

No. 20-542

In the Supreme Court of the United States

REPUBLICAN PARTY OF PENNSYLVANIA,
Petitioner

v.

KATHY BOOCKVAR, IN HER OFFICIAL CAPACITY AS
SECRETARY OF PENNSYLVANIA, ET AL.,
Respondents

**RESPONSE IN OPPOSITION TO
MOTION FOR EXPEDITED CONSIDERATION**

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The Pennsylvania Office of Attorney General, on behalf of the Secretary of the Commonwealth Kathy Boockvar, respectfully files this response in opposition to Petitioner's motion for expedited consideration of the petition for writ of certiorari. Petitioner is Pennsylvania Republican Party ("the Republican Party"). Respondents are Secretary Boockvar, the Pennsylvania Democratic Party, and all 67 Pennsylvania County Boards of Elections. For the following reasons, Secretary Boockvar respectfully requests that the motion to expedite be denied.

On September 17, 2020, the Pennsylvania Supreme Court issued its decision not to disenfranchise Pennsylvania voters during a deadly pandemic due to circumstances beyond their control. Instead of moving expeditiously, as it now claims circumstances require, the Republican Party waited until 9 p.m. on Friday, October 23 to file its petition for writ of certiorari and motion to expedite. That is more than five weeks after the Pennsylvania Supreme Court's decision, and four days after this Court declined to stay that decision. The Republican Party's own conduct created the very "emergency" that they now claim compels extraordinarily expedited consideration.

Importantly, this Court already had the opportunity to consider this matter on an expedited basis well before Election Day and declined to do so. Indeed, when the Secretary responded 21 days ago to the Republican Party's request, the Secretary suggested that, if this Court were to decide these issues, that it must do so immediately so as to not alter the rules on the eve of the election. This Court considered these issues for 13 days before ultimately deciding to leave the

Pennsylvania Supreme Court ruling in place. The election is now only eight days away. Time has run out.

Since September 17, Pennsylvania voters and the Secretary have relied upon the Pennsylvania Supreme Court's disposition, and, subsequently, upon this Court's decision not to intervene. That timeframe coincides with yet another spike in coronavirus cases in Pennsylvania (and the Country as whole), forcing Pennsylvanians to re-evaluate the risks associated with voting in person. More than 1.1 million Pennsylvanians have applied to vote by mail since the Pennsylvania Supreme Court's decision and more than 168,000 have done so since this Court declined to enter a stay.

Tomorrow, October 27, is the deadline for Pennsylvanians to request a mail-in ballot. Any Pennsylvanian who submits their mail-in ballot application today or tomorrow does so under the belief that there is ample time: (1) for that application to be processed; (2) for their ballot to then be mailed to them; (3) for them to then fill out their ballot and mail it back by November 3; and (4) for the United States Postal Service to deliver that ballot by November 6. This good-faith reliance on the current state of the law tips the balance against granting expedited consideration at this late date.

Recently, this Court recognized the primacy of voters' reliance interest in *Andino v. Middleton*, 20A55 (October 5, 2020). There, a South Carolina District Court order, entered on September 18, 2020, enjoining that state's witness requirement for absentee ballots during the COVID-19 pandemic. On October 5, this Court stayed the

District Court’s decision, thus reinstating the witness requirement. Recognizing that South Carolina voters submitted ballots without witnesses in the timeframe between the District Court’s September 18 injunction and this Court’s October 5 stay, however, this Court specified that “any ballots cast before this stay issues and received within two days of this order may not be rejected for failing to comply with the witness requirement.” This Court has thus acknowledged that voters should not be punished for relying upon the rules.

Similar reliance interests here compel this Court to maintain the status quo for Pennsylvania voters at this late juncture. As this Court has long recognized, “Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam); see also *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, ___U.S.___, 140 S. Ct. 1205, 1207 (2020).

This principle arises from the recognition that “[t]here is good reason to avoid last-minute intervention in a state’s election process. Any intervention at this point risks practical concerns including disruption, confusion or other unforeseen deleterious effects.” *Republican Party of Pennsylvania v. Cortes*, 218 F.Supp.3d 396, 404–05 (E.D. Pa. 2016) (alteration in original) (citation and quotation omitted). More fundamentally, “[c]omity between the state and federal governments also counsels against last-minute meddling. Federal intervention * * * risks a disruption in the

state electoral process [which] is not to be taken lightly. This important equitable consideration goes to the heart of our notions of federalism.” *Ibid.*

The Republican Party’s latest request for this Court’s intervention seeks precisely the eleventh-hour federal court meddling that the *Purcell* principle counsels against. The motion to expedite should be denied.

CONCLUSION

The Court should deny the motion for expedited consideration of the petition for writ of certiorari.

Respectfully submitted,

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October 26, 2020