

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**REPRESENTATIVE BRYAN CUTLER,)
LEADER OF THE REPUBLICAN)
CAUCUS OF THE PENNSYLVANIA)
HOUSE OF REPRESENTATIVES)**

Petitioner,

v.

**LEIGH M. CHAPMAN, ACTING)
SECRETARY OF THE)
COMMONWEALTH, THE)
PENNSYLVANIA DEPARTMENT OF)
STATE, and THE BOARD OF)
ELECTIONS OF ALLEGHENY)
COUNTY)**

Respondents.

No. 588 MD 2022

**ANSWER OF RESPONDENT ALLEGHENY COUNTY BOARD OF
ELECTIONS TO PETITION FOR EMERGENCY APPLICATION IN THE
NATURE OF A PRELIMINARY INJUNCTION**

AND NOW COMES Respondent, the Allegheny County Board of Elections (Allegheny BOE), through George M. Janocsko, County Solicitor, and Allan J. Opsitnick and Lisa G. Michel, Assistant County Solicitors, and files the within Answer to Petitioner Bryan Cutler’s (Cutler) Emergency Application for Special Relief in the Nature of a Preliminary Injunction (Emergency Application) and avers as follows:

1. Paragraph 1 of the Emergency Application is admitted.
2. Paragraph 2 of the Emergency Application is admitted. By way of further response, neither the Petition for Review nor the Emergency Application contain any averment that the Allegheny BOE has violated any law or disobeyed any writ. Allegheny BOE is simply the

recipient of four writs issued for the purpose of holding special elections to fill vacant seats in State House of Representative districts within Allegheny County. As such, Allegheny BOE is only a nominal party in this matter.

3. Paragraph 3 of the Emergency Application is admitted.
4. Paragraph 4 of the Emergency Application is admitted.
5. Paragraph 5 of the Emergency Application is admitted.
6. Paragraph 6 of the Emergency Application is admitted.
7. Paragraph 7 of the Emergency Application is admitted.
8. Paragraph 8 of the Emergency Application is admitted.
9. Paragraph 9 of the Emergency Application is admitted.
10. Paragraph 10 of the Emergency Application is admitted.
11. It is admitted that Petitioner issued a writ of election to Respondent Department of State (DOS) and Allegheny BOE setting a special election for February 7, 2023 to fill the late Representative DeLuca's seat in the General Assembly. The document attached as Exhibit A to the Emergency Application speaks for itself and no response is required by Allegheny BOE. By way of further response, Allegheny BOE avers that February 7, 2023 is the same date that Representative McClinton selected for the special election to fill the late Representative Anthony DeLuca's seat as set forth in the Writ of Election that she issued to Allegheny BOE.
12. The document referred to in Paragraph 12 of the Emergency Application speaks for itself and no response is required by Allegheny BOE. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 12 of the Emergency Application is specifically denied.

13. Paragraph 13 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 13 of the Emergency Application is specifically denied.

14. The document referred to in Paragraph 14 of the Emergency Application speaks for itself and no response is required by Allegheny BOE. The balance of this paragraph states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 14 of the Emergency Application is specifically denied.

15. It is admitted that Austin A. Davis, the duly elected member of the House of Representatives for the 35th Legislative District and the Lieutenant Governor-elect (“former Representative Davis”), and Summer L. Lee, the duly elected member of the House of Representatives for the 34th Legislative District and member-elect of the United States House of Representatives (“former Representative Lee”), resigned their seats in the Pennsylvania House of Representatives. The documents referred to in Paragraph 15 of the Emergency Application speak for themselves and no response is required by Allegheny BOE.

16. Paragraph 16 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the

avertment contained in this paragraph. Therefore, Paragraph 16 of the Emergency Application is specifically denied.

17. Paragraph 17 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 17 of the Emergency Application is specifically denied. By way of further response, Allegheny BOE notes that February 7, 2023 is the same date that the Petitioner and Representative McClinton selected for the special election to fill the late Representative Anthony DeLuca's seat as set forth in the Writ of Election that she issued to Allegheny BOE.

18. The document referred to in Paragraph 18 speaks for itself and no response is required by Allegheny BOE. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 18 of the Emergency Application is specifically denied.

19. The document referred to in Paragraph 19 of the Emergency Application speaks for itself and no response is required by Allegheny BOE. By way of further response, Paragraph 19 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 19 of the Emergency Application is specifically denied.

20. The document in this Paragraph 20 of the Emergency Application from which the quotation is made speaks for itself and no response is required by Allegheny BOE. By way of further response, Paragraph 20 of the Emergency Application states a conclusion of law to which no response is required.

21. The document referred to in Paragraph 21 of the Emergency Application speaks for itself and no response is required by Allegheny BOE. By way of further response, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 21 of the Emergency Application is specifically denied.

22. Paragraph 22 of the Emergency Application states a conclusion of law to which no response is required.

23. This Paragraph 23 of the Emergency Application contains introductory material and a request for relief to which no response is required. By way of further response, Allegheny BOE would note that the Petitioner and the Secretary of Respondent DOS do not appear to disagree over the date chosen for special elections in Allegheny County – February 7th. To that end, Allegheny BOE would urge a swift determination of the dispute between the Petitioner and DOS because the public interest warrants that the special elections should be held so that the citizens in Allegheny County living in the affected districts have representation in the State House of Representatives.

24. Paragraph 24 of the Emergency Application states legal argument or a conclusion of law to which no response is required.

25. Paragraph 25 of the Emergency Application states legal argument or a conclusion of law to which no response is required.

26. Paragraph 26 of the Emergency Application states legal argument or a conclusion of law to which no response is required.

27. Paragraph 27 of the Emergency Application states legal argument or a conclusion of law to which no response is required.

28. Paragraph 28 of the Emergency Application states legal argument or a conclusion of law to which no response is required.

29. Paragraph 29 of the Emergency Application states legal argument or a conclusion of law to which no response is required.

30. Paragraph 30 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 30 of the Emergency Application is specifically denied.

31. Paragraph 31 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 31 of the Emergency Application is specifically denied.

32. Paragraph 32 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 32 of the Emergency Application is specifically denied.

33. Paragraph 33 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 33 of the Emergency Application is specifically denied.

34. Paragraph 34 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 34 of the Emergency Application is specifically denied.

35. Paragraph 35 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 35 of the Emergency Application is specifically denied.

36. Paragraph 36 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 36 of the Emergency Application is specifically denied.

37. Paragraph 37 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the

truth of the averment contained in this paragraph. Therefore, Paragraph 37 of the Emergency Application is specifically denied.

38.Paragraph 38 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 38 of the Emergency Application is specifically denied.

39. Paragraph 39 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 39 of the Emergency Application is specifically denied.

40. Paragraph 40 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, after reasonable investigation, Allegheny BOE has insufficient knowledge or information in order to form a belief as to the truth of the averment contained in this paragraph. Therefore, Paragraph 40 of the Emergency Application is specifically denied.

41. Paragraph 41 of the Emergency Application states a conclusion of law to which no response is required. To the extent that any facts are averred, Allegheny BOE admits that the Board of Elections must immediately its preparations for the February 7, 2023 Special Elections including, but not limited to, preparing mail-in and absentee ballots for transmittal to voters, preparing paper ballots for voting on the date of the special election; securing the polling locations and securing required staffing at polling places/voting precincts.

A total of 246 voting precincts shall be required for the special election. The breakdown by Legislative District is:

32nd District -68 voting precincts;

34th District -81 voting precincts;

35th District-97 voting precincts.

Allegheny BOE agrees with Petitioner to the extent that he urges that swift determination is necessary because of the time needed by Allegheny BOE and its administrative arm, the County Elections Division, to begin preparations for these special elections.

WHEREFORE, Respondent Allegheny County Board of Elections requests this Court to act expeditiously in this matter so that it can effectively prepare and conduct the special elections in the three districts and that the citizens of Allegheny County in the affected districts are served by representatives in the Pennsylvania House of Representatives.

Respectfully submitted,

/s/ George M. Janocsko

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/s/ Allan J. Opsitnick

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Allan J. Opsitnick

Signature: /s/ Allan J. Opsitnick

Name: Allan J. Opsitnick

Attorney #: 28126

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving true and correct copies of the foregoing **ANSWER OF RESPONDENT ALLEGHENY COUNTY BOARD OF ELECTIONS TO PETITION FOR EMERGENCY APPLICATION IN THE NATURE OF A PRELIMINARY INJUNCTION** upon the persons and in the manner indicated below, which satisfies the requirements of Pa. R. A. P. 121:

Service by Electronic Mail as Addressed as Follows:

To all active counsel of record listed as participants on Commonwealth Court docket in this matter.

Date: December 14, 2022

/s/ Allan J. Opsitnick _____
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