

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DONALD J. TRUMP FOR PRESIDENT,
INC.; and REPUBLICAN NATIONAL
COMMITTEE,

Petitioners,

v.

KATHY BOOCKVAR, in her capacity as
Secretary of the Commonwealth of
Pennsylvania; ADAMS COUNTY
BOARD OF ELECTIONS; ALLEGHENY
COUNTY BOARD OF ELECTIONS;
ARMSTRONG COUNTY BOARD OF
ELECTIONS; BEAVER COUNTY
BOARD OF ELECTIONS; BEDFORD
COUNTY BOARD OF ELECTIONS;
BERKS COUNTY BOARD OF
ELECTIONS; BLAIR COUNTY BOARD
OF ELECTIONS; BRADFORD COUNTY
BOARD OF ELECTIONS; BUCKS
COUNTY BOARD OF ELECTIONS;
BUTLER COUNTY BOARD OF
ELECTIONS; CAMBRIA COUNTY
BOARD OF ELECTIONS; CAMERON
COUNTY BOARD OF ELECTIONS;
CARBON COUNTY BOARD OF
ELECTIONS; CENTRE COUNTY
BOARD OF ELECTIONS; CHESTER
COUNTY BOARD OF ELECTIONS;
CLARION COUNTY BOARD OF
ELECTIONS; CLEARFIELD COUNTY
BOARD OF ELECTIONS; CLINTON
COUNTY BOARD OF ELECTIONS;
COLUMBIA COUNTY BOARD OF
ELECTIONS; CRAWFORD COUNTY
BOARD OF ELECTIONS;
CUMBERLAND COUNTY BOARD OF
ELECTIONS; DAUPHIN COUNTY

ORIGINAL JURISDICTION

No. 602 MD 2020

BOARD OF ELECTIONS; DELAWARE
COUNTY BOARD OF ELECTIONS;
ELK COUNTY BOARD OF
ELECTIONS; ERIE COUNTY BOARD
OF ELECTIONS; FAYETTE COUNTY
BOARD OF ELECTIONS; FOREST
COUNTY BOARD OF ELECTIONS;
FRANKLIN COUNTY BOARD OF
ELECTIONS; FULTON COUNTY
BOARD OF ELECTIONS; GREENE
COUNTY BOARD OF ELECTIONS;
HUNTINGDON COUNTY BOARD OF
ELECTIONS; INDIANA COUNTY
BOARD OF ELECTIONS; JEFFERSON
COUNTY BOARD OF ELECTIONS;
JUNIATA COUNTY BOARD OF
ELECTIONS; LACKAWANNA
COUNTY BOARD OF ELECTIONS;
LANCASTER COUNTY BOARD OF
ELECTIONS; LAWRENCE COUNTY
BOARD OF ELECTIONS; LEBANON
COUNTY BOARD OF ELECTIONS;
LEHIGH COUNTY BOARD OF
ELECTIONS; LUZERNE COUNTY
BOARD OF ELECTIONS; LYCOMING
COUNTY BOARD OF ELECTIONS;
MCKEAN COUNTY BOARD OF
ELECTIONS; MERCER COUNTY
BOARD OF ELECTIONS; MIFFLIN
COUNTY BOARD OF ELECTIONS;
MONROE COUNTY BOARD OF
ELECTIONS; MONTGOMERY
COUNTY BOARD OF ELECTIONS;
MONTOUR COUNTY BOARD OF
ELECTIONS; NORTHAMPTON
COUNTY BOARD OF ELECTIONS;
NORTHUMBERLAND COUNTY
BOARD OF ELECTIONS; PERRY
COUNTY BOARD OF ELECTIONS;
PHILADELPHIA COUNTY BOARD OF

ELECTIONS; PIKE COUNTY BOARD OF ELECTIONS; POTTER COUNTY BOARD OF ELECTIONS; SCHUYLKILL COUNTY BOARD OF ELECTIONS; SNYDER COUNTY BOARD OF ELECTIONS; SOMERSET COUNTY BOARD OF ELECTIONS; SULLIVAN COUNTY BOARD OF ELECTIONS; SUSQUEHANNA COUNTY BOARD OF ELECTIONS; TIOGA COUNTY BOARD OF ELECTIONS; UNION COUNTY BOARD OF ELECTIONS; VENANGO COUNTY BOARD OF ELECTIONS; WARREN COUNTY BOARD OF ELECTIONS; WASHINGTON COUNTY BOARD OF ELECTIONS; WAYNE COUNTY BOARD OF ELECTIONS; WESTMORELAND COUNTY BOARD OF ELECTIONS; WYOMING COUNTY BOARD OF ELECTIONS; and YORK COUNTY BOARD OF ELECTIONS,

Respondents,

DNC SERVICES CORP. / DEMOCRATIC NATIONAL COMMITTEE,

Proposed Intervenor-Respondent

PROPOSED INTERVENOR-RESPONDENT DNC SERVICES CORP. / DEMOCRATIC NATIONAL COMMITTEE'S MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS

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INTRODUCTION

Petitioners are not entitled to the relief they seek in their Petition for several reasons. First, Petitioners lack standing: they are not “aggrieved” by the guidance at issue in this action and they lack a “substantial, direct, and immediate interest in the matter.” *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016). Second, the injunction they seek would not prevent them any irreparable harm. Third, Petitioners do not have a clear right to relief. And fourth, the relief sought here would result in far greater harm than it would prevent, including by causing enormous harm to the public by disenfranchising eligible voters who actively defended their fundamental right to vote. Petitioners’ requested relief should be denied, and their Petition should be dismissed.

BACKGROUND

On September 17, 2020, the Supreme Court of Pennsylvania concluded that strict enforcement of 25 P.S. §§ 3146.6(c) and 3150.16(c)—which set the deadline for county boards to receive absentee and mail-in ballots¹ at 8:00 p.m. on Election Day—would violate the Free and Fair Elections Clause of the Pennsylvania Constitution under the circumstances of the ongoing COVID-19 pandemic. *Pa. Democratic Party v. Boockvar*, --- A.3d ---, 2020 WL 5554644, at *10–18 (Pa.

¹ Because the relevant statutory provisions at issue in this dispute apply equally to absentee and mail-in ballots, this brief refers to absentee and mail-in ballots jointly as “mail-in ballots.”

2020). The Court’s decision was based on the lessons of the Commonwealth’s recent June 2 primary election, during which “the pandemic threatened the disenfranchisement of thousands of Pennsylvanians” because “several of the Commonwealth’s county election boards struggled to process the flow of mail-in ballot applications for voters who sought to avoid exposure to the virus.” *Id.* at *17.

The source of this problem was the fact that voters have “only seven days between the last date to request a mail-in ballot and the last day to return a completed ballot.” *Id.* at *18. During the primary, this resulted in several county boards, “especially those in areas hard-hit by the pandemic, [being] unable to provide electors with ballots in time for the electors to return their ballot in accord with the statutory deadline.” *Id.* at *10. Looking to the general election, the Court explained that continuing systemic U.S. Postal Service delays, the coming surge of mail-in ballot applications for the “upcoming highly-contested Presidential Election,” and “the near-certain delays that w[ould] occur” as county boards processed each of those applications meant that “the timeline built into the Election Code cannot be met by the [Postal Service’s] current delivery standards.” *Id.* Thus, strict enforcement of the Election Day receipt deadline would “result[] in the disenfranchisement of voters” who receive their mail-in ballots too late to return them by 8:00 p.m. on Election Day. *Id.*

To prevent that disenfranchisement, the Court extended the deadline such that

mail-in ballots postmarked by 8:00 p.m. on Election Day and received by county boards by 5:00 p.m. on November 6—three days after Election Day—would be counted. *Id.* at *31. The Republican Party of Pennsylvania and individual members of the Republican General Assembly leadership separately applied to the U.S. Supreme Court for a stay of the Pennsylvania Supreme Court’s decision, which the U.S. Supreme Court denied. *Scarnati v. Boockvar*, No. 20A53, 2020 WL 6128194 (U.S. Oct. 19, 2020); *Republican Party of Pa. v. Boockvar*, No. 20A54, 2020 WL 6128193 (U.S. Oct. 19, 2020). The Republican Party also sought expedited consideration of its petition for a writ of certiorari, which the U.S. Supreme Court denied. *Republican Party of Pa. v. Boockvar*, No. 20-542, 2020 WL 6304626 (U.S. Oct. 28, 2020).

The Pennsylvania Supreme Court’s extension of the deadline for county boards to receive mail-in ballots created internal inconsistencies with other statutory deadlines. Relevant to this case is the deadline for voters to submit proof of identification if they fail to do so prior to submitting their mail-in ballot. Under 25 P.S. § 3146.8(h)(5), a voter may submit such identification “by the sixth calendar day following the election,” or for purposes of the 2020 general election, Monday, November 9. But due to the Pennsylvania Supreme Court’s extension of the deadline for county boards to receive mail-in ballots, there was now a significant risk that voters whose ballots were received close to November 6 would not receive notice of

insufficient identification to respond by the November 9 deadline under § 3146.8(h)(5). As a result, the Secretary issued a guidance document (the “Guidance”) instructing that voters whose ballots reached the county board during the extended receipt period created by *Pennsylvania Democratic Party*—*i.e.*, between 8:00 p.m. on November 3 and 5:00 p.m. on November 6—could submit proof of identification “by the sixth calendar day following the canvassing, or on or before Thursday, November 12.”²

On November 4, 2020—the day after Election Day—Petitioners filed this lawsuit against the Secretary and each county board of election challenging the Guidance. Petitioners ask this Court to enjoin Respondents from “counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9.” Petition at 14.³

² Pa. Dep’t of State, *Canvassing Segregated Mail-in and Civilian Absentee Ballots Received by Mail After 8:00 p.m. on Tuesday, November 3, 2020 and Before 5:00 p.m. on Friday, November 6, 2020* (Nov. 1, 2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf>.

³ Petitioners also request that Respondents be enjoined “from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after *November 8*.” Petition at 13 (emphasis added). Proposed Intervenor-Respondent assumes this is a typographical mistake. There is no basis whatsoever to provide that relief. Putting the Guidance at issue here aside, 25 P.S. § 3146.8(h) unquestionably allows voters to submit proof of identification as late as November 9. Petitioners offer no reason why this Court should *shorten* that deadline.

LEGAL STANDARD

Petitioners seek a “preliminary, special, and/or permanent” injunction. Petition at 3. Pennsylvania courts treat special and preliminary injunctions generally “interchangeably,” and the standards applicable to such motions are the same. *See E. Stroudsburg Univ. v. Hubbard*, 591 A.2d 1181, 134 n.5 (Pa. Commw. 1991). “Three criteria have been established” for such relief, “which, as a harsh and extraordinary remedy, is to be granted only when and if each [of the following] criteria ha[ve] been fully and completely established”: (1) “the preliminary injunction must be necessary to prevent immediate and irreparable harm which could not be compensated for by damages,” (2) “greater injury would result from the denial of the preliminary injunction than from the granting of it,” and (3) “it would operate to restore the parties to the status quo as it existed prior to the alleged wrongful conduct.” *Comm. of Seventy v. Albert*, 381 A.2d 188, 189 (Pa. Commw. 1977). The Pennsylvania Supreme Court has set significant limitations on a court’s ability to issue such an injunction. For example, one “should *never* be awarded except when the rights of the plaintiff are clear.” *New Castle Orthopedic Assoc. v. Burns*, 392 A.2d 1383, 1385 (Pa. 1978) (emphasis added) (quoting *Herman v. Dixon*, 141 A.2d 576, 577 (Pa. 1958)). And courts must also consider the public interest: if the injunction will have an “adverse effect upon the public interest,” “it should not be granted.” *Sch. Dist. of Wilkinsburg v. Wilkinsburg Educ. Ass’n*, 667 A.2d 5, 7 (Pa.

1995) (quoting *Philadelphia v. District Council 33*, 535 A.2d 231 (Pa. Commw. 1987), *aff'd* 598 A.2d 256 (Pa. 1991)).

As for a permanent injunction, the same considerations apply, but the threshold requirements are “that (1) the right to relief is clear, (2) there is an urgent necessity to avoid an injury which cannot be compensated for by damages, and (3) greater injury will result in refusing rather than granting the relief requested.” *Big Bass Lake Comty. Ass’n v. Warren*, 23 A.3d 619, 626 (Pa. Commw. 2011).

ARGUMENT

I. Petitioners lack standing to assert their claims.

Petitioners lack standing. To invoke this Court’s powers, Petitioners must be “aggrieved,” which requires them to establish a “substantial, direct, and immediate interest in the matter.” *Markham*, 136 A.3d at 140; *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 659–60 (Pa. 2005). But Petitioners have made no attempt to explain how the Guidance has injured, or will injure, them. As a result, they fail to show a substantial, direct, or immediate interest in these issues. *Markham*, 136 A.3d at 140. Petitioners’ lack of standing is dispositive: not only should the relief they seek be denied, but their Petition should also be dismissed. *Mifflin Cty. Sch. Dist. v. Monsell*, 504 A.2d 1357, 1359 (Pa. Commw. 1986) (reversing injunction because applicant “ha[d] suffered no injury”); *Pittsburgh Palisades Park*, 888 A.2d at 663 (dismissing petition due to lack of standing).

Even if Petitioners attempted to prove their standing, they would not have been able to succeed. Petitioners' claim demonstrates that, in this suit, Petitioners have no "substantial" interest that "surpasses the common interest of all citizens in procuring obedience to the law." *Pittsburgh Palisades Park, LLC*, 888 A.2d at 660 (quoting *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003)). For example, they allege in conclusory fashion that they "would suffer" a "substantial injury and immediate irreparable harm . . . if Respondents are permitted to violate the laws of the Commonwealth of Pennsylvania." Petition at 13. But a claim that "the law . . . has not been followed" is "precisely the kind of undifferentiated, generalized grievance about the conduct of government" that cannot give rise to a cognizable injury. *Lance v. Coffman*, 549 U.S. 437, 442 (2007); see also *Markham*, 136 A.3d at 140.⁴ In Pennsylvania, "it is hornbook law that a person whose interest is common to that of the public generally . . . lacks standing to attack the validity" of state action. *Mixon v. Commonwealth*, 759 A.2d 442, 452 (Pa. Commw. 2000). As a result, a "generalized interest[] in the conduct of government common to the general

⁴ Curiously, Petitioners claim to have "Article III standing." Petition at 3–4. Article III standing is a federal constitutional requirement that applies to federal, not state, courts. While the Pennsylvania Supreme Court has explained that "federal decisions on standing" are "helpful" in determining whether a party has a cognizable injury, *Fumo v. City of Philadelphia*, 972 A.2d 487, 500 n.5 (Pa. 2009), Petitioners' unsupported and conclusory claim of Article III standing fails to establish any "substantial, direct, and immediate interest in the matter," *Markham*, 136 A.3d at 140, and thus does not advance their cause.

citizenry” fails to “satisfy the requirements of standing.” *Markham*, 136 A.3d at 140.

Petitioners’ status as a presidential campaign and a national political committee does not resolve this defect. Petitioner Donald J. Trump for President, Inc. (the “Trump Campaign”) appears as the principal committee for the re-election campaign of Donald J. Trump. Petition at 3. But the Trump Campaign does not allege that, or explain how, providing mail-in voters additional time to provide missing proof of identification would harm President Trump’s electoral prospects or any other interest it may hold as a political campaign. It does not assert, for example, that the voters who would be disenfranchised by the requested injunction are more likely to vote against President Trump than for him.

Similarly, Petitioner Republican National Committee (the “RNC”) brings this action “for itself, the Republican Party, all of its members, all registered Republican voters, and all nominated Republican candidates in the November 3, 2020 General Election in the Commonwealth of Pennsylvania,” *id.* at 4–5, but it fails to explain how any of those groups—the party, voters, or candidates—would be harmed by the Guidance. The crux of Petitioners’ barebones allegations is that Petitioners and those they represent have been injured by residing in Pennsylvania and being subject (like all Pennsylvania residents) to the Guidance. That alone cannot create standing; if it did, it would turn long-held principles of standing on their head.

To the extent Petitioner RNC implies that its voters are injured by other

eligible Pennsylvanians' participation in the election, that too is a generalized grievance that cannot create standing. Any voter could make this claim in any election. When voters seek "relief that no more directly and tangibly benefits [them] than it does" any other voter, they lack standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 574 (1992); *see also Martel v. Condos*, --- F. Supp. 3d ---, 2020 WL 5755289, at *4 (D. Vt. Sept. 16, 2020) (explaining "[i]f every voter suffers the same incremental dilution of the franchise" caused by the participation of certain voters, "then these voters have experienced a generalized injury"); *Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM (VCF), 2020 WL 5626974, at *4 (D. Nev. Sept. 18, 2020) (finding plaintiffs' claims that others might participate in the election as result of the challenged law "amount to general grievances that cannot support a finding of particularized injured as to [p]laintiffs" (internal quotation marks omitted)); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 926–27 (D. Nev. 2020) (reaching same conclusion because plaintiffs' claims "may be conceivably raised by any Nevada voter"); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) (adopting magistrate judge's finding that "complaints of undermined confidence and potential vote dilution are nothing but a generalized grievance about government, complaining that an official should be required to follow the law").

Separately, Petitioners also fail to show or explain how they have a "direct"

or “immediate” interest in the outcome of this case. A “direct” interest requires “a showing that the matter complained of ‘caused harm to the party’s interest’”—in other words, “a causal connection between the harm and the violation of the law.” *Pittsburgh Palisades Park, LLC*, 888 A.2d at 660 (quoting *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003)). And an “immediate” interest exists only “if the causal connection is not remote or speculative.” *Id.* The Petition offers no description of a “causal connection” between the Secretary’s Guidance and the harm Petitioners claim to suffer, much less a connection that is “not remote or speculative.” *Id.* At most, Petitioners make the wildly speculative, non-sensical, and unsupported arguments that (1) the Guidance might “create a high risk of jeopardizing the integrity of the November 3, 2020 election” *simply because it allows voters to prove their identity*, and (2) the Guidance “*may*” lead to a slight delay in processing some votes. Petition at 15–16 (emphases added).⁵ These are not the sort of “direct,” “immediate,” and non-speculative interests that give rise to standing in Pennsylvania. The Court should deny Petitioners’ request for relief.

II. Petitioners are not entitled to the injunctive relief they seek.

Although the tests for preliminary and permanent injunctive relief are framed

⁵ Indeed, Petitioners’ vague concern of “delay” is incompatible with their own actions in asking other courts to halt ballot counting and delay certification of the Commonwealth’s election results. Any delay in vote counting or certification is the result of Petitioners’ lawsuits, not the actions of the Secretary.

slightly differently, they both involve three core elements requiring the movant to show (1) it would be irreparably injured, or would suffer an injury that could not be compensated at law, without injunctive relief; (2) a clear right to relief on the merits; and (3) the balance of harms weigh in its favor. *Compare New Castle Orthopedic Assoc.*, 392 A.2d at 1385 (preliminary injunction); *with Big Bass Lake Comty. Ass’n*, 23 A.3d at 626 (permanent injunction). Because Petitioners fail to make these showings, their request for injunctive relief should be denied.

A. Petitioners have not identified an irreparable injury.

Petitioners first fail to show that they will be irreparably harmed—or, for the permanent injunction context, that they will suffer an injury that cannot be adequately compensated at law—if the Court denies their request for injunctive relief. Most obviously, they fail to show any injury at all. As discussed above, the Petition simply fails to explain how, or why, Petitioners would be injured if the Guidance is not enjoined.

To the extent Petitioners claim that Pennsylvania is experiencing delays in “declar[ing] the results of the election,” *see* Petition at 8, 11, they fail to show that the Guidance has contributed, or will contribute, to that delay. Instead, the Guidance merely gives voters three additional days to provide proof of identification, without “requiring alteration of the subsequent canvassing and reporting dates necessary for the Secretary’s final reporting of the election results.” *Pa. Democratic Party, 2020*

WL 5554644, at *18. Perhaps more importantly, Petitioners fail to show (or even argue) that they have been injured by any purported delays. A party is not injured simply because it must wait “days” for the Commonwealth to count the votes in an election. Petition at 12.

Because Petitioners fail to demonstrate any irreparable harm, the requested injunction must be denied. *New Castle Orthopedic Assocs.*, 392 A.2d at 1385.

B. Petitioners have not shown a clear right to relief.

Petitioners cite no case law in support of their contention that the Secretary’s extension of the voter ID deadline is unlawful. In fact, they ignore the fact that the Pennsylvania Supreme Court’s decision in *Pennsylvania Democratic Party* requires the Guidance that Petitioners challenge here. That case, like the present one, involved a three-day extension of a statutory deadline that was necessary to spare voters from disenfranchisement in the midst of an unprecedented natural disaster. *Pa. Democratic Party*, 2020 WL 5554644, at *17–18. In concluding that an extension was warranted, the *Pennsylvania Democratic Party* Court considered and rejected the same arguments Petitioners recycle here. Petitioners thus fail to show a clear right to relief, which dooms their request for an injunction. *See New Castle Orthopedic Assoc.*, 392 A.2d at 1385 (noting that injunctive relief “should *never* be awarded except when the rights of the plaintiff are clear.” (emphasis added) (quoting *Herman*, 141 A.2d at 577)).

In *Pennsylvania Democratic Party*, the Pennsylvania Supreme Court considered an as-applied challenge to the enforcement of the Election Code’s 8:00 p.m. receipt deadline for mail-in ballots in light of the COVID-19 pandemic and systemic delays in U.S. Postal Service operations. 2020 WL 5554644, at *10. In addressing that constitutional challenge, the Court emphasized “that the Free and Equal Elections Clause of the Pennsylvania Constitution requires that ‘all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth, and, also, conducted in a manner which guarantees, to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government.’” *Id.* at *17 (quoting *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018)). To effectuate these principles in the context of the pandemic, the Court extended the mail-in ballot deadline by three days. *Id.* at *18.

Importantly, while the Court noted that its decision would “*not* require[e] alteration of the . . . subsequent canvassing and reporting dates necessary for the *Secretary’s* final reporting of the election results,” *id.* at *18 (emphasis added), it left open the possibility that other interim deadlines for *voters* might require adjustment. After all, the Court’s decision to extend the ballot-receipt deadline was based on the need to prevent “disenfranchisement of voters” from the breakdown of the electoral process “under the strain of COVID-19 and the 2020 Presidential

Election.” *Id.* To the extent that other deadlines similarly risk disenfranchisement, the Court’s discussion indicates they must give way as well.

As relevant here, by extending the deadline to receive mail-in ballots to November 6, the Court’s remedy raised the prospect that some mail-in voters would not be notified until that date—or even later, depending on when those ballots are canvassed—that their ballots were rejected due to a lack of proof of identification. But 25 P.S. § 3146.8(h)(5) gives voters an explicit opportunity to submit identification in such circumstances. To preserve this opportunity, the Secretary extended the deadline for voters to submit proof of identification by three days, the same extension as that ordered by the Court in *Pennsylvania Democratic Party*.

Resisting this expected (and sanctioned) change in deadlines, Petitioners advance the same argument the Pennsylvania Supreme Court already rejected, attempting to characterize the Secretary’s guidance as “re-writ[ing] the Election Code.” Petition at 2. But as the Court in *Pennsylvania Democratic Party* explained, extending such deadlines in the present circumstances is not “rewriting” the Code, but rather a necessary action to prevent “infringement of electors’ right to vote.” 2020 WL 5554644, at *16. By mirroring the three-day extension provided in *Pennsylvania Democratic Party*, the Guidance aligns the deadline to submit proof of identification with the new deadline set by the Court for receiving mail-in ballots. This adjustment is necessary to provide the statutorily guaranteed right to submit

proof of identification to cure a deficient mail-in ballot.

Because Petitioners fail to show a clear right to the extraordinary relief they seek, they are not entitled to an injunction. *New Castle Orthopedic Assoc.*, 392 A.2d at 1385; *Big Bass Lake Comty. Ass'n*, 23 A.3d at 626.

C. The requested injunction would cause far greater harm than it would prevent.

Petitioners' request for injunctive relief should be denied on the independent ground that "greater harm [would be] worked by the issuance of this injunction than would result from its denial." *New Castle Orthopedic Assocs.*, 392 A.2d at 1385; *see also Big Bass Lake Comty. Ass'n*, 23 A.3d at 626. Petitioners' requested injunction would deny eligible voters their statutory right to cure a failure to provide proof of identification. *See* 25 P.S. § 3146.8(h). Because none of these voters can have their ballots counted unless they provide such identification, there is no risk that the Guidance would result in ineligible voters casting a ballot. All an injunction against the Guidance would accomplish is denying *eligible* voters the right to have their ballots counted. *See United States v. Mosley*, 238 U.S. 383, 386 (1915) (describing as "unquestionable" that the right to vote involves not just "the right to put a ballot in a box," but also "the right to have one's vote counted"). This result would be profoundly inequitable.

For the same reason, the requested injunction would significantly harm the public interest. "The public interest . . . favors permitting as many qualified voters

to vote as possible.” *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012); *see also, e.g., Pennsylvania Democratic Party*, No. 133 MM 2020, 2020 WL 5554644, at *5 (“[T]he Election Code should be liberally construed so as not to deprive, *inter alia*, electors of their right to elect a candidate of their choice.” (quoting *Perles*, 213 A.2d at 783–84)). Because the injunction that Petitioners request would prevent voters with unquestioned eligibility from participating in this election, it would have a dramatically “adverse effect upon the public interest.” *Sch. Dist. of Wilkinsburg*, 667 A.2d at 7. As a result, “it should not be granted.” *Id.*

CONCLUSION

Petitioners lack standing, they fail to prove the injunction they seek would prevent them irreparable harm, their claims lack merit, and the injunction they seek would cause serious harm to the public interest. The relief requested should be denied and the Petition should be dismissed.

Dated: November 10, 2020

Respectfully submitted,

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**Motion for Admission Pro Hac Vice
Forthcoming*

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/ Adam C. Bonin

Adam C. Bonin