
IN THE SUPREME COURT OF PENNSYLVANIA

DISABILITY RIGHTS PENNSYLVANIA;
SENIORLAW CENTER; SOUTHEAST ASIAN
MUTUAL ASSISTANCE ASSOCIATIONS
COALITION, INC. (SEAMAAC); SUZANNE ERB;
THE BARRISTERS' ASSOCIATION OF
PHILADELPHIA,

Petitioners,

v.

KATHY BOOCKVAR, IN HER CAPACITY AS
SECRETARY OF THE COMMONWEALTH OF
PENNSYLVANIA; AND JESSICA MATHIS, IN HER
CAPACITY AS DIRECTOR OF THE BUREAU OF
ELECTION SERVICES AND NOTARIES OF THE
PENNSYLVANIA DEPARTMENT OF STATE,

Respondents.

No. 83 MM 2020

**PETITIONERS' ANSWER TO
RESPONDENTS' PRELIMINARY OBJECTIONS**

Petitioners submit this Answer to Respondents' Preliminary Objections and request that the Court overrule the Preliminary Objections. Petitioners' grounds for opposing these Preliminary Objections are set forth below, and in Petitioners' concurrently filed Memorandum of Law in Opposition to Respondents' Preliminary Objections ("Memorandum of Law").

I. Procedural History and Factual Background

1. Admitted to the extent the Secretary is responsible for implementing Act 77 and Pennsylvania's system for voting by mail. *See Act 77; see also 25 P.S. § 2621.* After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

2. Admitted to the extent that the Director of the Bureau of Election Services and Notaries supervises the Commonwealth's Election Services and Voter Registration divisions. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph. By way of further answer, Petitioners refer to their Memorandum of Law.

3. Admitted.

4. Denied. As set forth in the Declaration of Service filed on the same day as this Answer, on the evening of April 27, 2020, after the Petition for Review was filed, attorneys for Petitioners sent a copy of the Petition and accompanying documents via email to the "Mailroom" team at the law office of Arnold & Porter in Washington, D.C., and directed the Mailroom team to mail those documents promptly to Secretary Boockvar and to the Office of the Attorney General. Decl. of Serv. ¶ 5. On April 28, 2020, Arnold & Porter Mailroom personnel confirmed

that they had sent copies of the Petition by United States Postal Service (USPS) Certified Mail, along with proof of service, to Secretary Boockvar and to Attorney General Josh Shapiro. The USPS tracking website confirmed that USPS received both envelopes at 4:06 p.m. on April 28, 2020. *Id.*, Exs. A, C. The Petition, which on its face alleges Act 77’s “received by” deadline is unconstitutional, was delivered by USPS to Secretary Boockvar on April 30, 2020, at 8:09 a.m. Although Petitioners *sent* it to the same city at the same minute on the same day, the USPS *delivered* the Petition to the Office of Attorney General four days later than Secretary Boockvar’s copy, on May 4, 2020, at 7:53 a.m., as documented by the Declaration of Service filed concurrently with this Answer. Decl. of Serv.

¶¶ 5-9. The remaining averments in this paragraph are conclusions of law to which no responsive pleading is required.

5. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

6. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

7. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

8. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

9. Admitted.

10. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

11. Petitioners admit that the General Assembly postponed the primary election date from April 28, 2020 to June 2, 2020. The remaining averments in this paragraph and the accompanying footnotes 3 and 4 contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph and the accompanying footnotes 3 and 4 also purport to summarize legislation. Petitioners refer to the legislation for its full and complete contents and deny anything inconsistent therewith.

12. Denied. To the extent the averments in this paragraph purport to summarize the Petition, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that

the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied.

Petitioners also refer to their Memorandum of Law.

13. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and the accompanying footnote 5.

14. Petitioners admit that the Department has received an unprecedented number of requests for absentee and mail-in ballot applications numbering in the hundreds of thousands. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph and the accompanying footnote 6.

15. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and the accompanying footnotes 7 and 8.

II. Answers to Preliminary Objections

A. Answer to First Preliminary Objection (Constitutional Violations)

16. Paragraphs 1–15 above are incorporated by reference as if fully set forth herein.

17. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and

deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

18. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

19. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

20. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

21. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

22. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

23. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

24. Paragraphs 10–15 above are incorporated by reference as if fully set forth herein. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

25. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive

pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

26. Admitted that “extending the deadline for receipt of ballots . . . would increase the number of votes that are timely returned.” Other averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the remaining averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

27. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the remaining averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

28. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondents' First Preliminary Objection.

B. Answer to Second Preliminary Objection (Standing and Ripeness)

29. Paragraphs 1–28 above are incorporated by reference as if fully set forth herein.

30. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

31. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

32. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

33. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

34. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

35. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

36. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

37. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondents' Second Preliminary Objection.

**C. Answer to Third Preliminary Objection
(Joinder of Necessary Parties)**

38. Paragraphs 1–37 above are incorporated by reference as if fully set forth herein.

39. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

40. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

41. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law

42. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

43. Denied. The averments in this paragraph and the accompanying footnote 9 purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

44. Denied. The averments in this paragraph purport to summarize the Petition. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

45. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their simultaneously filed brief.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondents' Third Preliminary Objection.

**D. Answer to Fourth Preliminary Objection
(Notice to the Attorney General)**

46. Paragraphs 1–45 above are incorporated by reference as if fully set forth herein.

47. Denied. On the evening of April 27, 2020 after filing the Petition for Review, attorneys for Petitioners sent a copy of the Petition and accompanying documents via email to the “Mailroom” team at the law office of Arnold & Porter in Washington, D.C. and directed the Mailroom team to mail those documents promptly to Secretary Boockvar and to the Office of the Attorney General. Decl. of Serv. ¶ 5. On April 28, 2020, Arnold & Porter Mailroom personnel confirmed that they had sent copies of the Petition by United States Postal Service (USPS) Certified Mail, along with proof of service, to Secretary Boockvar and to Attorney General Josh Shapiro. The USPS tracking website confirmed that USPS received both envelopes at 4:06 p.m. on April 28, 2020. *Id.*, Exs. A, C. The Petition, which on its face alleges Act 77’s “received by” deadline is unconstitutional, was delivered by USPS to Secretary Boockvar on April 30, 2020, at 8:09 a.m. Although Petitioners *sent* it to the same city at the same minute on the same day, the USPS *delivered* the Petition to the Office of Attorney General four days later than Secretary Boockvar’s copy, on May 4, 2020, at 7:53 a.m., as documented by the Declaration of Service filed concurrently with this Answer. Decl. of Serv.

¶¶ 5-9. The remaining averments in this paragraph are conclusions of law to which no responsive pleading is required.

48. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

49. The averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. Petitioners also refer to their Memorandum of Law.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondents' Fourth Preliminary Objection.

Dated: May 8, 2020

Respectfully submitted,

/s/ Benjamin D. Geffen

Mary M. McKenzie
Attorney ID No. 47434
Benjamin D. Geffen
Attorney ID No. 310134
Public Interest Law Center
1500 JFK Blvd., Suite 802
Philadelphia PA 19102
Telephone: +1 215.627.7100
Facsimile: +1 215.627.3183
mmckenzie@publintlaw.org

Elisabeth S. Theodore*
Daniel F. Jacobson*
R. Stanton Jones*
David P. Gersch*
Kolya Glick*
Samuel F. Callahan*
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave., NW
Washington, DC 20001-3743
Telephone: +1 202.942.5000
Facsimile: +1 202.942.5999
elisabeth.theodore@arnoldporter.com
* Not admitted in Pennsylvania,
admitted in the District of Columbia.
Pro hac vice motion to be filed.

Counsel for Petitioners

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[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2020, upon consideration of
Petitioners' Petition for Review, Respondents' Preliminary Objections, and
Petitioners' Answer and Memorandum of Law in response thereto, it is hereby
ORDERED that the Preliminary Objections are **OVERRULED**.

BY THE COURT:
