Received 10/6/2022 11:51:10 PM Supreme Court Middle District

ELECTION MATTER

Filed 10/6/2022 11:51:00 PM Supreme Court Middle District
100 MAP 2022

IN THE SUPREME COURT OF PENNSYLVANIA

No. 100 MAP 2022

Republican National Committee, *et al.*,
Petitioners/Appellants,

v.

Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth, *et al.*,
Respondents/Appellees,

and

DSCC, *et al.*,
Intervenor-Respondents/Appellees.

BRIEF OF INTERVENOR-RESPONDENTS DSCC AND DCCC

Uzoma N. Nkwonta*
Justin Baxenberg*
Alexander F. Atkins*
Daniela Lorenzo*
ELIAS LAW GROUP LLP
10 G St. NE, Suite 600
Washington, D.C. 20002
Telephone: (202) 968-4490
unkwonta@elias.law
jbaxenberg@elias.law
aatkins@elias.law
dlorenzo@elias.law

** Admitted Pro Hac Vice*

Adam C. Bonin
THE LAW OFFICE OF ADAM C. BONIN
121 South Broad Street, Suite 400
Philadelphia, PA 19107
Telephone: (267) 242-5014
Facsimile: (215) 827-5300
adam@boninlaw.com

Timothy J. Ford (Pa. Id. No. 325290)
Claire Blewitt Ghormoz (Pa. Id. No. 320816)
DILWORTH PAXSON LLP
1500 Market Street, Suite 3500E
Philadelphia, PA 19102
Telephone: (215) 575-7000
Facsimile: (215) 575-7200
tford@dilworthlaw.com
cghormoz@dilworthlaw.com

Counsel for Intervenor-Respondents DSCC & DCCC

Dated October 6, 2022

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Pursuant to Rule 2112 of the Pennsylvania Rules of Appellate Procedure, Intervenor-Respondents/Appellees DSCC and DCCC respectfully submit this Brief in response to the Brief of Petitioners/Appellants.

COUNTER-STATEMENT OF THE QUESTIONS INVOLVED

Whether the Commonwealth Court properly denied Petitioners' Application for Preliminary Injunction?

ANSWER: Yes.

Whether Petitioners' Application for Preliminary Injunction and/or Petition could have been denied on alternate grounds, including Petitioners' lack of standing and the equitable doctrine of laches?

ANSWER: Yes.

SUMMARY OF ARGUMENTS

This last-minute challenge to the authority of county boards of elections should be barred by the doctrine of laches. All relevant facts and all relevant law were known (or available) to Petitioners more than two years ago, and unnecessary litigation on the eve of an election is prejudicial to the parties and the public. Petitioners furthermore lack standing because they suffer no cognizable harm as a result of county boards allowing voters to cast an effective ballot. And even if laches is not applied and Petitioners' lawsuit is

not dismissed for lack of standing, the Commonwealth Court properly denied the application for preliminary injunction because Petitioners have failed to show that they are likely to succeed on the merits of their claims; a preliminary injunction would disrupt the status quo; and the potential for disenfranchising voters outweighs any miniscule harm Petitioners might suffer (if such harm is even cognizable). This Court should affirm the Commonwealth Court's Order denying Petitioners' Application for Special Relief in the Form of a Preliminary Injunction on the basis of laches, Petitioners' lack of standing, or Petitioners' failure to meet the standard required to issue preliminary relief.

COUNTER-STATEMENT OF THE CASE

Petitioners initiated these proceedings on September 1, 2022—nearly two years after decisions by this Court and the U.S. Court of Appeals for the Third Circuit addressed nearly identical ballot cure procedures, and after two statewide primary elections and the 2021 municipal election were successfully conducted with counties free to employ (and actually employing) cure procedures, and just weeks before mail ballots began to be distributed for the 2022 general election. Petitioners then waited nearly another week before filing an Application for Special Relief in the Form of a Preliminary Injunction ("Application"), as well as a Memorandum of Law in

support of the Application. Mem. Op. by Judge Ceisler ("Mem. Op.") at 3. Intervenors DSCC and DCCC, along with other parties, opposed that Application. The Commonwealth Court held a status conference/hearing on September 22, at which it heard argument from all of the parties in the case.

After carefully considering the extensive briefing from the parties, as well as the argument of counsel, the Commonwealth Court denied Petitioners' Application on September 29. The Court's decision was based on its well-supported conclusions that (1) Petitioners failed to prove that they were likely to succeed on the merits or that their right to relief is clear; (2) Petitioners' requested relief will disrupt the status quo and is not narrowly tailored to abate their alleged harm; and (3) Petitioners failed to show that an injunction is necessary to prevent immediate and irreparable harm. Mem. Op. at 9–11. On September 30, Petitioners initiated this appeal, in which they maintain that the Pennsylvania Constitution and Election Code require county boards to disqualify entirely eligible Pennsylvania voters for minor, correctable errors made on their mail ballot envelopes. Up until this point, many county boards have been utilizing procedures by which voters whose ballots contain minor, curable defects are given notice and an opportunity to cure those defects in time to save their ballot from rejection. Petitioners seek

an order declaring any such processes invalid, requiring the rejection of untold numbers of ballots of lawful Pennsylvania voters.

As noted, this is not the first time a court has been asked to consider the power of county boards to allow voters to cure minor errors on absentee ballots. Repeatedly, courts have found that boards have the power, and never indicated that they lack it (or that exercising that power violates any other provision or constitutional right).

This is consistent with the Pennsylvania Election Code, which confers on county boards broad authority to administer elections. The Code provides that "[t]here shall be a county board of elections in and for each county of this Commonwealth, which shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of this act." 25 P.S. § 2641(a). "[C]ounty boards of elections, within their respective counties, shall exercise, in the manner provided by [the Election Code], all powers granted to them by this [Code], and shall perform all the duties imposed upon them by this [Code]." 25 P.S. § 2642. In particular, the Election Code imposes a duty on boards to "inspect systematically and thoroughly the conduct of primaries and elections," 25 P.S. § 2642(g), and empowers boards to "instruct election officers in their duties" and "make and issue such rules, regulations and instructions, not inconsistent with law, as

they may deem necessary for the guidance of . . . elections officers and electors," 25 P.S. § 2642(f), (g).

Consistent with their authority, each county board has adopted procedures within their respective counties, and sometimes, in some aspects, these procedures differ between counties, including with regard to cure procedures. *See, e.g.*, *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 386 (W.D. Pa. 2020) ("*DJT I*"); *Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania*, 830 F. App'x 377, 388 (3d Cir. 2020) ("*DJT II*") ("Pennsylvania's Election Code gives counties specific guidelines. To be sure, counties vary in implementing that guidance, but that is normal."). Citing these differences, the Pennsylvania Democratic Party ("PDP") sought an injunction in 2020 that would have required all county boards to provide notice and an opportunity to cure to voters whose mail ballots bore certain facial defects. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 372 (Pa. 2020), *cert. denied sub nom. Republican Party of Pennsylvania v. Degraffenreid*, 209 L. Ed. 2d 164, 141 S. Ct. 732 (2021). Relying on the Free and Equal Elections Clause of the Pennsylvania Constitution, PDP argued that "voters should not be disenfranchised by technical errors or incomplete ballots" and that procedures requiring "notice and opportunity to cure" would

ensure that all electors have the opportunity to exercise their right to vote. *Pa. Democratic Party*, 238 A.3d at 372–73.

Although the Secretary of the Commonwealth sided with PDP in other aspects of its suit, *Pa. Democratic Party*, 238 A.3d at 357–58, 365–66, 376, 382, and noted that it "may be good policy to implement a procedure that entails notice of defective ballots and an opportunity to cure them," the Secretary opposed PDP's request for an injunction *requiring* boards to implement such procedures due to the absence of any statutory or constitutional mandate. *Id.* at 373. This Court agreed, concluding that boards were "not *required* to implement" cure procedures because neither the Pennsylvania Constitution nor the Election Code mandated them. *Id.* at 374 (emphasis added). But at no point did this Court determine that county boards lacked authority to proactively implement cure procedures.

Consistent with the Supreme Court's narrow ruling, the Secretary encouraged—but did not require—county boards to provide notice and an opportunity to cure facially defective mail ballots in the 2020 general election. *DJT II*, 830 F. App'x at 384. In response, then-President Trump's campaign filed a lawsuit in federal court challenging the notice and cure procedures used by several counties, in which the plaintiffs primarily argued that allowing county boards discretion to implement cure procedures violated the U.S.

Constitution's Equal Protection Clause. *See generally id*. The district court dismissed the lawsuit. In affirming that dismissal, the U.S. Court of Appeals for the Third Circuit recognized that "[n]ot every voter can be expected to follow [the mail ballot] process perfectly" and that "the Election Code says nothing about what should happen if a county notices these errors before election day." *Id.* at 384. The Third Circuit further observed that "[s]ome counties stay silent and do not count the ballots; others contact the voters and give them a chance to correct their errors," *id.*, but held that "variation from county to county" did not offend equal protection principles. *Id. at 388.*

Neither the Election Code nor the relevant facts have changed in any material way since these cases were decided in the fall of 2020.

ARGUMENT

I. This action is barred by laches.

Petitioners' claims are barred by laches, an equitable doctrine that forecloses relief where (1) petitioners fail to exercise due diligence in bringing an action, leading to a delay, and (2) the delay prejudices the opposing party. *Kelly v. Commonwealth*, 240 A.3d 1255, 1256 (Pa. 2020), *cert. denied sub nom. Kelly v. Pennsylvania*, 141 S. Ct. 1449 (2021); *see also Stilp v. Hafer*, 718 A.2d 290, 293 (Pa. 1998). Contrary to the Commonwealth Court's holding, both factors are met here.

A. Petitioners failed to exercise due diligence in bringing this action, which is based on facts and legal authorities that they admit have not changed since at least 2020.

Petitioners make no credible effort to defend their decision to sit on their hands for nearly two years as county boards provided the very notice and cure procedures that Petitioners now challenge, before filing this action just as voting was scheduled to begin in a major statewide general election. It is not credible that Petitioners were not aware that this was happening, and to the extent the Commonwealth Court accepted Petitioners' protests of ignorance, that was an abuse of discretion. The chair of Petitioner Republican National Committee ("RNC") revealed as much when, during a press conference on November 9, 2020 regarding the Republican Party's election litigation strategy in that election two years ago, she stated that "[v]oters in some [Pennsylvania] counties were allowed to cure their ballots whereas voters in other counties were not."[1] That same day, the Republican Party's own presidential nominee, former President Donald Trump, brought a lawsuit against the Secretary and seven county boards of elections in federal court over these very procedures, alleging that the counties

[1] *Kayleigh McEnany & Ronna McDaniel Press Conference Transcript: Lawsuits Over Election Disputes*, Rev Transcription (Nov. 9, 2020) (emphasis added), https://tinyurl.com/2p8x7dun; *see also* Video of RNC Chair McDaniel and White House Press Secretary McEnany News Conference, C-SPAN (Nov. 9, 2020), https://tinyurl.com/2p8s6krs.

unlawfully "provided their mail-in voters with the opportunity to cure mail-in and absentee ballot deficiencies," Verified Compl. for Declaratory and Injunctive Relief ¶ 6, *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-cv-02078-MWB, 2020 WL 6562045 (M.D. Pa. Nov. 9, 2020).[2] Petitioners certainly were aware during the 2020 election cycle—and throughout subsequent elections—that some county boards implemented cure procedures.

This Court therefore need not indulge the fiction—peddled by Petitioners—that the RNC, National Republican Senatorial Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania were completely unaware of the procedures their own party challenged in November 2020. But even if, somehow, these Petitioners did not *actually know* of their chairwoman's missive or the Trump campaign's lawsuit, their purported ignorance does not excuse their lack of due diligence on bringing this action.

[2] The campaign's argument was rejected by the district court on November 21, 2020, in a decision affirmed by the Third Circuit six days later. *See generally Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899 (M.D. Pa. 2020), *aff'd sub nom. Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania*, 830 F. App'x 377 (3d Cir. 2020) ("*DJT II*"), *appeal dismissed sub nom. Signed v. Pennsylvania*, No. 20-3384, 2021 WL 807531 (3d Cir. Jan. 7, 2021).

When considering whether a claim is barred by laches, "[t]he correct inquiry . . . is to focus not upon what the plaintiff knows*, but what he might have known*, by the use of the means of information within his reach, with the vigilance the law requires of him." *Sprague v. Casey*, 550 A.2d 184, 188 (Pa. 1988) (emphasis added). In finding that Petitioners' claims were not barred by laches, the Commonwealth Court failed to apply this well-established legal standard. Mem. Op. at 52–53. It should be beyond credible dispute that the Republican Party committees who are the Petitioners in this action had access to information that would have made them aware—with the vigilance that the law requires of them—that some of Pennsylvania's counties have been administering notice and cure procedures for mail ballots for years. *See Stilp*, 718 A.2d at 294 (applying laches and finding plaintiffs had access to facts supporting their claim based on legislative procedures that were available to the public).

Indeed, in addition to readily accessible evidence discussed above, ample publicly available data revealing the existence of notice and cure procedures in some counties has existed since at least 2020. *See, e.g.*, RR at 40a–46a, 56a–57a (Pet. Exs. B, C, D, G).[3] Petitioners even acknowledge

[3] *See also Republicans Seek to Sideline Pa. Mail Ballots that Voters Were Allowed to Fix*, Spotlight PA (Nov. 3, 2020), https://tinyurl.com/3r2cxm9s;

that they face "*the same factual setting as existed in 2020*" and that "*the Election Code remains as it existed in 2020*," Reproduced R. ("RR") at 17a (Pet. ¶ 35) (emphasis added); RR at 137a (PI Mem. at 23) (emphasis added); *see also* App. Brief at 11, 24. Had Petitioners acted with anything reasonably resembling diligence, they plainly could have brought this suit at any time over at least the past two years. Under the circumstances, "[t]he want of due diligence demonstrated in this matter is unmistakable." *Kelly*, 240 A.3d at 1256.

Petitioners claim—and the Commonwealth Court accepted—that they began seeking information about counties' cure procedures only after Governor Wolf vetoed House Bill 1300 in October 2021 and that the public was only put on notice regarding particular cure procedures earlier this year. Mem. Op. at 52. This is nonsensical. Petitioners are not challenging *particular* cure procedures; they are challenging the ability of county boards to implement cure procedures *at all*. *See* App. Br. at 36 ("Boards are not free to develop and implement their own cure procedures because such procedures are 'inconsistent with law' as established by express provisions

Ballot 'Curing' in Pennsylvania, FactCheck.org (Nov. 13, 2020), https://tinyurl.com/y5rcwnpa; *GOP effort to block 'cured' Pennsylvania ballots gets chilly reception from judge*, Politico (Nov. 4, 2020), https://tinyurl.com/2p9nmka5.

of the Election Code."). Petitioners undeniably were on notice for at least the past two years that some county boards implemented cure procedures; no further factual development was necessary.

B. Petitioners' unjustifiable delay severely prejudices the parties to this action and the voting public.

Laches forecloses relief here because its second element is also clearly met: Petitioners' strategic delay prejudices both the parties to this action and the public at large, and the Commonwealth Court erred in finding otherwise.

Respondents and Intervenor-Respondents have made clear that they are and will continue to be prejudiced by Petitioners' decision to wait until shortly before the election to bring this action. Among other things, granting the relief Petitioners request would force Respondents and Intervenor-Respondents to divert critical time and resources towards implementing new procedures, training staff, educating voters, and "determining how to implement the vague injunction sought by Petitioners," all while voting is already well underway. *See, e.g.*, RR at 421a (DSCC and DCCC's Resp. in Opp'n to Pets.' App. for Prelim. Inj., at 21); Supp. Reproduced R. ("SRR") at 14b (Young Affidavit ¶¶ 6–8, 10; SRR at 19b (Abraham Affidavit ¶¶ 9, 10, 12); RR at 1003a–1007a (Phila. Sur-Reply in Opp'n to Prelim. Inj. at 5–9); RR at 917a–925a (Cmwlth. Post-Hr'g. Opp'n to Prelim. Inj. 15–23); RR at

831a–832a (Bucks Cnty. Opp'n to Prelim. Inj. at 17–18). Petitioners attempt to wave all of this away by purporting to understand the innerworkings and considerations of Respondents and Intervenor-Respondents better than they do, even going so far as asserting—without any evidentiary basis—that an eleventh-hour injunction would be *beneficial* to Respondents and Intervenor-Respondents S*ee, e.g.*, App. Brief at 50. This is absurd and should be dismissed out of hand.

Respondents and Intervenor-Respondents have also specifically outlined how Petitioners' strategic delay in bringing this lawsuit, and seeking the extraordinary relief that they request at this extremely late date, threatens to severely prejudice the public at large, including by creating widespread confusion, needlessly disenfranchising voters, and shaking public confidence in Pennsylvania's election administration. *See, e.g.*, RR at 421a (DSCC and DCCC's Resp. in Opp'n to Pets.' App. for Prelim. Inj., at 21); SRR at 14b (Young Affidavit ¶¶ 6–8, 10); SRR at 19b (Abraham Affidavit ¶¶ 9, 10, 12); RR at 1003a–1007a (Phila. Sur-Reply in Opp'n to Prelim. Inj. at 5–9); RR at 917a–925a (Cmwlth. Post-Hr'g. Opp'n to Prelim. Inj. 15–23); RR at 831a–832a (Bucks Cnty. Opp'n to Prelim. Inj. at 17–18).

Already, every county board of elections in the Commonwealth is diverting resources that could be spent preparing for an orderly election into

litigating this action. And Petitioners' delay means that the judiciary is being forced to make pivotal decisions that could result in significant changes to election processes on an artificially compressed timeline in which briefs and opinions must be thrown together in days rather than considered over the course of weeks or months. In some situations, last-minute election litigation is necessary to vindicate the right to vote; this is not one of those cases. To the contrary, if Petitioners obtain the relief they seek, it would result in votes of lawful Pennsylvania voters being *rejected* that otherwise would be cured and counted.

Nor can there be any question that a political party strategically waiting until shortly before an election to launch a suit aimed at making voting more difficult is the type of gamesmanship that severely undermines public confidence in elections. Indeed, in other cases, the *RNC* has argued that making any changes to election administration rules even *many months before* an election is improper and risks chaos and confusion—or, at least that is the argument they have made when a party seeks changes that would make it easier for eligible voters to cast their ballots and have them counted. *See*, *e.g.*, *League of Women Voters of Fla. v. Fla. Sec'y of State*, 2022 WL 4078870, at *8–9 (11th Cir. 2022) (RNC arguing that "late judicial tinkering with election laws causes well-known harms to political parties" in case just

under four months before an election) (quotations omitted); *In re Georgia Senate Bill 202*, No. 1:21-mi-55555-JPB, ECF No. 194 at 9–10 (N.D. Ga. June 24, 2022) (RNC arguing that a "motion for a preliminary injunction" filed three months before the beginning of in-person voting "must be denied because it ask[ed the] Court to interfere with Georgia's elections laws shortly before voting" began which would have created "confusion and hardship" for voters and "[a]t the least, confused voters and groups would inundate state and local officials with inquiries and calls"). There is no logical explanation for their contrary position here—where granting the extraordinary relief Petitioners request would result in the rejection of lawful voters' ballots—except political gamesmanship. Indeed, Petitioners' position runs exactly counter to the governing principle in Pennsylvania that the franchise should be protected. And the cynical nature of this suit is but another reason why allowing this last-minute litigation to proceed would undermine public confidence. *See, e.g.*, *Shambach v. Bickhart*, 845 A.2d 793, 798 (Pa. 2004) (recognizing the "longstanding and overriding policy in this Commonwealth to protect the elective franchise") (citations omitted); *In re Luzerne Cnty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972) (reiterating that "[o]ur goal must be to enfranchise and not to disenfranchise [the electorate].").

For all of these reasons, this Court should find this action is barred by laches.

II. Petitioners lack standing to bring this action.

Even if their claims were not barred by laches, Petitioners lack standing to bring this suit because they are not injured by counties implementing notice-and-cure procedures. To demonstrate standing, Petitioners must be "aggrieved," *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003), meaning that they "must be negatively impacted in some *real and direct* fashion." *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005) (emphasis added). If a party is not adversely affected by what it challenges, it cannot be aggrieved and "has no standing." *Soc'y Hill Civic Ass'n v. Pa. Gaming Control Bd.*, 928 A.2d 175, 184 (Pa. 2007).

Instead of explaining how they have been or will be aggrieved by some county boards implementing notice-and-cure procedures that allow a greater number of eligible voters' ballots to be counted, Petitioners advance generalized interests in seeking adherence "to state law and [] Supreme Court" precedent. RR at 116a (PI Mem. at 2); *see also* App. Brief at 45. But it is not enough for Petitioners "to assert the common interest of all citizens in procuring obedience to the law." *Pittsburgh Palisades Park*, 888 A.2d at 660 (citing *In re Hickson*, 821 A.2d at 1243). In Pennsylvania, "it is hornbook

law that a person whose interest is common to that of the public generally . . . lacks standing to attack the validity" of state action. *Mixon v. Commonwealth*, 759 A.2d 442, 452 (Pa. Cmwlth. 2000). Indeed, a desire to see that the law has been followed "is precisely the kind of undifferentiated, generalized grievance" that cannot give rise to a cognizable injury. *Lance v. Coffman*, 549 U.S. 437, 442 (2007).

Moreover, it is hard to imagine what particularized injury the Republican Committee Petitioners can show at this juncture since they do not allege any fraud that will frustrate their political activities, Mem. Op. at 9–10, and when it is unknowable which candidates will be favored by cured ballots. *Cf. DJT I*, 493 F. Supp. 3d at 380 ("There is nothing in the record to establish that potential voter fraud and dilution will impact Republicans more than Democrats."). Nor do Republican Voter Petitioners suggest that they have or will cast a ballot that has been or will be rejected because of lack of notice-and-cure procedures in their county. But even if that were the case, that injury would not be redressed by denying other Pennsylvania voters notice and the opportunity to cure ballots flagged for rejection due to curable errors.

Likely recognizing as much, Petitioners' allegations of injury instead rely on a mischaracterization of the legal effect of variations of voting

practices across counties, ignoring authority finding that the mere fact that county boards may "employ entirely different election procedures and voting systems within a single state" does not, by itself, impose *any* injury so long as those procedures do not discriminate against certain groups of voters or infringe on an individual's fundamental right to vote. *DJT II*, 830 F. App'x at 388; *see also DJT I*, 493 F.Supp.3d at 383. Nowhere do Petitioners argue that county boards allowing voters to cure non-material defects discriminates against a group of voters or prevents a single voter from voting. Nor could they. The county boards' notice-and-cure opportunities *prevent* disenfranchisement and facilitate the exercise of eligible Pennsylvanians' right to vote; Petitioners' requested relief would *increase* disenfranchisement.

III. Petitioners cannot meet the standard required to issue preliminary relief.

Even if the Court were to reach the merits, the decision below should be affirmed. Petitioners "did not meet their heavy burden" of establishing *any* of the six essential prerequisites necessary to obtain preliminary injunctive relief. *See* Mem. Op. at 9.[4] And if there is even one factor that they cannot

[4] To qualify for a preliminary injunction, Petitioners must establish that (1) they are likely to succeed on the merits; (2) an injunction is necessary to prevent immediate and irreparable harm; (3) greater injury will result from

establish, "there is no need to address the others." *Cnty. Of Allegheny v. Commonwealth*, 544 A.2d 1305, 1307 (Pa. 1988).[5] Petitioners are not likely to succeed on their claims because there is no statutory or constitutional basis for them; indeed, their argument is inconsistent with prior decisions of this Court and the Third Circuit. But even putting the merits aside, Petitioners suffer no cognizable injury when *other* Pennsylvania citizens are allowed to ensure their votes are counted. On the other hand, significant harm, including disenfranchisement, would result if Petitioners are successful and county boards are now *required* to discard ballots of lawful voters who make minor errors unrelated to their eligibility to vote, without providing notice and a cure opportunity. Petitioners' strategic decision to wait until shortly before a pivotal

refusing than granting the injunction, while the injunction will not substantially harm other interested parties; (4) the preliminary injunction seeks to restore the status quo; (5) the injunction is reasonably suited to redress the purported offending activity; and (6) the injunction will not adversely affect the public interest. *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995 (Pa. 2003).

[5] Moreover, several of the factors present challenging factual or legal questions, which is even more reason to deny a request for extraordinary injunctive relief altering voting rules while mail voting is underway. *See, e.g.*, *Greene v. Raffensperger*, No. 22-CV-1294-AT, 2022 WL 1136729, at *28 (N.D. Ga. Apr. 18, 2022) (denying preliminary injunction sought shortly before primary election "[g]iven the preliminary stage of the proceedings, the difficulty of the legal questions posed, and Plaintiff's failure to . . . establish[] a likelihood of success on the merits"); *Cincinnati Bengals, Inc. v. Bergey*, 453 F. Supp. 129, 145 (S.D. Ohio 1974) ("where there are novel or complex issues of law or fact that have not been resolved a preliminary injunction should be denied").

statewide election to bring this challenge—despite all material facts being evident two years ago—only exacerbates the harm that would result if the relief they request were granted.

A. Petitioners are not likely to succeed on the merits.

Petitioners are unlikely to succeed on the merits because the Election Code does not prohibit county boards from providing voters with an opportunity to cure defective mail ballots, and instead confers broad authority to county boards to administer elections and implement appropriate procedures, particularly in areas where the Election Code does not mandate any specific course of action. *See DJT II*, 830 F. App'x at 384 ("[T]he Election Code says nothing about what should happen if a county notices [defects on mail ballots] before election day."). As the Third Circuit has previously noted, "the Election Code says nothing about what should happen if a county notices" minor errors on mail ballots before election day. *Id.* And absent an express limitation, the broad authority conferred on county boards clearly permits them to implement procedures by which a voter whose ballot has been flagged for rejection due to a curable error can address that error and ensure that their ballot is counted.

1. *County boards have broad authority to administer elections within their county.*

The Election Code establishes a framework within which county boards bear significant responsibility for overseeing elections in their respective counties. *See* 25 P.S. § 2641(a) ("There shall be a county board of elections in and for each county of this Commonwealth, which shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of this act."); 25 P.S. § 2642 ("[C]ounty boards of elections, within their respective counties, shall exercise, in the manner provided by [the Election Code], all powers granted to them by this [Code], and shall perform all the duties imposed upon them by this [Code]."). The Election Code expressly empowers boards "[t]o make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers and electors." 25 P.S. § 2642(f). The plain meaning of this conferral of authority is that boards have broad power to adopt procedures to promote the purpose of the Election Code: "freedom of choice, a fair election and an honest election return," *Pa. Democratic Party*, 238 A.3d at 356 (quotations and citations omitted), provided that the procedures they adopt are not otherwise inconsistent with law.

Determining the scope of the county boards' authority requires "listen[ing] attentively to what the statute says, but also to what it does not say." *In re Canvassing Observation*, 241 A.3d 339, 349 (Pa. 2020) (quoting *Discovery Charter Sch. v. Sch. Dist. of Phila.*, 166 A.3d 304, 321 (Pa. 2017)). Consistent with that principle, this Court has held that a command in the Election Code that does not specify relevant parameters may "reflect the legislature's deliberate choice to leave such matters to the informed discretion of county boards of elections." *In re Canvassing Observation*, 241 A.3d at 350. Within the bounds of the Election Code, boards have significant discretion to determine how to administer elections in their counties—particularly when acting consistent with this Court's directive that "the Election Code should be liberally construed so as not to deprive, inter alia, electors of their right to elect a candidate of their choice." *Pa. Democratic Party*, 238 A.3d at 356.

Intervenors agree that this does *not* mean that county boards have "unfettered power to regulate election administration." App. Br. at 32. For example, in *In re November 3, 2020 General Election*, this Court rejected the argument that county boards can disenfranchise mail voters by imposing a signature-match requirement without any basis in law for doing so. *See* 240 A.3d 591 (2020). In that case, this Court analyzed the "only three duties of

county boards of elections during the pre-canvassing and canvassing process" to determine whether boards must (or could) reject ballots based on signature comparison. *Id.* at 605. The Court held that "the plain and unambiguous language of the Election Code" did not include a signature comparison requirement. *Id.* at 608.

The Court next examined the rest of the Code, recognizing that the Legislature "has been explicit whenever it has desired to require election officials to undertake an inquiry in the authenticity of a voter's signature," *id.*, and identifying two provisions that set out consequences if a signature "shall not be deemed authentic by any of the election officers" or "if the signatures are determined to be genuine." *Id.* at 608–609 (citing 25 P.S. § 3050(a.3)(a) and 25 P.S. § 3050(a.4)(5)(i)). The Court also noted that "when the Election Code was first promulgated . . . it contained explicit signature comparison requirements for canvassing certain absentee ballots," but that later "this signature comparison language was removed from the Code." *Id.* at 609.

Under those circumstances—where the Code once had a requirement for mail ballots that was subsequently removed and where the Code elsewhere explicitly imposes that requirement on other types of ballots—the only reasonable interpretation is that the Legislature determined that mail ballots should not be subjected to signature comparison. County boards'

broad discretion does not extend to discarding ballots that the Legislature intends to be counted. But if the Legislature has not spoken on an issue within the boards' jurisdiction, county boards may adopt policies and procedures "as they may deem necessary" for effectuating their duties under the Election Code, including their duty to ensure that voters are not deprived of their suffrage rights. 25 P.S. § 2642(f).

2. *County boards can develop cure procedures consistent with the Election Code.*

Because the Election Code does not dictate what county boards should do when faced with a clearly deficient mail ballot, the broad authority vested by the General Assembly allows individual boards to determine whether voters in their counties should have an opportunity to resolve correctible errors that are detected before the voting deadline. To be sure, the Election Code does not *require* county boards to provide these notice and cure opportunities, *see Pa. Democratic Party*, 238 A.3d at 374, but neither does it *prohibit* them from implementing such procedures to protect the right to vote. In other words, the decision of whether to offer cure procedures rests within each board's discretion. *See DJT II*, 830 F. App'x at 384.

Petitioners raise a hodgepodge of arguments—many improperly for the first time, *see Cash Am. Net of Nevada, LLC v. Com., Dep't of Banking*,

8 A.3d 282, 299 (Pa. 2010) ("[Appellant] did not assert this argument before the Commonwealth Court, and may not raise it for the first time on appeal.")—in an attempt to locate some prohibition on ensuring mail voters can successfully cast their ballots. Those arguments should be rejected.

a) *Petitioners' statutory interpretation arguments are misplaced.*

Expresio unius est exclusio alterius has no application here because the Election Code nowhere addresses how boards should handle mail ballots with correctible errors. Petitioners claim that "the Legislature established a cure procedure for certain defects—a voter's initial lack of proof of identity," App. Br. 32, but the procedure they identify does not apply to *ballot* defects; it applies to *application* defects. When the county board receives an application for a mail ballot, it must "determine the qualifications of the applicant by verifying the proof of identification." 25 P.S. § 3150.12b(a). If proof of identification cannot be verified upon application, the Code establishes specific requirements as to when and how the putative elector must confirm that they are in fact eligible to vote. *See* 25 P.S. § 3146.8(h). But the Code is completely silent on what should be done when a county board receives a ballot that clearly cannot be counted. In the absence of a clear command in the text, this Court should not presume that

the Legislature intended to prohibit county boards from allowing voters to correct errors with their mail ballots so that their votes may be counted.

b) *The Election Code does not require all received ballots to be locked away undisturbed until the canvass.*

Petitioners argue for the first time on appeal that 25 P.S. § 3146.8(a) "spells out precisely what Boards must do upon receipt of absentee and mail-in ballots." Even if this argument were not waived (which it is), the identified provision does not prohibit boards from implementing notice or cure procedures. Petitioners emphasize that this provision states that boards "shall keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections," App. Br. at 36, and argue that it is therefore "'inconsistent with law' for Boards to do anything else." This argument suffers from two flaws.

First, in context this provision directs boards to securely maintain ballots—not to literally keep them in a container until the moment the canvass begins. The provision cannot mean that nothing else may be done with the ballots until the canvass because 25 P.S. § 3146.8(g) directs boards to *pre*-canvass mail ballots. "Canvass" and "pre-canvass" are distinct defined terms; the canvass occurs "after the final pre-canvass meeting." 25 P.S. § 2602(a.1). Boards would have great difficulty complying with their

obligation to pre-canvass ballots if mail ballots must be locked away until the canvass, which must occur after the pre-canvass.

Second, this provision can reasonably be interpreted as applying only to ballots that are (or appear to be) properly completed. The relevant text of the statute says:

> "The county board of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes **as provided under this article** and mail-in ballots as in sealed official mail-in ballot envelopes **as provided under Article XIII-D**, shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections." 25 P.S. § 3146.8(a) (emphasis added).

Here, the phrase "as provided under" makes the statute ambiguous. This Court has previously analyzed the nearly identical phrase "as provided by law," and identified the phrase's inherent ambiguity: because "'provided' . . . is a conjunction meaning 'on the condition [of],'" the phrase "as provided under" "could reasonably mean [either] as defined by law" or, alternatively, "'contingent on' or 'subject to' law." *Commonwealth v. McClelland*, 233 A.3d 717, 735 (Pa. 2020). The phrase's recognized ambiguity means that Section 3146.8(a) can be reasonably read as establishing requirements for the receipt of ballots "contingent on" those ballots' compliance with the identified articles.

For example, if a board receives a mail-in ballot as to which the voter clearly has failed to "fill out, date and sign the declaration" required by Article XIII-D, the board reasonably could conclude that it was not in "receipt of . . . [a] mail-in ballot[] as in [a] sealed official mail-in ballot envelope as provided under Article XIII-D" and take appropriate steps consistent with the Election Code's overriding purpose of vindicating the right to vote. At a minimum, a board of elections worker handed a facially deficient ballot envelope must be able to hand it back to the voter and say, "You forgot to sign this." But if Petitioners are correct, even so minor a remedial measure would be impermissible. This is flatly inconsistent with the principle that where the Code is "open to reasonable yet opposing interpretations," *McClelland*, 233 A.3d at 735, this Court should apply its canons "so as not to deprive" voters of their rights. *Pa. Democratic Party*, 238 A.3d at 356.

c) *Cure procedures are not pre-canvassing.*

Petitioners next argue, again for the first time on appeal, that boards that implement cure procedures are unlawfully "pre-canvassing absentee and mail-in ballots before the Election Code allows them to do so." App. Br. at 38. Even if this argument were not waived (which it is), it relies on a selective misreading of the defined term "pre-canvass." Petitioners' argument rests on the premise that "Under the Election Code, 'pre-canvass'

includes 'the inspection . . . of all envelopes containing official absentee ballots or mail-in ballots.'" App. Br. at 37 (emphasis added). But that's not what the statute says. Instead, under the Election Code "'pre-canvass' *shall mean* the inspection *and opening* of all envelopes containing official absentee ballots or mail-in ballots." 25 P.S. § 2602(q.1) (emphasis added). No board is opening any ballot envelope as part of their cure procedure; therefore no board is engaging in a pre-canvass as defined by the statute. Boards' authority to implement procedures "not inconsistent with law" means they must act within the law as established by the Legislature, not as rewritten by Petitioners.

d) *Curing through provisional voting is not perjury.*

Petitioners next argue, yet again for the first time on appeal, that cure procedures involving provisional voting suborn perjury. Even if this argument were not waived (which it is), a voter casting a provisional ballot because their mail ballot will not be counted is not committing perjury. Petitioners' argument relies on their interpretation of the term "cast" as used on the provisional ballot affidavit. Under their interpretation, anyone who has sent a mail ballot to their local board has "cast" a ballot and therefore cannot lawfully vote a provisional ballot, and "[w]hether a ballot is valid and able to be counted has no bearing on whether the vote was 'cast.'" App. Br. at 41 n.7.

This rigid interpretation cannot be squared with other provisions of the Election Code.

For example, as Petitioners acknowledge, 25 P.S. § 3150.13(e) allows "a voter who receives a mail-in ballot . . . and whose voted mail-in ballot is not timely received" to vote on election day by provisional ballot. *See* App. Br. at 40 n.6 ("Likewise, those voters whose absentee or mail-in ballot 'is not timely received' by the Board may also vote via provisional ballot."). But a voter who sends their ballot in close to election day may not know whether their ballot has been timely received. According to Petitioners' interpretation, a voter who sends in their ballot two days before an election but is concerned that it will not arrive in time cannot cast a provisional vote without committing a crime—even though their provisional ballot will be counted if the mail ballot is not timely received by the board. *See* 25 P.S. § 3050. The Legislature cannot have intended to entrap mail voters by authorizing them to vote a provisional ballot if their mail ballot is not timely received but also making it a crime to do so, but that is what Petitioners' theory requires.

Petitioners' perjury argument likewise fails to account for the treatment of ballots bearing identifying information. Under the Election Code, "[i]f any of the envelopes on which are printed, stamped or endorsed the words 'Official Election Ballot' contain any text, mark or symbol which reveals the

identity of the elector . . . the ballots contained therein shall be set aside *and declared void*." 25 P.S. § 3146.8(g)(4)(ii). Something that is void has "no legal effect." VOID, Black's Law Dictionary (11th ed. 2019); *see also M & P Mgmt., L.P. v. Williams*, 937 A.2d 398, 401 (Pa. 2007) ("a void judgment is no judgment at all") (quoting *Clarion, M. & P. R. Co. v. Hamilton*, 127 Pa. 1, 3, 17 A. 752 (1889)). If a voter's mail ballot is void, it cannot have the legal effect of preventing the voter from casting a countable ballot.

e) *County boards can lawfully implement procedures that differ from those of other boards.*

Finally, Petitioners invoke the Pennsylvania Constitution's requirement that "[a]ll laws regulating the holding of elections by the citizens . . . shall be uniform throughout the State" in an attempt to manufacture a conflict between cure procedures and the law. App. Br. at 42 (quoting PA. Const. art. VII, § 6; *Kuznik v. Westmoreland Cnty. Bd. of Comm'rs*, 902 A.2d 476, 492 (Pa. 2006)). But "to be uniform in the constitutional sense," laws simply "must treat all persons in the same circumstances alike." *Kuznik*, 902 A.2d at 491. And "[a] law is general and uniform, not because it operates upon every person in the state, but because every person brought within the relations provided for in the statute is within its provisions." *Winston v. Moore*, 91 A. 520, 524 (Pa. 1914). Petitioners make no meaningful allegation that any

county boards' procedures lack uniformity when applied to voters "within their respective counties." 25 P.S. § 2642(f).

Nor do their attempts to tether their arguments to the Election Code fare any better. The very section of the Election Code Petitioners point to clearly states (though Petitioners curiously omit it from their recitation of the Code): "The county boards of elections, ***within their respective counties***, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act." 25 P.S. § 2642. This is precisely what the county boards are doing—acting within the boundaries of the Code within their respective counties. That natural deviations occur as each county allocates its own resources in service to the unique needs of its voters is neither constitutionally nor statutorily wrong.

Just as this Court refused to impose a requirement not promulgated by the General Assembly in *Pennsylvania Democratic Party*, it should refuse to impose a *prohibition* now where the statute is again silent. The Election Code allows boards to implement procedures "not inconsistent" with law, and Petitioners cannot demonstrate that providing eligible voters with the opportunity to have their votes counted violates the Election Code.

B. Petitioners have not alleged any immediate and irreparable harm.

None of the purported injuries Petitioners claim will result from allowing lawful, eligible voters to cure minor, facial defects on their ballots are cognizable or otherwise sufficient to support a cause of action, much less a preliminary injunction. Their arguments to the contrary should be rejected.

First, Petitioners cannot demonstrate "per se immediate and irreparable harm," App. Br. at 45–47; RR at 128a (PI Mem. at 14), because, as explained, *supra* Section III(A), county boards have not committed any clear violation of law. *Brewneer Realty Two, LLC v. Catherman*, 276 A.3d 267 (Pa. Super. Ct. 2022); Mem. Op. at 47–49. Petitioners brazenly exaggerate *Pennsylvania Democratic Party*, asserting that this Court "has already held that [] cure procedure[s] . . . *must* come from the Legislature." App. Br. at 46 (emphasis added). But, as explained above, that was not this Court's holding, so it cannot serve as the basis for Petitioners' alleged violation of law that "per se constitutes immediate and irreparable harm." *See* App. Br. at 46 (citing *Hempfield Sch. Dist. v. Election Bd. Of Lancaster Cnty.*, 574 A.2d 1190, 1191 (Pa. Cmwlth. 1990), which found a clear violation of law based on the board of elections acting contrary to *express requirements* of a statute); *see also* Mem. Op. at 46–48.

Nor can Petitioners establish that they are actually harmed in any cognizable way by the possibility of eligible voters in some counties being allowed to cure their ballots. As explained above, *supra* Section II, complaining that the law is not being followed, without more, is "precisely the kind of undifferentiated, generalized grievance" that cannot give rise to a cognizable injury. *Coffman*, 549 U.S. at 442. Petitioners fail to identify any particular harm to show that they are actually negatively impacted in some way.

While Petitioners *speculate* that Republican Voter Petitioners "suffer the risk of having votes being treated unequally," App. Br. at 47; RR at 130a (PI Mem. at 16), they stop short of alleging that any Republican Voter Petitioners' mail ballots will be rejected, or that they will be denied an opportunity to cure defects—or even that they have ever voted (or plan to vote) by mail. *See, e.g.*, RR at 15a–17a (Pet. ¶¶ 20–36); *see also Novak v. Commonwealth*, 523 A.2d 318, 320 (Pa. 1987) (rejecting speculative considerations as legally insufficient to support preliminary injunction); *Sameric Corp. of Mkt. St. v. Goss*, 295 A.2d 277, 279 (Pa. 1972) (same). Petitioners' complaint that the "Commonwealth Court largely ignores these harms" overlooks that its "focus[] on federal court decisions involving Equal Protection claims" is directly applicable to—and rejects—their alleged harms

stemming from "disuniform election administration." App. Br. at 48; Mem. Op. at 24 n.15 (explaining that "[f]ederal courts have previously rejected the notion that variations in notice and opportunity to cure procedures from county to county violate equal protection principles"). Even if this were a valid injury, the solution to it would not be to order that other voters' ballots be rejected.

Moreover, county boards have "broad authority" to administer elections "within their respective counties," Mem. Op. at 9; 25 P.S. § 2642, and election procedures have always differed from one county to another because "[e]ach county has its own voting system."[6] A holding that differences in election administration across counties create a cognizable harm would not only run afoul of existing caselaw and upend Pennsylvania's longstanding county-based election administration status quo, it would cast undue suspicion over the way elections are administered nationwide. This Court should reject Petitioners' attempts to circumvent longstanding precedent based on a purported injury that has been rejected time and again by courts around the

[6] Pa. Dep't of State, *Voting in PA*, DOS Voting & Election Information, https://www.vote.pa.gov/Voting-in-PA/Pages/default.aspx (last accessed Oct. 6, 2022).

country. *See, e.g.*, *DJT II*, 830 F. App'x at 388 ("Reasonable county-to-county variation is not discrimination.")[7]

Petitioners further speculate that the lack of "publicly disclosed" information on cure procedures causes Republican Committee Petitioners to be "unable to properly educate their members regarding the rules applicable to mail-in and absentee ballots," App. Br. at 47, but this type of speculation is not a sufficient harm. Mem. Op. at 46, 49–50 (citing *Kiddo v. Am. Fed'n of State*, 239 A.3d 1141 (Pa. Cmwlth. 2020)). And even if it were, it cannot be reconciled with the broad injunction Petitioners seek. Mem. Op. at 49. Such an injury is, in fact, *reparable*; it can be entirely redressed by far less intrusive remedies like ensuring publication of cure procedures, or by simply requesting such information from county boards. *See infra* Section III(E).

C. Greater injury would result from granting than refusing the injunction.

The harm that would be caused by a last-minute disruption of existing voting procedures, and the resulting rejection of the mail ballots of potentially

[7] Petitioners' Petition below alleged only that cure procedures should be enjoined for violating the Election Code and the Elections Clause of the U.S. Constitution. *See* RR at 30a–34a (Pet. ¶¶ 86–103). Therefore, purported injuries resulting from variation in county procedures across the Commonwealth—like the new arguments they raise only on appeal—are also not properly before this Court, *Ioannidis v. Wolf*, 260 A.3d 1091, 2021 WL 2834611 at *3 n.5 (Pa. Cmwlth. 2021); *Pa. Med. Providers Ass'n v. Foster*, 613 A.2d 51, 53 n.3 (Pa. Cmwlth 1992).

thousands of eligible Pennsylvania voters, far outweighs the speculative and abstract injuries that Petitioners assert. Petitioners' failure to establish immediate and irreparable harm, *supra* Section III(B), all but forecloses their ability to show greater injury would result from refusing than granting the injunction. And despite claiming to make no equal protection arguments, App. Br. at 48, Petitioners premise their request for relief on the theory that it "will prevent the disparate treatment" of "two classes of voters," App. Br. at 49—an argument foreclosed by ample precedent.

Petitioners' claim that an injunction would cause Respondents "little . . . harm" and "save Boards money," App. Br. at 50, ignores that long established cure procedures cannot be undone with the flip of a switch. Instead, time and resources would need to be expended to hastily undo protocols amid active reliance on those protocols by Respondents, Intervenor-Respondents, and voters. *See Summit Towne Ctr. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). This is why forcing county boards to change longstanding practices while voting is underway "would seriously harm the public interest and orderly administration of elections" and would "result[] in almost certain disenfranchisement of voters." Mem. Op. at 43.

Further, Petitioners' efforts to obfuscate the disenfranchising impact of their proposed injunction can and should be easily rejected. First, their hyperbolic claim that revoking wide-reaching cure procedures mid-election is the same as this Court refusing to *require* statewide cure procedures once again misarticulates the holding of *Pennsylvania Democratic Party*, where this Court refused to alter the status quo—the opposite of what Petitioners seek here. *See* App. Br. at 51–52. Similarly, Petitioners' unsavory assertion that this Court was "perfectly comfortable" with eligible voters having their ballots rejected for minor, correctable errors is not supported by the opinion. *See* App. Br. at 52 (citing *Pa. Democratic Party*, 238 A.3d at 374). Finally, regardless of whether voters "rely on the ability to cure their ballots," App. Br. at 52–53, enjoining county boards from lawfully permitting eligible voters to do so will result in the disqualification of ballots that otherwise would have been lawfully counted (*i.e.*, disenfranchisement).

Finally, the last-minute nature of Petitioners' request will only exacerbate the resulting injuries if it is granted. Petitioners' inexcusable delay in bringing this claim and the resulting prejudice to Respondents, Intervenor-Respondents, and Pennsylvania voters outweighs the abstract and speculative harms Petitioners claim and underscores why the equitable, preliminary injunctive relief they seek is improper. Therefore, "with regard to

proportionate harm, . . . the balance of harms actually favor[s]" Respondents and Intervenor-Respondents, "as [Petitioners'] speculative harm pale[s] in comparison" to forcing Respondents and Intervenor-Respondents to hastily change procedures and try to prevent voter disenfranchisement. *See Summit Towne Ctr.*, 828 A.2d at 1002.

D. A preliminary injunction would alter the status quo.

Petitioners' effort to enjoin boards' cure procedures would undo the status quo that preliminary injunctions are meant to maintain. As the Commonwealth Court correctly noted, if preliminary relief were granted "County Boards would then have to modify their practices and procedures in response to the injunction **when absentee and mail-in voting is already underway.**" Mem. Op. at 10 (emphasis in original). Petitioners acknowledge that "[t]he status quo to be maintained by a preliminary injunction is the last actual, peaceable and lawful noncontested status which preceded the pending controversy," App. Br. at 53–54 (quoting *Allegheny Anesthesiology Assocs. v. Allegheny Gen. Hosp.*, 826 A.2d 886, 894 (Pa. Super. 2003)), and that when "the grant of relief necessitates a change in status at the time a court grants injunctive relief . . . the relief must not change the status that existed between the parties just before the conflict between them arose." App. Br. at 54 (quoting *Hatfield Twp. v. Lexon Ins. Co.*, 15 A.3d 547, 556 n.6

(Pa. Cmwlth. 2011)). Yet Petitioners seek to disrupt procedures that county boards currently use—and have used for years—to ensure that eligible voters can correct minor deficiencies in their ballots.

Petitioners argue that the status quo ante is that which existed before *any* board adopted a cure procedure. App. Br. at 56; RR at 134a (PI Mem. at 20). But that was not the status "just before," or even *years before*, this action. The record confirms that county boards have been giving voters notice and an opportunity to cure since at least 2020, RR at 40a–46a, 56a–57a (Pet. Exs. B, C, D, G); *see also* RR at 24a (Pet. ¶¶ 65–66), and one county has contacted voters with defective mail ballots since 2010. RR at 505a (Joint Stip. of Fact at 2). This action was initiated on September 1, 2022. Petitioners cannot plausibly claim that a preliminary injunction would maintain the status quo when it would require county boards to change policies that have been in place through at least five election cycles.

As Petitioners repeatedly emphasize, *e.g.*, RR at 21a (Pet. ¶ 47); RR at 82a–83a (Pets.' App. for Prelim. Inj. ¶ 17); RR at 136a (PI Mem. at 22); App. Br. at 11, 29, this Court's rationale for refusing to *require* cure procedures throughout the Commonwealth included "the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed,

and how the procedure would impact the confidentiality and counting of ballots." *Pa. Democratic Party*, 238 A.3d at 374. But what Petitioners fail to acknowledge is that the counties that employ cure procedures have addressed these questions in conformance with the particular needs of their county, as authorized by the Election Code. 25 P.S. § 2642(f). Any injunction will alter this status quo and force these counties to chaotically revise their thoughtfully developed procedures while in the middle of administering absentee and mail-in voting.

E. The requested preliminary injunction is not reasonably suited to abating the allegedly offending activity.

Petitioners have also "not shown that the injunction is reasonably suited to abate the offending activity." Mem. Op. at 45; *see also Woods at Wayne Homeowners Ass'n v. Gambone Bros. Constr. Co.*, 893 A.2d 196, 207 (Pa. Cmwlth. 2006) (courts "must fashion a remedy reasonably suited to abate the [alleged] harm."); *Crowe v. Sch. Dist. of Pittsburgh*, 805 A.2d 691, 694 (Pa. Cmwlth. 2002) (any injunction "must be narrowly tailored to address the wrong plead and proven"). They seek a sweeping "statewide injunction enjoining *all* 67 County Boards from developing and implementing 'unlawful' [notice-and-cure procedures], as well as the Acting Secretary from taking any action inconsistent with such injunction." Mem. Op. at 45. But as demonstrated above, *supra* Section III(A), and as the Commonwealth Court

correctly held, Petitioners failed to "allege[] a clear violation of the Election Code or the law interpreting it" so there is no "unlawful" activity for the Court to correct. Mem. Op. at 45.

Moreover, Petitioners fail to even explain what specific practices they challenge, which specific counties they allege are engaging in wrongdoing, or even what the scope of "notice" and "cure" is. This omission dismantles any claim that the requested injunction "has no impact on many County Boards," because all 67 county boards will have to assess whether any of their protocols might be considered "unlawful cure procedures." *See* App. Br. at 57. Indeed, lacking clarity on what exactly "unlawful cure procedures" are means that no court can craft a meaningful preliminary injunction order. The ambiguity regarding which cure procedures Petitioners seek to enjoin is exacerbated by the lack of clarity regarding which counties employ cure procedures and the specifics of those that do. Although the County Respondents' Joint Stipulation of Facts provided valuable insights on these questions, it omitted information regarding over a third of Pennsylvania's counties, so the full scope of the proposed injunction is still unknown. *See generally* RR at 504a–525a (Joint Stip. of Facts).[8]

[8] The Joint Stipulation does not provide information about Armstrong, Cambria, Carbon, Clearfield, Clinton, Crawford, Elk, Forest, Fulton, Greene,

Petitioners have also failed to "sufficiently allege[] what, if any, type of action the Acting Secretary might take in the event this Court granted the requested relief in this case," Mem. Op. at 45, creating further barriers to crafting a meaningful order. Finally, any supposed harm to Petitioners that is caused by a lack of clarity as to the cure procedures in each county can be easily remedied by requiring boards to publish the information. Preventing votes from being counted for the sake of clarity is neither proportional nor reasonably suited to abate Petitioners' purported informational harm.

F. Issuance of a preliminary injunction would substantially harm the public interest.

Courts considering whether to grant "the extraordinary remedy of injunction" pay special attention to the "public consequences" and, where a preliminary injunction "will adversely affect a public interest," it should not be granted. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (internal quotations and citations omitted). The "sweeping relief" Petitioners seek "would seriously harm the public interest and orderly administration of

Lackawanna, Lancaster, McKean, Mercer, Mifflin, Monroe, Montour, Perry, Pike, Potter, Schuylkill, Warren, Washington, or Wayne Counties. Although the Joint Stipulation indicates that only 12 of Pennsylvania's 67 counties intend to employ cure procedures in 2022 (Adams, Allegheny, Bucks, Erie, Lehigh, Lycoming, Luzerne, Montgomery, Northampton, Philadelphia, Tioga, and Union), they include many of the most populous counties in the Commonwealth.

elections, namely the 2022 General Election, which is already well underway." Mem. Op. at 43. Voting is a fundamental right. "It is [therefore] . . . a well-settled principle of Pennsylvania election law that '[e]very 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 Gen. Election*, 241 A.3d 1058, 1071 (Pa. 2020), *cert. denied sub nom. Donald J. Trump for President, Inc. v. Degraffenreid*, 141 S. Ct. 1451 (2021); *see also* Mem. Op. at 30–31 ("any doubt about whether the Election Code authorizes County Boards to implement notice and cure procedures must be resolved in favor of preventing inadvertent forfeiture of electors' right to vote.").

If Petitioners' relief is granted, voters who would otherwise be able to cure their ballots of minor defects and exercise their fundamental right to "elect a candidate of their choice" will be disenfranchised. *Pa. Democratic Party*, 238 A.3d at 356; *see also* Mem. Op. at 30–31. The public interest is not served by preventing lawful residents from voting, especially when legitimate processes are, and have been, in place to allow a greater number of eligible citizens to vote while simultaneously ensuring their ballots conform with state voting requirements.

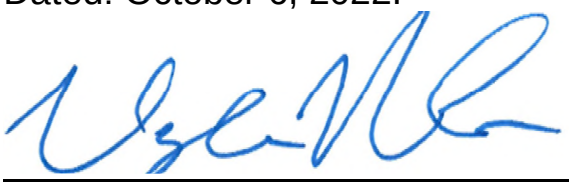
Put simply, far from advancing the interests of justice, granting a last-minute injunction barring ballot cure procedures and requiring county boards to disenfranchise voters whose ballots have minor, facial defects—all while mail voting is well underway, and voters have ballots in hand—disserves the public interest. Petitioners strategically ignore the many "actual harms that will almost certainly occur if the injunction is granted;" their machinations should not be placed above the well-being of all Pennsylvania voters. Mem. Op. at 43–44.

CONCLUSION

For all these reasons, this Court should affirm the Commonwealth Court's Order denying Petitioners' Application for Special Relief in the Form of a Preliminary Injunction on the basis of laches, Petitioners' lack of standing, or Petitioners' failure to meet the standard required to issue preliminary relief.

Dated: October 6, 2022.

Respectfully submitted,



Uzoma N. Nkwonta*
Justin Baxenberg*
Alexander F. Atkins*
Daniela Lorenzo*
ELIAS LAW GROUP LLP

/s/ Timothy J. Ford
Timothy J. Ford (Pa. Id. No. 325290)
Claire Blewitt Ghormoz (Pa. Id. No. 320816)
DILWORTH PAXSON LLP
1500 Market Street, Suite 3500E

10 G St. NE, Suite 600
Washington, D.C. 20002
Telephone: (202) 968-4490
unkwonta@elias.law
jbaxenberg@elias.law
aatkins@elias.law
dlorenzo@elias.law

Philadelphia, PA 19102
Telephone: (215) 575-7000
Facsimile: (215) 575-7200
tford@dilworthlaw.com
cghormoz@dilworthlaw.com

Adam C. Bonin
THE LAW OFFICE OF ADAM C. BONIN
121 South Broad Street, Suite 400
Philadelphia, PA 19107
Telephone: (267) 242-5014
Facsimile: (215) 827-5300
adam@boninlaw.com

Attorneys for Intervenor-Respondents/Appellees DSCC & DCCC

** Admitted Pro Hac Vice*

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I, Timothy J. Ford, certify that this filing contains fewer than 14,000 words as prescribed by Pa.R.A.P. 2135.

Submitted by:

Timothy J. Ford

Signature:

/s/ Timothy J. Ford

Attorney No. (if applicable):

325290

Date:

October 6, 2022

CERTIFICATE OF COMPLIANCE WITH P.a. R.A.P. 127

I, Timothy J. Ford, 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.

Submitted by:

Timothy J. Ford

Signature:

/s/ Timothy J. Ford

Attorney No. (if applicable):

325290

Date:

October 6, 2022

IN THE SUPREME COURT OF PENNSYLVANIA

Republican National Committee; National Republican 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, Appellants	:	100 MAP 2022
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 County Board of Elections; Greene County Board of Elections; Huntingdon County Board of Elections; Indiana County Board of Elections; Jefferson County Board of Elections; Juniata County Board of Elections; Lackawanna County Board of Elections; Lancaster County Board of Elections; Lawrence County Board of Elections; Lebanon County Board of Elections; Lehigh County Board of Elections; Luzerne County Board of Elections; Lycoming County Board of Elections; McKean County Board of Elections; Mercer County Board of Elections; Mifflin County Board of Elections; Monroe County Board of Elections; Montgomery County Board of Elections; Montour County Board of Elections; Northampton		

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

I hereby certify that this 6th day of October, 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 SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Service

Served:	Adam R. Roseman
Service Method:	eService
Email:	Rosemana@gtlaw.com
Service Date:	10/6/2022
Address:	1500 Locust Street, Apt. 1713 Philadelphia, PA 19102
Phone:	215--98-8-7826
Representing:	Appellee Pennsylvania Democratic Party Appellee Pennsylvania Democratic Party

Served:	Aimee Diane Thomson
Service Method:	eService
Email:	aimee.thomson@phila.gov
Service Date:	10/6/2022
Address:	1515 Arch St. 15th Floor Philadelphia, PA 19102
Phone:	215-683-5439
Representing:	Appellee Philadelphia County Board of Elections

Served:	Allan Joseph Opsitnick
Service Method:	eService
Email:	aopsitnick@opsitnickslaw.com
Service Date:	10/6/2022
Address:	564 Forbes Avenue #1301 Pittsburgh, PA 15219
Phone:	412-.39-1.3299
Representing:	Appellee Allegheny County Board of Elections

Served:	Amy Melaugh Fitzpatrick
Service Method:	eService
Email:	amfitzpatrick@buckscounty.org
Service Date:	10/6/2022
Address:	55 East Court Street Doylestown, PA 18901
Phone:	215-348-6008
Representing:	Appellee Bucks County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Andrew W. Norfleet
Service Method:	eService
Email:	awn@norlaflaw.com
Service Date:	10/6/2022
Address:	225 Market Street Suite 304 Harrisburg, PA 17101
Phone:	(71-7) -233-6633
Representing:	Appellee Perry County Board of Elections

Served:	Anna Skipper Jewart
Service Method:	eService
Email:	askipper@babstcalland.com
Service Date:	10/6/2022
Address:	603 Stanwix Street 6th Floor Pittsburgh, PA 15222
Phone:	412-699-6118
Representing:	Appellee Bedford County Board of Elections Appellee Carbon County Board of Elections Appellee Centre County Board of Elections Appellee Columbia County Board of Elections Appellee Dauphin County Board of Elections Appellee Fayette County Board of Elections Appellee Huntingdon County Board of Elections Appellee Indiana County Board of Elections Appellee Jefferson County Board of Elections Appellee Lawrence County Board of Elections Appellee Lebanon County Board of Elections Appellee Northumberland County Board of Elections Appellee Snyder County Board of Elections Appellee Venango County Board of Elections Appellee York County Board of Elections

Served:	Anthony V. Clarke
Service Method:	eService
Email:	theclarkefirm@yahoo.com
Service Date:	10/6/2022
Address:	204 Bolivar Drive Bradford, PA 16701
Phone:	814-363-9990
Representing:	Appellee McKean County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Armstrong County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	450 East Market Street Kittanning, PA 16201
Phone:	--
Pro Se:	Appellee Armstrong County Board of Elections

Served:	Beaver County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	810 Third Street Beaver, PA 15009
Phone:	--
Pro Se:	Appellee Beaver County Board of Elections

Served:	Benjamin Hirsch Field
Service Method:	eService
Email:	benjamin.field@phila.gov
Service Date:	10/6/2022
Address:	City of Philadelphia Law Department 1515 Arch Street, 15th Floor Philadelphia, PA 19102
Phone:	215-683-5024
Representing:	Appellee Philadelphia County Board of Elections

Served:	Bradford County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	6 Court Street Suite 2 Towanda, PA 18848
Phone:	--
Pro Se:	Appellee Bradford County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Brian J. Taylor
Service Method:	eService
Email:	btaylor@kingspry.com
Service Date:	10/6/2022
Address:	King, Spry, Herman, Freund & Faul One West Broad St., Ste. 700 Bethlehem, PA 18018
Phone:	610--33-2-0390
Representing:	Appellee Northampton County Board of Elections

Served:	Cameron County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	20 East 5th Street Emporium, PA 15834
Phone:	--
Pro Se:	Appellee Cameron County Board of Elections

Served:	Casey Alan Coyle
Service Method:	eService
Email:	ccoyle@babstcalland.com
Service Date:	10/6/2022
Address:	Babst, Calland, Clements and Zomnir, P.C. Two Gateway Center, 603 Stanwix Street, 6th Floor Pittsburgh, PA 15222
Phone:	267-939-5832
Representing:	Appellee Bedford County Board of Elections Appellee Carbon County Board of Elections Appellee Centre County Board of Elections Appellee Columbia County Board of Elections Appellee Dauphin County Board of Elections Appellee Fayette County Board of Elections Appellee Huntingdon County Board of Elections Appellee Indiana County Board of Elections Appellee Jefferson County Board of Elections Appellee Lawrence County Board of Elections Appellee Lebanon County Board of Elections Appellee Northumberland County Board of Elections Appellee Snyder County Board of Elections Appellee Venango County Board of Elections Appellee York County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Catharine Meade Roseberry
Service Method:	eService
Email:	catharineroseberry@lehighcounty.org
Service Date:	10/6/2022
Address:	17 S. 7th Street Allentown, PA 18101
Phone:	610-782-3180
Representing:	Appellee Lehigh County Board of Elections

Served:	Christopher P. Furman
Service Method:	eService
Email:	cfurman@gabrielfera.com
Service Date:	10/6/2022
Address:	1010 Western Ave Suite 200 Pittsbrugh, PA 15233
Phone:	412-223-5816
Representing:	Appellee Clarion County Board of Elections Appellee Susquehanna County Board of Elections Appellee Tioga County Board of Elections

Served:	Clifford B. Levine
Service Method:	eService
Email:	clifford.levine@dentons.com
Service Date:	10/6/2022
Address:	Dentons Cohen & Grigsby P.C. 625 Liberty Avenue Pittsburgh, PA 15222-3152
Phone:	412-297-4998
Representing:	Appellee Democratic National Committee Appellee Democratic National Committee Appellee Pennsylvania Democratic Party Appellee Pennsylvania Democratic Party

Served:	Clinton County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	2 Piper Way Suite 309 Lock Haven, PA 177450928
Phone:	--
Pro Se:	Appellee Clinton County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Cody Lee Kauffman
Service Method:	eService
Email:	CKauffman@countyofberks.com
Service Date:	10/6/2022
Address:	633 Court Street 13th Floor Reading, PA 19601
Phone:	(61-0) -478-6105
Representing:	Appellee Berks County Board of Elections

Served:	Colleen Mary Frens
Service Method:	eService
Email:	hughesck@gmail.com
Service Date:	10/6/2022
Address:	313 W. Market Street West Chester, PA 19382
Phone:	484-319-7842
Representing:	Appellee Chester County Board of Elections

Served:	Crawford County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	903 Diamond Park Meadville, PA 16335
Phone:	--
Pro Se:	Appellee Crawford County Board of Elections

Served:	Daniel Donovan Grieser
Service Method:	eService
Email:	ddgrieser@buckscounty.org
Service Date:	10/6/2022
Address:	55 East Court Street, 5th Floor DOYLESTOWN, PA 18901
Phone:	215-348-6548
Representing:	Appellee Bucks County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Dimitrios Mavroudis
Service Method:	eService
Email:	dmavroudis@tlgattorneys.com
Service Date:	10/6/2022
Address:	Tucker Law Group 1801 Market Street, Suite 2500 Philadelphia, PA 19103
Phone:	215-875-0609
Representing:	Appellee Jessica Mathis Appellee Leigh M. Chapman

Served:	Donald Kenneth Zagurskie
Service Method:	eService
Email:	JZLAWDONZ@GMAIL.COM
Service Date:	10/6/2022
Address:	117 Main Street PO Box O Mifflin, PA 17058
Phone:	717-436-8044
Representing:	Appellee Juniata County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Elizabeth A. Dupuis
Service Method:	eService
Email:	bdupuis@babstcalland.com
Service Date:	10/6/2022
Address:	330 Innovation Boulevard Suite 302 State College, PA 16803
Phone:	814--86-7-8055
Representing:	Appellee Bedford County Board of Elections Appellee Carbon County Board of Elections Appellee Centre County Board of Elections Appellee Columbia County Board of Elections Appellee Dauphin County Board of Elections Appellee Fayette County Board of Elections Appellee Huntingdon County Board of Elections Appellee Indiana County Board of Elections Appellee Jefferson County Board of Elections Appellee Lawrence County Board of Elections Appellee Lebanon County Board of Elections Appellee Northumberland County Board of Elections Appellee Snyder County Board of Elections Appellee Venango County Board of Elections Appellee York County Board of Elections

Served:	Elizabeth Pidcock Lester-Abdalla
Service Method:	eService
Email:	elester-abdalla@attorneygeneral.gov
Service Date:	10/6/2022
Address:	1328 Polo Run Dr. Yardley, PA 19067
Phone:	484-942-6679
Representing:	Appellee Jessica Mathis Appellee Leigh M. Chapman

Served:	Elk County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	300 Centre Street Ridgway, PA 158530448
Phone:	--
Pro Se:	Appellee Elk County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Emma Frances Elizabeth Shoucair
Service Method:	eService
Email:	emma.shoucair@dentons.com
Service Date:	10/6/2022
Address:	625 Liberty Ave Pittsburgh, PA 15222
Phone:	412-417-1889
Representing:	Appellee Democratic National Committee Appellee Democratic National Committee Appellee Pennsylvania Democratic Party Appellee Pennsylvania Democratic Party

Served:	Faith Anne Mattox-Baldini
Service Method:	eService
Email:	fmattoxbaldini@chesco.org
Service Date:	10/6/2022
Address:	313 W. Market Street Suite 6702 West Chester, PA 19380
Phone:	610-344-6195
Representing:	Appellee Chester County Board of Elections

Served:	Forest County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	526 Elm Street Unit #3 Tionesta, PA 16353
Phone:	--
Pro Se:	Appellee Forest County Board of Elections

Served:	Frank J. Lavery Jr.
Service Method:	eService
Email:	flavery@laverylaw.com
Service Date:	10/6/2022
Address:	225 Market Street 304 Harrisburg, PA 17101
Phone:	717--23-3-6633
Representing:	Appellee Perry County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Franklin County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	272 North Second Street Chambersburg, PA 17201
Phone:	--
Pro Se:	Appellee Franklin County Board of Elections

Served:	Fulton County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	116 West Market Street Suite 205 McConnellsburg, PA 17233
Phone:	--
Pro Se:	Appellee Fulton County Board of Elections

Served:	George M. Janocsko
Service Method:	eService
Email:	george.janocsko@alleghenycounty.us
Service Date:	10/6/2022
Address:	300 Fort Pitt Commons Building 445 Fort Pitt Boulevard Pittsburgh, PA 15219
Phone:	412--35-0-1132
Representing:	Appellee Allegheny County Board of Elections

Served:	Greene County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	Room 102 - County Office Building 93 East High Street Waynesburg, PA 15370
Phone:	--
Pro Se:	Appellee Greene County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	H. William White III
Service Method:	eService
Email:	wwhite@co.butler.pa.us
Service Date:	10/6/2022
Address:	124 West Diamond St PO Box 1208 Butler, PA 16003
Phone:	(72-4) -284-5100
Representing:	Appellee Butler County Board of Elections

Served:	Heather Lynn Bozovich
Service Method:	eService
Email:	heatherbozovich@gmail.com
Service Date:	10/6/2022
Address:	114 S. 2nd Street Clearfield, PA 16830
Phone:	814--29-0-0566
Representing:	Appellee Clearfield County Board of Elections

Served:	Jacob Biehl Boyer
Service Method:	eService
Email:	jboyer@attorneygeneral.gov
Service Date:	10/6/2022
Address:	1600 Arch Street Suite 300 Philadelphia, PA 19103
Phone:	267-768-3968
Representing:	Appellee Jessica Mathis Appellee Leigh M. Chapman

Served:	James Manly Parks
Service Method:	eService
Email:	JMParks@duanemorris.com
Service Date:	10/6/2022
Address:	30 south 17th street philadelphia, PA 19103
Phone:	215--97-9-1342
Representing:	Appellee Delaware County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	James V. Fareri
Service Method:	eService
Email:	JFareri@newmanwilliams.com
Service Date:	10/6/2022
Address:	712 Monroe Street Stroudsburg, PA 18360
Phone:	570--42-1-9090
Representing:	Appellee Monroe County Board of Elections

Served:	Jana Phillis Grimm
Service Method:	eService
Email:	jpgrimm@vorys.com
Service Date:	10/6/2022
Address:	Vorys Sater Seymour and Pease LLP 500 Grant St., Suite 4900 Pittsburgh, PA 15219
Phone:	412-904-7706
Representing:	Appellee Washington County Board of Elections

Served:	Jennifer B. Hipp
Service Method:	eService
Email:	jhipp@bogarlaw.com
Service Date:	10/6/2022
Address:	1 West Main Street Shiremanstown, PA 17011
Phone:	717--73-7-8761
Representing:	Appellee Cumberland County Board of Elections

Served:	Jessica L. VanderKam
Service Method:	eService
Email:	jvanderkam@stuckertyates.com
Service Date:	10/6/2022
Address:	2 North State Street Newtown, PA 18940
Phone:	215-968-4700
Representing:	Appellee Bucks County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Joe H. Tucker Jr.
Service Method:	eService
Email:	jtucker@tlgattorneys.com
Service Date:	10/6/2022
Address:	Tucker Law Group 1617 JFK Blvd., Suite 1700 Philadelphia, PA 19103
Phone:	215--87-5-0609
Representing:	Appellee Jessica Mathis Appellee Leigh M. Chapman

Served:	John Amos Marlatt
Service Method:	eService
Email:	jmarlatt@montcopa.org
Service Date:	10/6/2022
Address:	One Montgomery Plaza Suite 800, P.O. Box 311 Norristown, PA 19404
Phone:	610-278-3033
Representing:	Appellee Montgomery County Board of Elections

Served:	John B. Dunn
Service Method:	eService
Email:	jdunn@matergiadunn.com
Service Date:	10/6/2022
Address:	919 Main Street Stroudsburg, PA 18360
Phone:	570--42-1-7720
Representing:	Appellee Monroe County Board of Elections

Served:	John Brent Hill
Service Method:	eService
Email:	jbh@hangley.com
Service Date:	10/6/2022
Address:	One Logan Square 27th Floor Philadelphia, PA 19103
Phone:	215--56-8-6200
Representing:	Appellee Jessica Mathis Appellee Leigh M. Chapman

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Jonathan Lee DeWald
Service Method:	eService
Email:	jdewald@mpvhlaw.com
Service Date:	10/6/2022
Address:	433 Market Street Williamsport, PA 17701
Phone:	570-326-6555
Representing:	Appellee Union County Board of Elections

Served:	Joseph Matthias Cosgrove
Service Method:	eService
Email:	jmcosgro@msn.com
Service Date:	10/6/2022
Address:	114 N. Franklin Street Wilkes Barre, PA 18701
Phone:	570--31-3-4172
Representing:	Appellee Luzerne County Board of Elections

Served:	Kathleen A. Gallagher
Service Method:	eService
Email:	kag@glawfirm.com
Service Date:	10/6/2022
Address:	436 Seventh Avenue 31st Floor Pittsburgh, PA 15219
Phone:	412-717-1900
Representing:	Appellant Republican National Committee, et al.

Served:	Kathleen Marie Kotula
Service Method:	eService
Email:	kkotula@pa.gov
Service Date:	10/6/2022
Address:	Room 306 North Office Building 401 North Street Harrisburg, PA 17120-0500
Phone:	(71-7) -783-0736
Representing:	Appellee Jessica Mathis Appellee Leigh M. Chapman

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Kevin Michael Greenberg
Service Method:	eService
Email:	greenbergk@gtlaw.com
Service Date:	10/6/2022
Address:	1717 Arch Street Suite 400 Philadelphia, PA 19103
Phone:	215--98-8-7800
Representing:	Appellee Pennsylvania Democratic Party Appellee Pennsylvania Democratic Party

Served:	Lackawanna County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	123 Wyoming Avenue Second Floor Scranton, PA 18503
Phone:	--
Pro Se:	Appellee Lackawanna County Board of Elections

Served:	Lauren Lynn Mathews
Service Method:	eService
Email:	llmathews@vorys.com
Service Date:	10/6/2022
Address:	500 Grant Street Suite 4900 Pittsburgh, PA 15219
Phone:	724-825-0329
Representing:	Appellee Washington County Board of Elections

Served:	Lisa G. Michel
Service Method:	eService
Email:	lmichel@jblmlaw.com
Service Date:	10/6/2022
Address:	564 Forbes Avenue Pittsburgh, PA 15219
Phone:	412-391-8713
Representing:	Appellee Allegheny County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Lycoming County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	48 West Third Street Williamsport, PA 17701
Phone:	--
Pro Se:	Appellee Lycoming County Board of Elections

Served:	Maureen E. Herron
Service Method:	eService
Email:	mcalder@montcopa.org
Service Date:	10/6/2022
Address:	PO BOX 311 One Montgomery County Norristown, PA 19404
Phone:	610-278-3033
Representing:	Appellee Montgomery County Board of Elections

Served:	Melissa Ann Guiddy
Service Method:	eService
Email:	mguiddylaw@outlook.com
Service Date:	10/6/2022
Address:	527 Austin Street Greensburg, PA 15601
Phone:	724-244-7200
Representing:	Appellee Westmoreland County Board of Elections

Served:	Melvin Eugene Newcomer
Service Method:	eService
Email:	melvinn@epix.net
Service Date:	10/6/2022
Address:	339 North Duke Street PO Box 539 Lancaster, PA 17608
Phone:	717--39-3-7885
Representing:	Appellee Lancaster County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Mercer County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	130 North Pitt Street Suite B Mercer, PA 16137
Phone:	--
Pro Se:	Appellee Mercer County Board of Elections

Served:	Michael John Fischer
Service Method:	eService
Email:	mfischer@attorneygeneral.gov
Service Date:	10/6/2022
Address:	1600 Arch St., Suite 300 Philadelphia, PA 19103
Phone:	215--56-0-2171
Representing:	Appellee Jessica Mathis Appellee Leigh M. Chapman

Served:	Michael John Vargo
Service Method:	eService
Email:	mjvargoesq@gmail.com
Service Date:	10/6/2022
Address:	680 Wolf Avenue Easton, PA 18042
Phone:	610--25-3-8948
Representing:	Appellee Northampton County Board of Elections

Served:	Michael Philip Barbera
Service Method:	eService
Email:	mpbarbera@barberalaw.com
Service Date:	10/6/2022
Address:	P.O. Box 775 Somerset, PA 15501
Phone:	814--44-3-4681
Representing:	Appellee Somerset County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Michael Wu-Kung Pfautz
Service Method:	eService
Email:	michael.pfautz@phila.gov
Service Date:	10/6/2022
Address:	City of Philadelphia Law Department 1515 Arch Street, 15th Floor Philadelphia, PA 19102
Phone:	215-683-5233
Representing:	Appellee Philadelphia County Board of Elections

Served:	Mifflin County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	20 North Wayne Street Lewistown, PA 17044
Phone:	--
Pro Se:	Appellee Mifflin County Board of Elections

Served:	Molly Ruth Mudd
Service Method:	eService
Email:	mmudd@adamscounty.us
Service Date:	10/6/2022
Address:	111 Baltimore Street Gettysburg, PA 17325
Phone:	717--33-7-5911
Representing:	Appellee Adams County Board of Elections

Served:	Montour County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	435 East Front Street Danville, PA 17821
Phone:	--
Pro Se:	Appellee Montour County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Nathan W. Karn
Service Method:	eService
Email:	nkarn@eveyblack.com
Service Date:	10/6/2022
Address:	401-03 Allegheny Street PO Box 415 Hollidaysburg, PA 16648
Phone:	814--69-5-7581
Representing:	Appellee Blair County Board of Elections

Served:	Nathaniel Justus Schmidt
Service Method:	eService
Email:	contact@theschmidtlawfirm.com
Service Date:	10/6/2022
Address:	315 Second Avenue Suite 704 Warren, PA 16365
Phone:	814--72-3-8665
Representing:	Appellee Warren County Board of Elections

Served:	Nicholas J. Stevens
Service Method:	eService
Email:	nicholas.stevens@dbr.com
Service Date:	10/6/2022
Address:	400 Amanda Lane Media, PA 19063
Phone:	610-451-3166
Representing:	Appellee Chester County Board of Elections

Served:	Nicholas Michael Centrella Jr.
Service Method:	eService
Email:	NMCentrella@duanemorris.com
Service Date:	10/6/2022
Address:	30 South 17th St. 12th Floor Philadelphia, PA 19103
Phone:	215--97-9-1850
Representing:	Appellee Delaware County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Peter Poggi Elliot
Service Method:	eService
Email:	elliotp@gtlaw.com
Service Date:	10/6/2022
Address:	1717 Arch Street, Suite 400 Philadelphia, PA 19103
Phone:	215-972-5921
Representing:	Appellee Pennsylvania Democratic Party Appellee Pennsylvania Democratic Party

Served:	Pike County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	506 Broad Street Pike County Administration Building Milford, PA 183371535
Phone:	--
Pro Se:	Appellee Pike County Board of Elections

Served:	Richard Eugene Santee
Service Method:	eService
Email:	santeer10@sskdlaw.com
Service Date:	10/6/2022
Address:	44 E. Broad Street Suite 210 Bethlehem, PA 18018
Phone:	610-691-7000
Representing:	Appellee Northampton County Board of Elections

Served:	Robert Andrew Wiygul
Service Method:	eService
Email:	rwiygul@hangley.com
Service Date:	10/6/2022
Address:	Hangley Aronchick Segal Pudlin & Schiller One Logan Square, 27th Floor Philadelphia, PA 19103
Phone:	215--49-6-7042
Representing:	Appellee Jessica Mathis Appellee Leigh M. Chapman

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Russell David Giancola
Service Method:	eService
Email:	rdg@glawfirm.com
Service Date:	10/6/2022
Address:	Gallagher Giancola LLC 436 Seventh Avenue, 31st Floor Pittsburgh, PA 15219
Phone:	412-717-1921
Representing:	Appellant Republican National Committee, et al.

Served:	Ryan Blake Smith
Service Method:	eService
Email:	ryan.smith@phila.gov
Service Date:	10/6/2022
Address:	1515 Arch Street, 15th Floor Philadelphia, PA 19102
Phone:	215-683-2954
Representing:	Appellee Philadelphia County Board of Elections

Served:	Schuylkill County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	420 North Centre Street Pottsville, PA 17901
Phone:	--
Pro Se:	Appellee Schuylkill County Board of Elections

Served:	Sean James McGrath
Service Method:	eService
Email:	sean.mcgrath@phila.gov
Service Date:	10/6/2022
Address:	2551 E. Dauphin Street Philadelphia, PA 19125
Phone:	215-383-0510
Representing:	Appellee Philadelphia County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Sullivan County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	Sullivan County Courthouse Main & Muncy Streets Laporte, PA 186260157
Phone:	--
Pro Se:	Appellee Sullivan County Board of Elections

Served:	Thomas E. Breth
Service Method:	eService
Email:	tbreth@dmkcg.com
Service Date:	10/6/2022
Address:	128 West Cunningham Street Butler, PA 16001
Phone:	(72-4) -283-2200
Representing:	Appellant Republican National Committee, et al.

Served:	Thomas R. Shaffer
Service Method:	eService
Email:	tom@410ross.com
Service Date:	10/6/2022
Address:	410 Ross Street Coudersport, PA 16915
Phone:	814-203-1678
Representing:	Appellee Potter County Board of Elections

Served:	Thomas S. Talarico
Service Method:	eService
Email:	ttalarico@nwpalawyers.com
Service Date:	10/6/2022
Address:	510 cranberry street suite 301 erie, PA 16507
Phone:	814--45-9-4472
Representing:	Appellee Erie County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Thomas W. King III
Service Method:	eService
Email:	tking@dmkcg.com
Service Date:	10/6/2022
Address:	128 West Cunningham Street Butler, PA 16001
Phone:	(72-4) -283-2200
Representing:	Appellant Republican National Committee, et al.

Served:	Wayne County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	925 Court Street Honesdale, PA 18431
Phone:	--
Pro Se:	Appellee Wayne County Board of Elections

Served:	William Gleason Barbin
Service Method:	eService
Email:	britanderson2002@yahoo.com
Service Date:	10/6/2022
Address:	206 Main Street Johnstown, PA 15901
Phone:	814-535-5561
Representing:	Appellee Cambria County Board of Elections

Served:	Wyoming County Board of Elections
Service Method:	First Class Mail
Service Date:	10/6/2022
Address:	1 Courthouse Square Tunkhannock, PA 18657
Phone:	--
Pro Se:	Appellee Wyoming County Board of Elections

Served:	Zachary Gene Strassburger
Service Method:	eService
Email:	zachary.strassburger@phila.gov
Service Date:	10/6/2022
Address:	1515 Arch St Philadelphia, PA 19102
Phone:	215--68-3-2998
Representing:	Appellee Philadelphia County Board of Elections

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

Served:	Ronald Lee Hicks Jr.
Service Method:	eService
Email:	rhicks@porterwright.com
Service Date:	10/6/2022
Address:	Porter Wright Morris & Arthur LLP 6 PPG Place, Third Floor Pittsburgh, PA 15222
Phone:	412--23-5-1476
Representing:	Amicus Curiae Lawyers Democracy Fund

/s/ Timothy James Ford

(Signature of Person Serving)

Person Serving:	Ford, Timothy James
Attorney Registration No:	325290
Law Firm:	Dilworth Paxson LLP
Address:	1500 Market St Ste 3500 Philadelphia, PA 19102
Representing:	Appellee Democratic Congressional Campaign Committee (DCCC) Appellee Democratic Senatorial Campaign Committee (DSCC)