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**CAPTION**

The Honorable Mike Kelly, Sean Parnell, Thomas A. Frank, Nancy Kierzek, Derek Magee, Robin Sauter, Michael Kincaid, and Wanda Logan

v.

Commonwealth of Pennsylvania, Pennsylvania General Assembly, Honorable Thomas W. Wolf, Kathy Boockvar

Appeal of: Commonwealth of Pennsylvania, Honorable Thomas W. Wolf, Kathy Boockvar

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**CASE INFORMATION**

Initiating Document: Notice of Appeal

Case Status: Closed

Journal Number:

Case Category: Election Case Type(s): Election

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**CONSOLIDATED CASES**


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**RELATED CASES**


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## Supreme Court of Pennsylvania



## Appeal Docket Sheet

Docket Number: 68 MAP 2020

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January 17, 2021

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## SUPREME COURT INFORMATION

Appeal From: the Order of the Commonwealth Court dated November 25, 2020 at No. 620 MD 2020.

Appeal Filed Below: 11/25/2020 12:00:00AM

Probable Jurisdiction Noted: Docketed Date: November 25, 2020

Allocatur/Miscellaneous Granted: Allocatur/Miscellaneous Docket No.:

Allocatur/Miscellaneous Grant Order:

## FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
11/25/2020	Notice of Appeal	90.25	12/02/2020	2020-SUP-M-001489	90.25

## INTERMEDIATE APPELLATE COURT INFORMATION

Court Name: Docket Number:  
 Date of Order: Rearg/Recon Disp Date:  
 Rearg/Recon Disposition:

Judge(s):  
 Intermediate Appellate Court Action:  
 Referring Court:

## AGENCY/TRIAL COURT INFORMATION

Court Below: Commonwealth Court of Pennsylvania  
 County: Division: Commonwealth Court of Pennsylvania  
 Date of Agency/Trial Court Order: November 25, 2020  
 Docket Number: 620 MD 2020  
 Judge(s): McCullough, Patricia A. OTN:  
 Order Type: Order

## ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content/Description
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## Record Remittal:


**REARGUMENT / RECONSIDERATION / REMITTAL**

Filed Date:  
Disposition: Date:  
Reargument Order:  
Record Remittal: December 23, 2020

**DISPOSITION INFORMATION**

Related Journal No: Judgment Date:  
Category: Decided Disposition Author: Per Curiam  
Disposition: Appeal Dismissed Disposition Date: November 28, 2020  
Dispositional Filing: **Order** Author: Per Curiam  
Filed Date: November 28, 2020  
Dispositional Filing: **Concurring/Dissenting Statement** Author: Saylor, Thomas G.  
Filed Date: November 28, 2020  
Dispositional Filing: **Concurring Statement** Author: Wecht, David N.  
Filed Date: November 28, 2020

**DOCKET ENTRY**

Filed Date	Docket Entry / Representing	Participant Type	Filed By
<b>November 25, 2020</b>	<b>Notice of Appeal</b>	Appellant Appellant Appellant	Boockvar, Kathy Commonwealth of Pennsylvania Wolf, Thomas W.
<b>November 25, 2020</b>	<b>Jurisdictional Statement</b>	Appellant Appellant Appellant	Boockvar, Kathy Commonwealth of Pennsylvania Wolf, Thomas W.
<b>November 25, 2020</b>	<b>Application for the Court to Exercise Extraordinary Jurisdiction</b>	Appellant Appellant Appellant	Boockvar, Kathy Commonwealth of Pennsylvania Wolf, Thomas W.
<b>November 25, 2020</b>	<b>No Answer Letter to Notice of Appeal &amp; Jurisdictional Statement</b>	Appellee	Pennsylvania General Assembly



## DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
November 27, 2020	<b>Answer to Notice of Appeal &amp; Jurisdictional Statement</b>	Appellee	Kelly, Mike
		Appellee	Frank, Thomas A.
		Appellee	Kierzek, Nancy
		Appellee	Kincaid, Michael
		Appellee	Logan, Wanda
		Appellee	Magee, Derek
		Appellee	Parnell, Sean
		Appellee	Sauter, Robin
November 27, 2020	<b>Answer to Application for the Court to Exercise Extraordinary Jurisdiction</b>	Appellee	Kelly, Mike
		Appellee	Frank, Thomas A.
		Appellee	Kierzek, Nancy
		Appellee	Kincaid, Michael
		Appellee	Logan, Wanda
		Appellee	Magee, Derek
		Appellee	Parnell, Sean
		Appellee	Sauter, Robin
November 27, 2020	<b>No Answer Letter to Application for this Court to Exercise Extraordinary Jurisdiction</b>	Appellee	Pennsylvania General Assembly
November 27, 2020	<b>Notice of Supplemental Authority</b>	Appellant	Boockvar, Kathy
		Appellant	Commonwealth of Pennsylvania
		Appellant	Wolf, Thomas W.
November 27, 2020	<b>Application for Leave to Intervene</b>	Possible Intervenor	DNC Services Corp. / Democratic National Committee
		Possible Intervenor	DNC Services Corp. / Democratic National Committee



## DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
November 28, 2020	Extraordinary Jurisd. Granted; Prelim. Injunct. Vacated; Pet. for Review Dismissed with Prejudice		Per Curiam

## Comments:

AND NOW, this 28th day of November, 2020, pursuant to 42 Pa.C.S. § 726, we GRANT the application for extraordinary jurisdiction filed by the Commonwealth of Pennsylvania, Governor Thomas W. Wolf, and Secretary of the Commonwealth Kathy Boockvar ("Commonwealth"), VACATE the Commonwealth Court's order preliminarily enjoining the Commonwealth from taking any further action regarding the certification of the results of the 2020 General Election, and DISMISS WITH PREJUDICE the petition for review filed by the Honorable Mike Kelly, Sean Parnell, Thomas A. Frank, Nancy Kierzek, Derek Magee, Robin Sauter, and Wanda Logan ("Petitioners"). All other outstanding motions are DISMISSED AS MOOT.

Petitioners filed the petition for review in Commonwealth Court on November 21, 2020, setting forth a facial challenge to those provisions of Act 77 of 2019, establishing universal mail-in voting in the Commonwealth of Pennsylvania. Petitioners sought a declaration that the aforementioned provisions were unconstitutional and void ab initio, and injunctive relief prohibiting the certification of the results of the General Election held on November 3, 2020. As a remedy, Petitioners sought to invalidate the ballots of the millions of Pennsylvania voters who utilized the mail-in voting procedures established by Act 77 and count only those ballots that Petitioners deem to be "legal votes." Alternatively, Petitioners advocated the extraordinary proposition that the court disenfranchise all 6.9 million Pennsylvanians who voted in the General Election and instead "direct[] the General Assembly to choose Pennsylvania's electors." Petition for Review at 24.

Upon consideration of the parties' filings in Commonwealth Court, we hereby dismiss the petition for review with prejudice based upon Petitioners' failure to file their facial constitutional challenge in a timely manner. Petitioners' challenge violates the doctrine of laches given their complete failure to act with due diligence in commencing their facial constitutional challenge, which was ascertainable upon Act 77's enactment. It is well-established that "[l]aches is an equitable doctrine that bars relief when a complaining party is guilty of want of due diligence in failing to promptly institute an action to the prejudice of another." *Stilp v. Hafer*, 718 A.2d 290, 292 (Pa. 1998).

The want of due diligence demonstrated in this matter is unmistakable. Petitioners filed this facial challenge to the mail-in voting statutory provisions more than one year after the enactment of Act 77. At the time this action was filed on November 21, 2020, millions of Pennsylvania voters had already expressed their will in both the June 2020 Primary Election and the November 2020 General Election and the final ballots in the 2020 General Election were being tallied, with the results becoming seemingly apparent. Nevertheless, Petitioners waited to commence this litigation until days before the county boards of election were required to certify the election results to the Secretary of the Commonwealth. Thus, it is beyond cavil that Petitioners failed to act with due diligence in presenting the instant claim. Equally clear is the substantial prejudice arising from Petitioners' failure to institute promptly a facial challenge to the mail-in voting statutory scheme, as such inaction would result in the disenfranchisement of millions of Pennsylvania voters.

Accordingly, we grant the application for extraordinary jurisdiction, vacate the Commonwealth Court's order preliminarily enjoining the Commonwealth from taking any further action regarding the certification of the results of the 2020 General Election, and dismiss with prejudice Petitioners' petition for review. All other outstanding motions are dismissed as moot.

Justice Wecht files a concurring statement.

Chief Justice Saylor files a concurring and dissenting statement in which Justice Mundy joins.

November 28, 2020 Judgment Entered

Office of the Prothonotary



## DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
December 2, 2020	Emergency Application for Stay	Appellee	Kelly, Mike
		Appellee	Frank, Thomas A.
		Appellee	Kierzek, Nancy
		Appellee	Kincaid, Michael
		Appellee	Logan, Wanda
		Appellee	Magee, Derek
		Appellee	Parnell, Sean
		Appellee	Sauter, Robin
December 2, 2020	Answer to Emergency Application for Stay	Appellant	Boockvar, Kathy
		Appellant	Commonwealth of Pennsylvania
		Appellant	Wolf, Thomas W.
December 3, 2020	Order Denying Emergency Application for Stay		Per Curiam
Comments: AND NOW, this 3rd day of December, 2020, the Emergency Application for Stay of this Court's Order of November 28, 2020 is DENIED.			
December 3, 2020	Order Exited		Office of the Prothonotary
December 11, 2020	Petition for Writ of Certiorari		Clerk of the U.S. Supreme Court
December 23, 2020	Remitted		Office of the Prothonotary

## CROSS COURT ACTIONS

Docket Number: 620 MD 2020