

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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**APPLICATION FOR LEAVE TO FILE REPLY IN
SUPPORT OF APPLICATION FOR SPECIAL RELIEF
IN THE FORM OF A PRELIMINARY INJUNCTION**

Petitioners 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, and S. Michael Streib (collectively, “Petitioners”), by and through their undersigned counsel, hereby file this Application for Leave to File a Reply in Support of Application for Special Relief in the Form of a Preliminary Injunction, as follows:

1. On September 1, 2022, Petitioners initiated the instant action by submitting a Petition for Review Directed to this Court’s Original Jurisdiction Seeking Declaratory and Injunctive Relief against the Acting Secretary of the

Commonwealth, the Director of the Pennsylvania Bureau of Election Services and Notaries (collectively “The Commonwealth Respondents”), and all sixty-seven (67) County Boards of Election (collectively, “Respondents”).

2. On September 7, 2022, Petitioners filed an Application for Special Relief in the Form of a Preliminary Injunction under Pa. R.A.P. 1532 (the “Application”).

3. On September 9, 2022, The Democratic National Committee and the Pennsylvania Democratic Party filed an Application for Leave to Intervene in this matter. On that same date, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee (collectively, “Proposed Intervenors”) also filed an Application for Leave to Intervene.

4. On September 9, 2022, this Court issued a per curiam Order setting a hearing on Petitioners’ Application for Preliminary Injunction for September 28, 2022.

5. The September 9, 2022, Order further states that any party who opposes the Application for Preliminary Injunction shall file and serve an answer in opposition no later than 12:00 noon on Friday, September 16, 2022.

6. The September 9, 2022 Order also schedules a status conference for Thursday, September 22, 2022 at 10:00 a.m. for the purpose of discussing the

hearing, including the anticipated number of witnesses and exhibits, estimated duration of the hearing, and logistics.

7. Twenty-two (22) Boards, the Commonwealth Respondents, and Proposed Intervenor timely filed a total of fourteen (14) answers and/or responses in opposition to Petitioners' Application for Preliminary Injunction (the "Answers"). Two (2) counties filed "no answer letters".

8. The Court today granted an Application for Relief from Respondent Delaware County asking for permission to file a late Answer to Petitioners' Application for Preliminary Injunction. That Answer raises the affirmative defense of the doctrine of laches. (*See Delaware County's Answer*, at 2).

9. Likewise Respondent Philadelphia County and the Proposed Intervenor have answered that Petitioners' claims are barred by the affirmative defense of the doctrine of laches, (*see Philadelphia County's Answer*, at 4; Proposed Intervenor-Respondent's Brief, at 10), which is properly raised solely via New Matter pursuant to Pa. R.C. P. 1030(a).

10. Additionally, the brief filed by the Commonwealth Respondents erroneously alleges defenses to the Application properly raised as preliminary objections pursuant to Pa. R.C.P. 1028, such as the subject matter jurisdiction of this Court to hear this matter. (*See Commonwealth Respondents' Brief*, at 10).

11. Pursuant to the Pennsylvania Rules of Civil Procedure, Petitioners are entitled to file a response to both Preliminary Objections and New Matter pursuant to Pa. R.C.P 1028(c) and Pa. R.C.P 1017, respectively.

12. A Petitioner seeking a preliminary injunction has the ability to respond to new matter raised in answers. *See, e.g., Allied Env't Serv., Inc. v. Roth*, 222 A.3d 422, 425 (Pa. 2019).

13. Because Petitioners would be able to reply to these affirmative defenses had they been properly raised as new matter, the Court should allow them the opportunity to do so.

14. Given that the Petitioner would have the right to respond to various answers had the defenses therein been properly raised, Petitioners request that this Court grant Petitioners leave to file a single omnibus response to the Answers substantively addressing all issues raised therein.

15. It is in the interest of the Court to allow Petitioners the opportunity to address these issues in order to facilitate the Court's decision in this regard.

16. Moreover, in light of the Answer filed today by Delaware County, Petitioners ask for reasonable time to assess any new issues that may be introduced.

17. In light of the complexity of issues presented, the potential for further new issues to be introduced, and Petitioners' interest in presenting the Court with a diligent and thorough response to Respondent's improvidently-raised defenses,

Petitioners propose a 15-page limit for the reply, to be submitted on Sunday, September 25, 2022.

18. Such a filing will not delay the adjudication of this matter as all briefing would be completed in advance of the September 28, 2022, hearing on the Application.

WHEREFORE, Petitioners respectfully request that this Honorable Court grant them leave to file a response in support of their Application for Preliminary Injunction, not to exceed 15 pages, on or before Sunday, September 25, 2022.

Date: September 20, 2022

Respectfully submitted,

/s/ Kathleen A. Gallagher

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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 20, 2022

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Russell D. Giancola

Counsel for Petitioners

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[PROPOSED] ORDER OF COURT

Upon consideration of Petitioners' Motion for Leave to File Reply in Support of 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, ADJUDGED, and DECREED that said Motion is GRANTED.

Petitioners are directed to file a reply of no more than 15 pages by Sunday, September 25, 2022.

BY THE COURT:

_____, J.