

No. 20-740

IN THE

Supreme Court of the United States

JIM BOGNET, ET AL.,
Petitioners,

v.

KATHY BOOCKVAR, SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA, ET AL.,
Respondents.

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Third Circuit

BRIEF OF RESPONDENT
WESTMORELAND COUNTY
BOARD OF ELECTIONS IN OPPOSITION

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INTRODUCTION

In Pennsylvania, the sixty-seven (67) counties are responsible for conducting local, state, and federal elections. The Westmoreland County Board of Elections consists of two Republicans and one Democrat. This Board strives to ensure that eligible Westmoreland County voters, who wish to exercise their constitutional right to vote are able to do so.

The General Election of 2020 has been finished for months. County election officials certified the 2020 election results to the Secretary of the Commonwealth of Pennsylvania in November of 2020. The Pennsylvania County Boards of Election, including that in Westmoreland County, is now preparing for the 2021 Municipal Primary. As of this submission, the Municipal Primary is a little over two months away. The Pennsylvania Supreme Court has not extended the mail-in-ballot deadline on its own. In addition, there is no

litigation pending that is seeking to extend the ballot deadline.

The Westmoreland County Board of Elections sets forth the following argument in opposition to the Petitioners' Petition for Writ of Certiorari.

SUMMARY OF ARGUMENT

The Westmoreland County Board of Elections respectfully submits that the petition for certiorari should be denied by this Honorable Court when the election is now concluded, the results have been certified by the Commonwealth of Pennsylvania and by Congress, and President Joseph R. Biden has been sworn in as President approximately two months ago. As such, Petitioners' claims are now moot and non-justiciable. Even if Petitioners' relief was granted, the outcome of the election would not change. In addition, this matter is incapable of evading judicial review.

ARGUMENT

I. The Within Petition for Certiorari Should Be Denied When The Pennsylvania Election Results Have Been Certified, Thus Making This Case Moot And Non-Justiciable

Article III limits the jurisdiction of the federal courts to actual “cases” or “controversies.” U.S. Const. art. III, sect. 2, cl. 1. “An actual controversy must exist not only at the time the complaint is filed, but through all stages of the litigation.” *Trump v. New York*, 141 S.Ct. 530, 534 (2020) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90-91 (2013)). The case-or-controversy requirement of Article III involves two related doctrines:

First, a plaintiff must demonstrate standing, including “an injury that is concrete, particularized, and imminent rather than conjectural or hypothetical.” (internal citations omitted). Second, the case must be “ripe”—not dependent on “contingent future events that may not occur as anticipated, or indeed may not occur at all.” (internal citations omitted).

Trump v. New York, 141 S.Ct. at 535.

This case would now be moot, causing there to be no actual controversy existing for purposes of Article III jurisdiction. In the case at hand, Petitioners seek to overturn the September 17, 2020 Pennsylvania Supreme Court decision. This ruling extended the November 3, 2020 deadline for county board of elections in Pennsylvania to receive mail-in ballots from the United States Post Office by three days or until November 6, 2020 at 5pm. *See Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020).

The September 17, 2020 decision of the Pennsylvania Supreme Court's was limited to the November 3rd General Election due to the "unprecedented" circumstances of the 2020 General Election. *Id.* at 371. Since that time, the 2020 General Election concluded, the presidential results were certified by the Commonwealth of Pennsylvania and by the United States Congress, and President Joseph R. Biden has been sworn in as President of the United States for over two

months. Moreover, even if this Court were to invalidate the roughly 10,000 votes received by Pennsylvania county election boards in the three days after the November 3rd Election, it would not change the results in Pennsylvania. Now President Biden obtained approximately 80,000 more votes than President Trump did without those 10,000 mail-in ballots.

Moreover, there is no reasonable expectation that the circumstances underlying this pending litigation are “capable of repetition yet evading review.” *See Spencer v. Kemna*, 523 U.S. 1, 17 (1998) (recognizing exception to mootness doctrine). The exception to mootness applies “only in exceptional situations,” where (1) “the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration,” and (2) “there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.” *Kingdomware Technologies, Inc. v. U.S.*, 136 S.Ct. 1969, 1976 (2016) (quoting *Kemna*, at 17).

Neither prong can be met in the case at hand. Initially, the challenged action is not too short to be fully litigated prior to cessation or expiration. *See Kingdomware Technologies*, 136 S.Ct. at 1976. The Pennsylvania Supreme Court issued the Order on September 17, 2020, a month and a half prior to the November 3rd General Election. The Petitioner filed its action in the United States District Court for the Western District Court of Pennsylvania on October 22, 2020. By that time, this Honorable Court had denied a petition to stay the Pennsylvania Supreme Court's order a few days prior. There is nothing to indicate that the Petitioners could not have filed their action prior to when it did at the eleventh hour.


Second, there is no "reasonable expectation that the same complaining party [will] be subject to the same action again." The November General Election in Pennsylvania was a "perfect storm" in light of the changes to the mail-in-voting, the Nation facing an unimagined

Pandemic and the high voter turn-out. It is unlikely that Petitioners or anyone else will be subject to the same action. This is exemplified by the Pennsylvania Supreme Court limiting its decision to the November General Election.

CONCLUSION

In light of the foregoing, no exception to mootness should be applied and the petition for certiorari should be denied.

Respectfully submitted,


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