

No. 20-

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 WRITS OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

MOTION FOR EXPEDITED CONSIDERATION

BRUCE S. MARKS, Esq.
MARKS & SOKOLOV, LLC
1835 Market Street, Suite 1717
Philadelphia, PA 19103
(215) 569-8901

JOHN C. EASTMAN, Esq.
Counsel of Record
174 West Lincoln Avenue, Suite 620
Anaheim, CA 92805
(909) 257-3869
jeastman562@gmail.com

Counsel for Petitioners

300748



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

**MOTION FOR EXPEDITED CONSIDERATION OF THE
PETITION FOR A WRIT OF CERTIORARI AND
EXPEDITED MERITS BRIEFING AND ORAL ARGUMENT
IN THE EVENT THAT THE COURT GRANTS THE PETITION**

Petitioner Donald J. Trump for President, Inc., the re-election campaign for President Trump, respectfully requests, pursuant to Supreme Court Rule 21, that this Court expedite its consideration of the petition for a writ of certiorari filed today. Petitioner further requests, pursuant to Supreme Court Rule 25.4, that if the petition is granted, the Court expedite the schedule for briefing and oral argument, if the Court deems such helpful. Such expedited review would allow an orderly and timely resolution of the important questions presented under the U.S. Constitution and federal law. It is in the best interests of the parties, as well as the Nation, that this Court have as much time as possible to consider the relative merits of the parties' positions and to issue its decision sufficiently in advance of impending deadlines.

The Cases At Issue

Petitioner seeks a writ of certiorari to review the constitutionality of three related Pennsylvania Supreme Court opinions eviscerating the laws enacted by the Pennsylvania Legislature governing the election of presidential electors in the middle of the 2020 Presidential election, in violation of Article II and *Bush v. Gore*, 531 U.S. 98 (2000).¹ A related decision, *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d

¹ The petition is filed now as the need for relief did not fully ripen until this Court denied relief in *Kelly v. Commonwealth of Penn.* (No. 20A98) and did not grant the motion to file the bill of complaint in *State of Tex. v. Commonwealth of Penn.* (No. 22O155).

345 (Pa. Sep. 17, 2020) (extending the statutory deadline for receipt of absentee and mail ballots for three days); is already before this Court (No. 20-542).² The additional three Pennsylvania Supreme Court decisions are:

- (1) *In re November 3, 2020 Gen. Election*, No. 149 MM 2020, 240 A.3d 591 (Pa. Oct. 23, 2020), reprinted in Petitioner's Appendix ("Pet. App.") C (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), Pet. App. B (eliminating campaigns' statutory right to meaningfully observe canvassing of absentee and mail ballots on Election Day); and
- (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), Pet. App. A (eliminating or modifying statutory requirements for signing, addressing, and dating absentee and mail-in ballot declarations).

As Justice Alito, joined by Justice Thomas and Justice Gorsuch, noted regarding the Pennsylvania Supreme Court decision already before it:

The Supreme Court of Pennsylvania has issued a decree [*Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. Sep. 17, 2020)] that squarely alters an important statutory provision enacted by the Pennsylvania Legislature pursuant to its authority under the Constitution of the United States to make rules governing the conduct of elections for federal office. ...

[T]he constitutionality of the State Supreme Court's decision ... has national importance, and there is a strong likelihood that the State Supreme Court decision violates the Federal Constitution. The provisions of the Federal Constitution conferring on

² Petitioner's motion to intervene in this case is pending.

state legislatures, not state courts, the authority to make rules governing federal elections would be meaningless if a state court could override the rules adopted by the legislature simply by claiming that a state constitutional provision gave the courts the authority to make whatever rules it thought appropriate for the conduct of a fair election.

Republican Party v. Boockvar, 208 L.Ed.2d 266, 267, 2020 U.S. LEXIS 5188, 2020 WL 6304626 (2020) (citing U.S. Const. art. I, §4, cl. 1; art. II, §1, cl. 2; *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U. S. 70, 76 (2000)) (emphasis added). Likewise, the Pennsylvania Supreme Court's three decisions that are the basis of Petitioner's writ of certiorari before this Court raise substantial federal questions as to the Commonwealth's compliance with art. II, §1, cl. 2 and 3 U.S.C. §5, which govern the manner in which States handle Presidential elections. *See also Bush v. Gore*, 531 U.S. at 113 ("A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.") (Rehnquist, C.J., concurring).

The Pennsylvania Supreme Court's decisions involve issues of the utmost federal importance involving the Constitution's most fundamental rights as exercised in the Nation's most important election. The outcome of the election for the Presidency of the United States hangs in the balance because the selection of presidential electors is governed by the Constitution and congressional enactment, in addition to state law enacted by the Legislature. In the four related opinions, the Pennsylvania Supreme Court dramatically changed Pennsylvania law governing

absentee and mail voting during the 2020 Presidential election,³ which likely changed the result in Pennsylvania and, potentially, the outcome of the overall Presidential election. The Pennsylvania Supreme Court's changes are contrary to settled caselaw, the unambiguous language of the Election Code of the Commonwealth of Pennsylvania, and *Bush v. Gore*, 531 U.S. at 104-05 ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."). Only the state Legislatures, not the Courts, are empowered to set (or change) the rules for selecting Presidential electors.

The Need for Expedited Consideration

This Court should review the Pennsylvania Supreme Court's decisions and enter an appropriate remedy on an expedited basis.

First, the ordinary briefing schedules prescribed by Rules 15 and 25 of this Court would not allow the case to be considered and decided before the results of the general election must be finalized before the following upcoming deadlines: Congress is scheduled to count the electoral votes and declare a winner on January 6, 2021 (*see* 3 U.S.C. § 15), and Inauguration Day for the President and Vice President is January 20, 2021 (*see* U.S. Const. amend. XX), only approximately 30 days from now. These deadlines would expire before the completion of briefing, argument, and a decision on the merits under the Court's default rules. *See* U.S. Sup. Ct. R. 15, 25.

³ That the changes to the Commonwealth's Election Code were imposed by judicial fiat at the last minute just weeks and days before the election only underscores the error. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006).

Second, time is plainly of the essence because once candidates have taken office, it will be impossible to repair election results tainted by illegally and belatedly cast or absentee and mail ballots. Thus, without expedited review, Petitioner's appellate rights-and this Court's power to resolve the important constitutional and legal questions presented for this election may be irrevocably lost. *See, e.g., Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 1004, 1005 (2000) (granting petitioner's motion to expedite consideration of petition for a writ of certiorari).

Third, this Court's expedited review will in no way prejudice Respondents, many of which are state government agencies which have a similar interest that the Constitution be followed.

Finally, if this matter is not timely resolved, not only Petitioner, but the Nation as a whole may suffer injury from the resulting confusion. Indeed, the intense national and worldwide attention on the 2020 Presidential election only foreshadows the disruption that may well follow if the uncertainty and unfairness shrouding this election are allowed to persist. The importance of a prompt resolution of the federal constitutional questions presented by this case cannot be overstated.

Accordingly, Petitioner submits that Respondents should be directed to file their response(s) to the petition by 12:00 noon on December 23, 2020; and Petitioner submit its Reply Brief in support of certiorari by 12:00 noon on December 24, 2020. If certiorari is granted, if the Court deems additional briefing will be helpful, Petitioner submits that the Court should order expedited contemporaneous opening

merits briefs for Petitioner and Respondents, together with any amicus curiae briefs, and contemporaneous Reply briefs for Petitioner and Respondents within 24 hours thereafter. If oral argument is deemed helpful, Petitioner submits that it should be ordered expedited, as well.

Respectfully submitted this 20th day of December, 2020.

Bruce S. Marks
Marks & Sokolov, LLC
1835 Market St., #1717
Phil., PA 19103
(215) 569-8901
Marks@mslegal.com

John C. Eastman
Counsel of Record
174 W. Lincoln Ave, #620
Anaheim, CA 92805
(909) 257-3869
Jeastman562@gmail.com

Counsel for Petitioner