

ELECTION MATTER

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100 MAP 2022

IN THE SUPREME COURT OF PENNSYLVANIA

REPUBLICAN NATIONAL COMMITTEE, et. al. :

Petitioners, :

v. :

Docket No. 100 MAP 2022

LEIGH M. CHAPMAN, in her official capacity
as Acting Secretary of the Commonwealth of
Pennsylvania, et al.,

Respondents.

BRIEF OF APPELLEE BUCKS COUNTY BOARD OF ELECTIONS

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I. INTRODUCTION

This case concerns the Republican National Committee's efforts to disenfranchise qualified voters in Bucks County by prohibiting the Bucks County Board of Elections from providing notice to its voters that there may be a minor defect with the voter's outer declaration envelope that can be easily corrected prior to Election Day. The Bucks County Board of Elections simply seeks to continue to provide excellent customer service to its residents.

Appellants, in their seemingly endless efforts to undermine the integrity of elections, filed this meritless lawsuit just as the Board of Elections was about to send out and subsequently receive mail-in and absentee ballots to voters for General Election 2022. Their goal is obvious – to sow uncertainty and distrust in the public on the eve of Election Day when all there is to find are elections that are being run fairly and securely for all voters. There is no doubt Appellants seek to undermine the voters' faith in our electoral process.

What have Appellants argued in support of their position that they've waited until the last minute to file and demand immediate injunctive relief? First, they cite a legislative bill that was not passed into law to justify their arguments. Second, they search in vain for a provision of the Election Code that supports their position and after finding none, they argue that the omission of statutory language permitting a Board of Election to assist voters equates to a prohibition on such communications,

guidance, and assistance. Third, they baldly misconstrue the holding of this Court in *Pennsylvania Democratic Party v. Boockvar*. Fourth, they completely ignore the fact that these issues have already been litigated in federal court, and as it relates to Bucks County, they ignore the fact that this suit was already filed on General Election Day 2020 in the Bucks County Court of Common Pleas and dismissed.

Their meritless Application for a preliminary injunction was properly denied by the Commonwealth Court.¹ The Bucks County Board of Elections joins in the Brief filed by the Department of State and offers the following supplemental argument.

II. ARGUMENT: APPELLANTS WERE NOT ENTITLED TO A PRELIMINARY INJUNCTION

In ruling on a request for preliminary injunction, a trial court has grounds to deny relief where it properly finds that any one of the following “essential prerequisites” for a preliminary injunction is not satisfied. *See Maritrans GP*, 602

¹Further, even if Appellants had advanced a sound legal argument in support of their Application, Appellants failed below to establish that the Commonwealth Court had proper subject matter jurisdiction over Appellants’ Application pursuant to 42 Pa.C.S. § 761(a)(1). Appellants failed to establish how the Department of State was an indispensable party where no Department of State action is being challenged, and similarly failed to substantiate their argument that the county boards of elections are commonwealth agencies. *See In re Voter Referendum Petition Filed Aug. 5, 2008*, 981 A.2d 163, 170 (Pa. 2009). Now, Appellants shift their strategy to argue that this Court has jurisdiction under its King’s Bench authority. The failure to establish proper subject matter jurisdiction serves as an alternative basis to deny Appellants’ request for a preliminary injunction.

A.2d at 1282-83 (requirements for preliminary injunction are “essential prerequisites”); *County of Allegheny v. Commonwealth*, 544 A.2d 1305, 1307 (Pa. 1988) (“For a preliminary injunction to issue, every one of the[] prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the others.”).

The Pennsylvania Supreme Court set forth the criteria for the issuance of preliminary injunction in *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003):

- a. Petitioners must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. *Singzon v. Dep't of Pub. Welfare*, 436 A.2d 125, 127-28 (Pa. 1981); *John G. Bryant Co. v. Sling Testing & Repair, Inc.*, 369 A.2d 1164, 1167-68 (Pa. 1977); *Ala. Binder & Chem. Corp. v. Pa. Indus. Chem. Corp.*, 189 A.2d 180, 184 (Pa. 1963).
- b. Petitioners must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. *Maritrans GP*, 602 A.2d at 1283; *Valley Forge Historical Soc'y v. Washington Mem'l Chapel*, 426 A.2d 1123, 1128-29 (Pa. 1981); *Ala. Binder & Chem. Corp.*, 189 A.2d at 184.

- c. Petitioners must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. *Valley Forge Historical Soc'y*, 426 A.2d at 1128-29; *Herman v. Dixon*, 141 A.2d 576, 577-78.
- d. Petitioners must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits. *Anglo-Am. Ins. Co. v. Molin*, 691 A.2d 929, 933-34 (Pa. 1997); *Maritrans GP*, 602 A.2d at 1283-84; *Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 451 A.2d 434, 440 (Pa. 1982); *Singzon*, 436 A.2d at 127-28.
- e. Petitioners must show that the injunction it seeks is reasonably suited to abate the offending activity. *John G. Bryant Co.*, 369 A.2d at 1167-71; *Albee Homes, Inc. v. Caddie Homes, Inc.*, 207 A.2d 768, 771-73 (Pa. 1965).
- f. Petitioners must show that a preliminary injunction will not adversely affect the public interest. *Maritrans GP*, 602 A.2d at 1283; *Philadelphia v. District Council 33, AFSCME*, 598 A.2d 256, 260-61 (Pa. 1991).

Appellants failed miserably to meet the foregoing criteria, and accordingly, the Commonwealth Court's Order denying the Application for a Preliminary Injunction did not constitute reversible error.

a. Providing Excellent Customer Service To Voters Does Not Constitute Immediate Or Irreparable Harm.

Once the mail-in and absentee ballots are mailed out, the staff of the Bucks County Board of Elections reviews incoming mail-in and absentee ballot envelopes continuously as they are delivered to its office. That review process is primarily done by equipment that can sort the ballot envelopes into voting districts, confirm the ballot envelope was the same envelope that was mailed out to the voter, and can verify if certain information is missing from the declaration on the outer envelope. If certain information is missing from the outer envelope, such as a signature, the staff at the Bucks County Board of Elections mails a postcard to the voter notifying the voter of the defect and informing the voter that they can contact the Board of Elections office regarding remedying the problem so long as they do so by 8:00 p.m. on Election Day.

Appellants argued that the immediate and irreparable harm that they suffer relates to the Boards of Elections contacting qualified voters to alert them to the fact that there may be a minor defect with their outer envelope. There are no laws that prohibit this, and Appellants were unable to identify for the Court any provision in the Election Code that prevents Bucks County Board of Elections or any county board from contacting a voter to inform them of problems with their ballot. To the contrary, boards are empowered to “make and issue ... instructions to voters,” 25

P.S. § 2642(f), (i); these powers necessarily must include the power to contact voters when deemed necessary.

Appellants wish this Court to prohibit Boards from giving notice to voters of the defect not because there is a law prohibiting this provision of customer service to our citizens, but because the Boards do not engage in identical procedures in doing so. However, our courts have already opined that “county-to-county variations do not show discrimination. Counties may, consistent with equal protection, employ entirely different election procedures and voting systems within a single state. Even when boards of elections vary . . . considerably in how they decide to reject ballots, those local differences in implementing statewide standards do not violate equal protection. *NE. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 635-36 (6th Cir. 2016); see also *Wexler v. Anderson*, 452 F.3d 1226, 1231-33 (11th Cir. 2006) (recognizing that equal protection lets different counties use different voting systems). *Id.* at 388, *citing Donald J. Trump for President, Inc.*, 2020 U.S. Dist. LEXIS 188390, 2020 WL 5997680, at *44 (collecting cases).

“In Pennsylvania, each county runs its own elections. 25 Pa. Stat. § 2641(a). Counties choose and staff polling places. § 2642(b), (d). They buy their own ballot boxes and voting booths and machines. § 2642(c). They even count the votes and post the results. § 2642(k), (l). In all this, counties must follow Pennsylvania's Election Code and regulations. But counties can, and do, adopt rules and guidance

for election officers and electors. § 2642(f). And they are charged with ensuring that elections are “honestly, efficiently, and uniformly conducted.” *Donald J. Trump for President, Inc. v. Sec’y Pennsylvania*, 830 Fed. Appx. 377, 382 (3rd Cir. 2020).

The General Assembly has determined that “county boards of elections, within their respective counties, shall exercise, in the manner provided by [the Election Code], all powers granted to them by this [Code], and shall perform all the duties imposed upon them by this [Code], which shall include . . . [t]o make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers, and electors,” 25 P.S. § 2642(f), and “[t]o investigate election frauds, irregularities and violations of [the Election Code],” *id.* § 2642(i).

Determining the scope of the county boards’ authority to promulgate rules, regulations, and instructions requires “listen[ing] attentively to what the statute says, but also to what it does not say.” *In re Canvassing Observation*, 241 A.3d 339, 349 (Pa. 2020). Consistent with that principle, the Pennsylvania Supreme Court has held that a command in the Elections Code that does not specify relevant parameters may “reflect the legislature’s deliberate choice to leave such matters to the informed discretion of county boards of elections.” *Id.* at 350.

Appellants’ argument that the General Assembly’s decision not to impose a cure procedure means that no county board may adopt such a procedure fails. While

county boards may not adopt any such procedures that are “inconsistent with law,” where the law is silent, the board may adopt procedures to promote the purpose of the Election Code: “freedom of choice, a fair election and an honest election return.” *Boockvar*, 238 A.3d 345 at 356. Indeed, county boards may be “best suited” to identify the procedures needed to effectuate votes in their district based on their residents’ needs and county resources. To find that the Board’s lawful assistance to the voters constitutes irreparable harm would fly in the face of these purposes.

b. There Is No Injury In The Court’s Refusal To Grant The Injunction.

Appellants were required to show the lower court that a greater injury would result from refusing their request to stop County Boards of Election from providing good customer service to their voters. They argued that the “mishmash of cure procedures” violates the Election Code (though it fails to identify which section of the Election Code) and disadvantages Appellants because they have an inadequate period of time to properly educate their members regarding the exact rules applicable to mail-in and absentee ballot voters. Appellant’s failure to allege the specific violation speaks for itself. Appellant’s argument that they need more time to educate their voters is similarly meritless. The Bucks County Board of Election has been providing notice to electors in Bucks County regarding facially deficient problems with their outer ballot envelopes since 2020 and has been providing this service to all of its voters for four (4) elections so far: Primary and General Election in 2020;

Primary and General Election in 2021; and Primary Election in 2022. Candidates and the political parties in Bucks County are well aware of the notice and cure procedure, as the same has been discussed in public meetings of the Board of Elections. In fact, the political parties, specifically the Bucks County Republican Committee, was present at a public Board of Elections meeting wherein the procedure of notice and cure was discussed and approved as far back as October 2020 and have been aware of the procedure for the past four election cycles. *See* Affidavit of Bucks County Board of Elections Director Thomas Freitag attached as Exhibit Bucks-1 (“Freitag Affidavit”). At the public meeting of the Bucks County Board of Elections on October 22, 2020, the Board discussed their procedures for notice and cure of facially defective outer envelopes containing ballots and voted to use this notice and cure practice and procedure for the benefit of all Bucks County voters. *Id.* The Board further discussed providing a listing of any voters who received notice of their facially defective ballot envelope and voted to provide this information to the political parties upon their request of same. *Id.* The representative of the Bucks County Republican Committee asked questions about how the lists would be distributed to the parties and was informed of those procedures. *Id.* Subsequently, and since General Election 2020, both political parties have requested said lists and are continued to be provided said lists by Bucks County Board of Elections. *Id.* For Appellants to claim that they have not had adequate time to

educate their members as a basis for demanding an injunction and claiming denial of same would cause them greater injury is simply not supported by the record. Further, their claim that they only discovered that the notice and cure procedures due to a Right To Know request in 2022 ignores the reality that they certainly had the opportunity to learn of the procedures had they simply viewed the public meetings, which have been posted publicly online since October, 2020.

c. Appellants Sought To Disrupt The Status Quo, Not Preserve The Status Quo.

The third criteria Appellants had to establish was that a preliminary injunction would preserve the status quo. To the contrary, the Bucks County Board of Elections has a long-standing procedure of allowing electors the opportunity to cure minor defects with respect to absentee or mail-in ballots and this procedure is consistent with legislative intent that the Election Code be liberally construed so as not to deprive voters of their right to elect a candidate of their choice. As set forth above, the Bucks County Board of Elections has been providing this assistance to voters for four (4) elections now. It is a service that the voters use to ensure their votes are counted. Mail-in and absentee ballots are about to be sent out to voters, and the staff will use their best efforts to contact voters who mistakenly return an outer envelope that does not bear a signature and/or date to give those voters an opportunity to fix that error. This service complements the Board of Election's responsibility – its

mandate – to run a fair and honest election. Disrupting that service, muzzling county employees, and prohibiting the boards of election from providing information to the political parties does nothing to protect the status quo. Appellants mislead the Court by arguing that they are seeking to preserve the holding in *Pa. Democratic Party v. Boockvar*; the Court did not rule that Election Boards were prohibited from allowing electors to correct minor defects identified by Election Boards. It simply held that the Boards were not required to provide such notice to voters.

d. Appellants’ Petition for Review Is Unlikely To Prevail On The Merits.

For all of the foregoing reasons, the Petition for Review still before the Commonwealth Court has no merit and Appellant is unlikely to prevail. In addition, the issue Appellants raise has already been unsuccessfully challenged in federal court, where the claim was made that allowance of county boards’ discretion to implement cure procedures violated the United States Constitution’s Equal Protection Clause. *See Donald J. Trump for President, Inc. v. Sec’y Pennsylvania*, 830 Fed. Appx. 377 (3d Cir. 2020). The Court dismissed the lawsuit, noting: “[n]ot every voter can be expected to follow this process perfectly. Some forget one of the envelopes. Others forget to sign on the dotted line. Some major errors will invalidate a ballot. . . . But the Election Code says nothing about what should happen if a county notices these errors before election day. Some counties stay silent and do not count the ballots; others contact the voters and give them a chance to correct

their errors.” *Donald J. Trump for President, Inc. v. Sec’y Pennsylvania*, 830 Fed. Appx. 377 (3d Cir. 2020). Further, Appellants’ allegations center on a mischaracterization of vote cancellation and dilution. That county boards may “employ entirely different election procedures and voting systems within a single state” does not, by itself, impose any injury so long as those procedures do not discriminate against certain groups of voters or infringe on an individual’s fundamental right to vote. *See Donald J. Trump for President, Inc.*, 830 F. App’x at 388; *see also Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 383 (W.D. Pa. 2020). Appellee’s notice and cure procedures do not lead to voter disenfranchisement. Quite the opposite—voters that would otherwise be prevented from casting an effective mail ballot will now have an opportunity to ensure their ballots are counted. Meanwhile, Appellants’ requested relief would result in *more* disenfranchisement, not less.

Appellants have not identified any provision in the Election Code that prevents Bucks County Board of Elections or any county board from contacting a voter to inform them of problems with their ballot. To the contrary, boards are empowered to “make and issue ... instructions to voters,” 25 P.S. § 2642(f), (i); these powers necessarily must include the power to contact voters when deemed necessary.

The injunction was properly denied in this matter because notice-and-cure

procedures adopted by the Bucks County Board of Elections are fully consistent with the Election Code. The law does not prohibit a county board from taking action to prevent disenfranchisement when it receives a mail ballot that cannot be counted due to observable defects. Instead, it permits county boards to develop procedures to contact affected voters and provide them with the opportunity to have their votes counted.

e. An Injunction Would Have Ceased Notice to Voters And Was Not Narrowly Tailored.

The injunction Appellants sought was properly denied because it is “not narrowly tailored to correct the alleged wrong.” *Wheels Mech. Contracting & Supplier, Inc. v. W. Jefferson Hills Sch. Dist.*, 156 A.3d 356, 361 (Pa. Commw. Ct. 2017). A “preliminary injunction concludes no rights and is a final adjudication of nothing.” *Philadelphia Fire Fighters’ Union, Loc. 22, Int’l Ass’n of Fire Fighters, AFL-CIO v. City of Philadelphia*, 901 A.2d 560, 565 (Pa. Commw. Ct. 2006) (internal quotation marks omitted). Yet here, given the fact that county boards of election have already sent out mail-in and absentee ballots to voters and are receiving them back from said voters, granting Appellants’ requested injunction would have served, as a practical matter, as a final adjudication of the county boards’ ability to implement notice-and-cure procedures for this election cycle. That, in turn, would have ensured that every qualified elector whose ballot submissions contained

technical deficiencies would be disenfranchised, even though the Court may ultimately conclude notice-and-cure procedures are permissible.

f. An Injunction Will Adversely Affect the Public Interest.

Notifying voters that their ballots are not compliant with the Election Code and providing voters with the opportunity to ensure their vote will be counted, does not cause any cognizable harm to Appellants—or anyone else—that warranted an injunction. Enjoining the use of notice-and-cure provisions would harm voters in Bucks County and across the Commonwealth whose ballots will be cast aside due to readily apparent and easily correctible errors on the outer envelope, which are detected before any ballots are canvassed or counted.

And though Appellee does not believe there to be any doubt about whether the Election Code permits county boards to implement notice-and-cure procedures, if the Court has doubt, same must be resolved in favor of preventing inadvertent forfeiture of electors' right to vote. “[T]he overarching principle guiding the interpretation of the Election Code is that it should be liberally construed so as not to deprive electors of the right to elect a candidate of their choice.” *Chapman v. Berks Cnty. Bd. Of Elections*, No. 355 M.D. 2022, 2022 WL 4100998, at *13 (Pa. Commw. Ct. Aug. 19, 2022); accord *In re Major*, 248 A.3d 445, 450 (Pa. 2021), reargument denied (Apr. 12, 2021). The “goal must be to enfranchise and not to disenfranchise the electorate,” *Pa. Democratic Party*, 238 A.3d at 361 (quoting *In*

re Luzerne Cnty. Return Bd., 290 A.2d 108, 109 (Pa. 1972)), in accordance with the “longstanding and overriding policy in this Commonwealth to protect the elective franchise,” *id.* (quoting *Shambach v. Bickhart*, 845 A.2d 793, 798 (Pa. 2004)). Thus, as established by well-settled Pennsylvania precedent: [T]he power to throw out a ballot for minor irregularities ... must be exercised very sparingly and with the idea in mind that either an individual voter or a group of voters are not to be disenfranchised at an election except for compelling reasons.... The purpose in holding elections is to register the actual expression of the electorate’s will and that computing judges should endeavor to see what was the true result. There should be the same reluctance to throw out a single ballot as there is to throw out an entire district poll, for sometimes an election hinges on one vote. *Id.* (quoting *Appeal of James*, 105 A.2d 64, 67 (Pa. 1954)). Consequently, when a Pennsylvania court is provided with two reasonable interpretations of the Election Code, one which would enfranchise electors and one which would “disenfranchise[]” and “restrict[] voters’ rights,” the Court must adopt the “construction of the Code that favors the fundamental right to vote and enfranchises, rather than disenfranchises, the electorate.” *Pa. Democratic Party v. Boockvar*, 238 A.3d at 361.

Finally, Appellants’ demand on the eve of an election to disrupt the status quo procedures that have been in place for four (4) elections is frankly designed to cause public confusion and distrust in our electoral system. These efforts to curtail good

government services to its citizens are completely unwarranted and have no basis in law. Appellants seek to simply disrupt the electoral process by waiting until the very last minute to file a meritless suit that will no doubt be used to erroneously and publicly vilify the sanctity of our Commonwealth's electoral process, without any evidence whatsoever of any impropriety. The Republican National Committee is purposely seeking to undermine faith in our elections, whereas our Board has worked tirelessly to be a transparent source of public information to voters, candidates and political parties alike.

II. APPELLANTS' CLAIMS ARE BARRED BY THE DOCTRINE OF LACHES.

Appellants' Petition seeking injunctive relief is barred by the doctrine of laches, as they have had more than ample time to bring such a lawsuit prior to the eve of mail-in and absentee ballots being mailed out and returned to the county boards of election. Equity has established the doctrine of laches to preclude actions that are brought without due diligence, and which result in prejudice to the non-moving party. *Brodt v. Brown*, 172 A.2d 152 (Pa. 1961). Application of laches requires the party asserting it to establish two elements: (1) a delay arising from the complaining party's failure to exercise due diligence and (2) prejudice to the asserting party resulting from the delay. *Koter v. Cosgrove*, 844 A.2d 29, 34 (Pa. Cmwlth. 2004) *citing* *Stilp v. Hafer*, 718 A.2d 290, 292 (Pa. 1998). A determination as to whether the complaining party acted with due diligence will depend on what

that party might have known based on the information within its reach. Prejudice can be found where a change in the condition or relation of the parties occurs during the time the complaining party failed to act.

As set forth in Section I(b) above, the Bucks County Board of Election has been providing notice to electors in Bucks County regarding facially deficient problems with their outer ballot envelopes since 2020 and has been providing this service to all of its voters for the last four (4) elections following the enactment of Act 77. At the public meeting of the Bucks County Board of Elections on October 22, 2020, the Board discussed their procedures for notice and cure of facially defective outer envelopes containing ballots and voted to use this notice and cure practice and procedure for the benefit of all Bucks County voters. *See Freitag Affidavit.* The Board further discussed providing a listing of any voters who received notice of their facially defective ballot envelope and voted to provide this information to the political parties upon their request of same. *Id.* Subsequently, and since the General Election 2020, both political parties have requested said lists and are continued to be provided said lists by Bucks County Board of Elections.

A challenge at this late date prejudices the Boards of Elections who are in the midst of preparing for a General Election, but most importantly it prejudices the electorate who has come to rely upon and expect this governmental service, and will no doubt lose faith in the electoral system if yet another last-minute change is thrust

upon it before Election Day. Further, Appellants explanation that they only recently discovered the notice and cure procedures was expressly denied in the pleadings, as Appellants have been on notice of this procedure as it pertains to Bucks County since October, 2020 – over two years ago. Their failure to bring this suit sooner cannot be excused by lack of knowledge or due diligence, as the procedures were of public record, and discussed in a public meeting of the Bucks County Board of Elections. Appellants offered no objection then, despite political parties being present and having since taken advantage of the notice and cure services for their own political purposes. Indeed, this last-minute action is tantamount to mischief. For these reasons, the doctrine of laches should constitute grounds to affirm the lower Court’s decision and bar Appellants’ demand for a temporary and immediate injunction.

III. APPELLANTS’ CLAIMS WERE BARRED BY THE DOCTRINE OF RES JUDICATA AND COLLATERAL ESTOPPEL.

In 2020, Donald J. Trump, then-candidate, filed suits in federal and state court regarding the issue of notice and cure.

In federal court, his campaign challenged giving voters notice and letting them cure ballot defects, claiming violations of equal protection. *See Donald J. Trump for President, Inc. v. Sec’y Pa.*, 830 F. App’x 377, 390 (3d Cir. 2020). The Court reflected on the fact that the Campaign had already litigated these issues in state court and in denying relief stated: “The Campaign cites no authority for those propositions, and we know of none.” *Id.* at 387. Further, the Court opined that the

Campaign could have raised its complaints regarding notice and cure at an earlier juncture, and failure to do so barred it from relief. *Id.*

On a local level, the Campaign filed a Petition on Election Day, 2020, in the Bucks County Court of Common Pleas, Docket No. 2020-05627, raising complaints about the notice and cure procedures in Bucks County. Said Complaint was denied and dismissed; was not appealed; and is a final order. *Donald J. Trump for President, Inc. v. Bucks County Board of Elections*, 2020-05627 (Bucks C.C.P. 2020).

As discussed in *Allen v. McCurry*, 449 U.S. 90, 94 (U.S. 1980), the doctrine of res judicata precludes the parties or their privies from relitigating issues that were or could have been raised in an earlier action when there is a final judgment on the merits of an action. *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1876). Further, under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit on a different cause of action involving a party to the first case. *Montana v. United States*, 440 U.S. 147, 153 (1979). As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. *Id.*, at 153-154. Modern collateral estoppel doctrine no longer requires mutuality; a litigant who was not a party to the initial

litigation may now use collateral estoppel to avoid relitigating issues already ruled upon. *In re Stevenson*, 40 A.3d 1212, 1222 (Pa. 2012).

Re-litigation of the notice and cure issue, after it has already been disposed of by the Third Circuit Court of Appeals and our state courts unnecessarily subjects counties to repeated costs and the trouble of multiple lawsuits arising out of the same meritless complaints. It is inequitable to expect the Board of Elections to litigate this issue every election.

IV. CONCLUSION.

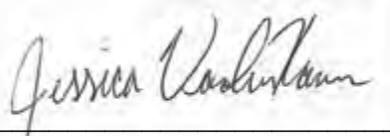
For all the foregoing reasons, the Commonwealth Court's Order denying the Application for Special Relief in the Form of an Injunction should be affirmed.

Respectfully submitted,

Date: October 6, 2022

/s/ Amy M. Fitzpatrick, Esquire
First Assistant County Solicitor
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Newtown, PA 18940

EXHIBIT BUCKS-1



County of Bucks

BOARD OF ELECTIONS and REGISTRATION COMMISSION
Administration Building, 55 East Court Street, Doylestown, PA 18901
Elections 215-348-6154 Registration 215-348-6169 Fax 215-348-6387

Board of Elections

ROBERT J. HARVIE, JR. *Chairman*
DIANE M. ELLIS-MARSEGLIA, LCSW
GENE DIGIROLAMO

THOMAS A. FREITAG
Director

1. I have served as the Bucks County Director of Elections since December 2019. I began my employment in the Board of Elections in 2014 as a registrar and was promoted to election coordinator in 2015. In my capacity as Bucks County Director of Elections, I have first-hand knowledge of the records and operations of the Board of Elections (“BOE”).
2. As Director, I strive to provide a fair and transparent election as well as assistance to Bucks County voters to ensure election integrity and faith in our election process.
3. Our BOE routinely assists voters in a variety of ways, including identifying their polling location, requesting mail-in ballots, providing educational materials, and identifying where ballot drop-boxes are located throughout the County. I train my staff to assist voters, whether by phone or in-person, with questions regarding the procedures to complete the mail-in ballot process.
4. If a voter arrived at the BOE with a mail-in or absentee ballot that did not contain a signature or date on the outer return envelope, my staff is trained to inform the voter that, in order to accept the ballot, the voter must sign or date the envelope.
5. During the 2020 General Election, and for each election after, Bucks County has also notified voters whose mail-in or absentee ballots had apparent declaration envelope deficiencies. Specifically, my staff have notified voters by sending them a postcard alerting them of the deficiency and informing them, “for your vote to count, your ballot must be cured by ... (Election Day).” A true and correct copy of the current version of this postcard is attached as **Exhibit A**.
6. This notification practice was discussed during a public Bucks County Board of Elections (the “Board”) meeting on October 22, 2020. Present at the meeting were the three Bucks County Commissioners, County staff, myself, and Joseph Cullen, Esq. Mr. Cullen serves as the Bucks County Republican Party Vice-Chair and routinely attends Board meetings. This meeting can be viewed in its entirety at <https://fb.watch/fzi-RXIUBa/>.
7. The recording of October 2020 meeting is 97 minutes. At the 23:45 mark, the three County Commissioners, who are the voting members of the Board, began discussing ballots that were received that were unsigned or undated. I explained to the Board how the BOE were sending notification postcards out to voters with declaration envelope deficiencies for the November 2020 General Election. The issue of notifying the political parties was also raised.

8. At 37:07, a motion was made “to authorize the Board of Election staff to generate a list of names and addresses of those who have declaration envelope issues to make available upon request to the parties.” The motion was seconded and approved unanimously.
9. At 38:46, Mr. Cullen asked a follow-up question about the list, asking how the parties request the list. I answered his question.
10. The Board also discussed the possibility of curing “naked” ballots at the October 2020 meeting. I explained to the Board how our machine could distinguish between envelopes containing both a secrecy envelope and a ballot versus envelopes containing only a ballot. However, no motion was made to provide notice to voters with “naked” ballots. The BOE does not notify voters whose ballots lack a secrecy envelope.
11. On November 13, 2020, the Chairs of the County Democrat and Republican Parties lauded the efforts of the BOE in conducting the election in a “fair, transparent, and accountable” fashion. A true and correct copy of a letter to the editor is attached as **Exhibit B**.
12. The practices of notifying the political parties of voters who have declaration or signature issues and sending out postcards to voters have continued since the November 2020 election. Unless directed otherwise, I plan to continue this practice for the November 2022 General Election.
13. Bucks County expects the November 2022 ballot to be sent out to mail-in and absentee voters on October 5, 2022. Our notice and cure process will start a few days later when the BOE starts receiving curing-related phone calls. The BOE will also begin sending notice and cure postcards upon receipt of envelope deficiencies.

I, Thomas A. Freitag, make these statements under penalty of perjury to the best of my knowledge information and belief as more fully set forth in 18 Pa. C.S. § 4904.

Date:

09/26/2022

Signature:


THOMAS A. FREITAG
DIRECTOR
BOARD OF ELECTIONS

**NOTICE: YOU FAILED TO SIGN
AND/OR DATE YOUR MAILED
BALLOT.**

- Please contact The Bucks County Board Of Elections Office as soon as possible to remedy this.
- For your vote to count, your ballots must be cured by 8:00 PM on Tuesday, May 17, 2022 (Election Day).

Call 215-348-6154 or email Elections@BucksCounty.org for more information.
Our office hours are 8:00 AM to 5:00 PM,
Monday-Friday.

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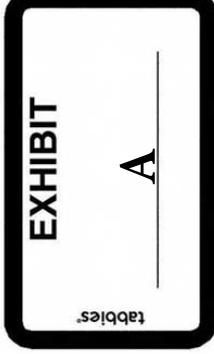
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MORE-VOICES | Opinion *This piece expresses the views of its author(s), separate from those of this publication.*

Both parties praise the Bucks County Board of Elections

By John Cordisco and Pat Poprik

Published 2:47 p.m. ET Nov. 13, 2020

Editor's Note: The following is an open letter to Thomas Freitag, director of the Bucks County Board of Elections.

Dear Tom,

On behalf of both the Bucks County Democratic and Republican committees, we want to thank you and your team at the Bucks County Board of Elections for your work throughout this cycle.

We recognize that successfully running an election this year was no easy feat. Overseeing a presidential election, with a brand new mail-in voting law, in the midst of a global pandemic, posed a set of challenges not faced by any Board of Elections to date. The long days, nights, and weekend hours your staff put in at three offices across the county were critical, and your dedication is truly appreciated.

While we may each support different candidates, we both want the process to be fair. We all worked very hard here in Bucks County, along with your staff and our County Commissioners, to ensure that the process was fair, transparent, and accountable in way that should give our voters confidence in the accuracy of the reported outcome.

We also owe our gratitude to the many of the men and women working for the county in other departments who answered the call for help from the Board of Elections. These employees came from a diverse geographic, political, and professional background, and their participation demonstrated an incredible level of dedication to the electoral process.

Finally, we must thank the voters of Bucks County. We experienced record turnout from both parties despite brand new voting machines and long lines at many polling places. It is encouraging to see so many of our friends, neighbors, and family taking part in such an important election.

Please share our deepest gratitude to the entire Board of Elections staff for their hard work, dedication, and cooperation. Their behind-the-scenes efforts are far too often taken for granted, and we hope they understand our appreciation for, and recognition of, all that they do.

John F. Cordisco chairs the Bucks County Democratic Committee. Patricia K. Poprik chairs the Bucks County Republican Committee.

