

TIMOTHY BONNER, et al.,

Petitioners/Appellees,

v.

VERONICA DEGRAFFENREID, in her official
capacity as Acting Secretary of the Commonwealth
of Pennsylvania, et al.,

Respondents/Appellants.

No. 15 MAP 2022

No. 18 MAP 2022

No. 19 MAP 2022

**RESPONDENTS/APPELLANTS' APPLICATION
FOR ENLARGEMENT OF WORD LIMIT FOR INITIAL BRIEF**

Respondents/Appellants, the Pennsylvania Department of State (the “Department”) and the Acting Secretary of the Commonwealth, respectfully submit this Application for an enlargement of the word limit for their initial appellate brief due on February 15, 2022. In support of the Application, Respondents state as follows:

1. The above-captioned proceeding involves consolidated appeals from the Commonwealth Court’s *en banc* Orders entered January 28, 2022, in the consolidated cases below. Pursuant to the Commonwealth Court’s 3-2 decision, those Orders declared that Act 77 of 2019, which established procedures allowing all Pennsylvanians to vote by mail, violates the Pennsylvania Constitution and was void *ab initio*.

2. The issues presented in this appeal are of great public significance. Since Act 77 was implemented, millions of Pennsylvanians have cast more than 4.7 million mail-in ballots during the 2020 and 2021 election cycles.¹ Moreover, as the Commonwealth Court acknowledged, more than 1.3 million Pennsylvanians have put themselves on Pennsylvania's permanent mail-in voting list, indicating their intention to vote by mail in all future elections. *See* Opinion dated January 28, 2022, slip op. at 49, No. 244 M.D. 2021 (Pa. Commw. Ct.).

3. Reflecting the weight of these issues, the briefing below was voluminous, including multiple rounds of cross-applications for relief and submissions by Respondents, two separate groups of Petitioners, a group of Intervenor-Petitioners, and a set of Intervenor-Respondents.

4. The Commonwealth Court Opinions to be reviewed by this Court are also of significant length; they comprise two majority opinions and two concurring and dissenting opinions, totaling 69 pages. *See* Opinion filed Jan. 28, 2022, in No. 244 M.D. 2021; Concurring and Dissenting Opinion filed Jan. 28, 2022, in No. 244 M.D. 2021; Opinion filed Jan. 28, 2022, in No. 293 M.D. 2021; Concurring and Dissenting Opinion filed Jan. 28, 2022, in No. 293 M.D. 2021.

¹ *See* <https://www.electionreturns.pa.gov/ReportCenter/Reports> (permitting generation of reports for each election since 2020, which list the total number of mail-in ballots).

5. Significantly, the Commonwealth Court Opinions did not address all of the issues involved in this appeal. In particular, although the Commonwealth Court Opinions addressed whether two century-old decisions by this Court were on point and controlled the constitutional question presented here—an issue on which the court below split 3-2—the Opinions did not address whether, in the alternative, those decisions were wrongly decided and should be overruled.

6. On February 2, 2022, this Court ordered a significantly accelerated briefing schedule, according to which Respondents/Appellants' initial brief is due by February 15, 2022, Petitioners/Appellees' brief is due within 10 days of the filing of Appellants' brief, and any reply is due within 5 day of the filing of Appellees' brief.

7. After this Court entered the February 2, 2022 order, two cross-appeals were respectively filed by the *Bonner* Petitioners, on the one hand, and Petitioners-Intervenors the Republican Committees of Butler, Washington, and York Counties, on the other hand. The cross-appeals challenge the Commonwealth Court's decision not to address the federal constitutional claims raised by the *Bonner* Petitioners.

8. On February 9, 2022, this Court noted probable jurisdiction with respect to the cross-appeals and consolidated all of the above-referenced appeals and cross-appeals.

9. In a separate Order also entered on February 9, 2022 (the “February 9 Order”), this Court directed “that Rule of Appellate Procedure 2136(b) (providing for four rounds of briefs in cross appeal scenarios) is inapplicable to the instant consolidated appeals.” Feb. 9, 2022 Order at 4. The February 9 Order further stated that the filing of the cross-appeals would not alter the previously issued briefing deadlines, except that “either Appellants[/Cross-Appellees] or Appellees[/Cross-Appellants]” could file a reply “within 5 days of the filing of Appellees’ briefs.” *Id.*

10. In light of the February 9 Order, Respondents/Appellants intend to address the issues raised by the *Bonner* Petitioners’ and Intervenor-Petitioners’ respective cross-appeals in Respondents/Appellants’ initial brief due on February 15, 2022.

11. Pursuant to Pa.R.A.P. 2135(a), where cross-appeals are filed, briefs addressing the issue raised in both the appeals and cross-appeals are typically allotted 16,500 words rather than the 14,000-word limit applicable in the absence of a cross-appeal.

12. Respondents/Appellants are endeavoring to prepare a brief that is as short as possible, yet thorough enough to provide this Court with a full understanding of the issues on appeal. Appellants/Respondents have determined

that the arguments supporting their position cannot be adequately stated within the word limit of Pa.R.A.P. 2135(a)(1), *i.e.*, 14,000 words.

13. Given the number and nature of the issues to be addressed in this proceeding, the scope and length of the analysis set forth in the parties' briefs and judicial opinions in the proceedings below, and the existence of cross-appeals, Respondents/Appellants respectfully request that the Court permit them to submit an initial appellate brief of no more than 16,500 words.

WHEREFORE, Respondents/Appellants respectfully request that the Court grant their Application and enter an Order in the form attached hereto.

Dated: February 10,
2022

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CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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.

Dated: February 10, 2022

/s/ Robert A. Wiygul
Robert A. Wiygul

IN THE SUPREME COURT OF PENNSYLVANIA

DOUG McLINKO,

Petitioner/Appellee,

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF STATE, et al.,

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**CASES
CONSOLIDATED**

No. 14 MAP 2022

No. 17 MAP 2022

No. 15 MAP 2022

No. 18 MAP 2022

No. 19 MAP 2022

[PROPOSED] ORDER

AND NOW, this ____ day of February, 2022, upon consideration of Respondents/Appellants' Application for Enlargement of Word Limit for Initial Brief, it is hereby ORDERED that the Application is GRANTED. IT IS

FURTHER ORDERED that Respondents/Appellants may submit an initial brief, not to exceed 16,500 words, on or before February 15, 2022.

J.