

No. 20-740

IN THE
SUPREME COURT OF THE UNITED STATES

—
JIM BOGNET, *et al.*,

Petitioners,

VS.

VERONICA DEGRAFFENREID, in her capacity as
Acting Secretary of the Commonwealth of Pennsylvania;
WASHINGTON COUNTY BOARD OF ELECTIONS; *et al.*,

Respondents.

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

—
BRIEF IN OPPOSITION OF
RESPONDENT, WASHINGTON COUNTY BOARD OF ELECTIONS

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INTRODUCTION

The Petition before this Court traces its origins to a Complaint for Declaratory and Injunctive Relief filed in the United States District Court for the Western District of Pennsylvania on October 22, 2019, by Jim Bognet, a former candidate for office running to represent Pennsylvania's 8th Congressional District (encompassing Lackawanna, Luzerne, Monroe, Pike, and Wayne Counties), and four individual voters, all residents of Somerset County, Pennsylvania. On the same date, the then-Plaintiffs filed a Motion for an Immediate Temporary Restraining Order, a Preliminary Injunction, and an Expedited Hearing. The Plaintiffs' Complaint was a response to the Pennsylvania Supreme Court's September 17, 2020 ruling, which extended the receipt deadline for mail-in ballots three days beyond Election Day, or until 5:00 PM on Friday, November 6, 2020, and which conferred a presumption of timeliness on mail-in ballots lacking a postmark or other proof of mailing. See Pennsylvania Democratic Party v. Boockvar, No. 133 MM 2020, 2020 WL 5554644 (Pa. Sept. 17, 2020). The Plaintiffs claimed violations of the Elections Clause, the Electors Clause, and the Equal Protection Clause of the United States Constitution.

The Washington County Board of Elections was listed as a party, along with the Boards of Elections of all the Commonwealth's counties—67 in total. Beyond appearing in the caption, Washington County was referred to just one other time in the Complaint, listed as a party, again alongside the other Boards of Elections. The Complaint contained no discrete, specific allegations regarding any election-related conduct—to say nothing of purported wrongdoing—on the part of Washington County. In this respect, the Plaintiffs' Complaint was similar to a prior Complaint filed by former President Donald Trump's reelection campaign in the United States District Court for the Western District of Pennsylvania, and a Petition filed by the Pennsylvania

Democratic Party with the Pennsylvania Commonwealth Court. Although named in both of the foregoing actions, no allegations were leveled against Washington County in either. Given the complete dearth of allegations and the nonexistence of plausible claims, Washington County moved for dismissal in both. Former President Donald Trump's action was dismissed, while jurisdiction over the Pennsylvania Democratic Party's action was assumed by the Pennsylvania Supreme Court, culminating in the September 17, 2020 ruling challenged in the pending Petition.¹

ARGUMENT

As noted above, the Complaint commencing this action was devoid of allegations against Washington County. In the same fashion, the Petition now before this Court is devoid of even a passing reference to Washington County. This stands to reason, because Washington County at all times complied with the laws of the Commonwealth in respect of administering the November 2020 Election. What is more, on the issue of mail-in ballots received between November 3 and 6, 2020, Washington County adhered to the Honorable Associate Justice Samuel A. Alito, Jr.'s directive that such ballots be segregated. All of this is to say that Washington County and its elections officials did the necessary and important work of overseeing a free and fair election. Thankfully, this limited Washington County's embroilment in events leading up to, surrounding, and immediately following the November 2020 Election. Consequently, Washington County's intention was to remain "neutral and detached" and refrain from filing a response to the pending Petition, which is reflected by its filing of a Waiver on

¹ Given the initial expedited nature, and subsequent appellate trajectory, of this litigation, Washington County has not as yet filed a formal response to the Complaint originally filed in the District Court. Indeed, most counties' Boards of Elections have not. The Honorable Judge Kim R. Gibson has granted an extension, permitting the parties to answer, move, or otherwise respond to the Complaint within twenty-one (21) days after this Court disposes of the instant Petition.

December 17, 2020. Nevertheless, at the Court’s request, Washington County now files this response.

Washington County submits that the Petition before the Court should be denied as moot. Article III of the United States Constitution grants the judiciary authority over “cases” and “controversies.” In the absence of a case or controversy, the judiciary has “no business” deciding a legal dispute. See DaimlerChrysler Corp. v. Cuno, 547 U.S. 341 (2006). This Court has repeatedly held that “an actual controversy must exist not only ‘at the time the complaint is filed,’ but through ‘all stages’ of the litigation.” Alvarez v. Smith, 558 U.S. 87, 92 (2009); see also Arizonans for Official English v. Arizona, 520 U.S. 43, 67 (1997) (“To qualify as a case fit for federal-court adjudication, ‘an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.’”). A case becomes moot—i.e., no longer a “case” or “controversy”—when “the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” Murphy v. Hunt, 455 U.S. 478, 481(1982).

The Petitioners’ claims for relief were arguably mooted when the November 2020 Election concluded, especially given that the vote dilution they forecast and feared never materialized. The Petitioners’ claims for relief have been yet further mooted by this Court’s February 22, 2021 denials of the Petitions for Writs of Certiorari filed at No. 20-542 (Republican Party of Pennsylvania v. Veronica Degraffenreid, Acting Secretary of Pennsylvania) and No. 20-574 (Jake Corman v. Pennsylvania Democratic Party). Like the current Petition, both of these now-denied Petitions took aim at the September 17, 2020 ruling of the Pennsylvania Supreme Court. Like the current Petition, both of these now-denied Petitions challenged the constitutionality of the extended deadline for the receipt of mail-in ballots as well as the presumption of timeliness. With the Court having denied the Petitions filed at Nos. 20-542 and


20-574, it only stands to reason that it should employ the same rationale in denying the pending Petition. Further, it should be noted that even the dissenting opinions filed at Nos. 20-542 and 20-574 acknowledge that the number of ballots received during the extended deadline were too few in number to be outcome-determinative.

In addition to asserting mootness, Washington County adopts the legal reasoning of the United States Court of Appeals for the Third Circuit in ruling that the Petitioners lack standing to bring claims based on alleged violations of the Elections Clause, the Electors Clause, and the Equal Protection Clause of the United States Constitution. See Bognet v. Secretary of the Commonwealth of Pennsylvania, 980 F.3d 336 (3d Cir. 2020). Washington County likewise adopts the Third Circuit's legal reasoning in affirming the District Court's application of Purcell v. Gonzalez, 549 U.S. 1 (2006), wherein this Court counseled against interference in an election on the eve of said election. Id.

WHEREFORE, the Respondent, Washington County Board of Elections, respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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