

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

NO. 447 M.D. 2022

LEIGH M. CHAPMAN, in her official)
 capacity as Acting Secretary of the)
 Commonwealth of Pennsylvania;)
 JESSICA MATHIS, in her official)
 capacity as Director of the Pennsylvania)
 Bureau of Election Services and)
 Notaries, *et al.*,)

Respondents.

APPLICATION OF PROPOSED INTERVENORS-RESPONDENTS
DEMOCRATIC NATIONAL COMMITTEE AND PENNSYLVANIA
DEMOCRATIC PARTY
FOR LEAVE TO INTERVENE

Proposed Intervenor-Respondents, the Democratic National Committee (“DNC”) and the Pennsylvania Democratic Party (“PDP”) (collectively, “Applicants”), respectfully file this Application for Leave to Intervene in the above-captioned litigation, and to participate fully therein as Intervenor-Respondents. If permitted to intervene, Applicants will file the attached Preliminary Objections.

I. INTRODUCTION

Petitioners in this case allege that any individual county Boards of Election that provide voters notice of and the opportunity to correct minor errors with their mail-in ballot envelopes are somehow violating Pennsylvania law. The DNC and PDP have a cognizable interest in the case because the relief Petitioners request—prohibiting boards from allowing voters the opportunity to correct such errors—would significantly impede the ability of thousands of Pennsylvanians, including a large number of Democratic Party members and supporters, to exercise their fundamental right to vote, and would thereby impair the electoral prospects of Democratic candidates.

The DNC and PDP have the right to intervene because no party to this proceeding adequately represents their interests. Respondents have the duty to enforce Pennsylvania law, which is distinct from Applicants’ particularized interest in having their candidates assume office and in ensuring that their voters’ ballots are counted. Applicants’ unique interests make allowance of that intervention not

just permissible, but in fact mandatory. *See Larock v. Sugarloaf Twp. Zoning Hr'g Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999).

II. LEGAL STANDARD

Pennsylvania Rule of Appellate Procedure 1531(b) governs applications to intervene in this Court's original jurisdiction. Rule 1531(b) mirrors the standards set forth in Pennsylvania Rules of Civil Procedure 2326 through 2350. Rule 2327 denotes four categories of persons or entities that may intervene "[a]t any time during the pendency of an action." Relevant here is the category that includes any person or entity that has "any legally enforceable interest" that may be affected by a judgment in the action, even if that person is bound by the judgment. Pa. R.C.P. 2327(4). Further, Rule 2329 provides certain grounds for refusal to permit the intervention of a person who fits within the parameters of Rule 2327, including that such person's interests are "already adequately represented." Pa. R.C.P. 2329(2). "Considering Rules 2327 and 2329 together," this Court has explained, "the effect of Rule 2329 is that if the petitioner is a person within one of the classes described in Rule 2327, the allowance of intervention is mandatory, not discretionary, unless one of the grounds for refusal under Rule 2329 is present." *Larock*, 740 A.2d at 313. And even if a ground for refusal under Rule 2329 is present, the Court still possesses discretion to permit intervention. *Allegheny*

Reprod. Health Ctr. v. Pa. Dep't of Human Servs., 225 A.3d 902, 908 (Pa. Commw. Ct. 1999) (citing *Larock*, 740 A.2d at 313).

III. APPLICANTS FOR INTERVENTION

The DNC is a national committee (as that term is defined in 52 U.S.C. §30101), dedicated to electing local, state, and federal candidates of the Democratic Party to public office throughout the United States, including in Pennsylvania. The PDP is the DNC's coordinate party within the Commonwealth and is the largest political party by registration in Pennsylvania. Recent registration data indicates that 3,571,594 registered voters in Pennsylvania are Democrats. *See Voting and Election Statistics*, PENNSYLVANIA DEP'T OF STATE, available at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Pages/VotingElectionStatistics.aspx> (visited September 9, 2022). The PDP is a "major political party" as defined in the Pennsylvania Election Code (25 Pa. Stat. §§ 2601) and is statutorily created. *See* 25 Pa. Stat. §§ 2834 *et seq.* In each primary election, the PDP nominates individuals for Pennsylvania's federal, state, and local offices, who then run as candidates in the general election. The DNC's members in the Commonwealth include qualified voters as well as candidates for offices across the Commonwealth. The DNC and PDP have dedicated significant resources to encourage their supporters and constituents to vote, including by mail. These efforts have been successful. 2020 election turnout in the Commonwealth was the highest in decades, with more than 2.6 million voters casting a ballot by mail. *See* Declaration

of Corey Pellington, Executive Director of the Pennsylvania Democratic Party (Ex. A).

IV. REASONS FOR GRANTING APPLICATION FOR LEAVE TO INTERVENE

Applicants have a cognizable interest in this litigation because the relief Petitioners seek would require otherwise valid mail-in and absentee ballots to be discarded because of minor, correctible errors, thereby disenfranchising voters, including members of the DNC and PDP as well as non-members voting for Democratic candidates. The DNC's and PDP's interests are not adequately represented by any party to this litigation.

A. Applicants have particularized interests that would be affected by a judgment in this matter, satisfying Rule 2327(4).

Applicants' institutional interests and the rights of their members would be adversely affected if this Court were to grant Petitioners' requested relief. Petitioners ask this Court for declaratory and injunctive relief forcing county Boards of Election not to provide notice to voters of minor defects with their ballots, and to permit those voters to address those problems, despite there being no prohibition in Pennsylvania law on doing so. Applicants have a clear interest in ensuring that Democratic voters are not impermissibly disenfranchised through erroneous interpretations of the Election Code.

As of May 10, 2022, 70% of the 959,794 mail-in ballot requests for the 2021 General Election came from registered Democrats. *See Mail Ballot Request Application Statistics*, PENNSYLVANIA DEPT. OF STATE, available at https://data.pa.gov/Government-Efficiency-Citizen-Engagement/2021-General-Election-Mail-Ballot-Requests-Departm/mksf-6xzy_ (visited September 9, 2022). And 77% of the 866,182 mail-in ballot requests for the 2022 Primary Election similarly came from registered Democrats. *See 2022 Primary Election Mail Ballot Requests*, PENNSYLVANIA DEP'T OF STATE, available at <https://data.pa.gov/Government-Efficiency-Citizen-Engagement/2022-Primary-Election-Mail-Ballot-Requests-Departm/8qup-ffkc> (visited September 9, 2022).

As the foregoing illustrates, many Democrats have cast mail ballots in the past and will do so again in the future, and Democrats running for office in the Commonwealth have received and will receive votes cast by mail. Petitioners' legal challenge targets mail-in and absentee ballots for disqualification, and thus threatens the ability of Democrats to have their votes counted. Any judgment granting Petitioners' requested relief would implicate Applicants' legally enforceable interests because it would harm Applicants' electoral prospects. Under similar circumstances, courts in the Commonwealth and around the country have granted intervention to political parties, particularly where plaintiffs seek to impose restrictions on voting access in ways that undermine the ability of one party's

voters to vote or harm the electoral prospects of the party's candidates. *See Paher v. Cegavske*, 2020 WL 2042365, at *4 (D. Nev. Apr. 28, 2020); *Donald J. Trump for President, Inc. v. Murphy*, 2020 WL 5229209, at *1 (D.N.J. Sept. 1, 2020); Minute Entry (ECF No. 37), *Cook Cty. Republican Party v. Pritzker*, No. 20-cv-4676 (N.D. Ill. Aug. 28, 2020); *Issa v. Newsom*, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020); Order (ECF No. 35), *Donald J. Trump for President v. Bullock*, No. 6:20-cv-66 (D. Mont. Sept. 8, 2020); *see also* Memorandum Order (ECF No. 309), *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-00966-NR (W.D. Pa. Aug. 3, 2020) (granting a non-profit organization standing to represent its members in a lawsuit by Republican presidential and congressional candidates).

Consistent with these cases, the DNC and PDP were each granted intervention in several election-related cases in Pennsylvania during the last federal election cycle. *See In re Canvassing Observation*, 241 A.3d 339 (Pa. 2020); *In re: Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058 (Pa. 2020); ECF No. 72, *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-cv-02078 (W.D. Pa. Nov. 12, 2020); Oral Order, *Donald J. Trump for President, Inc. v. Montgomery Cty. Bd. of Elections*, No. 2020-18680 (Pa. Com. Pl. Nov. 10, 2020); Oral Order, *Donald J. Trump for President, Inc. v. Phila. Cty. Bd. of Elections*, Nos. 201100874, 201100875, 201100876, 201100877, & 201100878 (Pa. Com. Pl. Nov. 13, 2020); Oral Order, *Donald J. Trump for President, Inc. v. Bucks*

Cty. Bd. of Elections, No. 2020-05786 (Pa. Com. Pl. Nov. 17, 2020); *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-cv-00966, ECF 309 (W.D. Pa. Aug. 3, 2020); *Libertarian Party of Pa. v. Boockvar*, No. 5:20-cv-2299, ECF 49 (E.D. Pa. July 8, 2020). And recently, this Court recognized Applicants’ interest in matters concerning mail-in ballots, granting Applicants’ intervention request in *McLinko v. Commonwealth*, 244 M.D. 2021 and *Bonner v. Chapman*, 364 M.D. 2022. Applicants participated in the subsequent appeal of *McLinko* before the Pennsylvania Supreme Court. *See McLinko v. Commonwealth*, 279 A.3d ___, 2022 WL 3039295 (Pa. Aug. 2, 2022). Judgments in those cases, like this one, implicated Applicants’ interests in ensuring that mail-in voters are not disenfranchised, and the same result, as far as allowing Applicants’ intervention, should follow here.

Lastly, given Petitioners’ request for declaratory relief and the extent to which Applicants’ interests are implicated by a judgment in this matter, Applicants’ participation may well be required under Pennsylvania’s Declaratory Judgments Act. That law provides that “[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.” 42 Pa. C.S. §7540(a). This provision “is mandatory.” *Allegheny Cty. v. Commonwealth*, 453 A.2d 1085, 1087 (Pa. Commw. Ct. 1983); *accord Stilp v.*

Commonwealth, 910 A.2d 775, 785 (Pa. Commw. Ct. 2006). As explained, Applicants and their candidate and voter members assuredly have interests that would be affected by a judgment granting the proposed declaratory relief.

B. Respondents do not adequately represent Applicants' interests and Applicants do not meet any of the criteria in Rule 2329.

Applicants' interests diverge from those of Respondents. As the Third Circuit has explained, "when ... proposed intervenors' concern is not a matter of 'sovereign interest,' there is no reason to think the government will represent it." *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (quotation marks omitted). That is the situation here because Applicants' concern is not one of "sovereign interest." Respondents are bound to represent the interests of *all* Pennsylvanians; they have no interest in which candidates win an election, and hence it is irrelevant to Respondents whether voting by mail is more prevalent among members of one political party than another, such that efforts to curtail such voting would disproportionately benefit one party. As another court put it in granting a similar intervention motion, "[w]hile [Respondents'] arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, the Proposed Intervenors are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the election procedures."

Issa, 2020 WL 3074351 at *3. This divergence of interest confirms the propriety of Applicants' intervention here.

The divergence between Applicants' and Respondents' interests also differentiates Applicants' interests from those of the general public. Put simply, Applicants' "interest in the outcome of the litigation ... surpasses that of Pennsylvania citizens generally in procuring obedience to the law." *City of Phila. v. Commonwealth*, 838 A.2d 566, 578 (Pa. 2003).

Consistent with the cases cited, Pennsylvania courts have both granted intervention and reversed denials of intervention where intervenors possessed unique and personal interests not adequately addressed by government respondents. *See D. G.A. v. Dep't of Human Servs.*, 2020 WL 283885, at *7 (Pa. Commw. Ct. Jan. 21, 2020) (citing *Benjamin ex rel. Yock v. Dep't of Pub. Welfare*, 701 F.3d 938 (3d Cir. 2012)); *Larock*, 740 A.2d at 314. Third Circuit precedent applying federal law is to the same effect. That Court explained, for example, that "when an agency's views are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it, the burden [of establishing inadequacy of representation] is comparatively light." *Kleissler*, 157 F.3d at 972; *accord Yock*, 701 F.3d at 958.

C. Applicants' interests in this matter are equivalent to Petitioners' asserted interests.

Applicants' interests here mirror those asserted by Petitioners, who are Republican Party committees and voters. Applicants have associational interests with their own candidates, officeholders, and millions of registered Democratic voters. As the two major parties under the Election Code, the Democratic Party and the Republican Party must each select their candidates through a state-sponsored primary election and thus each major party has an interest in how votes are received and counted by the various Boards of Election. To the extent Petitioners can bring this litigation, Applicants have equivalent interests.

D. Intervention is uniquely appropriate in these circumstances.

Even if the Court were to conclude that one of the bases in Rule 2329 for refusing intervention is present, "the court is given the discretion to allow ... intervention [] where the petitioner falls within one of the classes enumerated in Rule 2327." *Allegheny Reprod.*, 225 A.3d at 908. As discussed, Applicants' interests would plainly be affected by a judgment in this matter granting Petitioners' proposed relief. But even if the Court decides otherwise, this dispute presents a compelling case for exercising its discretion to allow intervention. The widespread use of mail ballots in Pennsylvania demonstrates that millions of voters of the Commonwealth, the majority of whom are registered Democrats, prefer to vote by mail—and thus Petitioners' requested relief risks the disproportionate

disenfranchisement of Democratic voters and disproportionate harm to Democratic candidates. Such a burden on the most fundamental of all rights should not be imposed lightly. Permitting Applicants to intervene would help to ensure that this Court's decision is made with the benefit of a full airing of views.

E. Applicants' participation will not delay adjudication of Petitioners' claims.

Applicants reserve the right to file a brief in support of their Preliminary Objections, and are prepared to present it, and they will litigate this matter on any schedule the Court adopts. Accordingly, granting Applicants' application to intervene would not delay the resolution of this case.

V. CONCLUSION

The application of the DNC and PDP to intervene should be granted and the attached proposed Preliminary Objections docketed.

Respectfully submitted,

DENTONS COHEN & GRIGSBY P.C.

By: Clifford B. Levine

Clifford B. Levine

Pa. I.D. No. 33507

Emma F.E. Shoucair

PA I.D. No. 325848

625 Liberty Avenue, 5th Floor

Pittsburgh, PA 15222-3152

(412) 297-4900

clifford.levine@dentons.com

emma.shoucair@dentons.com

*Counsel for the Democratic National
Committee and Pennsylvania Democratic
Party*

GREENBERG TRAURIG, LLP

By: /s/ Kevin Greenberg

Kevin Greenberg

PA I.D. 082311

Adam Roseman

PA I.D. No. 313809

1717 Arch Street, Suite 400

Philadelphia, PA 19103

(215) 988-7800

greenbergk@gtlaw.com

rosemana@gtlaw.com

*Counsel for the Pennsylvania Democratic
Party*

By: /s/ Lazar M. Palnick

PA I.D. No. 52762

1216 Heberton Street

Pittsburgh, PA 15206

(412) 661-3633

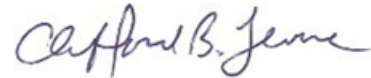
lazarpalnick@gmail.com

Dated: September 9, 2022

*Counsel for the Democratic National
Committee and Pennsylvania Democratic
Party*

CERTIFICATE OF COMPLIANCE

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.

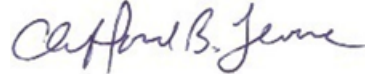


CLIFFORD B. LEVINE

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served upon all counsel of record on September 9, 2022, by this Court's electronic filing system.



CLIFFORD B. LEVINE

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

NO. 447 M.D. 2022

LEIGH M. CHAPMAN, in her official)
capacity as Acting Secretary of the)
Commonwealth of Pennsylvania;)
JESSICA MATHIS, in her official)
capacity as Director of the Pennsylvania)
Bureau of Election Services and)
Notaries, *et al.*,)

Respondents.

**[PROPOSED] ORDER GRANTING THE APPLICATION TO INTERVENE
OF THE DEMOCRATIC NATIONAL COMMITTEE AND THE
PENNSYLVANIA DEMOCRATIC PARTY**

AND NOW, this ___ day of _____, 2022, and upon consideration of

the application to intervene filed by the Democratic National Committee (“DNC”) and the Pennsylvania Democratic Party (“PDP”), it is hereby ORDERED that the application is GRANTED. The Court DIRECTS the Prothonotary to enter the DNC and the PDP on the docket in this matter as an intervenors-respondents, and to DOCKET their application and related materials.

BY THE COURT:

_____ J,

RETRIEVED FROM DEMOCRACYDOCKET.COM

PROPOSED FILING

RETRIEVED FROM DEMOCRACYPOCKET.COM

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

NO. 447 M.D. 2022

LEIGH M. CHAPMAN, in her official)
capacity as Acting Secretary of the)
Commonwealth of Pennsylvania;)
JESSICA MATHIS, in her official)
capacity as Director of the Pennsylvania)
Bureau of Election Services and)
Notaries, *et al.*,)

Respondents.

**PRELIMINARY OBJECTIONS OF THE DEMOCRATIC NATIONAL
COMMITTEE AND PENNSYLVANIA DEMOCRATIC PARTY TO
PETITION FOR REVIEW DIRECTED TO COURT'S ORIGINAL
JURISDICTION
SEEKING DECLARATORY AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. The Pennsylvania Election Code provides county Boards of Election with a significant degree of authority and flexibility in the administration of elections. That authority and flexibility enable the boards to designate the location and number of polling places, the location and number of drop-boxes, and the training of election judges and administrative staff. The authority and flexibility also allow boards to advise an in-person voter of the procedures to vote as well as to alert a voter dropping off his or her ballot of an apparent error, that, if adjusted, would avoid that voter's ballot being disqualified.

2. Just as a clerk can receive a hand-delivered ballot and point out an unintended omission, so too can a county Board of Election provide that same guidance to a voter who has chosen to mail in a vote. Petitioners seek to turn election officials into agents of punishment rather than public servants who assist citizens across the many aspects of life government touches.

3. Nearly two years ago, the Pennsylvania Supreme Court, in *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), considered a number of questions regarding the scope and application of Act 77 of 2019, which amended the Election Code. One such question was whether Article 1, Section 5 of the Pennsylvania Constitution, the Free and Equal Elections Clause, *required* Boards of Election to provide a notice to voters of a defect or omission

with their mail-in ballot and, following that notice, an opportunity to cure the defect or omission until the deadline for receipt of uniformed and overseas citizen ballots. The Court agreed with the Secretary of the Commonwealth that Act 77 did not expressly provide for, nor did the Free and Equal Elections Clause mandate, notice to voters or a post-election cure period. The Court certainly did not *prohibit* boards from advising voters of a discrepancy, nor did the Court preclude voters from taking steps to ensure that their vote would count *before* the close of polls on Election Day.

4. In their continuing effort to place limitations on mail-in voting, a voting option that has proven to be extremely popular, Petitioners seek to mandate the elimination of any communication as to whether a mail-in ballot contains a curable omission, in the apparent hope of increasing the number of disqualified mail-in ballots. The Election Code does not impose, nor does the Pennsylvania Constitution require, such a draconian result. To the contrary, the *Boockvar* Court recognized that “the Election Code should be liberally construed so as not to deprive, *inter alia*, Electors of their right to elect a candidate of their choice.” 238 A.3d at 356. Petitioners seek to invent a new prohibition in the Election Code out of whole cloth, purely to ensure that a certain group’s votes are at higher risk of being thrown out on technicalities.

5. With respect to the “notice and cure” issue, *Boockvar* held only that voters were not currently entitled to a *uniform statewide process* to notify them of potential defects, nor were they entitled to a post-election opportunity to cure any such defects. It did not hold that counties are prohibited from providing any notice of defects so that a voter could address any defects before the close of polls and thus ensure that his or her ballot will be counted.

6. To the extent the Pennsylvania Supreme Court determined that the decision to mandate a uniform statewide notice and cure procedure is a matter best left to the General Assembly, so too must be any decision to provide an explicit statewide and blanket prohibition on each and every county Board of Election. No such prohibition currently exists in the Election Code.

7. Petitioners cite no provision of the Election Code that prohibits counties from providing notice to voters to enable them to address certain mail-in ballot defects. Further, Petitioners cite no authority for the proposition that disparities between counties in providing simple notice to a voter of the status of that voter’s ballot violates the Free and Equal Elections Clause of Pennsylvania’s Constitution.

8. Nor can Petitioners succeed in their contention that a county Board of Election’s decision to implement a cure procedure in any way usurps the power of

the General Assembly because the General Assembly has expressly given boards the authority to make and issue rules concerning election administration.

II. BACKGROUND

9. Section 302 of the Election Code provides:

The county boards of elections, within their respective counties, 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, which shall include the following: ... (f) To 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.

25 Pa. Stat. § 2642.

10. This grant of authority is broad and “imposes ... discretionary authority and powers, such as the power to promulgate regulations” upon county boards. *County of Fulton v. Secretary of the Commonwealth*, 276 A.3d 846, 856 (Pa. Commw. Ct. 2022).

11. Given the language in the Election Code’s grant of authority to the county boards, an election-related instruction from a county board is presumptively valid unless it conflicts with an existing law.

III. STANDARD OF REVIEW

12. The Pennsylvania Rules of Civil Procedure allow for preliminary objections for “legal insufficiency of a pleading (demurrer).” Pa. R. Civ. P. 1028(a)(4). “Where the complaint fails to set forth a valid cause of action, a

preliminary objection in the nature of a demurrer is properly sustained.” *Lerner v. Lerner*, 954 A.2d 1229, 1235 (Pa. Super. Ct. 2008). A demurrer accepts as true well-pleaded facts, but it does not accept as true, and the Court should not consider, the pleader’s “conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion.” *County of Fulton*, 276 A.3d at 856 (quoting *Buoncuore v. Pennsylvania Game Comm’n*, 830 A.2d 660, 661 (Pa. Commw. Ct. 2003)).

IV. DEMURRER: FAILURE TO STATE A CLAIM

A. Petitioners fail to allege facts sufficient to show that notice-and-cure processes conflict with any law or violate the Pennsylvania Constitution.

13. The DNC and PDP adopt the foregoing paragraphs and incorporate them fully herein.

14. Section 302 of the Election Code, 25 Pa. Stat. § 2642, grants county Boards of Election with broad authority to administer elections.

15. Decisions individual county boards make in the administration of elections are presumptively valid unless they conflict with an existing law.

16. Petitioners have not pointed to any law prohibiting County Boards from providing notice to voters of certain minor defects in their mail-in ballots and permitting them to correct a such errors.

17. Pennsylvania’s Free and Equal Elections Clause is not violated every time a Board of Election adopts procedures that differ from procedures adopted by

a different Board of Election, and certainly not when some of those procedures reduce the technical objections that are often used to disenfranchise voters.

18. The decision to mandate or prohibit notice-and-cure processes should reside with the General Assembly, which has not enacted legislation in the face of some, but not all, counties choosing to adopt such procedures. *See Boockvar*, 238 A.3d at 374.

B. Because Petitioners present an issue of statutory interpretation, they have stated no claim for an Elections Clause violation.

19. Because the General Assembly made an express grant of power to the county Boards to develop procedures to administer elections, there can be no violation of the Elections Clause, because the boards are simply effectuating the intent of the legislature.

C. The lack of facts sufficient to state a claim highlights Petitioners' undue delay in bringing this case.

20. Petitioners have had notice since 2020 in *Boockvar* that some counties were utilizing notice-and-cure processes and some were not. Yet, Petitioners delayed in filing this suit until a month before mail-in ballots would be printed and mailed to voters. This lawsuit is thus barred under the doctrine of laches – at minimum as it pertains to the 2022 General Election. The county Boards of Election are in the process of commencing the administration of the upcoming election and will be sending out ballots to voters within a few weeks of the filing

of this lawsuit. In the absence of a statutory provision that prohibits county Boards of Election from providing simple notice to a voter to avoid disenfranchisement, this Court should dismiss this lawsuit. Otherwise, there will be undue administrative and voter confusion.

WHEREFORE, this Court should sustain these Preliminary Objections and dismiss the Petition.

Respectfully submitted,

DENTONS COHEN & GRIGSBY P.C.

By: Clifford B. Levine

Clifford B. Levine

Pa. I.D. No. 33507

Emma F.E. Shoucair

PA I.D. No. 325848

625 Liberty Avenue, 5th Floor

Pittsburgh, PA 15222-3152

(412) 297-4900

clifford.levine@dentons.com

emma.shoucair@dentons.com

*Counsel for the Democratic National
Committee and Pennsylvania Democratic
Party*

GREENBERG TRAUERIG, LLP

By: /s/ Kevin Greenberg

Kevin Greenberg

PA I.D. 082311

Adam Roseman

PA I.D. No. 313809

1717 Arch Street, Suite 400

Philadelphia, PA 19103

(215) 988-7800
greenbergk@gtlaw.com
rosemana@gtlaw.com

*Counsel for the Pennsylvania Democratic
Party*

By: /s/ Lazar Palnick
PA I.D. No. 52762
1216 Heberton Street
Pittsburgh, PA 15206
(412) 661-3633
lazarpalnick@gmail.com

Dated: September 9, 2022

*Counsel for the Democratic National
Committee and Pennsylvania Democratic
Party*

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

NO. 447 M.D. 2022

LEIGH M. CHAPMAN, in her official)
capacity as Acting Secretary of the)
Commonwealth of Pennsylvania;)
JESSICA MATHIS, in her official)
capacity as Director of the Pennsylvania)
Bureau of Election Services and)
Notaries, *et al.*,)

Respondents.

DECLARATION OF COREY PELLINGTON

I, Corey Pellington, hereby declare and state upon personal knowledge as follows:

I. Professional Experience

1. I currently serve as the Executive Director of the Pennsylvania Democratic Party (“PDP”). I have held that position since June of 2022.
2. Before that, I was the Deputy Executive Director of the PDP, starting in December of 2015.
3. Additionally, I have been the Chief Operations Officer since April of 2018.
4. As Executive Director of the PDP, I work with PDP officers and oversee the administration of the State Democratic Committee and state party activities, including the endorsement of statewide candidates.
5. Additionally, I oversee the operation of the Coordinated Campaign, a program that links all Democratic candidates on the ballot and conducts political, digital, communications, and field activities for all Democratic candidates running that cycle. I manage the full financial apparatus of the PDP coming to bear on each election cycle.
6. I also supervise campaign expenditures to help county-level parties and candidates, including mail programs.

II. PDP Generally

7. The Democratic National Committee (“DNC”) is the national umbrella organization for state parties. The PDP is the official state affiliate of DNC; what that means in practice is that nothing in our bylaws can contradict anything in the DNC bylaws (with the exception of primary endorsements in certain states). The PDP oversees 67 subsidiary county committees, whose bylaws in turn cannot contradict anything in the PDP bylaws.
8. The DNC has an interest in electing Democratic candidates and invests significant resources in state parties, including the PDP.
9. Among other things, the PDP communicates with voters concerning the timing of and how to participate in upcoming elections; encourages them to participate in the selection of the party’s nominees; and encourages them to support the party’s nominees during the general election.
10. The PDP represents the interests of Democratic voters in Pennsylvania by supporting candidates who share these voters’ values. As of August 4, 2022,

there were roughly three and a half million registered Democrats throughout the Commonwealth.

11. The PDP also represents the interests of Democratic candidates by providing campaign resources, logistical support, and coordination with other candidates. The number of Democratic candidates varies by year and cycle.
12. In 2020, for example, the PDP represented the interests of Democratic nominees for President and Vice President; four Democratic candidates for statewide row offices; 18 Democratic congressional candidates; 25 Democratic State Senate candidates; and roughly 203 Democratic State House candidates.
13. In 2018, the PDP represented the interests of Democratic candidates for Governor and United States Senate; 18 Democratic congressional candidates; 25 Democratic candidates for State Senate; and roughly 203 Democratic State House candidates.
14. This year, the PDP represents the interests of Democratic nominees for Governor and Lieutenant Governor, United States Senate, 17 Democratic Congressional candidates, 25 Democratic candidates for State Senate, and roughly 203 Democratic State House candidates.

III. Increasing the Availability of Mail Voting Raises (And In Pennsylvania Has Raised) Voter Participation

15. The DNC and the PDP share the goal of universal voter participation. That means that we take steps to facilitate safe, secure, and convenient voting so that an any eligible voter may exercise their right to vote. In our experience, allowing any qualified voter to vote by mail increases participation.
16. Using two recent state-run Democratic primaries as examples—one prior to no-excuses mail-in voting under Act 77, and one after Act 77 took effect—illustrates the point: In 2019, before Act 77 took effect, the Democratic primary participation was approximately 835,000; in 2021, by contrast, in a primary with similar offices, the turnout was over 1.1 million, a 32% increase. I believe that Act 77 is one of the principal reasons for this increase in voter participation.
17. In the 2020 general election, roughly 2.6 million voters voted by mail. Of these voters, roughly 65% or 1.7 million were registered Democrats.

18. As of October 4, 2021, over 700,000 voters had requested to be placed on the “permanent” vote by mail application list for 2021, which allows them to receive a mail-in ballot automatically for both elections this year. Of these voters, roughly 72% or 500,000 are registered Democrats. According to the Department of State, nearly 1.4 million voters have exercised this option in 2020 and 2021 combined.

IV. PDP Encourages its Voters to Vote By Mail

19. Consistent with its goal to elect Democrats to public office, the PDP shifted its strategy around voting by mail gradually after Act 77’s passage, in response to changes on the ground and the law’s interpretation in the courts.
20. In particular, as a result of Act 77, the PDP invested vastly more resources than before in a robust set of programs, including digital outreach, communications, field, and get-out-the-vote (“GOTV”) that both encourage our voters to vote by mail and support their efforts to do so.
21. These programs consume an enormous amount of time, money, and effort. For example, our digital and communications teams educated voters on (1) the availability of mail voting for all qualified voters and (2) how to vote by mail in accordance with the requirements of the law. These efforts are conducted by mail and online.
22. Our field efforts have similarly shifted to conducting substantial voter contact around voting by mail.
23. Finally, PDP’s GOTV program has fundamentally changed. Before Act 77, we conducted that program only in the four days preceding any election. Now, we work the entire *month* before the election, from when voters first receive their mail-in ballots to the receipt deadline for ballots. This vast expansion in the scope of the GOTV program has required wholesale revisions in the allocation of our resources.
24. In short, the PDP has invested significant time and money encouraging its voters to utilize the vote by mail option.
25. If Pennsylvania courts were to impose additional burdens on voting by mail that are not imposed on in-person voting, that would negatively and disproportionately affect Democratic voters.

26. In addition, PDP has an interest in preserving the confidence and trust it has built with voters over the four full election cycles Act 77 has been in effect and increased mail-in voting has become available.
27. Specifically, there are many voters who did not vote until they realized the simplicity of voting by mail. Many voters took advantage of the safety of voting by mail during the pandemic. The PDP put significant resources into educating and convincing these voters that mail-in voting was safe, secure, and effective through digital advertising, social media, media interviews, and online events. These voters would be put at increased risk of disenfranchisement should minor and correctible errors with their ballots become disqualifying.
28. My experience with the PDP makes me believe a blanket prohibition on curing minor defects with mail-in ballots would do damage to civic participation. It would throw up an additional barrier to using a method of voting that has become very popular with voters.
29. The DNC and the PDP would also have to invest resources in overcoming heightened voter confusion if voters in counties that previously had a system of notice-and-cure were barred from continuing to do so.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 9, 2022

Corey Pellington