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IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

No. 149 MM 2020

IN RE NOVEMBER 3, 2020 GENERAL ELECTION

SUPPLEMENTAL BRIEF OF PETITIONER KATHY BOOCKVAR IN SUPPORT OF APPLICATION FOR INVOCATION OF KING'S BENCH POWER TO DECLARE PROPER CONSTRUCTION OF ELECTION CODE

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INTRODUCTION

The plain text of the Election Code is dispositive of the issue before the Court. The Code provides processes for verifying proof of identity of mail-in and absentee voters. Signature comparison is not one of them. The contrary interpretation proposed by the Republican Intervenors[1] and Legislative *Amici*[2] is not faithful to the statutory text, defies settled rules of statutory construction and invites serious constitutional challenges.

ARGUMENT

A. The statutory text does not permit rejection of voted absentee and mail-in ballots based on signature comparison.

The Republican Intervenors suggest that signature analysis is required by 25 P.S. § 3146.8(g)(3) because that section directs county election officials to compare the voter's declaration on the ballot envelope with "the board's permanent voter registration records, such as the Voters File." Republican Intervenors' Answer to Appl. For Invocation of King's Bench Power ("Republican Intervenors'

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[1] Donald J. Trump for President, Inc., the Republican Party of Pennsylvania, the Republican National Committee and the National Republican Congressional Committee are referred to collectively herein as "Republican Intervenors."

[2] Speaker of the Pennsylvania House of Representatives Bryan Cutler, Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff, President *Pro Tempore* of the Pennsylvania Senate Joseph B. Scarnati, III and Majority Leader of the Pennsylvania Senate Jake Corman are referred to collectively herein as "Legislative *Amici*."

Answer") at 25 (citing 25 P.S. § 3146.8(g)(3)). Pennsylvania Senate President *Pro Tempore* Joseph B. Scarnati III and Majority Leader Jake Corman similarly argue that Section 3146.8(g)(3) requires comparison of the ballot envelope with information "contained in the [respective voter files]." *See* Scarnati and Corman Prelim. Objs. ¶ 5. Neither argument is faithful to what Section 3146.8(g)(3) actually says. This unassailable fact alone exposes the fatal flaw in the Republican Intervenors' and Senators' arguments.

In fact, Section 3146.8(g)(3) requires county boards to "compare the ***information***" on the ballot envelope "***with that contained*** in the 'Registered Absentee and Mail-in Voters File,' the absentee voters' list and/or the 'Military Veterans and Emergency Civilians Absentee Voters File,' whichever is applicable." 25 P.S. § 3146.8(g)(3) (emphasis added). These lists[3] include "***the name and residence***" of military, veteran and emergency civilian absentee voters and "show[] ***the names and post office addresses*** of all voting residents . . . to whom official absentee or mail-in ballots shall have been issued." 25 P.S. § 3146.2c(b), (c) (emphasis added). This is the only information in the lists of approved mail-in and absentee electors required by 25 P.S. § 3146.2c. The lists do

[3] The first list—"the Registered Absentee and Mail-In Voters File"—was discontinued by Act 12 of 2020. *See* Pa. Legis. Serv. Act 2020-12 (S.B. 422). The provisions in prior versions of the Election Code that related to this list—25 P.S. § 3146.2c(a) and 25 P.S. § 3150.12c—were both eliminated by Act 12.

not even include voters' signatures. Indeed, far from mandating signature matching as the Republican Intervenors propose, the word "signature" does not even appear in Section 3146.2c or Section 3146.8. The information that is required to be compared by Section 3146.8(g)(3) is the voter's name and address. Nothing more.

The Honorable J. Nicholas Ranjan rejected the very same argument advanced by the Republican Intervenors here when it was presented by the Republican Intervenors in *Trump for President, Inc. v. Boockvar*, No. 2:20-cv-966, 2020 WL 5997680 (W.D. Pa. Oct. 10, 2020). Judge Ranjan held that the only verification required by Section 3146.8(g)(3) is verification of the elector's "proof of identification" which is specifically defined in 25 P.S. § 2602(z.5)(3)(i)-(iv) as driver's license number, Social Security number or specifically approved form of identification. *Id.* at *54. Judge Ranjan explained: "Nowhere does [25 P.S. § 3146.8(g)(3)] require the election official to compare and verify the authenticity of the elector's signature. . . . Notably absent is any instruction to verify the signature and set aside the ballot if the election official believes the signature to be non-genuine." *Id.* at *55.

The Republican Intervenors likewise misread Section 3146.8(g) in arguing that the Election Code affords absentee and mail-in voters a hearing if their ballots are rejected based on signature analysis. Republican Intervenors' Answer at 26-27.

The notice and hearing procedure in Section 3146.8(g) applies only to ballots challenged under 25 P.S. § 3146.2b or 25 P.S. § 3150.12b and those sections authorize challenges only to voter qualifications. In other words, "challenges may be made only on the ground that the applicant was not a qualified elector"—*i.e.* the elector does not meet the age, residency or citizenship requirements. 25 P.S. 3146.2b(c) (absentee ballot applications); 25 P.S. § 3150.12b(a)(2) (mail-in ballot applications); *see also* 25 Pa. C.S. § 1301(a) (voter qualifications).[4] As Judge Ranjan held in *Trump for President, Inc.*, "the 'challenges' referenced in Section 3146.8(g)(5)-(7) refer to a voter's qualifications to vote, ***not a signature verification.***" 2020 WL 5997680 at *57 (emphasis added). Importantly, this is the ***only*** statutorily permissible basis to challenge an absentee or mail-in ballot or application. Section 3146.8(g)(4) is absolute and unconditional when it states that "[a]ll" verified absentee and mail-in ballots cast by voters whose qualifications have not been challenged under Sections 3146.2b or 3150.12b "shall be counted." 25 P.S. § 3146.8(g)(4). Moreover, any challenges to a voter's qualifications are required to be made by 5:00 pm on the Friday before election day. 25 P.S. §

[4] Section 3146.2b(c) uses the singular "ground" whereas Section 3150.12b(a)(2) uses the plural "grounds." Otherwise the relevant language is the same.

3146.2b(c); 25 P.S. § 3150.12b(a)(3). There is no statutory basis to challenge voted absentee or mail-in ballots on or after election day.[5]

B. The cases cited by the Republican Intervenors are not on point and do not endorse rejection of absentee or mail-in ballots based on signature comparison.

Unable to point to language in the Election Code that authorizes or requires signature comparisons for absentee or mail-in ballots, the Republican Intervenors claim that there is a "robust body" of caselaw "upholding signature verification by county boards." Republican Intervenors' Answer at 25, 27. This purportedly "robust body" of caselaw consists of three trial court decisions predating Act 77 and the implementation of mail-in voting. None of the referenced decisions involved signature comparison as a basis for setting aside absentee ballots.

The issue in *Fogleman* was whether an absentee ballot that lacked a signed declaration was properly rejected by the county board. *Fogleman Appeal*, 36 Pa. D. & C.2d 426 (CCP Juniata County 1964). With respect to the omission, the

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[5] Speaker Cutler and Majority Leader Benninghoff assert that Justice Wecht "acknowledged [signature matching] as the operative law" in his concurring statement in *Pa. Democratic Party v. Boockvar*, --- A.3d ---, No. 133 MM 2020, 2020 WL 5554644 (Pa. Sept. 17, 2020). *See* Cutler and Benninghoff Mem. in Support of Prelim. Objs. at 10. They misread Justice Wecht's statement. The statement did not acknowledge or endorse any form of signature matching, but rather noted that the Secretary recently issued guidance on the procedure for assessing the sufficiency of declarations on ballot envelopes, that no party asserted any claim based on that guidance and that, as a result, resolution of any dispute regarding use of signatures "must wait." 2020 WL 5554644 at *35.

court stated: "If the elector fails or refuses to attach his or her signature, then such elector has not completed the declaration as required by law of all voters." *Id.* at 427. *In re Canvass* involved the same issue and the same conclusion. *In re Canvass of Absentee Ballots of November 2, 1965*, 39 Pa. D. & C.2d 429, 444 (CCP Montgomery County 1965). Further, *In re Canvass* and *City of Wilkes-Barre Election Appeals* relate to post-election challenges to individual absentee ballots which are no longer permitted[6] by the Election Code. *Id.* at 430; *City of Wilkes-Barre Election Appeals*, 44 Pa. D. & C.2d 535 (CCP Luzerne County 1967).

None of the cited cases involve signature matching by county officials or in any way endorse signature comparison as a means of verifying voter identification with respect to absentee or mail-in ballots. The cases simply do not apply.[7]

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[6] Act 12 of 2020 amended the Election Code to eliminate any opportunity to challenge voted absentee or mail-in ballots. *See* Act of Mar. 27, 2020, P.L. 41, No. 12. The legislation that originally allowed mail-in voting, Act 77 of 2019, permitted authorized candidate representatives to assert challenges during pre-canvassing and canvassing. *See* 25 P.S. § 3146.8(g)(2) (2019) ("Representatives shall be permitted to challenge any absentee elector or mail-in elector in accordance with the provisions of paragraph (3)."). Act 12 eliminated this language. The current Section 3146.8(g)(4) instead provides that the only available challenges are challenges to an elector's qualifications and those challenges must be asserted ***before*** canvassing begins. 25 P.S. § 3146.8(g)(4).

[7] The Republican Intervenors also cite *Appeal of Orsatti*, 598 A.2d 1341 (Pa. Cmwlth. 1991), as support for the position that signature comparison is a "longstanding" practice. Republican Intervenors' Answer at 26 n.3. *Orsatti* did

C. The voter declaration on returned ballots is not intended for signature analysis.

The Republican Intervenors surmise that signature comparison must have been intended by the General Assembly because electors are required to execute a voter's declaration on their completed ballots. Republican Intervenors' Answer at 29. This, too, misapprehends the Election Code. The voter's declaration is not intended to serve as proof of identification under the Code. As Judge Ranjan correctly found, the Election Code mandates ***other*** procedures for verifying identification of mail-in and absentee voters. 2020 WL 5997680 at *58 ("[T]he General Assembly provided for certain methods of identification as to ballot applications. Signature verification isn't one of them."). Instead, the elector's signature on the ballot completes the voter's declaration which binds the elector to certain representations, including that the elector is qualified to vote and has not already voted,[8] and exposes the elector to criminal penalties if the representations

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not address the procedure for canvassing ballots, but rather the different forms of relief available in a recount proceeding as opposed to an election contest and, in any event, the discussion of fraudulent votes is *dicta*. 598 A.2d at 1342-43.

[8] The Voter's Declaration on the ballot envelope states:

> I hereby declare that I am qualified to vote from the below stated address at this election; that I have not already voted in this election; and I further declare that I marked my ballot in secret. I am qualified to vote the enclosed ballot. I understand I am no longer eligible to vote at my polling place after I return my voted ballot. However, if my ballot is not received by the county, I

are false. *See* 25 P.S. § 3553 ("If any person shall sign an application for absentee ballot, mail-in ballot or declaration of elector on the forms prescribed knowing any matter declared therein to be false, . . . the person shall be guilty of a misdemeanor of the third degree . . . .").

Speaker Cutler and Majority Leader Benninghoff argue that not mandating signature comparison means that county boards must "ignore obvious discrepancies in declarations and count ballots that should not otherwise be counted." Cutler and Benninghoff Prelim. Objs. ¶ 27. Again, this is not what 25 P.S. § 3146.8 says. That section requires county election officials to examine the declarations on voted ballots to satisfy themselves that the declarations are "sufficient." 25 P.S. § 3146.8(g)(3). In other words, "the election official must be 'satisfied' that the declaration is 'fill[ed] out, date[d] and sign[ed], as required by sections 3150.16(a) and 3146.6(a) of the Election Code." *Trump for President, Inc.*, 2020 WL 5997680 at *55. A ballot without a declaration signed by the elector—where there is no signature at all or where the name on the declaration is not the same as the elector (*e.g.*, the declaration says "Mickey Mouse" or is signed "Richard Roe" when the elector's name is "Jane Doe")—is not sufficient under the

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understand I may only vote by provisional ballot at my polling place unless I surrender my balloting materials, to be voided, by the judge of elections at my polling place.

standard set by the General Assembly and is required to be set aside. Applying the plain language in the Election Code as written does not require or allow invalid ballots to be counted.[9]

D. Omission of any reference to signature comparison in the absentee and mail-in voting provisions signifies different legislative intent.

The Republican Intervenors are wide of the mark in arguing that the procedure in 25 P.S. § 3050(a.3)(2) for verifying identity of in-person voters—comparing the elector's signature on his voter's certificate with his signature in the district register—must necessarily apply to absentee and mail-in voters. Republican Intervenors' Answer at 29-30. It is, of course, well within the General Assembly's authority to impose different verification procedures for different types of voting. *See Trump for President, Inc.*, 2020 WL 5997680 at *61 ("It is well settled that states may employ in-person voting, absentee voting, and mail-in voting and each method need not be implemented in exactly the same way.") (citation omitted); *The American Civil Liberties Union of New Mexico v.*

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[9] Speaker Cutler and Majority Leader Benninghoff concede that the plain language in the Election Code is controlling, but they completely ignore the applicable statutory text in their submissions. They point instead to provisions in the Election Code relating to nomination petitions and papers and in-person voting, none of which apply here. *See* Cutler and Benninghoff Prelim. Objs. ¶ 28 (citing 25 P.S. § 2868 (nomination petitions), 25 P.S. § 2937 (nomination petitions and papers), 25 P.S. § 3050 (voting in person)).

Santillanes, 546 F.3d 1313, 1320-21 (10th Cir. 2008) (states are permitted to establish "unique procedures for absentee voting [that] allow for a separate process confirming the identification of a voter"). And the General Assembly had good reason to treat in-person and mail-in voters differently with respect to signatures. When a voter votes in person, he signs the voter's certificate in the presence of an election official and is notified immediately if there is a concern with the signature. He is given an opportunity to produce a witness to attest to his identity and is then allowed to cast a ballot. 25 P.S. § 3050(a.3), (d). Absentee and mail-in voters receive no such notice or opportunity to have their votes counted. Their ballots cannot be examined until election day and there is no statutory provision for notice or a chance to address any concerns that might arise on election day. 25 P.S. § 3146.8(g)(3); *see also Pa. Democratic Party v. Boockvar*, 2020 WL 5554644 at *20. For these reasons, Judge Ranjan found that it was rational and constitutionally permissible for the General Assembly to treat in-person and mail-in voters differently with respect to signatures. *Trump for President, Inc.*, 2020 WL 5997680 at *62-63.

The difference in statutory procedures is dispositive. Requiring comparison of signatures for in-person voters but not absentee or mail-in voters signifies the General Assembly's intent ***not*** to allow rejection of absentee and mail-in ballots based on signature comparison. *See Sivick v. State Ethics Comm'n*, --- A.3d ---,

No. 62 MAP 2019, 2020 WL 5823822, at *10 (Pa. Oct. 1, 2020) ("It is axiomatic that we may not add statutory language where we find the extant language somehow lacking. . . ."); *Fonner v. Shandon, Inc.*, 724 A.2d 903, 907 (Pa. 1999) ("Where a section of a statute contains a given provision, the omission of such a provision from a similar section is significant to show a different legislative intent.") (citation omitted). As Judge Ranjan properly concluded in rejecting the Republican Intervenors' same argument in *Trump for President, Inc.*, "the General Assembly mandated signature comparison for in-person voting elsewhere in the Election Code—thus evidencing its intention not to require such comparison for mail-in ballots." 2020 WL 5997680 at *55 (citing *Fonner*).

E. Settled principles of statutory construction require the conclusion that voted ballots cannot be rejected based on signature analysis.

If the statutory text and settled precedent leave any room for doubt—and they do not—it is easily dispelled by settled rules of statutory construction. As Secretary Boockvar explained in her application, allowing rejection of voted ballots based on signature analysis without standards and without affording an opportunity for notice and cure risks disenfranchising vast numbers of voters contrary to the "longstanding and overriding policy" of construing election laws "in favor of the right to vote." *Pa. Democratic Party v. Boockvar*, --- A.3d ---, 2020 WL 5554644, at *9 (Pa. Sept. 17, 2020) (citations and internal quotation marks omitted). Further, injecting an entirely new signature comparison

requirement into the Election Code would give rise to, *inter alia*, due process and equal protection problems. *See* Appl. for Invocation of King's Bench Power at 22-23. Accordingly, construing the statute as written to not require or permit signature analysis comports with the canon of construction that statutes must be construed so as not to violate the United States or Pennsylvania Constitutions. 1 Pa. C.S. § 1922(3); *see also MCI WorldCom, Inc. v. Pennsylvania Pub. Utility Comm'n*, 844 A.2d 1239, 1250 (Pa. 2004).

F. The Secretary's guidance is consistent with the equal protection guarantee.

The Republican Intervenors rely on *Bush v. Gore*, 531 U.S. 98 (2000), to suggest that the Secretary's guidance creates an equal protection issue. Republican Intervenors' Answer at 30. It does no such thing. *Bush v. Gore* involved an equal protection challenge to Florida's recount procedures which were established nearly one month *after* the election. 31 U.S. at 101-05. The amorphous and arbitrary standard enunciated by the Florida Supreme Court without uniform rules resulted in unequal evaluation of ballots across Florida and enabled counties to change their ballot evaluation procedures in the middle of the recount. *Id.* at 105-06. For this reason, the High Court concluded that the process for gleaning a voter's intent lacked "sufficient guarantees of equal treatment." *Id.* at 107. As Judge Ranjan aptly stated, *Bush v. Gore* stands for the unremarkable proposition that "a state

may not take the votes of two voters, similarly situated in all respects and, for no good reason, count the vote of one but not the other." 2020 WL 5997680 at *42. That is precisely the scenario Secretary Boockvar seeks to avoid here. If some counties in Pennsylvania discard ballots based upon an *ad hoc* signature matching requirement, this would mirror the *ad hoc*, county-by-county approach rejected in *Bush v. Gore.* That case lends no support to Republican Intervenors, but rather supports the Secretary's position. Secretary Boockvar, not Respondents, seeks uniformity across Pennsylvania counties and a conclusive judgment on construction that only this Court can issue. And this Court will ensure uniformity by correctly ruling that the Election Code does not countenance rejection of absentee or mail-in ballots based on signature comparison.

G. This Court's clarification of state law is consistent with the *Purcell* principle.

The Republican Intervenors have invoked the *Purcell* principle in their opposition to the Secretary's application. *See* Republican Intervenors' Application for Leave to Intervene ¶ 40. In fact, what they seek here is directly contrary to the *Purcell* principle.

The *Purcell* principle provides that near an impending election *federal courts* should not alter election rules because "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer,

that risk will increase." *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (*per curiam*). This principle admonishes "lower *federal* courts" to not interfere with a State's election rules on the eve of an election. *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, __U.S.__, 140 S. Ct. 1205, 1207 (2020) (*per curiam*) (emphasis added). The Republican Intervenors reliance on *Purcell* is flawed for two reasons.

First, and most fundamentally, the Republican Intervenors reliance on *Purcell* in this Court reveals their misapprehension of the rationale for the *Purcell* principle. As noted, *Purcell* prohibits "lower *federal* courts" from interfering with a State's election rules on the eve of an election. *Republican Nat. Comm.,* 140 S. Ct. at 1207. In *Republican Nat. Comm.*, the Court drew a distinction between federal meddling and "further alterations that the State may make to state law." *Id.* at 1208. "Comity between the state and federal governments" undergirds the *Purcell* principle. *Republican Party of Pennsylvania v. Cortes*, 218 F. Supp. 3d 396, 404–05 (E.D. Pa. 2016) (citing, *inter alia*, *Page v. Bartels*, 248 F.3d 175, 195-96 (3d Cir. 2001)). "This important equitable consideration goes to the heart of our notions of federalism." *Ibid.*

Purcell thus leaves it to the states to interpret their own election laws in the runup to an election. For this reason, the High Court has routinely stayed or vacated orders by *federal courts* affecting state election procedures on the eve of an election. *See Republican Nat. Comm.,* 140 S. Ct. 1205; *Merrill v. People First*

of Ala., No. 19A1063 (July 2, 2020); *Little v. Reclaim Idaho*, 140 S. Ct. 2616 (July 30, 2020); *Clarno v. People Not Politicians*, --- S. Ct. ---, No. 20A21, 2020 WL 4589742 (Aug. 11, 2020); *Thompson v. DeWine*, --- S. Ct. ---, No. 19A1054, 2020 WL 3456705 (June 25, 2020); *Tex. Dem. Party v. Abbott*, --- S. Ct. ---, No. 19A1055, 2020 WL 3578675 (June 26, 2020).

A bedrock feature of our system of federalism is that state supreme courts are the ultimate expositors of state law. *Wardius v. Oregon*, 412 U.S. 470, 477 (1973) ("It is, of course, true that the Oregon courts are the final arbiters of the State's own law."). Further, "[s]tate courts are absolutely free both to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution." *Arizona v. Evans*, 514 U.S. 1, 8 (1995); *see also Florida v. Powell*, 559 U.S. 50, 56 (2010) ("It is fundamental that state courts be left free and unfettered by [this Court] when interpreting their state constitutions.").

Nothing about this Court rendering a decision in this pure state-law case runs afoul of the *Purcell* principle. On the contrary, this Court deciding this matter is exactly what *Purcell* mandates.

Second, the Republican Intervenors should be judicially estopped from raising *Purcell* in this Court, given that their recent initiation of various federal court cases flies in the face of the *Purcell* principle. The doctrine of judicial

estoppel prevents a litigant from asserting a position inconsistent with a position previously asserted in the same or in a previous proceeding. *In re Adoption of S.A.J.*, 838 A.2d 616, 621 (Pa. 2003). The doctrine is designed to uphold the integrity of the courts by "preventing parties from abusing the judicial process by changing positions as the moment requires." *Ibid.* (citations omitted). Changing positions as the moment requires is precisely what the Republican Intervenors have done with respect to *Purcell*.

Both here and in *Pa. Democratic Party v. Boockvar*, the Republican Intervenors have insisted that *Purcell* precludes this Court from interpreting the Election Code. Yet in *Trump for President v. Boockvar*, 2:20-cv-966 (W.D. Pa.) and *Trump for President v. Cegavske*, 2:20-cv-1445 (D. Nev.), the Republican Intervenors conveniently ignored *Purcell* and attempted to compel those federal courts to insert themselves into state election disputes by making "last-minute" changes to the rules. In both instances, the federal courts correctly declined the Republican Intervenors' invitation to upend state election law. *Purcell* is not a hat that can be taken on-and-off at the Republican Intervenors' convenience. For the above reasons, this Court should not countenance the Republican Intervenors' meritless and selective reliance on *Purcell*.

H. The other arguments advanced by the Republican Intervenors and Legislative *Amici* lack merit.

The remaining arguments advanced by the Republican Intervenors and Legislative *Amici* are easily rebutted. The Secretary is seeking a final ruling on statutory interpretation from this Court; she is not seeking to invalidate any of the Election Code's provisions and therefore the non-severability provision in Act 77 is not triggered or relevant. And, because the Secretary is properly seeking a declaration on what state law requires from the highest court in the state, it cannot be suggested that the Secretary is arrogating the legislature's authority in violation of the Elections or Electors Clauses in the United States Constitution. Republican Intervenors' Answer at 23-24. Judge Ranjan rejected the same argument in *Trump for President, Inc. v. Boockvar,* explaining that, if the Election Code does not authorize signature comparison, the Secretary's consistent guidance on the subject cannot be "a usurpation of the legislature's authority in violation of the Elections Clause." 2020 WL 5997680 at *53; *see also id.* at *52 n.12.[10] To the contrary, the

[10] In any event, the Republican Intervenors lack standing to assert any challenge under the Elections and Electors Clauses. Any such challenge stems from injury suffered by the General Assembly as a whole, not by a political party. *See Virginia House of Delegates v. Bethune-Hill*, __ U.S. __, 139 S. Ct. 1945, 1953 (2019) (institutional interests of a legislature belong to the legislative body as a whole); *see also Disability Rights v. Boockvar*, 234 A.3d 390 (Pa. 2020) (Wecht, J., concurring statement). The Republican Intervenors' argument amounts to a "generalized grievance," that is, "[a]n interest shared generally with the public at large in the proper application of the Constitution and laws." *Arizonans for*

Secretary's faithful adherence to the text of the Election Code gives effect to the General Assembly's chosen manner for regulating elections and shows profound respect for its place in the constitutional order. *See In re Guzzardi*, 99 A.3d 381, 385 (Pa. 2014); *see also Reuther v. Delaware Cty. Bd. of Elections*, 205 A.3d 302, 308-09 (Pa. 2019). The interpretation the Republican Intervenors propose does the opposite. They would have this Court "write [a signature comparison requirement] into the statute." *Trump for President*, 2020 WL 5997680 at 58. The result of such judicial rewriting would be the very usurpation of legislative authority the Republican Intervenors profess to want to protect.

CONCLUSION

This Court should declare that the Election Code does not authorize challenges to or rejection of voted absentee or mail-in ballots based on signature analysis or alleged or perceived signature variances.

Official English v. Arizona, 520 U.S. 43, 64 (1997). They plainly lack standing to pursue these constitutional claims.

Dated: October 16, 2020

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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 requires filing confidential information and documents differently than non-confidential information and documents.

Daniel T. Brier

Date: October 16, 2020

CERTIFICATE OF SERVICE

I, Daniel T. Brier, hereby certify that I am this day serving the foregoing Supplemental Brief of Petitioner Kathy Boockvar in Support of Application for Invocation of King's Bench Power upon all counsel of record via PACFile eService, which service satisfies the requirements of Pa.R.A.P. 121.

Daniel T. Brier

Date: October 16, 2020