

IN THE
Supreme Court of the United States

REPUBLICAN PARTY OF PENNSYLVANIA,

Petitioner-Applicant,

v.

KATHY BOOCKVAR, IN HER OFFICIAL CAPACITY AS PENNSYLVANIA
SECRETARY OF STATE, ET AL.,

Respondents,

Application from the Supreme Court of Pennsylvania

(No. 133 MM 2020)

**RESPONSE OF LUZERNE COUNTY BOARD OF ELECTIONS
TO EMERGENCY APPLICATION FOR INJUNCTION PENDING
CERTIORARI REVIEW**

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BACKGROUND

In its most recent emergency application, the Republican Party of Pennsylvania (“RPP”) asks this Court to issue an injunction directing the various county boards of election to do what they are already doing, namely segregate mail-in and civilian absentee ballots which have arrived between 8:00 P.M. on November 3, 2020 and 5:00 P.M. November 6, 2020. Additionally, RPP asks the Court to order the county boards to “take no further action” regarding these ballots, presumably not to “canvas” or “count” them. App at 5. This request is premised on RPP’s continued view that these ballots, which have been cast on or before Election Day, but were received by the election boards within this three-day window, are somehow invalid. While the merits of that view have not been decided by this Court, granting RPP’s request is unnecessary to its consideration.

The underlying issue at the heart of this matter has been before the Court since September 28, 2020, when RPP and others filed separate emergency applications to stay the September 17, 2020 order of the Pennsylvania Supreme Court which extended the time for receipt of mail-in and civilian absentee ballots to include the November 3 to November 6 window noted above. *Republican Party of Pennsylvania v. Boockvar, et al.*, 20A54; *Scarnati, et al., v. Boockvar, et al.*, 20A53. On October 19, 2020, the Court denied each of these applications. On October 23, 2020, RPP filed its petition for a writ of certiorari. Given the approaching Election Day, RPP also requested expedited review, which the Court denied on October 28, 2020. That same day, the Secretary of the Commonwealth of Pennsylvania issued a

directive to the county boards of election to segregate the mail-in and civilian absentee ballots received between 8:00 P.M. November 3 and 5:00 P.M. November 6.

Counsel for RPP contacted the boards of election on October 28 and asked that each, by the next day, “confirm by response to this email whether it intends to follow this guidance.” On behalf of the Luzerne County Board of Elections Respondent, undersigned replied to RPP counsel on October 29, stating that “Luzerne County intends to comply with the ‘Pennsylvania Guidance for Mail-in and Absentee Ballots Received from the United States Postal Service after 8:00 p.m. on Tuesday, November 3, 2020 / Version 1’ as provided by the Secretary of the Commonwealth, unless further directive or court order directs otherwise.”

On November 1, the Secretary of the Commonwealth issued a further directive, requiring continued compliance with the October 28 directive and providing detailed direction regarding the canvassing of the ballots in question. Notably, unlike its response to the October 28 directive, RPP has not similarly asked the county boards to address their intentions regarding this second directive. Of import here, the Luzerne County Board of Elections has, indeed, complied with both.

DISCUSSION

The present application seeks an extraordinary judicial response to a problem which does not exist. The present Respondent is doing everything required of it by the Secretary’s directives, and there is no indication or suspicion that its fellow boards are not doing likewise. “While there is no question of [the Court’s] power to

[issue the requested injunction], it is equally clear that ‘such power should be used sparingly and only in the most critical and exigent circumstances.’” *Fishman v. Schaffer*, 429 U.S. 1325, 1325–26 (1976)(Marshall, J., in chambers)(internal citations omitted). Granting RPP’s request can only serve as possible disruption of the already difficult task county boards have in canvassing *all* ballots received and providing true and accurate election results. At this late hour, the ballots which RPP questions have been received and addressed as the Secretary has directed. The question presented by the emergency application is thus moot, rendered all the more so by the Administrative Order of Justice Alito of November 6, effectively imposing the Secretary’s directives on the county boards. It is thus difficult to perceive how issuance of an injunction at this point would in any manner aid this Court in its certiorari review.

It is likewise difficult to see how the ballots in question will have any relevance to the electoral outcome. For example, as noted in the attached Appendix (letter of Romilda P. Crocamo, Chief County Solicitor), the **unofficial** results in Luzerne County show that **93,861** in-person votes were cast on November 3, Election Day, with **55,242** mail-in and absentee ballots received prior to 8:00 P.M. that day. Contrasted to this total of **149,103** votes, only **255** mail-in and absentee ballots were received between 8:00 P.M. on Election Day and 5:00 P.M. on November 6. Representing less than .2% of the total county vote, and while important that they be treated respectfully as every vote must, these late-ballots will certainly not sway the election results in any meaningful way. Indeed, this is

only one county's early and unofficial result, but it is telling and suggests the entire question related to this matter is not worthy of further exercise of this Court's energies.

CONCLUSION

For the foregoing reasons, the emergency application should be denied as the requested injunction is unnecessary.

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APPENDIX



LUZERNE COUNTY
OFFICE OF LAW
ROMILDA P. CROCAMO, ESQUIRE
CHIEF COUNTY SOLICITOR

LUZERNE COUNTY
COUNTY MANAGER
C. DAVID PEDRI, ESQUIRE

COUNTY of LUZERNE
P E N N S Y L V A N I A
ESTABLISHED 1786

November 7, 2020

To: Joseph M. Cosgrove, Esquire

From: Romilda P. Crocamo, Esquire
Luzerne County Chief County Solicitor

Re: Unofficial Election Results

As per your inquiry, please be advised of the following information regarding vote totals in Luzerne County. I stress that these are *unofficial* results and have not been certified by the Luzerne County Election Board:

In person votes: **93,861**

Mail-in and absentee ballots received by 8:00 P.M. on Election Day,
November 3, 2020: **55,242**

Mail-in and absentee ballots received between 8:00 P.M. on Election Day and 5:00 P.M. on
November 6, 2020: **255***

*Please note that these ballots have been segregated in compliance with the directives of the Secretary of the Commonwealth.

Sincerely,

Romilda P. Crocamo, Esq.
Chief County Solicitor