

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

LEIGH M. CHAPMAN, ACTING  
SECRETARY OF THE  
COMMONWEALTH AND THE  
PENNSYLVANIA  
DEPARTMENT OF STATE,

Petitioners,

v.

BERKS COUNTY BOARD OF  
ELECTIONS, FAYETTE  
COUNTY BOARD OF  
ELECTIONS, AND LANCASTER  
COUNTY BOARD OF  
ELECTIONS.

Respondents.

: No.: 355 MD 2022  
:  
: **RESPONDENT FAYETTE**  
: **COUNTY BOARD OF**  
: **ELECTIONS RESPONSE TO**  
: **PETITIONERS' EMERGENCY**  
: **APPLICATION FOR**  
: **PEREMPTORY JUDGMENT**  
: **AND SUMMARY RELIEF**  
:  
: Filed on Behalf of:  
: Respondent Fayette County  
: Board of Elections  
: Counsel of Record for this Party:  
:  
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BOARD OF ELECTIONS, AND  
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Respondents.

No.: 355 MD 2022

**RESPONDENT FAYETTE COUNTY BOARD OF ELECTIONS  
RESPONSE TO PETITIONERS' EMERGENCY APPLICATION FOR  
PEREMPTORY JUDGMENT AND SUMMARY RELIEF**

Respondent, Fayette County Board of Elections (hereinafter "**Fayette County**"), files the following Response to Petitioners' Emergency Application for Peremptory Judgment and Summary Relief (the "**Emergency Application**").

1. Denied. This paragraph sets forth the Pennsylvania Rules of Civil Procedure and the Pennsylvania Rules of Appellate Procedure to which no response is required; however to the extent a response is required, Fayette County denies the averments in this paragraph to the extent they expand

upon the rules or misstate them. Further, each and every averment of the Application are denied as follows:

- a. There is no emergency in this matter other than the emergency created entirely by the Petitioners;
  - b. There is no case or controversy and this Action merely masquerades as a request for an advisory opinion;
  - c. The Petitioners have taken opposite and contrary positions in their Guidance and in their Briefs and Pleadings in other cases before the State and Federal Courts, and have actually stated previously that they have no such powers or authority as those asserted here;
  - d. The *Ritter* case that Petitioners rely upon is still pending in the Supreme Court of the United States;
  - e. The Petitioners come before this Court with unclean hands and having failed to comply with statutory limitations and having failed to comply with statutory obligations to certify the election;
  - f. The Petitioners claims are barred by laches;
  - g. The *McCormick* case relied upon by Petitioners does not require the result sought in this matter;
  - h. The Petitioners have failed to comply with IRRRC regulations regarding their asserted "guidance;"
  - i. The Application is denied for all of the reasons set forth in the Respondent's Brief filed simultaneously herewith.
2. Denied. This paragraph misstates the law for the reasons as

more fully set forth at length, and incorporated herein by reference thereto, are Fayette County's Preliminary Objections and Memorandum of Law in Opposition to Petitioners' Emergency Application.

3. Denied. This paragraph misstates the law for the reasons as more fully set forth at length, and incorporated herein by reference thereto, are Fayette County's Preliminary Objections and Memorandum of Law in Opposition to Petitioners' Emergency Application.

4. Denied. This paragraph misstates the law for the reasons as more fully set forth at length, and incorporated herein by reference thereto, are Fayette County's Preliminary Objections and Memorandum of Law in Opposition to Petitioners' Emergency Application.

5. Denied. This paragraph misstates the law for the reasons as more fully set forth at length, and incorporated herein by reference thereto, are Fayette County's Preliminary Objections and Memorandum of Law in Opposition to Petitioners' Emergency Application.

6. Denied. To the contrary, the *McCormick* case has been settled and discontinued, and no further proceedings have been or will be scheduled therein.

7. Denied. This paragraph misstates the law for the reasons as more fully set forth at length, and incorporated herein by reference thereto, are Fayette County's Preliminary Objections and Memorandum of Law in Opposition to Petitioners' Emergency Application.

8. Denied. This paragraph misstates the law for the reasons as more fully set forth at length, and incorporated herein by reference thereto, are Fayette County's Preliminary Objections and Memorandum of Law in Opposition to Petitioners' Emergency Application.

WHEREFORE, Respondent, Fayette County Board of Elections, requests that this Court:

- 1) Deny Petitioners' Emergency Application in its entirety; and
- 2) Order Petitioners to certify the 2022 primary election results submitted by Fayette County;
- 3) Award the Fayette County Board of Elections counsel fees for obdurate and vexatious conduct by the Petitioners.

Respectfully Submitted,

**DILLON, McCANDLESS, KING,  
COULTER & GRAHAM, L.L.P.**

Dated: July 19, 2022

By: /s/ Thomas W. King, III

Thomas W. King, III

PA. I.D. No. 21580

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Thomas E. Breth

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Jordan P. Shuber

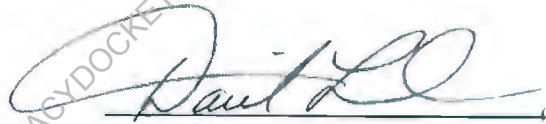
PA. I.D. No. 317823

[jshuber@dmkcg.com](mailto:jshuber@dmkcg.com)

*Counsel for Respondent, Fayette  
County Board of Elections*

## VERIFICATION

I, David Lohr, Chairman of the Fayette County Board of Elections, am authorized to make this verification. I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of perjury of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "David Lohr", written over a horizontal line.

David Lohr,  
Chairman of the Fayette  
County Board of Elections

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## **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.

/s/ Thomas W. King, III

Thomas W. King, III

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Respondents.

**PROPOSED ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, it is hereby  
ORDERED that the Petitioners' Emergency Application is DENIED. It is  
FURTHER ORDERED that:

- 1) Petitioners' Petition for Review is dismissed in its entirety *with prejudice*;
- 2) Petitioners are Ordered to certify the Fayette County and Pennsylvania 2022 primary election results; and
- 3) Fayette County is awarded attorneys' fees and costs related to responding to the Petition and Emergency Application, the same having been wrongfully and improvidently brought.

\_\_\_\_\_, J.