

IN THE SUPREME COURT OF PENNSYLVANIA

MICHAEL MILLER
Petitioner,

v.

COUNTY OF LANCASTER,
Respondent.

334 MAL 2025

APPLICATION TO VACATE ORDERS FOR FRAUD ON THE COURT

I. INTRODUCTION

This Application is filed within the pending docket No. 334 MAL 2025, in which no disposition has yet been entered. It seeks the Court’s exercise of inherent Article V authority to vacate the orders under review for fraud upon the tribunal and structural procedural defects described in the accompanying memorandum. It supplements the pending petition for allowance of appeal.

The purpose is to restore lawful adjudication, re-establish Article V judicial authority and integrity, and purge administrative substitutions that produced incompatible results under an unchanged statute. Relief sought is vacatur, verification of judicial participation, and reassignment before a qualified judicial officer.

II. FACTUAL BACKGROUND

A. OOR Final Determination (AP 2022-1749)

On October 5, 2022, the Office of Open Records held that mail-in ballots and envelopes (except military) are public records under 25 P.S. §§ 3146.9(a), 3150.17(a) and ordered County of Lancaster to make copies available “subject to the Election Code.”

B. County Response (October 5 2022 Letter)

Instead of producing copies of the records, County’s solicitor imposed only ‘inspection’ and with extra-statutory conditions such as requestor comes alone, no copying or photography, sheriff deputy supervision, two-hour appointments, staff supervision—citing § 2648 for “safekeeping.” as shown in the record.

C. Common Pleas Proceeding (CI-22-08146, May 12 2023)

Petitioner filed a verified § 1302 petition to enforce the OOR determination. The judge sua sponte reclassified the petition as an original action in mandamus, then dismissed the case on facial objections to the same petition under Pa.R.C.P. 1028(a)(2),(a)(4), all while admitting in the dismissal order that the petition stated a claim for relief. No hearing or record was made.

D. Commonwealth Court (*Miller v. County of Lancaster*, 595 C.D. 2023, Apr 11 2025)

A three-judge panel affirmed, again without a hearing, adopting the ‘trial’ judge’s logic and declaring that County’s restrictions were authorized discretion. The panel omitted any mention of *Previte v. Erie County Bd. of Elections*, 320 A.3d 908 (Pa. Cmwlth 2024 en banc), which eight months earlier had held that mail-in and absentee ballots are RTKL-obtainable public records. That omission rendered the *Miller* judgment *ultra vires*.

E. Supreme Court Per Curiam Order (59 MM 2025, Oct 3 2025)

The Supreme Court’s clerk and prothonotary officers then “DENIED” Miller’s motion for reconsideration and related King’s Bench petition (59 MM 2025), issuing unsigned “PER CURIAM – BY THE COURT” order, with no reasoning and without identifying any Justice or recorded vote.

F. Administrative Conflict and AOPC Defense (59 MM 2025)

The AOPC, agency of the Supreme Court, then ‘appeared’ as counsel for Clerk Zisk—the very official whose acts Miller challenged as *ultra vires*—while also managing the Clerk’s office, in violation of 42 Pa.C.S. § 8525.

Identical statutes; opposite outcomes. Each tribunal used procedure to preserve its own error and County’s censorship, indicating fraud not mistake. The defect is structural, not substantive.

III. SPECIFICATION OF FRAUDULENT OR ULTRA VIRES ACTS

1. **Facial Dismissal as Merits Decision** – Trial judge resolved statutory meaning and agency discretion on pleadings contrary to Rule 1028(a)(2)(4).
2. **Omission of Binding Precedent** – The *Miller* panel ignored *Previte* (2024 en banc) and the Rule 1028(a)(2)(4) violation, thereby issuing a judgment beyond its authority.
3. **Clerk Usurpation** – Unsigned orders entered without judicial signature or vote or reasoning, violating *School Dist. of Haverford Twp. v. Herzog*, 314 Pa. 161 (1934) and due process.
4. **Administrative Self-Representation** – AOPC defended its own subordinate, collapsing neutrality and contravening § 8525 and § 39.3(b).
5. **Retaliatory Hardening of Error** – After *Previte* validated Petitioner’s position, the same court denied review through procedural gamesmanship and anonymous orders—punishing the requestors for others’ errors and abuses.
6. **Jurisdictional Excess by OOR (*Bowling* Violation)** – Appeals officers acted beyond their statutory jurisdiction by substituting personal policy judgments for the RTKL’s enumerated exemptions, contrary to *Bowling v. Office of Open Records*, 75 A.3d 453 (Pa. 2013).

IV. GOVERNING LAW AND AUTHORITIES

- Pa. Const. art. V §§ 1–2 – Judicial power may be exercised only by judges.
- Pa.R.C.P. 1028(c)(2) – Facial dismissals confined to defects apparent on the pleading.
- 42 Pa.C.S. § 8525; 4 Pa. Code § 39.3(b) – Bar on Commonwealth defense of ultra vires acts.
- *Bowling v. OOR*, 75 A.3d 453 (Pa. 2013) – Appeals officers may decide only whether a record falls within the RTKL’s enumerated exemptions; they have no discretion to import other laws or policy considerations.
- *Hazel-Atlas, Chambers, Liljeberg* – Fraud-on-the-court standards.

Public confidence depends on verifiable judicial acts—not presumptions.

V. LEGAL ANALYSIS

A. Definition of Fraud on the Tribunal

Fraud exists when a court is prevented from performing its neutral function through administrative misrepresentation or concealment.

B. Application to Record Facts

Each tribunal replaced adjudication with administrative assertion—OOR deferral, trial-court reclassification, appellate omission, and clerical denial.

C. Administrative Conflict and Loss of Neutrality

AOPC’s dual role as administrator and advocate breached § 8525, nullifying impartiality and creating self-review.

D. Cumulative Due-Process Failure

No hearing, no record, no identifiable judge equals insufficient process; the presumption of regularity collapses when the record shows its absence.

E. Demonstrated Facial Inconsistency and Resulting Injustice

Previte (2024 en banc) held ballots are public records; *Miller* (2025 panel) ignored that binding rule. The later decision is void for want of jurisdiction.

F. Violation of *Bowling* – Exceeding Statutory Jurisdiction

Under *Bowling*, OOR appeals officers possess discretion only over procedure, not substance: “Either the document falls under one of the specific exemptions, or it is a document that must be released.” 75 A.3d at 474. Yet, in *Miller* (Oct 5 2022) and *Mancini* (Oct. 17 2025), OOR exceeded that boundary by invoking Election Code § 2648, constitutional “ballot secrecy,” and “barcode privacy”—matters beyond its purview. By invoking new grounds for nondisclosure, OOR acted *ultra vires*. The trial and appellate courts’ reliance on that defective foundation perpetuated the jurisdictional fraud that now taints this record.

G. Integrity as the Central Interest

Correction preserves the Court's legitimacy; concealment destroys it. Vacatur is a self-cleansing act reaffirming the judiciary's honor.

H. Constitutional Dimension — Court as Instrument of Interference

In *Capital Cities Media, Inc. v. Chester*, 797 F.2d 1164 (3d Cir. 1986), the Third Circuit held that the Free Speech Clause “bars government interference with the flow of information through the closure of governmental proceedings that historically have been open to the public.” The court further explained:

“The First Amendment ... seeks to promote the ideal of an informed electorate by barring government interference with the flow of information and ideas to the public. The founding fathers intended affirmative rights of access to government-held information ... to depend upon political decisions made by the people and their elected representatives. This conclusion finds support in the text of the First Amendment, the historical gloss on that text, and the First Amendment caselaw.” *Id.* at 1173 (emphasis added).

That principle—freedom from governmental interference in the circulation of public information—extends to judicial proceedings themselves. When the courts, acting for or alongside the executive, become the instrument of interference and censorship, the constitutional injury is magnified: the branch charged with enforcing transparency becomes the barrier to it. The judiciary's suppression of public election records, contrary to statutory command and binding precedent, thus represents not only fraud upon the tribunal but also a constitutional inversion of the

First Amendment's purpose. A court that conceals public information under color of law ceases to function as guarantor of liberty and instead becomes its censor.

Accordingly, the fraud demonstrated in this record is not a private wrong but a structural offense against the constitutional order. Vacatur is necessary not merely to cleanse the judicial record, but to restore the constitutional flow of information that the First Amendment was designed to protect.

VI. DEMAND FOR RELIEF

1. **Vacate** all orders entered in or arising from this matter. All are false.
2. **Declare** the *Miller* decision void ab initio for disregard of controlling en banc precedent (*Previte*) and for reliance on OOR actions beyond *Bowling's* jurisdictional limits.
3. **Reinstate** the verified § 1302 petition for *de novo* adjudication before an identifiable judicial officer or special master.
4. **Order disclosure** of assignment, circulation, and vote records to verify judicial participation in all purported per curiam entries.
5. **Refer** AOPC and Clerk conduct to appropriate disciplinary and legislative oversight bodies.
6. **Declare and direct** that unsigned, clerk-certified orders lacking judicial authentication are void and shall not constitute final judgments.

7. **Mandate future compliance** that every dispositive order be grounded in judicial reason and bear verifiable judicial identification and signature attestation.

RESERVATION OF RIGHTS

Petitioner expressly reserves all rights and remedies arising under the Constitution and laws of the United States and the Commonwealth of Pennsylvania.

Respectfully Submitted,

/s/ Michael Miller

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October 22, 2025

CERTIFICATE OF SERVICE

I, the undersigned Petitioner, hereby certify that on this date I served a true and correct copy of the foregoing Petition for Allowance of Appeal via the PACFile electronic filing system, in accordance with Pa.R.A.P. 121 and 122, upon the following counsel of record:

Claudia Shank & Peter Wurtz
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Respectfully submitted,

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October 22, 2025