

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

REPUBLICAN NATIONAL COMMITTEE, et al.

v.

CHAPMAN, et al.

CASE NO: 447 MD 2022

APPLICATION TO SUBMIT ANSWER OF RESPONDENT DELAWARE COUNTY BOARD OF ELECTIONS TO PETITIONERS' APPLICATION FOR SPECIAL RELIEF IN THE FORM OF A PRELIMINARY INJUNCTION NUNC PRO TUNC

Respondent Delaware County Board of Elections ("Board") submits the following application to this Court to accept an answer *nunc pro tunc* to Petitioners' Application for Special Relief in the Form of a Preliminary Injunction ("Application"):

1. This Court, by order dated September 9, 2022, directed any party who opposes the Application to file and serve an answer no later than 12:00 p.m. on Friday, September 16, 2022.
2. The undersigned were not retained by the Board until late afternoon on September 16, 2022 and did not receive access to this Court's docket until this morning, September 19, 2022, after acceptance of entries of appearance.
3. The undersigned were not aware of the September 16 deadline for opposition due to the late nature of their retention in this case. Upon learning of the deadline, the undersigned immediately prepared this application.
4. Due to the potential impact on the Board's operations and the significance of the issues involved, the Board respectfully requests that it be permitted to file an Answer to the Application, attached hereto as **Exhibit A**, despite the lapse of the deadline.

5. The Board and the undersigned have “acted in good faith and with due diligence” to lodge the Board’s Answer to the Application and respectfully request that this Court grant relief *nunc pro tunc*. See *Petition of Kloiber*, 362 A.2d 484, 486 (Pa. Cmwlth. 1976) (allowing relief *nunc pro tunc* where petitioner “acted in good faith and with due diligence”).

Dated: September 19, 2022

Respectfully submitted,

/s/ J. Manly Parks
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EXHIBIT

A

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**ANSWER OF RESPONDENT DELAWARE COUNTY BOARD OF ELECTIONS
TO PETITIONERS' APPLICATION FOR SPECIAL RELIEF IN THE FORM OF A
PRELIMINARY INJUNCTION**

Respondent Delaware County Board of Elections ("Board") Answer to Petitioners' Application for Special Relief in the Form of a Preliminary Injunction ("Application"):

BACKGROUND

1. Denied. This Paragraph contains conclusions of law to which no response is required and they are therefore denied. By way of further response, the boards of elections in Pennsylvania, including the Board, are delegated authority to issue rules, regulations, and instructions to elections officers that are not inconsistent with law. *See* 25 P.S. § 2642(g).

2. Denied. This Paragraph contains conclusions of law to which no response is required. By way of further response, the Board denies that *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020) prohibits boards from implementing procedures consistent with their statutory authority.

3. Denied. This Paragraph contains conclusions of law to which no response is required.

4. Denied. This Paragraph contains conclusions of law to which no response is required.

5. Admitted.

6. Denied. Further, this Paragraph contains conclusions of law to which no response is required. By way of further response, the boards of elections in Pennsylvania, including the Board, are delegated authority to issue rules, regulations, and instructions to elections officers that are not inconsistent with law. *See* 25 P.S. §§ 2642(f), (g). Petitioners cite no authority to justify a blanket ban on notice and cure procedures. *See Winston v. Moore*, 91 A. 520, 522 (Pa. 1914) (“...ballot and election laws have always been regarded as peculiarly within the province of the legislative branch of government, and should never be stricken down by the courts unless in plain violation of the fundamental law.”).

7. Denied as stated. Strict proof is demanded.

8. Denied as stated. Strict proof is demanded. Further, this Paragraph contains conclusions of law to which no response is required.

INJUNCTIVE RELIEF

9. This Paragraph purports to describe the action at bar and, as such, no response is required. To the extent this Paragraph contains assertions of fact, they are denied as stated.

10. Denied. This Paragraph contains conclusions of law to which no response is required.

11. Denied. This Paragraph contains conclusions of law to which no response is required. By way of further response, Petitioners are unable to meet the high bar required for imposition of a preliminary injunction. *See Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). Petitioners’ evidence dates to the 2020 Election, crippling their argument that they will suffer immediate and irreparable harm if an injunction is not granted. *Id.* Petitioners’ action is also barred by the doctrine of laches due to their

knowledge of the underlying facts since at least the 2020 Election and their failure to act diligently until nearly a month before the 2022 General Election. Moreover, Petitioners are unlikely to succeed on the merits because applicable precedent, including *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020) and *Winston v. Moore*, 244 Pa. 447, 454, 91 A. 520 (Pa. 1914), does not support Petitioners' position.

12. The Board incorporates by reference its response to Paragraph 11 as though fully set forth herein.

13. The Board incorporates by reference its response to Paragraph 11 as though fully set forth herein.

14. The Board incorporates by reference its response to Paragraph 11 as though fully set forth herein.

15. The Board incorporates by reference its response to Paragraph 11 as though fully set forth herein. By way of further response, the Legislature has exercised its constitutional authority to prescribe the manner of elections by delegating certain powers to the Boards. *See* U.S. CONST. art. I, § 4, cl. 1; *see also* 25 P.S. §§ 2642(f), (g).

16. The Board incorporates by reference its response to Paragraph 11 as though fully set forth herein. By way of further response, Petitioners' requested relief is not narrowly tailored. Petitioners request relief that invades the province of the Legislature and the boards of elections and has no support in the law.

17. The Board incorporates by reference its response to Paragraph 11 as though fully set forth herein. By way of further response, the relief requested by Petitioners violates state and federal law and will disenfranchise Pennsylvania voters.

Dated: September 19, 2022

Respectfully submitted,

/s/ J. Manly Parks

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