

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 Bernstine, Timothy F.
Twardzik, Dawn W. Keefer, Dan
Moul, Francis X. Ryan, and Donald
“Bud” Cook,

Petitioners,

v.

Leigh M. Chapman, in her official
capacity as Acting Secretary of the
Commonwealth of Pennsylvania, and
Commonwealth of Pennsylvania
Department of State,

Respondents, and

DSCC, DCCC,
Democratic National Committee,
Pennsylvania Democratic Party,

Intervenor-Respondents.

No. 364 M.D. 2022

**PETITIONERS’ BRIEF IN
RESPONSE TO DNC AND PDP
INTERVENOR-RESPONDENTS’
PRELIMINARY OBJECTIONS
AND CROSS-APPLICATION FOR
SUMMARY RELIEF**

Filed on behalf of Petitioners,
Timothy R. Bonner, P. Michael Jones,
David H. Zimmerman, Barry J.
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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. BACKGROUND	3
III. ARGUMENT.....	4
CONCLUSION.....	5
CERTIFICATE OF WORD COUNT	
CERTIFICATE OF COMPLIANCE (Public Access Policy)	
CERTIFICATE OF SERVICE	

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TABLE OF AUTHORITIES

Cases

Migliori v. Cohen, 36 F.4th 153 (3rd Cir. 2022)2

Statutes and Regulations

Laws of the General Assembly of the Commonwealth of Pennsylvania, Act of October 31, 2019, P.L. 552, No. 77 (“Act 77”)passim

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I. INTRODUCTION

The Preliminary Objections and Cross-Application for Summary Relief (“Cross-Application”) filed by the Democratic National Committee (“DNC”) and Pennsylvania Democratic Party (“PDP”) in large part overlap the Preliminary Objections and Cross-Applications for Summary Relief filed by Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania, and Commonwealth of Pennsylvania, Department of State (collectively, “the Government Respondents”) and the DSCC and DCCC (“the Committees”). Like the Government Respondents, the DNC and PDP attempt to argue that recognizing that Act 77 (Laws of the General Assembly of the Commonwealth of Pennsylvania, Act of October 31, 2019, P.L. 552, No. 77 (“Act 77”) is now void would disenfranchise many voters and destroy free and fair elections in Pennsylvania. It would do no such thing. Pennsylvanians were able to exercise their right to vote in free and fair elections before Act 77, and they will still be able to do so after this Court declares Act 77 void.

For all of the reasons already explained in Petitioners’ Response to the DNC’s and PDP’s Preliminary Objections (“Preliminary Objections”) and Cross-Application for Summary Relief (“Cross-Application”), which Response is

incorporated by reference,¹ the Preliminary Objections should be overruled and their Cross-Application should be denied because (a) the nonseverability provision of Act 77 is enforceable and the Petitioners are not required to plead more specifically the legal theories underlying the petition, (b) in *Migliori* a court of competent jurisdiction held that the date requirement provisions of Sections 6 and 8 of Act 77 and/or their application to a person or circumstance were invalid, (c) *Migliori* did not and could not hold that Act 77's date requirements are merely directory, and (d) neither the nature of Act 77 nor subsequent amendments prevent the enforcement of its nonseverability provision.

Petitioners incorporate by reference their Application for Summary Relief and Brief in support thereof, as well as their Responses to the Government Respondents' and other Intervenor-Respondents' Preliminary Objections and Cross-Applications for Summary Relief and Briefs in support thereof, to the extent applicable, to avoid duplicative briefing as much as possible. No party has identified any factual issues that would preclude summary disposition of this case and there appear to be no material facts in dispute, though the DNC and PDP

¹ This Brief focuses on new arguments found in the DNC's and PDP's Brief in support of their Preliminary Objections and Cross-Application because arguments already raised by them prior to those Briefs were adequately addressed in Petitioners' Response to the Preliminary Objections and Cross-Application.

attempt to misuse the legislative history to encourage this Court to draw unwarranted inferences.

II. BACKGROUND

Though the date provisions are not mentioned as having been publicly debated in the published legislative history of Act 77, the Court should not therefore infer that the date provisions were not integral to the rest of Act 77. The affidavits attached to Petitioners' Response to the Government Defendants' Preliminary Objections and Cross-Application for Summary Relief as Exhibit A undermine any such inference, as a number of House members who voted in favor of Act 77 confirm that they would not have voted in favor of passage of Act 77 if those date requirements had been eliminated instead of included, because they viewed those date requirements as being important to the integrity of mail-in and absentee ballots. Those affidavits also explain that much of the discussions and negotiations between and among the legislators and the Governor's office regarding Act 77 took place off the record, behind closed doors, as is typical for many such pieces of legislation. Therefore, the absence of discussion of the date requirements in the legislative history of Act 77 is not a definitive indication of whether the date requirements were discussed by or important to the legislators in the process of passing Act 77. It is also unnecessary to examine the legislative history for this purpose because the plain text of Act 77 already reflects that the

dating requirements were so important that they are included in the nonseverability clause.

III. ARGUMENT

The DNC and PDP attempt to argue that the various amendments to Act 77 confirm that the intent of the General Assembly was for Act 77 to remain a durable part of Pennsylvania law. On the contrary, the fact that the General Assembly declined, in numerous amendments to Act 77, to delete the nonseverability provision indicates that the General Assembly continued to want the nonseverability provision enforced in the event that any of the identified provisions of Act 77 or their application to any person or circumstance would be held invalid. The General Assembly never deleted the nonseverability provision of Act 77, in any of the amendments to Act 77 despite the sums obviously incurred in implementing Act 77 and its amendments, of which expenses the General Assembly could not have been unaware. The General Assembly also could have, but did not, put a sunset provision into Act 77's nonseverability provision, but rather chose to leave it in place indefinitely. The General Assembly obviously did not consider a return to pre-Act 77 law an absurd concept or the equivalent of untangling a Gordian knot, or it already would have deleted the nonseverability provision from Act 77.

CONCLUSION

For the aforementioned reasons and the reasons stated in Petitioners Response to the Preliminary Objections and Cross-Application, Petitioners respectfully urge this Court to enter the proposed orders denying the DNC and PDP's Cross-Application for Summary Relief and overruling their Preliminary Objections.

Respectfully submitted,

A handwritten signature in blue ink, reading "G. H. Teufel". The signature is written in a cursive style. A diagonal watermark "RETRIEVED FROM DEMOCRACYDOCKET.COM" is visible across the signature.

Gregory H. Teufel
Attorney for Petitioners

CERTIFICATE OF WORD COUNT

I certify that this Brief contains 917 words, as determined by the word-count feature of Microsoft Word.



Date: September 22, 2022

Gregory H. Teufel, Esq.

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Date: September 2, 2022



Gregory H. Teufel, Esq.

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