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IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY
CIVIL DIVISION

IN RE: EXTENSION OF TIME FOR : No.
ABSENTEE AND MAIL-IN BALLOTS :
TO BE RECEIVED AND COUNTED IN :
THE 2020 PRIMARY ELECTION :
 :
 :
Petition of Bucks County Board of Elections :

***EMERGENCY PETITION OF THE BUCKS COUNTY BOARD
OF ELECTIONS REQUESTING AN EXTENSION OF TIME TO
ACCEPT AND TABULATE ABSENTEE AND MAIL-IN BALLOTS
FROM THE QUALIFIED REGISTERED ELECTORS OF BUCKS
COUNTY POSTMARKED AND MAILED BY JUNE 1, 2020 AND
RECEIVED BY THE BUCKS COUNTY BOARD OF ELECTIONS BY
A DEADLINE TO BE SET AT OR BEFORE TUESDAY, JUNE 9, 2020
AT 5:00 P.M.***

TO THE HONORABLE JUDGES OF THE SAID COURT:

Petitioner, Bucks County Board of Elections, by its undersigned counsel,
respectfully submits as follows:

Petitioner, the Bucks County Board of Elections ("Board of Elections"), petitions this Court for permission to extend the deadline for receipt of the ballots of absentee and mail-in voters of Bucks County mailed and postmarked by June 1, 2020 to 5:00 p.m. Petitioner asks the Court to set a deadline for receipt that is no earlier than June 4, 2020 at 5:00pm and no later than June 9, 2020 at 5:00pm. In support of this Petition, the Board of Elections avers as follows:

1. Pursuant to 25 P.S. §2641, et seq., the Bucks County Board of Elections has jurisdiction over the conduct of elections, including the 2020 Primary Election scheduled for Tuesday June 2, 2020 (hereinafter the “2020 Primary”). The Board consists of Bucks County Commission Chair Diane M. Ellis-Marseglia, Commissioner Gene DiGirolamo, and the Honorable Brian T. McGuffin. On May 28, 2020, the Board met in executive session with undersigned counsel and unanimously authorized the filing of this petition.

2. The Bucks County Court of Common Pleas has jurisdiction over this matter pursuant to Article V, §2(b) (Courts of Common Pleas have “unlimited original jurisdiction in all cases except as may otherwise be provided by law.”) *See e.g. In re: General Election - 1985*, 531 A.2d 836, 839 (Pa. Cmwlth. 1987) (Court postponed the date of the Primary Election for 11 precincts that suffered extensive flooding, loss of electricity, heat, and water during extreme weather conditions).

3. This petition seeks relief arising from a nationwide emergency that evolves from day to day, requiring government and the Courts to adapt their procedures to enable them to carry out their functions the best way possible while minimizing the threat to public health and safety, even if it has meant temporary limitations on other rights normally guaranteed by law.

4. In early March of 2020, the highly infectious coronavirus (COVID-19) spread through the United States causing a public health emergency to be declared in the Commonwealth of Pennsylvania.

5. On March 13, 2020, Bucks County declared the existence of a disaster emergency in Bucks County due to the widespread outbreak of COVID-19 affecting the residents of Bucks County. Since then, this declaration – and various COVID-related orders, including orders issued by Pennsylvania Governor Tom Wolf, has been extended at every public meeting of the Bucks County Board of Commissioners and will remain in effect for the 2020 primary. Bucks County and other counties, as well as several Commonwealth departments and agencies, have worked nonstop to ensure that voting in the primary election will be as safe and as convenient as possible, despite the challenges posed by the health risks involved. The intensity of these efforts varies by region, because COVID-19 has had different effects in different areas of the Commonwealth. As of the filing of this petition, Bucks County is among the

relatively few counties still subject to the most severe restrictions for social distancing and the conduct of business possible under Governor Wolf's orders during this crises.

6. The Legislature and Governor, recognizing that existing law would not accommodate a primary election at which persons subject to social distancing, stay-at-home-orders, and justifiable fear of unnecessary spread of disease would feel free or be able to exercise their right to vote, postponed the date of the 2020 primary, previously scheduled for April 28, to June 2, 2020. In recognition that many more voters than previously expected would want to vote by never before used mail-in ballot procedure, the Legislature and Governor— for the June 2 primary only— also extended the times to apply for and vote mail-in ballots and allowed counties to begin to count those ballots from the times the polls open, rather than waiting for the polls to close before counting. *See* Senate Bill 422, March 27, 2020.

7. The Board of Elections, in order to accommodate an influx of mail-in votes than could have been reasonably anticipated, and pressed by the need for social distancing, enlisted staff from other county offices, set up computer terminals in furniture in other offices throughout the Bucks County Administration Building to receive and process the overflow of mail-in ballot applications while maintaining social distancing, and contracted with a bulk mail company to mail ballots to voters the day after the processing of their applications for ballots. Yet, as described below,

the Board of Elections has not been able to process mail-in ballots within a day of their receipt online or by mail, as had been previously hoped and expected.

8. The influx of mail-in applications has also been fueled by an influx of votes and requests from senior citizens (who represent a large percentage of the voting population), particularly those living in Bucks County's numerous senior citizen facilities, whose residents are generally more vulnerable to the COVID-19 virus than others. Larger facilities that previously accommodated polling places have asked the Board of Elections to move them and are encouraging their residents to vote by mail-in ballot.

9. The COVID-19 crises has resulted in the relaxation, disruption, and suspension of innumerable normal government operations, such as:

(a) Orders from Governor Wolf, the Pennsylvania Supreme Court, and this Court allowing relaxation and suspension of normal operations and rules due to the emergency;

(b) unprecedented outreach by the Pennsylvania Department of State and major political parties to promote mail-in voting;

(c) social distancing rules in effect for both the public and government workers in government buildings; and

(d) ongoing unanticipated exigencies that require additional solutions that slow government operations in order to protect the health of employees and the public.

10. The above-described consequences of the COVID-19 pandemic have converged into a perfect storm in which requests for mail-in and absentee ballots have far exceeded the Board of Elections' expectations. Notwithstanding the heroic efforts of the Board and its staff to preserve the constitutional rights of all Bucks County citizens, it simply cannot process all ballots the day following their arrival.

9. The statutory absentee and mail-in ballot deadline was 5:00 p.m. on Tuesday, May 26, 2020. *See*, 25 P.S. §§3146.2a, 3150.12a(a), which but for the excess demand created by the COVID-19 crises, would have allowed for all applicants to receive their ballots in time to mail them back to the Board of Elections in time for them to be counted.

10. However, two days after the deadline for submitting requests for absentee and mail-in ballots, the Board of Elections is still mailing absentee and mail-in ballots to the qualified electors in accordance with 25 P.S. §§3146.5 and 3150.15.

11. The Board of Elections has received and processed over 97,000 civilian absentee and mail-in ballot applications for the upcoming election. Of those, only about half of the persons to whom ballots were sent have returned them.

12. The Board of Elections, using additional help from other county departments and working more than twelve hours daily, including weekends and holidays, has been processing the absentee and mail-in ballot applications at a rate of 2,000 per day, and mailing the ballots to voters the day after they are processed.

13. All qualified electors who appropriately applied for civilian absentee and mail-in ballots before the statutory deadline are required to return their voted absentee and mail-in ballots to the County Board of Elections by 8:00 p.m. on Tuesday, June 2, 2020 for the voted ballot to be considered for tabulation. See 25 P.S. §§ 3146.6, 3150.16.

14. Unfortunately, due to the backlog in applications, the last of the mail-in and absentee ballots will not be mailed until May 29, 2020. As a result, many voters who made timely application for mail-in and absentee ballots might not receive their ballots until June 1, 2020, the day before the primary.

15. Earlier this week, to ameliorate the effect of last-minute mailing of the ballots, the Board of Elections established ballot boxes at the Lower Bucks Government Services Center, 7321 New Falls Road, Levittown, The Bucks County Administration Building, 55 E. Court St., Doylestown, and the Upper Bucks Government Services Center, 261 California Road, Quakertown, where voters can deposit their own mail-in ballots from 7 a.m. to 7 p.m. on May 30, 31 and June 1. Because of the shortage of Board of Election workers due to the need to deal with

the influx of mail-in and absentee ballots, the Board has enlisted the assistance of law enforcement personnel from other departments such as the Sheriff's Office to guard and monitor these boxes in accordance with state law.¹

16. Ballot boxes where voters can deposit ballots for twelve hours per day still will not afford access to many voters who receive ballots at the last minute, as those without easy access to transportation will not be able to get to them due to the lack of readily available public transportation and the rural nature of much of Bucks County. The ballot boxes were also only announced this week, and despite efforts to publicize them, many persons who receive their mail-in ballots at the last minute might not learn of the ballot box option before utilizing the U.S. mail system.

17. Because hundreds or thousands of qualified applicants for mail-in and absentee ballots might not receive their ballots in time to return their ballots on June 1 by mail, the Board of Elections now petitions this Honorable Court to extend the statutory deadline for receipt of mail-in and absentee ballots that are post-marked and mailed on or before June 1, 2020 and received by the Board of Elections by a deadline set by the Court (but not later than June 9, 2020 at 5:00 p.m.), and allow the tabulation of such ballots for the June 2, 2020 primary election.

¹ Voters cannot deposit any but their own ballot, and the ballot boxes cannot be left unattended. 25 P.S. §3150.16.

18. Such an extended deadline for receiving ballots – provided that it is not later than June 9, 2020 – would not exceed the existing deadline for military and overseas ballots which must be counted if received by the Board of Elections by 5:00 p.m. on the seventh day following the election. See, 25 Pa.C.S. § 3511(a). Moreover, the requirement of a postmark on or before June 1, 2020 would ensure that only ballots cast and mailed before Election Day would be counted.

19. No person, political party and/or candidate would be negatively affected by this relief, as only mail-in and absentee ballots cast and mailed by June 1, 2020 could be counted.

20. It is well-settled that the purpose of the Election Code is to ensure fair elections, including an equal opportunity for all eligible electors to participate in the election process. *In re: General Election - 1985*, 531 A.2d 836, 839 (Pa. Cmwlth. 1987) (Court postponed the date of the Primary Election for 11 precincts that suffered extensive flooding, loss of electricity, heat, and water during extreme weather conditions). *Cf., In re: Mayor, City of Altoona, Blair County*, 196 A.2d 371, 374 (1964) (the purpose of election laws is to secure freedom of choice and to prevent fraud and corruption; to obtain a fair election and an honest election return; to insure fair elections, or an equal chance and opportunity for everyone to express his choice at the polls; and to secure the rights of duly qualified electors and not to defeat them). An election that involves members of the electorate who could be deprived of their

opportunity to participate because of circumstances beyond their control would be inconsistent with the purpose of the Election Code. *Id.*

21. The Pennsylvania Department of State, in litigation now pending in the Pennsylvania Supreme Court in *Delisle v. Boockvar*, Dkt. 95 MM 2020 (Pa. Supreme Court), has publicly stated that while it opposes a statewide solution to the problems counties are encountering in processing, mailing, and receiving absentee ballots, it does not oppose solutions adopted by individual counties and their Courts of Common Pleas that to address specific problems – such as those described above – that those counties face individually.

22. The County Board of Elections seeks this extension so that all duly qualified electors of Bucks County who did not receive their ballots until June 1, 2020 due the COVID-19 crises are able to participate in the election process.²

WHEREFORE, the Bucks County Board of Elections respectfully requests this Honorable Court to GRANT its Emergency Petition to allow the Bucks County Board of Elections to accept and tabulate all absentee and mail-in ballots postmarked

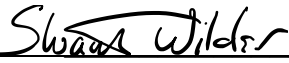
² On May 27, 2020, the Honorable Richard P. Haaz of the Montgomery County Court of Common Pleas denied a request by that County's Board of Elections to extend the time to receive mail-in and absentee ballots. In re: Extension of Time for Absentee Ballots and Mail-in Ballots to be Received and Counted in the 2020 Primary Election, 2020-06413 (Mont. Co.). That petition asked, *inter alia*, for permission to receive and tabulate ballots mailed or postmarked on June 2, 2020. The instant petition does not ask for such authorization. Judge Haaz has not yet explained the reason for his order. w

on or before June 1, 2020 and delivered by the United States Post Office to the Bucks County Board of Elections by a deadline set by the Court that is no earlier than June 4, 2020 at 5:00pm and no later than June 9, 2020 at 5:00pm.

Respectfully submitted,

JOSEPH J. KHAN
County Solicitor

BY:



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