

paragraph are denied as conclusions or statements of law to which no response is required. By way of further answer, the section of the Election Code referenced in this paragraph addresses ballot applications and not ballots returned by electors.

2. Denied. The averments of this paragraph are conclusions or statements of law to which no response is required. By way of further response, Petitioners' representation of the Supreme Court's holding in *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020) is inaccurate. The Supreme Court stated that the [Election] Boards are not required to implement a "notice and opportunity to cure" procedure for mail-in and absentee ballots that voters have filled out incompletely or incorrectly. The Court did not rule that Election Boards were prohibited from allowing electors to correct minor defects identified by Election Boards.

3. Denied. The averments of this paragraph are conclusions or statements of law to which no response is required. By way of further response, Petitioners' representation of the Supreme Court's holding in *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020) is inaccurate. The Supreme Court stated that the establishment of a procedure requiring Election Boards to provide "notice and opportunity to cure" to electors should be addressed by the legislature.

4. Denied. The averments of this paragraph are conclusions or statements of law to which no response is required.

5. Denied. The averments of this paragraph are conclusions or statements of law to which no response is required. By way of further response, the bill referenced in this paragraph contained several provisions that sought to disenfranchise voters and therefore, was not a genuine attempt to establish a requirement that all Election Boards must allow electors the opportunity to cure minor defects with respect to absentee or mail-in ballots.

6. Denied. The averments of this paragraph are conclusions or statements of law to which no response is required. By way of further response, nothing in the Election Code or case law prohibits an Election Board from allowing electors the opportunity to cure minor defects with respect to absentee or mail-in ballots. To the contrary, county boards of elections are responsible for overseeing elections in their respective counties and empowered to “make and issue ... instructions to voters,” including contacting voters when deemed necessary. *See* 25 P.S. § 2641(a), § 2642(f), (i).

7. Admitted in part; denied in part. Respondent admits that it has had a long standing policy of allowing voters to correct minor errors to their absentee and/or mail-in ballots. This policy was developed at the discretion of the Election Board granted by the Legislature to resolve issues not directly addressed by statute. Specifically, the General Assembly, through the Election Code, has given county boards of elections responsibility for overseeing elections in their respective

counties. *See* 25 P.S. § 2641(a). With respect to the policies and procedures of County Boards of Elections other than Montgomery County Board of Elections, Respondent is without knowledge or information sufficient to form a belief as the truth of the averment, and therefore the averment is denied. The remaining averments of this paragraph are denied as conclusions or statements of law to which no response is required.

8. Denied. It is specifically denied that Respondent lacks transparency with respect to its use of a notice and cure process. To the contrary, Respondent has been transparent about its use of a notice and cure process that is fully consistent with the Election Code. The remaining averments of this paragraph are denied as conclusions or statements of law to which no response is required.

INJUNCTIVE RELIEF

9. Denied. The averments of this paragraph are conclusions or statements of law to which no response is required.

10. Denied. The averments of this paragraph are conclusions or statements of law to which no response is required.

11. Denied. The averments of this paragraph are conclusions or statements of law to which no response is required.

12. Denied. The averments of this paragraph are conclusions or statements of law to which no response is required.

13. Denied. With respect to the policies and procedures of County Boards of Elections other than Montgomery County Board of Elections, Respondent is without knowledge or information sufficient to form a belief as the truth of the averment, and therefore the averment is denied. The remaining averments of this paragraph are conclusions or statements of law to which no response is required. By way of further response, Petitioners' representation of the Supreme Court's holding in *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020) is inaccurate. The Court did not rule that Election Boards were prohibited from allowing electors to correct minor defects identified by Election Boards. Accordingly, Petitioners have failed to demonstrate immediate and irreparable harm if Respondent continues its long standing policy of allowing electors the opportunity to cure minor defects with respect to absentee or mail-in ballots.

14. Denied. It is specifically denied that the granting of the requested injunction will "preserve the status quo." To the contrary, Respondent has had a long standing procedure of allowing electors the opportunity to cure minor defects with respect to absentee or mail-in ballots and this procedure is consistent with legislative intent that the Election Code be liberally construed so as not to deprive voters of their right to elect a candidate of their choice.

15. Denied. It is specifically denied the Petitioners are likely to prevail in this action when the relief requested is inconsistent with prior case law and contrary to the purpose of the Election Code in protecting electors' right to vote. The remaining averments of this paragraph are conclusions or statements of law to which no response is required. By way of further response, Petitioners' representation of the Supreme Court's holding in *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020) is inaccurate.

16. Denied. The averments of this paragraph are conclusions or statements of law to which no response is required. By way of further answer, the requested injunction is based on the Petitioners' misinterpretation of *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020) and seeks to disenfranchise voters in Montgomery County.

17. Denied. It is specifically denied that the granting of the requested injunction will not adversely affect public interest. To the contrary, enjoining the use of notice-and-cure provisions would harm voters in Montgomery County and across the Commonwealth whose ballots will be cast aside due to readily apparent and easily correctible errors that are detected before any votes are counted. The remaining averments of this paragraph are conclusions or statements of law to which no response is required.

WHEREFORE, Respondent Montgomery County Board of Elections respectfully requests that this Court deny Petitioners' Application for Special Relief in the Form of a Preliminary Injunction.

Respectfully submitted,
MONTGOMERY COUNTY SOLICITOR'S OFFICE

/s/ Maureen E. Calder
Maureen E. Calder, Esquire
John A. Marlatt, Esquire
One Montgomery Plaza, Suite 800
P.O. Box 311
Norristown, PA 19404-0311
610-278-3033

Counsel for Montgomery County Board of Elections

Dated: September 16, 2022

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/ Maureen E. Calder
Maureen E. Calder, Esquire
John A. Marlatt, Esquire
One Montgomery Plaza, Suite 800
P.O. Box 311
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