

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

National Election Defense Coalition,	:	
Citizens For Better Elections,	:	
Rich Garella, Rachel A. Murphy,	:	
Caroline Leopold, Stephen Strahs,	:	
Kathleen Blanford, Sharon Strauss,	:	
Anne C. Hanna, Raphael Y. Rubin,	:	
Robert F. Werner,	:	
Sandra O'Brien-Werner,	:	
Thomas P. Bruno, Jr.,	:	
Roger Dreisbach-Williams,	:	
and Jeff R. Faubert,	:	
Petitioners	:	
v.		
	:	No. 674 M.D. 2019
	:	
Kathy Boockvar, Secretary of the	:	
Commonwealth,	:	
Respondent	:	

PER CURIAM

MEMORANDUM AND ORDER

By Order dated January 14, 2020, the Court scheduled a hearing on Petitioners' Application for Special Relief in the Form of a Preliminary Injunction (Application) for January 28, 2020. In their Application, Petitioners seek mandatory injunctive relief against Respondent, Kathy Boockvar, Secretary of the Commonwealth (Secretary), with respect to her responsibilities under Section 1105-A of the Pennsylvania Election Code.¹ Petitioners, however, also seek an order prohibiting the use of the ExpressVote XL in any election. In

¹ Act of June 3, 1937, P.L. 1333, *as amended*, added by the Act of July 11, 1980, P.L. 600, 25 P.S. § 3031.5.

paragraph 3 of their Petition for Review, Petitioners identify three counties—Northampton, Philadelphia, and Cumberland—who, relying on the Secretary’s certification of the ExpressVote XL system in November 2018, “spent millions of dollars buying these new machines.” Under the Election Code, the county boards of election, not the Secretary, place electronic voting systems into use.

Based on the allegations in the Petition for Review and the relief Petitioners seek in their Application, the Court is concerned about the absence of participation in the preliminary injunction proceeding by the counties who would be most affected immediately by the relief Petitioners seek in their Application. *See Polydyne, Inc. v. City of Phila.*, 795 A.2d 495 (Pa. Cmwlth. 2002) (noting failure to join indispensable party is jurisdictional and may be raised by court *sua sponte*). The Court is aware of its opinion in *Banfield v. Cortez*, 922 A.2d 36 (Pa. Cmwlth. 2007) (en banc), where a divided *en banc* panel of this Court overruled an indispensable party preliminary objection in an action challenging the certification of electronic voting systems by the Secretary of the Commonwealth. Nonetheless, *Banfield* does not address the indispensable party question in the context of a preliminary injunction, where the relief sought would immediately bar the use of electronic voting systems by the counties who purchased them pending a final determination on the merits.

Accordingly, NOW, this 15th day of January, 2020, it is hereby ORDERED that the parties shall appear before the Court for ORAL ARGUMENT on the question of whether the county boards of election that have purchased and intend to use the ExpressVote XL system in the upcoming primary election (April 28, 2020) are indispensable to Petitioners’ Application and, thus, must be joined as parties. Oral argument will be held on January 23, 2020, at 9:30 a.m., in

Courtroom 3001 of the Pennsylvania Judicial Center, Harrisburg, Pennsylvania. A status conference for the Court and attorneys of record will immediately follow.

The Chief Clerk is directed to send a copy of this Memorandum and Order to the county boards of election for Cumberland, Northampton, and Philadelphia Counties.

Certified from the Record

JAN 15 2019

And Order Exit