

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

**CONSENT APPLICATION FOR LEAVE TO FILE AN
AMENDED PETITION BY JULY 13, 2020**

Petitioners Michael Crossey, Dwayne Thomas, Irvin Weinreich, Brenda Weinreich, and the Pennsylvania Alliance for Retired Americans (collectively, “Petitioners”) respectfully move the Court for leave to file an Amended Petition *by July 13, 2020*. Petitioners have conferred with Respondents Kathy Boockvar, Secretary of the Commonwealth, and Jessica Mathis, Director of the Bureau of Election Services and Notaries (collectively, the “Secretary”) regarding the relief sought in this Application, to which the Secretary has agreed. Petitioners further state the following:

On April 22, Petitioners filed a Petition for Declaratory and Injunctive Relief (“Petition”) in the Commonwealth Court of Pennsylvania. The Petition challenged

the Commonwealth's failure to provide sufficiently safe and reliable avenues for voting during the COVID-19 pandemic, and sought relief to protect voters' constitutional rights to participate in a free and equal election and to exercise their right to vote in the June 2 primary election and the November 3 general election. *See, e.g.*, Pet. ¶¶ 1, 2, 10 (alleging COVID-19 will affect Pennsylvania's "upcoming elections" and the Commonwealth failed to implement adequate safeguards for the "primary and general elections"). The Petitioners include several Pennsylvania voters who, because of their advanced age, are especially vulnerable to severe illness from COVID-19, and the Pennsylvania Alliance for Retired Americans, which has over 335,000 members across the Commonwealth.

On May 8, Petitioners filed an Emergency Application for Special Relief in the Nature of a Preliminary Injunction and for Expedited Review ("Emergency Application") with the Commonwealth Court, seeking limited emergency relief for the June 2 primary election. At the court's suggestion, the parties agreed to bifurcate jurisdictional questions from the merits of the Emergency Application, and the court issued a scheduling order to allow the parties to brief the jurisdictional issues, but stated that "Respondents' remaining preliminary objections, if any, will be briefed under a schedule later ordered by the court." May 19, 2020 Order, ¶ 1. On May 22, the Secretary filed preliminary objections contesting the court's jurisdiction and advancing several other objections to the Petition. Pursuant to the court's scheduling

order, Petitioners filed their response on May 26, addressing the Commonwealth Court's jurisdiction only.¹

On May 28, after submission of the parties' jurisdictional briefs, President Judge Mary Hannah Leavitt issued a memorandum opinion concluding that the Commonwealth Court lacked jurisdiction to grant the Emergency Application, finding that "[t]he Secretary's arguments on the issue of jurisdiction are compelling and when considered by the full Court may result in a transfer of the Petition to the Supreme Court." May 28, 2020 Mem. Op. On May 30, Petitioners appealed the denial of their Emergency Application to this Court, and, on June 4, following the June 2 primary election, the Court dismissed the appeal as moot (32 MAP 2020). That dismissal, however, resolved only the Emergency Application for preliminary injunction; the Petition, which addressed both the primary and general elections, remained pending before the Commonwealth Court.

On June 17, the Commonwealth Court sustained the Secretary's First Preliminary Objection for lack of jurisdiction, finding that Petitioners' claims were subject to the Supreme Court's exclusive jurisdiction under the Act of October 31, 2019, P.L. 552 No. 77 ("Act 77"), and concurrently transferred this matter to the Supreme Court pursuant to 42 Pa.C.S. § 5103(a). No scheduling order had been

¹ Petitioners served their Answer to the Secretary's remaining preliminary objections on June 22, a copy of which has been filed concurrently with this Application.

issued in this case for the Secretary's remaining preliminary objections, however. *See* May 19, 2020 Order, ¶ 1 (instructing that the Secretary's remaining preliminary objections "will be briefed under a schedule later ordered by the court").

Petitioners seek relief for elections occurring during the COVID-19 pandemic, including the November general election, *see, e.g.*, Pet. ¶¶ 1, 2, 10, thus this case presents a live controversy. Now that the June 2 primary has passed, Petitioners respectfully request this Court's leave to file an Amended Petition by July 13 in order to clarify the claims and issues currently before this Court as they pertain to the November general election, and to present relevant factual developments, including events that occurred during the June 2 primary, after which the Court may issue a scheduling order to brief preliminary objections to the Amended Petition, if any. As previously stated, the parties have conferred and the Secretary does not object to the requested leave to file an Amended Petition by July 13.

Wherefore, Petitioners respectfully request that this Court grant their application for leave to file an Amended Petition by July 13, 2020.

Dated: June 24, 2020

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**Pro hac vice application forthcoming.

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**ORDER GRANTING CONSENT APPLICATION FOR LEAVE TO FILE
AMENDED PETITION BY JULY 13, 2020**

And NOW this _____ day of _____ 2020, upon consideration of
Petitioners' Consent Application for Leave to File an Amended Petition by July 13,
2020, it is hereby ORDERED that said Application is GRANTED.

It is further ORDERED that Petitioners may file their Amended Petition by
July 13, 2020.

BY THE COURT:
