

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

MONTGOMERY COUNTY BOARD OF ELECTIONS

NO. 2020-06413

CIVIL COVER SHEET

State Rule 205.5 requires this form be attached to any document commencing an action in the Montgomery County Court of Common Pleas. The information provided herein is used solely as an aid in tracking cases in the court system. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Name of Plaintiff/Appellant's Attorney: MAUREEN E CALDER, Esq., ID: 68055

Self-Represented (Pro Se) Litigant

Class Action Suit Yes No

MDJ Appeal Yes No

Money Damages Requested

Commencement of Action:

Amount in Controversy:

Petition

Case Type and Code

Miscellaneous: _____

Other _____

Other: EMERGENCY PETITION

Case# 2020-06413-0 Docketed at Montgomery County Prothonotary on 05/26/2020 12:43 PM, Fee = \$289.50. The filer certifies 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.

PUBLIC HEALTH EMERGENCY COURT COVER SHEET

CIVIL

CRIMINAL

FAMILY

ORPHANS

Due to the Public Health Emergency, the Montgomery County Court of Common Pleas has limited operations for **EMERGENCY MATTERS ONLY**. A list of what is considered an emergency matter is available on the Court's website - www.montcopa.org/285/County-Courts

Every Emergency Petition or Emergency Motion filed during this time will be sent directly to a Judge after service has been made. **THE JUDGE WILL DECIDE WHETHER THIS IS AN EMERGENCY AND HOW IT WILL BE ADDRESSED.** If the Judge deems the matter is an emergency - a conference, hearing or argument may be scheduled by technology or in-person. Please complete all requested information, including telephone numbers and email addresses of all parties named in the captions, or their attorney's names and phone numbers and email addresses.

SERVICE: The party initiating the Emergency Petition or Emergency Motion must (1) serve the other side with a **TIME STAMPED** copy before the petition or motion will be forwarded to the Judge, and (2) file the original Certificate of Service with the applicable filing office.

CASE NUMBER:

MAUREEN CALDER ID: 68055

IN RE:

Attorney for Plaintiff **OR** Pro se Party

EXTENSION OF TIME FOR ABSENTEE AND MAIL-IN BALLOTS TO BE RECEIVED AND COUNTED IN THE 2020 PRIMARY ELECTION

MCalder@montcopa.org / cell 570-574-9833

Phone Number(s) and Email Address(es)

VS.

ID: _____

Attorney for Defendant **OR** Pro se Party

Phone Number(s) and Email Address(es)

THE FILING PARTY HEREBY CERTIFIES THAT HE/SHE HAS MADE A GOOD FAITH EFFORT TO RESOLVE THIS MATTER PRIOR TO THE FILING OF THE ATTACHED EMERGENCY PETITION.

ORDER

AND NOW, this _____ day of _____, 20____,

Judge _____ has deemed this petition/motion:

is an emergency, and has scheduled a conference/hearing/argument for:

By Technology _____ In-Person

is an emergency, and orders: _____

is **not** an emergency, and Court Administration is directed to schedule this in due course.

Other: _____

BY THE COURT:

J.

**IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA**

IN RE: :
EXTENSION OF TIME FOR : Civil Action
ABSENTEE AND MAIL-IN BALLOTS : Docket No. _____
TO BE RECEIVED AND COUNTED IN :
THE 2020 PRIMARY ELECTION :

ORDER

AND NOW, this _____ day of May, 2020, upon consideration of the Emergency Petition of the Montgomery County Board of Elections for an Extension of Time for the Voted Absentee and Mail-in Ballots of the Qualified Registered Electors of Montgomery County to be Counted for the 2020 Primary Election, and any opposition thereto, it is hereby ORDERED and DECREED, that said Petition is GRANTED as follows:

The Montgomery County Board of Elections shall accept all absentee and mail-in ballots received by the Montgomery County Board of Elections any time before Tuesday, June 9, 2020, at 5:00 p.m.

It is further ORDERED and DECREED that The Montgomery County Board of Elections shall consider for tabulation during the official tabulations, all civilian absentee and mail-in ballots received at the Montgomery County Board of Elections by Tuesday, June 9, 2020, at 5:00 p.m..

BY THE COURT:

J.

**IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA**

IN RE: :
EXTENSION OF TIME FOR : Civil Action
ABSENTEE AND MAIL-IN BALLOTS : Docket No. _____
TO BE RECEIVED AND COUNTED IN :
THE 2020 PRIMARY ELECTION :

**EMERGENCY PETITION OF THE MONTGOMERY COUNTY BOARD OF
ELECTIONS REQUESTING AN EXTENSION OF TIME TO ACCEPT VOTED
ABSENTEE AND MAIL-IN BALLOTS FROM THE QUALIFIED REGISTERED
ELECTORS OF MONTGOMERY COUNTY RECEIVED BY THE MONTGOMERY
COUNTY BOARD OF ELECTIONS BETWEEN TUESDAY, JUNE 2, 2020
AFTER 8:00 P.M. AND TUESDAY JUNE 9, 2020 AT 5:00 P.M.**

Petitioner, the Montgomery County Board of Elections (“Board of Elections”), by its undersigned attorneys, the Montgomery County Solicitor’s Office, hereby petitions this Honorable Court for permission to extend the deadlines for the Absentee and Mail-in Voters of Montgomery County to submit their voted Ballots to Board of Elections until 5:00 p.m. on Tuesday, June 9, 2020. In support of this Petition, the Montgomery County Board of Elections avers as follows:

1. Pursuant to 25 P.S. §2641, *et seq.*, the Montgomery County Board of Elections has jurisdiction over the conduct of elections, including the 2020 Primary Election scheduled for Tuesday June 2, 2020.
2. 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.
3. On March 8, 2020, Montgomery County declared the existence of a disaster emergency in Montgomery County due to the widespread outbreak of COVID-19 affecting the residents of Montgomery County.

4. Pennsylvania Governor Tom Wolf issued a Stay-at-Home Order that was effective for Montgomery County residents as of March 23, 2020 and remains in effect until June 4, 2020.

5. The statutory deadline for application of an absentee and mail-in ballot is 5:00 p.m. on Tuesday, May 26, 2020. *See*, 25 P.S. §§3146.2a(a), 3150.12a(a)¹

6. The Montgomery County Board of Elections has caused said absentee and mail-in ballots to be mailed to the aforementioned qualified electors in accordance with 25 P.S. §§3146.5, 3150.15.

7. The Montgomery County Board of Elections has received and processed over 154,000 civilian absentee and mail-in ballot applications for the upcoming election and has approximately three thousand applications that it intends to process within the next day.

8. As of the date of this filing, the Montgomery County Board of Elections has only received approximately twenty-five percent of the absentee and mail-in ballots that it sent to eligible electors.

9. The Montgomery County Board of Elections has received numerous reports from individuals who have not received their absentee or mail-in ballots, despite the fact that the ballots were mailed to them.

10. Additionally, both the Democratic and Republican party officials of Montgomery County have received reports from constituents that they still have not received their absentee or mail-in ballots.

¹ Pursuant to 25 P.S. §3146.2a(a) “except as provided in subsections (a.1) and (a.2), applications for absentee ballots shall be received in the office of the county board of elections not earlier than fifty (50) days before the primary or election and not later than five o’clock p.m. of the first Tuesday prior to the day of any primary or election.” Similarly, Applications for mail-in ballots shall be processed if received not later than five o'clock p.m. of the first Tuesday prior to the day of any primary or election. 25 P.S. §3150.12a(a).

11. On Thursday, May 21, 2020, the United States Post Office confirmed that absentee and mail-in ballots that had been mailed could take up to ten days to be delivered.

12. The Statewide Uniform Registry of Electors (SURE) system is a secure computer database that contains all registered electors in the Commonwealth. All absentee and mail-in ballot applications are processed through the SURE system.

13. On March 27, 2020, the Bureau of Election Security and Technology of the Pennsylvania Department of State implemented a SURE system enhancement that resulted in errors appearing on address labels for the absentee and mail-in ballots mailed to eligible electors.

14. Specifically, the system no longer recognized fields containing apartment numbers resulting in hundreds of ballots being mailed to apartment complexes with no way to deliver to the specific addresses within those complexes.

15. The United States Post Office has returned a number of these ballots to the Montgomery County Board of Elections because the address labels contained incomplete addresses and were undeliverable. The Montgomery County Board of Elections has added apartment numbers to those ballots that were missing them and mailed them again. However, there are potentially many more ballots that were sent out without apartment numbers that could be returned to the Montgomery County Board of Elections during the next week.

16. All qualified electors who appropriately applied for civilian absentee and mail-in ballots before the aforementioned 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 in order for the voted ballot to be considered for tabulation. *See* 25 P.S. §§ 3146.6, 3150.16.

17. On Friday, May 22, 2020, the Montgomery County Solicitor and the attorney for the Pennsylvania Department of State discussed possible ways in which the Montgomery County Board of Elections could proceed in order ensure that the absentee and mail-in voters of

Montgomery County could have their ballots counted if received after the statutory deadline set forth above. The Department of State suggested that the Montgomery County Board of Elections could exercise the option to petition the Montgomery County Court of Common Pleas for an extension of the deadline to receive completed absentee ballots.

18. After review, the Montgomery County Board of Elections now petitions this Honorable Court to extend the statutory deadline until June 9, 2020 at 5:00 p.m. for the County Board of Elections to receive completed absentee and mail-in ballots to be counted in the June 2, 2020 Primary.

19. As such, the Montgomery County Board of Elections respectfully requests this Honorable Court to extend the statutory deadline for absentee and mail-in ballots to be received by the Board to be counted for all offices on the ballot, from 8:00 p.m. Tuesday, June 2, 2020 to 5:00 p.m., Tuesday, June 9, 2020.

20. Moreover, the Montgomery County Board of Elections respectfully requests that any absentee or mail-in ballots received before 5:00P.M.on Tuesday, June 9, 2020 be counted during official tabulation.

21. This extended deadline would align with 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.A. § 3511 (a).

22. No person, political party and/or candidate would be negatively affected by this relief.


23. 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 PrimaryElection – 1985*, 109 Pa.Cmwlt. 604, 608, 531 A.2d 836, 839 (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) (*citing, In re Mayor, City of Altoona, Blair County*, 413 Pa. 305, 196 A.2d 371 (1964)). 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.*

24. The Montgomery County Board of Elections seeks this extension so that all of the duly qualified electors of Montgomery County are able to participate in the election process.

WHEREFORE, the Montgomery County Board of Elections respectfully requests this Honorable Court to GRANT its Emergency Petition to extend the 8:00 p.m., June 2, 2020 deadline to June 9, 2020 at 5:00 p.m. for all civilian absentee and mail-in ballots to be returned to the Montgomery County Board of Elections so that they can be tabulated for all offices that the electors have chosen to vote on at the official tabulations.

Respectfully submitted,



Maureen E. Calder
Attorney ID No. 68055
John A. Marlatt
Attorney ID No. 210141
Joshua M. Stein
Attorney ID No. 90473

Montgomery County Solicitor's Office
One Montgomery Plaza, Suite 800
Norristown, PA 19404
(610) 278-3033
*Attorneys for Petitioner,
Montgomery County Board of Elections*

Dated: May 26, 2020

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA


IN RE: :
EXTENSION OF TIME FOR : Civil Action
ABSENTEE AND MAIL-IN BALLOTS : Docket No. _____
TO BE RECEIVED AND COUNTED IN :
THE 2020 PRIMARY ELECTION :

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 26th day of May, 2020, she served a true and correct copy of the Emergency Petition of the Montgomery County Board of Elections Requesting an Extension of Time to Submit Absentee and mail-in Ballots, via email upon the following:

Joseph Foster, Chairman
Montgomery County Democratic Committee

Liz Preate Havey, Chairman
Montgomery County Republican Committee


Maureen E. Calder, Esquire

Dated: May 26, 2020 —