

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DONALD J. TRUMP FOR
PRESIDENT, INC.; et al.,

Petitioners,

v.

KATHY BOOCKVAR, et al.,

Respondents.

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) No. 602 MD 2020

**APPLICATION FOR SPECIAL RELIEF IN THE FORM OF A
SPECIAL, PRELIMINARY, AND/OR PERMANENT INJUNCTION**

Pursuant to Rule 1532 of the Pennsylvania Rules of Appellate Procedure, Petitioners, Donald J. Trump for President, Inc. and Republican National Committee (hereinafter collectively referred to as “Petitioners”), respectfully move for special relief in the form of a preliminary, special, and/or permanent injunction enjoining Respondents, Kathy Boockvar, as the Secretary of the Commonwealth of Pennsylvania (hereinafter referred to as “Secretary Boockvar”), and the 67 County Boards of Elections (hereinafter referred collectively with Secretary Boockvar as “Respondents”), from canvassing and counting absentee and mail-in ballots who fail to provide proof of identification that can be verified by the county boards of elections by the sixth (6th) calendar day following the November 3, 2020 General Election as mandated by Section 1308(h)(3) of the Pennsylvania Election Code, 25 P.S. § 3146.8(h)(3).

INTRODUCTION

1. On November 1, 2020, Secretary Boockvar published and delivered to all 67 of the County Elections Boards written “guidance” stating that an absentee or mail-in ballot of an elector whose proof of identification was not received or could not be verified at the time the ballot was delivered could be counted if the elector provides the requisite proof of identification to the county elections board by “the sixth calendar day following *the canvassing, or on or before Thursday, November 12.*” See “CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020,” dated November 1, 2020, version 1.0 (available online at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf> and hereinafter referred to as “November 1, 2020 Guidance.”)

2. The Secretary’s November 1, 2020 Guidance is contrary to the clear and unambiguous language of Election Code Section 1308(h)(3) which mandates the last date for the elector’s provision of identification as *Monday, November 9, 2020*, which is the sixth calendar following the November 3, 2020 General Election. See 25 P.S. § 3146.8(h)(3) (“(h) For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified: ... (3)

If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted.”). *See also* 25 P.S. § 3146.8(h)(2).

3. As neither Secretary Boockvar nor the County Elections Boards have any authority to re-write the Election Code or administer the November 3, 2020 General Election in a manner that is inconsistent and/or directly contrary to the Election Code’s clear and unambiguous mandates, Petitioners seek special, preliminary, and/or permanent injunctive relief to enjoin Respondents’ attempted extension of the Election Section 1308’s six calendar day statutory period.

4. Without an injunction, Petitioners will be irreparably harmed, and they have no adequate remedy at law.

5. Accordingly, Petitioners pray that this Court enjoin the Respondents from violating the Election Code, Section 1308’s six calendar day statutory period and from canvassing and counting any absentee or mail-in ballot where an elector who is required to provide proof of identification that can be verified by the county board of elections fails to do so on or before Monday, November 9, 2020.

BACKGROUND

6. Contemporaneously with the filing of this Application, Petitioners have filed a Petition for Review, a true and correct copy of which is attached hereto as Exhibit “A.”

7. On November 3, 2020, a General Election was held in which several candidates for federal and state offices were on the ballot, including without limitation the reelection campaign of Donald J. Trump, the 45th President of the United States of America and the Republican nominee for the office of the President of the United States of America (hereinafter, “President Trump”).

8. On November 1, 2020, two days before the November 3, 2020 General Election, Secretary Boockvar sent to every county elections board in the Commonwealth of Pennsylvania written guidance titled “CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020.” A true and correct copy of the November 1, 2020 is attached to the Petition for Review as Exhibit “1” and is available online at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf>.

9. The November 1, 2020 Guidance serves as an update to guidance that Secretary Boockvar and the Pennsylvania Department of State issued on October 28, 2020, concerning the segregation and canvassing of absentee and mail-in ballots cast in the November 3, 2020 General Election.

10. In the November 1, 2020 Guidance, Secretary Boockvar told the County Elections Boards that:

...

Additionally, the county board of elections should not open or count any of the following specific types of ballots pending further review as follows:

If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board ***by the sixth calendar day following the canvassing, or on or before Thursday, November 12.***

...

See November 1, 2020 Guidance, p. 3 (emphasis added).

11. Section 1308(h) of the Pennsylvania Election Code, codified at 25 P.S.

§ 3146.8(h), provides:

For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

...

(2) If the proof of identification is received and verified ***prior to the sixth calendar day following the election,*** then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections ***by the sixth calendar day following the election,*** then the absentee ballot or mail-in ballot ***shall not be counted.***

See 25 P.S. § 3146.8(h)(2) & (3) (emphasis added).

12. Section 102(f) of the Pennsylvania Election Code, codified at 25 P.S. § 2602(f), defines the word “election” to mean “any general, municipal, special, or primary election, unless otherwise specified.” 25 P.S. § 2602(f).

13. Moreover, Section 102(h) of the Pennsylvania Election Code, codified at 25 P.S. § 2602(h), defines the word “general election” to mean “the election which the Constitution of this Commonwealth requires to be held in even-numbered years.” 25 P.S. § 2602(h).

14. Article VII, Section 2 of the Pennsylvania Constitution defines a “general election” to be “[t]he general election ... held biennially on the Tuesday next following the first Monday of November in each even-numbered year” unless the General Assembly, by two-thirds consent of all members of each House, fixes a different day. Pa. Const. Art. VII, § 2.

15. The November 3, 2020 General Election constitutes an “election” and “general election” as those terms are defined in Section 102(f) and (h) of the Pennsylvania Election Code, and Article VII, Section 2 of the Pennsylvania Constitution.

16. The sixth calendar day following the November 3, 2020 General Election is Sunday, November 8, 2020.

16. Section 103(e) of the Election Code provides:

In determining or reckoning any period of time mentioned in this act, the day upon which the act is done, paper filed,

or notice given, shall be excluded from, and the date of the primary, election, hearing or other subsequent event, as the case may be, shall be included in the calculation or reckoning: Provided, however, That if the last day upon which any act may be done, paper filed, or notice given, shall fall on a Sunday or a legal holiday, the next following ordinary business day shall be considered as the last day for said purpose.

See 25 P.S. § 2603(e).

17. Pursuant to Section 2603(e) of the Election Code, because the sixth calendar day following the November 3, 2020 General Election falls on Sunday, November 8, 2020, the sixth calendar period under Election Code Section 1308(h)(3) expires on Monday, November 9, 2020.

18. The clear, plain, and unambiguous language of Section 1308(h)(3) of the Election Code provides that if an absentee or mail-in voter elector who is required to provide proof of identification that can be verified by the county elections fails to provide that proof by Monday, November 9, 2020, “then the absentee ballot or mail-in ballot shall not be counted.” 25 P.S. § 3146.8(h)(3).

19. The November 1, 2020 Guidance is in clear contravention of 25 P.S. § 3146.8(h)(3) because it allows for the counting of absentee or mail-in ballots for electors who provide their required proof of identification to the county elections boards on a day beyond Section 3146.8(h)(3)’s sixth calendar day statutory period.

INJUNCTIVE RELIEF

20. Petitioners move this Court for an Order declaring Secretary Boockvar's guidance to be invalid and enjoining the County Elections Boards from canvassing and counting any absentee or mail-in ballot where an elector who is required to provide proof of identification that can be verified by the county board of elections fails to do so on or before Monday, November 9, 2020.

21. Pursuant to Pa. R.A.P. 1532(a), this Court may order special relief, including a preliminary or special injunction "in the interest of justice and consistent with the usages and principles of law."

22. The standard for obtaining a preliminary injunction under this rule is the same as that for a grant of preliminary injunction pursuant to the Pennsylvania Rules of Civil Procedure. *Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 451 A.2d 434, 439 (Pa. Commw. Ct. 2004).

23. Preliminary injunctive relief may be granted at any time following the filing of a Petition for Review. *See* Pa. R.A.P. 1532(a).

24. For the reasons stated above and in Petitioners' Petition for Review, Petitioners meet all of the elements for the entering of a preliminary injunction in this case.

WHEREFORE, for all of the foregoing reasons and those alleged in the Petition for Review, Petitioners respectfully request that this Honorable Court grant

their Application for Special Relief in the Nature of a Preliminary Injunction and enter an order enjoining Respondents, their agents, servants, and officers, and others from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020 in direct contravention of the Pennsylvania Election Code, and prohibiting Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020.

Respectfully submitted,

Dated: November 4, 2020

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr. (PA #49520)

Jeremy A. Mercer (PA #86480)

Carolyn B. McGee (PA #208815)

Six PPG Place, Third Floor

Pittsburgh, PA 15222

(412) 235-4500 (Telephone)

(412) 235-4510 (Fax)

rhicks@porterwright.com

jmercer@porterwright.com

cmcgee@porterwright.com

Counsel for Petitioners

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[PROPOSED] ORDER

Upon consideration of Petitioners' Application for Special Relief in the Form of a Special, Preliminary, and/or Permanent Injunction under Pa. R.A.P. 1532 prohibiting Respondents, their agents, servants, and officers, and others from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020, in direct contravention of the Pennsylvania Election Code, and prohibiting Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020;

It appearing to the Court that Petitioners are likely to succeed on the merits of their action, that they will suffer irreparable injury if the requested relief is not issued, that Respondents will not be harmed if the request relief is issued, and that the public interest favors the entry of such an order, it is, therefore,

ORDERED that Petitioners' Application is hereby GRANTED;

ORDERED that Respondents and anyone acting on their behalf are enjoined from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020; and,

ORDERED that Respondents and anyone acting on their behalf are enjoined from counting any absentee and mail-in ballots cast by voters whose proof of identification was not received and verified by November 9, 2020;

Date: _____

Time: _____

Judge of the Commonwealth Court of
Pennsylvania

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr.

PA Supreme Court No. 49520