

separately tally the ballots” received after the Election Day received-by deadline, A.116.

For at least two “reason[s],” the Secretary’s guidances are not “satisf[actory]” or sufficient to preserve RPP’s rights to “a targeted remedy” “if the State Supreme Court’s decision is ultimately overturned.” *Republican Party of Pa.*, slip op. at 3–4 (statement of Alito, J.). First, the Secretary’s guidances are not binding on Pennsylvania’s 67 county boards of elections. That is because the Secretary acts primarily in a ministerial capacity under Pennsylvania law, which grants the county boards jurisdiction and authority to conduct the Commonwealth’s elections. *See* 25 Pa. Stat. §§ 2621, 2642; *Perzel v. Cortes*, 870 A.2d 759, 764 (Pa. 2005); *Hamilton v. Johnson*, 141 A. 846, 847 (Pa. 1928). Thus, county boards of elections may choose not to follow the Secretary’s guidances—and in the fast-paced and chaotic pace of post-election events in Pennsylvania, it is unclear whether all 67 county boards of elections are currently segregating late-arriving ballots.

In an effort to obviate the need for further proceedings before this Court, counsel for RPP contacted counsel for county boards of elections to request confirmation that the boards would segregate any late-arriving ballots. A.117. Forty-two counties affirmatively responded that they would do so, and no county indicated that it would not. The Secretary similarly requested such confirmation and received it from 33 of those counties. A.122. Thus, to date, a total of 25 Pennsylvania county boards of elections have not indicated whether they are segregating the late-arriving ballots.

Second, the Secretary has reserved the right to change her guidances or to provide “further direction regarding the ballot’s subject to the Supreme Court’s decision.” October 28 Guidance at 3. The Secretary, therefore, may issue new directions to county boards of elections in the absence of an order from this Court, just as she did in her November 1 Guidance when she purported to direct county boards to count the late-arriving ballots. A.114.

In short, an order from the Court is badly needed. But given some county boards’ refusal to confirm that they are segregating ballots and the Secretary’s changing guidance, an order requiring segregation of ballots may not suffice to preserve RPP’s appellate rights. RPP therefore now asks the Court for an order directing Respondents Secretary of State Boockvar and the county boards of elections, pending certiorari review or further order of the Court, to log, to segregate, and otherwise to take no further action related to any mail-in or civilian absentee ballots received after the General Assembly’s received-by deadline.

An order at this juncture is necessary to preserve this Court’s jurisdiction to resolve this matter on the merits, as well as its ability to enter an appropriate remedy for this general election. *See* 28 U.S.C. §§ 1651(a), 2101(f). Respondent Pennsylvania Democratic Party (PDP), *see* Pa. Dem. Party Opp’n to Mot. to Expedite at 7, *Republican Party of Pa.*, No. 20-542 (U.S. Oct. 25, 2020), the Secretary, *see* October 28 Guidance at 2, and 42 county boards of elections, *see* A.117, agree that segregation of ballots at a minimum is appropriate.