Filed 9/20/2024 2:29:00 PM Supreme Court Middle District 108 MM 2024

IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

Republican National Committee	:	
and Republican Party of	:	
Pennsylvania,	:	
	:	No. 108 MM 2024
Petitioners	:	
	:	
V.	:	
	:	
Al Schmidt, Secretary of the	:	
Commonwealth, <i>et alia</i> ,	:	
	:	
Respondents	:	

RESPONSE OF THE LEHIGH COUNTY BOARD OF ELECTIONS TO PETITIONERS' APPLICATION FOR THE EXERCISE OF KINGS BENCH OR EXTRAORDINARY JURISDICTION

Respondent, Lehigh County Board of Elections ("Lehigh"), through undersigned counsel, hereby opposes the Application for Kings Bench or Extraordinary Jurisdiction for the reasons set forth below.

 Petitioners have manufactured the exigency they rely upon in invoking this Court's Extraordinary Jurisdiction. They have been aware for several years that many Counties permit voters to cure mistakes with respect to mail-in ballots, and yet have failed to pursue a court remedy in the eighteen (18) months since the Commonwealth Court dismissed their case presenting similar arguments against curing. *See* <u>RNC v. Schmidt</u>, 447 M.D. 2022, Petition for Review dismissed on procedural grounds on March 23, 2023. Had Petitioners acted in a timely fashion, the "ordinary processes of law" would have had plenty of time to resolve this matter, negating the need for extraordinary measures. Their delay in presenting this matter to the Court until the eleventh hour, less than seven (7) weeks prior to a presidential election, and a few days prior to the start of mail-in voting, when they had ample time to do so beforehand, should not support this Court's exercise of either Kings Bench or Extraordinary Jurisdiction.

- 2. As noted in Petitioners' Application, counties, including Lehigh, will be sending out mail-in ballots within a few days. Lehigh, in accordance with its policies, will be notifying voters of issues with their mail-in ballots and affording them the opportunity to cure them. Notification of errors can occur as early as the first day such ballots are available. When a mail-in ballot is requested in person, filled out and immediately returned, the Lehigh employee at the counter accepting the mail-in ballot may identify a mistake. Therefore, it is entirely possible that Lehigh will be allowing voters to cure issues with their mail-in ballots as soon as those ballots are available, and well before this litigation is resolved. Changing the curing process midelection would not be equitable for the voters, if this Court were to rule that curing is not permissible after some voters had already done so. Maintaining the status quo for this election is the more equitable result, and therefore the Application should be denied at this time.
- 3. As Petitioners have recently argued in pending federal litigation on the issue of date requirements for mail-in ballots, "It is simply too late for this Court to grant Plaintiffs any relief on their claims for the imminent 2024 general elections. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006)." This quote is from Petitioners' response filed September 13, 2024 in *NAACP v. Chapman*, 22-cv-339. Under the *Purcell* principle cited by Petitioners, courts should not

change election rules during the period of time just prior to an election because doing so could confuse voters and create problems for officials administering the election. This Court should follow *Purcell* and deny Petitioners' Application.

4. Lehigh joins in the reasoning presented by those other county Boards of Election who oppose this Application.

For all the foregoing reasons, Lehigh respectfully requests that this Honorable Court deny the Application for the Exercise of Kings Bench or Extraordinary Jurisdiction.

Respectfully submitted,

/s/Catharine M. Roseberry, Esq. Catharine M. Roseberry, Esq. Assistant County Solicitor Lehigh County Government Center Department of Law – Room 440 17 S. 7th Street Allentown, PA 18101 (610) 782.3180 <u>catharineroseberry@lehighcounty.org</u> PA Atty ID 40199 Counsel for the Lehigh County Board of Elections

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted,

Date: September 20, 2024

/s/Catharine M. Roseberry, Esq.

Catharine M. Roseberry, Esq. Assistant County Solicitor Lehigh County Government Center Department of Law – Room 440 17 S. 7th Street Allentown, PA 18101 (610) 782.3180 <u>catharineroseberry@lehighcounty.org</u> PA Atty ID 40199