

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 SPECIAL RELIEF IN THE FORM
OF A PRELIMINARY INJUNCTION UNDER PA. R.A.P. 1532**

Petitioners, by counsel, hereby move pursuant to Rule 1532 of the Pennsylvania Rules of Appellate Procedure for special relief in the form of a preliminary injunction enjoining Respondent County Boards of Elections (“Boards”) from implementing procedures to notify voters that their mail-in or absentee ballots fail to comply with the Election Code’s signature and secrecy ballot requirements and giving such voters an opportunity to “cure” noncompliant ballots (“cure procedures”), except where expressly authorized under the Election Code, until resolution of this litigation. In support of their application, Petitioners hereby incorporate the Petition for Review filed in this action on September 1, 2022, as well as the memorandum of law filed in support of this Application. Petitioners further state the following:

BACKGROUND

1. As set forth more fully in the Petition for review filed on September 1, 2022, the General Assembly has authorized cure procedures in only a narrow circumstance: specifically, “[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). In that circumstance, the voter may cure only the lack of proof of identification, not any other defect. *Id.* Nonetheless, some Boards have, on their own initiative, implemented cure procedures of their own design in a broad range of circumstances not authorized by the General Assembly, including but not limited to voters’ failure to adhere to the Election Code’s requirement to place such ballots in a secrecy envelope and filling out and signing the “declaration of the elector” form on the outer envelope.

2. These Boards’ actions violate the clear and unanimous holding of the Pennsylvania Supreme Court just two years ago that “the Election Code provides procedures for casting and counting a vote by mail” but does not provide for cure procedures for voters who fail to comply with the requirements for voting by mail or absentee. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020).

3. The Pennsylvania Supreme Court expressly held 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.*

4. 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.*

5. The Legislature did, in fact, pass a bill to implement a broad cure procedure, but Governor Wolf vetoed it.

6. Those Boards which have implemented cure procedures not provided in the Election Code have exceeded their statutory authority and have usurped the exclusive legislative power of the General Assembly.

7. The selective and varying adoption of cure procedures by some Boards has also 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. Moreover, the Boards that have adopted cure procedures on their own initiative have not uniformly adopted the *same* procedure. The result is a lack of statewide uniformity in both the existence and—where they do exist—the particulars of cure procedures.

8. The Court should enjoin the unauthorized cure procedures implemented by those Boards which have elected to do so not only because the current arrangement treats voters residing in different counties unequally, but also because the lack of transparency by some Boards regarding the use of cure procedures has created uncertainty regarding which Boards have implemented cure procedures and, for those Boards that have done so, the particulars of those procedures.

INJUNCTIVE RELIEF

9. In this action, Petitioners request that this Court enter an order declaring that Boards are prohibited from developing or implementing cure procedures relating to a voter's failure to comply with the signature and secrecy ballot requirements set forth in the Election Code and permanently enjoining the Respondent Boards from developing and implementing cure procedures and the Acting Secretary from taking any action inconsistent with that injunction.

10. Pursuant to Pa. R.A.P. 1532(a), the Court may order special relief, including a preliminary or special injunction "in the interest of justice and consistent with the usages and principles of law." The standard for obtaining a preliminary injunction under this rule is the same as that for a grant of a preliminary injunction pursuant to the Pennsylvania Rules of Civil Procedure. *Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 451 A.2d 434, 439 (Pa. 1982); *Commonwealth ex rel. Pappert v. Coy*, 860 A.2d 1201, 1204 (Pa. Commw. 2004). Preliminary injunctive

relief may be granted at any time following the filing of a Petition for Review. *See* Pa. R.A.P. 1532(a).

11. A special injunction is warranted where: (1) it is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages, (2) greater injury would result from refusing than from granting the injunction and the issuance of an injunction will not substantively harm other interested parties in the proceedings, (3) the injunction would restore their status quo ante, (4) the movant is likely to succeed on the merits, (5) the requested injunction is reasonably suited to abate the offending activity, and (6) the injunction will not adversely affect the public interest. *See Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003).

12. All of these factors are satisfied here.

13. ***First***, an injunction is needed to prevent immediate and irreparable harm. Absent a preliminary injunction, some of the Boards will continue developing and implementing cure procedures in all elections, including the General Election scheduled to take place on November 8, 2022. Indeed, as referenced in the Petition for Review, the Northampton and Lehigh County Boards agreed as recently as June 15, 2022 to begin implementing cure procedures for upcoming elections. Upon information and belief, other Boards intend to implement cure procedures for the upcoming General Election. None of these cure procedures are authorized under the

Election Code and many of these cure procedures are not publicly disclosed and differ from one another. Unlawful action by a Board “per se constitutes immediate and irreparable harm.” *Hempfield Sch. Dist. v. Election Bd. of Lancaster County*, 574 A.2d 1190, 1193 (Pa. Commw. 1990). The Voter Petitioners thus suffer the risk of having votes being treated unequally, in violation of Article VII, Section 6 of the Pennsylvania Constitution, while the Committee Petitioners are unable to properly educate their members regarding the rules applicable to mail-in and absentee ballots. The continued practice of some Boards to implement cure procedures—despite the Election Code’s failure to authorize one, the Pennsylvania Supreme Court’s confirmation that such procedures must come from the Legislature, and Governor Wolf’s veto of the Legislature’s effort to enact one—also would cause irreparable harm to the separation of powers and the rule of law.

Second, greater injury would result from refusing than from granting the injunction. Absent an injunction, the Boards will collectively engage in a mishmash of cure procedures, allowing some voters to cure signature or secrecy envelope defects for some Pennsylvania voters (in violation of the Election Code) while preventing others from doing so. A violation of law cannot be considered a benefit to the public. *Commonwealth v. Coward*, 414 A.2d 91, 98 (Pa. 1980). The Committee Petitioners will likewise be unable to properly educate their members regarding the exact rules applicable to mail-in and absentee ballot voters. In contrast,

by granting the requested injunction, the Court will affirm the Pennsylvania Supreme Court's prior holding in *Pa. Democratic Party* that the Boards cannot implement cure procedures that are not set forth in the Election Code and maintain compliance with the Pennsylvania Constitution. *See* PA. CONST. art. VII, § 6 (requiring that “[a]ll laws regulating the holding of elections by the citizens ... shall be uniform throughout the State”).

14. **Third**, Petitioners' requested injunction seeks only to preserve the status quo. *See City of Philadelphia v. Commonwealth*, 837 A.2d 591, 604 (Pa. Commw. 2003) (granting preliminary injunctive relief and noting that “the public interest lies in favor of maintaining the status quo” pending resolution of the case's merits). Here, Petitioners merely seek to preserve the state of the law established by the Pennsylvania Supreme Court just two years ago in *Pa. Democratic Party*: with an explicit recognition that only the Legislature can authorize a cure procedure to address voters' failure to comply with the Election Code's signature and secrecy ballot requirements.

15. **Fourth**, Petitioners are likely to prevail on the merits of the underlying claims in this case. As set forth more fully in the brief accompanying this application, the cure procedures implemented by some, but not all, of the Boards run afoul of both the Election Code and the Supreme Court's holding in *Pa. Democratic Party*. Too, the Boards' implementation of cure procedures not crafted by the Legislature

violates the Elections Clause of the United States Constitution; only Congress and the Legislature may prescribe the “manner” of holding federal elections. *See* U.S. CONST. art. I, § 4, cl. 1. Boards’ implementation of cure procedures for mail-in and absentee ballots in federal elections infringes on the Legislature’s exclusive authority. *See Smiley v. Holm*, 285 U.S. 355, 373 (1982).

16. ***Fifth***, the requested injunction is reasonably suited to abate the offending activity. The relief sought by the Petitioners is narrowly tailored. Petitioners seek only to enforce the Pennsylvania Supreme Court’s holding that the Election Code fails to provide a cure procedure for mail-in and absentee ballots and that only the Legislature—not the Courts or any other entity, including the Boards—can enact one. The request has no impact on the overwhelming majority of mail-in and absentee ballots which are properly cast.

17. ***Sixth***, the requested injunction will not adversely affect the public interest. The Pennsylvania Supreme Court has already held that the “task of effectuating” the Pennsylvania Constitution’s mandate that elections be free and equal is the province of the Legislature. *Pa. Democratic Party*, 238 A.3d at 374. The public interest is best served by a consistent application of the rule of law and the maintenance of the separation of powers. Conversely, the public interest is not served by allowing Boards to act as quasi-Legislatures, resolving “the open policy questions” attendant with the development of cure procedures on their own. *Id.* A

ruling to the contrary would only further diminish Pennsylvania voters' confidence in the election system as a result of the secretive and inconsistent application of election procedures across the state.

WHEREFORE, for the above reasons and those set forth in the Petition for Review and the accompanying memorandum of law in support, Petitioners respectfully request that this Honorable Court grant their Application for Special Relief in the Nature of a Preliminary Injunction and enter an order prohibiting the Respondent Boards from developing and implementing cure procedures and for the Acting Secretary to take no action inconsistent with such an order.

Respectfully submitted,

Dated: September 7, 2022

/s/ Kathleen A. Gallagher

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Counsel for Petitioners

VERIFICATION

I hereby aver that the statements of fact contained in the attached **Petitioners' Application for Special Relief in the Form of a Preliminary Injunction Under Pa. R.A.P. 1532** are true and correct to the best of my knowledge and belief and are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


By: 

Angela Alleman, Executive Director
Republican Party of Pennsylvania

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By: 

Philip Valenziano, Regional Political Director
Republican National Committee

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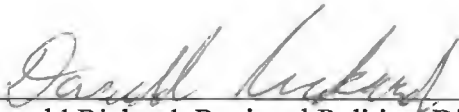
By: _____


Stu Sandler, Political Director
National Republican Senatorial Committee

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By: 
Donald Rickard, Regional Political Director
National Republican Congressional Committee

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By: David M Ball
David Ball

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By: 
Gwendolyn Mae Deluca

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By: _____


James D. Bee

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By: _____

Jesse D. Daniel

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By:


Linda S. Kozlovich

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By: Ross M. Farber
Ross M. Farber

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VERIFICATION

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By: 

Vallerie Siciliano-Biancaniello

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By: 
William P. Kozlovich

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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.

GALLAGHER GIANCOLA LLC

Dated: September 7, 2022

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Russell D. Giancola

Counsel for Petitioners

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PROOF OF SERVICE

I do hereby certify that a true and correct copy of the **Petitioners' Application for Special Relief in the Form of a Preliminary Injunction Under PA. R.A.P. 1532** has been served on all parties and/or their counsel as listed below:

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Respectfully submitted,

Dated: September 7, 2022

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

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Counsel for Petitioners

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

REPUBLICAN NATIONAL COMMITTEE, <i>et al.</i> , Petitioners, v. LEIGH M. CHAPMAN, in her official capacity as Acting Secretary of the Commonwealth, <i>et al.</i> , Respondents.	No. 447 MD 2022
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**ORDER GRANTING PETITIONERS' APPLICATION FOR SPECIAL
RELIEF IN THE FORM OF A PRELIMINARY INJUNCTION
UNDER PA. R.A.P. 1532**

Upon consideration of Petitioners' Application for Special Relief in the Form of a Preliminary Injunction Under Pa. R.A.P. 1532, and finding that good cause exists for the same, it is hereby ORDERED that said Application is GRANTED.

The Respondent Boards of Elections shall not develop or implement cure procedures to address voters' failures to comply with the Election Code's signature and secrecy ballot requirements for mail-in and absentee ballots. The Acting Secretary is ordered to take no action inconsistent with this Court's Order.

BY THE COURT:

_____, J.