

IN THE SUPREME COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY,
SEAN PARNELL, THOMAS A.
FRANK, NANCY KIERZEK,
DEREK MAGEE, ROBIN SAUTER,
MICHAEL KINCAID, and WANDA
LOGAN,

Petitioners,

v.

COMMONWEALTH OF
PENNSYLVANIA, PENNSYLVANIA
GENERAL ASSEMBLY,
HONORABLE THOMAS W. WOLF,
and KATHY BOOCKVAR,

Respondents,

DNC SERVICES
CORP./DEMOCRATIC NATIONAL
COMMITTEE

Proposed
Intervenor-
Respondent.

Docket No. 68 MAP 2020

**PETITIONERS' RESPONSE TO
RESPONDENTS'
JURISDICTIONAL STATEMENT**

Filed on behalf of Petitioners,
The Honorable Mike Kelly, Sean
Parnell, Thomas A. Frank, Nancy
Kierzek, Derek Magee, Robin
Sauter, Michael Kincaid, and
Wanda Logan

Counsel of Record for Petitioners:

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Preliminary Statement

It appears that this Court has jurisdiction over an appeal from the grant of temporary injunctive relief pursuant to Pa.R.A.P. 311(a)(4), not pursuant to 42 Pa.Cons.Stat. § 723 and Pa.R.A.P. 1101(a), as Respondents assert.

Counter-Statement of the Procedural History of the Case

Petitioners initiated this action by filing a verified Petition for Review styled as a Complaint Seeking Injunctive and Declaratory Relief (“the Petition”) on Saturday, November 21, 2020, seeking to have Act 77 declared unconstitutional and seeking injunctive relief to prohibit Respondents from certifying the results of the General Elections which include the tabulation of unauthorized votes that did not meet the Pennsylvania Constitutional requirements and, instead, to compel Respondents to certify the results of the election based solely on the legal votes or, alternatively, to direct that the Pennsylvania General Assembly choose Pennsylvania’s electors, or such other and further relief as the court deems just and proper.¹ On Sunday, November 22, Petitioners filed an

¹ After initially serving the Petition improperly by regular mail on November 21, 2020, pursuant to Pa.R.A.P. 1514(c), Petitioners properly served the Petition on Respondents by certified mail on November 23, 2020 and filed proof of such service with the Commonwealth Court as directed by that court.

Application for Relief styled as a Motion for Emergency/Special Prohibitory Injunction (“the Motion”) and Memorandum of Law in support, seeking to preserve the status quo until the Commonwealth Court could make a final determination of the merits of the claims.

The Commonwealth Court could have granted emergency relief *ex parte*, but instead, on November 23, 2020, prior to granting emergency relief, it held a telephonic status conference with counsel for all parties, during which call Respondents noted their intention to object as to jurisdiction and standing, among other things. The Commonwealth Court issued an Order at 5:47 p.m. directing Respondents to file Preliminary Objections by 11:00 p.m. the same night and Petitioners to file answers to those Preliminary Objections by 10:00 a.m. the following morning, November 24, 2020. The parties proceeded to file Preliminary Objections and Answers as directed by that Order.

At 9:57 a.m. on November 24, 2020, the Commonwealth Court entered an Order directing Respondents to file answers to the Motion not later than 12:30 p.m. that same day. Before filing answers to the Motion, the Executive Respondents took steps to certify the November 3, 2020 General Elections and submitted a Certificate of Ascertainment for a slate of electors for Joseph R. Biden as president and Kamala D. Harris as vice

president of the United States to the Archivist of the United States. Reports of that certification activity began surfacing in the media around 11:00 a.m. on November 24, 2020. Respondents filed answers to the Motion later that day, claiming that the Motion had been rendered moot by the certification activity.

Petitioners filed a Supplemental Application for Emergency Relief at 11:42 p.m. on November 24, 2020 noting that it appeared that Respondents' actions may have been accelerated in response to the Motion and/or the Commonwealth Court's 9:57 a.m. Order on November 24, 2020, and disputing the claim that the Motion had become moot. On November 25, 2020, the Commonwealth Court entered a preliminary Order ("the November 25 Order"), decreeing:

1. As to the Supplemental Emergency Application, to the extent that there remains any further action to perfect the certification of the results of the 2020 General Election (the "Election") for the offices of President and Vice President of the United States of America, Respondents are preliminarily enjoined from doing so, pending an evidentiary hearing to be held on Friday, November 27, 2020 at 11:30 am via WebEx.
2. As to the Emergency Motion, filed on November 22, 2020, inasmuch as Respondents, based on their Press Release and briefs, have not undertaken certification of any of the other results of the Election, Respondents are preliminarily enjoined from certifying the remaining results of the Election, pending the evidentiary hearing on Friday, November 27, 2020 at 11:30 am via WebEx.

The Commonwealth Court further directed Respondents to file answers to the Supplemental Emergency Application by 3:00 p.m. on November 25, 2020, which Respondents did.

The Executive Respondents filed a Notice of Appeal to this Court on November 25, 2020 at 1:29 p.m. The Executive Respondents also filed an Application for the Court to Exercise Extraordinary Jurisdiction (“the Application”) in this Court on November 25, 2020 at 3:34 p.m.

Statement of Scope and Standard of Review

Appellate review of an order temporarily enjoining action is a highly deferential, abuse of discretion standard. The standard is stated as follows:

“[O]n an appeal from ... a preliminary injunction, we do not inquire into the merits of the controversy, but only examine the record to determine if there were *any apparently reasonable grounds* for the action of the court below. Only if it is plain that *no grounds exist to support the decree or that the rule of law relied upon was palpably erroneous or misapplied* will we interfere with the decision”

Allegheny Cnty. V. Commonwealth, 544 A.2d 1305, 1307 (Pa. 1988)

(quoting *Singzon v. Commonwealth Dep’t of Pub. Welfare*, 436 A.2d 125, 126-127 (Pa. 1981)).

Counter-Statement of the Questions on Review

Did the Commonwealth Court abuse its discretion in issuing a preliminary injunction to maintain the status quo for two days until an evidentiary hearing could take place?

Suggested Answer: No

Respectfully submitted,

OGC Law, LLC

/s/ Gregory H. Teufel

Gregory H. Teufel, Esq.
Attorney for Petitioners

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

Date: November 27, 2020

/s/Gregory H. Teufel
Gregory H. Teufel

CERTIFICATION OF COMPLIANCE WITH WORD COUNT LIMIT

I certify that the PETITIONERS' RESPONSE TO RESPONDENTS' JURISDICTIONAL STATEMENT is 892 words as measured in accordance with Pennsylvania Rule of Appellate Procedure 2135.

Dated: November 27, 2020

/s/Gregory H. Teufel
Gregory H. Teufel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record on November 27, 2020 by this Court's electronic filing system.

/s/Gregory H. Teufel
Gregory H. Teufel