

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 MD 2024

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

Respondents.

**RESPONDENTS' CROSS-APPLICATION FOR
SUMMARY RELIEF**

Respondents Pennsylvania Department of State and Al Schmidt, in his official capacity as Secretary of the Commonwealth (collectively “the Department”) respectfully submit this cross-application for summary relief. For the reasons set forth below and in the accompanying brief, the Court should grant summary relief in the Department’s favor and dismiss this action.

1. Petitioner Robert Rossman, a member of the Potter County Board of Elections, filed this action to challenge a 2018 Directive (“the

Directive”) issued by the Department, which informs county boards of elections of their duties under the federal Help America Vote Act (“HAVA”), 52 U.S.C. § 20901 *et. seq.* Rossman’s petition alleges that the Directive is inconsistent with state law (Count I) and that it was issued without following the proper procedure (Count II).

2. The Department is entitled to summary relief for two separate reasons. First, Rossman lacks standing to bring this action. Second, the Directive is fully consistent with state law and was issued pursuant to the proper procedure, so his claims fail on the merits.

3. Rossman cannot demonstrate the “substantial, direct, and immediate interest” interest necessary to establish standing in this matter. *See Markham v. Wolf*, 136 A.3d 134, 140 (2016).

4. He has brought this action as a single member of the Potter County Board of Elections. The Board itself is not a petitioner, and neither of his fellow commissioners has joined him in this suit. But the injury he complains of—being forced to register voters who, he contends, have not met the legal requirements—would belong to the Board as a whole, and not to Rossman individually.

5. Under Pennsylvania law, “[a]ctions of a [registration] commission must be decided by a majority vote of all members except as otherwise provided.” 25 Pa.C.S. § 1203.¹ And decisions as to whether to accept or reject an application are to be made by “[a] commission”—not an individual commissioner. *See* 25 Pa.C.S. § 1328(b).

6. Individual members of multi-member bodies do not have standing to bring claims that belong to the body as a whole. *See, e.g., O’Neill v. Philadelphia 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).

7. Rossman’s claims also fail on the merits.

8. The Directive instructs county boards of elections that, under HAVA, all voter registration applications must include the applicant’s driver’s license number or the last four digits of the applicant’s social security number, unless the applicant possesses neither. It also instructs county boards that they must compare the information submitted by the applicant with the information in either the Department of

¹ The Potter County Board of Elections also serves as the County’s Registration Commission. *See* Pa.C.S. § 1203.

Transportation's driver's license database or the database of the Social Security Administration.²

9. In addition, the Directive states that county boards may not reject an application based *solely* on a mismatch between the information submitted by the applicant and the information contained in the relevant database. Because mismatches can be caused by many factors—such as poor handwriting, data entry errors, and other innocuous circumstances—the county board should work to determine the cause of the mismatch rather than rejecting the application outright.

10. The Directive's instruction to counties that they may not reject applications based solely on a database mismatch in no way conflicts with state law. Pennsylvania's voter registrations statute sets forth the bases for rejecting voter registration applications, and it does not authorize rejections based on such mismatches. *See* 25 Pa.C.S. § 1328(b)(2). In fact, the requirement to submit a driver's license number or partial social security number comes entirely from *federal* law. *See* 52 U.S.C. § 21083(a)(5).

² The Directive is attached as Exhibit A to the Department's brief in support of this application.

11. Similarly, there is no merit to Rossman's claim that the Directive was issued without following the proper procedure. Because the Directive "merely construes and does not expand upon the terms of a statute," it is not subject to the procedural requirements that apply to a regulation that "creates a new controlling standard of conduct." *Slippery Rock Area Sch. Dist. v. Unemployment Comp. Bd. of Rev.*, 983 A.2d 1231, 1236–38 (2009) (citation omitted).

12. As a result, if the Court does address the merits, the Department is entitled to summary relief on both of the counts of the Petition.

WHEREFORE, for the reasons set forth above and in the accompanying brief, the Department respectfully requests that it be granted summary relief, and that this action be dismissed.

Dated: June 30, 2025

Respectfully submitted,

Kathleen A. Mullen (No. 84604)
Pennsylvania Dept. of State
306 North Office Bldg.
401 North Street
Harrisburg, PA 17120-0500

/s/ Michael J. Fischer
Michael J. Fischer (No. 322311)
Executive Deputy General Counsel
Office of General Counsel
30 North Third Street, Suite 200
Harrisburg, PA 17101
(717) 831-2847
mjfischer@pa.gov

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently from non-confidential information and documents.

Dated: June 30, 2025

/s/ Michael J. Fischer

Michael J. Fischer

RETRIEVED FROM DEMOCRACYDOCKET.COM