

**RIN THE COMMONWEALTH COURT OF PENNSYLVANIA**

PENNSYLVANIA DEMOCRATIC	)	
PARTY, <i>et al.</i>	)	
	)	
v.	)	No. _____ MD 2020
	)	
KATHY BOOCKVAR, <i>et al.</i>	)	

**APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF AN EXPEDITED MOTION FOR ALTERNATIVE SERVICE**

Pursuant to Pa. R.A.P. 1532(a) and Pa. R. Civ. P. 430, Plaintiffs, X Y Z, hereby file their application for special relief in the nature of a Motion for Alternative Service and state as follows:

**I. Introduction**

This case seeks declarations and injunctions from the Court to clarify procedures that will be used in the fast-approaching 2020 General Election. The claims herein relate to the way hundreds of thousands of mail-in and absentee ballots will be returned and counted in the General Election. Actual voting will begin as early as September 8. Some actions covered by the petition including the sourcing, obtaining and installation of equipment that may take additional time before September 8. Thus, time is of the essence.

“It is well established under the Pennsylvania Election Code that [the court of original jurisdiction] has complete control over regulating the time and manner of giving notice and the fixing of hearings.” *In re Nominating Petition of King*, No.

462 C.D. 2015, at \*3 (Pa. Commw. Ct. Apr. 13, 2015) (citing *In re Nominating Petition of Morgan*, 428 A.2d 1055, 1058 (Pa. Commw. Ct. 1981)). A primary reason for hand delivery of original service is to prove receipt by the proper parties for notice of an action – a concern that is of less importance when delivery is to a government office. In light of the exigencies, the volume of respondents and the nature of respondents, the Court should grant Plaintiff’s Emergency Motion and order that Plaintiffs effectuate service by overnight mail and email upon the counsel for the 68 Defendants (collectively, “Defendants”). Tenets of due process and the needs of this case will best be served by permitting service using this method.

## **II. Factual Background**

This lawsuit relates to the administration of the 2020 General Election, which is scheduled for November 3, 2020. Specifically, Plaintiffs seek declarations from this Court to clarify the Election Code and certain processes regarding the return and canvassing of mail-in and absentee ballots. Applications for mail-in ballots are currently open and Boards of Elections will begin mailing mail-in ballots to electors on September 8, 2020. Thus, an expedient resolution of this lawsuit is important to the legitimate, free and fair administration of the General Election.

The legitimacy of the 2020 General Election is particularly important given the backdrop of a global pandemic and a candidate (the President of the United States) who has publicly shown his penchant for issuing baseless attacks on our

election systems and states' proposed increased utilization of mail-in ballots to protect the safety and health of its citizens during a pandemic.

There are 68 named defendants in this lawsuit: the Secretary of State, Kathy Boockvar, and the Boards of Elections of each of Pennsylvania's 67 counties. Each of these defendants have also been named in a federal lawsuit, filed June 29, 2020 by President Trump's campaign, which raises many issues similar to those underlying the claims in this matter. *See* Complaint at Dkt. #1, *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, CV-2:20-cv-00966-NR (W.D. Pa.) (Ranjan J.) (the "Trump Lawsuit"). In that case, plaintiffs moved for an expedited declaratory judgment hearing, which the Court held in abeyance until Plaintiffs served the Complaint, their Motion for Expedited Discovery, and the Western District's July 2, 2020 order ("Ranjan Order") on the defendants or their counsel via overnight mail and email or facsimile and plaintiffs' counsel certified, on the record that the materials were "mailed or otherwise delivered to Defendants or their counsel." *See* Ranjan Order, attached hereto as Exhibit A. Additionally, Judge Ranjan gave the defendants until July 13, 2020 to respond to the plaintiffs' motion for expedited discovery.

Locating defendants in this case is not an issue. However, achieving original service as required by the Pennsylvania Rules of Civil Procedure will present an hurdle that will cause a delay that is contrary to the needs of this case.

### III. Argument

Service of original process on the 68 defendants in this case via hand delivery is not required here because due process will be served by employing other means of service.

The Commonwealth Court may grant interim or special relief in the interest of justice. *See* Pa. R.A.P. 1532(a). When an officer of the Commonwealth, including the Secretary of State, is named as a defendant, service “shall be made at the office of the defendant and the office of the attorney general by handing a copy to the person in charge thereof.” Pa. R. Civ. P. 422(a). When a political subdivision, such as a County Board of Elections, is named a defendant, service must be achieved by handing a copy an agent duly authorized to receive service, the person in charge at the office of the political subdivision or certain executives of the political subdivision. *See id.* at (b).

Should the Court grant a motion for alternative service, due process must be satisfied, which requires notice. *See PNC Bank, N.A. v. Unknown Heirs*, 929 A.2d 219 (Pa. Super. Ct. 2007). “The adequacy of this notice, as applied to substituted service, depends upon whether it is reasonably calculated to give the party actual notice of the pending litigation and an opportunity to be heard.” *Id.*

Importantly, “it is well established under the Pennsylvania Election Code that [the court of original jurisdiction] has complete control over regulating the time and

manner of giving notice and the fixing of hearings.” *In re Nominating Petition of King*, No. 462 C.D. 2015, at \*3 (Pa. Commw. Ct. Apr. 13, 2015) (citing *In re Nominating Petition of Morgan*, 428 A.2d 1055, 1058 (Pa. Commw. Ct. 1981); *see also* 25 P.S. § 2937 (“The court shall [specify] the time and manner of notice that shall be given to the candidate” whose petitions are sought to be set aside).

Here, time is of the essence because the legal issues relate to the Election Code and must be decided before the administration of the 2020 General Election beginning in less than two months. Nor has there been any delay as the Primary was only recently certified on July 7, 2020. Accelerating service by allowing Plaintiffs to serve Defendants via overnight mail and email upon their counsel, when known, will significantly expedite service. Further, the COVID-19 pandemic has created an additional hurdle to in-person service at the office of each board of elections. Thus, requiring Plaintiffs to hand deliver service to 67 counties who are open at various hours, with limited staff, will needlessly delay what will already be an expedited process.

Petitioners recognize the overlap in issues before this Court and the Western District of Pennsylvania. As such, Petitioners intend to provide a copy of these filings, by email, to counsel for the plaintiffs in the Trump Lawsuit. Petitioners will also, of course, notify the Attorney General.

**IV. Conclusion**

For the foregoing reasons, the Court should grant Plaintiff's Motion and Order that service may be made by overnight mail, with copies to counsel for such plaintiffs as may be known.

Respectfully submitted,

Greenberg Traurig, LLP

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*Attorneys for Petitioners*

July 10, 2020

**PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE**

It is hereby certified by the undersigned 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.

Respectfully submitted,  
**GREENBERG TRAUIG, LLP**

*/s/ Kevin Greenberg*

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Dated: July 10, 2020

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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PARTY, *et al.* )  
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 )  
KATHY BOOCKVAR, *et al.* )  
 )  
 )

**[PROPOSED] ORDER GRANTING APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF AN EXPEDITED MOTION FOR ALTERNATIVE SERVICE**

AND NOW, this \_\_\_\_\_ day of July, 2020, upon consideration of Petitioners' Application for special relief in the nature of an Expedited Motion for Alternative Service, it is hereby ORDERED that the Application is GRANTED.

IT IS FURTHER ORDERED that Petitioners shall serve the Petition for Declaratory and Injunctive Relief by overnight mail with copies to counsel for such plaintiffs as may be known.

BY THE COURT:

\_\_\_\_\_

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD J. TRUMP FOR  
PRESIDENT, INC., et al.,

Plaintiffs,

v.

KATHY BOOCKVAR, et al.,

Defendants.

}  
2:20-cv-966-NR  
}  
}

**ORDER**

The Court is cognizant of the exigency of this case, but is also mindful that *ex parte* motions (even ones that are largely procedural) are disfavored. Balancing these considerations, the Court hereby **ORDERS**: (i) on or before **July 6, 2020**, Plaintiffs' counsel shall serve by overnight mail (and e-mail or facsimile, if possible) the complaint [ECF 4], the motion to expedite [ECF 6], and a copy of this order on Defendants or the attorneys that Plaintiffs reasonably believe to be counsel for Defendants in this matter; (ii) upon mailing of those documents, Plaintiffs' counsel shall file a certification, certifying that the complaint, motion, and order were mailed or otherwise delivered to Defendants or their counsel, and describing those efforts; and (iii) Defendants shall have until **July 13, 2020** to file any responses to the motion to expedite (responses not to exceed 10 pages). Nothing in this order shall be construed to excuse the requirement that Plaintiffs serve original process pursuant to the procedures outlined in Federal Rule of Civil Procedure 4.

Dated: July 2, 2020

BY THE COURT:

/s/ J. Nicholas Ranjan

United States District Judge