

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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**No. 108 MM 2024**

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**REPUBLICAN NATIONAL COMMITTEE and  
REPUBLICAN PARTY OF PENNSYLVANIA,  
Petitioners,**

**v.**

**AL SCHMIDT, in his official capacity as  
Secretary of the Commonwealth, et al.,  
Respondents.**

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**ANSWER OF RESPONDENTS THE BOARDS OF ELECTIONS  
OF ALLEGHENY, BUCKS, CHESTER, MONTGOMERY,  
AND PHILADELPHIA COUNTIES  
IN OPPOSITION TO PETITIONERS' APPLICATION FOR RELIEF  
TO FILE SUPPLEMENTAL RESPONSE TO APPLICATION  
FOR LEAVE TO INTERVENE**

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*Attorneys for Respondents the Boards of Elections of Allegheny, Bucks, Chester,  
Montgomery and Philadelphia Counties*

Respondents the Boards of Elections of Allegheny, Bucks, Chester, Montgomery, and Philadelphia Counties (collectively, “County Respondents”) respectfully submit this response in opposition to “Petitioners’ Application for Relief to File [sic] Supplemental Response to Application for Leave to Intervene.”

Although styled as a request to supplement their response to an application to intervene in this proceeding, Petitioners’ submission is actually an attempt to supplement their arguments in support of their Application for the Exercise of King’s Bench Power; the reference to the intervention application is pretextual. Petitioners took the same approach in their initial response to the intervention application, attempting to use it as a vehicle to argue the supposed merits of their King’s Bench Application.<sup>1</sup> Neither that initial response, nor Petitioners’ proposed “supplemental response” to the intervention application, addresses the legal standards governing intervention or attempts to apply those standards to the proposed intervenors here. That, County Respondents submit, is sufficient reason to reject the proposed supplement.

In any event, Petitioners’ arguments are unpersuasive. Petitioners contend that the Commonwealth Court’s recent decision in *Center for Coalfield Justice v.*

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<sup>1</sup> See Petitioners’ Response to Application for Leave to Intervene Filed by Faith A. Genser, Frank P. Matis, Center for Coalfield Justice, Washington Branch NAACP, Bruce Jacobs, Jeffrey Marks, June DeV Vaughn Hython, Erika Worobec, Sandra Macioce, Kenneth Elliott, and David Dean (filed Sept. 22, 2024).

*Washington County Board of Elections*, No. 1172 C.D. 2024, “illustrates the need for [this Court] to grant [Petitioners’] King Bench Application.” (Application ¶ 7.) It does not. Just as they did with respect to the Commonwealth Court’s decision in *Genser v. Butler County Board of Elections*, Nos. 1074 & 1085 C.D. 2024, Petitioners continue to mischaracterize the discrete issues decided by the Commonwealth Court and conflate them with the categorical challenge to undefined “notice and cure” procedures asserted in Petitioners’ King’s Bench Application.

“Notice and cure” is Petitioners’ label for a variety of election-administration procedures implemented by some (but not all) county boards of elections. Although these procedures take different forms, their common goal is to help qualified electors ensure that their votes are counted—by notifying electors when their initial mail-in or absentee ballot submission is defective, and providing them with an opportunity to submit a *timely* ballot that is *fully compliant* with all Election Code requirements. These procedures have been implemented under the discretionary authority vested in county boards. *See* 25 P.S. § 2642(f).

The *Genser* and *Washington County* decisions did not examine any such discretionary “notice and cure” procedures. Instead, *Genser* held that the Election Code *required* a county board to count a qualified elector’s provisional ballot where the sole basis proffered for rejecting the ballot was that the elector had

previously returned an invalid mail-in or absentee ballot submission. And *Washington County* held that a county violated constitutional due-process guarantees when it ceased providing notice to voters whose mail-in or absentee ballot submission had been flagged as fatally defective. Indeed, in both decisions, the Commonwealth Court expressly distinguished the issues before it from notice-and-cure procedures.<sup>2</sup>

The contrasts with the instant proceeding do not stop there. Both *Genser* and *Washington County* came up to the Commonwealth Court through the courts of common pleas, with a trial-court record describing the specific practices and procedures of specific county boards of elections. Here, by contrast, Petitioners ask this Court to categorically and peremptorily enjoin *all* of a variety of discretionary county board of elections procedures that Petitioners lump together

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<sup>2</sup> See *Genser v. Butler Cnty. Bd. of Elections*, Nos. 1074 & 1085 C.D. 2024, 2024 WL 4051375, at \*16 (Pa. Commw. Ct. Sept. 5, 2024) (“The County has a ballot curing policy, but the [Election] Code independently authorizes electors to vote by provisional ballot, and, when properly construed, it requires the County to count the provisional ballots here. That does not depend on any ballot curing process, whether optional or mandatory. The provisional ballot is a separate ballot, not a cured initial ballot.”); *Center for Coalfield Justice v. Wash. Cnty. Bd. of Elections*, No. 1172 C.D. 2024, 2024 WL 4272040, at \*1 (Pa. Commw. Ct. Sept. 24, 2024) (affirming trial court’s decision that petitioner-electors’ procedural due-process rights required that the respondent county board “notify electors whose mail-in ballot packets were segregated on suspicion of a disqualifying error, so that the voter may challenge, *but not cure*, the purported defect” (emphasis added)); *id.* at \*6 (relief ordered by court was not a matter of “‘curing’ a defective mail-in ballot”).

under the undefined term “notice and cure”—with no record regarding what those specific procedures are or which counties implement them.

Ultimately, Petitioners’ purpose for invoking the *Genser* and *Washington County* decisions is clear. Petitioners seek to persuade this Court to overlook their inexcusable lack of diligence in waiting to file this King’s Bench Application until the 2024 general election was already underway—notwithstanding that (1) Petitioners’ earlier Commonwealth Court lawsuit *asserting the exact same arguments* was dismissed *a year and a half ago*, in an opinion directing Petitioners to re-file their claims in the courts of common pleas of the counties whose practices they challenged; (2) Petitioners’ motion for a preliminary injunction in that action, which was filed *further in advance* of election day than this lawsuit, was denied because, *inter alia*, it would have disrupted election administration and prejudiced and disenfranchised voters; and (3) Petitioners have been aware of the notice-and-cure procedures they challenge since no later than the 2020 general election.<sup>3</sup> Petitioners’ ploy should be rejected. *Genser* and *Washington County* involve distinct, discrete issues. They do nothing to atone for Petitioners’

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<sup>3</sup> See Answer of Respondents the Boards of Elections of Allegheny, Bucks, Chester, Montgomery, and Philadelphia Counties in Opposition to Petitioners’ Application for the Exercise of King’s Bench Power or Extraordinary Jurisdiction at 1–17, 19–25 (Sept. 20, 2024).

egregious delay in filing suit, and nothing to mitigate that delay's severely prejudicial effect.

This Court has decided to review the Commonwealth Court's decision in *Genser*. If it wishes to review the due-process holding in *Washington County*, it may also elect to grant allowance of appeal in that case (which Petitioners promise to seek). But neither case provides any basis to entertain the different, far broader, and far more ill-defined set of challenges set forth in the present King's Bench Application.

WHEREFORE, County Respondents respectfully request that Petitioners' application for leave to file a supplemental response be denied.

HANGLEY ARONCHICK SEGAL  
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Dated: September 26, 2024

By: /s/ Robert A. Wiygul  
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