

IN THE SUPREME COURT OF PENNSYLVANIA

Michael Crossey, Dwayne Thomas,
Irvin Weinreich, Brenda Weinreich, and
the Pennsylvania Alliance for Retired
Americans,

Petitioners,

v.

Kathy Boockvar, Secretary of the
Commonwealth, and Jessica Mathis,
Director of the Bureau of Election
Services and Notaries,

Respondents.

No. 108 MM 2020

PETITIONERS' ANSWER TO RESPONDENTS'
PRELIMINARY OBJECTIONS

Petitioners Michael Crossey, Dwayne Thomas, Irvin Weinreich, Brenda Weinreich, (“Individual Petitioners”), and the Pennsylvania Alliance for Retired Americans (“the Alliance”) (collectively, “Petitioners”) hereby submit this Answer in opposition to Respondents’ Preliminary Objections. Petitioners have concurrently submitted a Motion for Leave to File an Amended Petition by July 13, 2020 (“Motion for Leave”), which would render Respondents’ preliminary objections to the original Petition moot.¹ But in the event that the Court does not grant the Motion for Leave, Petitioners request that the Court issue a briefing schedule to allow the

¹ Petitioners previously submitted a copy of the foregoing Answer to Respondents on June 22, 2020, while the transfer of this action to the Supreme Court was still pending.

parties to submit memoranda of law addressing Respondents' remaining, unresolved preliminary objections.

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND²

1. Admitted that the Secretary of the Commonwealth is tasked with ensuring that Pennsylvania's elections are free, fair, secure, and accessible to all eligible voters. Petitioners are without sufficient knowledge or information to form a belief as to the truth of the remaining averments set forth in this paragraph.

2. Admitted.

3. Admitted.

4. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition.

5. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition.

6. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition.

² Respondents' preliminary statement does not present any averments to which a responsive pleading is required. To the extent that it requires a response, the preliminary statement is denied.

7. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition.

8. Admitted that Petitioners sought relief for the June 2, 2020 primary election and continue to seek relief as to the November 3, 2020 general election. The remaining averments in this paragraph purport to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition.

9. Admitted.

10. Petitioners are without sufficient knowledge or information to form a belief as to the truth of the averments set forth in this paragraph.

11. Admitted that the General Assembly enacted legislation to postpone the primary election date from April 28 to June 2. The remaining averments in this paragraph and the accompanying footnotes purport to summarize legislation, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the referenced legislation.

12. Denied.

13. Petitioners are without sufficient knowledge or information to form a belief as to the truth of the averments set forth in this paragraph and the accompanying footnote.

14. Petitioners are without sufficient knowledge or information to form a belief as to the truth of the averments set forth in this paragraph and the accompanying footnote.

15. Admitted that the Department of State provided sub-grants to counties with funds received from the federal government. Petitioners are without sufficient knowledge or information to form a belief as to the truth of the remaining averments set forth in this paragraph.

II. RESPONSE TO PRELIMINARY OBJECTIONS

A. Response to First Preliminary Objection

16. Petitioners incorporate their responses to the preceding paragraphs as if fully set forth herein. Petitioners further state that the Commonwealth Court sustained Respondents' first preliminary objection and transferred this matter to the Pennsylvania Supreme Court. *See* June 17, 2020 Order. As a result, Respondents' first preliminary objection is no longer before the Court and the averments in this paragraph require no further response.

17. This paragraph purports to summarize provisions of Act 77, which speak for themselves, and asserts a legal conclusion to which no response is required. Furthermore, the Commonwealth Court sustained Respondents' first preliminary objection and transferred this matter to the Pennsylvania Supreme Court. *See* June

17, 2020 Order. As a result, Respondents' first preliminary objection is no longer before the Court and the averments in this paragraph require no further response.

18. This paragraph purports to summarize provisions of Act 77, which speak for themselves. Furthermore, the Commonwealth Court sustained Respondents' first preliminary objection and transferred this matter to the Pennsylvania Supreme Court. *See* June 17, 2020 Order. As a result, Respondents' first preliminary objection is no longer before the Court and the averments in this paragraph require no further response.

19. This paragraph purports to summarize provisions of Act 77, which speak for themselves. Furthermore, the Commonwealth Court sustained Respondents' first preliminary objection and transferred this matter to the Pennsylvania Supreme Court. *See* June 17, 2020 Order. As a result, Respondents' first preliminary objection is no longer before the Court and the averments in this paragraph require no further response.

20. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny averments in this paragraph to the extent that they are inconsistent with the Petition. Furthermore, the Commonwealth Court sustained Respondents' first preliminary objection and transferred this matter to the Pennsylvania Supreme Court. *See* June 17, 2020 Order. As a result, Respondents'

first preliminary objection is no longer before the Court and the averments in this paragraph require no further response.

21. This paragraph asserts a legal conclusion to which no response is required. Furthermore, the Commonwealth Court sustained Respondents' first preliminary objection and transferred this matter to the Pennsylvania Supreme Court. *See* June 17, 2020 Order. As a result, Respondents' first preliminary objection is no longer before the Court and the averments in this paragraph require no further response.

B. Response to Second Preliminary Objection

22. Petitioners incorporate their responses to the preceding paragraphs as if fully set forth herein.

23. Denied. This paragraph quotes a rule of civil procedure, Pa. R. Civ. P. 1032(b), which speaks for itself, and asserts a legal conclusion to which no response is required. To the extent a response is required, this paragraph is denied.

24. This paragraph quotes decisions from various courts, which speak for themselves, and asserts a legal conclusion to which no response is required.

25. This paragraph quotes decisions from various courts, which speak for themselves, and asserts a legal conclusion to which no response is required.

26. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition.

27. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition.

28. Admitted that Petitioners alleged delays in mail ballot processing and delivery prevented voters from submitting their mail ballots by the statutory deadline. Petitioners further state that this paragraph quotes from, and purports to summarize, paragraph 35 of the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the referenced portion of the Petition.

29. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition.

30. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition.

31. Admitted that Petitioners' requested relief may require certain actions by the county election officials but deny that such actions require their joinder in this

lawsuit. Petitioners further state that this paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition.

32. Admitted that county election officials have not joined this action. Denied that Petitioners' claims or requests for relief require the joinder of county election officials. Petitioners further state that this paragraph purports to summarize the Petition, which speaks for itself, and asserts legal conclusions to which no response is required. To the extent a response is required, this paragraph is denied.

33. Denied. This paragraph asserts a legal conclusion to which no response is required; to the extent a response is required, this paragraph is denied.

WHEREFORE, Petitioners respectfully request that the Court overrule Respondents' Second Preliminary Objection.

C. Response to Third Preliminary Objection

34. Petitioners incorporate their responses to the preceding paragraphs as if fully set forth herein.

35. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition. Petitioners further state that this paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied.

36. This paragraph quotes Article II, § 1 of the Pennsylvania Constitution, which speaks for itself and to which no response is required.

37. Denied. This paragraph purports to summarize the Petition and a court decision, both of which speaks for themselves. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition. Petitioners further state that this paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied.

38. Denied. This paragraph purports to summarize the Petition and a court decision, both of which speak for themselves. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition. Petitioners further state that this paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied.

39. This paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied.

40. Denied. This paragraph and the accompanying footnote purport to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition. Petitioners further state that this paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied. Petitioners

further deny that the Supreme Court's Order in *Disability Rights Pennsylvania v. Boockvar* No. 83 MM 2020, is persuasive in this case.

41. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition. Petitioners further state that this paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied.

42. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition. Petitioners further state that this paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied.

43. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition. Petitioners further state that this paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied.

44. Admitted that the parties had sufficient information demonstrating that counties were having difficulty processing mail-in and absentee ballot requests in a timely manner, and that Respondents filed a declaration with the Commonwealth

Court identifying some of these counties. Petitioners also agree that they should be given leave to amend the Petition if the Court determines that the allegations are too speculative.

45. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition. Petitioners further state that this paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied.

46. Admitted that “procedures that extend the deadline for receipt of ballots . . . could increase the number of votes that are timely returned” and will “increase voters’ confidence in the midst of a crisis.” The remaining averments in this paragraph purport to summarize the Petition, which speaks for itself, and assert legal conclusions to which no response is required. To the extent a response is required, this paragraph is denied.

47. Denied. This paragraph asserts a legal conclusion to which no response is required; to the extent a response is required, this paragraph is denied.

WHEREFORE, Petitioners respectfully request that the Court overrule Respondents’ Third Preliminary Objection.

D. Response to Fourth Preliminary Objection

48. Petitioners incorporate their responses to the preceding paragraphs as if fully set forth herein.

49. This paragraph asserts a legal conclusion to which no response is required, and quotes from a court decision which speaks for itself.

50. This paragraph asserts a legal conclusion to which no response is required, and quotes from a court decision which speaks for itself.

51. This paragraph asserts a legal conclusion to which no response is required, and quotes from a court decision which speaks for itself.

52. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition. Petitioners further state that this paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied.

53. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition. Petitioners further state that this paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied.

54. Denied. This paragraph purports to summarize the Petition, which speaks for itself. Petitioners deny the averments in this paragraph to the extent that they are inconsistent with the Petition. Petitioners further state that this paragraph asserts legal conclusions to which no response is required; to the extent a response is required, this paragraph is denied.

55. Denied. This paragraph asserts a legal conclusion to which no response is required; to the extent a response is required, this paragraph is denied.

WHEREFORE, Petitioners respectfully request that the Court overrule Respondents' Fourth Preliminary Objection.

E. Response to Fifth Preliminary Objection

56. Petitioners incorporate their responses to the preceding paragraphs as if fully set forth herein.

57. Denied. This paragraph and the accompanying footnote assert legal conclusions to which no response is required, and quote from a court decision which speaks for itself. To the extent a response is required, this paragraph is denied.

58. Denied. This paragraph asserts a legal conclusion to which no response is required; to the extent a response is required, this paragraph is denied.

WHEREFORE, Petitioners respectfully request that the Court overrule Respondents' Fifth Preliminary Objection.

Dated: June 22, 2020

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer to Respondents' Preliminary Objections was served upon counsel for respondents via email on June 22, 2020, and will be filed with the Pennsylvania Supreme Court upon completion of the transfer of this case from the Commonwealth Court and the assignment of a docket number.

Dated: June 22, 2020



Adam C. Bonin

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[PROPOSED] ORDER

AND NOW this _____ day of _____ 2020, upon consideration of Respondents' Preliminary Objections to the Petition for Review, and the Answers of Petitioners thereto, it is hereby ORDERED that said Preliminary Objections are OVERRULED.

BY THE COURT:
