

Nos. 20A53, 20A54

In the **Supreme Court of the United States**

JOSEPH B. SCARNATI, III, ET AL., *Applicants*,
v.

KATHY BOOCKVAR, SECRETARY OF PENNSYLVANIA, ET AL., *Respondents*.

REPUBLICAN PARTY OF PENNSYLVANIA, *Applicant*,
v.

KATHY BOOCKVAR, SECRETARY OF PENNSYLVANIA, ET AL., *Respondents*.

**On Applications for Stay Pending Disposition
of a Petition for a Writ of Certiorari**

**MOTION FOR LEAVE TO FILE; AND AMICUS BRIEF OF CHRISTIAN
FAMILY COALITION (CFC) FLORIDA, INC., IN SUPPORT OF
APPLICATIONS FOR STAY PENDING DISPOSITION**

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Amicus Christian Family Coalition (CFC) Florida, Inc., hereby moves on an emergency basis for leave to file its attached Amicus Brief in support of Petitioners' emergency motions for a stay and certiorari.

**OVERVIEW AND THE NEED TO ENFORCE THE UNIFORM FEDERAL
ELECTION DATES, TO PREVENT ELECTORAL CHAOS**

This Court's emergency intervention and stay are essential to prevent the electoral chaos that will ensue under the last-minute decisions below. In violation of long-standing Congressional statutes – for uniform nation-wide federal election dates – the last-minute decisions of the Pennsylvania Supreme Court under review, as well as similar last-minute decisions in other states, have authorized a myriad of inconsistent “extensions” permitting voters to cast or “correct” ballots for Congress and President, long after the uniform election dates Congress prescribed. These last-minute judicial decisions not only make a mockery of the uniform election dates in federal law but also guarantee electoral chaos, uncertainty, lack of finality, and post-election fraud.

Only this Court's immediate intervention and a stay can prevent this electoral anarchy. Without a stay and immediate review, the same issue will inevitably arise after the election which, by then, will be hopelessly complicated by election “results” already tabulated, as well as by post-election chaos, uncertainty, confusion, and fraud.

The attached editorial from the *Wall Street Journal* of Friday October 2, 2020 surveys the inconsistent last-minute voting “extensions” ordered by lower courts

across the country – in violation of federal law – and underscores the chaos, fraud and uncertainty that will ensue absent this Court’s immediate review.

Petitioners filed their emergency applications only last week, and Amicus became aware of them only this past weekend. As a result, Amicus had not had an opportunity to seek the parties’ consent to the filing of the attached Amicus Brief which must be filed today.

The attached Amicus Brief is short, focuses on a single issue, will not prejudice any party, will assist this Court, and is being filed as soon as possible following Petitioners’ emergency application.

This Court should grant this emergency motion, permit the filing of the attached emergency Amicus Brief, grant a stay and certiorari, and enforce the uniform election dates that Congress has prescribed for federal elections.

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AMICUS BRIEF OF CHRISTIAN FAMILY COALITION (CFC) FLORIDA, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION

The Christian Family Coalition (CFC) Florida, Inc. (“Amicus”), hereby submits its Amicus Brief in support of Petitioners’ emergency applications for a stay and certiorari, to enforce the uniform federal election dates Congress has prescribed for Congressional (2 U.S.C. §§ 1 & 7) and Presidential elections (3 U.S.C. § 1).

INTEREST OF AMICUS

Amicus, a non-profit corporation, is a human rights and social justice advocacy organization representing over 500,000 fair-minded voters. Amicus actively seeks to protect human rights and social justice in litigation and political forums. The performance of Amicus’s function in legislative and executive forums depends upon the responsiveness of the political process and, in turn, upon the integrity and fairness of the elections by which legislators and executive officials are elected, including members of Congress and the President. The uniform nationwide election dates enacted by Congress for its own members (2 U.S.C. §§ 1 & 7) and for Presidential electors (3 U.S.C. § 1) – which are at issue in these cases – are indispensable to the integrity, honesty and timeliness of federal elections and thus to the responsiveness of the political processes upon which Amicus depends to protect human rights and social justice.¹

¹ No counsel or other representative or agent of any party in these cases authored any part of this Amicus Brief or exercised any form of control or approval over this Amicus Brief or any portion of it. No person or entity, aside from Amicus or its counsel, made a monetary contribution to the preparation or submission of this Amicus Brief.

SUMMARY OF ARGUMENT

Congress has enacted uniform nation-wide election dates for electing members of Congress and Presidential electors (2 U.S.C. §§ 1 & 7; 3 U.S.C. § 1). The Pennsylvania Supreme Court, as well as courts in several other States, has violated these uniform nation-wide election dates by authorizing late receipt of mail-in ballots, often with tacit indifference to late voting itself. A stay is necessary not only to preserve the temporal uniformity that Congress required but also to preserve the integrity of federal elections by preventing (or at least minimizing) the chaos, uncertainty, confusion, tampering, and public unrest and disrespect that will inevitably ensue from masses of late-arriving mail-in ballots.

THE UNIFORM ELECTION DATE PRESCRIBED BY CONGRESS FOR ALL FEDERAL ELECTIONS AND THE CHAOTIC CONSEQUENCES THAT WILL ENSUE NATIONWIDE FROM ITS VIOLATION

Present Amicus fully supports the arguments on all issues by Petitioners in both cases 20A53 and 20A54 as well as the arguments on all issues by amici Cutler and Benninghoff in 20A53 filed September 30, 2020. However, present Amicus wishes to focus on a single issue in the applications – the uniform election date enacted by Congress for federal elections and the chaotic and horrific consequences of its violation.

Exercising its constitutional authority to supersede State regulation of the “times, places and manner” of Congressional elections (U.S. Const. Art. I § 4 cl. 1), Congress has prescribed uniform nation-wide election dates for Senators and Representatives (2 U.S.C. §§ 1 & 7). Congress exercised a parallel constitutional

authority (U.S. Const. Art. II § 1 cl. 4) to designate a uniform nation-wide date for the election of Presidential electors (3 U.S.C. § 1).

These uniform nation-wide voting dates in federal elections are of necessity the dates by which the selection processes must be finalized. Whether electing members of Congress or Presidential electors, all votes must be received and available for tabulation by the uniform election dates Congress specified. Although the final counting may sometimes be delayed, the votes themselves must be in and available for counting by election “officials ... to make a final selection.” This Court has made this clear:

“When the federal statutes speak of ‘the election’ of a Senator or Representative, they plainly refer to the **combined actions** of voters and officials meant to make a **final selection** of an officeholder See N. Webster, *An American Dictionary of the English Language* 433 (C. Goodrich & N. Porter eds. 1869) (defining “election” as ‘the act of choosing a person to fill an office’). By establishing a particular day as ‘the day’ on which these actions must take place, the statutes simply regulate the time of the election, a matter on which the Constitution explicitly gives Congress the final say.”

Foster v. Love, 522 U.S. 67, 71-72 (1997) (emp.added). As a result, “all elections for Congress and the Presidency [are] on a **single day throughout the nation.**” *Id.*, at 69-70 (emp.added).

This Congressional mandate for a “final selection” in federal elections on a “single day throughout the nation” has numerous benefits. It prevents post-election chaos, lingering uncertainty, confusion, and public unrest, and minimizes the opportunities for post-election fraud and manipulation. It also serves the strong public interest in finalizing the electoral process.

The Pennsylvania Supreme Court failed to recognize these important points. Its decision violated this Congressional mandate for a uniform nation-wide election date for federal officials and disserved the numerous benefits that nation-wide temporal uniformity was designed to serve. The Pennsylvania Supreme Court improperly allowed the late receipt of mail-in ballots up to 3 days after the uniform federal election date – even without visible postmarks, thereby permitting late balloting itself. This contravenes both the federal statutes and the enactment of its own State legislature which, like Congress, had mandated receipt of all mail-in ballots by election day itself. A stay and reversal are clearly warranted. *Foster v. Love, supra*; 2 U.S.C. §§ 1 & 7; 3 U.S.C. § 1.

**THE DRACONIAN POTENTIAL FOR MULTI-STATE CHAOS MANDATES A
STAY AND REVERSAL, TO END THE SIMILAR ELECTORAL MISCHIEF
UNDERWAY IN SEVERAL OTHER STATES**

Pennsylvania is not alone. Judicial decisions in other States – often manipulated through collusive “consent decrees” with sympathetic governors – have “extended” voting or ballot-receipt deadlines well beyond the uniform federal election day. Their potential for chaos, disruption and uncertainty in the upcoming federal elections places a premium on a stay, allowing this Court to confirm the uniform federal election date and put an end to the electoral mischief that other States have engineered.

Realistically, this Court will need to confront this issue either now or after the election. Better now than later.

Otherwise, there will be electoral disaster. Without prompt enforcement of the uniform federal election dates, there will be post-election chaos, uncertainty, confusion and increased potential for post-election fraud in the various States that have engineered last-minute “extensions” for federal voting.

The *Wall Street Journal* has underscored the point, with specific examples. In its October 2, 2020 editorial (attached), it points out:

- In Minnesota, a collusive “consent decree” with a sympathetic governor provided that mail-in ballots are valid through Nov. 10, 2020 even without postmarks;
- In North Carolina, another “consent decree” provided for receipt of ballots through Nov. 12, 2020;
- In Wisconsin, a federal judge unilaterally extended the receipt deadline for federal-election ballots to Nov. 9, 2020;
- In Georgia, a federal judge ordered late-arriving ballots to be counted through Nov. 6, 2020;
- In Michigan, another judge allowed mail-in ballots to be counted through Nov. 17, 2020.

See attached Oct. 2, 2020 *Wall Street Journal* editorial listing the above.

CONCLUSION

The Pennsylvania Supreme Court, as well as courts in other States, has violated the uniform nation-wide election dates Congress has prescribed for Congressional and Presidential elections. A stay is necessary not only to preserve the temporal uniformity that Congress intended but also to preserve the integrity of federal elections by preventing (or at least minimizing) the chaos, uncertainty, confusion, tampering, and public unrest and disrespect that will inevitably ensue from massive amounts of late-arriving mail-in ballots. This Court should grant the applications for a stay pending certiorari.

Respectfully submitted

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REVIEW & OUTLOOK

What's the Ballot Deadline? Who Knows

Barely a month is left before Election Day, yet voting rules in pivotal states are still being litigated. This week Pennsylvania Republicans asked the U.S. Supreme Court to halt a state judicial ruling that says late ballots must be counted, even if they lack postmarks and arrive three days after the statutory deadline.

The Pennsylvania Supreme Court, controlled by Democratic justices who are chosen in partisan elections, issued that order Sept. 17 in a 4-3 vote. State law says valid ballots must arrive by 8 p.m. on Nov. 3. The court unilaterally pushed it to Nov. 6. If a postmark is missing or illegible, officials are told to presume that the ballot was mailed on time.

"This is an open invitation to voters to cast their ballots *after* Election Day," say Republican leaders of the Pennsylvania Senate, in their filing to the U.S. Supreme Court. They add that by extending the ballot deadline, the state jurists "usurped" the Legislature's authority over elections under the U.S. Constitution.

Similar arguments appear in a separate application to the U.S. Supreme Court from the Pennsylvania Republican Party. "This Court should intervene now," it argues, "to provide guidance to lower courts before the rapidly approaching federal general election." Justice Samuel Alito, who handles emergency appeals from that region, has asked for a response to the GOP briefs by Monday at 3 p.m. But it's certainly true that, left to their own devices, judges across the country are making it up as they go.

In Wisconsin last week, a federal judge said ballots postmarked by Election Day could arrive by Nov. 9. State lawmakers and the Republican Party sought a stay. On Tuesday the Seventh U.S. Circuit Court of Appeals denied the request, saying the GOP hadn't "suffered an injury" and the Legislature wasn't "entitled to represent Wisconsin's interests as a polity." The mistake was not having a citizen or elector as a co-litigant. But a request for an en banc rehearing has been filed.

In Georgia, a federal judge ordered late-arriving ballots to be counted until Nov. 6. State officials have a stay application pending at the Eleventh Circuit Court of Appeals. "Voters will

be confused: ballots already have preprinted instructions that refer to the Election Day Deadline," it says. Also: "Deciphering whether a ballot has a valid and timely postmark pursuant to the order inserts new subjective considerations."

In Minnesota a lawsuit filed last week in district court challenges a consent de-

cree agreed to by a Democratic state leader, which says mail votes are valid through Nov. 10, even if they lack postmarks. In Michigan the GOP sued in state court, seeking to overturn a judge's order that straggling ballots, if mailed by Nov. 2, could arrive as late as Nov. 17.

A lawsuit in North Carolina federal court seeks to kill a legal settlement entered into by the state Board of Elections, which would count postmarked ballots through Nov. 12. Republican lawmakers argue that the U.S. Constitution explicitly empowers the Legislature to set voting rules, meaning the Board of Elections can't huddle with private litigants to "usurp the General Assembly's sole authority."

In Arizona state officials want to stay a federal judge's order that voters be permitted to fix ballots with missing signatures until "the fifth business day" after Nov. 3. Arizona provides that opportunity if a faulty signature is rejected, but the law says people who outright neglect to sign a ballot must do so by Election Day. "There are entirely reasonable bases to distinguish between signature mismatches and non-signatures," says the filing at the Ninth Circuit Court of Appeals. Specifically, there's little risk of error in throwing out unsigned ballots, which are "the exclusive fault of the voter."

* * *

The U.S. Supreme Court might be hesitant to intervene, but the Pennsylvania appeal has already reached its chambers, and others could get there before Nov. 3. If the Justices don't step in to stop this chaotic, last-minute judicial law-writing before the election, they might have to do so afterward, at far greater political cost to themselves and the country.

The way to protect democratic confidence is to run elections by the book, not to let judges rewrite state laws willy-nilly in the weeks before Election Day.