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IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

DOUG MCLINKO,

Appellee,

v.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF STATE, and **LEIGH M. CHAPMAN**, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania, *et al*.,

Appellants,

TIMOTHY BONNER, *et al*.,

Appellees,

v.

CHAPMAN, *et al*.,

Appellants,

and

BUTLER COUNTY REPUBLICAN COMMITTEE; **YORK COUNTY REPUBLICAN COMMITTEE;** and **WASHINGTON COUNTY REPUBLICAN COMMITTEE.**

Intervenor-Appellees.

Nos.: 14 MAP 2022 (Consolidated)
15 MAP 2022
17 MAP 2022
18 MAP 2022
19 MAP 2022

Intervenor-Appellees' Brief

Counsel of Record:

Thomas W. King III, Esq.
PA. ID No. 21580
tking@dmkcg.com

Thomas E. Breth, Esq.
PA. I.D. No. 66350
tbreth@dmkcg.com

Jordan P. Shuber, Esq.
PA. I.D. No. 317823
jshuber@dmkcg.com

Dillon, McCandless, King, Coulter & Graham L.L.P.
128 West Cunningham Street,
Butler, Pennsylvania 16001
724-283-2200 (phone)

Counsel for Intervenor-Appellees

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I. Order or Other Determination in Question in Intervenor-Appellees' Cross-Appeal.

Intervenor-Appellees have filed a Notice of Cross Appeal appealing from the Commonwealth Court's Order dated January 28, 2022. Intervenor-Appellees have only appealed from the failure of the lower court to rule on the Bonner Petitioners' federal claims under Article I, § 2; Article I, § 4; Article II, § 1; and the 17th Amendment of the United States Constitution. The Court's January 28, 2022 Order states,

ORDER

> AND NOW, this 28th day of January, 2022, it is ORDERED that the application for summary relief filed by Petitioners Timothy R. Bonner and 13 other members of the Pennsylvania House of Representatives in the above-captioned matter is GRANTED, in part. Act 77 is declared unconstitutional and void ab initio. Petitioners' request for injunctive relief, nominal damages and reasonable costs and expenses, including attorneys' fees, is DENIED.
>
> The application for summary relief filed by Respondents Veronica Degraffenreid, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania, and the Department of State is DENIED.
>
> R. 1908a- R. 1909a.

A true and correct copy of the Commonwealth Court's Order dated January 28, 2022 is attached hereto as "Exhibit A."

II. Counterstatement of the Questions Presented.

1. Whether Act 77 is unconstitutional as it violates the Pennsylvania Constitution's requirement to "offer to vote," as that phrase has been interpreted by this Court in *Chase v. Miller*, 41 Pa. 403 (1862) and *In re Contested Election in Fifth Ward of Lancaster City*, 126 A. 199 (Pa. 1924).

   Answer Below: Yes.
   Suggested Answer: Yes.

2. Whether Section 13(3) of Act 77 of 2019 operates as a statutory time bar foreclosing constitutional challenges to the Act after the expiration of 180-days from the date of Act 77's enactment?

   Answer Below: No.
   Suggested Answer: No.

3. Whether Section 13(2) of Act 77 of 2019 grants exclusive jurisdiction to the Pennsylvania Supreme Court for challenges to the Act, even after the expiration of 180-days from the date of Act 77's enactment?

   Answer Below: No.
   Suggested Answer: No.

Question Presented in Intervenor-Appellees' Cross-Appeal:

4. Whether Act 77 violates Article I, § 2; Article I, § 4; Article II, § 1; and the 17th Amendment of the United States Constitution, as raised in the Bonner Petitioners' Petition for Review, and is thus unconstitutional?

   Answer Below: Did not address.
   Suggested Answer: Yes.

III. Counterstatement of the Case.

The present case does not concern the efficacy or the wisdom of no-excuse mail-in voting in the Commonwealth of Pennsylvania, and Appellees take no position on such issue.

Rather, this case concerns the integrity of the Constitution of the Commonwealth of Pennsylvania and the need for the legislature to follow the required procedures to amend the Constitution. Act 77 of 2019 provides for "no-excuse" mail-in ballots despite well-engrained precedent from this Court holding that Pennsylvania's Constitution must be amended to provide for a form of voting that exceeds the rights authorized under Article VII, Section 1 of the Pennsylvania Constitution.

The "sanctity" of the right of suffrage, as contained in the Pennsylvania Constitution, was recognized by this Court in its first decision confronting the issue of an impermissible expansion of absentee voting, *Chase v. Miller*, as follows:

> It is scarcely possible to conceive of any provision and practice that could, at so many points, offend the cherished policy of Pennsylvania in respect to suffrage. Our constitution and laws treat the elective franchise as a sacred trust, committed only to that portion of the citizens who come up to the prescribed standards of qualification, and to be exercised by them at the time and place and in the manner prearranged by public law and proclamations; and whilst being exercised, to be guarded, down to the instant of its final consummation, by magistrates and constables, and by oaths and penalties.

Chase v. Miller, 41 Pa. 403, 424-25 (1862).

Appellant seeks to maintain Act 77's no-excuse mail-in voting in Pennsylvania, despite the constitutional defects in permitting such a system to be effectuated by statute. As Mr. Justice Sadler announced in *Lancaster City*,

> [h]owever laudable the purpose . . . it cannot be sustained. If it is deemed necessary that such legislation be placed upon our statute books, then an amendment to the Constitution must be adopted permitting this to be done.

In re Contested Election in Fifth Ward of Lancaster City, 126 A. 199, 201 (Pa. 1924) (speaking to the 1923 Absentee Voting Act).

Almost 100 years later, those same words ring true as noted by President Judge Emerita, Mary Hannah Leavitt in the court below,

> [n]o-excuse mail-in voting makes the exercise of the franchise more convenient and has been used four times in the history of Pennsylvania. Approximately 1.38 million voters have expressed their interest in voting by mail permanently. If presented to the people, a constitutional amendment to end the Article VII, Section 1 requirement of in-person voting is likely to be adopted. But a constitutional amendment must be presented to the people and adopted into our fundamental law before legislation authorizing no-excuse mail-in voting can "be placed upon our statute books."

R. 1958a.

Despite the availability of constitutional avenues through which no-excuse mail-in ballots may be permitted in the Commonwealth of

Pennsylvania, Appellant argues that a holding that Act 77 violates the Pennsylvania Constitution would result in the disenfranchisement of Pennsylvania's electors. *See* Brief of Appellant, at pg. 15. This old argument is exactly the same argument raised in *Chase* and *Lancaster City* and denounced by this Court in both cases. As was said in Chase, *supra.*, "this is an inaccurate use of language." *Chase*, 41 Pa. at 427. As set forth by this Court in *Chase* when confronted with arguments of disenfranchisement (at a time prior to the current Article VII, Section 14 permitting limited absentee voting),

> [t]he constitution would disfranchise no qualified voter. But, to secure purity of election, it would have its voters in the place where they are best known on election day. If a voter voluntarily stays at home, or goes a journey, or joins the army of his country, can it be said the constitution has disfranchised him? Four of the judges of this court, living in other parts of the state, find themselves, the day of every presidential election, in the city of Pittsburgh, where their official duties take them and where they are not permitted to vote. Have they a right to charge the constitution with disfranchising them? Is not the truth rather this – that they have voluntarily assumed duties that are inconsistent with the right of suffrage for the time being?

Id.

Likewise, a voter who chooses or refuses to go to a polling place can hardly be said to be disenfranchised by their voluntary decision; rather, they have to follow years of constitutionally established voting practices in Pennsylvania.

Accordingly, in order to preserve the integrity of the Constitution of this Commonwealth, and in order to preserve the integrity of this Court's binding decisions in *Chase v. Miller* and *City of Lancaster*, Act 77 must be held to be unconstitutional and void ab initio. Although Intervenor-Appellees take no position on whether no-excuse mail-in voting in the Commonwealth of Pennsylvania is a good idea or a popular one, any provision for no-excuse mail-in voting must be adopted in accordance with Pennsylvania's Constitution in order to include it as a part of Pennsylvania's "fundamental law."

A. Factual Background.

In October of 2019, the Pennsylvania General Assembly passed P.L. 552, No. 77, which act introduced substantial changes to Pennsylvania's Election Code. Act 77's most significant amendment to Pennsylvania's Election Code is codified at 25 P.S. § 3150.11(a) and provides that, "a qualified mail-in elector shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under [Article XIII-D]." The Act further defines a "qualified mail-in elector" as any elector meeting the qualifications for voting under the Pennsylvania Constitution, or any elector who will meet such qualifications prior to the next ensuing election. 25 P.S. § 2602. However, such Act clearly and plainly

violates Article VII, Section 1 of the Pennsylvania Constitution as an impermissible attempt to amend Pennsylvania's Constitution through legislation.

Indeed, Pennsylvania's General Assembly began to amend Pennsylvania's Constitution to include no-excuse mail-in voting but elected instead to proceed with Act 77 without submitting the constitutional question to the citizens for a vote, as required.

In 2019, Senate Bill 411, Printer's No. 1012, contained a Joint Resolution to amend Article VII, Section 14 of the Pennsylvania Constitution to provide for no-excuse mail-in voting. Senate Bill 411 was considered twice on June 18 and June 19 of 2019 before being referred to the Appropriations Committee. *See Pennsylvania Legislative Journal-Senate*, June 18, 19, 2019. The necessity of a constitutional amendment to provide for no-excuse mail-in voting was expressly recognized by Senator Mike Folmer in his Co-Sponsoring Memoranda as well as in the text of the bills themselves. *See* SB 411 of 2019, Printer's Number 1012 ("[p]roposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for

absentee voting."); *See also Senator Mike Folmer,* Senate *Co-Sponsoring Memoranda* (January 29, 2019).[1]

Despite the General Assembly's apparent recognition that the implementation of no-excuse mail-in voting in Pennsylvania must be effectuated through constitutional amendment, no further action was taken on the proposed constitutional amendments in SB 411 and SB 413. the General Assembly reversed course and passed the amendments to Pennsylvania's Election Code as Act 77 of 2019.[2] *See* Senate Bill 413 of 2019, Printer's No. 1653.

B. Procedural Background.

On July 26, 2021, Petitioner Doug McLinko initiated this action by filing a Petition for Review and Application for Summary Relief under the Commonwealth Court's original jurisdiction. R. 58a. Mr. McLinko, as a Bradford County Commissioner, serves on the Bradford County Board of Elections. In this role, McLinko is charged with overseeing the lawful administration of elections and certifying primary and general elections in

[1] https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=28056.

[2] Interestingly, one of the sponsors of Senate Bills 411 and 413 was highly respected Senator Jay Costa, the Minority Leader in the Pennsylvania Senate, who curiously has filed an Amicus Curiae brief with the Court in the present matter arguing that no-excuse mail-in voting does not need to be effectuated by constitutional amendment.

Bradford County to the Secretary of State. Because of his belief that administering ballots pursuant to Act 77 is unconstitutional, McLinko was placed in an "untenable position of acting unlawfully at the risk of disenfranchisement of voters." R. 61a.

On August 31, 2021, fourteen sitting members of the Pennsylvania House of Representatives, known as the "Bonner Petitioners," then filed a separate Petition for Review challenging the constitutionality of Act 77 and an Application for Summary Relief. R. 257a. Both petitions alleged that Act 77 violated Article VII, § I of the Pennsylvania Constitution, which mandates that qualified voters must "offer to vote." This Court has long interpreted "offer to vote" to mean physically presenting a ballot at a polling place or in-person voting. *See In re Contested Election in Fifth Ward of Lancaster City*, 126 A. 199, 201 (Pa. 1924); *See also Chase v. Miller*, 41 Pa. 403 (Pa. 1862). Act 77 flies in the face of both the *Lancaster City* and *Chase* decisions by allowing electors to cast their votes without physically presenting their ballot at the polling place *without* amending the Pennsylvania Constitution.

Importantly, the Bonner Petitioners also allege that Act 77 violates the U.S. Constitution. Article I, § 2 of the United States Constitution; Article I, § 4 of the United States Constitution; Article II, § 1 of the United States Constitution; and the 17th Amendment of the U.S. Constitution delegates

power to the state legislature for lawmaking authority in the conduct of federal elections, which the Legislature exceeded when it adopted Act 77 in violation of the Pennsylvania Constitution in the exercise of that authority. R. 281a.

On September 22, 2021, Respondents filed an Application for Summary Relief in the Bonner and McLinko actions and the Commonwealth Court first heard oral argument on the cross-applications for summary relief in McLinko. On September 24, 2021, the Commonwealth Court then deferred ruling on the claims, consolidated the McLinko and Bonner cases, and ordered expedited briefing on cross-dispositive motions.

On October 26, 2021, the Commonwealth Court granted the applications of the Republican Committees of Butler, York, and Washington Counties to intervene on the side of Petitioners and the Applications of the Democratic National Committee and the Pennsylvania Democratic Party to intervene on the side of Respondents. R. 1489a; R. 1532a.

On November 17, 2021, the Commonwealth Court heard oral argument from Petitioners, Respondents, and Intervenors regarding the cross-applications for summary relief and preliminary objections in the consolidated action.

The Commonwealth Court issued its Memorandum Opinions and Orders on January 28, 2022. The Commonwealth Court denied the Commonwealth's Application for Summary Relief on procedural and substantive grounds. R. 1906a; 1908a. The Commonwealth Court not only held that Petitioners had standing because of their substantial, direct, and immediate interest in the litigation's outcome, but also met the requirements for taxpayer standing. R. 1949a. The Commonwealth Court also soundly rejected the Respondent's claim that the action was barred by the doctrine of laches, as the Court's precedent prevents the raising of a laches defense in constitutional claims for prospective declaratory relief.[3] Similarly, the Commonwealth Court held that this action was not time-barred. R. 1957a.

On January 28, 2022, Respondents appealed the Commonwealth Court's Order. R. 1979a. On February 4, 2022, Intervenor-Petitioners Butler County Republican Committee, York County Republican Committee, and Washington County Republican Committee subsequently filed their Notice of Cross Appeal, solely appealing the Commonwealth Court's declination to determine the Bonner-Petitioners' federal claims on the merits. R. 2413a.

[3] Note that Appellant has waived her arguments raised below regarding standing and laches. Brief of Appellant, at pg. 15, n. 8.

On January 31, 2022, Appellees McLinko, Bonner, et al., and the Intervenor-Appellees Republican Committees, filed their Joint Application to Terminate (Eliminate) Automatic Stay, seeking to terminate the automatic stay triggered by the Appellant's appeal pursuant to Pa. R.A.P. 1736(b). R. 2163a.

On February 16, 2022, the Commonwealth Court granted Appellees' Joint Application to Terminate (Eliminate) Automatic Stay, effective March 15, 2022. *See* Memorandum Opinion dated February 16, 2022, 244 M.D. 2022.

IV. Summary of the Argument.

Pennsylvania's Act 77 of 2019 violates Article VII, Section 1 of the Pennsylvania Constitution by providing for no-excuse mail-in ballot by statute despite the clear directive contained in Article VII, Section 1 that electors in the Commonwealth "offer to vote" by physically casting their ballots at their polling place on election day.

This Court has had two prior occasions upon which to interpret the phrase "offer to vote" as used in Pennsylvania's Constitution. This Court has interpreted the phrase to mean "to present oneself, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it." *See Chase v. Miller*, 41 Pa. 403 (1862); *see also In re Contested Election of Fifth Ward of Lancaster City*, 126 A. 199 (Pa. 1924). Note that while Pennsylvania's Constitution has been amended on several occasions since this Court's binding precedent interpreting what is now Article VII, Section 1 of the Pennsylvania Constitution, the language has remained consistent throughout time.[4]

Article VII, Section 14 of the Pennsylvania Constitution, which provides for absentee voting, sets forth the sole exceptions to Article VII, Section 1's

[4] A discussion of the relevant amendments to the Pennsylvania Constitution is contained in Section IV(B)(1) of this Brief.

directive to “offer to vote.” Section 14 permits electors to vote by absentee ballot if they meet one of the specifically enumerated exceptions therein.

Act 77 of 2019 renders Article VII, Section 14 of the Pennsylvania Constitution entirely superfluous as it would permit the use of mail-in voting by electors with no declared excuse for its use. Any modification to this system must be effectuated by Constitutional Amendment, just as was done to introduce absentee voting in the Commonwealth of Pennsylvania, and as was contemplated by Pennsylvania’s General Assembly prior to the passing of Act 77.

Act 77 also violates the United States Constitution as a violation of Article I, Section 2; Article I, Section 4; Article II, Section 1; and the 17th Amendment of the United States Constitution. The United States Constitution delegates the power to provide for the election of United States Senators, United States Representatives, and President of the United States to the states and their legislatures.

When a state exercises the power to provide for federal elections in such a manner that is violative of that state’s constitution, such act arises to the level of a violation of the United States Constitution. *See Smiley v. Holm*, 285 U.S. 355 (1932). Here, as Act 77 applies in equal force to elections for state and federal office, and as Act 77 clearly violates Article VII, Section 1

of the Pennsylvania Constitution, Act 77 violates the United States Constitution as an improper use of a state legislature's federally delegated power to provide for the election of United States Senator, United States Representative, and the President of the United States in contravention of this State's Constitution.

Lastly, Appellant claims that Section 13 of Act 77 operates as a statutory time bar to claims challenging the validity of Act 77 after the expiration of 180 days from the date of Act 77's enactment. Appellant also argues that Section 13 of Act 77 grants exclusive jurisdiction to the Pennsylvania Supreme Court to hear such challenges during the 180-day period. Appellant's argument misinterprets Section 13 of Act 77. Section 13 simply provides that for the first 180 days of Act 77's enactment, the Pennsylvania Supreme Court shall have exclusive subject matter jurisdiction over challenges to Act 77's validity.

The expiration of such a time period does not operate to bar any claims after the 180 days, but simply revokes the Pennsylvania Supreme Court's exclusive jurisdiction, permitting challenges outside of the 180-day period to be brought in other Pennsylvania Courts possessing jurisdiction over the matter, i.e., the Commonwealth Court. *See Delisle v. Boockvar*, 95 MM 2020, 234 A.3d 410 (Table) (Pa. 2020). As Section 13 does not operate as a

statutory time bar foreclosing all challenges to Act 77 after the expiration of 180 days, the Commonwealth Court had subject matter jurisdiction to resolve Appellees' challenges to Act 77.

V. Argument.

A. No-excuse mail-in voting provided for under Act 77 violates the Pennsylvania Constitution as the Pennsylvania Constitution requires electors to "offer to vote" by physically presenting their ballots to their polling place on election day, unless the exceptions set forth in Article VII, Section 14 of the Pennsylvania Constitution are met.

Act 77's authorization of no-excuse mail-in voting violates Article VII, Section 1 of the Pennsylvania Constitution as Article VII, Section 1 provides,

> Every Citizen 21 years of age, possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact.
>
> 1. He or she shall have been a citizen of the United States for at least one month.
>
> 2. He or she shall have resided in the State 90 days immediately preceding the election.
>
> 3. He or she shall have resided in the election district where he or she shall offer to vote at least 60 days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within 60 days preceding the election.

Pa. Const. art. VII, § 1.

The phrase contained in Article VII, Section 1, "offer to vote," has been interpreted by this Court to require an elector to present their ballot, in person, at their polling place on election day. *See Chase v. Miller*, 41 Pa.

403 (1862); *see also In re Contested Election of Fifth Ward of Lancaster City*, 126 A. 199 (Pa. 1924). The sole exception to the Pennsylvania Constitution's requirement to "offer to vote," is contained in Article VII, Section 14 of the Pennsylvania's Constitution, which provides as follows,

> (a) The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation, or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.
>
> (b) For purposes of this section, "municipality" means a city, borough, incorporated town, township, or any similar general purpose unit of government which may be created by the General Assembly.

Pa. Const. art. VII, § 14.

1. This Court's decisions in *Chase v. Miller*, 41 Pa. 403 (1862) and *In re Contested Election of Fifth Ward of Lancaster City*, 126 A. 199 (Pa. 1924) have held that the phrase "offer to vote," as used in Pennsylvania's Constitution, requires electors to physically present their ballots at their polling places, on election day.

The case of *Chase v. Miller*, 41 Pa. 403 (1862) concerned an election for district attorney of Luzerne County. Chase received 5811 votes to Miller's

5646 votes. At the time, Pennsylvania's Military Absentee Act of 1839 was in effect, which act provided that,

> [w]henever any of the citizens of this Commonwealth, qualifies as hereinbefore provided, shall be in any actual military service in any detachment of the militia or corps of volunteers under a requisition from the President of the United States, or by the authority of this Commonwealth, on the day of the general election, such citizens may exercise the right of suffrage at such place as may be appointed by the commanding officer of the troop or company to which they shall respectively belong, as fully as if they were present at the usual place of election: Provided, that no member of any such troop or company shall be permitted to vote at the place so appointed, if at the time of such election he shall be within ten miles of the place at which he would be entitled to vote if not in the service aforesaid.

Chase v. Miller, 41 Pa. 403, 416 (1862); *citing* Military Absentee Act of 1839, Act of July 2, 1839, P.L. 770.

Pursuant to the Military Absentee Act of 1839, 420 absentee ballots were received from volunteers in the United States Army. *Chase*, 41 Pa. at 414. Of these 420 absentee ballots, 362 votes were cast for Jerome Miller, which if counted would give him enough votes to win the election for district attorney in Luzerne County. This led to a challenge to the 420 absentee ballots and the Military Absentee Act of 1839 as violative of Article III, Section 1 of the Pennsylvania Constitution of 1838.

Article III, Section 1 of Pennsylvania's 1838 Constitution is a previous version of Article VII, Section 1 of Pennsylvania's current Constitution and contains similar language, stating:

> In elections by the citizens, every white freeman of the age of twenty-one years, having resided in this State one year, and in the election-district where he offers to vote ten days immediately preceding such election, and within two years paid State or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector.

Pa. Const. art. III, § 1 (1838)

This Court discussed the legislative history of the 1838 constitutional amendment stating that, "the main object [of the amendment] was to identify the legal voter, before the election came on, and to compel him to offer his vote in his appropriate ward or township, and thereby to exclude disqualified pretenders and fraudulent voters of all sorts." *Chase*, 41 Pa. at 418. As further noted by the *Chase* Court, "the Constitution of 1838 made the precise place of voting an element of suffrage." *Id*. at 417.

In reviewing Article III, Section 1 of the 1838 Constitution together with the political context under which the amendment was adopted, this Court defined the phrase "offer to vote," as used in Article III, Section 1 of the 1838 Constitution, as follows:

> To "offer to vote" by ballot, is to present oneself, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to

> receive it. The ballot cannot be sent by mail or express, nor can it be cast outside of all Pennsylvania election districts and certified into the county where the voter has his domicil. We cannot be persuaded that the constitution ever contemplated any such mode of voting, and we have abundant reason for thinking that to permit it would break down all the safeguards of honest suffrage. The constitution meant, rather, that the voter, in propria persona, should offer his vote in an appropriate election district, in order that his neighbours might be at hand to establish his right to vote if it were challenged, or to challenge if it were doubtful.
>
> The amendment so understood, introduced not only a new test of the right of suffrage, to wit, a district residence, but a rule of voting also. Place became an element of suffrage for a two-fold purpose. Without the district residence no man shall vote, but having had the district residence, the right it confers is to vote *in that district*. Such is the voice of the constitution. The test and the rule are equally obligatory. We have no power to dispense with either. Whoever would claim the franchise which the constitution grants, must exercise it in the manner the constitution prescribes.

Id. at 419 (emphasis in original).

In response to the Court's decision in *Chase v. Miller*, Pennsylvania's Constitution was amended in 1864 to allow for absentee voting for electors serving in the military through Article III, Section 4, which stated,

> [w]henever any of the qualified electors of this Commonwealth shall be in actual military service, under a requisition from the President of the United States or by the authority of this Commonwealth, such electors may exercise the right of suffrage in all elections by the citizens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual places of election.

Pa. Const. art. III, § 4 (1864).[5]

In 1923, Pennsylvania's General Assembly passed the Act of May 22, 1923, P.L. 309, or the 1923 Absentee Voting Act. This Act expanded Pennsylvania's absentee voting to include citizens who, while not in the military, were nonetheless unable to be in their district on election day.

At the first election following the adoption of Pennsylvania's statutory expansion of absentee voting in 1923, a dispute arose between candidates for the Councilman of the fifth ward of Lancaster City. *In re Contested Election of Fifth Ward of Lancaster City*, 126 A. 199 (Pa. 1924). One candidate for councilman, Lewis, received 869 votes while the opposing candidate, Bare, received 861. *Id*. at 200. After receiving absentee ballots under the 1923 Absentee Voting Act, 20 votes were cast for Bare, leaving Bare the winner of the election. In response, Lewis challenged the results of the 1923 election alleging that the 1923 Absentee Voting Act violated the Pennsylvania Constitution. *Id*.

In determining the constitutionality of the 1923 Absentee Voting Act, this Court reaffirmed its holding in *Chase v. Miller*, construing the operative phrase, "offer to vote," as used in Article VIII, Section 1 of the Pennsylvania

[5] Article III, § 4 of the Pennsylvania Constitution of 1864 was continued in the Pennsylvania Constitution of 1874 at Article VIII, § 6. See Pa. Const. art. VIII, § 6 (1874).

Constitution of 1874, to require an elector, "to present one's self, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it." *In re Contested Election in Fifth Ward of Lancaster City*, 126 A. 199, 200 (Pa. 1924); *citing Chase v. Miller*, 41 Pa. 403 (1862). This Court ultimately struck down the 1923 Absentee Voting Act as an unconstitutional attempt to amend the Constitution by statute, stating,

> [t]he Legislature can confer the right to vote only upon those designated by the fundamental law, and subject to the limitations therein fixed. The latter has determined those who, absent from the district, may vote other than by personal presentation of the ballot, but those so permitted are specifically named in section 6 of article 8. The old principle that the expression of an intent to include one class excludes another has full application here [*Expressio Unius*] . . .
>
> However laudable the purpose of the act of 1923, it cannot be sustained. If it is deemed necessary that such legislation be placed upon our statute books, then an amendment to the Constitution must be adopted permitting this to be done.

Lancaster City, 126 A. at 201; *citing McCafferty v. Guyer*, 59 Pa. 109 (1868).

While Pennsylvania's Constitution was amended following this Court's decision in *Chase v. Miller* to include absentee voting for citizens in active military service, the 1923 expansion of absentee voting was effectuated through statute. Similar to Act 77 in the present matter, Pennsylvania's General Assembly attempted to amend the Pennsylvania Constitution's

mandate of voting in person by statute, ultimately resulting in such statute being declared unconstitutional.

This Court's decisions in the cases of *Chase v. Miller* and *In re Contested Election of Fifth Ward of Lancaster City* have created binding precedent holding that the phrase "offer to vote" as contained in the Pennsylvania Constitution, requires electors to physically present themselves to their polling place on election day to manually deliver their ballot. Any exception to this rule, such as is provided in Article VII, Section 14, must be adopted through Constitutional Amendment. Any attempt to amend the Pennsylvania Constitution through statute, such as what occurred through the passage of Act 77, must be held to be unconstitutional pursuant to this Court's ruling in *Lancaster City*.

Further, Appellant's assertions that the cases of *Chase v. Miller* and *Lancaster City* are inapplicable to the present case as they concern prior versions of Pennsylvania's Constitution are misplaced. As demonstrated below, the constitutional provisions implicated by the present matter have remained largely unchanged since their interpretation in *Chase* and *Lancaster*.

As noted by the *Lancaster City* Court when reviewing the 1923 Absentee Voting Act,

> [i]n construing particular clauses of the Constitution it is but reasonable to assume that in inserting such provisions the convention representing the people had before it similar provisions in earlier Constitutions, not only in our own state but in other states which it used as a guide, and, in adding to, or subtracting from, the language of such other Constitutions the change was made deliberately and was not merely accidental.

Lancaster City, 126 A. at 201

The case of *Chase v. Miller* analyzed the matter pursuant to Article III, Section 1 of the Pennsylvania Constitution.[6] Article III, Section 1 was continued in the Constitution of 1874 and renumbered to Article VIII, Section 1. Article VIII, Section 6 maintained the phrase, "offer to vote," but added additional qualifications for an elector in the Commonwealth as follows:

> [e]very male citizen twenty-one years of age, possessing the following qualifications shall be entitled to vote at all elections:
>
> First. – He shall have been a citizen of the United States at least one month.
>
> Second. – He shall have resided in the State one year, (or if, having previously been a qualified elector or native born citizen of the State, he shall have removed therefrom and returned, then six months), immediately preceding the election.
>
> Third. – He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.

[6] Pa. Const. art. III, § 1 (1838): [i]n elections by the citizens, every white freeman of the age of twenty-one years, having resided in this State one year, and in the election-district where he offers to vote ten days immediately preceding such election, and within two years paid State or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector.

> Fourth. – If twenty-two years of age or upwards, he shall have paid within two years a State or county tax, which shall have been assessed at least two months and paid at least one month before the election.

Pa Const. art. VIII, § 1 (1874).

The Constitution of 1901 also maintained this section, changing the first paragraph of Article VIII, Section 1 to read, "[e]very male citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections, *subject however to such laws requiring and regulating the registration of electors as the General Assembly may enact.*" Pa. Const. art. VIII, § 1 (1901) (text added by amendment emphasized).

Article VIII, Section 1 was further amended in 1959 to expand paragraph 3 of the Section to contain the same language it contains in the present day. Article VIII, Section 1 has remained unchanged since 1959, with the only change being the section being renumbered to Article VII, Section 1 in 1967.

Every past iteration of Article VII, Section 1 of the Pennsylvania Constitution has maintained the phrase "offer to vote" in its text and none of the various amendments to Article VII, Section 1 has removed the phrase or provided additional context so as to render this Court's interpretation of the phrase inapplicable. Accordingly, despite the fact that Article VII, Section 1

of the Pennsylvania Constitution has been amended on numerous occasions, the operative phrase “offer to vote” has been contained in each version of the Pennsylvania Constitution.

By necessary implication, this Court’s decisions in *Chase v. Miller* and *Lancaster City*, which held that “offer to vote” requires that an elector “to present one's self, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it,” are binding precedent directly applicable to the present matter and require that Act 77 be stricken as violative of the Pennsylvania Constitution. *See In re Contested Election in Fifth Ward of Lancaster City*, 126 A. 199, 200 (Pa. 1924); *citing Chase v. Miller*, 41 Pa. 403 (1862).

Article VII, Section 1 of the Pennsylvania Constitution requires that ballots be manually delivered at the polling place of the elector, on election day, except for such circumstances as recognized by Article VII, Section 14. As recognized by this Court in *Lancaster City*, any attempt to modify this constitutional rule must be accomplished through amendment to the Constitution of the Commonwealth of Pennsylvania and cannot be accomplished through legislation.

Appellant additionally argues that Article VII, Section 4 of the Pennsylvania Constitution permits the General Assembly to enact Act 77 of

2019, which section provides that, "[a]ll elections by the citizens shall be by ballot or by such other method as may be prescribed by law: provided, that secrecy in voting be preserved." Pa. Const. art. VII, § 4. However, this interpretation is in error as Article VII, Section 4 simply provides for secrecy in voting. The *Lancaster City* Court construed the phrase, "by such other method as may be prescribed by law," to have been added to provide for the use of voting machines in the Commonwealth. *See Lancaster City*, 126 A. at 201. (stating "It may well be argued that the scheme of procedure fixed by the act of 1923 . . . would end in disclosure of the voter's intention prohibited by the amendment of 1901 to section 4 of article 8 of the Constitution. Though this provision as to secrecy was likely added in view of the suggestion of the use of voting machines.")

2. The Doctrine of *Stare Decisis* demands that Act 77 be held to be violative of Article VII, Section 1 of the Pennsylvania Constitution.

The Doctrine of *Stare Decisis* comes from the legal maxim, "*stare decisis et non quieta movere*," which doctrine declares that a conclusion reached in one case should be applied to cases with substantially similar facts that follow for the sake of certainty and clarity in the current state of the law. *See* 1 Standard Pennsylvania Practice 2d § 2:247. The importance of the Doctrine of *Stare Decisis* was underscored by Madame Justice Todd in

this Court's opinion in *Hunt v. Pennsylvania State Police of Com.*, which stated that,

> [w]hen our Court renders a decision on a particular topic, it enjoys the status of precedent. The danger of casually discarding prior decisions is that future courts may regard the new precedent as temporary as well. . .
>
> Certainly, there are legitimate and necessary exceptions to the principle of *stare decisis*. But for the purposes of stability and predictability that are essential to the rule of law, the forceful inclination of courts should favor adherence to the general rule of abiding by that which has been settled.

Hunt v. Pennsylvania State Police of Com., 983 A.2d 627, 637 (Pa. 2009); *citing Shambach v. Bickhart*, 845 A.2d 793, 807 (Pa. 2004) (Saylor, J. concurring).

Stare Decisis has been labeled, "the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Fugh v. Unemployment Compensation Bd. of Rev.*, 153 A.3d 1169, 1177 (Pa. Commw. 2017); *citing Payne v. Tennessee*, 501 U.S. 808, 827 (1991).

As noted by the Court below, this Court's binding precedents in *Lancaster City* and *Chase v. Miller* have instructed both the General Assembly and the Courts of Pennsylvania on the current state of Pennsylvania's election law for over 100 years.

As recognized by this Court and the United States Supreme Court, "[t]o reverse a decision, we demand a special justification, over and above the belief that the precedent was wrongly decided." *Commonwealth v. Alexander*, 243 A.3d 177, 196 (Pa. 2020); *citing Allen v. Cooper*, - U.S. -, 140 S.Ct. 994, 1003 (2020) (internal citations omitted).

In setting forth the factors to be considered when deciding to overrule a prior decision, Madame Justice Donahue of this Court stated,

> [t]he high Court has "identified several factors to consider in deciding whether to overrule a past decision, including the quality of its reasoning, the workability of the rule it established, its consistency with other related decisions, … and reliance on the decision."

Alexander, 243 A.3d at 196; *citing Knick v. Twp. Of Scott, Pennsylvania*, - U.S. -, 139 S. Ct. 2162 (2019).

Appellant simply alleges that the Court's decisions in *Chase v. Miller* and *Lancaster City* were wrongly decided, with no additional justification provided for the overturning of this Court's binding precedent. However, when analyzing the factors set forth by this Court in *Alexander*, it becomes clear that *Chase* and *Lancaster City* should not be overturned.

Both decisions were well reasoned opinions that have established rules that have been workable for the past one hundred years and remain workable today. *Chase* and *Lancaster City* do not place a blanket prohibition

on the potential future use of no-excuse mail-in ballots in Pennsylvania. Indeed, the *Lancaster City* opinion and the lower Court's opinion both recognize the expansion of voting rights as "laudable," but that given the state of Pennsylvania's Constitution such a provision must be provided by Constitutional Amendment. Additionally, the holdings in *Chase* and *Lancaster City* are firmly rooted in the text of the Pennsylvania Constitution, with the operative language of such text remaining virtually the same as it was when analyzed in those cases.[7]

Moreover, as *Chase* and *Lancaster City* have been binding precedent of this Court for over one hundred years, there has been significant reliance on their holdings. The Pennsylvania Constitution was amended in 1874 in direct response to this Court's decision in *Chase v. Miller*, thereby creating the basis and precursor for Article VII, Section 14 of Pennsylvania's current constitution. Pennsylvania's Constitution was again amended following this Court's decision in *Lancaster City* to provide for expanded absentee voting. In addition to the amendments of Pennsylvania's Constitution being inspired by *Lancaster City* and *Chase*, several lower courts in the Commonwealth of

[7] As noted by the court below, the text of Pennsylvania's Constitution at issue in the present case ("offer to vote") has only been strengthened over time as the phrase has been changed from its declarative form ("offers to vote") to its imperative form ("shall offer to vote") by the 1874 Amendment to Article III, Section 1 (Now Article VII, Section 1).

Pennsylvania have issued decisions relying on this Court's holdings in *Lancaster City* and *Chase*. *See e.g., In re Franchise of Hospitalized Veterans*, 77 Pa. D. & C. 237 (Allegheny Cty. 1952); *In re Election Instructions*, 2 Pa. D. 299 (Perry Cty. 1888).

The applicability of *Lancaster City* and *Chase* to the present matter, as more fully set forth in the preceding section of this Brief, together with the 100 years of guidance and direction that those decisions have provided to the Commonwealth of Pennsylvania, counsel against Appellant's suggestion that such decisions should be overturned. Very little has changed in the text of Pennsylvania's Constitution that would make *Lancaster City* and *Chase* inapplicable to the present matter. Accordingly, any change to Pennsylvania's Constitution providing for no-excuse mail-in voting must be effectuated through constitutional amendment, just as this Court held in *Lancaster City*. This Court should reaffirm its prior decisions and hold that Act 77 violates Article VII, Section 1 of the Pennsylvania Constitution.

3. Act 77 renders Article VII, Section 14 of Pennsylvania's Constitution superfluous and meaningless, in violation of well-established Pennsylvania law.

Pennsylvania law provides that, "[e]very statute shall be construed, if possible, to give effect to all its provisions." 1 Pa. C.S. § 1921(a). This Court has held that the provisions of Pennsylvania's Statutory Construction Act

apply to the interpretation of Constitutional provisions. *See League of Woman Voters v. Commonwealth*, 178 A.3d 737, 802 (Pa. 2018) (stating, "in the process of undertaking explication of a provision of the Pennsylvania Constitution . . . we follow the rules generally applicable when construing statutes"). Therefore, no provision shall be "reduced to mere surplusage." *Office of General Counsel v. Bumsted*, 247 A.3d 71, 78 (Pa. Commw. 2001); *citing Walker v. Eleby*, 842 A.2d 389, 400 (Pa. 2004). However, Act 77's provision for no-excuse mail-in voting would render Article VII, Section 14 of the Pennsylvania Constitution entirely meaningless. Article VII, Section 14 provides for the absentee voting of electors in the Commonwealth as follows,

> (a) The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation, or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

Pa. Const. art. VII, § 14.

Article VII, Section 14 of Pennsylvania's constitution sets forth four exceptions to Pennsylvania's requirement of in-person voting. The doctrine

of *expressio unius est exclusio alter* dictates that the inclusion of specific matters implies the exclusion of all other matters. *See Thompson v. Thompson*, 223 A.3d 1272, 1277 (Pa. 2020). However, Act 77 would permit the use of no-excuse mail-in voting regardless of whether an elector met any of the constitutionally enumerated exceptions in Article VII, Section 14 and no voter would ever again need to utilize the constitutional provisions for absentee voting. Indeed, the Constitutional Amendment offered by the General Assembly would have stricken the language of Article VII, Section 14 of the Pennsylvania Constitution and would have substituted the following:

> The legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors may vote, and for the return and canvass of their votes in the election district in which they respectively reside. A law under this subsection may not require a qualified elector to physically appear at a designated polling place on the day of the election.

SB 411 of 2019, Printer's No. 1012.

Accordingly, for the foregoing reasons, Act 77 should be held to be unconstitutional.

B. As set forth in Appellees' Notice of Cross Appeal, Act 77 violates the United States Constitution.

1. Act 77 exceeds the powers granted to Pennsylvania's General Assembly by Article I, § 2; Article I, § 4; Article II, § 1; and the 17th Amendment of the United States Constitution.

The lower court declined to reach the merits of the Bonner Petitioners' claims under the United States Constitution. As Intervenors in both of the consolidated cases in the lower court, Appellees Butler County Republican Committee, Washington County Republican Committee, and York County Republican Committee filed a Notice of Cross Appeal, appealing from the lower court's declination to reach the merits of Bonner's federal claims.

The United States Constitution delegates power to the states to provide for the election of members of the United States House of Representatives, United States Senate, and the President of the United States.

Article I, Section 2 of the United States Constitution provides that, "[t]he House of Representatives shall be composed of members chosen every second year by the People of the several states, and the Electors in each state shall have the qualifications requisite for Electors of the most numerous Branch of the State Legislature." U.S. Const. art. I, § 2.

Article I, Section 4 of the U.S. Constitution delegates the power to choose the time, place, and manner of elections for federal office to the states. U.S. Const. art. I, § 4.

Article II, Section 1, clause 2 of the U.S. Constitution delegates the power to the states to appoint electors for the election of President of the United States. U.S. Const. art. II, § 1, cl.2.

And lastly, the 17th Amendment to the United States Constitution provides for the popular election of United States Senators. U.S. Const. amend. XVII.

The United States Supreme Court has reviewed the U.S. Constitution's delegation of the power to provide for the election of federal offices to the states in the case of *Smiley v. Holm*, 285 U.S. 355 (1932). The *Smiley* case concerned Minnesota's attempt to pass a reapportioned congressional district map following the fifteenth decennial census. The Minnesota legislature passed a reapportioned map, but the map was rejected by Minnesota's governor. *Id*. at 361. Thereafter, without any further action on the Minnesota Legislature's reapportioned map, the legislature deposited the bill with the Secretary of State, despite the fact that Minnesota's governor failed to approve the same. *Id*. The *Smiley*-Petitioner then brought suit alleging that the reapportioned map was a nullity as it was not repassed by

the Minnesota Legislature after the Governor's veto in violation of Article 4, Section 1 of the Minnesota Constitution. *Id*. at 363.

The issue before the *Smiley*-Court was, "whether the provision of the Federal Constitution, thus regarded as determinative, invests the Legislature with a particular authority, and imposes upon it a corresponding duty, the definition of which imports a function different from that of lawgiver, and thus renders inapplicable the conditions which attach to the making of state laws." *Smiley*, 285 U.S. at 365. The Court held that Minnesota's reapportioned map violated the Minnesota Constitution, and consequently the delegation of power to the States to provide for the election of federal officers. *Id*. at 372-73. In so holding, the Mr. Chief Justice Hughes reasoned,

> [a]s the authority is conferred for the purpose of making laws for the state, it follows, in the absence of an indication of a contrary intent, that the exercise of the authority must be in accordance with the method which the state has prescribed for legislative enactments. ***We find no suggestion in the federal constitutional provision of an attempt to endow the Legislature of the state with power to enact laws in any manner other than that in which the Constitution of the state has provided that laws shall be enacted.***

Id. at 367-68 (emphasis added).

Accordingly, while acting under the delegation of powers set forth in Article I, Section 2; Article I, Section 4; Article II, Section 1; and the 17th Amendment of the United States Constitution by enacting legislation

affecting the election of United States Representative, United States Senator, and/or President of the United States, a state must ensure that such legislation complies with its own Constitution.

As set forth herein, Act 77 plainly and clearly violates Article VII, Section 1 of Pennsylvania's Constitution as it is in violation of the clear mandate in Article VII, Section 1 to "offer to vote," as that phrase has been consistently interpreted by this Court. As Act 77 applies to elections for federal office in the Commonwealth of Pennsylvania and violated the Constitution of the Commonwealth of Pennsylvania, Act 77 also violates Article I, Section 2; Article I, Section 4; Article II, Section 1; and the 17th Amendment of the United States Constitution.

2. No-excuse mail-in voting under Act 77 violates the Fourteenth Amendment of the United States Constitution's guarantee of Due Process and Equal Protection by diluting the weight of a citizen's vote through the Commonwealth's use of illegal mail-in ballots.

As set forth by Chief Justice Warren of the United States Supreme Court, "[u]ndeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections . . . And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964).

The principle of vote dilution was recognized by Justice Douglas's dissent in *South v. Peters*, 339 U.S. 276 (1950). In his dissent, Justice Douglas observed,

> [t]here is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted. It also includes the right to have the vote counted at full value without dilution or discount. That federally protected right suffers substantial dilution in this case. The favored group has full voting strength. The groups not in favor have their votes discounted.

South v. Peters, 339 U.S. 276, 279 (1950); *citing Ex parte Yarborough*, 110 U.S. 651 (1884); *United States v. Saylor*, 322 U.S. 385 (1944).

This Court has adopted a similar standard in the case of *League of Women Voters* by holding that, "any legislative scheme which has the effect of impermissibly diluting the potency of an individual's vote for candidates for elective office relative to that of other voters will violate the guarantee of 'free and equal' elections afforded by Article I, Section 5." *League of Women Voters v. Commonwealth*, 178 A.3d 737, 809 (Pa. 2018).

Applying the legal principle of vote dilution to the present matter concerning Act 77, it becomes clear that the use of illegal no-excuse mail-in ballots in elections in the Commonwealth of Pennsylvania effectively dilutes the properly cast votes of citizens voting under Article VII, Section 1 or Article VII, Section 14 of the Pennsylvania Constitution. This dilution of votes, as

recognized by the Supreme Court's decisions in *South v. Peters* and *Reynolds v. Sims*, rises to an infringement of the exercise of the right to vote, and therefore is violative of the Fourteenth Amendment of the United States Constitution and its guarantees of Due Process and Equal Protection under the law.

C. Section 13 of Act 77 does not operate as a statutory time bar so as to totally prevent constitutional challenges to the Act 180-days after its enactment.

Appellants argue that Section 13 of Act 77 operates as a statutory time bar, requiring any challenge to the constitutionality of Act 77 to be brought within the first 180 days of the Act's enactment. However, a review of statutes in the Commonwealth of Pennsylvania containing similar exclusive jurisdiction provisions, together with case law interpreting such provisions, makes it clear that Section 13 of Act 77 grants exclusive jurisdiction to the Pennsylvania Supreme Court for the first 180 days of Act 77's effective date. The expiration of this time period contained in Section 13 does not operate as a bar to any challenge to the constitutionality of Act 77 but removes the Supreme Court's exclusive jurisdiction.

Section 13 of Act 77 provides as follows,

> (2) The Pennsylvania Supreme Court has exclusive jurisdiction to hear a challenge to or to render a declaratory judgment concerning the constitutionality of a provision referred to in

> paragraph (1)[8]. The Supreme Court may take action it deems appropriate, consistent with the Supreme Court retaining jurisdiction over the matter, to find facts, or to expedite a final judgment in connection with such a challenge or request for declaratory relief.
> (3) An action under paragraph (2) must be commenced within 180 days of the effective date of this section.

As recognized by the Court below, the language contained in Section 13 of Act 77 speaks to subject matter jurisdiction of a Court reviewing the constitutionality of Act 77 and grants the exclusive subject matter jurisdiction to the Pennsylvania Supreme Court for the first 180 days of its enactment. This Court has confronted this issue before in the case of *Glen-Gery Corp. v. Zoning Hearing Bd. of Dover Tp.*, 907 A.2d 1033 (Pa. 2006). The *Glen-Gery* case concerned a corporation's challenge to two zoning and land use ordinances of Dover Township. The ordinances challenged in *Glen-Gery* contained exclusive jurisdiction provisions similar to the provision included in Section 13 of Act 77, granting exclusive jurisdiction to the Dover Township Zoning Hearing Board for the first thirty days following the enactment of the ordinances. *Id*. at 1035. The Dover Township Zoning Hearing Board dismissed the *Glen-Gery* Appellants' challenges as untimely filed as the

[8] Paragraph (1) of Section 13 provides, "this section applies to the amendment or addition of the following provisions of the act: Section 102; Section 1003(a); Section 1007(b); Section 1107; Section 1110; Section 1107-A; Section 1109-A; Section 1112-A(a); Section 1216(d); Section 1222 (a) and (b); Section 1223; Section 1231; Section 1232; Section 1233; Section 1302; Section 1302.1; Section 1303.2; Section 1305; Section 1306; Section 1308; Article XIII-D.

challenges were filed after the expiration of the thirty-day exclusive jurisdiction provision contained in the ordinances. *Id*. On appeal, this Court framed the issue as follows,

> [t]he basic issue before this Court is whether the plain language of either of two statutory provisions, Section 909.1(a)(2) or amended Section 5571(c)(5), controls this appeal or whether the challenged statute is rendered void *ab initio*, thereby circumventing the deadline for filing an appeal. The underlying claim regarding the alleged procedural defect in enacting the ordinance is not before us; rather, we are asked to decide whether such a challenge may be heard as timely. We conclude that it can be heard.

Glen-Gery Corp., 907 A.2d at 1037.

In holding that the exclusive jurisdiction provisions of the two ordinances at issue in *Glen-Gery Corp.*, this Court examined the doctrine of void *ab initio*. The doctrine of void *ab initio* provides that where a statute is held unconstitutional, "[it] is considered void in its entirety and inoperative as if it had no existence from the time of its enactment." *Id*.; *citing* Erica Frohman Plave, *The Phenomenon of Antique Laws: Can a State Revive Old Abortion Laws in a New Era?*, 58 Geo. Wash. L.Rev. 111 (1990).

This Court subsequently applied the void *ab initio* doctrine to the exclusive jurisdiction provision contained in the ordinances at issue in *Glen-Gery Corp* and concluded that,

> the effect of a finding that the ordinance is void *ab initio* means that it essentially never became law because of its procedural

> defects; thus, any component of the challenge that contains a time bar, or intended effective date, is deemed void for having never been properly passed.

Glen-Gery Corp., 907 A.2d at 1040.

Accordingly, for purposes of the exclusive jurisdiction provisions in the *Glen-Gery* case, the statutes were treated as void *ab initio* and as such, were never in effect so as to begin the time period for the exclusive jurisdiction; thus, permitting the challenges to the ordinances to proceed. *Id*.

Applying the above to the present challenge to Act 77, the exclusive jurisdiction provisions contained in Section 13 of Act 77 do not operate as a time bar to any challenges brought to Act 77 after the expiration of 180 days after the enactment of Act 77, but rather grant exclusive jurisdiction to the Pennsylvania Supreme Court for the time period referenced therein, after such point challenges to the constitutionality of Act 77 may brought in other Courts possessing subject matter jurisdiction (such as the Commonwealth Court).

Indeed, this Court has been confronted with this precise issue, in the context of a challenge to Act 77. In the case of *Delisle v. Boockvar*, a Petition for Review was filed challenging the constitutionality of Act 77 after the expiration of the 180-day time period referenced in Section 13 of the Act.

Delisle v. Boockvar, 95 MM 2020, 234 A.3d 410 (Table) (Pa. 2020). This Court issued a Per Curiam Order providing,

> AND NOW, this 29th day of May, 2020, upon consideration of the Petitioners' Petition for Review:
>
> 1. The Petition for Review was filed outside of the 180-day time period from the date of enactment of Act No. 2019-77 during which this Court had exclusive jurisdiction to decided specified constitutional challenges to Act No. 2019-77. See Section 13(1)-(3).
>
> 2. Petitioners' alternative request for King's Bench or extraordinary jurisdiction is denied.
>
> 3. The case is immediately transferred to the Commonwealth Court.

Delisle v. Boockvar, 95 MM 2020, 234 A.3d 410-411 (Table) (Pa. 2020).

In a concurring statement to the Per Curiam Opinion, Mr. Justice Wecht reasoned that, "*I join the Court's decision to transfer the Petition for Review to the Commonwealth Court for disposition*. The statute that conferred exclusive jurisdiction upon this Court to hear constitutional challenges revoked that jurisdiction at the expiration of 180 days, and there is no question that Petitioners herein filed their petition outside that time limit." *Delisle v. Boockvar*, 95 MM 2020, 234 A.3d 410, 411 (Table) (Pa. 2020) (Wecht, J. concurring) (emphasis added).

Accordingly, Appellant's assertion that Section 13 of Act 77 operates as a time bar to all constitutional challenges brought outside of the 180-day

time period is without merit as Act 77 was void ab initio and was never legally effective so as to begin the 180-day time period; and, Pennsylvania's General Assembly has utilized exclusive jurisdiction provisions on prior occasions and such prior use has not operated as a time bar to constitutional challenges in their entirety. *See e.g., Pennsylvanians Against Gambling Expansion Fund, Inc. v. Com.*, 877 A.2d 383 (Pa. 2005). Further, this Court has already had occasion to interpret the specific exclusive jurisdiction provision contained in Section 13 of Act 77 and has concluded that challenges brought outside of the 180-day time period should be transferred to the Commonwealth Court of Pennsylvania, just as the Petitioners' challenges in the present matter were originated. *See Delisle v. Boockvar*, 95 MM 2020, 234 A.3d 410 (Table) (Pa. 2020).

Moreover, Appellant's construction of Section 13 of Act 77 to operate as a statutory time bar to all challenges to Act 77 falling outside of the 180-day time period does not comport with this Court's jurisprudence on unconstitutional statutes. This Court has held that a delay in bringing a challenge to the constitutionality of a statute shall not bar such challenge from proceeding. In *Sprague v. Casey*, this Court held that, "laches and prejudice can never be permitted to amend the Constitution." *Sprague v.*

Casey, 550 A.2d 184, 188 (Pa. 1988).[9] In so holding, this Court cited to the case of *Wilson, et ux. v. Philadelphia School District, et al.*, 195 A. 90 (Pa. 1937), which case provides,

> [w]e have not been able to discover any case which holds that laches will bar an attack upon the constitutionality of a statute as to its future operation, especially where the legislation involves a fundamental question going to the very roots of our representative form of government and concerning one of its highest prerogatives. To so hold would establish a dangerous precedent, the evil effect of which might reach far beyond present circumstances.

Sprague v. Casey, 550 A.2d 184, 188-89 (Pa. 1988); *citing Wilson, et ux. v. Philadelphia School District, et al.*, 195 A. 90, 99 (Pa. 1937).

However, Appellant's interpretation of Section 13 of Act 77 would have the same effect as barring Appellees' claims due to laches or unreasonable delay. Appellant argues that even if the Appellees' claims are correct and that Act 77 is unconstitutional, that such actions were time barred. This would permit the Pennsylvania Constitution, specifically Article VII, Section 1 and Article VII, Section 14, to improperly be amended by statute. This is precisely the scenario contemplated by this Court's holding in *Sprague v. Casey*, and,

[9] Note that Appellant has waived her arguments raised below regarding standing and laches. Brief of Appellant, at pg. 15, n. 8. The case of *Sprague v. Casey* is cited solely for the proposition that delay will not bar an attack upon the constitutionality of the "future operation" of a statute.

as such, Section 13 of Act 77 does not operate as a time bar to challenges to Act 77 brought outside of the 180-day time period referenced therein.

VI. Conclusion.

As set forth herein, Act 77 of 2019 should be stricken as violative of the Pennsylvania Constitution inasmuch as it is an impermissible attempt to statutorily amend the Constitution to provide for no-excuse mail-in voting. As recognized by the court below (in similar fashion as this Court in *Lancaster City*), "[i]f presented to the people, a constitutional amendment to end the Article VII, Section 1 requirement of in-person voting is likely to be adopted. But a constitutional amendment must be presented to the people and adopted into our fundamental law before legislation authorizing no-excuse mail-in voting can be placed upon our statute books." R. 2117a; *See also In re Contested Election in Fifth Ward of Lancaster City*, 126 A. 199, 200 (Pa. 1924) (holding: "[h]owever laudable the purpose of the [1923 Absentee Voting Act], it cannot be sustained. If it is deemed necessary that such legislation be placed upon our statute books, then an amendment to the Constitution must be adopted permitting this to be done.")

Moreover, as Act 77 violates the Pennsylvania Constitution, and as such act applies to the election of the offices of United States Representative, United States Senator, and President of the United States,

Act 77 violates Article I, Section 2; Article I, Section 4; Article II, Section 1; and the 17th Amendment of the United States Constitution.

For the foregoing reasons, Appellees-Intervenors respectfully request that this Court affirm the Order of the Commonwealth Court and strike down Act 77 of 2019 as unconstitutional.

Respectfully submitted,

DILLON, McCANDLESS, KING, COULTER & GRAHAM, L.L.P.

By: /s/ Thomas W. King, III
Thomas W. King, III
PA. I.D. No. 21580
tking@dmkcg.com

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Doug McLinko, Petitioner	:	**CASES CONSOLIDATED**
v.	:	No. 244 M.D. 2021
Commonwealth of Pennsylvania, Department of State; and Veronica Degraffenreid, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania, Respondents	:	
Timothy R. Bonner, P. Michael Jones, David H. Zimmerman, Barry J. Jozwiak, Kathy L. Rapp, David Maloney, Barbara Gleim, Robert Brooks, Aaron J. Bernstine, Timothy F. Twardzik, Dawn W. Keefer, Dan Moul, Francis X. Ryan, and Donald "Bud" Cook, Petitioners	:	
v.	:	No. 293 M.D. 2021 Argued: November 17, 2021
Veronica Degraffenreid, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania, and Commonwealth of Pennsylvania, Department of State, Respondents	:	

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge

EXHIBIT A

OPINION
BY JUDGE LEAVITT[1] FILED: January 28, 2022

In this companion opinion to *McLinko v. Commonwealth*, __ A.3d __ (Pa. Cmwlth., No. 244 M.D. 2021, filed January 28, 2022), Representative Timothy R. Bonner and 13 members of the Pennsylvania House of Representatives (collectively, Petitioners) have filed a petition for review seeking a declaration that Act 77 of 2019,[2] which established that any qualified elector may vote by mail for any reason, violates the Pennsylvania Constitution and is, therefore, void. Petitioners also assert that Act 77 violates the United States Constitution. U.S. CONST. art. I, §§2, 4 and art. II, §1; U.S. CONST. amends. XIV and XVII. Finally, Petitioners seek an injunction prohibiting the distribution, collection, and counting of no-excuse mail-in ballots in future state and federal elections.

Respondents, the Acting Secretary of the Commonwealth, Veronica Degraffenreid, and the Department of State (collectively, Acting Secretary), have filed preliminary objections to Petitioners' challenge to Act 77's system of no-excuse mail-in voting.[3] The Acting Secretary also raises procedural challenges to the petition for review, *i.e.*, it was untimely filed, and Petitioners lack standing to challenge the constitutionality of Act 77. As in *McLinko*, the parties have filed cross-applications for summary relief, which are now before the Court for disposition.

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[1] This matter was assigned to the panel before January 3, 2022, when President Judge Emerita Leavitt became a senior judge on the Court. Because the vote of the commissioned judges was evenly divided on the constitutional analysis in this opinion, the opinion is filed "as circulated" pursuant to Section 256(b) of the Court's Internal Operating Procedures, 210 Pa. Code §69.256(b).

[2] Act of October 31, 2019, P.L. 552, No. 77 (Act 77).

[3] The Democratic National Committee and the Pennsylvania Democratic Party (collectively, Democratic Intervenors), and the Butler County Republican Committee, the York County Republican Committee, and the Washington County Republican Committee (collectively, Republican Intervenors) sought intervention in these consolidated matters. The Court granted them intervention.

On the merits, Petitioners' claims under the Pennsylvania Constitution are identical to those raised by McLinko in the companion case.[4] The Court thoroughly addressed those claims in the *McLinko* opinion, which we incorporate here by reference. For all the reasons set forth in *McLinko,* we hold that Petitioners are entitled to summary relief on their request for declaratory judgment.[5]

Additionally, Petitioners seek to enjoin the Acting Secretary from enforcing Act 77, which motion for summary relief will be denied as unnecessary. The declaration has the "force and effect of a final judgment or decree." 42 Pa. C.S. §7532.

We turn next to the Acting Secretary's procedural objections. As in *McLinko*, she contends that Petitioners' petition for review was untimely filed because it is barred by the doctrine of laches or, alternatively, because it was filed after the so-called statute of limitations in Section 13 of Act 77. The Court considered, and rejected, these arguments in *McLinko*, and we incorporate that analysis here. *See McLinko*, __ A.3d at __- __, slip op. at 40-48. Accordingly, we hold that Petitioners' petition for review was timely filed.

Finally, we consider the Acting Secretary's challenge to Petitioners' standing. A party seeking judicial resolution of a controversy must establish a "substantial, direct, and immediate interest" in the outcome of the litigation to have standing. *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016). An interest is "substantial" if the party's interest "surpasses the common interest of all citizens in procuring obedience to the law." *Firearm Owners Against Crime v. City of*

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[4] The cases have been consolidated because they raise identical issues under the Pennsylvania Constitution. A separate opinion is filed in each case to address the differences in standing and requested relief.

[5] In light of our holding that Act 77 violates the Pennsylvania Constitution, we need not address Petitioners' claims under the United States Constitution.

Harrisburg, 218 A.3d 497, 506 (Pa. Cmwlth. 2019) (quotation omitted). A "direct" interest requires a causal connection between the matter complained of and the party's interest. *Id*. An "immediate" interest requires a causal connection that is neither remote nor speculative. *Id*. The key is that the petitioner must be "negatively impacted in some real and direct fashion." *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005).

Petitioners argue that they meet the above standards either as candidates for office or as registered voters. As registered voters, Petitioners have a right to vote on a constitutional amendment prior to the implementation of no-excuse mail-in voting in Pennsylvania. As past and likely future candidates for office, Petitioners have been or will be impacted by dilution of votes in every election in which improper mail-in ballots are counted. As candidates, Petitioners argue that they will have to adapt their campaign strategies to an unconstitutional law.

The Acting Secretary responds that Petitioners' interest as registered electors does not confer standing.[6] She argues that courts have repeatedly rejected the "vote dilution" theory of injury advanced by Petitioners and, further, Petitioners have not explained how mail-in voting injures them as past and future candidates for office.

This Court has recognized that voting members of a political party have a substantial interest in assuring compliance with the Election Code[7] in that party's primary election. *In re Pasquay*, 525 A.2d at 14. Likewise, a political party has

[6] Notably, this Court has observed that "any person who is registered to vote in a particular election has a substantial interest in obtaining compliance with the election laws by any candidate for whom that elector may vote in that election." *In re Williams*, 625 A.2d 1279, 1281 (Pa. Cmwlth. 1993) (quoting *In re Pasquay*, 525 A.2d 13, 14 (Pa. Cmwlth. 1987)).

[7] Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§2600-3591.

standing to challenge the nomination of a party candidate who has failed to comply with election laws. *In re Barlip*, 428 A.2d 1058 (Pa. Cmwlth. 1981).[8] In *In re Shuli*, 525 A.2d 6, 9 (Pa. Cmwlth. 1987), this Court concluded that a candidate for district justice had standing to challenge his opponent's nominating petition because his status as a candidate for the same office gave him a substantial interest in the action. *See also In re General Election – 1985*, 531 A.2d 836, 838 (Pa. Cmwlth. 1987) (candidate in general election had standing to challenge judicial deferment and resumption of election because it could have jeopardized the outcome of the election, a possibility sufficient to show "direct and substantial harm").[9] In sum, a candidate has an interest beyond the interest of other citizens and voters in election matters. Because Petitioners have been and will be future candidates, they have a cognizable interest in the constitutionality of Act 77.

Nevertheless, the Acting Secretary directs the Court to *In re General Election 2014* (Pa. Cmwlth., No. 2047 C.D. 2014, filed March 11, 2015).[10] In that case, the manager of a rehabilitation center in the City of Philadelphia filed an emergency application for absentee ballots for five patients who had been admitted to the facility just before the 2014 General Election. The trial court granted the

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[8] In *In re Barlip*, this Court held that a county Republican Committee had standing to challenge the nomination of a Republican candidate who failed to comply with election laws. We explained that "a political party, by statutory definition,[] is an organization representing qualified electors, [thus] it maintains the same interest as do its members in obtaining compliance with the election laws so as to effect the purpose of those laws in preventing fraudulent or unfair elections." *In re Barlip*, 428 A.2d at 1060. "Moreover, a political party may suffer a direct and practical harm to itself from the violation of the election laws by its candidates, for such noncompliance or fraud will ultimately harm the reputation of party and impair its effectiveness." *Id.*

[9] Notably, in *Barbieri v. Shapp*, 383 A.2d 218, 221 (Pa. 1978), the State Court Administrator had standing to seek a declaration that four judicial offices be filled by an election, as required by statute.

[10] Under Section 414(a) of this Court's Internal Operating Procedures, an unreported opinion may be cited for its persuasive value. 210 Pa. Code §69.414(a).

emergency application over the objections of attorneys for the Republican State Committee and the Republican City Committee. Two registered electors (objectors), who had not participated in the hearing on the emergency application, appealed the trial court's order and raised the same objections as the Republican committees, which were no longer participating. The trial court determined that the objectors lacked standing.

On appeal, the objectors argued that the trial court erred, asserting that as registered electors in the City of Philadelphia, they had "a substantial, immediate and pecuniary interest that the Election Code be obeyed." *In re General Election 2014*, slip op. at 12. The objectors claimed that the disputed absentee ballots affected the outcome of the General Election in which they had voted.

In quashing the objectors' appeal of the trial court's order, this Court held, *inter alia*, that the objectors were not "aggrieved" because they could not establish a "substantial, direct and immediate" interest. *Id.*, slip op. at 11 (citing *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 286 (Pa. 1975)). In so holding, we relied upon *Kauffman v. Osser*, 271 A.2d 236 (Pa. 1970),[11] where our Pennsylvania Supreme Court rejected a challenge to absentee ballots that was premised on a speculative theory of vote dilution:

> Basic in appellants' position is the [a]ssumption that those who obtain absentee ballots, by virtue of statutory provisions which they deem invalid, will vote for candidates at the November election other than those for whom the appellants will vote and thus will cause a dilution of appellants' votes. This assumption, unsupported factually, is unwarranted and cannot afford a sound

[11] In *Kauffman*, registered Democratic electors filed a declaratory judgment action against the Philadelphia Board of Elections and its chief clerk to challenge a section of the Election Code that permitted electors and their spouses on vacation to vote by absentee ballot. The objecting electors argued that they would have their votes diluted by the absentee ballots.

> basis upon which to afford appellants a standing to maintain this action.

Kauffman, 271 A.2d at 239-40. We concluded that, as in *Kauffman*, the objectors' interest was common to all qualified electors. Further, the objectors offered no support for their claim that the five absentee ballots they challenged would impact the outcome of the election.

In contrast to *In re General Election 2014*, Petitioners have pleaded an interest as candidates, as well as electors, and this matter extends far beyond five absentee ballots. In the 2020 general election, 2.7 million ballots were cast as mail-in or absentee ballots; more than 1.38 million Pennsylvania electors have requested to be placed on a permanent mail-in ballot list. Affidavit of Jonathan Marks ¶25. Given these numbers, it is obvious that no-excuse mail-in voting impacts a candidate's campaign strategy. We conclude that Petitioners have standing.

Even so, this case presents the special circumstances where taxpayer standing may be invoked to challenge the constitutionality of governmental action. The Pennsylvania Supreme Court has established that a grant of taxpayer standing is appropriate where (1) governmental action would otherwise go unchallenged; (2) those directly affected are beneficially affected; (3) judicial relief is appropriate; (4) redress through other channels is not appropriate; and (5) no one else is better positioned to assert the claim. *Application of Biester*, 409 A.2d 848, 852 (Pa. 1979). Petitioners meet all five requirements. Because the Acting Secretary has not challenged the constitutionality of Act 77, it may go unchallenged if Petitioners are denied standing.

In *Sprague v. Casey*, 550 A.2d 184 (Pa. 1988), a taxpayer challenged the special election to fill one seat on the Supreme Court and one seat on the Superior Court scheduled for the General Election of November 1988. The respondents

argued that the taxpayer lacked standing because the governmental action he challenged did not substantially or directly impact him. The Supreme Court determined that taxpayer standing under *Biester* was warranted because the "election would otherwise go unchallenged because respondents are directly and beneficially affected" and chose not to initiate legal action. *Sprague*, 550 A.2d at 187. The Court explained that "[j]udicial relief is appropriate because the determination of the constitutionality of the election is a function of the courts … and redress through other channels is unavailable." *Id.* (citation omitted).

We reject the challenge of the Acting Secretary and the Democratic Intervenors to Petitioners' standing to initiate an action to challenge the constitutionality of Act 77's system of no-excuse mail-in voting.

Conclusion

For all of the above reasons, we grant Petitioners' application for summary relief, in part, and, in accordance with our analysis in *McLinko*, declare Act 77 to violate Article VII, Section 1 of the Pennsylvania Constitution,[12] PA. CONST. art. VII, §1.

s/Mary Hannah Leavitt
MARY HANNAH LEAVITT, President Judge Emerita

Former President Judge Brobson, Judge Covey, and former Judge Crompton did not participate in the decision in this case.

[12] Given our grant of declaratory relief to Petitioners, we need not address the federal claims. Additionally, Petitioners' request for nominal damages, attorneys' fees and costs is denied.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Doug McLinko, Petitioner	:	**CASES CONSOLIDATED**
v.	:	No. 244 M.D. 2021
Commonwealth of Pennsylvania, Department of State; and Veronica Degraffenreid, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania, Respondents	:	
Timothy R. Bonner, P. Michael Jones, David H. Zimmerman, Barry J. Jozwiak, Kathy L. Rapp, David Maloney, Barbara Gleim, Robert Brooks, Aaron J. Bernstine, Timothy F. Twardzik, Dawn W. Keefer, Dan Moul, Francis X. Ryan, and Donald "Bud" Cook, Petitioners	:	
v.	:	No. 293 M.D. 2021
Veronica Degraffenreid, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania, and Commonwealth of Pennsylvania, Department of State, Respondents	:	

O R D E R

AND NOW, this 28th day of January, 2022, it is ORDERED that the application for summary relief filed by Petitioners Timothy R. Bonner and 13 other

EXHIBIT A

members of the Pennsylvania House of Representatives in the above-captioned matter is GRANTED, in part. Act 77 is declared unconstitutional and void *ab initio*. Petitioners' request for injunctive relief, nominal damages and reasonable costs and expenses, including attorneys' fees, is DENIED.

The application for summary relief filed by Respondents Veronica Degraffenreid, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania, and the Department of State is DENIED.

s/Mary Hannah Leavitt
MARY HANNAH LEAVITT, President Judge Emerita

Order Exit
01/28/2022

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I, Thomas W. King, III, hereby certify that this filing was prepared in Microsoft Word 2018 (for Windows), and I further certify that, as counted by Microsoft Word 2018, this filing contains 10,657 words.

/s/ Thomas W. King, III
Thomas W. King, III

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Thomas W. King, III
Thomas W. King, III

CERTIFICATE OF SERVICE

I certify that this filing was served via PACFile upon all counsel of record this 28th day of February, 2022.

/s/ Thomas W. King, III
Thomas W. King, III

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Thomas W. King, III
Thomas W. King, III

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/s/ Thomas W. King, III
Thomas W. King, III