
IN THE SUPREME COURT OF PENNSYLVANIA

DISABILITY RIGHTS PENNSYLVANIA;
SENIORLAW CENTER; SOUTHEAST ASIAN
MUTUAL ASSISTANCE ASSOCIATIONS
COALITION, INC. (SEAMAAC); SUZANNE ERB;
THE BARRISTERS' ASSOCIATION OF
PHILADELPHIA,

Petitioners,

v.

KATHY BOOCKVAR, IN HER CAPACITY AS
SECRETARY OF THE COMMONWEALTH OF
PENNSYLVANIA; AND JESSICA MATHIS, IN HER
CAPACITY AS DIRECTOR OF THE BUREAU OF
ELECTION SERVICES AND NOTARIES OF THE
PENNSYLVANIA DEPARTMENT OF STATE,

Respondents.

No. 83 MM 2020

**PETITIONERS' APPLICATION FOR SPECIAL RELIEF IN THE
NATURE OF A PRELIMINARY INJUNCTION**

Pursuant to Rule 1531(a) of the Pennsylvania Rules of Civil Procedure
Petitioners, through their counsel, hereby move for special relief in the form of a
preliminary injunction enjoining Respondents Secretary of the Commonwealth
Kathy Boockvar and Director Jessica Mathis from enforcing, during the upcoming
June 2020 primary, Act 77's requirement that mail-in and absentee ballots be
received by election day. In support of their application, Petitioners hereby
incorporate (1) the Verified Petition for Review in this action filed April 27, 2020,

and (2) the Memorandum in Support of Preliminary Injunction filed along with this application. Petitioners further state the following:

BACKGROUND

1. As set forth in the Petition for Review filed April 27, 2020, and in the Memorandum accompanying this application, enforcement of Act 77's "received-by" deadline during the COVID-19 pandemic violates the Pennsylvania Constitution.

2. Under Act 77, enacted October 31, 2019, a mail-in or absentee ballot will not be counted unless it is received by a county election board "on or before eight o'clock P.M. the day of the primary or election." 25 P.S. §§ 3146.6(c), 3146.8(g)(1)(ii), 3150.16(c).

3. Given the risks posed by in-person voting during the pandemic, applications to vote by mail have skyrocketed. This massive uptick in applications has already led to backlogs in processing applications by county boards of elections. Those backlogs will only continue to grow as election day nears. Mail delivery by the U.S. Postal Service has also slowed due to the pandemic. And as a result of these inevitable delays, a significant number of eligible Pennsylvania voters who timely request absentee and mail-in ballots by the May 26, 2020 deadline for the primary will not receive their ballots until close to election day, June 2. Voters who are uncertain whether there is enough time to mail back their

ballots will be forced to risk their lives to vote in person, and even then, they will only be able to vote by provisional ballot for the June 2 primary. Other votes will mail back their ballots and miss the arrival deadline through no fault of their own.

4. Pursuant to Pennsylvania Rule of Appellate Procedure 1532(a), this Court may order special relief, including a preliminary or special injunction “in the interest of justice and consistent with the usages and principles of law.” The standard for obtaining a preliminary injunction under this rule is the same as that for a grant of a preliminary injunction pursuant to the Pennsylvania Rules of Civil Procedure. *Shenango Valley Osteopathic Hosp. v. Dep’t of Health*, 451 A.2d 434, 441 (Pa. 1982). Preliminary injunctive relief may be granted at any time following the filing of a Petition for Review. *See* Pa. R. App. P. 1532(a).

INJUNCTIVE RELIEF

5. The Court in deciding whether to issue a preliminary injunction considers whether (1) the petitioner is likely to prevail on the merits; (2) an injunction is necessary to prevent immediate and irreparable harm; (3) greater injury would result from refusing the injunction than from granting it, and granting it will not substantially harm other interested parties; (4) the injunction will not adversely affect the public interest; (5) the injunction will properly restore the parties to their status immediately prior to the passage of the law; and (6) the

injunction is reasonably suited to abate the offending activity. *SEIU Healthcare Pa. v. Commonwealth*, 104 A.3d 495, 501-02 (Pa. 2014).

6. As explained in greater detail in the accompanying Memorandum, Petitioners meet all of the elements for the entering of a preliminary injunction in this case.

7. *First*, Petitioners are likely to succeed on the merits of their claims. Enforcement of the received-by deadline amid the COVID-19 pandemic will place unconstitutional burdens on the ability to cast a ballot by forcing many voters to risk their health by voting in person, will disenfranchise a significant number of eligible Pennsylvania voters whose absentee and mail-in ballots arrive too late, and will treat similarly situated voters differently depending on factors like where they live in the state and whether they can risk exposure to a deadly virus by voting in person.

8. Enforcement of the received-by deadline will thus violate the guarantee of Article I, Section 5 of the Pennsylvania Constitution, which provides that “[e]lections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

9. Enforcement of the received-by deadline will also violate the Pennsylvania Constitution’s guarantees of free expression and association, as it will prevent many voters from engaging in core political expression or will

condition their political expression on their ability to risk their health by voting in person.

10. Enforcement of the deadline will also violate the Pennsylvania Constitution's equal protection guarantees, as it will necessarily result in the differential treatment of similarly situated voters based on unpredictable variation in application-processing and mail-delivery times due to the pandemic, and based on age, disability, health, and English proficiency status.

11. And enforcement of the received-by deadline will violate Article VII, § 14(a) of the Pennsylvania Constitution by placing undue burdens on, or outright disenfranchising, voters who have a constitutional right to cast an absentee ballot.

12. *Second*, enjoining enforcement of the received-by deadline will prevent several forms of immediate and irreparable harm. The received-by deadline threatens to deprive a large number of Pennsylvanians of their fundamental right to vote. It will cause many voters to endanger their health by voting in person to avoid having their mail-in ballot arrive too late. It will force many voters to cast their votes significantly earlier than they otherwise would. And it will force the organizational Petitioners to divert resources away from other election-related purposes and toward educating citizens about mail-in deadlines.

13. *Third*, these immediate irreparable harms dramatically outweigh any injury the Commonwealth might claim from having to consider ballots timely if

sent on or before the day of the primary. The U.S. Supreme Court recently approved the same relief Petitioners seek in Wisconsin, and many states that allow voting by mail consider ballots timely if postmarked on or the day before election day, showing that such sent-by-election-day rules are manageable and impose no significant administrative burden.

14. *Fourth*, the public interest strongly favors an injunction that will avoid a widespread deprivation of the right to vote and will protect public health by reducing the number of citizens forced to vote in person.

15. *Fifth*, an injunction will restore Pennsylvania voters to the pre-COVID-19 status quo, when voters did not need to risk their lives to ensure their votes would be counted

16. *Finally*, the narrow injunction that Petitioners seek—to prevent enforcement of the received-by deadline during the upcoming primary election given the pandemic—is reasonably tailored to the offending activity.

17. Under ordinary principles of severability, the received-by deadline is severable from the remainder of Act 77. While Act 77 has a boilerplate non-severability provision, that provision is not controlling under this Court's precedent, and applying the provision here would be unconstitutional because it would result in wholly eliminating no-excuse mail-in voting during a deadly

pandemic, exacerbating the very constitutional violations underlying Petitioners' claims.

EXPEDITED TIMING

18. The Commonwealth has a primary election scheduled for June 2, 2020. Petitioners seek an injunction that will prevent enforcement of the received-by deadline for that upcoming primary election in order to prevent irreparable constitutional injury that will occur absent the injunction. Petitioners thus respectfully submit that the interests of all parties as well as the general public will be best served by a schedule that allows this Court to resolve Petitioners' application for a preliminary injunction as soon as possible to ensure that such injunction could be implemented in time for the primary.

19. Petitioners request that this Honorable Court therefore set an expedited schedule for briefing and hearing in this application, and propose the following schedule:

- Respondents file a response and/or brief in opposition to preliminary injunction by Monday, May 11, 2020.
- Petitioners file any reply in support of preliminary injunction by May 14, 2020.
- Preliminary injunction hearing held at the Court's convenience thereafter, if the Court determines that a hearing is warranted.

WHEREFORE, for all the foregoing reasons, and those stated in the Petition for Review and Memorandum accompanying this application, Petitioners respectfully request that this Honorable Court grant their application for special relief in the nature of a preliminary injunction, and enter an order that:

- a. Enjoins Respondents, their agents, officers, and employees from enforcing the received-by deadline for absentee and mail-in ballots in 25 P.S. §§ 3146.6(c), 3146.8(g)(1)(ii), 3150.16(c) for the June 2, 2020 primary, based on the public health emergency related to COVID-19.
- b. Enjoins Respondents, their agents, officers, and employees, for the 2020 primary election, to consider timely any absentee or mail-in ballot if:
 1. The ballot is received in the office of the county board of elections by 8 p.m. on June 2, 2020;
 2. The ballot is postmarked on or before the day of the primary election, and is received in the office of the county board of elections no later than June 9, 2020;
 3. If the ballot has no postmark, a postmark with no date, or an illegible postmark, the ballot is delivered by the United States Postal Service to the office of the county board of elections no later than June 3, 2020.

FURTHERMORE, Petitioners respectfully request that this Honorable Court shorten the time for Respondents' response and/or brief in opposition to a preliminary injunction pursuant to Pa. R. App. P. 123(b), and set a schedule for expedited briefing and hearing on this application in accordance with the proposed order submitted with this application.

Respectfully submitted,

Dated: May 4, 2020

/s/ Benjamin D. Geffen

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**ORDER GRANTING APPLICATION FOR SPECIAL RELIEF IN THE
NATURE OF A PRELIMINARY INJUNCTION**

AND NOW, this _____ day of _____, 2020, upon consideration of
Petitioners' Petition for Review, Application for Special Relief in the Nature of a
Preliminary Injunction, and Memorandum in Support, it is hereby **ORDERED** that
said Application is **GRANTED**.

IT IS FURTHER ORDERED that Respondents, their agents, officers, and
employees are **ENJOINED** from enforcing the received-by deadline for absentee

and mail-in ballots in 25 P.S. §§ 3146.6(c), 3146.8(g)(1)(ii), 3150.16(c) for the June 2, 2020 primary, based on the public health emergency related to COVID-19.

IT IS FURTHER ORDERED that Respondents, their agents, officers, and employees are **ENJOINED**, for the 2020 primary election, to consider timely any absentee or mail-in ballot if:

1. The ballot is received in the office of the county board of elections by 8 p.m. on June 2, 2020;
2. The ballot is postmarked on or before the day of the primary or general election, and is received in the office of the county board of elections no later than June 9, 2020;
3. If the ballot has no postmark, a postmark with no date, or an illegible postmark, the ballot is delivered by the United States Postal Service to the office of the county board of elections no later than June 3, 2020.

BY THE COURT:

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**ORDER GRANTING APPLICATION FOR EXPEDITED BRIEFING AND
HEARING SCHEDULE, AND TRUNCATING RESPONSE TIME**

AND NOW, this _____ day of _____, 2020, upon consideration of
Petitioners' Petition for Review, Application for Special Relief in the Nature of a
Preliminary Injunction, and Memorandum in Support, it is hereby **ORDERED** that
the parties proceed pursuant to the following schedule for briefing and hearing in
this case:

Respondents shall file their response to this application and/or brief in opposition to the preliminary injunction no later than Monday, May 11, 2020.

Petitioners shall file any reply in support of preliminary injunction by May 14, 2020.

A hearing on Petitioners' application is set for _____, 2020.

BY THE COURT:
