

No. 20A84

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)

**REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR INJUNCTION
PENDING CERTIORARI REVIEW**

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Respondents' Responses only underscore that the Court should grant the Emergency Application For Injunction Pending Certiorari Review filed by the Republican Party of Pennsylvania (RPP). Respondents universally agree that ballots received by election officials after the General Assembly's Election Day received-by deadline but before the Pennsylvania Supreme Court's judicially extended deadline "should be logged and segregated." PA Dem. Resp. 1; *see also* Sec'y Resp. 1–7; Luzerne Cnty. Resp. 1. Indeed, as RPP already has explained, such relief is warranted to protect RPP's appellate rights and to preserve this Court's jurisdiction over the important questions presented. *See* RPP App. 8–11.

Respondents nonetheless offer various arguments in an attempt to show that an injunction is "unnecessary," PA Dem. Resp. 1, 8; Sec'y Resp. 6; Luzerne Cnty. Resp. 1, but none rebuts RPP's dispositive points. First, Respondents note that county boards of elections have logged and segregated late-arriving ballots, Sec'y Resp. 1, 6; Nov. 8, 2020 Letter, *Republican Party of Pa. v. Boockvar*, No. 20A84 (U.S. Nov. 8, 2020), but no Respondent disputes, let alone disproves, RPP's showing that the Secretary's guidances are not binding on county boards under Pennsylvania law, *see* RPP App. 4. Accordingly, absent an order of this Court, there is no legal mandate that county boards continue to segregate late-arriving ballots for the pendency of this appeal, and boards could choose to stop doing so at any time. *See id.*¹

¹ The Pennsylvania Democratic Party accuses RPP of "manufactur[ing] evidence" regarding county boards' compliance with the Secretary's guidances, but it cites no authority for its false assertion that RPP's request that county boards confirm such compliance was improper. PA Dem. Resp. 4.

Second, the Secretary argues that there is no “factual foundation” for RPP’s “suggestion” that she “might change her guidance.” Sec’y Resp. 7. But the Secretary *already* changed her guidance on November 1 even though her October 28 guidance “had an important bearing on the question whether to order special treatment of the ballots in question.” Order, *Republican Party of Pa.*, No. 20A84 (U.S. Nov. 6, 2020) (Alito, J.). That the Secretary may not now intend to “change” her guidance again, Sec’y Resp. 7, thus does not suffice to preserve RPP’s appellate rights or this Court’s jurisdiction, *see, e.g.*, RPP App. 5.

Third, Respondents take issue with RPP’s request that the Court additionally order county boards of elections not to take any other action with respect to late-arriving ballots. *See, e.g.*, PA Dem. Resp. 7; Sec’y Resp. 7–9. But as RPP has explained, the “issue[]” presented “is precisely whether the votes that have been ordered to be counted” by the Pennsylvania Supreme Court are “legally cast” under federal law, *Bush v. Gore*, 531 U.S. 1046, 1046–47 (2000) (Scalia, J., concurring). Thus, the counting of those votes while that issue remains unresolved “threaten[s] irreparable harm” to RPP and all Pennsylvanians. *Id.*; *see also* RPP App. 11.

Finally, Respondents recognize that Justice Alito’s administrative order encompasses the logging and segregation relief that they concede is proper. *See* PA Dem. Resp. 5; Sec’y Resp. 7; Luzerne Cnty. Resp. 3. RPP agrees that, at a minimum, Justice Alito’s administrative order, or an order of the Court providing the same relief, should remain in place pending certiorari review.

Respectfully submitted,

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