

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 149 MM 2020

IN RE NOVEMBER 3, 2020 GENERAL ELECTION

**ANSWER OF PETITIONER KATHY BOOCKVAR TO
APPLICATIONS FOR LEAVE TO INTERVENE**

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The Election Code does not require or permit county election boards to reject absentee or mail-in ballots based on signature matching and does not allow challenges to absentee or mail-in ballots based on signature comparisons. As Secretary of the Commonwealth Kathy Boockvar detailed in her application, the plain language in the Election Code is controlling and compels the conclusion that absentee and mail-in ballot applications cannot be rejected and voted ballots cannot be cast aside based on subjective signature analysis.

Various Republican interests seek to intervene to advocate their contrary view that the Election Code implies additional and different procedures not expressed in its text. As this Court previously recognized in assuming jurisdiction over and deciding similar statutory interpretation issues raised by the Secretary, the Secretary's pending application to this Court to resolve issues of immediate public concern regarding implementation of new statutory provisions on mail-in voting is appropriate. This Court, and this Court alone, is the final word on such state issues.

The Republican Intervenors' suggestion that the Secretary's application is an attempted end run around the Western District litigation and constitutes "forum shopping" is belied by reality. Republican Intervenors' Appl. To Intervene at 2-3, 18. The Honorable J. Nicholas Ranjan announced on September 23, 2020 that he will *continue* to abstain from deciding unsettled issues of state law, including plaintiffs' claims regarding verification of in-person mail-in ballot applications. *See*

ECF Nos. 459, 460 (attached to Secretary Boockvar's Application as Exs. A and B). Undeterred by Judge Ranjan's abstention ruling, the plaintiffs in the Western District asserted a new claim under state law concerning signature analysis on September 23, 2020 challenging the Secretary's plain reading of the Election Code and the recent guidance that she issued on this subject. The Secretary's request that this Court declare the meaning of new state laws is consistent with Judge Ranjan's direction and decision to abstain. The Republican Intervenors mischaracterize Judge Ranjan's October 6, 2020 order by suggesting that the order reconsidered the earlier decision to abstain. *See* Ex. 1 to Appl. To Intervene at 9-10. That four-sentence electronic order merely vacated the previous scheduling order because "there are no material disputes of fact" and no longer a need for an "evidentiary hearing" which had been scheduled for October 13-14, 2020. (A copy of the electronic notice sent on October 6, 2020 is attached as Exhibit "A."). Nothing in the electronic notice suggests that Judge Ranjan reconsidered or retracted his earlier orders announcing that he would abstain from deciding unsettled state law issues.

The Republican Intervenors mischaracterize Secretary Boockvar's application as "*ex parte*." *See* Republican Intervenors' Appl. To Intervene at 3, 11, 19. Notice of the intent to file was given to the organizational Republican Intervenors (and to Judge Ranjan) in advance, the application was filed to a public docket and was served on all parties in the Western District and all parties have been

afforded an opportunity to file an answer. This proceeding is not *ex parte*. See *Black's Law Dictionary*, 576 (6th ed. 1990) (“A judicial proceeding . . . is said to be *ex parte* when it is taken for granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.”).

The Republican Intervenors are also wrong in advocating that the counties are necessary parties. See Republican Intervenors’ Appl. To Intervene at 11. Requiring the participation of all parties having any interest which could be affected by a ruling on the construction of the Election Code would be impractical and is not required where the Secretary of the Commonwealth, the Commonwealth’s Chief Election Officer, is already a party. See generally *City of Philadelphia v. Com.*, 838 A.2d 566, 570-71 (Pa. 2003). Moreover, despite being provided with notice and a copy of the Secretary’s application, none of the 67 counties expressed interest in participating as parties yet many expressed strong views that this matter should be expeditiously decided in advance of the election. See Letters filed by Adams, Bradford, Butler, Clarion, Clearfield, Crawford, Cumberland, Luzerne, Northampton, Potter, Sullivan, Tioga, Warren, Westmoreland, and Wyoming Counties.

Given the critically important rights that are at stake and the urgent need for final, declarative relief in advance of the election, the Secretary does not oppose intervention by the Republican Intervenors or the proposed Legislative Intervenors

(Speaker of the Pennsylvania House of Representatives Bryan Cutler and Majority Leader Kerry Benninghoff). The applications filed by the Legislative Intervenors, however, is defective to the extent it proposes to assert preliminary objections challenging the authority of this Court. Not only are the preliminary objections defective as a matter of law, such a filing would be contrary to Rule 2329 which requires that “the claim or defense of the proposed intervenor is not in subordination to and in recognition of the propriety of the action.” Pa. R. Civ. P. 2329(1); *see Pierce Junior College v. Schumacker*, 333 A.2d 510 (Pa. Cmwlth. 1975) (intervention properly denied where proposed intervenor sought to quash appeal or remand to zoning board because such relief was “not in subordination to and in recognition of the propriety of the action”).

This Court alone can provide the clarity on these issues necessary for a free and fair election and should proceed to resolve these critically important questions in advance of the general election.

Dated: October 8, 2020

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Respectfully submitted,

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Exhibit A

Carol A. Kelleher

From: ecf_intake_pawd@pawd.uscourts.gov
Sent: Tuesday, October 6, 2020 12:07 PM
To: pawd_ecf@pawd.uscourts.gov
Subject: [EXTERNAL] Activity in Case 2:20-cv-00966-NR DONALD J. TRUMP FOR PRESIDENT, INC. et al v. BOOCKVAR et al Order Cancelling Deadline

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U.S. District Court

Western District of Pennsylvania

Notice of Electronic Filing

The following transaction was entered on 10/6/2020 at 12:07 PM EDT and filed on 10/6/2020

Case Name: DONALD J. TRUMP FOR PRESIDENT, INC. et al v. BOOCKVAR et al

Case Number: 2:20-cv-00966-NR

Filer:

Document Number: 566(No document attached)

Docket Text:

ORDER vacating [462] amended scheduling order. Upon careful consideration of the parties' cross-motions for summary judgment, the Court finds that there are no material disputes of fact on the remaining legal claims and defenses in this case. The Court intends to resolve all claims on summary judgment. As such, the remaining deadlines, obligations, and events in the amended scheduling order (ECF [462]), including the evidentiary hearing, are hereby VACATED. Signed by Judge J. Nicholas Ranjan on 10/6/2020. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (av)

2:20-cv-00966-NR Notice has been electronically mailed to:

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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 requires filing confidential information and documents differently than non-confidential information and documents.

/s/ Daniel T. Brier
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Date: October 8, 2020

CERTIFICATE OF SERVICE

I, Daniel T. Brier, hereby certify that I am this day serving the foregoing Answer of Petition Kathy Boockvar to Applications for Leave to Intervene upon all counsel of record via PACFile eService, which service satisfies the requirements of Pa.R.A.P. 12.

/s/ Daniel T. Brier
Daniel T. Brier

Date: October 8, 2020