

Nos. 25-962, 25-967

IN THE
Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, *et al.*,
Petitioners,

v.

BETTE EAKIN, *et al.*,
Respondents.

PENNSYLVANIA,
Petitioner,

v.

BETTE EAKIN, *et al.*,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

**BRIEF OF RESPONDENT
LUZERNE COUNTY BOARD OF ELECTIONS
AND REGISTRATION IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

JOSEPH M COSGROVE
Counsel of Record
SELINGO GUAGLIARDO LLC
345 Market Street
Kingston, PA 18704
(570) 287-2400
jmcosgro@msn.com
*Counsel for Luzerne County
Board of Elections and
Registration, Respondent*

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**COUNTERSTATEMENT OF THE
QUESTION PRESENTED**

Do the principles arising from *Purcell v. Gonzalez*, 549 U.S. 1 (2006), and its progeny, counsel against grant of the present petitions for a writ of certiorari and further review of the decisions of the United States Court of Appeals for the Third Circuit in these matters?

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INTRODUCTION

Given Pennsylvania’s decentralized electoral structure, the impact of how the present question is answered (i.e., whether mail-in and absentee ballots which fail to contain a date, or contain an incorrect date, should or should not be counted) falls primarily on the local boards of election in each of the state’s counties. The Luzerne County Board of Elections and Registration¹ (“Board”) is one such body, but while it is also one of the present respondents, it takes no position on the merits of the underlying issue presented in this case or on the decisions of the courts below.

The Board has been consistent in this regard. For example, at the district level in each of the matters now before the Court, the Board (along with several other election boards) entered into a stipulation with the respective plaintiffs which essentially detached it from any participation in either advancing or opposing the merits arguments. *See Pennsylvania State Conference of the NAACP, et al. v. Lehigh M. Chapman, et al.*, 1:22-cv-00339 (W.D. PA)(Doc. 192), and *Bette Eakin, et al. v. Adams County Board of Elections, et al.*, 1:22-cv-00340 (W.D. PA)(Doc. 232). The first paragraph of each of these stipulations states that:

[t]he undersigned County Election Boards ***desire a prompt resolution*** of this case ***in order to have direction on how to properly proceed in future elections.***

¹ Since Luzerne County is one of several “home rule” counties in Pennsylvania, *see* 53 Pa.C.S. § 2901 *et seq.*, it has modified the structure of its election board and renamed it to include its role in voter registration. This modification and any difference it represents from the other county election boards has no bearing on how it will be affected by the outcome of this case.

Id. (emphasis added).²

While these stipulations imposed certain discovery obligations on the Board at the district level, that was the extent of the Board’s participation. Indeed, the Board emphasized its position in each case when the District Court later ordered the parties to “address[] the impact of the decision in *Black Political Empowerment Project v. Schmidt*, [325 A.3d 1046 (Pa. Cmwlth.) Aug. 30, 2024), on the pending summary judgment motions.”³ *Pennsylvania State Conference of the NAACP, et al.*, 1:22-cv-00339 (W.D. PA)(Doc. 454); and *Bette Eakin, et al.*, 1:22-cv-00340 (W.D. PA)(Doc. 410). In response, the Board affirmed that its position:

remains as it has throughout this litigation, namely, that the Board will obey the law as directed by the courts, and takes no position otherwise.

Id. No. 339 (Doc. 461); No. 340 (Doc. 417).

The Board likewise took no part in the appeal in either case before the United States Court of Appeals for the Third Circuit. As such, when the present petitions were filed, the Board waived its right to file a response “unless one is requested by the Court.” By letter dated April 1, 2026, the Clerk advised of the Court’s desire for such a response.

The present brief is in compliance with that request.

² The District Court adopted these stipulations by Order. *Id.*

³ The decision of Commonwealth Court in *Black Political Empowerment Project* was ultimately overturned by the Pennsylvania Supreme Court, *per curiam*, on jurisdictional grounds. *Black Political Empowerment Project v. Schmidt*, 322 A.3d 221 (Pa. 2024).

REASONS FOR DENYING THE WRIT

This Court's decision in *Purcell v. Gonzalez*, 549 U.S. 1 (2006) directed the district courts to proceed with the utmost caution when considering challenges to state election procedures close in time to the elections themselves. As this "*Purcell* principle" has developed, courts have recognized additional considerations which must be taken into account before judicial interruption of a state's electoral process is imposed.

Aside from the two matters presently at issue, the specific question regarding Pennsylvania's rules for the dating of mail-in and absentee ballots has been, in one form or another, before the courts for several years. *See, e.g., Migliori v. Cohen*, 36 F.4th 153 (3rd Cir. 2022), *mandate stayed* 213 L.Ed.2d 1013, 2022 WL 1743146, *vacated* 142 S. Ct. 1824, 213 L.Ed.2d 1034, *on remand* 2022 WL 22789331, *vacated* 143 S. Ct. 297, 214 L.Ed.2d 129, *on remand* 53 F.4th 285; *McCormick for U.S. Senate v. Chapman*, No. 286 M.D. 2022, 2022 WL 2900112 (Pa. Cmwlth. 2022). For the Board and its contemporaries throughout the Commonwealth, this has caused more than a bit of confusion, perhaps no more so than with the decision of the Supreme Court of Pennsylvania in *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023). In that case, the Court held that Pennsylvania's Election Code "commands absentee and mail-in electors to date the declaration that appears upon ballot return envelopes, and failure to comply with that command renders a ballot invalid as a matter of Pennsylvania law." *Id.* at 28.

However, on the question of whether federal law (such as at issue presently) required a different result, the *Ball* court was split evenly. *Id.* As a result, the wish of the Board as noted in the above-cited

stipulations for “a prompt resolution” regarding these issues and “direction on how to properly proceed in future elections,” was lacking in the *Ball* decision from the state’s highest Court.

While *Ball* was being addressed, the two cases presently before this Court were in active litigation, with the positions on both sides presented to the District Court and then the Third Circuit. Accordingly, since the District Court’s opinions were issued herein, the Board has overseen several elections, and has done so with the decisions below as guide.

More importantly for purposes of *Purcell* analysis, the election cycle for 2026 is well underway, with the primary election having now been held on May 19. As such, electors have been justified in relying on the decisions of the federal courts at issue herein. Alteration of those decisions, or calling them into question prior to the November 2026 General Election (which grant of the instant petitions would do) would seem to flout the principles stemming from *Purcell* and the many cases which have arisen from it since.

For example, while this Court “has not yet had occasion to fully spell out all of [*Purcell*’s] contours,” *Singleton v. E. Barton Par. Such. Bd.*, 621 F.Supp 3d 618, 628 (M.D. La. 2022), certain aspects of the *Purcell* principle are well known and applicable here. First among these is *Purcell*’s recognition that “Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls.” *Purcell*, 549 U.S. at 4-5. Given the above-cited history of back-and-forth decisions addressing the mail-in ballot dating issue, the dangers of voter disincentive which *Purcell* warned of are notably present here.

With the decisions below having been in place now for several election cycles, further intervention can only risk “the uncertainty engendered by judicial disruptions to the status quo in the ***midst of elections*** [which] can and often will cause eligible voters to remain away from the polls.” *Mi Familia Vota v. Fontes*, 111 F.4th 976, 985 (9th Cir. 2024)(emphasis added).

“Midst of elections” in the *Purcell* realm is rather imprecise. In fact, this Court “has never specified precisely what it means to be ‘on the eve of an election’ for *Purcell* purposes.” *League of Women Voters of Fla., Inc. v. Fla. Sec’y of State*, 32 F.4th 1363, 1371 (11th Cir. 2022). “When determining how far the *Purcell* principle extends, courts do not simply look to the next primary or general election date—there are often critical deadlines that arise before election day itself.” *McClure v. Jefferson Cnty. Comm’n*, No. 25-13253, 2025 WL 2977740, at *1–2 (11th Cir. Oct. 16, 2025). As the *McClure* court noted, courts have assessed the relevant *Purcell* timelines, not just relative to the actual Election Day, but with consideration of other significant electoral dates:

When determining how far the *Purcell* principle extends, courts do not simply look to the next primary or general election date—there are often critical deadlines that arise before election day itself. *See, e.g., League of Women Voters*, 32 F.4th at 1371 (considering pre-election activities like voter registration and the need to re-train poll workers); *Tenn. Conf. of the NAACP v. Lee*, 105 F.4th 888, 898 (6th Cir. 2024) (applying *Purcell* based on a voter registration deadline); *Thompson v. DeWine*, 959 F.3d at 804 (applying *Purcell*

because of “important interim deadlines” like a deadline to procure signatures).

Id.

The General Election this year is November 3. <https://www.pa.gov/agencies/vote/elections/upcoming-elections> (last visited May 26, 2026). Just one aspect of the many different electoral time considerations noted in *McClure* is of particular note here: “By statute, county boards of elections may receive applications for mail-in ballots ‘not earlier than [**fifty**] **days** before the primary or election.’ See 25 P.S. § 3150.12a(a).” *Ball*, 289 A.3d at 23, fn.130 (emphasis added). “Fifty days” before the General Election this year is only three and a half months after the submission of the instant brief, bringing the present consideration clearly within the *Purcell* parameters by which other courts have been guided.

Grant of certiorari will certainly promote confusion as to what electors perceive the law to be if they decide to exercise their right to vote through mail-in ballot. As the *Purcell* principle strongly cautions against creation of such confusion, especially given the proximity to the next election, it speaks against the present petitions.

CONCLUSION

For these reasons, the petitions for writ of certiorari should be denied.

Respectfully submitted,

JOSEPH M COSGROVE
Counsel of Record
SELINGO GUAGLIARDO LLC
345 Market Street
Kingston, PA 18704
(570) 287-2400
jmcosgro@msn.com

*Counsel for Luzerne County
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