

No. 20-845

**In the
Supreme Court of the United States**

DONALD J. TRUMP FOR PRESIDENT, INC.,
Petitioner,

v.

KATHY BOOCKVAR, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA,
et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

**MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF
OF THE REPUBLICAN PARTY OF PENNSYLVANIA, AS
AMICUS CURIAE IN SUPPORT OF PETITIONER'S APPLICATION FOR WRIT OF
CERTIORARI**

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Pursuant to Supreme Court Rule 37.2(b), the Republican Party of Pennsylvania (hereinafter the “PA GOP”) respectfully moves for leave to file the accompanying brief as *amicus curiae*. Due to the pending urgency of this action, PA GOP has been unable to secure the consent of the parties, but PA GOP has notified the parties of its intent to file this Motion and Brief.

There are more than three million registered Republicans in Pennsylvania. The PA GOP is a non-profit entity and was founded on November 27, 1854. The PA GOP is a protector of individual freedom and seeks to preserve the sanctity of liberty of the individual and the limitation of government. The PA GOP believes in a strong, free America and the ideals on which our country is founded.

This brief would be helpful to the Court because it briefly addresses the limited issue of Act 77 of 2019 in the context of Article I, § 4, cl. 1 of the Constitution.

Pursuant to this Court’s order of April 15, 2020, the PA GOP is hereby filing a single paper copy of this motion on 8½ x 11 inch paper under Rule 33.2.

The undersigned is a member in good standing of the Bar of the United States Supreme Court in good standing.

Respectfully submitted December 30, 2020,

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INTRODUCTION¹

“The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

The above quote is fitting because the Pennsylvania Supreme Court and Pennsylvania’s Executive Branch have usurped the power of the Pennsylvania’s Legislature and thus have violated the United States Constitution as set forth herein.

Act 77 of 2019 was signed into law by Governor Wolf on October 31, 2019. The effect of the law was to authorize “no excuse” mail in voting. 25 P.S. §§ 3150.11-3150.17.

Since its enactment, the Pennsylvania Supreme Court, as well as Pennsylvania’s Executive Branch, expanded Act 77 to the extent that it is almost unrecognizable. In several key decisions, the Pennsylvania Supreme Court unilaterally amended the Pennsylvania Election Code and all security requirements for mail-in voting. The Pennsylvania Supreme Court issued the following three opinions interpreting the Pennsylvania Election Code. These decisions are:

- 1) *In Re November 3, 2020 Gen. Election*, No. 149 MM 2020, 240 A.3d 591 (Pa. Oct. 23, 2020) (changing the law and prohibiting verification of signatures on absentee and mail ballot declarations and eliminating the statutory right for parties and campaigns to challenge absentee and mail ballots during canvassing on Election Day);
- 2) *In Re Canvassing Observation*, No. 30 EAP 2020, 2020 Pa. LEXIS 58792020, WL 6737895 (Pa. Nov. 17, 2020) (eliminating or modifying statutory right to meaningfully observe canvassing of absentee and mail ballots on Election Day); and

¹ Petitioner’s have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the Amicus Curiae, its members or its counsel made a monetary contribution to its preparation or submission.

- 3) *In Re Canvass of Absentee & Mail-In Ballots of Nov. 3, 2020 Gen. Election*, Nos. 31 EAP 2020, 32 EAP 2020, 33 EAP 2020, 34 EAP 2020, 35 EAP 2020, 29 WAP 2020, 2020 Pa. LEXIS 5989, 2020 WL 6875017 (Pa. Nov. 23, 2020) (eliminating or modifying statutory requirements for signing, addressing, and dating absentee and mail-in ballot declarations).

In the above cases the Pennsylvania Supreme Court disregarded the Pennsylvania Election Code by “rewriting” certain provisions concerning mail-in voting.

Prior to 2019, a voter was only eligible to vote by mail (absentee) ballot if they could establish cause. Pa. Const. Art. 7, § 14; 25 P.S. § 3146.1. Even in circumstances where mail-in voting was permitted, those votes were subject to signature verification, voter identification, and opposing parties and candidates were permitted to observe the entire canvassing process of mail-in ballots. See 25 P.S. §§ 3146.2, 3145.2b, 3146.8; *See also In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Elections*, 843 A.2d 1223, 1234 (Pa. 2004) (“so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed – particularly where...they are designed to reduce fraud.”). In 2019, the Pennsylvania General Assembly amended the Election Code, allowing for no-excuse mail-in voting by any eligible voter while leaving intact the additional security requirements such as signature verification, voter identification and canvassing observation. *See* 25 P.S. §§ 1302.2, 1306, 1308, Act 77, 2019 Pa. Legis. Serv. Act 2019-77 2019 Pa. ALS 77; 2019 Pa Laws 77; 2019 Pa. SB 421 (Apr. Oct. 31, 2019).

Despite the Pennsylvania General Assembly’s decision to leave the additional security requirements untouched, the Pennsylvania Supreme Court eliminated any semblance of a security requirement for absentee ballots using the COVID-19 pandemic as an excuse to amend the election code in the middle of the 2020 Election. These decisions have served to eliminate any protections

against voter fraud in mail-in (or absentee) ballots, and thus have undermined the faith and integrity of the Commonwealth's election and most importantly they have usurped the power of the Legislature.

ARGUMENT

A. THE PENNSYLVANIA SUPREME COURT'S DECISIONS ELIMINATED CRUCIAL SECURITY REQUIREMENTS FOR MAIL-IN BALLOTS, UNDERMINING THE LEGITIMACY AND INTEGRITY OF THE ELECTION.

The provisions of the election code relating to mail-in and absentee ballots were drafted as security features to ensure that mail-in ballots were legitimately cast. 25 P.S. §§ 1302.2, 1306, and 1308 provide that a mail-in voter's signature must be verified, that the voter is positively identified, and that observers may be present for the canvassing of mail-in ballots. These requirements were passed specifically to reduce the opportunities for voter fraud, as reflected in *In Re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1234 (Pa. 2004). But in a year in which mail-in ballots were received in record numbers, the Pennsylvania Supreme Court chose to unilaterally, and unconstitutionally, dismiss those security measures as "overlooked remnants of a prior, now eliminated, process." *In Re Nov. 3, 2020 General Election*, J-113-2020 at 29, n.24 (Pa. Oct. 23, 2020). This "elimination" of crucial security requirements for mail-in ballots came only one year after the Pennsylvania General Assembly amended the Election Code, choosing to change the eligibility of mail-in voters while leaving the security requirements contained in §§ 1302.2, 1306, and 1308 untouched. *See Act 77, 2019 Pa. Legis. Serv. Act 2019-77 2019 Pa. ALS 77; 2019 Pa Laws 77; 2019 Pa. SB 421 (Appr. Oct. 31, 2019).*

Article 1, Section 4, Clause 1 of the United States Constitution provides, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in

each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.” Accordingly, the Pennsylvania Legislature did prescribe a time, place, and manner when they enacted their amendments to the Election Code under Act 77. The Election Code, as passed and amended by the Pennsylvania Legislature, required that all mail-in ballots be received by 8:00 P.M. on Election Night, that poll workers verify the signatures of ballots, that defective absentee and mail-in ballots shall not be counted, and that “watchers” be permitted to observe the process of canvassing absentee and mail-in ballots.

On September 17, 2020, less than 7 weeks before Election Day and despite the clear and unambiguous prescribing of a “manner” of holding elections from the Pennsylvania Legislature, the Pennsylvania Supreme Court extended the statutorily defined mail-in ballot deadline to three days after Election Day. *Pa. Democratic Party v. Boockvar*, J-96-2020 (Pa. Sep. 17, 2020); *See also* 25 P.S. § 3150.16(a). This decision, made in the preceding days to the election, entirely ignored the Legislature’s clear decision to maintain a concrete deadline for receipt of ballots at 8:00 P.M. on Election Night, creating a situation where thousands of votes were counted that would have been late under the Legislature’s original deadline.

Art. I. Sec. 4, Cl. 1 of the United States Constitution makes clear that it is the Legislature, not the Court, which should decide the “Time, Place, and Manner” of Elections. The Pennsylvania Legislature indeed provided for such a “Time, Place, and Manner”. Yet the Pennsylvania Supreme Court, through several decisions in the days leading up to the Election and the days following it, entirely disregarded the Legislature’s directive and essentially created a new election system directly in contrast with provisions of the statutory system.

CONCLUSION

The 2020 General Election in the Commonwealth of Pennsylvania was a close election, with a difference of only 80,558 votes between the two parties. According to the 2020 election returns, President Trump received approximately 595,538 mail-in votes while Former Vice President Biden received approximately 1,995,691 mail-in votes, for a total of 2,591,229 mail-in votes being cast in the election. Further, as can be seen by the computation by certain members of the Pennsylvania House of Representatives, more than 200,000 more votes were cast in Pennsylvania than voters identified on Pennsylvania's DoS/SURE system, a true and correct copy of the Press Release by members of the Pennsylvania House of Representatives is attached hereto as "Exhibit A." Given the Pennsylvania Supreme Court's eradication of nearly all of the security requirements for mail-in ballots and the high number of overall mail-in ballots cast in the Election, Pennsylvania's certified results are anything but secure. Accordingly, the Republican Party of Pennsylvania respectfully requests that this Honorable Court grant Petitioner's Application for Writ of Certiorari.

Respectfully submitted,

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FOR IMMEDIATE RELEASE
 DECEMBER 28, 2020

PA Lawmakers: Numbers Don't Add Up, Certification of Presidential Results Premature and In Error

HARRISBURG – A group of state lawmakers performing extensive analysis of election data today revealed troubling discrepancies between the numbers of total votes counted and total number of voters who voted in the 2020 General Election, and as a result are questioning how the results of the presidential election could possibly have been certified by Secretary of the Commonwealth Kathy Boockvar and Governor Tom Wolf. These findings are in addition to prior concerns regarding actions by the Supreme Court of Pennsylvania, the Secretary, and others impacting the conduct of the election.

A comparison of official county election results to the total number of voters who voted on November 3, 2020 as recorded by the Department of State shows that 6,962,607 total ballots were reported as being cast, while DoS/SURE system records indicate that only 6,760,230 total voters actually voted. Among the 6,962,607 total ballots cast, 6,931,060 total votes were counted in the presidential race, including all three candidates on the ballot and write-in candidates.

The difference of 202,377 more votes cast than voters voting, together with the 31,547 over- and under-votes in the presidential race, adds up to an alarming discrepancy of 170,830 votes, which is more than twice the reported statewide difference between the two major candidates for President of the United States. On November 24, 2020, Boockvar certified election results, and Wolf issued a certificate of ascertainment of presidential electors, stating that Vice President Joe Biden received 80,555 more votes than President Donald Trump.

	Total Ballots Cast (County Data)	Total Votes Counted in Presidential Race (County Data)	SURE System Total Voters Who Voted 11/3/2020 (SURE Data)
County Data	6,962,607	6,931,060	6,760,230
SURE Data	-6,760,230	-6,760,230	
	202,377 <i>more ballots cast than voters who voted</i>	170,830 <i>more ballots cast than voters who voted</i>	

Note: Three small rural counties have not fully posted results online and their results were included as reported.

The lawmakers issued the following statement in response to their findings:

“We were already concerned with the actions of the Supreme Court of Pennsylvania, the Executive branch, and election officials in certain counties contravening and undermining the Pennsylvania Election Code by eliminating signature verification, postmarks, and due dates while allowing the proliferation of drop boxes with questionable security measures and the unauthorized curing of ballots, as well as the questionable treatment of poll watchers, all of which created wholesale opportunities for irregularities in the 2020 presidential election.”

“However, we are now seeing discrepancies on the retail level which raise even more troubling questions regarding irregularities in the election returns. These findings call into question the accuracy of the SURE system, consistency in the application of the Pennsylvania Election Code from county to county, and the competency of those charged with oversight of elections in our Commonwealth.

“These numbers just don’t add up, and the alleged certification of Pennsylvania’s presidential election results was absolutely premature, unconfirmed, and in error.”

State Representative Frank Ryan indicated that state legislators sponsoring and participating in this analysis were himself, Rep. Russ Diamond, Rep. Dave Zimmerman, Rep. Barb Gleim, Rep. Stephanie Borowicz, Rep. Dan Moul, Rep. Paul Schemel, Rep. Dawn Keefer, Rep. Eric Nelson, Rep. Mike Jones, Rep. Rob Kauffman, Rep. David Maloney, Rep. David Rowe, Rep. Kathy Rapp, Rep. Daryl Metcalfe, Rep. Jim Cox and Rep Brett Miller.

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