

IN THE SUPREME COURT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC)
 PARTY; *et al.*,)
)
 Petitioners,)
)
 v.)
)
 KATHY BOOCKVAR; *et al.*,)
)
 Respondent.)

133 MM 2020

**PETITIONERS’ 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 STREET, and ANTHONY H. WILLIAMS**

**ANSWER TO RESPONDENT’S APPLICATION FOR THE COURT TO
 EXERCISE EXTRAORDINARY JURISDICTION**

By:

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August 19, 2020

Lazar M. Palnick

By and through undersigned counsel, Petitioners submit their answer to the Secretary of the Commonwealth's application for the Court to exercise Extraordinary Jurisdiction ("King's Bench Petition").

I. No Objection to King's Bench Jurisdiction

This Court is the ultimate expositor of Pennsylvania law, Pa. Const. art. V, § 2. The Court's supreme authority has for generations enforced the Pennsylvania Constitution's protections for electors because, in elections, "nothing can be more vital in the accomplishment of an honest and just selection than the ascertainment of the intention of the voter . . . All statutes tending to limit the citizen in his exercise of the right of suffrage should be liberally construed in his favor . . . No construction of a statute should be indulged that would disfranchise any voter if the law is reasonably susceptible of any other meaning." *See In re James Appeal*, 377 Pa. 405, 105 A.2d 64, 65-66 (1954) (citing *Bauman's Election Contest Case*, 351 Pa. 451, 456 (1945) (internal quotations omitted)). This interpretation is long-standing, as Pennsylvania's Constitution predates our federal Constitution and, even as far back as 1776, was the most radically democratic of all the early state constitutions and served as the template for the federal Constitution. *See League of Women Voters v. Commonwealth*, 645 Pa. 1, 178 A.3d 737, 802 (2018).

As the Secretary correctly asserts in her Application to this Honorable Court, the fundamental voting rights of Pennsylvanians, as guaranteed by the Pennsylvania

Constitution, are threatened by claims advanced in federal court by certain litigants and would also be threatened by excessive delays in resolving this matter.

Election Day is now less than 11 weeks away. Voting commences on September 9. It will take time for election administration officials to implement the decisions made by this Court. As a result, a final order in this litigation would, ideally, be entered in early September. Understanding that timeline and the process of the litigation to this point, Petitioners have no objection to the Court exercising extraordinary jurisdiction for the reasons set forth by the Secretary.

II. Partial Alternative Proposal for Questions Presented

If the King's Bench Petition is granted, Petitioners agree with the questions as presented by the Secretary numbered as questions I, II, V, and VI in the Secretary's Application to this Honorable Court. Petitioners respectfully propose alternate phrasing for questions III and IV along with an additional question VII as follows:

Question III – (a) Given the United States Postal Service's unsolicited warning that it cannot guarantee timely delivery of mail-in ballots by the current deadline, and the volume of applications precipitated by the COVID-19 pandemic, should County Boards of Election count all returned ballots postmarked by 8:00 p.m. on Election Day as valid if received following the election by a reasonable deadline? (b) And if so, what date is appropriate.

Suggested answers: (a) Yes; (b) November 10, 2020, which is the deadline for receipt of overseas and military ballots under federal law.

Question IV – Where a County Board of Election knows, prior to the conclusion of the canvass, that an elector has failed to facially complete the required statement, and that Board has the information and the reasonable ability to contact such elector, must the Board inform the elector of the rejection and to permit the elector to seasonably present herself or himself to cure the minor, non-material, errors to avoid disenfranchisement?

Suggested answer: Yes.

Question VII – Where a Board of Election determines that it has not, or will not, meet the deadlines for timely distribution of mail-in ballots, as required by the Election Code, must the Board adopt a plan to allow alternative return of the ballots, adopting a plan that is reasonably appropriate for the geography, transportation network, and population of the county?

Suggested answer: Yes.

III. Conclusion

For the foregoing reasons, Petitioners do not object to this Honorable Court exercising its extraordinary jurisdiction and granting the Secretary's present Application for the Exercise of this Honorable Court's Extraordinary Jurisdiction.

Respectfully submitted,

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Dated: August 19, 2020