

ELECTION MATTER

Filed 10/05/2022 Supreme Court Middle District

IN THE SUPREME COURT OF PENNSYLVANIA

No. 100 MAP 2022

Republican National Committee, National Republican Senatorial Committee,
National Republican Congressional Committee, Republican Party of Pennsylvania,
David Ball, James D. Bee, Debra A. Biro, Jesse D. Daniel,
Gwendolyn Mae Deluca, Ross M. Farber, Connor R. Gallagher,
Lynn Marie Kalcevic, Linda S. Kozlovich, William P. Kozlovich,
Vallerie Siciliano-Biancaniello, and S. Michael Streib,

Petitioners/Appellants,

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the
Commonwealth; Jessica Mathis, in her official capacity as Director of the
Pennsylvania Bureau of Election Services and Notaries;
and All 67 County Boards of Elections
(See back of cover for list of County Respondents),

Respondents/Appellees.

REPRODUCED RECORD – VOLUME 3

Appeal from Commonwealth Court's Sept. 29, 2022 Order at No. 447 MD 2022

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Bedford County Board of Elections; Berks County Board of Elections;
Blair County Board of Elections; Bradford County Board of Elections;
Bucks County Board of Elections; Butler County Board of Elections;
Cambria County Board of Elections; Cameron County Board of Elections;
Carbon County Board of Elections; Centre County Board of Elections;
Chester County Board of Elections; Clarion County Board of Elections;
Clearfield County Board of Elections; Clinton County Board of Elections;
Columbia County Board of Elections; Crawford County Board of Elections;
Cumberland County Board of Elections; Dauphin County Board of Elections;
Delaware County Board of Elections; Elk County Board of Elections;
Erie County Board of Elections; Fayette County Board of Elections;
Forest County Board of Elections; Franklin County Board of Elections;
Fulton County Board of Elections; Greene County Board of Elections;
Huntingdon County Board of Elections; Indiana County Board of Elections;
Jefferson County Board of Elections; Juniata County Board of Elections;
Lackawanna County Board of Elections; Lancaster County Board of Elections;
Lawrence County Board of Elections; Lebanon County Board of Elections;
Lehigh County Board of Elections; Luzerne County Board of Elections;
Lycoming County Board of Elections; McKean County Board of Elections;
Mercer County Board of Elections; Mifflin County Board of Elections;
Monroe County Board of Elections; Montgomery County Board of Elections;
Montour County Board of Elections; Northampton County Board of Elections;
Northumberland County Board of Elections; Perry County Board of Elections;
Philadelphia County Board of Elections; Pike County Board of Elections;
Potter County Board of Elections; Schuylkill County Board of Elections;
Snyder County Board of Elections; Somerset County Board of Elections;
Sullivan County Board of Elections; Susquehanna County Board of Elections;
Tioga County Board of Elections; Union County Board of Elections;
Venango County Board of Elections; Warren County Board of Elections;
Washington County Board of Elections; Wayne County Board of Elections;
Westmoreland County Board of Elections; Wyoming County Board of Elections;
and York County Board of Elections,

Respondents/Appellants.

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Petitioners' Omnibus Reply and in further support of Philadelphia's Answer to the Application for a Preliminary Injunction.

The 2020 General Election was marked by a flurry of lawsuits challenging election practices and procedures in a manner that undermined voter confidence. Those cases alleged, without a scintilla of evidentiary support, that Pennsylvania's elections were tainted by fraud and focused most specifically on unsupported allegations that mail-in ballot processes undermined the integrity of the elections. Courts considered those allegations and resoundingly denied them. E.g., Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania, 830 F. App'x 377, 381 (3d Cir. 2020) (“[C]alling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”). Notably, that case also soundly rejected the theory of vote dilution standing Petitioners assert here, where no specific voter is harmed by Philadelphia's practice rather than that of their own county board. Donald J. Trump for President, Inc. v. Boockvar, 502 F. Supp. 3d 899, 912 n.50 (M.D. Pa. 2020) (“[T]he theory that Pennsylvania's purportedly unconstitutional failure to uniformly prohibit the notice-and-cure procedure constitutes vote-dilution . . . would be foreclosed under Bognet[.]”).

Two years later, just as county boards of elections are preparing for the 2022 General Election, the Republican National Committee and individual Petitioners have brought this litigation claiming that some county boards violate the Election

Code when they take steps to ensure voters are able to cast a valid ballot.

Importantly, just as there were no actual facts showing fraud in the myriad of cases filed in Pennsylvania and across the country in 2020, there is no suggestion of wrongdoing in this case. Petitioners do not allege that qualified voters are doing anything other than trying to ensure their votes are counted. Similarly, Petitioners do not allege that county boards are doing anything other than taking steps to permit all qualified voters to exercise the franchise. Despite this, Petitioners raise the specter that the best efforts of the County Board Respondents will somehow harm public confidence in the integrity of Pennsylvania's elections. Pet'rs' Mem. of Law ISO App. for Prelim. Inj. at 12 (Sept. 7, 2022). The proposition that public confidence is damaged when voters and county boards work to make sure votes are validly cast and counted is remarkable and should not be indulged by this Court.

Importantly, there can be no dispute that a preliminary injunction issued this close to the election would disenfranchise qualified voters and undermine the efficacy of elections in Pennsylvania. An injunction would prevent county boards from helping qualified voters to cast timely replacement absentee or mail-in ballots or to cast provisional ballots. It would also introduce confusion and concern among voters who seek to utilize absentee and mail-in ballot processes and cause county boards to pivot limited resources amidst the flurry of pre-election activities they are required to conduct. And contrary to Petitioners' view, it is the

disenfranchisement of voters, not the best efforts of voters and county boards, that would raise questions about the integrity of Pennsylvania’s elections. This Court should deny Petitioners’ request for preliminary relief.

I. ARGUMENT

A. Petitioners’ Request for Preliminary Relief Should Be Barred by Laches

Petitioners cannot credibly dispute that the facts central to their claims have been well known since 2020. Indeed, in Donald J. Trump for President, Inc. v. Sec’y of Pennsylvania, the Third Circuit directly stated that if an error is noted before election day, “[s]ome counties stay silent and do not count the ballots; others contact the voters and give them a chance to correct their errors.” 830 F. App’x at 384. Notably, the Third Circuit considered a county board’s ability to promulgate procedures to address such errors as unproblematic under the Election Code—even though Pennsylvania Democratic Party v. Boockvar, 238 A.3d 345 (Pa. 2020), on which Petitioners rely, had already been decided, Donald J. Trump for President, 830 F. App’x at 384.

Nor can Petitioners claim they were unaware of Philadelphia’s procedures. Those have been clearly publicized since the 2020 General Election. See Joint Stip. of Exs. No. Pet-4. Even if the Court credits Petitioners’ argument that they waited because of potential legislation, they acknowledge that that legislation was foreclosed as of June 2021. Moreover, Petitioners do not bring the instant litigation

against one county board of elections based on the specifics of that county's procedures.¹ Rather, Petitioners have asked a broad legal question—are county boards of election permitted to take any action not expressly listed in the Election Code—and named every county. Based on their theory, Petitioners have failed to put forward any reason why they could not have challenged Philadelphia's practices in the two years since the Supreme Court's Pennsylvania Democratic Party v. Boockvar decision upon which Petitioners' incorrectly base their claims. Petitioners' delay was neither excusable nor due to a lack of due diligence. It was a strategic choice to wait to seek an injunction that would upend settled voter expectations and county board procedures in the midst of the 2022 General Election.

Importantly, Petitioners' delay prejudices Philadelphia voters and the Philadelphia County Board of Elections in important ways. The types of errors Petitioners seek to enjoin county boards from addressing impact a significant number of voters, which Philadelphia documents publicly during the canvass in each election cycle. E.g., Transcript of Meeting of the Commissions at 6:4-7:4, 7:6-8:6, 8:8-9:7, 17:1-21:8 (May 25, 2022) (voting not to count 1,256 timely

¹ Petitioners' reliance on Dondiego v. Lehigh County Board of Elections, No. 22-2111 (E.D. Pa. 2022), and Right to Know requests are wholly misplaced. Among other things, Dondiego and the referenced Right to Know requests did not provide any new or additional information regarding the practices of Philadelphia, or many other respondents; to the contrary, Petitioners' only fact averments about Philadelphia's practices date to 2020.

ballots from qualified voters);² Transcript of Meeting of the Commissioners at 5:9-6:4, 6:5-6:23, 6:24-8:24, 9:1-10:13 (Nov. 12, 2021) (voting to not count 638 timely ballots from qualified electors);³ Transcript of Meeting of the Commissioners at 5:3-5:15, 5:17-6:5, 11:23-13:18 (Nov. 9, 2020) (voting to not count 4,724 timely ballots from qualified electors);⁴ Aff. of Seth Bluestein at ¶ 17, Donald J. Trump for President, Inc. v. City of Philadelphia, No. 20-cv-2078-MWB (M.D. Pa. Nov. 21, 2020) (ECF No. 193-2 at 3) (noting that the board set aside 3,088 potentially deficient ballots prior to election day in November 2020, and those ballot submissions were then cancelled in the SURE system).

At this point in the election cycle, a mere 43 days before Election Day, those who choose to vote by mail have largely made their decision and plan. The Supreme Court has already recognized that courts can consider prejudice for laches based on obvious harms to the voting public. Two years ago, in Kelly v. Commonwealth, the Court reversed a preliminary injunction against mail-in voting on the basis of briefing alone because it was obvious that disenfranchising voters was a form of prejudice. 240 A.3d 1255, 1256-57 (Pa. 2020) (per curiam). That is

² https://vote.phila.gov/files/announcements/MeetingTranscripts/052522_Meeting_Transcript.pdf.

³ https://vote.phila.gov/files/announcements/MeetingTranscripts/110821_Meeting_Transcript.pdf.

⁴ https://vote.phila.gov/files/announcements/MeetingTranscripts/11920_Meeting_Transcript.pdf.

equally true here, where Petitioners’ requested preliminary relief would prevent eligible voters from requesting replacement ballots or casting provisional ballots and having their votes counted. And because Petitioners have requested preliminary injunctive relief, were an injunction to issue that was later reversed by the Supreme Court, some number of voters will already have suffered the permanent, irreversible harm of being prevented from casting valid replacement or provisional ballots because of the timing Petitioners have imposed. For that reason alone, a finding of laches is especially appropriate as to Petitioners’ request for preliminary injunctive relief.⁵

In addition, Petitioners’ delay prejudices Philadelphia because its limited resources are now focused on election administration. It is now 43 days before Election Day and the Philadelphia Board of Elections—indeed all county boards across the Commonwealth—are hard at work on the numerous duties they must conduct under the Election Code to operate the election. They must process voter registration applications, including those handwritten and submitted in person. 25 Pa. C.S. § 1322. They must arrange for polling places, of which Philadelphia has over 700. See 25 P.S. § 2726(c). They must recruit and train thousands of poll workers to staff polling places on Election Day. 25 P.S. § 2642(d), (f), (g). They

⁵ This same harm would likely occur were the Court to issue an expedited final decision before Election Day that relied on the same limited evidentiary record and rushed briefing and argument.

must extensively test voting machines for use in polling places and then arrange for delivery to polling places prior to Election Day. 25 P.S. §§ 2642(b), 3031.10, 3044. They must prepare the ballot in multiple languages where required by federal law. 52 U.S.C. § 10503. And they must process applications for and then deliver absentee and mail-in ballots, along with instructions, including to voters overseas and in the military. 25 P.S. §§ 3146.2b, 3146.5, 3150.12b, 3150.15.

Short of Election Day itself, there is no busier time for the Philadelphia County Board. An injunction now would require Philadelphia to implement new procedures and educate both workers and the public on the impact of the litigation—even as it continues to conduct all activities required by the Election Code and necessary for a free, fair, and effective election. Had Petitioners sought relief even a few months earlier, an adverse final ruling might have issued in time for boards to change procedures regarding replacement and provisional ballots; retrain staff; and reallocate resources into a public education campaign. And that is to say nothing of the challenges the Board would face in determining how to implement the vague injunction sought by Petitioners. Indeed, even the scope of such an injunction is unclear as Petitioners’ counsel appear not to agree whether

the issuance of replacement ballots to voters who never received their absentee or mail-in ballot package at all should—in their view—be enjoined.⁶

It is important to note that Petitioners’ argument that Respondents and voters are not prejudiced asks the Court to impose a higher evidentiary burden on Respondents’ laches defenses than on Petitioners’ own Application. Petitioners have not pled any specific harm regarding Philadelphia and have not come forward with any evidence—none—that they will suffer vote dilution without an immediate injunction. Indeed, their entire claim is speculative and at best a generalized grievance shared equally by every other voter in the Commonwealth. The recording of a lawful vote cannot cause dilution. See Donald J. Trump for Pres., Inc. v. Boockvar, 493 F. Supp. 3d 331, 389 (W.D. Pa. 2020). And even if an unlawful vote was recorded, which is not at issue in this case, such a vote equally dilutes all lawful votes. See id. The Court should not consider Petitioners’ Application, which is based on speculative harms, while indulging Petitioners’ argument that Respondents must meet some higher evidentiary burden in their defense at this preliminary stage.

⁶ At argument, Petitioners suggested that absentee and mail-in ballots could only be sent to a voter’s registered address. The Election Code flatly contradicts that. See 25 P.S. §§ 3146.2(b.1), 3150.12(b)(2) (“specify the address to which the ballot is to be sent”).

Because Petitioners' delay is inexcusable, and because their delay in seeking preliminary relief will prejudice Philadelphia and the voters it serves, laches bars the request for preliminary relief.

B. Petitioners Have Not Demonstrated a Likelihood of Success on the Merits

Petitioners seek a broad injunction that would bar county boards from implementing “cure procedures,” but they fail to specify what that blunderbuss terminology entails or the logical implications of that position. It is critical, therefore, to accurately summarize the procedures in Philadelphia that Petitioners are challenging.

When a voter returns her absentee or mail-in ballot, Philadelphia must process it, update the SURE system, properly prepare the poll book to reflect that the ballot was received and voted, and place the ballot in secure storage for Election Day. See 25 P.S. §§ 3150.16(b)(1), 3146.6(b)(1); 25 Pa. C.S. § 1402; see also Pa Dep't of State, Pennsylvania Absentee and Mail-in Ballot Return Guidance (Aug. 19, 2020).⁷ Given the sheer number of ballots, Philadelphia necessarily uses mechanical equipment to process the ballots, and that equipment can easily recognize ballots returned without signatures and ballots that are too light or thin to

⁷ https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_BallotReturn_Guidance_1.0.pdf.

contain a secrecy envelope. Cf. Pet., Ex. F ¶ 7(b). None of this standard process involves opening declaration envelopes. Aff. of Seth Bluestein at ¶ 14, Donald J. Trump for President, Inc. v. City of Philadelphia, No. 20-cv-2078-MWB (M.D. Pa. Nov. 21, 2020) (ECF No. 193-2 at 3).

Importantly, Philadelphia does not permit voters to “cure” or access their absentee and mail-in ballot declaration envelopes after the Board receives them, whether or not any of aforementioned defects are present. Rather, when voters return an absentee or mail-in ballots which includes an observable error, Philadelphia records the relevant information in the SURE system, as it does with all ballots that are returned, including those that were undeliverable. Aff. of Jonathan Marks at ¶¶ 6-7 (Sept. 26, 2022); JSOF Ex. G; Joint Stip. of Exs. Pet-4. And just like voters who do not receive the first ballot sent to them because of a Postal Service delivery error or address issue, voters whose ballots are deficient and will not be counted because of missing signatures or secrecy envelopes may cast a provisional ballot on Election Day or ask the Board to send a replacement ballot. JSOF Ex. G. If valid, such ballots will be counted.

Indeed, the issuance of replacement ballots is well within Philadelphia’s delegated power to administer elections, issue regulations, and guide voters, see 25 P.S. § 2642(f), and is not prohibited by the Election Code. As Petitioners conceded during oral argument, it is certainly a necessary capability where a voter did not

receive their initial absentee or mail-in ballot. The very same authority enables Philadelphia to provide replacement ballots to voters who returned a declaration envelope with an inadvertent error that could prevent their vote from being counted. Were this Court to hold, as Petitioners implicitly request, that boards lack the power to issue replacement ballots, the Court would likely disenfranchise an even broader swath of voters who never received their ballot in the first place, received it damaged, spilled coffee on it while marking it at home, or any other number of circumstances in which a voter would need a replacement. Petitioners' narrow focus on only certain circumstances in which a voter may want a replacement ballot belies the legal infirmity of their argument.

C. The Preliminary Injunctive Relief Sought Has a Significant Adverse Effect on the Public Interest Outweighing Any Harm to Petitioners

The public trust in elections was assailed in 2020 by frivolous suits asserting that the election was fraudulent while never producing any evidence of fraud. Petitioners' vaguely asserted harm of county-by-county differences and "vote dilution" similarly lacks any specific allegation or evidentiary support. Knowing that they cannot succeed on those grounds, Petitioners do not assert an equal

protection or uniformity claim.⁸ Rather, they claim that “cure procedures” not “expressly created by the General Assembly” are unlawful. Pet. at 25, Count I.

But the procedures at issue here are provided for by the Election Code. The General Assembly expressly delegated authority to the Boards of Elections, including to make regulations and provide guidance to voters, while providing no prohibition against the challenged practices. 25 P.S. § 2642(f).⁹ And there will necessarily be greater harm to the public interest from Petitioners’ requested remedy than the harm alleged by Petitioners because the remedy will not just cure the specious “dilution” of Petitioners’ votes, but wholly prevent qualified voters from casting replacement or provisional ballots that would otherwise be counted. For the same reasons that laches bars their claims, Petitioners fail to establish the second and sixth prongs required for preliminary injunctive relief.¹⁰ To prevent any

⁸ See, e.g., Donald J. Trump for Pres., Inc. v. Boockvar, 493 F. Supp. 3d at 389-90 (explaining that Plaintiffs’ complaint regarding increased risk of vote fraud due to differing drop box practices across counties was that “the state is not imposing a restriction on someone else’s right to vote The consequence of this inverted theory of vote dilution is that all other votes are diluted in the same way; all feel the same effect.”). Petitioners here fail to allege even that the county differences will result in a chance of voter or election fraud and have presented no allegation or evidence of their votes being diluted by unlawful votes.

⁹ And where the General Assembly specified that a ballot should not be counted, it did not prohibit the counting of a subsequent, valid, replacement ballot by the same elector. See, e.g., 25 P.S. §§ 3146.8; 3150.16. Given that the Election Code must be construed liberally “so as not to deprive, inter alia, electors of their right to elect a candidate of their choice,” this Court should not impose restrictions on the fundamental right to vote that are not explicit in the Code. Pa. Democratic Party v. Boockvar, 238 A.3d 345, 356 (Pa. 2020) (citation omitted).

¹⁰ In other words, “the party 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,” and “the party seeking an

further harm to the public trust, including the preclusion of qualified voters ensuring that their votes count, this Court should deny the preliminary injunction.

D. Petitioners’ Petition, If Heard at All, Belongs in the Court of Common Pleas

Finally, Petitioners make the novel argument that county boards of elections are actually part of the Commonwealth government for purpose of this Court’s original jurisdiction as defined by 42 Pa. C.S. § 761 (giving this Court jurisdiction over, among others, civil actions “[a]gainst the Commonwealth government”).¹¹ But Petitioners identify no court decision reaching that conclusion and the Court should not countenance the argument.

Petitioners wholly misconstrue the definition of “Commonwealth government.” This defined term excludes “any political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision or

injunction must show that a preliminary injunction will not adversely affect the public interest.” Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc., 828 A.2d 995, 1001 (Pa. 2003) (citations omitted).

¹¹ Petitioners’ invocation of 42 Pa. C.S. § 764 is entirely irrelevant. Election contests are a term of art in the Election Code used for challenging specific nomination and election results. *See* 25 P.S. §§ 3291-3473. As the election has not occurred yet, there can be no election contest, and Petitioners do not challenge any specific results. “Contested nominations and elections of the second class,” moreover, refer only to election contests concerning “electors of President and Vice-President of the United States and all officers of this Commonwealth.” 25 P.S. § 3291.

Likewise, Petitioners’ citation to County. of Fulton v. Secretary of Commonwealth, 276 A.3d 846, 861 (Pa. Commw. Ct. 2022), is specious. That a county board of elections is a “government agency” proves nothing, since a “government agency” encompasses both Commonwealth agencies and “any political subdivision or municipal or other local authority, or any officer or agency of any such political subdivision or local authority.” 42 Pa. C.S. § 102.

local authority.” 42 Pa. C.S. § 102. Petitioners fixate myopically on “local authority,” but this ignores that the statute also excludes “any . . . agency of any such political subdivision.” The Statutory Construction Act defines a “political subdivision” to include a “county” and a “city.” 1 Pa. C.S. § 1991. The plain language of the Election Code makes clear that county boards of election are agencies of their counties. 1 Pa. C.S. § 1921(b). They exist “in and for each county,” 25 P.S. § 2641(a); have jurisdiction only over elections “in such county,” id.; are composed of “county commissioners,” id.; and are represented not by the Attorney General but by the county solicitor, compare 71 Pa. Stat. Ann. § 732-204 (c) (“The Attorney General shall represent the Commonwealth and all Commonwealth agencies[.]”), with 25 P.S. § 2646 (“The county solicitor shall serve as counsel for the county board[.]”). As a city and county agency, Philadelphia’s Board of Elections is therefore not a part of the Commonwealth government. See also, e.g., In re Voter Referendum Petition Filed Aug. 5, 2008, 981 A.2d 163, 170 (Pa. 2009) (referring to the Allegheny County Board of Elections as a “local agency”); Kerrigan v. Philadelphia Bd. of Election, No. 07-687, 2008 WL 3562521, at *29 (E.D. Pa. Aug. 14, 2008) (“We find that Defendants have submitted ample authority to support their argument that the Board is a department of the Philadelphia city government and not a separate entity and that the City, through its Commissioners, administer voter registration and

elections.”).

Moreover, even if the Court finds that county boards of election can fall only under the exception for “local authority” as defined by Philadelphia Parking Auth. v. Am. Fed'n of State, Cnty., Mun. Emps., Dist. Council 33, Loc. 1637, 845 A.2d 245, 248 (Pa. Commw. Ct. 2004), the City’s board of elections qualifies. Pursuant to the authority granted by the First Class City Home Rule Act, 53 P.S. § 13101, the City has created three City Commissioners and granted them the “powers, duties and functions of . . . the County Board of Elections relating to the conduct of primaries and elections.” Phila. Home Rule Charter § 2-112(4). The City has therefore “created . . . by statute” the local authority that carries out the functions of the board of elections. See 1 Pa. C.S. § 1991.

II. CONCLUSION

Petitioners have failed to timely bring their Application, failed to meet their burden of establishing the requirements for obtaining a preliminary injunction, and failed to bring their case in a court with jurisdiction. Accordingly, for all the reasons set forth herein and in prior briefing, the Court should deny Petitioners’ Application.

Respectfully submitted,

DATE: September 26, 2022

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**REPUBLICAN NATIONAL COMMITTEE, et
al.**

CASE NO: 447 MD 2022

v.

CHAPMAN, et al.

JOINDER

Respondent Delaware County Board of Elections, by and through its counsel, hereby joins in the supplemental brief filed by Respondent Allegheny County Board of Elections in opposition to Petitioners' Application for Special Relief in the Form of a Preliminary Injunction.

Dated: September 26, 2022

Respectfully submitted,

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<p>REPUBLICAN NATIONAL COMMITTEE, <i>et al.</i>,</p> <p>Petitioners,</p> <p>v.</p> <p>LEIGH M. CHAPMAN, in her official capacity as Acting Secretary of the Commonwealth, <i>et al.</i>,</p> <p>Respondents.</p>	<p>No. 447 MD 2022</p>
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**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF
PETITIONERS' APPLICATION FOR SPECIAL RELIEF IN THE FORM
OF A PRELIMINARY INJUNCTION UNDER PA. R.A.P. 1532**

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INTRODUCTION

Petitioners commenced this action when they secured, after months of diligent efforts, evidence that some county boards of elections (“Boards”) were implementing notice and opportunity to cure procedures (“cure procedures”) in the upcoming election for voters who failed to comply with the signature and secrecy envelope requirements for voting by mail or absentee. These cure procedures violate Pennsylvania law as reflected in the Pennsylvania Supreme Court’s clear holding that the Election Code did not provide for same and that the creation of such was the province of the Legislature. *See Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020).

The facts developed in this litigation have only more starkly shown the two-tiered nature of election administration in this Commonwealth. Because of haphazard and unlawful curing, there are the “haves” and the “have-nots” in this state: More than half the population reside in counties that have developed their own cure procedures. This includes the four most populous counties, which alone comprise more than one-third of Pennsylvania’s population: Philadelphia, Allegheny, Montgomery, and Bucks Counties. These voters sometimes receive a mulligan if they fail to adhere to balloting requirements. Meanwhile, voters in the rest of the state have to vote, consistent with the Election Code, without the benefit of a second chance.

Petitioners' Application and memorandum of law in support of same filed on September 7, 2022—both of which Petitioners incorporate by reference as if set forth herein—amply demonstrated that Petitioners are entitled to a preliminary injunction. An immediate injunction is needed to end the haphazard mishmash of cure procedures implemented by some of the Boards. Those Boards which have implemented cure procedures have done so without the Legislature resolving “the open policy questions attendant” with the decision of whether and how to implement a cure procedure, “including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots.” *Pa. Democratic Party*, 238 A.3d at 374. Petitioners have satisfied the six prerequisites for obtaining a preliminary injunction.

In response, several Respondents have raised the equitable defense of laches. But laches simply does not apply here. *First*, this equitable defense cannot be invoked by Respondents with “unclean hands.” Those Respondents' implementation of cure procedures that are not authorized under the Election Code and which the Pennsylvania Supreme Court confirmed is the province of the legislature forecloses their ability to assert laches as a defense. *Second*, neither element of the laches defense is present here. Petitioners exercised diligence in their efforts to obtain the information needed to commence this action. Petitioners Republican National

Committee did not receive responses to some of its Right to Know Law requests until April, and only after months of granting requests for extensions and litigating appeals. Northampton and Lehigh County only confirmed they would be engage in cure procedures in the upcoming election via settlements in the *Dondiego* case on June 15, 2022. And no party suffers undue prejudice sufficient for laches to apply: unlike other election cases challenging mail-in ballots, this action does not seek to invalidate any votes or delay certification. Rather, the requested injunction seeks only to have Boards cease their unauthorized cure procedures. Such an injunction will, in fact, will reduce the staff and resources needed to implement these cure procedures. Certainly, no Respondent has carried its burden of proof to establish prejudice sufficient to allow a constitutional violation to persist.

Petitioners support and seek to uphold free and fair elections on behalf of all Pennsylvanians. Accordingly, they have brought this action to ensure that Respondents adhere to state law and the Supreme Court’s holding for the upcoming general election and beyond.

STATEMENT OF THE CASE

It is beyond dispute that the Election Code does not provide for a cure procedure. When the Pennsylvania Supreme Court denied a request for an injunction requiring Boards to contact electors whose mail-in or absentee ballots contained facial defects and to provide those electors with an opportunity to cure the same,

there was no indication as to which counties had undertaken efforts to establish cure procedures of their own. The Legislature accepted the Supreme Court’s invitation in *Pa. Democratic Party* to establish a uniform cure procedure, *see* HB 1300, but the Governor vetoed it in June 2021.

In October 2021, Petitioner Republican National Committee attempted to determine the extent to which Boards had implemented their own cure procedures via a series of Right to Know Requests. Although the Right to Know Law process generally contemplates responses within a 35-day timeline, the responding Boards took significantly longer in many cases. Substantive responses to some of those requests did not come until August 2022. In the interim, in June 2022, the Northampton and Lehigh County Boards entered into settlement agreements confirming that they would implement certain cure protocols. Petitioners promptly commenced this action several weeks before the mailing and return of mail-in and absentee votes, in an effort to bring uniformity and equality to the administration and counting of these votes.

Further, only during the course of this litigation has the true scope of the problem come into focus. At least 15 Boards, comprising more than half of the voting population of the Commonwealth, have implemented cure procedures of some sort. The particulars of those cure procedures vary wildly. Under a constitution requires that “[a]ll laws regulating the holding of elections by the citizens ... shall

be uniform throughout the State,” PA. CONST art. VII, § 6, and that “[e]lections shall be free and equal,” PA. CONST. art. I, § 5, the disjointed approach to whether and how to implement cure procedures cannot continue.

The Application makes a simple request: to bring uniformity to the counting of mail-in and absentee ballots, and given the lack of authority to mandate a cure procedure, the Petitioners request an injunction prohibiting Boards from implementing cure procedures of their own. The requested injunction imposes minimal burdens on the Boards, whose staff and resources would no longer need to be diverted to perform cure procedures. And there would be minimal confusion to the voting public as well: voters are instructed how to vote via mail-in and absentee ballots, and are warned that failure to follow these steps could result in their vote not being counted. Pennsylvania Department of State, *Mail and Absentee Ballot*, at <https://www.vote.pa.gov/voting-in-pa/pages/mail-and-absentee-ballot.aspx>. Thus, there is no evidence that any voter relies upon a Boards’ unauthorized cure procedure when voting. Accordingly, Petitioners request the preliminary injunction set forth in the Application.

LEGAL STANDARD

As stated in Petitioners’ memorandum of law in support of its Application, the Court may order a preliminary injunction or special injunction “in the interest of justice and consistent with the usages and principles of law.” Pa. R.A.P. 1532(a).

The purpose of a preliminary injunction is to “put and keep matters in the position in which they were before the improper conduct of the defendant commenced.” *Chipman v. Avon Grove Sch. Dist.*, 841 A.2d 1098, 1101 (Pa. Commw. 2004).

A special injunction is warranted where: (1) it is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages, (2) greater injury would result from refusing than from granting the injunction and the issuance of an injunction will not substantively harm other interested parties in the proceedings, (3) the injunction would restore their status quo ante, (4) the movant is likely to succeed on the merits, (5) the requested injunction is reasonably suited to abate the offending activity, and (6) the injunction will not adversely affect the public interest. *See Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). All of these factors are satisfied here.

To prevail on the equitable doctrine of laches, “it must be established that there was an inexcusable delay arising from the petitioners’ failure to exercise due diligence, and prejudice to the party asserting laches resulting from the delay.” *Chapman v. Berks County Bd. of Elections*, No. 355 MD 2022, 2022 Pa. Commw. Unpub. LEXIS 390, 2022 WL 4100998, at *27 (Pa. Commw. Aug. 19, 2022) (quoting *Sprague v. Casey*, 550 A.2d 184, 187 (Pa. 1988)). “It is not enough to show delay arising from failure to exercise due diligence; for ‘[l]aches will not be imputed where no injury has resulted to the other party by reason of the delay.’” *Kehoe*

Gilroy, 467 A.2d 1, 4 (Pa. Super. 1983) (quoting *Brodt v. Brown*, 172 A.2d 152, 154 (1961)). Further, a party “because laches is an equitable remedy, to succeed the claimant must come before the court with clean hands.” *Mrkich v. Workers’ Comp. Appeal Bd.*, 801 A.2d 668 (Pa. Commw. 2002); accord *Penn Square Gen. Corp. v. County of Lancaster*, 936 A.2d 158, 165 n.5 (Pa. Commw. 2007) (“A party seeking equitable relief must have clean hands.”)

ARGUMENT

I. All Six Prerequisites For A Preliminary Injunction Are Present Here.

A. A Preliminary Injunction Is Necessary To Prevent Immediate And Irreparable Harm.

When Petitioners commenced this action, it was clear only that some Boards had implemented cure procedures to be used for the 2022 general election. But the joint stipulation filed by the parties demonstrates far more fully the extent of the problem. A preliminary injunction is necessary to prevent immediate and irreparable harm to the Petitioners due to the Respondents’ failure to uniformly administer elections in Pennsylvania: the Voter Petitioners, who reside in non-curing counties, find mail-in and absentee ballots would be treated differently than other residents in the state if their ballot contained any defect. Similarly, the Committee Petitioners are forced to expend additional resources to determine not only which counties have implemented cure procedures, but the particulars of each cure procedure in effect.

And given the lack of guidance or authorization for such cure procedures under the Election Code, those cure procedures could theoretically change at any minute.

Per the Joint Stipulation of Facts filed on September 20, 2022, a total of 15 Boards have implemented cure procedures or intend to implement a cure procedure in the upcoming general election:

- Adams
- Allegheny
- Beaver
- Berks
- Blair
- Bucks
- Chester
- Lehigh
- Luzerne
- Lycoming
- Montgomery
- Northampton
- Philadelphia
- Tioga
- Union

See Joint Stipulation of Facts. These Boards serve more than half the voting population within the Commonwealth. *See* Joint Stipulation of Facts; Pet-12. The four most populous counties—Philadelphia, Allegheny, Montgomery, and Bucks—all have implemented a cure procedure.

And, as perhaps should be expected, the Boards that have implemented procedures have not implemented uniform procedures. The Beaver Board has, in the past, implemented an “informal notice and opportunity to cure procedure with

respect to voters' failure to comply with signature or date requirements.” Joint Stipulation at 2–3. In contrast, the Philadelphia Board issues “cancelled ballot notifications” to voters and allowed voters to “request a replacement ballot” from the Philadelphia Board. *See* Ex. G to Joint Stipulation. The Union Board, in turn, provides a cure opportunity starting on Election Day by taping and posting defective mail-in ballots on the pre-canvassing room of the Board of Elections, and Union Board staff and “designated representatives of the major political parties” attempt to contact electors. *See* Ex. H to Joint Stipulation. The Allegheny Board mails back defective absentee and mail-in ballots to voters, so long as such defective ballot is received by the Allegheny Board prior to the day before election day. *See* Joint Exhibits-Allegheny 2 & Allegheny 3. The Lehigh Board is exploring the “acquisition of a ballot sorter that has the capability either to weigh return ballots or measure their thickness so that voters can be notified of possible Naked Ballots.” *See* Lehigh Settlement in *Dondiego*, Joint Stipulation of Exhibits, Pet-7.

It should be noted that none of this is necessary for the proper processing of absentee and mail-in ballots prior to the pre-canvass. Under the Election Code, the Boards, “upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D, shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of

elections.” 25 P.S. § 3146.8(a). No examination or manipulation of the ballots (or their envelopes) is permitted; the absentee and mail-in ballots are simply required to be safely stored until election day. *Id.*

The Secretary has confirmed all of this:

Your outer envelope [for each absentee and mail-in ballot] contains a barcode that specifically identifies you. SO, when county elections officials scan that barcode, they automatically record that you have voted by mail ballot (and therefore cannot vote again by another means, such as in-person voting on Election Day).

See Pa. Dept. of State, *How to Vote by Mail Ballot*, available at <https://www.dos.pa.gov/SimplyStated/Pages/Article.aspx?post=46> (last visited Sept. 26, 2022), Joint Stipulation of Exhibits, Pet-15. The Election Code’s express directives of how the Boards are required to handle absentee and mail-in ballots, the Secretary’s guidance, and the Pennsylvania Supreme Court’s holding in *Pa. Democratic Party*, leave no room for ad hoc cure procedures. And, of course, multiple provisions of the Pennsylvania Constitution make clear that elections must be “equal.” *See* PA. CONST. art. VII, § 6 (“All laws regulating the holding of elections by the citizens ... shall be uniform throughout the State.”); PA. CONST. art. I, § 5 (“Elections shall be free and equal”); *see also Kuznik v. Westmoreland County Bd. of Comm’rs*, 902 A.2d 476, 492 (Pa. 2006) (“[T]he Election Code, the Pennsylvania Constitution, and the testimony of experienced election officials contemplated a

unitary system of voting in Pennsylvania”). Accordingly, these cure procedures are unlawful.

Next, unlawful action by a County Boards “per se constitutes immediate and irreparable harm.” *Hempfield Sch. Dist. v. Election Bd. of Lancaster County*, 574 A.2d 1190, 1193 (Pa. Commw. 1990). “Where a statute proscribes certain activity, all that need be done is for the court to make a finding that the illegal activity occurred.” *Commonwealth v. Coward*, 414 A.2d 91, 98 (Pa. 1980). A “violation of law” cannot be considered a benefit to the public. *Id.* (citing *Pennsylvania Pub. Utility Com. v. Israel*, 52 A.2d 317, 321 (Pa. 1947)). “For one to continue such unlawful conduct constitutes irreparable injury.” *Israel*, 52 A.2d at 321.

Further, there is no question that per se immediate, real, and irreparable harm to Petitioners will occur without a preliminary injunction. The Voter Petitioners run the risk of voting in an unequal environment; as noted in their Declarations, these voters, who reside in counties that do not have a cure procedure, bear the risk of voting without the benefit of a mulligan if they fail to complete their absentee or mail-in ballot correctly, while voters in 15 other counties (and more than half the state’s voting population), will have that luxury. *See* Declarations attached to Joint Stipulation of Exhibits, Pet-17 to Pet-20. As noted in the verified Petition for Review, the Committee Petitioners face an ever-shifting election landscape that frustrates their education and voter outreach efforts, as the precise scope of the cure

procedures offered by the Boards appears to not be subject to any principled restriction and can vary at any time.

Indeed, even voters in the counties that offer cure procedures are subject to unequal treatment: for example, in Allegheny County, some voters get the benefit of having their defective absentee or mail-in ballot mailed back to them, while others do not. *See* Allegheny Exs. 2 & 3. The Blair Board recognized its voters had similarly unequal treatment, and as a result, discontinued its cure procedure. It bears noting that other states that directly authorize the use of cure procedures generally provide an extended deadline for “cured” ballots to be received, *see, e.g.*, Ariz. Rev. Stat. § 16-550(A) (allowing ballots with corrected signatures to be received and counted either 3 or 5 business days after an election); Cal. Elec. Code § 3019(d)(1)(A) (permitting signature verification statements to be returned no later than 2 days prior to certification of the election); Fla. Stat. § 101.68(1)(b) (allowing affidavit to cure vote-by-mail ballot to be returned on the 2nd day after the election); Haw. Rev. Stat. § 11-106 (allowing 5 business days for voter to cure deficiency in ballot); N.J. Stat. § 19:63-17(b)(2-4) (allowing cures of signature deficiencies to be cured not later than 48 hours prior to the final certification of the results of the election); R.I. Code. R. 20-00-23.12(B)(2) (allowing cures to be completed 3 days following a primary and 7 days following a general election). But the received-by deadline is inflexible in Pennsylvania. Thus, even for voters in counties whose

Boards have implemented cure procedures, there are practical limitations as to whether the voter will receive notice and an opportunity to cure a defective absentee or mail-in ballot.

Simply stated, no cure procedures are authorized under the Election Code and many of these cure procedures are not publicly disclosed and differ from one another, and quite possibly even within a single county. To the extent such cure procedures enlist the help of local parties to assist in notifying voters, voters who are not registered with a major political party also suffer from unequal treatment.

Moreover, the holding of an election in a manner that violates applicable election laws constitutes irreparable harm to voters. *See United States v. Berks County*, 250 F. Supp. 2d 525, 540 (E.D. Pa. 2003) (collecting cases which held that the holding of an election in a manner that will violate the Voting Rights Act constitutes irreparable harm to voters). Voters denied equal access to the electoral process cannot collect money damages after trial. *Id.*

Because (1) the Pennsylvania Supreme Court has already correctly held that all cure procedures for defective mail-in and absentee ballots must come from the Legislature, (2) the Legislature's effort to create such a cure procedure was vetoed by Governor Wolf, (3) a violation of election law constitutes immediate and irreparable harm per se, and (4) no adequate damages remedy exists, a preliminary injunction is necessary to prevent the immediate and irreparable harm caused by

Boards failing to follow the Election Code and the Pennsylvania Supreme Court's holding in *Pa. Democratic Party*.

B. Greater Injury Would Result From Refusing Than From Granting The Injunction.

An injunction will prevent the disparate treatment of non-compliant mail-in and absentee ballots throughout the Commonwealth, while at the same time will eliminate uncertainty regarding how mail-in and absentee ballots will be counted. Absent an injunction, the Boards will collectively engage in a mishmash of cure procedures. *See* the Joint Stipulation of Facts. This will have the necessary result of allowing some voters to cure signature or secrecy ballot envelope defects (in violation of the Election Code) while preventing others—especially those not registered with a particular political party—from doing so.

As noted above, an unlawful act by a Board constitutes per se immediate and irreparable harm. *See Hempfield Sch. Dist.*, 574 A.2d at 1191. A violation of law cannot be considered a benefit to the public. *Coward*, 414 A.2d at 98 (citing *Israel*, 52 A.2d at 321).

Thus, the second prerequisite for a preliminary injunction is easily satisfied: the refusal to grant a preliminary injunction will result in further unlawful activity, which constitutes immediate and irreparable injury per se. As the continued unlawful activity cannot be considered a benefit to the public, the need for a preliminary injunction is manifest.

Further, the burden imposed on the Respondents by the injunction would be *de minimis*: all that is required is for Boards to *stop* implementing cure procedures. Such an injunction would actually *save* Boards money, as they would no longer be required to devote staff and resources their cure procedures would otherwise require. And the Intervenor-Respondents' have failed to demonstrate any harm would be suffered with respect to their education and outreach efforts.¹ With the requested injunction, their training could be uniform and standardized statewide. Additionally, while they comprise more than half of the state's registered voters, there are only 15 of 67 counties that will require any modifications to their processes, with one of them, Luzerne, already affirming they will suspend, without difficulty or burden, any curing until the disposition of this motion.

The Respondents and Intervenor-Respondents will argue the requested injunction will “disenfranchise” those voters who reside in counties which have a cure procedure and who will not be given a second chance to allow their defective mail-in or absentee ballot to count. This is an incorrect framing of the issue for several reasons.

¹ Indeed, Intervenor-Respondents have not proffered any evidence regarding their education and outreach programs, so any argument regarding the impact of the injunction would be hypothetical. If, however, an injunction is granted, the Intervenor-Respondents' education and training efforts—like the Committee Petitioners—would be greatly simplified, as all Boards would be following a uniform set of rules already observed by a majority of the Boards.

First, the requested injunction would merely bring all counties into a uniform application of the Election Code, as contemplated by the Pennsylvania Constitution. Elections are “free and equal” for constitutional purposes when, *inter alia*, “the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied him.” *Pa. Democratic Party*, 238 A.3d at 372–73 (quoting *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914)). Compliance with validly enacted regulations does not constitute disenfranchisement.

Second, the requested injunction would not cause “disenfranchisement” because no Pennsylvania voter has a right to a cure procedure. Certainly, the Election Code does not provide for one. And the Pennsylvania Supreme Court in *Pa. Democratic Party* was perfectly comfortable with the fact that a voter may be “at risk for having his or her ballot rejected due to minor errors made in contravention of [the Election Code’s] requirements” unless and until the Legislature provided a procedure to alleviate that risk. *Pa. Democratic Party*, 238 A.3d at 374. Respondents have also not proffered any evidence that voters are preemptively notified about the opportunity to cure nor, much less that voters implausibly rely on the ability to cure their mail ballots. It strains credulity to think that voters are casual about adhering to balloting procedures because they believe that an election official might pluck their ballot from the pile, notice the error, and notify them – and that they will only

then take the time to conform their ballot to the law. That some version of this sequence of events may sometimes happen is not evidence that any voter relies upon it when voting. To the extent such reliance exists, it is not reliance that merits the equitable attention of this court.

Third, the Respondents' protestation of disenfranchisement ignores the harm to voter confidence caused by the disparate cure procedures implemented by some Boards. Especially where "the power to regulate elections is legislative," *Winston*, 91 A. at 522, and the Pennsylvania Constitution requires elections be "equal," *see* art. VII, § 6 ("All laws regulating the holding of elections by the citizens ... shall be uniform throughout the State."); PA. CONST. art. I, § 5 ("Elections shall be free and equal"), the actions by at least 15 Boards to create their own rules regarding which votes count and which voters get a second bite at the apple (and maybe more) does untold damage to the confidence voters can place in elections throughout the Commonwealth.

If the Boards are not enjoined from implementing cure procedures of their own making, the Voter Petitioners thus suffer the risk of having votes being treated unequally based on their county of residence; effectively, their validly-cast votes will be diluted by the counting of unlawfully "cured" ballots that failed to meet the Election Code's minimal criteria. The Committee Petitioners will likewise be unable to properly educate their members regarding the exact rules applicable to mail-in

and absentee ballot voters due to the fact that many of the Boards do not publicize whether they offer a cure procedure and if so, the particulars of same. In contrast, by granting the requested injunction, the Court will affirm the Pennsylvania Supreme Court's prior holding in *Pa. Democratic Party* that the Boards cannot implement cure procedures that are not set forth in the Election Code and eliminate these harms to Petitioners.

C. The Requested Injunction Seeks Only to Preserve the Status Quo.

Petitioners' requested injunction seeks only to preserve the status quo as it existed prior to the wrongful (i.e., unauthorized) conduct. *See City of Philadelphia v. Commonwealth*, 837 A.2d 591, 604 (Pa. Commw. 2003) (granting preliminary injunctive relief and noting that "the public interest lies in favor of maintaining the status quo" pending resolution of the case's merits).

"Courts have defined the term 'status quo ante' as 'the last peaceable and lawful uncontested status preceding the underlying controversy.'" *Hatfield Twp. v. Lexon Ins. Co.*, 15 A.3d 547, 555 (Pa. Commw. 2011) (quoting *In re Milton Hershey School Trust*, 807 A.2d 324 (Pa. Commw. 2002)). "The status quo to be maintained by a preliminary injunction is the last actual, peaceable and lawful noncontested status which preceded the pending controversy." *Allegheny Anesthesiology Assocs. v. Allegheny Gen. Hosp.*, 826 A.2d 886, 894 (Pa. Super. 2003). "Put another way, the grant of relief necessitates a change in status at the time a court grants injunctive

relief, but the relief must not change the status that existed between the parties just before the conflict between them arose.” *Hatfield Twp.*, 15 A.3d at 556 n.6.

Some of the Respondents misconstrue the “ante” from which the “status quo ante” should be measured. For example, some argue that because they have implemented cure procedures since the passage of Act 77, their illegal cure procedures should be considered the status quo. Others argue that before the passage of Act 77, they had implemented cure procedures for absentee ballots, further establishing their unauthorized cure procedures as the status quo.

But these arguments miss the point: no period when a cure procedure was in place can be considered the “status quo ante,” as such cannot be considered “the last **peaceable and lawful uncontested** status preceding the underlying controversy.” *Hatfield Twp.*, 15 A.3d at 555 (emphasis added). In an action where the use of any cure procedure not authorized under the Election Code is at issue, it is axiomatic that any period that includes the use of such a cure procedure cannot serve as the status quo for purposes of a preliminary injunction.

Boards have never been permitted to develop and implement their own cure procedures with respect to mail-in and absentee ballots that do not satisfy the Election Code’s signature and secrecy envelope requirements; all such cure procedures are unlawful under the Election Code. Thus, the status quo ante in this matter is the time when no such cure procedures existed. Petitioners’ application for

preliminary injunction seeks to return to that status quo pending a final resolution of this litigation.

D. Petitioners Are Likely to Prevail on the Merits.

Petitioners are likely to prevail on the merits of the underlying claims in this case. The cure procedures implemented by Boards run afoul of both the Election Code and the Supreme Court’s holding in *Pa. Democratic Party*. Moreover, the Boards’ implementation of cure procedures not crafted by the Legislature violates the Elections Clause of the United States Constitution, as only the Legislature or Congress may prescribe the “manner” of holding federal elections. *See* U.S. CONST. art. I, § 4, cl. 1. Boards’ implementation of cure procedures for mail-in and absentee ballots in federal elections infringes on the Legislature’s exclusive authority in this domain. *See Smiley v. Holm*, 285 U.S. 355, 373 (1982).

1. Boards Are Prohibited from Developing and Implementing Cure Procedures Not Expressly Created by the General Assembly

a. The Supreme Court Has Already Held that the Decision to Provide a Cure Procedure rests with the Legislature.

The Election Code does not set forth a procedure by which Boards are permitted to provide electors with notice and an opportunity to cure their mail-in or

absentee ballots that fail to comply with the signature and secrecy envelope requirements set forth in 25 Pa. C.S. §§ 3146.6(a) or 3150.16(a).

Two years ago, the Pennsylvania Democratic Party tried to force the Secretary of the Commonwealth and all 67 Boards to require the Boards to contact voters whose mail-in or absentee ballots failed to comply with the Election Code's requirements regarding signatures and secrecy envelopes. *Pa. Democratic Party*, 238 A.3d at 372. The Pennsylvania Democratic Party said this was required by the Free and Equal Elections Clause of the Pennsylvania Constitution, PA. CONST. art. I, § 5, and could be implemented through the Court's "broad authority to craft meaningful remedies' when necessary." *Id.* at 373 (quoting *League of Women Voters v. Commonwealth*, 178 A.3d at 737, 822 (Pa. 2018)).

The Supreme Court agreed with the Secretary and soundly rejected the Pennsylvania Democratic Party's contentions. It noted what was obvious from a plain reading of the Election Code: the Election Code "does not provide for [a] 'notice and opportunity to cure' procedure" outside narrow circumstances relating to voters providing proof of identification. *Id.* at 374. It further held that to the extent a voter is at risk for having his or her ballot rejected due to a failure to comply with the Election Code's signature and secrecy ballot requirements, "the decision to provide a 'notice and opportunity to cure' procedure to alleviate that risk is one best suited for the Legislature." *Id.* This was so

particularly in light of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Pennsylvania's government.

Id.

b. The Legislature Has Not Enacted Any Cure Procedure Since *Pa. Democratic Party* Was Decided.

After *Pa. Democratic Party* was decided, the Legislature considered and even passed legislation requiring a cure procedure for non-compliant mail-in and absentee ballots. *See* House Bill 1300, Printer's Number 1869, § 1308(g)(3)(iv), (v) (2021). But Governor Wolf vetoed that legislation. As a result, the Election Code remains as it existed in 2020 when *Pa. Democratic Party* was decided: without a legislatively proscribed cure procedure for absentee or mail-in ballots that lack a required signature or secrecy envelope.

Thus, post-*Pa. Democratic Party*, the Election Code provides a cure procedure in only one circumstance: “[f]or those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified.” *See* 25 P.S. § 3146.8(h). This procedure provides that if proof of a voter's identification is received and verified prior to the sixth day following the election, the Board shall canvass the absentee or mail-in ballot. *Id.* § 3146.8(h)(2). As was the case at the time *Pa. Democratic Party* was decided, no other cure procedure exists in the Election

Code. See *Atcovitz v. Gulph Mills Tennis Club, Inc.*, 571 Pa. 580, 589, 812 A.2d 1218, 1223 (2002)). (“We must infer that, under the doctrine of *expressio unius est exclusio alterius*, the inclusion of a specific matter in a statute implies the exclusion of other matters.”); cf. *Thompson v. Thompson*, 223 A.3d 1272, 1277–78 (Pa. 2020) (“Applying these maxims, if the General Assembly intended to permit trial courts to impose suspended sentences for civil contempt of a child support order, it would have expressly provided for this alternative. It did not. We cannot ignore this exclusion. Because suspended sentences are not statutorily authorized as punishment for non-compliance with a child support order, they are illegal and may not be imposed.”).

The absence is particularly significant in the context of the Election Code, because “[t]he power to regulate elections is a legislative one, and has been exercised by the General Assembly since the foundation of the government.” *Pa. Democratic Party*, 238 A.3d at 366 (quoting *Winston v. Moore*, 91 A. 520, 522 (Pa. 1914)). Just as the Supreme Court is not free to “create statutory language that the General Assembly chose not to provide,” *id.* at 373 (citing *Winston*, 91 A. at 522), the Boards are not free to do so either, particularly given the Supreme Court’s holding in *Pa. Democratic Party*.

c. Boards Are Not Free to Create Their Own Cure Procedures.

In addition to squarely holding that the Boards are not required to implement cure procedures, *Pa. Democratic Party* also forecloses any argument that the Boards are permitted to implement their own cure procedures. After all, it observed that any such procedures would reflect policy choices reserved by law to the Legislature. Boards simply do not have the authority under Pennsylvania law to craft and implement their own cure procedures, especially when the Legislature has already addressed the one circumstance when curing of an absentee or mail ballot is permitted.

Under the Election Code, the Boards “shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act.” 25 P.S. § 2642. Section 2642 enumerates several duties the Boards must perform. *See id.* § 2642(a)–(p). Notably absent from the list is anything that might authorize the development and implementation of cure procedures.

In fact, § 2642 makes clear that the Boards lack the authority to implement their own cure procedures that necessarily vary across and even within counties. For example, Boards are required to “instruct election officers in their duties ... and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be

honestly, efficiently, and **uniformly** conducted.” *Id.* § 2642(g) (emphasis added); *see also* PA. CONST. art. VII, § 6 (requiring that “[a]ll laws regulating the holding of elections by the citizens . . . shall be uniform throughout the State”).

Further, the limited rulemaking authority granted to the Boards does not extend to cure procedures. Rather, Boards are authorized only “[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.” *Id.* § 2642(f); *accord PG Publ. Co. v. Aichele*, 902 F. Supp. 2d 724, 761 (W.D. Pa. 2012) (holding that § 2642(f) “extends only to the promulgation of rules that are ‘not inconsistent with law.’”); *Hempfield Sch. Dist.*, 574 A.2d at 1191 (“It is *a priori* that a governmental body such as an election board has only those powers expressly granted to it by the legislature.”); *In re Canvassing Observation*, 241 A.3d 339, 350 (Pa. 2020), *cert. denied sub nom. Donald J. Trump for President, Inc. v. Degraffenreid*, 141 S. Ct. 1451 (2021) (holding Boards have the authority to promulgate such regulations only where the absence of statutory authority on a particular topic is deemed “to reflect the legislature's deliberate choice to leave such matters to the informed discretion of county boards of elections, who are empowered by Section 2642(f) of the Election Code ‘[t]o make and issue such rules, regulations and instructions’”).

Several Respondents have argued that the Election Code’s silence regarding cure procedures opens the door for Boards to exercise discretion to implement their own, arguing that the Court “must listen 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). But this mischaracterizes the nature of a cure procedure. A cure procedure is *not* a mere “gap filler” on which the Election Code is silent. First, limiting curing is permitted to address a voter’s initial failure to provide proof of identification. But even more importantly, the decision on whether and how to implement a cure goes to the very heart of election administration, deciding which votes will be counted and which ones will not. Given the explicit rules governing the absentee and mail-in ballot voting process, the idea that the Legislature intended to leave this decision up to the various Boards does not merit serious consideration. The Respondents’ characterization of this being an area in which the Boards have near unfettered discretion is an invitation for unlawful disuniformity that cannot be sanctioned.

Cure procedures adopted by Boards are “inconsistent with law” because the Election Code spells out the limited availability of such procedures and does not authorize Boards to expand them. *See, e.g., Pa. Democratic Party*, 238 A.3d at 374. “It is a well established principle of statutory interpretation that [the courts] ‘may not supply omissions in the statute when it appears that the matter may have been intentionally omitted.’” *In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 611 (Pa.

2020). Especially where the Election Code contemplates a “unitary system of voting in Pennsylvania” in keeping with the Pennsylvania Constitution’s requirement that “[a]ll laws regulating the holding of elections by the citizens ... shall be uniform throughout the State,” Boards simply cannot be permitted to decide whether and how to implement their own cure procedures. *see Kuznik v. Westmoreland County Bd. of Comm’rs*, 902 A.2d 476, 492 (Pa. 2006); *see also* PA. CONST. art. VII, § 6.

The Election Code’s provision of cure procedures for some matters—namely, lack of proof of identification—but not for others, such as a voter’s failure to comply with signature and secrecy envelope requirements, cannot be assumed to be accidental. Nor can it be interpreted as giving the Boards the discretion to create their own cure procedures. Accordingly, the Boards’ development of such cure procedures is “inconsistent with law.”

d. Collateral Estoppel Precludes the Respondents From Relitigating the Issue.

As discussed in Petitioners’ Memorandum of Law in Support of their Application, the Supreme Court has already resolved the issues of whether the Election Code provides for cure procedures aside from providing missing proof of identification—it does not—and which governmental body is empowered to change that—the Legislature. Because the Respondents were parties or in privity with parties in *Pa. Democratic Party*, the issue cannot be relitigated under the doctrine of

collateral estoppel. *See J.S. by & ex rel. H.S. v. Bethlehem Area Sch. Dist.*, 794 A.2d 936, 939 (Pa. Commw. 2002).

Because all four elements of collateral estoppel apply, the Respondents should be precluded from relitigating the issues raised in this application for preliminary injunction.

e. The Acting Secretary Should Be Barred From Advocating for a Different Result Now.

Judicial estoppel prohibits the Acting Secretary from taking a different position in this action. The Secretary previously taken the position that the Election Code does not provide for cure procedures to address voters' failure to comply with signature and secrecy envelope requirements, and in other contexts, has argued that the that the Election Code's silence on a matter does not vest the Boards with discretion to take matters into their own hands.

"The purpose of judicial estoppel is to ensure the parties do not play 'fast and loose' with the facts in order to suit their interests in different actions before different tribunals." *Marazas v. Workers' Comp. Appeal Bd. (Vitas Healthcare Corp.)*, 97 A.3d 854, 859 (Pa. Commw. 2014). Unlike *res judicata* and collateral estoppel, "judicial estoppel does not require actual litigation to a final order." *Id.* "In essence, the doctrine of judicial estoppel prohibits parties from switching legal positions to suit their own ends." *Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 791 A.2d 1189, 1192 (Pa. 2001).

Both in *Pa. Democratic Party* and afterwards, the Acting Secretary has taken the position that cure procedures for signature and secrecy envelope defects are not permitted. In *Pa. Democratic Party*, the Acting Secretary *opposed* the relief sought by the Pennsylvania Democratic Party, arguing that “so long as a voter follows the requisite voting procedures, he or she ‘will have equally effective power to select the representative of his or her choice.’” *Pa. Democratic Party*, 238 A.3d at 373 (quoting *League of Women Voters*, 178 A.3d at 809). Moreover, the Acting Secretary noted that “logistical policy decisions” implicated in a cure procedure are properly addressed by the Legislature. *Id.*

The Acting Secretary has remained consistent in her public pronouncements since *Pa. Democratic Party*. The “Frequently Asked Questions” page on the Secretary’s website provides in relevant part:

How do I know if my ballot was accepted or counted?

Under current Pennsylvania law, your mail-in ballot can’t be opened until Election Day. Therefore, **if there’s a problem with your mail-in ballot, you won’t have the opportunity to correct it before the election.** Still, as long as you followed all the instructions and mailed your completed, signed, dated, and sealed in the inner secrecy envelope, ballot by Election Day, you don’t have to worry.

Pennsylvania Department of State, *Mail and Absentee Ballot*, at <https://www.vote.pa.gov/voting-in-pa/pages/mail-and-absentee-ballot.aspx>.

The Secretary’s position on cure procedures is consistent with the position she has taken in other contexts. With regard to signature comparisons, the

Secrecy issued guidance in 2020 that remains in force today: “The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections.” See Pennsylvania Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* (Sept. 11, 2020), available at www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf.

This guidance was upheld in both state and federal court, with both courts noting that the Election Code’s failure to expressly provide for signature comparison for absentee and mail-in ballots did not allow for either the Boards or the courts to craft procedures of their own. See *In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 611 (Pa. 2020) (“It is not our role under our tripartite system of governance to engage in judicial legislation and to rewrite a statute in order to supply terms which are not present therein, and we will not do so in this instance.”); accord *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 399 (W.D. Pa. 2020) (“nowhere does the plain language of the statute require signature comparison as part of the verification analysis of [absentee or mail-in] ballots.”).

Accordingly, the Acting Secretary should be barred from taking a different position in this litigation.

2. Allowing The Boards To Implement Their Own Cure Procedures Absent Any Directive from the Election Code Would Violate the Federal Elections Clause.

The Elections Clause of the United States Constitution directs: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”

U.S. CONST. art. I, § 4, cl. 1. The United States Supreme Court held that:

[i]t cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to **notices**, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, **counting of votes**, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements and safeguards which experience shows are necessary in order to enforce the fundamental right involved.

Smiley v. Holm, 285 U.S. 355, 366 (Pa. 1932) (emphases added). “The Framers intended the Elections Clause to grant States authority to create procedural regulations.” *United States Term Limits v. Thornton*, 514 U.S. 779 (1995). “Both parts of the Elections Clause are in line with the fundamental premise that all political power flows from the people. So comprehended, the clause doubly empowers the people. They may control the State’s lawmaking processes in the first instance ... and they may seek Congress’s correction of regulations prescribed by state legislatures.” *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 824 (2015).

The Elections Clause plainly contemplates that only two entities are empowered to regulate the “manner” in which elections are conducted: the Legislature and Congress. The General Assembly has authorized only a limited cure procedure regarding proof of identification through the Election Code, and a recent bill passed by the Legislature to include broader cure procedures was vetoed by Governor Wolf. For its part, Congress has not created any cure procedure for Pennsylvania elections.

Moreover, there is nothing in the Election Code to suggest that the General Assembly has authorized Boards to develop and implement cure procedures of their own. The powers granted to the Boards are limited. *See* 25 P.S. § 2642. Indeed, the Boards are required to inspect “the conduct of primaries and elections ... to the end that primaries and elections may be honestly, efficiently, and **uniformly** conducted.” *Id.* § 2642(g) (emphasis added). Accordingly, Boards are authorized only “[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.” *Id.* (emphasis added); *see also PG Publ. Co. v. Aichele*, 902 F. Supp. 2d 724, 761 (W.D. Pa. 2012) (holding that § 2642(f) “extends only to the promulgation of rules that are ‘not inconsistent with law.’”).

The Pennsylvania Supreme Court has already clearly expressed what the law is with respect to cure procedures: the Election Code does not provide for any aside

from proof of identification. Those Boards which have implemented their own cure procedures cannot be acting “consistent with law” and, to the extent such cure procedures differ from those implemented by other Boards (and from those Boards which have not implemented a cure procedure), have usurped the Legislature’s authority to regulate the “manner” of elections in Pennsylvania. Such conduct must be enjoined.

E. The Requested Injunction Is Reasonably Suited to Abate the Offending Activity.

The relief sought by the Petitioners is narrowly tailored. *See Crowe v. Sch. Dist. of Pittsburgh*, 805 A.2d 691, 694 (Pa. Commw. 2002) (any injunction “must be narrowly tailored to address the wrong plead and proven”); *Woods at Wayne Homeowners Ass’n v. Gambone Bros. Constr. Co.*, 893 A.2d 196, 207 (Pa. Commw. 2006) (“Even if the prerequisites of an injunction are satisfied, the court must fashion a remedy ‘reasonably suited to abate the harm.’”); *Big Bass Lake Cmty. Ass’n v. Warren*, 950 A.2d 1137, 1145 (Pa. Commw. 2008) (“the court must narrowly tailor its remedy to abate the injury”).

Petitioners seek only to enforce the Pennsylvania Supreme Court’s holding that the Election Code fails to provide a cure procedure for mail-in and absentee ballots and that only the Legislature—not the Courts or any other entity, including the Boards—can enact one. Petitioners also only seek relief against those County Boards that are administering unlawful cure procedures, not against the vast majority

that are following the law. The request has no impact on many County Boards or the overwhelming majority of mail-in and absentee ballots which are properly cast.

The narrowness of the requested injunction stands in stark contrast to the relief sought in other election cases dealing with mail-in ballots. For example, in *Kelly v. Commonwealth*, 240 A.3d 1255 (Pa. 2020), the petitioners filed a facial challenge to Act 77 nearly three weeks after the general election, seeking to invalidate millions of mail-in ballots that had already been cast. *Id.* at 1256. Similarly, in *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899 (M.D. Pa. 2020), the plaintiffs sought to prohibit certification of a general election that had already taken place. In stark contrast, this action merely requests the Boards to not initiate cure procedures in the upcoming election that are not authorized under the Election Code. The requested injunction does not invalidate any vote, but instead aims only to put all absentee and mail-in ballot voters on equal footing, as required under the Pennsylvania Constitution.

F. The Requested Injunction Will Not Adversely Affect the Public Interest.

The Pennsylvania Supreme Court has already held that the “task of effectuating” the Pennsylvania Constitution’s mandate that elections be free and equal is the province of the Legislature. *Pa. Democratic Party*, 238 A.3d at 374. Thus, the public interest is best served by a consistent application of the rule of law established by the General Assembly and the maintenance of the separation of

powers in Pennsylvania. Conversely, the public interest is not served by allowing Boards to act as quasi-legislatures, resolving “the open policy questions” attendant with the development of cure procedures on their own, let alone cure procedures whose existence and particulars vary from county to county. *Id.* A ruling to the contrary would only further diminish Pennsylvania voters’ confidence in the election system as a result of the secretive and inconsistent application of election procedures across the state.

II. The Defenses Raised By The Respondents Are Inapplicable Here.

A. The Application Is Not Barred by the Doctrine of Laches.

Respondents’ invocation of the doctrine of laches does not apply here. Respondents implausibly allege the timing of this lawsuit has prejudiced voters who reasonably rely on curing when casting an absentee ballot. But no such voters exist. Pennsylvania voters are instructed that failure to follow the law regarding absentee balloting could jeopardize their vote:

How do I know if my ballot was accepted or counted?

Under current Pennsylvania law, your mail-in ballot can’t be opened until Election Day. Therefore, **if there’s a problem with your mail-in ballot, you won’t have the opportunity to correct it before the election.** Still, as long as you followed all the instructions and mailed your completed, signed, dated, and sealed in the inner secrecy envelope, ballot by Election Day, you don’t have to worry.

Pennsylvania Department of State, *Mail and Absentee Ballot*, at <https://www.vote.pa.gov/voting-in-pa/pages/mail-and-absentee-ballot.aspx>. And

just as people do not (or should not) engage in riskier behavior simply because they are insured, for example, Pennsylvania voters do not rely on curing when casting their ballots simply because they *might* live in a county that *might* allow that procedure. Counties rarely, if ever, publish their (non-uniform) curing procedures, so the voters who Respondents claim will be prejudiced most likely do not even know their ballots might be curable. If they do, those voters are intentionally careless when casting an absentee ballot, risking non-compliance with the law for the chance to fix their vote later. Certainly, such a voter could not come before the court with clean hands, forfeiting the ability to invoke the equitable doctrine of laches that Respondents now pursue.

“Laches is an equitable doctrine that ‘bars relief when the complaining party is guilty of want of due diligence in failing to promptly institute [an] action to the prejudice of another.’” *Chapman v. Berks County Bd. of Elections*, No. 355 MD 2022, 2022 Pa. Commw. Unpub. LEXIS 390, 2022 WL 4100998, at *27 (Pa. Commw. Aug. 19, 2022) (quoting *Sprague v. Casey*, 550 A.2d 184, 187 (Pa. 1988)). “To prevail on the assertion of laches, it must be established that there was an inexcusable delay arising from the petitioners’ failure to exercise due diligence, and prejudice to the party asserting laches resulting from the delay.” *Id.* “It is not enough to show delay arising from failure to exercise due diligence; for ‘[l]aches will not be imputed where no injury has resulted to the other party by reason of the delay.’”

Kehoe Gilroy, 467 A.2d 1, 4 (Pa. Super. 1983) (quoting *Brodt v. Brown*, 172 A.2d 152, 154 (1961)).

Respondents' laches defense is inapplicable where the objecting party attempts to open the doors of equity with unclean hands. Further, the record is devoid of evidence to support any element of Respondents' laches defense—a failure to exercise due diligence and the objecting party's suffering of undue prejudice.

1. Neither Element of Laches Applies.

Laches does not apply because Petitioners did not unduly delay the commencement of this action, nor has the alleged delay resulted in any prejudice to the other parties. To prevail on the equitable doctrine of laches, “it must be established that there was an inexcusable delay arising from the petitioners’ failure to exercise due diligence, and prejudice to the party asserting laches resulting from the delay.” *Chapman v. Berks County Bd. of Elections*, No. 355 MD 2022, 2022 Pa. Commw. Unpub. LEXIS 390, 2022 WL 4100998, at *27 (Pa. Commw. Aug. 19, 2022) (quoting *Sprague v. Casey*, 550 A.2d 184, 187 (Pa. 1988)). Because neither element is present here, the Respondents’ laches defense cannot be used to deny the relief requested in the Application.

a. Petitioners Did Not Engage in Undue Delay

Petitioners timely commenced this action. While the Pennsylvania Supreme Court decided *Pa. Democratic Party* in September 2020, its central thrust was for

the Legislature to enact a cure procedure. The Legislature attempted to do just that: House Bill 1300 was passed by the General Assembly in June 2021. *See* HB 1300, attached to Joint Stipulation of Exhibits as Pet-9. But Governor Wolf vetoed it on June 30, 2021. *See* Governor Wolf’s Letter dated June 30, 2021, attached to Joint Stipulation of Exhibits as Pet-10.²

After the legislative solution encouraged by the Supreme Court failed, Petitioner RNC, who had no reason to believe any counties would defy the state Supreme Court, nevertheless began seeking information about Boards’ cure procedures via Right to Know Law inquiries. For example, on October 27, 2021, Petitioner RNC served the Philadelphia Board with a Right to Know Law Request. *See* B. Adrian Declaration, attached to Joint Stipulation of Exhibits as Pet-16. The Philadelphia Board made serial requests for extensions to respond, finally providing a response with objections on January 21, 2022. *Id.* When Petitioner RNC’s appeal was considered untimely—due entirely to the RNC granting the Philadelphia Board’s request for a further extension after the previous deadline had elapsed—RNC served another Right to Know Law Request on March 15, 2022. *Id.* A final determination on the appeals in that matter was received on August 11, 2022. The Petition for Review in this action was filed just 3 weeks after this final determination.

² Additional legislation was proposed in November 2021, but also failed. *See* House Bill NO. 1800, Printer’s Number 2431, § 1308 (2021).

Similarly, Petitioner RNC served a Right to Know Law Request on the Bucks Board on October 21, 2021. *Id.* Oral argument on the appeal of the disposition of that request was scheduled for August 4, 2022. *Id.* On August 1, 2022, the Bucks Board provided a written explanation of its curing process, and on August 3, 2022, the Bucks Board produced 3,400 pages of additional documents in response to the Right to Know Law request. *Id.* The Petition for Review in this action was filed less than one month after the Bucks' Board's production.

The earliest indication Petitioners had that some Boards planned to engage in cure procedures for the upcoming election came in the wake of the settlements by Northampton and Lehigh Counties in *Dondiego v. Lehigh County Board of Elections*, No. 5:22-cv-02111 (E.D. Pa. 2022). That lawsuit was not commenced until May 2022, and the settlements were reached on June 15, 2022, just two and a half months before Petitioners commenced this action. *See* Pet-6 (Northampton Board settlement) and Pet-7 (Lehigh Board settlement) to Joint Stipulation of Exhibits.

The June *Dondiego* settlements following the 2022 primary election provided the first confirmation that some Boards intend to implement cure procedures for the upcoming general election regarding absentee and mail-in ballots that lack secrecy envelopes. Of course, this runs directly counter to the Pennsylvania Supreme Court's explicit holding that the Pennsylvania Constitution mandates secrecy envelopes for

absentee and mail in ballots. *Pa. Democratic Party*, 238 A.3d at 377–80. Notably, the Secretary, while a party to the *Dondiego* action, did not sign the settlement agreements with the Northampton and Lehigh Boards; doing so would have been contrary to the very guidance provided on her website regarding the secrecy envelope requirement. Moreover, the Northampton and Lehigh Boards in that litigation were on notice that RNC believed that the settlement agreement reached in that case were illegal. *See* Letter from T. King dated June 15, 2022, attached to Joint Stipulation of Exhibits as Pet-21, at 2.

Under no circumstance does the Petitioners’ conduct constitute undue delay. Petitioners appropriately gave the space for the Legislature to craft a cure procedure as the Pennsylvania Supreme Court urged. When that failed, Petitioners engaged in an effort to gather information to determine whether Boards were, in fact, continuing to implement their own cure procedures. For two of the largest counties, that process did not finish until August 2022.

The timing of the filing of the Petition for Review thus stands in stark contrast to that at issue in *Kelly v. Commonwealth*, 240 A.3d 1255 (Pa. 2020). In *Kelly*, the petitioners filed a facial challenge to Act 77 on November 21, 2020, nearly three weeks *after* the general election. The petitioners’ request sought to invalidate millions of mail-in ballots that had *already been cast*. *Id.* at 1256. In contrast, here, the Petition for Review was filed weeks **before** any absentee or mail-in ballots had

been served and more than two months before election day (and the date the pre-canvass can begin).

Accordingly, the Petitioners acted with due diligence in commencing this action, and the doctrine of laches does not apply.

b. There Is No Undue Prejudice

The second required element for laches—undue prejudice caused by delay—is also lacking. “Laches arises when a defendant’s position or rights are so prejudiced by length of time and inexcusable delay, plus attendant facts and circumstances, that it would be an injustice to permit presently the assertion of a claim against him.” *Nilon Bros. Enterprises v. Lucente*, 461 A.2d 1312 (Pa. super. 1983). Any showing of such prejudice must be made through “clear, precise and unequivocal evidence.” *Bd. of Ed. of Sch. Dist. of Philadelphia v. Philadelphia Fed’n of Teachers Loc. No. 3*, 397 A.2d 1273 (Pa. Commw. 1979). Respondents have failed to make any such showing to support their defense of laches.

First, a “violation of law” cannot be considered a benefit to the public. *Commonwealth v. Coward*, 414 A.2d 91, 98 (Pa. 1980). The Respondents’ suggestion that an injunction to prevent cures which the Boards had no right to implement in the first lace rings hollow, as the Election Code, the Secretary’s guidance, and *Pa. Democratic Party* make clear that no one has a right to institute a cure procedure but the legislature. Likewise, the Intervenor-Respondents have no

protectable interest in maintaining education and training programs that revolve around these illegal cure procedures. Indeed, Intervenor-Respondents have not offered any evidence regarding which training or outreach programs would need to be changed as a result of the injunction. Given their burden to establish prejudice, *see Weinberg v. Commonwealth*, 501 A.2d 239, 242 (Pa. 1985), this amounts to an admission that they have not, in fact, suffered undue prejudice.

Second, the relief requested in the Application imposes a minimal burden on the Respondents. Indeed, the Application seeks a prohibitory injunction: it merely requests that those Boards which would implement a cure procedure stop doing so. Minimal, if any, new training is needed: indeed, little more should be required than an intra-office memo instructing workers to stop examining absentee and mail-in ballots prior to the pre-canvass and to stop contacting voters regarding their potentially defective absentee or mail-in ballots. Board workers should require minimal training in how to *stop* doing cure procedures. Effectively, they only need (and presumably have had) training to follow the applicable election laws: store absentee and mail-in ballots in a secure place and beginning canvassing on election day. *See* 25 P.S. § 3146.8(a). And Intervenor-Respondents' education efforts can—and likely already does—parrot the guidance provided by the Secretary even before this action: “if there’s a problem with your mail-in ballot, you won’t have the opportunity to correct it before the election.” Pennsylvania Department of State,

Mail and Absentee Ballot, at <https://www.vote.pa.gov/voting-in-pa/pages/mail-and-absentee-ballot.aspx>.

Again, *Kelly v. Commonwealth* aptly demonstrates the absence of undue prejudice here. In *Kelly*, millions of voters had already voted via mail-in ballot before the petitioners sought to have Act 77 declared facially unconstitutional. In that action, the petitioners sought a ruling that would directly invalidate millions of votes cast in reliance on the text of that law. In contrast, here, Petitioners are not seeking to invalidate any ballots, let alone any ballots that have a claim to legitimacy based on the text of any statute. Rather, Petitioners merely request that the Court preclude the Boards' use of non-statutory cure procedures – often unpublished procedures that may help some voters but upon which no reasonable voter could rely. The differences in the relief sought are so fundamental, the objecting Respondents and Intervenor-Respondents reliance on *Kelly* beggars belief here.

The Respondents have failed to make a specific evidentiary showing to support their claims that they will actually incur costs, let alone costs sufficient enough to render it unjust to grant an injunction that would prevent potentially illegal election administration practices from taking place. And any such costs hardly rise to the level of the harm usually contemplated as meriting the application of laches. Generally, courts look to whether the delay has caused any prejudice that would harm a party's position in the litigation such as evidence "that a witness has died or

become unavailable, that substantiating records were lost, or that the defendant has changed [her] position in anticipation the opposing party has waived his claims.” *Commonwealth ex rel. Pennsylvania Att’y Gen. Corbett v. Griffin*, 946 A.2d 668, 677 (Pa. 2008). “Even if compliance with a court order [is] ‘extremely burdensome,’ that is quite different than the kind of prejudice required to successfully invoke laches.” *Pennsylvania Fed’n of Dog Clubs v. Commonwealth*, 105 A.3d 51, 58 (Pa. Commw. 2014), *aff’d*, 115 A.3d 309 (Pa. 2015). The minimal cost that Boards might incur as a result of an injunction prohibiting cure procedures the Boards had no right to implement does not support the Court’s use of laches.

There is also no evidence that counties have already initiated any curing procedures for the upcoming election and Philadelphia, the county with the most registered voters, has yet to even mail ballots to voters due to various delays. *See* <https://www.inquirer.com/politics/philadelphia/philadelphia-council-special-elections-called-mayor-jim-kenney-veto-20220915.html>. One of the offending counties, Luzerne, has also agreed, without protest, to suspend any curing processes until outcome of this motion. For the remaining counties, ballots could only begin to be mailed to voters a week ago were just recently mailed to voters with pending requests and it will likely be some time until most voters return them. Additionally, no County Boards have provided evidence that voters were informed of curing opportunities in their absentee ballot materials mailed to them.

Finally, although Respondents complained at Thursday’s hearing about “disenfranchisement,” such protestations ring hollow. The Pennsylvania Supreme Court held that “[w]hile the Pennsylvania Constitution mandates that elections be ‘free and equal,’ it leaves the task of effectuating that mandate to the Legislature.” *Pa. Democratic Party*, 238 A.3d at 374. Simply, the enforcement of existing election laws already on the books does not “disenfranchise” voters; it merely ensures a level playing field for all voters regardless of their county of residence. “The purpose of the election laws is to ensure fair elections, including an equal opportunity for all eligible electors to participate in the election process.” *In re General Election of 1985*, 531 A.2d 836, 839 (Pa. Commw. 1987). Elections are “free and equal” for constitutional purposes when, *inter alia*, “the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied him.” *Pa. Democratic Party*, 238 A.3d at 372–73 (quoting *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914)). Compliance with validly enacted regulations does not constitute disenfranchisement.

Further, no Pennsylvania voter has a right to a cure procedure. Certainly, the Election Code does not provide for one. And the Pennsylvania Supreme Court in *Pa. Democratic Party* was perfectly comfortable with the fact that a voter may be “at risk for having his or her ballot rejected due to minor errors made in contravention

of [the Election Code’s] requirements” unless and until the Legislature provided a procedure to alleviate that risk. *Pa. Democratic Party*, 238 A.3d at 374. Respondents have also not proffered any evidence that voters are preemptively notified about the opportunity to cure nor, much less that voters implausibly rely on the ability to cure their mail ballots. It strains credulity to think that voters are casual about adhering to balloting procedures because they believe that an election official might pluck their ballot from the pile, notice the error, and notify them—and that they will only then take the time to conform their ballot to the law.

None of this amounts to “undue prejudice.” The Secretary took the same position in *Pa. Democratic Party*: “The Secretary submits that so long as a voter follows the requisite voting procedures, he or she “will have an equally effective power to select the representative of his or her choice.” *Pa. Democratic Party*, 238 A.3d at 373 (quoting *League of Women Voters v. Commonwealth*, 178 A.3d 737, 809 (Pa. 2018)). Accordingly, neither the requested injunction nor the timing of this action will cause “disenfranchisement” and would not cause any undue prejudice.

2. Respondents’ Unclean Hands Precludes the Application of Laches.

Respondents’ attempt to raise the equitable defense of laches fails in this instance because of the Respondents’ unclean hands. The Respondents would use this equitable defense to allow Boards to implement illegal cure procedures of their own creation, despite the lack of authorization in the Election Code, the Secretary’s

guidance which says such cure procedures are not permitted, and in violation of the Supreme Court's holding in *Pa. Democratic Party*.

“[B]ecause laches is an equitable remedy, to succeed the claimant must come before the court with clean hands.” *Mrkich v. Workers’ Comp. Appeal Bd.*, 801 A.2d 668 (Pa. Commw. 2002); accord *Penn Square Gen. Corp. v. County of Lancaster*, 936 A.2d 158, 165 n.5 (Pa. Commw. 2007) (“A party seeking equitable relief must have clean hands.”); *Jackman v. Pelusi*, 550 A.2d 199, 204 (Pa. Super. 1988) (“However, the principles of equity do not allow [a party], with unclean hands, to seek equity.”). As a general principle, unclean hands is “a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.” *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945). It is an equitable doctrine which applies “when a party seeking relief has committed an unconscionable act immediately related to the equity the party seeks in respect to the litigation.” *Highmark, Inc. v. UPMC Health Plan, Inc.*, 276 F.3d 160, 174 (3d Cir. 2001); accord *Ne. Women’s Ctr., Inc. v. McMonagle*, 868 F.2d 1342, 1354 (3d Cir. 1989) (unclean hands applies “only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation.”).

The broad, equitable principle of unclean hands applies “when the court, within its discretion, finds the party seeking affirmative relief is guilty of fraud, unconscionable conduct or bad faith directly related to the matter at issue which injures the other party and affects the balance of equities between the litigants.” *Olson v. North Am. Indus. Supply*, 658 A.2d 358, 365–66 (Pa. Super. 1995) (quoting *Equibank v. Adle, Inc.*, 595 A.2d 1284, 1287 (Pa. Super. 1991)). “[A]ny willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for closing the doors of a court of equity to one tainted with inequity.” *Penn Square Gen. Corp.*, 936 A.2d at 165 n.5 (quoting *Giddings v. State Bd. of Psychology*, 69 A.2d 431 (Pa. Commw. 1995)).

Respondents’ invocation of the affirmative defense of laches would open the doors of the Court of equity. But the Respondents who seek to open those doors cannot do so by virtue of their unclean hands.³ Those Respondents include Boards which have implemented and plan to continue to implement cure procedures in the absence of any such cure procedure under the Election Code. To the extent there was any doubt about whether the Election Code’s silence with respect to cure procedures

³ Pennsylvania courts have held that *any* “party seeking equitable relief ... must come before the court with clean hands.” *Mente Chevrolet Oldsmobile, Inc. v. GMAC, Inc.*, 451 Fed. Appx. 214, 218 n.4 (3d Cir. 2011) (quoting *Mudd v. Nosker Lumber, Inc.*, 662 A.2d 660, 663 (Pa. Super. 1995)). Thus, Petitioners may invoke the doctrine of unclean hands in response to Respondents’ attempt to raise the equitable doctrine of laches. *Id.*

granted the Boards discretion to create cure procedures of their own, the Pennsylvania Supreme Court's decision in *Pa. Democratic Party* put the issue to rest when it held that the decision to provide a notice and opportunity to cure procedure was best left to the Legislature to resolve the "open policy questions" attendant with such a procedure's implementation. *Pa. Democratic Party*, 238 A.3d at 374. Moreover, the Secretary's guidance, which advises voters about the lack of cure procedures, belies any suggestion that those Boards which engaged in cure procedures did so in good faith:

How do I know if my ballot was accepted or counted?

Under current Pennsylvania law, your mail-in ballot can't be opened until Election Day. Therefore, **if there's a problem with your mail-in ballot, you won't have the opportunity to correct it before the election.** Still, as long as you followed all the instructions and mailed your completed, signed, dated, and sealed in the inner secrecy envelope, ballot by Election Day, you don't have to worry.

Pennsylvania Department of State, *Mail and Absentee Ballot*, at <https://www.vote.pa.gov/voting-in-pa/pages/mail-and-absentee-ballot.aspx>

(emphasis added). Likewise, the doors of equity do not open to the Intervenor-Respondents—whose alleged education, training, and advocacy revolve in part around these same illegal cure procedures—as such efforts to support cure procedures render their hands similarly unclean.

In sum, laches is not an available defense to the Respondents here, as the Respondents' implementation and support of unauthorized cure procedures

constitutes bad faith conduct directly related to the matter at issue. As explained above, such conduct has injured the Petitioners, and, as a result, affects the balance of the equities between the parties. Accordingly, the Respondents' unclean hands nullifies their attempt to raise the equitable defense of laches.

B. This Court Has Subject Matter Jurisdiction to Hear This Matter.

Because the Boards of Elections are part of the Pennsylvania commonwealth government, the Commonwealth Court has original jurisdiction over this matter.

As stated in the Petition for Review, this Court's jurisdiction to hear this matter is set forth in 42 Pa. C.S. § 761: "the Commonwealth Court shall have original jurisdiction of all civil actions or proceedings: (1) against the Commonwealth government, including any officer thereof, acting in his official capacity" The Respondent Boards are a component of the "Commonwealth government," and thus the Court has subject matter jurisdiction to hear this matter.

Under the Judicial Code, "commonwealth government" is defined as:

The government of the Commonwealth, including the courts and other officers or agencies of the unified judicial system, the General Assembly and its officers and agencies, the Governor, and the departments, *boards*, commissions, authorities and officers and agencies of the Commonwealth, but the term does not include any political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision or local authority.

42 Pa. C.S. § 102. In turn, a "local authority," which is excluded from the definition of "commonwealth government," is defined as "a municipal authority or other body

corporate or politic created by one or more political subdivisions pursuant to statute.” 1 Pa. C.S. § 1991. The difference between a “commonwealth government” and a “local authority” hinges on how the entity was created. Where local legislative bodies create the entity, it is a “local authority.” *Phila. Parking Auth. V. AFSCME, Dist. Council 33, Local 1637*, 1845 A.2d 245, 248 (Pa. Commw. 2003).

The Boards constitute a commonwealth government and are not “local authorities” under these definitions. Boards are formed by statute, specifically, § 301(a) of the Election Code; they are not created by a political subdivision. *See* 25 P.S. § 2641(a); *see also In re Nomination Petition of Griffis*, 259 A.3d 542 (Pa. Commw. 2021) (citing § 2641(a)); *Cnty. of Fulton v. Sec’y of the Commonwealth*, 276 A.3d 846, 861 (Pa. Commw. 2021) (“Whether prevention [with the tampering of election equipment] is the responsibility of the Secretary or the county boards of elections, or both, is not clear. ***Both are government agencies created by the General Assembly*** with discrete and separate roles to fulfill toward the end of honest elections in Pennsylvania.... The county boards of elections are not bureaus within the Department of State subject to management by the Secretary of the Commonwealth. They are a ***separate and standalone government agencies.***”).

Further, the Secretary is an indispensable party in this action. A party is indispensable when his rights are so connected with the claims of the litigants that no decree can be made without impairing those rights. *Banfield v. Cortes*, 922 A.2d

36 (Pa. Commw. 2007). The Secretary has issued guidance to the Boards and to the voting public regarding the mechanics of absentee and mail-in ballot voting, as well as whether a right to cure exists. *See, e.g.*, Exs. Pet-11, Pet-14, Pet-15. Indeed, the Secretary recently filed suit against three Boards in Commonwealth Court, espousing the same position Petitioners assert here: that the Election Code's silence on a matter does not vest Boards with discretion to take matters into their own hands. *See Chapman v. Berks County Board of Elections*, No. 355 MD 2022 (regarding whether Boards may exercise discretion whether to count absentee and mail-in ballots that are not dated by the voter). Accordingly, this action not only challenges the conduct of some Boards that have implemented cure provisions, it also challenges action by the Secretary. Accordingly, the Secretary is a necessary party, and as such, this Court has original jurisdiction to hear this matter.

Further, the mere suggestion that subject matter jurisdiction is lacking here is puzzling, as such issue never arose in *Pa. Democratic Party*. There, the petitioners filed suit against the *exact same parties*: the Secretary and all 67 Boards. And, like the Petitioners in this action, the petitioners in *Pa. Democratic Party* sought the entry of an order compelling uniform treatment across by the Boards with respect to cure procedures. To the extent subject matter jurisdiction existed in *Pa. Democratic Party*, it exists here, too.

C. This Case Bears Little Resemblance to *Donald J. Trump for President, Inc. v. Boockvar*.

Some of the Respondents have wrongly attempted to liken this action with *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899 (M.D. Pa. 2020). But that case is distinguishable from this action both legally and factually, to the extent that it offers little guidance regarding how this action should be addressed.

First, *Donald J. Trump for President* centered on a claim alleging violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. *Id.* at 910; *see also* U.S. CONST. amend. XIV. There, the Court considered Plaintiffs “as alleging two equal-protection claims,” “[t]he first being on behalf of Individual Plaintiffs whose ballots were cancelled,” and “the second being on behalf of the Trump Campaign and raising the broad *Bush v. Gore* arguments that Plaintiffs allege is the main focus of this lawsuit.” *Donald J. Trump for President*, 502 F. Supp. 3d at 911.

Here, of course, Petitioners have not asserted any claims under the Equal Protection Clause. The Petition for Review makes no reference to Equal Protection Claims. To be sure, Petitioners *do* assert that under Pennsylvania law, namely PA. CONST. art. VII, § 6 (“All laws regulating the holding of elections by the citizens ... shall be uniform throughout the State.”) and PA. CONST. art. I, § 5 (“Elections shall be free and equal”), the Boards are required to administer elections in an “equal” and

“uniform” manner. This is not a novel view; the Pennsylvania Supreme Court has held the same for over a century:

“All laws regulating the holding of elections ... shall be uniform throughout the State.” What is meant by the word “uniform” as here used? A law is general and uniform if all persons in the same circumstances are treated alike. Uniform operation means that the same law shall apply to all persons placed in the same circumstances. A law is general and uniform, not because it operates upon every person in the State, but because every person brought within the relations provided for in the statute is within its provision.

Winston v. Moore, 91 A. 520, 524 (Pa. 1914). But this analysis was completely absent in *Donald J. Trump for President*.

This distinction is significant. While the district court in *Donald J. Trump for President* held that “Individual Plaintiffs’ claims fail because it is perfectly rational for a state to provide counties discretion to notify voters that they may cure procedurally defective mail-in ballots,” 502 F. Supp. 3d at 920, it reached that conclusion strictly in the context of a federal Equal Protection claim, *see id.* at 919 (holding that the plaintiffs’ equal-protection claim was subject to rational basis review). The district court conducted no analysis as to whether, in fact, Pennsylvania state law granted the counties the discretion it presupposed was rational. *See, e.g., Winston*, 91 A. at 522 (noting that [t]he power to regulate elections is legislative”).

Second, the procedural posture and relief sought in *Donald J. Trump for President* were radically different. *Donald J. Trump for President* was filed *after* the 2020 general election, while Petitioners commenced this action before absentee and

mail-in ballots could even be requested. Whereas *Donald J. Trump for President* sought to prohibit the certification of the results of the 2020 election, relief that “would simply deny more than 6.8 million people *their* right to vote.” *Id.* at 914. In contrast, Petitioners do not seek to invalidate any votes or to delay certification of an election that is still weeks away. Rather, Petitioners seek only an injunction to prohibit Boards from implementing cure procedures that are not authorized under the Election Code, and do not seek to invalidate any votes.

Third, events subsequent to *Donald J. Trump for President* make clearer that the Legislature did not intend to grant the Boards discretion whether and how to implement cure procedures. In June 2021, House Bill 1300 sought to establish a uniform cure procedure for all Boards to apply. *See* House Bill 1300, Printer’s Number 1869, § 1308(g)(3)(iv), (v) (2021). As previously noted, Governor Wolf vetoed HB 1300. But the Legislature’s effort to do precisely what the Pennsylvania Supreme Court urged in *Pa. Democratic Party* belies the notion that the Legislature had intended to grant the Boards discretion with respect to cure procedures.

Simply stated, *Donald J. Trump for President* was a case raising different legal theories, seeking different relief, at a different procedural posture. It sheds no light on the claims at issue here.

CONCLUSION

The Court should grant the Petitioners' Application for Special Relief in the Nature of a Preliminary Injunction and enter an order prohibiting the Respondent Boards from developing and implementing cure procedures and for the Acting Secretary to take no action inconsistent with such an order.

Respectfully submitted,

Dated: September 26, 2022

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**CERTIFICATE OF COMPLIANCE
WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Public Access Policy of the United 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.

GALLAGHER GIANCOLA LLC

Dated: September 26, 2022

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Russell D. Giancola

Counsel for Petitioners

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

REPUBLICAN NATIONAL	:	
COMMITTEE, et al.,	:	
	:	
Petitioners	:	
	:	
	:	
v.	:	No. 447 MD 2022
	:	
	:	
LEIGH M. CHAPMAN, in her capacity as	:	
Acting Secretary of the Commonwealth of	:	
Pennsylvania, <i>et al.</i> ,	:	
	:	
Respondents	:	

SUPPLEMENTAL MEMORANDUM OF THE LEHIGH COUNTY BOARD OF ELECTIONS IN OPPOSITION TO PETITIONERS’ REQUEST FOR A PRELIMINARY INJUNCTION

Respondent Lehigh County Board of Elections (Lehigh) hereby submits this memorandum in opposition to Petitioners’ Request for a Preliminary Injunction.

Background

The Petition for Review before this Court was filed on September 1, 2022 and received by the Lehigh via certified mail on September 7, 2022. On September 7, 2022 Petitioners filed their Application for Special Relief in the Nature of a Preliminary Injunction which Lehigh received on September 12th. The Court issued an order on September 9, 2022 which: 1. required all Respondents who opposed the Preliminary Injunction to file a response by September 16, 2022; 2. established a deadline for stipulation of facts; and 3. scheduled a status conference on September 22, 2022.

The Parties submitted a joint stipulation of facts to the Court on September 20, 2022. On September 22nd the Court held a status conference which included

argument on the issue of laches raised by several Respondents, as well as the merits of Petitioners' Application for a Preliminary Injunction. After the status conference, the Court issued an order requiring a joint stipulation of exhibits and setting a schedule for the parties to brief both the issue of laches and any remaining arguments pertaining to the preliminary injunction criteria.

Lehigh would like to be clear about the assistance it provides to its absentee and mail-in ballot voters. First, as many other counties do, it has assisted voters at the counter with absentee ballots for many years, and continues to provide that same assistance to voters delivering their mail-in ballots to the counter. This assistance includes a visual inspection of the outer envelope to determine if there are omissions or mistakes in the voter declaration, which requires the voter to sign and date the envelope. If there are issues, Lehigh informs the voter and permits them to remedy those omissions or mistakes.

If the ballot outer envelope is properly complete, then the ballot is placed with the group of ballots waiting for pre-canvassing on election day. At that point the ballot is secured, and no one other than election personnel has access to it. If the outer envelope is not properly completed, the ballot is segregated and not put in the group of ballots eligible for pre-canvassing.

This same process is also used for those mail-in ballots which are deposited in drop boxes or sent through the mail. Lehigh wants all eligible voters to have the opportunity to remedy minor issues with their ballots' outer envelope, regardless of how the ballot is delivered.

Ballots with complete outer envelopes which are missing secrecy envelopes are put in the pre-canvass pile and are secured. It is not until election day during the pre-canvass process that the outer envelope is removed and the lack of the

secrecy envelope is determined. At that point the ballot is cancelled in the SURE system, and the state sends notice to the voter that the ballot has been cancelled. The only remedy available for those Lehigh voters whose ballots are cancelled is to cast a provisional ballot at their polling place. When a voter gets the cancellation notification from the state and calls Lehigh to ask what they can do, this is the information provided to them.

In addition to the notice by the state, Lehigh has agreed in the Bausch/Dondiego stipulated settlement to notify any party representatives present during pre-canvassing of the ballot cancellation, and if there is contact information to attempt to notify the voter that their ballot has been cancelled.

Lehigh has also agreed to look at the possibility of identifying the ballots without secrecy envelopes prior to pre-canvassing, so that the voters could be notified earlier of the need to cast a provisional ballot. Lehigh has not yet done this.

Argument

With regard to the laches defense presented by Intervenor-Respondents, Lehigh joins in those arguments.

Lehigh also joins in the briefs filed by Northampton County and the Intervenor-Respondents regarding the criteria required to be established for a Preliminary Injunction.

The Preliminary Injunction requested by Petitioners is far too broad and would do more harm than the alleged problem it purports to address. Election workers will be concerned they cannot advise voters of their right to cast a provisional ballot much less assist voters at the counter. If they are required to tell voters they cannot help them, how does that inspire trust in the election system?

Finally, Petitioners rely upon the free and fair elections clause, Pa. Const. Art 1, section 5. They have not alleged, much less proved, any constitutional injury under that section. Because of the discretion provided to Boards of Elections in the 67 Counties under the Election Code, the processes used for conducting elections will inherently have minor differences among the Counties. Different voting machines will create different options for how voters cast their ballots. Similar machines may be programmed differently to address over and under voting on ballots. Each County is slightly different from the others, but this does not create a constitutional injury under Article 1, section 5. Further, this clause should not be used to restrict voter access, but to enlarge it. Let the Court not get lost in the weed trees which have grown from the seeds sown by Petitioners, which seek to obscure the view of the magnificent forest that is the right of Pennsylvania citizens to vote for their choice of candidates.

For all the foregoing reasons, Lehigh respectfully requests that this Honorable Court deny Petitioners' request for a Preliminary Injunction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Catharine M. Roseberry, 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.

Respectfully submitted,

Date: September 26, 2022

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Republican National Committee; :
National Republican Senatorial :
Committee; National Republican :
Congressional Committee; Republican :
Party of Pennsylvania; David Ball; :
James D. Bee; Debra A. Biro; Jesse D. :
Daniel; Gwendolyn Mae Deluca; Ross :
M. Farber; Connor R. Gallagher; Lynn :
Marie Kalcevic; Linda S. Kozlovich; :
William P. Kozlovich; Vallerie :
Siciliano-Biancaniello; S. Michael :
Streib, :

Petitioners :

v. :

No. 447 M.D. 2022

Leigh M. Chapman, in her official :
capacity as Acting Secretary of the :
Commonwealth; Jessica Mathis, in :
her official capacity as Director of the :
Pennsylvania Bureau of Election :
Services and Notaries; Adams County :
Board of Elections; Allegheny County :
Board of Elections; Armstrong County :
Board of Elections; Beaver County :
Board of Elections; Bedford County :
Board of Elections; Berks County Board :
of Elections; Blair County Board of :
Elections; Bradford County Board of :
Elections; Bucks County Board of :
Elections; Butler County Board of :
Elections; Cambria County Board of :
Elections; Cameron County Board of :
Elections; Carbon County Board of :
Elections; Centre County Board of :
Elections; Chester County Board of :
Elections; Clarion County Board of :
Elections; Clearfield County Board of :
Elections; Clinton County Board of :
Elections; Columbia County Board of :

Elections; Crawford County Board of :
Elections; Cumberland County Board :
of Elections; Dauphin County Board of :
Elections; Delaware County Board of :
Elections; Elk County Board of :
Elections; Erie County Board of :
Elections; Fayette County Board of :
Elections; Forest County Board of :
Elections; Franklin County Board of :
Elections; Fulton County Board of :
Elections; Greene County Board of :
Elections; Huntingdon County Board :
of Elections; Indiana County Board of :
Elections; Jefferson County Board of :
Elections; Juniata County Board of :
Elections; Lackawanna County Board :
of Elections; Lancaster County Board :
of Elections; Lawrence County Board :
of Elections; Lebanon County Board :
of Elections; Lehigh County Board of :
Elections; Luzerne County Board of :
Elections; Lycoming County Board of :
Elections; McKean County Board of :
Elections; Mercer County Board of :
Elections; Mifflin County Board of :
Elections; Monroe County Board of :
Elections; Montgomery County Board :
of Elections; Montour County Board of :
Elections; Northampton County Board :
of Elections; Northumberland County :
Board of Elections; Perry County :
Board of Elections; Philadelphia County :
Board of Elections; Pike County Board :
of Elections; Potter County Board of :
Elections; Schuylkill County Board of :
Elections; Snyder County Board of :
Elections; Somerset County Board of :
Elections; Sullivan County Board of :
Elections; Susquehanna County Board :
of Elections; Tioga County Board of :
Elections; Union County Board of :
Elections; Venango County Board of :

Elections; Warren County Board of :
Elections; Wayne County Board of :
Elections; Westmoreland County Board :
of Elections; Wyoming County Board of:
Elections; and York County Board of :
Elections, :
Respondents :

BEFORE: HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE CEISLER

FILED: September 29, 2022

On September 1, 2022, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the National Republican Senatorial Committee (NRSC), and the Republican Party of Pennsylvania (RPP) (collectively, Republican Committee Petitioners), and David Ball, James D. Bee, Debra A. Biro, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Connor R. Gallagher, Lynn Marie Kalcevic, Linda S. Kozlovich, William P. Kozlovich, Vallerie Siciliano-Biancaniello, and S. Michael Streib (collectively, Voter Petitioners)¹ (all collectively referred to as Petitioners), filed a Petition for Review Directed to this Court’s Original Jurisdiction Seeking Declaratory and Injunctive Relief (Petition for Review) against Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth (Acting Secretary), and Jessica Mathis, in her official capacity as Director of the Pennsylvania Bureau of Election Services and

¹ Voter Petitioners are 12 registered voters who reside in Washington County, Cambria County, Northampton County, Indiana County, Beaver County, Westmoreland County, Allegheny County, Fayette County, Delaware County, and Butler County, who regularly vote in both primary and general elections, and who intend to vote for candidates in all races, including for federal and statewide offices, that will be on the ballot in the upcoming General Election. (Pet. for Rev. ¶¶ 20-32.)

Notaries (collectively, Commonwealth Respondents), and the Commonwealth's 67 county boards of elections (County Boards).² Petitioners allege that several County Boards have taken it upon themselves to develop and implement notice and opportunity to cure procedures with respect to absentee and mail-in ballots that fail to comply with the Pennsylvania Election Code's (Election Code)³ signature and ballot secrecy requirements, for the November 8, 2022 General Election and beyond, in direct contravention of the Election Code and our Supreme Court's holding in *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020). (Pet. for Rev. ¶¶ 2-12.) On September 7, 2022, 62 days away from the 2022 General Election scheduled for November 8, 2022, Petitioners also filed an Application for Special Relief in the Form of a Preliminary Injunction Under Pa.R.A.P. 1532 (Application for Preliminary Injunction), along with a Memorandum of Law in Support thereof, asking this Court to preliminarily enjoin the County Boards from developing and implementing notice and opportunity to cure procedures, and the Acting Secretary from taking any action inconsistent with such order enjoining the County Boards. The Application for Preliminary Injunction is currently before the Court for disposition.

I. PROCEDURAL HISTORY

Initially, the Court notes that, because Petitioners' claims, as set forth in the Petition for Review and Application for Preliminary Injunction bear directly on

² The Court notes that only 66 of the Commonwealth's 67 county boards of elections (County Boards) are actually named in the caption in this matter. It appears that the Washington County Board of Elections was inadvertently omitted from the caption, as the allegations of the Petition for Review clearly refer to all 67 County Boards. Moreover, the Petition for Review and other filings were served on the Washington County Board of Elections. The Court will therefore consider the Washington County Board of Elections to be a Respondent in this matter notwithstanding its omission from the caption.

³ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

future elections, including the November 8, 2022 General Election, which is only **39 days** from the date of this filing, this Court made every effort to expeditiously conduct factfinding, obtain all of the parties' positions, and consider the applicable law in this case. The Court will therefore first explain the procedural history of this case in depth for purposes of transparency.

By Order dated September 9, 2022, the Court scheduled a hearing on the Application for Preliminary Injunction for Wednesday, September 28, 2022; directed the filing of answers in opposition to the Application for Preliminary Injunction by noon on Friday, September 16, 2022, and a joint stipulation of facts by noon on Monday, September 19, 2022, indicating which County Boards have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots; and scheduled a status conference for Thursday, September 22, 2022, for purposes of discussing, among other things, the logistics of the hearing. The Court's Order also provided, *inter alia*, that any party who failed to file an answer to the Application for Preliminary Injunction will be considered by the Court to be unopposed to the Application.

Also on September 9, 2022, two Applications for Leave to Intervene (Applications to Intervene) were filed by: (1) the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee (DSCC and DCCC), and (2) the Democratic National Committee and the Pennsylvania Democratic Party (DNC and PDP) (collectively, Intervenors). In light of the Applications to Intervene and the status conference scheduled for September 22, 2022, the Court issued an Order on September 13, 2022, directing answers in opposition to the Applications to Intervene by noon on Monday, September 19, 2022; granting Intervenors (then-proposed intervenors) leave to participate in the

status conference subject to the Court's future disposition of their respective Applications to Intervene; and further directed the parties and Intervenors to be prepared to discuss the Applications to Intervene at the status conference. The Court's Order also provided, among other things, that any party who failed to file an answer to the Applications to Intervene will be considered by the Court to be unopposed to the Applications. Only Petitioners opposed the Applications to Intervene.

Pursuant to the Court's September 9, 2022 Order, Commonwealth Respondents filed an answer and a brief in opposition to the Application for Preliminary Injunction. Twenty-five County Boards⁴ (25 County Boards) filed answers in opposition to the Application for Preliminary Injunction, generally all of which deny that injunctive relief is warranted in this case. The Washington County Board of Elections filed a letter, indicating it takes no position on the Application for Preliminary Injunction or the joint stipulation of facts ordered by the Court, and

⁴ These include: Berks County; Lehigh County; Allegheny County; Philadelphia County (also filed Memorandum of Law in Opposition); Montgomery County (also filed preliminary objections to the Petition for Review); Bedford County, Centre County, Columbia County, Dauphin County, Fayette County, Jefferson County, Huntingdon County, Indiana County, Lawrence County, Lebanon County, Northumberland County, Venango County, York County (filed Joint Answer); Northampton County; Bucks County; Monroe County; Adams County; Luzerne County; Delaware County; and Erie County.

The Court notes that Erie County filed an answer to the Application for Preliminary Injunction past the deadline for doing so, joining in Commonwealth Respondents' answer in opposition. In addition to filing an answer opposing the Application, Bucks County also filed an answer and new matter to the Petition for Review. Monroe County also filed a letter separate from its answer in opposition to the Application, indicating that it takes no position on the joint stipulation of facts ordered by the Court and that it will not be participating in the filing of the joint stipulation or in the status conference. Luzerne County also filed a Submission separate from its answer in opposition to the Application, explaining Luzerne County's notice and cure procedure and indicating that it takes no position on the other proposed stipulations submitted by the other parties. Erie, Bucks, Monroe, and Luzerne Counties are nevertheless included in the above list of County Boards that oppose the Application for Preliminary Injunction.

41 County Boards⁵ failed to file answers to the Application for Preliminary Injunction and, thus, are considered by the Court to be unopposed to the relief sought therein. Intervenors filed separate answers in opposition to the Application for Preliminary Injunction setting forth their respective positions on why the relief sought by Petitioners should be denied.

By Order dated September 19, 2022, the Court granted Petitioners' request for an extension to 5:00 p.m. on Tuesday, September 20, 2022, for the filing of the joint stipulation of facts. In accordance with that extension Order, the parties filed a Joint Stipulation of Facts on September 20, 2022, which is signed by Petitioners and 42 County Boards⁶ and includes 8 exhibits (Exhibits A through H). Exhibit A is the

⁵ These include: Armstrong County; Beaver County; Blair County; Bradford County; Butler County; Cambria County; Cameron County; Carbon County; Chester County; Clarion County; Clearfield County; Clinton County; Crawford County; Cumberland County; Elk County; Forest County; Franklin County; Fulton County; Greene County; Juniata County; Lackawanna County; Lancaster County; Lycoming County; McKean County; Mercer County; Mifflin County; Montour County; Perry County; Pike County; Potter County; Schuylkill County; Snyder County; Somerset County; Sullivan County; Susquehanna County; Tioga County; Warren County; Wayne County; Westmoreland County; Wyoming County; and Union County.

Perry County filed a no answer letter, indicating it would not be filing an answer to the Petition for Review in this matter. Union County filed a Submission, similar to Luzerne County's Submission, explaining Union County's notice and cure procedure and indicating that it takes no position on the other proposed stipulations submitted by the other parties. Lancaster County filed an answer to the Petition for Review, indicating that it does not have a notice and cure procedure. Perry, Union, and Lancaster Counties did not address their positions on the Application for Preliminary Injunction and are thus considered to be unopposed to the Application.

⁶ These include: Adams County; Allegheny County; Beaver County; Bedford County, Centre County, Columbia County, Dauphin County, Fayette County, Jefferson County, Huntingdon County, Indiana County, Lawrence County, Northumberland County, Venango County, and York County; Berks County; Blair County; Bradford County; Bucks County; Butler County; Cameron County; Chester County; Clarion County, Susquehanna County, and Tioga County; Cumberland County; Delaware County; Erie County; Franklin County; Juniata County; Lehigh County; Luzerne County; Lycoming County; Montgomery County; Northampton County; Philadelphia County; Union County; Westmoreland County; Sullivan County and Wyoming County; Snyder County; and Somerset County.

letter Petitioners sent to all County Boards requesting information regarding, *inter alia*, whether they have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots. Exhibits B through H contain separate stipulations regarding the above information from 18 County Boards⁷ that signed the Joint Stipulation of Facts. For the sake of brevity, the Court will not reproduce the Joint Stipulation of Facts in its entirety in this opinion. However, the Court notes the Joint Stipulation of Facts reveals that there are a number of County Boards that have implemented notice and opportunity to cure procedures, both before pre-canvassing begins and on Election Day, with respect to absentee and mail-in ballots that lack either a date or signature on the outer ballot envelope, or that lack a secrecy envelope. There are other County Boards that do not have any notice and opportunity to cure procedures.

The Court held the status conference on Thursday, September 22, 2022, via WebEx videoconferencing. For purposes of transparency and given the exigency of this matter in light of the looming General Election, the Court permitted the status conference to be livestreamed to the public and had a stenographer present for purposes of creating a record in the event any appeal is taken from this Court's final order. During the status conference, which was essentially turned into a hearing without objection of the parties, the Court first considered Intervenors' Applications to Intervene. There being no objection by any of the parties, including Petitioners who initially opposed the Applications, the Court granted the Applications to

⁷ These include: Bedford County, Centre County, Columbia County, Dauphin County, Fayette County, Jefferson County, Huntingdon County, Indiana County, Lawrence County, Northumberland County, Venango County, and York County (Exhibit B – also indicates Lebanon County's response not yet received); Westmoreland County (Exhibit C); Chester County (Exhibit D); Bucks County (Exhibit E); Luzerne County (Exhibit F); Philadelphia County (Exhibit G); and Union County (Exhibit H).

Intervene on the record, which was confirmed by subsequent order.⁸ The Court then heard argument on laches as a potential bar to the relief sought in the Application for Preliminary Injunction and the six criteria for a preliminary injunction. Following argument, and observing that the issue in this case is really a legal one, the Court asked the parties if an evidentiary hearing was necessary. The parties ultimately agreed to dispense with the hearing on the Application for Preliminary Injunction that was scheduled for Wednesday, September 28, 2022, and for the Court to decide the Application on the papers, with the caveat that the Court permit additional briefing. Following the status conference, the Court issued an Order on September 22, 2022, granting intervention; directing the parties and Intervenors to file briefs and a joint stipulation of exhibits; cancelling the hearing; and indicating that the Application for Preliminary Injunction would be decided on the papers following the Court's receipt of the aforementioned filings, unless otherwise ordered.

The parties⁹ have complied with the Court's September 22, 2022 Order by filing comprehensive briefs addressing their respective positions and the applicable

⁸ The Court's order also directed the Prothonotary to docket Intervenors' respective sets of preliminary objections to the Petition for Review. *See* Cmwlth. Ct. Order dated Sept. 22, 2022.

⁹ The following parties filed briefs pursuant to this Court's September 22, 2022 Order: Northampton County; Bedford County, Centre County, Columbia County, Dauphin County, Fayette County, Jefferson County, Huntingdon County, Indiana County, Lawrence County, Northumberland County, Venango County, and York County (joint answer, in which Carbon County now joins); Allegheny County; Montgomery County; Intervenors DNC and PDP; Bucks County; Intervenors DSCC and DCCC; Luzerne County; Commonwealth Respondents; Petitioners; Philadelphia County; and Lehigh County. Delaware County joined in the brief filed by Allegheny County. Berks County filed a letter in response to the September 22, 2022 Order, indicating, among other things, that it takes no position on either laches as a potential bar to the relief sought herein or on the Application for Preliminary Injunction.

The Court also notes that the Lawyers Democracy Fund filed an *amicus curiae* brief in support of Petitioners' requested relief.

law, and a comprehensive Joint Stipulation of Exhibits, which includes, *inter alia*, the Joint Stipulation of Facts previously filed by the parties. At this juncture, the Court is satisfied that everyone in this case had a full and fair opportunity to be heard, that a sufficient record has been created given the time constraints, and that the proceedings were conducted with transparency.

Having considered the argument, pleadings, evidence, and law, the Court **DENIES** Petitioners' Application for Preliminary Injunction, as Petitioners did not meet their heavy burden of proving the following criteria:

1. **Petitioners' have not proven that they are likely to succeed on the merits or that their right to relief is clear.**

- A review of relevant and recent case law indicates that notice and opportunity to cure procedures implemented by County Boards have *generally* been accepted in order to fulfill the longstanding and overriding policy in this Commonwealth to protect the elective franchise. The courts have held that any doubt about whether the Election Code authorizes County Boards to implement notice and cure procedures must be resolved in favor of preventing the inadvertent forfeiture of electors' right to vote.
- The Election Code does not specifically prohibit County Boards from implementing notice and cure procedures. Rather, County Boards enjoy broad authority under Section 302(f) of the Election Code, 25 P.S. § 2642(f), to implement such procedures at their discretion to ensure that the electoral franchise is protected. While Section 302(f) of the Election Code requires that only procedures that comply with the

law are permitted, Petitioners themselves do not allege any fraud is taking place with respect to such procedures.

- In *Pennsylvania Democratic Party*, 238 A.3d 345, the Supreme Court specifically held that adoption of statewide notice and opportunity to cure procedures are within the province of the legislature and not the judiciary.

2. **The relief requested by Petitioners will disrupt the status quo and is not narrowly tailored to abate the offending activity.**

- Such sweeping relief against the 67 County Boards would clearly cause greater injury than refusing the injunction, precisely because it would seriously harm the public interest and orderly administration of the 2022 General Election, **which is already well underway**. Enjoining the various County Boards' procedures at this point in time would further deprive voters in counties who have been privy to such procedures for the past two years since the enactment of Act 77 the opportunities to have their votes counted, thus resulting in almost certain disenfranchisement of voters. If this Court were to grant the injunctive relief Petitioners seek, the County Boards would then have to modify their practices and procedures in response to the injunction **when absentee and mail-in voting is already underway**.

3. **Petitioners have not presented concrete or sufficient evidence that the injunction is necessary to prevent immediate and irreparable harm.**

- There is no violation of the Election Code which would constitute *per se* immediate and irreparable harm, and the cases cited by Petitioners to support this claim are inapposite. Importantly, as stated earlier,

Respondents also agree that there is no assertion, or evidence, of fraud by the County Boards in any county in Pennsylvania.

- Petitioners claims of immediate and irreparable harm are speculative in nature.

Having summarized the Court's findings and conclusions with respect to the denial of the Application for Preliminary Injunction above, the Court turns to averments of the Petition for Review, the Application for Preliminary Injunction, and the parties' arguments, and finally, explains its reasoning for denying the Application for Preliminary Injunction.

PETITION FOR REVIEW

The Petition for Review in this matter sets forth Petitioners' concern that various County Boards have developed and implemented unauthorized notice and opportunity to cure procedures with respect to absentee and mail-in ballots that fail to comply with the Election Code's signature and ballot secrecy requirements. (Pet. for Rev. ¶¶ 7-8.) Petitioners claim these cure procedures are unauthorized, because the Election Code does not specifically provide for them, and our Supreme Court has already held in *Pennsylvania Democratic Party* that the decision to provide a notice and opportunity to cure procedure is one that is best suited for the legislature. (Pet. for Rev. ¶¶ 2-4, 43-47.) Petitioners point out that the Election Code provides only one cure procedure in a very limited circumstance with respect to those absentee or mail-in ballots for which proof of identification has not been received or could not be verified. (Pet. for Rev. ¶¶ 5-6, 48-51); *see also* Section 1308(h) of the Election

Code, added by the Act of March 6, 1951, P.L. 3, 25 P.S. § 3146.8(h).¹⁰ Petitioners claim that the Acting Secretary has also acknowledged the absence of any other cure procedures in the Election Code on the Department of State’s website. (Pet. for Rev. ¶ 55 (stating, in response to the frequently asked question, “How do I know if my ballot was accepted or counted?” that “if there’s a problem with your mail-in ballot, **you won’t have the opportunity to correct it before the election.**” (emphasis added)); *see also* Pa. Dep’t of State, Mail-in and Absentee Ballot, Frequently Asked Questions, *available at* <https://www.vote.pa.gov/Voting-in-PA/Pages/Mail-and-Absentee-Ballot.aspx> (last visited Sept. 27, 2022); Jt. Stip. of Exs., Pet’rs’ Ex. 11. Petitioners further point out that Governor Wolf recently vetoed the legislature’s attempt to implement a broad notice and cure procedure in the Election Code. *See* Pet. for Rev. ¶¶ 52-53; *see also* House Bill 1300 (vetoed by the Governor on June 30, 2021), *available at* <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PD>

¹⁰ Section 1308(h) provides:

(h) For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

(1) Deleted by [the Act of October 31, 2019, P.L. 552, No. 77 (Act 77), effective immediately]

(2) If the proof of identification is received and verified prior to the sixth calendar day following the election, then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted.

25 P.S. § 3146.8(h).

(last visited Sept. 27, 2022); Jt. Stip. of Exs., Pet’rs’ Ex. 9. Thus, according to Petitioners, the only cure procedure available that the County Boards may provide, as was the case in 2020, is that set forth in Section 1308(h) of the Election Code, (Pet. for Rev. ¶¶ 6, 54), and any attempt to adopt cure procedures at the county level constitutes a usurpation of the exclusive legislative authority of the General Assembly and a violation of the authority granted to the General Assembly to regulate the manner of federal elections under Article I, Section 4 of the United States Constitution, U.S. Const. art. I, § 4,¹¹ (Pet. for Rev. ¶¶ 8-9).

Petitioners further assert that the County Boards’ unlawful actions in adopting cure procedures have resulted and/or will result in “a lack of transparency, unequal treatment of otherwise identical ballots based upon the county in which the voter resides, and an erosion of public trust and confidence in the integrity of Pennsylvania’s elections at a vital moment in the Nation’s and the Commonwealth’s history.” (Pet. for Rev. ¶ 1.) Specifically, Petitioners contend that not all County Boards have publicly disclosed whether they have adopted cure procedures or the particulars of those procedures, resulting in confusion and a lack of transparency in election administration; and that those County Boards that have adopted cure procedures have not uniformly adopted **the same** procedures, resulting in a lack of statewide uniformity in both the existence and particulars of such cure procedures. (Pet. for Rev. ¶¶ 10-11, 83-85.) Petitioners thus request that this Court “restore transparency, fundamental fairness, and integrity to Pennsylvania’s elections by

¹¹ The Elections Clause provides: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of ch[oo]sing Senators.” U.S. Const. art. I, § 4, cl.1.

upholding the plain text of the Election Code and the clear holding of the Pennsylvania Supreme Court and declaring that [the County Boards] may not adopt cure procedures other than as the General Assembly has expressly provided in the Election Code.” (Pet. for Rev. ¶ 12.)

Republican Committee Petitioners, specifically, assert that they have each made significant contributions and expenditures in support of Republican candidates for various federal, state, and local offices and in mobilizing and educating voters in Pennsylvania in past election cycles and again in 2022. (Pet. for Rev. ¶¶ 15-18.) According to Republican Committee Petitioners, such education includes devoting substantial time and resources toward monitoring the voting and vote counting processes in Pennsylvania and ensuring that such processes are lawfully conducted, and further ensuring that voters understand the rules governing the election process, including applicable dates, deadlines, and requirements for voting by mail or absentee. (Pet. for Rev. ¶¶ 15-18.) Republican Committee Petitioners further assert that their “efforts require a uniform application of the law and a clear and transparent understanding of mail voting requirements, including any allowances for notice and opportunity to cure procedures.” (Pet. for Rev. ¶¶ 15-18.) Republican Committee Petitioners thus contend that they each have “a substantial and particularized interest in ensuring that Pennsylvania carries out free and fair elections.” (Pet. for Rev. ¶¶ 15-18.) However, because the various approaches taken by the County Boards regarding notice and opportunity to cure procedures are not published and are also not readily known to Republican Committee Petitioners, or voters for that matter, Republican Committee Petitioners argue that their ability to educate voters in this regard is thwarted. (Pet. for Rev. ¶ 19.)

For their own part, Voter Petitioners assert that the implementation of cure procedures by some County Boards, absent any directive to do so under the Election Code, has interfered with Voter Petitioners' right to "equal elections." (Pet. for Rev. ¶ 33.) Further, "the unauthorized cure procedures implemented by some [of the County] Boards have had and will have the result of counting votes that should not have been counted due to the voter's failure to comply with signature and secrecy ballot requirements for mail-in and absentee ballots[,]” which will result in Voter Petitioners' validly cast votes being "cancelled and diluted by the counting of ballots in violation of the Election Code." (Pet. for Rev. ¶ 34.)

Petitioners thus observe that this case involves essentially the same factual scenario that existed in 2020 when the *Pennsylvania Democratic Party* decision was issued, which they describe as "an election landscape where [County] Boards throughout the state operate under different rules, particularly with respect to whether to implement cure procedures, and if so, how." (Pet. for Rev. ¶ 35.) In light of the Supreme Court's holding and Governor Wolf's recent veto of the General Assembly's attempt to implement a uniform cure procedure, Petitioners claim they "seek the mirror-image form of relief: the Court should enjoin the [County] Boards from using any cure procedures that are not expressly set forth in the Election Code." (Pet. for Rev. ¶ 36.)

Petitioners readily acknowledge that Section 302 of the Election Code, 25 P.S. § 2642, imbues the County Boards with authority to exercise all powers granted to them, provides that the County Boards "shall perform all the duties imposed upon them by th[e Election Code,]" and lists several duties the County Boards must perform. (Pet. for Rev. ¶¶ 57-58.) Petitioners also concede the County Boards' authority in that section to, among other things, "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.” (Pet. for Rev. ¶ 63); Section 302(f) of the Election Code, 25 P.S. § 2642(f) (emphasis added). Petitioners claim, however, that absent from that section is any indication that the County Boards have authority to develop and implement notice and opportunity to cure procedures; as such, Petitioners assert, such cure procedures are “inconsistent with law,” i.e., the Election Code. (Pet. for Rev. ¶¶ 56, 59-62, 64.)

Petitioners further assert that publicly available information and investigation has revealed that some County Boards, including Bucks, Montgomery, Philadelphia, Northampton, and Lehigh Counties, have developed and intend to implement cure procedures, or have agreed to begin the process of implementing cure procedures in future elections. (Pet. for Rev. ¶¶ 65-76.) According to Petitioners, Northampton and Lehigh Counties, specifically, have each also entered into Stipulated Settlement Agreements in federal court that would permit them to, among other things, utilize certain cure procedures. (Pet. for Rev. ¶¶ 72-76.) Other counties have expressed, however, that they are not allowing any cure procedures, including, among others, Lancaster, Franklin, Mifflin, Wyoming, and Allegheny. (Pet. for Rev. ¶¶ 77-81.) Thus, Petitioners assert, whether voters will be permitted to fix their noncompliant absentee or mail-in ballots “depends entirely on the county in which they reside.” (Pet. for Rev. ¶ 82.) Stated otherwise, “ballots with identical defects are receiving unequal treatment based solely on the voter’s residency.” (Pet. for Rev. ¶¶ 82.)

Count I of the Petition for Review therefore requests a declaratory judgment that the County Boards are prohibited under Pennsylvania law from developing and implementing cure procedures not expressly created by the legislature. (Pet. for Rev. ¶¶ 86-92.) Count II requests a declaratory judgment that adoption of any cure

procedures for federal elections not expressly authorized by the General Assembly violates the Elections Clause of the United States Constitution, U.S. Const. art. I, § 4, cl. 1, in that it is the legislature, not the County Boards, that has authority to regulate the manner of holding federal elections. (Pet. for Rev. ¶¶ 93-96.) Count III requests a statewide injunction prohibiting the 67 County Boards from developing or implementing cure procedures and directing the Acting Secretary to take no action inconsistent with such injunction order. (Pet. for Rev. ¶¶ 97-103.)

II. APPLICATION FOR PRELIMINARY INJUNCTION

Petitioners' Application for Preliminary Injunction seeks the same relief as that sought in the Petition for Review. In addition, Petitioners claim that they have satisfied each element for injunctive relief. They assert, first, that the County Boards' unlawful conduct in implementing, or continuing to implement, cure procedures per se constitutes immediate and irreparable harm. (Appl. for Prelim. Inj. ¶ 13; Memo. of Law in Support at 14.) Further, an injunction is needed to prevent immediate and irreparable harm in the form of Voter Petitioners' votes being treated unequally in violation of article VII, section 6 of the Pennsylvania Constitution, Pa. Const. art. VII, § 6,¹² and Republican Committee Petitioners not being able to properly educate their members regarding the rules applicable to absentee and mail-in ballots. (Appl. for Prelim. Inj. ¶ 13; Memo. of Law in Support at 14-15.) Petitioners contend that the Supreme Court has spoken when it ruled that notice and cure procedures must come from the General Assembly. (Memo. of Law in Support at 14.) Petitioners claim there is no question that per se immediate and irreparable harm will occur without an injunction, as ballots are expected to go out

¹² It provides: "All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State," with certain exceptions not applicable to this case. Pa. Const. art. VII, § 6.

as soon as September 19, 2022, and Northampton and Lehigh Counties have agreed as recently as June 2022 to begin implementing cure procedures for upcoming elections, none of which are authorized under the Election Code. (Memo. of Law in Support at 16.) Moreover, Petitioners claim that there is no adequate damages remedy for voters who are denied equal access to the electoral process. (Memo. of Law in Support at 17.)

Second, Petitioners assert that greater injury would result from refusing rather than granting the injunction, because the County Boards “will collectively engage in a mishmash of cure procedures, allowing some voters to cure signature or secrecy envelope defects for some Pennsylvania voters (in violation of the Election Code) while preventing others from doing so.” (Appl. for Prelim. Inj. ¶ 13; Memo. of Law in Support at 17.) Because the County Boards’ continued unlawful conduct cannot be considered a benefit to the public, Petitioners argue that the need for a preliminary injunction is clear. (Appl. for Prelim. Inj. ¶ 13; Memo. of Law in Support at 17-18.) Petitioners also repeat their claims regarding the harms to Republican Committee Petitioners and Voter Petitioners, respectively. Petitioners thus claim that by granting the injunction, the Court will reaffirm the *Pennsylvania Democratic Party* Court’s holding that the County Boards cannot implement cure procedures that are not set forth in the Election Code, thus eliminating the harms to Petitioners. (Memo. of Law in Support at 19.)

Third, Petitioners claim that the requested prohibitory injunction—i.e., one that enjoins the doing of an act that will change the status quo—seeks only to preserve the state of the law as set forth by the Election Code and as established by the Supreme Court’s decision in *Pennsylvania Democratic Party*, i.e., prior to the County Boards’ unlawful conduct in implementing notice and cure procedures.

(Appl. for Prelim. Inj. ¶ 14; Memo. of Law in Support at 19-20.) Petitioners further request “an explicit recognition that only the Legislature can authorize a cure procedure to address voters’ failure to comply with the Election Code’s signature and [ballot secrecy] requirements.” (Appl. for Prelim. Inj. ¶ 13; Memo. of Law in Support at 20.)

Fourth, Petitioners assert they are likely to prevail on the merits of their underlying claims in this matter because the notice and cure procedures implemented by some, but not all, County Boards are unlawful under both the Election Code and the Supreme Court’s holding in *Pennsylvania Democratic Party*, and they violate the Elections Clause of the United States Constitution because they infringe on the legislature’s exclusive authority to regulate the manner of holding federal elections. (Appl. for Prelim. Inj. ¶ 15; Memo. of Law in Support at 21-22.) Petitioners again highlight the Supreme Court’s prior holding that County Boards are not required to implement cure procedures, which they contend forecloses the notion that County Boards are permitted to implement their own notice and cure procedures, because such procedures would reflect policy decisions reserved for the legislature. (Memo. of Law in Support at 23-24.) Petitioners repeat their claim that Section 302 of the Election Code contains nothing authorizing County Boards to implement these procedures, and, moreover, that section requires that County Boards ensure that elections are honestly, efficiently, and **uniformly** conducted. (Memo. of Law in Support at 24 (quoting Section 302(g) of the Election Code, 25 P.S. § 2642(g)). Petitioners again highlight that these cure procedures are “inconsistent with law” under Section 302(f) of the Election Code, “because the Election Code spells out the

limited availability of such procedures and does not authorize Boards to expand them.” (Memo. of Law in Support at 25.)¹³

Fifth, Petitioners contend the requested injunction is narrowly tailored and, thus, reasonably suited to abate the offending activity because it seeks only to enforce the Supreme Court’s prior holding in *Pennsylvania Democratic Party* that the Election Code does not provide any cure procedures for absentee and mail-in ballots and that only the legislature can enact such procedures. (Appl. for Prelim. Inj. ¶ 16; Memo. of Law in Support at 32-33.) Sixth, and finally, Petitioners argue that “the public interest is best served by a consistent application of the rule of law established by the General Assembly and the maintenance of the separation of powers in Pennsylvania. Conversely, the public interest is not served by allowing Boards to act as quasi-legislatures, resolving ‘the open policy questions’ attendant [to] the development of cure procedures on their own, let alone cure procedures whose existence and particulars vary from county to county.” (Appl. for Prelim. Inj. ¶ 17; Memo. of Law in Support at 33-34.) In this regard, Petitioners claim that any “ruling to the contrary would only further diminish Pennsylvania voters’ confidence in the election system as a result of the secretive and inconsistent application of election procedures across the state.” (Memo. of Law in Support at 34.) For these reasons, Petitioners assert they are entitled to injunctive relief.

¹³ Petitioners further contend that Respondents, who all were parties in the *Pennsylvania Democratic Party* case, are collaterally estopped from relitigating whether the Election Code provides for cure procedures aside from missing proof of identification. (Memo. of Law in Support at 26-27.) Moreover, the Acting Secretary should be barred, through judicial estoppel, from advocating for a different result in this case, when she previously took the position in *Pennsylvania Democratic Party* that the Election Code does not provide for cure procedures to address voters’ failure to comply with the signature and ballot secrecy requirements. (Memo. of Law in Support at 27-28.) Given the Court’s disposition on the Application for Preliminary Injunction, the Court will not address these issues further.

III. PARTIES' & INTERVENORS' ARGUMENTS

Commonwealth Respondents, and various County Boards, oppose the relief sought in the Application for Preliminary Injunction and argue that Petitioners cannot establish a clear right to relief for various reasons. First, Commonwealth Respondents contend that this Court lacks subject matter jurisdiction over the matter because Commonwealth Respondents are not indispensable parties. (Cmwlth. Resps.' Br. in Opp. at 10-15.) Commonwealth Respondents point out that Petitioners' challenges to the "varied exercise of discretionary power" are made in relation to the 67 County Boards, which are not considered "the Commonwealth government" for purposes of Section 761 of the Judicial Code, 42 Pa.C.S. § 761, but rather, are "local agencies." (Cmwlth. Resps.' Br. in Opp. at 12.) According to Commonwealth Respondents, Petitioners are not challenging any decision or exercise of authority of the Acting Secretary, the Department of State, or otherwise, and nowhere do Petitioners allege any unlawful act committed by any Commonwealth official. (Cmwlth. Resps.' Br. in Opp. at 13.) Moreover, the relief sought is an injunction against the County Boards, prohibiting them from developing and implementing cure procedures; as such, the participation of Commonwealth officials is not necessary for Petitioners to obtain the relief they seek. (Cmwlth. Resps.' Br. in Opp. at 13-14.) Petitioners opine, in footnotes, that Petitioners must instead assert their claims separately against each County Board in the respective county court of common pleas. (Cmwlth. Resps.' Br. in Opp. at 14-15, nn. 2-3.)

Commonwealth Respondents further argue that Petitioners lack standing, as they have not pled a cognizable injury. (Cmwlth. Resps.' Br. in Opp. at 16-21.) Commonwealth Respondents contend specifically as to Voter Petitioners that courts have repeatedly rejected the "vote dilution" theory of standing, which has been held

to assert only a generalized grievance as opposed to any particularized injury. (Cmwlth. Resps.’ Br. in Opp. at 17-18.) Moreover, Voter Petitioners have not been prevented from voting; they are not otherwise disadvantaged in terms of voting relative to other Pennsylvanians; and there is no indication the implementation of cure procedures by some County Boards has otherwise interfered with Petitioners’ right to equal elections. (Cmwlth. Resps.’ Br. in Opp. at 17-18.) According to Commonwealth Respondents, to the extent any Voter Petitioners live in counties with cure procedures, those procedures actually lift the burden on their right to vote; conversely, to the extent any Voter Petitioners live in counties without cure procedures, there is no injury. (Cmwlth. Resps.’ Br. in Opp. at 18-19.)

To the extent Republican Committee Petitioners have alleged a cognizable injury with respect to their “thwarted” ability to educate voters about absentee and mail-in voting due to a lack of notice of County Boards’ procedures, Commonwealth Respondents contend that they fail to prove the causal connection between the alleged injury and the County Boards’ notice and cure procedures. (Cmwlth. Resps.’ Br. in Opp. at 20-21.) Moreover, Republican Committee Petitioners have not alleged that the County Boards’ notice and cure procedures put Republicans at a competitive disadvantage or otherwise impair their ability to win votes. (Cmwlth. Resps.’ Br. in Opp. at 21.) Commonwealth Respondents further contend that Petitioners have failed to make out an Elections Clause claim, as “case law makes clear that individual voters, candidates, and political party organizations have no particularized interest in alleged violations of the Elections Clause[,]” and also have no interest in a state legislature’s authority under the Election Code. (Cmwlth. Resps.’ Br. in Opp. at 21-22 (citing various federal cases).) Rather, the only entity

who may assert such a claim is the General Assembly itself. (Cmwlth. Resps.’ Br. in Opp. at 22.)

Finally, Commonwealth Respondents argue that Petitioners’ claims simply fail as a matter of law, as they have not identified any provision of the Election Code prohibiting the County Boards from developing and implementing notice and cure procedures; the County Boards have rulemaking authority under Section 2642(f) of the Election Code delegated to them by the General Assembly; and, in *In Re Canvassing Observation*, 241 A.3d 339 (Pa. 2020), our Supreme Court specifically recognized that the County Boards may fill gaps in the Election Code under such discretionary rulemaking authority. (Cmwlth. Resps.’ Br. in Opp. at 23-26.) Commonwealth Respondents also point to the statutory requirement that County Boards make lists of voters who have received and voted absentee and/or mail-in ballots, which requirement presupposes that County Boards will review absentee and mail-in ballots before pre-canvassing and canvassing begin and identify any deficiencies with those ballots. (Cmwlth. Resps.’ Br. in Opp. at 27 (citing Sections 1306(b)(1) and 1306-D(b)(1) of the Election Code,¹⁴ 25 P.S. §§ 3146.6(b)(1) and 3150.16(b)(1)).) Commonwealth Respondents further observe that the other purported “cure procedure” identified by Petitioners in Section 1308(h) of the Election Code does not go “hand in hand” with the cure procedures implemented by certain County Boards, thus defeating Petitioners’ reliance on that section to support its case. (Cmwlth. Resps.’ Br. in Opp. at 29-30.) Commonwealth Respondents further contend that the Election Code must be read to enfranchise, not disenfranchise, voters (*id.* at 31-33); Petitioners distort the Supreme Court’s holding in *Pennsylvania Democratic Party*, and thus, collateral and judicial estoppel do not

¹⁴ Section 1306-D was added to the Election Code by Act 77.

apply (*id.* at 34-37); and Petitioners waived their uniformity and equal protection arguments based on their failure to plead them in the Petition for Review (*id.* at 37-40).¹⁵

With respect to the Application for Preliminary Injunction, Commonwealth Respondents assert that Petitioners cannot meet their burden on the preliminary injunction criteria. Specifically, they contend that the injunction would run counter to the public interest of enfranchising voters and would substantially harm voters by disenfranchising them. (Cmwlth. Resps.’ Br. in Opp. at 40-42.) Moreover, according to Commonwealth Respondents, any order prohibiting notice and cure procedure for the upcoming General Election would likely result in the invalidation of ballots already cast, confuse and upset electors, and disrupt the ongoing administration of the election. (Cmwlth. Resps.’ Br. in Opp. at 43.) Further, the injunction is “vastly overbroad.” (Cmwlth. Resps.’ Br. in Opp. at 45-47.)

¹⁵ Federal courts have previously rejected the notion that variations in notice and opportunity to cure procedures from county to county violate equal protection principles. For example, in *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899 (M.D. Pa. 2020) (*Trump II*), the United States District Court for the Middle District of Pennsylvania rejected such a claim made on behalf of the Trump Campaign, holding that it is consistent with equal protection principles for some but not all counties to implement notice and opportunity to cure procedures. The District Court stated: “[t]hat some counties may have chosen to implement the [Secretary’s] guidance [on notice and opportunity to cure procedures] (or not), or to implement it differently, does not constitute an equal[] protection violation. ‘[M]any courts [] have recognized that counties may, consistent with equal protection, employ entirely different election procedures and voting systems within a single state.’ . . . Requiring that every single county administer elections in exactly the same way would impose untenable burdens on counties, whether because of population, resources, or a myriad of other reasonable considerations.” *Trump II*, 502 F. Supp. 3d at 922-23 (quoting *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 389-90 (W.D. Pa. 2020) (*Trump I*)). The United States Court of Appeals for the Third Circuit affirmed the District Court’s decision in *Trump II*. See *Donald J. Trump for President, Inc. v. Secretary of Pennsylvania*, 830 F. App’x 377, 388 (3d Cir. 2020) (*Trump III*). **Thus, even if Petitioners had brought an election uniformity or equal protection claim, it would plainly fail, just as the equal protection claim in *Trump I* and *Trump II* failed.**

Commonwealth Respondents finally contend that Petitioners must post a substantial bond to obtain the relief sought, pursuant to Pa.R.Civ.P. 1531(b). (Cmwlth. Resps.’ Br. in Opp. at 47-48.)

In their answers in opposition, mostly all of the 25 County Boards generally deny that Petitioners are entitled to the relief they seek in the Application for Preliminary Injunction and assert reasons therefor that are similar to those of Commonwealth Respondents. Generally speaking, these County Boards claim that Petitioners misunderstand and misstate the Supreme Court’s holding in *Pennsylvania Democratic Party*, which was not that County Boards are prohibited from implementing notice and cure procedures, but only that County Boards are not **required** to implement notice and cure procedures. To the contrary, County Boards enjoy broad authority under Section 2642(f) of the Election Code to implement such procedures at their discretion. Further, Petitioners cannot meet their burden of establishing the six essential prerequisites for the grant of a preliminary injunction because (1) they cannot show immediate and irreparable harm setting Petitioners apart from other voters in Pennsylvania and, further, with respect to the County Boards continuing any notice and cure procedures; (2) greater injury to voters would result from granting the injunction rather than refusing it; (3) the injunction would substantially disrupt the status quo by changing current procedures in various counties, some of which have been in place since 2020; (4) Petitioners have not shown a clear right to the relief they seek, as they have pointed to neither any provision of the Election Code, nor any case law, prohibiting the curing of minor defects on absentee and mail-in ballots; (5) the injunction is overbroad, as some County Boards have no cure procedures in place; (6) and the public interest will be severely harmed if the injunction is granted, as it will result in the

disenfranchisement of voters whose ballots will be set aside based on readily apparent and easily correctible defects, general confusion amongst voters, and County Boards having to expend additional funds to educate voters, as well as County Board staff, about new procedures on the eve of an election that is already underway.

Northampton County also generally opposes the relief sought by Petitioners for the above reasons but adds that Petitioners misrepresent the Stipulated Settlement Agreement to which it is a party, which provides only that it may provide notice to a voter who returns a ballot lacking a secrecy envelope in relation to its pre-canvass duties, which is compliant with the Election Code.

Lehigh County, which is a party to a separate Stipulated Settlement Agreement, explains that it has entered in the agreement to perform certain actions, including informing voters of the importance of providing contact information, notifying all voters whose naked ballots are discovered prior to 8:00 p.m. on Election Day, providing those names to the party or candidate representatives who are onsite, and pursuing other actions in good faith to allow Lehigh County officials to identify naked ballots prior to pre-canvassing by virtue of the weight and/or thickness of the envelope and possibly utilizing a secrecy envelope of a strong color so it is more readily identifiable compared to other absentee or mail-in ballot materials that are provided to voters.

Monroe County additionally asserts, in relevant part, that Petitioners have not stated with specificity what is and is not considered a “cure” procedure. Adams County adds, similar to Commonwealth Respondents, that Section 1308(h) is not actually a “cure” concerning ballot defects but rather addresses the identity of the voter, and further highlights that it is impossible to know what the General Assembly

might consider a “cure procedure” without that term being statutorily defined or appearing elsewhere in the Election Code.

Philadelphia County, Delaware County, and Intervenors DNC and PDP assert that Petitioners’ claims are foreclosed by laches, as they waited nearly two years to assert the same claims that were rejected in 2020 and have not offered any justification for waiting to file this action when they knew or should have known that County Boards had these notice and cure procedures. Like Commonwealth Respondents, Philadelphia County also vehemently argues that Petitioners, i.e., party organizations and individual voters from counties that do not include Philadelphia, lack standing to pursue their claims and, on that basis, cannot show a probability of success on the merits. (Phila. Cnty. Memo. of Law in Opp. to Pet’rs’ Appl. for Prelim. Inj. at 6-7.) The Philadelphia Board claims that Petitioners have failed to show they have an interest surpassing that of every other citizen in having ballots counted properly and in having County Boards obey the law. (*Id.* at 6.) Further, citing a federal district court decision in *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331 (W.D. Pa. 2020), the Philadelphia Board asserts that “[p]arty organizations cannot show any particularized injury given that it is pure speculation at this time what parties’ candidates any cured ballots will favor.” (*Id.* at 6.)

Philadelphia County and Intervenors further assert that Petitioners cannot satisfy the other preliminary injunction factors, as the requested injunction would upset the status quo, confuse county officials and voters alike regarding an already complex system of absentee and mail-in voting, and risk unnecessarily and unjustifiably disenfranchising Pennsylvanians, which is not in the public interest. Moreover, Petitioners have not asserted any irreparable harm, and the injunction is

not narrowly tailored to address the challenged conduct during the pendency of this litigation.

Petitioners rejoin that their claims are not barred by the doctrine of laches, as asserted by Philadelphia County, Delaware County, and Intervenors. Petitioners inform that it was not until after the Governor vetoed House Bill 1300 in June of 2021 that Petitioner RNC began seeking information about County Boards' various ballot curing procedures under the Right-to-Know Law (RTKL).¹⁶ Further, the most recent settlement agreement addressing cure procedures did not occur until June of 2022. Petitioners thus contend that Respondents have alleged only vague and speculative harms that may occur if a preliminary injunction is granted; however, even if the County Boards would experience some harm in the form of incurring costs to adjust their practices and train staff, such harm is not the type of prejudice that the laches defense is intended to prevent. Petitioners also contend that this Court does have subject matter jurisdiction over this matter and dispute Commonwealth Respondents' assertion that the County Boards are not included as part of the "Commonwealth government" under 42 Pa.C.S. § 761. Petitioners submit that this Court also has exclusive original jurisdiction over election matters under 42 Pa.C.S. § 764. Petitioners argue that the County Boards are creatures of statute, i.e., the Election Code, and, thus, are government agencies. For these reasons, Petitioners assert that this Court has original jurisdiction over this matter. Petitioners finally assert that all of the named Respondents are indispensable parties in this matter.

IV. DISCUSSION

As extensively set forth above, Petitioners seek an order from this Court, preliminarily enjoining the County Boards from developing and implementing

¹⁶ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

notice and opportunity to cure procedures with respect to absentee and mail-in ballots that fail to comply with the Election Code's signature and ballot secrecy requirements, as well as enjoining the Acting Secretary from taking any action inconsistent with such order enjoining the County Boards, and Respondents generally deny that injunctive relief is warranted in this case. Commonwealth Respondents, some County Boards, and one set of Intervenor also assert several arguments as to why the Application for Preliminary Injunction should be denied and the Petition for Review dismissed, including challenges based on laches, lack of subject matter jurisdiction, and lack of standing. Because the Court heard argument on the parties' positions regarding laches at the status conference/hearing, the Court will address that issue herein. However, because the Court does not find laches to be a bar to Petitioners' action, the Court will first address the Application for Preliminary Injunction, followed by an analysis of why laches does not apply in this case.

Application for Preliminary Injunction

“The sole object of a preliminary injunction is to preserve the subject of the controversy in the condition in which it is when the order was made, it is not to subvert, but to maintain the existing status until the merits of the controversy can be fully heard and determined.” *Appeal of Little Britain Twp. From Dec. of Zoning Hearing Bd. of Little Britain Twp.*, 651 A.2d 606, 611 (Pa. Cmwlth. 1994). A preliminary injunction is a temporary remedy granted until the parties' dispute can be fully resolved. *Id.* The party seeking a preliminary injunction bears a heavy burden of proof and must establish all of the following criteria:

- (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages;
- (2) greater injury would result from refusing the injunction than from granting it,

and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and[] (6) the preliminary injunction will not adversely affect the public interest.

SEIU Healthcare Pa. v. Commonwealth, 104 A.3d 495, 502 (Pa. 2014) (citing, *inter alia*, *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003)). “Because the grant of a preliminary injunction is a harsh and extraordinary remedy, it is to be granted only when and if **each** [factor] has been fully and completely established.” *Pa. AFL-CIO by George v. Commonwealth*, 683 A.2d 691, 694 (Pa. Cmwlth. 1996) (emphasis in original). However, “if the petitioner[s] fail[] to establish any one of them, there is no need to address the others.” *Lee Pub’n, Inc. v. Dickinson Sch. of Law*, 848 A.2d 178, 189 (Pa. Cmwlth. 2004) (en banc) (emphasis in original) (quoting *City of Allegheny v. Commonwealth*, 544 A.2d 1305, 1307 (Pa. 1988)).

Before addressing each of the preliminary injunction criteria, this Court notes that “[t]he longstanding and overriding policy in this Commonwealth [is] to protect the elective franchise.” *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 360-61 (Pa. 2020) (quoting *Shambach v. Bickhart*, 845 A.2d 793, 798 (Pa. 2004)). Further, any doubt about whether the Election Code authorizes County Boards to implement notice and cure procedures must be resolved in favor of preventing inadvertent forfeiture of electors’ right to vote. In interpreting the Election Code, the Court applies “interpretive principles” of statutory construction specific to “election matters.” *Pa. Democratic Party*, 238 A.3d at 360. “[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* (Pa. Cmwlth., No. 355 M.D. 2022, filed Aug. 19, 2022), 2022 WL 4100998, at *13 (Cohn Jubelirer, P.J.) (single-Judge op.) (citing *Pa. Democratic Party*, 238 A.3d at 356); 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)).

With the above principles in mind, the Court turns to the Application for Preliminary Injunction before it.

Success on the Merits

Because it is dispositive, the Court will first address whether Petitioners are likely to prevail on the merits of their claims. At the status conference/hearing in this matter, all parties agreed that a hearing was not necessary in this case because the issue is purely a legal one requiring both statutory construction and interpretation of relevant case law. The Petition for Review essentially asks this Court to decide whether County Boards are prohibited under Pennsylvania law from developing and implementing notice and opportunity to cure procedures with respect to absentee and mail-in ballots that fail to comply with the Election Code’s signature and ballot secrecy requirements. The Court will thus begin with the relevant sections of the Election Code pertaining to those requirements.

Section 1306(a) of the Election Code, 25 P.S. § 3146.6(a), explains the process for voting by absentee ballot as follows:

(a) Except as provided in paragraphs (2) and (3), at any time after receiving an official absentee ballot, but on or before eight o'clock P.M. the day of the primary or election, **the elector shall, in secret, proceed to mark the ballot . . . and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot."** This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. **The elector shall then fill out, date and sign the declaration printed on such envelope.** Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

(Emphasis added.) Section 1306-D(a) of the Election Code, added by Act 77, 25 P.S. § 3150.16(a), explains the same process for voting by mail-in ballot:

(a) General rule.--At any time after receiving an official mail-in ballot, but on or before eight o'clock P.M. the day of the primary or election, the mail-in elector **shall, in secret, proceed to mark the ballot . . . and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot."** This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. **The elector shall then fill out, date and sign the declaration printed on such envelope.** Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

(Emphasis added.) In summary, after absentee and mail-in voters mark their respective ballots, they must secure them in a secrecy envelope, and then place that envelope into the return envelope on which is printed the declaration of the elector, which the elector must "fill out, date and sign." Electors can then either send the return envelope to their County Boards by mail, postage prepaid, or deliver it in person to their County Boards. Notably, neither Section 1306 nor Section 1306-D,

governing voting by absentee and mail-in ballots, provides any language regarding the consequence for failing to comply with either the “fill out, date^[17] and sign” requirement as to the declaration or the secrecy envelope requirement.

Section 1308(a) of the Election Code governs what happens when County Boards receive voted absentee and mail-in ballots:

(a) The county boards of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D, shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections. An absentee ballot, whether issued to a civilian, military or other voter during the regular or emergency application period, shall be canvassed in accordance with subsection (g). A mail-in ballot shall be canvassed in accordance with subsection (g).

25 P.S. § 3146.8(a) (emphasis added). Thus, upon receipt of voted ballots, County Boards must safely keep and secure the ballots until they are to be canvassed.

¹⁷ Although the date requirement does not appear to be at issue in this case, the Court notes that in *In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election (Appeal of: Donald J. Trump for President, Inc.)*, 241 A.3d 1058, 1061-62 (Pa. 2020), a plurality of our Supreme Court held that Election Code does not require County Boards to disqualify absentee or mail-in ballots submitted by qualified electors who signed the declaration on their ballots’ outer envelopes but did not handwrite their name, address, and/or date in voter declaration on outer envelope, where no fraud or irregularity has been alleged. *See also McCormick v. Chapman* (Pa. Cmwlth., No. 286 M.D. 2022, filed June 2, 2022) (in granting motion for special injunction, Court concluded a substantial question was raised as to whether voters are being disenfranchised based on a date requirement that is immaterial to a voter’s qualification in violation of Section 10101(a)(2)(B) of the Civil Rights Act and/or without a compelling reason in violation of state law), and *Chapman v. Berks Cnty. Bd. of Election* (Pa. Cmwlth., No. 355 M.D. 2022, filed Aug. 19, 2022) (in granting summary relief, Court held the lack of a handwritten date on the declaration on the return envelope of a timely received absentee or mail-in ballot does not support excluding those ballots from the three county boards’ certified results under both Pennsylvania law and Section 10101(a)(2)(B) of the Civil Rights Act).

The County Boards may begin pre-canvassing ballots no earlier than 7:00 a.m. on Election Day per Section 1308(g)(1.1) of the Election Code, 25 P.S. § 3146.8(g)(1.1). Section 1308(g)(1.1) further provides that “[n]o person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls.”

Following the pre-canvass, County Boards are required to “canvass,” or count, the votes reflected in the absentee and mail-in ballots that are received no later than 8:00 p.m. on Election Day. Section 1308(g)(2) of the Election Code, 25 P.S. § 3146.8(g)(2); Section 102 of the Election Code, 25 P.S. § 2602 (defining “canvass”). Each County Board is to examine the declaration of the absentee and mail-in ballots, which includes comparing the information thereon with the information the county board has in its files, verifying the proof of identification and the right to vote of the elector, and determining whether the elector’s declaration is sufficient. 25 P.S. § 3146.8(g)(3). Where no challenge to the absentee or mail-in ballot has been made, and the elector is not deceased, “[a]ll absentee ballots . . . and all mail-in ballots . . . that have been verified under paragraph (3) shall be counted and included with the returns of the applicable election district.” 25 P.S. § 3146.8(d), (g)(4). However, “[i]f any of the envelopes on which are printed, stamped or endorsed the words “Official Election Ballot” [(i.e., the secrecy envelope)] contain any text, mark or symbol which reveals the identity of the elector, the elector’s political affiliation or the elector’s candidate preference, the envelopes and the ballots contained therein shall be set aside and declared void.” 25 P.S. § 3146.8(g)(4)(ii).

In support of their argument that they have a likelihood of success on the merits, Petitioners cite Section 1308(h), which they claim provides the only “cure”

procedure in the Election Code relating to the proof of identification required when applying for and obtaining absentee and mail-in ballots:¹⁸

¹⁸ In order to vote by absentee or mail-in ballot, electors

must submit applications to county boards of elections, and in connection therewith must provide the address at which they are registered to vote. They must also sign a declaration affirming, among other things, that they are “eligible to vote by mail-in [or absentee] ballot at the forthcoming primary or election,” and that “all of the information” supplied in the mail-in or absentee ballot application is “true and correct.” 25 P.S. §§ 3150.12, 3146.2. Upon receipt of the application, the county board of elections must confirm the elector’s qualifications and verify that the elector’s address on the application matches the elector’s registration. Upon the county board of elections’ approval of the application, the elector is provided with a ballot, an inner “secrecy envelope” into which the ballot is to be placed, and an outer envelope into which the secrecy envelope is to be placed and returned to the board.

See In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election (Appeal of: Donald J. Trump for President, Inc.), 241 A.3d 1058, 1067 (Pa. 2020). Where, however, an absentee ballot is not approved by the County Board, Section 1302.2(d) of the Election Code, added by the Act of August 13, 1963, P.L. 707, 25 P.S. § 3146.2b(d), provides a type of cure procedure for applications for absentee ballots/proof of identification:

(d) In the event that any application for an official absentee ballot is not approved by the county board of elections, the elector shall be notified immediately to that effect with a statement by the county board of the reasons for the disapproval. For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send notice to the elector with the absentee ballot requiring the elector to provide proof of identification with the absentee ballot or the ballot will not be counted.

See also Section 1305 of the Election Code, added by the Act of March 6, 1951, P.L. 3, 25 P.S. § 3146.5, which states that, “For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2(d) with the absentee ballot.”

For mail-in ballots, Section 1302.2-D(c) of the Election Code, added by Act 77, 25 P.S. § 3150.12b(c), provides as follows:

(c) Notice.--In the event that an application for an official mail-in ballot is not approved by the county board of elections, the elector shall be notified immediately

(h) For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

(1) Deleted by [the Act of October 31, 2019, P.L. 552, No. 77 (Act 77), effective immediately]

(2) If the proof of identification is received and verified prior to the sixth calendar day following the election, then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted.

25 P.S. § 3146.8(h). Thus, those electors applying to vote by absentee or mail-in ballot have until six days following Election Day to verify their proof of identification, and, pursuant to subsection (h)(3), their failure to do so will result in their ballot not being counted.

Also pertinent to this dispute is Section 302 of the Election Code, 25 P.S. § 2642, which enumerates the powers and duties of County Boards, in relevant part, as follows:

The county boards of elections, within their respective counties, shall exercise, **in the manner provided by this act**, all powers granted to

with a statement by the county board of the reasons for the disapproval. For applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send notice to the elector with the mail-in ballot requiring the elector to provide proof of identification with the mail-in ballot or the ballot will not be counted.

See also Section 1305-D of the Election Code, 25 P.S. § 3150.15, which states that, “For applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2-D(c) with the mail-in ballot.”

them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

.....

(f) To 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.

(Emphasis added.)

The case law interpreting these sections of the Election Code has been less than clear over recent years. As many of the Respondents, and even Petitioners, in this case point out, in *Pennsylvania Democratic Party*, the Supreme Court considered the specific question of whether County Boards were required to contact qualified electors whose absentee and mail-in ballots contained minor facial defects resulting from their failure to comply with the statutory requirements for voting by mail and provide them with an opportunity to cure those defects. *Pa. Democratic Party*, 238 A.3d at 372. In considering that question and ultimately concluding that the petitioner in that case, i.e., PDP, was not entitled to the relief it sought as to that question, the Supreme Court stated as follows, which we quote in full for accuracy:

Upon review, we conclude that the Boards are not required to implement a “notice and opportunity to cure” procedure for mail-in and absentee ballots that voters have filled out incompletely or incorrectly. Put simply, as argued by the parties in opposition to the requested relief, [the petitioner] has cited no constitutional or statutory basis that would countenance imposing the procedure [the petitioner] seeks to require (*i.e.*, having the Boards contact those individuals whose ballots the Boards have reviewed and identified as including “minor” or “facial” defects—and for whom the Boards have contact information—and then afford those individual the opportunity to cure defects until the . . . deadline [for uniform and overseas ballots].”

While the Pennsylvania Constitution mandates that elections be “free and equal,” it leaves the task of effectuating that mandate to the Legislature. *Winston*, 91 A. at 522. As noted herein, although the

Election Code provides the procedures for casting and counting a vote by mail, **it does not provide for the “notice and opportunity to cure” procedure sought by [p]etitioner.** To the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, **we agree that the decision to provide a “notice and opportunity to cure” procedure to alleviate that risk is one best suited for the Legislature.** We express this agreement particularly in light of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Pennsylvania's government. Thus, for the reasons stated, the [p]etitioner is not entitled to the relief it seeks in Count III of its petition.

Pa. Democratic Party, 238 A.3d at 374 (emphasis added).

As the above-quoted text indicates, the *Pennsylvania Democratic Party* Court held that the decision of whether to provide a notice and cure procedure is one best suited for the legislature in light of the policy considerations attendant to that decision. However, this Court does not read that decision, and specifically, the above text, to stand for the much broader proposition asserted by Petitioners that County Boards are necessarily prohibited from developing and implementing notice and opportunity to cure procedures. Notably, the Supreme Court did not explicitly decide whether County Boards' implementation of notice and opportunity to cure procedures were **forbidden** under the Election Code, but only whether the Election Code **required** County Boards to implement such procedures. Those are separate and distinct issues. **Therefore, the Court disagrees with Petitioners' argument that *Pennsylvania Democratic Party* was the final word on this subject.**

The *Pennsylvania Democratic Party* Court also considered whether the Election Code required that absentee or mail-in ballots, which are otherwise without error, be invalidated based solely on voters' failure to place such ballots in the

secrecy envelope (labeled “Official Election Ballot”). The Court ultimately concluded that the legislature intended for the secrecy envelope provision of 25 P.S. § 3150.16(a) to be mandatory, stating: “We respectfully reject the contentions of [the petitioner] and the Secretary that because the General Assembly did not delineate a remedy narrowly linked to the mail-in elector’s failure to utilize a secrecy envelope, the language of the Election Code is directory, and an elector’s violation of the command inconsequential.” *Pa. Democratic Party*, 238 A.3d at 378. The Court further noted “the inescapable conclusion that a mail-in ballot that is not enclosed in the statutorily-mandated secrecy envelope must be disqualified.” *Id.* at 380. In *In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election (Appeal of: Donald J. Trump for President, Inc.)*, 241 A.3d 1058, 1061-62 (Pa. 2020), a plurality of the Supreme Court reaffirmed its holding in *Pennsylvania Democratic Party* that the secrecy ballot requirement was mandatory, noting it implicated a “weighty interest,” i.e., secrecy in voting protected by article VII, section 4 of the Pennsylvania Constitution, but distinguished that case from the dispute before it, which involved what it found to be “minor irregularities.” *In re Canvass*, 241 A.3d at 1071-73. There is no question these cases stand for the proposition that the secrecy envelope requirement is mandatory.

The Supreme Court’s holding in *Pennsylvania Democratic Party*, and later in *In re Canvass*, specifically with respect to the mandatory nature of the ballot secrecy requirement, leads this Court to conclude that any procedure developed and implemented to cure such deficiency **may be** contrary to the Supreme Court’s observations that (1) the Election Code contains no notice and cure procedures for defective absentee or mail-in ballots, and (2) the implementation of any such cure procedures is one best suited for the legislature in light of the policy decisions

attendant thereto. However, notably absent from the Supreme Court’s discussions in both those cases is whether County Boards’ are prohibited from offering a notice and opportunity to cure procedure to remedy such mandatory defect. Also absent from those cases, as well as the parties’ filings in this case, is any discussion of whether the signature requirement with respect to absentee or mail-in ballots is a mandatory requirement of the Election Code, or merely directory, and whether such defect may be remedied prior to 8:00 p.m. on Election Day.

With respect to Section 302(f) of the Election Code, upon which Respondents rely for the proposition that the County Boards do in fact have authority to develop and implement notice and cure procedures at their discretion, our Supreme Court has held that the absence of any provisions in the Election Code relating to proximity parameters for representatives viewing the pre-canvassing meeting reflected “the legislature’s deliberate choice to leave such matters to the informed discretion of [County Boards], who are empowered by Section 2642(f) of the Election Code “[t]o make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of . . . elections officers.”” *In re Canvassing Observation*, 241 A.3d 339, 350 (Pa. 2020). As the Supreme Court further stated in that case, “[t]he General Assembly, had it so desired, could have easily established such [proximity] parameters; however, it did not. It would be improper for this Court to judicially rewrite the statute by imposing distance requirements where the legislature has, in the exercise of its policy judgment, seen fit not to do so.” *See Sivick v. State Ethics Commission*, — Pa. —, 238 A.3d 1250, —, 2020 WL 5823822, at *10 (2020) (“It is axiomatic that we may not add statutory language where we find the extant language somehow lacking.”).” Here, in light of *In re Canvassing Observation*, this Court cannot say for certain whether

the legislature intended to omit a notice and opportunity to cure procedure from the Election Code, or whether the lack thereof imbues the County Boards with authority under their discretionary rulemaking authority delegated to them by the General Assembly in Section 302(f).

Because it is not clear based on either the text of the Election Code, or the subsequent cases interpreting it, whether notice and cure procedures are permitted and/or prohibited by the Election Code, the Court concludes that Petitioners have failed to show a strong likelihood of success at this early stage of the litigation.

Greater Injury by Refusing the Injunction; Maintaining the Status Quo; Injunction Reasonably Suited to Abate Offending Activity; Public Interest

Although the Court technically need not continue further in light of its conclusion that Petitioners have not established a likelihood of success on the merits in this case, the Court will address the other prongs of the preliminary injunction test for the sake of completeness.

As stated earlier, in order to grant a preliminary injunction, Petitioners must also prove each of the following:

- (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings;
- (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
.....
- (5) the injunction is reasonably suited to abate the offending activity;
and[]
- (6) the preliminary injunction will not adversely affect the public interest.

SEIU Healthcare Pa., 104 A.3d at 582. Because these four prongs are closely interrelated and involve similar issues and analysis, they will be addressed together.

The injunction requested by Petitioners does not satisfy these four prongs or effectively address the concerns raised by the parties to this action. Specifically, greater harm will clearly result from granting the injunction, rather than denying it; granting the injunction will not maintain the status quo; the injunction is not reasonably suited to abate the offending conduct; and the injunction will adversely affect the public interest.

Petitioners argue that greater harm will result if the injunction is denied, rather than if the injunction is granted, because it will prevent the disparate treatment of noncompliant mail-in and absentee ballots throughout the Commonwealth and eliminate uncertainty regarding how mail-in and absentee ballots will be counted. Further, absent the injunction, the County Boards “will collectively engage in a[n unlawful] mishmash of cure procedures.” (Pet’rs’ Suppl. Memo. of Law at 14.) Petitioners also contend that the burden imposed on the County Boards is “*de minimis*” because all that is required is for them to **stop** implementing cure procedures, which would save the County Boards money; the requested injunction would merely bring all County Boards into a uniform application of the Election Code; the injunction would not cause “disenfranchisement” as alleged by Respondents, because no Pennsylvania voter has a right to notice and an opportunity to cure their ballot; and without an injunction, voter confidence will be harmed due to the disparate procedures employed by various County Boards. (Pet’rs’ Suppl. Memo. of Law at 15-18 (emphasis in original).) Petitioners further submit that the injunction only seeks to preserve the status quo, which it claims is the time when no such cure procedures existed; the injunction is narrowly tailored because it seeks

only to enforce the Supreme Court’s decision in *Pennsylvania Democratic Party* that the Election Code fails to provide a cure procedure and only the legislature can enact one; and, finally, the injunction will not adversely affect the public interest, which is best served by consistent application of the rule of law established by the General Assembly and the maintenance of the separation of powers in Pennsylvania. (Pet’rs’ Suppl. Memo. of Law at 18-19, 33-35.)

Petitioners’ arguments as to greater harm in refusing the injunction, preserving the status quo, and adverse effect on the public interest all hinge on their belief that the notice and cure procedures used by various County Boards are “unlawful.” However, as will be discussed below in the context of immediate and irreparable harm, Petitioners have failed to establish a clear violation of the Election Code or the law interpreting the Election Code, such that the County Boards’ continuing implementation of these procedures cannot, therefore, be considered “unlawful” at this point in the litigation such that it needs to be enjoined.

Such sweeping relief against the 67 County Boards would clearly cause greater injury than refusing the injunction, precisely because it would seriously harm the public interest and orderly administration of elections, namely the 2022 General Election, which is already well underway. Enjoining the various County Boards’ procedures at this point in time would further deprive voters in counties who have been privy to such procedures for the past two years since the enactment of Act 77 the opportunities to have their votes counted, thus resulting in almost certain disenfranchisement of voters. If this Court were to grant the injunctive relief Petitioners seek, the County Boards would then have to modify their practices and procedures in response to the injunction **and would notably have to do so when absentee and mail-in voting is already underway**. Simply put, Petitioners ignore

the actual harms that will almost certainly occur if the injunction is granted, which all participating Respondents have laid out in their comprehensive filings in this matter.

As it further relates to the greater harm inquiry, the status quo,¹⁹ and an adverse effect on the public interest, the Court quotes the following passage from Commonwealth Respondents' Brief in Opposition to Petitioners' Application for Preliminary Injunction:

Beyond disenfranchising electors directly, entering an injunction now will [] cause confusion and uncertainty, altering election administration procedures in many counties. As the Petition for Review reflects, [County Boards] with notice-and-cure procedures have, at least in some cases, had them in past years, *see* Pet.[] ¶¶ 65-70, and communicated them to the public. *See, e.g., id.* ¶¶ 66-67, 70; *see also* Angela Coulombis and Jamie Martines, *Republicans Seek to Sideline Pa. Mail Ballots that Voters Were Allowed to Fix*, Spotlight PA (November 3, 2020), <https://www.spotlightpa.org/news/2020/11/pennsylvania-mail-ballots-republican-legal-challenge-naked-ballots-fixed-cured/>.

Further, by the time the Court hears argument on Petitioners' [Application for Preliminary Injunction] on September 28, mail-in and absentee voting pursuant to Act 77 will likely already be well underway. Counties are statutorily authorized to begin processing mail-in ballot applications and mailing ballots to electors on the permanent mail-in voting list on September 19. *See* 25 P.S. § 3150.12a (application processing may begin 50 days before Election Day); 25 P.S. § 3150.15 (mailing of ballots). Ballot mailings will speed up in the last two weeks of September. By the end of September, counties will likely have mailed out tens of thousands of ballots; in many places, voters will be streaming to election offices to request mail-in ballots in person, fill them out, and hand them in.

¹⁹ The status quo for a preliminary injunction is “the last peaceable and lawful uncontested status preceding the underlying controversy.” *Hatfield Twp. v. Lexon Ins. Co.*, 15 A.3d 547, 555 (Pa. Cmwlth. 2011) (quoting *In re Milton Hershey Sch. Tr.*, 807 A.2d 324, 333 (Pa. Cmwlth. 2002)). One purpose of a preliminary injunction is to keep the parties in the same positions they had when the case began in order to preserve the Court's ability to decide the issues before it.

Accordingly, an order prohibiting notice-and-cure procedures in the November 2022 election would likely invalidate ballots already cast, confuse and upset electors, and disrupt the ongoing administration of the election. In that way, this case is like *Kelly v. Commonwealth*, 240 A.3d 1255, 1256 (Pa. 2020) (per curiam). There, the petitioners filed a suit asking that mail-in votes already cast in the 2020 general election be disqualified, **387 days and two elections** after the Governor signed Act 77 into law. Here, Petitioners filed suit on September 1, 2022, 667 days after the 2020 election, the latest date by which Petitioners knew about [County Boards’] notice-and-cure procedures. See Pet. ¶¶ 66-67 (discussing 2020 notice-and-cure procedures about which political parties were notified).

Consequently, . . . , fundamental principles of equity would preclude this Court from granting the relief Petitioners seek prior to the November 2022 general election. See . . . *McLinko v. Degraffenreid* [Pa. Cwmlth., No. 244 M.D. 2021, order dated Sept. 24, 2021] [] (“prospective relief, as requested by petitioners, is not available for the November 2021 election because it is already underway”); see also *Kuznik v. Westmoreland Cnty. Bd. of Com[m]’rs*, 902 A.2d 476, 489 (Pa. 2006) (injunctive relief is unavailable where greater injury would result from granting the injunction than from denying it).

(Cmwlt. Resps.’ Br. in Opp. at 42-44 (emphasis in original).) This Court agrees.

Petitioners have also not shown that the injunction is reasonably suited to abate the offending activity. Petitioners seek a statewide injunction enjoining all 67 County Boards from developing and implementing “unlawful” notice and opportunity to cure procedures, as well as the Acting Secretary from taking any action inconsistent with such injunction. **Again, Petitioners have not alleged a clear violation of the Election Code or the law interpreting it.** Further, not all 67 County Boards have notice and opportunity to cure procedures. See Jt. Stip. of Exs., Jt. Stip. of Facts at 2-6 & Exs. B-D. Moreover, Petitioners have not sufficiently alleged what, if any, type of action the Acting Secretary might take in the event this Court granted the requested relief in this case. Accordingly, this Court concludes

that Petitioners failed to meet their burden as to these four prongs of the preliminary injunction test.

Immediate & Irreparable Harm

The Court will now address the remaining prong of the preliminary injunction criteria: that the party seeking a preliminary injunction must establish that “the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages.” To meet this burden, Petitioners must present “concrete evidence” demonstrating “actual proof of irreparable harm.” *Greenmoor, Inc. v. Burchick Constr. Co., Inc.*, 908 A.2d 310, 314 (Pa. Super. 2006). A claim of irreparable harm cannot be based on speculation and hypothesis, and for purposes of a preliminary injunction, the harm must be irreversible before it is deemed irreparable. *Id.* at 314; *see also Kiddo v. Am. Fed’n of State*, 239 A.3d 1141 (Pa. Cmwlth. 2020) (not reported), 2020 WL 4431793 (stating that “the alleged harm or consequences must not be speculative in nature and [that] ‘speculative considerations . . . cannot form the basis for issuing [a preliminary injunction]’”).

Petitioners argue that the preliminary injunction is necessary to prevent immediate and irreparable harm to the uniform and equal administration of elections in Pennsylvania and that, absent a preliminary injunction, some County Boards will continue developing and implementing in secrecy disparate and unlawful cure procedures in all elections, including in the upcoming 2022 General Election. In support of their argument that there would be immediate and irreparable harm if the injunction is not granted, Petitioners’ cite *Hempfield School District v. Election Board of Lancaster County*, 574 A.2d 1190, 1191 (Pa. Cmwlth.), *appeal denied*, 581 A.2d 575 (Pa. 1990). In doing so, Petitioners allege that this case stands for the proposition that unlawful action by a County Board “per se constitutes immediate

and irreparable harm.” (Appl. for Prelim. Inj. ¶ 13, Memo. of Law in Support at 14; Pet’rs’ Suppl. Memo. of Law at 11.) However, this case is not on point.

In *Hempfield*, the county board of elections (election board) planned to include on the local May 1990 primary election ballot a nonbinding referendum asking voters if they supported the school board’s plan to construct a new high school. *Hempfield*, 574 A.2d at 1190-91. The school board petitioned a trial court for an injunction enjoining the election board from placing the referendum on the ballot, arguing that the election board had no legal authority to place the referendum on a ballot on its own initiative. The trial court denied injunctive relief, and the school district appealed. *Id.* at 1191. On appeal, the election board argued that the school district was not entitled to injunctive relief because the referendum would not subject the school board to “**great** and irreparable harm.” *Id.* at 1193 (emphasis added). Noting that the Election Code gave the school board, not the election board, “the option as to the means for obtaining public review of the construction or leasing of a new school building . . . [,]” this Court disagreed with the election board and reversed the trial court, holding that “unlawful action by the [e]lection [b]oard per se constitutes immediate and irreparable harm.” *Id.* at 1193.

Here, Petitioners have not proven that there is a clear violation of the Election Code or the law interpreting the Election Code, such that it per se constitutes immediate and irreparable harm. First, Petitioners argue that notice and opportunity to cure procedures are not authorized under the Election Code, but they have not cited to any Election Code provision that **prohibits** County Boards from developing and implementing such notice and opportunity to cure procedures. Second, Petitioners’ strained reliance on the Supreme Court’s decision in *Pennsylvania Democratic Party* for the proposition that the Court has already spoken on the

subject and held that a cure procedure to address signature and secrecy ballot defects in absentee and mail-in ballots must come from the legislature, such that the continued implementation of such cure procedures by County Boards constitutes a “violation of law” that *per se* constitutes immediate and irreparable harm, is also unavailing.

As mentioned above, *Pennsylvania Democratic Party* considered, *inter alia*, the specific question of whether County Boards were **required** to contact qualified electors whose absentee and mail-in ballots contained minor facial defects resulting from their failure to comply with the statutory requirements for voting by mail and provide them with an opportunity to cure those defects. *Pa. Democratic Party*, 238 A.3d at 372. In considering that question and ultimately concluding that the petitioner in that case, i.e., PDP, was not entitled to the relief it sought as to that question, the Supreme Court determined that the Election Code does not provide for the notice and cure procedure the petitioner requested in that case. In so deciding, the Court recognized that while voters may be at risk of having their ballots rejected based on minor defects in contravention of the Election Code’s requirements, it agreed that the decision to provide such a procedure was one best suited for the legislature. Thus, while this Court agrees with Petitioners that *Pennsylvania Democratic Party* held that implementation of any notice and cure procedure is best suited for the legislature, this Court does not read that decision to stand for the much broader proposition asserted by Petitioners that County Boards are necessarily prohibited from developing and implementing notice and opportunity to cure procedures and, consequently, that any violation of such holding constitutes *per se* immediate and irreparable harm. As discussed above in the context of whether Petitioners are likely to succeed on the merits of their claims, the question of whether

County Boards are **forbidden** from allowing electors to cure deficient absentee or mail-in ballots is separate and distinct from the issue of whether counties are **required** to adopt notice and opportunity to cure procedures under the Election Code. Accordingly, the Court concludes that Petitioners have failed to establish that the County Boards are clearly violating this case law interpreting the Election Code, such that it constitutes per se immediate and irreparable harm.

To the extent Petitioners allege that, without an injunction, the continuing implementation of such notice and cure procedures will harm Voter Petitioners because they will suffer the risk of having their votes being treated unequally, and thus diluted, and Republican Committee Petitioners because they will be unable to properly educate their members regarding the rules applicable to absentee and mail-in voting, the Court disagrees that these things constitute immediate and irreparable harm. In support of their claim of harm in these regards, Petitioners point to the nearly 15 County Boards identified in the Joint Stipulation of Facts in this matter and the lack of uniformity in cure procedures amongst those counties. *See generally* Jt. Stip. of Exs., Jt. Stip. of Facts at 2-3 (Beaver County); Ex. G (Philadelphia County); Jt. Stip. of Exs., Allegheny-2 and Allegheny-3; Pet'rs' Ex. 7 (Lehigh County Settlement). Petitioners also rely on the declarations of four named Voter Petitioners, all of whom allege that their respective County Boards do not have notice and opportunity to cure procedures; as such, if there is a mistake on their ballots, they will not have an opportunity to correct them and their votes will not count. *See* Jt. Stip. of Exs., Pet'rs' Exs. 17-20 (Declarations of Ross M. Farber (Pet-17), Vallerie Siciliano-Biancaniello (Pet-18), S. Michael Streib (Pet-19), and Jesse D. Daniel (Pet-20)). While it appears true from the Joint Stipulation of Facts that some County Boards are implementing different cure procedures, the Court does not

believe such lack of uniformity constitutes “concrete evidence” demonstrating “**actual proof** of irreparable harm” that is irreversible. Moreover, with respect to Voter Petitioners, such matters are, at best, **speculative** considerations, which cannot form the basis for issuing the extraordinary relief sought. *See Kiddo*, at *11 (stating that “claims that something may happen in the future if the injunctive relief is denied is speculative and insufficient to support the grant of a preliminary injunction”). As such, Petitioners have not met their burden of proving immediate and irreparable harm for purposes of the preliminary injunction.

Laches

Respondents and Intervenors essentially allege that the Application for Preliminary Injunction should be denied, and the Petition for Review dismissed, because Petitioners waited too long to file this action, which has prejudiced voters who reasonably rely on notice and opportunity to cure procedures when casting their absentee or mail-in ballots. In support of their argument, Respondents and Intervenors rely primarily on *Kelly v. Commonwealth*, 240 A.3d 1255 (Pa. 2020). Petitioners respond that *Kelly* is distinguishable from this matter, and that laches does not apply here because they have neither unduly delayed instituting this action due to a lack of due diligence, nor has there been any prejudice to any Respondents or Intervenors. Petitioners cite various exhibits in the Joint Stipulation of Exhibits as support for their contentions.

The Court first addresses Respondents’ and Intervenors’ reliance on *Kelly*. The *Kelly* action was commenced several weeks after the 2020 General Election and set forth a facial challenge to the constitutionality of Act 77. The petitioners in that case “sought to invalidate the ballots of millions of Pennsylvania voters who utilized the mail-in voting procedures established by Act 77 and count only those ballots that

[the petitioners] deem to be ‘legal votes.’” *Kelly*, 240 A.3d at 1256. The petitioners further sought “injunctive relief prohibiting the certification of the results of the General Election held on November 3, 2020.” *Id.* Notably, in addition to advocating the “proposition that the court disenfranchise al 6.9 million Pennsylvanians’ who voted in the General Election[,]” the petitioners also requested that the court “direct[] the General Assembly to choose Pennsylvania’s electors.” *Id.* The Supreme Court ultimately dismissed the petition for review on the basis of laches, holding that the petitioners failed to act with due diligence in commencing their facial challenge nearly a year after the enactment of Act 77 and on the eve of the County Boards’ certification of the results of the election when the results were “becoming seemingly apparent.” *Id.* at 1256-57. The Supreme Court also noted the substantial prejudice in the form of disenfranchisement of voters who had already voted in both the primary and general elections that year that would arise from the failure to institute a timely facial challenge. *Id.*

The Court agrees with Petitioners that *Kelly* is distinguishable from the instant matter. The petitioners in *Kelly* filed their challenge to Act 77 nearly 3 weeks **after** the 2020 General Election and a year after the enactment of Act 77, whereas Petitioners here filed this action on September 1, 2022, nearly two months **prior to** the upcoming General Election. That absentee and mail-in voting has already begun in relation to the 2022 General Election does not mean that laches is a complete bar to Petitioners’ action as a whole, which also seeks a declaration regarding the lawfulness of notice and opportunity to cure procedures in future elections. The Court therefore holds that *Kelly* is not controlling in this case and will instead consider whether laches applies under the applicable standards.

Laches is an equitable doctrine that “bars relief when the complaining party is guilty of want of due diligence in failing to promptly institute [an] action to the prejudice of another.” *Sprague v. Casey*, 550 A.2d 184, 187 (Pa. 1988). To prevail on the assertion of laches, it must be established that there was an inexcusable delay arising from Petitioners’ failure to exercise due diligence, and prejudice to the party asserting laches resulting from the delay. *Id.*; *Meier v. Maleski*, 648 A.2d 595, 603 (Pa. Cmwlth. 1994). “[T]he question of laches is factual and is determined by examining the circumstances of each case.” *Sprague*, 550 A.2d at 187.

After reviewing the evidence offered and the circumstances of this case, the Court concludes that Respondents and Intervenors have not established that laches is a bar to Petitioners’ claims. Based on the evidence presented in this case, the delay was not inexcusable or for want of due diligence. Petitioners explained in their filings, as well as at the status conference/hearing in this matter, that following the Supreme Court’s decision in *Pennsylvania Democratic Party*, and the failed legislative attempt to enact such procedures in accordance with that decision (i.e., House Bill 1300), Petitioner RNC began seeking information about County Boards’ various ballot curing procedures under the RTKL but was met with numerous extensions and delays. *See* Jt. Stip. of Exs., Pet’rs’ Exs. 9 (House Bill 1300); 10 (Governor Wolf’s Letter dated June 30, 2021, indicating he was withholding his signature); 16 (Declaration of Brian M. Adrian, explaining, *inter alia*, that RTKL requests served on Philadelphia County in October 2021 and March 2022, and on Bucks County in October 2021, and that responses not received from either County Board until August 2022). Petitioners further explained that the earliest indication they had that some County Boards planned to utilize cure procedures for the upcoming 2022 General Election came to light in the wake of the Stipulated

Settlement Agreements entered into by Northampton and Lehigh Counties in the federal case in *Dondiego v. Lehigh County Board of Elections*, No. 5:22-cv-02111 (E.D. Pa. 2022), on June 15, 2022. See Jt. Stip. of Exs., Pet’rs’ Exs. 6 (Northampton County Settlement dated June 15, 2022) & 7 (Lehigh County Settlement dated June 15, 2022). Petitioners, RNC and RPP of which were intervenors in the federal action, have also produced a June 15, 2022 letter from one of their counsel addressed to the federal court Judge in that case, placing Northampton and Lehigh Counties on notice that the Settlement Agreements reached were illegal. Jt. Stip. of Exs., Pet’rs’ Ex. 21 (June 15, 2022 letter from Thomas W. King to Judge Schmehl in *Dondiego* case). Petitioners further highlight, as they did at the status conference/hearing, that the Acting Secretary did not sign the Settlement Agreements, purportedly because her doing so would have been contrary to the guidance she has on the Department of State’s website stating that absentee and mail-in ballots will not be counted if they fail to comply with the Election Code’s outer envelope declaration and ballot secrecy requirements. Jt. Stip. of Exs., Pet’rs Ex. 11 (print-out of Acting Secretary’s Guidance on Department of State’s website). The Court finds Petitioners’ explanation and evidence in this regard credible and that its decision to actively seek out information from County Boards regarding what they were doing with respect to ballot curing following the legislature’s failed attempt to enact the same, rather than immediately file a lawsuit, reflects that Petitioners acted with due diligence and provides an excuse for any delay in filing the Petition for Review.

The Court is also not convinced that Respondents and Intervenors established that they were prejudiced in any way by the delay in filing the Petition for Review. The party asserting laches “must establish prejudice from some changed condition of the parties which occurs during the period of, and in reliance on, the delay.”

Meier, 648 A.2d at 604-05 (citing *Sprague*, 550 A.2d at 188) (emphasis omitted). Such prejudice has been found where “records have become lost or unavailable, witnesses die or cannot be located, and where the party asserting laches has changed its position in anticipation that a party will not pursue a particular claim.” *Id.* The evidence in this case does not establish that Philadelphia County, Delaware County, or Intervenors DNC and PDP changed their positions based on the delay in filing the Petition for Review. While the County Boards and Intervenors DNC and PDP claim that, if Petitioners prevail, voters, the County Boards, and DNC and PDP will be prejudiced because voters will no longer be able to rely on longstanding notice and cure procedures in their respective counties, County Boards that have employed these procedures will have to, among other things, retrain their staff, and DNC and PDP will have to reeducate voters on mail voting – this is not prejudice, but rather “this would be a natural consequence of a legal determination that” such notice and cure procedures violate the law. *Chapman v. Berks Cnty. Bd. of Elections* (Pa. Cmwlth., No. 355 M.D. 2022, filed Aug. 19, 2022), slip op. at 22 (Cohn Jubelirer, P.J.) (single-Judge op.), 2022 WL 4100998. Thus, under the circumstances in this case, the Court cannot say that laches applies here.

Accordingly, for all of the foregoing reasons, Petitioners’ Application for Preliminary Injunction is **DENIED**.



ELLEN CEISLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Republican National Committee; :
National Republican Senatorial :
Committee; National Republican :
Congressional Committee; Republican :
Party of Pennsylvania; David Ball; :
James D. Bee; Debra A. Biro; Jesse D. :
Daniel; Gwendolyn Mae Deluca; Ross :
M. Farber; Connor R. Gallagher; Lynn :
Marie Kalcevic; Linda S. Kozlovich; :
William P. Kozlovich; Vallerie :
Siciliano-Biancaniello; S. Michael :
Streib, :

Petitioners :

v. :

No. 447 M.D. 2022

Leigh M. Chapman, in her official :
capacity as Acting Secretary of the :
Commonwealth; Jessica Mathis, in :
her official capacity as Director of the :
Pennsylvania Bureau of Election :
Services and Notaries; Adams County :
Board of Elections; Allegheny County :
Board of Elections; Armstrong County :
Board of Elections; Beaver County :
Board of Elections; Bedford County :
Board of Elections; Berks County Board :
of Elections; Blair County Board of :
Elections; Bradford County Board of :
Elections; Bucks County Board of :
Elections; Butler County Board of :
Elections; Cambria County Board of :
Elections; Cameron County Board of :
Elections; Carbon County Board of :
Elections; Centre County Board of :
Elections; Chester County Board of :
Elections; Clarion County Board of :
Elections; Clearfield County Board of :
Elections; Clinton County Board of :
Elections; Columbia County Board of :
Elections; Crawford County Board of :

Elections; Cumberland County Board :
of Elections; Dauphin County Board of :
Elections; Delaware County Board of :
Elections; Elk County Board of :
Elections; Erie County Board of :
Elections; Fayette County Board of :
Elections; Forest County Board of :
Elections; Franklin County Board of :
Elections; Fulton County Board of :
Elections; Greene County Board of :
Elections; Huntingdon County Board :
of Elections; Indiana County Board of :
Elections; Jefferson County Board of :
Elections; Juniata County Board of :
Elections; Lackawanna County Board :
of Elections; Lancaster County Board :
of Elections; Lawrence County Board :
of Elections; Lebanon County Board :
of Elections; Lehigh County Board of :
Elections; Luzerne County Board of :
Elections; Lycoming County Board of :
Elections; McKean County Board of :
Elections; Mercer County Board of :
Elections; Mifflin County Board of :
Elections; Monroe County Board of :
Elections; Montgomery County Board :
of Elections; Montour County Board of :
Elections; Northampton County Board :
of Elections; Northumberland County :
Board of Elections; Perry County :
Board of Elections; Philadelphia County:
Board of Elections; Pike County Board :
of Elections; Potter County Board of :
Elections; Schuylkill County Board of :
Elections; Snyder County Board of :
Elections; Somerset County Board of :
Elections; Sullivan County Board of :
Elections; Susquehanna County Board :
of Elections; Tioga County Board of :
Elections; Union County Board of :
Elections; Venango County Board of :
Elections; Warren County Board of :

Elections; Wayne County Board of :
Elections; Westmoreland County Board :
of Elections; Wyoming County Board of:
Elections; and York County Board of :
Elections, :
Respondents :

ORDER

AND NOW, this 29th day of September, 2022, the Application for Special Relief in the Form of a Preliminary Injunction Under Pa.R.A.P. 1532, filed by Petitioners, is DENIED.



ELLEN CEISLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 447 MD 2022

Republican National Committee, National Republican Senatorial Committee,
National Republican Congressional Committee, Republican Party of Pennsylvania,
David Ball, James D. Bee, Debra A. Biro, Jesse D. Daniel,
Gwendolyn Mae DeLuca, Ross M. Farber, Connor R. Gallagher,
Lynn Marie Kalcevic, Linda S. Kozlovich, William P. Kozlovich,
Vallerie Siciliano-Biancaniello, and S. Michael Streib,

Petitioners,

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the
Commonwealth; Jessica Mathis, in her official capacity as Director of the
Pennsylvania Bureau of Election Services and Notaries;
and All 67 County Boards of Elections
(See back of cover for list of County Respondents),

Respondents.

PETITIONERS' NOTICE OF APPEAL

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Bedford County Board of Elections; Berks County Board of Elections;
Blair County Board of Elections; Bradford County Board of Elections;
Bucks County Board of Elections; Butler County Board of Elections;
Cambria County Board of Elections; Cameron County Board of Elections;
Carbon County Board of Elections; Centre County Board of Elections;
Chester County Board of Elections; Clarion County Board of Elections;
Clearfield County Board of Elections; Clinton County Board of Elections;
Columbia County Board of Elections; Crawford County Board of Elections;
Cumberland County Board of Elections; Dauphin County Board of Elections;
Delaware County Board of Elections; Elk County Board of Elections;
Erie County Board of Elections; Fayette County Board of Elections;
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Huntingdon County Board of Elections; Indiana County Board of Elections;
Jefferson County Board of Elections; Juniata County Board of Elections;
Lackawanna County Board of Elections; Lancaster County Board of Elections;
Lawrence County Board of Elections; Lebanon County Board of Elections;
Lehigh County Board of Elections; Luzerne County Board of Elections;
Lycoming County Board of Elections; McKean County Board of Elections;
Mercer County Board of Elections; Mifflin County Board of Elections;
Monroe County Board of Elections; Montgomery County Board of Elections;
Montour County Board of Elections; Northampton County Board of Elections;
Northumberland County Board of Elections; Perry County Board of Elections;
Philadelphia County Board of Elections; Pike County Board of Elections;
Potter County Board of Elections; Schuylkill County Board of Elections;
Snyder County Board of Elections; Somerset County Board of Elections;
Sullivan County Board of Elections; Susquehanna County Board of Elections;
Tioga County Board of Elections; Union County Board of Elections;
Venango County Board of Elections; Warren County Board of Elections;
Washington County Board of Elections; Wayne County Board of Elections;
Westmoreland County Board of Elections; Wyoming County Board of Elections;
and York County Board of Elections,

Respondents.

NOTICE OF APPEAL

Notice is hereby given that Petitioners, Republican National Committee; National Republican Senatorial Committee; National Republican Congressional Committee; Republican Party of Pennsylvania; David Ball; James D. Bee; Debra A. Biro; Jesse D. Daniel; Gwendolyn Mae Deluca; Ross M. Farber; Connor R. Gallagher; Lynn Marie Kalcevic; Linda S. Kozlovich; William P. Kozlovich; Vallerie Siciliano-Biancaniello; and S. Michael Streib, appeal to the Pennsylvania Supreme Court from the Memorandum Opinion and Order entered in this matter on September 29, 2022. The Memorandum Opinion and Order have been entered on the docket, a true and correct copy of which is attached hereto as Exhibit A. Pursuant to Rules 904 and 1911 of the Pennsylvania Rules of Appellate Procedure, the complete transcript of the status conference and hearing conducted on September 22, 2022 on the Petitioners' Application for Special Relief in the Form of a Preliminary Injunction Under Pa. R.A.P. 1532 has been ordered. *See* Ex. B.

Pursuant to Pa. R.A.P. 909 and 910, Petitioners are filing concurrently with this Notice of Appeal a Jurisdictional Statement, a true and correct copy of which is attached as Exhibit C.

Respectfully submitted,

Dated: September 30, 2022

/s/ Kathleen A. Gallagher
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Exhibit A
to Notice of Appeal
(Docket)

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 447 MD 2022**Page 1 of 79****September 30, 2022****CAPTION**

Republican National Committee; National Republican Senatorial Committee; National Republican Congressional Committee; Republican Party of Pennsylvania; David Ball; James D. Bee; Debra A. Biro; Jesse D. Daniel; Gwendolyn Mae Deluca; Ross M. Farber; Connor R. Gallagher; Lynn Marie Kalcevic; Linda S. Kozlovich; William P. Kozlovich; Vallerie Siciliano-Biancaniello; S. Michael Streib,
Petitioners

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth; Jessica Mathis, in her official capacity as Director of the Pennsylvania Bureau of Election Services and Notaries; Adams County Board of Elections; Allegheny County Board of Elections; Armstrong County Board of Elections; Beaver County Board of Elections; Bedford County Board of Elections; Berks County Board of Elections; Blair County Board of Elections; Bradford County Board of Elections; Bucks County Board of Elections; Butler County Board of Elections; Cambria County Board of Elections; Cameron County Board of Elections; Carbon County Board of Elections; Centre County Board of Elections; Chester County Board of Elections; Clarion County Board of Elections; Clearfield County Board of Elections; Clinton County Board of Elections; Columbia County Board of Elections; Crawford County Board of Elections; Cumberland County Board of Elections; Dauphin County Board of Elections; Delaware County Board of Elections; Elk County Board of Elections; Erie County Board of Elections; Fayette County Board of Elections; Forest County Board of Elections; Franklin County Board of Elections; Fulton County Board of Elections; Greene County Board of Elections; Huntingdon County Board of Elections; Indiana County Board of Elections; Jefferson County Board of Elections; Juniata County Board of Elections; Lackawanna County Board of Elections; Lancaster County Board of Elections; Lawrence County Board of Elections; Lebanon County Board of Elections; Lehigh County Board of Elections; Luzerne County Board of Elections; Lycoming County Board of Elections; McKean County Board of Elections; Mercer County Board of Elections; Mifflin County Board of Elections; Monroe County Board of Elections; Montgomery County Board of Elections; Montour County Board of Elections; Northampton County Board of Elections; Northumberland County Board of Elections; Perry County Board of Elections; Philadelphia County Board of Elections; Pike County Board of Elections; Potter County Board of Elections; Schuylkill County Board of Elections; Snyder County Board of Elections; Somerset County Board of Elections; Sullivan County Board of Elections; Susquehanna County Board of Elections; Tioga County Board of Elections; Union County Board of Elections; Venango County Board of Elections; Warren County Board of Elections; Wayne County Board of Elections; Westmoreland County Board of Elections; Wyoming County Board of Elections; and York County Board of Elections,
Respondents

CASE INFORMATION

Initiating Document: Petition for Review

Case Status: Active

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Case Processing Status: September 26, 2022 Awaiting Respondent Paperbooks

Journal Number:

Case Category: Miscellaneous Case Type(s): Equity Election

CONSOLIDATED CASES

RELATED CASES

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Miscellaneous Docket Sheet

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Miscellaneous Docket Sheet

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Miscellaneous Docket Sheet

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COUNSEL INFORMATION

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Miscellaneous Docket Sheet

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COUNSEL INFORMATION

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Miscellaneous Docket Sheet

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COUNSEL INFORMATION

Petitioner National Republican Congressional Committee

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Miscellaneous Docket Sheet

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COUNSEL INFORMATION

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Miscellaneous Docket Sheet

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COUNSEL INFORMATION

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Miscellaneous Docket Sheet

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COUNSEL INFORMATION

Petitioner Kalcevic, Lynn Marie

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Miscellaneous Docket Sheet

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COUNSEL INFORMATION

Petitioner Gallagher, Connor R.

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Miscellaneous Docket Sheet

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September 30, 2022



COUNSEL INFORMATION

Petitioner Farber, Ross M.

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Miscellaneous Docket Sheet

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COUNSEL INFORMATION

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Miscellaneous Docket Sheet

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September 30, 2022



COUNSEL INFORMATION

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Miscellaneous Docket Sheet

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September 30, 2022



COUNSEL INFORMATION

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Miscellaneous Docket Sheet

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September 30, 2022



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Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 447 MD 2022

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September 30, 2022

**COUNSEL INFORMATION****Petitioner** **Ball, David**

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Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania****Docket Number: 447 MD 2022****Page 18 of 79****September 30, 2022****COUNSEL INFORMATION****Intervenor Pennsylvania Democratic Party**

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Pro Se: No

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Attorney: Lorenzo, Daniela
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COUNSEL INFORMATION

Intervenor Democratic National Committee

Pro Se: No

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Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania****Docket Number: 447 MD 2022****Page 21 of 79****September 30, 2022****COUNSEL INFORMATION****Intervenor Democratic Congressional Campaign Committee (DCCC)**

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**COUNSEL INFORMATION****Respondent York County Board of Elections**

Pro Se: No

IFP Status:

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Attorney: Jewart, Anna Skipper
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Respondent Wyoming County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Wyoming County Board of Elections
 Address: 1 Courthouse Square
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Respondent Westmoreland County Board of Elections

Pro Se: No

IFP Status:

Attorney: Guidy, Melissa Ann
 Law Firm: Westmoreland County Solicitor's Office
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 Greensburg, PA 15601
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Respondent Wayne County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Wayne County Board of Elections
 Address: 925 Court Street
 Honesdale, PA 18431

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**COUNSEL INFORMATION****Respondent Washington County Board of Elections**

Pro Se: No

IFP Status:

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 Law Firm: Vorys, Sater, Seymour and Pease LLP
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Attorney: Grimm, Jana Phillis
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Respondent Warren County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Warren County Board of Elections
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Respondent Venango County Board of Elections

Pro Se: No

IFP Status:

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Pro Se: No

IFP Status:

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 Law Firm: Mc Nerney, Page, Vanderlin & Hall
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Respondent Tioga County Board of Elections

Pro Se: No

IFP Status:

Attorney: Furman, Christopher P.
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Respondent Susquehanna County Board of Elections

Pro Se: No

IFP Status:

Attorney: Furman, Christopher P.
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Respondent Sullivan County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Sullivan County Board of Elections
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Respondent Somerset County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Somerset County Board of Elections
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Respondent Snyder County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Snyder County Board of Elections
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 9 West Market Street
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COUNSEL INFORMATION

Respondent **Schuylkill County Board of Elections**
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IFP Status:
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Respondent **Potter County Board of Elections**
Pro Se: Yes
IFP Status:
 Pro Se: Potter County Board of Elections
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Respondent **Pike County Board of Elections**
Pro Se: Yes
IFP Status:
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**COUNSEL INFORMATION****Respondent Philadelphia County Board of Elections**

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Respondent Perry County Board of Elections

Pro Se: No

IFP Status:

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**COUNSEL INFORMATION****Respondent Northumberland County Board of Elections**

Pro Se: No

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Respondent Northampton County Board of Elections

Pro Se: No

IFP Status:

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Respondent Montour County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Montour County Board of Elections
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**COUNSEL INFORMATION****Respondent Montgomery County Board of Elections**

Pro Se: No

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Respondent Monroe County Board of Elections

Pro Se: No

IFP Status:

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 Law Firm: McFall, Layman & Jordan, P.C.
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Respondent Mifflin County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Mifflin County Board of Elections
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Respondent Mercer County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Mercer County Board of Elections
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Miscellaneous Docket Sheet

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**COUNSEL INFORMATION****Respondent McKean County Board of Elections**

Pro Se: Yes
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Respondent Mathis, Jessica

Pro Se: No
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Miscellaneous Docket Sheet

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 Pro Se: Yes
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Respondent **Luzerne County Board of Elections**
 Pro Se: No
 IFP Status:
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Respondent **Lehigh County Board of Elections**
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Miscellaneous Docket Sheet

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**COUNSEL INFORMATION****Respondent Lawrence County Board of Elections**

Pro Se: No

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Respondent Lancaster County Board of Elections

Pro Se: No

IFP Status:

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Respondent Lackawanna County Board of Elections

Pro Se: Yes

IFP Status:

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Respondent Juniata County Board of Elections

Pro Se: No

IFP Status:

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Miscellaneous Docket Sheet

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**COUNSEL INFORMATION****Respondent Jefferson County Board of Elections**

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Respondent Indiana County Board of Elections

Pro Se: No

IFP Status:

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**COUNSEL INFORMATION****Respondent** **Huntingdon County Board of Elections**

Pro Se: No

IFP Status:

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Law Firm: Babst Calland

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Attorney: Coyle, Casey Alan

Law Firm: Babst, Calland, Clements and Zomnir, PC

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Attorney: Jewart, Anna Skipper

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Pittsburgh, PA 15222**Respondent** **Greene County Board of Elections**

Pro Se: Yes

IFP Status:

Pro Se: Greene County Board of Elections

Address: Room 102 - County Office Building
93 East High Street
Waynesburg, PA 15370**Respondent** **Fulton County Board of Elections**

Pro Se: Yes

IFP Status:

Pro Se: Fulton County Board of Elections

Address: 116 West Market Street
Suite 205
McConnellsburg, PA 17233**Respondent** **Franklin County Board of Elections**

Pro Se: Yes

IFP Status:

Pro Se: Franklin County Board of Elections

Address: 272 North Second Street
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Miscellaneous Docket Sheet

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**COUNSEL INFORMATION****Respondent Forest County Board of Elections**

Pro Se: Yes

IFP Status:

Pro Se: Forest County Board of Elections
 Address: 526 Elm Street
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Respondent Fayette County Board of Elections

Pro Se: No

IFP Status:

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Attorney: Coyle, Casey Alan
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Attorney: Jewart, Anna Skipper
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Respondent Erie County Board of Elections

Pro Se: No

IFP Status:

Attorney: Talarico, Thomas S.
 Law Firm: Talarico & Associates
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 Erie, PA 16507-1077
 Phone No: (814) 459-4472 Fax No:

Respondent Elk County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Elk County Board of Elections
 Address: 300 Centre Street
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Miscellaneous Docket Sheet

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**COUNSEL INFORMATION****Respondent Delaware County Board of Elections**

Pro Se: No

IFP Status:

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 Law Firm: Duane Morris LLP
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Attorney: Centrella, Nicholas Michael, Jr.
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Respondent Dauphin County Board of Elections

Pro Se: No

IFP Status:

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Respondent Cumberland County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Cumberland County Board of Elections
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 Carlisle, PA 17013

Respondent Crawford County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Crawford County Board of Elections
 Address: 903 Diamond Park
 Meadville, PA 16335

Miscellaneous Docket Sheet

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**COUNSEL INFORMATION****Respondent Columbia County Board of Elections**

Pro Se: No

IFP Status:

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Respondent Clinton County Board of Elections

Pro Se: Yes

IFP Status:

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Respondent Clearfield County Board of Elections

Pro Se: No

IFP Status:

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Respondent Clarion County Board of Elections

Pro Se: No

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COUNSEL INFORMATION

Respondent **Chester County Board of Elections**

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Address: 313 W Market St
Ste 6702
West Chester, PA 19380
Phone No: (610) 451-3166

Fax No:

Attorney: Mattox-Baldini, Faith Anne
Law Firm: Chester County Solicitor's Office
Address: 313 W Market St
Ste 6702
West Chester, PA 19380
Phone No: (610) 344-6195

Fax No:

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

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September 30, 2022

**COUNSEL INFORMATION****Respondent Chapman, Leigh M.**

Pro Se: No

IFP Status:

Attorney: Kotula, Kathleen Marie
 Law Firm: Pennsylvania Department of State
 Address: Pa Dept Of State
 306 N Ofc Bldg 401 North St
 Harrisburg, PA 17120-0500
 Phone No: (717) 783-1657 Fax No:

Attorney: Tucker, Joe H., Jr.
 Law Firm: Tucker Law Group, LLC
 Address: Tucker Law Group LLC
 1801 Market Ste Ste 2500
 Philadelphia, PA 19103
 Phone No: (215) 875-0609 Fax No:

Attorney: Wiygul, Robert Andrew
 Law Firm: Hangley, Aronchick, Segal, Pudlin & Schiller
 Address: Hangley Aronchick Et Al
 18TH Cherry Sts Fl 27
 Philadelphia, PA 19103
 Phone No: (215) 496-7042 Fax No:

Attorney: Mavroudis, Dimitrios
 Address: Tucker Law Group
 1801 Market St Ste 2500
 Philadelphia, PA 19103
 Phone No: (215) 982-2280 Fax No:

Attorney: Boyer, Jacob Biehl
 Law Firm: Pennsylvania Office of Attorney General, 16th Floor , Strawberry Square, Harrisburg, PA
 Address: Pa Office Of Attorney General
 1600 Arch St Ste 300
 Philadelphia, PA 19103
 Phone No: (267) 768-3968 Fax No:

Attorney: Hill, John Brent
 Law Firm: Hangley, Aronchick, Segal, Pudlin & Schiller
 Address: Hangley Aronchick Segal
 1 Logan Sq Fl 27
 Philadelphia, PA 19103
 Phone No: (215) 496-7049 Fax No:

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 447 MD 2022

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**COUNSEL INFORMATION****Respondent Centre County Board of Elections**

Pro Se: No

IFP Status:

Attorney: Dupuis, Elizabeth A.
 Law Firm: Babst Calland
 Address: Babst Calland Et Al
 330 Innovation Blvd Ste 302
 State College, PA 16803
 Phone No: (814) 867-8055 Fax No:

Attorney: Coyle, Casey Alan
 Law Firm: Babst, Calland, Clements and Zomnir, PC
 Address: Two Gateway Center
 603 Stanwix Street, 6th Floor
 Pittsburgh, PA 15222
 Phone No: (267) 939-5832 Fax No:

Attorney: Jewart, Anna Skipper
 Address: 603 Stanwix Street
 Two Gateway, 6th Floor
 Pittsburgh, PA 15222

Respondent Carbon County Board of Elections

Pro Se: No

IFP Status:

Attorney: Dupuis, Elizabeth A.
 Law Firm: Babst Calland
 Address: Babst Calland Et Al
 330 Innovation Blvd Ste 302
 State College, PA 16803
 Phone No: (814) 867-8055 Fax No:

Attorney: Coyle, Casey Alan
 Law Firm: Babst, Calland, Clements and Zomnir, PC
 Address: Two Gateway Center
 603 Stanwix Street, 6th Floor
 Pittsburgh, PA 15222
 Phone No: (267) 939-5832 Fax No:

Attorney: Jewart, Anna Skipper
 Address: 603 Stanwix Street
 Two Gateway, 6th Floor
 Pittsburgh, PA 15222

Respondent Cameron County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Cameron County Board of Elections
 Address: 20 East 5th Street
 Emporium, PA 15834

Miscellaneous Docket Sheet

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**COUNSEL INFORMATION****Respondent Cambria County Board of Elections**

Pro Se: No

IFP Status:

Attorney: Barbin, William Gleason
 Law Firm: Gleason Barbin & Markovitz LLP
 Address: 206 Main St
 Johnstown, PA 15901-1509
 Phone No: (814) 535-5561 Fax No:

Respondent Butler County Board of Elections

Pro Se: No

IFP Status:

Attorney: White, H. William, III
 Law Firm: Butler County Solicitor's Office
 Address: Po Box 1208
 Butler, PA 16003-1208
 Phone No: (724) 284-5381 Fax No:

Respondent Bucks County Board of Elections

Pro Se: No

IFP Status:

Attorney: Grieser, Daniel Donovan
 Law Firm: Bucks County
 Address: 55 E Court St Fl 5
 Doylestown, PA 18901
 Phone No: (215) 348-6548 Fax No:

Attorney: VanderKam, Jessica L.
 Law Firm: Stuckert and Yates
 Address: 2 N State St
 Newtown, PA 18940-2027
 Phone No: (215) 968-4700 Fax No:

Attorney: Fitzpatrick, Amy Melaugh
 Law Firm: The County of Bucks
 Address: The County Of Bucks-Law Department
 55 E Court St
 Doylestown, PA 18901
 Phone No: (215) 348-6464 Fax No:

Respondent Bradford County Board of Elections

Pro Se: Yes

IFP Status:

Pro Se: Bradford County Board of Elections
 Address: 6 Court Street
 Suite 2
 Towanda, PA 18848

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

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**COUNSEL INFORMATION**

Respondent Blair County Board of Elections
 Pro Se: Yes
 IFP Status:
 Pro Se: Blair County Board of Elections
 Address: Blair County Courthouse
 279A Loop Road
 Hollidaysburg, PA 16648

Respondent Berks County Board of Elections
 Pro Se: No
 IFP Status:
 Attorney: Kauffman, Cody Lee
 Law Firm: Berks County Solicitor's Office
 Address: Solicitor's Office
 633 Court St 13th Fl
 Reading, PA 19601
 Phone No: (610) 478-6105 Fax No:

Respondent Bedford County Board of Elections
 Pro Se: No
 IFP Status:
 Attorney: Dupuis, Elizabeth A.
 Law Firm: Babst Calland
 Address: Babst Calland Et Al
 330 Innovation Blvd Ste 302
 State College, PA 16803
 Phone No: (814) 867-8055 Fax No:

Attorney: Coyle, Casey Alan
 Law Firm: Babst, Calland, Clements and Zomnir, PC
 Address: Two Gateway Center
 603 Stanwix Street, 6th Floor
 Pittsburgh, PA 15222
 Phone No: (267) 939-5832 Fax No:

Attorney: Jewart, Anna Skipper
 Address: 603 Stanwix Street
 Two Gateway, 6th Floor
 Pittsburgh, PA 15222

Respondent Beaver County Board of Elections
 Pro Se: Yes
 IFP Status:
 Pro Se: Beaver County Board of Elections
 Address: 810 Third Street
 Beaver, PA 15009

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COUNSEL INFORMATION	
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Respondent	Armstrong County Board of Elections
Pro Se:	Yes
IFP Status:	
Pro Se:	Armstrong County Board of Elections
Address:	450 East Market Street Kittanning, PA 16201

Respondent	Allegheny County Board of Elections
Pro Se:	No
IFP Status:	
Attorney:	Janocsko, George M.
Law Firm:	Allegheny County Law Department
Address:	300 Fort Pitt Cmns 445 Fort Pitt Blvd Pittsburgh, PA 15219
Phone No:	(412) 350-1132
Fax No:	

Attorney:	Michel, Lisa G.
Address:	445 Ft Pitt Commons Ste 300 Pittsburgh, PA 15219-2909
Phone No:	(412) 350-1167
Fax No:	

Attorney:	Opsitnick, Allan Joseph
Law Firm:	Opsitnick and Associates
Address:	564 Forbes Ave Ste 1201 Pittsburgh, PA 15219-2910
Phone No:	(412) 391-3299
Fax No:	

Respondent	Adams County Board of Elections
Pro Se:	No
IFP Status:	
Attorney:	Mudd, Molly Ruth
Address:	Adams County Courthouse 117 Baltimore St 2nd Fl Gettysburg, PA 17325-2367
Phone No:	(717) 337-5911
Fax No:	

FEE INFORMATION				
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Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
09/01/2022	Miscellaneous Docket Filing Fee	70.25	09/02/2022	2022-CMW-H-001698	70.25

AGENCY/TRIAL COURT INFORMATION	
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Order Appealed From:	Notice of Appeal Filed:
Order Type:	
Documents Received:	September 1, 2022

Court Below:	
County:	Division:
Judge:	OTN:
Docket Number:	Judicial District:

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**ORIGINAL RECORD CONTENT**

Original Record Item	Filed Date	Content Description
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Date of Remand of Record:**BRIEFING SCHEDULE****Amicus Curiae**

Lawyers Democracy Fund
Brief

Due: September 26, 2022 Filed: September 26, 2022

Petitioner

Ball, David
Brief

Due: September 26, 2022 Filed: September 21, 2022

Bee, James D.
Brief

Due: September 26, 2022 Filed: September 21, 2022

Biro, Debra A.
Brief

Due: September 26, 2022 Filed: September 21, 2022

Daniel, Jesse D.
Brief

Due: September 26, 2022 Filed: September 21, 2022

Deluca, Gwendolyn Mae
Brief

Due: September 26, 2022 Filed: September 21, 2022

Farber, Ross M.
Brief

Due: September 26, 2022 Filed: September 21, 2022

Gallagher, Connor R.
Brief

Due: September 26, 2022 Filed: September 21, 2022

Kalcevic, Lynn Marie
Brief

Due: September 26, 2022 Filed: September 21, 2022

Kozlovich, Linda S.
Brief

Due: September 26, 2022 Filed: September 21, 2022

Kozlovich, William P.

Intervenor

Democratic Congressional Campaign Committee (DCCC)
Brief

Due: September 26, 2022 Filed: September 26, 2022

Democratic National Committee
Brief

Due: September 26, 2022 Filed: September 26, 2022

Democratic Senatorial Campaign Committee (DSCC)
Brief

Due: September 26, 2022 Filed: September 26, 2022

Pennsylvania Democratic Party
Brief

Due: September 26, 2022 Filed: September 26, 2022

Respondent

Adams County Board of Elections
Brief

Due: September 26, 2022 Filed:

Allegheny County Board of Elections
Brief

Due: September 26, 2022 Filed: September 26, 2022

Armstrong County Board of Elections
Brief

Due: September 26, 2022 Filed:

Beaver County Board of Elections
Brief

Due: September 26, 2022 Filed:

Bedford County Board of Elections
Brief

Due: September 26, 2022 Filed: September 26, 2022

Berks County Board of Elections
Brief

Due: September 26, 2022 Filed: September 16, 2022

Blair County Board of Elections

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**BRIEFING SCHEDULE**

Petitioner		Respondent	
Kozlovich, William P.		Blair County Board of Elections	
Brief		Brief	
Due: September 26, 2022	Filed: September 21, 2022	Due: September 26, 2022	Filed:
National Republican Congressional Committee		Bradford County Board of Elections	
Brief		Brief	
Due: September 26, 2022	Filed: September 26, 2022	Due: September 26, 2022	Filed:
National Republican Senatorial Committee		Bucks County Board of Elections	
Brief		Brief	
Due: September 26, 2022	Filed: September 26, 2022	Due: September 26, 2022	Filed: September 26, 2022
Republican National Committee		Butler County Board of Elections	
Brief		Brief	
Due: September 26, 2022	Filed: September 26, 2022	Due: September 26, 2022	Filed:
Republican Party of Pennsylvania		Cambria County Board of Elections	
Brief		Brief	
Due: September 26, 2022	Filed: September 26, 2022	Due: September 26, 2022	Filed:
Siciliano-Biancaniello, Vallerie		Cameron County Board of Elections	
Brief		Brief	
Due: September 26, 2022	Filed: September 21, 2022	Due: September 26, 2022	Filed:
Streib, S. Michael		Carbon County Board of Elections	
Brief		Brief	
Due: September 26, 2022	Filed: September 21, 2022	Due: September 26, 2022	Filed: September 26, 2022
		Centre County Board of Elections	
		Brief	
		Due: September 26, 2022	Filed: September 26, 2022
		Chapman, Leigh M.	
		Brief	
		Due: September 26, 2022	Filed: September 26, 2022
		Chester County Board of Elections	
		Brief	
		Due: September 26, 2022	Filed:
		Clarion County Board of Elections	
		Brief	
		Due: September 26, 2022	Filed:
		Clearfield County Board of Elections	
		Brief	
		Due: September 26, 2022	Filed:



BRIEFING SCHEDULE

Respondent

**Clinton County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Columbia County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Crawford County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Cumberland County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Dauphin County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Delaware County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Elk County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Erie County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Fayette County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Forest County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Franklin County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Fulton County Board of Elections
Brief**

Due: September 26, 2022 Filed:



BRIEFING SCHEDULE

Respondent

**Greene County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Huntingdon County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Indiana County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Jefferson County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Juniata County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Lackawanna County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Lancaster County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Lawrence County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Lebanon County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Lehigh County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Luzerne County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Lycoming County Board of Elections
Brief**

Due: September 26, 2022 Filed:



BRIEFING SCHEDULE

Respondent

Mathis, Jessica

Brief

Due: September 26, 2022 Filed: September 26, 2022

McKean County Board of Elections

Brief

Due: September 26, 2022 Filed:

Mercer County Board of Elections

Brief

Due: September 26, 2022 Filed:

Mifflin County Board of Elections

Brief

Due: September 26, 2022 Filed:

Monroe County Board of Elections

Brief

Due: September 26, 2022 Filed:

Montgomery County Board of Elections

Brief

Due: September 26, 2022 Filed: September 26, 2022

Montour County Board of Elections

Brief

Due: September 26, 2022 Filed:

Northampton County Board of Elections

Brief

Due: September 26, 2022 Filed: September 26, 2022

Northumberland County Board of Elections

Brief

Due: September 26, 2022 Filed: September 26, 2022

Perry County Board of Elections

Brief

Due: September 26, 2022 Filed:

Philadelphia County Board of Elections

Brief

Due: September 26, 2022 Filed: September 26, 2022

Pike County Board of Elections

Brief

Due: September 26, 2022 Filed:



BRIEFING SCHEDULE

Respondent

**Potter County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Schuylkill County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Snyder County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Somerset County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Sullivan County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Susquehanna County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Tioga County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Union County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Venango County Board of Elections
Brief**

Due: September 26, 2022 Filed: September 26, 2022

**Warren County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Washington County Board of Elections
Brief**

Due: September 26, 2022 Filed:

**Wayne County Board of Elections
Brief**

Due: September 26, 2022 Filed:

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**BRIEFING SCHEDULE****Respondent****Westmoreland County Board of Elections****Brief**

Due: September 26, 2022 Filed:

Wyoming County Board of Elections**Brief**

Due: September 26, 2022 Filed:

York County Board of Elections**Brief**

Due: September 26, 2022 Filed: September 26, 2022

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 1, 2022	Petition for Review Filed			
	Republican National Committee		Petitioner	
	National Republican Senatorial Committee		Petitioner	
	National Republican Congressional Committee		Petitioner	
	Republican Party of Pennsylvania		Petitioner	
	Ball, David		Petitioner	
	Bee, James D.		Petitioner	
	Biro, Debra A.		Petitioner	
	Daniel, Jesse D.		Petitioner	
	Deluca, Gwendolyn Mae		Petitioner	
	Farber, Ross M.		Petitioner	
	Gallagher, Connor R.		Petitioner	
	Kalcevic, Lynn Marie		Petitioner	
	Kozlovich, Linda S.		Petitioner	
	Kozlovich, William P.		Petitioner	
	Siciliano-Biancaniello, Vallerie		Petitioner	
Streib, S. Michael		Petitioner		
September 2, 2022	Notice Exited			
	Commonwealth Court Filing Office			
September 7, 2022	Entry of Appearance			
	Herron, Maureen E. Marlatt, John Amos	Montgomery County Board of Electic Respondent Montgomery County Board of Electic Respondent		
Document Name: Maureen E. Calder & John Marlatt for Montgomery County Board of Elections.				

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 7, 2022	Petition for Preliminary Injunction			
	Gallagher, Kathleen A.	Republican National Committee	Petitioner	
	Gallagher, Kathleen A.	National Republican Senatorial Com	Petitioner	
	Gallagher, Kathleen A.	National Republican Congressional (	Petitioner	
	Gallagher, Kathleen A.	Republican Party of Pennsylvania	Petitioner	
	Gallagher, Kathleen A.	Ball, David	Petitioner	
	Gallagher, Kathleen A.	Bee, James D.	Petitioner	
	Gallagher, Kathleen A.	Biro, Debra A.	Petitioner	
	Gallagher, Kathleen A.	Daniel, Jesse D.	Petitioner	
	Gallagher, Kathleen A.	Deluca, Gwendolyn Mae	Petitioner	
	Gallagher, Kathleen A.	Farber, Ross M.	Petitioner	
	Gallagher, Kathleen A.	Gallagher, Connor R.	Petitioner	
	Gallagher, Kathleen A.	Kalcevic, Lynn Marie	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, Linda S.	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, William P.	Petitioner	
	Gallagher, Kathleen A.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Gallagher, Kathleen A.	Streib, S. Michael	Petitioner	
	Breth, Thomas E.	Republican National Committee	Petitioner	
	Giancola, Russell David	Republican National Committee	Petitioner	
	King, Thomas W., III	Republican National Committee	Petitioner	
	Breth, Thomas E.	Ball, David	Petitioner	
	Breth, Thomas E.	Bee, James D.	Petitioner	
	Breth, Thomas E.	Biro, Debra A.	Petitioner	
	Breth, Thomas E.	Farber, Ross M.	Petitioner	
	Breth, Thomas E.	Daniel, Jesse D.	Petitioner	
	Breth, Thomas E.	Streib, S. Michael	Petitioner	
	Breth, Thomas E.	Kozlovich, Linda S.	Petitioner	
	Breth, Thomas E.	Gallagher, Connor R.	Petitioner	
	Breth, Thomas E.	Kalcevic, Lynn Marie	Petitioner	
	Breth, Thomas E.	Deluca, Gwendolyn Mae	Petitioner	
	Breth, Thomas E.	Kozlovich, William P.	Petitioner	
	Breth, Thomas E.	Republican Party of Pennsylvania	Petitioner	
	Breth, Thomas E.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Breth, Thomas E.	National Republican Senatorial Com	Petitioner	
	Breth, Thomas E.	National Republican Congressional (	Petitioner	
	Giancola, Russell David	Ball, David	Petitioner	
	Giancola, Russell David	Bee, James D.	Petitioner	
	Giancola, Russell David	Biro, Debra A.	Petitioner	
	Giancola, Russell David	Farber, Ross M.	Petitioner	
	Giancola, Russell David	Daniel, Jesse D.	Petitioner	
	Giancola, Russell David	Streib, S. Michael	Petitioner	
	Giancola, Russell David	Kozlovich, Linda S.	Petitioner	
	Giancola, Russell David	Gallagher, Connor R.	Petitioner	
	Giancola, Russell David	Kalcevic, Lynn Marie	Petitioner	
	Giancola, Russell David	Deluca, Gwendolyn Mae	Petitioner	
	Giancola, Russell David	Kozlovich, William P.	Petitioner	

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
	Giancola, Russell David	Republican Party of Pennsylvania	Petitioner	
	Giancola, Russell David	Siciliano-Biancaniello, Vallerie	Petitioner	
	Giancola, Russell David	National Republican Senatorial Com	Petitioner	
	Giancola, Russell David	National Republican Congressional (	Petitioner	
	King, Thomas W., III	Ball, David	Petitioner	
	King, Thomas W., III	Bee, James D.	Petitioner	
	King, Thomas W., III	Biro, Debra A.	Petitioner	
	King, Thomas W., III	Farber, Ross M.	Petitioner	
	King, Thomas W., III	Daniel, Jesse D.	Petitioner	
	King, Thomas W., III	Streib, S. Michael	Petitioner	
	King, Thomas W., III	Kozlovich, Linda S.	Petitioner	
	King, Thomas W., III	Gallagher, Connor R.	Petitioner	
	King, Thomas W., III	Kalcevic, Lynn Marie	Petitioner	
	King, Thomas W., III	Deluca, Gwendolyn Mae	Petitioner	
	King, Thomas W., III	Kozlovich, William P.	Petitioner	
	King, Thomas W., III	Republican Party of Pennsylvania	Petitioner	
	King, Thomas W., III	Siciliano-Biancaniello, Vallerie	Petitioner	
	King, Thomas W., III	National Republican Senatorial Com	Petitioner	
	King, Thomas W., III	National Republican Congressional (	Petitioner	

Document Name: Pet. Appl. for Special Relief in the form of a Preliminary Injunction Under PA.R.A.P. 1532.

September 7, 2022 Memorandum of Law Filed

Gallagher, Kathleen A.	Republican National Committee	Petitioner
Gallagher, Kathleen A.	National Republican Senatorial Com	Petitioner
Gallagher, Kathleen A.	National Republican Congressional (	Petitioner
Gallagher, Kathleen A.	Republican Party of Pennsylvania	Petitioner
Gallagher, Kathleen A.	Ball, David	Petitioner
Gallagher, Kathleen A.	Bee, James D.	Petitioner
Gallagher, Kathleen A.	Biro, Debra A.	Petitioner
Gallagher, Kathleen A.	Daniel, Jesse D.	Petitioner
Gallagher, Kathleen A.	Deluca, Gwendolyn Mae	Petitioner
Gallagher, Kathleen A.	Farber, Ross M.	Petitioner
Gallagher, Kathleen A.	Gallagher, Connor R.	Petitioner
Gallagher, Kathleen A.	Kalcevic, Lynn Marie	Petitioner
Gallagher, Kathleen A.	Kozlovich, Linda S.	Petitioner
Gallagher, Kathleen A.	Kozlovich, William P.	Petitioner
Gallagher, Kathleen A.	Siciliano-Biancaniello, Vallerie	Petitioner
Gallagher, Kathleen A.	Streib, S. Michael	Petitioner

Document Name: Memo. of Law in Support of Pet. Appl for Special Relief in the form of a Prel. Injunction.

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 8, 2022	Amended Certificate of Service			
	Gallagher, Kathleen A.	Kozlovich, William P.	Petitioner	
	Gallagher, Kathleen A.	Republican National Committee	Petitioner	
	Gallagher, Kathleen A.	National Republican Senatorial Com	Petitioner	
	Gallagher, Kathleen A.	National Republican Congressional (	Petitioner	
	Gallagher, Kathleen A.	Republican Party of Pennsylvania	Petitioner	
	Gallagher, Kathleen A.	Ball, David	Petitioner	
	Gallagher, Kathleen A.	Bee, James D.	Petitioner	
	Gallagher, Kathleen A.	Biro, Debra A.	Petitioner	
	Gallagher, Kathleen A.	Daniel, Jesse D.	Petitioner	
	Gallagher, Kathleen A.	Deluca, Gwendolyn Mae	Petitioner	
	Gallagher, Kathleen A.	Farber, Ross M.	Petitioner	
	Gallagher, Kathleen A.	Gallagher, Connor R.	Petitioner	
	Gallagher, Kathleen A.	Kalcevic, Lynn Marie	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, Linda S.	Petitioner	
	Gallagher, Kathleen A.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Gallagher, Kathleen A.	Streib, S. Michael	Petitioner	
September 8, 2022	Entry of Appearance			
	Kauffman, Cody Lee	Berks County Board of Elections	Respondent	
	Document Name: Cody Lee Kauffman Esq. - Berks Co. Board.			
September 8, 2022	Entry of Appearance			
	Grieser, Daniel Donovan	Bucks County Board of Elections	Respondent	
	Fitzpatrick, Amy Melaugh	Bucks County Board of Elections	Respondent	
	Document Name: Amy M. Fitzpatrick Esq. & Daniel D. Grieser Esq.			
September 9, 2022	Entry of Appearance			
	Wiygul, Robert Andrew	Chapman, Leigh M.	Respondent	
	Wiygul, Robert Andrew	Mathis, Jessica	Respondent	
	Document Name: Robert A. Wiygul Esq.			
September 9, 2022	Entry of Appearance			
	Hill, John Brent	Chapman, Leigh M.	Respondent	
	Hill, John Brent	Mathis, Jessica	Respondent	
	Document Name: John B. Hill Esq.			
September 9, 2022	Entry of Appearance			
	Roseberry, Catharine Meade	Lehigh County Board of Elections	Respondent	
	Document Name: Catharine Meade Roseberry Esq.			
September 9, 2022	Entry of Appearance			
	Tucker, Joe H., Jr.	Chapman, Leigh M.	Respondent	
	Tucker, Joe H., Jr.	Mathis, Jessica	Respondent	
	Document Name: Joe H. Tucker Jr. Esq.			
September 9, 2022	Entry of Appearance			
	Mavroudis, Dimitrios	Chapman, Leigh M.	Respondent	
	Mavroudis, Dimitrios	Mathis, Jessica	Respondent	
	Document Name: Dimitrios Mavroudis Esq.			

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 9, 2022	Hearing Scheduled Per Curiam			09/09/2022
	Document Name: Hearing Scheduled for 9-28-22 on App for Preliminary Injunction			
	Comment: NOW, September 9, 2022, upon consideration of Petitioners' Application for Special Relief in the Form of a Preliminary Injunction under Pa.R.A.P. 1532 (Application for Preliminary Injunction), and the Memorandum of Law in Support of the Application for Preliminary Injunction, it is hereby ORDERED as follows:			
	1. Hearing on Petitioners' Application for Preliminary Injunction is scheduled for Wednesday, September 28, 2022, at 10:00 a.m., in Courtroom 3001, Pennsylvania Judicial Center, Third Floor, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, and will continue daily thereafter until concluded.			
	2. Petitioners are directed to secure the services of a court stenographer for the hearing.			
	3. Any party who opposes the pending Application for Preliminary Injunction shall file and serve an answer in opposition thereto no later than 12:00 noon on Friday, September 16, 2022. Any party who fails to file an answer by 12:00 noon on Friday, September 16, 2022, will be considered by the Court to be unopposed to the Application for Preliminary Injunction.			
	4. The parties shall file a joint stipulation of facts no later than 12:00 noon on Monday, September 19, 2022, indicating which county boards of elections have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots.			
	5. A status conference is scheduled for Thursday, September 22, 2022, at 10:00 a.m., via WebEx videoconferencing, for the purpose of discussing the hearing, including the anticipated number of witnesses and exhibits, estimated duration of the hearing, and logistics.			
	6. Each party shall email the name, email address, and mobile telephone number of all counsel who intend to participate in the status conference to the following email address: CommCourtRemote@pacourts.us by no later than 4:00 p.m. on Monday, September 19, 2022. The Court will provide counsel with the information for connecting to the WebEx conference.			
	7. To facilitate participation, various WebEx applications are available for download at pacourts.webex.com. Please see the Protocol for WebEx Video Proceedings attached to this Order. The parties are directed to connect to the WebEx video conference 15 minutes before the starting time. In the event of technical difficulties, please contact the Court's IT staff at 717-255-1626.			
September 9, 2022	Petition to Intervene (Pa.R.C.P. 2328)			
	Bonin, Adam Craig	Democratic Senatorial Campaign Co	Intervenor	
	Bonin, Adam Craig	Democratic Congressional Campaign	Intervenor	
	Document Name: Application of DSCC and DCCC for Leave to Intervene			
September 9, 2022	Application for Intervention (Pa.R.A.P. 1531b)			
	Levine, Clifford B.	Democratic National Committee	Intervenor	
	Levine, Clifford B.	Pennsylvania Democratic Party	Intervenor	
	Document Name: DNC and PDP Application for Leave to Intervene			
September 9, 2022	Memorandum of Law Filed			
	Levine, Clifford B.	Democratic National Committee	Intervenor	
	Levine, Clifford B.	Pennsylvania Democratic Party	Intervenor	
	Document Name: In Support of DNC and PDP Application for Leave to Intervene			
September 12, 2022	Entry of Appearance			
	Lavery, Frank J., Jr.	Perry County Board of Elections	Respondent	
	Norfleet, Andrew W.	Perry County Board of Elections	Respondent	
	Document Name: Attys. Lavery, Jr. and Norfleet for Perry Co. Bd. of Elections			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 12, 2022	Entry of Appearance Talarico, Thomas S.	Erie County Board of Elections	Respondent	
	Document Name: Atty. Talarico for Erie Co. Bd. of Elections			
September 12, 2022	Letter Lavery, Frank J., Jr.	Perry County Board of Elections	Respondent	
	Document Name: No Answer to Petition for Review to be Filed by Perry Co. Bd. of Elections			
September 12, 2022	Certificate of Service Filed Gallagher, Kathleen A.	Republican National Committee	Petitioner	
	Gallagher, Kathleen A.	National Republican Senatorial Com	Petitioner	
	Gallagher, Kathleen A.	National Republican Congressional (	Petitioner	
	Gallagher, Kathleen A.	Republican Party of Pennsylvania	Petitioner	
	Gallagher, Kathleen A.	Ball, David	Petitioner	
	Gallagher, Kathleen A.	Bee, James D.	Petitioner	
	Gallagher, Kathleen A.	Biro, Debra A.	Petitioner	
	Gallagher, Kathleen A.	Daniel, Jesse D.	Petitioner	
	Gallagher, Kathleen A.	Deluca, Gwendolyn Mae	Petitioner	
	Gallagher, Kathleen A.	Farber, Ross M.	Petitioner	
	Gallagher, Kathleen A.	Gallagher, Connor R.	Petitioner	
	Gallagher, Kathleen A.	Kalcevic, Lynn Marie	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, Linda S.	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, William P.	Petitioner	
	Gallagher, Kathleen A.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Gallagher, Kathleen A.	Streib, S. Michael	Petitioner	
	Document Name: of Petition for Review			
September 12, 2022	Entry of Appearance Mathews, Lauren Lynn	Washington County Board of Electio	Respondent	
	Grimm, Jana Phillis	Washington County Board of Electio	Respondent	
	Document Name: Attys. Grimm and Mathews for Washington Cop. Bd. of Elections			
September 12, 2022	Entry of Appearance Boyer, Jacob Biehl	Chapman, Leigh M.	Respondent	
	Boyer, Jacob Biehl	Mathis, Jessica	Respondent	
	Document Name: Jacob Biehl Boyer Esq.			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 13, 2022	Order Filed Per Curiam			09/13/2022
	Document Name: Regarding the status conference and Hearing			
	Comment: NOW, September 13, 2022, upon consideration of the Application for Leave to Intervene filed by the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee (DSCC and DCCC), and the Application for Leave to Intervene and Memorandum of Law in Support thereof filed by the Democratic National Committee and the Pennsylvania Democratic Party (DNC and PDP) (collectively, Proposed Intervenors), and in light of the status conference scheduled for Thursday, September 22, 2022, via WebEx videoconferencing, and the in-person hearing scheduled for Wednesday, September 28, 2022, in this matter, it is hereby ORDERED as follows:			
	1. Any party who opposes the pending Applications for Leave to Intervene, filed by the DSCC and DCCC, and the DNC and PDP, respectively, shall file and serve an answer in opposition thereto no later than 12:00 noon on Monday, September 19, 2022. Any party who fails to file an answer by 12:00 noon on Monday, September 19, 2022, will be considered by the Court to be unopposed to the Applications for Leave to Intervene.			
	2. Proposed Intervenors are granted leave to participate in the aforementioned status conference scheduled for Thursday, September 22, 2022, at 10:00 a.m., via WebEx videoconferencing, subject to the Court's future disposition of their respective Applications for Leave to Intervene.			
	3. Proposed Intervenors shall email the name, email address, and mobile telephone number of all counsel who intend to participate in the status conference to the following email address: CommCourtRemote@pacourts.us by no later than 4:00 p.m. on Monday, September 19, 2022, pursuant to Paragraph 6. of this Court's September 9, 2022 Order. The Court will provide counsel with the information for connecting to the WebEx conference.			
	4. To facilitate participation, various WebEx applications are available for download at pacourts.webex.com. Please see the Protocol for WebEx Video Proceedings attached to this Order. The parties are directed to connect to the WebEx video conference 15 minutes before the starting time. In the event of technical difficulties, please contact the Court's IT staff at 717-255-1626.			
	5. The Court will confirm the schedule, sequence, and procedures for the in-person hearing presently scheduled for Wednesday, September 28, 2022, at 10:00 a.m., in this matter, as well as any intervention hearing(s), by separate order following the status conference. The parties and Proposed Intervenors shall be prepared to discuss the Applications for Leave to Intervene during the status conference.			
	6. All provisions of this Court's September 9, 2022 Order remain in effect			
September 13, 2022	Entry of Appearance DeWald, Jonathan Lee	Union County Board of Elections	Respondent	
	Document Name: Jonathan Lee DeWald Esq.			
September 13, 2022	Entry of Appearance Opsitnick, Allan Joseph Janocsko, George M.	Allegheny County Board of Elections Allegheny County Board of Elections	Respondent Respondent	
	Document Name: George M. Janocsko Esq. / Allan J. Opsitnick Esq.			
September 13, 2022	Entry of Appearance Ford, Timothy James Ford, Timothy James	Democratic Senatorial Campaign Co Democratic Congressional Campaign	Intervenor Intervenor	
	Document Name: Timothy J. Ford Esq.			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 13, 2022	Entry of Appearance Ghormoz, Claire Blewitt Ghormoz, Claire Blewitt Document Name: Claire B. Ghormoz, Esq.	Democratic Senatorial Campaign Co Democratic Congressional Campaign	Intervenor Intervenor	
September 13, 2022	Entry of Appearance Santee, Richard Eugene Document Name: Richard E. Santee Esq.	Northampton County Board of Electi	Respondent	
September 13, 2022	Entry of Appearance Mudd, Molly Ruth Document Name: Molly Ruth Mudd Esq.	Adams County Board of Elections	Respondent	

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 14, 2022	Entry of Appearance			
	Dupuis, Elizabeth A.	Bedford County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Centre County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Columbia County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Dauphin County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Huntingdon County Board of Electior	Respondent	
	Dupuis, Elizabeth A.	Indiana County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Jefferson County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Lawrence County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Lebanon County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Northumberland County Board of Ele	Respondent	
	Dupuis, Elizabeth A.	Venango County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	York County Board of Elections	Respondent	
	Coyle, Casey Alan	Bedford County Board of Elections	Respondent	
	Jewart, Anna Skipper	Bedford County Board of Elections	Respondent	
	Coyle, Casey Alan	Centre County Board of Elections	Respondent	
	Jewart, Anna Skipper	Centre County Board of Elections	Respondent	
	Coyle, Casey Alan	Columbia County Board of Elections	Respondent	
	Jewart, Anna Skipper	Columbia County Board of Elections	Respondent	
	Coyle, Casey Alan	Dauphin County Board of Elections	Respondent	
	Jewart, Anna Skipper	Dauphin County Board of Elections	Respondent	
	Coyle, Casey Alan	Huntingdon County Board of Electior	Respondent	
	Jewart, Anna Skipper	Huntingdon County Board of Electior	Respondent	
	Coyle, Casey Alan	Indiana County Board of Elections	Respondent	
	Jewart, Anna Skipper	Indiana County Board of Elections	Respondent	
	Coyle, Casey Alan	Jefferson County Board of Elections	Respondent	
	Jewart, Anna Skipper	Jefferson County Board of Elections	Respondent	
	Coyle, Casey Alan	Lawrence County Board of Elections	Respondent	
	Jewart, Anna Skipper	Lawrence County Board of Elections	Respondent	
	Coyle, Casey Alan	Lebanon County Board of Elections	Respondent	
	Jewart, Anna Skipper	Lebanon County Board of Elections	Respondent	
	Coyle, Casey Alan	Northumberland County Board of Ele	Respondent	
	Jewart, Anna Skipper	Northumberland County Board of Ele	Respondent	
	Coyle, Casey Alan	Venango County Board of Elections	Respondent	
	Jewart, Anna Skipper	Venango County Board of Elections	Respondent	
	Coyle, Casey Alan	York County Board of Elections	Respondent	
	Jewart, Anna Skipper	York County Board of Elections	Respondent	
	Document Name: Casey Alan Coyle Esq.			

September 15, 2022	Entry of Appearance			
	Guiddy, Melissa Ann	Westmoreland County Board of Elec	Respondent	
	Document Name: Atty. Guiddy for Westmorelan Co. Bd. of Elections			

September 15, 2022	Entry of Appearance			
	VanderKam, Jessica L.	Bucks County Board of Elections	Respondent	
	Document Name: Jessica L. VanderKam Esq.			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 15, 2022	Entry of Appearance White, H. William, III Document Name: William H. White III Esq.	Butler County Board of Elections	Respondent	
September 15, 2022	Entry of Appearance Smith, Ryan Blake Field, Benjamin Hirsch Pfautz, Michael Wu-Kung Document Name: Benjamin H. Field Esq., Michael Wu-Kung Esq., Ryan B. Smith Esq.	Philadelphia County Board of Electio Philadelphia County Board of Electio Philadelphia County Board of Electio	Respondent Respondent Respondent	
September 16, 2022	Letter Mathews, Lauren Lynn Document Name: Washington Co. Bd. of Elections takes no Position on Request for Injunctive Relief	Washington County Board of Electio	Respondent	
September 16, 2022	Entry of Appearance Frens, Colleen Mary Document Name: of Colleen Mary Frens Esq. and Chester Co. BOE response to Pet. Appl for P.I.	Chester County Board of Elections	Respondent	
September 16, 2022	Answer to Petition for Preliminary Injunction Wiygul, Robert Andrew Wiygul, Robert Andrew Document Name: Commonwealth Respondent's Answer	Chapman, Leigh M. Mathis, Jessica	Respondent Respondent	
September 16, 2022	Respondent's Brief Filed Berks County Board of Elections Document Name: Answer to Petitioners' PFR and Petition for Preliminary Injunction		Respondent	
September 16, 2022	Entry of Appearance Dupuis, Elizabeth A. Coyle, Casey Alan Jewart, Anna Skipper Document Name: Attys. Coyle, Dupuis and Jewart for Fayette Co. Bd. of Elections	Fayette County Board of Elections Fayette County Board of Elections Fayette County Board of Elections	Respondent Respondent Respondent	
September 16, 2022	Memorandum of Law Filed Democratic National Committee Pennsylvania Democratic Party Document Name: Answer to Application in the Form of a Preliminary Injunction		Intervenor Intervenor	
September 16, 2022	Answer to Petition for Preliminary Injunction Roseberry, Catharine Meade Document Name: Lehigh Co. Bd. of Election's Answer	Lehigh County Board of Elections	Respondent	
September 16, 2022	Filed - Other Roseberry, Catharine Meade Document Name: Proposed Order	Lehigh County Board of Elections	Respondent	
September 16, 2022	Answer to Petition for Preliminary Injunction Opsitnick, Allan Joseph Document Name: Allegheny Co. Bd. of Elections' Answer	Allegheny County Board of Elections	Respondent	
September 16, 2022	Answer to Petition for Preliminary Injunction Smith, Ryan Blake Document Name: Philadelphia Co. Bd. of Elections' Answer	Philadelphia County Board of Electic	Respondent	

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September 16, 2022	Entry of Appearance Cosgrove, Joseph Matthias	Luzerne County Board of Elections	Respondent	
	Document Name: Atty. Cosgrove for Luzerne Co. Bd. of Elections			
September 16, 2022	Answer to Petition for Preliminary Injunction Herron, Maureen E.	Montgomery County Board of Electic	Respondent	
	Document Name: Montgomery Co. Bd. of Elections' Answer			
September 16, 2022	Answer Filed Dupuis, Elizabeth A.	Bedford County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Centre County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Columbia County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Dauphin County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Fayette County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Huntingdon County Board of Electior	Respondent	
	Dupuis, Elizabeth A.	Indiana County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Jefferson County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Lawrence County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Lebanon County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Northumberland County Board of Ele	Respondent	
	Dupuis, Elizabeth A.	Venango County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	York County Board of Elections	Respondent	
	Document Name: Joint Answer of Resp. Bedored Co., Centre Co., Columbia County In Opp. to Pet. Appl for Prem. Inj.			
September 16, 2022	Answer Filed Santee, Richard Eugene	Northampton County Board of Electic	Respondent	
	Document Name: Respondent Northampton Co. BOE answer to Appl for special relief in the form of Prel. Inj.			
September 16, 2022	Answer Filed VanderKam, Jessica L.	Bucks County Board of Elections	Respondent	
	Document Name: Answer of Bucks Co. BOE to Appl. for Special Relief in the form of Prel. Inj.			
September 16, 2022	Respondent's Brief Filed Chapman, Leigh M.		Respondent	
	Mathis, Jessica		Respondent	
	Document Name: Commonwealth Respondents' Brief in Opposition to Application for Preliminary Injunction			
September 16, 2022	Memorandum of Law Filed Democratic Senatorial Campaign Committee (DSCC)		Intervenor	
	Democratic Congressional Campaign Committee (DCCC)		Intervenor	
	Document Name: DSCC and DCCC's Response in Opposition to Application for Preliminary Injunction			
September 16, 2022	Answer Filed Herron, Maureen E.	Montgomery County Board of Electic	Respondent	
	Document Name: Preliminary Objections of Montgomery Co. Bd. of Elections			
September 16, 2022	Entry of Appearance Fareri, James V.	Monroe County Board of Elections	Respondent	
	Document Name: Atty. Fareri and Dunn for Monroe Co. Bd. of Elections			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 16, 2022	Answer to Petition for Preliminary Injunction Fareri, James V. Document Name: Monroe Co. Bd. of Elections' Answer	Monroe County Board of Elections	Respondent	
September 16, 2022	Answer to Petition for Preliminary Injunction Mudd, Molly Ruth Document Name: Answer to Adams County Board of Elections Oppo. Pet.'s Appl for Special Relief.	Adams County Board of Elections	Respondent	
September 16, 2022	Entry of Appearance Taylor, Brian J. Document Name: Brian J. Taylor Esq.	Northampton County Board of Elections	Respondent	
September 16, 2022	Answer to Petition for Preliminary Injunction Cosgrove, Joseph Matthias Document Name: Luzerne Co. Bd. of Elections Answer	Luzerne County Board of Elections	Respondent	
September 16, 2022	Letter Fareri, James V. Document Name: Monroe Co. Bd. of Elections Re: Further Participation	Monroe County Board of Elections	Respondent	
September 16, 2022	Entry of Appearance Vargo, Michael John Document Name: Atty. Vargo for Northampton Co. Bd. of Elections	Northampton County Board of Elections	Respondent	
September 16, 2022	Filed - Other Cosgrove, Joseph Matthias Document Name: Submission of Luzerne Co. Bd. of Elections Re: Stipulated Facts	Luzerne County Board of Elections	Respondent	
September 19, 2022	Entry of Appearance Zagurskie, Donald Kenneth Document Name: Donald K. Zagurskie Esq.	Juniata County Board of Elections	Respondent	
September 19, 2022	Entry of Appearance Michel, Lisa G. Document Name: Lisa G. Michel Esq.	Allegheny County Board of Elections	Respondent	
September 19, 2022	Filed - Other DeWald, Jonathan Lee Document Name: Submission of Respondent Union County Board of Elections Regarding Stipulation of Facts	Union County Board of Elections	Respondent	
September 19, 2022	Entry of Appearance Parks, James Manly Document Name: James M. Parks Esq.	Delaware County Board of Elections	Respondent	
September 19, 2022	Entry of Appearance Centrella, Nicholas Michael, Jr. Document Name: Nicholas M. Centrella Jr. Esq.	Delaware County Board of Elections	Respondent	

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September 19, 2022	Answer Filed			
	Gallagher, Kathleen A.	Republican National Committee	Petitioner	
	Gallagher, Kathleen A.	National Republican Senatorial Com	Petitioner	
	Gallagher, Kathleen A.	National Republican Congressional (	Petitioner	
	Gallagher, Kathleen A.	Republican Party of Pennsylvania	Petitioner	
	Gallagher, Kathleen A.	Ball, David	Petitioner	
	Gallagher, Kathleen A.	Bee, James D.	Petitioner	
	Gallagher, Kathleen A.	Biro, Debra A.	Petitioner	
	Gallagher, Kathleen A.	Daniel, Jesse D.	Petitioner	
	Gallagher, Kathleen A.	Deluca, Gwendolyn Mae	Petitioner	
	Gallagher, Kathleen A.	Farber, Ross M.	Petitioner	
	Gallagher, Kathleen A.	Gallagher, Connor R.	Petitioner	
	Gallagher, Kathleen A.	Kalcevic, Lynn Marie	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, Linda S.	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, William P.	Petitioner	
	Gallagher, Kathleen A.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Gallagher, Kathleen A.	Streib, S. Michael	Petitioner	
	Breth, Thomas E.	Republican National Committee	Petitioner	
	Giancola, Russell David	Republican National Committee	Petitioner	
	King, Thomas W., III	Republican National Committee	Petitioner	
	Breth, Thomas E.	Ball, David	Petitioner	
	Breth, Thomas E.	Bee, James D.	Petitioner	
	Breth, Thomas E.	Biro, Debra A.	Petitioner	
	Breth, Thomas E.	Farber, Ross M.	Petitioner	
	Breth, Thomas E.	Daniel, Jesse D.	Petitioner	
	Breth, Thomas E.	Streib, S. Michael	Petitioner	
	Breth, Thomas E.	Kozlovich, Linda S.	Petitioner	
	Breth, Thomas E.	Gallagher, Connor R.	Petitioner	
	Breth, Thomas E.	Kalcevic, Lynn Marie	Petitioner	
	Breth, Thomas E.	Deluca, Gwendolyn Mae	Petitioner	
	Breth, Thomas E.	Kozlovich, William P.	Petitioner	
	Breth, Thomas E.	Republican Party of Pennsylvania	Petitioner	
	Breth, Thomas E.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Breth, Thomas E.	National Republican Senatorial Com	Petitioner	
	Breth, Thomas E.	National Republican Congressional (	Petitioner	
	Giancola, Russell David	Ball, David	Petitioner	
	Giancola, Russell David	Bee, James D.	Petitioner	
	Giancola, Russell David	Biro, Debra A.	Petitioner	
	Giancola, Russell David	Farber, Ross M.	Petitioner	
	Giancola, Russell David	Daniel, Jesse D.	Petitioner	
	Giancola, Russell David	Streib, S. Michael	Petitioner	
	Giancola, Russell David	Kozlovich, Linda S.	Petitioner	
	Giancola, Russell David	Gallagher, Connor R.	Petitioner	
	Giancola, Russell David	Kalcevic, Lynn Marie	Petitioner	
	Giancola, Russell David	Deluca, Gwendolyn Mae	Petitioner	
	Giancola, Russell David	Kozlovich, William P.	Petitioner	

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
	Giancola, Russell David	Republican Party of Pennsylvania	Petitioner	
	Giancola, Russell David	Siciliano-Biancaniello, Vallerie	Petitioner	
	Giancola, Russell David	National Republican Senatorial Com	Petitioner	
	Giancola, Russell David	National Republican Congressional (	Petitioner	
	King, Thomas W., III	Ball, David	Petitioner	
	King, Thomas W., III	Bee, James D.	Petitioner	
	King, Thomas W., III	Biro, Debra A.	Petitioner	
	King, Thomas W., III	Farber, Ross M.	Petitioner	
	King, Thomas W., III	Daniel, Jesse D.	Petitioner	
	King, Thomas W., III	Streib, S. Michael	Petitioner	
	King, Thomas W., III	Kozlovich, Linda S.	Petitioner	
	King, Thomas W., III	Gallagher, Connor R.	Petitioner	
	King, Thomas W., III	Kalcevic, Lynn Marie	Petitioner	
	King, Thomas W., III	Deluca, Gwendolyn Mae	Petitioner	
	King, Thomas W., III	Kozlovich, William P.	Petitioner	
	King, Thomas W., III	Republican Party of Pennsylvania	Petitioner	
	King, Thomas W., III	National Republican Senatorial Com	Petitioner	
	King, Thomas W., III	National Republican Congressional (	Petitioner	

Document Name: Pet.'s Response & Answer to Dem. Nat. Committee & PA Demo. Party's Appl. for Intervention.

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September 19, 2022	Answer Filed			
	Gallagher, Kathleen A.	Republican National Committee	Petitioner	
	Gallagher, Kathleen A.	National Republican Senatorial Com	Petitioner	
	Gallagher, Kathleen A.	National Republican Congressional (	Petitioner	
	Gallagher, Kathleen A.	Republican Party of Pennsylvania	Petitioner	
	Gallagher, Kathleen A.	Ball, David	Petitioner	
	Gallagher, Kathleen A.	Bee, James D.	Petitioner	
	Gallagher, Kathleen A.	Biro, Debra A.	Petitioner	
	Gallagher, Kathleen A.	Daniel, Jesse D.	Petitioner	
	Gallagher, Kathleen A.	Deluca, Gwendolyn Mae	Petitioner	
	Gallagher, Kathleen A.	Farber, Ross M.	Petitioner	
	Gallagher, Kathleen A.	Gallagher, Connor R.	Petitioner	
	Gallagher, Kathleen A.	Kalcevic, Lynn Marie	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, Linda S.	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, William P.	Petitioner	
	Gallagher, Kathleen A.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Gallagher, Kathleen A.	Streib, S. Michael	Petitioner	
	Breth, Thomas E.	Republican National Committee	Petitioner	
	Giancola, Russell David	Republican National Committee	Petitioner	
	King, Thomas W., III	Republican National Committee	Petitioner	
	Breth, Thomas E.	Ball, David	Petitioner	
	Breth, Thomas E.	Bee, James D.	Petitioner	
	Breth, Thomas E.	Biro, Debra A.	Petitioner	
	Breth, Thomas E.	Farber, Ross M.	Petitioner	
	Breth, Thomas E.	Daniel, Jesse D.	Petitioner	
	Breth, Thomas E.	Streib, S. Michael	Petitioner	
	Breth, Thomas E.	Kozlovich, Linda S.	Petitioner	
	Breth, Thomas E.	Gallagher, Connor R.	Petitioner	
	Breth, Thomas E.	Kalcevic, Lynn Marie	Petitioner	
	Breth, Thomas E.	Deluca, Gwendolyn Mae	Petitioner	
	Breth, Thomas E.	Kozlovich, William P.	Petitioner	
	Breth, Thomas E.	Republican Party of Pennsylvania	Petitioner	
	Breth, Thomas E.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Breth, Thomas E.	National Republican Senatorial Com	Petitioner	
	Breth, Thomas E.	National Republican Congressional (	Petitioner	
	Giancola, Russell David	Ball, David	Petitioner	
	Giancola, Russell David	Bee, James D.	Petitioner	
	Giancola, Russell David	Biro, Debra A.	Petitioner	
	Giancola, Russell David	Farber, Ross M.	Petitioner	
	Giancola, Russell David	Daniel, Jesse D.	Petitioner	
	Giancola, Russell David	Streib, S. Michael	Petitioner	
	Giancola, Russell David	Kozlovich, Linda S.	Petitioner	
	Giancola, Russell David	Gallagher, Connor R.	Petitioner	
	Giancola, Russell David	Kalcevic, Lynn Marie	Petitioner	
	Giancola, Russell David	Deluca, Gwendolyn Mae	Petitioner	
	Giancola, Russell David	Kozlovich, William P.	Petitioner	

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
	Giancola, Russell David	Republican Party of Pennsylvania	Petitioner	
	Giancola, Russell David	Siciliano-Biancaniello, Vallerie	Petitioner	
	Giancola, Russell David	National Republican Senatorial Com	Petitioner	
	Giancola, Russell David	National Republican Congressional (	Petitioner	
	King, Thomas W., III	Ball, David	Petitioner	
	King, Thomas W., III	Bee, James D.	Petitioner	
	King, Thomas W., III	Biro, Debra A.	Petitioner	
	King, Thomas W., III	Farber, Ross M.	Petitioner	
	King, Thomas W., III	Daniel, Jesse D.	Petitioner	
	King, Thomas W., III	Streib, S. Michael	Petitioner	
	King, Thomas W., III	Kozlovich, Linda S.	Petitioner	
	King, Thomas W., III	Gallagher, Connor R.	Petitioner	
	King, Thomas W., III	Kalcevic, Lynn Marie	Petitioner	
	King, Thomas W., III	Deluca, Gwendolyn Mae	Petitioner	
	King, Thomas W., III	Kozlovich, William P.	Petitioner	
	King, Thomas W., III	Republican Party of Pennsylvania	Petitioner	
	King, Thomas W., III	Siciliano-Biancaniello, Vallerie	Petitioner	
	King, Thomas W., III	National Republican Senatorial Com	Petitioner	
	King, Thomas W., III	National Republican Congressional (	Petitioner	

Document Name: Petitioners' Response & Answer to the DSCC's & DCCC'S Application for Intervention.

September 19, 2022	Application for Extension of Time to File			
	King, Thomas W., III	Republican National Committee	Petitioner	
	King, Thomas W., III	National Republican Senatorial Com	Petitioner	
	King, Thomas W., III	National Republican Congressional (	Petitioner	
	King, Thomas W., III	Republican Party of Pennsylvania	Petitioner	
	King, Thomas W., III	Ball, David	Petitioner	
	King, Thomas W., III	Bee, James D.	Petitioner	
	King, Thomas W., III	Biro, Debra A.	Petitioner	
	King, Thomas W., III	Daniel, Jesse D.	Petitioner	
	King, Thomas W., III	Deluca, Gwendolyn Mae	Petitioner	
	King, Thomas W., III	Farber, Ross M.	Petitioner	
	King, Thomas W., III	Gallagher, Connor R.	Petitioner	
	King, Thomas W., III	Kalcevic, Lynn Marie	Petitioner	
	King, Thomas W., III	Kozlovich, Linda S.	Petitioner	
	King, Thomas W., III	Kozlovich, William P.	Petitioner	
	King, Thomas W., III	Siciliano-Biancaniello, Vallerie	Petitioner	
	King, Thomas W., III	Streib, S. Michael	Petitioner	

Document Name: Letter request for extension of time to file joint stipulation of facts.

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 19, 2022	Order Granting Application for Extension of Time to File Per Curiam Document Name: Ext. Request Granted Comment: NOW, September 19, 2022, upon consideration of Petitioners' request for extension of the deadline set by this Court's September 9, 2022 Order for the filing of a joint stipulation of facts in this matter, which was due no later than noon today, the request is GRANTED. The deadline by which the parties shall file a joint stipulation of facts, as set forth in Paragraph 4. of this Court's September 9, 2022 Order, is now extended to 5:00 p.m. on Tuesday, September 20, 2022.			09/19/2022
September 19, 2022	Entry of Appearance Furman, Christopher P. Furman, Christopher P. Furman, Christopher P. Document Name: Christopher P. Furman Esq.	Clarion County Board of Elections Susquehanna County Board of Elect Tioga County Board of Elections	Respondent Respondent Respondent	
September 19, 2022	Entry of Appearance Mattox-Baldini, Faith Anne Document Name: Faith Anne Mattox-Baldini Esq.	Chester County Board of Elections	Respondent	
September 19, 2022	Application to be Admitted Pro Hac Vice Filed Bonin, Adam Craig Bonin, Adam Craig Document Name: of Uzoma N. Nkwonta, Esq.	Democratic Senatorial Campaign Co Democratic Congressional Campaign	Intervenor Intervenor	
September 19, 2022	Application to be Admitted Pro Hac Vice Filed Bonin, Adam Craig Bonin, Adam Craig Document Name: of Alexander F. Atkins, Esq.	Democratic Senatorial Campaign Co Democratic Congressional Campaign	Intervenor Intervenor	
September 19, 2022	Answer and New Matter VanderKam, Jessica L. Fitzpatrick, Amy Melaugh Document Name: Answer & New Matter of Bucks Co. Board of Elections to PFR Seeking Declaratory & Injunctive Relief.	Bucks County Board of Elections Bucks County Board of Elections	Respondent Respondent	
September 19, 2022	Application to be Admitted Pro Hac Vice Filed Bonin, Adam Craig Bonin, Adam Craig Document Name: of Daniela Lorenzo, Esq.	Democratic Senatorial Campaign Co Democratic Congressional Campaign	Intervenor Intervenor	
September 19, 2022	Application for Relief Centrella, Nicholas Michael, Jr. Parks, James Manly Document Name: Appl. to Submit Answer of Resp. Delaware Co. BOE to Pet Appl for Special Relief In the form of a PI.	Delaware County Board of Elections Delaware County Board of Elections	Respondent Respondent	
September 19, 2022	Answer to Application for Relief Parks, James Manly Document Name: Answer of Respondent Del. Co. BOE to Pet. Appl. for Special Relief in the form of a PI.	Delaware County Board of Elections	Respondent	
September 20, 2022	Entry of Appearance Stevens, Nicholas J. Document Name: Nicholas J. Stevens Esq.	Chester County Board of Elections	Respondent	

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 20, 2022	Entry of Appearance Barbin, William Gleason	Cambria County Board of Elections	Respondent	
	Document Name: William Gleason Barbin Esq.			
September 20, 2022	Order Granting Application for Relief Per Curiam			09/20/2022
	Document Name: Answer of Del. Co. Bd. of Elections is accepted			
	Comment: NOW, September 20, 2022, upon consideration of the Application to Submit Answer of Respondent Delaware County Board of Elections to Petitioners' Application for Special Relief in the Form of a Preliminary Injunction Nunc Pro Tunc (Application to Submit Answer), filed on September 19, 2022, in which the Delaware County Board of Elections seeks leave to file, nunc pro tunc, its Answer to Petitioners' Application for Special Relief that was due by noon on September 16, 2022, the Application to Submit Answer is GRANTED. The Prothonotary is directed to docket Delaware County Board of Elections' Answer to Petitioners' Application for Special Relief in the Form of a Preliminary Injunction, which is attached to the Application to Submit Answer as Exhibit A. It is further ORDERED that, upon consideration of the Answer of Respondent Luzerne County Board of Elections to Petitioners' Application for Special Relief in the Form of a Preliminary Injunction and Application to Submit Same Nunc Pro Tunc (Answer and/or Application), filed on September 16, 2022, in which the Luzerne County Board of Elections also seeks leave to file, nunc pro tunc, its Answer to Petitioners' Application for Special Relief that was due by noon on September 16, 2022, it appears that Luzerne County Board of Elections' Answer was already docketed as such on that date. Accordingly, to the extent the Answer and Application request nunc pro tunc relief, the Application portion is DISMISSED as moot.			
September 20, 2022	Entry of Appearance Greenberg, Kevin Michael Greenberg, Kevin Michael Elliot, Peter Poggi Roseman, Adam R. Elliot, Peter Poggi Roseman, Adam R.	Pennsylvania Democratic Party Pennsylvania Democratic Party Pennsylvania Democratic Party Pennsylvania Democratic Party Pennsylvania Democratic Party Pennsylvania Democratic Party	Intervenor Intervenor Intervenor Intervenor Intervenor Intervenor	
	Document Name: Attys Elliot, Roseman and Greenberg			
September 20, 2022	Entry of Appearance Bozovich, Heather Lynn	Clearfield County Board of Elections	Respondent	
	Document Name: of Heather Bozovich, Esq. on behalf of Respondent			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 20, 2022	Stipulation Filed			
	Gallagher, Kathleen A.	Gallagher, Connor R.	Petitioner	
	Gallagher, Kathleen A.	Republican National Committee	Petitioner	
	Gallagher, Kathleen A.	National Republican Senatorial Com	Petitioner	
	Gallagher, Kathleen A.	National Republican Congressional (	Petitioner	
	Gallagher, Kathleen A.	Republican Party of Pennsylvania	Petitioner	
	Gallagher, Kathleen A.	Ball, David	Petitioner	
	Gallagher, Kathleen A.	Bee, James D.	Petitioner	
	Gallagher, Kathleen A.	Biro, Debra A.	Petitioner	
	Gallagher, Kathleen A.	Daniel, Jesse D.	Petitioner	
	Gallagher, Kathleen A.	Deluca, Gwendolyn Mae	Petitioner	
	Gallagher, Kathleen A.	Farber, Ross M.	Petitioner	
	Gallagher, Kathleen A.	Kalcevic, Lynn Marie	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, Linda S.	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, William P.	Petitioner	
	Gallagher, Kathleen A.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Gallagher, Kathleen A.	Streib, S. Michael	Petitioner	
	King, Thomas W., III	Republican National Committee	Petitioner	
	King, Thomas W., III	Ball, David	Petitioner	
	King, Thomas W., III	Bee, James D.	Petitioner	
	King, Thomas W., III	Biro, Debra A.	Petitioner	
	King, Thomas W., III	Farber, Ross M.	Petitioner	
	King, Thomas W., III	Daniel, Jesse D.	Petitioner	
	King, Thomas W., III	Streib, S. Michael	Petitioner	
	King, Thomas W., III	Kozlovich, Linda S.	Petitioner	
	King, Thomas W., III	Republican Party of Pennsylvania	Petitioner	
	King, Thomas W., III	Siciliano-Biancaniello, Vallerie	Petitioner	
	King, Thomas W., III	National Republican Senatorial Com	Petitioner	
	King, Thomas W., III	National Republican Congressional (	Petitioner	
	Centrella, Nicholas Michael, Jr.	Delaware County Board of Elections	Respondent	
	Cosgrove, Joseph Matthias	Luzerne County Board of Elections	Respondent	
	DeWald, Jonathan Lee	Union County Board of Elections	Respondent	
	Field, Benjamin Hirsch	Philadelphia County Board of Electio	Respondent	
	Furman, Christopher P.	Tioga County Board of Elections	Respondent	
	Furman, Christopher P.	Clarion County Board of Elections	Respondent	
	Furman, Christopher P.	Susquehanna County Board of Elect	Respondent	
	Guiddy, Melissa Ann	Westmoreland County Board of Elec	Respondent	
	Herron, Maureen E.	Montgomery County Board of Electic	Respondent	
	Marlatt, John Amos	Montgomery County Board of Electic	Respondent	
	Pfautz, Michael Wu-Kung	Philadelphia County Board of Electio	Respondent	
	Roseberry, Catharine Meade	Lehigh County Board of Elections	Respondent	
	Roseman, Adam R.	Pennsylvania Democratic Party	Intervenor	
	Roseman, Adam R.	Pennsylvania Democratic Party	Intervenor	
	Santee, Richard Eugene	Northampton County Board of Electi	Respondent	
	Smith, Ryan Blake	Philadelphia County Board of Electio	Respondent	
	Talarico, Thomas S.	Erie County Board of Elections	Respondent	

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
	Taylor, Brian J.	Northampton County Board of Electi	Respondent	
	Vargo, Michael John	Northampton County Board of Electi	Respondent	
	White, H. William, III	Butler County Board of Elections	Respondent	
	Zagurskie, Donald Kenneth	Juniata County Board of Elections	Respondent	
	Cameron County Board of Elections		Respondent	
	Cumberland County Board of Elections		Respondent	
	Lycoming County Board of Elections		Respondent	
	Snyder County Board of Elections		Respondent	
	Wyoming County Board of Elections		Respondent	
	Document Name: Joint Stipulation of Facts			
September 20, 2022	Application for Relief			
	Gallagher, Kathleen A.	Republican National Committee	Petitioner	
	Gallagher, Kathleen A.	National Republican Senatorial Com	Petitioner	
	Gallagher, Kathleen A.	National Republican Congressional (	Petitioner	
	Gallagher, Kathleen A.	Republican Party of Pennsylvania	Petitioner	
	Gallagher, Kathleen A.	Ball, David	Petitioner	
	Gallagher, Kathleen A.	Bee, James D.	Petitioner	
	Gallagher, Kathleen A.	Biro, Debra A.	Petitioner	
	Gallagher, Kathleen A.	Daniel, Jesse D.	Petitioner	
	Gallagher, Kathleen A.	Deluca, Gwendolyn Mae	Petitioner	
	Gallagher, Kathleen A.	Farber, Ross M.	Petitioner	
	Gallagher, Kathleen A.	Gallagher, Connor R.	Petitioner	
	Gallagher, Kathleen A.	Kalcevic, Lynn Marie	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, Linda S.	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, William P.	Petitioner	
	Gallagher, Kathleen A.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Gallagher, Kathleen A.	Streib, S. Michael	Petitioner	
	Document Name: Application for Leave to File Reply in Support of Application for Special Relief in the form of a PI			
September 21, 2022	Answer to Application for Relief			
	Centrella, Nicholas Michael, Jr.	Delaware County Board of Elections	Respondent	
	Document Name: Opposition of Resp Delaware Co Bd of Elections to Pets' App for Leave to File Reply			
September 21, 2022	Application to be Admitted Pro Hac Vice Filed			
	Bonin, Adam Craig	Democratic Senatorial Campaign Co	Intervenor	
	Bonin, Adam Craig	Democratic Congressional Campaig	Intervenor	
	Document Name: of Justin Baxenberg, Esq.			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 21, 2022	Order Granting Application for Relief Per Curiam			09/21/2022
	Document Name: Application for Leave to File a Reply is Granted/ Petitioners' Reply is Due Setp. 21, 2022 4:00pm			
	Comment: NOW, September 21, 2022, upon consideration of Petitioners' Application for Leave to File Reply in Support of Application for Special Relief in the Form of a Preliminary Injunction (Application to File Reply), and Respondent Delaware County Board of Elections' answer in opposition thereto (Answer), the Application to File Reply is GRANTED, in part. Petitioners reply (4 copies) shall be filed and served no later than 4:00 p.m. today, September 21, 2022, and shall include Petitioners' response(s) to the potential bars to relief asserted by Respondents in their respective answers in opposition to the Application for Special Relief in the Form of a Preliminary Injunction (Application for Preliminary Injunction). All parties and Proposed Intervenors shall be prepared to discuss and present oral argument on laches as a potential bar to the relief sought in the Application for Preliminary Injunction at the status conference currently scheduled for tomorrow, at 10:00 a.m., via WebEx videoconferencing. ¹ To the extent Respondent Delaware County Board of Elections' Answer requests leave on behalf of it and all other Respondents to file sur-replies to Petitioners' reply, the Court will hold that request in abeyance until after the September 22, 2022 conference.			
	1 The status conference will be live streamed via a link posted on the Court's website.			
September 21, 2022	Answer Filed Talarico, Thomas S.	Erie County Board of Elections	Respondent	
	Document Name: Erie Co. Bd. of Elections Joinder in Commonwealth's Answer to Application for Prelim. Injctn.			
September 21, 2022	Order Granting Application to be Admitted Pro Hac Vice Per Curiam			09/21/2022
	Document Name: Uzoma N. Nkwonta, Esq. for DSCC and DCCC			
	Comment: NOW, September 21, 2022, upon consideration of the application of Adam C. Bonin, Esq., for admission pro hac vice of Uzoma N. Nkwonta, Esq., on behalf of Proposed Intervenors Democratic Senatorial Campaign Committee (DSCC) and Democratic Congressional Campaign Committee (DCCC), it is hereby ordered: (1) Uzoma N. Nkwonta, Esq. is admitted pro hac vice to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301, as co-counsel on behalf of said Proposed Intervenors in this matter; (2) Uzoma N. Nkwonta, Esq. shall abide by the rules of this Court including all disciplinary rules; (3) Uzoma N. Nkwonta, Esq. shall immediately notify this Court of any matter affecting his standing at the bar of any other court where he may be admitted to practice; and (4) Adam C. Bonin, Esq., the moving attorney herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of said Proposed Intervenors.			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 21, 2022	Order Granting Application to be Admitted Pro Hac Vice Per Curiam			09/21/2022
	Document Name: Atty. Alexander F. Atkins, Esq. for DSCC and DCCC			
	Comment: NOW, September 21, 2022, upon consideration of the application of Adam C. Bonin, Esq., for admission pro hac vice of Alexander F. Atkins, Esq., on behalf of Proposed Intervenors Democratic Senatorial Campaign Committee (DSCC) and Democratic Congressional Campaign Committee (DCCC), it is hereby ordered:			
	(1) Alexander F. Atkins, Esq. is admitted pro hac vice to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301, as co-counsel on behalf of said Proposed Intervenors in this matter;			
	(2) Alexander F. Atkins, Esq. shall abide by the rules of this Court including all disciplinary rules;			
	(3) Alexander F. Atkins, Esq. shall immediately notify this Court of any matter affecting his standing at the bar of any other court where he may be admitted to practice; and			
	(4) Adam C. Bonin, Esq., the moving attorney herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of said Proposed Intervenors.			
September 21, 2022	Order Granting Application to be Admitted Pro Hac Vice Per Curiam			09/21/2022
	Document Name: Daniela Lorenzo, Esq. for DSCC and DCCC			
	Comment: NOW, September 21, 2022, upon consideration of the application of Adam C. Bonin, Esq., for admission pro hac vice of Daniela Lorenzo, Esq., on behalf of Proposed Intervenors Democratic Senatorial Campaign Committee (DSCC) and Democratic Congressional Campaign Committee (DCCC), it is hereby ordered:			
	(1) Daniela Lorenzo, Esq. is admitted pro hac vice to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301, as co-counsel on behalf of said Proposed Intervenors in this matter;			
	(2) Daniela Lorenzo, Esq. shall abide by the rules of this Court including all disciplinary rules;			
	(3) Daniela Lorenzo, Esq. shall immediately notify this Court of any matter affecting her standing at the bar of any other court where she may be admitted to practice; and			
	(4) Adam C. Bonin, Esq., the moving attorney herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of said Proposed Intervenors.			
September 21, 2022	Order Granting Application to be Admitted Pro Hac Vice Per Curiam			09/21/2022
	Document Name: Justin Baxenberg, Esq. for DSCC and DCCC			
	Comment: NOW, September 21, 2022, upon consideration of the application of Adam C. Bonin, Esq., for admission pro hac vice of Justin Baxenberg, Esq., on behalf of Proposed Intervenors Democratic Senatorial Campaign Committee (DSCC) and Democratic Congressional Campaign Committee (DCCC), it is hereby ordered:			
	(1) Justin Baxenberg, Esq. is admitted pro hac vice to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301, as co-counsel on behalf of said Proposed Intervenors in this matter;			
	(2) Justin Baxenberg, Esq. shall abide by the rules of this Court including all disciplinary rules;			
	(3) Justin Baxenberg, Esq. shall immediately notify this Court of any matter affecting his standing at the bar of any other court where he may be admitted to practice; and			
	(4) Adam C. Bonin, Esq., the moving attorney herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of said Proposed Intervenors.			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 21, 2022	Application for Extension of Time to File			
	Gallagher, Kathleen A.	Republican National Committee	Petitioner	
	Gallagher, Kathleen A.	National Republican Senatorial Com	Petitioner	
	Gallagher, Kathleen A.	National Republican Congressional (	Petitioner	
	Gallagher, Kathleen A.	Republican Party of Pennsylvania	Petitioner	
	Gallagher, Kathleen A.	Ball, David	Petitioner	
	Gallagher, Kathleen A.	Bee, James D.	Petitioner	
	Gallagher, Kathleen A.	Biro, Debra A.	Petitioner	
	Gallagher, Kathleen A.	Daniel, Jesse D.	Petitioner	
	Gallagher, Kathleen A.	Deluca, Gwendolyn Mae	Petitioner	
	Gallagher, Kathleen A.	Farber, Ross M.	Petitioner	
	Gallagher, Kathleen A.	Gallagher, Connor R.	Petitioner	
	Gallagher, Kathleen A.	Kalcevic, Lynn Marie	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, Linda S.	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, William P.	Petitioner	
	Gallagher, Kathleen A.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Gallagher, Kathleen A.	Streib, S. Michael	Petitioner	
September 21, 2022	Order Granting Application for Extension of Time to File Per Curiam			09/21/2022
	Document Name: Petitioners' Reply Deadline is now extended to 10:00pm today, Sept. 21, 2022			
	Comment: NOW, September 21, 2022, upon consideration of Petitioners' request for extension of the deadline set by this Court's September 21, 2022 Order for the filing of a reply in support of the Application for Special Relief in the Form of a Preliminary Injunction, which was due no later than 4:00 p.m. today, the request is GRANTED. The deadline by which Petitioners shall file their reply, as set forth in in this Court's September 21, 2022 Order, is now extended to 10:00 p.m. today, September 21, 2022.			
September 21, 2022	Certificate of Service Filed			
	Gallagher, Kathleen A.	Republican National Committee	Petitioner	
	Gallagher, Kathleen A.	National Republican Senatorial Com	Petitioner	
	Gallagher, Kathleen A.	National Republican Congressional (	Petitioner	
	Gallagher, Kathleen A.	Republican Party of Pennsylvania	Petitioner	
	Gallagher, Kathleen A.	Ball, David	Petitioner	
	Gallagher, Kathleen A.	Bee, James D.	Petitioner	
	Gallagher, Kathleen A.	Biro, Debra A.	Petitioner	
	Gallagher, Kathleen A.	Daniel, Jesse D.	Petitioner	
	Gallagher, Kathleen A.	Deluca, Gwendolyn Mae	Petitioner	
	Gallagher, Kathleen A.	Farber, Ross M.	Petitioner	
	Gallagher, Kathleen A.	Gallagher, Connor R.	Petitioner	
	Gallagher, Kathleen A.	Kalcevic, Lynn Marie	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, Linda S.	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, William P.	Petitioner	
	Gallagher, Kathleen A.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Gallagher, Kathleen A.	Streib, S. Michael	Petitioner	
	Document Name: Proof of Service of PFR on Adams Cty BOE and Phila. Cty. BOE			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 21, 2022	Petitioner's Reply Brief Filed			
	Gallagher, Kathleen A.	Republican National Committee	Petitioner	
	Gallagher, Kathleen A.	National Republican Senatorial Com	Petitioner	
	Gallagher, Kathleen A.	National Republican Congressional (	Petitioner	
	Gallagher, Kathleen A.	Republican Party of Pennsylvania	Petitioner	
	Gallagher, Kathleen A.	Ball, David	Petitioner	
	Gallagher, Kathleen A.	Bee, James D.	Petitioner	
	Gallagher, Kathleen A.	Biro, Debra A.	Petitioner	
	Gallagher, Kathleen A.	Daniel, Jesse D.	Petitioner	
	Gallagher, Kathleen A.	Deluca, Gwendolyn Mae	Petitioner	
	Gallagher, Kathleen A.	Farber, Ross M.	Petitioner	
	Gallagher, Kathleen A.	Gallagher, Connor R.	Petitioner	
	Gallagher, Kathleen A.	Kalcevic, Lynn Marie	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, Linda S.	Petitioner	
	Gallagher, Kathleen A.	Kozlovich, William P.	Petitioner	
	Gallagher, Kathleen A.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Gallagher, Kathleen A.	Streib, S. Michael	Petitioner	
	Breth, Thomas E.	Republican National Committee	Petitioner	
	Giancola, Russell David	Republican National Committee	Petitioner	
	King, Thomas W., III	Republican National Committee	Petitioner	
	Breth, Thomas E.	Ball, David	Petitioner	
	Breth, Thomas E.	Bee, James D.	Petitioner	
	Breth, Thomas E.	Biro, Debra A.	Petitioner	
	Breth, Thomas E.	Farber, Ross M.	Petitioner	
	Breth, Thomas E.	Daniel, Jesse D.	Petitioner	
	Breth, Thomas E.	Streib, S. Michael	Petitioner	
	Breth, Thomas E.	Kozlovich, Linda S.	Petitioner	
	Breth, Thomas E.	Gallagher, Connor R.	Petitioner	
	Breth, Thomas E.	Kalcevic, Lynn Marie	Petitioner	
	Breth, Thomas E.	Deluca, Gwendolyn Mae	Petitioner	
	Breth, Thomas E.	Kozlovich, William P.	Petitioner	
	Breth, Thomas E.	Republican Party of Pennsylvania	Petitioner	
	Breth, Thomas E.	Siciliano-Biancaniello, Vallerie	Petitioner	
	Breth, Thomas E.	National Republican Senatorial Com	Petitioner	
	Breth, Thomas E.	National Republican Congressional (	Petitioner	
	Giancola, Russell David	Ball, David	Petitioner	
	Giancola, Russell David	Bee, James D.	Petitioner	
	Giancola, Russell David	Biro, Debra A.	Petitioner	
	Giancola, Russell David	Farber, Ross M.	Petitioner	
	Giancola, Russell David	Daniel, Jesse D.	Petitioner	
	Giancola, Russell David	Streib, S. Michael	Petitioner	
	Giancola, Russell David	Kozlovich, Linda S.	Petitioner	
	Giancola, Russell David	Gallagher, Connor R.	Petitioner	
	Giancola, Russell David	Kalcevic, Lynn Marie	Petitioner	
	Giancola, Russell David	Deluca, Gwendolyn Mae	Petitioner	
	Giancola, Russell David	Kozlovich, William P.	Petitioner	

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	Giancola, Russell David	Republican Party of Pennsylvania	Petitioner	
	Giancola, Russell David	Siciliano-Biancanello, Vallerie	Petitioner	
	Giancola, Russell David	National Republican Senatorial Com	Petitioner	
	Giancola, Russell David	National Republican Congressional (	Petitioner	
	King, Thomas W., III	Ball, David	Petitioner	
	King, Thomas W., III	Bee, James D.	Petitioner	
	King, Thomas W., III	Biro, Debra A.	Petitioner	
	King, Thomas W., III	Farber, Ross M.	Petitioner	
	King, Thomas W., III	Daniel, Jesse D.	Petitioner	
	King, Thomas W., III	Streib, S. Michael	Petitioner	
	King, Thomas W., III	Kozlovich, Linda S.	Petitioner	
	King, Thomas W., III	Gallagher, Connor R.	Petitioner	
	King, Thomas W., III	Kalcevic, Lynn Marie	Petitioner	
	King, Thomas W., III	Deluca, Gwendolyn Mae	Petitioner	
	King, Thomas W., III	Kozlovich, William P.	Petitioner	
	King, Thomas W., III	Republican Party of Pennsylvania	Petitioner	
	King, Thomas W., III	Siciliano-Biancanello, Vallerie	Petitioner	
	King, Thomas W., III	National Republican Senatorial Com	Petitioner	
	King, Thomas W., III	National Republican Congressional (	Petitioner	
	Republican National Committee		Petitioner	
	National Republican Senatorial Committee		Petitioner	
	National Republican Congressional Committee		Petitioner	
	Republican Party of Pennsylvania		Petitioner	
	Ball, David		Petitioner	
	Bee, James D.		Petitioner	
	Biro, Debra A.		Petitioner	
	Daniel, Jesse D.		Petitioner	
	Deluca, Gwendolyn Mae		Petitioner	
	Farber, Ross M.		Petitioner	
	Gallagher, Connor R.		Petitioner	
	Kalcevic, Lynn Marie		Petitioner	
	Kozlovich, Linda S.		Petitioner	
	Kozlovich, William P.		Petitioner	
	Siciliano-Biancanello, Vallerie		Petitioner	
	Streib, S. Michael		Petitioner	

Document Name: Pet. Omnibus Reply in Support of App. for Special Relief in the Form of a PI

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

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September 30, 2022



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 22, 2022	Order Granting Application for Intervention Ceisler, Ellen			09/22/2022
	Document Name: Intervention Granted/ Hearing of Sept. 28, 2022 Cancelled/ Briefing Set			
	Comment: AND NOW, this 22nd day of September 2022, upon consideration of the Applications for Leave to Intervene filed by the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee (DSCC and DCCC), and the Democratic National Committee and the Pennsylvania Democratic Party (DNC and PDP) (collectively, Applications to Intervene), and following a status conference during which the parties agreed there is no objection to the proposed intervention, the Applications to Intervene are GRANTED. The Court directs the Prothonotary to enter DSCC, DCCC, DNC, and PDP (collectively, Intervenors) on the docket in this matter as Intervenor-Respondents. The Prothonotary is further directed to docket DSCC and DCCC's and DNC and PDP's preliminary objections, which are attached to the respective Applications to Intervene. It is further ORDERED as follows: 1. The hearing on Petitioners' Application for Special Relief in the Form of a Preliminary Injunction Under Pa.R.A.P. 1532 (Application for Preliminary Injunction), scheduled for Wednesday, September 28, 2022, at 10:00 a.m., in Courtroom 3001, Third Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, is CANCELLED. 2. The parties and Intervenors shall file and serve briefs (4 copies) no later than 5:00 p.m. on Monday, September 26, 2022, which shall address laches as a potential bar to the relief requested in the Application for Preliminary Injunction, and any remaining arguments pertaining to the six preliminary injunction criteria. 3. The parties and Intervenors shall also file a joint stipulation of exhibits no later than 5:00 p.m. on Monday, September 26, 2022. 4. As discussed at the status conference held on this date, and there being no objection thereto, the Court will rule on the Application for Preliminary Injunction on the papers following the Court's receipt of the above briefs and joint stipulation of exhibits, unless otherwise ordered.			
September 22, 2022	Preliminary Objections			
	Atkins, Alexander F.	Democratic Senatorial Campaign Co	Intervenor	
	Atkins, Alexander F.	Democratic Congressional Campaign	Intervenor	
	Baxenberg, Justin	Democratic Senatorial Campaign Co	Intervenor	
	Baxenberg, Justin	Democratic Congressional Campaign	Intervenor	
	Bonin, Adam Craig	Democratic Senatorial Campaign Co	Intervenor	
	Bonin, Adam Craig	Democratic Congressional Campaign	Intervenor	
	Ford, Timothy James	Democratic Senatorial Campaign Co	Intervenor	
	Ford, Timothy James	Democratic Congressional Campaign	Intervenor	
	Ghormoz, Claire Blewitt	Democratic Senatorial Campaign Co	Intervenor	
	Ghormoz, Claire Blewitt	Democratic Congressional Campaign	Intervenor	
	Document Name: of Respondent Intervenors DSCC and DCCC			
September 22, 2022	Preliminary Objections			
	Democratic National Committee		Intervenor	
	Pennsylvania Democratic Party		Intervenor	
	Document Name: of Respondent Intervenors DNC and PDP			

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September 30, 2022



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 23, 2022	Application to be Admitted Pro Hac Vice Filed			
	Levine, Clifford B.	Democratic National Committee	Intervenor	
	Levine, Clifford B.	Pennsylvania Democratic Party	Intervenor	
	Levine, Clifford B.	Democratic National Committee	Intervenor	
	Levine, Clifford B.	Pennsylvania Democratic Party	Intervenor	
	Document Name: Clifford B. Levine Esq. on behalf of Seth P. Waxman Esq.			
September 23, 2022	Application to be Admitted Pro Hac Vice Filed			
	Levine, Clifford B.	Pennsylvania Democratic Party	Intervenor	
	Levine, Clifford B.	Democratic National Committee	Intervenor	
	Levine, Clifford B.	Democratic National Committee	Intervenor	
	Levine, Clifford B.	Pennsylvania Democratic Party	Intervenor	
	Document Name: Clifford B. Levine Esq. on behalf of Daniel S. Volchok Esq.			
September 23, 2022	Application to be Admitted Pro Hac Vice Filed			
	Levine, Clifford B.	Democratic National Committee	Intervenor	
	Levine, Clifford B.	Pennsylvania Democratic Party	Intervenor	
	Levine, Clifford B.	Democratic National Committee	Intervenor	
	Levine, Clifford B.	Pennsylvania Democratic Party	Intervenor	
	Document Name: Clifford B. Livine Esq. on behalf of Christopher E. Babbitt Esq.			
September 23, 2022	Entry of Appearance			
	Thomson, Aimee Diane	Philadelphia County Board of Electic Respondent		
	Document Name: Atty. Thomson for Philadelphia Co. Bd. of Elections			
September 26, 2022	Entry of Appearance			
	Coyle, Casey Alan	Carbon County Board of Elections	Respondent	
	Jewart, Anna Skipper	Carbon County Board of Elections	Respondent	
	Dupuis, Elizabeth A.	Carbon County Board of Elections	Respondent	
	Document Name: Attys. Dupuis, Coyle and Jewart for Carbon Co. Bd. of Elections			
September 26, 2022	Order Granting Application to be Admitted Pro Hac Vice			09/26/2022
	Per Curiam			
	Document Name: Atty. Waxman for DNC and PDP			
	Comment: NOW, September 26, 2022, upon consideration of the application of Clifford B. Levine, Esq., for admission pro hac vice of Seth P. Waxman, Esq., on behalf of Intervenor Democratic National Committee and Pennsylvania Democratic Party, it is hereby ordered:			
	(1) Seth P. Waxman, Esq. is admitted pro hac vice to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301, as co-counsel on behalf of said Intervenor in this matter;			
	(2) Seth P. Waxman, Esq. shall abide by the rules of this Court including all disciplinary rules;			
	(3) Seth P. Waxman, Esq. shall immediately notify this Court of any matter affecting his standing at the bar of any other court where he may be admitted to practice; and			
	(4) Clifford B. Levine, Esq., the moving attorney herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of said Intervenor.			

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September 30, 2022



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 26, 2022	Order Granting Application to be Admitted Pro Hac Vice Per Curiam			09/26/2022
	Document Name: Atty. Volchok for DNC and PDP			
	Comment: NOW, September 26, 2022, upon consideration of the application of Clifford B. Levine, Esq., for admission pro hac vice of Daniel S. Volchok, Esq., on behalf of Intervenors Democratic National Committee and Pennsylvania Democratic Party, it is hereby ordered: (1) Daniel S. Volchok, Esq. is admitted pro hac vice to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301, as co-counsel on behalf of said Intervenors in this matter; (2) Daniel S. Volchok, Esq. shall abide by the rules of this Court including all disciplinary rules; (3) Daniel S. Volchok, Esq. shall immediately notify this Court of any matter affecting his standing at the bar of any other court where he may be admitted to practice; and (4) Clifford B. Levine, Esq., the moving attorney herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of said Intervenors.			
September 26, 2022	Order Granting Application to be Admitted Pro Hac Vice Per Curiam			09/26/2022
	Document Name: Atty. Babbitt for DNC and PDP			
	Comment: NOW, September 26, 2022, upon consideration of the application of Clifford B. Levine, Esq., for admission pro hac vice of Christopher E. Babbitt, Esq., on behalf of Intervenors Democratic National Committee and Pennsylvania Democratic Party, it is hereby ordered: (1) Christopher E. Babbitt, Esq. is admitted pro hac vice to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301, as co-counsel on behalf of said Intervenors in this matter; (2) Christopher E. Babbitt, Esq. shall abide by the rules of this Court including all disciplinary rules; (3) Christopher E. Babbitt, Esq. shall immediately notify this Court of any matter affecting his standing at the bar of any other court where he may be admitted to practice; and (4) Clifford B. Levine, Esq., the moving attorney herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of said Intervenors.			
September 26, 2022	Entry of Appearance McGrath, Sean James	Philadelphia County Board of Electio	Respondent	
	Document Name: Sean James McGrath Esq. - Philadelphia County Board of Elections - Respondent.			
September 26, 2022	Letter Kauffman, Cody Lee	Berks County Board of Elections	Respondent	
	Document Name: In Response to 9/22/22 Court Order.			
September 26, 2022	Entry of Appearance Newcomer, Melvin Eugene	Lancaster County Board of Elections	Respondent	
	Document Name: Atty. Newcomer for Lancaster Co. Bd. of Elections			
September 26, 2022	Answer to Petition for Review Newcomer, Melvin Eugene	Lancaster County Board of Elections	Respondent	
	Document Name: of Lancaster Co. Bd. of Elections			
September 26, 2022	Respondent's Brief Filed Northampton County Board of Elections		Respondent	
	Document Name: In Support of Response to Petitioners' Application for P.I.			

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 26, 2022	Respondent's Brief Filed			
	Bedford County Board of Elections		Respondent	
	Centre County Board of Elections		Respondent	
	Columbia County Board of Elections		Respondent	
	Dauphin County Board of Elections		Respondent	
	Fayette County Board of Elections		Respondent	
	Huntingdon County Board of Elections		Respondent	
	Indiana County Board of Elections		Respondent	
	Jefferson County Board of Elections		Respondent	
	Lawrence County Board of Elections		Respondent	
	Lebanon County Board of Elections		Respondent	
	Northumberland County Board of Elections		Respondent	
	Venango County Board of Elections		Respondent	
	York County Board of Elections		Respondent	
	Document Name: In Opposition to Petitioners' Application for P.I.			
September 26, 2022	Respondent's Brief Filed			
	Allegheny County Board of Elections		Respondent	
	Document Name: In Opposition to Application for P.I.			
September 26, 2022	Respondent's Brief Filed			
	Montgomery County Board of Elections		Respondent	
	Document Name: In Opposition to Petitioners' Application for Special Relief in the form of P.I.			
September 26, 2022	Intervenor's Brief			
	Democratic National Committee		Intervenor	
	Pennsylvania Democratic Party		Intervenor	
	Document Name: In Opposition to Petitioners' Application for P.I.			
September 26, 2022	Respondent's Brief Filed			
	Bucks County Board of Elections		Respondent	
	Document Name: In Opposition to Application for Special Relief in the form of P.I.			

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 26, 2022	Intervenor's Brief Democratic Senatorial Campaign Committee (DSCC) Democratic Congressional Campaign Committee (DCCC)		Intervenor Intervenor	
	Document Name: Surreply in Opposition to Petitioners' Application for Special Relief in the form of P.I.			
September 26, 2022	Amicus Curiae Brief Lawyers Democracy Fund		Amicus Curiae	
	Document Name: In Support of Petitioners			
September 26, 2022	Respondent's Brief Filed Cosgrove, Joseph Matthias Luzerne County Board of Elections	Luzerne County Board of Elections	Respondent Respondent	
September 26, 2022	Respondent's Brief Filed Chapman, Leigh M. Mathis, Jessica		Respondent Respondent	
	Document Name: In Opposition to Petitioners' Application for Special Relief in the form of P.I.			
September 26, 2022	Respondent's Brief Filed Philadelphia County Board of Elections		Respondent	
	Document Name: In Opposition to Petitioners' Application for P.I.			
September 26, 2022	Joinder in Brief Delaware County Board of Elections		Respondent	
	Document Name: Joins in Brief filed by Allegheny Co. Board of Elections			
September 26, 2022	Petitioner's Brief Filed Republican National Committee National Republican Senatorial Committee National Republican Congressional Committee Republican Party of Pennsylvania		Petitioner Petitioner Petitioner Petitioner	
	Document Name: In Support of Application for Special Relief in the form of P.I.			

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Commonwealth Court of Pennsylvania

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date	
September 26, 2022	Exhibit Republican National Committee National Republican Senatorial Committee National Republican Congressional Committee Republican Party of Pennsylvania Ball, David Bee, James D. Biro, Debra A. Daniel, Jesse D. Deluca, Gwendolyn Mae Farber, Ross M. Gallagher, Connor R. Kalcevic, Lynn Marie Kozlovich, Linda S. Kozlovich, William P. Siciliano-Biancaniello, Vallerie Streib, S. Michael		Petitioner Petitioner Petitioner Petitioner Petitioner Petitioner Petitioner Petitioner Petitioner Petitioner Petitioner Petitioner Petitioner Petitioner Petitioner		
	Document Name: Joint Stipulation of Exhibits				
September 26, 2022	Respondent's Brief Filed Lehigh County Board of Elections		Respondent		
	Document Name: Memorandum in Opposition to P.I.				
September 27, 2022	Application for Relief Wiygul, Robert Andrew Wiygul, Robert Andrew	Chapman, Leigh M. Mathis, Jessica	Respondent Respondent		
	Document Name: Commonwealth Respondents' Application for Leave to file a Sur Reply				
September 28, 2022	Order Denying Application for Relief Per Curiam			09/28/2022	
	Document Name: Commonwealth Respondents' Application to File a Sur Reply is Denied Comment: NOW, September 28, 2022, upon consideration of Commonwealth Respondents' Application for Leave to File a Sur-Reply addressing Petitioners' New Argument Regarding Subject Matter Jurisdiction (Application), the Application is DENIED.				
September 29, 2022	Memorandum Opinion Filed Ceisler, Ellen			09/29/2022	
	Document Name: Memorandum Opinion : App. for Special Relief is Denied. Comment: AND NOW, this 29th day of September, 2022, the Application for Special Relief in the Form of a Preliminary Injunction Under Pa.R.A.P. 1532, filed by Petitioners, is DENIED.				
September 30, 2022	Letter Mathews, Lauren Lynn	Washington County Board of Electio	Respondent		
	Document Name: Re: Wash. Cnty Bd of Elections - No answer will be filed to PFR.				

Exhibit B
to Notice of Appeal
(Request for Transcript)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<p>REPUBLICAN NATIONAL COMMITTEE, <i>et al.</i>,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>LEIGH M. CHAPMAN, in her official capacity as Acting Secretary of the Commonwealth, <i>et al.</i>,</p> <p style="text-align: center;">Respondents.</p>	<p>No. 447 MD 2022</p>
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REQUEST FOR TRANSCRIPT

A Notice of Appeal having been filed in this matter, the official court reporter is hereby requested to produce, certify, and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

Respectfully submitted,

Dated: September 30, 2022

/s/ Kathleen A. Gallagher
Kathleen A. Gallagher
PA I.D. #37950
Russell D. Giancola
PA. I.D. #200058
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tking@dmkcg.com
tbreth@dmkcg.com

Counsel for Petitioners

Exhibit C
to Notice of Appeal
(Jurisdictional Statement)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 447 MD 2022

Republican National Committee, National Republican Senatorial Committee,
National Republican Congressional Committee, Republican Party of Pennsylvania,
David Ball, James D. Bee, Debra A. Biro, Jesse D. Daniel,
Gwendolyn Mae DeLuca, Ross M. Farber, Connor R. Gallagher,
Lynn Marie Kalcevic, Linda S. Kozlovich, William P. Kozlovich,
Vallerie Siciliano-Biancaniello, and S. Michael Streib,

Petitioners,

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the
Commonwealth; Jessica Mathis, in her official capacity as Director of the
Pennsylvania Bureau of Election Services and Notaries;
and All 67 County Boards of Elections
(See back of cover for list of County Respondents),

Respondents.

PETITIONERS' JURISDICTIONAL STATEMENT

GALLAGHER GIANCOLA LLC

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Russell D. Giancola
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**DILLON, McCANDLESS, KING,
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724.283.2200 (Phone)

Counsel for Petitioners

Adams County Board of Elections; Allegheny County Board of Elections;
Armstrong County Board of Elections; Beaver County Board of Elections;
Bedford County Board of Elections; Berks County Board of Elections;
Blair County Board of Elections; Bradford County Board of Elections;
Bucks County Board of Elections; Butler County Board of Elections;
Cambria County Board of Elections; Cameron County Board of Elections;
Carbon County Board of Elections; Centre County Board of Elections;
Chester County Board of Elections; Clarion County Board of Elections;
Clearfield County Board of Elections; Clinton County Board of Elections;
Columbia County Board of Elections; Crawford County Board of Elections;
Cumberland County Board of Elections; Dauphin County Board of Elections;
Delaware County Board of Elections; Elk County Board of Elections;
Erie County Board of Elections; Fayette County Board of Elections;
Forest County Board of Elections; Franklin County Board of Elections;
Fulton County Board of Elections; Greene County Board of Elections;
Huntingdon County Board of Elections; Indiana County Board of Elections;
Jefferson County Board of Elections; Juniata County Board of Elections;
Lackawanna County Board of Elections; Lancaster County Board of Elections;
Lawrence County Board of Elections; Lebanon County Board of Elections;
Lehigh County Board of Elections; Luzerne County Board of Elections;
Lycoming County Board of Elections; McKean County Board of Elections;
Mercer County Board of Elections; Mifflin County Board of Elections;
Monroe County Board of Elections; Montgomery County Board of Elections;
Montour County Board of Elections; Northampton County Board of Elections;
Northumberland County Board of Elections; Perry County Board of Elections;
Philadelphia County Board of Elections; Pike County Board of Elections;
Potter County Board of Elections; Schuylkill County Board of Elections;
Snyder County Board of Elections; Somerset County Board of Elections;
Sullivan County Board of Elections; Susquehanna County Board of Elections;
Tioga County Board of Elections; Union County Board of Elections;
Venango County Board of Elections; Warren County Board of Elections;
Washington County Board of Elections; Wayne County Board of Elections;
Westmoreland County Board of Elections; Wyoming County Board of Elections;
and York County Board of Elections,

Respondents.

JURISDICTIONAL STATEMENT

Pursuant to Rules 909 and 910 of the Pennsylvania Rules of Appellate Procedure, Petitioners file this Jurisdictional Statement in support of their Notice of Appeal of the September 29, 2022 memorandum opinion and order of the Commonwealth Court of Pennsylvania, which denied Petitioners' Application for Special Relief in the Form of a Preliminary Injunction Under Pa. R.A.P. 1532.

I. Opinion of the Court Below

Petitioners appeal from the memorandum opinion and order entered by the Honorable Ellen Ceisler of the Commonwealth Court of Pennsylvania on September 29, 2022. True and correct copies of the Commonwealth Court's September 29, 2022 Memorandum Opinion and Order are collectively attached hereto as Exhibit 1.

II. Basis for Jurisdiction of the Pennsylvania Supreme Court

Pursuant to Rule 1101(a)(1) of the Pennsylvania Rules of Appellate Procedure, an order of the Commonwealth Court entered in "any matter which was originally commenced in the Commonwealth Court and which does not constitute an appeal of the Commonwealth Court from another court, a district justice or another government unit" may be appealed as of right to the Supreme Court. Pa. R.A.P. 1101(a)(1). This action was commenced in the Commonwealth Court pursuant to its original jurisdiction. *See* 42 Pa. C.S. § 761(a)(1). Accordingly, the Supreme Court has exclusive jurisdiction over this matter. *See* 42 Pa. C.S. § 723(a).

The Memorandum Opinion and Order are immediately appealable because they deny an injunction. *See* Pa. R.A.P. 311(a)(4); *see also SEIU Healthcare Pennsylvania v. Com.*, 104 A.3d 495, 501 n.6 (Pa. 2014) (holding that “[t]he Commonwealth Court’s order denying SEIU’s preliminary injunction is appealable to this Court as of right pursuant to Pa.R.A.P. 311(a)(4) (providing that an appeal may generally be taken as of right from an order that grants or denies an injunction); *see also* 42 Pa. C.S. §723(a) (providing that this Court shall have exclusive jurisdiction of appeals from final orders of the Commonwealth Court entered in any matter originally commenced in that Court).”).

III. Text of the Order in Question

AND NOW, this 29th day of September, 2022, the Application for Special Relief in the Form of a Preliminary Injunction Under Pa.R.A.P. 1532, filed by Petitioners, is DENIED.

/s/ Ellen Ceisler

ELLEN CEISLER, Judge

IV. Concise Statement of the Procedural History

On September 1, 2022, Petitioners, Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee, Republican Party of Pennsylvania, David Ball, James D. Bee, Debra A. Biro, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Connor R. Gallagher, Lynn

Marie Kalcevic, Linda S. Kozlovich, William P. Kozlovich, Vallerie Siciliano-Biancaniello, and S. Michael Streib (“Petitioners”) filed a Petition for Review in the Commonwealth Court pursuant to its original jurisdiction. Petitioners’ Petition for Review seeks an Order declaring that the County Boards of Election are not authorized to adopt or enact procedures for the curing of absentee and mail-in ballots that fail to comply with the Pennsylvania Election Code’s signature and secrecy envelope requirements.

On September 7, 2022, Petitioners filed an Application for Special Relief in the Form of a Preliminary Injunction Under Pa. R.A.P. 1532 (“Application for Preliminary Injunction”) and a memorandum of law in support. In the Application for Preliminary Injunction, Petitioners seek to enjoin the county boards of elections from developing or implementing cure procedures to address voters’ failures to comply with the Election Code’s signature and secrecy envelope requirements for mail-in and absentee ballots.

On September 9, 2022, the Commonwealth Court scheduled a hearing on the Application for Preliminary Injunction to take place on September 28, 2022, directing the filing of answers in opposition to the Application for Preliminary Injunction by September 16, 2022, and a joint stipulation of facts, indicating which county boards of elections have implemented, or plan to implement, notice and opportunity to cure

procedures with respect to mail-in and absentee ballots, and scheduled a status conference to take place on September 22, 2022.

On September 20, 2022, Petitioners filed a joint stipulation of facts, signed by Petitioners and 42 county boards of elections. The joint stipulation of facts reveals that at least 15 county boards of elections have implemented some form of a cure procedure for absentee and mail-in ballots for a voter's failure to comply with signature or secrecy envelope requirements.

At the status conference on September 22, 2022, the Commonwealth Court decided to hold a hearing. Following the status conference and hearing, the Commonwealth Court entered an order canceling the September 28, 2022 hearing and directing the parties to file supplemental briefs. Petitioners and several Respondents filed supplemental briefs on September 26, 2022.

On September 29, 2022, the Commonwealth Court entered its memorandum opinion and order, from which Petitioners appeal.

V. Question Presented for Review

Whether the Commonwealth Court erred by denying the Petitioners' Application for Preliminary Injunction?

ANSWER: Yes.

Respectfully submitted,

Dated: September 30, 2022

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

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Russell D. Giancola

PA. I.D. #200058

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Counsel for Petitioners

Exhibit 1
to Jurisdictional Statement

(Memorandum Opinion
and Order)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Republican National Committee; :
National Republican Senatorial :
Committee; National Republican :
Congressional Committee; Republican :
Party of Pennsylvania; David Ball; :
James D. Bee; Debra A. Biro; Jesse D. :
Daniel; Gwendolyn Mae Deluca; Ross :
M. Farber; Connor R. Gallagher; Lynn :
Marie Kalcevic; Linda S. Kozlovich; :
William P. Kozlovich; Vallerie :
Siciliano-Biancaniello; S. Michael :
Streib, :

Petitioners :

v. :

No. 447 M.D. 2022

Leigh M. Chapman, in her official :
capacity as Acting Secretary of the :
Commonwealth; Jessica Mathis, in :
her official capacity as Director of the :
Pennsylvania Bureau of Election :
Services and Notaries; Adams County :
Board of Elections; Allegheny County :
Board of Elections; Armstrong County :
Board of Elections; Beaver County :
Board of Elections; Bedford County :
Board of Elections; Berks County Board :
of Elections; Blair County Board of :
Elections; Bradford County Board of :
Elections; Bucks County Board of :
Elections; Butler County Board of :
Elections; Cambria County Board of :
Elections; Cameron County Board of :
Elections; Carbon County Board of :
Elections; Centre County Board of :
Elections; Chester County Board of :
Elections; Clarion County Board of :
Elections; Clearfield County Board of :
Elections; Clinton County Board of :
Elections; Columbia County Board of :

Elections; Crawford County Board of :
Elections; Cumberland County Board :
of Elections; Dauphin County Board of :
Elections; Delaware County Board of :
Elections; Elk County Board of :
Elections; Erie County Board of :
Elections; Fayette County Board of :
Elections; Forest County Board of :
Elections; Franklin County Board of :
Elections; Fulton County Board of :
Elections; Greene County Board of :
Elections; Huntingdon County Board :
of Elections; Indiana County Board of :
Elections; Jefferson County Board of :
Elections; Juniata County Board of :
Elections; Lackawanna County Board :
of Elections; Lancaster County Board :
of Elections; Lawrence County Board :
of Elections; Lebanon County Board :
of Elections; Lehigh County Board of :
Elections; Luzerne County Board of :
Elections; Lycoming County Board of :
Elections; McKean County Board of :
Elections; Mercer County Board of :
Elections; Mifflin County Board of :
Elections; Monroe County Board of :
Elections; Montgomery County Board :
of Elections; Montour County Board of :
Elections; Northampton County Board :
of Elections; Northumberland County :
Board of Elections; Perry County :
Board of Elections; Philadelphia County :
Board of Elections; Pike County Board :
of Elections; Potter County Board of :
Elections; Schuylkill County Board of :
Elections; Snyder County Board of :
Elections; Somerset County Board of :
Elections; Sullivan County Board of :
Elections; Susquehanna County Board :
of Elections; Tioga County Board of :
Elections; Union County Board of :
Elections; Venango County Board of :

Elections; Warren County Board of :
Elections; Wayne County Board of :
Elections; Westmoreland County Board :
of Elections; Wyoming County Board of:
Elections; and York County Board of :
Elections, :
Respondents :

BEFORE: HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE CEISLER

FILED: September 29, 2022

On September 1, 2022, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the National Republican Senatorial Committee (NRSC), and the Republican Party of Pennsylvania (RPP) (collectively, Republican Committee Petitioners), and David Ball, James D. Bee, Debra A. Biro, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Connor R. Gallagher, Lynn Marie Kalcevic, Linda S. Kozlovich, William P. Kozlovich, Vallerie Siciliano-Biancaniello, and S. Michael Streib (collectively, Voter Petitioners)¹ (all collectively referred to as Petitioners), filed a Petition for Review Directed to this Court’s Original Jurisdiction Seeking Declaratory and Injunctive Relief (Petition for Review) against Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth (Acting Secretary), and Jessica Mathis, in her official capacity as Director of the Pennsylvania Bureau of Election Services and

¹ Voter Petitioners are 12 registered voters who reside in Washington County, Cambria County, Northampton County, Indiana County, Beaver County, Westmoreland County, Allegheny County, Fayette County, Delaware County, and Butler County, who regularly vote in both primary and general elections, and who intend to vote for candidates in all races, including for federal and statewide offices, that will be on the ballot in the upcoming General Election. (Pet. for Rev. ¶¶ 20-32.)

Notaries (collectively, Commonwealth Respondents), and the Commonwealth's 67 county boards of elections (County Boards).² Petitioners allege that several County Boards have taken it upon themselves to develop and implement notice and opportunity to cure procedures with respect to absentee and mail-in ballots that fail to comply with the Pennsylvania Election Code's (Election Code)³ signature and ballot secrecy requirements, for the November 8, 2022 General Election and beyond, in direct contravention of the Election Code and our Supreme Court's holding in *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020). (Pet. for Rev. ¶¶ 2-12.) On September 7, 2022, 62 days away from the 2022 General Election scheduled for November 8, 2022, Petitioners also filed an Application for Special Relief in the Form of a Preliminary Injunction Under Pa.R.A.P. 1532 (Application for Preliminary Injunction), along with a Memorandum of Law in Support thereof, asking this Court to preliminarily enjoin the County Boards from developing and implementing notice and opportunity to cure procedures, and the Acting Secretary from taking any action inconsistent with such order enjoining the County Boards. The Application for Preliminary Injunction is currently before the Court for disposition.

I. PROCEDURAL HISTORY

Initially, the Court notes that, because Petitioners' claims, as set forth in the Petition for Review and Application for Preliminary Injunction bear directly on

² The Court notes that only 66 of the Commonwealth's 67 county boards of elections (County Boards) are actually named in the caption in this matter. It appears that the Washington County Board of Elections was inadvertently omitted from the caption, as the allegations of the Petition for Review clearly refer to all 67 County Boards. Moreover, the Petition for Review and other filings were served on the Washington County Board of Elections. The Court will therefore consider the Washington County Board of Elections to be a Respondent in this matter notwithstanding its omission from the caption.

³ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

future elections, including the November 8, 2022 General Election, which is only **39 days** from the date of this filing, this Court made every effort to expeditiously conduct factfinding, obtain all of the parties' positions, and consider the applicable law in this case. The Court will therefore first explain the procedural history of this case in depth for purposes of transparency.

By Order dated September 9, 2022, the Court scheduled a hearing on the Application for Preliminary Injunction for Wednesday, September 28, 2022; directed the filing of answers in opposition to the Application for Preliminary Injunction by noon on Friday, September 16, 2022, and a joint stipulation of facts by noon on Monday, September 19, 2022, indicating which County Boards have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots; and scheduled a status conference for Thursday, September 22, 2022, for purposes of discussing, among other things, the logistics of the hearing. The Court's Order also provided, *inter alia*, that any party who failed to file an answer to the Application for Preliminary Injunction will be considered by the Court to be unopposed to the Application.

Also on September 9, 2022, two Applications for Leave to Intervene (Applications to Intervene) were filed by: (1) the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee (DSCC and DCCC), and (2) the Democratic National Committee and the Pennsylvania Democratic Party (DNC and PDP) (collectively, Intervenors). In light of the Applications to Intervene and the status conference scheduled for September 22, 2022, the Court issued an Order on September 13, 2022, directing answers in opposition to the Applications to Intervene by noon on Monday, September 19, 2022; granting Intervenors (then-proposed intervenors) leave to participate in the

status conference subject to the Court's future disposition of their respective Applications to Intervene; and further directed the parties and Intervenors to be prepared to discuss the Applications to Intervene at the status conference. The Court's Order also provided, among other things, that any party who failed to file an answer to the Applications to Intervene will be considered by the Court to be unopposed to the Applications. Only Petitioners opposed the Applications to Intervene.

Pursuant to the Court's September 9, 2022 Order, Commonwealth Respondents filed an answer and a brief in opposition to the Application for Preliminary Injunction. Twenty-five County Boards⁴ (25 County Boards) filed answers in opposition to the Application for Preliminary Injunction, generally all of which deny that injunctive relief is warranted in this case. The Washington County Board of Elections filed a letter, indicating it takes no position on the Application for Preliminary Injunction or the joint stipulation of facts ordered by the Court, and

⁴ These include: Berks County; Lehigh County; Allegheny County; Philadelphia County (also filed Memorandum of Law in Opposition); Montgomery County (also filed preliminary objections to the Petition for Review); Bedford County, Centre County, Columbia County, Dauphin County, Fayette County, Jefferson County, Huntingdon County, Indiana County, Lawrence County, Lebanon County, Northumberland County, Venango County, York County (filed Joint Answer); Northampton County; Bucks County; Monroe County; Adams County; Luzerne County; Delaware County; and Erie County.

The Court notes that Erie County filed an answer to the Application for Preliminary Injunction past the deadline for doing so, joining in Commonwealth Respondents' answer in opposition. In addition to filing an answer opposing the Application, Bucks County also filed an answer and new matter to the Petition for Review. Monroe County also filed a letter separate from its answer in opposition to the Application, indicating that it takes no position on the joint stipulation of facts ordered by the Court and that it will not be participating in the filing of the joint stipulation or in the status conference. Luzerne County also filed a Submission separate from its answer in opposition to the Application, explaining Luzerne County's notice and cure procedure and indicating that it takes no position on the other proposed stipulations submitted by the other parties. Erie, Bucks, Monroe, and Luzerne Counties are nevertheless included in the above list of County Boards that oppose the Application for Preliminary Injunction.

41 County Boards⁵ failed to file answers to the Application for Preliminary Injunction and, thus, are considered by the Court to be unopposed to the relief sought therein. Intervenors filed separate answers in opposition to the Application for Preliminary Injunction setting forth their respective positions on why the relief sought by Petitioners should be denied.

By Order dated September 19, 2022, the Court granted Petitioners' request for an extension to 5:00 p.m. on Tuesday, September 20, 2022, for the filing of the joint stipulation of facts. In accordance with that extension Order, the parties filed a Joint Stipulation of Facts on September 20, 2022, which is signed by Petitioners and 42 County Boards⁶ and includes 8 exhibits (Exhibits A through H). Exhibit A is the

⁵ These include: Armstrong County; Beaver County; Blair County; Bradford County; Butler County; Cambria County; Cameron County; Carbon County; Chester County; Clarion County; Clearfield County; Clinton County; Crawford County; Cumberland County; Elk County; Forest County; Franklin County; Fulton County; Greene County; Juniata County; Lackawanna County; Lancaster County; Lycoming County; McKean County; Mercer County; Mifflin County; Montour County; Perry County; Pike County; Potter County; Schuylkill County; Snyder County; Somerset County; Sullivan County; Susquehanna County; Tioga County; Warren County; Wayne County; Westmoreland County; Wyoming County; and Union County.

Perry County filed a no answer letter, indicating it would not be filing an answer to the Petition for Review in this matter. Union County filed a Submission, similar to Luzerne County's Submission, explaining Union County's notice and cure procedure and indicating that it takes no position on the other proposed stipulations submitted by the other parties. Lancaster County filed an answer to the Petition for Review, indicating that it does not have a notice and cure procedure. Perry, Union, and Lancaster Counties did not address their positions on the Application for Preliminary Injunction and are thus considered to be unopposed to the Application.

⁶ These include: Adams County; Allegheny County; Beaver County; Bedford County, Centre County, Columbia County, Dauphin County, Fayette County, Jefferson County, Huntingdon County, Indiana County, Lawrence County, Northumberland County, Venango County, and York County; Berks County; Blair County; Bradford County; Bucks County; Butler County; Cameron County; Chester County; Clarion County, Susquehanna County, and Tioga County; Cumberland County; Delaware County; Erie County; Franklin County; Juniata County; Lehigh County; Luzerne County; Lycoming County; Montgomery County; Northampton County; Philadelphia County; Union County; Westmoreland County; Sullivan County and Wyoming County; Snyder County; and Somerset County.

letter Petitioners sent to all County Boards requesting information regarding, *inter alia*, whether they have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots. Exhibits B through H contain separate stipulations regarding the above information from 18 County Boards⁷ that signed the Joint Stipulation of Facts. For the sake of brevity, the Court will not reproduce the Joint Stipulation of Facts in its entirety in this opinion. However, the Court notes the Joint Stipulation of Facts reveals that there are a number of County Boards that have implemented notice and opportunity to cure procedures, both before pre-canvassing begins and on Election Day, with respect to absentee and mail-in ballots that lack either a date or signature on the outer ballot envelope, or that lack a secrecy envelope. There are other County Boards that do not have any notice and opportunity to cure procedures.

The Court held the status conference on Thursday, September 22, 2022, via WebEx videoconferencing. For purposes of transparency and given the exigency of this matter in light of the looming General Election, the Court permitted the status conference to be livestreamed to the public and had a stenographer present for purposes of creating a record in the event any appeal is taken from this Court's final order. During the status conference, which was essentially turned into a hearing without objection of the parties, the Court first considered Intervenors' Applications to Intervene. There being no objection by any of the parties, including Petitioners who initially opposed the Applications, the Court granted the Applications to

⁷ These include: Bedford County, Centre County, Columbia County, Dauphin County, Fayette County, Jefferson County, Huntingdon County, Indiana County, Lawrence County, Northumberland County, Venango County, and York County (Exhibit B – also indicates Lebanon County's response not yet received); Westmoreland County (Exhibit C); Chester County (Exhibit D); Bucks County (Exhibit E); Luzerne County (Exhibit F); Philadelphia County (Exhibit G); and Union County (Exhibit H).

Intervene on the record, which was confirmed by subsequent order.⁸ The Court then heard argument on laches as a potential bar to the relief sought in the Application for Preliminary Injunction and the six criteria for a preliminary injunction. Following argument, and observing that the issue in this case is really a legal one, the Court asked the parties if an evidentiary hearing was necessary. The parties ultimately agreed to dispense with the hearing on the Application for Preliminary Injunction that was scheduled for Wednesday, September 28, 2022, and for the Court to decide the Application on the papers, with the caveat that the Court permit additional briefing. Following the status conference, the Court issued an Order on September 22, 2022, granting intervention; directing the parties and Intervenors to file briefs and a joint stipulation of exhibits; cancelling the hearing; and indicating that the Application for Preliminary Injunction would be decided on the papers following the Court's receipt of the aforementioned filings, unless otherwise ordered.

The parties⁹ have complied with the Court's September 22, 2022 Order by filing comprehensive briefs addressing their respective positions and the applicable

⁸ The Court's order also directed the Prothonotary to docket Intervenors' respective sets of preliminary objections to the Petition for Review. *See* Cmwlth. Ct. Order dated Sept. 22, 2022.

⁹ The following parties filed briefs pursuant to this Court's September 22, 2022 Order: Northampton County; Bedford County, Centre County, Columbia County, Dauphin County, Fayette County, Jefferson County, Huntingdon County, Indiana County, Lawrence County, Northumberland County, Venango County, and York County (joint answer, in which Carbon County now joins); Allegheny County; Montgomery County; Intervenors DNC and PDP; Bucks County; Intervenors DSCC and DCCC; Luzerne County; Commonwealth Respondents; Petitioners; Philadelphia County; and Lehigh County. Delaware County joined in the brief filed by Allegheny County. Berks County filed a letter in response to the September 22, 2022 Order, indicating, among other things, that it takes no position on either laches as a potential bar to the relief sought herein or on the Application for Preliminary Injunction.

The Court also notes that the Lawyers Democracy Fund filed an *amicus curiae* brief in support of Petitioners' requested relief.

law, and a comprehensive Joint Stipulation of Exhibits, which includes, *inter alia*, the Joint Stipulation of Facts previously filed by the parties. At this juncture, the Court is satisfied that everyone in this case had a full and fair opportunity to be heard, that a sufficient record has been created given the time constraints, and that the proceedings were conducted with transparency.

Having considered the argument, pleadings, evidence, and law, the Court **DENIES** Petitioners' Application for Preliminary Injunction, as Petitioners did not meet their heavy burden of proving the following criteria:

1. **Petitioners' have not proven that they are likely to succeed on the merits or that their right to relief is clear.**

- A review of relevant and recent case law indicates that notice and opportunity to cure procedures implemented by County Boards have *generally* been accepted in order to fulfill the longstanding and overriding policy in this Commonwealth to protect the elective franchise. The courts have held that any doubt about whether the Election Code authorizes County Boards to implement notice and cure procedures must be resolved in favor of preventing the inadvertent forfeiture of electors' right to vote.
- The Election Code does not specifically prohibit County Boards from implementing notice and cure procedures. Rather, County Boards enjoy broad authority under Section 302(f) of the Election Code, 25 P.S. § 2642(f), to implement such procedures at their discretion to ensure that the electoral franchise is protected. While Section 302(f) of the Election Code requires that only procedures that comply with the

law are permitted, Petitioners themselves do not allege any fraud is taking place with respect to such procedures.

- In *Pennsylvania Democratic Party*, 238 A.3d 345, the Supreme Court specifically held that adoption of statewide notice and opportunity to cure procedures are within the province of the legislature and not the judiciary.

2. **The relief requested by Petitioners will disrupt the status quo and is not narrowly tailored to abate the offending activity.**

- Such sweeping relief against the 67 County Boards would clearly cause greater injury than refusing the injunction, precisely because it would seriously harm the public interest and orderly administration of the 2022 General Election, **which is already well underway**. Enjoining the various County Boards' procedures at this point in time would further deprive voters in counties who have been privy to such procedures for the past two years since the enactment of Act 77 the opportunities to have their votes counted, thus resulting in almost certain disenfranchisement of voters. If this Court were to grant the injunctive relief Petitioners seek, the County Boards would then have to modify their practices and procedures in response to the injunction **when absentee and mail-in voting is already underway**.

3. **Petitioners have not presented concrete or sufficient evidence that the injunction is necessary to prevent immediate and irreparable harm.**

- There is no violation of the Election Code which would constitute *per se* immediate and irreparable harm, and the cases cited by Petitioners to support this claim are inapposite. Importantly, as stated earlier,

Respondents also agree that there is no assertion, or evidence, of fraud by the County Boards in any county in Pennsylvania.

- Petitioners claims of immediate and irreparable harm are speculative in nature.

Having summarized the Court's findings and conclusions with respect to the denial of the Application for Preliminary Injunction above, the Court turns to averments of the Petition for Review, the Application for Preliminary Injunction, and the parties' arguments, and finally, explains its reasoning for denying the Application for Preliminary Injunction.

PETITION FOR REVIEW

The Petition for Review in this matter sets forth Petitioners' concern that various County Boards have developed and implemented unauthorized notice and opportunity to cure procedures with respect to absentee and mail-in ballots that fail to comply with the Election Code's signature and ballot secrecy requirements. (Pet. for Rev. ¶¶ 7-8.) Petitioners claim these cure procedures are unauthorized, because the Election Code does not specifically provide for them, and our Supreme Court has already held in *Pennsylvania Democratic Party* that the decision to provide a notice and opportunity to cure procedure is one that is best suited for the legislature. (Pet. for Rev. ¶¶ 2-4, 43-47.) Petitioners point out that the Election Code provides only one cure procedure in a very limited circumstance with respect to those absentee or mail-in ballots for which proof of identification has not been received or could not be verified. (Pet. for Rev. ¶¶ 5-6, 48-51); *see also* Section 1308(h) of the Election

Code, added by the Act of March 6, 1951, P.L. 3, 25 P.S. § 3146.8(h).¹⁰ Petitioners claim that the Acting Secretary has also acknowledged the absence of any other cure procedures in the Election Code on the Department of State’s website. (Pet. for Rev. ¶ 55 (stating, in response to the frequently asked question, “How do I know if my ballot was accepted or counted?” that “if there’s a problem with your mail-in ballot, **you won’t have the opportunity to correct it before the election.**” (emphasis added)); *see also* Pa. Dep’t of State, Mail-in and Absentee Ballot, Frequently Asked Questions, *available at* <https://www.vote.pa.gov/Voting-in-PA/Pages/Mail-and-Absentee-Ballot.aspx> (last visited Sept. 27, 2022); Jt. Stip. of Exs., Pet’rs’ Ex. 11. Petitioners further point out that Governor Wolf recently vetoed the legislature’s attempt to implement a broad notice and cure procedure in the Election Code. *See* Pet. for Rev. ¶¶ 52-53; *see also* House Bill 1300 (vetoed by the Governor on June 30, 2021), *available at* <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PD>

¹⁰ Section 1308(h) provides:

(h) For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

(1) Deleted by [the Act of October 31, 2019, P.L. 552, No. 77 (Act 77), effective immediately]

(2) If the proof of identification is received and verified prior to the sixth calendar day following the election, then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted.

25 P.S. § 3146.8(h).

(last visited Sept. 27, 2022); Jt. Stip. of Exs., Pet’rs’ Ex. 9. Thus, according to Petitioners, the only cure procedure available that the County Boards may provide, as was the case in 2020, is that set forth in Section 1308(h) of the Election Code, (Pet. for Rev. ¶¶ 6, 54), and any attempt to adopt cure procedures at the county level constitutes a usurpation of the exclusive legislative authority of the General Assembly and a violation of the authority granted to the General Assembly to regulate the manner of federal elections under Article I, Section 4 of the United States Constitution, U.S. Const. art. I, § 4,¹¹ (Pet. for Rev. ¶¶ 8-9).

Petitioners further assert that the County Boards’ unlawful actions in adopting cure procedures have resulted and/or will result in “a lack of transparency, unequal treatment of otherwise identical ballots based upon the county in which the voter resides, and an erosion of public trust and confidence in the integrity of Pennsylvania’s elections at a vital moment in the Nation’s and the Commonwealth’s history.” (Pet. for Rev. ¶ 1.) Specifically, Petitioners contend that not all County Boards have publicly disclosed whether they have adopted cure procedures or the particulars of those procedures, resulting in confusion and a lack of transparency in election administration; and that those County Boards that have adopted cure procedures have not uniformly adopted **the same** procedures, resulting in a lack of statewide uniformity in both the existence and particulars of such cure procedures. (Pet. for Rev. ¶¶ 10-11, 83-85.) Petitioners thus request that this Court “restore transparency, fundamental fairness, and integrity to Pennsylvania’s elections by

¹¹ The Elections Clause provides: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of ch[oo]sing Senators.” U.S. Const. art. I, § 4, cl.1.

upholding the plain text of the Election Code and the clear holding of the Pennsylvania Supreme Court and declaring that [the County Boards] may not adopt cure procedures other than as the General Assembly has expressly provided in the Election Code.” (Pet. for Rev. ¶ 12.)

Republican Committee Petitioners, specifically, assert that they have each made significant contributions and expenditures in support of Republican candidates for various federal, state, and local offices and in mobilizing and educating voters in Pennsylvania in past election cycles and again in 2022. (Pet. for Rev. ¶¶ 15-18.) According to Republican Committee Petitioners, such education includes devoting substantial time and resources toward monitoring the voting and vote counting processes in Pennsylvania and ensuring that such processes are lawfully conducted, and further ensuring that voters understand the rules governing the election process, including applicable dates, deadlines, and requirements for voting by mail or absentee. (Pet. for Rev. ¶¶ 15-18.) Republican Committee Petitioners further assert that their “efforts require a uniform application of the law and a clear and transparent understanding of mail voting requirements, including any allowances for notice and opportunity to cure procedures.” (Pet. for Rev. ¶¶ 15-18.) Republican Committee Petitioners thus contend that they each have “a substantial and particularized interest in ensuring that Pennsylvania carries out free and fair elections.” (Pet. for Rev. ¶¶ 15-18.) However, because the various approaches taken by the County Boards regarding notice and opportunity to cure procedures are not published and are also not readily known to Republican Committee Petitioners, or voters for that matter, Republican Committee Petitioners argue that their ability to educate voters in this regard is thwarted. (Pet. for Rev. ¶ 19.)

For their own part, Voter Petitioners assert that the implementation of cure procedures by some County Boards, absent any directive to do so under the Election Code, has interfered with Voter Petitioners' right to "equal elections." (Pet. for Rev. ¶ 33.) Further, "the unauthorized cure procedures implemented by some [of the County] Boards have had and will have the result of counting votes that should not have been counted due to the voter's failure to comply with signature and secrecy ballot requirements for mail-in and absentee ballots[,]” which will result in Voter Petitioners' validly cast votes being "cancelled and diluted by the counting of ballots in violation of the Election Code." (Pet. for Rev. ¶ 34.)

Petitioners thus observe that this case involves essentially the same factual scenario that existed in 2020 when the *Pennsylvania Democratic Party* decision was issued, which they describe as "an election landscape where [County] Boards throughout the state operate under different rules, particularly with respect to whether to implement cure procedures, and if so, how." (Pet. for Rev. ¶ 35.) In light of the Supreme Court's holding and Governor Wolf's recent veto of the General Assembly's attempt to implement a uniform cure procedure, Petitioners claim they "seek the mirror-image form of relief: the Court should enjoin the [County] Boards from using any cure procedures that are not expressly set forth in the Election Code." (Pet. for Rev. ¶ 36.)

Petitioners readily acknowledge that Section 302 of the Election Code, 25 P.S. § 2642, imbues the County Boards with authority to exercise all powers granted to them, provides that the County Boards "shall perform all the duties imposed upon them by th[e Election Code,]" and lists several duties the County Boards must perform. (Pet. for Rev. ¶¶ 57-58.) Petitioners also concede the County Boards' authority in that section to, among other things, "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.” (Pet. for Rev. ¶ 63); Section 302(f) of the Election Code, 25 P.S. § 2642(f) (emphasis added). Petitioners claim, however, that absent from that section is any indication that the County Boards have authority to develop and implement notice and opportunity to cure procedures; as such, Petitioners assert, such cure procedures are “inconsistent with law,” i.e., the Election Code. (Pet. for Rev. ¶¶ 56, 59-62, 64.)

Petitioners further assert that publicly available information and investigation has revealed that some County Boards, including Bucks, Montgomery, Philadelphia, Northampton, and Lehigh Counties, have developed and intend to implement cure procedures, or have agreed to begin the process of implementing cure procedures in future elections. (Pet. for Rev. ¶¶ 65-76.) According to Petitioners, Northampton and Lehigh Counties, specifically, have each also entered into Stipulated Settlement Agreements in federal court that would permit them to, among other things, utilize certain cure procedures. (Pet. for Rev. ¶¶ 72-76.) Other counties have expressed, however, that they are not allowing any cure procedures, including, among others, Lancaster, Franklin, Mifflin, Wyoming, and Allegheny. (Pet. for Rev. ¶¶ 77-81.) Thus, Petitioners assert, whether voters will be permitted to fix their noncompliant absentee or mail-in ballots “depends entirely on the county in which they reside.” (Pet. for Rev. ¶ 82.) Stated otherwise, “ballots with identical defects are receiving unequal treatment based solely on the voter’s residency.” (Pet. for Rev. ¶¶ 82.)

Count I of the Petition for Review therefore requests a declaratory judgment that the County Boards are prohibited under Pennsylvania law from developing and implementing cure procedures not expressly created by the legislature. (Pet. for Rev. ¶¶ 86-92.) Count II requests a declaratory judgment that adoption of any cure

procedures for federal elections not expressly authorized by the General Assembly violates the Elections Clause of the United States Constitution, U.S. Const. art. I, § 4, cl. 1, in that it is the legislature, not the County Boards, that has authority to regulate the manner of holding federal elections. (Pet. for Rev. ¶¶ 93-96.) Count III requests a statewide injunction prohibiting the 67 County Boards from developing or implementing cure procedures and directing the Acting Secretary to take no action inconsistent with such injunction order. (Pet. for Rev. ¶¶ 97-103.)

II. APPLICATION FOR PRELIMINARY INJUNCTION

Petitioners' Application for Preliminary Injunction seeks the same relief as that sought in the Petition for Review. In addition, Petitioners claim that they have satisfied each element for injunctive relief. They assert, first, that the County Boards' unlawful conduct in implementing, or continuing to implement, cure procedures per se constitutes immediate and irreparable harm. (Appl. for Prelim. Inj. ¶ 13; Memo. of Law in Support at 14.) Further, an injunction is needed to prevent immediate and irreparable harm in the form of Voter Petitioners' votes being treated unequally in violation of article VII, section 6 of the Pennsylvania Constitution, Pa. Const. art. VII, § 6,¹² and Republican Committee Petitioners not being able to properly educate their members regarding the rules applicable to absentee and mail-in ballots. (Appl. for Prelim. Inj. ¶ 13; Memo. of Law in Support at 14-15.) Petitioners contend that the Supreme Court has spoken when it ruled that notice and cure procedures must come from the General Assembly. (Memo. of Law in Support at 14.) Petitioners claim there is no question that per se immediate and irreparable harm will occur without an injunction, as ballots are expected to go out

¹² It provides: "All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State," with certain exceptions not applicable to this case. Pa. Const. art. VII, § 6.

as soon as September 19, 2022, and Northampton and Lehigh Counties have agreed as recently as June 2022 to begin implementing cure procedures for upcoming elections, none of which are authorized under the Election Code. (Memo. of Law in Support at 16.) Moreover, Petitioners claim that there is no adequate damages remedy for voters who are denied equal access to the electoral process. (Memo. of Law in Support at 17.)

Second, Petitioners assert that greater injury would result from refusing rather than granting the injunction, because the County Boards “will collectively engage in a mishmash of cure procedures, allowing some voters to cure signature or secrecy envelope defects for some Pennsylvania voters (in violation of the Election Code) while preventing others from doing so.” (Appl. for Prelim. Inj. ¶ 13; Memo. of Law in Support at 17.) Because the County Boards’ continued unlawful conduct cannot be considered a benefit to the public, Petitioners argue that the need for a preliminary injunction is clear. (Appl. for Prelim. Inj. ¶ 13; Memo. of Law in Support at 17-18.) Petitioners also repeat their claims regarding the harms to Republican Committee Petitioners and Voter Petitioners, respectively. Petitioners thus claim that by granting the injunction, the Court will reaffirm the *Pennsylvania Democratic Party* Court’s holding that the County Boards cannot implement cure procedures that are not set forth in the Election Code, thus eliminating the harms to Petitioners. (Memo. of Law in Support at 19.)

Third, Petitioners claim that the requested prohibitory injunction—i.e., one that enjoins the doing of an act that will change the status quo—seeks only to preserve the state of the law as set forth by the Election Code and as established by the Supreme Court’s decision in *Pennsylvania Democratic Party*, i.e., prior to the County Boards’ unlawful conduct in implementing notice and cure procedures.

(Appl. for Prelim. Inj. ¶ 14; Memo. of Law in Support at 19-20.) Petitioners further request “an explicit recognition that only the Legislature can authorize a cure procedure to address voters’ failure to comply with the Election Code’s signature and [ballot secrecy] requirements.” (Appl. for Prelim. Inj. ¶ 13; Memo. of Law in Support at 20.)

Fourth, Petitioners assert they are likely to prevail on the merits of their underlying claims in this matter because the notice and cure procedures implemented by some, but not all, County Boards are unlawful under both the Election Code and the Supreme Court’s holding in *Pennsylvania Democratic Party*, and they violate the Elections Clause of the United States Constitution because they infringe on the legislature’s exclusive authority to regulate the manner of holding federal elections. (Appl. for Prelim. Inj. ¶ 15; Memo. of Law in Support at 21-22.) Petitioners again highlight the Supreme Court’s prior holding that County Boards are not required to implement cure procedures, which they contend forecloses the notion that County Boards are permitted to implement their own notice and cure procedures, because such procedures would reflect policy decisions reserved for the legislature. (Memo. of Law in Support at 23-24.) Petitioners repeat their claim that Section 302 of the Election Code contains nothing authorizing County Boards to implement these procedures, and, moreover, that section requires that County Boards ensure that elections are honestly, efficiently, and **uniformly** conducted. (Memo. of Law in Support at 24 (quoting Section 302(g) of the Election Code, 25 P.S. § 2642(g)). Petitioners again highlight that these cure procedures are “inconsistent with law” under Section 302(f) of the Election Code, “because the Election Code spells out the

limited availability of such procedures and does not authorize Boards to expand them.” (Memo. of Law in Support at 25.)¹³

Fifth, Petitioners contend the requested injunction is narrowly tailored and, thus, reasonably suited to abate the offending activity because it seeks only to enforce the Supreme Court’s prior holding in *Pennsylvania Democratic Party* that the Election Code does not provide any cure procedures for absentee and mail-in ballots and that only the legislature can enact such procedures. (Appl. for Prelim. Inj. ¶ 16; Memo. of Law in Support at 32-33.) Sixth, and finally, Petitioners argue that “the public interest is best served by a consistent application of the rule of law established by the General Assembly and the maintenance of the separation of powers in Pennsylvania. Conversely, the public interest is not served by allowing Boards to act as quasi-legislatures, resolving ‘the open policy questions’ attendant [to] the development of cure procedures on their own, let alone cure procedures whose existence and particulars vary from county to county.” (Appl. for Prelim. Inj. ¶ 17; Memo. of Law in Support at 33-34.) In this regard, Petitioners claim that any “ruling to the contrary would only further diminish Pennsylvania voters’ confidence in the election system as a result of the secretive and inconsistent application of election procedures across the state.” (Memo. of Law in Support at 34.) For these reasons, Petitioners assert they are entitled to injunctive relief.

¹³ Petitioners further contend that Respondents, who all were parties in the *Pennsylvania Democratic Party* case, are collaterally estopped from relitigating whether the Election Code provides for cure procedures aside from missing proof of identification. (Memo. of Law in Support at 26-27.) Moreover, the Acting Secretary should be barred, through judicial estoppel, from advocating for a different result in this case, when she previously took the position in *Pennsylvania Democratic Party* that the Election Code does not provide for cure procedures to address voters’ failure to comply with the signature and ballot secrecy requirements. (Memo. of Law in Support at 27-28.) Given the Court’s disposition on the Application for Preliminary Injunction, the Court will not address these issues further.

III. PARTIES' & INTERVENORS' ARGUMENTS

Commonwealth Respondents, and various County Boards, oppose the relief sought in the Application for Preliminary Injunction and argue that Petitioners cannot establish a clear right to relief for various reasons. First, Commonwealth Respondents contend that this Court lacks subject matter jurisdiction over the matter because Commonwealth Respondents are not indispensable parties. (Cmwlth. Resps.' Br. in Opp. at 10-15.) Commonwealth Respondents point out that Petitioners' challenges to the "varied exercise of discretionary power" are made in relation to the 67 County Boards, which are not considered "the Commonwealth government" for purposes of Section 761 of the Judicial Code, 42 Pa.C.S. § 761, but rather, are "local agencies." (Cmwlth. Resps.' Br. in Opp. at 12.) According to Commonwealth Respondents, Petitioners are not challenging any decision or exercise of authority of the Acting Secretary, the Department of State, or otherwise, and nowhere do Petitioners allege any unlawful act committed by any Commonwealth official. (Cmwlth. Resps.' Br. in Opp. at 13.) Moreover, the relief sought is an injunction against the County Boards, prohibiting them from developing and implementing cure procedures; as such, the participation of Commonwealth officials is not necessary for Petitioners to obtain the relief they seek. (Cmwlth. Resps.' Br. in Opp. at 13-14.) Petitioners opine, in footnotes, that Petitioners must instead assert their claims separately against each County Board in the respective county court of common pleas. (Cmwlth. Resps.' Br. in Opp. at 14-15, nn. 2-3.)

Commonwealth Respondents further argue that Petitioners lack standing, as they have not pled a cognizable injury. (Cmwlth. Resps.' Br. in Opp. at 16-21.) Commonwealth Respondents contend specifically as to Voter Petitioners that courts have repeatedly rejected the "vote dilution" theory of standing, which has been held

to assert only a generalized grievance as opposed to any particularized injury. (Cmwlth. Resps.’ Br. in Opp. at 17-18.) Moreover, Voter Petitioners have not been prevented from voting; they are not otherwise disadvantaged in terms of voting relative to other Pennsylvanians; and there is no indication the implementation of cure procedures by some County Boards has otherwise interfered with Petitioners’ right to equal elections. (Cmwlth. Resps.’ Br. in Opp. at 17-18.) According to Commonwealth Respondents, to the extent any Voter Petitioners live in counties with cure procedures, those procedures actually lift the burden on their right to vote; conversely, to the extent any Voter Petitioners live in counties without cure procedures, there is no injury. (Cmwlth. Resps.’ Br. in Opp. at 18-19.)

To the extent Republican Committee Petitioners have alleged a cognizable injury with respect to their “thwarted” ability to educate voters about absentee and mail-in voting due to a lack of notice of County Boards’ procedures, Commonwealth Respondents contend that they fail to prove the causal connection between the alleged injury and the County Boards’ notice and cure procedures. (Cmwlth. Resps.’ Br. in Opp. at 20-21.) Moreover, Republican Committee Petitioners have not alleged that the County Boards’ notice and cure procedures put Republicans at a competitive disadvantage or otherwise impair their ability to win votes. (Cmwlth. Resps.’ Br. in Opp. at 21.) Commonwealth Respondents further contend that Petitioners have failed to make out an Elections Clause claim, as “case law makes clear that individual voters, candidates, and political party organizations have no particularized interest in alleged violations of the Elections Clause[,]” and also have no interest in a state legislature’s authority under the Election Code. (Cmwlth. Resps.’ Br. in Opp. at 21-22 (citing various federal cases).) Rather, the only entity

who may assert such a claim is the General Assembly itself. (Cmwlth. Resps.’ Br. in Opp. at 22.)

Finally, Commonwealth Respondents argue that Petitioners’ claims simply fail as a matter of law, as they have not identified any provision of the Election Code prohibiting the County Boards from developing and implementing notice and cure procedures; the County Boards have rulemaking authority under Section 2642(f) of the Election Code delegated to them by the General Assembly; and, in *In Re Canvassing Observation*, 241 A.3d 339 (Pa. 2020), our Supreme Court specifically recognized that the County Boards may fill gaps in the Election Code under such discretionary rulemaking authority. (Cmwlth. Resps.’ Br. in Opp. at 23-26.) Commonwealth Respondents also point to the statutory requirement that County Boards make lists of voters who have received and voted absentee and/or mail-in ballots, which requirement presupposes that County Boards will review absentee and mail-in ballots before pre-canvassing and canvassing begin and identify any deficiencies with those ballots. (Cmwlth. Resps.’ Br. in Opp. at 27 (citing Sections 1306(b)(1) and 1306-D(b)(1) of the Election Code,¹⁴ 25 P.S. §§ 3146.6(b)(1) and 3150.16(b)(1)).) Commonwealth Respondents further observe that the other purported “cure procedure” identified by Petitioners in Section 1308(h) of the Election Code does not go “hand in hand” with the cure procedures implemented by certain County Boards, thus defeating Petitioners’ reliance on that section to support its case. (Cmwlth. Resps.’ Br. in Opp. at 29-30.) Commonwealth Respondents further contend that the Election Code must be read to enfranchise, not disenfranchise, voters (*id.* at 31-33); Petitioners distort the Supreme Court’s holding in *Pennsylvania Democratic Party*, and thus, collateral and judicial estoppel do not

¹⁴ Section 1306-D was added to the Election Code by Act 77.

apply (*id.* at 34-37); and Petitioners waived their uniformity and equal protection arguments based on their failure to plead them in the Petition for Review (*id.* at 37-40).¹⁵

With respect to the Application for Preliminary Injunction, Commonwealth Respondents assert that Petitioners cannot meet their burden on the preliminary injunction criteria. Specifically, they contend that the injunction would run counter to the public interest of enfranchising voters and would substantially harm voters by disenfranchising them. (Cmwlth. Resps.’ Br. in Opp. at 40-42.) Moreover, according to Commonwealth Respondents, any order prohibiting notice and cure procedure for the upcoming General Election would likely result in the invalidation of ballots already cast, confuse and upset electors, and disrupt the ongoing administration of the election. (Cmwlth. Resps.’ Br. in Opp. at 43.) Further, the injunction is “vastly overbroad.” (Cmwlth. Resps.’ Br. in Opp. at 45-47.)

¹⁵ Federal courts have previously rejected the notion that variations in notice and opportunity to cure procedures from county to county violate equal protection principles. For example, in *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899 (M.D. Pa. 2020) (*Trump II*), the United States District Court for the Middle District of Pennsylvania rejected such a claim made on behalf of the Trump Campaign, holding that it is consistent with equal protection principles for some but not all counties to implement notice and opportunity to cure procedures. The District Court stated: “[t]hat some counties may have chosen to implement the [Secretary’s] guidance [on notice and opportunity to cure procedures] (or not), or to implement it differently, does not constitute an equal[] protection violation. ‘[M]any courts [] have recognized that counties may, consistent with equal protection, employ entirely different election procedures and voting systems within a single state.’ . . . Requiring that every single county administer elections in exactly the same way would impose untenable burdens on counties, whether because of population, resources, or a myriad of other reasonable considerations.” *Trump II*, 502 F. Supp. 3d at 922-23 (quoting *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 389-90 (W.D. Pa. 2020) (*Trump I*)). The United States Court of Appeals for the Third Circuit affirmed the District Court’s decision in *Trump II*. See *Donald J. Trump for President, Inc. v. Secretary of Pennsylvania*, 830 F. App’x 377, 388 (3d Cir. 2020) (*Trump III*). **Thus, even if Petitioners had brought an election uniformity or equal protection claim, it would plainly fail, just as the equal protection claim in *Trump I* and *Trump II* failed.**

Commonwealth Respondents finally contend that Petitioners must post a substantial bond to obtain the relief sought, pursuant to Pa.R.Civ.P. 1531(b). (Cmwlth. Resps.’ Br. in Opp. at 47-48.)

In their answers in opposition, mostly all of the 25 County Boards generally deny that Petitioners are entitled to the relief they seek in the Application for Preliminary Injunction and assert reasons therefor that are similar to those of Commonwealth Respondents. Generally speaking, these County Boards claim that Petitioners misunderstand and misstate the Supreme Court’s holding in *Pennsylvania Democratic Party*, which was not that County Boards are prohibited from implementing notice and cure procedures, but only that County Boards are not **required** to implement notice and cure procedures. To the contrary, County Boards enjoy broad authority under Section 2642(f) of the Election Code to implement such procedures at their discretion. Further, Petitioners cannot meet their burden of establishing the six essential prerequisites for the grant of a preliminary injunction because (1) they cannot show immediate and irreparable harm setting Petitioners apart from other voters in Pennsylvania and, further, with respect to the County Boards continuing any notice and cure procedures; (2) greater injury to voters would result from granting the injunction rather than refusing it; (3) the injunction would substantially disrupt the status quo by changing current procedures in various counties, some of which have been in place since 2020; (4) Petitioners have not shown a clear right to the relief they seek, as they have pointed to neither any provision of the Election Code, nor any case law, prohibiting the curing of minor defects on absentee and mail-in ballots; (5) the injunction is overbroad, as some County Boards have no cure procedures in place; (6) and the public interest will be severely harmed if the injunction is granted, as it will result in the

disenfranchisement of voters whose ballots will be set aside based on readily apparent and easily correctible defects, general confusion amongst voters, and County Boards having to expend additional funds to educate voters, as well as County Board staff, about new procedures on the eve of an election that is already underway.

Northampton County also generally opposes the relief sought by Petitioners for the above reasons but adds that Petitioners misrepresent the Stipulated Settlement Agreement to which it is a party, which provides only that it may provide notice to a voter who returns a ballot lacking a secrecy envelope in relation to its pre-canvass duties, which is compliant with the Election Code.

Lehigh County, which is a party to a separate Stipulated Settlement Agreement, explains that it has entered in the agreement to perform certain actions, including informing voters of the importance of providing contact information, notifying all voters whose naked ballots are discovered prior to 8:00 p.m. on Election Day, providing those names to the party or candidate representatives who are onsite, and pursuing other actions in good faith to allow Lehigh County officials to identify naked ballots prior to pre-canvassing by virtue of the weight and/or thickness of the envelope and possibly utilizing a secrecy envelope of a strong color so it is more readily identifiable compared to other absentee or mail-in ballot materials that are provided to voters.

Monroe County additionally asserts, in relevant part, that Petitioners have not stated with specificity what is and is not considered a “cure” procedure. Adams County adds, similar to Commonwealth Respondents, that Section 1308(h) is not actually a “cure” concerning ballot defects but rather addresses the identity of the voter, and further highlights that it is impossible to know what the General Assembly

might consider a “cure procedure” without that term being statutorily defined or appearing elsewhere in the Election Code.

Philadelphia County, Delaware County, and Intervenors DNC and PDP assert that Petitioners’ claims are foreclosed by laches, as they waited nearly two years to assert the same claims that were rejected in 2020 and have not offered any justification for waiting to file this action when they knew or should have known that County Boards had these notice and cure procedures. Like Commonwealth Respondents, Philadelphia County also vehemently argues that Petitioners, i.e., party organizations and individual voters from counties that do not include Philadelphia, lack standing to pursue their claims and, on that basis, cannot show a probability of success on the merits. (Phila. Cnty. Memo. of Law in Opp. to Pet’rs’ Appl. for Prelim. Inj. at 6-7.) The Philadelphia Board claims that Petitioners have failed to show they have an interest surpassing that of every other citizen in having ballots counted properly and in having County Boards obey the law. (*Id.* at 6.) Further, citing a federal district court decision in *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331 (W.D. Pa. 2020), the Philadelphia Board asserts that “[p]arty organizations cannot show any particularized injury given that it is pure speculation at this time what parties’ candidates any cured ballots will favor.” (*Id.* at 6.)

Philadelphia County and Intervenors further assert that Petitioners cannot satisfy the other preliminary injunction factors, as the requested injunction would upset the status quo, confuse county officials and voters alike regarding an already complex system of absentee and mail-in voting, and risk unnecessarily and unjustifiably disenfranchising Pennsylvanians, which is not in the public interest. Moreover, Petitioners have not asserted any irreparable harm, and the injunction is

not narrowly tailored to address the challenged conduct during the pendency of this litigation.

Petitioners rejoin that their claims are not barred by the doctrine of laches, as asserted by Philadelphia County, Delaware County, and Intervenors. Petitioners inform that it was not until after the Governor vetoed House Bill 1300 in June of 2021 that Petitioner RNC began seeking information about County Boards' various ballot curing procedures under the Right-to-Know Law (RTKL).¹⁶ Further, the most recent settlement agreement addressing cure procedures did not occur until June of 2022. Petitioners thus contend that Respondents have alleged only vague and speculative harms that may occur if a preliminary injunction is granted; however, even if the County Boards would experience some harm in the form of incurring costs to adjust their practices and train staff, such harm is not the type of prejudice that the laches defense is intended to prevent. Petitioners also contend that this Court does have subject matter jurisdiction over this matter and dispute Commonwealth Respondents' assertion that the County Boards are not included as part of the "Commonwealth government" under 42 Pa.C.S. § 761. Petitioners submit that this Court also has exclusive original jurisdiction over election matters under 42 Pa.C.S. § 764. Petitioners argue that the County Boards are creatures of statute, i.e., the Election Code, and, thus, are government agencies. For these reasons, Petitioners assert that this Court has original jurisdiction over this matter. Petitioners finally assert that all of the named Respondents are indispensable parties in this matter.

IV. DISCUSSION

As extensively set forth above, Petitioners seek an order from this Court, preliminarily enjoining the County Boards from developing and implementing

¹⁶ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

notice and opportunity to cure procedures with respect to absentee and mail-in ballots that fail to comply with the Election Code's signature and ballot secrecy requirements, as well as enjoining the Acting Secretary from taking any action inconsistent with such order enjoining the County Boards, and Respondents generally deny that injunctive relief is warranted in this case. Commonwealth Respondents, some County Boards, and one set of Intervenor also assert several arguments as to why the Application for Preliminary Injunction should be denied and the Petition for Review dismissed, including challenges based on laches, lack of subject matter jurisdiction, and lack of standing. Because the Court heard argument on the parties' positions regarding laches at the status conference/hearing, the Court will address that issue herein. However, because the Court does not find laches to be a bar to Petitioners' action, the Court will first address the Application for Preliminary Injunction, followed by an analysis of why laches does not apply in this case.

Application for Preliminary Injunction

“The sole object of a preliminary injunction is to preserve the subject of the controversy in the condition in which it is when the order was made, it is not to subvert, but to maintain the existing status until the merits of the controversy can be fully heard and determined.” *Appeal of Little Britain Twp. From Dec. of Zoning Hearing Bd. of Little Britain Twp.*, 651 A.2d 606, 611 (Pa. Cmwlth. 1994). A preliminary injunction is a temporary remedy granted until the parties' dispute can be fully resolved. *Id.* The party seeking a preliminary injunction bears a heavy burden of proof and must establish all of the following criteria:

- (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages;
- (2) greater injury would result from refusing the injunction than from granting it,

and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and[] (6) the preliminary injunction will not adversely affect the public interest.

SEIU Healthcare Pa. v. Commonwealth, 104 A.3d 495, 502 (Pa. 2014) (citing, *inter alia*, *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003)). “Because the grant of a preliminary injunction is a harsh and extraordinary remedy, it is to be granted only when and if **each** [factor] has been fully and completely established.” *Pa. AFL-CIO by George v. Commonwealth*, 683 A.2d 691, 694 (Pa. Cmwlth. 1996) (emphasis in original). However, “if the petitioner[s] fail[] to establish any one of them, there is no need to address the others.” *Lee Pub’n, Inc. v. Dickinson Sch. of Law*, 848 A.2d 178, 189 (Pa. Cmwlth. 2004) (en banc) (emphasis in original) (quoting *City of Allegheny v. Commonwealth*, 544 A.2d 1305, 1307 (Pa. 1988)).

Before addressing each of the preliminary injunction criteria, this Court notes that “[t]he longstanding and overriding policy in this Commonwealth [is] to protect the elective franchise.” *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 360-61 (Pa. 2020) (quoting *Shambach v. Bickhart*, 845 A.2d 793, 798 (Pa. 2004)). Further, any doubt about whether the Election Code authorizes County Boards to implement notice and cure procedures must be resolved in favor of preventing inadvertent forfeiture of electors’ right to vote. In interpreting the Election Code, the Court applies “interpretive principles” of statutory construction specific to “election matters.” *Pa. Democratic Party*, 238 A.3d at 360. “[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* (Pa. Cmwlth., No. 355 M.D. 2022, filed Aug. 19, 2022), 2022 WL 4100998, at *13 (Cohn Jubelirer, P.J.) (single-Judge op.) (citing *Pa. Democratic Party*, 238 A.3d at 356); 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)).

With the above principles in mind, the Court turns to the Application for Preliminary Injunction before it.

Success on the Merits

Because it is dispositive, the Court will first address whether Petitioners are likely to prevail on the merits of their claims. At the status conference/hearing in this matter, all parties agreed that a hearing was not necessary in this case because the issue is purely a legal one requiring both statutory construction and interpretation of relevant case law. The Petition for Review essentially asks this Court to decide whether County Boards are prohibited under Pennsylvania law from developing and implementing notice and opportunity to cure procedures with respect to absentee and mail-in ballots that fail to comply with the Election Code’s signature and ballot secrecy requirements. The Court will thus begin with the relevant sections of the Election Code pertaining to those requirements.

Section 1306(a) of the Election Code, 25 P.S. § 3146.6(a), explains the process for voting by absentee ballot as follows:

(a) Except as provided in paragraphs (2) and (3), at any time after receiving an official absentee ballot, but on or before eight o'clock P.M. the day of the primary or election, **the elector shall, in secret, proceed to mark the ballot . . . and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot."** This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. **The elector shall then fill out, date and sign the declaration printed on such envelope.** Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

(Emphasis added.) Section 1306-D(a) of the Election Code, added by Act 77, 25 P.S. § 3150.16(a), explains the same process for voting by mail-in ballot:

(a) General rule.--At any time after receiving an official mail-in ballot, but on or before eight o'clock P.M. the day of the primary or election, the mail-in elector **shall, in secret, proceed to mark the ballot . . . and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot."** This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. **The elector shall then fill out, date and sign the declaration printed on such envelope.** Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

(Emphasis added.) In summary, after absentee and mail-in voters mark their respective ballots, they must secure them in a secrecy envelope, and then place that envelope into the return envelope on which is printed the declaration of the elector, which the elector must "fill out, date and sign." Electors can then either send the return envelope to their County Boards by mail, postage prepaid, or deliver it in person to their County Boards. Notably, neither Section 1306 nor Section 1306-D,

governing voting by absentee and mail-in ballots, provides any language regarding the consequence for failing to comply with either the “fill out, date¹⁷ and sign” requirement as to the declaration or the secrecy envelope requirement.

Section 1308(a) of the Election Code governs what happens when County Boards receive voted absentee and mail-in ballots:

(a) The county boards of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D, shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections. An absentee ballot, whether issued to a civilian, military or other voter during the regular or emergency application period, shall be canvassed in accordance with subsection (g). A mail-in ballot shall be canvassed in accordance with subsection (g).

25 P.S. § 3146.8(a) (emphasis added). Thus, upon receipt of voted ballots, County Boards must safely keep and secure the ballots until they are to be canvassed.

¹⁷ Although the date requirement does not appear to be at issue in this case, the Court notes that in *In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election (Appeal of: Donald J. Trump for President, Inc.)*, 241 A.3d 1058, 1061-62 (Pa. 2020), a plurality of our Supreme Court held that Election Code does not require County Boards to disqualify absentee or mail-in ballots submitted by qualified electors who signed the declaration on their ballots’ outer envelopes but did not handwrite their name, address, and/or date in voter declaration on outer envelope, where no fraud or irregularity has been alleged. *See also McCormick v. Chapman* (Pa. Cmwlth., No. 286 M.D. 2022, filed June 2, 2022) (in granting motion for special injunction, Court concluded a substantial question was raised as to whether voters are being disenfranchised based on a date requirement that is immaterial to a voter’s qualification in violation of Section 10101(a)(2)(B) of the Civil Rights Act and/or without a compelling reason in violation of state law), and *Chapman v. Berks Cnty. Bd. of Election* (Pa. Cmwlth., No. 355 M.D. 2022, filed Aug. 19, 2022) (in granting summary relief, Court held the lack of a handwritten date on the declaration on the return envelope of a timely received absentee or mail-in ballot does not support excluding those ballots from the three county boards’ certified results under both Pennsylvania law and Section 10101(a)(2)(B) of the Civil Rights Act).

The County Boards may begin pre-canvassing ballots no earlier than 7:00 a.m. on Election Day per Section 1308(g)(1.1) of the Election Code, 25 P.S. § 3146.8(g)(1.1). Section 1308(g)(1.1) further provides that “[n]o person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls.”

Following the pre-canvass, County Boards are required to “canvass,” or count, the votes reflected in the absentee and mail-in ballots that are received no later than 8:00 p.m. on Election Day. Section 1308(g)(2) of the Election Code, 25 P.S. § 3146.8(g)(2); Section 102 of the Election Code, 25 P.S. § 2602 (defining “canvass”). Each County Board is to examine the declaration of the absentee and mail-in ballots, which includes comparing the information thereon with the information the county board has in its files, verifying the proof of identification and the right to vote of the elector, and determining whether the elector’s declaration is sufficient. 25 P.S. § 3146.8(g)(3). Where no challenge to the absentee or mail-in ballot has been made, and the elector is not deceased, “[a]ll absentee ballots . . . and all mail-in ballots . . . that have been verified under paragraph (3) shall be counted and included with the returns of the applicable election district.” 25 P.S. § 3146.8(d), (g)(4). However, “[i]f any of the envelopes on which are printed, stamped or endorsed the words “Official Election Ballot” [(i.e., the secrecy envelope)] contain any text, mark or symbol which reveals the identity of the elector, the elector’s political affiliation or the elector’s candidate preference, the envelopes and the ballots contained therein shall be set aside and declared void.” 25 P.S. § 3146.8(g)(4)(ii).

In support of their argument that they have a likelihood of success on the merits, Petitioners cite Section 1308(h), which they claim provides the only “cure”

procedure in the Election Code relating to the proof of identification required when applying for and obtaining absentee and mail-in ballots:¹⁸

¹⁸ In order to vote by absentee or mail-in ballot, electors

must submit applications to county boards of elections, and in connection therewith must provide the address at which they are registered to vote. They must also sign a declaration affirming, among other things, that they are “eligible to vote by mail-in [or absentee] ballot at the forthcoming primary or election,” and that “all of the information” supplied in the mail-in or absentee ballot application is “true and correct.” 25 P.S. §§ 3150.12, 3146.2. Upon receipt of the application, the county board of elections must confirm the elector’s qualifications and verify that the elector’s address on the application matches the elector’s registration. Upon the county board of elections’ approval of the application, the elector is provided with a ballot, an inner “secrecy envelope” into which the ballot is to be placed, and an outer envelope into which the secrecy envelope is to be placed and returned to the board.

See In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election (Appeal of: Donald J. Trump for President, Inc.), 241 A.3d 1058, 1067 (Pa. 2020). Where, however, an absentee ballot is not approved by the County Board, Section 1302.2(d) of the Election Code, added by the Act of August 13, 1963, P.L. 707, 25 P.S. § 3146.2b(d), provides a type of cure procedure for applications for absentee ballots/proof of identification:

(d) In the event that any application for an official absentee ballot is not approved by the county board of elections, the elector shall be notified immediately to that effect with a statement by the county board of the reasons for the disapproval. For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send notice to the elector with the absentee ballot requiring the elector to provide proof of identification with the absentee ballot or the ballot will not be counted.

See also Section 1305 of the Election Code, added by the Act of March 6, 1951, P.L. 3, 25 P.S. § 3146.5, which states that, “For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2(d) with the absentee ballot.”

For mail-in ballots, Section 1302.2-D(c) of the Election Code, added by Act 77, 25 P.S. § 3150.12b(c), provides as follows:

(c) Notice.--In the event that an application for an official mail-in ballot is not approved by the county board of elections, the elector shall be notified immediately

(h) For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

(1) Deleted by [the Act of October 31, 2019, P.L. 552, No. 77 (Act 77), effective immediately]

(2) If the proof of identification is received and verified prior to the sixth calendar day following the election, then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted.

25 P.S. § 3146.8(h). Thus, those electors applying to vote by absentee or mail-in ballot have until six days following Election Day to verify their proof of identification, and, pursuant to subsection (h)(3), their failure to do so will result in their ballot not being counted.

Also pertinent to this dispute is Section 302 of the Election Code, 25 P.S. § 2642, which enumerates the powers and duties of County Boards, in relevant part, as follows:

The county boards of elections, within their respective counties, shall exercise, **in the manner provided by this act**, all powers granted to

with a statement by the county board of the reasons for the disapproval. For applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send notice to the elector with the mail-in ballot requiring the elector to provide proof of identification with the mail-in ballot or the ballot will not be counted.

See also Section 1305-D of the Election Code, 25 P.S. § 3150.15, which states that, “For applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2-D(c) with the mail-in ballot.”

them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

.....

(f) To 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.

(Emphasis added.)

The case law interpreting these sections of the Election Code has been less than clear over recent years. As many of the Respondents, and even Petitioners, in this case point out, in *Pennsylvania Democratic Party*, the Supreme Court considered the specific question of whether County Boards were required to contact qualified electors whose absentee and mail-in ballots contained minor facial defects resulting from their failure to comply with the statutory requirements for voting by mail and provide them with an opportunity to cure those defects. *Pa. Democratic Party*, 238 A.3d at 372. In considering that question and ultimately concluding that the petitioner in that case, i.e., PDP, was not entitled to the relief it sought as to that question, the Supreme Court stated as follows, which we quote in full for accuracy:

Upon review, we conclude that the Boards are not required to implement a “notice and opportunity to cure” procedure for mail-in and absentee ballots that voters have filled out incompletely or incorrectly. Put simply, as argued by the parties in opposition to the requested relief, [the petitioner] has cited no constitutional or statutory basis that would countenance imposing the procedure [the petitioner] seeks to require (*i.e.*, having the Boards contact those individuals whose ballots the Boards have reviewed and identified as including “minor” or “facial” defects—and for whom the Boards have contact information—and then afford those individual the opportunity to cure defects until the . . . deadline [for uniform and overseas ballots].”

While the Pennsylvania Constitution mandates that elections be “free and equal,” it leaves the task of effectuating that mandate to the Legislature. *Winston*, 91 A. at 522. As noted herein, although the

Election Code provides the procedures for casting and counting a vote by mail, **it does not provide for the “notice and opportunity to cure” procedure sought by [p]etitioner.** To the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, **we agree that the decision to provide a “notice and opportunity to cure” procedure to alleviate that risk is one best suited for the Legislature.** We express this agreement particularly in light of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Pennsylvania's government. Thus, for the reasons stated, the [p]etitioner is not entitled to the relief it seeks in Count III of its petition.

Pa. Democratic Party, 238 A.3d at 374 (emphasis added).

As the above-quoted text indicates, the *Pennsylvania Democratic Party* Court held that the decision of whether to provide a notice and cure procedure is one best suited for the legislature in light of the policy considerations attendant to that decision. However, this Court does not read that decision, and specifically, the above text, to stand for the much broader proposition asserted by Petitioners that County Boards are necessarily prohibited from developing and implementing notice and opportunity to cure procedures. Notably, the Supreme Court did not explicitly decide whether County Boards' implementation of notice and opportunity to cure procedures were **forbidden** under the Election Code, but only whether the Election Code **required** County Boards to implement such procedures. Those are separate and distinct issues. **Therefore, the Court disagrees with Petitioners' argument that *Pennsylvania Democratic Party* was the final word on this subject.**

The *Pennsylvania Democratic Party* Court also considered whether the Election Code required that absentee or mail-in ballots, which are otherwise without error, be invalidated based solely on voters' failure to place such ballots in the

secrecy envelope (labeled “Official Election Ballot”). The Court ultimately concluded that the legislature intended for the secrecy envelope provision of 25 P.S. § 3150.16(a) to be mandatory, stating: “We respectfully reject the contentions of [the petitioner] and the Secretary that because the General Assembly did not delineate a remedy narrowly linked to the mail-in elector’s failure to utilize a secrecy envelope, the language of the Election Code is directory, and an elector’s violation of the command inconsequential.” *Pa. Democratic Party*, 238 A.3d at 378. The Court further noted “the inescapable conclusion that a mail-in ballot that is not enclosed in the statutorily-mandated secrecy envelope must be disqualified.” *Id.* at 380. In *In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election (Appeal of: Donald J. Trump for President, Inc.)*, 241 A.3d 1058, 1061-62 (Pa. 2020), a plurality of the Supreme Court reaffirmed its holding in *Pennsylvania Democratic Party* that the secrecy ballot requirement was mandatory, noting it implicated a “weighty interest,” i.e., secrecy in voting protected by article VII, section 4 of the Pennsylvania Constitution, but distinguished that case from the dispute before it, which involved what it found to be “minor irregularities.” *In re Canvass*, 241 A.3d at 1071-73. There is no question these cases stand for the proposition that the secrecy envelope requirement is mandatory.

The Supreme Court’s holding in *Pennsylvania Democratic Party*, and later in *In re Canvass*, specifically with respect to the mandatory nature of the ballot secrecy requirement, leads this Court to conclude that any procedure developed and implemented to cure such deficiency **may be** contrary to the Supreme Court’s observations that (1) the Election Code contains no notice and cure procedures for defective absentee or mail-in ballots, and (2) the implementation of any such cure procedures is one best suited for the legislature in light of the policy decisions

attendant thereto. However, notably absent from the Supreme Court’s discussions in both those cases is whether County Boards’ are prohibited from offering a notice and opportunity to cure procedure to remedy such mandatory defect. Also absent from those cases, as well as the parties’ filings in this case, is any discussion of whether the signature requirement with respect to absentee or mail-in ballots is a mandatory requirement of the Election Code, or merely directory, and whether such defect may be remedied prior to 8:00 p.m. on Election Day.

With respect to Section 302(f) of the Election Code, upon which Respondents rely for the proposition that the County Boards do in fact have authority to develop and implement notice and cure procedures at their discretion, our Supreme Court has held that the absence of any provisions in the Election Code relating to proximity parameters for representatives viewing the pre-canvassing meeting reflected “the legislature’s deliberate choice to leave such matters to the informed discretion of [County Boards], who are empowered by Section 2642(f) of the Election Code “[t]o make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of . . . elections officers.”” *In re Canvassing Observation*, 241 A.3d 339, 350 (Pa. 2020). As the Supreme Court further stated in that case, “[t]he General Assembly, had it so desired, could have easily established such [proximity] parameters; however, it did not. It would be improper for this Court to judicially rewrite the statute by imposing distance requirements where the legislature has, in the exercise of its policy judgment, seen fit not to do so.” *See Sivick v. State Ethics Commission*, — Pa. —, 238 A.3d 1250, —, 2020 WL 5823822, at *10 (2020) (“It is axiomatic that we may not add statutory language where we find the extant language somehow lacking.”).” Here, in light of *In re Canvassing Observation*, this Court cannot say for certain whether

the legislature intended to omit a notice and opportunity to cure procedure from the Election Code, or whether the lack thereof imbues the County Boards with authority under their discretionary rulemaking authority delegated to them by the General Assembly in Section 302(f).

Because it is not clear based on either the text of the Election Code, or the subsequent cases interpreting it, whether notice and cure procedures are permitted and/or prohibited by the Election Code, the Court concludes that Petitioners have failed to show a strong likelihood of success at this early stage of the litigation.

Greater Injury by Refusing the Injunction; Maintaining the Status Quo; Injunction Reasonably Suited to Abate Offending Activity; Public Interest

Although the Court technically need not continue further in light of its conclusion that Petitioners have not established a likelihood of success on the merits in this case, the Court will address the other prongs of the preliminary injunction test for the sake of completeness.

As stated earlier, in order to grant a preliminary injunction, Petitioners must also prove each of the following:

- (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings;
- (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
.....
- (5) the injunction is reasonably suited to abate the offending activity;
and[]
- (6) the preliminary injunction will not adversely affect the public interest.

SEIU Healthcare Pa., 104 A.3d at 582. Because these four prongs are closely interrelated and involve similar issues and analysis, they will be addressed together.

The injunction requested by Petitioners does not satisfy these four prongs or effectively address the concerns raised by the parties to this action. Specifically, greater harm will clearly result from granting the injunction, rather than denying it; granting the injunction will not maintain the status quo; the injunction is not reasonably suited to abate the offending conduct; and the injunction will adversely affect the public interest.

Petitioners argue that greater harm will result if the injunction is denied, rather than if the injunction is granted, because it will prevent the disparate treatment of noncompliant mail-in and absentee ballots throughout the Commonwealth and eliminate uncertainty regarding how mail-in and absentee ballots will be counted. Further, absent the injunction, the County Boards “will collectively engage in a[n unlawful] mishmash of cure procedures.” (Pet’rs’ Suppl. Memo. of Law at 14.) Petitioners also contend that the burden imposed on the County Boards is “*de minimis*” because all that is required is for them to **stop** implementing cure procedures, which would save the County Boards money; the requested injunction would merely bring all County Boards into a uniform application of the Election Code; the injunction would not cause “disenfranchisement” as alleged by Respondents, because no Pennsylvania voter has a right to notice and an opportunity to cure their ballot; and without an injunction, voter confidence will be harmed due to the disparate procedures employed by various County Boards. (Pet’rs’ Suppl. Memo. of Law at 15-18 (emphasis in original).) Petitioners further submit that the injunction only seeks to preserve the status quo, which it claims is the time when no such cure procedures existed; the injunction is narrowly tailored because it seeks

only to enforce the Supreme Court’s decision in *Pennsylvania Democratic Party* that the Election Code fails to provide a cure procedure and only the legislature can enact one; and, finally, the injunction will not adversely affect the public interest, which is best served by consistent application of the rule of law established by the General Assembly and the maintenance of the separation of powers in Pennsylvania. (Pet’rs’ Suppl. Memo. of Law at 18-19, 33-35.)

Petitioners’ arguments as to greater harm in refusing the injunction, preserving the status quo, and adverse effect on the public interest all hinge on their belief that the notice and cure procedures used by various County Boards are “unlawful.” However, as will be discussed below in the context of immediate and irreparable harm, Petitioners have failed to establish a clear violation of the Election Code or the law interpreting the Election Code, such that the County Boards’ continuing implementation of these procedures cannot, therefore, be considered “unlawful” at this point in the litigation such that it needs to be enjoined.

Such sweeping relief against the 67 County Boards would clearly cause greater injury than refusing the injunction, precisely because it would seriously harm the public interest and orderly administration of elections, namely the 2022 General Election, which is already well underway. Enjoining the various County Boards’ procedures at this point in time would further deprive voters in counties who have been privy to such procedures for the past two years since the enactment of Act 77 the opportunities to have their votes counted, thus resulting in almost certain disenfranchisement of voters. If this Court were to grant the injunctive relief Petitioners seek, the County Boards would then have to modify their practices and procedures in response to the injunction **and would notably have to do so when absentee and mail-in voting is already underway**. Simply put, Petitioners ignore

the actual harms that will almost certainly occur if the injunction is granted, which all participating Respondents have laid out in their comprehensive filings in this matter.

As it further relates to the greater harm inquiry, the status quo,¹⁹ and an adverse effect on the public interest, the Court quotes the following passage from Commonwealth Respondents' Brief in Opposition to Petitioners' Application for Preliminary Injunction:

Beyond disenfranchising electors directly, entering an injunction now will [] cause confusion and uncertainty, altering election administration procedures in many counties. As the Petition for Review reflects, [County Boards] with notice-and-cure procedures have, at least in some cases, had them in past years, *see* Pet.[] ¶¶ 65-70, and communicated them to the public. *See, e.g., id.* ¶¶ 66-67, 70; *see also* Angela Coulombis and Jamie Martines, *Republicans Seek to Sideline Pa. Mail Ballots that Voters Were Allowed to Fix*, Spotlight PA (November 3, 2020), <https://www.spotlightpa.org/news/2020/11/pennsylvania-mail-ballots-republican-legal-challenge-naked-ballots-fixed-cured/>.

Further, by the time the Court hears argument on Petitioners' [Application for Preliminary Injunction] on September 28, mail-in and absentee voting pursuant to Act 77 will likely already be well underway. Counties are statutorily authorized to begin processing mail-in ballot applications and mailing ballots to electors on the permanent mail-in voting list on September 19. *See* 25 P.S. § 3150.12a (application processing may begin 50 days before Election Day); 25 P.S. § 3150.15 (mailing of ballots). Ballot mailings will speed up in the last two weeks of September. By the end of September, counties will likely have mailed out tens of thousands of ballots; in many places, voters will be streaming to election offices to request mail-in ballots in person, fill them out, and hand them in.

¹⁹ The status quo for a preliminary injunction is “the last peaceable and lawful uncontested status preceding the underlying controversy.” *Hatfield Twp. v. Lexon Ins. Co.*, 15 A.3d 547, 555 (Pa. Cmwlth. 2011) (quoting *In re Milton Hershey Sch. Tr.*, 807 A.2d 324, 333 (Pa. Cmwlth. 2002)). One purpose of a preliminary injunction is to keep the parties in the same positions they had when the case began in order to preserve the Court's ability to decide the issues before it.

Accordingly, an order prohibiting notice-and-cure procedures in the November 2022 election would likely invalidate ballots already cast, confuse and upset electors, and disrupt the ongoing administration of the election. In that way, this case is like *Kelly v. Commonwealth*, 240 A.3d 1255, 1256 (Pa. 2020) (per curiam). There, the petitioners filed a suit asking that mail-in votes already cast in the 2020 general election be disqualified, **387 days and two elections** after the Governor signed Act 77 into law. Here, Petitioners filed suit on September 1, 2022, 667 days after the 2020 election, the latest date by which Petitioners knew about [County Boards'] notice-and-cure procedures. See Pet. ¶¶ 66-67 (discussing 2020 notice-and-cure procedures about which political parties were notified).

Consequently, . . . , fundamental principles of equity would preclude this Court from granting the relief Petitioners seek prior to the November 2022 general election. See . . . *McLinko v. Degraffenreid* [Pa. Cwmlth., No. 244 M.D. 2021, order dated Sept. 24, 2021] [] (“prospective relief, as requested by petitioners, is not available for the November 2021 election because it is already underway”); see also *Kuznik v. Westmoreland Cnty. Bd. of Com[m]’rs*, 902 A.2d 476, 489 (Pa. 2006) (injunctive relief is unavailable where greater injury would result from granting the injunction than from denying it).

(Cmwlt. Resps.’ Br. in Opp. at 42-44 (emphasis in original).) This Court agrees.

Petitioners have also not shown that the injunction is reasonably suited to abate the offending activity. Petitioners seek a statewide injunction enjoining all 67 County Boards from developing and implementing “unlawful” notice and opportunity to cure procedures, as well as the Acting Secretary from taking any action inconsistent with such injunction. **Again, Petitioners have not alleged a clear violation of the Election Code or the law interpreting it.** Further, not all 67 County Boards have notice and opportunity to cure procedures. See Jt. Stip. of Exs., Jt. Stip. of Facts at 2-6 & Exs. B-D. Moreover, Petitioners have not sufficiently alleged what, if any, type of action the Acting Secretary might take in the event this Court granted the requested relief in this case. Accordingly, this Court concludes

that Petitioners failed to meet their burden as to these four prongs of the preliminary injunction test.

Immediate & Irreparable Harm

The Court will now address the remaining prong of the preliminary injunction criteria: that the party seeking a preliminary injunction must establish that “the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages.” To meet this burden, Petitioners must present “concrete evidence” demonstrating “actual proof of irreparable harm.” *Greenmoor, Inc. v. Burchick Constr. Co., Inc.*, 908 A.2d 310, 314 (Pa. Super. 2006). A claim of irreparable harm cannot be based on speculation and hypothesis, and for purposes of a preliminary injunction, the harm must be irreversible before it is deemed irreparable. *Id.* at 314; *see also Kiddo v. Am. Fed’n of State*, 239 A.3d 1141 (Pa. Cmwlth. 2020) (not reported), 2020 WL 4431793 (stating that “the alleged harm or consequences must not be speculative in nature and [that] ‘speculative considerations . . . cannot form the basis for issuing [a preliminary injunction]’”).

Petitioners argue that the preliminary injunction is necessary to prevent immediate and irreparable harm to the uniform and equal administration of elections in Pennsylvania and that, absent a preliminary injunction, some County Boards will continue developing and implementing in secrecy disparate and unlawful cure procedures in all elections, including in the upcoming 2022 General Election. In support of their argument that there would be immediate and irreparable harm if the injunction is not granted, Petitioners’ cite *Hempfield School District v. Election Board of Lancaster County*, 574 A.2d 1190, 1191 (Pa. Cmwlth.), *appeal denied*, 581 A.2d 575 (Pa. 1990). In doing so, Petitioners allege that this case stands for the proposition that unlawful action by a County Board “per se constitutes immediate

and irreparable harm.” (Appl. for Prelim. Inj. ¶ 13, Memo. of Law in Support at 14; Pet’rs’ Suppl. Memo. of Law at 11.) However, this case is not on point.

In *Hempfield*, the county board of elections (election board) planned to include on the local May 1990 primary election ballot a nonbinding referendum asking voters if they supported the school board’s plan to construct a new high school. *Hempfield*, 574 A.2d at 1190-91. The school board petitioned a trial court for an injunction enjoining the election board from placing the referendum on the ballot, arguing that the election board had no legal authority to place the referendum on a ballot on its own initiative. The trial court denied injunctive relief, and the school district appealed. *Id.* at 1191. On appeal, the election board argued that the school district was not entitled to injunctive relief because the referendum would not subject the school board to “**great** and irreparable harm.” *Id.* at 1193 (emphasis added). Noting that the Election Code gave the school board, not the election board, “the option as to the means for obtaining public review of the construction or leasing of a new school building . . . [,]” this Court disagreed with the election board and reversed the trial court, holding that “unlawful action by the [e]lection [b]oard per se constitutes immediate and irreparable harm.” *Id.* at 1193.

Here, Petitioners have not proven that there is a clear violation of the Election Code or the law interpreting the Election Code, such that it per se constitutes immediate and irreparable harm. First, Petitioners argue that notice and opportunity to cure procedures are not authorized under the Election Code, but they have not cited to any Election Code provision that **prohibits** County Boards from developing and implementing such notice and opportunity to cure procedures. Second, Petitioners’ strained reliance on the Supreme Court’s decision in *Pennsylvania Democratic Party* for the proposition that the Court has already spoken on the

subject and held that a cure procedure to address signature and secrecy ballot defects in absentee and mail-in ballots must come from the legislature, such that the continued implementation of such cure procedures by County Boards constitutes a “violation of law” that *per se* constitutes immediate and irreparable harm, is also unavailing.

As mentioned above, *Pennsylvania Democratic Party* considered, *inter alia*, the specific question of whether County Boards were **required** to contact qualified electors whose absentee and mail-in ballots contained minor facial defects resulting from their failure to comply with the statutory requirements for voting by mail and provide them with an opportunity to cure those defects. *Pa. Democratic Party*, 238 A.3d at 372. In considering that question and ultimately concluding that the petitioner in that case, i.e., PDP, was not entitled to the relief it sought as to that question, the Supreme Court determined that the Election Code does not provide for the notice and cure procedure the petitioner requested in that case. In so deciding, the Court recognized that while voters may be at risk of having their ballots rejected based on minor defects in contravention of the Election Code’s requirements, it agreed that the decision to provide such a procedure was one best suited for the legislature. Thus, while this Court agrees with Petitioners that *Pennsylvania Democratic Party* held that implementation of any notice and cure procedure is best suited for the legislature, this Court does not read that decision to stand for the much broader proposition asserted by Petitioners that County Boards are necessarily prohibited from developing and implementing notice and opportunity to cure procedures and, consequently, that any violation of such holding constitutes *per se* immediate and irreparable harm. As discussed above in the context of whether Petitioners are likely to succeed on the merits of their claims, the question of whether

County Boards are **forbidden** from allowing electors to cure deficient absentee or mail-in ballots is separate and distinct from the issue of whether counties are **required** to adopt notice and opportunity to cure procedures under the Election Code. Accordingly, the Court concludes that Petitioners have failed to establish that the County Boards are clearly violating this case law interpreting the Election Code, such that it constitutes per se immediate and irreparable harm.

To the extent Petitioners allege that, without an injunction, the continuing implementation of such notice and cure procedures will harm Voter Petitioners because they will suffer the risk of having their votes being treated unequally, and thus diluted, and Republican Committee Petitioners because they will be unable to properly educate their members regarding the rules applicable to absentee and mail-in voting, the Court disagrees that these things constitute immediate and irreparable harm. In support of their claim of harm in these regards, Petitioners point to the nearly 15 County Boards identified in the Joint Stipulation of Facts in this matter and the lack of uniformity in cure procedures amongst those counties. *See generally* Jt. Stip. of Exs., Jt. Stip. of Facts at 2-3 (Beaver County); Ex. G (Philadelphia County); Jt. Stip. of Exs., Allegheny-2 and Allegheny-3; Pet'rs' Ex. 7 (Lehigh County Settlement). Petitioners also rely on the declarations of four named Voter Petitioners, all of whom allege that their respective County Boards do not have notice and opportunity to cure procedures; as such, if there is a mistake on their ballots, they will not have an opportunity to correct them and their votes will not count. *See* Jt. Stip. of Exs., Pet'rs' Exs. 17-20 (Declarations of Ross M. Farber (Pet-17), Vallerie Siciliano-Biancaniello (Pet-18), S. Michael Streib (Pet-19), and Jesse D. Daniel (Pet-20)). While it appears true from the Joint Stipulation of Facts that some County Boards are implementing different cure procedures, the Court does not

believe such lack of uniformity constitutes “concrete evidence” demonstrating “**actual proof** of irreparable harm” that is irreversible. Moreover, with respect to Voter Petitioners, such matters are, at best, **speculative** considerations, which cannot form the basis for issuing the extraordinary relief sought. *See Kiddo*, at *11 (stating that “claims that something may happen in the future if the injunctive relief is denied is speculative and insufficient to support the grant of a preliminary injunction”). As such, Petitioners have not met their burden of proving immediate and irreparable harm for purposes of the preliminary injunction.

Laches

Respondents and Intervenors essentially allege that the Application for Preliminary Injunction should be denied, and the Petition for Review dismissed, because Petitioners waited too long to file this action, which has prejudiced voters who reasonably rely on notice and opportunity to cure procedures when casting their absentee or mail-in ballots. In support of their argument, Respondents and Intervenors rely primarily on *Kelly v. Commonwealth*, 240 A.3d 1255 (Pa. 2020). Petitioners respond that *Kelly* is distinguishable from this matter, and that laches does not apply here because they have neither unduly delayed instituting this action due to a lack of due diligence, nor has there been any prejudice to any Respondents or Intervenors. Petitioners cite various exhibits in the Joint Stipulation of Exhibits as support for their contentions.

The Court first addresses Respondents’ and Intervenors’ reliance on *Kelly*. The *Kelly* action was commenced several weeks after the 2020 General Election and set forth a facial challenge to the constitutionality of Act 77. The petitioners in that case “sought to invalidate the ballots of millions of Pennsylvania voters who utilized the mail-in voting procedures established by Act 77 and count only those ballots that

[the petitioners] deem to be ‘legal votes.’” *Kelly*, 240 A.3d at 1256. The petitioners further sought “injunctive relief prohibiting the certification of the results of the General Election held on November 3, 2020.” *Id.* Notably, in addition to advocating the “proposition that the court disenfranchise al 6.9 million Pennsylvanians’ who voted in the General Election[,]” the petitioners also requested that the court “direct[] the General Assembly to choose Pennsylvania’s electors.” *Id.* The Supreme Court ultimately dismissed the petition for review on the basis of laches, holding that the petitioners failed to act with due diligence in commencing their facial challenge nearly a year after the enactment of Act 77 and on the eve of the County Boards’ certification of the results of the election when the results were “becoming seemingly apparent.” *Id.* at 1256-57. The Supreme Court also noted the substantial prejudice in the form of disenfranchisement of voters who had already voted in both the primary and general elections that year that would arise from the failure to institute a timely facial challenge. *Id.*

The Court agrees with Petitioners that *Kelly* is distinguishable from the instant matter. The petitioners in *Kelly* filed their challenge to Act 77 nearly 3 weeks **after** the 2020 General Election and a year after the enactment of Act 77, whereas Petitioners here filed this action on September 1, 2022, nearly two months **prior to** the upcoming General Election. That absentee and mail-in voting has already begun in relation to the 2022 General Election does not mean that laches is a complete bar to Petitioners’ action as a whole, which also seeks a declaration regarding the lawfulness of notice and opportunity to cure procedures in future elections. The Court therefore holds that *Kelly* is not controlling in this case and will instead consider whether laches applies under the applicable standards.

Laches is an equitable doctrine that “bars relief when the complaining party is guilty of want of due diligence in failing to promptly institute [an] action to the prejudice of another.” *Sprague v. Casey*, 550 A.2d 184, 187 (Pa. 1988). To prevail on the assertion of laches, it must be established that there was an inexcusable delay arising from Petitioners’ failure to exercise due diligence, and prejudice to the party asserting laches resulting from the delay. *Id.*; *Meier v. Maleski*, 648 A.2d 595, 603 (Pa. Cmwlth. 1994). “[T]he question of laches is factual and is determined by examining the circumstances of each case.” *Sprague*, 550 A.2d at 187.

After reviewing the evidence offered and the circumstances of this case, the Court concludes that Respondents and Intervenors have not established that laches is a bar to Petitioners’ claims. Based on the evidence presented in this case, the delay was not inexcusable or for want of due diligence. Petitioners explained in their filings, as well as at the status conference/hearing in this matter, that following the Supreme Court’s decision in *Pennsylvania Democratic Party*, and the failed legislative attempt to enact such procedures in accordance with that decision (i.e., House Bill 1300), Petitioner RNC began seeking information about County Boards’ various ballot curing procedures under the RTKL but was met with numerous extensions and delays. *See* Jt. Stip. of Exs., Pet’rs’ Exs. 9 (House Bill 1300); 10 (Governor Wolf’s Letter dated June 30, 2021, indicating he was withholding his signature); 16 (Declaration of Brian M. Adrian, explaining, *inter alia*, that RTKL requests served on Philadelphia County in October 2021 and March 2022, and on Bucks County in October 2021, and that responses not received from either County Board until August 2022). Petitioners further explained that the earliest indication they had that some County Boards planned to utilize cure procedures for the upcoming 2022 General Election came to light in the wake of the Stipulated

Settlement Agreements entered into by Northampton and Lehigh Counties in the federal case in *Dondiego v. Lehigh County Board of Elections*, No. 5:22-cv-02111 (E.D. Pa. 2022), on June 15, 2022. See Jt. Stip. of Exs., Pet’rs’ Exs. 6 (Northampton County Settlement dated June 15, 2022) & 7 (Lehigh County Settlement dated June 15, 2022). Petitioners, RNC and RPP of which were intervenors in the federal action, have also produced a June 15, 2022 letter from one of their counsel addressed to the federal court Judge in that case, placing Northampton and Lehigh Counties on notice that the Settlement Agreements reached were illegal. Jt. Stip. of Exs., Pet’rs’ Ex. 21 (June 15, 2022 letter from Thomas W. King to Judge Schmehl in *Dondiego* case). Petitioners further highlight, as they did at the status conference/hearing, that the Acting Secretary did not sign the Settlement Agreements, purportedly because her doing so would have been contrary to the guidance she has on the Department of State’s website stating that absentee and mail-in ballots will not be counted if they fail to comply with the Election Code’s outer envelope declaration and ballot secrecy requirements. Jt. Stip. of Exs., Pet’rs Ex. 11 (print-out of Acting Secretary’s Guidance on Department of State’s website). The Court finds Petitioners’ explanation and evidence in this regard credible and that its decision to actively seek out information from County Boards regarding what they were doing with respect to ballot curing following the legislature’s failed attempt to enact the same, rather than immediately file a lawsuit, reflects that Petitioners acted with due diligence and provides an excuse for any delay in filing the Petition for Review.

The Court is also not convinced that Respondents and Intervenors established that they were prejudiced in any way by the delay in filing the Petition for Review. The party asserting laches “must establish prejudice from some changed condition of the parties which occurs during the period of, and in reliance on, the delay.”

Meier, 648 A.2d at 604-05 (citing *Sprague*, 550 A.2d at 188) (emphasis omitted). Such prejudice has been found where “records have become lost or unavailable, witnesses die or cannot be located, and where the party asserting laches has changed its position in anticipation that a party will not pursue a particular claim.” *Id.* The evidence in this case does not establish that Philadelphia County, Delaware County, or Intervenors DNC and PDP changed their positions based on the delay in filing the Petition for Review. While the County Boards and Intervenors DNC and PDP claim that, if Petitioners prevail, voters, the County Boards, and DNC and PDP will be prejudiced because voters will no longer be able to rely on longstanding notice and cure procedures in their respective counties, County Boards that have employed these procedures will have to, among other things, retrain their staff, and DNC and PDP will have to reeducate voters on mail voting – this is not prejudice, but rather “this would be a natural consequence of a legal determination that” such notice and cure procedures violate the law. *Chapman v. Berks Cnty. Bd. of Elections* (Pa. Cmwlth., No. 355 M.D. 2022, filed Aug. 19, 2022), slip op. at 22 (Cohn Jubelirer, P.J.) (single-Judge op.), 2022 WL 4100998. Thus, under the circumstances in this case, the Court cannot say that laches applies here.

Accordingly, for all of the foregoing reasons, Petitioners’ Application for Preliminary Injunction is **DENIED**.



ELLEN CEISLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Republican National Committee; :
National Republican Senatorial :
Committee; National Republican :
Congressional Committee; Republican :
Party of Pennsylvania; David Ball; :
James D. Bee; Debra A. Biro; Jesse D. :
Daniel; Gwendolyn Mae Deluca; Ross :
M. Farber; Connor R. Gallagher; Lynn :
Marie Kalcevic; Linda S. Kozlovich; :
William P. Kozlovich; Vallerie :
Siciliano-Biancaniello; S. Michael :
Streib, :

Petitioners :

v. :

No. 447 M.D. 2022

Leigh M. Chapman, in her official :
capacity as Acting Secretary of the :
Commonwealth; Jessica Mathis, in :
her official capacity as Director of the :
Pennsylvania Bureau of Election :
Services and Notaries; Adams County :
Board of Elections; Allegheny County :
Board of Elections; Armstrong County :
Board of Elections; Beaver County :
Board of Elections; Bedford County :
Board of Elections; Berks County Board :
of Elections; Blair County Board of :
Elections; Bradford County Board of :
Elections; Bucks County Board of :
Elections; Butler County Board of :
Elections; Cambria County Board of :
Elections; Cameron County Board of :
Elections; Carbon County Board of :
Elections; Centre County Board of :
Elections; Chester County Board of :
Elections; Clarion County Board of :
Elections; Clearfield County Board of :
Elections; Clinton County Board of :
Elections; Columbia County Board of :
Elections; Crawford County Board of :

Elections; Cumberland County Board :
of Elections; Dauphin County Board of :
Elections; Delaware County Board of :
Elections; Elk County Board of :
Elections; Erie County Board of :
Elections; Fayette County Board of :
Elections; Forest County Board of :
Elections; Franklin County Board of :
Elections; Fulton County Board of :
Elections; Greene County Board of :
Elections; Huntingdon County Board :
of Elections; Indiana County Board of :
Elections; Jefferson County Board of :
Elections; Juniata County Board of :
Elections; Lackawanna County Board :
of Elections; Lancaster County Board :
of Elections; Lawrence County Board :
of Elections; Lebanon County Board :
of Elections; Lehigh County Board of :
Elections; Luzerne County Board of :
Elections; Lycoming County Board of :
Elections; McKean County Board of :
Elections; Mercer County Board of :
Elections; Mifflin County Board of :
Elections; Monroe County Board of :
Elections; Montgomery County Board :
of Elections; Montour County Board of :
Elections; Northampton County Board :
of Elections; Northumberland County :
Board of Elections; Perry County :
Board of Elections; Philadelphia County:
Board of Elections; Pike County Board :
of Elections; Potter County Board of :
Elections; Schuylkill County Board of :
Elections; Snyder County Board of :
Elections; Somerset County Board of :
Elections; Sullivan County Board of :
Elections; Susquehanna County Board :
of Elections; Tioga County Board of :
Elections; Union County Board of :
Elections; Venango County Board of :
Elections; Warren County Board of :

Elections; Wayne County Board of :
Elections; Westmoreland County Board :
of Elections; Wyoming County Board of:
Elections; and York County Board of :
Elections, :
Respondents :

ORDER

AND NOW, this 29th day of September, 2022, the Application for Special Relief in the Form of a Preliminary Injunction Under Pa.R.A.P. 1532, filed by Petitioners, is DENIED.



ELLEN CEISLER, Judge

**CERTIFICATION OF COMPLIANCE
WITH CASE RECORDS PUBLIC ACCESS POLICY**

I, Kathleen A. Gallagher, certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Dated: September 30, 2022

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2022, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher _____

Kathleen A. Gallagher

Counsel for Petitioners

The County of Chester
Solicitor's Office
Colleen Frens (Pa. No. (Pa. No. 309604)
Faith Mattox-Baldini (Pa. No. 323868)
Nicholas J. Stevens (Pa. No. 322906)
313 W. Market Street, Suite 6702
West Chester, PA 19382
T 610.344.6195, F 610.344.5995

Attorneys for Chester County Board of Elections

Republican National Committee, <i>et al.</i> ,	:	In the Commonwealth Court of
	:	Pennsylvania
Petitioners,	:	
	:	Case No. 447 MD 2022
v.	:	
	:	
Leigh M. Chapman, <i>et al.</i> ,	:	
	:	
Respondents.	:	

**CHESTER COUNTY BOARD OF ELECTIONS RESPONSE IN OPPOSITION TO
PETITION FOR REVIEW DIRECTED TO COURT'S ORIGINAL JURISDICTION
SEEKING DECLARATORY AND INJUNCTIVE RELIEF**

I. PRELIMINARY STATEMENT

Respondent Chester County Board of Elections ("Board") hereby submits its response in opposition to the Petitioners' Petition for Review seeking Declaratory and Injunctive Relief ("Petition"). The Board is statutorily charged with administering elections in Chester County. 25 P.S. § 2641(a). The Board accomplishes this statutory duty by providing Chester County citizens with the opportunity to register to vote, conducting fair, accurate, and impartial elections, and affording all registered electors the opportunity to participate in the electoral process. To achieve that end, and in accordance with Pennsylvania law, Chester County citizens participate in secure elections through in-person, absentee, and mail-in ballot voting. The Board is devoted to conducting free and equal elections and to ensure that Chester County citizens' ballots

are collected and canvassed consistent with Pennsylvania law, the Constitution of the Commonwealth of Pennsylvania, and the United States Constitution.

The Petition takes issue with “some” County Board of Elections in the Commonwealth that have supposedly implemented notice and cure procedures for a ballot that fails to satisfy the requirements for voting by mail or absentee. *See generally* Petition ¶ 2. Because “some” County Board of Elections *may* have implemented a notice and cure procedure, the Petition seeks a declaration that *all* the County Boards of Elections are prohibited from developing any “cure procedures” (although, it is unclear what the Petition is specifically defining as a cure procedure), a declaration that the adoption of a “cure procedure” violates the United States Constitution, and an injunction prohibiting *all* the County Board of Elections from implementing “cure procedures.” Yet the Petition fails to direct a single allegation at the Chester County Board, and, to the Chester County Board’s knowledge, the Petitioners made no attempt to investigate the Board’s canvassing operation prior to filing the Petition. Because the Petition fails to allege any conduct against the Board that would warrant the relief sought, the Petitioners have failed to present a cause of action against the Board and their Petition should be dismissed.

II. BOARD’S RESPONSE TO PETITION

1. Denied. After a reasonable investigation the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to “several county Boards of Elections” and/or other Respondents rather than asserting specific allegations against the Board. Moreover, to

the extent this averment asserts an opinion concerning Pennsylvania election law(s), rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required. Finally, the Board incorporates by reference its Preliminary Statement as if fully set forth herein.

2. Admitted in part and denied in part. It is admitted only that Petitioners have accurately quoted a portion of the opinion in *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020). To the extent this averment asserts an opinion regarding the outcome or holding of *Pa. Democratic Party*, the Board denies the averment as a legal conclusion to which no responsive pleading is required. If a response is required, the Board denies that Pennsylvania election law expressly permits or prohibits a Board's decision to provide a cure procedure for mail-in or absentee ballots.

3. Denied. Petitioners have failed to accurately quote a portion of the opinion in *Pa. Democratic Party*, 238 A.3d at 374. Furthermore, to the extent this averment asserts an opinion regarding the outcome or holding of *Pa. Democratic Party*, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

4. Admitted in part and denied in part. It is admitted only that Petitioners have accurately quoted a portion of the opinion in *Pa. Democratic Party*, 238 A.3d at 374. However, to the extent this averment asserts an opinion regarding the outcome or holding of *Pa. Democratic Party*, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

5. Admitted in part and denied in part. It is admitted only that Petitioner have accurately quoted a portion of 25 P.S. § 3146.8(h). However, to the extent this averment

asserts an opinion regarding Pennsylvania election law(s), rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to non-party "Legislature" rather than asserting specific allegations against the Board.

6. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. Furthermore, to the extent this averment asserts an opinion regarding Pennsylvania election law(s), rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required. Furthermore, to the extent this averment asserts an opinion regarding the contents of an unidentified "bill," the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to non-parties "Legislature" and "Governor Wolf," rather than asserting specific allegations against the Board.

7. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. Furthermore, to the extent this averment asserts an opinion regarding Pennsylvania election law(s), rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct

attributable to "several Boards" and/or other Respondents and non-parties rather than asserting specific allegations against the Board.

8. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, to the extent this averment asserts an opinion regarding Pennsylvania election law(s), rules, an election administration procedure, and/or the outcome or holding in an undisclosed Pennsylvania Supreme Court opinion, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to "these Boards," and/or other Respondents and non-parties rather than asserting specific allegations against the Board.

9. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, to the extent this averment asserts an opinion regarding Pennsylvania election law(s), rules, election administration procedure, and the United States Constitution, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to "these Boards," and/or other Respondents and non-parties rather than asserting specific allegations against the Board.

10. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, to the extent this averment asserts an opinion regarding Pennsylvania

election law(s), rules, election administration procedure, and the United States Constitution, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to "these Boards," "the Boards," and/or other Respondents and non-parties rather than asserting specific allegations against the Board.

11. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, to the extent this averment asserts an opinion regarding Pennsylvania election law(s), rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to "some Boards," "the Boards," and/or other Respondents and non-parties rather than asserting specific allegations against the Board.

12. Denied the broad averment that Pennsylvania elections lack transparency, fundamental fairness, and integrity. Furthermore, to the extent this averment asserts an opinion regarding Pennsylvania election law(s), rules, election administration procedure, and/or the outcome or holding in an undisclosed Pennsylvania Supreme Court opinion, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

13. To the extent this averment asserts an opinion regarding this Court's original jurisdiction, the Board denies the averment as a legal conclusion to which no

responsive pleading is required. In addition, the Board incorporates by reference its Preliminary Statement as if fully set forth herein.

14. To the extent this averment asserts an opinion about the Declaratory Judgment Act, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, the Board incorporates by reference its Preliminary Statement as if fully set forth herein.

15. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, to the extent this averment asserts an opinion regarding a federal statute, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

16. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, to the extent this averment asserts an opinion regarding a federal statute, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

17. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, to the extent this averment asserts an opinion regarding a federal statute, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

18. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, to the extent this averment asserts an opinion regarding a Pennsylvania statute and a federal statute, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

19. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, this averment is denied to the extent it vaguely references conduct attributable to "counties" and/or other Respondents and non-parties rather than asserting specific allegations against the Board.

20. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

21. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

22. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

23. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

24. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

25. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

26. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

27. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

28. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

29. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

30. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

31. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

32. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

33. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

Furthermore, to the extent this averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition,

this averment is denied to the extent it vaguely references conduct attributable to unidentified "Boards" and/or other Respondents rather than asserting specific allegations against the Board.

34. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, to the extent this averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to unidentified "Boards" and/or other Respondents rather than asserting specific allegations against the Board.

35. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, to the extent this averment asserts an opinion regarding opinion regarding the outcome or holding of *Pa. Democratic Party*, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to unidentified "Boards" and/or other Respondents rather than asserting specific allegations against the Board.

36. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. Furthermore, to the extent this averment asserts an opinion regarding the outcome or holding of *Pa. Democratic Party*, the Board denies the averment as a legal conclusion to

which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to non-parties and/or other Respondents rather than asserting specific allegations against the Board.

37. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

38. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

39. Admitted in part and denied in part. It is admitted only that Chester County Board of Elections is named as a Respondent and that Petitioners have accurately quoted a portion of 25 P.S. § 2641(a). As to the remaining allegations, the Board responds as follows: after a reasonable investigation the Board is without knowledge or information sufficient to form a belief as to the truth of the remaining averment in this paragraph.

40. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph concerning “Act 77” and denies the allegation. To the extent a response is required, the averment asserts an opinion regarding contents of “Act 77,” which is a legal conclusion to which no responsive pleading is required and is denied.

41. Denied. The averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and is a legal conclusion to which no responsive pleading is required.

42. Denied. The averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and is a legal conclusion to which no responsive pleading is required.

43. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. Furthermore, to the extent this averment asserts an opinion regarding the outcome or holding of *Pa. Democratic Party*, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to non-parties and/or other Respondents rather than asserting specific allegations against the Board.

44. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. Furthermore, to the extent this averment asserts an opinion regarding the outcome or holding of *Pa. Democratic Party*, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to non-parties and/or other Respondents rather than asserting specific allegations against the Board.

45. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. Furthermore, to the extent this averment asserts an opinion

regarding the outcome or holding of *Pa. Democratic Party*, the Board denies the averment as a legal conclusion to which no responsive pleading is required. In addition, this averment is denied to the extent it vaguely references conduct attributable to non-parties and/or other Respondents rather than asserting specific allegations against the Board.

46. Admitted in part and denied in part. It is admitted that Petitioners have accurately quoted a portion of the opinion in *Pa. Democratic Party*, 238 A.3d at 374. To the extent this averment asserts an opinion regarding the outcome or holding of *Pa. Democratic Party*, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

47. Admitted in part and denied in part. It is admitted that Petitioners have accurately quoted a portion of the opinion in *Pa. Democratic Party*, 238 A.3d at 374. To the extent this averment asserts an opinion regarding the outcome or holding of *Pa. Democratic Party*, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

48. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. Furthermore, to the extent this averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

49. Admitted in part and denied in part. It is admitted that Petitioners have accurately quoted a portion of 25 P.S. § 3146.8(h). However, to the extent this averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

50. Admitted in part and denied in part. It is admitted that 25 P.S. § 3146.8(h)(2) states that "[i]f the proof of identification received and verified prior to the sixth calendar day following the election, then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2)." However, to the extent this averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

51. To the extent this averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

52. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. Furthermore, to the extent this averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is

required. In addition, this averment is denied to the extent it vaguely references conduct attributable to non-parties rather than asserting specific allegations against the Board.

53. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to non-parties rather than asserting specific allegations against the Board.

54. This averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and thus, is a legal conclusion to which no responsive pleading is required.

55. Admitted in part and denied in part. It is admitted that Petitioners have accurately quoted a portion of the website at <https://www.vote.pa.gov/Voting-in-PA/Pages/Mail-and-Absentee-Ballot.aspx>. As to the remaining allegations, the Board responds as follows: after a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. In addition, this averment is denied to the extent it vaguely references conduct attributable to non-parties or other Respondents rather than asserting specific allegations against the Board.

56. This averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and thus, is a legal conclusion to which no responsive pleading is required.

57. Admitted in part and denied in part. It is admitted that Petitioners have accurately quoted a portion of 25 P.S. § 2642. To the extent this averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

58. This averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and thus, is a legal conclusion to which no responsive pleading is required.

59. Denied as vague regarding the phrase “Notably absent from the list” as “the list” is not defined nor specified. In addition, this averment seemingly asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and thus, is a legal conclusion to which no responsive pleading is required.

60. This averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and thus, is a legal conclusion to which no responsive pleading is required.

61. Admitted in part and denied in part. It is admitted that Petitioners have accurately quoted a portion of 25 P.S. § 2642(g). To the extent this averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

62. Denied as vague regarding the phrase “limited rulemaking authority” because the averment fails to identify the “authority” referenced. In addition, this

averment seemingly asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and thus, is a legal conclusion to which no responsive pleading is required.

63. Admitted in part and denied in part. It is admitted that Petitioners have accurately quoted a portion of 25 P.S. § 2642(f). To the extent this averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

64. This averment asserts an opinion regarding the outcome or holding of *Pa. Democratic Party*, and thus, is a legal conclusion to which no responsive pleading is required.

65. Denied as vague regarding the phrase “publicly available information and investigation” because the averment fails to identify the “publicly available information” or the “investigation” conducted. To the extent that a response is required, the Board respond as follows: after a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. In addition, this averment is denied to the extent it vaguely references conduct generally attributable to other Respondents rather than asserting specific allegations against the Board.

66. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. In addition, this averment is denied to the extent it vaguely references conduct

attributable to other Respondents rather than asserting specific allegations against the Board.

67. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

68. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

69. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

70. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

71. Denied as vague regarding the phrase “other counties have previously opined that” because the averment failed to identify which counties “opined.” To the extent that a response is required, the Board responds as follows: after a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct generally attributable to Respondents rather than asserting specific allegations against the Board.

72. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

73. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

74. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

75. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

76. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

77. Denied as vague regarding the phrase “other Boards do not allow for any . . .” because the averment fails to identify the “other Boards.” To the extent that a response is required, the Board respond as follows: after a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph. In addition, this averment is denied to the extent it vaguely references conduct generally attributable to Respondents rather than asserting specific allegations against the Board.

78. Denied as vague regarding the phrase “some Boards are transparent” because the averment fails to identify “some Boards” and how they are “transparent.” To the extent that a response is required, the Board respond as follows: after a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation.

In addition, this averment is denied to the extent it vaguely references conduct generally attributable to other Respondents rather than asserting specific allegations against the Board.

79. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

80. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

81. Denied. After a reasonable investigation, the Board is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph and denies the allegation. In addition, this averment is denied to the extent it vaguely references conduct attributable to other Respondents rather than asserting specific allegations against the Board.

82. This averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and thus, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

83. This averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and thus, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

84. This averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and thus, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

85. This averment asserts an opinion regarding Pennsylvania election law, rules, and election administration procedure, and thus, the Board denies the averment as a legal conclusion to which no responsive pleading is required.

COUNT I

86. The Board incorporates by reference its response to all preceding paragraphs as if fully set forth herein.

87. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

88. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

89. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

90. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

91. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

92. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

COUNT II

93. The Board incorporates by reference its response to all preceding paragraphs as if fully set forth herein.

94. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

95. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

96. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

COUNT III

97. The Board incorporates by reference its response to all preceding paragraphs as if fully set forth herein.

98. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

99. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

100. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

101. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

102. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

103. Denied. Petitioners assert a legal conclusion to which no responsive pleading is required.

Dated: October 3, 2022

Respectfully,

/s/ Nicholas J. Stevens

Colleen Frens (Pa. No. 309604)

Faith Mattox-Baldini (Pa. No. 323868)

Nicholas J. Stevens (Pa. No. 322906)

The County of Chester

Solicitor's Office

*Attorneys for Chester County Board of
Elections*

**CERTIFICATE OF COMPLIANCE
WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Public Access Policy of the United 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.

GALLAGHER GIANCOLA LLC

Dated: October 5, 2022

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Russell D. Giancola

Counsel for Petitioners