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Robert Meek, Emergency Applications Attorney
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543
cc: The Honorable Scott Harris, Clerk of the Court

Re: *Ritter v. Migliori*, No. 21A772

Dear Mr. Meek and Mr. Harris:

A Pennsylvania court—relying on the Third Circuit’s decision in this case—has ordered every county to count undated ballots in the 2022 primary. *Dave McCormick for U.S. Senate v. Chapman*, No. 286 MD 2022 (Pa. Commw. Ct. June 2). The plaintiffs think the *McCormick* decision alleviates the need for this Court to stay the Third Circuit’s decision. If anything, it does the opposite.

McCormick illustrates the need for a stay. In their briefs to this Court, the plaintiffs and Cohen both stressed that the Third Circuit’s resolution of this “single county election” wouldn’t spill over to other elections, including the ongoing dispute between Oz and McCormick. *E.g.*, Pltfs.-Opp. 19, 34 n.14; Cohen-Opp. 8-9. The *McCormick* decision proves that’s not true.

McCormick highlights the chaos that the Third Circuit has unleashed on Pennsylvania. Apparently, based on the Third Circuit’s decision, some counties have been counting undated ballots while others haven’t. *McCormick op.* at 31. Worse, the Eastern District of Pennsylvania just enjoined two counties from certifying the 2022 primaries. *Dondiego v. Lehigh Cnty. Bd. of Elections*, Doc. 11, No. 5:22-cv-2111 (June 1, 2022). That court is considering whether counties must count ballots that violated secrecy requirements or arrived late—an extension of the Third Circuit’s decision that the plaintiffs assured this Court couldn’t occur. Pltfs.-Opp. 26.

McCormick also deepens the divide on the meaning of the federal materiality statute. In Ritter’s election, the Commonwealth Court (sitting as a three-judge appellate tribunal) issued a final decision ordering Lehigh County not to count undated ballots. *Ritter v. Lehigh Cnty. Bd. of Elections*, 2022 WL 16577 (Jan. 3). The *McCormick* decision doesn’t affect that order: There the court is sitting as a one-judge trial court, its decision is limited to the 2022 primary, and its “preliminary” analysis is not “a judgment on the merits.” *McCormick op.* at 20-21. So Lehigh County remains subject to directly conflicting orders from the state and federal courts about how to treat undated ballots in *this* election. And at least until *McCormick* is reversed or stayed on appeal, Lehigh County is now being told to treat undated ballots differently *across* elections.

This Court should stay the Third Circuit's decision pending certiorari.

Respectfully submitted,

/s/ Cameron T. Norris

Counsel of Record for David Ritter

cc: All counsel of record