

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioner,

v.

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

Respondents.

No. 516 MD 2024

**BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS OF
RESPONDENTS PENNSYLVANIA DEPARTMENT OF STATE
AND SECRETARY OF THE COMMONWEALTH AL SCHMIDT**

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Respondents Pennsylvania Department of State and Al Schmidt, in his official capacity as Secretary of the Commonwealth (collectively “the Department”) respectfully submit this brief in support of their Preliminary Objections to the Petition for Review in the Nature of a Complaint for Declaratory Judgment filed by Petitioner Robert Rossman, in his official capacity as a Commissioner of the Potter County Board of Elections.

Petitioner, a member of the Potter County Board of Elections, has brought this action to challenge a one-page directive issued by the Department seven years ago. That directive summarizes certain aspects of state and federal law relating to the processing of voter registration applications, which in Pennsylvania is the responsibility of county boards of elections. Petitioner objects to language in that directive that informs county boards that they may not reject an individual’s voter registration application *solely* because an identification number (a driver’s license number or partial social security number) on the application form did not match information contained in a government database. Rather, in such cases, the board is to investigate further, so as to ensure that eligible voters are not improperly disenfranchised.

Petitioner alleges that this directive violates state law. He is incorrect. State law does not require applicants to provide driver's license numbers or social security numbers at all—and it certainly does not allow county boards to reject applications based solely on database mismatches. It is federal law—the Help America Vote Act, or HAVA—that requires this information, but Petitioner concedes that “HAVA does not require states to reject applications if a there is a mismatch.” Pet. ¶ 16. The directive is fully consistent with both state and federal law, and Petitioner's argument to the contrary are meritless.

Furthermore, the Court need not even consider the substance of Petitioner's claims, because Petitioner lacks standing to bring this action. As a single member of the Potter County Board of Elections, Petitioner cannot assert claims on behalf of the entire board, and he cannot show that the directive infringes on his individual authority as a board member. Thus, under settled law, he lacks standing to pursue this case.

Because Petitioner lacks standing to bring this action, and because the Petition for Review fails to state a cause of action, this matter should be dismissed.

BACKGROUND

I. Voter Registration in Pennsylvania

Citizens of Pennsylvania are qualified to vote if they satisfy four criteria: they must (1) be at least 18 years old on the day of the election; (2) have been a U.S. citizen for at least one month prior to the election; (3) have lived in Pennsylvania and in their election district for at least thirty days prior to the election; and (4) not be imprisoned for a felony conviction. Pa. Const. art. VII, § 1; 25 P.S. § 2811; 25 Pa.C.S. § 1301(a).¹ In addition, all voters in Pennsylvania must be registered. State law provides multiple ways of registering, including in person at a county election office, by mail, at a driver's license center, and at other government agencies. *See* 25 Pa.C.S. § 1321.

By law, the Secretary is required to “prescribe the form of an official voter registration application” that Pennsylvania citizens can return to

¹ *See also* *Mixon v. Commonwealth*, 759 A.2d 442, 451 (Pa. Cmwlth. 2000), *aff'd*, 783 A.2d 763 (2001) (holding that individuals with felony convictions, other than those currently incarcerated, may register to vote); 1972 Op. Atty. Gen. No. 121 (concluding that *Dunn v. Blumstein*, 405 U.S. 330 (1972), prohibits the enforcement of certain durational residency requirements longer than 30 days); U.S. Const. amend. XXVI (prohibiting denial of right to vote to citizens 18 years of age or older on account of age).

their county boards of elections. 25 Pa.C.S. § 1327(a)(1). That form must ask for the following information from the voter: (a) full name; (b) residence address; (c) mailing address; (d) name and address on any previous registration; (e) political party; (f) date of birth; (g) telephone number; and (h) race. *Id.* Nowhere does Pennsylvania law require applicants to submit driver's license numbers or social security numbers with their voter registration applications.

In Pennsylvania, county registration commissions are responsible for processing voter registration applications. In most cases, the county's commissioners comprise the registration commission. 25 Pa.C.S. § 1203(b)(1).² A registration commission is required to accept a registration application and register the applicant if it determines that: “(i) The application requests registration” and “(ii) The application contains the required information indicating that the applicant is a qualified elector of the county.” 25 Pa.C.S. § 1328(b)(3).

A commission is required to reject an application if it determinates that the application was incomplete; that the applicant is not qualified;

² This brief uses “county board” and “registration commission” interchangeably.

that the applicant is not entitled to an address change; or that the applicant is not entitled to a name change. 25 Pa.C.S. § 1328(b)(2). Any rejection “shall be made no later than ten days before the election succeeding the filing of the application,” which allows the applicant time to seek redress from a Court of Common Pleas. *Id.*; *see also id.* § 1602 (appeal process).

II. The Help America Vote Act

Under the federal Help America Vote Act (HAVA), a state must “implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier each legally registered voter in the State.” 52 U.S.C. § 21083(a)(1)(A). HAVA also contains two provisions requiring voters to provide specific identifying information to state officials: one provision that applies when individuals register to vote, and another that applies when certain registered voters cast their ballots.

HAVA's Registration Rule: Under HAVA, a state may not process an application to register to vote for federal office unless the application contains a current and valid driver's license number or the last four digits of a social security number, provided that the applicant possesses one or both numbers. 52 U.S.C. § 21083(a)(5)(A)(i). For applicants who have neither a current and valid driver's license nor a social security number, HAVA provides a "Special Rule," which requires states to assign the applicant a number that will serve to identify the applicant for voter registration purposes. 52 U.S.C. § 21083(a)(5)(A)(ii). HAVA also requires a state's chief election official to enter into an agreement with the state motor vehicle authority, which in turn must enter into an agreement with the Commissioner of Social Security, to enable the matching of information in the statewide voter registration system with information in the motor vehicle authority's database. 52 U.S.C. § 21083(a)(5)(B).

While HAVA requires that certain information must be provided on applications to register to vote in federal elections, it leaves it to states to "determine whether the information provided by an individual is

sufficient to meet [this requirement] in accordance with State law.” 52 U.S.C. § 21083(a)(5)(A)(iii).

HAVA’s First-Time Voter Rule: Separately, HAVA requires that a voter who registered by mail and is voting in the state for the first time must provide identification when they attempt to vote. 52 U.S.C. § 21083(b)(1). This requirement applies regardless of whether the individual is voting by mail or in person. *Id.* § 21083(b)(2)(A). An in-person voter must present “a current and valid photo identification” or “a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.” *Id.* § 21083(b)(2)(A)(i). Mail voters must return a copy of one of these documents with their ballots. *Id.* § 21083(b)(2)(A)(ii).

Importantly, this provision does not apply if the voter provided a driver’s license number or partial social security number when registering to vote, and election officials matched that information against the state’s records. *Id.* § 21083(b)(3)(B)(i)–(ii).

III. The Department’s Directive

The Department complies with its obligation under HAVA to implement an “interactive computerized statewide voter registration list”

by operating the Statewide Uniform Registry of Electors (SURE) system. *See* 25 Pa.C.S. § 1222. Among other functions, the SURE system assists counties in processing voter registration applications. 25 Pa.C.S. § 1222(c). SURE allows a county to designate the status of a voter registration application. The different options include “approved,” “declined” (with additional information explaining why the application was declined), and “pending.” “Pending” status is used to identify any application that is currently undergoing review by the county.

In 2018, the Department issued a document entitled, “Directive Concerning HAVA-Matching Drivers’ Licenses of Social Security Numbers for Voter Registration Applications” (“the Directive”) (attached as Exhibit A), which Petitioner has challenged in this action. The Directive spelled out certain requirements of state and federal law relating to the processing of voter registration applications.

The Directive instructed counties as to their obligation under HAVA. It specifically reminded county boards of HAVA’s registration rule, instructing them that HAVA required:

- (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.

Exh. A. In addition, the Directive informed county election officials 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." *See* Exh. A (second emphasis added). Finally, it further informed county election officials that they could not leave an applicant in "pending" status indefinitely based upon a mismatch with a submitted driver's license number or social security number.

The Directive did not prohibit counties from comparing the driver's license number or partial social security number submitted by the applicant with information in the state's databases; to the contrary, it instructed them that HAVA requires them to do so. Nor did it instruct counties to ignore the results of this comparison. Rather, it simply told them that a mismatch could not be the *sole* basis for a rejection of an

application, and that they could not leave applications in “pending” status indefinitely.

Under the Directive, the proper response for a county that receives an application generating a mismatch is to investigate further, which will typically involve contacting the applicant for more information. Mismatches have many innocuous causes, including sloppy handwriting; data-entry error; or an error in the database itself. In most cases, these errors can be easily identified, and they should not serve as a barrier to accepting the voter’s application.

If, on the other hand, further investigation reveals that the applicant is not qualified or that the application is fraudulent, then the proper course is for the county to reject the application and, if appropriate, refer the matter to law enforcement. Nothing in the Directive prevents counties from doing so. What the Directive instructs them not to do is to deny an application *without* any further investigation, or to leave the investigation in “pending” status indefinitely. Doing so denies the applicant the opportunity to appeal the board’s decisions, which is guaranteed by law.

IV. This Action

On November 4, 2024, Petitioner, a member of the Potter County Board of Elections, filed his Petition for Review, seeking declaratory and injunctive relief against the Department. The Petition contains two counts: Count I alleges that the Directive violates state law relating to the processing of voter registration applications; and Count II alleges that the Directive constitutes an unlawful regulation that was promulgated without adherence to the proper procedure. On December 23, 2024, the Department filed preliminary objections to the Petition, and Petitioner responded on February 21, 2025.³

STANDARD OF REVIEW

A respondent may assert preliminary objections based upon “legal insufficiency of [the] pleading (demurrer).” Pa. R.C.P. 1028(a)(4). In adjudicating preliminary objections for legal insufficiency, the Court “must accept as true all well-pleaded material allegations in the petition

³ Two other cases challenging the Directive are currently pending before this Court. *See PA Fair Elections v. Department of State*, No. 1512 CD 2023 (argued *en banc* Feb. 5, 2024); *McLinko v. Department of State*, No. 1205 CD 2024 (filed Sept. 16, 2024). A federal challenge to the directive was unsuccessful. *See Keefer v. Biden*, 725 F. Supp. 3d 491 (M.D. Pa. 2024), *aff'd sub nom. Keefer v. President*, No. 24-1716, 2025 WL 688924 (3d Cir. Mar. 4, 2025).

for review, as well as all inferences reasonably deducible therefrom.” *Cogen, Sklar & Levick v. Com.*, 814 A.2d 825, 827 (Pa. Cmwlth. 2003). But the Court “does not consider conclusions of law, argumentative allegations, or expressions of opinion.” *Id.* Preliminary objections in the nature of demurrer should be sustained where it is clear “the law will not permit recovery.” *Id.*

If there are no contested factual averments, the Court may consider Petitioner’s standing under Rule 1028(a)(4). *Petty v. Hosp. Serv. Ass’n of Ne. Pennsylvania*, 967 A.2d 439, 444 (Pa. Cmwlth. 2009).

SUMMARY OF ARGUMENT

Petitioner’s case should be dismissed for two separate reasons. First, under well-settled caselaw, he lacks standing: as a single member, he cannot assert claims on behalf of the Potter County Board of Elections as a whole, and he cannot show how he is individually injured by the Directive he seeks to challenge. Second, the Petition fails to state a claim, because nothing in the Directive conflicts with state law. For either of these reasons, the Petition should be dismissed.

ARGUMENT

I. Commissioner Rossman Lacks Standing

A party seeking to “initiate the court’s dispute resolution machinery” must first demonstrate that he or she had standing to do so. *Markham v. Wolf*, 136 A.3d 140 (2016) (citing *William Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975) (plurality)). To assess whether a party has standing, “courts consider whether the litigant has a substantial, direct, and immediate interest in the matter.” *Id.* An interest is substantial if it “surpass[es] ‘the common interest of all citizens in procuring obedience to the law.’” *Id.* (quoting *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003)).

To establish standing, a petitioner must identify “some discernable adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.” *William Penn Parking Garage*, 346 A.2d at 282. An interest is direct if the challenged law causes “harm to the party’s interest.” *Markham*, 136 A.3d at 298 (quoting *In re Hickson*, 821 A.2d at 1243). An interest is immediate if the “causal connection is not remote or speculative.” *Id.* (quoting *In re Hickson*, 821 A.2d at 1243).

Here, Petitioner has brought this action in his capacity as a single member of the Potter County Board of Elections. The Board itself is not a petitioner, nor have either of Petitioner’s fellow commissioners joined him in this action. Rather, Commissioner Rossman—one of three votes on the Board—has brought this case solely on his own.

In Pennsylvania, Boards of Elections have only collective duties and powers. The Election Code expressly provides that “[a]ll actions of a county board shall be decided by a majority vote of all the members.” 25 P.S. § 2643(a). The same is true when Boards act as registration commissions: “Actions of a [registration] commission must be decided by a majority vote of all members except as otherwise provided in this part.” 25 Pa.C.S. § 1203. Petitioner thus cannot take action with respect to a voter registration application without the concurrence of a majority of the Potter County Board of Elections.

It is well-established that individual members of an elected body lack standing to represent the interests of that body. For example, this Court held that a single councilmember could not appeal a Philadelphia Zoning Board decision when the law only “grants standing to City Council as a body.” *O’Neill v. Philadelphia Zoning Bd. of Adjustment*, 169 A.3d

1241, 1245 (Pa. Cmwlth. 2017). Likewise, this Court concluded that a single township commissioner lacked standing to bring a declaratory judgment action challenging the employment contract between the township and the township manager. *Szoko v. Twp. of Wilkins*, 974 A.2d 1216, 1220 (Pa. Cmwlth. 2009); *see also Miller v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cnty.*, 703 A.2d 733 (Pa. Cmwlth. 1997) (one member of the board of commissioners lacked standing to appeal the trial court’s order declaring the county’s property tax assessment practice to be unlawful) (discussing *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 543 (1986) (holding that an individual member of a school board lacked standing to appeal a decision entered against the school board, because “members of collegial bodies do not have standing to perfect an appeal the body itself has declined to take”)).

Federal law, which the Pennsylvania Supreme Court has often looked to in analyzing standing, *Markham*, 136 A.3d at 144-45, is consistent on this point. In *Raines v. Byrd*, the U.S. Supreme Court held that six members of Congress could not challenge a statute that allowed the President to “cancel’ certain spending and tax benefit measures after he has signed them into law.” 521 U.S. 811, 814 (1997). Instead, the Court

ruled that such an interest was shared equally by every member of Congress's two bodies such that no individual member had a personal stake; the alleged injury was instead an "institutional injury." *Id.* at 821, 829-30. Since *Raines*, the Supreme Court and lower federal courts have reiterated that only a collegial body has standing to act based on alleged injuries to that body. *E.g.*, *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1953-54 (2019); *Arizona State Leg. v. Arizona Independent Redistricting Comm'n*, 576 U.S. 787, 802-04 (2015); *Yaw v. Delaware River Basin Comm'n*, 49 F.4th 302, 312-13 (3d Cir. 2022); *Keefer v. Biden*, No. 24-147, 2024 WL 1285538, at *10 (M.D. Pa. Mar. 26, 2024); *Corman v. Torres*, 287 F. Supp. 3d 558, 567 (M.D. Pa. 2018) (three-judge panel).

In addition, Petitioner does not satisfy the narrow circumstances in which an individual member of an elected body has standing on his own behalf, because the Directive does not infringe on his authority as a board member. *See Allegheny Reprod.*, 309 A.3d at 844, 845-46; *Markham*, 136 A.3d at 140-46; *Fumo v. City of Philadelphia*, 972 A.2d 487, 501-02 (Pa. 2009); *Wilt v. Beal*, 363 A.2d 876, 881 (Pa. Cmwlth. 1976). An individual member of collective body has standing only if he can show "a discernible

and palpable infringement on [his] authority” as a member of that body. *See Allegheny Reprod.*, 309 A.3d at 844 (quoting *Fumo*, 972 A.2d at 501).

Thus, an individual member has standing only if the member’s “direct and substantial interest in [his] ability to participate in the voting process is negatively impacted” or if the individual “has suffered a concrete impairment or deprivation of an official power or authority to act as” a member of that body. *Allegheny Reprod.*, 309 A.3d at 845 (citing *Markham*, 136 A.3d at 145). The individual member’s interest must implicate “a defense of the power or authority of their offices []or a defense of the potency of their right to vote.” *Robinson Twp. v. Com.*, 84 A.3d 1054, 1055 (Pa. 2014). If the alleged injury falls outside of these two categories, then the individual member cannot intervene because the interest would merely be “akin to a general grievance about the correctness of governmental conduct.” *Allegheny Reprod.*, 309 A.3d at 845 (quoting *Markham*, 136 A.3d at 145).

Commissioner Rossman has not alleged, and could not show, that this matter poses “a discernible and palpable infringement on [his] authority” as a member of the Potter County Board. *See Allegheny Reprod.*, 309 A.3d at 844; *Fumo*, 972 A.2d at 502; *Markham*, 136 A.3d at

145. The Directive does not have any “negative impact on” Rossman’s “ability to vote” as a member of the board. *Allegheny Reprod.*, 309 A.3d at 846. Nor does it threaten to “usurp[]” his authority as a Board member. *Fumo*, 972 A.2d at 502.

Indeed, in a situation identical to this one in all relevant respects, this Court rejected the argument that an individual member of a county board of elections had standing to intervene in litigation based on his own interpretation of Pennsylvania’s election laws. *See Black Political Empowerment Project v. Schmidt*, No. 283 M.D. 2024 (Pa. Cmwlth. July 18, 2024) (single-judge op.), slip op. at 49–51 (“*BPEP*”) (attached as Exhibit B).⁴ In *BPEP*, the Court concluded that the county commissioner sought to participate in the case in order “to do nothing more than merely offer his perspective on the correctness of his own future government conduct as a member of the [board of elections] and what he believes is correct with respect to the law.” *Id.* at 51. As a result, his interest in the dispute was “no greater than that of the general citizenry in having duly

⁴ The Supreme Court subsequently ruled that this Court lacked jurisdiction over the underlying action in *BPEP*. *See Black Pol. Empowerment Project v. Schmidt*, 322 A.3d 221, 222 (Pa. 2024). It did not question this Court’s decision on intervention.

enacted statutory provisions enforced.” *Id.*; see also *Bonner v. Chapman*, 298 A.3d 153, 162 (Pa. Cmwlth. 2023).

BPEP likewise rejected the argument, also advanced by Petitioner here, that unsupported allegations that a board member might be subject to criminal or civil penalties based on the member’s interpretation of the law were sufficient to establish standing. *BPEP* at 51. As in *BPEP*, Petitioner’s assertions on this point are “entirely speculative.” *Id.* He does not plausibly explain how, as a single member of a board that can only act collectively, he could be subject to such penalties based on his own view of the law.

Simply put, Petitioner lacks “a substantial, direct, and immediate interest in the matter” and this case should be dismissed for lack of standing.

II. The Petition Fails To State A Claim

Petitioner’s lack of standing provides a sufficient basis for dismissing the Petition. The Petition should also be dismissed for the additional reason that it does not allege facts establishing that the Directive is in any way inconsistent with state law, or that it was issued in violation of state regulatory requirements.

A. *The Directive Does Not Conflict with State Law*

Petitioner's first count alleges that the Directive is inconsistent with state voter registration law. This allegation fails for multiple reasons.

As an initial matter, state law does not require applicants to submit driver's license numbers or partial social security numbers to register to vote. That requirement comes entirely from HAVA, which is a federal statute. State law specifically requires applicants to provide eight pieces of information, which do not include driver's license numbers or social security numbers. *See* 25 Pa.C.S. § 1327(a)(1); *supra* at 2 (listing information required). And because state law does not require applicants to submit this information, it certainly does not authorize county boards to reject applications based on mismatches between the information provided and that in government databases. Petitioner's allegation that *state* law requires county boards to reject applications based on mismatches in information that is only required by *federal* law simply defies logic.

Regardless, the Directive is fully consistent with both state and federal law. State law requires a commission to accept a registration

application if “(i) The application requests registration” and “(ii) The application contains the required information indicating that the applicant is a qualified elector of the county.” 25 Pa.C.S. § 1328. It further provides only four grounds for rejecting a voter registration application: an incomplete application, non-qualification, non-entitlement to a transfer or address change, and non-entitlement to a name change. *Id.* § 1328(b)(2). Nothing in the Directive conflicts with these requirements.

Florida State Conference of the NAACP v. Browning, 522 F.3d 1153 (11th Cir. 2008), relied on extensively by Petitioner, actually demonstrates why his allegations fail. That decision involved the application of a Florida law that expressly required matching the relevant number provided by the applicant. The law provided:

A voter registration application, including an application with a change in name, address, or party affiliation, may be accepted as valid *only after the department has verified the authenticity or nonexistence of the driver license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant.*

Fla. Stat. § 97.053(6) (emphasis added).

Pennsylvania law, by contrast, contains no such requirement that voters provide—or that county boards verify—social security numbers or driver’s license numbers.

In *Browning*, the question for the court was whether HAVA prohibits states from enacting laws that require matching the social security number or driver’s license number submitted by the applicant. The court answered in the negative, ruling that HAVA did not preempt Florida’s requirement. So *Browning* stands for the proposition that a state *may* require boards to verify driver’s license or social security numbers before registering an individual to vote, as Florida has done. But it provides no support whatsoever for Petitioner’s claim that *Pennsylvania* law imposes such a requirement. It does not.

In order to create a conflict with state law, the Petition misrepresents what the Directive actually says. Nowhere does the Directive require county boards to “ignore incomplete and inconsistent voter registration applications” or to “accept voter registration applications without properly determining whether applicants are qualified electors.” *Contra* Pet. ¶ 96. What the Directive says is simply that boards may not reject applications—or leave them in limbo indefinitely—based *solely* on a database mismatch. But county boards are encouraged to investigate further to determine the basis for the mismatch and to ultimately decide if the individual meets the

qualifications to vote. And if the board learns through that investigation that the individual is not qualified, then it should reject the application and inform the applicant. Nothing in the Directive is to the contrary.

Thus, Petitioner’s assertion that “the [Potter] Board would not approve applications with mis-matched driver’s license numbers or social security numbers, until having exercised reasonable effort to reconcile the disparity with the applicant,” Pet. ¶ 82, is an accurate statement of what boards *should* do. And Petitioner has identified nothing in the Directive that prevents it from doing so.⁵

B. The Directive Was Properly Issued

For the same reasons, there is no merit to Count II, which alleges that the Directive was issued without adherence to the proper procedure.

State law gives the Department the authority to “to take any actions ... which are necessary to ensure compliance and participation by

⁵ Elsewhere, Petitioner claims, “The 2018 Directive states that applications with nonmatching data ‘**may *not* be rejected and must be processed like all other applications.**’” ¶ 54. But Petitioner has selectively quoted from the Directive, omitting the underlined language: “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.**” Exh. A.

the commissions.” 25 Pa.C.S. § 1803(a). Consistent with this authority, the Department issued the Directive “to ensure compliance” with Pennsylvania law relating to voter registration.

The Directive does not create any new obligations. To the contrary, it “merely construes and does not expand upon the terms of a statute.” *Slippery Rock Area Sch. Dist. v. Unemployment Comp. Bd. of Rev.*, 983 A.2d 1231, 1236 (2009) (citation omitted). And a regulation that “merely construes” a statute—otherwise referred to as an “interpretive regulation”—is valid “if it genuinely tracks the meaning of the underlying statute.” *Id.* at 1237 (cleaned up). Such “interpretive regulations” are not subject to the procedural requirements that apply to a regulation that “creates a new controlling standard of conduct.” *Id.* at 1238.

The plain language of the Directive makes clear that it is interpreting existing law, not creating new obligations. The specific sentence Petitioner objects to is presented as a statement of current law: “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.” Exh. A (emphasis added).

For the reasons explained above, *see supra* Part I, the Directive “genuinely tracks the meaning of the underlying statute.” It did not create new obligations; rather, it simply informed county boards of their obligations under current law. As a result, the Directive did not “create[] a new controlling standard of conduct,” and there is no merit to Petitioner’s claim that the Department did not follow the proper procedure in issuing it.

CONCLUSION

For the reasons set forth above, the Court should grant the Department’s preliminary objections and dismiss the Petition with prejudice.

Dated: March 27, 2027

Respectfully submitted,

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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 than non-confidential information and documents.

Dated: March 27, 2025

/s Michael J. Fischer
Michael J. Fischer