

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 149 MM 2020

IN RE NOVEMBER 3, 2020 GENERAL ELECTION

**APPLICATION OF URBAN LEAGUE OF GREATER
PITTSBURGH FOR LEAVE TO INTERVENE, OR, IN
THE ALTERNATIVE, TO FILE *AMICUS* BRIEF**

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Exhibit B - [Proposed] Joinder of Urban League of Greater Pittsburgh to Application for Invocation of King's Bench Power to Declare Proper Construction of Election Code and Application for Alternative Relief

Proposed Intervenor-Petitioner, the Urban League of Greater Pittsburgh (“Urban League”), by and through undersigned counsel, respectfully submits this Application for Leave to Intervene as Co-Petitioner, or, in the Alternative to File *Amicus* Brief, pursuant to Pennsylvania Rules of Civil Procedure 2326-2329.

I. INTRODUCTION

1. Urban League is a nonpartisan organization dedicated to promoting economic self-reliance, parity and power, and civil rights for African Americans. Urban League seeks leave to intervene to assert the interests of its organization, constituents, and members with respect to the right to vote in the November 3, 2020 general election. Urban League seeks to protect the fundamental voting rights of its constituents and members and to assert their particular interests in order to ensure that its constituents’ and members’ ballots are not rejected for benign, signature-related defects, particularly without appropriate notice or an opportunity to cure such defects.

2. The right to vote is fundamental to the democratic process and to the future of our democratic republic. The lingering COVID-19 pandemic has increased the likelihood that millions of Pennsylvanians will opt to vote – and indeed, many already have – via mail-in or absentee ballot, rather than traveling to a polling site to vote in person. The decision to avail oneself of the mail-in or absentee option should not create an increased risk that an otherwise properly

completed ballot will be arbitrarily discounted or set aside based on a perceived signature mismatch by an individual with no applicable expertise. Discarding the ballots of Pennsylvania voters with no opportunity to cure perceived mismatches would both infringe on the fundamental right to vote, and compromise the integrity of the election, ultimately destroying the confidence of Pennsylvania voters in our electoral process.

3. Urban League is an organization that represents and serves individuals whose fundamental right to vote would be impacted by a grant or denial of Petitioner's requested declaratory relief. Among Urban League's members and/or constituents are voters—including seniors, racial minorities, and medically vulnerable individuals—who are particularly at risk from the COVID-19 pandemic and are likely to vote by mail-in ballot. As eligible registered voters, Urban League's constituents have a cognizable interest in ensuring that their fundamental right to vote is not impaired needlessly without notice or an opportunity to cure. Accordingly, Urban League is particularly well-suited to advancing and protecting the interests of its constituents and their right to vote in the general election, and is differently situated than Petitioner, Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania.

4. Urban League also retains an interest in promoting active participation in democracy through voting and has devoted substantial resources toward this

goal, including, without limitation, through its “Reclaim the Vote” project. *See* Declaration of Esther Bush, dated October 9, 2020 (“Ex. A”), ¶¶ 2. The relief Petitioner seeks, or denial thereof, will impact upon Urban League’s ongoing efforts to protect the ability of its members to exercise their fundamental right to vote and to do so safely. Accordingly, Urban League is a critical participant in this action.

5. Finally, in addition to its constituents, Urban League is well-situated to promote and protect the right of all eligible Pennsylvania voters to cast their ballots safely and to have those ballots counted. Urban League, therefore, is entitled to intervene under Pa.R.C.P. 2327. As further described herein, Urban League could have joined this action as an original party, and the determination of the action may affect a legally enforceable interest of the individuals on whose behalf Urban League seeks leave to intervene, and because there is no reason to deny the petition under Pa.R.C.P. 2329.

6. Urban League adopts certain of Petitioner’s allegations, as shown in the attached [Proposed] Joinder of Urban League of Greater Pittsburgh to Application for Invocation of King’s Bench Power to Declare Proper Construction of Election Code and Application for Alternative Relief (“Ex. B”), and, as set forth herein, makes additional allegations of its own.

7. First, should the Court conclude that the Pennsylvania Election Code authorizes signature matching by the county boards of elections,¹ Urban League requests that the Court declare that absentee and mail-in ballots may not be rejected due to a signature mismatch without providing each applicable voter (a) appropriate notice to each voter whose ballot might be rejected and (b) the opportunity to cure any related issues, such that each voter's vote would be counted upon curing such issues.²

8. Urban League further requests a declaration that the Pennsylvania Election Code, consistent with the Court's duty to avoid statutory interpretations that raise grave constitutional concerns, does not permit signature verification by non-governmental persons as a basis upon which to challenge a voter's ballot, as such challenges by third-party, nongovernmental actors would violate the Pennsylvania Constitution's Free and Equal Elections Clause and its due process guarantee.

¹ To be clear, the Urban League's notice-and-cure claim only arises if the Court disagrees with the Secretary's statutory interpretation. The Urban League notes that the U.S. District Court for the Western District of Pennsylvania this weekend came to the same conclusion as the Secretary, determining that "[a] plain reading of the Election Code demonstrates that it does not impose a signature-comparison requirement for mail-in ballots and applications." Op. at 94, *Trump v. Boockvar*, No. 20-cv-00966-NR (W.D. Pa. Oct. 10, 2020).

² The Urban League seeks intervention because it raises a distinct claim for declaratory relief beyond that sought by the Secretary. In the alternative, the Urban League asks this Court to treat the accompanying Memorandum of Law as an *amicus* brief. Attached thereto as Exhibit A is the declaration of Esther Bush, chief executive officer of the Urban League, outlining its interest and the harm faced by its members should Pennsylvania implement a signature-matching system in the absence of notice and cure protections.

II. BACKGROUND

9. Urban League is an organization that serves, represents, and has members who are Pennsylvania voters.

10. Urban League is an affiliate of the National Urban League, a non-profit corporation. Founded in 1918, Urban League is the largest comprehensive social service and civil rights organization in Southwestern Pennsylvania, and has approximately 450 members in the greater Pittsburgh area. Urban League's members range in age from their twenties to their nineties. Through vital programs in employment, youth, family and child development, housing and self-sufficiency, Urban League works to level the playing field for all Americans and to equip disadvantaged families to care for themselves. Ex. A ¶ 2. Specifically, Urban League, through the National Urban League's "Reclaim the Vote" project, works to educate its members and African Americans in general throughout Southwestern Pennsylvania on their rights; register them to vote; and encourage them to vote. *Id.*

11. Urban League has previously pursued legal action against Pennsylvania officials to achieve these goals, including in a previously filed action against Petitioner relating to the issue of signature matching. In *League of Women Voters of Pa. v. Kathy Boockvar, et. al.*, (E.D. Pa 2020), Urban League, along with a number of other parties, filed action seeking to require Petitioner to issue guidance to local election officials preventing them from rejecting ballots solely

due to a perceived signature issue and seeking notice and cure provisions for addressing such an issue. During the pendency of those proceedings, Petitioner issued official guidance advising all county Boards of Election in Pennsylvania that the Pennsylvania Election Code does not authorize the county Boards to set aside returned absentee or mail-in ballots based solely on the basis of signature matching. *See* Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes, dated as of September 11, 2020 as issued by the Pennsylvania Department of State, p. 3. Following the issuance of the foregoing guidance, Urban League, along with its co-plaintiffs in that matter, dismissed the action.

12. Urban League seeks to intervene in this action to protect its members' and constituents' fundamental right to vote in the upcoming general election. If Petitioner is not successful in convincing this Court to issue its requested declaration, then Urban League will be required to divert its limited resources away from its regular "Get Out the Vote" efforts towards informing its members and community about Pennsylvania's signature matching requirements and preparing them for inevitable issues arising therefrom. *See, e.g.,* Ex. A, ¶ 8. For Urban League, expending additional resources to, *inter alia*, educate its members and other voters regarding the risks of potential signature mismatches will necessarily divert funds from other efforts important to its mission and the rights of its members. Ex. A, ¶ 8.

13. While Urban League’s interests are aligned with those of Petitioner, the latter represents a state government agency. Urban League is a not-for-profit, nonpartisan organization, whose mission focuses on voter access and education, specifically in Southwestern Pennsylvania. Urban League seeks this relief, “[t]o avoid confusion, to ensure transparency, and, most importantly, to prevent qualified voters from being disenfranchised based on arbitrary, standardless, and non-statutory grounds . . .” (App. at 10). Urban League, on behalf of Pennsylvania voters, rather than the agency administering the November 2020 election, agrees: voters should not be faced with uncertainty as to whether their mail-in ballots were counted, particularly during an already disruptive pandemic. Allowing such ballots to be discarded for potential signature mismatches, particularly without providing notice and the opportunity to cure to such voters, would deprive those voters of their fundamental right to vote.

III. URBAN LEAGUE IS ENTITLED TO INTERVENE

14. In Pennsylvania, a party is entitled to intervene if they “could have joined as an original party in the action or could have been joined therein” or “the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Pa.R.C.P. 2327(3)-(4). The application may be refused only if “(1) the claim or defense of the petitioner is not in subordination to and in recognition of the

propriety of the action; or (2) the interest of the petitioner is already adequately represented; or (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” Pa.R.C.P. 2329. Thus, “a grant of intervention is mandatory where the intervenor satisfies one of the four bases set forth in Rule No. 2327 unless there exists a basis for refusal under Rule No. 2329.” *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep’t of Human Servs.*, 225 A.3d 902, 908 (Pa. Commw. Ct. 2020).

15. Urban League satisfies each of the four requirements of Pa.R.C.P. 2327, and there is no basis for denying intervention under Pa.R.C.P. 2329. The Court should therefore grant its application to intervene.

A. The Determination of This Action May Affect a Legally Enforceable Interest of Urban League.

16. Urban League has an interest in the litigation that is “substantial, direct, and immediate.” *Markham v. Wolf*, 136 A.3d 134, 139 (Pa. 2016). Specifically, Urban League has a substantial, legally cognizable interest in protecting its constituents’ and members’ rights to vote. That right would be at significant risk if voters’ ballots could be discarded due to a perceived signature mismatch, particularly without providing notice to them or the opportunity for them to cure such mismatch. This is of particular importance in the upcoming

election, where the ongoing COVID-19 related health risks posed by voting in person.

17. Urban League expends considerable resources educating its “members and African Americans in general throughout Southwestern Pennsylvania on their rights, register[ing] them to vote, and [encouraging] them to vote.” Ex. A, ¶ 2.

Urban League is committed to eliminating barriers to voting and increasing civic engagement in communities that traditionally have been disenfranchised. Urban League has a concrete, protectable, and substantial interest in ensuring that eligible voters’ ballots are counted, that their fundamental right to vote is protected, and that such voters maintain confidence in the election process generally. If

Petitioner’s claim is not successful, Urban League expects to divert significant additional resources—including volunteers, time, and substantial available cash — away from its regular “Get Out the Vote” effort, and redirecting them toward informing its members and community about Pennsylvania’s signature matching requirements. Ex. A, ¶ 8. Urban League’s interest is thus cognizable.

18. Moreover, Urban League has standing on behalf of its members, among whom are Pennsylvania voters. *See, e.g., Robinson Twp. v. Commonwealth*, 83 A.3d 901, 922 (Pa. 2013) (“[A]n association has standing as representative of its members to bring a cause of action even in the absence of injury to itself, if the

association alleges that at least one of its members is suffering immediate or threatened injury as a result of the action challenged.”).

B. Urban League’s Interest Is Not Adequately Represented.

19. The existing parties in the litigation do not adequately represent Urban League’s interests because those interests “may diverge” from those of the Petitioner or any of the potential Intervenors. *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 314 (Pa. Commw. Ct. 1999). Since no party currently (or potentially) in the litigation “unequivocally share[s] [Applicants]’ interest[s],” the application to intervene should be granted. *Id.*; see also *D. G. A. v. Dep’t of Human Servs.*, No. 1059 C.D. 2018, 2020 WL 283885, at *7 (Pa. Commw. Ct. Jan. 21, 2020) (reversing denial of petition to intervene in administrative proceeding because “the personal interests of [proposed intervenors] in their individual welfare could diverge from the more general interest of [a governmental agency] in public welfare”).

20. Urban League meets this standard because neither the Petitioner, nor any of the potential partisan Intervenors “unequivocally share” Urban League’s interests. Political parties and elected officials do not necessarily share Urban League’s interests in protecting the fundamental right to vote among all constituencies, and particularly the relevant constituencies in Southwest Pennsylvania. Consistent with its organizational missions and goals, Urban League

has interests in ensuring that all eligible voters in Pennsylvania can effectively vote by mail and be ensured that their votes will count, and not be discarded without notice or an opportunity to cure signature related deficiencies. Urban League will demonstrate that such notice and opportunity to cure is necessary to ensure a free and fair election. Pennsylvania voters should not be faced with uncertainty as to whether their votes will be discarded due to benign signature mismatch issues; should this practice continue, notice to such voters and an opportunity for them to cure such signature mismatches would provide voters with certainty in the election process and an effective remedy.

21. Minority voters are at greater risk of disenfranchisement from signature mismatch analysis. *See* “ACLU Florida: Report on Vote-by-Mail Ballots in the 2018 General Election,” by *Dr. Daniel A. Smith & Anna Baringer, University of Florida, p. 49*. A study conducted by the ACLU Florida found that Black and Latino voters were more likely to have their ballots rejected. In the 2016 general election in Florida, 1.9% of Black voter ballots were rejected, 1.8% of Latino voter ballots were rejected, while only 0.7% of non-Latino white voter ballots were rejected. *Id. at p. 56*. Urban League’s mission and organizational goals focus on protecting the rights of minority voters in Southwestern Pennsylvania, and as such is uniquely situated to address these matters.

22. In addition, in August 2020, Urban League was one of the parties to commence an action against the Petitioner and other Pennsylvania officials in *League of Women Voters of Pa. v. Kathy Boockvar, et. al.*, (E.D. Pa 2020) with respect to this very issue. This action was dismissed following Petitioner's issuance of official guidance advising all county Boards of Election in Pennsylvania that the Pennsylvania Election Code does not authorize the county Boards of Elections to set aside returned absentee or mail-in ballots based solely on perceived signature matching issues. Based on threats to ignore her mandatory guidance, and the need for a notification and cure process if the guidance is ignored, Petitioner has been compelled to seek the immediate assistance of this Court with respect to the very same issues that were believed to have been resolved. As an original party to those proceedings, Urban League has a unique and invaluable perspective here.

23. For these reasons, Urban League provides a perspective that the Petitioner lacks in representing minority communities particularly affected by COVID-19 and seeking broader access to voting (including by use of mail-in ballots) as a key mission.

C. Urban League's Application Is Timely.

24. This Application is timely. Petitioner initiated this matter on October 4, 2020. The Court has not yet provided a response to the Petitioner's Application

for Invocation of King’s Bench Power to Declare Proper Construction of the Election Code, nor has the Court issued a ruling on the numerous applications to intervene by the numerous other potential Intervenors, each of which was filed on October 7, 2020. No hearing before the Court has been scheduled. Urban League’s prompt intervention does not delay the timely advancement of the action, prejudice the trial or the adjudication of the rights of the parties, or otherwise harm the parties.

IV. RELIEF REQUESTED

25. Urban League adopts certain of Petitioner’s allegations, and, as set forth herein, makes additional allegations of its own. (Ex. B).

26. First, should the Court conclude that the Pennsylvania Election Code authorizes signature matching by the county boards of elections, Urban League requests that the Court declare that absentee and mail-in ballots may not be rejected due to a signature mismatch without providing each applicable voter (a) appropriate notice to each voter whose ballot might be rejected and (b) the opportunity to cure any related issues, such that each voter’s vote would be counted upon curing such issues.

27. Urban League further requests a declaration that the Pennsylvania Election Code, consistent with the Court’s duty to avoid statutory interpretations that raise grave constitutional concerns, does not permit signature verification by

non-governmental persons as a basis upon which to challenge a voter's ballot, as such challenges by third-party, nongovernmental actors would violate the Pennsylvania Constitution's Free and Equal Elections Clause and its due process guarantee.

V. CONCLUSION

28. For the reasons stated above and in the supporting declaration of Esther Bush, the Court should grant Urban League's Application for Leave to Intervene or in the Alternative to File *Amicus* Brief.

October 13, 2020

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*Application for Admission *Pro Hac*
Vice Forthcoming

Respectfully submitted,

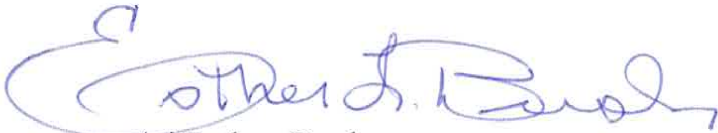
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VERIFICATION

I am authorized to make this verification on behalf of the Urban League of Greater Pittsburgh. I have personal knowledge of the statements made in the foregoing Application to Intervene, and verify that those statements are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



/s/ Esther Bush

Signature

Esther Bush, Chief Executive Officer
Name and Position

Date: October 9, 2020

PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

It is hereby certified by the undersigned that this filing complies with the provision 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.

/s/John P. Lavelle, Jr.
John P. Lavelle, Jr. (PA Bar# 54279)

Dated: October 13, 2020

IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

IN RE NOVEMBER 3, 2020 GENERAL
ELECTION,

Case No. 149 MM 2020

Petition of: Kathy Boockvar, Secretary of the
Commonwealth of Pennsylvania

ORDER

AND NOW, this ____ day of _____ 2020, upon consideration of the Application of the Urban League of Greater Pittsburgh for Intervention or in the Alternative to File *Amicus* Brief filed by the Urban League of Greater Pittsburgh, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the foregoing application be **GRANTED**. The Urban League of Greater Pittsburgh is hereby permitted to intervene in the above-captioned matter. The Court hereby **DIRECTS** the Prothonotary to enter the name of the Urban League of Greater Pittsburgh on the docket in this matter as Intervenor-Petitioner, and **DOCKET** the Intervenor-Petitioner's application and related materials.

DATE: _____, 2020

BY THE COURT

EXHIBIT A

DECLARATION OF ESTHER BUSH

I, Esther Bush, declare as follows:

1. I am the President and CEO of the Urban League of Greater Pittsburgh (“Pittsburgh Urban League”), a Pittsburgh, Pennsylvania-based non-profit civil rights organization which works to ensure economic self-reliance, parity and power, and civil rights for African Americans. I have served as President and CEO of the Pittsburgh Urban League since 1994. In my capacity as President, I manage Pittsburgh Urban League activities throughout Southwestern Pennsylvania serving tens of thousands of individuals each year.

2. The Pittsburgh Urban League is an affiliate of the National Urban League, a non-profit corporation. Founded in 1918, the Pittsburgh Urban League is the largest comprehensive social service and civil rights organization in Southwestern Pennsylvania, and has approximately 450 members in the greater Pittsburgh area. Our members range in age from their twenties to their nineties. Through vital programs in employment, youth, family and child development, housing and self-sufficiency, we work to level the playing field for all Americans and to equip disadvantaged families to care for themselves. The Pittsburgh Urban League also views voting as a form of empowerment. Through the National Urban League’s “Reclaim the Vote” project, we work to educate our members and African Americans in general throughout Southwestern Pennsylvania on their rights, register them to vote, and encourage them to vote.

3. In the upcoming elections, and in light of the challenges and health risks posed by in person voting during the ongoing public health crisis, we expect that many of our members and engaged community will choose to vote by mail. We intend to engage our members, our clients, and the Southwestern Pennsylvania African American community more broadly on issues related to mail voting, including related deadlines and requirements. The Pittsburgh Urban League

anticipates that if Pennsylvania election officials engage in signature matching to determine whether to count mail-in and absentee ballots without providing notice or an opportunity to cure, at least some of our members who vote by mail will have their votes not counted as a result of a signature-related deficiency.

4. Our diverse membership and the community members we serve include the elderly and people with health conditions and disabilities that make producing a consistent signature difficult and put them at even greater risk of disenfranchisement. Specifically, the client base we serve has general disability needs. We host a “seniors in a community service” program, where participants must be 55 and older to participate and we also provide some healthcare services to the elderly free of charge in partnership with Carlow University School of Nursing.

5. The implementation of signature matching without notice and cure protections is particularly concerning this year with the ongoing public health crisis caused by COVID-19. More and more people are voting by mail to protect their health and we are encouraging people to do so well. However, due to historical suppression, many people, particularly in the African American community do not trust that their vote will be counted unless they vote in person. Implementation of a signature matching process that lacks notice and an opportunity to cure would only compound their well-founded concerns. In order to trust that their votes will be counted if they vote by mail, our members and clients need to know that their votes will not simply be thrown out because the signature on their ballot did not match a signature on their voter registration form that could be decades old.

6. The Pittsburgh Urban League engages in voter education, voter registration, and “Get Out of the Vote” efforts every single year. In some years we have paid workers to go out and register individuals across Southwestern Pennsylvania to vote. When clients visit our offices to

receive social services, we also invite them to register to vote. Our physical office includes voter registration information in the lobby and our website includes voter registration and polling place information.

7. I regularly have discussions with National Urban League President Marc Morial about including absentee voting in our advocacy this year in light of the COVID-19 pandemic. Recently, on August 3, 2020 I virtually attended a national meeting with all of the affiliate Urban League CEOs where we discussed the importance of encouraging our respective members and communities to have a voting plan for November including if they plan to vote by mail. We have also partnered with the Black Political Empowerment Program (B-PEP) locally and with When We All Vote nationally to engage in voter registration and engagement efforts.

8. This year, in light of the COVID-19 pandemic, the Pittsburgh Urban League will educate its members and the community members it serves about Pennsylvania's signature matching requirement. As a part of encouraging them to have voting plans in place for November, we will also encourage them to pay special attention to their signature and warn them that if their signature does not match, their ballot may not be counted. The Pittsburgh Urban League will have to divert its limited resources away from its regular "Get Out the Vote" efforts towards informing its members and community about Pennsylvania's signature matching requirements.

9. The Pittsburgh Urban League provides direct social services to thousands of community members through our housing department. As a primary housing resource in Allegheny County, we provide funds to individuals who are delinquent on their rent, mortgage payments, or utilities. We also operate three family support centers, which serve families who have children between the ages of 0 and 18. We encourage youth at our family support centers to register to vote as soon as they turn 18 and also encourage adult parents to register to vote. We also engage

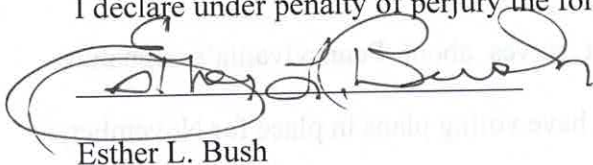
in voter registration and education at our annual Thanksgiving Distribution, where we serve approximately 900 families Thanksgiving dinner.

10. The Pittsburgh Urban League also manages a variety of youth focused programs including our Black Male Leadership Development Institute and Black Female Leadership Development Institute. A main focus of these programs is to prepare youth for their transition into adulthood and registering them to vote is a part of that. We emphasize the importance of voting to our youth and as soon as they turn 18, we hand them voter registration forms.

11. Pennsylvania's laws must reflect the interests of the people of Pennsylvania and the only way to ensure that will happen is to ensure that every eligible voters' ballot is counted.

Executed on October 9, 2020 at Pittsburgh, Pennsylvania.

I declare under penalty of perjury the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Esther L. Bush", written over a horizontal line. The signature is stylized and cursive.

Esther L. Bush

EXHIBIT B

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 149 MM 2020

IN RE NOVEMBER 3, 2020 GENERAL ELECTION

**[PROPOSED] JOINDER OF URBAN LEAGUE OF GREATER
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Other Authorities

PA. CONST. art. I, § 58

Pa. R. Civ. P. 23281

Pursuant to Pennsylvania Rules of Civil Procedure 2328, Intervenor-Petitioner, the Urban League of Greater Pittsburgh (“Urban League”), by and through undersigned counsel, respectfully submits this [Proposed] Joinder to the Application of Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania for Invocation of King’s Bench Power to Declare Proper Construction of the Election Code and Application for Alternative Relief, and hereby states as follows:

I. INTRODUCTION

1. Urban League is a nonpartisan organization dedicated to promoting economic self-reliance, parity and power, and civil rights for African Americans. Urban League has been granted by this Court leave to intervene to assert the interests of its organization, constituents, and members with respect to the right to vote in the November 3, 2020 general election. Urban League seeks to protect the fundamental voting rights of its constituents and members and to assert their particular interests in order to ensure that its constituents’ and members’ ballots are not rejected for benign, signature-related perceived defects, particularly without appropriate pre-rejection notice or an opportunity to cure.

2. Petitioner Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania (the “Secretary”), commenced this action to request a declaratory judgment from this Court that the Pennsylvania Election Code (1) does not authorize county boards of elections to reject mail-in or absentee ballots based on signature

comparisons, and (2) prohibits private party challenges to ballots based on perceived signature variations. *Application of Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania for Invocation of King’s Bench Power to Declare Proper Construction of the Election Code* (the “Secretary’s Application”), at 1.

3. Urban League agrees that signature matching on absentee and mail-in ballots will lead to the disenfranchisement of thousands of Pennsylvania voters in violation of the Free and Equal Elections Clause. *Id.*

4. To the extent this Court finds, however, that the Election Code *does* authorize county boards of elections to conduct signature matching, Urban League alternatively contends that the Pennsylvania Constitution’s due process guarantee and its Free and Equal Elections Clause require that a voter be provided notice and an opportunity to cure before her vote is discarded because of a purported mismatched signature.

5. Although this Court recently concluded that the Free and Equal Elections Clause did not require notice and cure procedures, *see Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644 (Pa. Sept. 17, 2020) that decision was in the context of *voters* casting incomplete or inaccurate ballots. When an election official makes a subjective judgment that the signature on a ballot does not match an earlier signature, the voter has not cast an incomplete or inaccurate ballot. Indeed, most commonly, the *election official* has made an

inaccurate determination of a mismatch. As Justice Wecht explained in his concurrence, this Court’s decision in *Pennsylvania Democratic Party v. Boockvar* did not address whether the Pennsylvania Constitution would require a notice-and-cure remedy for subjective signature matching. In particular, the *Pennsylvania Democratic Party* decision also did not address the requirements of due process, and as nearly every federal court to consider the question has concluded with respect to the federal Due Process Clause, Pennsylvania’s Constitution likewise demands that ballots not be rejected due to subjective signature matching absent pre-deprivation notice and an opportunity to cure the alleged discrepancy. Thus, should this Court disagree with the Secretary in this matter, the Urban League urges the Court to order any county board of elections engaging in signature matching to provide meaningful notice and an opportunity to cure before rejecting ballots.¹

6. Second, Urban League raises additional claims with respect to signature matching challenges by non-governmental officials. The Secretary contends that the Election Code’s plain text does not permit such challenges. Urban League has intervened to explain that even if the Election Code were ambiguous, an alternative

¹ To be clear, the Urban League’s notice-and-cure claim only arises if the Court disagrees with the Secretary’s statutory interpretation. Intervenor-Petitioner notes that the U.S. District Court for the Western District of Pennsylvania this weekend came to the same conclusion as the Secretary, determining that “[a] plain reading of the Election Code demonstrates that it does not impose a signature-comparison requirement for mail-in ballots and applications.” Op. at 94, Dkt. 574, *Trump v. Boockvar*, No. 20-cv-00966-NR (W.D. Pa. Oct. 10, 2020).

conclusion would raise grave constitutional concerns, thus compelling the conclusion advocated by the Secretary. If non-governmental officials are permitted to challenge ballots on the basis of signature matching, the door would open to improper, partisan motivations animating challenges to signatures. Although a notice-and-cure procedure may suffice to remedy the risk of erroneous deprivation when a governmental official is making neutral judgments about signatures, *no procedure* is constitutionally sufficient to ward against subjective and possibly ill-motivated challenges to signatures by third-party, nongovernmental actors. Because a system that permits such challenges would violate the Pennsylvania Constitution's Free and Equal Elections Clause and its due process guarantee, this Court should adopt the Secretary's statutory interpretation with respect to challenges by non-governmental officials following the doctrine of constitutional avoidance.

II. FACTUAL BACKGROUND

A. *Intervenor Petitioner*

7. Urban League is a not-for-profit, nonpartisan organization, whose mission focuses on voter access and education, specifically in Southwestern Pennsylvania. Urban League represents, serves, and has members that are Pennsylvania voters, whose fundamental right to vote would be impacted by a grant or denial of the Secretary's requested declaratory relief. Among Urban League's members and/or constituents are voters—including seniors, racial minorities, and

medically vulnerable individuals — who are particularly at risk from the COVID-19 pandemic and are likely to vote by mail-in ballot. As eligible registered voters, Urban League’s constituents have a cognizable interest in ensuring that their fundamental right to vote is not impaired needlessly, and certainly not without notice or an opportunity to cure.

8. Applicant is an affiliate of the National Urban League, a non-profit corporation. Founded in 1918, Applicant is the largest comprehensive social service and civil rights organization in Southwestern Pennsylvania, and has approximately 450 members in the greater Pittsburgh area. Applicant’s members range in age from their twenties to their nineties. Through vital programs in employment, youth, family and child development, housing and self-sufficiency, Applicant works to level the playing field for all Americans and to equip disadvantaged families to care for themselves. *See Declaration of Esther Bush, Chief Executive Officer of the Urban League of Pittsburgh*, attached to Intervenor’s Application as Ex. A (the “Bush Declaration”), ¶ 2. Specifically, Urban League, through the National Urban League’s “Reclaim the Vote” project, works to educate its members and African Americans in general throughout Southwestern Pennsylvania on their rights; register them to vote; and encourage them to vote. *Id.*

9. Urban League previously pursued legal action against Pennsylvania officials to achieve these goals, including in a previously filed action against the

Secretary relating to the issue of signature matching. In *League of Women Voters of Pa. v. Kathy Boockvar, et. al.*, No. 2:20-cv-03850 (E.D. Pa. 2020), Urban League, along with a number of other parties, filed action seeking to require the Secretary to issue guidance to local election officials preventing them from rejecting ballots solely due to a perceived signature issue and seeking notice and cure provisions for addressing such an issue. Following the commencement of those proceedings, Petitioner issued official guidance advising all county Boards of Elections in Pennsylvania that the Pennsylvania Election Code does not authorize the county boards to set aside returned absentee or mail-in ballots based solely on perceived signature mismatching. See p. 3 of *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes*, dated as of September 11, 2020, cited in the Secretary's Application p. 8 fn. 7. Shortly after the issuance of the foregoing guidance, Urban League, along with its co-plaintiffs in that matter, dismissed the action.

10. Urban League has intervened in this action to protect its members' and constituents' fundamental right to vote in the upcoming general election. If this Court declines to order the Secretary's requested relief, then Urban League will be required to divert its limited resources away from its regular "Get Out the Vote" efforts towards informing its members and community about Pennsylvania's signature matching requirements and preparing them for inevitable issues arising

therefrom. *See, e.g.*, Bush Declaration, ¶ 8. For Urban League, expending additional resources to, *inter alia*, educate its members and other voters regarding the risks of potential signature mismatches will necessarily divert funds from other efforts important to its mission and the rights of its members. *Id.*

11. While Urban League’s interests are aligned with those of the Secretary, Urban League seeks alternative relief in the absence of the declaration the Secretary has requested. The Secretary seeks this relief, “[t]o avoid confusion, to ensure transparency, and, most importantly, to prevent qualified voters from being disenfranchised based on arbitrary, standardless, and non-statutory grounds . . .” (Secretary’s Application at 10). Intervenor-Petition agrees: voters should not be faced with uncertainty as to whether their mail-in ballots were counted, particularly during an already disruptive pandemic. Allowing such ballots to be discarded for potential signature mismatches without providing pre-rejection notice and the opportunity to cure to such voters would unconstitutionally deprive those voters of their fundamental right to vote.

B. *Secretary’s Application*

12. Urban League adopts the factual background set forth in the Secretary’s Application in its entirety.

III. BASIS FOR EXERCISE OF KING'S POWERS

13. Urban League adopts the bases for the exercise by this Court of King's Powers set forth in the Secretary's Application in their entirety. For the reasons articulated therein, Urban League asserts the same bases for the exercise by this Court of King's Powers with respect to the alternative relief sought herein.

IV. ARGUMENTS FOR DECLARATORY RELIEF

A. *Secretary's Application*

14. Urban League adopts the Secretary's second request for declaratory relief in its entirety.

B. *Alternative Relief Sought by Urban League's Application*

i. The Pennsylvania Constitution's Due Process Guarantee Prohibits the Rejection of Ballots in the Absence of Pre-Deprivation Notice and an Opportunity to Cure.

15. To the extent this Court determines that the Election Code permits absentee and mail-in ballots to be rejected on the basis of signature matching, Pennsylvania's Constitution demands that ballots not be rejected on the basis of subjective signature matching absent pre-deprivation notice and an opportunity to cure the alleged discrepancy.

16. Pennsylvanians have a vital protected liberty interest at stake—the fundamental right to vote. The due process guarantees of Article I, Section 1 in the Pennsylvania Constitution require that the Commonwealth may not deny voters this interest without first adopting and following appropriate procedural measures to

guard against erroneous deprivations. *See* PA. CONST. art. I, § 1. Accordingly, in the event the Election Code is read to permit signature verification programs, then due process demands that voters be provided adequate notice and a meaningful opportunity to cure before any ballot may be rejected because of perceived signature deficiencies.

17. The reasoning of *Pennsylvania Democratic Party*, where this Court concluded that the Free and Equal Elections Clause did not require notice and cure procedures “for mail-in and absentee ballots that voters have filled out incompletely or incorrectly,” 2020 WL 5554644, at *20, does not apply to process-less rejections on the basis of signature matching, where the voter has not made any error—rather, it is the county board of elections that has likely made the error in wrongly concluding a signature does not match. *See Id.* at *34 (Wecht, J., concurring). Just as nearly every federal court has concluded with respect to the federal Constitution’s Due Process Clause, the Pennsylvania Constitution’s due process guarantee likewise prohibits ballots from being rejected based upon subjective signature comparisons absent pre-deprivation notice and cure procedures.²

² Although the due process analysis is the same under the Pennsylvania and U.S. Constitution, the Urban League limits its claim for declaratory relief to the Pennsylvania Constitution’s due process guarantee.

ii. **The Pennsylvania Constitution’s Free and Equal Elections Clause Prohibits Signature Match Rejections Without Notice and Cure Procedures.**

18. The Pennsylvania Constitution’s Free and Equal Elections Clause likewise prohibits signature match rejections of ballots in the absence of a meaningful pre-rejection notice and cure process. The Pennsylvania Constitution provides that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” PA. CONST. art. I, § 5. This Clause is to be read “in the broadest possible terms” and was “specifically intended to equalize the power of voters in our Commonwealth’s election process.” *Pennsylvania Democratic Party*, 2020 WL 5554644, at *4 (quoting *League of Women Voters v. Boockvar*, 178 A.3d 737, 804, 812 (Pa. 2018)). Elections are free and equal under the Constitution when “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.” *Id.* at *19 (quoting *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914)). “[I]n enforcing the Free and Equal Elections Clause, this ‘Court possesses broad authority to craft meaningful remedies when required.’” *Id.* at *18 (quoting *League of Women Voters*, 178 A.3d at 822).

19. As explained above and as further set forth in the Intervenor’s Memorandum of Support, signature matching poses a high risk of erroneous

deprivation—*i.e.*, it results in election officials wrongly identifying signatures as being from different people—and so a signature matching system that lacks notice and cure protections “den[ies] the franchise itself.” *Pennsylvania Democratic Party*, 2020 WL 5554644, at *19. Valid votes are thus tossed and not counted with no notice to the voter and no recourse. Such a process is the antithesis of a “free and equal” election, and would constitute a straightforward violation of the Free and Equal Elections Clause.

iii. Allowing Private Signature Challenges Would Pose Grave Constitutional Concerns.

20. Signature verification challenges by non-governmental entities such as candidates, parties, or other private actors would give rise to serious constitutional concerns under both due process and the Free and Equal Elections Clause, and, accordingly, Pennsylvania’s Election Code should not be interpreted to permit such challenges. *See Secretary’s Application at 22–24.*

21. Due process concerns. Allowing non-governmental private actors or entities to challenge the validity of a ballot based on the voter’s signature violates the Pennsylvania Constitution’s due process guarantees in Article I, Section 1. If signature verification by officials were permitted, errors by county election officials tasked to uphold the neutral and outcome-blind application of the law can be at least partially addressed through pre-deprivation notice and cure. Private actors, however, are even more lacking in objective expertise and may make subjective assessments

based not on ballot security, but on harassment or biases against a particular voter's ballot because of his or her suspected political preferences. Permitting private challenges to ballot signatures introduces a heightened risk of alarming political or other biases, which would amount to a severe due process violation that even pre-deprivation notice and cure could not relieve.

22. Free and Equal Elections Clause. The Free and Equal Elections guarantee for Pennsylvania voters also “guards against the risk of unfairly rendering votes nugatory.” *League of Women Voters*, 178 A.3d at 814. Allowing non-governmental entities or persons to challenge signature verification would violate this substantive guarantee, and enable private actors to disrupt the counting of eligible ballots from a certain subset of voters based on political or other illegitimate motivations. Notice and cure would not remedy this violation. The Election Code should be read to avoid such constitutional infirmities.

iv. The Court Has the Remedial Power to Order a Notice and Cure Procedure.

23. The Court has the remedial power to order a notice and cure procedure if it concludes that the Election Code permits signature matching. *See Pennsylvania Democratic Party*, 2020 WL 5554644, at *18. Such an order should require election officials to 1) make a determination upon receipt of absentee and mail-in ballots whether the board of elections is likely to conclude the signatures do not match and create a log of such ballots, 2) contact the voters by phone to confirm they voted the

ballot and, if so, make a notation on the log to be accepted by the board of elections at the pre-canvass or canvass as proof the signatures match, and 3) send a mailed notice if the voter is not reached by phone informing the voter that their signature can be confirmed by calling, emailing, or mailing confirmation to the county board of elections verifying that they voted the ballot. The same procedures should be followed for any additional ballot questioned at the pre-canvass or canvass, and voters should be afforded the duration of the provisional ballot period to confirm their signatures. Voters should not be required to submit new or additional signatures. Such a remedy is consistent with that recently ordered by the United States District Court for the District of North Dakota. *See* Ex. B (Permanent Injunction, Dkt. 36, *Self Advocacy Solutions, N.D. v. Jaeger*, No. 3:20-cv-00071 (D.N.D. Aug. 28, 2020)).

V. RELIEF REQUESTED

A. *Secretary's Application*

24. Urban League adopts the Secretary's second request for declaratory relief in its entirety to avoid the grave constitutional concerns with a contrary interpretation of the Pennsylvania Election Code.

B. *Alternative Relief Sought by Urban League's Application*

25. Solely to the extent this Court determines that the Pennsylvania Election Law permits signature matching by county election officials and declines

the Secretary's first request for declaratory relief, Urban League requests that this Court enter declaratory judgment ordering the following alternative relief:

(a) requiring election officials to make a determination upon receipt of absentee and mail-in ballots whether the board of elections is likely to conclude the signatures do not match and create a log of any and all such ballots;

(b) contact the voters who voted such ballots by phone to confirm they voted the ballot and, if so, make a notation on the log to be accepted by the board of elections at the pre-canvass or canvass as proof the signatures match; and

(c) send a mailed notice if the voter is not reached by phone informing the voter that their signature can be confirmed by calling, emailing, or mailing confirmation to the county board of elections verifying that they voted the ballot.

VI. CONCLUSION

26. It is imperative that this Court exercise its King's Bench powers to resolve this issue to ensure that thousands of Pennsylvania voters do not risk having their ballots wrongly rejected without any notice or opportunity to cure based upon subjective and error-prone signature comparison assessments of layperson county election officials. This Court's involvement is particularly warranted in light of the

resolution of the federal litigation challenging the Secretary's signature match Guidance, the statements of certain county boards of elections declining to follow that Guidance, and the substantial increase in voters casting mail-in ballots in light of the COVID-19 pandemic. Pennsylvania voters must have confidence that they can safely cast their ballots by mail without risk of subjective, untrained, and notice-free rejection of their ballots.

If the Court determines that the Pennsylvania Election Law permits signature matching and declines to grant the Secretary's first request for declaratory relief, this Court should alternatively enter declaratory relief requiring that any signature matching by county election officials must include a pre-rejection notice and cure procedure consistent with the process outlined herein. The Court should grant the Secretary's second request for declaratory relief and interpret the Election Code to prohibit non-governmental challenges to ballots based on signature matching to avoid grave constitutional concerns with a contrary reading.

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*Application for Admission *Pro Hac*
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Respectfully submitted,

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Dated: October 13, 2020