

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TIMOTHY R. BONNER, P. MICHAEL
JONES, DAVID H. ZIMMERMAN,
BARRY J. JOZWIAK, KATHY L. RAPP,
DAVID MALONEY, BARBARA GLEIM,
ROBERT BROOKS, AARON J.
BERNSTINE, TIMOTHY F. TWARDZIK,
DAWN KEEFER, DAN MOUL,
FRANCIS X. RYAN, and DONALD
“BUD” COOK,

Docket No. ____ M.D. 2021

Petitioners,

v.

VERONICA DEGRAFFENREID, in her
official capacity as Acting Secretary of the
Commonwealth of Pennsylvania, and COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF STATE,

Respondents.

**PETITION FOR REVIEW IN THE NATURE OF AN ACTION FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Petitioners Timothy R. Bonner, P. Michael Jones, David H. Zimmerman,
Barry J. Jozwiak, Kathy L. Rapp, David Maloney, Barbara Gleim, Robert Brooks,
Aaron J. Bernstine, Timothy F. Twardzik, Dawn W. Keefer, Dan Moul, Francis X.
Ryan, and Donald “Bud” Cook hereby file the following Petition for Review
against Respondents, Veronica Degraffenreid, in her official capacity as Acting
Secretary of the Commonwealth of Pennsylvania, and the Commonwealth of
Pennsylvania, Department of State, in support thereof avers as follows:

Introduction

1. This is an action seeking declaratory and injunctive relief, challenging the unlawful implementation of no-excuse mail-in balloting through Act 77 (Laws of the General Assembly of the Commonwealth of Pennsylvania, Act of October 31, 2019, P.L. 552, No. 77 (“Act 77”); 25 Pa.Stat. §§ 3146.6(c), 3150.16(c)), the most expansive and fundamental change to the Pennsylvania Election Code since it was enacted in 1937. Act 77 violates the Constitution of the Commonwealth of Pennsylvania because it permits all electors to vote by mail, without qualifying for a constitutionally-prescribed exemption. Act 77 also violates the U.S. Constitution because it exceeds the powers granted to the Pennsylvania General Assembly under Article I, § 2; Article I, § 4; Article II, § 1; and the 17th Amendment of the U.S. Constitution.

2. Beginning with the Military Absentee Ballot Act of 1839, the Pennsylvania Supreme Court consistently rejected all attempts to expand absentee voting by statute, uniformly holding that a constitutional amendment is required to expand absentee voting beyond the categories provided in the Pennsylvania Constitution. Act 77 is the Commonwealth’s latest attempt to override through legislation the limitations on absentee voting contained in the Pennsylvania Constitution, as interpreted by the Pennsylvania Supreme Court for over 150 years. In doing so, the Commonwealth has disenfranchised its citizens by denying them

the right to approve an amendment to the Pennsylvania Constitution that would permit no-excuse mail-in voting.

Parties

3. Petitioner Timothy R. Bonner (hereinafter “Bonner”) is an adult individual who is a qualified registered elector residing in Mercer County and a member of the Pennsylvania House of Representatives (“the House”) serving Mercer County (Part) and Butler County (Part). Bonner was elected to the House on March 17, 2020, and took office on April 6, 2020, after Act 77 was passed by the House.

4. Petitioner P. Michael Jones (hereinafter “Jones”) is an adult individual who is a qualified registered elector residing in York County and a member of the House serving Lancaster County. Jones voted in favor of Act 77 when it was passed by the House.

5. Petitioner David H. Zimmerman (hereinafter “Zimmerman”) is an adult individual who is a qualified registered elector residing in Lancaster County and a member of the House serving Lancaster County (Part). Zimmerman voted against Act 77 when it was passed by the House.

6. Petitioner the Barry J. Jozwiak (hereinafter “Jozwiak”) is an adult individual who is a qualified registered elector residing in Berks County and a

member of the House serving Berks County (Part). Jozwiak voted in favor of Act 77 when it was passed by the House.

7. Petitioner Kathy L. Rapp (hereinafter “Rapp”) is an adult individual who is a qualified registered elector residing in Warren County and a member of the House serving Warren County, Crawford County (Part), and Forest County (Part). Rapp voted in favor of Act 77 when it was passed by the House.

8. Petitioner David Maloney (hereinafter “Maloney”) is an adult individual who is a qualified registered elector residing in Berks County and a member of the House serving Berks County (Part). Maloney voted in favor of Act 77 when it was passed by the House.

9. Petitioner Barbara Gleim (hereinafter “Gleim”) is an adult individual who is a qualified registered elector residing in Cumberland County and a member of the House serving Cumberland County (Part). Gleim voted in favor of Act 77 when it was passed by the House.

10. Petitioner Robert Brooks (hereinafter “Brooks”) is an adult individual who is a qualified registered elector residing in Westmoreland County and a member of the House serving Westmoreland County (Part) and Allegheny County (Part). Brooks voted in favor of Act 77 when it was passed by the House.

11. Petitioner Aaron J. Bernstine (hereinafter “Bernstine”) is an adult individual who is a qualified registered elector residing in Beaver County and a

member of the House serving Beaver County (Part), Butler County (Part) and Lawrence County (Part). Bernstine voted in favor of Act 77 when it was passed by the House.

12. Petitioner Timothy F. Twardzik (hereinafter “Twardzik”) is an adult individual who is a qualified registered elector residing in Schuylkill County and a member of the House serving Schuylkill County (Part). Twardzik voted in favor of Act 77 when it was passed by the House.

13. Petitioner Dawn W. Keefer (hereinafter “Keefer”) is an adult individual who is a qualified registered elector residing in York County and a member of the House serving York County (Part) and Cumberland County (Part). Keefer voted in favor of Act 77 when it was passed by the House.

14. Petitioner Dan Moul (hereinafter “Moul”) is an adult individual who is a qualified registered elector residing in Adams County and a member of the House serving Adams County (Part). Moul voted in favor of Act 77 when it was passed by the House.

15. Petitioner Francis X. Ryan (hereinafter “Ryan”) is an adult individual who is a qualified registered elector residing in Lebanon County and a member of the House serving Lebanon County (Part). Ryan voted in favor of Act 77 when it was passed by the House.

16. Petitioner Donald “Bud” Cook (hereinafter “Cook”) is an adult individual who is a qualified registered elector residing in Washington County and a member of the House serving Fayette County (Part) and Washington County (Part). Cook voted in favor of Act 77 when it was passed by the House.

17. The Petitioners do not bring this action in their official capacities as House members, but rather in their personal capacities. Each of the Representatives constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code Section 102(a) and (t), 25 P.S. § 2602(a) & (t). The Representatives brings this suit in their capacities as past and likely future candidates for office and as private citizens and registered Pennsylvania voters.

18. Respondents are Veronica Degraffenreid, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania (“Acting Secretary Degraffenreid”) and the Commonwealth of Pennsylvania, Department of State.

Jurisdiction

19. Act 77 initially conferred exclusive jurisdiction on the Supreme Court to address constitutional challenges to certain provisions therein. However, that exclusive jurisdiction terminated 180 days after Act 77 was passed, on April 28, 2020. As a result, this Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 761(a)(1) (“Against the Commonwealth government, including any officer thereof, acting in his official capacity”).

20. The Declaratory Judgment Acts grants this Court “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.” 42 Pa.Cons.Stat. § 7532.

21. The Supremacy Clause of the U.S. Constitution requires this Court to hear claims brought under 42 U.S.C. § 1983 because the Commonwealth Court is vested with original jurisdiction over state law claims against government officials which are analogous to § 1983 claims. See, e.g., Haywood v. Drown, 556 U.S. 729 (2009).

Material Facts

I. Historical constitutional amendments to expand absentee voting.

22. In order to qualify to vote, Article VII of the Pennsylvania Constitution provides two exclusive ways an elector may cast a ballot in an election: 1) offering the ballot *in propria persona* (in person) at the polling place on election day, as provided in Article VII, § 1; and 2) exceptions to the first method limited to those persons qualifying under Article VII § 14.

23. This qualification for voting has been consistently upheld by the Pennsylvania Supreme Court in multiple cases going back to the first major attempt to expand absentee voting in 1864.

24. Over time, exceptions to in-person voting have been added to the Pennsylvania Constitution only through valid constitutional amendments, which includes specific exceptions for military personnel, disabled veterans, religious observations, out of town work duties, and county employees who cannot vote due to election day duties.

25. Article XI, Section 1 of the Pennsylvania Constitution establishes the mandatory procedural requirements that must be strictly followed to amend the Constitution.

26. Pursuant to Article XI, Section 1, a proposed constitutional amendment must be approved by a majority vote of the members of both the Pennsylvania House of Representatives and Senate in two consecutive legislative sessions, then the proposed amendment must be published for three months ahead of the next general election in two newspapers in each county, and finally it must be submitted to the qualified electors as a ballot question in the next general election and approved by a majority of those voting on the amendment.

27. Therefore, the qualified electors, the people of Pennsylvania, have the right to vote on any amendment to the Pennsylvania Constitution, and the final say on whether any such amendment is permitted.

28. This Court cannot allow the Commonwealth to bypass that right to vote and amend the Pennsylvania Constitution through pretense of mere legislation, thereby disenfranchising the entire Pennsylvania electorate.

29. 1949 marked the first of several modern attempts to amend the Pennsylvania Constitution to expand the exceptions for which absentee voting would be allowed.

30. The legislature went through the formal procedure for amending the Pennsylvania Constitution, as explicitly provided therein, to allow bedridden or hospitalized war veterans the ability to vote absentee. Pa. Const. Art. VIII, § 18 (1949).

31. In 1957, Pennsylvania went through the formal amendment process to amend the Pennsylvania Constitution to allow civilian absentee voting in instances where un-avoidable absence or physical disability prevented them from voting in person.

32. In 1967, following a constitutional convention, the Pennsylvania Constitution was reorganized and Article VII, § 19 was renumbered to Article VII, § 14.

33. In 1985, Pennsylvania went through the formal amendment process to amend the Pennsylvania Constitution to add religious observances to the list of permissible reasons for requesting an absentee ballot. See Pa. H. Leg. J. No. 88,

167th General Assembly, Session of 1983, at 1711 (Oct. 26, 1983) (considering HB 846, PN 1963, entitled “An Act amending the ‘Pennsylvania Election Code,’ ... further providing for absentee ballots for religious holidays and for the delivery and mailing of ballots.”); see also Id. (statement of Mr. Itkin) (“[T]his amendment is offered to alleviate a possible problem with respect to the legislation. The bill would originally amend the Election Code to [expand absentee balloting] Because it appears that the Constitution talks about who may receive an absentee ballot, we felt it might be better in changing the bill from a statute to a proposed amendment to the Pennsylvania Constitution.”).

34. In 1997, Pennsylvania went through the formal amendment process to amend the Pennsylvania Constitution to expand the ability to vote by absentee ballot to qualified voters who were outside of their municipality of residence on election day, where previously absentee voting had been limited to those outside of their county of residence. See Pa. H. Leg. J. No. 31, 180th General Assembly, Session of 1996 (May 13, 1996) (“people who do not work outside the municipality [or county] or people who are ill and who it is a great difficulty for them to vote but it is not impossible for them to vote, ... they cannot vote under [the 1997 amendment].” Id. at 841 (statement of Mr. Cohen).

II. The Pennsylvania General Assembly began the process for amending the Pennsylvania Constitution to allow for no-excuse absentee voting.

35. Although Article VII, § 4 of the Pennsylvania Constitution generally provides that “All elections by the citizens shall be by ballot or by such other method as may be prescribed by law: Provided, That secrecy in voting be preserved,” the Pennsylvania General Assembly recognized that such general legislative power did not extend to amending or eliminating the constitutional prerequisites for absentee voting, as more specifically set forth in Article VII, § 14.

36. Indeed, the Supreme Court in the case of In re Contested Election in Fifth Ward of Lancaster City, 126 A. 199, 201 (1924) specifically cited the above quoted language from Article VII, § 4, but nevertheless found that the legislature lacked the power through mere legislation to allow absent voting other than in the limited situations prescribed by the Pennsylvania Constitution, as set forth in Article VII § 19 (the predecessor to Article VII, § 14, prior to its renumbering).

37. Therefore, on March 19, 2019, the Pennsylvania General Assembly introduced a joint resolution to amend Article VII, § 14 of the Pennsylvania Constitution to permit no-excuse absentee voting. See Senate Bill 411, 2019 (later incorporated into Senate Bill 413).

38. The legislative history set forth in the Co-Sponsorship Memorandum of the proposed constitutional amendment (such memoranda accompany all proposed legislation) recognized that “Pennsylvania’s current Constitution restricts

voters wanting to vote by absentee ballot to [specific] situations...” The amendment proposes to “eliminate these limitations, empowering voters to request and submit absentee ballots for any reason – allowing them to vote early and by mail.” Sen. Mike Folmer & Sen. Judith Schwank, Senate Co-Sponsorship Memoranda to S.B. 411 (Jan. 29, 2019, 10:46 AM), <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=28056>.

39. The constitutional amendment proposed to “eliminate these limitations, empowering voters to request and submit absentee ballots for any reason—allowing them to vote early and by mail.” *Id.*

40. S.B. 413, amending Article VII, § 14 of the Pennsylvania Constitution, was passed by both chambers and filed with the Office of the Secretary of the Commonwealth on April 29, 2020.

41. If S.B. 413 passed both chambers again in the next legislative session, it would have appeared on a future ballot for approval by a majority of Pennsylvania electors to be properly ratified, but the Commonwealth failed to follow the requisite procedure to amend the Pennsylvania Constitution.

42. Had it been properly approved and ratified by a majority of electors in 2021, S.B. 413 would have amended Article VII, § 14 to allow any voter, for any reason, to vote by absentee ballot as follows:

~~(a) The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside. **A law under this subsection may not require a qualified elector to physically appear at a designated polling place on the day of the election.**~~

~~(b) For purposes of this section, "municipality" means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.~~

43. Instead, the General Assembly later went on to establish a “Select Committee on Election Integrity” to “investigate, review and make recommendations concerning the regulation and conduct of the 2020 general election.” Pa. H. Res. No. 1032, Printer’s No. 4432, Session of 2020 (Sep. 28, 2020),

<https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=H&billTyp=R&billNbr=1032&pn=4432>

44. The resolution establishing the committee noted that the “Commonwealth has traditionally only allowed absentee voting by individuals with a statutorily defined excuse to do so, such as a physical disability or absence from their municipality on election day.” *Id.* (emphasis added).

45. It further noted that “[b]efore the enactment of Act 77 of 2019, for an individual to vote absentee in this Commonwealth, the individual must have provided a permissible reason to do so....” *Id.*

46. It is expressly acknowledged that Act 77 of 2019, “created a new category of mail-in voting ... [whereby] mail-in voters do not have to provide a customary reason to vote by mail and are able to return their ballots several days later than had traditionally been allowed.” *Id.*

47. Neither Act 77 nor the contemporaneous proposed constitutional amendment initiated by the legislature were approved by a majority vote of both the House and Senate in two consecutive legislative sessions, nor were either submitted to the qualified electors of Pennsylvania as a ballot question and approved by a majority vote of the citizens, to give the final consent to amend Article VII, § 14 of the Pennsylvania Constitution.

48. Despite the lack of constitutional authority to pass a no-excuse mail-in voting scheme – a scheme which far eclipses any previously conscribed absentee voting scheme – the Commonwealth proceeded to implement Act 77 anyway, in direct contravention of the Pennsylvania Constitution.

49. Put differently, the Commonwealth first recognized the constitutional constraints and the need to amend the Pennsylvania Constitution in order to enact no-excuse mail-in voting, sought to amend the Pennsylvania Constitution to

lawfully allow for the legislation, and subsequently abandoned the efforts to comply with the Pennsylvania Constitution and instead enacted Act 77 irrespective of the knowledge of the lack of legal authority unless and until the proposed constitutional amendment was ratified by approval of a majority of the electors voting on the proposed amendment, thereby usurping the power of the people to give the final consent to any amendment to the Pennsylvania Constitution.

III. Act 77, as Amended by Act 12, became the legislative vehicle for implementing no-excuse mail-in voting.

50. On October 31, 2019, Governor Wolf signed Act 77 into law, implementing sweeping reforms to the Pennsylvania Election Code.

51. Among other changes, Act 77 “create[ed] a new option to vote by mail without providing an excuse,” allowed voters to request and submit mail-in or absentee ballots up to 50 days before an election; and established a semi-permanent mail-in and absentee ballot voter list. Press Release, Governor Wolf Signs Historic Election Reform Bill Including New Mail-in Voting, Governor Tom Wolf (Oct. 31, 2019).

52. In March 2020, Pennsylvania further updated its Election Code, including certain changes to mail-in voting provisions implemented by Act 77, when it enacted “Act 12 of 2020,” which among other changes amended the definition of a “qualified mail-in elector” to include all qualified voters, except for

“person[s] specifically prohibited from being a qualified absentee elector undersection 1301.” *See* Act 12, Section 1(z.6).

IV. No Excuse Mail-In Ballots were used extensively in the 2020 Elections.

53. The 2020 primary and general elections were conducted with extensive use of Act 77’s no-excuse mail-in voting system.

54. Leading up to the 2020 elections, the Secretary of the Commonwealth issued guidance documents on a number of topics related to Election Day procedures, including interpretations of provisions amended by Act 77.

55. Among other directives, the Pennsylvania Department of State issued guidelines for accepting mail-in ballots received after election day. *See, e.g.*, Pa. Dep’t State, Pennsylvania Guidance for Mail-in and Absentee Ballots Received from the United States Postal Service after 8:00 p.m. on Tuesday, November 3, 2020 (Oct. 28, 2020, Version 1.0), Pet.App. 345a-347a. Pa. Dep’t State, Statewide Return and Recount Directive and Procedures (Nov. 1, 2020).

COUNT I Pa. Const. Art. VII; Pa. Const. Art. XI

56. Petitioners hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

57. The no-excuse mail-in voting provisions of Act 77 violate the Pennsylvania and U.S. Constitutions because they seek to eliminate the

qualification of in-person voting in the Pennsylvania Constitution through *ultra vires* legislation without the required Pennsylvania constitutional amendment.

58. No legislative enactment may contravene the requirements of the Pennsylvania Constitution.

59. To be a “qualified elector,” and therefore generally entitled to vote, the Pennsylvania Constitution requires the following:

1. 18 years of age.
2. A Citizen of the United States for at least one month.
3. Residence in Pennsylvania for the 90 days immediately preceding the election.
4. Residence in the “election district where he or she *shall offer to vote* at least 60 days immediately preceding the election”

Pa. Const. Art. VII, § 1 (emphasis added).

60. To “offer to vote” by ballot is to present oneself, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it, not to send a ballot by mail.

Interpreting the same portions of Article VII, Sections 1 and 5 that exist today, the Pennsylvania Supreme Court explained as follows:

To ‘offer to vote’ by ballot is to present one’s self, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it. ***The ballot cannot be sent by mail or express***, nor can it be cast outside of all Pennsylvania election districts and certified into the county where the voter has his domicil. ***We cannot be persuaded that the Constitution ever contemplated any such mode of voting***, and we have abundant reason for thinking that to permit it would break down all the safeguards of honest suffrage. ***The Constitution meant, rather,***

that the voter, in propria persona, should offer his vote in an appropriate election district, in order that his neighbors might be at hand to establish his right to vote if it were challenged, or to challenge if it were doubtful.

In re Contested Election in Fifth Ward of Lancaster City, 126 A. 199, 200 (Pa. 1924) (quoting Chase v. Miller, 41 Pa. 403, 418-19 (1864)) (emphasis added).

61. Article VII, Section 14 of the Pennsylvania Constitution provides the only exemptions to the *in propria persona* voting requirements of the Pennsylvania Constitution, for four specific circumstances:

(a) The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

(b) For purposes of this section, "municipality" means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.

Pa. Const. Art. VII, § 14.

62. The Pennsylvania Constitution does not provide a mechanism for the Legislature to allow for absentee voting in situations other than those enumerated in Article VII § 14.

63. Act 77 unconstitutionally expands the scope of absentee voting permitted by the Pennsylvania Constitution to all voters.

64. Newly created 25 P.S., Chapter 14, Article XIII-D, § 3510 (25 Pa.Stat. § 3150.11) states:

§ 3150.11. Qualified mail-in electors.

(a) General rule.-- A qualified mail-in elector shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article.

(b) Construction.-- The term “qualified mail-in elector” shall not be construed to include a person not otherwise qualified as a qualified elector in accordance with the definition in section 102(t) [25 Pa.Stat. § 2602(t)].

65. Absentee voting is defined in 25 P.S., Chapter 14, Article 13. 3146.1 (25 Pa.Stat. § 3146.1), which outlines a variety of categories of eligibility that are each consistent with Article VII, Section 14 of the Pennsylvania Constitution.

66. In enacting Act 77, the Legislature created a fictitious distinction between the pre-existing “absentee” voting and the newly created “Mail-In Voting.”

67. In reality, there is no distinction except that Mail-In Voting is simply absentee voting without any of the conditions precedent that the Pennsylvania Constitution clearly requires in order for someone to be permitted to cast a ballot without being physically present at the polls on election day.

68. In other words, absentee voting (by any name, such as “mail-in” voting) is only constitutionally authorized under the four limited circumstances

specifically delineated under Article VII, Section 14, whereas Act 77 opens absentee voting (renamed “mail-in” voting) to any and all otherwise qualified voters in the Commonwealth who do not meet the constitutional requirements for absentee voting, without excuse or limitation, and simply relabels the voting mechanism as “mail-in” voting as opposed to “absentee” voting.

69. Taking an inartful twist such as simply relabeling “absentee” voting as “mail-in” voting simply yields a distinction without a legal difference and violates Article VII, § 14 of the Pennsylvania Constitution, as Act 77 effectively repeals Article VII, § 14 and/or makes it moot.

70. The Legislature further attempted to do indirectly what it could not otherwise do without a constitutional amendment, namely disguise the obvious redundancy between mail-in voting and absentee voting by refusing to add “mail-in” voting to 25 P.S. Article XIII (which governs “Voting By Qualified Absentee Elector”) and instead created a new Article (25 P.S. Article XIII-D, “Voting By Qualified Mail-In Electors”).

71. By doing this, it appears the Legislature intended to obscure that the two are the same, except that absentee voters are required to satisfy additional conditions mandated by the Pennsylvania Constitution whereas Mail-In Voters are not.

72. The legislative goal is clear: vastly expand absentee voting and remove all conditions precedent and requirements to make it a no-excuse voting mechanism, while obscuring the fact that such voting method would violate the Pennsylvania Constitution and which otherwise could only be properly enacted through a constitutional amendment to Article VII, § 14.

73. However, renaming a vast, unconstitutional expansion of absentee voting as “Mail-In Voting” cannot, and does not, make the conduct valid or effective as a matter of law.

74. The authority vested in the Legislature to pass general laws concerning the way voters can vote by absentee ballot is explicitly (and inherently) limited only to the four enumerated circumstances in Article VII, § 14 where absentee voting is authorized.

75. Therefore, any attempt to expand the definition of an absentee voter conflicts with and exceeds the authority established by the Pennsylvania Constitution and, therefore, a constitutional amendment is required for such an expansion to be legitimate.

76. Section 11 of Act 77 also contains a non-severability clause, which requires that the entire act be rendered void if certain provisions of Act 77 are held invalid. See Act of October 31, 2019, P.L. 552, No. 77, at Section 11 (“Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are non-severable. If any provision

of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.”).

77. Several of the provisions noted in the non-severability clause of Act 77 include changes to the Election Code relating to no-excuse mail-in voting, including Section 8, which contains most of the provisions for the new mail-in voting system. *Id.* at Section 8.

78. Because Section 8 and other sections of Act 77 containing provisions for the mail-in ballot system are invalid, Act 77 must be struck down in its entirety.

COUNT II

U.S. Const. Art. I, § 2; U.S. Const. Art. I § 4; U.S. Const. Art. II, § 1; U.S. Const. Amend. XVII

79. Petitioners hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

80. The U.S. Constitution delegates the authority to make laws for federal elections to the states’ legislative power. See U.S. Const. Art. I, § 2; U.S. Const. Art. I § 4; U.S. Const. Art. II, § 1; U.S. Const. Amend. XVII.

81. A state is restricted to exercising this federal authority in accordance with the provisions of its Constitution delegating the legislative power. State constitutions may delegate legislative power to the people, for example through a referendum process, or in part to the Governor through, *e.g.*, the veto power. See, e.g., Arizona State Legislature v. Arizona Indep. Redistricting Comm'n, 576 U.S.

787 (2015); Smiley v. Holm, 285 U.S. 355 (1932); State of Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565 (1916); McPherson v. Blacker, 146 U.S. 1(1892)

82. In the case of a law enacted by a state legislature applicable to the election of U.S Senators, U.S. Representatives, and the selection of Presidential and Vice-Presidential electors, the legislature is not acting solely under the authority given to it by the people of the state, but by virtue of a direct grant of authority made under Article I, § 2; Article 1, § 4; Art. II, § 1; and the 17th Amendment of the United States Constitution.

83. When a state legislature violates its state constitution, purportedly in furtherance of its plenary authority to regulate federal elections and appoint electors, it also violates the U.S. Constitution.

84. Because the legislative changes enabling no-excuse mail voting in Pennsylvania require a constitutional amendment, and because the Pennsylvania Constitution has delegated to its citizens the right to vote on amendments to the Pennsylvania Constitution, Act 77 violates the U.S. Constitution's delegation to states of the lawmaking power for federal elections.

COUNT III
42 U.S.C. § 1983; U.S. Const. Amend. XIV

85. Petitioners hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

86. Title 42 of the U.S. Code, Section 1983, prohibits any person acting under color of law to subject or cause to be subjected any other person “to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.”

87. The right to vote in lawful elections is a right “of the most fundamental significance” protected by the U.S. Constitution. Burdick v. Takushi, 504 U.S. 428, 433 (1992).

88. Allowing mail-in ballots to be counted which exceed the limitations for permitted absentee voting under the Pennsylvania Constitution can deny the right to vote “by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise,” in violation of 14th Amendment Due Process and Equal Protection guarantees. See Reynolds v. Sims, 377 U.S. 533, 555 (1964); U.S. Const. Amend. XIV.

89. Acting Secretary Degraffenreid, in her role as Secretary of the Commonwealth and acting under color of state law, has continued to implement the unlawful provisions of the Pennsylvania Election code that permit no-excuse mail-in voting.

90. These practices have had the impact of disenfranchising Petitioners and other registered Pennsylvania voters in previous elections and such policies will continue to disenfranchise voters unless relief is granted to Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Honorable Court enter relief as follows:

- A. DECLARATORY JUDGMENT: a declaratory judgment declaring unconstitutional the Act 77 provisions, as amended by Act 12, that enable voting by mail without excuse;
- B. PROHIBITORY INJUNCTION: an order, declaration, and/or injunction that prohibits Defendants from distributing, collecting, and counting no-excuse mail-in ballots in future state and federal elections and
- C. FURTHER RELIEF: awarding Petitioners' nominal damages; reasonable costs and expenses of this action, including attorneys' fees and costs; and providing such other and further legal and equitable relief as this Court deems just and proper.

Respectfully submitted,

Gregory H. Teufel
Attorney for Petitioners