

No. 20-740

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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JIM BOGNET, *et al.*,

*Petitioners,*

vs.

VERONICA DEGRAFFENREID, in her capacity as  
Acting Secretary of the Commonwealth of  
Pennsylvania;  
FRANKLIN COUNTY BOARD OF ELECTIONS, *et al.*,

*Respondents.*

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

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**BRIEF IN OPPOSITION OF  
RESPONDENTS, FRANKLIN COUNTY BOARD OF  
ELECTIONS AND PERRY COUNTY BOARD OF ELECTIONS**

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/s/ Frank J. Lavery, Jr.

Frank J. Lavery, Jr., Esquire  
Pennsylvania Supreme Court I.D.: 42370  
*Counsel of Record for the  
Respondents, Franklin County Board  
of Elections and Perry County Board  
of Elections*

Lavery Law  
225 Market Street, Suite 304  
Harrisburg, PA 17319  
(717) 233-6633

flavery@laverylaw.com

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## INTRODUCTION

On September 17, 2020, the Pennsylvania Supreme Court extended the receipt deadline for mail-in ballots in Pennsylvania until three days after Election Day, or until Friday, November 6, 2020 at 5:00 PM, with a presumption of timeliness on mail-in ballots lacking a postmark or other proof of timely mailing. See Pennsylvania Democratic Party v. Boockvar, No. 133 MM 2020, 2020 WL 5554644 (Pa. Sept. 17, 2020). On October 22, 2019, Jim Bognet, a former candidate for office running to represent Pennsylvania's 8th Congressional District and four individual voters, all residents of Somerset County, Pennsylvania, ("the Plaintiffs") filed a Complaint for Declaratory and Injunctive Relief in the United States District Court for the Western District of Pennsylvania. The Plaintiffs also filed a Motion for an Immediate Temporary Restraining Order, a Preliminary Injunction, as well as a request for an Expedited Hearing. In their Complaint, the Plaintiffs alleged violations of the Elections Clause, the Electors Clause, and the Equal Protection Clause of the United States Constitution.

The Franklin County Board of Elections and the Perry County Board of Elections, along with the Boards of Elections of each of the Commonwealth's counties, were listed as a party to Plaintiffs' Complaint. Plaintiffs' Complaint contained no specific allegations of wrongdoing on the part of the Franklin County Board of Elections and/or the Perry County Board of Elections related to alleged election-related conduct. In fact, although the Franklin County Board of Elections and the Perry County Board of Elections both appear in the caption, Plaintiffs raised no specific allegations against either Board of Elections.

## ARGUMENT

As noted above, Plaintiffs' Complaint contains no allegations against Franklin County or Perry County. Plaintiffs did not and cannot raise any specific allegations against Franklin County or Perry County because both counties complied with the laws of the Commonwealth while administering the November 2020 Election. Specifically, both Franklin and Perry County adhered to The Honorable Associate Justice Samuel A. Alito, Jr.'s directive that mail-in ballots received between November 3 and 6, 2020, be segregated. Therefore, Franklin County and Perry County maintain that their respective Boards of Elections properly administered free and fair elections for the citizens of their counties. It remains the intention of both Franklin and Perry Counties to avoid additional and unnecessary costs and expense, placed on the residents of both counties, related to the November 2020 election. To that end, both Franklin County and Perry County filed Waivers on December 23, 2020, waiving their right to Respond to Plaintiffs' Petition. On January 13, 2020, the Court requested that Franklin County and Perry County file responses in this matter.

Franklin County and Perry County submit that the Petition before the Court should be denied as moot. With the conclusion and certification of the November 2020 Election, there is no longer a "case" or "controversy" before the Court. In the absence of a case or controversy, the judiciary has should not decide a legal dispute. See Daimler Chrysler Corp. v. Cuno, 547 U.S. 341 (2006). This Court has repeatedly held that "an actual controversy must exist not only 'at the time the complaint is filed,' but through 'all stages' of the litigation." Alvarez v. Smith, 558 U.S. 87, 92 (2009); see also Arizonans for

Official English v. Arizona 520 U.S. 43, 67 (1997) (“To qualify as a case fit for federal-court adjudication, ‘an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.’”). Franklin County and Perry County respectfully suggest that the Court has denied similar attempts to revisit and litigate the November 2020 Election. (See, the February 22, 2021 denials of the Petitions for Writs of Certiorari filed at No. 20-542 (Republican Party of Pennsylvania v. Veronica Degraffenreid, Acting Secretary of Pennsylvania) and No. 20- 574 (Jake Corman v. Pennsylvania Democratic Party)).

In addition to the foregoing argument, Franklin County and Perry County join and adopt the position and reasoning of the United States Court of Appeals for the Third Circuit related to all of Petitioners’ claims in its Petition for a Writ of Certiorari. (See, Bognet v. Secretary Commonwealth of Pennsylvania, 980 F.3d 336 (3d Cir. 2020)).

### **CONCLUSION**

WHEREFORE, the Respondents, Franklin County Board of Elections and Perry County Board of Elections, respectfully request that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

LAVERY LAW

By: /s/ Frank J. Lavery, Jr.

Frank J. Lavery, Jr., Esquire

PA Supreme Court ID.: 42370

225 Market Street, Suite 304

Harrisburg, PA 17108

(717) 233-6633

[flavery@laverylaw.com](mailto:flavery@laverylaw.com)

Counsel for the Respondents, Franklin County  
Board of Elections and Perry County Board of  
Elections