

No. 25-967

In the
Supreme Court of the United States

COMMONWEALTH OF PENNSYLVANIA,

Petitioner,

v.

BETTE EAKIN, ET AL.,

Respondents.

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

**BRIEF OF RESPONDENTS BEDFORD COUNTY
BOARD OF ELECTIONS, CARBON COUNTY
BOARD OF ELECTIONS, CENTRE COUNTY
BOARD OF ELECTIONS, COLUMBIA COUNTY
BOARD OF ELECTIONS, DAUPHIN COUNTY
BOARD OF ELECTIONS, HUNTINGDON COUNTY
BOARD OF ELECTIONS, INDIANA COUNTY
BOARD OF ELECTIONS, JEFFERSON COUNTY
BOARD OF ELECTIONS, LAWRENCE COUNTY
BOARD OF ELECTIONS, LEBANON COUNTY
BOARD OF ELECTIONS, MONROE COUNTY
BOARD OF ELECTIONS, MONTOUR COUNTY
BOARD OF ELECTIONS, NORTHUMBERLAND
COUNTY BOARD OF ELECTIONS, SNYDER
COUNTY BOARD OF ELECTIONS, VENANGO
COUNTY BOARD OF ELECTIONS**

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PARTIES TO THE PROCEEDING

The parties to the proceeding are set forth in the *Petition for Writ of Certiorari* filed by the Commonwealth of Pennsylvania. This brief is filed on behalf of Respondents Bedford County, Carbon County, Centre County, Columbia County, Dauphin County, Huntingdon County, Indiana County, Jefferson County, Lawrence County, Lebanon County, Monroe County, Montour County, Northampton County, Snyder County and Venango County Boards of Election. These Respondents are not aware of any stock ticker symbol associated with any of the parties to this proceeding.

Pennsylvania state and federal courts have been inundated with a litany of election lawsuits since 2020.¹ In the vast majority of such cases, the plaintiff(s) complains about the alleged conduct of a handful of Pennsylvania counties. Nonetheless, and despite the longstanding requirement that there must be a case or controversy to properly initiate a lawsuit against a defendant, *see, e.g., Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), the plaintiff(s) in election cases have adopted the practice of joining all 67 counties in Pennsylvania as defendants to the lawsuit. As a result, scarce public funds are being diverted by Pennsylvania counties from human service agencies

¹ *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331 (W.D. Pa. 2020) (*Trump I*);

Donald J. Trump for President, Inc. v. Boockvar, 502 F. Supp. 3d 899 (M.D. Pa. 2020) (*Trump II*);

Pa. Democratic Party v. Boockvar, 407 MD 2020 (Pa. Cmmw. Ct. 2020); *aff'd in part and rev'd in part*, 238 A.3d 345 (Pa. 2020), *cert. denied*, 141 S. Ct. 732 (2021).

In re: November 3, 2020 General Election, 240 A.3d 591 (Pa. 2020), *cert. denied*, 141 S. Ct. 1451 (2021); (related to *In re Canvassing Observation*, 241 A.3d 339 (Pa. 2020));

Bognet v. Boockvar, No. 3:20-CV-215, 2020 WL 6323121 (W.D. Pa. Oct. 28, 2020), *aff'd sub nom. Bognet v. Sec'y Commonwealth of Pa.*, 980 F.3d 336 (3d Cir. 2020), *cert. granted and judgment vacated*, 141 S. Ct. 2508 (2021);

In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election, 241 A.3d 1058 (Pa. 2020);

Republican Nat'l Comm. v. Chapman, 447 MD 2022 (Pa. Cmmw. Ct. 2022); and

Ball v. Chapman, No. 102 MM 2022, 284 A.3d 1189 (Mem.) (Pa. 2022) (King's Bench Petition filed by Republican National Committee).

and programs, emergency management services, and other vital public services to responding to an endless stream of politically motivated litigation.

The instant matter is just another example of this unfortunate pattern. Plaintiff-Respondents Bette Eakin, Ines Massella, DSCC, DCCC, and AFT Pennsylvania instituted the underlying action against every county in Pennsylvania—including Bedford County, Carbon County, Centre County, Columbia County, Dauphin County, Huntingdon County, Indiana County, Jefferson County, Lawrence County, Lebanon County, Monroe County, Montour County, Northampton County, Snyder County and Venango County Boards of Election (the “Respondent Counties”)—even though the specific claims related to rejected mail-in ballots of a voter in Erie County.² Given that none of the underlying Plaintiffs in this case nor the companion case were voters in their counties, the Respondent Counties only participated in a limited basis before the District Court and did not participate in the ensuing appeal to the U.S. Court of Appeals for the Third Circuit. When the Commonwealth of Pennsylvania, which intervened as an appellant in the Third Circuit, filed its Petition for Writ of Certiorari, the Respondent Counties accordingly waived their right to respond. The Court then directed all Respondents, including the Respondent Counties, to submit a response.

² A companion case, *Pennsylvania State Conference of the NAACP et. al. v. Leigh M. Chapman et. al.*, Case No. 1:22-cv-00339-SPB (W.D. Pa.), was filed contemporaneously with the underlying action and sought similar relief. The matters were consolidated for consideration in the District Court.

Consistent with the Court's directive, please be advised that the Respondent Counties take no position on the pending Petition. Should the Court grant further review, however, the Respondent Counties have two requests for the Court.

First, the Respondent Counties respectfully request that the Court direct the parties to brief separately whether Plaintiff-Respondents have standing to file suit against the Respondent Counties in the first place. The Respondent Counties collectively have spent hundreds of thousands of dollars in attorney's fees and costs in defending election lawsuits over the past six years. This is despite employing various cost-saving measures like entering into joint representation agreements to have a single law firm represent multiple counties and dividing attorney's fees and costs accordingly. If the Respondent Counties are going to continue to get dragged into election cases like the instant matter—and public coffers are going to continue to be depleted as a result—the Respondent Counties deserve a ruling from this Court as to why a case or controversy exists as to them. *See, e.g., Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001) (“We are obliged to examine standing *sua sponte* where standing has erroneously been assumed below.”); *see also Juidice v. Vail*, 430 U.S. 327, 331 (1977) (“Although raised by neither of the parties, we are first obliged to examine the standing of appellees, as a matter of the case-or-controversy requirement associated with Art. III . . .”).

Second, the Respondent Counties respectfully request that the Court expedite the disposition of any appeal on the merits. While Pennsylvania has just

completed a primary election, election workers across the Commonwealth are already gearing up for a likely contentious general election in November. By late September, voters can begin requesting mail-in ballots in Pennsylvania (the last date to request a mail-in or absentee ballot is October 27, 2026), and all ballots have to be finalized for printing and posting generally 45 days prior to the election unless litigation over the parties on the ballots is pending. This finalization process requires Pennsylvania counties to prepare all ballots (mail-in, in person, and provisional) and all materials (primarily outer envelopes, secrecy envelopes, and directions for voting, all used for mail-in ballots) related to the same and submit those to the Pennsylvania Department of State before the respective county Board of Elections can approve the same. The ballots generally must be mailed no later than two weeks prior to election day, 25 Pa. C.S. § 3146.5(b)(2), but can be mailed any time after the ballots for military and overseas voters are posted on the Department of State website, 25 Pa. C.S. § 3508.

It is important that once the election process is in full swing, Boards of Elections are not faced with a court decision that will impact how an election already underway is being conducted—which has occurred in prior elections. See *In Re Canvass*, 241 A.3d 1058, and *Ball*, 102 MM 2022, 284 A.3d 1189 (Mem.). The Respondent Counties desire to have a prompt resolution of the issues in the instant matter so they have direction to prepare for and conduct the fall 2026 general election in their respective counties.

CONCLUSION

For these reasons the Respondent Counties take no position on the Court's disposition of the Petition but request that, if the Petition is granted, the Court require the parties to brief whether Plaintiff-Respondents have standing and to expedite a disposition on the merits.

Respectfully submitted,

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