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| IN RE NOVEMBER 3, 2020 GENERAL ELECTION Petition of: Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania | IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT No. 149 MM 2020 |
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**MOTION TO INTERVENE BY JOSEPH B. SCARNATI III,
PRESIDENT PRO TEMPORE, AND JAKE CORMAN, MAJORITY
LEADER OF THE PENNSYLVANIA SENATE**

Proposed Intervenors, Joseph B. Scarnati III, Pennsylvania Senate President Pro Tempore, and Jake Corman, Senate Majority Leader (“Applicants”), by and through the undersigned counsel, respectfully submit this motion to intervene as respondents in the above-captioned proceeding, pursuant to Rule 2327 of the Pennsylvania Rules of Civil Procedure.

Senators Scarnati and Corman have been duly authorized to act in this matter by each of the members of the Senate Republican Caucus, which constitute a majority of the Pennsylvania Senate as a whole.

BASES FOR PROPOSED INTERVENORS’ APPLICATION

1. Pursuant to Pennsylvania Rule of Appellate Procedure 106, the practice and procedures relating to original jurisdiction matters are to be in accordance with the Pennsylvania Rules of Civil Procedure.

2. Pennsylvania Rule of Civil Procedure 2327 allows a person not named as a party to seek leave to intervene by filing an application with the court.

3. Proposed Intervenors seek to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327(3)-(4), which states, in pertinent part, as follows:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if . . .

(3) such person could have joined as an original party in the action or could have been joined therein; or

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa.R.C.P. 2327.

4. Proposed Intervenors meet the requirements for intervention under Pa.R.C.P. 2327(3)-(4). They seek to protect the Pennsylvania Senate’s exclusive constitutional rights, together with the Pennsylvania House of Representatives, of determining the times, places, and manner of holding elections under Art. 1, §4 of the U.S. Constitution and Art. 2, §1 of the Pennsylvania Constitution; and of suspending laws under Art. 1, §12 of the Pennsylvania Constitution.

5. Importantly, when evaluating whether a proposed intervenor’s asserted interests satisfy Pa.R.C.P. 2327(4), this Court must not “confus[e] weakness on the merits with the absence of ... standing.” *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2663 (2015). This is because the analysis here is dependent upon the source and nature of the interest asserted, not on the

merits of the claim. *See id.* (quoting and citing *Warth v. Seldin*, 422 U.S. 490, 500 (1975)). Additionally, the threshold to satisfy Pa.R.C.P. 2327(4) is lower than the threshold to establish standing. *See Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs.*, 225 A.3d 902, 910-911 (Pa. Comm. Ct. 2020).¹

PETITIONER'S CLAIM

6. On the eve of an election, with pre-canvassing and mail-in and absentee voting just around the corner, Petitioner seeks to disrupt Pennsylvania's clear and unambiguously crafted procedures for determining and challenging the validity of an absentee or mail-in ballot and/or application. Petitioner asks this Court to rewrite existing law and pronounce that county boards of election cannot reject, nor can a third-party challenge, an absentee or mail-in ballot on the basis that a voter's signature used to sign the declaration does not match the respective voter's signature on file. Pet. at 2.

7. In order to avoid further confusion² as a result of the Secretary petitioning this Court regarding duly-established election procedures, Proposed Intervenors agree

¹ This Court, as well as others, have recently granted Proposed Intervenors' motions to intervene in similarly situated matters. *See* Order, *Crossey v. Boockvar* (Pa., No. 108 MM 2020,, filed Aug. 21, 2020); Order, *Pa. Democratic Party v. Boockvar* (Pa., No. 133 MM 2020, filed Sept. 3, 2020); Order, *NAACP Pennsylvania State Conference v. Boockvar* (Pa. Commw. Ct., No. 364 M.D. 2020, filed Sept. 11, 2020) (noting in granting intervention to Proposed Intervenors that, "in the interest of time the Court resolved the pending applications for intervention in an expedited fashion, erring on the side of overinclusion for purposes of creating a fulsome record . . .").

² Even on the face of the Petition, it is unclear which position Petitioner is advocating for, which will only lead to further confusion as to when it is okay to verify signatures—this has Equal Protection implications. *See* Pet. at 20 FN15 ("To be clear, Secretary Boockvar is not advocating that signatures on applications and ballots must be ignored. If, based on examination of a voter's signed declaration, a county elections official in good faith believes the ballot was voted by someone other than the qualified elector who applied for the ballot or is fraudulent, the ballot should be set aside and investigated. But this is very different from suggesting that the Election Code requires county election

with Petitioner that this Court should issue a prompt pronouncement regarding the clear meaning of the challenged law. However, Proposed Intervenors strongly disagree with Petitioner's flawed and selective interpretation of Pennsylvania law.

8. As such, Petitioner does not adequately represent Proposed Intervenors' interests regarding Petitioner's requests for relief and its flawed interpretation of Pennsylvania law. Further, upon information and belief, there are no additional parties present in this matter interested in defending the legislature's prerogatives.

9. Proposed Intervenors seek to protect rights and obligations that the U.S. Constitution vests in the Pennsylvania legislature, namely the right to enact the times, places, and manner of holding elections under the Constitution's Elections Clause. *See* U.S. Const. art. I, §4.

10. Additionally, Art. 2, §1 of the Pennsylvania Constitution vests the legislative power in Pennsylvania's General Assembly.

11. In enacting the laws presently found in 25 P.S. § 3146.8(g)(3), the Legislature required that county boards of elections "examine the declaration on the envelope of each ballot . . . and shall compare the information thereon with that contained in the [respective voter files]." Further, only after the county boards have satisfactorily "verified the proof of identification as required by [25 P.S. § 3146.8(g)(3)]" by

employees to perform a subjective signature analysis or authorizes rejection of validly cast and voted ballots based on signature variances.").

comparing the information on the ballot envelope to the information contained in the voter file, which clearly includes a voter signature³, shall the ballot be canvassed. *See* 25 P.S. § 3146.8(g)(3). Petitioner’s requested relief, that only name and address be verified, diminishes and encroaches on the constitutionally granted investment of authority by creating instability in the carefully crafted administration of elections.

12. Petitioner’s requested relief, therefore, diminishes the General Assembly’s authority to enact a comprehensive elections code including the enactment of deadlines, locations, and canvassing of ballots.

13. Petitioner’s requested relief affects the General Assembly’s constitutionally vested authority. The U.S. Constitution vests the Pennsylvania legislature with the authority to enact comprehensive election code. This includes establishing the “Places” of elections as well as provisions to protect the integrity and uniformity of the election by preventing acts that invite fraudulent practices.

14. Petitioner asks that this Court use its equitable powers to alter the statutorily mandated procedures regarding ballot canvassing, particularly the information that the county boards are required to verify before canvassing a ballot. Petitioner’s requested relief directly harms the legislature’s interest in enacting comprehensive election codes and its right to devise rules for the counting of ballots.

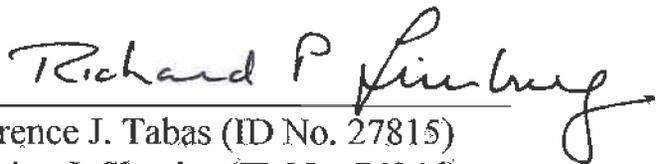
³ *See, e.g.*, 25 P.S. § 1402 (b)&(f) (clearly establishes that a signature being part of the voter registration file and that the signature be verified and updated following each election); 25 P.S. § 1402 (the General Register requires the digitized signature of the elector); 25 P.S. § 1327(b)(2), (3) & (4) (voter registration shall contain the signature of the voter and that the signing is done under penalty for falsifying declaration).

15. Because Petitioner requests that this Court modify election laws, laws whose creation the U.S. Constitution and the Pennsylvania Constitution have vested in the Pennsylvania legislature, and because there are no parties present in this present matter that are interested in defending the legislature's prerogatives, this Court should grant intervention.

WHEREFORE, for the reasons set forth above and more fully set forth in the accompanying Memorandum of Law, Senators Scarnati and Corman respectfully request the Court's permission to intervene on behalf of the legislative houses whose majorities they represent.

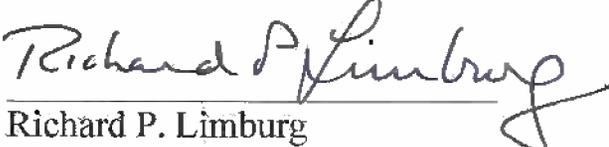
Dated: October 7, 2020

Respectfully submitted,
Obermayer Rebmann Maxwell & Hippel LLP

By: 
Lawrence J. Tabas (ID No. 27815)
Mathieu J. Shapiro (ID No. 76266)
Richard Limburg (ID No. 39598)
Centre Square West
1515 Market St., Suite 3400
Philadelphia, PA 19102
Attorneys for Joseph B. Scarnati III and Jake Corman

CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion to intervene complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania – Case Records of the Appellate and Trial Courts*, which requires filing confidential information and documents differently than non-confidential information and documents.


Richard P. Limburg

Date: October 7, 2020

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| <p>IN RE NOVEMBER 3, 2020 GENERAL ELECTION</p> <p>Petition of: Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania</p> | <p>IN THE SUPREME COURT OF PENNSYLVANIA</p> <p>MIDDLE DISTRICT</p> <p>No. 149 MM 2020</p> |
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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO INTERVENE BY JOSEPH B. SCARNATI III,
PRESIDENT PRO TEMPORE, AND JAKE CORMAN, MAJORITY
LEADER OF THE PENNSYLVANIA SENATE**

Proposed Intervenors, Joseph B. Scarnati III, Pennsylvania Senate President Pro Tempore, and Jake Corman, Senate Majority Leader (“Applicants”), by and through the undersigned counsel, respectfully submit this memorandum of law in support of their motion to intervene as respondents in the above-captioned proceeding, pursuant to Rule 2327 of the Pennsylvania Rules of Civil Procedure.

Senators Scarnati and Corman have been duly authorized to act in this matter by each of the members of the Senate Republican Caucus, which constitutes a majority of the Pennsylvania Senate as a whole.

In addition to this Memorandum of Law, Applicants submit their proposed Preliminary Objection to Petitioner’s pleading, attached as Exhibit A.

BASES FOR PROPOSED INTERVENORS' APPLICATION

1. Pursuant to Pennsylvania Rule of Appellate Procedure 106, the practice and procedures relating to original jurisdiction matters are to be in accordance with the Pennsylvania Rules of Civil Procedure.

2. Pennsylvania Rule of Civil Procedure 2327 allows a person not named as a party to seek leave to intervene by filing an application with the court.

3. Proposed Intervenors seek to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327(3)-(4), which states, in pertinent part, as follows:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if . . .

(3) such person could have joined as an original party in the action or could have been joined therein; or

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa.R.C.P. 2327.

4. Proposed Intervenors meet the requirements for intervention under Pa.R.C.P. 2327(3-4). They seek to protect the Pennsylvania Senate's exclusive constitutional rights, together with the Pennsylvania House of Representatives, of determining the times, places, and manner of holding elections under Art. 1, §4 of the U.S. Constitution and Art. 2, §1 of the Pennsylvania Constitution; and of suspending laws under Art. 1, §12 of the Pennsylvania Constitution.

5. Importantly, when evaluating whether the Applicants’ asserted interests satisfy Pa.R.C.P. 2327(4), this Court must not “confus[e] weakness on the merits with the absence of ... standing.” *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2663 (2015). This is because the analysis here is dependent upon the source and nature of the interest asserted, not on the merits of the claim. *See id.* (quoting and citing *Warth v. Seldin*, 422 U.S. 490, 500 (1975)). Additionally, the threshold to satisfy Pa.R.C.P. 2327(4) is lower than the threshold to establish standing. *See Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Human Servs.*, 225 A.3d 902, 910-911 (Pa. Comm. Ct. 2020).¹

PETITIONER’S CLAIM

6. On the eve of an election, with pre-canvassing and mail-in and absentee voting just around the corner, Petitioner seeks to disrupt Pennsylvania’s clear and unambiguously crafted procedures for determining and challenging the validity of an absentee or mail-in ballot and/or application. Petitioner asks this Court to rewrite existing law and pronounce that county boards of election cannot reject, nor can a third-party challenge, an absentee or mail-in ballot on the basis that a voter’s

¹ This Court, as well as others, have recently granted Proposed Intervenors’ motions to intervene in similarly situated matters. *See* Order, *Crossey v. Boockvar* (Pa., No. 108 MM 2020,, filed Aug. 21, 2020); Order, *Pa. Democratic Party v. Boockvar* (Pa., No. 133 MM 2020, filed Sept. 3, 2020); Order, *NAACP Pennsylvania State Conference v. Boockvar* (Pa. Commw. Ct., No. 364 M.D. 2020, filed Sept. 11, 2020) (noting in granting intervention to Proposed Intervenors that, “in the interest of time the Court resolved the pending applications for intervention in an expedited fashion, erring on the side of overinclusion for purposes of creating a fulsome record . . .”).

signature used to sign the declaration does not match the respective voter's signature on file. Pet. at 2.

7. In order to avoid further confusion² as a result of the Secretary petitioning this Court regarding duly-established election procedures, Proposed Intervenors agree with Petitioner that this Court should issue a prompt pronouncement regarding the clear meaning of the challenged law. However, Proposed Intervenors strongly disagree with Petitioner's flawed and selective interpretation of Pennsylvania law.

8. As such, Petitioner does not adequately represent Proposed Intervenors' interests regarding Petitioner's requests for relief and its flawed interpretation of Pennsylvania law. Further there are no additional parties present in this matter interested in defending the legislature's prerogatives.

ARGUMENT

I. PETITIONER'S CLAIMS DIRECTLY INFRINGE THE RIGHTS AND OBLIGATIONS OF THE PENNSYLVANIA SENATE UNDER THE ELECTIONS CLAUSE OF THE UNITED STATES CONSTITUTION AND ART. 2, §1 OF THE PENNSYLVANIA CONSTITUTION.

² Even on the face of the Petition, it is unclear which position Petitioner is advocating for, which will only lead to further confusion as to when is it okay to verify signatures—this has Due Process implications. *See* Pet. at 20 FN15 (“To be clear, Secretary Boockvar is not advocating that signatures on applications and ballots must be ignored. If, based on examination of a voter's signed declaration, a county elections official in good faith believes the ballot was voted by someone other than the qualified elector who applied for the ballot or is fraudulent, the ballot should be set aside and investigated. But this is very different from suggesting that the Election Code requires county election employees to perform a subjective signature analysis or authorizes rejection of validly cast and voted ballots based on signature variances.”)

9. Proposed Intervenors seek to protect rights and obligations that the U.S. Constitution vests in the Pennsylvania legislature, namely the right to enact the times, places, and manner of holding elections under the Constitution’s Elections Clause. *See* U.S. Const. art. I, §4. *See In re Nomination of Driscoll*, 847 A.2d 44, 45 n.1 (Pa. 2004) (stating that a candidate for federal office must “abide by the election procedures in the Pennsylvania Election Code” because, unless altered by Congress, Pennsylvania’s General Assembly prescribes the Times, Places and Manner of holding Elections for Senators and Representatives); *In re Guzzardi*, 99 A.3d 381, 385-86 (Pa. 2014) (stating that the legislature enacts election related deadlines for the orderly, efficient, and fair proceedings of elections as well as creating much needed stability). This federal constitutional grant of authority provides state legislatures with “a wide discretion in the formulation of a system for the choice by the people of representatives in Congress.” *In re Nomination of Driscoll*, 847 A.2d at 45 n.1 (quoting *U.S. v. Classic*, 313 U.S. 299, 311 (1941)). In interpreting the Elections Clause’s Times, Places, and Manner provision, the U.S. Supreme Court has ruled:

It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.

Smiley v. Holm, 285 U.S. 355, 366 (1932).

10. Additionally, Art. 2, §1 of the Pennsylvania Constitution vests the legislative power in Pennsylvania’s General Assembly.

11. The Pennsylvania legislature is, therefore, empowered to craft legislation regulating the administration of elections, including deadlines. *See In re Nomination of Driscoll*, 847 A.2d at 45 n.1; *see also Corman v. Torres*, 287 F. Supp. 3d 558, 573 (M.D. Pa. 2018) (three-judge court) (“The Elections Clause, therefore, affirmatively grants rights to state legislatures...” (citing *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2668 (2015))).

12. In enacting the laws presently found in 25 P.S. § 3146.8(g)(3), the Legislature required that county boards of elections “examine the declaration on the envelope of each ballot . . . and shall compare the information thereon with that contained in the [respective voter files].” Further, only after the county boards have satisfactorily “verified the proof of identification as required by [25 P.S. § 3146.8(g)(3)]” by comparing the information on the ballot envelope to the information contained in the voter file, which clearly includes a voter signature³, shall the ballot be canvassed. *See* 25 P.S. § 3146.8(g)(3). Petitioner’s requested

³ *See, e.g.*, 25 P.S. § 1402 (b)&(f) (clearly establishes that a signature being part of the voter registration file and that the signature be verified and updated following each election); 25 P.S. § 1402 (the General Register requires the digitized signature of the elector); 25 P.S. § 1327(b)(2), (3) & (4) (voter registration shall contain the signature of the voter and that the signing is done under penalty for falsifying declaration).

relief, that only name and address be verified, diminishes and encroaches on the constitutionally granted investment of authority by creating instability in the carefully crafted administration of elections.

13. As a result, Petitioner's requested relief affects the Legislature's legally enforceable interest in determining the times of elections, Pa. R. Civ. P. 2327(4), because it diminishes the General Assembly's authority to enact a comprehensive elections code establishing procedures for the counting of ballots. *In re Nomination of Driscoll*, 847 A.2d at 45 n.1 (quoting *Classic*, 313 U.S. at 311); *In re Guzzardi*, 99 A.3d at 385-86; *see also Smiley*, 285 U.S. at 366.

14. Petitioner asks that this Court use its equitable powers to alter the statutorily mandated procedures regarding ballot canvassing, particularly the information that the county boards are required to verify before canvassing a ballot. Petitioner's requested relief directly harms the legislature's interest in enacting comprehensive election codes and its right to devise rules for the counting of ballots.

15. Furthermore, the election law, 25 P.S. § 3146.8, is clear that county boards of elections must verify the information on the envelope, not just name and address, with the information in the respective voter files (which expressly includes voter signatures)—nothing more, nothing less. See 25 P.S. § 1402 (b)&(f) (clearly establishes that a signature being part of the voter registration file and that the signature be verified and updated following each election). This Court cannot use

equity to override a clear statutory mandate. To do otherwise, infringes upon the authority of the legislature. *In re Guzzardi*, 99 A.3d 381, 382 (Pa. 2014) (“Pennsylvania courts are not empowered to employ principles of equity to override the express statutory command...”).

16. Accordingly, this Court should grant intervention, because Petitioner seeks to modify Pennsylvania’s election laws, the enactment of which the U.S. Constitution entrusts to the Pennsylvania legislature alone.

17. A ruling granting in Petitioner’s favor would also invade the rights and obligations of the Pennsylvania legislature under Art. 2, §1 of the Pennsylvania Constitution which vests the legislative power of the Commonwealth in the General Assembly and that includes enacting a comprehensive election code. The United States District Court for the Middle District of Pennsylvania in *Corman v. Torres*, 287 F.Supp.3d 558, 573 (M.D. Pa. 2018), recognized that only the General Assembly has standing to assert its prerogatives under the Elections Clause. Accordingly, this Court should grant the requested intervention. *See also Sixty-Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 194 (1972) (granting intervention in a redistricting case to the Minnesota Senate because the district court orders directly impacted the Senate).

II. PETITIONER’S REQUESTED RELIEF INFRINGES UPON THE LEGISLATURE’S RIGHTS AND OBLIGATIONS TO SUSPEND LAWS UNDER ARTICLE I, § 12 OF PENNSYLVANIA’S CONSTITUTION.

18. Petitioner, an executive, not legislative, officer, effectively seeks the amendment of certain provisions of the Election Code concerning procedures for determining and challenging the validity of an absentee or mail-in ballot and/or application. Such relief would be contrary to Article I, §12 of the Pennsylvania Constitution, which states that “no power of suspending laws shall be exercised unless by the legislature.”

19. Petitioner seeks to enjoin the county boards from applying the law as written and prohibit them from verifying a signature on the ballot in question with the signature in the respective voter’s file. Pet. at 2. Petitioner also seeks to enjoin non-present third-parties from challenging ballots for similar reasons. *Id.*; see 25 P.S. § 3146.8 (discusses challenges to ballots and applications throughout provision). Only the legislature has the authority to suspend the enforcement of laws and an injunction infringes upon the legislature’s right. Accordingly, Petitioner’s requested relief impacts the legislature’s right to suspend laws. This Court should therefore grant intervention.

III. PROPOSED INTERVENORS SATISFY THE REMAINING REQUIREMENTS FOR INTERVENTION.

20. If the requirements for who may intervene are met, intervention shall be granted, unless the petition to intervene is unduly delayed, the interest of the proposed intervenor is already adequately represented, or the intervenor does not take the litigation as he finds it. Pa.R.C.P. 2329; *Appeal of the Municipality of Penn Hills*, 546 A.2d 50, 52 (1988).

21. Proposed Intervenors have filed a motion to intervene promptly.

22. On information and belief, Petitioner, nor any other party, does not take the same position as the Proposed Intervenors and will not adequately represent their interests.

23. Proposed Intervenors seek to intervene as Respondents. They will assert defenses to Petitioner's claims.

24. If allowed to intervene, Proposed Intervenors intend to file the attached preliminary objections stating the constitutional objections raised herein.

25. Moreover, Petitioner's requested relief creates an equal protection problem. Without explanation, Petitioner acknowledges that in some instances it is permissible to verify and reject a ballot or application where a signature on a submitted ballot or application does not match with the signature in the respective voter's file, while at the same time requesting that this Court declare such verification is impermissible under Pennsylvania Law.—Such approach will lead to

confusion and different county boards verifying ballots and applications differently.
See Pet. at 20, FN15. This violates the Equal Protection Clause. *See, e.g., Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

Dated: October 7, 2020

Respectfully submitted,
Obermayer Rebmann Maxwell & Hippel
LLP

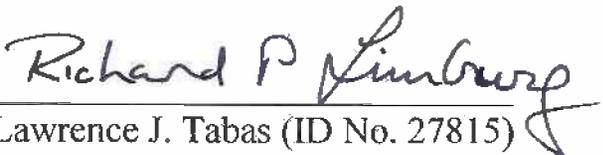
By: 
Lawrence J. Tabas (ID No. 27815)
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Richard Limburg (ID No. 39598)
Centre Square West
1515 Market St., Suite 3400
Philadelphia, PA 19102
*Attorneys for Joseph B. Scarnati III and
Jake Corman*

EXHIBIT A

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| <p>IN RE NOVEMBER 3, 2020 GENERAL ELECTION</p> <p>Petition of: Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania</p> | <p>IN THE SUPREME COURT OF PENNSYLVANIA</p> <p>MIDDLE DISTRICT</p> <p>No. 149 MM 2020</p> |
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**PRELIMINARY OBJECTIONS OF INTERVENOR RESPONDENTS,
JOSEPH B. SCARNATI III, PRESIDENT PRO TEMPORE, AND
JAKE CORMAN, MAJORITY LEADER
OF THE PENNSYLVANIA SENATE**

Intervenor respondents, Joseph B. Scarnati III, Pennsylvania Senate President Pro Tempore, and Jake Corman, Senate Majority Leader,¹ by and through the undersigned counsel, object preliminarily to the Secretary's Petition to declare proper construction of Election Code pursuant to Pa.R.C.P. 106 and 1028(a)(1) for the reasons set forth below:

1. Petitioner commenced this case as an invocation of King's Bench power to interpret various provisions of the Election Code regarding the challenging and verification of absentee and mail-in ballots and applications in Pennsylvania.

¹ Senators Scarnati and Corman have been duly authorized to act in this matter by each of the members of the Senate Republican Caucus, which constitute a majority of the Senate as a whole.

2. Pursuant to Pennsylvania Rule of Appellate Procedure 106, the practice and procedures relating to original jurisdiction matters are to be in accordance with the Pennsylvania Rules of Civil Procedure.

3. On the eve of an election, with pre-canvassing and mail-in and absentee voting just around the corner, Petitioner seeks to disrupt Pennsylvania's clear and unambiguously crafted procedures for determining and challenging the validity of an absentee or mail-in ballot and/or application. Petitioner asks this Court to rewrite existing law and pronounce that county boards of election cannot reject, nor can a third-party challenge, an absentee or mail-in ballot on the basis that a voter's signature used to sign the declaration does not match the respective voter's signature on file. Pet. at 2.

I. PETITIONER'S INTERPRETATION OF PENNSYLVANIA LAW IS FLAWED.

4. In order to avoid further confusion² as a result of the Secretary petitioning this Court regarding duly-established election procedures, Proposed Intervenors agree with Petitioner that this Court should issue a prompt

² Even on the face of the Petition, it is unclear which position Petitioner is advocating for, which will only lead to further confusion as to when is it okay to verify signatures—this has Due Process implications. *See* Pet. at 20 FN15 (“To be clear, Secretary Boockvar is not advocating that signatures on applications and ballots must be ignored. If, based on examination of a voter's signed declaration, a county elections official in good faith believes the ballot was voted by someone other than the qualified elector who applied for the ballot or is fraudulent, the ballot should be set aside and investigated. But this is very different from suggesting that the Election Code requires county election employees to perform a subjective signature analysis or authorizes rejection of validly cast and voted ballots based on signature variances.”).

pronouncement regarding the clear meaning of the challenged law. However, Proposed Intervenors strongly disagree with Petitioner’s flawed and selective interpretation of Pennsylvania law.

5. In enacting the laws presently found in 25 P.S. § 3146.8(g)(3), the Legislature required that county boards of elections “examine the declaration on the envelope of each ballot . . . and shall compare the information thereon with that contained in the [respective voter files].” Further, only after the county boards have satisfactorily “verified the proof of identification as required by [25 P.S. § 3146.8(g)(3)]” by comparing the information on the ballot envelope to the information contained in the voter file, which clearly includes a voter signature³, shall the ballot be canvassed. *See* 25 P.S. § 3146.8(g)(3). Petitioner’s requested relief, that only name and address be verified, diminishes and encroaches on the constitutionally granted investment of authority by creating instability in the carefully crafted administration of elections.

6. The Legislature envisioned all of the information contained on the envelope be compared against the voter’s file—there is nothing contained in Pennsylvania law that dictates otherwise. To remove signatures from what a county

³ *See, e.g.*, 25 P.S. § 1402 (b)&(f) (clearly establishes that a signature being part of the voter registration file and that the signature be verified and updated following each election); 25 P.S. § 1402 (the General Register requires the digitized signature of the elector); 25 P.S. § 1327(b)(2), (3) & (4) (voter registration shall contain the signature of the voter and that the signing is done under penalty for falsifying declaration).

board can verify, would do directly against the express language of the passed law. While the Secretary might disagree with a particular law, as a non-legislative executive agent, she lacks *any* authority to say otherwise.

II. PETITIONER'S CLAIMS VIOLATE THE U.S. AND PENNSYLVANIA CONSTITUTIONS.

7. Petitioner's claims violate both this U.S. and Pennsylvania Constitutions in that the Legislature has exclusive constitutional authority of determining the times, places, and manner of holding elections under Art. 1, §4 of the U.S. Constitution and Art. 2, §1 of the Pennsylvania Constitution; and of suspending laws under Art. 1, §12 of the Pennsylvania Constitution.

8. Further, Petitioner's requested relief creates an equal protection problem. Without explanation, Petitioner acknowledges that in some instances it is permissible to verify and reject a ballot or application where a signature on a submitted ballot or application does not match with the signature in the respective voter's file, while at the same time requesting that this Court declare such verification is impermissible under Pennsylvania Law.—Such approach will lead to confusion and different county boards verifying ballots and applications differently. *See* Pet. at 20, FN15. This violates the Equal Protection Clause. *See, e.g., Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

WHEREFORE, Senators Joseph B. Scarnati III, and Jake Corman respectfully request that this Court consider the above stated preliminary objections and issue guidance consistent with Legislative intent and Pennsylvania law.

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| <p>Dated: October 7, 2020</p> | <p>Respectfully submitted, Obermayer Rebmann Maxwell & Hippel LLP</p> <p>By: _____ Lawrence J. Tabas (ID No. 27815) Mathieu J. Shapiro (ID No. 76266) Richard Limburg (ID No. 39598) Centre Square West 1515 Market St., Suite 3400 Philadelphia, PA 19102 <i>Attorneys for Joseph B. Scarnati III and Jake Corman</i></p> |
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