

IN THE SUPREME COURT OF PENNSYLVANIA

108 MM 2024

**REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF
PENNSYLVANIA**

v.

**AL SCHMIDT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE
COMMONWEALTH, AND ALL 67 COUNTY BOARDS OF ELECTIONS**

**OPPOSITION OF DELAWARE COUNTY BOARD OF ELECTIONS TO
PETITIONERS' APPLICATION FOR THE EXERCISE OF KING'S BENCH
POWER OR EXTRAORDINARY JURISDICTION**

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Respondent Delaware County Board of Elections (“Board”), by and through its undersigned counsel, hereby files its Opposition to the Application for Exercise of King’s Bench Jurisdiction or Extraordinary Jurisdiction filed by Petitioners Republican National Committee (“RNC”) and the Republican Party of Pennsylvania (“Party”) and states as follows.

I. INTRODUCTION

This Court should reject Petitioners’ last-minute attempt to disenfranchise tens of thousands of voters in the Commonwealth ahead of a hotly contested presidential election. This case is a rehashed version of the same case that Petitioners brought in the Commonwealth Court in 2022, where their position was rejected. In the intervening time, Petitioners have done nothing to pursue their claims despite ample opportunity to do so. Petitioners now file this Application in an attempt to manufacture an emergency, have this Court grant jurisdiction, and attempt to invalidate a practice that is not only well-supported in Pennsylvania law, but has been in place for four separate election cycles since Petitioners brought their last challenge. This Court should reject the Application because of Petitioners’ extreme delay and the resulting prejudice to the Board and to the voters of Delaware County (and the Commonwealth). This Court should also reject the Application for the more fundamental reason that it finds no support in the text of the Election Code or the decisions of this Court interpreting the same.

II. COUNTER-STATEMENT OF JURISDICTION

The Board disputes that this Court has proper original jurisdiction over it and that this Court should exercise extraordinary jurisdiction. This Court should decline to exercise extraordinary jurisdiction because Petitioners could have, and should have, followed proper procedures for bringing this action in either the local courts of common pleas in individual counties where notice and cure is practiced, or in the Commonwealth Court (as they have previously done). Instead, Petitioners have unduly delayed by failing to pursue either path, and now bring this last-minute challenge directly into this Court and ask for an exercise of extraordinary jurisdiction and an expedited ruling.

But the extraordinary circumstances that Petitioners use to justify an exercise of jurisdiction were created by Petitioners themselves. By deliberately and artificially waiting for years to bring this Application, Petitioners are attempting to manufacture an emergency where none exists, as this case could have easily been brought in March 2023 (when Petitioners' last challenge was dismissed) or in any of the 18 intervening months. Petitioners chose not to do so. Therefore, their Application should be barred as described herein, and this Court should decline to exercise its power of King's Bench jurisdiction.

III. ARGUMENT

A. Petitioners Have Unduly Delayed in Bringing their Application

Petitioners' Application should be denied under the doctrine of laches because Petitioners have unduly delayed in bringing the Application until this juncture.

“Laches is an equitable doctrine that bars relief when a complaining party is guilty of want of due diligence in failing to promptly institute an action to the prejudice of another.” *White v. Twp. of Upper St. Clair*, 968 A.2d 806, 810–11 (Pa. Cmwlth. 2009) (citing *Stilp v. Hafer*, 553 Pa. 128, 718 A.2d 290 (Pa. 1998)). “In order to establish laches, a defendant must establish (1) a delay arising from the complaining party's failure to exercise due diligence and (2) prejudice to the defendant resulting from the delay.” *Id.*

Not only have Petitioners known for years about this practice, they also previously solicited this information from not only the Board, but the other 66 county boards, in 2022. Inexplicably, Petitioners then allowed the various boards of elections to implement notice and cure procedures for both the primary and general election cycles in 2023, and then the primary election cycle in 2024, before bringing this Application only several weeks before the 2024 General Election.

The Petitioners' lack of diligence in bringing this action has also prejudiced the Board and the voters of Delaware County. Preparations are well under way for

the 2024 General Election, and the Board will shortly begin sending mail ballots to voters, some of whom are likely to return their votes before this Court issues a final ruling. Any changes in the procedure mid-stream could result in an uneven application of the law to voters within the same county. Moreover, the voters themselves will be prejudiced because, due to Petitioners' delay, voters have been led to believe they may lawfully cure their ballots (indeed many have done so in the past)¹ and likely expect the same in the 2024 General Election, which is just weeks away.

1. Petitioners Have Not Acted with Diligence

Petitioners have not acted with diligence because they have waited nearly eighteen months, and four election cycles, since their last challenge to notice and cure procedures, despite being in full possession of all necessary information.

In 2022, these same Petitioners filed a Petition for Review in the Pennsylvania Commonwealth Court seeking to have notice and cure procedures declared unlawful under the Election Code. *See generally Republican National Committee, et al., v. Chapman, et al.*, Case No. 447 MD 2022. On September 12, 2022, Petitioners – represented by the same counsel as in this proceeding – sent a

¹ The Delaware County Court of Common Pleas has already held that voters whose mail-in or absentee ballots are invalidated due to facial defects may vote provisionally. *See Keohane, et al. v. Delaware County Board of Elections*, No. CV-2023-004458, a copy of which is attached as **Exhibit C**.

letter to counsel for various boards of elections requesting information on their notice and cure processes. A copy of this letter is attached as **Exhibit A**. In the letter, Petitioners requested that the boards “state whether the county on behalf of which you are responding has adopted and/or implemented one or more notice and opportunity to cure procedures with respect to voters’ failure to comply with signature and secrecy envelope requirements for absentee or mail-in ballots as set forth in 25 Pa. C.S. §§ 3146.6(a) and 3150.16(a).” *See id.* at ¶ 1. Petitioners then asked the boards to provide detailed information on the notice and cure procedure implemented, the number of ballots that had been cured, and similar information. *See id.* at ¶¶ 2-4.

As a result of that outreach, the boards – including Delaware County – and Petitioners entered into a joint stipulation of facts, which was filed on September 20, 2022. A copy of this Joint Stipulation is attached as **Exhibit B**. In the stipulation, numerous boards indicated that they had adopted notice and cure procedures.² *See id.* at 2-5. Following an initial round of briefing, the Pennsylvania Commonwealth Court issued an opinion which noted that the *Pennsylvania Democratic Party v. Boockvar*, 238 A.2d 345 (Pa. 2020), decision did not “stand for the much broader proposition asserted by Petitioners that County

² Delaware County did not have a notice and cure procedure implemented at the time. The Board subsequently implemented a notice and cure procedure following resolution of that case when it was determined such practices were not prohibited by the Election Code.

Boards are necessarily **prohibited** from developing and implementing notice and opportunity to cure procedures.” *See Republican National Committee v. Chapman*, 2022 WL 16754061, at * 17 (Pa. Cmwlth. Sept. 29, 2022). Petitioners filed an Amended Petition for Review which was dismissed for lack of subject matter jurisdiction on March 23, 2023. *See generally* Docket at *Republican National Committee v. Chapman*, 447 MD 2022.

Petitioners then remained silent. Following the Commonwealth Court decision, the Board, and other boards throughout the Commonwealth, instituted notice and cure procedures for the 2022 General Election, the 2023 Primary Election, the 2023 General Election, and the 2024 Primary Election, all without any objection from Petitioners. Even though the Commonwealth Court held that it lacked subject matter jurisdiction over the Amended Petition for Review, the Petitioners could have challenged notice and cure procedures in the court of common pleas of any individual county where such procedures were enacted. This would have been the proper venue and that court would have had subject matter jurisdiction to consider Petitioners’ challenge.³ They failed to do so. Instead,

³ The Board makes this argument without any waiver to future arguments on subject matter jurisdiction, standing, or any other issue that might arise in the context of an individual case filed in the Delaware County Court of Common Pleas. This analysis merely mirrors the Commonwealth Court’s analysis in dismissing the Petitioners’ prior action on the basis of lack of subject matter jurisdiction.

Petitioners waited until September 18, 2024 – almost two years to the day since they first obtained the information – to file this Application and take a second bite of the apple in seeking to have notice and cure procedures declared unlawful.

Petitioners’ failure to act with diligence should bar their Petition. “A determination as to whether the complaining party acted with due diligence will depend on what that party might have known based on the information in its reach.” *Koter v. Cosgrove*, 844 A.2d 29, 34 (Pa. Cmwlth. 2004). Petitioners here not only had access to information regarding notice and cure, but specifically sought that information from the county boards, almost exactly two years ago. Even taking into account the delay until the final ruling in Petitioners’ previous action – which came in March 2023 – Petitioners have waited eighteen months and four election cycles to press this challenge.

Courts in similar circumstances have found that actions were not prosecuted with diligence and barred claims based on laches. For example, this case resembles *Koter*, where a group of voters challenged the results of a ballot referendum seeking to alter the number of City Council members. *See* 844 A.2d at 30. The voters filed their action thirteen months after the referendum result was finalized (five months shorter than Petitioners’ first claim was finally dismissed here). *See id.* The Commonwealth Court, reversing the trial court, held that thirteen months constituted sufficiently long delay because “the triggering event

for the challenge,” was not the implementation of the results, but “the point when the results of the election became clear.” *See id.* at 34.

Similarly, in *Kelly v. Commonwealth*, the petitioners filed a Petition for Review in the Commonwealth Court seeking to invalidate the practice of mail-in and absentee authorized by Act 77. *See* 240 A.3d 1255, 1256 (Pa. 2020). This Court dismissed the petition and held that the challenge “violates the doctrine of laches given their complete failure to act with due diligence in commencing their facial constitutional challenge, which was ascertainable upon Act 77’s enactment.” *See id.* The Court further held that the “want of due diligence,” was “unmistakable,” because the Petitioners had waited over a year to bring their case after Act 77 was enacted. *See id.* The circumstances here are even worse than those in *Kelly*, because Petitioners have waited over a year and a half to bring this case, with the intent of manufacturing an emergency just weeks before the election.

Petitioners here knew the results of their last challenge when it was decided in March 2023. Petitioners allowed notice and cure to proliferate through four election cycles, and no facts have arisen since then which would justify Petitioners reopening this argument. Petitioners also failed to challenge individual counties’ notice and cure processes in their local courts of common pleas despite ample opportunity to do so. This is a textbook example of failure to act with diligence, satisfying the first element of the laches test.

2. The Board and Voters Have Been Prejudiced

The Board, and the voters of Delaware County, have also been prejudiced by the Petitioners' undue delay, satisfying laches' second element. Prejudice, in the laches analysis, arises when "a change in the condition or relation of the parties occurs during the time the complaining party failed to act." *Koter*, 844 A.2d at 34.

The Board itself is prejudiced by Petitioners' delay. The Board and its staff have already begun preparing for the 2024 General Election, including preparing to mail ballots out to voters. As Petitioners themselves even note, the Election Code authorized county boards to begin sending mail ballots to voters on September 16, 2024. *See* Application at 19. Yet Petitioners intentionally waited until September 18, 2024 to file the Application. This means boards across the Commonwealth have already prepared to mail, or even mailed, ballots to voters, and in a matter of days will begin receiving voted ballots. This presents a scenario where some voters **within the same county** could be instructed to cure their ballot based on existing notice and cure procedures, while others who wait a mere several additional days will not be, depending on the outcome of this Court's ruling. Those ballots which were received, noticed, and cured before this Court rules on the merits will then be required to either be located and segregated, or invalidated entirely after a voter has already voted.

Further, the Board has already taken other administrative steps to prepare for the election which would need to be reversed. First, the Board placed language on its mail ballots and return envelopes that indicate its current notice and cure policies. The Board's current ballots contain a warning that the voter cannot vote on Election Day unless they remit their mail ballot and return envelope to the Board, or unless they vote provisionally. Such language would be invalidated if Petitioners' request is granted; this means that the Board would need to send out a second set of mailings to all voters with contrary instructions, and in turn sow high levels of confusion among voters and doubt in the integrity of the election as a whole.

Second, logic and accuracy testing is scheduled to begin in the coming week, meaning these envelopes and ballots are already set to be tested as required by law, and any changes would require an additional round of testing even closer to the election.

Third, the Board has already printed its poll worker training materials, including forms and envelopes used in precincts, which reference how to handle situations where a voter remits their mail-in ballot, as well as handling provisional voting for those whose mail-in or absentee ballots had a disqualifying flaw. At this point, it would be extremely difficult and confusing to alter these materials for poll workers, who have already begun training for the election this past weekend. The

relief requested by the Petitioners would require altering all of these materials and re-performing all of these administrative steps. If Petitioners had acted diligently, this issue could have been resolved far in advance and would not have required any of the significant alterations described above.

Prejudice exists here for not only the Board, but the voters of Delaware County, because a ruling outlawing a practice which existed in the primary for this very election would sow confusion and undoubtedly disenfranchise voters. Again, four elections have passed where voters in Delaware County have voted under a regime which provides notice of ballot envelope defects and permits voters to cure those defects and ensure their vote was counted.

A change in this law to prevent notice and cure could affect tens of thousands of people. For example, in the 2024 Primary Election – a low-turnout election – Delaware County had 30,616 voters voted by mail or by absentee ballot. In the 2022 General Election, which had U.S. Senate and Pennsylvania Governor on the ballot, 57,891 Delaware County voters voted by mail or by absentee ballot. These tens of thousands of voters voted in these previous elections with the knowledge that if their outer envelope contained a defect, they would be contacted and could cure that defect without having their vote invalidated entirely. The number of voters in the 2024 General Election will undoubtedly be vastly higher given the high level of public interest in the race, meaning the number of voters

who will vote by mail or absentee will grow accordingly. A last-minute rule change threatens to disenfranchise thousands, if not tens of thousands, of those voters who now expect that the Board will contact them if there is any problem with their mail-in or absentee ballot. Moreover, if voters have already returned their ballots, been noticed of a defect, and cured their ballot, all before this Court issues a ruling, such voters will believe they have validly voted in the election when in fact their vote may be invalidated by a *post hoc* order of this Court, again with no notice whatsoever.

Applying laches to bar Petitioners' requested relief will accomplish the Election Code's goal of ensuring that the franchise is protected. *See Shambach v. Bickhart*, 845 A.2d 793, 798 (Pa. 2004) ("There is a longstanding and overriding policy in this Commonwealth to protect the elective franchise). Moreover, this Court and others has held that voter confusion is a sufficient basis for granting relief, and should do so here.⁴ *See, e.g., Deer Creek Drainage Basin Auth. v. Cnty. Bd. of Elections of Allegheny Cnty.*, 475 Pa. 491, 500, 381 A.2d 103, 107 (Pa.

⁴ To the extent that Petitioners argue that banning notice and cure will avoid voter confusion due to differing practices across counties, this argument is off-base. Voters only vote in their own counties. A voter in Delaware County likely has little to no idea about the notice and cure policies enacted in Allegheny or Butler counties, for example, because they do not vote in those counties. The crucial question for voter confusion is whether confusion will result within a county rather than between counties.

1977) (granting injunctive relief “[i]n order to avoid unnecessary voter confusion); *Pennsylvania Democratic Party v. Boockvar*, 662 Pa. 39, 82, 238 A.3d 345, 371 (Pa. 2020) (granting extension of ballot deadline to avoid “creating voter confusion”); *see also United States v. City of Philadelphia*, No. 2:06CV4592, 2006 WL 3922115, at *2 (E.D. Pa. Nov. 7, 2006) (noting that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls.”). Accordingly, the Board requests that the Application be denied.

B. Pennsylvania Law Permits Notice and Cure

Petitioners have already attempted once, and failed once, to have this Court determine notice and cure is prohibited by Pennsylvania law. This Court ruled otherwise. There is no legal basis to disturb that decision, and the Application should be rejected.

Petitioners’ argument that the Election Code prohibits notice and cure is misguided. Petitioners assert that the Election Code mandates that Boards “are not permitted to inspect or open a mail-ballot package returned by voter,” and that reviewing the outer envelope constitutes an impermissible pre-canvass. *See* Application at 33-37. But a review of the unambiguous language of the Election Code, and interpreting case law, reveals that this is not so.

The Election Code contemplates that the outer envelope of absentee and mail-in ballots must be examined to determine a ballot's suitability for pre-canvassing. For example, in 25 P.S. § 3146.8(d), the Code requires the county board to reject the ballots of "any absentee elector or mail-in elector who has returned his ballot" but "has died prior to the opening of the polls on the day of the primary or election." Such examination is impossible without viewing the contents of the outer envelope before it is set aside before the pre-canvass.

Further, the decisions of this Court have acknowledged that sorting ballots into categories for the pre-canvass (which requires viewing their contents) does not convert such activities into pre-canvassing. In *In re Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, this Court, in the course of describing the Philadelphia Board of Elections' practices, noted that "the Philadelphia Board met to determine **whether ballots separated into nine categories were "sufficient" to be pre-canvassed or canvassed. It concluded that four categories were not sufficient to be pre-canvassed or canvassed:** (1) 472 ballots where the outer envelope lacked a signature and any other handwritten information; (2) 225 ballots where the outer envelope was not signed by the voter; (3) 112 ballots where the individual who completed the declaration appeared to be different from the individual who had been assigned the ballot; and (4) 4,027

ballots that were not submitted in a secrecy envelope.” *See* 241 A.3d 1058, 1067 (Pa. 2020) (emphasis added).

To separate such ballots into categories, it is essential that election officials view the outer envelopes. Otherwise, it would be impossible to segregate ballots lacking a signature from ballots lacking a secrecy envelope, or from ballots signed by a different individual. This Court acknowledged that, and determined that this sorting is distinct from the pre-canvass. *Id.* This Court also noted that receiving a ballot envelope and scanning it into the SURE system was a distinct procedure from pre-canvassing. *See id.* (“After receiving the outer envelope, the board of elections stamps the date of receipt on it then scans the unique nine-digit bar code, which links the voter’s ballot to his or her registration file. **The pre-canvassing or canvassing of absentee and mail-in ballots then proceeds...**”) (emphasis added).

Stamping and scanning the outer envelope of a ballot necessarily requires viewing its contents. If a ballot is lacking a signature and sorted into that pile, this Court has noted this is not a pre-canvass. *See id.* Notice and cure merely adds a notification to a voter after their ballot is sorted but before the ballot is pre-canvassed.

The Commonwealth Court has also already held that notice and cure procedures do not facially violate the Election Code. In the Commonwealth Court’s opinion in *Republican National Committee v. Chapman*, while considering

the holding of *Pennsylvania Democratic Party v. Boockvar*, the court noted that the decision did not “stand for the much broader proposition asserted by Petitioners that County Boards are necessarily **prohibited** from developing and implementing notice and opportunity to cure procedures.” *See Republican National Committee v. Chapman*, 2022 WL 16754061, at * 17 (Pa. Cmwlth. Sept. 29, 2022) (emphasis added). The Court therefore left the decision to each county board as to whether they would develop and use a notice and cure procedure.

Such procedures were in fact developed and used in the 2022 General Election, as Petitioners have acknowledged. Both this Court and the Commonwealth Court have thus not only permitted sorting of ballots before the pre-canvass, but both courts also permitted the county boards to develop their own notice and cure procedures for the 2022 General Election.

These rulings counsel that notice and cure does not violate the Election Code, and the same result should apply here.

C. Petitioners’ Argument Against Provisional Voting Should Similarly Fail

In addition to their argument against notice and cure, Petitioners also ask this Court to declare that it is illegal to allow voters to vote provisionally if their mail-in or absentee ballot contains a facial defect. This position should be similarly rejected as unsupported by Pennsylvania law.

The Election Code contains two provisions that relate to casting a provisional ballot following an unsuccessful attempt to cast a mail-in or absentee ballot. The first subsection states that “[e]xcept as provided in clause (ii), if it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast, the county board of elections shall compare the signature on the provisional ballot envelope with the signature on the elector’s registration form and, if the signatures are determined to be genuine, shall count the ballot if the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election.” 25 P.S. § 3050(a.4)(5)(i). The second subsection states that a provisional ballot “shall not be counted” if “the elector’s absentee ballot or mail-in ballot are timely received by a county board of elections.” 25 P.S. § 3050(a.4)(5)(ii)(F).

The language of these subsections has two apparent goals: 1) that only ballots validly cast **and counted** prohibit a voter from voting provisionally; and 2) that double voting be prevented. By analogy and comparison to votes cast in-person at a polling place, it is clear that the Code’s plain language allows these votes to be counted.

1. The Election Code's Language Presumes the Voter Cast a Valid Vote

The Election Code's language, as viewed both in the provisions at issue, similar provisions, and Pennsylvania law, should be understood to bar provisional voting only if the prior vote was received and counted by the Board.

Again, the Code states that “[e]xcept as provided in clause (ii), if it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast, the county board of elections shall compare the signature on the provisional ballot envelope with the signature on the elector's registration form and, if the signatures are determined to be genuine, shall count the ballot if the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election.” 25 P.S. § 3050(a.4)(5)(i).

This statute, read in context with other Code provisions, uses “cast” interchangeably with “count”, as the Code frequently does in the context of in-person voting. For example, in the Code section containing instructions on counting ballots at primaries, the Code says that upon opening the ballot box “[t]he ballots shall then be counted one by one, and a record made of the total number, and at primaries of the total number cast for each party.” 25 P.S. § 3062. In the context of in-person ballots, the “cast” ballots are all counted. *Id.*

In another section providing instructions for counting votes cast in person, the Code says that “[a]ny erasure or mutilation in the vote in any office block shall render void the vote for candidates in said block, but shall not invalidate the votes cast on the remainder of the ballot.” 25 P.S. § 3063. This language contemplates that votes for certain candidates may be voided (and not cast) while the other properly cast and counted votes remain in effect.

Pennsylvania case law has also used the word “cast” as a synonym for the word “count.” For example, in *Shambach v. Bickhart*, this Court considered the ability to cast write-in votes at precincts with voting machines. *See generally* 845 A.2d 793 (Pa. 2004). The court noted that “an election official must always review the ballot card where a write-in vote has been cast in order to tabulate that vote.” *Id.* at 802. Accordingly, this Court said that “it is apparent that the tabulation of the write-in votes at issue in the instant case...will not undermine the efficiency of the voting system or make it possible for voters to cast more than one vote for a single candidate.” *Id.* In that context, the word “cast” is used to mean “counted.”⁵

Similarly, in *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223 (Pa. 2004), this Court’s analysis assumed “casting” a ballot to be synonymous with having it count. In that case, the Court evaluated the

⁵ This analysis is also consistent with the use of the word “cast” in the statute itself, as it pertains to double voting.

Election Code’s ban on third-party delivery of an absentee ballot. In discussing the Code’s requirements, this Court said that the statute in question was “consistent with the spirit and intent of our election law, which requires that a voter cast his ballot alone, and that it remain secret and inviolate.” *Id.* at 1232. The word “cast” there presumes that a ballot should remain secret because otherwise it will not be properly “cast” and thus not counted. *Id.*

The analogy to in-person voting is apt because, in those circumstances, a voter is able to vote a replacement ballot rather than be disenfranchised entirely. If an in-person voter attempts to submit a ballot containing an overvote in any race, for example, a scanner will detect this and reject the ballot, and the voter is entitled to obtain and vote a replacement ballot. Mail-in voters should not be disenfranchised entirely by submitting a ballot that is later voided without recourse to vote on Election Day in person. The provisional voting rules allow for this process to occur in the same manner as in-person voting while preventing double voting.

2. The Goal of the Code is to Prevent Double Voting

Reading the statute to mean that provisional ballots are only barred if another vote is cast *and counted* also accomplishes the clear intent of the General Assembly to prevent double voting. *See* 1 Pa. C.S. § 1921(a).

Again in the context of in-person voting, the Election Code's procedures are designed to prevent double voting without unnecessarily disenfranchising voters. For example, in the statute instructing election officers on their duties following the close of polls, the Code requires that election officers separate and not count all ballots "spoiled and returned by voters and cancelled," and enter those ballots in a separate line on the general returns. *See* 25 P.S. § 3061. This process ensures that canceled ballots are not counted alongside any replacement ballot cast by the same voter.

The Board's procedures are easily harmonized with this command and prevent this outcome. When the Board receives a mail-in or absentee ballot, Board staff examines the outer envelope for obvious defects such as a missing signature or date. If such a defect is found, the Board provides a notice via e-mail or regular mail to the affected voter and offers them the opportunity to cure their ballot at Government Center in person, or mails a replacement ballot.

Critically, the voter's original ballot is marked CANCELED in the SURE system. This means the mail-in ballot is segregated from other mail-in ballots and is not counted or included in the pre-canvass and canvass. It is treated by staff as if the ballot was not received at all. Then, the voter may vote their replacement ballot, which for all purposes replaces the original ballot in the SURE system to ensure the voter is able to vote only once. This procedure, then, satisfies the

Election Code’s requirement that the county board “confirm[] that the individual did not cast any other ballot” in the election. *See* 25 P.S. § 3050(a.4)(5)(i).

This same rationale applies to ballots not received by 8 P.M. on the day of the election. If a vote is received after the deadline, it is not counted and is entered into the SURE system as an invalid vote. If a voter mails a ballot and then votes provisionally, and the mail-in ballot arrives after Election Day, the Board is able to cross reference the voter’s status in SURE and confirm that only one vote is counted. In such a scenario, the provisional ballot would unquestionably count. It would make no sense to count a provisional ballot in that situation, but not in the circumstances presented here.

The Board implements additional safeguards in the form of its provisional ballot challenge process. Consistent with the Election Code, the Board schedules and holds a provisional ballot challenge hearing within seven days of each primary or election. *See* 25 P.S. § 3050(a.4)(4). Prior to the hearing, the Board checks all provisional ballots against Election Day poll books and by-mail ballots to determine if each voter who voted provisionally also voted a different way. The Board also collects the names and addresses of each voter who cast a provisional ballot in Delaware County and makes those available to party leaders and candidates. The Board further publishes all mail-in and absentee voters on its website. Therefore, ahead of the hearing, representatives and the Board, and any

other interested party, can confirm that voters have not cast a provisional ballot and also voted in some other way.

This procedure does not violate the Election Code, and in fact advances the Code's dual purposes of enfranchisement of voters as well as protection of election integrity. Accordingly, Petitioners' request to ban the practice should be denied.

IV. CONCLUSION

Based on the high potential for voter confusion and disenfranchisement, and the clear language of the Election Code, the Delaware County Board of Elections respectfully requests that the Application be denied.

/s/ J. Manly Parks _____

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EXHIBIT A

September 12, 2022

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RE: RNC et al. v. Chapman et al.

Dear Counsel:

As you may be aware, on September 9, 2022, the Court entered a Scheduling Order in the above-referenced matter. For reference, a copy of the Scheduling Order is attached. Paragraph 4 of that Order provides:

4. The parties shall file a joint stipulation of facts no later than **12:00 noon on Monday, September 19, 2022**, indicating which county boards of elections have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots.

In furtherance of the Court's order, and to streamline the presentation of evidence at the hearing, please provide answers to the following questions no later than September 15, 2022, in order to allow us sufficient time to compile the stipulation and to circulate the same to counsel for review.

1. Please state whether the county on behalf of which you are responding has adopted and/or implemented one or more notice and opportunity to cure procedures with respect to voters' failure to comply with signature and secrecy envelope requirements for absentee or mail-in ballots as set forth in 25 Pa. C.S. §§ 3146.6(a) and 3150.16(a) ("Notice and Cure Procedure") since the enactment of the amendment of Act 77 on October 31, 2019. This request does not apply to those procedures relating to proof of identification as set forth in 25 P.S. § 3146.8(h). If your answer to this question is in the negative, please proceed to question 3.

2. If your answer to the preceding question is in the affirmative, please state for each election from the 2020 Primary election through the 2022 Primary election:
 - a. Whether the Notice and Cure Procedure applied to both absentee and mail-in ballots and if not, to which ballots did the Notice and Cure Procedure apply;
 - b. The specific defect or deficiency for which a Notice and Cure Procedure was adopted and/or implemented;
 - c. The steps taken to determine if an absentee and/or mail-in ballot was defective and/or deficient;
 - d. The time period for determining whether an absentee and/or mail-in ballot was defective;
 - e. The specific procedure(s) adopted and/or implemented, including but not limited to how notice was provided to the voter who had cast a defective and/or deficient ballot and the cure permitted;
 - f. The identity of the individual and/or individuals responsible for implementing the Notice and Cure Procedure;
 - g. The time period for providing notice to a voter that the voter's ballot had been determined to be defective and/or deficient;
 - h. The number of ballots determined to be defective and/or deficient and the reason and/or reasons the ballots were determined to be defective and/or deficient;
 - i. The number of voters to whom notice and the opportunity to cure any such defect and/or deficiency was given;
 - j. To the extent notice and an opportunity to cure was not given to a voter whose ballot was determined to be defective and/or deficient, the reason for the lack of notice to such a voter or voters;

- k. The number of ballots cured and the manner in which such ballots were cured; and
 - l. The source of funding for the Notice and Cure Procedure.
3. Please state whether the county on behalf of which you are responding intends to adopt and/or implement a Notice and Cure Procedure for the 2022 November election.
4. If your answer to the preceding question is in the affirmative, please state:
- a. Whether the notice and cure procedure will apply to both absentee and mail-in ballots and if not, to which ballot the Notice and Cure Procedure will apply;
 - b. The specific defect or deficiency for which a Notice and Cure Procedure was adopted and/or implemented;
 - c. The steps to be taken to determine if an absentee and/or mail-in ballot was defective and/or deficient;
 - d. The time period for determining whether an absentee and/or mail-in ballot is defective;
 - e. The specific procedure(s) adopted and/or implemented, including but not limited to how notice will be provided to the voter who casts a defective and/or deficient ballot and the cure permitted;
 - f. The identity of the individual and/or individuals responsible for implementing the Notice and Cure Procedure;
 - g. The time period for providing notice to a voter that the voter's ballot has been determined to be defective and/or deficient; and
 - h. The source of funding for the implementation of the proposed Notice and Cure Procedure(s).

To save time, we request that you send your responses via email to all counsel for the Petitioners:

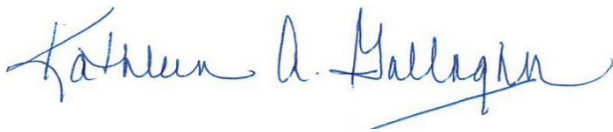
Page 5
September 12, 2022

Kathleen A. Gallagher
Russell D. Giancola
Thomas W. King, III
Thomas E. Breth

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rdg@glawfirm.com
tking@dmkcg.com
tbreth@dmkcg.com

We appreciate your timely cooperation in this regard. Please feel free to contact us with any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Kathleen A. Gallagher". The signature is written in a cursive style with a long horizontal stroke at the end.

Kathleen A. Gallagher

KAG:jsp

cc: All Respondents who have not entered an appearance in this matter (via Federal Express)

EXHIBIT B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

JOINT STIPULATION OF FACTS

On September 9, 2022, this Court entered a Scheduling Order which required the parties to file a joint stipulation of facts indicating which county boards of elections have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots. To facilitate compliance with the Court’s Order, eliminate the need for additional expedited discovery as well as the testimony of a representative of each county Board of Elections at the hearing of this matter, on September 12, 2022, counsel for Petitioners sent a letter via email to all counsel of record as of that date and via Federal Express next day delivery to those counties on behalf of whom counsel had not yet entered an appearance (the “September 12, 2022 Letter”), a copy of which is attached as Exhibit “A”).

The Boards of Election for Bedford County, Centre County, Columbia County, Dauphin County, Fayette County, Huntingdon County, Indiana County,

Jefferson County, Lawrence County, Northumberland County, Venango County, York County, Westmoreland County, and Chester County stipulate per the attached Exhibits “B”, “C”, and “D”, respectively.

The undersigned parties join this Joint Stipulation of Fact subject to the caveat that the Respondent Boards are stipulating only the facts that are applicable and known to them. Specifically, the parties, through their undersigned counsel, hereby stipulate to the following facts:

1. Please state whether the county on behalf of which you are responding has adopted and/or implemented one or more notice and opportunity to cure procedures with respect to voters’ failure to comply with signature and secrecy envelope requirements for absentee or mail-in ballots as set forth in 25 Pa. C.S. §§ 3146.6(a) and 3150.16(a) (“Notice and Cure Procedure”) since the enactment of the amendment of Act 77 on October 31, 2019. This request does not apply to those procedures relating to proof of identification as set forth in 25 P.S. § 3146.8(h):

- Adams County – Since at least 2010, when the County’s current Elections Director joined the Elections Office, it has been the practice of election staff to notify voters of defective absentee or mail-in ballots by means of telephone, e-mail, or letter, and to provide them an opportunity to correct such defects in the presence of election staff in the Elections Office.
- Allegheny County – Since 2020, Allegheny County has informed voters, whose mail-in/absentee ballots lack required information. A letter from the Allegheny County Elections Division, a copy of which is attached hereto as Exhibit B, is mailed, by ordinary mail, to said voters. Accompanying this letter is a “fresh” declaration envelope and secrecy envelope.
- Beaver County – In the past, the Beaver County Bureau of Elections had implemented an informal notice and opportunity to cure procedure with respect to voters’ failure to comply with

signature or date requirements only for both absentee and mail-in ballots.

- Berks County – Does not proactively contact voters regarding mail-in/absentee ballot deficiencies for the purpose of providing them an opportunity to cure. As such, they do not have a “Notice and Cure” procedure. However, if a voter contacts them about a potential deficiency within their ballot, they will generally allow them the opportunity to cure prior to 8:00 p.m. on Election Day.
- Blair County - Prior to this past summer, when the decision was made to stop notifying voters of potential errors in their mail-in or absentee ballots of a potential error that would cause their ballot not to count, there was a practice to provide an opportunity to correct the same.
- Bradford County – Has not adopted and/or implemented notice and opportunity to cure procedures. However, it should be noted that, upon receipt, the ballot is scanned and if there is an error with the ballot the system automatically generates an email notice to the voter stating that there is a problem with the ballot. The County does not reach out to voters.
- Bucks County – See response attached as Exhibit “E”.
- Butler County - Has no such procedures in place. Butler County does not allow for a mail-in or absentee ballot (once received and stamped in at the Bureau of Elections) to be altered, corrected or in any way modified.
- Cameron County – Neither the County nor its Election Board have adopted or implemented one or more notice and opportunity to cure procedures with respect to voters' failure to comply with signature and secrecy envelope requirements for absentee or mail-in ballots as set forth in 25 Pa. C.S. §§ 3146.6(a) and 3150.16(a).
- Clarion County – Follows the Election Code and does not use nor intends to use or adopt curing procedures for absentee/mail-in ballots.

- Cumberland County – Has not formally adopted and does not have set plans to formally implement notice and opportunity to cure provisions for absentee and mail-in ballots.
- Delaware County – The Board has not implemented any notice and opportunity to cure procedures.
- Erie County – The Board of Elections did not implement a "notice to cure" procedure during the 2020 election or for any election since then.
- Franklin County – Has not implemented any notice and opportunity to cure procedures.
- Juniata County – Has not adopted nor implemented any notice and opportunity to cure procedures with respect to voters' failure to comply with signature and secrecy envelope requirements for absentee or mail-in ballots as set forth in 25 Pa. C.S. §§ 3146.6(a) and 3150.16(a) ("Notice and Cure Procedure") since the enactment of the amendment of Act 77 on October 31, 2019.
- Lehigh County – The Lehigh County Board of Elections permitted outer envelope corrections for absentee ballots prior to 2020, and since 2020 has notified voters and permitted curing with respect to voters' failure to comply with outer envelope requirements for mail-in as well as absentee ballots.
- Luzerne County – In answer, the Board of Elections and Registration refers to its September 16, 2022 Stipulation attached as Exhibit "F" hereto.
- Lycoming County – has adopted and/or implemented one or more notice and opportunity to cure procedures with respect to voters' failure to comply with signature and secrecy envelope requirements for absentee or mail-in ballots as set forth in 25 Pa. C.S. §§ 3146.6(a) and 3150.16(a) ("Notice and Cure Procedure") since the enactment of the amendment of Act 77 on October 31, 2019.

- Montgomery County – Board of Elections has implemented notice and cure procedures for mail-in and absentee ballots in prior elections.
- Northampton County – The Board of Elections provides voters with an opportunity to fix an issue with the date or signature on an absentee or mail-in ballot prior to Election Day. Northampton County Board of Elections does not provide voters with an opportunity to fix an issue with the secrecy envelope prior to Election Day.
- Philadelphia County – See response attached as Exhibit “G”.
- Snyder County – The Board of Elections has no curative procedures policy in effect for the 2020 election.
- Somerset County – The Board of Elections has not implemented notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots.
- Sullivan County – At no time since the enactment of Act 77 on October 31,2019, has Sullivan County adopted and/or implemented one or more notice and opportunity to cure procedures with respect to voters' failure to comply with signature and secrecy envelope requirements for absentee or mail-in ballots as set forth in 25 Pa.C.S.3146.6(a) and3150.16(a).
- Susquehanna County – Follows the Election Code and does not use nor intends to use or adopt curing procedures for absentee/mail-in ballots.
- Tioga County – If a voter provided a phone number on their application, and the County receives a mail-in/absentee and the voter forgot something on the envelope, or it’s missing a secrecy envelope, they try to call the voter.
- Union County – See response attached as Exhibit “H”.
- Wyoming County – At no time since the enactment of Act 77 on October 31,2019, has Wyoming County adopted and/or implemented one or more notice and opportunity to cure

procedures with respect to voters' failure to comply with signature and secrecy envelope requirements for absentee or mail-in ballots as set forth in 25 Pa.C.S.3146.6(a) and 3150.16(a).

2. Of those counties which indicated in paragraph 1 above to having notice and opportunity to cure procedures, the counties below offer the following details regarding such procedures:

a. Whether the notice and cure procedure applied to both absentee and mail-in ballots and, if not, to which ballots did the notice and cure procedure apply:

- Adams County – The procedure applied to both absentee and mail-in ballots.
- Beaver County – The notice and cure procedure applied to both absentee and mail-in ballots.
- Blair County – The notice and cure procedure applied to both absentee and mail-in ballots.
- Lehigh County – The notice and cure procedure applied to both absentee and mail-in ballots.
- Lycoming County – The procedure applied to both absentee and mail-in ballots.
- Montgomery County – The notice and cure procedures applied to both absentee and mail-in ballots.
- Northampton County – In the 2020 General, 2021 Primary, 2021 Municipal, and 2022 Primary Elections, the notice and cure procedure applied to both absentee and mail-in ballots.

b. The specific defect or deficiency for which a notice and cure procedure was adopted and/or implemented:

- Adams County – The defect/deficiency that would trigger the procedure was an employee noting an unsigned or undated envelope.

- Beaver County – The defect/deficiency that would trigger the procedure was an employee noting an unsigned or undated envelope.
- Blair County – If a returned ballot was missing a signature or date (these were the only issues notification was provided for).
- Lehigh County – Lack of a signature and/or date on the outer envelope.
- Lycoming County – The defect/deficiency that would trigger the procedure was an employee noting an unsigned or undated envelope.
- Northampton County – In the 2020 General, 2021 Primary, 2021 Municipal and 2022 Primary Elections, if a mail-in or absentee ballot lacked a signature or date.

c. The steps taken to determine if an absentee and/or mail-in ballot was defective and/or deficient:

- Adams County – The steps taken were a review of the outer envelope to determine whether or not the envelope was adequately signed and dated.
- Beaver County – The only steps taken were a review of the outer envelope to determine whether or not the envelope was adequately signed and dated.
- Blair County – When time permitted, generally when ballots were initially mailed and returned immediately, they were reviewed for signature and date.
- Lehigh County – Review of the outer envelope upon receipt and security envelope during pre-canvassing.
- Lycoming County – If voter registration staff observed a missing signature and/or missing date on the back of an official ballot return envelope during the receiving process, and if voter registration staff could ascertain a phone number on file on the voter's registration record, voter registration staff attempted the phone number on file to inform the voter of the missing signature

and/or missing date. Determinations of missing signatures and/or missing dates were strictly preliminary, subject to formal, final determinations during the official pre-canvassing and canvassing activities.

- Northampton County – In the 2020 General, 2021 Primary, 2021 General, and 2022 Primary, all ballots were reviewed upon receipt to determine whether or not the envelope was adequately signed and dated as part of being scanned into the SURE system. The only distinction is the Department of State developed a new message in SURE for 2021 for ballots that lacked a date.

d. The time period for determining whether an absentee and/or mail-in ballot was defective:

- Beaver County – The defect/deficiency that would trigger the procedure was an employee noting an unsigned or undated envelope.
- Blair County – The defect/deficiency that would trigger the procedure was an employee noting a missing signature or date.
- Lehigh County – Determined during outer envelope review upon receipt and security envelope during pre-canvassing.
- Lycoming County – Aforementioned preliminary determinations of missing signatures and/or missing dates were made during the initial mail ballot receiving process, which consisted of dating and time-stamping received ballots, scanning the bar codes on the official return envelopes to log the received ballots into each voter's registration record in the SURE system, and sorting the received ballots for eventual pre-canvassing and canvassing activities.
- Northampton County – In all elections, all ballots are scanned into the SURE system upon receipt, at which point the deficiency would be noted.

e. The specific procedure(s) adopted and/or implemented, including but not limited to how notice was provided to the voter who had cast a defective and/or deficient ballot and the cure permitted:

- Adams County – The procedure consisted of attempting to notify the voter by means of telephone, e-mail, or letter and to provide them an opportunity to correct such defects in the presence of election staff in the Elections Office.
- Beaver County – Notice was only provided via phone call if the voter provided a phone number on their application for a mail-in or absentee ballot. All ballots with a missing element were segregated from other ballots that had both signature and date elements. The voter was notified and provided the option to come into the office to provide the missing element to their envelope. In very rare cases, if requested by the voter, voters were provided the opportunity to fill in a blank envelope designated for the voter transmitted via US mail and return said envelope with complete elements. Once received, staff would affix (via Scotch tape) the newly signed and dated back provided by the voter to the originally submitted envelope, without materially changing the original. Ballots would not leave the custody of the office upon their return either in-person or via mail.
- Blair County – If SURE contained a phone number for the voter, an attempt to call the voter was made to advise the voter that the voter's ballot may not counted due to the absence of a signature and/or date. The voter was told they could come in before 8:00 p.m. on election day to make this correction. If no number was available or the number on record was no longer in service or the person did not answer and there was no voicemail, no further action was taken.
- Lehigh County – The notice process is by email or phone for those voters who have provided that information, and if not and time permits, by letter. Voters are required to come to the office in person to cure the identified issues. If a voter has been notified by the Department of State that their ballot has been canceled, for whatever reason, including lack of a secrecy envelope, and calls Lehigh, Lehigh informs the voter that they can go to their polling place and cast a provisional ballot until 8 p.m. on election

day. Under the Stipulated Agreement in the Bausch case, E.D. Pa. Dkt. 22-cv-2111, while conducting pre-canvassing, the County will inform voters and party representatives when a ballot is submitted without its secrecy envelope. Lehigh will inform the voter they may cast a provisional ballot. Lehigh will not permit the voter to replace the naked ballot with another ballot.

- Lycoming County – If voter registration staff observed a missing signature and/or missing date on the back of an official ballot return envelope during the receiving process, and if voter registration staff could ascertain a phone number on file on the voter’s registration record, voter registration staff attempted the phone number on file to inform the voter of the missing signature and/or missing date. Affected voters who could be reached by phone were offered an opportunity to visit the county voter registration office in person to provide the missing signature or date, or to be mailed a replacement ballot and the original ballot voided, or were informed that they could vote in-person at their precinct by provisional ballot, which would be counted if their mail ballot was set aside during pre-canvassing and/or canvassing.
- Northampton County – In the 2020 General and 2021 Primary Elections, if the voter’s SURE record was accessible to the voter, it would be reflected as such. If the voter provided an email address, the SURE system would also send the voter an email. If the voter came into the Election Office prior to Election Day, the voter could fix the issue with the signature or date. During the pre-canvass, which began at 7:00 a.m. on Election Day, the County Board of Elections followed the guidance of the Department of State and provided candidates and party representatives on-site a list of names of voters whose ballots were set aside for a secrecy envelope issue or signature or date issue. If the voter discovered that their ballot was set aside during the pre-canvass, the voter potentially could go to the polling place and vote by provisional ballot. This process stopped after the 2021 Primary Election as candidates and parties did not ask for the list. In the 2021 Municipal and 2022 Primary Elections, if the voter provided an email address to the Department of State,

an email is automatically generated by the SURE system. The Election Division has no control over the email function of the Department of State through the SURE system. All voters whose ballots lack a signature or date but lack an email or phone number will be sent a form letter via regular mail advising them of the lack of a signature and/or date and how to address the issue. If time or staffing permitted, efforts were made to telephone voters. The Election Office does not plan to telephone voters moving forward.

f. The identity of the individual and/or individuals responsible for implementing the notice and cure procedure:

- Adams County – Election Office staff was responsible for contacting voters regarding the notice and cure procedure.
- Beaver County – All employees were part of the process.
- Blair County – Employees of the Elections/Voter Registration Office.
- Lehigh County – Office staff or Department of State provide notice.
- Lycoming County – Forrest Lehman, Director of Elections.
- Northampton County – With respect to signature or date issues, office staff would note an issue with a signature or date as part of scanning the ballot being scanned into the SURE system. For ballots lacking a secrecy envelope, party and candidate representatives had equal access on Election Day to the list of voters whose ballots were set aside.

g. The time period for providing notice to a voter that the voter's ballot had been determined to be defective and/or deficient:

- Beaver County – Voters would be called within 24 to 48 hours of their ballot being received if their information was on file.
- Blair County – No specific time period was established. As the election approached, less time was available for the staff to make these attempts, and the attempts were not made. A primary

reason for making the decision to cease notifying voters of these errors and providing an opportunity to correct was the fact that the practice was not uniform for all voters in Blair County.

- Lehigh County – No specific time period is established but notice attempt is made before Election Day if possible and on pre-canvassing if ballot lacks a security envelope.
- Lycoming County – Notice was attempted during the receiving process.
- Northampton County – In the 2020 General and 2021 Primary Elections, the time period for providing notice to a voter that the voter’s ballot had been determined to be defective and/or deficient was not provided by the County. In the 2021 Municipal and 2022 Primary Elections, the ballots were scanned upon receipt at the office.

h. The number of ballots determined to be defective and/or deficient and the reason and/or reasons the ballots were determined to be defective and/or deficient:

- Beaver County – It is unclear how many ballots were determined to be defective.
- Lycoming County – Unknown. Plaintiff appears to be asking for a catalogue of all ballots with missing signatures or dates that may have been “cured” over the course of 5 elections. No interim logs were kept to track informal determinations that were necessarily preliminary until formal, final determinations were made during pre-canvassing and canvassing activities. The county would have information about the number of mail ballots that were ultimately set aside during pre-canvassing and canvassing activities, as well as the number of mail ballots that were counted, but no records or count exists of mail ballots that were preliminarily determined to be missing a signature or date, but were subsequently cured prior to the formal, final pre-canvassing or canvassing determinations.
- Northampton County – For the 2020 General Election, 542 ballots were “Undeliverable,” 934 total votes were canceled and

2 ballots were marked “No Signature.” The state only has a single combined scan reason for both no signature and no date ballots. They have to scan both in under the CANCEL- NO SIGNATURE category. There is no further breakdown available. Due to state guidance at the time, no signature/no date/naked ballots were all scanned in under the CANCEL-VOTE CANCELLED category. In the 2021 Primary Election, 62 ballots were “Undeliverable,” there were 125 naked ballots, and 1,198 ballots were marked “No Signature.” In the 2021 General Election, 219 ballots were “Undeliverable,” there were 204 naked ballots, and 349 ballots were marked “No Signature.” In the 2022 Primary Election, 93 ballots were “Undeliverable,” there were 259 naked ballots, and 18 ballots were marked “No Signature.” In accordance with court decisions, all undated ballots for the 2022 Primary Election were counted, so the SURE scan reason was changed from CANCEL to VOTE RECORDED.

i. The number of voters to whom notice and the opportunity to cure any such defect and/or deficiency was given:

- Beaver County – The number of voters that notice was provided to is not readily available. Records were not kept at the time.
- Lycoming County – Unknown. Plaintiff appears to be asking for a catalogue of all ballots with missing signatures or dates that may have been “cured” over the course of 5 elections. No interim logs were kept to track informal determinations that were necessarily preliminary until formal, final determinations were made during pre-canvassing and canvassing activities. The county would have information about the number of mail ballots that were ultimately set aside during pre-canvassing and canvassing activities, as well as the number of mail ballots that were counted, but no records or count exists of mail ballots that were preliminarily determined to be missing a signature or date, but were subsequently cured prior to the formal, final pre-canvassing or canvassing determinations.
- Northampton County – The number of voters that notice was provided to is not readily available.

j. To the extent notice and an opportunity to cure was not given to a voter whose ballot was determined to be defective and/or deficient, the reason for the lack of notice to such a voter or voters:

- Beaver County – It is not clear how many voters did or did not receive notice, as records were not kept of contact made (see i above).
- Blair County – As the election approached, less time was available for the staff to make these attempts, and the attempts were not made. A primary reason for making the decision to cease notifying voters of these errors and providing an opportunity to correct was the fact that the practice was not uniform for all voters in Blair County.
- Lycoming County – Notice of a missing signature or missing date was provided if the voter had a phone number on file on their voter registration record.
- Northampton County – In the 2020 General, 2021 Primary, 2021 Municipal, and 2022 Primary Elections, if no contact information for voter was present in SURE system.

k. The number of ballots cured and the manner in which such ballots were cured:

- Beaver County – It is not clear how many voters did or did not cure the ballots.
- Lycoming County – Unknown. Plaintiff appears to be asking for a catalogue of all ballots with missing signatures or dates that may have been “cured” over the course of 5 elections. No interim logs were kept to track informal determinations that were necessarily preliminary until formal, final determinations were made during pre-canvassing and canvassing activities. The county would have information about the number of mail ballots that were ultimately set aside during pre-canvassing and canvassing activities, as well as the number of mail ballots that were counted, but no records or count exists of mail ballots that were preliminarily determined to be missing a signature or date,

but were subsequently cured prior to the formal, final pre-canvassing or canvassing determinations.

- Northampton County – For the 2020 General and 2021 Primary Elections, the county does not know how many ballots had signature or date issues fixed prior to Election Day during the 2020 General or 2021 Primary Elections as it did not keep those ballots separate from other ballots, as there was no guidance on segregation of ballots at the time. In the 2021 Municipal Election, 147 ballots were cured by voters coming into the office. In the 2022 Primary Election, 90 ballots were cured by voters coming into the office.

I. The source of the funding for the notice and cure procedure:

- Beaver County – The procedure was operated during the course of regular office operations with no unique funding source.
- Blair County – The procedure was operated during the course of regular office operations with no unique funding source.
- Lycoming County – Unknown. Plaintiff appears to be asking for a catalogue of all ballots with missing signatures or dates that may have been “cured” over the course of 5 elections. No interim logs were kept to track informal determinations that were necessarily preliminary until formal, final determinations were made during pre-canvassing and canvassing activities. The county would have information about the number of mail ballots that were ultimately set aside during pre-canvassing and canvassing activities, as well as the number of mail ballots that were counted, but no records or count exists of mail ballots that were preliminarily determined to be missing a signature or date, but were subsequently cured prior to the formal, final pre-canvassing or canvassing determinations.
- Northampton County – In the 2020 General, 2021 Primary, 2021 Municipal. and 2022 Primary Elections, the procedure was operated during the course of regular office operations with no unique funding source.

3. Please state whether the county on behalf of which you are responding intends to adopt and/or implement a notice and cure procedure for the 2022 November election:

- Adams County – The Elections Office will continue its policy outlined above.
- Allegheny County – Intends to continue the notice and cure procedures identified in paragraph 1 above.
- Beaver County – The office does not intend to implement a Notice and Cure procedure for the Fall 2022 election.
- Berks County – The office does not intend to implement a Notice and Cure procedure for the Fall 2022 election.
- Blair County – The office already determined prior to the filing of the Complaint and Application not to implement any notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots for the upcoming 2022 general election and, absent a change in the law, Blair County would continue with that position in future elections. Consistent with current statute, Blair County will allow voters who need to provide an ID in order for their mail-in or absentee ballot to count to do the same.
- Bradford County – The office does not intend to implement a Notice and Cure procedure for the Fall 2022 election.
- Bucks County – The Board intends to continue notifying voters regarding missing signatures for the upcoming election.
- Butler County – Has no plan in place to alter its past/current practice.
- Cameron County – Neither the County nor its Election Board intend to adopt and/or implement a Notice and Cure Procedure for the 2022 November election.
- Clarion County – Follows the Election Code and does not use nor intend to use or adopt curing procedures for absentee/mail-in ballots.

- Cumberland County – Has not formally adopted and does not have set plans to formally implement notice and opportunity to cure provisions for absentee and mail-in ballots.
- Delaware County – The Board does not intend to implement a notice and cure procedure.
- Erie County – The Board of Elections is contemplating a procedure which would notify the mail-in/absentee elector of curable defects on the face of the ballot. It may also consider notifying the mail-in/absentee elector of the rejection of their ballots and the necessity of voting in person at their polling district on the day of the election.
- Franklin County – The office does not intend to implement a Notice and Cure procedure for the Fall 2022 election.
- Juniata County – The office has no intention to adopt and/or implement Notice and Cure Procedure for the 2022 November election.
- Lehigh County – Lehigh intends to continue notifying voters regarding outer envelope issues for the upcoming election.
- Luzerne County – In answer, the Board of Elections and Registration refers to its September 16, 2022 Stipulation attached as Exhibit “G” hereto.
- Lycoming County – The current intent is to make preliminary, informal determinations of missing signatures and missing dates during the initial mail ballot receiving process and to provide notice to voters by phone where the voter has a phone number on file.
- Montgomery County – Board of Elections intends to continue notice and cure practice for future elections.
- Northampton County – Intends to provide notice to voters who have an issue with their signature prior to Election Day.
- Snyder County – The Board of Elections does not intend to adopt or implement a notice and cure procedure for the 2022 election.

- Somerset County – The Board of Elections is not implementing notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots.
- Sullivan County – The Board of Elections does not intend to adopt or implement a Notice and Cure Procedure for the 2022 November election.
- Susquehanna County – Follows the Election Code and does not use nor intend to use or adopt curing procedures for absentee/mail-in ballots.
- Wyoming County – The Board of Elections does not intend to adopt or implement a Notice and Cure Procedure for the 2022 November election.

4. If your answer to the preceding question is in the affirmative, please state:

a. Whether the notice and cure procedure will apply to both absentee and mail-in ballots, and if not, to which ballot the notice and cure procedure will apply:

- Allegheny County – The procedure applied to both absentee and mail-in ballots.
- Lehigh County – The notice and cure procedure will apply to both absentee and mail-in ballots.
- Lycoming County – The procedure applied to both absentee and mail-in ballots.
- Northampton County – Plans to resume the prior practice of creating a list of names of voters whose ballots are set aside during the pre-canvass and make that list available to party representatives or candidate representatives who are present on-site. Parties and candidates have an equal opportunity to contact voters about voting by provisional ballot as a result of the set aside of the ballot during the pre-canvass.

b. The specific defect or deficiency for which a notice and cure procedure was adopted and/or implemented:

- Lycoming County – The defect/deficiency that would trigger the procedure was an employee noting an unsigned or undated envelope.
- Northampton County – Since ballots without dates or incorrect dates are to be counted under applicable law, voters who submit ballots that have an issue with the date will not be contacted prior to Election Day. Otherwise, the practice remains the same as the most recent elections.

c. The steps to be taken to determine if an absentee and/or mail-in ballot was defective and/or deficient:

- Lehigh County – Review of the outer envelope upon receipt and security envelope during pre-canvassing.
- Lycoming County – If voter registration staff observed a missing signature and/or missing date on the back of an official ballot return envelope during the receiving process, and if voter registration staff could ascertain a phone number on file on the voter's registration record, voter registration staff attempted the phone number on file to inform the voter of the missing signature and/or missing date. Determinations of missing signatures and/or missing dates were strictly preliminary, subject to formal, final determinations during the official pre-canvassing and canvassing activities.
- Northampton County – Ballots will be reviewed upon receipt to determine whether or not the envelope was adequately signed and dated as part of being scanned into the SURE system.

d. The time period for determining whether an absentee and/or mail-in ballot is defective:

- Lehigh County – Determined during outer envelope review upon receipt and security envelope during pre-canvassing.
- Lycoming County – Aforementioned preliminary determinations of missing signatures and/or missing dates were made during the

initial mail ballot receiving process, which consisted of dating and time-stamping received ballots, scanning the bar codes on the official return envelopes to log the received ballots into each voter's registration record in the SURE system, and sorting the received ballots for eventual pre-canvassing and canvassing activities.

- Northampton County – Ballots will be reviewed upon receipt.

e. The specific procedure(s) adopted and/or implemented, including but not limited to how notice will be provided to the voter who casts a defective and/or deficient ballot and the cure permitted:

- Lehigh County – The notice process is by email or phone for those voters who have provided that information, and if not and time permits, by letter. Voters are required to come to the office in person to cure the identified issues. If a voter has been notified by the Department of State that their ballot has been canceled, for whatever reason including lack of a secrecy envelope, and calls Lehigh, Lehigh informs the voter that they can go to their polling place and cast a provisional ballot until 8 p.m. on election day. Under the Stipulated Agreement in the Bausch case, E.D. Pa. Dkt. 22-cv-2111, while conducting pre-canvassing, the County will inform voters and party representatives when a ballot is submitted without its secrecy envelope. Lehigh will inform the voter they may cast a provisional ballot. Lehigh will not permit the voter to replace the naked ballot with another ballot. In addition, as part of that stipulation, Lehigh is evaluating whether it is permissible to notify voters and party representatives of possible naked ballots prior to the pre-canvassing, should Lehigh have the ability to identify naked ballots before the outer envelopes are opened.
- Lycoming County – If voter registration staff observed a missing signature and/or missing date on the back of an official ballot return envelope during the receiving process, and if voter registration staff could ascertain a phone number on file on the voter's registration record, voter registration staff attempted the phone number on file to inform the voter of the missing signature and/or missing date. Affected voters who could be reached by phone were offered an opportunity to visit the county voter

registration office in person to provide the missing signature or date, or to be mailed a replacement ballot and the original ballot voided, or were informed that they could vote in-person at their precinct by provisional ballot, which would be counted if their mail ballot was set aside during pre-canvassing and/or canvassing.

- Northampton County – A list of deficient ballots will be provided to party representatives or candidate representatives who are present on site. Parties and candidates have an equal opportunity to contact voters about voting by provisional ballot as a result of the set aside of the ballot during the pre-canvass.

f. The identity of the individual and/or individuals responsible for implementing the Notice and Cure Procedure:

- Lehigh County – Office staff or Department of State provide notice.
- Lycoming County – Forrest Lehman, Director of Elections.
- Northampton County – Party representatives or candidate representatives who are present on site will be responsible for implementing the Notice and Cure Procedure. Parties and candidates have an equal opportunity to contact voters about voting by provisional ballot as a result of the set aside of the ballot during the pre-canvass.

g. The time period for providing notice to a voter that the voter's ballot has been determined to be defective and/or deficient:

- Lehigh County – No specific time period is established, but notice attempt is made before Election Day, if possible, and on pre-canvassing if ballot lacks a security envelope.
- Lycoming County – Notice was attempted during the receiving process.
- Northampton County – The time period for providing notice will be dependent on party representatives or candidate representatives being present on site.

h. The source of funding for the implementation of the proposed Notice and Cure Procedure(s).

- Allegheny County – No unique funding source is utilized.
- Lycoming County – Unknown. Plaintiff appears to be asking for a catalogue of all ballots with missing signatures or dates that may have been “cured” over the course of 5 elections. No interim logs were kept to track informal determinations that were necessarily preliminary until formal, final determinations were made during pre-canvassing and canvassing activities. The county would have information about the number of mail ballots that were ultimately set aside during pre-canvassing and canvassing activities, as well as the number of mail ballots that were counted, but no records or count exists of mail ballots that were preliminarily determined to be missing a signature or date, but were subsequently cured prior to the formal, final pre-canvassing or canvassing determinations.
- Northampton County – No unique funding source is required since the notice procedure will be conducted by party representatives or candidate representatives who are present on site.

Dated: September 20, 2022

STIPULATED AND AGREED TO BY:

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EXHIBIT A

September 12, 2022

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RE: *RNC et al. v. Chapman et al.*

Dear Counsel:

As you may be aware, on September 9, 2022, the Court entered a Scheduling Order in the above-referenced matter. For reference, a copy of the Scheduling Order is attached. Paragraph 4 of that Order provides:

4. The parties shall file a joint stipulation of facts no later than **12:00 noon on Monday, September 19, 2022**, indicating which county boards of elections have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots.

In furtherance of the Court's order, and to streamline the presentation of evidence at the hearing, please provide answers to the following questions no later than September 15, 2022, in order to allow us sufficient time to compile the stipulation and to circulate the same to counsel for review.

1. Please state whether the county on behalf of which you are responding has adopted and/or implemented one or more notice and opportunity to cure procedures with respect to voters' failure to comply with signature and secrecy envelope requirements for absentee or mail-in ballots as set forth in 25 Pa. C.S. §§ 3146.6(a) and 3150.16(a) ("Notice and Cure Procedure") since the enactment of the amendment of Act 77 on October 31, 2019. This request does not apply to those procedures relating to proof of identification as set forth in 25 P.S. § 3146.8(h). If your answer to this question is in the negative, please proceed to question 3.

2. If your answer to the preceding question is in the affirmative, please state for each election from the 2020 Primary election through the 2022 Primary election:
 - a. Whether the Notice and Cure Procedure applied to both absentee and mail-in ballots and if not, to which ballots did the Notice and Cure Procedure apply;
 - b. The specific defect or deficiency for which a Notice and Cure Procedure was adopted and/or implemented;
 - c. The steps taken to determine if an absentee and/or mail-in ballot was defective and/or deficient;
 - d. The time period for determining whether an absentee and/or mail-in ballot was defective;
 - e. The specific procedure(s) adopted and/or implemented, including but not limited to how notice was provided to the voter who had cast a defective and/or deficient ballot and the cure permitted;
 - f. The identity of the individual and/or individuals responsible for implementing the Notice and Cure Procedure;
 - g. The time period for providing notice to a voter that the voter's ballot had been determined to be defective and/or deficient;
 - h. The number of ballots determined to be defective and/or deficient and the reason and/or reasons the ballots were determined to be defective and/or deficient;
 - i. The number of voters to whom notice and the opportunity to cure any such defect and/or deficiency was given;
 - j. To the extent notice and an opportunity to cure was not given to a voter whose ballot was determined to be defective and/or deficient, the reason for the lack of notice to such a voter or voters;

- k. The number of ballots cured and the manner in which such ballots were cured; and
 - l. The source of funding for the Notice and Cure Procedure.
3. Please state whether the county on behalf of which you are responding intends to adopt and/or implement a Notice and Cure Procedure for the 2022 November election.
4. If your answer to the preceding question is in the affirmative, please state:
- a. Whether the notice and cure procedure will apply to both absentee and mail-in ballots and if not, to which ballot the Notice and Cure Procedure will apply;
 - b. The specific defect or deficiency for which a Notice and Cure Procedure was adopted and/or implemented;
 - c. The steps to be taken to determine if an absentee and/or mail-in ballot was defective and/or deficient;
 - d. The time period for determining whether an absentee and/or mail-in ballot is defective;
 - e. The specific procedure(s) adopted and/or implemented, including but not limited to how notice will be provided to the voter who casts a defective and/or deficient ballot and the cure permitted;
 - f. The identity of the individual and/or individuals responsible for implementing the Notice and Cure Procedure;
 - g. The time period for providing notice to a voter that the voter's ballot has been determined to be defective and/or deficient; and
 - h. The source of funding for the implementation of the proposed Notice and Cure Procedure(s).

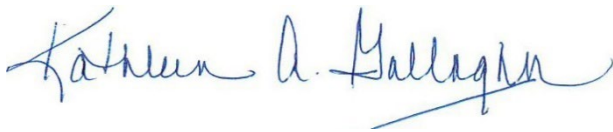
To save time, we request that you send your responses via email to all counsel for the Petitioners:

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Russell D. Giancola
Thomas W. King, III
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We appreciate your timely cooperation in this regard. Please feel free to contact us with any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Kathleen A. Gallagher". The signature is written in a cursive style with a long horizontal stroke at the end.

Kathleen A. Gallagher

KAG:jsp

cc: All Respondents who have not entered an appearance in this matter (via Federal Express)

EXHIBIT B

From: [Dupuis, Betsy](#)
To: [Jennifer Pepmeyer](#); [Kathleen Gallagher](#)
Cc: [Jewart, Anna S.](#); [Keegan, Sean](#); [Coyle, Casey A.](#); [Barnes, Jessica](#)
Subject: RE: RNC et al. v. Chapman et al. Stipulation
Date: Friday, September 16, 2022 2:48:35 PM
Attachments: [image002.png](#)
[image003.png](#)

Counsel:

Babst Calland represents the following parties in the *RNC et al. v. Chapman et al.* matter: Bedford County Board of Elections, Centre County Board of Elections, Columbia County Board of Elections, Dauphin County Board of Elections, Fayette County Board of Elections, Jefferson County Board of Elections, Huntingdon County Board of Elections, Indiana County Board of Elections, Lawrence County Board of Elections, Lebanon County Board of Elections, Northumberland County Board of Elections, Venango County Board of Elections and York County Board of Elections.

On September 12, 2022, Petitioners requested information from the defendants to compile a Joint Stipulation of Facts. In response to that request, please see the following information on behalf of the preceding counties:

- **Bedford County Board of Elections:** No cure procedures implemented for the 2022 General Election regarding absentee or mail-in ballots beyond what is permitted by the Election Code.
- **Centre County Board of Elections:** No cure procedures implemented for the 2022 General Election regarding absentee or mail-in ballots beyond what is permitted by the Election Code.
- **Columbia County Board of Elections:** No cure procedures implemented for the 2022 General Election regarding absentee or mail-in ballots beyond what is permitted by the Election Code.
- **Dauphin County Board of Elections:** No cure procedures implemented for the 2022 General Election regarding absentee or mail-in ballots beyond what is permitted by the Election Code.
- **Fayette County Board of Elections:** No cure procedures implemented for the 2022 General Election regarding absentee or mail-in ballots beyond what is permitted by the Election Code.
- **Jefferson County Board of Elections:** No cure procedures implemented for the 2022 General Election regarding absentee or mail-in ballots beyond what is permitted by the Election Code.
- **Huntingdon County Board of Elections:** No cure procedures implemented for the 2022 General Election regarding absentee or mail-in ballots beyond what is permitted by the Election Code.
- **Indiana County Board of Elections:** No cure procedures implemented for the 2022 General Election re regarding absentee or mail-in ballots beyond what is permitted by the Election Code.
- **Lawrence County Board of Elections:** No cure procedures implemented for the 2022 General Election regarding absentee or mail-in ballots beyond what is permitted by the Election Code.
- **Northumberland County Board of Elections:** No cure procedures implemented for the 2022 General Election regarding absentee or mail-in ballots beyond what is permitted by the Election Code.
- **Venango County Board of Elections:** No cure procedures implemented for the 2022 General Election regarding absentee or mail-in ballots beyond what is permitted by the Election Code.
- **York County Board of Elections:** No cure procedures implemented for the 2022

General Election regarding absentee or mail-in ballots beyond what is permitted by the Election Code.

We have not yet received Lebanon County Board of Elections' response to Petitioners' inquiry letter but will supplement with their information once available. Should you have any questions on the foregoing information, do not hesitate to contact me.

| | |
|---|---|
| <p>Elizabeth (Betsy) A. Dupuis (she/her/hers) Attorney at Law bdupuis@babstcalland.com</p> | <p>330 Innovation Blvd., Suite 302 State College, PA 16803 O 814.867.8055 D 814.235.8421 C 814.883.4117 F 814.867.8051 www.babstcalland.com</p> |
|---|---|

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify the sender. Please destroy the original transmission and its attachments without reading or saving in any manner. Thank you, Babst, Calland, Clements & Zomnir, P.C.

From: Jennifer Pepmeyer <jsp@glawfirm.com>
Sent: Friday, September 16, 2022 11:29 AM
To: mmudd@adamscounty.us; gianocsko@alleghenycounty.us; aopsitnick@opsitnickslaw.com; Dupuis, Betsy <BDupuis@babstcalland.com>; Coyle, Casey A. <CCoyle@babstcalland.com>; Jewart, Anna S. <AJewart@babstcalland.com>; Amy M. Fitzpatrick <amfitzpatrick@buckscounty.org>; Daniel D. Grieser <ddgrieser@buckscounty.org>; jvanderkam@stuckertyates.com; wwwhite@co.butler.pa.us; ttalarico@nwpalawyers.com; Catharine M. Roseberry <catharineroseberry@lehighcounty.org>; John A. Marlatt <jmarlatt@montcopa.org>; Maureen E. Calder <mcalder@montcopa.org>; RSantee@northamptoncounty.org; flavery@laverylaw.com; Ryan.Smith@phila.gov; Benjamin.Field@phila.gov; Michael.Pfautz@phila.gov; jdewald@mpvhlaw.com; jpgrimm@vorys.com; Mathews, Lauren L. <llmathews@vorys.com>; mguiddy@co.westmoreland.pa.us
Cc: Kathleen Gallagher <kag@glawfirm.com>; Russell Giancola <rdg@glawfirm.com>; Thomas W King III <tking@dmkcg.com>; tbreth@dmkcg.com
Subject: RNC et al. v. Chapman et al. Stipulation

ATTENTION: Email sent from outside Babst Calland.

Sent on behalf of Kathleen A. Gallagher:

I write in follow up to my letter of September 12, 2022. A copy of that letter is attached for your

convenience. To date, we have not received a response to that letter on behalf of the county you represent. As we stated in our letter of September 12, 2022, given the amount of time it will take to prepare the Court-ordered stipulation, and circulate same for your review and approval, we again ask that you forward the necessary information as soon as possible.

We appreciate your timely response. Please feel free to contact us with any questions.

Kindest regards,
Kathy

Jennifer S. Pepmeyer

Gallagher Giancola LLC

jsp@glawfirm.com

412.717.1900 (Main)

412.717.1901 (Fax)

3100 Koppers Building

436 Seventh Avenue

Pittsburgh, PA 15219



EXHIBIT C

From: Melissa Guiddy <MGUIDDY@co.westmoreland.pa.us>

Sent: Friday, September 16, 2022 4:37 PM

To: Kathleen Gallagher <kag@glawfirm.com>; Russell Giancola <rdg@glawfirm.com>;
tbreth@dkmkg.com; tking@dkmkg.com

Subject: Fwd: RNC et al v. Chapman et al

Dear Counsel:

In accordance with paragraph 4 of the Commonwealth's Court Order dated September 9, 2022, Westmoreland County has not implemented and does not plan to implement notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots for the November election.

Thank you,

Melissa A. Guiddy, Esquire

Office of County Solicitor

2 North Main Street, Suite 103

Greensburg, PA 15601

Phone: (724) 830-3553

mguiddy@co.westmoreland.pa.us

Call 2-1-1 for Social Services. Help Starts Here.

EXHIBIT D

The County of Chester
 Solicitor's Office
 Colleen Frens (Pa. No. 309604)
 Faith Mattox-Baldini (Pa. No. 323868)
 Nicholas J. Stevens (Pa. No. 322906)
 313 W. Market Street, Suite 6702
 West Chester, PA 19382
 T 610.344.6195, F 610.344.5995
 cfrens@chesco.org
 fmattoxbaldini@chesco.org
 nstevens@chesco.org

Attorneys for Chester County Board of Elections

| | | |
|--|---|------------------------------|
| Republican National Committee, <i>et al.</i> , | : | In the Commonwealth Court of |
| | : | Pennsylvania |
| Petitioners, | : | |
| | : | Case No. 447 MD 2022 |
| v. | : | |
| | : | |
| Leigh M. Chapman, <i>et al.</i> , | : | |
| | : | |
| Respondents. | : | |

CHESTER COUNTY BOARD OF ELECTIONS' RESPONSE TO SEPTEMBER 9, 2022 COURT ORDER

Pursuant to the Court's Order, paragraph 4, directing the parties to file a joint stipulation of facts "indicating which county boards of elections have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots," the Chester County Board of Elections ("County") responds as follows:

The Board of Elections has not implemented, nor plans to implement, a procedure to notify an elector that their mail-in or absentee ballot envelope fails to comply with the Election Code's requirements and to provide such an elector the opportunity to cure their noncompliant ballot envelope. In the 2022 Primary, the County did allow the political parties to review mail-in and absentee envelopes that failed to comply with the Election Code on election day and contact electors if they chose. The County itself took no affirmative steps to contact the electors, nor does it plan to do so in the future.

The County takes no position regarding other proposed stipulations submitted by other parties.

Dated: September 19, 2022

Respectfully,

/s/ Nicholas J. Stevens

Colleen Frens (Pa. No. 309604)

Faith Mattox-Baldini (Pa. No. 323868)

Nicholas J. Stevens (Pa. No. 322906)

The County of Chester

Solicitor's Office

*Attorneys for Chester County Board of
Elections*

EXHIBIT E

BUCKS COUNTY LAW DEPARTMENT
Amy M. Fitzpatrick, Esquire
First Assistant County Solicitor
Attorney I.D. No. 324672
Daniel Grieser, Esquire, Asst. County Solicitor
Attorney I.D. No. 325455
55 East Court Street, Fifth Floor
Doylestown, PA 18901

STUCKERT AND YATES
Jessica L. VanderKam, Esquire
County I.D. No. 208337
2 North State Street
Newtown, PA 18940
Attorneys for Bucks County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|---------------------------------------|---|------------------------|
| REPUBLICAN NATIONAL | : | |
| COMMITTEE, et. al. | : | |
| | : | |
| Petitioners, | : | |
| | : | Docket No. 447 MD 2022 |
| v. | : | |
| | : | |
| LEIGH M. CHAPMAN, in her official | : | |
| Capacity as Acting Secretary of the | : | |
| Commonwealth of Pennsylvania, et. al. | : | |
| | : | |
| Respondents. | : | |

BUCKS COUNTY BOARD OF ELECTIONS’ RESPONSE TO SEPTEMBER 9, 2022
COURT ORDER

Pursuant to the Court’s Order, Paragraph 4, directing the parties to file a joint stipulation of facts “indicating which county boards of elections have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots,” the Bucks County Board of Elections (“County”) responds as follows:

The Bucks County Board of Elections has utilized notice and cure procedures with respect to voters’ failure to comply with signature requirements for absentee

and mail-in ballots since November 2020. The Board intends to continue notifying voters regarding missing signatures for the upcoming election.

The County takes no position regarding other proposed stipulations submitted by other parties. The County's signature to the Joint Stipulation is solely as to the information provided in this Exhibit Response.

Respectfully submitted,

DATED: September 20, 2022

BUCKS COUNTY LAW DEPARTMENT

BY: /s/ Amy M. Fitzpatrick, Esquire
Amy M. Fitzpatrick, Esquire
First Assistant County Solicitor
Attorney I.D. No. 324672
55 East Court Street, 5th floor
Doylestown, PA 18901
(215) 348-6464

BY: /s/ Daniel D. Grieser, Esquire
Daniel D. Grieser, Esquire
Assistant County Solicitor
Attorney I.D. No. 325445
55 East Court Street, 5th floor
Doylestown, PA 18901
(215) 348-6464

STUCKERT AND YATES

BY: /s/ Jessica L. VanderKam, Esquire
Jessica L. VanderKam, Esquire
Attorney I.D. No. 208337
2 North State Street
Newtown, PA 18940

EXHIBIT F

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|--|---|-------------|
| Republican National Committee, <i>et al.</i> , | : | |
| | : | |
| Petitioners, | : | |
| | : | |
| v. | : | 447 MD 2022 |
| | : | |
| Leigh M. Chapman, in her official capacity | : | |
| as Acting Secretary of the Commonwealth | : | |
| <i>et al.</i> , | : | |
| | : | |
| Respondents. | : | |

SUBMISSION OF RESPONDENT LUZERNE COUNTY BOARD OF ELECTIONS REGARDING STIPULATED FACTS

Pursuant to the Court's Order directing the parties to file a joint stipulation of facts, Respondent Luzerne County Board of Elections submits the following:

The Luzerne County Board of Elections has implemented a procedure regarding "notice and cure" of defective mail-in ballots since the November Election of 2020. This procedure essentially consists of an Election Day pre-canvass of ballots, with those defective mail-in ballots being identified and set aside. At several points during Election Day, a list of those electors whose mail-in ballots have been identified as defective is provided to the Bureau of Elections and designated representatives of the major political parties (and those other parties for whom contact information has been provided to the Board) who may (or may not) thereafter contact the electors.

The Board takes no position regarding other proposed stipulations submitted by the other parties.

Respectfully submitted,

/s/Joseph M. Cosgrove
Selingo Guagliardo LLC
Attorney I.D. No. 37130
jcosgrove@getyourselfagoodlawyer.com
Attorneys for Appellant
345 Market Street
Kingston, PA 18704
(570) 287-2400

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.

Respectfully submitted,

/s/Joseph M. Cosgrove
Selingo Guagliardo LLC
Attorney I.D. No. 37130
jcosgrove@getyourselfagoodlawyer.com
Attorneys for Appellant
345 Market Street
Kingston, PA 18704
(570) 287-2400

EXHIBIT G

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|-----------------------------------|---|-----------------|
| REPUBLICAN NATIONAL | : | No. 447 MD 2022 |
| COMMITTEE, <i>et al.</i> , | : | |
| Petitioners, | : | |
| | : | |
| v. | : | |
| | : | |
| LEIGH M. CHAPMAN, <i>et al.</i> , | : | |
| Respondents. | : | |
| | : | |

**RESPONDENT PHILADELPHIA COUNTY BOARD OF ELECTIONS’
RESPONSE TO THE COURT’S ORDER OF SEPTEMBER 9, 2022**

Pursuant to the Court’s Order, paragraph 4, directing the parties to file a joint stipulation of facts “indicating which county boards of elections have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots,” the Philadelphia County Board of Elections responds as follows:

Since 2020, the Philadelphia Board of Elections has permitted voters issued “cancelled ballot notifications” due to a missing signature on the declaration envelope, due to a missing secrecy envelope, or due to the ballot being returned to the Board of Elections as “undeliverable” by USPS to vote by provisional ballot on Election Day or request a replacement ballot. In addition, voters who made a mistake on their ballot, such as an inadvertent mark in an oval for a candidate they do not intend to vote for, could request a replacement ballot from the Philadelphia

Board of Elections.

As of this date, the Philadelphia Board of Elections has not published updated voter information regarding cancelled ballots for the 2022 General Election and the Philadelphia Board of Elections practices are subject to change.

The Philadelphia Board of Elections, by submitting this letter, and in the interest of a joint stipulation in compliance with the Court's Order, has included this information by reference and its signature on the joint stipulation. By signing the stipulation, Philadelphia Board of Elections is only jointly stipulating to the information contained in this letter and takes no position at this time as to any other information contained in the joint stipulation.

DATE: September 20, 2022

Respectfully submitted,

BY:



Benjamin H. Field, Chief Deputy City Solicitor

Michael Pfautz, Deputy City Solicitor
Ryan B. Smith, Assistant City Solicitor
City of Philadelphia Law Department
One Parkway Building, 15th Floor
1515 Arch Street
Philadelphia, PA 19102-1595
Phone: (215) 683-5024

*Counsel for Respondent Philadelphia
Board of Elections*

EXHIBIT H

**IN THE COMMONWEALTH COURT OF
PENNSYLVANIA**

| | | |
|--------------------------------------|---|-------------------|
| Republican National Committee, et al | : | |
| Petitioners | : | |
| | : | |
| v. | : | |
| | : | |
| Leigh M. Chapman, et al | : | |
| Respondents | : | No. 447 M.D. 2022 |

**SUBMISSION OF RESPONDENT UNION COUNTY BOARD OF
ELECTIONS REGARDING STIPULATED FACTS**

Pursuant to this Court’s Order directing the parties to file a joint stipulation of facts, Respondent Union County Board of Elections, submits the following:

The Union County Board of Elections has implemented a procedure regarding “notice and cure” of defective mail-in ballots since the November Election of 2020. This procedure consists of an Election Day pre-canvass of ballots, with those defective mail-in ballots being identified and set aside. At several points during Election Day, a list of those electors whose mail-in ballots have been identified as defective is provided to the Union County Department of Elections’ staff and designated representatives of the major political parties (and those other parties for whom contact information has been provided to the Board) who may (or may not) thereafter contact the electors. The defective mail-in ballot is taped and posted on the pre-canvassing room of the Board of Elections, pending such opportunity to contact. Additionally, the Union County Department of Elections updates the SURE system accordingly. This procedure has been followed since receiving the direction from the Pennsylvania Department of State, via e-mail, on November 2, 2020 regarding such mail-in ballots.

The Board takes no position regarding other proposed stipulations submitted by the other parties.

McNERNEY, PAGE, VANDERLIN & HALL

By: /s/ Jonathan L. DeWald
Jonathan L. DeWald, Esquire
I.D. No. 314791
jdewald@mpvhlaw.com
Attorney for Respondent, Union
County Board of Elections
433 Market Street
Williamsport, PA 17701
Telephone: 570-326-6555
Facsimile: 570-326-3170

Dated: September 19, 2022

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|--|---|-------------|
| Republican National Committee; National Republican | : | 447 MD 2022 |
| Senatorial Committee; | : | |
| National Republican Congressional Committee; | : | |
| Republican Party of | : | |
| Pennsylvania; David Ball; James D. Bee; Debra A. | | |
| Biro; Jesse D. Daniel; | | |
| Gwendolyn Mae Deluca; Ross M. Farber; Connor R. | | |
| Gallagher; Lynn | | |
| Marie Kalcevic; Linda S. Kozlovich; William P. | | |
| Kozlovich; Vallerie | | |
| Siciliano-Biancaniello; S. Michael Streib, | | |
| Petitioners | | |

v.

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

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

I hereby certify that this 19th day of September, 2022, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Service

Served: Allan Joseph Opsitnick
Service Method: eService
Email: aopsitnick@opsitnickslaw.com
Service Date: 9/19/2022
Address: 564 Forbes Avenue
#1301
Pittsburgh, PA 15219
Phone: 412-.39-1.3299
Representing: Respondent Allegheny County Board of Elections

Served: Andrew W. Norfleet
Service Method: eService
Email: awn@norlaflaw.com
Service Date: 9/19/2022
Address: 225 Market Street
Suite 304
Harrisburg, PA 17101
Phone: (71-7) -233-6633
Representing: Respondent Perry County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Anna Skipper Jewart
Service Method: eService
Email: askipper@babstcalland.com
Service Date: 9/19/2022
Address: 603 Stanwix Street
6th Floor
Pittsburgh, PA 15222
Phone: 412-699-6118
Representing: Respondent Bedford County Board of Elections
Respondent Centre County Board of Elections
Respondent Columbia County Board of Elections
Respondent Dauphin County Board of Elections
Respondent Fayette County Board of Elections
Respondent Huntingdon County Board of Elections
Respondent Indiana County Board of Elections
Respondent Jefferson County Board of Elections
Respondent Lawrence County Board of Elections
Respondent Lebanon County Board of Elections
Respondent Northumberland County Board of Elections
Respondent Venango County Board of Elections
Respondent York County Board of Elections

Served: Armstrong County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 450 East Market Street
Kittanning, PA 16201
Phone: --
Representing: Respondent Armstrong County Board of Elections

Served: Beaver County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 810 Third Street
Beaver, PA 15009
Phone: --
Representing: Respondent Beaver County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Benjamin Hirsch Field
Service Method: eService
Email: benjamin.field@phila.gov
Service Date: 9/19/2022
Address: City of Philadelphia Law Department
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
Phone: 215-683-5024
Representing: Respondent Philadelphia County Board of Elections

Served: Blair County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: Blair County Courthouse
279A Loop Road
Hollidaysburg, PA 16648
Phone: --
Representing: Respondent Blair County Board of Elections

Served: Bradford County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 6 Court Street
Suite 2
Towanda, PA 18848
Phone: --
Representing: Respondent Bradford County Board of Elections

Served: Brian J. Taylor
Service Method: eService
Email: btaylor@kingspry.com
Service Date: 9/19/2022
Address: King, Spry, Herman, Freund & Faul
One West Broad St., Ste. 700
Bethlehem, PA 18018
Phone: 610--33-2-0390
Representing: Respondent Northampton County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Cambria County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 200 South Center Street
Ebensburg, PA 15931
Phone: --
Representing: Respondent Cambria County Board of Elections

Served: Cameron County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 20 East 5th Street
Emporium, PA 15834
Phone: --
Representing: Respondent Cameron County Board of Elections

Served: Carbon County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 44 Susquehanna Street
Jim Thorpe, PA 18229
Phone: --
Representing: Respondent Carbon County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Casey Alan Coyle
Service Method: eService
Email: ccoyle@babstcalland.com
Service Date: 9/19/2022
Address: Babst, Calland, Clements and Zomnir, P.C.
Two Gateway Center, 603 Stanwix Street, 6th Floor
Pittsburgh, PA 15222
Phone: 267-939-5832
Representing: Respondent Bedford County Board of Elections
Respondent Centre County Board of Elections
Respondent Columbia County Board of Elections
Respondent Dauphin County Board of Elections
Respondent Fayette County Board of Elections
Respondent Huntingdon County Board of Elections
Respondent Indiana County Board of Elections
Respondent Jefferson County Board of Elections
Respondent Lawrence County Board of Elections
Respondent Lebanon County Board of Elections
Respondent Northumberland County Board of Elections
Respondent Venango County Board of Elections
Respondent York County Board of Elections

Served: Catharine Meade Roseberry
Service Method: eService
Email: catharinerosberry@lehighcounty.org
Service Date: 9/19/2022
Address: 17 S. 7th Street
Allentown, PA 18101
Phone: 610-782-3180
Representing: Respondent Lehigh County Board of Elections

Served: Clarion County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 330 Main Street
Room 104
Clarion, PA 16214
Phone: --
Representing: Respondent Clarion County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Clearfield County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 212 East Locust Street
Clearfield, PA 16830
Phone: --
Representing: Respondent Clearfield County Board of Elections

Served: Clinton County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 2 Piper Way
Suite 309
Lock Haven, PA 177450928
Phone: --
Representing: Respondent Clinton County Board of Elections

Served: Cody Lee Kauffman
Service Method: eService
Email: CKauffman@countyofberks.com
Service Date: 9/19/2022
Address: 633 Court Street
13th Floor
Reading, PA 19601
Phone: (61-0) -478-6105
Representing: Respondent Berks County Board of Elections

Served: Colleen Mary Frens
Service Method: eService
Email: hughesck@gmail.com
Service Date: 9/19/2022
Address: 313 W. Market Street
West Chester, PA 19382
Phone: 484-319-7842
Representing: Respondent Chester County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Crawford County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 903 Diamond Park
Meadville, PA 16335
Phone: --
Representing: Respondent Crawford County Board of Elections

Served: Cumberland County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 1601 Ritner Highway
Carlisle, PA 17013
Phone: --
Representing: Respondent Cumberland County Board of Elections

Served: Daniel Donovan Grieser
Service Method: eService
Email: ddgrieser@buckscounty.org
Service Date: 9/19/2022
Address: 55 East Court Street, 5th Floor
DOYLESTOWN, PA 18901
Phone: 215-348-6548
Representing: Respondent Bucks County Board of Elections

Served: Delaware County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 201 West Front Street
Government Center Building
Media, PA 19063
Phone: --
Representing: Respondent Delaware County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Dimitrios Mavroudis
Service Method: eService
Email: dmavroudis@tlgattorneys.com
Service Date: 9/19/2022
Address: Tucker Law Group
1801 Market Street, Suite 2500
Philadelphia, PA 19103
Phone: 215-875-0609
Representing: Respondent Jessica Mathis
Respondent Leigh M. Chapman

Served: Donald Kenneth Zagurskie
Service Method: eService
Email: JZLAWDONZ@GMAIL.COM
Service Date: 9/19/2022
Address: 117 Main Street
PO Box O
Mifflin, PA 17058
Phone: 717-436-8044
Representing: Respondent Juniata County Board of Elections

Served: Elizabeth A. Dupuis
Service Method: eService
Email: bdupuis@babstcalland.com
Service Date: 9/19/2022
Address: 330 Innovation Boulevard
Suite 302
State College, PA 16803
Phone: 814--86-7-8055
Representing: Respondent Bedford County Board of Elections
Respondent Centre County Board of Elections
Respondent Columbia County Board of Elections
Respondent Dauphin County Board of Elections
Respondent Fayette County Board of Elections
Respondent Huntingdon County Board of Elections
Respondent Indiana County Board of Elections
Respondent Jefferson County Board of Elections
Respondent Lawrence County Board of Elections
Respondent Lebanon County Board of Elections
Respondent Northumberland County Board of Elections
Respondent Venango County Board of Elections
Respondent York County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Elk County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 300 Centre Street
Ridgway, PA 158530448
Phone: --
Representing: Respondent Elk County Board of Elections

Served: Forest County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 526 Elm Street
Unit #3
Tionesta, PA 16353
Phone: --
Representing: Respondent Forest County Board of Elections

Served: Frank J. Lavery Jr.
Service Method: eService
Email: flavery@laverylaw.com
Service Date: 9/19/2022
Address: 225 Market Street
304
Harrisburg, PA 17101
Phone: 717--23-3-6633
Representing: Respondent Perry County Board of Elections

Served: Franklin County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 272 North Second Street
Chambersburg, PA 17201
Phone: --
Representing: Respondent Franklin County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Fulton County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 116 West Market Street
Suite 205
McConnellsburg, PA 17233
Phone: --
Representing: Respondent Fulton County Board of Elections

Served: George M. Janocsko
Service Method: eService
Email: george.janocsko@alleghenycounty.us
Service Date: 9/19/2022
Address: 300 Fort Pitt Commons Building
445 Fort Pitt Boulevard
Pittsburgh, PA 15219
Phone: 412--35-0-1132
Representing: Respondent Allegheny County Board of Elections

Served: Greene County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: Room 102 - County Office Building
93 East High Street
Waynesburg, PA 15370
Phone: --
Representing: Respondent Greene County Board of Elections

Served: H. William White III
Service Method: eService
Email: wwwhite@co.butler.pa.us
Service Date: 9/19/2022
Address: 124 West Diamond St
PO Box 1208
Butler, PA 16003
Phone: (72-4) -284-5100
Representing: Respondent Butler County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Jacob Biehl Boyer
Service Method: eService
Email: jboyer@attorneygeneral.gov
Service Date: 9/19/2022
Address: 1600 Arch Street
Suite 300
Philadelphia, PA 19103
Phone: 267-768-3968
Representing: Respondent Jessica Mathis
Respondent Leigh M. Chapman

Served: James V. Fareri
Service Method: eService
Email: JFareri@newmanwilliams.com
Service Date: 9/19/2022
Address: 712 Monroe Street
Stroudsburg, PA 18360
Phone: 570--42-1-9090
Representing: Respondent Monroe County Board of Elections

Served: Jana Phillis Grimm
Service Method: eService
Email: jpggrimm@vorys.com
Service Date: 9/19/2022
Address: Vorys Sater Seymour and Pease LLP
500 Grant St., Suite 4900
Pittsburgh, PA 15219
Phone: 412-904-7706
Representing: Respondent Washington County Board of Elections

Served: Jessica L. VanderKam
Service Method: eService
Email: jvanderkam@stuckertyates.com
Service Date: 9/19/2022
Address: 2 North State Street
Newtown, PA 18940
Phone: 215-968-4700
Representing: Respondent Bucks County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Joe H. Tucker Jr.
Service Method: eService
Email: jtucker@tlgattorneys.com
Service Date: 9/19/2022
Address: Tucker Law Group
1617 JFK Blvd., Suite 1700
Philadelphia, PA 19103
Phone: 215--87-5-0609
Representing: Respondent Jessica Mathis
Respondent Leigh M. Chapman

Served: John Amos Marlatt
Service Method: eService
Email: jmarlatt@montcopa.org
Service Date: 9/19/2022
Address: One Montgomery Plaza
Suite 800, P.O. Box 311
Norristown, PA 19404
Phone: 610-278-3033
Representing: Respondent Montgomery County Board of Elections

Served: John B. Dunn
Service Method: eService
Email: jdunn@matergiadunn.com
Service Date: 9/19/2022
Address: 919 Main Street
Stroudsburg, PA 18360
Phone: 570--42-1-7720
Representing: Respondent Monroe County Board of Elections

Served: John Brent Hill
Service Method: eService
Email: jbh@hangle.com
Service Date: 9/19/2022
Address: One Logan Square
27th Floor
Philadelphia, PA 19103
Phone: 215--56-8-6200
Representing: Respondent Jessica Mathis
Respondent Leigh M. Chapman

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Joseph Matthias Cosgrove
Service Method: eService
Email: jmcosgro@msn.com
Service Date: 9/19/2022
Address: 114 N. Franklin Street
Wilkes Barre, PA 18701
Phone: 570--31-3-4172
Representing: Respondent Luzerne County Board of Elections

Served: Kathleen A. Gallagher
Service Method: eService
Email: kag@glawfirm.com
Service Date: 9/19/2022
Address: 436 Seventh Avenue
31st Floor
Pittsburgh, PA 15219
Phone: 412-717-1900
Representing: Petitioner Connor R. Gallagher
Petitioner David Ball
Petitioner Debra A. Biro
Petitioner Gwendolyn Mae Deluca
Petitioner James D. Bee
Petitioner Jesse D. Daniel
Petitioner Linda S. Kozlovich
Petitioner Lynn Marie Kalcevic
Petitioner National Republican Congressional Committee
Petitioner National Republican Senatorial Committee
Petitioner Republican National Committee
Petitioner Republican Party of Pennsylvania
Petitioner Ross M. Farber
Petitioner S. Michael Streib
Petitioner Vallerie Siciliano-Biancaniello
Petitioner William P. Kozlovich

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Kathleen Marie Kotula
Service Method: eService
Email: kkotula@pa.gov
Service Date: 9/19/2022
Address: Room 306 North Office Building
401 North Street
Harrisburg, PA 17120-0500
Phone: (71-7) -783-0736
Representing: Respondent Jessica Mathis
Respondent Leigh M. Chapman

Served: Lackawanna County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 123 Wyoming Avenue
Second Floor
Scranton, PA 18503
Phone: --
Representing: Respondent Lackawanna County Board of Elections

Served: Lancaster County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 150 North Queen Street
Suite 117
Lancaster, PA 17603
Phone: --
Representing: Respondent Lancaster County Board of Elections

Served: Lauren Lynn Mathews
Service Method: eService
Email: llmathews@vorys.com
Service Date: 9/19/2022
Address: 500 Grant Street
Suite 4900
Pittsburgh, PA 15219
Phone: 724-825-0329
Representing: Respondent Washington County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Lycoming County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 48 West Third Street
Williamsport, PA 17701
Phone: --
Representing: Respondent Lycoming County Board of Elections

Served: Maureen E. Herron
Service Method: eService
Email: mcalder@montcopa.org
Service Date: 9/19/2022
Address: PO BOX 311
One Montgomery County
Norristown, PA 19404
Phone: 610-278-3033
Representing: Respondent Montgomery County Board of Elections

Served: McKean County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: McKean County Courthouse
500 West Main Street
Smethport, PA 16749
Phone: --
Representing: Respondent McKean County Board of Elections

Served: Melissa Ann Guiddy
Service Method: eService
Email: mguiddylaw@outlook.com
Service Date: 9/19/2022
Address: 527 Austin Street
Greensburg, PA 15601
Phone: 724-244-7200
Representing: Respondent Westmoreland County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Mercer County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 130 North Pitt Street
Suite B
Mercer, PA 16137
Phone: --
Representing: Respondent Mercer County Board of Elections

Served: Michael John Vargo
Service Method: eService
Email: mjvargoesq@gmail.com
Service Date: 9/19/2022
Address: 680 Wolf Avenue
Easton, PA 18042
Phone: 610--25-3-8948
Representing: Respondent Northampton County Board of Elections

Served: Michael Wu-Kung Pfautz
Service Method: eService
Email: michael.pfautz@phila.gov
Service Date: 9/19/2022
Address: City of Philadelphia Law Department
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
Phone: 215-683-5233
Representing: Respondent Philadelphia County Board of Elections

Served: Mifflin County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 20 North Wayne Street
Lewistown, PA 17044
Phone: --
Representing: Respondent Mifflin County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Molly Ruth Mudd
Service Method: eService
Email: mmudd@adamscounty.us
Service Date: 9/19/2022
Address: 111 Baltimore Street
Gettysburg, PA 17325
Phone: 717--33-7-5911
Representing: Respondent Adams County Board of Elections

Served: Montour County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 435 East Front Street
Danville, PA 17821
Phone: --
Representing: Respondent Montour County Board of Elections

Served: Pike County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 506 Broad Street
Pike County Administration Building
Milford, PA 183371535
Phone: --
Representing: Respondent Pike County Board of Elections

Served: Potter County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 1 North Main Street
Coudersport, PA 16915
Phone: --
Representing: Respondent Potter County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Richard Eugene Santee
Service Method: eService
Email: santeer10@sksdlaw.com
Service Date: 9/19/2022
Address: 44 E. Broad Street
Suite 210
Bethlehem, PA 18018
Phone: 610-691-7000
Representing: Respondent Northampton County Board of Elections

Served: Robert Andrew Wiygul
Service Method: eService
Email: rwiygul@hangleyley.com
Service Date: 9/19/2022
Address: Hangleyley Aronchick Segal Pudlin & Schiller
One Logan Square, 27th Floor
Philadelphia, PA 19103
Phone: 215--49-6-7042
Representing: Respondent Jessica Mathis
Respondent Leigh M. Chapman

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Russell David Giancola
Service Method: eService
Email: rdg@glawfirm.com
Service Date: 9/19/2022
Address: Gallagher Giancola LLC
436 Seventh Avenue, 31st Floor
Pittsburgh, PA 15219
Phone: 412-717-1921
Representing: Petitioner Connor R. Gallagher
Petitioner David Ball
Petitioner Debra A. Biro
Petitioner Gwendolyn Mae Deluca
Petitioner James D. Bee
Petitioner Jesse D. Daniel
Petitioner Linda S. Kozlovich
Petitioner Lynn Marie Kalcevic
Petitioner National Republican Congressional Committee
Petitioner National Republican Senatorial Committee
Petitioner Republican National Committee
Petitioner Republican Party of Pennsylvania
Petitioner Ross M. Farber
Petitioner S. Michael Streib
Petitioner Vallerie Siciliano-Biancaniello
Petitioner William P. Kozlovich

Served: Ryan Blake Smith
Service Method: eService
Email: rbsmith@attorneygeneral.gov
Service Date: 9/19/2022
Address: 1515 Arch Street, 15th Floor
Philadelphia, PA 19102
Phone: 215-683-2954
Representing: Respondent Philadelphia County Board of Elections

Served: Schuylkill County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 420 North Centre Street
Pottsville, PA 17901
Phone: --
Representing: Respondent Schuylkill County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Snyder County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: Snyder County Courthouse
9 West Market Street
Middleburg, PA 17842
Phone: --
Representing: Respondent Snyder County Board of Elections

Served: Somerset County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 300 North Center Avenue
Suite 340
Somerset, PA 15501
Phone: --
Representing: Respondent Somerset County Board of Elections

Served: Sullivan County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: Sullivan County Courthouse
Main & Muncy Streets
Laporte, PA 186260157
Phone: --
Representing: Respondent Sullivan County Board of Elections

Served: Susquehanna County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 31 Lake Avenue
Montrose, PA 18801
Phone: --
Representing: Respondent Susquehanna County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Thomas E. Breth
Service Method: eService
Email: tbreth@dmkcg.com
Service Date: 9/19/2022
Address: 128 West Cunningham Street
Butler, PA 16001
Phone: (72-4) -283-2200
Representing: Petitioner Connor R. Gallagher
Petitioner David Ball
Petitioner Debra A. Biro
Petitioner Gwendolyn Mae Deluca
Petitioner James D. Bee
Petitioner Jesse D. Daniel
Petitioner Linda S. Kozlovich
Petitioner Lynn Marie Kalcevic
Petitioner National Republican Congressional Committee
Petitioner National Republican Senatorial Committee
Petitioner Republican National Committee
Petitioner Republican Party of Pennsylvania
Petitioner Ross M. Farber
Petitioner S. Michael Streib
Petitioner Vallerie Siciliano-Biancaniello
Petitioner William P. Kozlovich

Served: Thomas S. Talarico
Service Method: eService
Email: ttalarico@nwpalawyers.com
Service Date: 9/19/2022
Address: 510 cranberry street
suite 301
erie, PA 16507
Phone: 814--45-9-4472
Representing: Respondent Erie County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Thomas W. King III
Service Method: eService
Email: tking@dmkcg.com
Service Date: 9/19/2022
Address: 128 West Cunningham Street
Butler, PA 16001
Phone: (72-4) -283-2200
Representing: Petitioner Connor R. Gallagher
Petitioner David Ball
Petitioner Debra A. Biro
Petitioner Gwendolyn Mae Deluca
Petitioner James D. Bee
Petitioner Jesse D. Daniel
Petitioner Linda S. Kozlovich
Petitioner Lynn Marie Kalcevic
Petitioner National Republican Congressional Committee
Petitioner National Republican Senatorial Committee
Petitioner Republican National Committee
Petitioner Republican Party of Pennsylvania
Petitioner Ross M. Farber
Petitioner S. Michael Streib
Petitioner Vallerie Siciliano-Biancaniello
Petitioner William P. Kozlovich

Served: Tioga County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 118 Main Street
Wellsboro, PA 16901
Phone: --
Representing: Respondent Tioga County Board of Elections

Served: Warren County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: Warren County Courthouse
204 4th Avenue
Warren, PA 16365
Phone: --
Representing: Respondent Warren County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Wayne County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 925 Court Street
Honesdale, PA 18431
Phone: --
Representing: Respondent Wayne County Board of Elections

Served: Wyoming County Board of Elections
Service Method: First Class Mail
Service Date: 9/19/2022
Address: 1 Courthouse Square
Tunkhannock, PA 18657
Phone: --
Representing: Respondent Wyoming County Board of Elections

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

Served: Adam Craig Bonin
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Email: adam@boninlaw.com
Service Date: 9/19/2022
Address: 121 S Broad St, Suite 400
Phila, PA 19107
Phone: 267-242-5014
Representing: Possible Intervenor Democratic Congressional Campaign Committee (DCCC)
Possible Intervenor Democratic Senatorial Campaign Committee (DSCC)

Served: Claire Blewitt Ghormoz
Service Method: eService
Email: cghormoz@dilworthlaw.com
Service Date: 9/19/2022
Address: 1500 Market Street
Suite 3500 E
Philadelphia, PA 19102
Phone: 215-575-7000
Representing: Possible Intervenor Democratic Congressional Campaign Committee (DCCC)
Possible Intervenor Democratic Senatorial Campaign Committee (DSCC)

Served: Clifford B. Levine
Service Method: eService
Email: clifford.levine@dentons.com
Service Date: 9/19/2022
Address: Dentons Cohen & Grigsby P.C.
625 Liberty Avenue
Pittsburgh, PA 15222-3152
Phone: 412-297-4998
Representing: Possible Intervenor Democratic National Committee
Possible Intervenor Democratic National Committee
Possible Intervenor Pennsylvania Democratic Party
Possible Intervenor Pennsylvania Democratic Party

**CERTIFICATE OF COMPLIANCE
WITH PUBLIC ACCESS POLICY**

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

GALLAGHER GIANCOLA LLC

Dated: September 20, 2022

/s/ Kathleen A. Gallagher
Kathleen A. Gallagher
Russell D. Giancola

Counsel for Petitioners

EXHIBIT C

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION AT LAW

SONJA KEOHANE, RICHARD KEOHANE :
and BARBARA WELSH :

No.: 2023-004458

v. :

DELAWARE COUNTY BOARD OF :
ELECTIONS :

ORDER

AND NOW, this 21st day of September, 2023, upon consideration of the Motion for Judgment on the Pleadings of Petitioners Sonja Keohane, Richard Keohane, and Barbara Welsh, a Memorandum of Law in support thereof, Respondent Delaware County Board of Elections' response to the Motion in which Respondent does not oppose the relief requested by Petitioners, and Petitioners' reply in support of the Motion, it is ORDERED that the Motion for Judgment on the Pleadings is GRANTED. It is further ORDERED that Respondent is directed to count Petitioners' provisional ballots submitted at their respective polling places on Primary Election Day, May 16, 2023, and amend the official vote count from the May 2023 Primary Election to include the votes indicated on Petitioners' provisional ballots. In support of the foregoing, the Court hereby sets forth the following:

1. The facts of this case are not in dispute as this matter concerns the decision of Respondent Delaware County Board of Elections ("the Board") not to count three provisional ballots submitted by Petitioners, who each voted by mail but whose mail-in ballots were canceled due to disqualifying defects on the outer envelopes;
2. In each instance, the Board contacted Petitioners and provided a "notice and cure letter" explaining the opportunity to cure the defective ballots in person at the Board's

office in Media, Delaware County, Pennsylvania or to request a replacement ballot be issued by mail in advance of primary Election Day, May 16, 2023;

3. The Petitioners did not request replacement ballots nor appear in person in Media, Delaware County, Pennsylvania to avail themselves of the “notice and cure” procedure offered by the Board but rather each Petitioner voted provisionally at their polling place on primary Election Day, May 16, 2023;

4. Subsequently, at the provisional ballot challenge hearing, the Board voted to not count these ballots based on *In Re Allegheny Cnty. Provisional Ballots in the 2020 Gen. Election*, 241 A.3d 695 (Pa.Cmwlt. 2020) which stands for the proposition that voters who have cast another ballot and/or whose ballots have been timely received by the Board may not have subsequent provisional ballots counted;

5. This Court recognizes the Election Code contains two provisions which are at issue and relate to casting a provisional ballot following an unsuccessful attempt to cast a mail-in or absentee ballot. The first subsection states that “[e]xcept as provided in clause (ii), if it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast, the county board of elections shall compare the signature on the provisional ballot envelope with the signature on the elector’s registration form and, if the signatures are determined to be genuine, shall count the ballot if the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election.” 25 P.S. § 3050(a.4)(5)(i);

6. The second subsection states that a provisional ballot “shall not be counted” if “the elector’s absentee ballot or mail-in ballot are timely received by a county board of elections.” 25 P.S. § 3050(a.4)(5)(ii)(F);

7. To the extent there is any ambiguity between § 3050(a.4)(5)(i) and § 3050(a.4)(5)(ii)(F), Pennsylvania law demands that statutory provisions be read harmoniously to give effect to both provisions and should be construed in a way that does not nullify or exclude another provision. *See, e.g., In re Borough of Downingtown*, 161 A.3d 844, 871 (Pa. 2017) (noting that when two statutory provisions can be read as harmonious or in conflict, courts should construe them as in harmony with each other).

8. “It is the longstanding and overriding policy in this Commonwealth to protect the elective franchise. The Election Code must be liberally construed so as not to deprive . . . the voters of their right to elect a candidate of their choice. It is therefore a well-settled principle of Pennsylvania election law that every rationalization within the realm of common sense should aim at saving the ballot rather than voiding it.” *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 General Election*, 241 A.3d 1058, 1071 (Pa. 2020).

9. In this instance, these three qualified voters who attempted to submit mail-in ballots to the Board and were later notified by the Board that their respective mail-in ballots were defective, cannot be said to have “cast” a ballot.

10. All parties and this Court are concerned with the risk of double voting; however, the Board has safeguards in place to prevent double voting in this situation.

11. “When the Board receives a mail-in or absentee ballot, Board staff examines the outer envelope for obvious defects such as a missing signature or date. If such a defect is found, the Board provides a notice via e-mail or regular mail to the affected voter and offers them the opportunity to cure their ballot at Government Center in person, or mails a replacement ballot.” (Board’s 7/28/23 Memorandum of Law, p. 6).

12. The defective mail-in ballot is segregated from other mail-in ballots and is not counted or included in the pre-canvass and canvass. (Board's 7/28/23 Memorandum of Law, p. 6). It is treated by the Board's staff as if the ballot was not received at all.

Id. Then, the voter may vote their replacement ballot;

13. The Board also provided this Court with additional protections afforded by the provisional ballot challenge hearing process. These include:

- a. "The Board schedules and holds a provisional ballot challenge hearing within seven days of each primary or election. *See* 25 P.S. § 3050(a.4)(4);
- b. Prior to the hearing, the Board checks all provisional ballots against Election Day poll books and by-mail ballots to determine if each voter who voted provisionally also voted a different way;
- c. The Board also collects the names and addresses of each voter who cast a provisional ballot in Delaware County and makes those available to party leaders and candidates;
- d. The Board further publishes all mail-in and absentee voters on its website. Therefore, ahead of the hearing, representatives and the Board, and any other interested party, can confirm that voters have not cast a provisional ballot and also voted in some other way."

(Board's 7/28/23 Memorandum of Law, p. 7).

14. With these safeguards in place, Respondent shall count Petitioners' provisional ballots submitted at their respective polling places on Primary Election Day, May 16, 2023, and amend the official vote count from the May 2023 Primary Election to include the votes indicated on Petitioners' provisional ballots.

BY THE COURT:



JOHN J. WHELAN, J.