

IN THE SUPREME COURT OF PENNSYLVANIA

108 MM 2024

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

Petitioners,

v.

**AL SCHMIDT, SECRETARY OF THE COMMONWEALTH, et al.,
Respondents.**

**THE SECRETARY OF THE COMMONWEALTH'S ANSWER TO
THE APPLICATION TO FILE A SUPPLEMENTAL RESPONSE**

The RNC's application for leave to file a supplemental response continues to muddle distinct legal issues, mispresent facts, and obscure that it waited far too long to file its King's Bench petition. The Court should make clear that it will not be receptive to such blatant abuses of judicial process. The motion to file a supplemental response and the underlying King's Bench petition should both be denied.

1. Commonwealth Court's recent decision in *Center for Coalfield Justice v. Washington County Board of Elections*, No. 1172 CD 2024 (Pa. Cmwlth. Sept. 24, 2024) has no bearing on the RNC's King's Bench petition.

2. Commonwealth Court’s decision in *Center for Coalfield Justice* reaffirmed that court’s prior decision from *Genser v. Butler County Board of Elections* that the Election Code does not permit rejecting a provisional ballot submitted by an eligible voter solely because the voter’s invalid and uncounted mail ballot was “timely received.” Slip Op. at 10-13. That decision has nothing to do with “curing.” It followed instead from the interpretation of federal and state statutes that govern provisional ballots. *Id.* This Court will resolve the statutory questions regarding provisional ballots that was addressed in Commonwealth Court’s *Genser* and *Center for Coalfield Justice* decisions in the appeals already docketed at 26 & 27 WAP 2024 (Pa.). The same question need not be addressed here too.

3. Beyond that, *Center for Coalfield Justice* examined Washington County’s policy of refusing to inform voters (including those who affirmatively inquired) of whether their mail ballot had been flagged for rejection as well as Washington County’s duty to accurately inform voters if their mail ballot was likely going to be rejected. Slip Op. at 2-3. Commonwealth Court held that Washington County’s practices violated its voters’ constitutional right to due process. Slip Op. at 14-17. The decision,

however, said nothing about any right to “cure” an error that will lead to a mail ballot being rejected. The RNC’s description of Commonwealth Court decision as having created a “constitutional right to notice and cure,” RNC Suppl. Response ¶ 8, is therefore yet another mischaracterization of judicial proceedings.

4. Further, it continues to be wrong that the Secretary has done anything to “mandate notice and cure procedures” through the SURE system, *contra* RNC Suppl. Response ¶ 9, or that the decision in *Center for Coalfield Justice* suggests as much.

5. In fact, Commonwealth Court’s decision says nothing about the SURE system at all nor does it state that the SURE system must be used in any way. Instead, Washington County’s use of tools made available in the SURE system is one way, in the lower courts’ views, that it can provide voters accurate information about their ballot’s status. There could, as the RNC suggested below, be others. Slip Op. at 17.

6. Finally, *Center for Coalfield Justice* only underscores the RNC’s egregious lack of diligence in this matter. That action was filed in the Washington County Court of Common Pleas on July 1. Any petition for allowance of appeal must be filed with this Court by September 27. If

the RNC had legitimate challenges to any county’s so-called “notice-and-cure” practices, it could have followed a similar course and raised those issues long ago. It opted not to do so.

For these reasons, and for the reasons previously identified in the Secretary’s original response, both the RNC’s motion to supplement and its King’s Bench petition should be denied.

September 26, 2024

Respectfully submitted,

Kathleen M. Kotula (No. 86321)
Kathleen A. Mullen (No. 84604)
Pennsylvania Department of State
306 North Office Bldg.
401 North Street
Harrisburg, PA 17120

Michael J. Fischer (No. 322311)

/s/ Jacob B. Boyer

Jacob B. Boyer (No. 324396)
Aimee D. Thomson (No. 326328)
Office of General Counsel
Deputy General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17101
(717) 460-6786
jacobboyer@pa.gov

Counsel for Secretary of the Commonwealth Al Schmidt

CERTIFICATE OF COMPLIANCE

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

Dated: September 26, 2024

/s/ Jacob B. Boyer

Jacob B. Boyer