

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<p>REPUBLICAN NATIONAL COMMITTEE, <i>et al.</i>,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>LEIGH M. CHAPMAN, in her official capacity as Acting Secretary of the Commonwealth, <i>et al.</i>,</p> <p style="text-align: center;">Respondents.</p>	<p>No. 447 MD 2022</p>
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**PETITIONERS' APPLICATION FOR LEAVE TO FILE
AMENDED PETITION FOR REVIEW**

Petitioners, by and through undersigned counsel, file the following Application for Leave to File an Amended Petition for Review, and state as follows:

1. On September 1, 2022, Petitioners filed a Petition for Review directed to the Court's original jurisdiction.
2. Respondents the Montgomery County Board of Elections ("Montgomery Board"); the Philadelphia County Board of Elections ("Philadelphia Board"); Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth and Jessica Mathis, in her official capacity as Director of the Pennsylvania Bureau of Election Services and Notaries (collectively, "Commonwealth Respondents"); and Intervenors Democratic Senatorial Campaign Committee, Democratic Congressional Campaign Committee, and Democratic

National Committee (collectively, “Intervenors”) filed preliminary objections to the Petition for Review.

3. On September 7, 2022, Petitioners filed an Application for Special Relief in the Form of a Preliminary Injunction, however, the Court denied such Application.

4. The Philadelphia Board failed to include a notice to plead with its preliminary objections. *See* Pa. R.C.P. 1026(a) (“... no pleading need be filed unless the preceding pleading contains a notice to plead or is endorsed with a notice to plead”); *see also* Pa. R.A.P. 1517 (“Unless otherwise prescribed by these rules, the practice and procedure under this chapter relating to pleadings in original jurisdiction petition for review practice shall be in accordance with the appropriate Pennsylvania Rules of Civil Procedure, so far as they may be applied”); Pa. R.A.P. 106 (“Unless otherwise prescribed by these rules the practice and procedure in matters brought before an appellate court within its original jurisdiction shall be in accordance with the appropriate general rules applicable to practice and procedure in the courts of common pleas, so far as they may be applied”).

5. Following the 2022 General Election, the Court issued a briefing schedule for the pending preliminary objections, as well as a deadline for the Petitioners to respond to the Philadelphia Board’s preliminary objections.

6. Petitioners hereby seek leave to file an amended petition for review, a copy of which is attached hereto as Exhibit 1.

7. The proposed amended petition for review will address several of the objections raised by the Montgomery Board, the Philadelphia Board, the Commonwealth Respondents, and the Intervenors.

8. In Pennsylvania, “leave to amend is liberally granted to allow full development of a party’s theories and averments.” *Beardell v. Western Wayne Sch. Dist.*, 496 A.2d 1373, 1376 (Pa. Commw. 1985).

9. “Although the determination of whether to grant leave to amend is within the sound discretion of the trial court, leave should be granted at any stage of the proceedings, unless such amendment violates the law or unfairly prejudices the rights of the opposing party.” *Frey v. Pennsylvania Electric Co.*, 607 A.2d 796, 797 (Pa. Super. 1992).

10. “Undue prejudice in this analysis has been defined as something more than a detriment to the other party, as any amendment would likely have the effect of harming the adverse party’s interests. The policy underlying this rule of liberal leave to amend is to insure that parties get to have their cases decided on the substantive case presented, and not on legal formalities.” *Chaney v. Meadville Med. Ctr.*, 912 A.2d 300, 303 (Pa. Super. 2006).

11. “Even where a trial court sustains preliminary objections on their merits, it is generally an abuse of discretion to dismiss a complaint without leave to amend. There may, of course, be cases where it is clear that amendment is impossible and where to extend leave to amend would be futile. However, the right to amend should not be withheld where there is some reasonable possibility that amendment can be accomplished successfully.” *In re Estate of Luongo*, 823 A.2d 942, 946 (Pa. Super. 2003).

12. Here, Respondents and Intervenors raised objections that under 25 P.S. § 2642, the Election Code grants county boards of elections with broad authority in the administration of elections.

13. But § 2642(f) restricts this grant of authority only to the extent such are “not inconsistent with law.”

14. The proposed amended petition for review sets forth with greater specificity various grounds by which the implementation of notice-and-cure procedures are “inconsistent with law” and, in fact, directly violate express provisions of the Election Code.

15. Further, Respondents and Intervenors raised objections that no Commonwealth Official is an indispensable party and that the Court lacks subject matter jurisdiction.

16. Although Petitioners dispute the Respondents' and Intervenors' position, the proposed amended petition for review sets forth with greater specificity the Acting Secretary's improper conduct with respect to notice-and-cure procedures.

17. No undue prejudice will result from the filing of this amended petition for review.

18. No statute of limitations is at issue in this case, as the Petitioners challenge the Boards' implementation and use of notice-and-cure procedures in future elections.

19. Petitioners' deadline to respond to one of the preliminary objections—the Philadelphia Boards'—has not passed. *See* Order of Dec. 7, 2022; *see also* Pa. R.C.P. 1028(c) (allowing a party to file an amended pleading as a matter of course within 20 days of the filing of preliminary objections, the usual timeframe in which to file a response when a party includes a notice to plead).

20. Further, no scheduling order has been issued except with respect to briefing of the preliminary objections. This case thus remains in its infancy, and thus the Court should follow the general rule that leave to amend should be “liberally granted to allow full development of a party’s theories and averments.” *Beardell v. Western Wayne Sch. Dist.*, 496 A.2d 1373, 1376 (Pa. Commw. 1985).

WHEREFORE, Petitioners respectfully request the Court grant the within application and allow Petitioners to file the amended petition for review attached as an exhibit to this application.

Respectfully submitted,

Dated: January 30, 2023

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EXHIBIT 1

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

REPUBLICAN NATIONAL
COMMITTEE; REPUBLICAN
PARTY OF PENNSYLVANIA;
DAVID BALL; JAMES D. BEE;
DEBRA A. BIRO; JESSE D.
DANIEL; GWENDOLYN MAE
DELUCA; ROSS M. FABER;
CONNOR R. GALLAGHER; LYNN
MARIE KALCEVIC; LINDA S.
KOZLOVICH; WILLIAM P.
KOZLOVICH; VALLERIE
SICILIANO-BIANCANIELLO; and S.
MICHAEL STREIB,

Petitioners,

v.

LEIGH M. CHAPMAN, in her official
capacity as Acting Secretary of the
Commonwealth; JESSICA MATHIS,
in her official capacity as Director of
the Pennsylvania Bureau of Election
Services and Notaries; ADAMS
COUNTY BOARD OF ELECTIONS;
ALLEGHENY COUNTY BOARD OF
ELECTIONS; ARMSTRONG
COUNTY BOARD OF ELECTIONS;
BEAVER COUNTY BOARD OF
ELECTIONS; BEDFORD COUNTY
BOARD OF ELECTIONS; BERKS
COUNTY BOARD OF ELECTIONS;
BLAIR COUNTY BOARD OF
ELECTIONS; BRADFORD COUNTY
BOARD OF ELECTIONS; BUCKS
COUNTY BOARD OF ELECTIONS;
BUTLER COUNTY BOARD OF
ELECTIONS; CAMBRIA COUNTY

No. 447 MD 2022

**FIRST AMENDED PETITION FOR
REVIEW DIRECTED TO
COURT'S ORIGINAL
JURISDICTION
SEEKING DECLARATORY AND
INJUNCTIVE RELIEF**

Filed on behalf of Petitioners

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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

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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 COUNTY BOARD
OF ELECTIONS;
NORTHUMBERLAND COUNTY
BOARD OF ELECTIONS; PERRY
COUNTY BOARD OF ELECTIONS;
PHILADELPHIA COUNTY BOARD
OF ELECTIONS; PIKE COUNTY
BOARD OF ELECTIONS; POTTER
COUNTY BOARD OF ELECTIONS;
SCHUYLKILL COUNTY BOARD
OF ELECTIONS; SNYDER COUNTY
BOARD OF ELECTIONS;
SOMERSET COUNTY BOARD OF
ELECTIONS; SULLIVAN COUNTY
BOARD OF ELECTIONS;
SUSQUEHANNA COUNTY BOARD
OF ELECTIONS; TIOGA COUNTY
BOARD OF ELECTIONS; UNION
COUNTY BOARD OF ELECTIONS;
VENANGO COUNTY BOARD OF
ELECTIONS; WARREN COUNTY
BOARD OF ELECTIONS; WAYNE
COUNTY BOARD OF ELECTIONS;
WESTMORELAND COUNTY
BOARD OF ELECTIONS;
WYOMING COUNTY BOARD OF
ELECTIONS; and YORK COUNTY
BOARD OF ELECTIONS,

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Respondents.

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

REPUBLICAN NATIONAL
COMMITTEE, *et al.*,

No. 447 MD 2022

Petitioners,

v.

LEIGH M. CHAPMAN, in her official
capacity as Acting Secretary of the
Commonwealth, *et al.*,

Respondents.

NOTICE TO PLEAD

To Respondents:

You are hereby notified to file a written response to the enclosed First Amended Petition for Review within thirty (30) days from service hereof or a judgment may be entered against you.

Dated: January 30, 2023

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Russell D. Giancola

Gallagher Giancola LLC

Counsel for Petitioners

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<p>REPUBLICAN NATIONAL COMMITTEE, <i>et al.</i>,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>LEIGH M. CHAPMAN, in her official capacity as Acting Secretary of the Commonwealth, <i>et al.</i>,</p> <p style="text-align: center;">Respondents.</p>	<p>No. 447 MD 2022</p>
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**FIRST AMENDED PETITION FOR REVIEW
DIRECTED TO COURT’S ORIGINAL JURISDICTION
SEEKING DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Petitioners support and seek to uphold free and fair elections on behalf of all Pennsylvanians. For that reason, Petitioners bring this suit to ensure that future elections are conducted in accordance with the rules that the General Assembly has prescribed by law. Unfortunately, several County Boards of Elections (“Boards”), acting on their own initiative, are departing from those rules in a crucial area of election administration. The result is a lack of transparency, unequal treatment of otherwise identical ballots based upon the county in which the voter resides, and an erosion of public trust and confidence in the integrity of Pennsylvania’s elections at a vital moment in the Nation’s and the Commonwealth’s history.

2. Some Boards, with the encouragement of the Secretary, have engaged and intend to continue to engage in the practice of conducting pre-canvass activities under the guise of “notice-and-cure procedures” before Election Day.

3. These pre-canvass activities include inspecting the outer envelopes containing absentee and mail-in ballots and disclosing the results of such inspections before the close of the polls.

4. Some of these Boards have also engaged in the practice of allowing voters who previously cast an absentee or mail-in ballot to vote again provisionally as an alleged “cure.”

5. These notice-and-cure procedures are expressly prohibited under the Election Code.

6. Although Boards have discretion to promulgate regulations that are not “inconsistent with law,” that discretion simply does not encompass notice and cure procedures, which are contrary and inconsistent with law in several respects.

7. Boards cannot determine whether a cast ballot—i.e., any absentee or mail-in ballot they have received—complies with the signature, date, and secrecy envelope requirements unless they “inspect” it, and Boards are not permitted to do until Election Day. 25 P.S. § 3146.8(g)(1.1).

8. Boards cannot notify voters of any defect in their ballot to facilitate a cure without “disclos[ing] the results of any portion of any pre-canvass meeting prior to the close of the polls.” 25 P.S. § 3146.8(g)(1.1).

9. And Boards cannot allow voters to “cure” a defective absentee or mail-in ballot by allowing them to vote provisionally without causing the voter to perjure him or herself: a condition of voting provisionally is signing an affidavit that affirms that the provisional ballot “is the only ballot I cast in this election,” a demonstrably false statement in the curing context. 25 P.S. § 3050(a.4)(2).

10. All that Boards are permitted to do with absentee and mail-in ballots before Election Day is to “safely keep the ballots in sealed or locked containers.” 25 P.S. § 3146.8(a).

11. Any “notice-and-cure procedure” directly violates these provisions of the Election Code.

12. In 2020, the Pennsylvania Supreme Court unanimously held that “the Election Code provides procedures for casting and counting a vote by mail” but does not provide for a notice and opportunity to cure procedure for a voter who fails to comply with the requirements for voting by mail or absentee. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020).

13. The Supreme Court further stated that “[t]o the extent that a voter is at risk of having his or her ballot rejected” due to failure to comply with the Election

Code’s signature and secrecy ballot requirements for mail-in and absentee ballots, “the decision to provide a ‘notice and opportunity to cure’ procedure to alleviate that risk is one best suited for the Legislature.” *Id.*

14. The Supreme Court “express[ed] this agreement particularly in light of 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, all of which are best left to the legislative branch of Pennsylvania’s government.” *Id.*

15. The Legislature has addressed the issue of when Boards may provide notice and an opportunity to cure a non-compliant mail-in or absentee ballot. The Election Code currently provides a cure procedure in only a limited circumstance: “[f]or those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified.” 25 P.S. § 3146.8(h). And even in that circumstance, the voter may cure only the lack of proof of identification and not any other defect. *See id.*

16. In 2022, the Legislature passed a bill to implement a broad notice-and-cure procedure, but former Governor Wolf vetoed it. Accordingly, lack of verification of identification remains the only circumstance under which Boards are authorized to provide a cure opportunity.

17. Despite the Election Code's plain text and the Supreme Court's clear holding, and the veto by the Governor of the bill enacted by the Legislature to implement a notice-and-cure procedure, several Boards, without legal authority, have developed and implemented notice-and-cure procedures for use in elections.

18. These Boards' development and implementation of notice-and-cure procedures exceed the Boards' authority under state law and the Election Code. These Boards have, in effect, usurped the exclusive legislative authority of the General Assembly in contravention of the Pennsylvania Supreme Court's holding.

19. Moreover, these Boards' actions purport to regulate the "manner" in which federal elections are conducted, in violation of the General Assembly's plenary delegated authority to "prescribe" the "Manner" of such elections under the Elections Clause of Article 1, Section 4 of the United States Constitution.

20. The untenable consequences of these Boards' usurpation of the General Assembly's legislative and federal constitutional authority are difficult to overstate. For one thing, the Boards that have adopted procedures have not all disclosed that fact—let alone the particulars of those procedures—to the public, creating confusion and a lack of transparency in election administration.

21. The selective and varying adoption of notice-and-cure procedures by some Boards has created an unequal playing field. Depending on the county in which voters reside, some receive notice and an opportunity to cure a ballot defect while

others receive no such notice of or opportunity to cure an identical ballot defect. For example, a voter who lives in a county that has no notice-and-cure protocol and submits a ballot without a secrecy envelope will not have his or her vote counted. But a voter who lives in a county which has implemented a notice-and-cure protocol and submits such a ballot gets a second “bite at the apple,” resulting in unequal and non-uniform administration of elections.

22. Moreover, the Boards that have adopted notice-and-cure procedures on their own initiative have not uniformly adopted the *same* procedure.

23. The result is a lack of statewide uniformity in both the existence and—where they do exist—the particulars of notice-and-cure procedures.

24. The disuniformity in the implementation and particulars of Boards’ notice-and-cure procedures creates a two-tier system of “haves” and “have nots” with respect to whether a voter is afforded an opportunity to cure a defective ballot, based entirely on the voter’s county of residence.

25. This runs directly counter to constitutional requirements that “[a]ll laws regulating the holding of elections by the citizens ... shall be uniform throughout the State.” PA. CONST. art. VII, § 6, and that “[e]lections shall be free **and equal**” PA. CONST. art. I, § 5 (emphasis added).

26. The disparities in whether and how notice-and-cure procedures are implemented also directly violate the Election Code’s requirement that “the conduct

of primaries and elections ... be honestly, efficiently, and *uniformly* conducted.” 25 P.S. § 2642(g) (emphasis added).

27. The Court should restore transparency, fundamental fairness, and integrity to Pennsylvania’s elections by upholding the plain text of the Election Code and the clear holding of the Pennsylvania Supreme Court and declaring that county boards of elections may not adopt notice-and-cure procedures other than as the General Assembly has expressly provided in the Election Code.

JURISDICTION AND VENUE

28. This Court has original jurisdiction over this Petition for Review under 42 Pa. C.S. § 761(a)(1) because this matter is asserted against Commonwealth officials in their official capacities.

29. The Petitioners bring this action pursuant to the Declaratory Judgments Act, which empowers this Court “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” 42 Pa. C.S. § 7541(a). The Declaratory Judgments Act permits “[a]ny person ... whose rights, status, or other legal relations are affected by a statute” to “have determined any question of construction or validity arising under the ... statute” and to “obtain a declaration of rights, status, or other legal relations thereunder.” 42 Pa. C.S. § 7533.

PARTIES

A. Republican Committees

30. The Republican National Committee (the “RNC”) is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14). The RNC manages the Republican Party’s business at the national level, including development and promotion of the Party’s national platform and fundraising and election strategies; supports Republican candidates for public office at all levels across the country, including those on the ballot in Pennsylvania; and assists state parties throughout the country, including the Republican Party of Pennsylvania, to educate, mobilize, assist, and turnout voters. The RNC made significant contributions and expenditures in support of Republican candidates up and down the ballot and in mobilizing and educating voters in Pennsylvania in past election cycles and is doing so for future elections. These efforts include devoting substantial time and resources toward monitoring of the voting and vote counting process in Pennsylvania and to ensure it is conducted lawfully. The RNC makes expenditures to ensure it and its voters understand the rules governing the elections process, including applicable dates, deadlines, and requirements for voting by mail or absentee. These efforts require a uniform application of the law and a clear and transparent understanding of mail voting requirements, including any allowances for notice and opportunity to cure procedures. The RNC has a substantial and

particularized interest in ensuring that Pennsylvania administers free and fair elections.

31. Petitioner Republican Party of Pennsylvania (“RPP”) is a major political party, 25 P.S. § 2831(a), and the “State committee” for the Republican Party in Pennsylvania, 25 P.S. § 2834, as well as a federally registered “State Committee” of the Republican Party as defined by 52 U.S.C. § 30101(15). RPP, on behalf of itself and its members, nominates, promotes, and assists Republican candidates seeking election or appointment to federal, state, and local office in Pennsylvania. It works on an ongoing basis to accomplish this purpose by, among other things, devoting substantial resources toward turning out voters in Pennsylvania and informing them of the legal requirements as adopted by the Legislature for voting. RPP has made significant contributions and expenditures in support of Republican statewide, district, and local candidates in past election cycles and is doing so again for future elections. These efforts include devoting substantial time and resources toward monitoring of the voting and vote counting process in Pennsylvania and to ensure it is conducted lawfully. The RPP makes expenditures to ensure it and its voters understand the rules governing the elections process, including applicable dates, deadlines, and requirements for voting by mail or absentee. These efforts require a uniform application of the law and a clear and transparent understanding of mail voting requirements, including any allowances for notice and opportunity to

cure procedures. The RPP has a substantial and particularized interest in ensuring that Pennsylvania carries out free and fair elections.

32. The various approaches taken by the counties regarding notice-and-cure procedures are not routinely published and thus not readily known to the RPP and RNC or even voters themselves. Thus, the ability of the RPP and RNC to educate voters regarding the procedures is thwarted.

B. Voter Petitioners

33. Petitioner David Ball resides in Washington County, Pennsylvania and is a registered Pennsylvania elector who consistently votes in each election.

34. Petitioner James D. Bee resides in Cambria County, Pennsylvania and is a registered Pennsylvania elector who consistently votes in each election.

35. Petitioner Debra A. Biro resides in Northampton County, Pennsylvania and is a registered Pennsylvania elector who consistently votes in each election.

36. Petitioner Jesse D. Daniel resides in Indiana County, Pennsylvania and is a registered Pennsylvania elector who consistently votes in each election.

37. Petitioner Gwendolyn Mae DeLuca resides in Beaver County, Pennsylvania and is a registered Pennsylvania elector who consistently votes in each election.

38. Petitioner Ross M. Farber resides in Westmoreland County, Pennsylvania, and is a registered Pennsylvania elector who consistently votes in each election.

39. Petitioner Connor R. Gallagher resides in Allegheny County, Pennsylvania, and is a registered Pennsylvania elector who consistently votes in each election.

40. Petitioner Lynn Marie Kalcevic resides in Beaver County, Pennsylvania and is a registered Pennsylvania elector who consistently votes in each election.

41. Petitioner Linda S. Kozlovich resides in Fayette County, Pennsylvania and is a registered Pennsylvania elector who consistently votes in each election.

42. Petitioner William P. Kozlovich resides in Fayette County, Pennsylvania and is a registered Pennsylvania elector who consistently votes in each election.

43. Petitioner Vallerie Siciliano-Biancaniello resides in Delaware County, Pennsylvania and is a registered Pennsylvania elector who consistently votes in each election.

44. Petitioner S. Michael Streib resides in Butler County, Pennsylvania and is a registered Pennsylvania elector who consistently votes in each election.

45. Each of the Voter Petitioners regularly votes in both primary and general elections and intends to vote for candidates in all races on their respective ballots in the upcoming general election, including but not limited to the races for United States Senate, United States House of Representatives, Pennsylvania Senate and Pennsylvania House of Representatives.

46. The implementation of notice-and-cure procedures by some Boards absent any directive to do so under the Election Code has interfered with Voter Petitioners' right to "equal elections." *See* PA. CONST. art. I, § 5; PA. CONST. art. VII, § 6.

47. Moreover, the unauthorized notice-and-cure procedures implemented by some Boards have had and will have the result of counting votes that should not have been counted due to the voter's failure to comply with signature and secrecy ballot requirements for mail-in and absentee ballots. As a result, the votes validly cast by Voter Petitioners have been and will be canceled out and diluted by the counting of ballots in violation of the Election Code.

48. Petitioners thus find themselves in the same factual setting as existed in 2020 when *Pa. Democratic Party* was filed: an election landscape where Boards throughout the state operate under different rules, particularly with respect to whether to implement notice-and-cure procedures, and if so, how.

49. Insofar as the Pennsylvania Supreme Court made clear in *Pa. Democratic Party* that the solution to this lack of uniformity could not be resolved by the Court mandating a notice-and-cure procedure for all counties to follow, and because Governor Wolf vetoed the General Assembly's attempt to implement a uniform notice-and-cure procedure, Petitioners thus seek the mirror-image form of relief: the Court should enjoin the Boards from using any notice-and-cure procedures that are not expressly set forth in the Election Code.

C. Respondents

50. Respondent Leigh M. Chapman is the Acting Secretary of the Commonwealth and is sued in her official capacity only. In that capacity, Acting Secretary Chapman must “receive from county boards of elections the returns of primaries and elections,” “canvass and compute the votes cast for candidates,” proclaim the results of such primaries and elections,” and “issue certificates of election to the successful candidates at such elections.” *See* 25 P.S. § 2621(f); *see also* 25 P.S. § 3159.¹

51. Respondent Jessica Mathis is the Director for the Bureau of Election Services and Notaries and is sued in her official capacity only. In that capacity, Director Mathis oversees the Election Services and Voter Registration divisions of

¹ On January 17, 2023, Al Schmidt was appointed by Governor Shapiro as Acting Secretary of the Commonwealth.

the Pennsylvania Department of State. The Bureau of Election Services and Notaries is responsible for planning, developing, and coordinating the statewide implementation of the Election Code. See <https://www.dos.pa.gov/about-us/Pages/Director-Bureau-of-Elections-and-Notaries.aspx>.

52. Each of the 67 County Boards of Elections in Pennsylvania are also named as Respondents. Boards of Elections “have jurisdiction over the conduct of primaries and elections in such count[ies].” *Id.* at § 2641(a). The Boards of Elections’ powers are set forth under the Election Code. See 25 P.S. § 2642.

FACTUAL ALLEGATIONS

A. Act 77 Requirements for Absentee and Mail-In Ballots.

53. The expanded use of mail-in voting authorized under Act 77 has amply revealed a lack of statewide standards for the canvassing and counting of mail-in ballots.

54. Under the Pennsylvania Election Code, voters casting an absentee or mail-in ballot are required to: (1) place their marked ballots in a sealed envelope (“secrecy envelope”), (2) place the secrecy envelope inside a second envelope, which is marked with a “declaration of the elector” form, (3) “fill out” and “sign the declaration printed on such envelope,” and (4) return the ballot by 8:00 p.m. on election day. 25 P.S. § 3146.6(a); § 3150.16(a).

55. If a voter fails to comply with these requirements, the voter's absentee or mail-in ballot must be set aside and not counted. 25 P.S. § 3146.8; *Pa. Democratic Party*, 238 A.3d 345.

B. Providing Any Notice-and-Cure Procedure for Non-Compliant Ballots Is the Exclusive Province of The General Assembly.

56. Just over two years ago, the Pennsylvania Democratic Party sought an injunction to *require* Boards of Election to contact electors whose mail-in or absentee ballots contained facial defects and to provide those electors with an opportunity to cure the same. *See Pennsylvania Democratic Party v. Boockvar*, No. 407 MD 2020 (Commw. Ct.).

57. There, citing the Free and Equal Elections Clause, PA. CONST. art. I, § 5, and the Court's "broad authority to craft meaningful remedies," *League of Women Voters v. Commonwealth*, 178 A.3d 737, 822 (Pa. 2018), the Pennsylvania Democratic Party argued that the Court should require the Boards of Elections to implement a "notice and opportunity to cure procedure" for mail-in and absentee ballots that voters have filled out incompletely or incorrectly.

58. In that case, the Secretary of the Commonwealth *opposed* the relief sought by the Pennsylvania Democratic Party, arguing that "so long as a voter follows the requisite voting procedures, he or she 'will have equally effective power to select the representative of his or her choice.'" *Pa. Democratic Party*, 238 A.3d at 373 (quoting *League of Women Voters*, 178 A.3d at 809). Moreover, the Secretary

noted that logistical policy decisions implicated in a notice-and-cure procedure are more properly addressed by the Legislature, not the Courts. *Id.*

59. The Supreme Court unanimously agreed. It held that “[w]hile the Pennsylvania Constitution mandates that elections be “free and equal,” it leaves the task of effectuating that mandate to the Legislature.” *Id.* It further noted that “although the Election Code provides the procedures for casting and counting a vote by mail [ballot], it does not provide for the ‘notice and opportunity to cure’ procedure sought by the Petitioner.” *Id.*

60. Importantly, the Supreme Court further agreed that “the decision to provide a ‘notice and opportunity to cure’ procedure to alleviate that risk [of a voter having his or her ballot rejected due to minor errors] is one best suited for the Legislature.” *Id.* It reasoned that the Legislature was best positioned to resolve the “open policy questions” attendant with a notice and opportunity to cure procedure, 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.” *Id.*

C. The Election Code Provides Only a Limited Notice and Opportunity to Cure, and Governor Wolf Recently Vetoed an Expansion of Ballot Curing.

61. The General Assembly has addressed notice-and-cure procedures and has provided only a limited opportunity for voters to cure a non-compliant mail-in or absentee ballot.

62. In particular, the Election Code currently provides a notice-and-cure procedure in only one circumstance: “[f]or those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified.” *See* 25 P.S. § 3146.8(h).

63. This procedure provides that if proof of a voter’s identification is received and verified prior to the sixth day following the election, the Board shall canvass the absentee or mail-in ballot. *Id.* § 3146.8(h)(2).

64. No other notice-and-cure procedure exists in the Election Code.

65. After *Pa. Democratic Party* was decided, the Legislature considered and even passed legislation requiring a notice-and-cure procedure for non-compliant mail-in and absentee ballots. *See* House Bill 1300, Printer’s Number 1869, § 1308(g)(2)(iv), (v) (2021).

66. Governor Wolf vetoed House Bill 1300.

67. As a result, the Election Code remains as it existed in 2020 when *Pa. Democratic Party* was decided: without a notice-and-cure procedure for absentee or mail-in ballots that lack a required signature or secrecy envelope.

68. The Secretary of the Commonwealth has acknowledged this fact, providing in its answer to “Frequently Asked Questions”:

How do I know if my ballot was accepted or counted?

Under current Pennsylvania law, your mail-in ballot can’t be opened until Election Day. Therefore, **if there’s a problem with your mail-in ballot, you won’t have the opportunity to correct it before the election.** Still, as long as you followed all the instructions and mailed your completed, signed, dated, and sealed in the inner secrecy envelope, ballot by Election Day, you don’t have to worry.

Pennsylvania Department of State, *Mail and Absentee Ballot*, at

<https://www.vote.pa.gov/voting-in-pa/pages/mail-and-absentee-ballot.aspx>

(emphasis added).

D. Boards Are Not Free to Create Their Own Notice-and-Cure Procedures.

69. Although *Pa. Democratic Party* answered the limited question of whether the Court could *require* the Boards to implement a notice and opportunity to cure provision, the answer of whether Boards were free to create their own such policies is equally clear under Pennsylvania law.

70. Under the Election Code, the Boards “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.

71. Section 2642 enumerates several duties the Boards must perform. *See id.* § 2642(a)–(p).

72. Notably absent from the list is the development and implementation of notice-and-cure procedures.

73. In fact, § 2642 makes clear that the Boards lack the authority to implement their own notice-and-cure procedures.

74. For example, Boards are required to “instruct election officers in their duties ... and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and **uniformly** conducted.” *Id.* § 2642(g) (emphasis added).

75. Further, the limited rulemaking authority granted to the Boards does not extend to notice-and-cure procedures.

76. Rather, Boards are authorized only “[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.” *Id.* § 2642(f) (emphasis added); *accord PG Publ. Co. v. Aichele*, 902 F. Supp. 2d 724, 761 (W.D. Pa. 2012) (holding that § 2642(f) “extends only to the promulgation of rules that are ‘not inconsistent with law.’”).

77. Notice-and-cure procedures adopted by Boards are “inconsistent with law” because the Election Code spells out the limited availability of such procedures

and does not authorize Boards to expand them. *See, e.g., Pa. Democratic Party*, 238 A.3d at 374.

E. Notice-and-Cure Procedures are “Inconsistent with Law” and, in Fact, Directly Violate the Election Code.

78. The Election Code tightly constrains what Boards may do with absentee and mail-in ballots once they receive them.

a. Absentee and mail-in ballots must be kept in sealed or locked containers until Election Day.

79. “[U]pon receipt” of an absentee or mail-in ballot, the Boards “shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the [Board].” 25 P.S. § 3146.8(a).

80. Boards are prohibited under the Election Code from doing anything else with the absentee and mail-in ballots until Election Day. *Id.*

b. Boards cannot begin the pre-canvass, including inspection of absentee and mail-in ballot outer envelopes, until Election Day.

81. Boards may not begin to “pre-canvass” the absentee and mail-in ballots, a process which includes “the inspection ... of all envelopes containing official absentee ballots or mail-in ballots,” until 7:00 a.m. on Election Day. 25 P.S. §§ 2602(q.1), 3146.8(g)(1.1).

82. Notice-and-cure procedures are “inconsistent with law” because they necessarily entail “inspection” of the absentee and mail-in ballot envelopes before the pre-canvass is permitted to begin.

c. Boards cannot disclose the results of any part of the pre-canvass—including inspections—until the polls close on Election Day.

83. Similarly, the Boards' notification to voters and others regarding defects in absentee or mail-in ballots is "inconsistent with law": "[n]o person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls." 25 P.S. § 3146.8(g)(1.1).

84. The phrase "results of any portion of any pre-canvass meeting prior to the close of the polls" must have a broader meaning than the counting, computing, and tallying of votes because a pre-canvass "does not include the recording or publishing of the votes reflected on the ballots." 25 P.S. § 2602(q.1).

85. The prohibition of the disclosure of the "results of any portion of any pre-canvass meeting prior to the close of the polls" must, of necessity, include a prohibition of the disclosure of a Board's determination that a ballot will not count due to a defect such as the lack of a signature, date, or secrecy envelope. 25 P.S. §§ 2602(q.1), 3146.6, 3150.16.

86. But that is precisely what Boards do when they contact voters or party representatives or publish notices on the internet regarding defective absentee or mail-in ballots. These notifications are disclosures of the "results" of a "portion" of a pre-canvass meeting, wherein the ballots were inspected.

d. Boards cannot encourage voters to cast a second vote via provisional ballot.

87. Further, a common protocol used by Boards to “cure” improperly cast absentee or mail-in ballots is to encourage or allow voters to cast another vote, via provisional ballot.

88. This procedure, however, requires voters to make a false statement while subject to the penalties of perjury.

89. Voters who both “receive and vote” via absentee or mail-in ballot “shall not be eligible to vote at a polling place on election day.” 25 P.S. §§ 3146.6(b)(1); 3150.16(b)(1).

90. To ensure such voters do not vote at the polling place, “[t]he district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted a mail-in ballot to vote at the polling place.” 25 P.S. §§ 3146.6(b)(1); 3150.16(b)(1).²

91. The Election Code requires every voter who casts a provisional ballot to sign an affidavit which states:

I do solemnly swear or affirm that my name is _____, that my date of birth is _____, and at the time that I registered I resided _____

² This restriction applies only to voters who both receive *and* vote via absentee or mail-in ballot. Those voters who requested an absentee or mail-in ballot but did not cast it may vote provisionally. 25 P.S. §§ 3146.6(b)(2); 3150.16(b)(2). Those voters who requested an absentee or mail-in ballot and spoil it at the polling place may vote at the polling place. 25 P.S. §§ 3146.6(b)(3); 3150.16(b)(3).

at _____ in the municipality of _____ in
_____ County of the Commonwealth of Pennsylvania **and**
that this is the only ballot that I cast in this election.

25 P.S. § 3050(a.4)(2) (emphasis added).

92. Every voter casting a provisional ballot who signs this affidavit makes a knowingly false, sworn statement: they are only voting provisionally *because* they cast another ballot in that election.

F. Nevertheless, Some Boards Provide Notice and Opportunities to Cure Defective Absentee or Mail-In Ballots.

93. Publicly available information and investigation have revealed that some Boards allow voters to “cure” noncompliant ballots, following protocols of their own design.

94. For example, in 2020, during the course of an appeal regarding its response to a Right to Know Law request, the Bucks County Board of Elections admitted that it implemented the following “cure” protocol which included sending postcards to the voters and allowing voters to sign and date their ballot envelope:

Generally speaking, we receive mail-in/absentee ballots during the election season, for those missing a signature or date, we allow them to be “cured.” BOE sends a postcard out to voters on ballots needing to be cured. Last year’s version is attached. We send those postcards out up to the day before the election. We also send our list of voters with problems to the parties if they request them. We update the list each day to allow the parties to contact them on election day if necessary. To cure ballots, voters travel to BOE and either sign or date their ballots and then resubmit them to the BOE. If a voter is unable to cure the problematic ballot, they can file a provisional ballot at their poll on

election day. Any cured mailed-in/absentee ballots received at 8 PM on election day are not accepted.

See Email from Daniel D. Grieser, dated August 1, 2022, and a copy of the postcard used by Bucks County is attached as **Exhibit “A”**.

95. Bucks County also contacted both political parties and forwarded the list of voters it had sent the postcard to in the event either party wished to reach out to the voters in order to assist them in curing their ballot.

96. Similarly, the Montgomery County Board of Elections implemented its own protocol to contact voters and allow them to cure ballots in the 2020 General Election.

97. Its protocol included emailing certain voters to alert them of the defect or defects in their absentee or mail-in ballot. Montgomery County Board of Elections workers also attempted to speak to such voters utilizing a script. The Montgomery County Board of Elections then afforded such voters the opportunities that included but were not limited to: coming to the Board of Elections’ office to “correct an incomplete declaration;” canceling their absentee or mail-in ballot and replacing it in person; or canceling their absentee or mail-in ballot and replacing it by email using a form on the Montgomery County Board of Elections website. *See* Montgomery County Right to Know Law Response, attached as **Exhibit “B”** (October 27, 2020 email from Sarah Batipps (pp. 24-25)).

98. Upon information and belief, the Philadelphia Board has implemented its own notice-and-cure procedure, which includes providing information that voters' mail-in or absentee ballot will not count because it was returned without a signature on the declaration envelope or because the Philadelphia Board determined the ballot lacks a secrecy envelope without opening the declaration envelope. Voters whose ballots would be canceled for these defects were instructed that they could vote by provisional ballot or request a replacement ballot at a satellite election office. See Office of Philadelphia City Commissioners, *Cancelled Ballot Notification Information*, at https://www.philadelphiavotes.com/en/home/item/1873-cancelled_ballot_notification_info (as of November 1, 2020), a copy of which is attached as **Exhibit "C."**

99. Still other counties have previously opined that curing is not permissible under the Election Code, but nevertheless have agreed to begin implementing notice-and-cure procedures in future elections.

100. For example, the solicitor for the Northampton County Board of Elections stated that Northampton's solicitor had opined that "we are prohibited from contacting voters: to cure defective ballots, such as those which are missing the secrecy envelope." See **Exhibit "D"** (October 6, 2020 Amy Cozze email, p. 35).

101. But in conjunction with a stipulated settlement agreement reached in *Dondiego v. Lehigh County Board of Elections, et al.* in the United States District

Court for the Eastern District of Pennsylvania at Civil Action No. 5:22-cv-02111, the Northampton County Board of Elections agreed that for future elections, it would:

- a. Include messaging to Northampton County voters emphasizing the importance of providing contact information including a notice on the Northampton County Voter Registration website;
- b. Provide notice to a voter who returns mail-in ballots and absentee ballots without a secrecy envelope (known as “Naked Ballots”); and
- c. Provide the names of all voters whose Naked Ballots are discovered prior to 8:00 p.m. on Election Day to the party and/or candidate representative(s) who are on-site during pre-canvassing so that the party representative(s) can notify the voters.

See Northampton County Board of Elections Stipulated Settlement Agreement, attached hereto as **Exhibit “E.”**

102. The Lehigh County Board of Elections entered into a similar agreement, which included additional obligations:

- a. Explore in good faith the acquisition of a ballot sorter that has the capability to either weigh return ballots or measure their thickness so that voters can be notified of possible Naked Ballots. If feasible, such a ballot sorter shall be purchased and in operation as soon as possible;
- b. Explore in good faith the legality of the Office notifying voters if, upon receipt of their ballot, the Office believes (without opening or tampering with the envelope or the ballot) that the voter may have submitted a Naked Ballot. If feasible, this practice shall be implemented in advance of the November 2022 General Election.

See Lehigh County Board of Elections Stipulated Settlement Agreement, attached hereto as **Exhibit “F.”**

103. The Acting Secretary was a party in the *Dondiego* litigation, and upon information and belief, was made aware of the Stipulated Settlement Agreements involving the Northampton and Lehigh Boards, but has taken no action to stop the unauthorized notice-and-cure procedures.

104. The Stipulated Settlement Agreements involving the Northampton and Lehigh County Boards run afoul not only of Pennsylvania law, but even the Secretary’s simultaneous acknowledgment that “if there’s a problem with your mail-in ballot, you won’t have the opportunity to correct it before the election.” Pennsylvania Department of State, *Mail and Absentee Ballot*, at <https://www.vote.pa.gov/voting-in-pa/pages/mail-and-absentee-ballot.aspx>. The Secretary was a party in the *Dondiego* action in which the Stipulated Settlement Agreements were reached but not to the Stipulated Settlement Agreements.

105. Some counties have implemented notice-and-cure procedures since 2020.

106. For example, the Union County Board “has implemented a procedure regarding “notice and cure” of defective mail-in ballots “since receiving the direction from the Pennsylvania Department of State, via email, on November 2,

2020 regarding such mail-in ballots.” See Submission of Respondent Union County Board Regarding Stipulated Facts, attached as **Exhibit “G.”**

107. The Union County Board sets aside defective mail-in ballots, and “[a]t several points during Election Day, a list of those electors whose mail-in ballots have been identified as defective is provided to the Union County Department of Elections’ staff and designated representatives of the major political parties (and those other parties for whom contact information has been provided to the Board) who may (or may not) thereafter contact the electors.” **Ex. G.**

108. Luzerne County has implemented a similar notice-and-cure procedure “since the November Election of 2020.” See Submission of Respondent Luzerne County Board Regarding Stipulated Facts, attached as **Exhibit “H.”**

109. The Luzerne County Board voted on January 18, 2023 to change its notice-and-cure procedure, requiring voters to visit the county election bureau to cure absentee and mail-in ballots that are missing a signature or date. See Eric Mark, *Luzerne County Election Board Reverses Ballot Curing Decision*, WFMZ-TV News, (Jan. 25, 2023) https://www.wfmz.com/news/state/luzerne-county-election-board-reverses-ballot-curing-decision/article_49fd02f3-a186-5ee5-82e1-1435e878a824.html. But just one week later, the Luzerne County Board changed course, allowing voters to also cast provisional ballots at their designated polling cite in an effort to cure their absentee or mail-in ballot. *Id.*

110. In the 2022 Primary Election—and upon information and belief, in the 2022 General Election—the Chester County Board “did allow the political parties to review mail-in and absentee envelopes that failed to comply with the Election Code on election day and contact electors if they chose.” *See* Chester County Board’s Response to September 9, 2022 Court Order, attached as **Exhibit “I.”**

111. Meanwhile, other Boards do not allow for any notice and opportunity to cure non-compliant ballots.

112. Some Boards are transparent and explicit in their adherence to the Election Code and the Supreme Court’s holding in *Pa. Democratic Party*. For example, the Lancaster Board provides on its website, stating in relevant part:

Once a ballot has been recorded as received by the County, there is not a legal procedure for the County to return it to the voter or for the voter to alter it for any reason.

Lancaster County, *Frequently Asked Questions About Mail-in Ballots*, at <https://www.co.lancaster.pa.us/1351/FAQs-of-MAIL-IN-BALLOTS>.

113. Moreover, communications among the Directors of the Boards of Elections reveal that several other Boards have not provided any opportunity for voters to cure noncompliant absentee or mail-in ballots.

114. For example, the Executive Director of the Franklin County Board of Elections noted in an email:

I know that voters are not entitled to notice and an opportunity cure minor defects resulting from failure to comply with statutory

requirements for vote by mail but I am curious if any counties are planning on reaching out to voters by email, phone or mail whenever a defect is detected.

See **Exhibit “J”** (October 6, 2020 email from Jean C. Byers, p. 34).

115. Other Boards have not implemented cure protocols, including the Boards of Butler, Cameron, Clarion, Cumberland, Franklin, Juniata, Snyder, Somerset, Sullivan, Susquehanna, Westmoreland, and Wyoming Counties.

116. But upon information and belief, even in those counties which have not implemented cure protocols, the Statewide Uniform Registry of Voters, maintained by the Acting Secretary, provides notice via email to voters that their ballots may not be counted.

117. Thus, whether voters who cast a non-compliant mail-in ballot will be afforded an opportunity to cure the defect depends entirely on the county in which they reside. In other words, mail-in and absentee ballots with identical defects are receiving unequal treatment based solely on the voter’s residency.

118. Moreover, the likelihood of the voter receiving notice of his or her non-compliant ballot depends not only on the voter’s county of residence, but also whether that voter is registered with a political party, when the ballot is returned to the Board, and whether “time allows” for some Boards to provide such notice.

119. Further, the permissible methods of cure vary even across those counties which afford voters the opportunity to cure.

120. The result is a lack of transparency, unequal treatment of otherwise identical ballots based upon the county in which the voter resides, and an erosion of public trust and confidence in the integrity of Pennsylvania’s elections.

G. The Acting Secretary Encourages Boards to Utilize Notice-and-Cure Procedures.

121. The Acting Secretary has issued guidance to the Boards and to the voting public regarding the mechanics of absentee and mail-in ballot voting, as well as whether a right to cure exists.

122. The Acting Secretary has issued guidance directing Boards to “[e]xamine all mail-in ballots received to determine if the return envelopes for those ballots are signed and dated.” *See* <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2022-11-03-Guidance-UndatedBallot.pdf>.

123. Despite characterizing this conduct as an “administrative determination,” this is precisely the type of inspection included within the definition of “pre-canvass” under the Election Code, which cannot begin until 7:00 a.m. on Election Day. *See* 25 P.S. §§ 2602(q.1), 3146.8(g)(1.1).

124. Thus, the Acting Secretary is directing Boards to directly violate the Election Code.

125. Further, in the days before the 2022 general election, the Acting Secretary encouraged Boards “to contact voters whose ballots have been cancelled

due to an error on the outside envelope so that voters may have the opportunity to have their vote count.” See <https://www.media.pa.gov/pages/state-details.aspx?newsid=544>.

126. This is an express endorsement of notice-and-cure procedures and directly violates the Election Code’s prohibition of disclosing results of the pre-cavass before the close of the polls. See 25 P.S. § 3146.8(g)(1.1).

COUNT I

DECLARATORY JUDGMENT THAT UNDER PENNSYLVANIA LAW, THE BOARDS ARE PROHIBITED FROM DEVELOPING AND IMPLEMENTING NOTICE-AND-CURE PROCEDURES NOT EXPRESSLY CREATED BY THE GENERAL ASSEMBLY

127. Petitioners incorporate by reference all preceding paragraphs of this Petition as if fully set forth herein.

128. The Election Code does not set forth a procedure by which Boards are permitted to provide electors with notice and an opportunity to cure their mail-in or absentee ballots that fail to comply with 25 Pa. C.S. §§ 3146.6(a) or 3150.16(a).

129. The Pennsylvania Supreme Court agrees, having already made clear that the Election Code “does not provide for [a] ‘notice and opportunity to cure’ procedure” outside narrow circumstances and that “the decision to provide a ‘notice and opportunity to cure’ procedure to alleviate the risk [of minor errors causing a ballot to be rejected] is one best suited for the Legislature.” *Pa. Democratic Party*, 238 A.3d at 374.

130. Since *Pa. Democratic Party*, the Legislature has not enacted any law allowing for a notice-and-cure procedure.

131. The Boards have only limited rulemaking authority under the Election Code.

132. To the extent certain counties have developed and implemented notice-and-cure procedures, such are “inconsistent with law,” and are thus void *ab initio*. See *Bank of New York Mellon v. Johnson*, 121 A.3d 1056, 1060 (Pa. Super. 2015) (“When a prothonotary enters judgment without authority, that judgment is *void ab initio*.”).

133. The decision of some Boards to develop and implement their own notice-and-cure procedures without authorization under the Election Code is unlawful.

134. Specifically, the Boards’ implementation of notice-and-cure procedures is “inconsistent with law,” and directly violates the Election Code, in the following particulars:

- a. Failing to keep absentee and mail-in ballots safely in sealed or locked containers until they are to be canvassed by the county board of elections, 25 P.S. § 3146.8(a);
- b. Commencing pre-canvassing activities, including “the inspection ... of all envelopes containing absentee ballots or mail-in ballots,” before 7:00 a.m. on Election Day, 25 P.S. §§ 2602(q.1), 3146.8(g)(1.1);

- c. Disclosing the results of any portion of any pre-canvass meeting prior to the close of the polls, 25 P.S. § 3146.8(g)(1.1);
- d. Furnishing to representatives of political parties, candidates, and/or special-interest groups, personally identifying information of voters, including but not limited to the addresses, phone numbers, and/or email addresses of voters whose absentee or mail-in ballots are defective (in addition to the fact that such voters cast such ballots), in violation of the voters' constitutional right to informational privacy, PA. CONST. art. I, § 1; *Pennsylvania State Educ. Ass'n v. Commonwealth Dep't of Cmty. & Econ. Dev.*, 148 A.3d 142, 157 (2016);
- e. Delegating to representatives of political parties, candidates, and/or special-interest groups, none of whom have sworn an oath and are not elections officers under the Election Code, the duty to notify voters that their absentee or mail-in ballot is defective;
- f. Permitting voters to cast a second vote via provisional ballot, 25 P.S. §§ 3146.6(b)(1), 3150.16(b)(1);
- g. Requiring voters who cast a ballot via absentee or mail-in ballot to make knowingly false statements under penalty of perjury during the course of casting a second vote via provisional ballot, 25 P.S. § 3050(a.4)(2); and

135. As set forth above, the Acting Secretary has issued guidance directing the Boards to engage in pre-canvass activity under the guise of making “administrative determinations” and has issued statements encouraging Boards “to contact voters whose ballots have been cancelled due to an error on the outside envelope so that voters may have the opportunity to have their vote count.

WHEREFORE, Petitioners respectfully request this Honorable Court declare that the development and implementation of notice-and-cure procedures by Boards

violates Pennsylvania law and is prohibited and further request that this Honorable Court prohibit the Acting Secretary from issuing guidance or other statements directing Boards to violate provisions of the Election Code.

COUNT II

DECLARATORY JUDGMENT THAT THE DISPARATE APPROACHES TAKEN BY BOARDS WITH RESPECT TO NOTICE-AND-CURE PROCEDURES VIOLATES ARTICLE VII, § 6 AND ARTICLE I, § 5 OF THE PENNSYLVANIA CONSTITUTION AND 25 P.S. § 2642(g)

136. Petitioners incorporate by reference all preceding paragraphs of this Petition as if fully set forth herein.

137. “All laws regulating the holding of elections by the citizens ... shall be uniform throughout the State.” PA. CONST. art. VII, § 6; *accord Kuznik v. Westmoreland County Bd. of Comm’rs*, 902 A.2d 476, 492 (Pa. 2006) (noting that the Election Code contemplates a “unitary system of voting in Pennsylvania” in keeping with Article VII, § 6 of the Pennsylvania Constitution).

138. Further, the Pennsylvania Constitution provides that “[e]lections shall be free **and equal**” PA. CONST. art. I, § 5 (emphasis added).

139. “Stated another way, the actual and plain language of Section 5 mandates that all voters have an equal opportunity to translate their votes into representation.” *Working Families Party v. Commonwealth*, 209 A.3d 270, 279 (Pa. 2019) (quoting *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018)).

140. “The Free and Equal Elections Clause was specifically intended to equalize the power of voters in our Commonwealth’s elections process, and it explicitly confers this guarantee.” *Id.* (quoting *League of Women Voters*, 178 A.3d at 812).

141. Similarly, the Election Code, in turn, cements the requirement for uniformity in election administration. Under the Election Code, the Boards are required to inspect “the conduct of primaries and elections ... to the end that primaries and elections may be honestly, efficiently, and **uniformly** conducted.” 25 P.S. § 2642(g) (emphasis added).

142. As set forth above, some counties have implemented notice-and-cure procedures, while others have not.

143. Further, those notice-and-cure procedures adopted by Boards are not uniform throughout the Commonwealth.

144. For example, these notice-and-cure procedures differ in the ways Boards notify voters of defects in their absentee or mail-in ballots: some Boards contact voters directly, while others entrust this disclosure to representatives of candidates, parties, or special-interests groups. Still other Boards simply publish on the internet lists of voters whose absentee or mail-in ballot contained a defect.

145. The notice-and-cure procedures adopted by the Boards also differ with respect to how quickly and whether voters are notified of defects in their ballots:

some Boards discontinue the notice procedure earlier than others, such that a voter in one county whose vote is received the Friday before an election may get notice, while a similar voter in another county whose vote is received that same day will not.

146. Accordingly, the notice-and-cure procedures have resulted in persons in the same circumstances not being treated alike. *See Winston v. Moore*, 91 A. 520, 524 (Pa. 1914).

147. The unequal adoption and implementation of notice-and-cure procedures prevents all voters within the Commonwealth from having an “equal opportunity to translate their votes into representation.”

148. Specifically, some counties’ adoption of notice-and-cure procedures results in a two-tier system, based upon voters’ county of residence, in which some voters receive a second opportunity to ensure their vote will count—and in turn, “translate their votes into representation”—while others do not. Hence, as a result of this two-tier system, not all voters have equal power within the election process.

149. Similarly, the discrepancies in the procedures used by those counties that have adopted notice-and-cure procedures have created further inequalities in opportunities for voters to translate their votes into representation, based upon when their ballots are received, and in the case of those counties that delegate the

notification process to political parties, candidates, and/or special-interest groups, whether the voter supports the notifiers' favored candidates or party.

150. The unequal adoption and implementation of notice-and-cure procedures violates Article VII, § 6 and Article 1, § 5 of the Pennsylvania Constitution, as well as 25 P.S. § 2642(g).

151. To the extent it is determined that Boards may exercise their discretion under 25 P.S. § 2642(f) to implement notice-and-cure procedures, the resultant multi-tiered system consisting of statewide variance in which counties implement notice-and-cure procedures and the differences between the procedures adopted by those counties is constitutionally impermissible.

WHEREFORE, Petitioners respectfully request this Honorable Court declare that the development and implementation of notice-and-cure procedures by Boards violates Pennsylvania law and is prohibited and further request that this Honorable Court prohibit the Acting Secretary from issuing guidance or other statements directing Boards to violate provisions of the Election Code.

COUNT III

DECLARATORY JUDGMENT THAT ADOPTION OF ANY NOTICE-AND-CURE PROCEDURES FOR FEDERAL ELECTIONS NOT EXPRESSLY AUTHORIZED BY THE GENERAL ASSEMBLY VIOLATES THE ELECTIONS CLAUSE OF THE UNITED STATES CONSTITUTION

152. Petitioners incorporate by reference all preceding paragraphs of this Petition as if fully set forth herein.

153. The Elections Clause of the United States Constitution directs: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” U.S. CONST. art. I, § 4, cl. 1.

154. Whether, and under what circumstances, to provide voters notice and an opportunity to cure non-compliant mail-in and absentee ballots cast in federal elections are issues of the “Manner” in which such elections are conducted and, thus, are entrusted to the Legislature’s exclusive authority. *See id.*; *see also, e.g., Smiley v. Holm*, 285 U.S. 355, 373 (1982).

155. Accordingly, neither Boards nor any other organ or instrumentality of the State government may regulate that question. *See* U.S. CONST. art. I, § 4, cl. 1; *Smiley*, 285 U.S. at 373.

WHEREFORE, Petitioners respectfully request this Honorable Court declare that any adoption or implementation of notice-and-cure procedures for federal elections other than those expressly authorized by the General Assembly violates the Elections Clause of the United States Constitution.

COUNT IV

INJUNCTION PROHIBITING BOARDS FROM DEVELOPING OR IMPLEMENTING NOTICE-AND-CURE PROCEDURES

156. Petitioners incorporate by reference all preceding paragraphs of this Petition as if fully set forth herein.

157. Because the development and implementation by some Boards of notice-and-cure procedures is inconsistent with Pennsylvania law, and because the Court lacks the power to require Boards to implement a notice-and-cure procedure, the practice must be enjoined statewide.

158. A party seeking a permanent injunction must establish three elements: “(1) a clear right to relief; (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages; and (3) that a greater injury will result from refusing the injunction.” *Mazin v. Bureau of Professionals Occupational Affairs*, 950 A.2d 382, 389 (Pa. Commw. 2008).

159. Petitioners have a clear right to relief: the Election Code provides a notice-and-cure procedure only with respect to proof of identity, not for defects under 25 Pa. C.S. §§ 3146.6(a) and 3150.16(a). Moreover, the varied approaches taken by the Boards in deciding whether to implement a notice-and-cure procedure, and if so, the particulars of same, unquestionably prevents voters in Pennsylvania from voting on equal terms.

160. The varied procedures (or absence of same) have materially affected the manner Pennsylvania voters are able to exercise their right to vote by absentee or mail-in ballot.

161. Violations which affect voting rights cannot be compensated by damages. *See Kuznik v. Westmoreland Cty. Bd. of Com'rs*, 902 A.2d 476 (Pa. 2006).

162. The balancing of harms favors granting injunctive relief, as the alternative is to allow the usurpation by some Boards of the exclusive legislative power held by the General Assembly to persist.

WHEREFORE, Petitioners respectfully request this Honorable Court issue a permanent injunction prohibiting the Boards from developing and implementing notice-and-cure procedures and further request that this Honorable Court prohibit the Acting Secretary from issuing guidance or other statements directing Boards to violate provisions of the Election Code.

Respectfully submitted,

Dated: January 30, 2023

/s/ Kathleen A. Gallagher
Kathleen A. Gallagher
PA I.D. #37950
Russell D. Giancola
PA. I.D. #200058
GALLAGHER GIANCOLA LLC
436 Seventh Avenue, 31st Floor
Pittsburgh, PA 15219
Phone: (412) 717-1900
kag@glawfirm.com
rdg@glawfirm.com

Thomas W. King, III
Thomas E. Breth
DILLON, McCANDLESS, KING,
COULTER & GRAHAM, LLP
128 W. Cunningham St.
Butler, PA 16001
Phone: (724) 283.2200
tking@dmkcg.com
tbreth@dmkcg.com

Counsel for Petitioners

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: [Grieser, Daniel D.](#)
To: [Brian Adrian](#)
Cc: [Jennifer Pepmeyer](#); [Dayoub, Ashley](#); [Kathleen Gallagher](#)
Subject: RE: Bucks County filings
Date: Monday, August 1, 2022 11:47:35 AM
Attachments: [image001.png](#)
[Curing Postcard Side 1.docx](#)
[Curing Postcard Side 2 - 2021.doc](#)
[RNC responsive emails.pdf](#)

Brian, we are still working through the emails. Unfortunately, my computer crashed halfway through, so I had to start over.

Below is a summary of our "curing process"

Generally speaking, we receive mail in/absentee ballots during the election season, for those missing a signature or date, we allow them to be "cured." BOE sends a postcard out to voters on ballots needing to be cured. Last year's version is attached. We send those postcards out up to the day before the election. We also send our list of voters with problems to the parties if they request them. We update the list each day to allow the parties to contact them on election day if necessary. To cure ballots, voters travel to BOE and either sign or date their ballots and then resubmit them to the BOE. If a voter is unable to cure the problematic ballot, they can file a provisional ballot at their poll on election day. Any cured mailed-in/absentee ballots received after 8 PM on election day are not accepted.

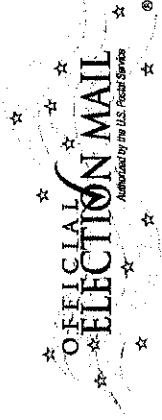
I have also attached the only emails we have that regard "curing."

The remaining emails I am reviewing are DOS guidance regarding the election in general and our BOE's response, if any. There is several hundred to go through. If you are only concerned about curing, these emails are not particularly helpful. Please clarify if there is something specific you are looking for. If it is easier, I am free for a phone call as well – Dan.

County of Bucks
Board of Elections
55 East Court St
Doylestown PA 18901



County of Bucks
Board of Elections
55 East Court St
Doylestown PA 18901



County of Bucks
Board of Elections
55 East Court St
Doylestown PA 18901



County of Bucks
Board of Elections
55 East Court St
Doylestown PA 18901



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**NOTICE: YOU FAILED TO SIGN AND/OR DATE
YOUR MAILED BALLOT.**

**PLEASE CONTACT THE BUCKS COUNTY BOARD OF
ELECTIONS OFFICE AS SOON AS POSSIBLE TO
REMEDY THIS. BALLOTS MUST BE CURED BY 8:00
PM ON ELECTION DAY IN ORDER TO COUNT. IF
YOU ARE UNABLE TO CORRECT THIS YOU MAY
VOTE BY PROVISIONAL BALLOT AT YOUR POLLING
PLACE.**

**CALL 215-348-6154 FOR MORE INFORMATION
OFFICE HOURS ARE 8:00-5:00, M-F.**

**NOTICE: YOU FAILED TO SIGN AND/OR DATE
YOUR MAILED BALLOT.**

**PLEASE CONTACT THE BUCKS COUNTY BOARD OF
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YOU ARE UNABLE TO CORRECT THIS YOU MAY
VOTE BY PROVISIONAL BALLOT AT YOUR POLLING
PLACE.**

**CALL 215-348-6154 FOR MORE INFORMATION
OFFICE HOURS ARE 8:00-5:00, M-F.**

EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: [Benitz, Caroline](#)
To: [Batipps, Sarah](#); [Piening, Sarah](#); [Dean, Francis](#)
Subject: Re: Montgomery County Voter Services
Date: Wednesday, October 28, 2020 9:21:50 AM

Unfortunately I'm not aware of any to refer them to you. Frank or Sarah, do you know a better answer to this question?

From: Batipps, Sarah <SBatipps@montcopa.org>
Sent: Wednesday, October 28, 2020 9:12 AM
To: Benitz, Caroline <cbenitz@montcopa.org>; Piening, Sarah <SPiening2@montcopa.org>
Subject: RE: Montgomery County Voter Services

Right, I have that understanding, the issue is that the person is physically disabled and cannot appear in person to cure the ballot or to cast a provisional vote.

I know that it is not the county issue that the person did not complete the ballot correctly, but are there any community resources/agencies that we could refer them too as far as assistance in getting to the polls?

From: Benitz, Caroline <cbenitz@montcopa.org>
Sent: Wednesday, October 28, 2020 9:09 AM
To: Batipps, Sarah <SBatipps@montcopa.org>; Piening, Sarah <SPiening2@montcopa.org>
Subject: Re: Montgomery County Voter Services

Hi Sarah,

The option would be us mailing them the form, but at this point we all know it wouldn't arrive in time for them to return and get a new ballot sent to them. Please also tell voters they can vote provisionally on election day.

From: Batipps, Sarah <SBatipps@montcopa.org>
Sent: Tuesday, October 27, 2020 5:58 PM
To: Piening, Sarah <SPiening2@montcopa.org>; Benitz, Caroline <cbenitz@montcopa.org>
Subject: FW: Montgomery County Voter Services

Good Evening Ladies

I am reaching out to you as I don't have any other direct contacts in Voters. I am coordinating the call backs to voters who submitted a ballots with errors in an attempt to cure the problem. I am working with Tom Bonner on this, and he sends me the spreadsheet and has provided scripted response to the various issues.

However, we have had a few voters who cannot cure their ballot with the options that we have been directed to provide them:

- Physically coming to HSC to correct an incomplete declaration
- completing a cancellation and replace in person, or
- cancellation and replace by email using the form on voter services website.

Are there any alternatives for those without electronic means of communication and who are disabled and cannot appear in person to cure their ballot?

One Voter in particular has been calling quite distressed about how to proceed, can you help us?

Ballot # 110832073 [REDACTED]

Thank you,

Sarah Batipps

Sarah Batipps, MSS

Performance and Planning Specialist
Office of Performance and Planning
Department of Health and Human Services
Office: 610-278-3013
Cell: 610-724-8926



Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Applegate, Christina <CApplagate@montcopa.org>

Sent: Tuesday, October 27, 2020 5:48 PM

To: Batipps, Sarah <SBatipps@montcopa.org>

Subject: RE: Montgomery County Voter Services

Can we have someone from voter services call [REDACTED] with another option? I spoke with her last night and she was very upset because she cannot come to Norristown nor does she have email. She called me several times today crying.

EXHIBIT C

RETRIEVED FROM DEMOCRACYDOCKET.COM



Presidential General Election

11/3/2020
Polls open 7am-8pm.

1 DAYS
20 HRS **45** MINS

Election Calendar

11/ 3/2020
Last day for County
Boards of Elections to
receive voted mail-in
and civilian absentee
ballots

11/ 3/2020
GENERAL ELECTION

11/ 3/2020
24-Hour Reporting -
Daily Reporting Ends

11/ 4/2020
First day to REGISTER
after November election

11/10/2020
Last day for County
Boards of Elections to
receive voted military
and overseas absentee
ballots

11/23/2020
Thirty Day Post-Election
- Cycle 6 Reporting
Period Closes

[Read more](#)

Cancelled Ballot Notification Information

[Share on Facebook](#) | [Print](#)

Voters who have received a notification that their ballot was cancelled may fall into one of the following three categories:

- ✓ CANC – NO SIGNATURE - Voter's ballot was returned without a signature on the declaration envelope
- ✓ CANC – VOTE CANCELLED - Voter's ballot was determined to lack a secrecy envelope without opening the declaration envelope
- ✓ CANC - UNDELIVERABLE - Voter's ballot was returned by the USPS to the County Board of Elections

Voters whose ballots have been cancelled can vote by provisional ballot on Election Day; alternatively they may request a replacement ballot at a satellite election office through 8:00 PM on Election Day.

Información sobre el Aviso de Boleta Cancelada

Los votantes que hayan recibido un aviso de que su boleta fue cancelada pueden integrar una de las tres categorías siguientes:

- ✓ CANCELACIÓN-FAJTA DE FIRMA: la boleta del votante se envió sin una firma en el sobre de declaración.
- ✓ CANCELACIÓN-VOTO CANCELADO: se determinó, sin abrir el sobre de declaración, que la boleta del votante no contenía el sobre secreto.
- ✓ CANCELACIÓN-IMPOSIBILIDAD DE ENTREGA: USPS devolvió la boleta del votante a la Junta Electoral del Condado.

Los votantes cuyas boletas hayan sido canceladas pueden votar mediante una boleta provisional el Día de la Elección; alternatively, pueden solicitar una boleta electoral de reemplazo en una oficina electoral satélite hasta las 8:00 p. m. del Día de la Elección.

[Tweet](#)

EXHIBIT D

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: [Powell, Pamela via PA County Election Directors](#)
To: [PA County Election Directors](#)
Subject: [PA County Election Directors] RE: [EXTERNAL]Naked Ballots & No Signature on Declaration Envelope
Date: Tuesday, October 6, 2020 4:29:33 PM

I thought DOS stated something somewhere that we weren't supposed to contact voters regarding the mail-ins/absentees? Anyone else vaguely remembering this?

Kind Regards,

Pam

*Pamela Powell
Director of Elections & Voter Registration
Mifflin County
20 North Wayne Street
Lewistown, PA 17044
(717) 248-6571 ext. 5444*

Notice: This confidential message/attachment contains information for a specific individual(s) and purpose. Any inappropriate use, distribution, or copying is prohibited. If received in error, please notify the sender and immediately delete the message. The Mifflin County Department of Elections and Voter Registration cannot provide legal, tax, or accounting advice. All candidates for public office should solicit advice from a licensed professional in the appropriate field in advance of statutory deadlines and before filing documents with this office. Filers are responsible for ensuring the correctness and completeness of all documents; the Mifflin County Department of Elections and Voter Registration is not responsible for errors and omissions.

From: Amy Cozze via PA County Election Directors
<paelectiondirectors+acozze_at_northamptoncounty.org@gaggle.email>
Sent: Tuesday, October 6, 2020 1:22 PM
To: 'PA County Election Directors' <paelectiondirectors@gaggle.email>
Subject: [PA County Election Directors] RE: [EXTERNAL]Naked Ballots & No Signature on Declaration Envelope

EXTERNAL EMAIL: Please use caution when opening attachments and links.

Has anyone attempted to rectify ballots returned that obviously don't have the secrecy envelope included? You can see the timing marks through the return envelope. Our solicitor is of the opinion that we are prohibited from contacting voters to cure this situation – but that being said I have several hundred ballots here that are “naked” and the number is growing....

From: Clearfield County Election Office via PA County Election Directors
<paelectiondirectors+elections_at_clearfieldco.org@gaggle.email>
Sent: Tuesday, October 6, 2020 12:57 PM
To: PA County Election Directors <paelectiondirectors@gaggle.email>

EXHIBIT E

RETRIEVED FROM DEMOCRACYDOCKET.COM

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RUTHANN BAUSCH, MARCIA DAY
DONDIEGO, JUDITH REED, RHODA
EMEFA AMEDEKU, DANIEL
STROHLER, SHARON STROHLER,
BERNARD BOAKYE BOATENG,
LORI RIEKER and LISA DANNER,

Plaintiffs,

v.

LEHIGH COUNTY BOARD OF
ELECTIONS, NORTHAMPTON
COUNTY BOARD OF ELECTIONS
and LEIGH M. CHAPMAN,
in her capacity as Secretary of the
Commonwealth of Pennsylvania

Defendants.

JURY TRIAL DEMANDED

Civ. No. 5:22-cv-02111

**STIPULATED AGREEMENT BETWEEN AND AMONG PLAINTIFFS, RUTHANN
BAUSCH, MARCIA DAY DONDIEGO, JUDITH REED, DANIEL STROHLER,
SHARON STROHLER, BERNARD BOAKYE BOATENG AND LORI RIEKER, AND
DEFENDANT, NORTHAMPTON COUNTY BOARD OF ELECTIONS**

AND NOW, come the Plaintiffs, Ruthann Bausch, Marcia Day Dondiego, Judith Reed Daniel Strohler, Sharon Strohler, Bernard Boakye Boateng, and Lori Reiker (“Northampton Plaintiffs”), by and through their attorneys Mobilio Wood, and the Defendant, Northampton County Board of Elections, by and through its attorney Richard Eugene Santee, and hereby submit the instant Stipulated Agreement and aver as follows:

1. Plaintiffs Ruthann Bausch, Marcia Day Dondiego, and Judith Reed are among a group of 23 Democratic Northampton County voters in State Senate District 14 whose timely-submitted mail-in ballots for the May 17, 2022, election will not count because they were not placed in a “secrecy envelope” before being sent to the Election Boards.

2. Plaintiffs Daniel Stroehler, Sharon Stroehler, Bernard Boakye Boateng, and Lori Reiker, are among a group of 25 Democratic Northampton County voters in State Senate District 14 whose timely-mailed ballots for the May 17, 2022, election will not count because said ballots were mailed to, but not received by the Northampton County Election Office on or before May 17, 2022, at 8:00 p.m.

3. On May 31, 2022, the Northampton Plaintiffs filed a Complaint in the Eastern District of Pennsylvania alleging that the aforementioned impediments to the counting of their votes was unlawful.

4. The Northampton County Board of Elections disputes Northampton Plaintiffs’ assertions with respect to the application of the law referenced in Plaintiffs’ Complaint.

5. Although the parties disagree on the application of the law in this matter, the parties agree that voting is a fundamental right which all parties strive to safeguard.

6. In furtherance of that objective, and as a full and final resolution of the aforementioned matter, the parties agree as follows:

a. Plaintiffs will immediately seek the dismissal, with prejudice, of the instant litigation.

b. Defendant, Northampton County Board of Elections, will, from this date forward:

- a. Include messaging to Northampton County voters emphasizing the importance of providing contact information including a notice on the Northampton County Voter Registration website;

7. The parties also agree that is in the best interests of the Northampton County Board of Elections and Northampton County voters to provide the opportunity of notice to a voter who returns mail-in ballots and absentee ballots without a secrecy envelope (known as “Naked Ballots”).

8. In furtherance of that objective, the Northampton County Board of Elections shall do the following:

- a. During the pre-canvass which begins on or after 7 a.m. on Election Day, the County shall provide the names of all voters whose Naked Ballots are discovered prior to 8:00 pm on Election Day to the party and/or candidate representative(s) who are on-site during pre-canvassing so that the party representative(s) can notify the voters; and
- b. Explore changing the color of the secrecy envelope to something more conspicuous than white, so that the secrecy envelope stands out to the voter and is easily discernable from other materials provided to them with their mail-in ballot.

Date: 6/15/22

Matthew Mobilio

Matthew Mobilio, Esquire
Attorney for Plaintiff

Date: 6/15/22

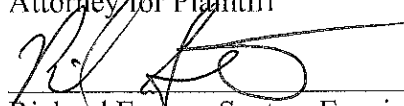

Richard Eugene Santee, Esquire
Assistant Solicitor, Office of the Solicitor
Attorney for Northampton County
Board of Elections

EXHIBIT F

RETRIEVED FROM DEMOCRACYDOCKET.COM

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RUTHANN BAUSCH, MARCIA DAY
DONDieGO, JUDITH REED, RHODA
EMEFA AMEDEKU, DANIEL
STROHLER, SHARON STROHLER,
BERNARD BOAKYE BOATENG,
LORI RIEKER and LISA DANNER,

Plaintiffs,

v.

LEHIGH COUNTY BOARD OF
ELECTIONS, NORTHAMPTON
COUNTY BOARD OF ELECTIONS
and LEIGH M. CHAPMAN,
in her capacity as Secretary of the
Commonwealth of Pennsylvania

Defendants.

JURY TRIAL DEMANDED

Civ. No. 5:22-cv-02111

**STIPULATED AGREEMENT BETWEEN AND AMONG PLAINTIFFS, RHODA
EMEFA AMEDEKU AND LISA DANNER, AND DEFENDANT, LEHIGH COUNTY
BOARD OF ELECTIONS**

AND NOW, come the Plaintiffs, Rhoda Emefa Amedeku and Lisa Danner ("Lehigh Plaintiffs"), by and through their attorneys Mobilio Wood, and the Defendant, Lehigh County Board of Elections, by and through its attorneys Sarah Murray and Lucas Repka, and hereby submit the instant Stipulated Agreement and aver as follows:

1. Plaintiff Rhoda Emefa Amedeku is among a group of 94 Democratic Lehigh County voters in State Senate District 14 whose timely-submitted mail-in ballots for the May 17,

2022, election will not count because it was not placed in a “secrecy envelope” before being sent to the Election Board.

2. Plaintiff Lisa Danner is among a group of 118 Democratic Lehigh County voters in State Senate District 14 whose mailed ballots for the May 17, 2022, election will not count because said ballots were mailed to the Lehigh County Election Office on or before May 17, 2022, but were not received by the Lehigh County Election Office on or before May 17, 2022, at 8:00 p.m.

3. On May 31, 2022, the Lehigh Plaintiffs filed a Complaint in the Eastern District of Pennsylvania alleging that the aforementioned impediments to the counting of their votes was unlawful.

4. Although the parties disagree on the application of the law aforesaid, the parties agree that a more robust voter education system should be established to ensure that Lehigh County voters have every opportunity to have their votes counted.

5. In furtherance of that objective, and as a full and final resolution of the aforementioned matter, the parties agree as follows:

- a. Plaintiffs will immediately seek the dismissal, with prejudice, of the instant litigation.
- b. Defendant, Lehigh County Board of Elections, will, from this date forward:
 - a. Include an insert with all outgoing mail-in ballot applications and absentee ballot applications (including permanent voter mailings) emphasizing the importance of providing contact information on the ballot application; and

- b. Include messaging on the Lehigh County Voter Registration website emphasizing the importance of providing contact information on the ballot application.

6. The parties also agree that is in the best interests of the Lehigh County Board of Elections and Lehigh County voters to provide notice to a voter who returns a mail-in ballot or an absentee ballot without a secrecy envelope (known as “Naked Ballots”).

7. In furtherance of that objective, the Lehigh County Voter Registration Office shall do the following:

- a. During the pre-canvass, which begins on or after 7:00 am on Election Day, the Office shall notify all voters whose Naked Ballots are discovered prior to 8:00 pm on Election Day and/or provide the names of such voters to the party and/or candidate representative(s) who are on-site during pre-canvassing so that the voters can be notified;
- b. Explore in good faith the acquisition of a ballot sorter that has the capability to either weigh return ballots or measure their thickness so that voters can be notified of possible Naked Ballots. If feasible, such a ballot sorter shall be purchased and in operation as soon as possible;
- c. Explore in good faith the legality of the Office notifying voters if, upon receipt of their ballot, the Office believes (without opening or tampering with the envelope or the ballot) that the voter may have submitted a Naked Ballot. If feasible, this practice shall be implemented in advance of the November 2022 General Election; and

- d. Explore in good faith changing the color of the secrecy envelope to something more conspicuous than white, so that the secrecy envelope stands out to the voter and is easily discernable from other materials provided to them with their mail-in or absentee ballot.

Date: June 15, 2022

By: 
Matthew Mobilio, Esquire
Attorney for Plaintiffs

Date: June 15, 2022

By: 
Sarah M. Murray, Esquire
Deputy County Solicitor
Attorney for Defendant Lehigh
County Board of Elections

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EXHIBIT G

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**IN THE COMMONWEALTH COURT OF
PENNSYLVANIA**

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

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

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

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

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

McNERNEY, PAGE, VANDERLIN & HALL

By: /s/ Jonathan L. DeWald

Jonathan L. DeWald, Esquire

I.D. No. 314791

jdewald@mpvhlaw.com

Attorney for Respondent, Union

County Board of Elections

433 Market Street

Williamsport, PA 17701

Telephone: 570-326-6555

Facsimile: 570-326-3170

Dated: September 19, 2022

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CERTIFICATES OF SERVICE AND COMPLIANCE

The undersigned hereby certifies that a true and correct copy of the foregoing Praecipe to Enter Appearance, which document complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents, was filed electronically and served via the Court's PAC File system, pursuant to the Pennsylvania Rules of Civil Procedure.

McNERNEY, PAGE, VANDERLIN & HALL

By: /s/ Jonathan L. DeWald
Jonathan L. DeWald, Esquire
I.D. No. 314791
jdewald@mpvhlaw.com
Attorney for Respondent, Union
County Board of Elections

433 Market Street
Williamsport, Pennsylvania 17701
Telephone: 570-326-6555
Facsimile: 570-326-3170

EXHIBIT H

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

SUBMISSION OF RESPONDENT LUZERNE COUNTY BOARD OF ELECTIONS REGARDING STIPULATED FACTS

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

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

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

Respectfully submitted,

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

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted,

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

EXHIBIT I

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

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

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

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

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

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

Dated: September 19, 2022

Respectfully,

/s/ Nicholas J. Stevens

Colleen Frens (Pa. No. 309604)

Faith Mattox-Baldini (Pa. No. 323868)

Nicholas J. Stevens (Pa. No. 322906)

The County of Chester

Solicitor's Office

*Attorneys for Chester County Board of
Elections*

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EXHIBIT J

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From: [Jean Byers via PA County Election Directors](#)
To: [PA County Election Directors](#)
Subject: [PA County Election Directors] Naked Ballots & No Signature on Declaration Envelope
Date: Tuesday, October 6, 2020 12:30:59 PM

I know that voters are not entitled to notice and an opportunity to cure minor defects resulting from failure to comply with statutory requirements for vote by mail but I am curious if any counties are planning on reaching out to voters by email, phone or mail whenever a defect is detected. Thanks!

Jean C. Byers
Deputy Chief Clerk & Open Records Officer
Phone: (717) 261-3810
Fax: (717) 267-3438

Sent via the paelectiondirectors@gaggle.email email group by
jcbyers@franklincountypa.gov - [reply to sender](#)

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**CERTIFICATION OF COMPLIANCE
WITH CASE RECORDS PUBLIC ACCESS POLICY**

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

Dated: January 30, 2023

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Counsel for Petitioners

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2023, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Counsel for Petitioners

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

AND NOW, this ____ day of _____, 2023, upon consideration of the Application for Leave to File an Amended Petition for Review filed by the Petitioners, and any opposition thereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

Said application is GRANTED. Petitioners shall file an Amended Petition for Review within 7 days of this Order. The preliminary objections filed to the original petition for review shall be deemed moot.

BY THE COURT:

_____, J.