

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC PARTY,
NILOFER NINA AHMAD, DANILO BURGOS,
AUSTIN DAVIS, DWIGHT EVANS, ISABELLA
FITZGERALD, EDWARD GAINEY, MANUEL
M. GUZMAN, JR., JORDAN A. HARRIS,
ARTHUR HAYWOOD, MALCOLM KENYATTA,
PATTY H. KIM, STEPHEN KINSEY, PETER
SCHWEYER, SHARIF STREED, and
ANTHONY H. WILLIAMS,

NO. 407 MD 2020

Petitioners,

v.

KATHY BOOCKVAR, in her capacity as
Secretary of the Commonwealth of
Pennsylvania; WASHINGTON COUNTY
BOARD OF ELECTIONS; *et al.*,

Respondents.

**RESPONDENT WASHINGTON COUNTY BOARD OF ELECTIONS’
RESPONSE TO PETITIONERS’ APPLICATION FOR AN
EXPEDITED DISCOVERY SCHEDULE AND EVIDENTIARY HEARING**

AND NOW, comes the Respondent, Washington County Board of Elections,
by and through its attorneys, Robert J. Grimm, Esquire and the law firm of Swartz
Campbell, LLC, and files the within Response to Petitioners’ Application for an
Expedited Discovery Schedule and Evidentiary Hearing, setting forth and averring
in support thereof the following:

The Petitioners, the Pennsylvania Democratic Party and others (hereinafter, “the Petitioners”), initiated this matter by way of filing a Petition for Declaratory and Injunctive Relief on July 10, 2020, naming as Respondents, Kathy Boockvar, the Secretary and Chief Elections Officer of the Commonwealth of Pennsylvania, along with the Boards of Elections of all 67 counties, including the Board of Elections of Washington County (hereinafter, “Washington County”). Also on July 10, 2020, the Petitioners filed an Application for an Expedited Discovery Schedule and Evidentiary Hearing. As permitted by the Court’s July 21, 2020 Order, Washington County now files the within response.

Washington County acknowledges that the Petitioners’ requests for expedited discovery and a timely evidentiary hearing are motivated by the admittedly fast-approaching General Election. Washington County shares in the emerging consensus that the Petitioners’ claims should be resolved in advance of the General Election such that all of the Respondents can focus on preserving and promoting the franchise, while ensuring the security and integrity of election processes. Washington County, however, opposes the Petitioners’ requests to the extent they would impose an undue burden or otherwise result in prejudice to it. Furthermore, Washington County opposes any discovery timeline that would

curtail its ability to challenge the legal viability of the Petitioners' claims in the first instance.

The Petitioners' Petition spans fully 56 pages—not including exhibits—and encompasses 207 discrete paragraphs. Despite its length, the Petition is marked by a complete lack of specificity in terms of allegations against individual counties and their boards of elections, including Washington County and its Board of Elections. Inasmuch as the Petition is devoid of specific allegations against Washington County, it plainly fails to give rise to colorable claims for relief. Washington County, therefore, intends to oppose the Petition and seek dismissal from this matter. Washington County requests a reasonable opportunity to do so.

Where the Petitioners' request for expedited discovery is concerned, Washington County submits that this amounts to putting the proverbial cart before the horse. Washington County should not be required to respond to the Petitioners' discovery requests before (or even contemporaneous with) filing its opposition to the Petitioners' Petition. After all, if the Petitioners' Petition is dismissed as to Washington County, then no discovery directed to Washington County by the Petitioners is or ever was authorized. It only stands to reason, then, that Washington County should be permitted to file and obtain a ruling on its request for dismissal before being required to engage in discovery.

Further, Washington County notes that the Petitioners, beyond indicating the number of discovery requests contemplated, have not given any advance notice as to the topics of those requests. In that the Petitioners' claims generally involve questions of statutory interpretation, Washington County questions the basic necessity of fact discovery. Moreover, Washington County notes that the Pennsylvania Department of State will be issuing a comprehensive report on August 1, 2020, as required by Act 35 of 2020, 71 P.S. § 279.6, which report will provide detailed information on 25 different topics relating to the June 2, 2020 Primary. It is believed that many of the Petitioners' discovery requests will be rendered moot as a result of information furnished through the report. In light of this, Washington County submits that the Petitioners' discovery requests must be narrowly tailored so as to avoid unnecessary duplication.

WHEREFORE, the Respondent, Washington County Board of Elections, respectfully requests that this Honorable Court take into consideration the within Response in ruling on the Petitioners' Application for an Expedited Discovery Schedule and Evidentiary Hearing.

Respectfully submitted,

SWARTZ CAMPBELL LLC

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Board of Elections

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 requires filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Robert J. Grimm, Esquire

Signature: /s/ Robert J. Grimm

Name: Robert J. Grimm, Esquire

Attorney No. (if applicable): 55381

CERTIFICATE OF SERVICE

I, Robert J. Grimm, Esquire, hereby certify that true and correct copies of the foregoing **Respondent Washington County Board of Elections' Response to Petitioners' Application for an Expedited Discovery Schedule and Evidentiary Hearing** have been served this 29th day of July 2020, on the following:

All Counsel of Record

Respectfully submitted,

SWARTZ CAMPBELL LLC

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