

[J-96-2020]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PENNSYLVANIA DEMOCRATIC PARTY,	:	No. 133 MM 2020
NILOFER NINA AHMAD, DANILO	:	
BURGOS, AUSTIN DAVIS, DWIGHT	:	Emergency Applications to Stay
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	:	

v.

KATHY BOOCKVAR, IN HER CAPACITY	:
AS SECRETARY OF THE	:
COMMONWEALTH OF PENNSYLVANIA;	:
ADAMS COUNTY BOARD OF ELECTIONS;	:
ALLEGHENY COUNTY BOARD OF	:
ELECTIONS; ARMSTRONG COUNTY	:
BOARD OF ELECTIONS; BEAVER	:
COUNTY BOARD OF ELECTIONS;	:
BEDFORD COUNTY BOARD OF	:
ELECTIONS; BERKS COUNTY BOARD OF	:
ELECTIONS; BLAIR COUNTY BOARD OF	:
ELECTIONS; BRADFORD COUNTY	:
BOARD OF ELECTIONS; BUCKS COUNTY	:
BOARD OF ELECTIONS; BUTLER	:
COUNTY BOARD OF ELECTIONS;	:
CAMBRIA COUNTY BOARD OF	:
ELECTIONS; CAMERON COUNTY BOARD	:
OF ELECTIONS; CARBON COUNTY	:
BOARD OF ELECTIONS; CENTRE	:
COUNTY BOARD OF ELECTIONS;	:
CHESTER COUNTY BOARD OF	:
ELECTIONS; CLARION COUNTY BOARD	:
OF ELECTIONS; CLEARFIELD COUNTY	:
BOARD OF ELECTIONS; CLINTON	:
COUNTY BOARD OF ELECTIONS;	:
COLUMBIA COUNTY BOARD OF	:

ELECTIONS; CRAWFORD COUNTY :
BOARD OF ELECTIONS; CUMBERLAND :
COUNTY BOARD OF ELECTIONS; :
DAUPHIN COUNTY BOARD OF :
ELECTIONS; DELAWARE COUNTY :
BOARD OF ELECTIONS; ELK COUNTY :
BOARD OF ELECTIONS; ERIE COUNTY :
BOARD OF ELECTIONS; FAYETTE :
COUNTY BOARD OF ELECTIONS; :
FOREST COUNTY BOARD OF :
ELECTIONS; FRANKLIN COUNTY BOARD :
OF ELECTIONS; FULTON COUNTY :
BOARD OF ELECTIONS; GREENE :
COUNTY BOARD OF ELECTIONS; :
HUNTINGDON COUNTY BOARD OF :
ELECTIONS; INDIANA COUNTY BOARD :
OF ELECTIONS; JEFFERSON COUNTY :
BOARD OF ELECTIONS; JUNIATA :
COUNTY BOARD OF ELECTIONS; :
LACKAWANNA COUNTY BOARD OF :
ELECTIONS; LANCASTER COUNTY :
BOARD OF ELECTIONS; LAWRENCE :
COUNTY BOARD OF ELECTIONS; :
LEBANON COUNTY BOARD OF :
ELECTIONS; LEHIGH COUNTY BOARD :
OF ELECTIONS; LUZERNE COUNTY :
BOARD OF ELECTIONS; LYCOMING :
COUNTY BOARD OF ELECTIONS; :
MCKEAN COUNTY BOARD OF :
ELECTIONS; MERCER COUNTY BOARD :
OF ELECTIONS; MIFFLIN COUNTY :
BOARD OF ELECTIONS; MONROE :
COUNTY BOARD OF ELECTIONS; :
MONTGOMERY COUNTY BOARD OF :
ELECTIONS; MONTOUR COUNTY BOARD :
OF ELECTIONS; NORTHAMPTON :
COUNTY BOARD OF ELECTIONS; :
NORTHUMBERLAND COUNTY BOARD OF :
ELECTIONS; PERRY COUNTY BOARD OF :
ELECTIONS; PHILADELPHIA COUNTY :
BOARD OF ELECTIONS; PIKE COUNTY :
BOARD OF ELECTIONS; POTTER :
COUNTY BOARD OF ELECTIONS; :
SCHUYLKILL COUNTY BOARD OF :
ELECTIONS; SNYDER COUNTY BOARD :
OF ELECTIONS; SOMERSET COUNTY :

BOARD OF ELECTIONS; SULLIVAN
COUNTY BOARD OF ELECTIONS;
SUSQUEHANNA COUNTY BOARD OF
ELECTIONS; TIOGA COUNTY BOARD OF
ELECTIONS; UNION COUNTY BOARD OF
ELECTIONS; VENANGO COUNTY BOARD
OF ELECTIONS; WARREN COUNTY
BOARD OF ELECTIONS; WASHINGTON
COUNTY BOARD OF ELECTIONS;
WAYNE COUNTY BOARD OF
ELECTIONS; WESTMORELAND COUNTY
BOARD OF ELECTIONS; WYOMING
COUNTY BOARD OF ELECTIONS; AND
YORK COUNTY BOARD OF ELECTIONS

PETITION OF: KATHY BOOCKVAR, IN
HER CAPACITY AS SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA

DISSENTING STATEMENT

JUSTICE MUNDY

FILED: September 24, 2020

In my view, Intervenor¹ make a substantial case on the merits that this Court should stay the portion of our opinion extending the deadline for receipt of mail-in ballots past 8:00 p.m. on November 3, 2020, Election Day.² In *Pennsylvania Democratic Party v. Boockvar*, ___ A.3d ___, 2020 WL 5554644 (Pa. 2020), a majority of this Court held that all mail-in ballots postmarked by 8:00 on Election Day, and received by 5:00 p.m.

¹ Intervenors refers to the Republican Party of Pennsylvania and Joseph B. Scarnati III, President Pro Tempore, Jake Corman, Majority Leader of the Pennsylvania Senate, Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives.

² A stay may be granted where Petitioners, “make a substantial case on the merits and show that without the stay, irreparable injury will be suffered. Additionally, before granting a request for a stay, the court must be satisfied the issuance of the stay will not substantially harm other interested parties in the proceedings and will not adversely affect the public interest.” *Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz*, 573 A.2d 1001, 1003 (1990).

November 6, 2020, even those lacking a postmark or bearing an illegible postmark, would be counted. *Id.* at *37. Without further explanation, the majority qualified that such ballots “will be presumed to have been mailed by Election Day unless a preponderance of the evidence demonstrates that it was mailed after Election Day.” *Id.* The Republican Party of Pennsylvania Intervenors argue that virtually no evidence exists to overcome such a presumption, and “the Court’s presumption opens the door to illegally and untimely cast or mailed ballots being counted in, and tainting the results of, the imminent general election in which millions of Pennsylvanians will exercise their right to vote.” Republican Party of Pennsylvania Application for Partial Stay at 4.

Intervenors assert that there is a substantial likelihood that they will be successful on the merits of the stay application and writ of certiorari to be filed in the United States Supreme Court. Citing to *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205 (2020), Intervenors note that the United States Supreme Court stayed a judgment of a federal district Court in Wisconsin and held that “[e]xtending the date by which ballots may be cast by voters after the scheduled election day fundamentally alters the nature of the election.” *Id.* at 1207. It is reasonable that the United States Supreme Court may view this Court’s presumption regarding ballots lacking a postmark or bearing an illegible postmark in the same light. As a result, I would grant a stay to preserve the public confidence in the integrity of the upcoming election.