

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY,
SEAN PARNELL, THOMAS A.
FRANK, NANCY KIERZEK, DEREK
MAGEE, ROBIN SAUTER,
MICHAEL KINCAID, and WANDA
LOGAN,

Petitioners,

v.

COMMONWEALTH OF
PENNSYLVANIA, PENNSYLVANIA
GENERAL ASSEMBLY,
HONORABLE THOMAS W. WOLF,
and KATHY BOOCKVAR,

Respondents.

Docket No. 620 M.D. 2020

**PETITIONERS' ANSWER TO
RESPONDENTS
COMMONWEALTH OF
PENNSYLVANIA, HONORABLE
THOMAS W. WOLF, AND KATHY
BOOCKVAR'S PRELIMINARY
OBJECTIONS**

Filed on behalf of Petitioners,
The Honorable Mike Kelly, Sean
Parnell, Thomas A. Frank, Nancy
Kierzek, Derek Magee, Robin Sauter,
Michael Kincaid, and Wanda Logan

Counsel of Record for Petitioners:

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PETITIONERS' ANSWER TO RESPONDENTS COMMONWEALTH OF PENNSYLVANIA, HONORABLE THOMAS W. WOLF, AND KATHY BOOCKVAR'S PRELIMINARY OBJECTIONS

Petitioners the Honorable Mike Kelly, Sean Parnell, Thomas A. Frank, Nancy Kierzek, Derek Magee, Robin Sauter, and Wanda Logan, by and through their undersigned counsel, file the following Answer to Respondents Commonwealth of Pennsylvania, Honorable Thomas W. Wolf, and Kathy Boockvar's Preliminary Objections:

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

1. Admitted.

2. Denied. After reasonable investigation, Petitioners are without knowledge sufficient to form a belief as to what the legislature was aware of.

Therefore, that averment is denied. The remaining averments in Paragraph 2 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

3. Admitted.

4. Admitted in part and denied in part. It is denied that "Petitioners held their fire." To the contrary, Petitioners brought an action within mere days of being harmed by an unconstitutional election, as soon as they reasonably could have hired counsel and identified the constitutional issues after they gained standing to bring their claims. It is denied that Petitioners filed their Complaint/Petition for

Review in the late afternoon of Saturday, November 21, 2020. To the contrary, the Complaint/Petition for Review was filed in the early morning (4:00 a.m.) of Saturday, November 21, 2020. It is admitted that Petitioners filed a Motion for an Emergency/Special Prohibitory Injunction on Sunday, November 22, 2020. It is admitted that, pursuant to 25 Pa. Stat. § 2642(k), counties' statutory deadline for certifying elections results to the Commonwealth was Monday, November 23, 2020. Respondents' characterizations of Petitioners filings are denied as stated.

5. Admitted in part and denied in part. It is denied that Petitioners did not serve the Complaint/Petition for Review. To the contrary, Petitioners initially served the Complaint/Petition for Review by first class United States mail with the because effectuating in person service was not possible on Saturday, November 21, 2020. Pursuant to this Court's November 22, 2020 Order and Pennsylvania Rule of Appellate Procedure 1514(c), Petitioners promptly served the Complaint/Petition for Review by certified mail on Monday, November 23, 2020 – the first business day following electronic filing of the Complaint/Petition for Review. It is admitted that this Court held an initial telephonic conference on November 23, 2020. It is admitted that this Court ordered Respondents to file Preliminary Objections by 11:00 p.m. on November 23, 2020.

II. PRELIMINARY OBJECTIONS

A. First Preliminary Objection

6. Denied. The averments in Paragraph 6 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

7. Denied. The averments in Paragraph 7 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

8. Denied. The averments in Paragraph 8 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

9. Denied. The averments in Paragraph 9 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. Respondents' characterizations of the Complaint/Petition for Review are denied as stated.

10. Denied. The averments in Paragraph 10 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. Respondents' characterizations of the Complaint/Petition for Review are denied as stated.

11. Denied. Respondents' characterizations of the Complaint/Petition for Review are denied as stated.

12. Denied. Respondents' characterizations of the Complaint/Petition for Review are denied as stated.

13. Denied. The averments in Paragraph 13 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. Respondents' characterizations of the Complaint/Petition for Review are denied as stated.

14. Denied. The averments in Paragraph 14 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

15. Denied. The averments in Paragraph 15 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

16. Denied. The averments in Paragraph 16 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. Respondents' characterizations of the Complaint/Petition for Review are denied as stated.

WHEREFORE, Petitioners respectfully request that this Honorable Court overrule Respondents Commonwealth of Pennsylvania, Honorable Thomas W.

Wolf, and Kathy Boockvar's Preliminary Objections and order Respondents to file an Answer to the Petition on an expedited basis.

B. Second Preliminary Objection

17. Paragraph 17 is an incorporation paragraph to which no response is required.

18. Denied. The averments in Paragraph 18 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

19. Denied. The averments in Paragraph 19 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

20. Admitted in part and denied in part. It is denied that Act 77 "created the opportunity for all qualified Pennsylvania electors to vote by mail without providing an excuse." To the contrary, Act 77 purports to create such an opportunity, however, for the reasons discussed in the Complaint/Petition for Review, Act 77 is unconstitutional and therefore did not create such an opportunity. The remaining averments are admitted.

21. Denied. The averments in Paragraph 21 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

22. Admitted.

23. Admitted in part and denied in part. It is admitted that April 28, 2020 was 180 days after October 31, 2019. The remaining averments in Paragraph 23 are conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

24. Denied. The averments in Paragraph 24 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

WHEREFORE, Petitioners respectfully request that this Honorable Court overrule Respondents Commonwealth of Pennsylvania, Honorable Thomas W. Wolf, and Kathy Boockvar's Preliminary Objections and order Respondents to file an Answer to the Petition on an expedited basis.

C. Third Preliminary Objection

25. Paragraph 25 is an incorporation paragraph to which no response is required.

26. Denied. The averments in Paragraph 26 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. Respondents' characterizations of the Complaint/Petition for Review are denied as stated.

27. Denied. The averments in Paragraph 27 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

28. Denied. The averments in Paragraph 28 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. Respondents' characterizations of the Complaint/Petition for Review are denied as stated.

WHEREFORE, Petitioners respectfully request that this Honorable Court overrule Respondents Commonwealth of Pennsylvania, Honorable Thomas W. Wolf, and Kathy Boockvar's Preliminary Objections and order Respondents to file an Answer to the Petition on an expedited basis.

D. Fourth Preliminary Objection

29. Denied. The averments in Paragraph 29 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

30. Denied. It is denied that Petitioners were not diligent in bringing the claims. To the contrary, Petitioners brought an action within mere days of being harmed by an unconstitutional election, as soon as they reasonably could have hired counsel and identified the constitutional issues after they gained standing to bring their claims.

31. Denied. It is denied that Petitioners were not diligent in bringing the claims. To the contrary, Petitioners brought an action within mere days of being harmed by an unconstitutional election, as soon as they reasonably could have hired counsel and identified the constitutional issues after they gained standing to bring their claims.

32. Denied. The averments in Paragraph 32 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

33. Denied. The averments in Paragraph 33 are an impertinent statement.

34. Admitted in part and denied in part. It is admitted that two elections have been administered since Act 77's enactment. It is denied that Petitioners seek to "disenfranchise every single voter who participated in the November 3, 2020 presidential election." To the contrary, Petitioners seek to protect all lawfully cast ballots. The remaining averments in Paragraph 34 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

35. Denied. The averments in Paragraph 35 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

36. Denied. It is denied that Petitioners “knew or should have known from the moment Act 77 was enacted on October 31, 2019 . . . about its alleged constitutional infirmity.” To the contrary, Petitioners brought an action within mere days of being harmed by an unconstitutional election, as soon as they reasonably could have hired counsel and identified the constitutional issues after they gained standing to bring their claims. The remaining averments in Paragraph 36 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

37. Denied. The averments in Paragraph 37 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

WHEREFORE, Petitioners respectfully request that this Honorable Court overrule Respondents Commonwealth of Pennsylvania, Honorable Thomas W. Wolf, and Kathy Boockvar’s Preliminary Objections and order Respondents to file an Answer to the Petition on an expedited basis.

E. Fourth Preliminary Objection

38. Paragraph 38 is an incorporation paragraph to which no response is required.

39. Denied. The averments in Paragraph 39 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

40. Denied. The averments in Paragraph 40 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

41. Denied. The averments in Paragraph 40 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. Respondents' characterizations of Petitioners filings are denied as stated.

42. Denied. The averments in Paragraph 42 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. Respondents' characterizations of Petitioners filings are denied as stated.

43. Denied. The averments in Paragraph 43 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

44. Denied. The averments in Paragraph 44 set forth conclusions of law to which no response is required. To the extent a response is required, the averments

are denied. Respondents' characterizations of Petitioners filings are denied as stated.

45. Denied. The averments in Paragraph 45 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

46. Denied. The averments in Paragraph 46 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

47. Denied. The averments in Paragraph 47 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

48. Denied. The averments in Paragraph 48 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

49. Denied. The averments in Paragraph 49 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

50. Denied. The averments in Paragraph 50 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

51. Denied. The averments in Paragraph 51 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

52. Admitted in part and denied in part. It is admitted that the General Assembly started a process to amend the Constitution to allow for no-excuse absentee voting. Petitioners lack information sufficient to form a belief as to any abandonment of that quest. Therefore, such abandonment is denied. It is admitted that the Pennsylvania Senate originated a Bill to amend Article VII, Section 14 of the Constitution and the General Assembly did not carry the Amendment through to the point where it would be put on the ballot for the voters to consider. Petitioners are without knowledge sufficient to form a belief as to what the General Assembly “recognized.” Therefore, that averment is denied.

53. Denied. The averments in Paragraph 53 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

WHEREFORE, Petitioners respectfully request that this Honorable Court overrule Respondents Commonwealth of Pennsylvania, Honorable Thomas W. Wolf, and Kathy Boockvar’s Preliminary Objections and order Respondents to file an Answer to the Petition on an expedited basis.

III. Conclusion

For the foregoing reasons, it is respectfully submitted that Respondents Commonwealth of Pennsylvania, Honorable Thomas W. Wolf, and Kathy Boockvar's Preliminary Objections are without merit. Petitioners request that this Honorable Court overrule the Preliminary Objections and order Respondents to file an Answer to the Petition on an expedited basis.

Respectfully submitted,

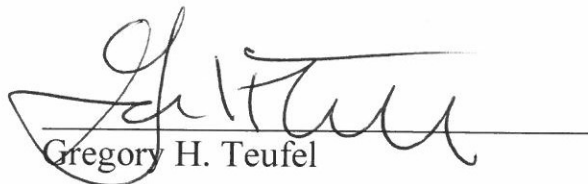
OGC Law, LLC


Gregory H. Teufel
Attorney for Petitioners

CERTIFICATE OF COMPLIANCE

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.

Date: November 24, 2020


Gregory H. Teufel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record on November 24, 2020 by this Court's electronic filing system.


Gregory H. Teufel