

No. 20-___

(Related to No. 20A98)

In the

Supreme Court of the United States

MIKE KELLY, U.S. Congressman; SEAN PARNELL; THOMAS A. FRANK;
NANCY KIERZEK; DEREK MAGEE; ROBIN SAUTER; MICHAEL KINCAID;
and WANDA LOGAN,

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA; PENNSYLVANIA GENERAL
ASSEMBLY; THOMAS W. WOLF, in his official capacity as Governor of the
Commonwealth of Pennsylvania; and KATHY BOOCKVAR, in her official capacity
as Secretary of the Commonwealth of Pennsylvania,

Respondents.

**On Petition for A Writ of Certiorari
to the Supreme Court of Pennsylvania**

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

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Petitioners respectfully move, pursuant to Supreme Court Rule 21, for expedited consideration of the petition for a writ of certiorari, filed today, to review the judgment of the Supreme Court of Pennsylvania entered November 28, 2020 and its December 3, 2020 denial of a stay of that November 28 Order. (Pet. App. 1a, 16a). Expedited review is warranted because of the need to resolve this appeal in time to implement constitutionally permissible voting procedures for Pennsylvania's 2021 primary and general elections and to minimize limitations on the ability to provide relief with respect to the 2020 **general** election. Petitioners also move for expedited consideration of this motion and for this Court to order respondents to respond to this motion by **Tuesday, December 15, 2020**.

STATEMENT

Respondent, Governor Thomas Wolf, signed Act of October 31, 2019, P.L. 552, No. 77 ("Act 77") into law – implementing sweeping reforms to Pennsylvania's Election Code. Act 77, disregarding 158 years of Pennsylvania Supreme Court precedent requiring a constitutional amendment to expand absentee voting, permits no excuse, mail-in voting. For the reasons discussed in the petition, Act 77 violates both the Constitution of the United States and the Constitution of the Commonwealth of Pennsylvania.

Petitioners initiated this action by filing a petition for review in the Commonwealth Court of Pennsylvania on November 21, 2020, seeking injunctive relief (enjoining the Executive-Respondents from certifying the results of the November 3, 2020 general election) and to have Act 77 declared unconstitutional. The

Commonwealth Court entered emergency preliminary injunctive relief – enjoining Respondents from taking any further steps to certify the results of the November 3, 2020 general election – on November 25, 2020. (Pet. App. 30a) The Commonwealth Court further issued a memorandum opinion in support of the November 25, 2020 order which expressly found that Petitioners “appear to have established a likelihood to succeed on the merits” . . . “Petitioners appear to have a viable claim that the mail-in ballot procedures set forth in Act 77 contravene Pa. Const. Article VII Section 14 as the plain language of that constitutional provision is at odds with the mail-in provisions of Act 77.” (Pet. App. 26a-27a).

At Respondents’ request, Pennsylvania’s Supreme Court exercised extraordinary jurisdiction- vacating the Commonwealth Court’s order and dismissing the petition for review with prejudice on November 28, 2020. All of Petitioners’ claims – including prospective relief for future elections – were dismissed with prejudice solely based on laches. On December 2, 2020, Petitioners requested the Pennsylvania Supreme Court issue an emergency stay, pending the filing and disposition of a Petition for a Writ of Certiorari with this Court. The following day, Pennsylvania’s Supreme Court issued a per curiam order denying the emergency stay application.

Later that day, Petitioners filed an emergency application for writ of injunction pending the filing and disposition of a petition for a writ of certiorari to the Honorable Samuel A. Alito, Jr. Justice Alito requested a response to the application by Tuesday,

December 8, 2020 – which Respondents filed. The same day, Justice Alito referred the application to the Court and the application was denied. The Court’s December 8, 2020 Order solely addresses, and denies, the application for injunctive relief.

No court – other than the Commonwealth Court, who found Petitioners were likely to succeed on the merits – has addressed the constitutionality of Act 77’s mail-in voting scheme. Absent intervention by this Court, Pennsylvania’s Supreme Court’s dismissal, with prejudice and without ruling on the merits of Petitioners’ constitutional challenge, will permanently preclude judicial review of Act 77.

ARGUMENT

Expedited consideration of the petition for a writ of certiorari is warranted because the questions presented are of exceptional importance, implicating the core of the electoral process and the constitutionality of how Pennsylvania citizens cast their votes. Resolution of this case is also highly time sensitive. Absent expedited intervention of this court, the decision below will allow Pennsylvania’s 2021 primary and general elections to be conducted in an unconstitutional manner. All Pennsylvania voters will be permanently disenfranchised of their right – as guaranteed by the Pennsylvania Constitution – to vote on whether to amend the Pennsylvania Constitution to expand absentee voting to include no-excuse mail-in voting. The General Assembly and Governor unconstitutionally usurped the voters’

right to decide on mail-in balloting by passing Act 77 instead of amending the Pennsylvania Constitution.

Relief with respect to the 2020 general election, for the time being, is still possible, but expedited consideration is necessary to minimize limitations on the ability to provide relief with respect to the 2020 general election. In addition, under Pennsylvania law, a primary election will be held on Tuesday, May 18, 2021. 25 Pa.Stat. § 2754 (“There shall be a Municipal primary preceding each municipal election which shall be held on the third Tuesday of May in all odd-numbered years”). There are only 26 days until the United States Congress meets to count the 2020 electoral college votes. There are only 158 days until the 2021 Primary election. This Court’s expedited review is necessary to provide clarity in sufficient time to allow Respondents to prepare for the 2021 primary election. The cost of not granting expedited review in this matter is great – allowing the 2021 primary election and general election to be conducted pursuant to Act 77’s unconditional no-excuse, mail-in voting scheme, compounding the injury of conducting 2020 elections in an unconstitutional manner. Allowing Act 77’s unconstitutional scheme to persist risks undermining public confidence in elections.

Given the urgent nature of this appeal, the limited options remaining for relief with respect to the 2020 general election, and the rapidly approaching 2021 primary election, expedited consideration of the questions presented is warranted on the

following proposed schedule: Petitioners' brief and any amicus curiae in support be due on December 17, 2020; Respondents' brief and any amicus curie in support be due by December 23, 2020; Petitioners' reply brief be due by December 24, 2020. Through this motion, Petitioners waive the 14-day period provided for in this Court's Rule 15.5 between the filing of a brief in opposition and the distribution of the petition and other materials to the Court.

CONCLUSION

WHEREFORE, for the reasons stated, Petitioners respectfully request that the Court expedite consideration of the petition for a writ of certiorari and order expedited merits briefing based on the schedule proposed above or such other expedited schedule as the Court may deem proper.

December 11, 2020

Respectfully submitted,

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