

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC	:	
PARTY, et al.	:	
Plaintiffs,	:	
	:	
v.	:	NO. 407 MD 2020
	:	
KATHY BOOCKVAR, et al.	:	
	:	
Defendants.	:	

**RESPONSE OF THE BERKS COUNTY BOARD OF ELECTIONS
TO PLAINTIFFS’ APPLICATION FOR AN EXPEDITED
DISCOVERY SCHEDULE AND EVIDENTIARY HEARING**

Defendant Berks County Board of Elections (“Answering County” or Berks County”), by and through its undersigned counsel, files this response to Petitioners’ Application for an Expedited Discovery Schedule and Evidentiary Hearing (the “Application”). Importantly, Berks County does not take the position that a speedy resolution of this matter is unwarranted. In fact, Berks County believes that it is critical that the Court bring this matter to a final resolution sufficiently in advance of the November 3, 2020 election so that Berks County is able to ensure a fair and free process. Therefore, Berks County does not oppose a reasonable acceleration of the schedule for responses to the Application, briefing, and a hearing on Petitioners’ claims for relief.

However, Berks County opposes Petitioners’ request for permission to conduct expedited discovery, at least as that request is currently presented. Petitioners ask the Court for an order permitting them to serve ten document requests, ten interrogatories, and ten requests for admissions, and to take three depositions. Petitioners have not, however, told the Court from which Respondents they intend to seek discovery, have not disclosed what topics they intend to explore, and have not explained to the Court why any discovery is necessary. For several

reasons, Berks County believes that the Court should not give Petitioners free rein to serve expedited discovery on any and all topics. To the extent the Court permits discovery at all, that discovery should be tightly constrained.

First, because this case involves questions of statutory interpretation, extensive discovery should be unnecessary. Most of Petitioners' allegations involve questions of interpretation of the Pennsylvania Election Code. Details of the administration of past elections—if that is what Petitioners intend to seek—are not relevant to these interpretations.

Second, an ongoing legislative inquiry will likely put much of the information Petitioners seek into their hands without any need for discovery. The General Assembly recently passed Act 35 of 2020, 71 P.S. § 279.6, which requires the Pennsylvania Department of State to collect information from the Counties and publish a report by August 1, 2020. This report is to provide detailed information on 25 different primary-related topics, including numbers of absentee and mail-in ballot applications and approvals, misdelivered or wrongly voted ballots, canvassing procedures, and ballot challenges. The fact that this detailed information will be available to Petitioners in just a few days further lessens any need for expedited discovery.

Finally, requiring Berks County to produce any amount of information on an expedited basis would put an unreasonable burden on it. Berks County in the midst of an extraordinarily demanding election year. The COVID-19 crisis has greatly complicated all aspects of election planning; the COVID-related postponement of the primary election has given Berks County less time to prepare for November; and it appears likely that the presidential and other races will inspire high turnout. Moreover, social distancing requirements mean that Berks County is operating with limited personnel, making physical and electronic files more difficult to access and copy. Accordingly, responding to extensive expedited discovery would cause a hardship to

Berks County and could divert them from their critical election-related responsibilities.

For these reasons, Berks County respectfully requests that if the Court permits any discovery at all, it should require that Petitioners' discovery be narrowly tailored to seek only information that is directly relevant to Petitioners' claims and not duplicative of information that is publicly available.

Respectfully submitted,

DEASEY, MAHONEY & VALENTINI, LTD.

Date: July 27, 2020

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CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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.

Date: July 27, 2020

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