the registration-update process—not the rejection procedure. *See* 25 Pa.C.S. § 1328(b)(4)–(8) (describing procedures for updating registrations). The majority's framing is thus incoherent on its own terms.

[19] Concurring/Dissenting Op. at 8–9 ("Neither the Voter Registration Act nor the Department's regulations limit rejection on this ground to only those situations where the inconsistency results in the discovery of a 'duplicate' registration, as the Majority suggests.").

its conclusion unsustainable. Because this Court's review is de novo, it is not bound by the majority's cursory treatment and should conduct the analysis the Commonwealth Court failed to perform.

2. The Registration Act and the SURE Regulations, Read as an Integrated Whole, Require Rejection of Applications With Irreconcilable Identification Discrepancies, and the Directive Forbids What the Law Requires.

With the Commonwealth Court majority's mistaken formulation jettisoned, an examination of Pennsylvania law—as reflected in the statutory scheme enacted by the General Assembly and the accompanying regulations duly promulgated by the Department itself—shows a palpable conflict with the Directive. In this regard, it is important first to clarify the proper frame of reference. Specifically, given that duly promulgated regulations are binding on courts no less than any statute and are interpreted in accordance with general principles of statutory construction, the Registration Act and the SURE Regulations must be read as an integral whole. *See Bailey*, 801 A.2d at 501 ("Where an administrative agency is specifically authorized to adopt rules under a statute, the rules adopted by an agency are binding upon a reviewing court as part of the statute . . . ."); *In re Amazon.com,*

Inc., 255 A.3d 191, 203 (Pa. 2021) ("When 'interpreting an administrative regulation, as in interpreting a statute, the plain language of the regulation is paramount.'" (citation omitted)). Together the Registration Act and the SURE Regulations form Pennsylvania law.

To briefly summarize the governing framework detailed above, the Registration Act directs the Secretary to "prescribe the form of an official voter registration application," which must contain basic information about the applicant. 25 Pa.C.S. § 1327(a). The full list of specific information that an applicant must be asked to provide is found in Section 183.l(a), which provides that the voter registration application form must include, among other things, a request for the applicant's DLN and Partial SSN.[20] And if the SURE Regulations were not enough, federal law also explicitly requires Pennsylvania to include a field in the registration application for DLN or Partial SSN. *See* 52 U.S.C. § 21083(a)(5)(A)(i) (State may not "accept[] or process[]" "an

[20] *See* 4 Pa. Code § 183.1 (providing that a statewide voter registration application form must contain, among other things, requests for "[a] driver's license number" and "[t]he last four digits of the applicant's Social Security number").

application for voter registration . . . unless the application includes" a Driver's License number or Partial SSN).[21]

The SURE Regulations also confirm that an applicant's DLN—or, in its absence, a Partial SSN—is required information. 4 Pa. Code § 183.5(f). Specifically, that provision identifies information on a voter registration form that is "additional or optional" and, thus, "may not be considered when determining the acceptance or rejection of the application." A DLN is not on that optional list, and a Partial SSN may be optional—but only "if the applicant's driver's license number is provided." *Id.* § 183.5(f)(8). Applying the long-standing principle of statutory construction, the unavoidable implication of this provision is that at least one of these two identifying data points is not "optional"—*i.e.*, it is mandatory.[22]

[21] Although HAVA provides the federal backdrop, the Department has effectively conceded that it does not compel the Directive's commands. HAVA expressly provides that states "shall determine whether the information provided by an individual is sufficient to meet the [matching] requirements . . . in accordance with State law." 52 U.S.C. § 21083(a)(5)(A)(iii) (emphasis added). *See also id.* at § 21084 (describing HAVA's requirements as "minimum requirements"); *Browning*, 522 F.3d at 1168, 1172 (same).

[22] The Latin maxim, *inclusio unius est exclusio alterius*, is a well-established interpretive canon expressly adopted by the Statutory Construction Act. *See Indep. Oil & Gas Ass'n of Pennsylvania v. Bd. of Assessment Appeals of Fayette Cnty.*, 814 A.2d 180, 184 (Pa. 2002). *Dauphin Cnty. Pub. Def.'s Office v. Court of Common Pleas of Dauphin Cnty.*, 849 A.2d 1145, 1150 (Pa. 2004).

The parameters for processing an application after its submission are detailed in statute and the accompanying regulations. Specifically, upon receiving an application, a county registration officer—like Commissioner Rossman—must "[e]xamine the application to determine" whether: (i) "the application is *complete*;" and (ii) "[w]hether the applicant is a *qualified elector*." 25 Pa.C.S. § 1328(a)(2)(i)–(ii). If the application "contains the required information indicating that the applicant is a qualified elector," it must be approved. *Id.* § 1328(b)(3)(ii).

On the other hand, if the application was "not *properly completed*," it may not be processed. Instead, the commission must use "reasonable efforts . . . to ascertain the necessary information." *Id.* § 1328(b)(2)(i); *accord* 4 Pa. Code § 183.5(c). If, however, after such reasonable efforts, the application remains incomplete or inconsistent," the commission "shall" reject it. 25 Pa.C.S. § 1328(b)(2)(i). That sequence is mandatory.

With this framework in place, the material statutory and regulatory terms—examined within their proper context and in accordance with the settled precepts of statutory construction—brings into sharper focus the Directive's palpable conflict with Pennsylvania law.

a) The Registration Act's provision requiring that applications be properly completed mandates that the required information be materially correct, accurate, and in order.

First, a plain language review of Section 1328 shows that a voter registration application is not "properly completed" if the required information, which includes a DLN or Partial SSN, is incorrect or inconsistent—*i.e.*, if there is a mismatch. The starting point of any plain-text analysis is the common and approved meaning of a word, which, in the absence of a statutory definition, is controlling. *See* 1 Pa.C.S. § 1903(a).[23] That meaning is often best discerned by consulting a term's dictionary definition. *See Commonwealth v. Chisebwe*, 310 A.3d 262, 269 (Pa. 2024).[24] Here, the term "complete," which was the focus of the majority's decision, means "having all necessary parts, elements, or steps." COMPLETE, The Merriam-Webster Dictionary. [25] Under this definition, an application is "complete" only when it contains all necessary information—and an identifying number that does not correspond to the applicant's record in the relevant government

[23] *See* 1 Pa.C.S. § 1903(a) (words and phrases construed according to common and approved usage).

[24] *See also, e.g.*, *Greenwood Gaming & Ent., Inc. v. Dep't of Revenue*, 306 A.3d 319, 331 (Pa. 2023); *O'Neill v. State Emps.' Ret. Sys.*, 280 A.3d 873, 885 (Pa. 2022)

[25] *Available at* https://www.merriam-webster.com/dictionary/complete.

database is not the "necessary" information the form requests. The form does not ask for *any* driver's license number; it asks for *the applicant's* driver's license number. *See* 4 Pa. Code § 183.1(a). A number that does not match the applicant's identity in PennDOT's database is, in every meaningful sense, not the information the form requires.

The majority, for its part, concluded that, in suggesting that "the information must not only be complete, but also *correct*," Commissioner Rossman had "draw[n] an inference that is one step beyond the statutory requirement[.]" Majority Op. at 12. Yet the majority made no attempt to square its holding with the ordinary meaning of the term "complete," and it offered no rationale for its apparent conclusion that "complete" means merely "facially filled in"—that is, that an application is "complete" so long as some digits appear in the relevant blank, even if those digits are fictitious, transposed, or belong to someone else.

Nor could it have, since its conception of a "completed" application squarely contravenes this Court's decision in *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023), which rejected a similarly warped interpretive approach. Examining a provision requiring electors to "date" their declaration, the Court in *Ball* declined to adopt a construct that

required merely *some* date—even if the date plainly bears no correlation with the action of signing. *Id.* at 22 & n.129. In this regard, the Court cautioned that the statutory command must be read in context and that the law implicitly requires the correct date—the one corresponding to the act of completing and signing the declaration. *Id.* The principle is the same here. Just as "date" means the correct date in *Ball*, "complete" means complete with the correct identifying information—not merely complete with any eight-digit number in the DLN field.

More fundamentally still, the majority's analysis is based on a misstatement of what the statute actually requires. As the dissent correctly observed, the Registration Act does not require that applications be merely "complete." It requires that they be "*properly* completed." 25 Pa.C.S. § 1328(b)(2)(i) (emphasis added); *see* Concurring/Dissenting Op. at 13. Under the canons of interpretation, the inclusion of the modifier "properly" is independently significant and cannot be treated as mere surplusage. *See* 1 Pa.C.S. § 1921(a) ("Every statute shall be construed, if possible, to give effect to all its provisions.").

The insertion of the term "properly"—which means "in an accurate or correct way"[26]—underscores the General Assembly's deliberate intent to ensure that the necessary information is not just present in a perfunctory way, but that it is up to snuff—that is, correct, accurate, and consistent with the applicant's actual identity.[27]

b) The prohibition against accepting applications that remain "inconsistent" after reasonable inquiry applies to mismatching identifying information.

Separate and apart from the foregoing, the statute's use of the word "inconsistent" is fatal to the majority's analysis. Section 1328(b)(2)(i) of the Registration Act provides that, after reasonable efforts, the commission shall reject the application if it "remains incomplete *or* inconsistent." 25 Pa.C.S. § 1328(b)(2)(i) (emphasis added). The disjunctive "or" means that "incomplete" and "inconsistent" are independent grounds for rejection. An application can be inconsistent even if every field is filled in: if the DLN on the application does not

[26] PROPERLY, Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/properly

[27] And its inclusion means that Ball applies here with even greater force: if a statutory command directing an elector to provide certain information requires that the information be correct, then the command to do so "properly" certainly must mean that the data furnished is accurate and correct.

correspond to the applicant's name and date of birth in PennDOT's database, the application contains internally discordant information. That is the paradigmatic inconsistency.

"Inconsistent" means "lacking consistency," and "consistency" means "agreement or harmony of parts or features to one another or a whole." INCONSISTENT, CONSISTENCY, The Merriam-Webster Dictionary.[28] When mandatory identifying information on the application does not harmonize with the corresponding government database, the application is "inconsistent" in the most straightforward sense of the word.

Inexplicably, however, the majority never confronted this term. Its merits discussion does not quote it, does not analyze it, and does not explain how the Directive can be reconciled with it. The majority's failure to do so is no minor oversight. Rather, it sharply conflicts with a central tenet of the Statutory Construction Act, which provides that "[e]very statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S. § 1921(a). The General Assembly is presumed to

[28] *Available at* https://www.merriam-webster.com/dictionary/inconsistent and https://www.merriam-webster.com/dictionary/consistency.

"intend[] the entire statute to be effective and certain." *Id.* § 1922(2). The majority's reading effectively strips the word "inconsistent" of meaningful effect, leaving it no real work to do. If a mismatch in mandatory identifying information is not an "inconsistency" within the meaning of Section 1328(b)(2)(i), it is difficult to imagine what would be. That is not a permissible construction. The dissent rightly recognized as much. *See* Concurring/Dissenting Op. at 4–5, 8–9.

c) An examination of the DLN or Partial SSN is central to a commission's ability to comply with its statutory duty to determine whether the applicant is a "qualified elector."

The statute imposes yet another related requirement that the majority likewise ignored. Recall, in this connection, that according to the majority, examination of a DLN or Partial SSN is somehow tied (exclusively) to identifying and eliminating duplicates. But the Registration Act states otherwise. Section 1328(a)(2)(ii) requires the commission to determine "[w]hether the applicant is a qualified elector." 25 Pa.C.S. § 1328(a)(2)(ii). And an application may be approved only where it "contains the required information indicating that the applicant is a qualified elector of the county." *Id.* § 1328(b)(3)(ii). When the identifying number on the application does not match the

applicant's record in the relevant government database, the commission cannot make the threshold determination that the applicant is who he or she claims to be—and therefore cannot determine that the applicant is a qualified elector. The Directive, by commanding acceptance notwithstanding an unresolved mismatch, eliminates the commission's ability to fulfill this statutory duty.

3. Applied to the Directive, the Plain-Language Framework Confirms That the Majority's Decision Cannot Stand.

Having established what the Registration Act and SURE Regulations require, the analysis turns to the Directive's operative commands and the majority's treatment of them. At every point of comparison, the Directive forbids what the law requires.

The majority further erred by suggesting that the Directive somehow incorporates the ascertainment process contemplated by the Registration Act and the SURE Regulations. That suggestion collapses upon contact with the Directive's text.

Under Pennsylvania law, the sequence is clear: examine the application; determine whether it is properly completed; if not, use reasonable efforts to ascertain the necessary information; and only then

decide whether to accept or reject. *See* 25 Pa.C.S. § 1328(a), (b)(2)(i)–(ii), (b)(3)(ii); 4 Pa. Code § 183.5(c). The ascertainment occurs before acceptance. In this regard it bears noting that the process set forth in Section 1328(b)(2)(i) and Section 183.5(c) exists precisely to address the common, innocent causes of mismatches—sloppy handwriting, data-entry errors, transposed digits, and the like. The statute affords the county reasonable efforts—including mailing a notice to the applicant or contacting the applicant by phone—to resolve the discrepancy before any adverse action is taken. *See* 4 Pa. Code § 183.5(c). The majority's contrary characterization—that Commissioner Rossman seeks "out-of-hand rejection"—is not only wrong; it ignores the very statutory safeguard that answers the policy concern the majority appears to have been animated by.

The Directive turns this sequence on its head. It commands that applications with mismatched identifying information "may not be rejected and must be processed like all other applications." Directive at 1 (Appendix 2) (emphasis in original). It further commands that applications placed in pending status while follow-up occurs "MUST be accepted." *Id.* (emphasis in original). In other words, under the

Directive, acceptance occurs first; any further inquiry comes only afterward—if at all.

To be sure, the Directive does not expressly prohibit a county from conducting some form of follow-up inquiry. But that concession avails the Department nothing. Because the Directive commands that the application "MUST be accepted" regardless of the inquiry's outcome, any follow-up the county might undertake is stripped of practical consequence. The ascertainment process under Section 1328(b)(2)(i) and Section 183.5(c) has legal teeth precisely because it determines whether an application will be accepted or rejected. The Directive removes those teeth by mandating the outcome in advance. An investigation whose conclusion is preordained is no investigation at all.

Worse still, the majority's analysis effectively creates a species of "provisional" or "interim" acceptance that Pennsylvania law does not recognize. Section 1328 establishes a binary framework: the application is either accepted or rejected. The statute does not contemplate an intermediate category of unresolved applications that are accepted onto the rolls while the county continues to investigate. An innovation of this magnitude—fundamentally altering the statutory sequence for

processing voter registration applications—would have to come in the form of a statute, or—at a minimum—duly promulgated regulation. *See e.g., Shrom*, 292 A.3d at 917. It cannot, however, be created by an unpromulgated directive, and it certainly cannot be inferred from a statute that contains no trace of it.

The practical consequences confirm the error. Once an application is accepted, the applicant becomes a registered voter. *See* 25 Pa.C.S. § 1328(b)(3)(ii), (c). At that point, removal is no longer governed by the front-end acceptance rules in Section 1328 but by the separate state and federal list-maintenance provisions—provisions that are considerably slower, more cumbersome, and far more limited in scope. *See, e.g.*, 52 U.S.C. § 20507; 25 Pa.C.S. §§ 1901–1906. Thus, the majority's invented "accept first, verify later" regime does more than distort the statutory text. It replaces the General Assembly's chosen sequence with a materially different system—one under which individuals may be placed on the voter rolls before their eligibility has been determined, and under which the practical ability to remove them is sharply constrained by federal law.

The majority compounded these errors by treating duplicate registrations as the sole circumstance in which an unresolved mismatch may warrant rejection. *See* Majority Op. at 12. But Section 1328 does not say an application may be rejected only if the discrepancy reveals a duplicate. It says the application must be rejected if, after reasonable efforts, it remains "incomplete or inconsistent." 25 Pa.C.S. § 1328(b)(2)(i).

That broader command matters enormously. A fictitious identifying number may never produce a duplicate registration, but it is still inconsistent with the applicant's other identifying information and still prevents the commission from determining whether the applicant is a qualified elector. As the dissent explained, "disparate identification numbers can result, not only from duplicate registrations, but also from other kinds of identity fraud perpetuated on registration commissions." Concurring/Dissenting Op. at 8. A made-up number in an application submitted under a fictitious name "would have no analogue in government databases and would not produce a duplicate registration." *Id.* at 8–9. The majority's limitation to duplicates imported into the law

a restriction the General Assembly did not enact and the text will not bear.

* * *

With the governing legal framework properly understood, the Directive's conflict with Pennsylvania law is unmistakable. The Directive commands that applications with mismatched identifying information "may not be rejected." Directive at 1 (Appendix 2). The law requires rejection where, after reasonable efforts, the application remains incomplete or inconsistent. The Directive commands that such applications "must be processed like all other applications." *Id.* The law provides that applications may be approved only where they contain "the required information indicating that the applicant is a qualified elector." 25 Pa.C.S. § 1328(b)(3)(ii). The Directive commands that applications in pending status "MUST be accepted." Directive at 1 (Appendix 2). The law contains no such mandate and, to the contrary, requires ascertainment before acceptance. That is the Directive the Department issued. It is also the Directive the majority never squarely confronted.

4. Even if the Statutory Language Were Ambiguous, the Canons of Construction and the Department's Own Administrative History Confirm That the Registration Act Requires Rejection of Applications with Unresolved Identification Discrepancies.

The foregoing analysis demonstrates that the statutory and regulatory text is clear. But even if this Court were to conclude that the relevant provisions are susceptible to more than one reasonable reading—and they are not—the secondary interpretive tools all point in the same direction.[29]

First, the Department's reading produces an absurd result. Under the Statutory Construction Act, the General Assembly is presumed not to "intend a result that is absurd, impossible of execution or unreasonable." 1 Pa.C.S. § 1922(1). On the Department's view, an applicant has "properly completed" a voter registration form so long as some digits appear in the relevant blank—even if those digits are

[29] *See Bowman v. Sunoco, Inc.*, 65 A.3d 901, 906 (Pa. 2013) ("[I]f we deem the statutory language ambiguous, we must then ascertain the General Assembly's intent by statutory analysis, wherein we may consider numerous relevant factors." (citing 1 Pa. C.S. § 1921(c))); *see also Commonwealth v. Cullen-Doyle*, 164 A.3d 1239, 1242 (Pa. 2017) (holding that, where a term is "materially ambiguous, thereby implicating recourse to the rules of statutory construction[,]" the Court "may discern legislative intent by considering, *inter alia*, the occasion for the provision, the context in which it was passed, the mischief it was designed to remedy, and the object it sought to attain" (citing 1 Pa.C.S. § 1921(c))).

fictitious, transposed, or belong to someone else. That reading would mean that a form bearing the number 00000000 in the DLN field has been "properly completed" so long as the applicant wrote something. It would mean that a county commission confronted with a blatant inconsistency between the application and the government database must nonetheless accept the application, powerless to act on information that the law expressly directs it to examine. That is not a plausible reading of a statutory scheme designed to ensure the accuracy of voter rolls. *See, e.g.*, *Ball*, 289 A.3d at 22 & n.129.

Second, the Department's reading violates the rule against surplusage. As demonstrated above, if a mismatch in mandatory identifying information is not an "inconsistency" warranting rejection under Section 1328(b)(2)(i), the word "inconsistent" has no meaningful function in the statute. *See* 1 Pa.C.S. § 1921(a) ("Every statute shall be construed, if possible, to give effect to all its provisions."); *id.* § 1922(2) (presuming General Assembly "intends the entire statute to be effective and certain"). The majority's interpretation would relegate "inconsistent" to a nullity. This Court should not adopt a construction

that renders statutory language superfluous when a natural and readily available alternative gives every word its intended effect.

Third, contemporaneous legislative history confirms that the majority's interpretation sharply conflicts with the General Assembly's intent.[30] The 2001 and 2002 amendments to the statutory regime governing voter registration in Pennsylvania were enacted in direct response to a well-documented, years-long failure in the accuracy and integrity of the Commonwealth's voter rolls—a failure that the General Assembly had formally diagnosed, on the record, as rooted in the absence of a single, reliable identifying number that could be used to confirm an applicant's eligibility alongside the basic information supplied (i.e., Name, Date of Birth, and Signature). As early as 1996, the Department of State's own contracted study found that the absence of a statewide central registry capable of cross-checking voter records posed a significant risk to the purity of the ballot box.[31] The Legislative

[30] *Accord Cullen-Doyle*, 164 A.3d at 1242 (examining committee reports and hearing testimony).

[31] *Study of a Statewide Central Registry of Qualified Voters*, Election Data Services, Inc. (June 24, 1996), *discussed in* Joint Select Comm. to Examine Election Issues, *Interim Report Regarding a Statewide Integrated Voter Registration System* 8–9 (Pa. Gen. Assembly 2001), *available at* https://www.legis.state.pa.us/WU01/LI/TR/Reports/2001_0003R.pdf.

Budget and Finance Committee's February 2000 Report reinforced this finding, explicitly recommending the adoption of a system enabling registration officials to use some form of unique identifying number as a means of cross-checking a voter's eligibility—observing that without such a tool, "common names and birth dates will continue to pose a problem for counties" seeking to identify and eliminate not only duplicate registrations, but also ineligible voters.[32] That recommendation was the direct precursor to Act 61 of 2001, which mandated creation of the SURE System and expressly stated that, "[i]t is the intent of the General Assembly that a Statewide system of voter registration be established in this Commonwealth to ensure the integrity and accuracy of voter registration records." Act of June 25, 2001, P.L. 692, No. 61, § 321.

The SURE Regulations made DLN and Partial SSN verification the instrument by which county commissions carry out that mandate, and the legislative history thus establishes that the requirement was

[32] Pa. Legislative Budget & Fin. Comm., *A Performance Audit of Pennsylvania's Compliance with the Pennsylvania Voter Registration Act* 14 (Feb. 2000), *discussed* in Joint Select Comm. to Examine Election Issues, *Interim Report Regarding a Statewide Integrated Voter Registration System* 14 (Pa. Gen. Assembly 2001), https://www.legis.state.pa.us/WU01/LI/TR/Reports/2001_0003R.pdf.

designed not merely to prevent duplicate entries but to allow commissions to affirmatively examine eligibility—confirming the applicant's identity as a real, verifiable person before adding them to the rolls—consistent with the General Assembly's declared goal of ensuring "the integrity and accuracy of voter registration records" that animated both Act 61 of 2001 and Act 3 of 2002.

Moreover, while not entitled to significant weight in the present context, to the extent this Court is inclined to consult the Department's own contemporaneous administrative construction, it supports Commissioner Rossman's reading. In 2003—approximately one year after the Registration Act was enacted and the SURE Regulations were promulgated—the Department published a notice in the Pennsylvania Bulletin providing that election officials must "determine that the number provided by the applicant is valid" before accepting the application. Pa. Bull., Vol. 33, No. 50, at 6120 (Dec. 13, 2003). The Department's subsequent reversals—first in 2006, then in 2018—were not accompanied by any rulemaking, any legal analysis grounded in Pennsylvania law, or any amendment to the regulations that make one of the two identifying numbers mandatory. The Department simply

changed its position by fiat, each time without offering a reasoned explanation for why its earlier view was wrong.

* * *

Ultimately, then, the choice before this Court is not a difficult one. Either the Court enforces the integrated statutory-and-regulatory scheme the General Assembly enacted and the Department itself codified, or it allows an unpromulgated executive directive to override that scheme by fiat. Pennsylvania law requires county officials to examine voter registration applications, use reasonable efforts to ascertain necessary information, and reject applications that remain incomplete or inconsistent. The Directive commands the opposite result: it forbids rejection on the very basis the law treats as disqualifying and compels counties to accept applications before mandatory identity discrepancies have been resolved. Because the Directive cannot be reconciled with Pennsylvania law, the Commonwealth Court's contrary conclusion must be reversed, and Commissioner Rossman is entitled to declaratory and injunctive relief.

B. The Directive is an unlawful *de facto* regulation.

The majority below erred, both procedurally and substantively, in its analysis of whether the Directive is an unlawful *de facto* regulation. More fully, the majority committed a procedural error by failing to apply the "binding norm" rubric at all. It then erred substantively by failing to identify the binding norms of the Directive. The dissent, however, correctly identified and applied the appropriate analytical rubric, and reached the proper conclusion: the Directive is an unlawful regulation. Moreover, even if, as the majority found, the Directive issues commands consonant with the Registration Act, the conclusion that the Directive is lawful is still incorrect in failing to require the Department to promulgate the Directive's commands through formal rulemaking. Lastly, the majority erred in finding that even as an "interpretive regulation" the Directive only tracked, but did not expand upon, the Registration Act.

Inherently, Commonwealth agencies have no power to make law. *Northwestern Youth Servs., Inc. v. Commonwealth, Dep't of Pub. Welfare*, 66 A.3d 301, 310 (Pa. 2013) (*Northwestern II*). Instead, agencies can only make binding law according to the strict regulatory

process established by the General Assembly in the Commonwealth Documents Law, the Regulatory Review Act, and the Commonwealth Attorneys Act. *Id.* Courts have recognized, however, that not every agency pronouncement on the law is a "substantive regulation" that must follow this statutory scheme; instead, agencies can also issue non-binding, "non-legislative rules." *See id.* As a result, in the administrative law context, agency rules essentially fall into one of three categories: (1) "legislative rules"; (2) "interpretive rules"; or (3) "statements of policy." *See id.* at 311-12.[33] The present appeal concerns only the former two categories.[34]

A legislative rule establishes "a substantive rule, creating a controlling standard of conduct[.]" *Borough of Pottstown v. Pa. Mun. Retirement Bd.*, 712 A.2d 741, 743 (Pa. 1998). Such rules must follow the formal procedures in the Commonwealth Documents Law, the

[33] This Court has also referred to first two categories as "legislative regulations" and "interpretive regulations," respectively. *See Slippery Rock Area Sch. Dist. v. Unemployment Compensation Bd. of Review*, 983 A.2d 1231, 1236 (Pa. 2009). Legislative rules have also been called "substantive regulations." *Borough of Pottstown v. Pa. Mun. Retirement Bd.*, 712 A.2d 741, 743 (Pa. 1998).

[34] In the Commonwealth Court, the Department only argued the Directive is an "interpretive regulation." *See* (R. 442a.) (Department brief in opposition to Rossman application for summary relief). The Department did not suggest the Directive was a statement of policy and the Commonwealth Court did not evaluate it as such. *See* Majority Op. at 12-13.

Regulatory Review Act, and the Commonwealth Attorneys Act to be valid. *Id.* Only then does a legislative rule "ha[ve] force of law[.]" *Id.*

In contrast, an interpretive rule does not establish a binding standard of conduct. *Id.* Instead, valid interpretive rules "merely construe a statute and do not improperly expand upon its terms." *Id.* Stated otherwise, such rules are valid if they "genuinely track the meaning of the underling statute, rather than establish an extrinsic substantive standard." *Id.* An interpretive rule does not need to be formally promulgated. *Id.*; *see also Northwestern II*, 66 A.3d at 311 (observing interpretive rules are "exempt from notice-and-comment rulemaking and regulatory-review requirements").

This Court has identified the fundamental difference between legislative and interpretive rules: a rule establishing a "binding norm" is a legislative rule and not an interpretive one. *See Pennsylvania Hum. Rels. Comm'n v. Norristown Area Sch. Dist.*, 374 A.2d 671, 679 (Pa. 1977). The Commonwealth Court has developed a three-factor test to identify a binding norm: "(1) the plain language of the enactment; (2) the manner in which the agency implements it; and (3) whether it restricts the agency's discretion." *Northwestern Youth Servs., Inc. v.*

Commonwealth, Dep't of Pub. Welfare, 1 A.3d 988, 993 (Pa. Cmwlth. 2010) (*Northwestern I*), *aff'd*, 66 A.3d 301 (Pa. 2013).[35] While this Court has not expressly adopted this same test, it has noted its use favorably. *See Northwestern II*, 66 A.3d at 306-07; *see also id.* at 318 (dissenting opinion) ("The three-factor test requires consideration of (1) the plain language of the bulletin, (2) the manner in which DPW has implemented the bulletin, and (3) the amount of administrative discretion allowed by the bulletin.").

Instead, this Court has struck down agency rules that respective agencies alleged were non-legislative rules without a factor-based test. *See Shrom v. Pa. Underground Storage Tank Indemnification Bd.*, 292 A.3d 894, 917 (Pa. 2023); *Northwestern II*, 66 A.3d at 315; *Lopata v. Commonwealth, Unemployment Compensation Bd. of Review*, 493 A.2d 657, 660 (Pa. 1985); *see generally Corman v. Acting Secretary of Pa.*

[35] The three-factor binding norm test used by the Commonwealth Court seemingly first appeared in *R.M. v. Pennsylvania Housing Finance Agency of the Commonwealth*, 740 A.2d 302, 307 (Pa. Cmwlth. 1999), *allocatur denied*, 759 A.2d 390 (Pa. 2000). *See Northwestern II*, 66 A.3d at 318 n.1 (dissenting opinion, citing *R.M.* and three-part test). The Commonwealth Court has used it repeatedly since then. *See, e.g.*, *Pennsylvania Sch. Boards Ass'n, Inc. v. Mumin*, 317 A.3d 1077, 1101 (Pa. Cmwlth. 2024), *appeal pending*, No. 39 MAP 2024 (Pa.); *see also* Concurring/Dissenting Op. at 10-11 (noting the Court has applied the three-part framework "in multiple decisions").

Dep't of Health, 266 A.3d 452, 486 (Pa. 2021). The common thread in this Court's cases invalidating non-legislative rules appears to be that the rule examined left the agency with no discretion to deviate from the so-called non-legislative rule. *Cf. Shrom*, 292 A.3d at 917; *Northwestern II*, 66 A.3d at 315; *Lopata*, 493 A.2d at 660.[36] Indeed, even the Commonwealth Court, despite adopting the three-factor binding-norm test, appears to chiefly look for loss of discretion when examining rules as improper *de facto* regulations. *Cf. Pennsylvania Sch. Boards Ass'n, Inc. v. Mumin*, 317 A.3d 1077, 1105 (Pa. Cmwlth. 2024), *appeal pending*, No. 39 MAP 2024 (Pa.); *Cary v. Bureau of Pro. & Occupational Affs.*, 153 A.3d 1205, 1214 (Pa. Cmwlth. 2017) (*en banc*); *Transportation Servs., Inc. v. Underground Storage Tank Indemnification Bd.*, 67 A.3d

[36] *Shrom*, 292 A.3d at 917 ("Given that both the Board and the Fund have been acting under the faulty presumption that Section 706(3) clearly and unambiguously requires a claimant to establish that the subject USTs had been registered and the Section 503 registration fees had been paid at the time that the release giving rise to the claim was discovered to establish eligibility for the payment of remediation costs from the Fund under Section 706(3) of the Act, we must also conclude that the Fund's rule in that regard constitutes a unlawful, *de facto* regulation."); *Northwestern II*, 66 A.3d at 315 ("In the present case, although referring to its bulletin in terms applicable to statements of policy, DPW does not convincingly deny that the is an attendant binding effect."); *Lopata*, 493 A.2d at 660 ("In the instant case it is clear that U.C. Bulletin No. 871 does more than simply offer generalized guidelines, or articulate general statements of policy. Rather, the standard therein articulated is completely and unequivocally determinative of the issue of how to count a credit week which overlaps two quarters.").

142, 155 (Pa. Cwlth. 2013)[37]; *Eastwood Nursing & Rehab. Ctr. v. Dep't of Pub. Welfare*, 910 A.2d 134, 146 (Pa. Cmwlth. 2006), *allocatur denied*, 927 A.2d 626 (Pa. 2007); *Dep't of Env't Res. v. Rushton Min. Co.*, 591 A.2d 1168, 1174 (Pa. Cmwlth. 1991), *allocatur denied*, 600 A.2d 541 (Pa. 1991).[38]

Against this backdrop, the majority below erred in several ways.

[37] While no appeal was taken in *Transportation Services*, this Court favorably cited the decision in *Shrom*. *See* 292 A.3d at 917.

[38] *Mumin*, 317 A.3d at 1105 ("Moreover, the State Plan, which incorporates the Department's Model Policy by reference, is the USDE-approved document pursuant to which the Department receives federal funding. It eliminates the Department's discretion to fund LEA special education plans that do not extend a FAPE to children with disabilities until their 22nd birthdays. Accordingly, based on the limits of the Department's discretion, this Court holds that the New Age-Out Plan is a binding norm."); *Cary*, 153 A.3d at 1214 ("Importantly, the statement of policy is not applied in a discretionary manner; instead, it was crafted by the Board to be used as the legal guidepost to determine unconditionally, and in all instances, whether the educational accreditation requirements for licensure are met."); *Transportation Servs.*, 67 A.3d at 155 ("[T]he Fund's permanent closure rule establishes a standard of conduct which the Fund applies in all situations now and in the future, which is the hallmark of a regulation."); *Eastwood*, 910 A.2d at 146 ("The plain language of the provision indicates the Department wrote the provision to restrict its staff from granting any request for enrollment of a nursing facility in the MA program, or expansion of MA beds in a facility currently enrolled."); *Rushton*, 591 A.2d at 1174 ("Applying the binding norm test to these conditions, the DER is attempting to implement a uniform state-wide policy for certain aspects of mine operations. Inherent in a state-wide policy is that the regulations will necessarily be binding on the agency, and none of the agency's personnel will have any discretion to vary those terms and conditions.").

1. The Directive establishes a binding norm and thus cannot be a mere "interpretive regulation."

To begin, this Court should note that the Department does *not* claim the Directive was promulgated under the Commonwealth Documents Law, the Regulatory Review Act, and the Commonwealth Attorneys Act. *See* (R. 441a–443a). In fact, the Department didn't even publish the Directive in the Pennsylvania Bulletin or any official publication, let alone pursue formal promulgation. *See* Concurring/Dissenting Op. at 14. Thus, if this Court finds the Directive is a legislative rule, the Directive is per se invalid for having not been properly promulgated. *See Lopata*, 493 A.2d at 660; *Cary*, 153 A.3d at 1215; *see also Shrom*, 292 A.3d at 917.

Turning then to the heart of the analysis, the majority below procedurally erred by sidestepping the "binding norm" analysis altogether. *See* Majority Op. at 12-13. The dissent, in contrast, rightly identified the analytical error in the majority's analysis and proceeded to apply the Commonwealth Court's long-standing three-factor test and found the Directive to be an improper legislative rule. *See* Dissenting Op. at 10-11, 13-14. This Court should do the same.

Indeed, whether the Court applies the Commonwealth Court's test, as applied in this Brief, or any other test, the Directive establishes a binding norm. It restricts discretion and commands both the Department and county registration commissions to act in specific ways. Applying this analysis shows that the majority also committed substantive error by failing to identify the Directive's binding norm.

Plain language. The Directive is replete with mandatory language, commanding county registration commissions that they "**must ensure**" their procedures match the process set forth in the Directive, that they "**may *not***" reject applications for mismatched information, and that they "**MUST**" accept applications after an investigation has not resolved mismatched data. *See* Directive at ¶ 5 (all emphases in original) (Appendix 2). Indeed, even the Directive's opening paragraph makes clear that the Department is doing more than clarifying the law: the Directive states the Department intends to "clarify *and specify* legal processes[.]" *See* Directive at ¶ 1 (emphasis added). While the majority found the language merely tracked the Registration Act and did not expand upon it, *see* Majority Op. at 13, the dissent rightly observed the language commands counties—at their

financial peril for ignoring it—to accept mismatched application data. *See* Concurring/Dissenting Op. at 13-14 (citing 25 Pa.C.S. § 1803(a)-(b)). Moreover, as explained above, *see supra* Section VIII.A.2–3, the Directive actually compels a specific act—accepting applications with mismatched data after commissions have made reasonable efforts to ascertain the voter's identity. That is not required by 25 Pa.C.S. § 1328(b)(2) of the Registration Act or, indeed, even permitted under *existing* Department regulations. *Cf.* 4 Pa. Code § 183.5(f)(8). Further still, the Directive—by the Department's own admission—contradicts the original guidance issued to counties. That is manifest not only on the face of the 2003 Notice published in the Pennsylvania Bulletin, *see* Pa. Bull., Vol. 33, No. 50, at 6120 (Dec. 13, 2003), but is also acknowledged in the 2006 Alert. In sum, the Directive's plain language shows the Department created a binding norm.

Implementation. The Department implemented the Directive in 2018 and since has continuously insisted that county registration commissions followed it. Critically, the Department both defended it vigorously in this litigation and has refused to modify existing *regulations*—specifically 4 Pa. Code § 183.5(f)(8)—that are incompatible

with it. As the dissent observed, the Department intended the Directive, when implemented in 2018, to be immediately followed. *See* Concurring/Dissenting Op. at 14. And the Department never signaled an intent for the Directive to *one day* become part of Pennsylvania law, but rather the Department stated it intended it to be *immediately* part of Pennsylvania law (subject to financial sanction for non-compliance). *See* Concurring/Dissenting Op. at 13-14.

Discretion. Lastly, the Directive strips the Department and its personnel of discretion. The Department cannot allow county election commissions to reject applications with mismatched information and to leave such applications in a pending status; its financial threat against contrary action is made clear in the first paragraph. *See* Concurring/Dissenting Op. at 13. The Directive likewise strips county election commissions of discretion to, among other things, hold applications in a pending status. In fact, as the dissent rightly observed, the Directive cuts a unitary path: accept the application with mismatched data after an inconclusive investigation or else face sanction. *See* Concurring/Dissenting Op. at 14. The Directive allows no additional considerations; i.e., it affords no discretion.

Accordingly, the Directive, when analyzed through the binding-norm framework, is shown to be an unlawful *de facto* regulation. It commands, it compels, and it strips discretion. The Directive is a regulation in every sense. Thus, the Court should declare it void.

2. Even if the Directive contains a correct interpretation of the Registration Act, the Department must still formally promulgate it because it contains a binding norm.

Next, even if the Court agrees that the Directive is consistent with Pennsylvania law, the Court must still declare it void. As described at length above, the Directive contains a binding norm. The majority below seems comfortable with the Directive's validity because the Court concluded the Directive's recitation of the law is correct. *See* Majority Op. at 13. But even if the binding norm created by the Directive is consistent with the Registration Act and existing registration regulations (it isn't), it still must be formally promulgated. Indeed, Pennsylvania courts have struck down unpromulgated legislative rules masquerading as non-legislative rules, even when the respective court agreed the rule would be proper had it been formally promulgated. *See Shrom*, 292 A.3d at 917 ("Therefore, to the extent that the Fund wishes to impose an eligibility requirement relative to

the timing of UST registration and the payment of Section 503 registration fees in the future, the Board must adopt a regulation to that effect in accordance with the Commonwealth Documents Law as it is permitted to do by Section 706(6)."); *Cary*, 153 A.3d at 1216 n.8 ("Following our decision, the Board is free to implement a new policy or promulgate a regulation for future licensing cases. In allowing the Board to decide for itself how it wants to determine in the future what is a 'board-approved, accredited' school, we believe that our course of action is prudent and respectful of the Board's statutory delegation of legislative power."); *Rushton Mining*, 591 A.2d at 1176 n.17 ("While the DER obviously has the authority to place conditions in permits, we have determined in this case that simply having statutory and regulatory authority to place conditions in permits does not mean an agency may do so if those conditions are regulations which must first be promulgated."); *see also Corman*, 266 A.3d at 485 ("The Department's ability to develop comprehensive regulations for disease control in schools is apparent. Presently, we see no obvious reason why it cannot formally add masks to that list in due course.").

In other words, if this Court agrees the Directive accurately reflects Pennsylvania law—which it does not—the Court must still declare it invalid because it constitutes a binding norm.

3. Even if the Directive is a mere interpretive rule, the Court should still declare it invalid because it does not genuinely track the Registration Act.

Finally, if the Court finds the Directive does not establish a binding norm, the Court should still invalidate it, even as a mere interpretive rule. As detailed elsewhere in this Brief, the Directive contradicts both 25 Pa.C.S. § 1328(b)(2)(i) and 4 Pa. Code § 183.5(f)(8). Thus, it is not valid, even as a purported interpretive rule.

For all the reasons set forth above, the Court should reverse the decision of the Commonwealth Court and declare the Directive an invalid *de facto* regulation.

IX. CONCLUSION

The Directive cannot be squared with Pennsylvania law, and it cannot be enforced as if it were law. It commands county officials to do what the Registration Act and the Department's own regulations forbid, and it does so through an unpromulgated directive that carries all the hallmarks of a binding rule without any of the procedures Pennsylvania law requires. This Court should not permit executive fiat to displace

enacted law. The Court should therefore reverse the Commonwealth Court's order, declare the Directive invalid, enjoin its enforcement, and grant such other relief as may be just and proper.

Respectfully submitted,

Dated: March 17, 2026

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WORD COUNT CERTIFICATION

I hereby certify that the foregoing principal brief complies with the word count limits under Pa.R.A.P. 2135(a). Based on the word count feature used to prepare the document, it contains 13,509 words, exclusive of the supplementary matters in 2135(b).

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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.

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APPENDIX 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Rossman, in his official capacity as member of the Potter County Board of Elections, Petitioner	:	
v.	:	No. 516 M.D. 2024
Department of State of the Commonwealth of Pennsylvania, and Al Schmidt, in his official capacity as Secretary of the Commonwealth, Respondents	:	Argued: October 7, 2025

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE WOLF FILED: December 8, 2025

Before the Court are (1) preliminary objections filed by the Pennsylvania Department of State (Department) and Al Schmidt, in his official capacity as Secretary of the Commonwealth (Secretary, and with the Department, Respondents) to the original jurisdiction petition for review filed by Robert Rossman, in his official capacity as a member of the Potter County Board of Elections and Registration Commission (Petitioner); and (2) Petitioner's and

Respondents' cross-applications for summary relief.[1] We conclude initially that Petitioner has standing to bring this action, which challenges a directive issued by the Secretary regarding Petitioner's duties as an elected official when accepting applications to register to vote. But we also conclude that the Secretary's directive is consistent with Petitioner's statutory duties, so Respondents are entitled to summary relief in their favor. Accordingly, we overrule Respondents' first preliminary objection, grant Respondents' cross-application for summary relief, and dismiss the petition for review.

I. BACKGROUND

Petitioner filed this petition for review in our original jurisdiction seeking declaratory and injunctive relief. The petition alleges the following facts, which are undisputed. Petitioner is an elected county commissioner of Potter County. Pet. ¶ 10. As such, under the statute commonly called the Pennsylvania Voter Registration Act (Registration Act),[2] Petitioner is a statutorily designated member of the "commission" that oversees the registration of electors in Potter County. Pet. ¶ 10. Thus, Petitioner has powers and duties related to voter registration. *Id*. The Department is authorized under the Registration Act to take certain actions regarding voter registration, and the Secretary is the chief officer charged with overseeing the Department and its duties, including prescribing voter registration forms and "promulgat[ing] regulations necessary to establish, implement and administer" the Statewide Uniform Registry of Electors (SURE system). *Id.* ¶¶ 11-12 (quoting 25 Pa. C.S. § 1222(f)).

[1] By May 29, 2025 Order, this Court determined that this matter involves purely legal questions, ordered Respondents to file a cross-application for summary relief, and directed that the cross-applications be considered simultaneously with the preliminary objections.

[2] 25 Pa. C.S. §§ 1101-1906.

Under the Help America Vote Act of 2002 (HAVA),[3] all applications for voter registration must include at least one of three pieces of identifying information: a driver's license number, the last four digits of a Social Security number (SSN), or a statement that the applicant has neither a driver's license nor an SSN. *Id.* ¶¶ 13-15. HAVA does not require officials to reject an application if the number provided does not match the applicant's identity, but it does require that state officials have access to Social Security and driver's license databases and that they determine that the application provides enough information to comply with state law before accepting it. *Id.* ¶¶16-18. The SURE system, created by Pennsylvania statute before HAVA, satisfies HAVA's requirement for a statewide database that assigns a unique identifying number to each registered voter in the state. *Id.* ¶¶ 19-21 (citing 52 U.S.C. § 21083(a)(1)(A)(iii)). In 2003, the Department promulgated regulations governing the SURE system. *See* 4 Pa. Code Ch. 183.

The Registration Act and SURE system regulations establish the following registration process. A voter registration application must have a space for the voter's driver's license number or the SSN, 4 Pa. Code § 183.1(a); and the application must be on an official form provided by the Secretary, by the Pennsylvania Department of Transportation (PennDOT) if registering while obtaining a driver's license, or by the Federal Election Assistance Commission (FEAC), 25 Pa. C.S. §§ 1323-24(a). Upon receiving the application, a registration commission or commissioner must determine whether the application is "complete" and "[w]hether the applicant is a qualified elector." 25 Pa. C.S. § 1328(a)(2)(i)-(ii). If it is not properly completed and the commission cannot with reasonable efforts obtain the missing information, it must reject the application. *Id.* § 1328(b)(2)(i). If

[3] 52 U.S.C. §§ 21081-21085, 21101-21102.

the application "contains the required information indicating that the applicant is a qualified elector," the commission must accept the application. *Id.* § 1328(b)(3)(ii). The commission must also use the applicant's name and date of birth to check for a duplicate registration in the SURE system; if it finds a possible duplicate, the commission may use the driver's license number, SSN, or the unique SURE system identifier to determine if it is in fact a duplicate registration. 4 Pa. Code § 183.6(a)(2). If that information is missing from the application, the commission uses the signature to investigate duplicates. *Id.* § 183.6(a)(3).

Since HAVA was enacted, the Department has issued guidance about what a commissioner should do with the driver's license number or SSN on an application. Initially, the Department stated that the application must be rejected unless the number given is "valid." 33 Pa. B. 6340-59 (Dec. 13, 2003). But in a 2006 communication, the Department stated that "the failure to achieve a match between a voter registration application and a record in the Commonwealth's driver's license database or the database of the Social Security Administration is not a reason to reject the application." Pet. Ex. C, at 5.

In 2018, the Department issued a "Directive Concerning [HAVA]-Matching Drivers' Licenses or Social Security Numbers for Voter Registration Applications" (Directive). Pet. ¶ 51 & Ex. D. The Directive states that a registration application where the applicant's name does not correspond to the identifying numbers provided on the application "may *not* be rejected and must be processed like all other applications." *Id.* Ex. D (emphasis in original). The Directive prohibits commissions from placing an application "in 'Pending' status while a county is doing follow-up with an applicant whose driver[] license or [SSN] could not be matched" and provides that such applications "**MUST** be accepted, unless the

county has identified another reason to decline the application." *Id.* (emphasis in original). The Directive purports to rely on "state and federal law" and was not promulgated as a legislative regulation. Pet. ¶¶ 56-58.

According to a 2019 Auditor General's report, of the 8.6 million voter registrations in the SURE system, more than 600,000 lack a driver's license number. *Id.* ¶ 63 & Ex. E. The report identifies 37,000 *potential* SURE system duplicate registrations, based on analysis of the driver's license number and/or SSN. *Id.* ¶¶ 64-65. Duplicate registrations could facilitate voters committing the criminal offense of voting more than once in a single election. *Id.* ¶ 66. There have been "rare" prosecutions for double voting in a few counties in 2024. *Id.* ¶¶ 67-68 & n.4.

Petitioner, as a commissioner, faces potential criminal penalties for not following the legal requirements of the registration process. For example, it is a misdemeanor for anyone to "[k]nowingly and intentionally prevent an applicant who is a qualified elector from being registered." 25 Pa. C.S. § 1711(a)(1). For a commissioner, it is a misdemeanor to "knowingly register[] or permit[] the registration of an applicant not lawfully entitled to be registered," *id.* § 1702(a), to "[i]ntentionally fail to make a transmission under Section 1328 (relating to approval of registration applications)," *id.* § 1712(a)(2), to "without reasonable cause, refuse[] to register a qualified elector lawfully entitled to be registered," *id.* § 1702(b), or "to intentionally delay[], neglect[] or refuse[] to perform a duty imposed by [the Registration Act]," *id*. § 1706. Pet. ¶¶ 71-73. The Secretary can also file an action to withhold election funding from a county if a commissioner refuses to comply with the Registration Act. *Id.* ¶¶ 75-76.

Because of the Directive, Petitioner has accepted applications where the driver's license number or SSN does not match the applicant's information located in the corresponding database. *Id.* ¶ 77. He believes that because he cannot reject an application based on a mismatch between those numbers and the database, he has been forced to create duplicate registrations. *Id.* ¶¶ 78-80. Absent the Directive, Petitioner would reject applications where the driver's license number or SSN do not match the information in the relevant database, because in his view those applications are "not 'properly completed'" as the Registration Act requires. *Id.* ¶ 84.

The petition for review seeks declaratory and injunctive relief in two counts. In Count I, Petitioner requests a declaration that the Directive requires him to violate Pennsylvania law, because the Directive requires Petitioner to ignore incompleteness in voter registration applications and accept voter registration applications that have less than the minimum data required by law. Petitioner requests an injunction against "enforcement" of the Directive. Alternatively, in Count II, Petitioner seeks a declaration that the Directive is an unlawful *de facto* regulation and, therefore, is void and unenforceable. He seeks an injunction against the Directive unless and until it is properly promulgated as a binding regulation.

II. ISSUES

Respondents raise two preliminary objections. First, they assert that Petitioner, as a single commissioner, lacks standing to bring this action for the commission as a whole. Second, they raise a demurrer to the legal sufficiency of both counts of the petition for review. Respondents seek summary relief and dismissal on those same bases, including their position on the merits that the

Directive does not conflict with state law. Petitioner seeks summary relief on both counts, claiming no facts are disputed and he is entitled to relief as a matter of law.

III. DISCUSSION

When deciding preliminary objections, we accept as true all well-pled material facts and all reasonable inferences from those facts. *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1214 n.6 (Pa. Cmwlth. 2018) (en banc). We need not accept unwarranted factual inferences, conclusions of law, arguments, or opinions. *Id.* To sustain preliminary objections, it must be clear that the law will permit no recovery, even resolving doubts in favor of the non-movant. *Id.*

Further, we will grant an application for summary relief in our original jurisdiction only if there are no disputes of fact. *Phantom Fireworks Showroom*, 198 A.3d at 1220. Summary relief "is appropriate where a party asserts a challenge to the constitutionality of a statute and no material facts are in dispute." *Id.*

A. Preliminary Objections: Standing

Our Supreme Court has explained the requirement of standing as follows:

> In Pennsylvania, a party to litigation must establish as a threshold matter that he or she has standing to bring an action. Standing in Pennsylvania is a jurisprudential matter. In our Court's landmark decision on standing, we explained that a person who is not adversely impacted by the matter he or she is litigating does not enjoy standing to initiate the court's dispute resolution machinery. *William Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975) (plurality). This is consistent with our jurisprudential approach that eschews advisory or abstract opinions, but, rather, requires the resolution of real and concrete issues. As we explained in *In re Hickson*, [821 A.2d 1238, 1242 (Pa. 2003)], the party to the legal action must be "aggrieved."

> In determining whether a party is aggrieved, courts consider whether the litigant has a substantial, direct, and immediate interest in the matter. To have a substantial interest, the concern in the outcome of the challenge must surpass "the common interest of all citizens in procuring obedience to the law." *Id.* An interest is direct if it is an interest that mandates demonstration that the matter "caused harm to the party's interest." *Id.* Finally, the concern is immediate "if that causal connection is not remote or speculative." [*Fumo v. City of Phila.*, 972 A.2d 487, 577 (Pa. 2009)]. The "keystone to standing in these terms is that the person must be negatively impacted in some real and direct fashion." *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005).

Markham v. Wolf, 136 A.3d 134, 140 (Pa. 2016) (some citations and footnotes omitted).

Respondents argue Petitioner lacks standing because he is a single member of a collective body, the registration commission in Potter County. They claim that, pursuant to the Registration Act, all actions by the commission are collective in nature, so an individual official like Petitioner does not have control over the commission's decision whether to accept or reject an application. In support, they cite cases where we have held that individual members of local elected bodies lack standing to sue individually on behalf of that body. *See O'Neill v. Phila. Zoning Bd. of Adjustment*, 169 A.3d 1241, 1245 (Pa. Cmwlth. 2017); *Szoko v. Twp. of Wilkins*, 974 A.2d 1216, 1220 (Pa. Cmwlth. 2009). Respondents acknowledge that this general rule has an exception, largely taken from our caselaw on legislative standing: if the member of the body can show harm to his individual interest, such as a restriction on his authority to act in his official capacity, he may have standing. *See Markham*, 136 A.3d at 140-46; *Allegheny Reproductive Health Ctr. v. Pa. Dep't of Hum. Servs.*, 309 A.3d 808, 844 (Pa. 2024). Respondents argue Petitioner has not shown how his ability to act as a commissioner is impacted by the Directive.

Petitioner disagrees that the commission's duties are purely collective. He cites several sections of the Registration Act that require "a commissioner" (singular) to, *inter alia*, initial for receipt of the application, examine it, and determine whether it is complete. 25 Pa. C.S. § 1328(a)(1)-(2). The Registration Act vests individual commissioners with power to investigate irregularities, *id.* § 1203, and criminalizes conduct by individual commissioners, as set forth in the petition for review. Thus, Petitioner argues, because of these individual statutory duties and corresponding individual criminal sanctions, his interest in understanding the requirements of the law is greater than those of the general citizen, and he is thus aggrieved by the Declaration. *See Phantom Fireworks*, 198 A.3d at 1215.

We agree with Petitioner that he has standing to bring this action under the facts as alleged in the Petition. Although Respondents are correct that some actions of the commission are purely collective, Petitioner's allegations persuasively show that other statutory duties relate to him acting as an individual. Petitioner's work as a commissioner is ongoing, and he must choose whether to follow the Directive or his own interpretation of state law. Whether Petitioner's individual actions and choices are undertaken on behalf of the commission is immaterial in this case, because unlike the statutes in many of the cases Respondents cite, the Registration Act would possibly criminally punish Petitioner individually for failing to discharge his duties in accordance with law. Under these allegations, that risk gives Petitioner a substantial, direct, and immediate interest in knowing which instruction he must follow. *See Markham*, 136 A.3d at 140.

Having determined Petitioner has standing to sue under the allegations in the Petition, we will overrule Respondents' first preliminary objection. We turn to the substantive claims of the petition for review, which are the subject of

Respondents' second preliminary objection and the cross-applications for summary relief.

B. Substantive Claims

Petitioner seeks summary relief on Count I based on his view that the Directive requires him to violate the Registration Act by accepting "incomplete" or "not 'properly completed'" applications. He explains that the Registration Act commands rejection of an application that does not contain "the required information" to show the applicant is a qualified elector of the county. 25 Pa. C.S. § 1328(b)(3)(ii). He argues this statutory language can only be construed one way: "[T]hat county registration officials are prohibited from approving an application if there is *a mismatch* between the identifying information listed on the application and the information within PennDOT or Social Security Administration databases." Petitioner's Appl. for Summary Relief at 23 (emphasis added). Petitioner claims "properly complete" must imply that the applicant wrote not just "some 8-digit number" in the blank space for the driver's license number or "some 4-digit number in the blank space for the SSN." *Id.* at 25. Instead, he argues, complete means the number must be known to correspond to the applicant's identity in the SURE system or a separate database before the application can be accepted.

Petitioner maintains that the unambiguous language of the Registration Act requires this, but that it is also consistent with the purpose of the Registration Act to maintain confidence in voter registration, by ensuring at the application stage that the voter has provided an accurate driver's license number or SSN. Petitioner adds that the legal support cited in the Directive itself—that HAVA requires accepting an application even if there is a mismatch—is not settled, so HAVA would permit rejection of applications with mismatches.

Respondents seek summary relief on Count I because they view the Directive as completely consistent with state law. First, Respondents point out that the requirement for a driver's license number or SSN comes from HAVA, not from the Registration Act. Respondents acknowledge that the SURE system regulations do require the form application *to have a space for* the applicant to give the driver's license number or SSN. *See* 4 Pa. Code § 183.1. But they emphasize that this is not the same thing as requiring commissioners to reject an application, not because it is *missing* those numbers the application requires, but because of a *mismatch* between the numbers given and other voter information. Thus, Respondents argue, Petitioner's claimed interpretation of the Registration Act and its regulations—that they require rejection based on a mismatch—is an overreading of state law.

Respondents also argue that the Directive is consistent with the structure of the Registration Act. The Directive requires commissioners not to reject an application based on a mismatch alone, which appears to be Petitioner's view of the statutory mandate. Instead, the Directive says that the proper response for a county that receives an application with a mismatch is to investigate further, because mismatches may have innocuous causes like sloppy handwriting or data-entry errors, so they do not necessarily indicate ineligibility. They emphasize that the Registration Act specifically requires such investigation as the remedy, and not rejection, which is the same thing the Directive says. *See* Respondents' Br. in Support of Summary Relief at 10; Respondents' Br. in Opposition to Summary Relief at 28.

As to Count I, we are persuaded by Respondents' arguments that the Directive is not inconsistent with the Registration Act or its regulations. Under those laws, the requirement is for the application to be "complete," that is, that the

applicant has provided the information requested on the application form. Petitioner appears to draw an inference that is one step beyond the statutory requirement: that the information must not only be complete, but also *correct*, that is, not a mismatch. And more tenuously, Petitioner claims the required remedy or response to that mismatch under the law is *to reject* the application. As Respondents explain, however, state law requires a different response: the commissioner must *investigate* to determine if the mismatch relates to a duplicate registration. The statute and its regulations give commissioners the power to investigate for just this reason, including by using the applicant's name and date of birth to check against the SURE system. If the mismatch Petitioner invokes turns out, after investigation, to reveal a duplicate, then both state law and the Directive require rejection. But state law does not authorize an out-of-hand rejection based merely upon a mismatch in the driver's license or SSN databases, without investigation. The Directive, consistent with those provisions, forbids that sort of summary rejection. It thus does not require Petitioner to act inconsistently with his obligations under the Registration Act. Accordingly, we conclude that the Secretary is entitled to judgment as a matter of law on Count I.

Regarding Count II, Petitioner claims the Directive is an unpromulgated-yet-binding regulation, and is thus invalid because it did not follow proper procedure. Respondents contend the Directive is an interpretive regulation, which creates no new legal obligations and merely clarifies how the Secretary interprets the requirements of the Registration Act. Our courts distinguish between legislative and interpretive regulations as follows:

> [A] regulation may be either binding (legislative) or merely entitled to deference (interpretive). Generally, a legislative regulation establishes "a substantive rule

> creating a controlling standard of conduct." *Borough of Pottstown v. Pa. Mun. Ret. Bd.*, 712 A.2d 741, 743 (Pa. 1998) (*Pottstown*). A legislative regulation is valid if adopted pursuant to delegated legislative power, in accordance with the appropriate administrative procedure, and is reasonable. By comparison, an interpretive regulation merely construes and does not expand upon the terms of a statute. *See Pottstown*, 712 A.2d at 743. An interpretive regulation is valid if it "genuinely track[s] the meaning of the underlying statute." *Id* . . . .

Slippery Rock Area Sch. Dist. v. Unemployment Comp. Bd. of Rev., 983 A.2d 1231, 1236 (Pa. 2009) (citation omitted).

We agree with Respondents that the Directive is an interpretive regulation, not a legislative, and thus did not require promulgation. As we have determined, the Directive tracks the meaning of the Registration Act and its regulations, and it does not obligate Petitioner to any conduct that would not otherwise be required of him under extant state and federal law. Thus, Respondents are entitled to judgment in their favor on Count II.

IV. CONCLUSION

For the foregoing reasons, we overrule Respondents' first preliminary objection, concluding that Petitioner has standing to bring this action. Further, we grant Respondents' cross-application for summary relief and dismiss the petition for review.[4]

/s/ Matthew S. Wolf
MATTHEW S. WOLF, Judge

Judge Wallace did not participate in the decision in this matter.

[4] Given this conclusion, we dismiss as moot Respondents' second preliminary objection in the nature of a demurrer and Petitioner's application for summary relief.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Rossman, in his official capacity as member of the Potter County Board of Elections, Petitioner	:	
v.	:	No. 516 M.D. 2024
Department of State of the Commonwealth of Pennsylvania, and Al Schmidt, in his official capacity as Secretary of the Commonwealth, Respondents	:	Argued: October 7, 2025

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

CONCURRING AND DISSENTING OPINION
BY JUDGE McCULLOUGH FILED: December 8, 2025

Because I believe the Directive issued by the Department of State of the Commonwealth of Pennsylvania (Department) (together with Al Schmidt, in his official capacity as Secretary of the Commonwealth, Respondents) sometime in 2018 is inconsistent with Pennsylvania voter registration law and is an invalid, unpromulgated regulation, I must dissent in part.

Specifically, I concur with the Majority's conclusion that Petitioner Robert Rossman (Petitioner) has standing to challenge the Directive. I also concur with the Majority's conclusion that Pennsylvania voter registration law requires the rejection of a registration application where irreconcilable inconsistencies in an applicant's identification numbers reveal a duplicate registration.

I dissent, however, to the Majority's conclusion that rejection based on inconsistent identification numbers is mandated *only* where a duplicate registration is uncovered. To the contrary, Pennsylvania voter registration law mandates rejection of applications where inconsistent identification numbers cannot, after investigation, be reconciled for any reason. Because the Directive on its face flatly prohibits rejection based on inconsistent identification numbers *in all circumstances*, it is inconsistent with Pennsylvania law and is invalid.

I further dissent to the Majority's conclusion that the Directive is a valid, unpromulgated "interpretive" regulation. By its plain language, the Directive mandates new rules of conduct for registration commissions and threatens financial penalties for noncompliance. The Department was obligated to duly promulgate the Directive in accordance with established procedures, which it undisputedly did not do. The Directive thus is invalid on this additional ground.

A. The Directive Violates Pennsylvania Voter Registration Law

1. Pennsylvania Law Requires Rejection of Registration Applications with Inconsistent Identification Numbers.

To begin, Section 303(a)(5)(A)(i) of the Help America Vote Act of 2002 (HAVA), 52 U.S.C. § 21083(a)(5)(A)(i), requires that voter registration applications contain certain items of identifying information, including (1) a valid driver's license number (DLN), if issued; or (2) the last four digits of the applicant's Social Security number (SSN). If the applicant has neither of those numbers, a state must issue to the applicant a unique numerical identifier for voter registration purposes. Section 303(a)(5)(A)(ii) of HAVA, 52 U.S.C. § 21083(a)(5)(A)(ii). HAVA further requires that top state election officials enter into information-matching agreements with state motor vehicle authorities "to the extent required to enable each such official to verify the accuracy of the information provided on

applications for voter registration." Section 303(a)(5)(B)(i) of HAVA, 52 U.S.C. § 21083(a)(5)(B)(i). State motor vehicle authorities must also enter into similar agreements with the Social Security Administration. Section 303(a)(5)(B)(ii) of HAVA, 52 U.S.C. § 21083(a)(5)(B)(ii). Despite these requirements, however, HAVA authorizes state registration commissions to determine, "**in accordance with State law**," whether the identifying information provided in a registration application meets HAVA's requirements. 52 U.S.C. § 21083(a)(5)(A)(iii).

In this vein, Section 1382(a)(2) of what commonly is referred to as Pennsylvania's Voter Registration Act, 25 Pa.C.S. §§ 1801-1906, requires county voter registration commissions to examine voter registration applications to determine (1) whether the application is complete; (2) whether the applicant is a qualified elector; (3) whether the applicant has an existing registration record within the Statewide Uniform Registry of Electors, known as the SURE system[1]; and (4) whether the applicant is entitled or qualified to receive a requested registration transfer or change, if applicable. 25 Pa.C.S. § 1328(a)(2). Thereafter, the registration commission *must* determine whether to either accept and process the application or reject it. 25 Pa.C.S. § 1328(b). **A commission may reject a registration applicant for four reasons:**

> (i) The application was not properly completed **and, after reasonable efforts by the commission to ascertain the necessary information, the application remains incomplete or *inconsistent***[;]
>
> (ii) The applicant is not a qualified elector[;]
>
> (iii) The applicant is not entitled to transfer of registration or a change of address[; or]

[1] *See* Section 1222(a) of the Voter Registration Act, 25 Pa.C.S. § 1222(a).

(iv) The applicant is not legally qualified for a change of name.

25 Pa.C.S. § 1328(b)(2)(i)-(iv) (emphasis provided). If an application is rejected, the commission must **notify** the applicant of the **rejection** and the reasons for it **no fewer than 10 days** prior to the election succeeding the application's filing, 25 Pa.C.S. § 1328(b). The **applicant** then **may challenge the rejection**.[2]

Consistent with both HAVA and the Voter Registration Act, Section 183.5(a) of The Administrative Code of 1929, 4 Pa. Code § 183.5,[3] provides that "[a] commission shall be responsible for making the final decision to accept or reject an applicant's application to register to vote in accordance with [S]ection 1328 of the [Voter Registration Act] (relating to approval of registration applications)." Section 183.5(c) of the Department's regulations also consistently provides:

> (c) Except as provided at subsection (d), **a commission shall use reasonable efforts to ascertain information that is necessary for voter registration and is incomplete, inconsistent, or unclear on an applicant's application form. Reasonable efforts shall include mailing a notice to the applicant or contacting the applicant by phone, if available. The commission shall notify the applicant of the reason the application could not be accepted and provide the opportunity for the applicant to complete the form.**

4 Pa. Code § 185.3(c) (emphasis provided); *see also* 4 Pa. Code § 185.3(f)(8) (mandating a commission's consideration of **either (1) the last four digits of the**

[2] *See* Sections 1232(a) and 1233(a), (b) of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, *as amended*, added by the Act of October 31, 2019, P.L. 552, 25 P.S. §§ 3072(a), 3073(a), (b) (petition challenging the rejection of a registration application must be filed with the commission by the eighth day preceding an election and, thereafter, with the court of common pleas by the third day preceding an election).

[3] Section 1201(4) of the Voter Registration Act, 25 Pa.C.S. § 1201(4), requires the Department to promulgate regulations necessary to administer voter registration in Pennsylvania.

applicant's SSN or (2) the applicant's DLN in determining whether to accept or reject the application).

Thus, pursuant to the express provisions of HAVA, the Voter Registration Act, and the Department's regulations, a registration commission is required to verify the information provided in a registration application, including a DLN or SSN, to determine whether the information is incomplete *or inconsistent* with established government databases. If, after reasonable investigation, the commission is unable to obtain complete information *or reconcile inconsistencies*, it must reject the application.[4]

2. The Directive Forbids Rejection of Applications Based on Inconsistent Identification Numbers Where Pennsylvania Law Requires It

Because the Majority does not include it, I provide the language of the Directive in its entirety:

> Pursuant to Section 1803(a) of [the Voter Registration Act], 25 Pa.C.S. § 1803(a),[5] the following Directive is

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[4] In our unreported decision in *McLinko v. Department of State* (Pa. Cmwlth., No. 1205 C.D. 2024, filed October 20, 2025), the petitioner challenged the Directive under HAVA only, asserting that HAVA itself required rejection of applications where identification numbers in those applications did not match corresponding numbers in government databases. A panel of this Court, relying on our decision in *PA Fair Elections v. Pennsylvania Department of State*, 337 A.3d 598 (Pa. Cmwlth. 2025) (*en banc*), concluded that HAVA did not require rejection of such applications. *Id.*, slip op. at 10-11. The panel went further to conclude, however, that "a nonmatch or mismatch in the DLNs or SSNs provided by the applicant is not a valid reason to reject an application *under the Voter Registration Act*." *Id*., slip op. at 11 (emphasis provided). Because the challenges involved in both *PA Fair Elections* and *McLinko* were lodged only under HAVA, they are not controlling here. Moreover, any conclusions in those decisions as to the requirements of Pennsylvania voter registration law are nonbinding *dicta*.

[5] Section 1803 of the Voter Registration Act, contained within Chapter 18 ("Enforcement"), provides as follows:

> **(a) General rule.--**The [D]epartment shall have the authority to take any actions, including the authority to audit the registration records

(Footnote continued on next page…)

issued by the Department . . . to clarify and specify legal processes relating to HAVA-matching of drivers' license numbers [DLNs] (or [Pennsylvania Department of Transportation (PennDOT) identification] card numbers) and Social Security Numbers [SSNs] when voters submit new voter registration applications or an application to reactivate a cancelled record.

This Directive underscores that Pennsylvania and federal law are clear that voter registrations may not be rejected based solely on a non-match between the applicants' identifying numbers on their application and the comparison database numbers.

As stated in the Department[']s] . . . August 9, 2006 *Alert Re: Driver's License and Social Security Data Comparison Processes Required by* [*HAVA*], HAVA requires only the following:

(1) that all applications for new voter registration include a current and valid [Pennsylvania DLN], the last four digits of the applicant's [SSN], or a statement indicating that the applicant has neither a valid and current [Pennsylvania] driver's license or [SSN], and

(2) that voter registration commissions compare the information provided by an applicant with [PennDOT's], driver's license database or the database of the Social Security Administration.

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of a commission, which are necessary to ensure compliance and participation by the commissions.

(b) Notifications.--The secretary shall notify the State Treasurer to withhold funds in accordance with section 1804(b) (relating to relief) if a commission fails or refuses to comply with the provisions of this part.

25 Pa.C.S. § 1803(a), (b); *see also* Section 1804(b) of the Voter Registration Act, 25 Pa.C.S. § 1804(b) (requiring the State Treasurer, upon notice, to withhold "any part or all of the State appropriations to which a county is entitled, including funding for the court of common pleas but excluding funding for human services").

> HAVA's data comparison process "was intended as an administrative safeguard for 'storing and managing the official list of registered voters,' and not as a restriction on voter eligibility." *Washington* [*Association*] *of Churches v. Reed*, 492 F. Supp. 2d 1264, 1268 (W.D. Wash. 2006).
>
> **Counties must ensure their procedures comply with state and federal law, which means that if there are no independent grounds to reject a voter registration application other than a nonmatch, the application may not be rejected and must be processed like all other applications.**
>
> It is important to remember that any application placed in ["]Pending["] status while a county is doing follow-up with an applicant whose [DLN] or last four of SSN could not be matched MUST be accepted, unless the county has identified another reason to decline the application. Leaving an application in Pending status due to a nonmatch is effectively the same as declining the application while denying the applicant access to the statutory administrative appeals process, and as described above is not permitted under state and federal law.

(Respondents' Br. in Opposition to Petitioner's Application for Summary Relief, Ex. A) (emphasis in original).

> The Majority construes the Directive as follows:
>
> If the mismatch . . . turns out, after investigation, to reveal a duplicate [registration], *then both state law and the Directive require rejection.* But state law does not authorize an out-of-hand rejection based merely upon a mismatch in the DLN or SSN databases, without investigation. The Directive, consistent with those provisions, forbids that sort of summary rejection. It thus does not require Petitioner to act inconsistently with his obligations under the [Voter] Registration Act.

Rossman v. Department of State (Pa. Cmwlth., No. 516 M.D. 2024, filed December 8, 2025) (Majority Op.), slip op. at 12 (emphasis provided). I agree with the

Majority that the Voter Registration Act does not require an initial, facial rejection of an application merely because an applicant's DLN or SSN cannot be matched with the applicant's corresponding numbers in PennDOT or Social Security Administration databases. Rather, the commission first must investigate inconsistent identification numbers to determine whether they can be reconciled. I also agree with the Majority that the Voter Registration Act mandates rejection of an application if inconsistencies in those numbers, after investigation, ultimately reveal duplicate registrations. At this point, however, I must part ways with the Majority's analysis because the Majority stops there and inappropriately limits rejection to situations where a duplicate registration is discovered.

As set forth above, the Voter Registration Act and the Department's promulgated regulations require rejection of applications that contain inconsistent identification numbers that cannot, after investigation, be reconciled. Neither the Voter Registration Act nor the Department's regulations limit rejection on this ground to only those situations where the inconsistency results in the discovery of a "duplicate" registration, as the Majority suggests. Rather, it is the commission's inability to reconcile the identification numbers in the application that requires rejection. And this makes sense. Identification numbers that cannot be reconciled after investigation could result from a host of causes, most of which likely are benign and can be resolved via the commission's investigation. However, disparate identification numbers can result, not only from duplicate registrations, but also from other kinds of identity fraud perpetuated on registration commissions. For example, made-up identification numbers included in applications submitted with fictitious names would have no analogue in government databases and would not produce a duplicate registration. Similarly, incorrect identification numbers included in an

application submitted unknowingly on behalf of an *unregistered* individual would not produce a duplicate registration. I believe the Voter Registration Act and the Department's regulations plainly were crafted, in light of HAVA's requirements, to protect against such fraud by requiring rejection of applications containing irreconcilably inconsistent identification numbers for any reason.

Despite this, the Directive plainly, and unlawfully in my opinion, prohibits commissions from rejecting applications with irreconcilable identification numbers (other than those that reveal duplicate registrations) *for any reason* and *at any point* in the registration process, whether before or after the commission's investigation. In this regard, the Directive is inconsistent with Pennsylvania voter registration law, which again requires rejection of applications containing inconsistent identification numbers that cannot be reconciled *for any reason.* The Directive does not quote or cite to any substantive provisions of either the Voter Registration Act or the Department's *promulgated* regulations to support its commands and prohibitions and, for that reason, fails to properly guide registration commissions. Rather, as is clear from the necessity of this lawsuit, it has only confused them.

For these reasons, the Directive conflicts with both the Voter Registration Act and the Department's regulations by prohibiting rejection of applications where the law requires it. I accordingly would conclude that the Directive is invalid on that basis.

B. <u>The Directive is an Unpromulgated and Invalid *De Facto* Regulation</u>

In Count II of the Petition for Review, Petitioner challenges the Directive's validity as an unpromulgated, *de facto* regulation. The Majority, relying on a quotation from the Pennsylvania Supreme Court's decision in *Slippery Rock*

Area School District v. Unemployment Compensation Board of Review, 983 A.2d 1231, 1236 (Pa. 2009), distinguishes between binding or legislative regulations and interpretive regulations that are entitled to mere deference. It then construes the Directive as an "interpretive regulation" which, according to the Majority, frees it from any need to be promulgated by the Department. (Majority Op., at 12-13.) The entirety of the Majority's analysis on this issue is as follows:

> We agree with Respondents that the Directive is an interpretive regulation, not a legislative, and thus did not require promulgation. As we have determined, the Directive tracks the meaning of the [Voter] Registration Act and its regulations, and it does not obligate Petitioner to any conduct that would not otherwise be required of him under extant state and federal law.

(Majority Op. at 13.) I cannot agree with either the analytical framework applied by the Majority or its conclusion.

In *Slippery Rock Area School District*, our Supreme Court was presented with only two questions: (1) whether a regulation duly promulgated by the Department of Labor and Industry and codified in the Administrative Code was an interpretive or a binding legislative regulation; and (2) whether the regulation was valid. *Id.* at 1236. It did not consider, address, or conclude anything as to whether a particular pronouncement of a Commonwealth agency, which undisputedly was *not* a regulation promulgated in accordance with applicable procedures, was nevertheless an invalid *de facto* regulation.

Instead, the framework to be applied when considering whether an unpromulgated agency bulletin, statement of policy, or "directive" is an invalid *de facto* regulation clearly has been set forth by this Court in multiple decisions, including *Northwestern Youth Services, Inc. v. Department of Public Welfare*, 1

A.3d 988 (Pa. Cmwlth. 2010). There, we considered whether an administrative bulletin issued by the Department of Public Welfare was an invalid, unpromulgated regulation. *Id.* at 990. Beginning in 2008, the Department of Public Welfare issued administrative bulletins imposing new statewide cost-reporting forms and procedures on county children and youth agencies. *Id.* at 990-91. If county agencies did not follow the new procedures, the Department of Public Welfare would withhold State funding for certain contracted-for services at the county level. *Id*. at 991. Certain providers of those services challenged the validity of one of the bulletins in this Court, seeking a declaration that it was an unpromulgated and invalid regulation. *Id.* The Department of Public Welfare argued in response that the bulletin merely implemented the already-existing audit and reimbursement procedures set forth in its regulations, which implementation could be accomplished by a "directive" or "memorandum." *Id.* at 992.

Thus, the central issue presented by the providers' petition for review was whether the bulletin "was an invalid regulation because it was not promulgated pursuant to the requirements of what commonly is referred to as the Commonwealth Documents Law (CDL).[6] We then applied the following legal principles:

> The determination of whether an agency's pronouncement is an unpromulgated regulation is a question of law. If an agency fails to properly promulgate a regulation in accordance with the CDL, we will declare the pronouncement a nullity.

[6] Act of July 31, 1968, P.L. 769, *as amended*, 45 P.S. §§ 1102-1602. The CDL imposes formal requirements for the promulgation of an agency regulation, which include the publication of notice, a statement of the statutory or other provision(s) authorizing the regulation, an explanation of the regulation, and an invitation for written comments by interested parties. Section 202 of the CDL, 45 P.S. § 1202.

We begin our analysis by distinguishing a regulation requiring formal promulgation from a statement of policy, which need not be formally promulgated. Our Supreme Court has explained that an agency pronouncement constitutes a regulation when it purports to create a "binding norm":

> "The critical distinction between a substantive rule and a general statement of policy is the different practical effect that these two types of pronouncements have in subsequent administrative proceedings. . . . A properly adopted substantive rule establishes a standard of conduct which has the force of law. . . .
>
> A general statement of policy, on the other hand, does not establish a 'binding norm'. . . . A policy statement, announces the agency's tentative intentions for the future."

Pennsylvania Human Relations Commission v. Norristown Area School District, [ ] 374 A.2d 671, 679 ([Pa.] 1977) (citation omitted). "Statements of policy are agency pronouncements that declare, [the agency's] future intentions, but which are applied prospectively on a case-by-case basis and *without* binding effect." *Borough of Pottstown v. Pennsylvania Municipal Retirement Board*, [ ] 712 A.2d 741, 743 n.8 ([Pa.] 1998) (emphasis in original). A statement of policy also tracks the language of a statute and does not expand on its plain meaning. [*Borough of*] *Bedford* [*v. Department of Environmental Protection*], 972 A.2d [53,] 64 [Pa. Cmwlth. 2009 (*en banc*)].

To determine whether an agency has attempted to establish a binding norm, we must consider: (1) the plain language of the enactment, (2) the manner in which the agency implements it, and (3) whether it restricts the agency's discretion, *Cash America Net of Nevada, LLC v. Commonwealth*, 978 A.2d 1028, 1033 (Pa. Cmwlth. 2009) (*en banc*).

Id. at 993 (some internal citations omitted); *see also Pennsylvania School Boards Association, Inc. v. Mumin*, 317 A.3d 1077 (Pa. Cmwlth. 2024) (setting forth the same three-part test).

Applying this test, we concluded that the bulletin was an invalid, unpromulgated regulation because (1) it was "replete with mandatory, restrictive language that is indicative of a regulation" and conditioned Department of Public Welfare funding on compliance; (2) it did not announce any future intent of the Department of Public Welfare, but, rather, imposed new cost-reporting requirements that were intended to have retroactive effect; and (3) it did not leave the Department with any discretion to deviate from its terms. *Id.* at 994-95. *See also Cary v. Bureau of Professional and Occupational Affairs*, *State Board of Medicine*, 153 A.3d 1205 (Pa. Cmwlth. 2017) (concluding similarly); *Eastwood Nursing & Rehabilitation Center v. Department of Public Welfare*, 910 A.2d 134, 146-48 (Pa. Cmwlth. 2006) (same).

Here, the **Directive clearly fails this three-part test**. *First*, the Directive is unquestionably binding[7] and purports to forbid county registration commissions from *ever* rejecting registration applications due to mismatches between DLN or SSN numbers provided in registration applications and those contained in established databases. The Directive is issued pursuant to Section 1803(a) of the Voter Registration Act, which provides the Department with an *enforcement* (but not regulatory) mechanism to compel compliance with the statute. Section 1804(b) contains an accompanying enforcement mechanism through which the Department can withhold funding from counties that do not comply with the

[7] The Department's counsel indicated at argument that the Directive is intended to be binding on registration commissions.

Voter Registration Act, presumably as the Department has purported to enforce it via the Directive. The Directive contains no general statements of policy, suggestive language, or predictions as to the Department's future course of conduct but, rather, clearly establishes a mandatory standard for registration commissions to follow, at their financial peril if necessary.

Second, as to the manner in which the Directive was implemented, there is no indication in the record that the Department provided the public with *any* pre-issuance notice of the Directive's mandates. The Directive is not signed or dated and contains no official seal or other authorization of the Department. It could have been mailed, emailed, or posted on the Department's website, but it certainly was not published in the Pennsylvania Bulletin or any other official publication. Despite its informality, however, the Directive purports to establish binding norms for registration commissions. That in no reasonable fashion can be construed as a mere statement of policy or self-regulating interpretive rule.[8]

Third, although the Directive is aimed at local registration commissions, it leaves the Department, to the extent applicable, with no discretion at all as to how the Voter Registration Act must be implemented where identification numbers in registration applications do not match those in established databases.

Because consideration of all three factors indicates that the **Directive is an unpromulgated regulation, it is invalid.** The Majority does not perform this

[8] The Directive is not an "interpretive rule" developed by the Department to aid in its own consistent administration of the Voter Registration Act. *See Slippery Rock Area School District*, 983 A.2d at 1237; *Bailey v. Zoning Board of Adjustment of the City of Philadelphia*, 801 A.2d 492, 501 (Pa. 2002). Instead, the Directive, by its own name and language, is aimed at local registration commissions and purports to direct *them*, in binding fashion, as to how they are to carry out their obligations under the Voter Registration Act and the Department's associated (and duly promulgated) regulations.

analysis, but rather starts with the conclusion that the Directive is a regulation and then posits that, because it is "interpretive" (which it is not), it need not be promulgated.[9] That is not the appropriate test under our case law, and it has led the Majority to the wrong conclusion in this instance.

In sum, and for the above reasons, I must concur in part and dissent in part. The Directive **does not follow Pennsylvania voter registration law and is an invalid, unpromulgated regulation**. Accordingly, I would overrule Respondents' preliminary objections, deny their cross-application for summary relief, and grant Petitioner's application for summary relief.

s/ Patricia A. McCullough
PATRICIA A. McCULLOUGH, Judge

[9] As I have demonstrated above, the Directive is mandatory and does not track the meaning of the Voter Registration Act. It therefore is not "interpretive" as the Majority suggests.

APPENDIX 2

pennsylvania
DEPARTMENT OF STATE

DIRECTIVE CONCERNING HAVA-MATCHING
DRIVERS' LICENSES OR SOCIAL SECURITY NUMBERS
FOR VOTER REGISTRATION APPLICATIONS

Pursuant to Section 1803(a) of Act 3 of 2002, 25 Pa.C.S. § 1803(a), the following Directive is issued by the Department of State to clarify and specify legal processes relating to HAVA-matching of drivers' license numbers (or PennDOT ID card numbers) and Social Security numbers when voters submit new voter registration applications or an application to reactivate a cancelled record.

This Directive underscores that Pennsylvania and federal law are clear that voter registrations may *not* be rejected based solely on a non-match between the applicant's identifying numbers on their application and the comparison database numbers.

As stated in the Department of State's August 9, 2006 *Alert Re: Driver's License and Social Security Data Comparison Processes Required by The Help America Vote Act (HAVA),* HAVA requires only the following:

> (1) that all applications for new voter registration include a current and valid PA driver's license number, the last four digits of the applicant's social security number, or a statement indicating that the applicant has neither a valid and current PA driver's license or social security number; and
>
> (2) that voter registration commissions compare the information provided by an applicant with the Department of Transportation's driver's license database or the database of the Social Security Administration.

HAVA's data comparison process "was intended as an administrative safeguard for 'storing and managing the official list of registered voters,' and not as a restriction on voter eligibility." *Washington Ass'n of Churches v. Reed*, 492 F.Supp.2d 1264, 1268 (W.D. Wash. 2006).

Counties must ensure their procedures comply with state and federal law, which means that if there are no independent grounds to reject a voter registration application other than a non-match, the application may *not* be rejected and must be processed like all other applications.

It is important to remember that any application placed in 'Pending' status while a county is doing follow-up with an applicant whose driver's license or last four of SSN could not be matched **MUST** be accepted, unless the county has identified another reason to decline the application. Leaving an application in Pending status due to a non-match is effectively the same as declining the application while denying the applicant access to the statutory administrative appeals process, and as described above is **not** permitted under state and federal law.

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IN THE SUPREME COURT OF PENNSYLVANIA

Robert Rossman, in his official capacity as member of the Potter County Board of Elections, Appellant	:	1 WAP 2026
v. Department of State of the Commonwealth of Pennsylvania, and Al Schmidt, in his official capacity as Secretary of the Commonwealth, Appellees	:	

PROOF OF SERVICE

I hereby certify that this 17th day of March, 2026, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served:	Fischer, Michael John
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Representing:	Appellee Department of State Appellee Schmidt, Al

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IN THE SUPREME COURT OF PENNSYLVANIA

/s/ Shohin Hadizadeh Vance

(Signature of Person Serving)

Person Serving:	Vance, Shohin Hadizadeh
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