IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald J. Trump For President, Inc.; : and Republican National Committee, : Petitioners :

v.

: No. 602 M.D. 2020

Kathy Boockvar, in her capacity as Secretary of the Commonwealth of Pennsylvania; Adams County Board of Elections; Allegheny County Board of Elections; Armstrong County Board of Elections; Beaver County Board of Elections; Bedford County Board of Elections; Berks County Board of Elections; Blair County Board of Elections; Bradford County Board of Elections; Bucks County Board of Elections; Butler County Board of Elections; Cambria County Board of Elections; Cameron County Board of Elections; Carbon County Board of Elections; Centre County Board of Elections; Chester County Board of Elections; Clarion County Board of Elections; Clearfield County Board of Elections; Clinton County Board of Elections; Columbia County Board of Elections; Crawford County Board of Elections; Cumberland County Board of Elections; Dauphin County Board of Elections; Delaware County Board of Elections; Elk County Board of Elections; Erie County Board of Elections; Fayette County Board of Elections; Forest County Board of Elections; Franklin County Board of Elections; Fulton County Board of Elections: Greene County Board of Elections; Huntingdon County Board of Elections; Indiana County Board of Elections; Jefferson County Board of

Elections; Juniata County Board of Elections; Lackawanna County Board of Elections; Lancaster County Board of Elections; Lawrence County Board of Elections; Lebanon County Board of Elections; Lehigh County Board of Elections; Luzerne County Board of Elections; Lycoming County Board of Elections; McKean County Board of Elections; Mercer County Board of Elections; Mifflin County Board of Elections; Monroe County Board of Elections; Montgomery County Board of Elections; Montour County Board of Elections: Northampton County Board of Elections; Northumberland County Board of: Elections; Perry County Board of Elections; Philadelphia County Board of Elections; Pike County Board of Elections; Potter County Board of Elections; Schuylkill County Board of Elections; Snyder County Board of Elections; Somerset County Board of Elections; Sullivan County Board of Elections; Susquehanna County Board of Elections; Tioga County Board of Elections; Union County Board of Elections; Venango County Board of Elections; Warren County Board of Elections; Washington County Board of Elections; Wayne County Board of Elections; Westmoreland County Board of Elections; Wyoming County Board of Elections; and York County Board of Elections; Respondents

<u>ORDER</u>

AND NOW this 12th day of November, 2020, upon consideration of Petitioners' Petition for Review in the Nature of a Complaint in Equity, and the

memoranda of law filed by the parties and the proposed intervenor-respondent, the Court concludes that Respondent Kathy Boockvar, in her official capacity as Secretary of the Commonwealth, lacked statutory authority¹ to issue the November 1, 2020, guidance to Respondents County Boards of Elections insofar as that guidance purported to change the deadline in Section 1308(h) of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. §3146.8(h), for certain electors to verify proof of identification, based on Secretary Boockvar's interpretation and application of the Pennsylvania Supreme Court's decision in *Pennsylvania Democratic Party v. Boockvar*, __ A.3d __ (Pa., No. 133 MM 2020, filed September 17, 2020).²

Accordingly, the Court hereby ORDERS that Respondents County Boards of Elections are enjoined from counting any ballots that have been segregated pursuant to paragraph 1 of this Court's order dated November 5, 2020, granting a special injunction.

MARY HANNAH LEAVITT, President Judge

¹ See Section 703 of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, 71 P.S. §243 (powers and duties of Secretary of Commonwealth); Section 201 of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. §2621 (same).

² In *Pennsylvania Democratic Party*, the Pennsylvania Supreme Court exercised its extraordinary jurisdiction to adopt a three-day extension of the received-by deadline for absentee and mail-in ballots for the 2020 General Election, thereby allowing Respondents County Boards of Elections to count all such ballots that were postmarked by 8:00 p.m. on Election Day, Tuesday, November 3, 2020, and received by the County Boards no later than 5:00 p.m. Friday, November 6, 2020. Secretary Boockvar's interpretation of the Supreme Court's decision as requiring a corresponding three-day extension of the proof of identification deadline highlights the cascading effect that altering one deadline in the Election Code can have on other statutory deadlines. Mindful of this, the petitioners in *Pennsylvania Democratic Party*, *i.e.*, the Pennsylvania Democratic Party and several Democratic elected officials and candidates, asserted that the Supreme Court "has the authority to alter [post-election] deadlines to be consistent with the relief granted" in that case. *Pennsylvania Democratic Party*, __ A.3d at __, slip op. at 26. The petitioners' observation persuades the Court that an amendment of the Supreme Court's order is necessary to achieve Secretary Boockvar's objective.