

IN THE SUPREME COURT OF PENNSYLVANIA

No. 29 WAP 2020

IN RE: 2,349 BALLOTS IN THE 2020 GENERAL ELECTION

Petition for Allowance of Emergency Appeal from the November 20, 2020
Memorandum and Order of the Commonwealth Court, No. 1162 CD 2020

**ANSWER OF RESPONDENTS
THE PENNSYLVANIA DEMOCRATIC PARTY AND JAMES BREWSTER
TO EMERGENCY APPLICATION FOR INJUNCTIVE RELIEF**

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**ANSWER TO
EMERGENCY APPLICATION FOR INJUNCTIVE RELIEF**

The Pennsylvania Democratic Party and James Brewster (collectively, the “Pennsylvania Democratic Party Respondents”) file this Answer to Nicole Zicarelli’s (“Zicarelli”) Emergency Application for Injunctive Relief (the “Application”).

The Pennsylvania Democratic Party Respondents oppose the relief Zicarelli requests because the Application is moot. Pursuant to 25 P.S. § 2642(k), the county boards of elections must certify their computations on November 23, 2020. On November 23, 2020, the Allegheny County Board of Elections (the “Allegheny Board”) issued a final certification letter, as required under the Election Code. However, the Board clearly qualified the status of the election results it was transmitting to the Secretary of State, noting:

The below listed categories of votes subject to pending timely filed litigation and not included as part of this final certification are:

1. 254 provisional ballots challenged and unopened.
2. 326 undated mail-in/absentee ballots within the 45th Senatorial District.
3. 1996 undated mail-in/absentee ballots not within the 45th Senatorial District.
4. 708 mail-in/absentee ballots received after 8 P.M on November 3, 2020 and before 5 P.M on November 6, 2020 with a visible postmark of November 3, 2020 or earlier.

5. 23 mail-in/absentee ballots received after 8 P.M on November 3, 2020 and before 5 P.M on November 6, 2020 without a visible postmark.

Further, on November 23, 2020, the Westmoreland Board of Elections (“Westmoreland Board”) (collectively “the Boards”) plan to meet today to certify elections, but, again, there is the expectation that the close senate race in the 45th District, will not be finally certified, pending the final resolution of these ballots. This is in contrast to the other races, where the outstanding ballots could not impact the outcomes.

The Pennsylvania Democratic Party Respondents further oppose the relief requested because the Boards are acting appropriately. Quite simply, Zicarelli is not likely to succeed on the merits, nor she will not suffer irreparable harm if the results are certified because the results do not include the ballots that have not been counted or applied to the final tally. The public interests, including Senator Brewster’s Interests, favor the certification of the Boards’ election results in light of the November 23, 2020 deadline for certification.

For the foregoing reasons, the Respondents ask this Court to DENY Zicarelli’s Application.

Respectfully submitted,

By /s/ Clifford B. Levine

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Dated: November 23, 2020

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PROPOSED ORDER

AND NOW this ___ day of November, 2020, upon consideration of the Emergency Application for Injunctive Relief of Nicole Zicarelli and the responses thereto, this Court hereby DENIES the Application.

BY THE COURT:

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2020, I caused the foregoing to be electronically filed and to be served on counsel of record for Plaintiffs and Defendants listed on the docket via the Court's ECF system.

/s/ Clifford B. Levine