

IN THE SUPREME COURT OF PENNSYLVANIA

TIMOTHY R. BONNER, et al.,
Petitioners,

v.

No. 75 MAP 2023

LEIGH M. CHAPMAN, in her official
capacity as Acting Secretary of the
Commonwealth of Pennsylvania, et al.,
Respondents, and

DSCC and DCCC,
Intervenor-Respondents.

**INTERVENOR-RESPONDENTS DSCC AND DCCC’S
ANSWER TO JURISDICTIONAL STATEMENT**

This appeal is untimely and should be quashed for lack of jurisdiction. Petitioners seek an interpretation of Act 77 that would render it void and its many revisions to the Election Code inapplicable and unenforceable. But where, as here, a petitioner’s argument “hinges upon the interpretation and application of . . . an Election Code provision,” *Ryckman v. Crawford Cnty. Bd. of Elections*, No. 472 C.D. 2018, 2018 WL 6005779, at *3–4 (Pa. Commw. Ct. Nov. 16, 2018), the petitioner must file a notice of appeal within *ten days* after the entry of the order from which the appeal is taken. *See* Pa.R.A.P. 903(c)(1)(ii) (providing appeal from “an order in any matter arising under the Pennsylvania Election Code” must “be

taken within ten days after the entry of the order from which the appeal is taken”); *see also* Pa.R.A.P. 1101(a)(1) (incorporating Rules of Appellate Procedure Chapter 9 to appeals from Commonwealth Court to Supreme Court).

Petitioners, however, filed their notice of appeal on July 21, 2023, *24 days* after the June 27 entry of the Commonwealth Court order from which they appeal. *See* Pets.’ Jurisdictional Statement in Supp. of Appeal at 1 (“Pets.’ Jurisdictional Statement”); Ex. B to Pets.’ Jurisdictional Statement (Commonwealth Court Opinion and Order). But their lawsuit seeks an interpretation of the Election Code that would invalidate virtually all of Act 77 based on their assessment of how the Act’s revisions to the Election Code have been applied and enforced—a paradigmatic case requiring the notice of appeal to be filed within ten days.¹

As the Commonwealth Court explained below, directly echoing the *Ryckman* standard, “at issue is whether judicial *interpretations* of [Sections 6 and 8 of Act 77, which amended the Election Code], in conjunction with the *Election Code* and other state and federal statutes, *invalidated* those provisions[.]” *Bonner v. Chapman*, No. 364 M.D. 2022, 2023 WL 4188674, at *1 (Pa. Commw. Ct. June 27, 2023)

¹ Specifically, Petitioners claim that Act 77’s nonseverability provision was triggered by judicial decisions that interpreted the Act’s mail voting instructions and directed elections officials in some elections to count undated or incorrectly dated mail-in ballots.

(emphases added); *see also* Pets.’ Jurisdictional Statement at 4 (describing question presented).² Accordingly, Rule 903(c)(1)(ii) governs, rendering Petitioners’ notice of appeal untimely.

Petitioners’ failure to timely file their notice of appeal deprives this Court of jurisdiction. *Commonwealth v. Williams*, 106 A.3d 583, 587 (Pa. 2014); *see also* Pa.R.A.P. 741(b) (stating that defect in jurisdiction of appellate court from untimely filing cannot be waived); 42 Pa. C.S. § 704(b) (same). And because this Court lacks authority to forgive Petitioners’ untimeliness, the defect cannot be remedied. *See* Pa.R.A.P. 105 (providing that Appellate courts “may not enlarge the time for filing a notice of appeal”). The filing deadline prescribed by Rule 903 is jurisdictional in nature, and therefore it “must be strictly construed and may not be extended as a matter of indulgence or grace.” *Cnty. Coll. of Phila. v. McClain*, 283 A.3d 908 (Pa. Commw. Ct. 2022).³

² *Working Families Party v. Commonwealth*, 209 A.3d 270 (Pa. 2019), also supports application of the ten-day deadline. There, this Court did not apply the accelerated filing deadline because the appeal was based on a constitutional challenge to Election Code provisions “rather than its “enforcement, interpretation or application.” *Id.* at 278. The instant case falls squarely into the latter category.

³ Petitioners have not alleged any extraordinary circumstances that permit granting them equitable relief in the form of an appeal *nunc pro tunc*, such as fraud, a breakdown in the court’s operations, or other non-negligent circumstances. *Criss v. Wise*, 781 A.2d 1156, 1160 (Pa. 2001).

Accordingly, Petitioners' untimely appeal should be quashed for lack of jurisdiction.

Dated: July 28, 2023

Respectfully submitted,

By: Adam C. Bonin

Adam C. Bonin
THE LAW OFFICE OF ADAM C. BONIN
121 South Broad Street, Suite 400
Philadelphia, PA 19107
Telephone: (267) 242-5014
Facsimile: (215) 827-5300
adam@boninlaw.com

Uzoma N. Nkwonta*
Noah Baron*
Marilyn Gabriela Robb*
Jacob D. Shelly*
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW, Suite 400
Washington, D.C. 20001
Telephone: (202) 968-4490
unkwonta@elias.law
nbaron@elias.law
mrobb@elias.law
jshelly@elias.law

**Applications for Admission Pro Hac Vice
Forthcoming*

*Attorneys for Intervenor-Respondents
DSCC and DCCC*

CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMIT
FOR ANSWER TO JURISDICTIONAL STATEMENT

Pursuant to Rule of Appellate Procedure 911(b)(1), I, Adam C. Bonin, certify that the above Answer to Jurisdictional Statement contains fewer than 1,000 words, exclusive of the caption and signature block.

/s/ Adam C. Bonin

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