

In The
Supreme Court of the United States

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JIM BOGNET, ET AL.,
Petitioners,
v.

KATHY BOOKVAR, SECRETARY OF PENNSYLVANIA, ET AL.,
Respondents.

—————
**On Petition for Writ of Certiorari to the United States Court of Appeals for the
Third Circuit**

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**BRIEF OF RESPONDENT NORTHAMPTON COUNTY BOARD OF ELECTIONS
IN OPPOSITION**

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INTRODUCTION

The 2020 General Election is over. All fifty states conducted fair and secure elections and certified results during a global health pandemic. Hundreds of thousands of United States citizens selflessly and faithfully served as poll workers and election officials to permit the American people to choose its representatives in local, state, and federal government.

Like the rest of this country, the County of Northampton administered a fair and legal election in 2020. Its poll workers, election staff, election administrators, and support staff tirelessly devoted themselves to providing every qualified voter an opportunity to vote and legally and accurately counted those votes. Over 75% of Northampton County's electorate exercised their right to vote and expressed their preference for representation in government alongside their fellow Pennsylvanians.

Unfortunately, in the midst of conducting the most recent election, Respondent was subject to and saddled with the burden of defending numerous meritless lawsuits, including an action in the Middle District of Pennsylvania where Plaintiff's counsel in that case conceded during televised oral argument that there was no evidence of any wrongdoing in Northampton County. Petitioners' eleventh-hour filing in this matter similarly attempted to disrupt the election across the Commonwealth with unfounded claims of perceived unfairness, ill-conceived legal theories, and dubious assumptions.

In their attempt to manufacture an argument that they had standing to launch this belated contest, Petitioners claimed in their Complaint for Declaratory and Injunctive Relief that counties which are more "urban," such as Northampton County, had a higher mail-in ballot request rate than more

“rural” counties, like where the individual voter Petitioners resided. *See* Complaint for Declaratory and Injunctive Relief, ¶¶41-50. Without any legal support, the individual voter Petitioners claim their votes would be “diluted” by the Deadline Extension ordered by the Pennsylvania Supreme Court because of the difference in the mail-in ballot request rate among so-called “urban” and “rural” counties. *See* Complaint for Declaratory and Injunctive Relief, ¶¶71.

Rather, the individual voter Petitioners essentially ask this Court to afford their votes preference and greater weight than votes from Northampton County because Petitioners reside in a more “rural” county. Petitioners’ theory, clumsily expressed in divisive and loaded rhetoric, is devoid of factual and legal support and belongs relegated to a past century.

There is no evidence the Deadline Extension of mail-in ballots ordered by the Pennsylvania Supreme Court caused any harm to Petitioners. The 2020 General Election results were tabulated and certified without ballots subject to the Deadline Extension. If any individuals suffered a cognizable harm in the most recent election, arguably it was those voters who were effectively disenfranchised when their votes were lawfully received within the Deadline Extension but not made part of the certified election results, not Petitioners.

ARGUMENT

This case is before the Court in the procedural posture of an appeal from the denial of a motion for temporary restraining order and request for preliminary injunctive relief. To obtain a preliminary injunction, a movant must establish that the movant is: “(1) likely to succeed on the merits; (2) likely to suffer irreparable harm in the absence of the

preliminary injunction; (3) "that the balance of equities tips in [movant's] favor; and (4) that an injunction is in the public interest." *Republican Party of Pa. v. Cortés*, 218 F. Supp. 3d 396, 404 (E.D. Pa. 2016) (citing *Winter v. Nat. Res. Def. Ctr.*, 555 U.S. 7, 20 (2008)). Petitioners are unable to establish harm entitling them to the injunctive relief sought which is the basis of this appeal. None of the votes received within the extension period ordered by the Pennsylvania Supreme Court were included in the certified results. Candidates won and lost based on votes received on or before 8 p.m. on Election Day.

The Third Circuit correctly determined Petitioners lack standing in this matter. This case is moot and non-justiciable. The 2020 General Election is over; it is time for this case to be over.

Even if this matter were not moot, among the several reasons Petitioners do not have standing, the proffered class of "rural" and "urban" voters is entirely amorphous and not capable of administration. How would a court distinguish a county such as Northampton County from Carbon, Centre, Chester, Monroe, Schuylkill, or Westmoreland County? Further, it is likely that among such counties there are both "rural" and "urban" areas and voters, if such classes could be defined. A claim may be non-justiciable if "the duty asserted c[ould not] be judicially identified and its breach [could not be] judicially determined, and . . . protection for the right asserted c[ould not] be judicially molded." *Baker v. Carr*, 369 U.S. 186, 198 (1962). Petitioners failed to proffer a manageable standard of review to evaluate their unfounded claims of vote dilution. This Court should not allow this continued assault on democracy.

In further support of this Opposition, Respondent Northampton County Board of Elections adopt the reasoning of the Third Circuit Court of Appeals on all issues that

support denial, and Respondent also adopts the arguments made in all respondent briefs advocating for denial of this petition.

CONCLUSION

For the foregoing reasons, Respondent Northampton County Board of Elections respectfully request that this Petition be denied.



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