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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

FAITH A. GENSER and FRANK P. MATIS,

Petitioners,

v.

BUTLER COUNTY BOARD OF ELECTIONS,

Respondent.

CIVIL DIVISION

A.D. No. 2024-40116

PROTHONOTARY'S OFFICE-BUTLER CO. ENTERED & FILED 2024 JUN 28 P 2:

BOARD OF ELECTIONS ANSWER TO PETITION FOR REVIEW IN THE NATURE OF STATUTORY APPEAL

Filed on behalf of Respondent, BUTLER COUNTY BOARD OF ELECTIONS

COUNSEL OF RECORD FOR THIS PARTY:

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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

FAITH A. GENSER and FRANK P. MATIS, CIVIL DIVISION

Petitioners, A.D. No. 2024-40116

v.

BUTLER COUNTY BOARD OF ELECTIONS,

Respondent.

BOARD OF ELECTIONS ANSWER TO PETITION FOR REVIEW IN THE NATURE OF STATUTORY APPEAL

Respondent, Butler County Board of Elections (the "Board"), by and through its undersigned counsel, respectfully submits its Answer to Petition for Review in the Nature of Statutory Appeal ("Petition") filed by Petitioners Faith A. Genser and Frank P. Matis (the "Petitioners") and avers as follows:

1. Paragraph 1 contains conclusions of law to which no response is required. By way of further response, the Board is committed to administering elections as mandated by the Pennsylvania Election Code to ensure voters' rights, voters' privacy, and the integrity of elections.

2. Paragraph 2 is admitted in part and denied in part. To the extent that this paragraph purports to describe the action, no response is required to that aspect of the paragraph. The Board admits only that the Petitioners voted a provisional ballot at their respective polling places on primary election day, April 23, 2024. The remaining factual allegations are denied as stated. By way of further response, it is specifically denied that the Board is seeking to disenfranchise any voters, including the Petitioners and the Board denies that the relief requested is appropriate under 25 P.S. § 3157.

3. Paragraph 3 is admitted in part and denied in part. It is admitted that a curing policy for immaterial deficiencies on absentee and mail-in ballots declaration envelopes is linked to the Butler County Pennsylvania Bureau of Elections webpage. The curing policy for immaterial deficiencies on absentee and mail-in ballots declaration envelopes was effective as of May 2, 2023, and was modified on February 14, 2024. It is denied that the curing policy is at issue in the matter concerning Petitioners' provisional ballots.

4. The allegations in Paragraph 4 reference a written document which speaks for itself, and any characterization thereof is denied.

5. The allegations in Paragraph 5 reference a written document which speaks for itself, and any characterization thereof is denied.

6. The Board is without sufficient knowledge to admit or deny the allegations contained within Paragraph 6 as to what Petitioners' "learned." However, the Board has no reason to doubt their testimony during the May 7th hearing before the Court of Common Pleas of Butler County Pennsylvania related to that issue. The remaining allegations in Paragraph 6 are denied.

7. Paragraph 7 contains conclusions of law to which no response is required. Any remaining factual allegations are denied.

8. To the extent that Paragraph 8 purports to describe the nature of the action no response is required. Further, Paragraph 8 contains conclusions of law to which no response is required. The Board is without knowledge as to the "order" referenced in Paragraph 8 that the Petitioners claim to have been aggrieved by and denies the same. The Board assumes that the "decision" mentioned in Paragraph 8 references the April 26, 2024, determination of the

Computation Board not to count three provisional ballots voted by individuals having previously cast mail-in ballots lacking secrecy envelopes.

9. Paragraph 9 contains conclusions of law to which no response is required. The Board denies Petitioners met statutory prerequisites to bring this action and that the relief requested is available under 25 P.S. § 3157(a).

10. Paragraph 10 is admitted in part and denied in part. It is admitted only that Faith Genser is a registered voter residing in Zelienople, Butler County. The remaining factual allegations are denied as stated.

11. The Board is without sufficient knowledge to admit or deny the allegations contained within Paragraph 11 as to when Petitioner Genser received an email from the Department of State dated April 11, 2024. However, the Board has no basis to question Ms. Genser's sworn testimony during the May 7th hearing before the Court of Common Pleas of Butler County Pennsylvania related to that issue . To the extent that the remaining allegations reference a written document, such document speaks for itself, and any characterization thereof is denied.

12. The allegations within Paragraph 12 are admitted.

13. The Board is without sufficient knowledge to admit or deny the allegations contained within Paragraph 13. However, the Board has no basis to question Mr. Matis' sworn testimony during the May 7th hearing before the Court of Common Pleas of Butler County Pennsylvania related to the specific averments contained within Paragraph 13.

14. Paragraph 14 is admitted in part and denied in part. It is admitted only that Petitioner Matis testified during the May 7th, 2024, hearing before the Butler County Court of

Common Pleas that he received an email from the Department of State. The remaining allegations in Paragraph 14 are denied as stated.

15. Paragraph 15 is admitted.

16. Paragraph 16 purports to describe the nature of this action and, as such, no response is required. Any remaining factual allegations are denied as stated.

17. Paragraph 17 is denied.

18. Paragraph 18 refers to a written document which speaks for itself, and any characterization thereof is denied. Further, Paragraph 18 contains conclusions of law to which no response is required.

19. Paragraph 19 refers to a written document which speaks for itself, and any characterization thereof is denied. Further, Paragraph 19 contains conclusions of law to which no response is required.

20. Paragraph 20 refers to a written document which speaks for itself, and any characterization thereof is denied. Further, Paragraph 20 contains conclusions of law to which no response is required.

21. Paragraph 21 refers to a written document which speaks for itself, and any characterization thereof is denied. Further, Paragraph 21 contains conclusions of law to which no response is required.

22. Paragraph 22 refers to a written document which speaks for itself, and any characterization thereof is denied. Further, Paragraph 22 contains conclusions of law to which no response is required.

23. Paragraph 23 is admitted in part and denied in part. It is admitted that the Pennsylvania General Assembly amended the Election Code in 2019. To the extent that

Paragraph 23 refers to a writing, which speaks for itself any characterization thereof is denied. Further, Paragraph 23 contains conclusions of law to which no response is required.

24. Paragraph 24 is admitted in part and denied in part. The Board is without sufficient information to determine what Petitioners mean by "not uncommon." The remaining allegations set forth in Paragraph 24 reference a written document which speaks for itself, and any characterization thereof is denied. By way of further response, the Board denies that the article cited is pertinent to a statutory appeal under 25 P.S. § 3157.

25. Paragraph 25 is admitted in part and denied in part. It is admitted that Petitioners applied for and received mail-in ballots prior to the April 23rd, 2024, primary elections.

26. Paragraph 26 is admitted in part and denied in part. It is admitted that Petitioners are, and were at the time of the 2024 election, qualified electors, that they were registered to vote in Butler County, and that they validly requested mail-in ballots prior to the April 23nd, 2024, primary election. The remaining factual allegations are denied.

27. Paragraph 27 is admitted in part and denied in part. It is admitted that the Bureau of Elections reviewed the envelopes returned by Petitioners under authorization of the Board. The remaining factual allegations are denied as stated. By way of further response, the actions of the Bureau of Elections are fully explained by the testimony of Election Director, Chantell McCurdy's during the May 7th, 2024, hearing before the Butler County Court of Common Pleas.

28. The Board is without direct knowledge of the "automatic notice," received by Petitioners prior to the April 23nd primary elections. Notwithstanding the foregoing, the Board has no reason to dispute the testimony of the Petitioners related to emails received from the Department of State during the May 7th, 2024, hearing before the Butler County Court of Common Pleas.

29. The allegations contained within Paragraph 29 refer to a written document which speaks for itself, and any characterization thereof is denied. Any remaining factual allegations are denied as stated.

30. The allegations contained within Paragraph 30 refer to a written document which speaks for itself, and any characterization thereof is denied. Any remaining factual allegations are denied as stated.

31. The allegations contained within Paragraph 31 refer to a written document which speaks for itself, and any characterization thereof is denied. Any remaining factual allegations are denied as stated.

32. The allegations contained within Paragraph 32 refer to a written document which speaks for itself, and any characterization thereof is denied. Any remaining factual allegations are denied as stated.

33. The allegations contained within Paragraph 33 refer to a written document which speaks for itself, and any characterization thereof is denied. Any remaining factual allegations are denied as stated.

34. The allegations contained within Paragraph 34 refer to a written document which speaks for itself, and any characterization thereof is denied. Any remaining factual allegations are denied as stated.

35. The allegations within Paragraph 35 are denied.

36. The allegations within Paragraph 36 are admitted.

37. The allegations within Paragraph 37 are unintelligible thereby forcing the Board to speculate as to their meaning, accordingly, they are denied as stated.

38. The allegations within Paragraph 38 reference a written document which speaks for itself, and any characterization thereof is denied.

39. The allegations within Paragraph 39 reference a written document which speaks for itself, and any characterization thereof is denied.

40. The allegations within Paragraph 40 reference a written document which speaks for itself, and any characterization thereof is denied. By way of further response these allegations are denied to the extent that they are unsupported by the evidentiary record developed during the May 7, 2024, hearing before the Butler County Court of Common Pleas.

41. The allegations within Paragraph 41 are denied to the extent that they are unsupported by the evidentiary record developed during the May 7, 2024, hearing before the Butler County Court of Common Pleas.

42. The allegations within Paragraph 42 are denied to the extent that they are unsupported by the evidentiary record developed during the May 7, 2024, hearing before the Butler County Court of Common Pleas.

43. The allegations within Paragraph 43 are admitted.

44. The allegations within Paragraph 44 are admitted in part and denied in part. It is admitted only that on April 26, 2024, a determination of the Computation Board was made not to count three provisional ballots voted by individuals having previously cast mail-in ballots lacking secrecy envelopes. It is denied that this determination was specific to Petitioner Genser or that the Computation Board had any knowledge of her identity.

45. Paragraph 45 refers to a written document, which speaks for itself, and any characterization thereof is denied.

46. Paragraph 46 refers to a written document, which speaks for itself, and any characterization thereof is denied.

47. Paragraph 47 refers to a written document, which speaks for itself, and any characterization thereof is denied.

48. Paragraph 48 refers to a written document, which speaks for itself, and any characterization thereof is denied.

49. Paragraph 49 refers to a written document, which speaks for itself, and any characterization thereof is denied.

50. Paragraph 50 refers to a written document, which speaks for itself, and any characterization thereof is denied.

51. Paragraph 51 refers to a written document, which speaks for itself, and any characterization thereof is denied.

52. The allegations within Paragraph 52 are denied.

53. The allegations within Paragraph 53 are admitted in part and denied in part. The Board is without knowledge as to whether or not Petitioner Matis was following anyone's advice and therefore denies the same. It is admitted only that Petitioner Matis cast a provisional ballot on April 23, 2024. Any remaining allegations within Paragraph 53 are denied.

54. The allegations within Paragraph 54 are admitted in part and denied in part. It is admitted only that Petitioner Matis testified that he had received a phone call from "Kate" of the American Civil Liberties Union, and she advised him that his provisional ballot had not been counted. The Board is without direct knowledge as to Petitioner Matis's personal reaction to the information shared by "Kate" and therefore denies the remaining allegations within Paragraph 54.

55. The Board is without knowledge as to Petitioner Matis's state of mind and the "position" Petitioner contends the Board is taking and therefore denies the allegations within Paragraph 55.

56. Paragraph 56 is denied as stated.

57. Paragraph 57 contains conclusions of law to which no response is required. Any remaining factual allegations are denied as stated. By way of further response, no support for Paragraph 57 was established during the May 7th, 2024, hearing.

58. Paragraph 58 contains conclusions of law to which no response is required.

59. Paragraph 59 contains conclusions of law to which no response is required.

60. Paragraph 60 contains conclusions of law to which no response is required.

61. Paragraph 61 contains conclusions of law to which no response is required. Any remaining factual allegations are denied as stated. By way of further response, no support for Paragraph 61 was established during the May 7th, 2024, hearing.

62. Paragraph 62 contains conclusions of law to which no response is required.

63. Paragraph 63 contains conclusions of law to which no response is required.

64. Paragraph 64 contains conclusions of law to which no response is required.

65. Paragraph 65 contains conclusions of law to which no response is required.

66. Paragraph 66 contains conclusions of law to which no response is required.

67. Paragraph 67 refers to a written document, which speaks for itself, and any characterization thereof is denied. Further, Paragraph 67 contains conclusions of law to which no response is required.

68. Paragraph 68 contains conclusions of law to which no response is required and any remaining factual allegations are denied as stated.

69. The allegations set forth in Paragraph 69 are unintelligible and the Board is unable to reasonably form a response thereto. To the extent that the Board understands Paragraph 69 can be referencing a written document, such written document speaks for itself and any characterization thereof is denied. To the extent that Paragraph 69 references conclusions of law, no response is required.

70. Paragraph 70 appears to reference a written opinion from the Court of Common Pleas of Delaware County Pennsylvania which speaks for itself, and any characterization thereof is denied. To the extent that Paragraph 70 references conclusions of law, no response is required.

71. Paragraph 71 references a written document which speaks for itself, and any characterization thereof is denied. Further, Paragraph 71 contains conclusions of law to which no response is required.

72. To the extent that the allegations that are contained in Paragraph 72 contain conclusions of law, no response is required. The remaining factual allegations are denied as stated.

73. Paragraph 73 contains conclusions of law to which no response is required.

74. Paragraph 74 contains conclusions of law to which no response is required.

75. Paragraph 75 contains conclusions of law to which no response is required.

76. Paragraph 76 contains conclusions of law to which no response is required.

77. Paragraph 77 contains conclusions of law to which no response is required.

78. Paragraph 78 contains conclusions of law to which no response is required. By way of further response to the extent that Paragraph 78 references a written document that document speaks for itself, and any characterization thereof is denied.

WHEREFORE, the Board requests that the Court uphold the determinations of the Computation Board during its canvass of votes following the April 23, 2024, primary. With respect to the relief requested, the broad declaratory judgment requested in the Petition far exceeds the remedies available under 25 P.S. § 3157 and must be denied.

Dated: June 28, 2024

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

By: _____

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VERIFICATION

I, the undersigned am authorized to sign this verification on behalf of Respondent Butler County Board of Elections. I hereby certify that the statements in the foregoing answer are true and correct to the best of my knowledge, information, and belief. I understand that this Verification is made subject to the penalties of 18 Pa.C.S. § 4904 related to unsworn falsification to authorities.

Dated: June 28, 2024

Name: Chantell McCurdy
Title: Director of Elections

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praecipe for Entry of Appearance was served upon counsel for Petitioners and Intervenors, via email at this 28th day of June, 2024.

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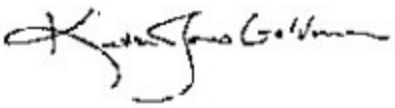

Kathleen Jones Goldman

CERTIFICATE OF COMPLIANCE

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

Submitted by: Kathleen Jones Goldman Esquire

Signature: */s/ Kathleen Jones Goldman*

Name: Kathleen Jones Goldman, Esquire

Attorney No.: 90380