

IN THE COMMONWEALTH COURT OF PENNSYLVANIA**IN RE CANVASSING OBSERVATION**

Petition of Donald J. Trump for President Inc.

No. 1094 CD 2020

BRIEF OF APPELLEE PENNSYLVANIA DEMOCRATIC PARTY


While the Pennsylvania Democratic Party prizes transparency and may have wished for a different policy balance to have been struck by the General Assembly on issues relating to pre-canvass and canvass observation, we recognize that in enacting Act 12 of 2020, “the legislature sought to streamline the process for canvassing [mail-in] ballots, perhaps to avoid undermining the expansion effort by eliminating the prospect that voters—including a potentially large number of new mail-in voters—would be brought before the board or the courts to answer third-party challenges.” In re November 3, 2020 General Election (Petition of Boockvar), No. 149 MM 2020, slip op. at 28 (Pa. Oct. 16, 2020). These limits included allowing each candidate a solitary precanvass observer to “remain in the room,” and said observer cannot make any challenges. *See* Act 12 of 2020, §11 (enacting Section 1308(g)(1.1)).¹

Accordingly, Appellee believes that the well-reasoned eight-page opinion and order of the Court of Common Pleas of Philadelphia must be affirmed as a matter of law. This Court should not “supply omissions in the statute when it appears that the matter may have been intentionally omitted” or “engage in judicial legislation and to rewrite a statute in order to supply terms which

¹ The same is true of the vote canvass, which begins Friday morning. Id., §11 (eliminating Section 1308(g)(3) language allowing canvass challenges).

are not present therein.” In re November 3, 2020 General Election, slip op. at 29, quoting Sivick v. State Ethics Commission, 2020 WL 5823822, at *10 (Pa. Oct. 1, 2020).²

Respectfully submitted,

By: 

Adam C. Bonin (PA ID No. 80929)
LAW OFFICE OF ADAM C. BONIN
The North American Building
121 South Broad Street, Suite 400
Philadelphia, PA 19107
Telephone: (267) 242-5014
Facsimile: (215) 827-5300
adam@boninlaw.com

Clifford B. Levine (PA ID No. 33507)
DENTONS COHEN & GRIGSBY P.C.
625 Liberty Avenue
Pittsburgh, PA, 15222-3152
Telephone: (412) 297-4998
clifford.levine@dentons.com

Susan M. Lin (PA ID No. 94184)
KAIRYS, RUDOVSKY, MESSING,
FEINBERG & LIN LLP
The Cast Iron Building
718 Arch Street, Suite 501 South
Philadelphia, PA 19106
Office: 215-925-4400
Cell: 215-915-3147
Fax: 215-925-5365

Counsel for the Pennsylvania Democratic Party

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² The Pennsylvania Democratic Party remains willing to engage in discussions with the Philadelphia Board of Elections as to those accommodations which it believes it can reasonably grant while maintaining a secure, reliable process which ensures that every vote is counted promptly and properly, every voter’s privacy is protected, and every person working at or attending the canvass can maintain the social distancing and other precautions necessary in our days.

Appellant’s newly proposed remedy—which goes far beyond what was raised with the trial court—would substantially impair all these interests which are also incorporated within the Election Code.