

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA  
CIVIL DIVISION

Sean Gill, Robert Smith, Tim Ramos, Jackie Rivera :  
: - VS - : File No. 2022-C-1849  
Lehigh County Board of Elections, Phillips :  
Armstrong, Jennifer Allen, Dennis Nemes, : Assigned Judge: Thomas A. Capehart  
Timothy A Benyo, Diane Gordian :  
-VS- :  
Pennsylvania Alliance for Retired Americans :

**ORDER**

AND NOW this 20<sup>th</sup> day of October, 2022, upon consideration of the Petitioners'

Motion/Application for Stay and Injunction Pending Appeal, filed on October 19, 2022,

**IT IS ORDERED** that said Motion and Application are DENIED.<sup>1</sup>

<sup>1</sup> "To obtain a stay pursuant to Rule 1732, an applicant must make a substantial case on the merits and show that without the stay, irreparable injury will be suffered. Additionally, before granting a request for a stay, the court must be satisfied the issuance of the stay will not substantially harm other interested parties in the proceedings and will not adversely affect the public interest." *Commonwealth v. Melvin*, 79 A.3d 1195, 1200 (Pa. Super. 2013) (quoting *Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz*, 573 A.2d 1001, 1003 (Pa. 1990)).

On October 18, 2022, the lower court denied Petitioners' application for a mandatory preliminary injunction regarding five (5) Lehigh County mail-in ballot drop boxes in use for the November 8, 2022 general election. Petitioners had sought an injunction that would require the Lehigh County Board of Elections ("Board") to provide in-person monitoring of all drop boxes, have all drop boxes placed inside a building, and limit the hours of a 24/7 drop box to regular business hours. However, prior to the October 7, 2022, hearing Petitioners and Respondents stipulated to a temporary suspension of the Board's acceptance of mail-in ballots at drop boxes pending the lower court's decision on the merits, resulting in the September 9, 2022 order approving the parties' stipulation which rendered Petitioners' then pending request for emergency preliminary injunction moot.

In its contemporaneously filed opinion dated October 18, 2022, the lower court found that Plaintiffs' evidence failed to establish their right to injunctive relief. Critical to the lower court's decision was that Petitioners' evidence failed to prove that in-person monitoring had significant impact on reducing the number of third-party return of mail-in ballots delivered to a drop box, nor were any of Petitioners' requested limitations mandated by any provision of the Election Code, case law, or the guidance provided to the Board by the Pennsylvania Department of State.

Initially, it is noted that Petitioners not only seek to stay enforcement of the order at issue, but now apply for injunctive relief that appears broader than the relief sought before the lower court. Regarding the November 8, 2022 general-election, Petitioners are seeking, in their post-appeal stay request, to enjoin Respondents from receiving any mail-ballots at drop boxes pending disposition of the appeal before the Commonwealth Court. Petitioners' current request is different than the position taken by Petitioners at the October 7, 2022 hearing, nor did Petitioners present any evidence, brief, or argue this issue before the lower court and therefore Petitioners not only are unable to meet the

BY THE COURT:

  
Thomas A. Capehart, J.

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requirements of Rule 1732(a), but Petitioner have waived the right to raise this issue before the appellate court. Pa.R.A.P. 302(a).

Regardless, Petitioners' alleged harm of potential voter dissolution is speculative and therefore, Petitioners are unable to meet this injunction prerequisite. *See, Donald J. Trump for President v. Boockvar*, 493 F. Supp.3d 331 (W.D. Pa. 2020). Any order by this court granting Petitioners' post-appeal stay is effectively a reversal of the rendered decision equivalent to a decision in appellants' favor on the merits of the appeal. *Peters Twp. Sch. Dist. v. Peters Twp. Federation of Teachers, AFT Local 3431*, 501 A.2d 327 (Pa. Commw Ct. 1985). Most importantly, many Lehigh County voters use drop boxes to securely and timely deliver their ballots to select a candidate of their choosing. Accordingly, significant public interest factors would certainly be affected by the elimination of drop boxes, and such action would be contrary to the permitted actions of the Board under the authority granted it in the decision of *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), which permitted a county to use of drop boxes for the receipt of mail-ballots. Therefore, Petitioners' motion and application are denied.