

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

IN RE: CANVASS OF ABSENTEE AND  
MAIL-IN BALLOTS OF NOVEMBER 3,  
2020 GENERAL ELECTION

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NO. 2020-18680

**COVER SHEET OF RESPONDENT**

Date of Filing 11/09/2020 Respondent Montgomery County Board of Elections

Counsel for Respondent Raymond McGarry, Esquire I.D. No. 56520

Document Filed (Specify) Response to Petition for Review of Decision by the Montgomery  
County Board of Elections

**RULE RETURN DATE of Related Motion** \_\_\_\_\_

Matter is (Check One)  (Appealable)  (Interlocutory)

Oral Argument  (Yes)  (No)

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Respondent Requires (Specify Reason Only if Interlocutory) :

DISCOVERY \_\_\_\_\_  
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**IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY,  
PENNSYLVANIA**

<b>DONALD J TRUMP FOR PRESIDENT INC, et al.</b>	No. 2020-18680
<b>v.</b>	
<b>MONTGOMERY COUNTY BOARD OF ELECTIONS</b>	

**MONTGOMERY COUNTY BOARD OF ELECTION'S ANSWER TO  
PETITION FOR REVIEW OF BOARD DECISION**

Respondent Montgomery County Board of Elections, through its undersigned counsel, hereby responds to the Petition for Review of the Decision by the Montgomery County Board of Elections brought by Petitioners Donald J. Trump for President Inc., Republican National Committee, Heidelbaugh for Attorney General, Inc., Garrity for PA, and Daniel J. Wissert, as follows:

**JURISDICTION AND VENUE**

1. Admitted.

**PARTIES**

2. Respondent admits that Donald J. Trump is the 45<sup>th</sup> President of the United States, and that he is the Republican candidate for President of the United States in the November 3,

2020 general election and is a “candidate” as that term is defined in 25 P.S. § 2602(a).

Respondent lacks sufficient knowledge and/or information to form a belief as to the truth of the averments regarding Petitioner Donald J. Trump for President, Inc. and the truth of the averments regarding on whose behalf this Petition is brought. The balance of the allegations constitutes conclusions of law to which no response is required.

3. Respondent lacks sufficient knowledge and/or information to form a belief as to the truth of the averments regarding the Republican National Committee, its purpose, organization and operations. Respondent lacks sufficient knowledge and/or information to form a belief as to truth of the averments regarding the Republican Party generally. Respondent admits that the Republican Party constitutes a “political party” within the Commonwealth of Pennsylvania as that term is defined in 25 P.S. § 2831. Respondent lacks sufficient knowledge and/or information to form a belief as to the truth of the averments regarding on whose behalf this Petition is brought. The balance of the allegations constitutes conclusions of law to which no response is required. Respondent specifically denies the averments that the RNC has Article III standing to bring the Petition.

4. Respondent admits that Heather Heidelbaugh is the Republican candidate for the office of Attorney General of Pennsylvania in the November 3, 2020 general election and is a “candidate” as that term is defined in 25 P.S. § 2602(a). Respondent lacks sufficient knowledge and/or information to form a belief as to truth of the averments regarding Petitioner Heidelbaugh for Attorney General, Inc. and the truth of the averments regarding on whose behalf this Petition is brought. The balance of the allegations constitutes conclusions of law to which no response is required.

5. Respondent admits that Stacy L. Garrity is the Republican candidate for the office of Treasurer of Pennsylvania in the November 3, 2020 general election and is a “candidate” as that term is defined under 25 P.S. § 2602(a). Respondent lacks sufficient knowledge and/or information to form a belief as to the truth of the averments regarding Petitioner Garrity for PA and the truth of the averments regarding on whose behalf this Petition is brought. The balance of the allegations constitutes conclusions of law to which no response is required.

6. Admitted.

7. It is admitted only that the Montgomery County Board of Elections (“Board”) is responsible for overseeing the conduct of elections in Montgomery County, including the administration of the pre-canvass and canvass sessions of the Board during which absentee and mail-in ballots are inspected, opened, reviewed and counted in accordance with the Election Code. It is further admitted that its principal place of business is located at One Montgomery Plaza, 425 Swede Street, Norristown, PA 19401.

#### **FACTS AND PROCEDURAL BACKGROUND**

8. Admitted.

9. Admitted.

10. The allegations of paragraph 10 of the Petition constitute conclusions of law to which no response is required, and any characterization of the law is denied. Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

11. It is admitted only that, by the enactment of Act 77, the Pennsylvania General Assembly adopted mail-in voting for all qualified electors. The Election Code is a document in writing that speaks for itself and all characterizations thereof, as contained in paragraph 11 of the

Petition, are denied. Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

12. It is admitted only that the Election Code provides for absentee voting and, most recently, mail-in voting, as a means to enfranchise the electors of this Commonwealth and also provides for safeguards against fraud. The Election Code is a document in writing that speaks for itself and all characterizations thereof, as contained in paragraph 12 of the Petition, are denied. Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

13. Admitted. By way of further reply, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

14. It is admitted only that a general election was held in which one Petitioner, Daniel J. Wissert, was a candidate and/or registered voter. It is denied that Petitioner Donald J. Trump for President, Inc., the Republican National Committee, Petitioner Heidelbaugh for Attorney General, Inc., and Garrity for PA are candidates or registered voters in this election. Respondent assumes, but cannot confirm at this time, that Heather Heidelbaugh, Stacy L. Garrity and Daniel J. Wissert cast votes in the election in the Commonwealth of Pennsylvania, but not necessarily in Montgomery County. It is denied that Heather Heidelbaugh and Stacy L. Garrity are Petitioners herein.

15. It is admitted only that the November 3, 2020 general election was the first general election following the enactment of Act 77 in 2019 which made significant changes to Pennsylvania's elections, including the adoption of mail-in voting for all qualified electors. The balance of the allegations of paragraph 15 of the Petition constitute speculation as to why the General Assembly enacted certain provisions to which no response is required. By way of

further response, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

16. The opinion of the Pennsylvania Supreme Court in *Pa. Democratic Party v. Boockvar*, 202 WL 5554644, 2020 Pa. LEXIS 4872 (Pa. September 17, 2020) is in writing and speaks for itself. Respondent denies Petitioners' characterization of the Pennsylvania Supreme Court's opinion. By way of further response, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

17. It is admitted only that Sections 3146.6(a) and 3150.16(a) of the Election Code are at issue in this Petition and that Petitioners correctly set forth the text of Section 3146.6(a). It is denied that Petitioners bring this action by way of appeal but rather, by Petition. It is further denied that Sections 3146.6(a) and 3150.16(a) are the only sections of the Election Code at issue. By way of further response, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

18. It is admitted only that section 3150.16 applies to mail-in ballots. The provisions of section 3150.16 are in writing and speak for themselves. By way of further response, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

19. Denied. The allegations of paragraph 19 of the Petition are conclusions of law to which no responsive pleading is required. Respondent denies Petitioners' characterization of the law. By way of further response, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

20. Denied. The allegations of paragraph 20 of the Petition are conclusions of law to which no responsive pleading is required. Respondent denies Petitioners' characterization of the

law. By way of further response, Respondent incorporates herein by reference its Brief Opposition to the Petition for Review as if fully set forth at length.

21. Denied. To the contrary, Respondent has at all times adhered to the requirements of the Election Code. By way of further reply, there are 592 absentee and mail-in ballots for which the elector did not print his or her complete address beneath the declaration on the outer envelope, but otherwise signed and provided a date on the outer envelope. By way of further response, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review and the Parties' Stipulated Facts as if fully set forth at length.

22. Denied. By way of further response, there are 592 absentee and mail-in ballots for which the elector did not print his or her complete address beneath the declaration on the outer envelope, but otherwise signed and provided a date on the envelope. By way of further response, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review and the Parties' Stipulated Facts as if fully set forth at length.

23. It is admitted only that Petitioners were notified by the Solicitor for Montgomery County that the ballots described above in response to paragraphs 21 and 22 of the Petition, were segregated with the intent to count them. By way of further response, Petitioners' objection was limited to the failure of the elector to print his or her complete address underneath the declaration on the outer envelope. No further objections were lodged by Petitioners to the Board at the time, or thereafter. As such, all further objections pertaining to the contents of the outer envelopes for those absentee and mail-in ballots cast -- other than as to the lack of an address printed beneath the declaration -- are waived.

24. Denied. To the contrary, Respondent has at all times acted in conformance with the Pennsylvania Election Code. By way of further response, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

25. Denied. To the contrary, Respondent has at all times acted in conformance with the Pennsylvania Election Code. By way of further response, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

26. Admitted in part, denied in part. It is admitted that Respondent is not empowered to re-write the Election Code or to make and issue rules, regulations and instructions inconsistent with law; it is denied that Respondent has done so. By way of further response, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

27. Denied. The allegations contained in paragraph 27 of the Petition are conclusions of law to which no response is required. By way of further response, Respondent incorporates herein by reference its Brief in Opposition to the Petition for Review as if fully set forth at length.

28. It is denied that Petitioners bring this dispute before the Court by way of Notice of Appeal via Petition for Review or that it was timely. By way of further response, Respondent incorporates herein by reference its Brief Opposition to the Petition for Review as if fully set forth at length.

WHEREFORE, Respondent Montgomery County Board of Elections respectfully requests this Honorable Court to uphold its decision and overrule Petitioners' objection thereto, and for such other and further relief as provided by the Pennsylvania Election Code and/or as this Court deems just and appropriate.

Date: November 9, 2020

/s/ Raymond McGarry

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