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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY,
PENNSYLVANIA

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PROthonotary's
OFFICE BUTLER CO.
ENHANCED & FILED

FAITH GENSER and FRANK MATIS,

CIVIL DIVISION

Petitioners,

No. 24-40116

v.

**MOTION TO DISMISS PETITION
FOR REVIEW IN THE NATURE OF
A STATUTORY APPEAL**

BUTLER COUNTY BOARD OF
ELECTIONS,

Respondent.

Filed on behalf of:

**Proposed Intervenor-Respondents,
Republican National Committee and
Republican Party of Pennsylvania**

Counsel of Record for this Party

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**IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY,
PENNSYLVANIA**

FAITH GENSER and FRANK MATIS,	:	CIVIL DIVISION
	:	
Petitioners,	:	No. 24-40116
	:	
v.	:	<i>ELECTION APPEAL</i>
	:	
BUTLER COUNTY BOARD OF	:	
ELECTIONS,	:	
	:	
Respondent.	:	

**MOTION TO DISMISS PETITION FOR REVIEW
IN THE NATURE OF A STATUTORY APPEAL**

Proposed Intervenor-Respondents, the Republican National Committee and the Republican Party of Pennsylvania (collectively, “Republican Committees”), by and through their undersigned counsel, hereby move this Court for an Order dismissing Petitioners Faith Genser (“Petitioner Genser”) and Frank Matis’ (“Petitioner Matis”) (hereinafter collectively referred to as the “Petitioners”) Petition for Review in the Nature of a Statutory Appeal (the “Petition”).¹ The Republican Committees incorporate by reference their concurrently filed Brief in Support of Motion to Dismiss Petition for Review in the Nature of a Statutory Appeal.

¹ The Republican Committees have styled this response to the Petition as a Motion to Dismiss based on the Pennsylvania Commonwealth Court’s decision in *Schimes v. City of Scranton Non-Uniform Pension Bd.*, No. 1526 C.D. 2018, 2019 Pa. Commw. Unpub. LEXIS 438 at *9 (Pa. Commw. Aug. 1, 2019) which found that “the Pennsylvania Rules of Civil Procedure are not applicable to statutory appeals; thus, preliminary objections, the grounds for which are set forth in Pa. R.C.P. 1028, cannot be used as a vehicle for challenging such an appeal” (*citing Appeal of Borough of Churchill*, 575 A.2d 550, 553 (Pa. 1990)). *See also, Barros v. City of Allentown*, No. 1592 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 466 at *7 n. 4 (Pa. Commw. Feb. 17, 2012) (“Because preliminary objections are not permitted in statutory appeals, the common pleas court erred when it dismissed Barros’ appeal on the City’s preliminary objections. We find this error to be harmless, where the court could have treated the preliminary objections as a motion to dismiss . . . Accordingly, and because the parties are not prejudiced as a result, we will treat our review of the common pleas court’s order as though the City filed a motion to dismiss. . .”).

1. Petitioners have filed the instant statutory appeal challenging the decision of the Butler County Board of Elections (the “Board of Elections”) rejecting Petitioners’ mail-in ballots and/or provisional ballots in the 2024 Primary Election on April 23, 2024 (the “Primary Election”).

2. Petitioners admit that they submitted their mail-in ballots without the required secrecy envelope which rendered those ballots defective.

3. There can be no dispute that the unequivocal law of Pennsylvania is that secrecy envelopes are required, and any mail-in ballot received without a secrecy envelope cannot be counted. *See, Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 380 (Pa. 2020).

4. As the result of a notification from the Pennsylvania Department of State which advised Petitioners whose mail-in ballots were rejected due to a perceived lack of a secrecy envelope, and further advised Petitioners to cure such ballots by appearing in person and voting provisionally, Petitioners believe they have a legal right to cure such deficiency via their provisional ballots.

5. The Butler County Board of Elections correctly chose not to count Petitioners’ provisional ballots because those ballots are null under Pennsylvania law.

6. To be clear, there is no right to cure defective mail-in ballots under Pennsylvania law.

7. Indeed, the Pennsylvania Supreme Court has already concluded that “naked ballots” — mail-in ballots which were submitted without the required secrecy envelope — are defective and cannot be counted. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 378 (Pa. 2020) (“[W]e conclude that the Legislature intended for the secrecy envelope provision to be mandatory.”).

8. Further, in *Pa. Democratic Party v. Boockvar*, the Pennsylvania Supreme Court held that it cannot require county boards of elections to adopt notice and cure procedures as such decisions are best left to the Legislature.

9. Yet this is exactly what Petitioners seek here, a Court Order which requires the Butler County Board of Elections to permit Petitioners to cure their defective mail-in ballots when the Board has already considered the issue, created a policy governing what defects it will permit to be cured, and has determined that the lack of a secrecy envelope is not something which can be cured.

10. The Butler County Board of Election's decision in this matter was in accordance with clear Pennsylvania law, and Petitioners' appeal challenging that decision should, accordingly, be dismissed.

WHEREFORE, for the reasons stated herein, those contained in Proposed Intervenor-Respondents' accompanying Brief in Support of this Motion to Dismiss, and those that may be urged upon this Court at oral argument of this Motion, Proposed Intervenor-Respondents, the Republican National Committee and the Republican Party of Pennsylvania, respectfully request that this Honorable Court grant their Motion to Dismiss, enter an order dismissing Petitioners' Petition for Review in the Nature of a Statutory Appeal, and grant any such other relief that the Court may deem just and fair.

Dated: May 7, 2024

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE
WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Public Access Policy of the United 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.

Dated: May 7, 2024

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the within **MOTION TO DISMISS PETITION FOR REVIEW IN THE NATURE OF A STATUTORY APPEAL** has been served on all counsel of record listed below via email this 6th day of May 2024:

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