

**[J-96-2020][M.O. - Baer, J.]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

PENNSYLVANIA DEMOCRATIC PARTY, : No. 133 MM 2020  
NILOFER NINA AHMAD, DANILO :  
BURGOS, AUSTIN DAVIS, DWIGHT :  
EVANS, ISABELLA FITZGERALD, :  
EDWARD GAINEY, MANUEL M. GUZMAN, :  
JR., JORDAN A. HARRIS, ARTHUR :  
HAYWOOD, MALCOLM KENYATTA, : SUBMITTED: September 8, 2020  
PATTY H. KIM, STEPHEN KINSEY, PETER :  
SCHWEYER, SHARIF STREET, AND :  
ANTHONY H. WILLIAMS :

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 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 :  
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 PETITION OF: KATHY BOOCKVAR, IN :  
 HER CAPACITY AS SECRETARY OF THE :  
 COMMONWEALTH OF PENNSYLVANIA :

**CONCURRING AND DISSENTING OPINION**

**CHIEF JUSTICE SAYLOR**

**DECIDED: September 17, 2020**

I join Parts I, II, and III(C), (D) and (E) of the majority opinion, and I respectfully dissent relative to Parts III(A) and (B), concerning the approval of unmanned drop boxes and the extension of the deadline for receiving mail-in ballots.

With regard to drop boxes, I agree with Respondent and the Caucus that the statutory option for a voter to deliver a mail-in ballot “in person to said county board of election” contemplates in-person delivery to a manned, office location. 25 P.S. §3150.16(a). Although another provision of the Election Code contemplates receipt of “ballot boxes and returns . . . in such other place as has been designated by the board” on Election Day, *id.* §3151, no analogous provision applies to the submission by voters of individual ballots. Moreover, the legislative policy to restrain aggregated handling of

mail-in ballots by third parties is manifest, *see, e.g., id.* §3150.16(a) (requiring *the elector* to mail or deliver a ballot), and the enforceability of this policy is weakened by the use of non-statutory, unmanned drop boxes. This, to me, suggests against a permissive interpretation of the Election Code.

Relative to the deadline for receiving mail-in ballots, I join Part II of Justice Donohue's concurring and dissenting opinion, as this most closely hews to the express legislative intent that the election be concluded by 8:00 p.m. on election night.

Finally, although the majority decision appears to be designed to accommodate only ballots actually mailed on Election Day or before, the majority does not so much as require a postmark. Particularly in combination with the allowance of drop boxes, this substantially increases the likelihood of confusion, as well as the possibility that votes will be cast after 8:00 p.m. on Election Day, thus greatly undermining a pervading objective of the General Assembly.

Justice Mundy joins this concurring and dissenting opinion.