

**NOTICE TO PLEAD**

To: **Representative Bryan Cutler, Leader of  
the Republican Caucus of the  
Pennsylvania House of Representatives**

You are hereby notified to file a written response to  
the enclosed **New Matter** within thirty (30) days  
from service hereof or a judgment may be entered  
against you.

*/s/ Justin G. Weber*

Justin G. Weber (No. 89266)

*Attorney for Leigh M. Chapman, Acting Secretary  
of the Commonwealth, and the Pennsylvania  
Department of State*

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

REPRESENTATIVE BRYAN  
CUTLER, LEADER OF THE  
REPUBLICAN CAUCUS OF THE  
PENNSYLVANIA HOUSE OF  
REPRESENTATIVES,

Petitioner,

v.

LEIGH M. CHAPMAN, ACTING  
SECRETARY OF THE  
COMMONWEALTH, THE  
PENNSYLVANIA DEPARTMENT  
OF STATE, AND THE BOARD OF  
ELECTIONS OF ALLEGHENY  
COUNTY,

Respondents.

Docket No. 588 M.D. 2022

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**ANSWER WITH NEW MATTER OF  
LEIGH M. CHAPMAN, ACTING SECRETARY  
OF THE COMMONWEALTH, AND THE PENNSYLVANIA  
DEPARTMENT OF STATE TO PETITION FOR REVIEW IN THE  
NATURE OF A COMPLAINT FOR DECLARATORY JUDGMENT**

Respondents Leigh M. Chapman, Acting Secretary of the Commonwealth (“Acting Secretary Chapman”), and the Pennsylvania Department of State (“the Department”) (Acting Secretary Chapman and the Department are collectively referred to as the “Commonwealth Respondents”), by and through their undersigned counsel, submit this Answer to the Petition for Review in the Nature of the Complaint for Declaratory Judgment (the “Petition”) filed by Petitioner Representative Bryan Cutler (“Representative Cutler”).

**ANSWER**

1. Admitted.
2. Admitted. By way of further response, the December Writs identify Representative McClinton as Majority Leader and were attested to by the Chief Clerk of the House of Representatives.
3. Admitted.
4. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.
5. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied. If a response is

required, the Commonwealth Respondents admit only that the Pennsylvania Constitution and the Election Code authorize the presiding officer of the House of Representatives to issue writs of election and that in the event of a vacancy in the Office of Speaker, those duties are to be performed by the Majority Leader. *See* 46 P.S. § 42.121m.

6. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied. If a response is required, the Commonwealth Respondents admit only that the Department received writs of election issued by Representative McClinton on December 7, 2022 (“December Writs”) identifying Representative McClinton as Majority Leader and those writs were attested to by the Chief Clerk of the House of Representatives. After a reasonable investigation, the Commonwealth Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and they are denied.

7. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied. If a response is required, the Commonwealth Respondents admit only that the Department received the December Writs identifying Representative McClinton as Majority Leader and those writs were attested to by the Chief Clerk of the House of Representatives. After a reasonable investigation, the Commonwealth Respondents are without knowledge

or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and they are denied.

8. Admitted in part, denied in part. The Commonwealth Respondents admit only that Representative Cutler filed the Petition for Review, seeking an order declaring the December Writs invalid. The remaining allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

9. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

10. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

11. Admitted.

12. Admitted. By way of further response, Representative McClinton has been granted permission to intervene.

13. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

14. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

15. Admitted.

16. Admitted in part, denied in part. The Commonwealth Respondents admit only that all 203 seats of the House of Representatives were up for election in the 2022 General Election. The Commonwealth Respondents deny the remaining allegations.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted.

21. Denied as stated. The Commonwealth Respondents admit only that Representative DeLuca's death created a vacancy in the House of Representatives for his term that expired on November 30, 2022, and that, following his re-election, a new vacancy arose on December 1, 2022, for the term beginning on that date.

22. Admitted in part, denied in part. The Commonwealth Respondents admit only that a true and correct copy of the purported writ of election issued by then-Speaker Cutler on November 30, 2022, is attached to the Petition as Exhibit A. Exhibit A is a written document that speaks for itself and any characterizations inconsistent with the express terms thereof are denied.

23. Admitted only that the Department acknowledged receipt of the purported November 30, 2022 writ of election. By way of further response, the

purported writ was returned for facial deficiencies as set forth in the letter attached to the Petition as Exhibit I.

24. Admitted in part, denied in part. The Commonwealth Respondents admit only that December 1, 2022, constituted the start of the 207th General Assembly. The remaining allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

25. Admitted in part, denied in part. The Commonwealth Respondents admit only that Representative McClinton identified herself as the Majority Leader of the House of Representatives on December 7, 2022. After a reasonable investigation, the Commonwealth Respondents are without knowledge or information sufficient to form a belief as to whether Exhibit B to the Petition is a true and correct copy of a press release issued by Representative McClinton. The remaining allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

26. Admitted in part, denied in part. The Commonwealth Respondents admit only that Representatives Davis and Lee resigned from the House of Representatives. After reasonable investigation, the Commonwealth Respondents are without sufficient knowledge or information to form a belief as to whether Exhibits C and D to the Petition are true and correct copies of resignation letters of Representatives Davis and Lee and, accordingly, that allegation is denied.

27. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied. If a response is required, after reasonable investigation, the Commonwealth Respondents are without sufficient knowledge or information to form a belief as to the truth of the averments of this paragraph.

28. Admitted in part, denied in part. The Commonwealth Respondents admit only that true and correct copies of the writs of election issued by Representative McClinton on December 7, 2022, are attached to the Petition as Exhibits E, F, and G. The December Writs are written documents that speak for themselves, and any characterizations contrary to the express terms thereof are denied. The remaining allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

29. Admitted in part, denied in part. The Commonwealth Respondents admit only that this paragraph quotes a portion of the document attached to the Petition as Exhibit H. After a reasonable investigation, the Commonwealth Respondents are without knowledge or information sufficient to form a belief as to the truth of whether Exhibit H to the Petition a true and correct copy of a Legal Opinion of the Legislative Reference Bureau issued on December 7, 2022, and, accordingly, the remaining allegations of this paragraph are denied.

30. Admitted in part, denied in part. The Commonwealth Respondents admit only that the Legal Opinion of the Legislative Reference Bureau attached to the Petition as Exhibit H is a written document that speaks for itself. The Commonwealth Respondents deny that the Legal Opinion of the Legislative Reference Bureau is a binding legal opinion or authoritative interpretation of law.

31. Admitted in part, denied in part. The Commonwealth Respondents admit only that this paragraph quotes a portion of the Legal Opinion of the Legislative Reference Bureau. The Legal Opinion of the Legislative Reference Bureau is a written document that speaks for itself, and any characterizations contrary to the express terms thereof are denied. By way of further response, the Commonwealth Respondents deny that the Legal Opinion of the Legislative Reference Bureau is a binding legal opinion or authoritative interpretation of law.

32. Admitted in part, denied in part. The Commonwealth Respondents admit only that a true and correct copy of Acting Secretary Chapman's December 7, 2022 letter is attached to the Petition as Exhibit I and that the purported writ was rejected for the reasons stated in the letter. Acting Secretary Chapman's December 7, 2022 letter is a written document that speaks for itself, and any characterizations contrary to the express terms thereof are denied.

33. Admitted in part, denied in part. The Commonwealth Respondents admit only that Representative Cutler disputes that Acting Secretary Chapman was

correct in rejecting the purported writ of election issued by him on November 30, 2022. The Commonwealth Respondents deny that Acting Secretary Chapman erred in rejecting that document.

**COUNT I — DECLARATORY JUDGMENT**  
**(REPRESENTATIVE CUTLER V. ALL RESPONDENTS)**

34. This paragraph is an incorporation paragraph to which no responsive pleading is required. To the extent a response is required, the Commonwealth Respondents incorporate paragraphs 1 through 33 of their Answer as if set forth fully herein.

35. Admitted in part, denied in part. The Commonwealth Respondents admit only that Representative Cutler filed the Petition for Review purporting to seek relief under the Declaratory Judgments Act. The remaining allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

36. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

37. Admitted in part, denied in part. The Commonwealth Respondents admit only that Representative Cutler filed the Petition for Review purporting to seek relief under the Declaratory Judgments Act. The remaining allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

38. Admitted.

39. Denied as stated. The Commonwealth Respondents admit only that Representative DeLuca's death created a vacancy in the House of Representatives for his term that expired on November 30, 2022, and that, following his re-election, a new vacancy arose on December 1, 2022, for the term beginning on that date.

40. Admitted.

41. Admitted.

42. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

43. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

44. The allegation of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

45. The allegation of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

46. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

47. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

48. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

49. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

50. Admitted in part, denied in part. The Commonwealth Respondents admit only that Representative McClinton identified herself as the Majority Leader of the House of Representatives on December 7, 2022. After a reasonable investigation, the Commonwealth Respondents are without knowledge or information sufficient to form a belief as to whether Exhibit B to the Petition is a true and correct copy of a press release issued by Representative McClinton. The remaining allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

51. Admitted.

52. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied. By way of further response, the December Writs identified Representative McClinton as Majority Leader and those writs were attested to by the Chief Clerk of the House of Representatives.

53. After a reasonable investigation, the Commonwealth Respondents are without knowledge or information sufficient to form a belief as to the truth of this assertion.

54. Admitted in part, denied in part. The Commonwealth Respondents admit only that Representative McClinton identified herself as the Majority Leader of the House of Representatives on December 7, 2022. After a reasonable investigation, the Commonwealth Respondents are without knowledge or information sufficient to form a belief as to whether Exhibit B to the Petition is a true and correct copy of a press release issued by Representative McClinton. The remaining allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

55. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

56. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

57. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

58. Admitted in part, denied in part. The Commonwealth Respondents admit only that this paragraph quotes a portion of the definition of “Majority Leader”

in the 11<sup>th</sup> Edition of Black's Law Dictionary. The Commonwealth Respondents deny that Black's Law Dictionary is binding legal authority.

59. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

60. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

61. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

62. Admitted.

63. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied. To the extent a response is required, the Commonwealth Respondents admit only that Representative DeLuca's death created a vacancy in the House of Representatives for his term that expired on November 30, 2022, and that, following his re-election, a new vacancy was created on December 1, 2022.

64. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

65. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

66. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

67. Admitted.

68. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

69. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

70. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

71. The allegations of this paragraph are conclusions of law to which no responsive pleading is required, and they are deemed denied.

**NEW MATTER**

72. The December Writs identified Representative McClinton as the Majority Leader and were attested to by the Chief Clerk of the House of Representatives.

73. The December Writs directed special elections to be held on February 7, 2023, for vacancies in the Pennsylvania House of Representatives in the 32<sup>nd</sup>, 34<sup>th</sup>, and 35<sup>th</sup> Legislative Districts.

74. On December 7, 2022, the Commonwealth Respondents scheduled special elections to be held on February 7, 2023, and published calendars with deadlines for those special elections.

75. After Representative McClinton's December Writs already scheduled special elections for the 34<sup>th</sup> and 35<sup>th</sup> Legislative Districts, Representative Cutler issued writs on December 15, 2022, purporting to schedule special elections for the same districts, but for May.

76. December 19, 2022 was the last day to file nomination certificates and nomination papers for the special elections scheduled for February 7, 2023, and multiple candidates have filed nomination certificates for the special elections for the 34<sup>th</sup> and 35<sup>th</sup> Legislative Districts.

77. The last day to file objections was December 22, 2022.

78. Acting Secretary Chapman will certify the names and residences of the candidates for the special elections on or before January 8, 2023.

79. The Petition for Review fails to state a claim for which relief can be granted because, *inter alia*, it raises claims that warrant the exercise of judicial abstention or restraint under the political question doctrine.

WHEREFORE, the Pennsylvania Department of State and Leigh M. Chapman, Acting Secretary of the Commonwealth of Pennsylvania, request that the

Petition for Review be dismissed and the Court grant any relief that is just and proper.

Date: December 28, 2022

Respectfully Submitted,

/s/ Justin G. Weber

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## **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/ Justin G. Weber

Justin G. Weber

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## **PROOF OF SERVICE**

I hereby certify that on December 28, 2022, I caused a copy of the forgoing document to be served via the Court's electronic filing system upon the following, which service satisfies the requirements of Pa. R.A.P. 121:

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/s/ Justin G. Weber  
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**VERIFICATION**

I, Jonathan Marks, am the Deputy Secretary for Elections and Commissions of the Pennsylvania Department of State and authorized to make this verification. I verify that the statements made in the foregoing Answer and New Matter are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of perjury 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: December 28, 2022

  
\_\_\_\_\_  
Jonathan Marks, Deputy Secretary for  
Elections and Commissions

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