

No. 20-

IN THE SUPREME COURT OF THE UNITED STATES

REPUBLICAN PARTY OF PENNSYLVANIA, ET AL.,

Petitioner,

v.

KATHY BOOCKVAR, IN HER OFFICIAL CAPACITY AS PENNSYLVANIA SECRETARY OF STATE,
ET AL., and PENNSYLVANIA DEMOCRATIC PARTY,

Respondents.

On A Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania

**MOTION FOR EXPEDITED CONSIDERATION OF THE PETITION FOR A
WRIT OF CERTIORARI AND FOR EXPEDITED MERITS BRIEFING AND
ORAL ARGUMENT IN THE EVENT THAT THE COURT GRANTS THE
PETITION**

Petitioner Republican Party of Pennsylvania (RPP) moves, under Supreme Court Rule 21, for expedited consideration of the petition for writ of certiorari, filed today, to the Supreme Court of Pennsylvania. Four Justices of this Court already have agreed that there is “‘a reasonable probability’ that this Court will grant certiorari” and “‘a fair prospect’ that the Court will then reverse the decision below.” *Maryland v. King*, 133 S. Ct. 1, 2 (2012) (Roberts, C.J., in chambers) (citations omitted). Those Justices voted to stay the Pennsylvania Supreme Court’s judgment extending the General Assembly’s Election Day received-by deadline and mandating a judicially crafted non-postmarked ballots presumption. *See Republican Party of Pa.*

v. Boockvar, No. 20A54 (Oct. 19, 2020); *Scarnati v. Boockvar*, No. 20A53 (Oct. 19, 2020). For their part, Respondents acknowledge that the questions presented are “of overwhelming importance for States and voters across the country” because numerous courts are addressing “state election-law provisions . . . similar to” those at issue here. Pa. Dems. Br. 9, No. 20A54; *see also* Sec’y Br. 2–3, No. 20A54. Indeed, Respondents have already asked the Court to resolve the questions presented without further briefing. *See* Pa. Dems. Br. 9, No. 20A54; Sec’y Br. 2–3, No. 20A54.

Expedited consideration of the petition for a writ of certiorari is warranted because of the imminence of the general election in which millions of Pennsylvanians will cast their votes for President, U.S. Representative, and other offices. *See* Pet. 3–4. RPP respectfully requests that the Court decide this case on the merits before Election Day—and the General Assembly’s Election Day received-by deadline—on November 3, 2020. To that end, RPP proposes that:

- Respondents be directed to file any response to the petition on or before Tuesday, October 27, 2020;
- RPP file a reply brief on or before Wednesday, October 28, 2020; and
- The Court treat the briefing on the petition as merits briefs and decide the case without oral argument. *Cf. Purcell v. Gonzalez*, 549 U.S. 1 (2006).

In the alternative, if the Court believes that merits briefing and oral argument would aid its resolution of the issues presented, RPP requests that the Court set an expedited schedule for such briefing and argument. RPP has today asked the Pennsylvania Supreme Court to order Respondents Secretary of State Boockvar and

the county boards of elections to segregate ballots received after the General Assembly's deadline of 8 o'clock P.M. on November 3, 2020 from those received before the deadline. Should that court decline to act, this Court should enter a similar order to preserve its jurisdiction to resolve this matter and to enter an appropriate remedy. *See* 28 U.S.C. § 1651(a).

As the Petition explains, the Court's review and reversal of the Pennsylvania Supreme Court's judgment are warranted. *See* Pet. 18–36. The Pennsylvania Supreme Court majority acknowledged that there is “no ambiguity regarding the deadline set by the General Assembly”: to be counted, absentee and mail-in ballots “must be received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.” Pet.App.43a–44a (quoting 25 Pa. Stat. § 3150.16(c)). Nonetheless, on a 4–3 vote—and well after the eleventh hour—the majority ordered a three-day extension of the received-by deadline and imposed a judicially crafted presumption of timeliness for non-postmarked ballots that arrive after Election Day but before the extended deadline. *See* Pet.App.132a. Thus, the majority directed county boards of elections to treat as valid, and to count, ballots the General Assembly has statutorily mandated are invalid and not to be counted. *See* Pet. 1–4.

As the three dissenting justices explained, the decision below is incompatible with the General Assembly's “clear legislative intent” to ensure “a timely vote could be cast before the only meaningful milestone [in the legislative scheme], Election Day.” Pet.App.113a.(Donohue, J., concurring and dissenting); Pet.App.125a–126a.

(Saylor, C.J., concurring and dissenting). The majority thus gave insufficient regard to—and, in fact, *usurped*—the General Assembly’s plenary authority to “direct” the “Manner” for appointing electors for President and Vice President, U.S. Const. art. II, § 1, cl. 2, and broad power to prescribe “[t]he Times, Places, and Manner” for congressional elections, *id.* art. I, § 4, cl. 1; *Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 77 (2000) (per curiam); *see also* Pet. 18–30. The majority’s judicial extension and non-postmarked ballots presumption also are preempted by a trio of federal statutes that set a uniform nationwide federal Election Day. *See* 3 U.S.C. § 1, 2 U.S.C. §§ 1, 7; *see also* Pet. 31–33. That the majority imposed these changes to the Commonwealth’s Election Code by judicial fiat at the last minute only underscores its error. *See, e.g., Purcell*, 549 U.S. at 4–5.

This Court, however, can review the judgment below and enter an appropriate remedy only if it does so on an expedited basis. The ordinary briefing schedules prescribed by Rules 15 and 25 of this Court would not allow the case to be considered and decided before the results of the general election must be finalized. The Electoral College “Safe Harbor” deadline for resolving contested elections in any State falls on December 8, *see* 3 U.S.C. § 5, and “[t]he electors of President and Vice President of each State shall meet and give their votes” on December 14, *id.* § 7. Congress must count the electoral votes and declare a winner on January 6, 2021, *id.* § 15, and Inauguration Day for the President and Vice President is January 20, 2021, only approximately 90 days from now, *see* U.S. Const. amend. XX. All of these deadlines

would expire before the completion of briefing, argument, and a decision on the merits under the Court's default rules. *See* U.S. Sup. Ct. R. 15, 25.

Once candidates have taken office, it will be impossible to repair election results tainted by illegally and belatedly cast or mailed ballots. Thus, without expedited review, RPP's appellate rights—and this Court's power to resolve the important constitutional and legal questions presented for this election—will be irrevocably lost. *Cf. Chafin v. Chafin*, 568 U.S. 165, 178 (2013). In other words, expedited review is, as a practical matter, the only way to protect this Court's ability to conduct a plenary review of the Pennsylvania Supreme Court's rulings for this election.¹ Such review will in no way prejudice Respondents, who have already asked this Court to decide the case on the merits based on briefing already submitted. *See* Pa. Dems. Br. 9, No. 20A54; Sec'y Br. 2–3, No. 20A54.

For all of these reasons, RPP respectfully requests that the Court grant expedited review of the petition for certiorari and of the merits of this case. Such expedited review would allow an orderly and timely resolution of the important questions presented under the U.S. Constitution and federal law—questions that four Justices of the Court and Respondents themselves have deemed worthy of the Court's attention.

¹ This does not mean, however, that if the Court denies this Motion to Expedite the case becomes moot. The issues presented in this appeal are capable of repetition yet evading review. *See FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007).

Respectfully submitted,

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