

IN THE SUPREME COURT OF THE UNITED STATES

REPUBLICAN PARTY OF PENNSYLVANIA,

Petitioner,

v.

KATHY BOOCKVAR, SECRETARY OF THE COMMONWEALTH OF
PENNSYLVANIA, ET AL.,

Respondents.

JOSEPH B. SCARNATI III, ET AL.,

Petitioners,

v.

PENNSYLVANIA DEMOCRATIC PARTY, ET AL.,

Respondents.

**On Petitions For Writs Of Certiorari
To The Supreme Court Of Pennsylvania**

**RESPONSE OF THE PENNSYLVANIA DEMOCRATIC PARTY
RESPONDENTS TO MOTION OF DONALD J. TRUMP FOR PRESIDENT,
INC. FOR LEAVE TO INTERVENE AS PETITIONER**

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RESPONSE

Donald J. Trump for President, Inc. (“movant”) has moved for leave to intervene in these cases. Because this Court may well not need to hear and decide these cases, it would be premature for this Court to rule on the motion to intervene. Moreover, movant’s contention that the “time has come” for this Court to review these cases, see Motion of Donald J. Trump for President, Inc. (“Motion”) 1, is incorrect. There is no reason for the Court to expedite consideration of the pending petitions, let alone to grant certiorari at this time. Should the Court nonetheless wish to rule on the motion to intervene now—despite the absence of any reason to think that deciding these cases will be necessary—the Pennsylvania Democratic Party Respondents do not oppose this Court’s granting movant leave to intervene.

1. Before Election Day, this Court twice denied efforts to seek immediate review in these cases. On September 28, petitioners—the Republican Party of Pennsylvania (“RPP”) and two Pennsylvania state legislators—asked this Court to stay the Pennsylvania Supreme Court’s decision. See Nos. 20A53, 20A54. RPP also asked the Court to construe its stay motion as a petition for certiorari and grant review. See 20A54 RPP Application 3 & n.1, 19. On October 19, the Court denied the stay applications, indicating that it would not disturb Pennsylvania’s voting procedures before Election Day. See *Scarnati v. Boockvar*, No. 20A53 (Oct. 19, 2020); *Republican Party of Pa. v. Boockvar*, No. 20A54 (Oct. 19, 2020). On October 23, RPP filed a petition for certiorari, together with a motion to expedite. See No. 20-542. The Court denied the request to accelerate consideration of the petition, thus declining to take the case up on the merits before Election Day. See *Republican Party of Pa. v.*

Boockvar, No. 20-542 (Oct. 28, 2020). On October 27, 2020, the state legislator petitioners filed a petition for certiorari, without seeking expedition. See *Scarnati v. Pennsylvania Democratic Party*, No. 20-574. Respondents' briefs in opposition have not yet been filed; they are currently due on November 25 in No. 20-542 and on November 30 in No. 20-574.

There is no reason for the Court to reverse course now, mere days *after* Election Day. If anything, the need for immediate review has diminished, because any interest in providing clear pre-election guidance has evaporated. And no new circumstances require this Court to take any precipitous action. The petitions challenge the counting of ballots received between 8:00 p.m. on November 3 and 5:00 p.m. on November 6. That window of time has not closed, and it is far from clear how many ballots will be received during it. Even if there were a legal basis for refusing to count any such ballots (and there is not), no reason exists to assume that the number of ballots received in that window would be large enough to be decisive in the races for President and House of Representatives. Movant asserts that “[t]he Pennsylvania Supreme Court’s decision may well dictate who will become the next President,” Motion 4, but that is not remotely clear at this juncture. Rather, that assertion—and hence any possible basis for expedition or for this Court’s immediate review—depends on numerous contingencies and facts that movant cannot, and does not even try to, establish.

2. It is particularly clear that the Court need not take any action at present because the Secretary of the Commonwealth has issued guidance directing county

boards of elections to segregate ballots received between 8:00 p.m. on November 3 and 5:00 p.m. on November 6. See Letter from Pennsylvania Attorney General, No. 20-542 (Oct. 28, 2020); see also *Republican Party of Pennsylvania v. Boockvar*, slip op. 3, No. 20-542 (Oct. 28, 2020) (statement of Alito, J.). Given that procedure, which ensures that the ballots that petitioners challenge are not commingled with other ballots, there is no need for this Court to intervene prematurely while state officials continue to count votes as required under Pennsylvania law.

CONCLUSION

For the foregoing reasons, although the Pennsylvania Democratic Party Respondents do not oppose the motion to intervene, it would be premature to rule on that motion now. And there is certainly no basis for the Court to expedite these cases or to grant certiorari at this time.

Dated: November 5, 2020

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Respectfully submitted,

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