



West

THE COUNCIL OF STATE GOVERNMENTS

U.S. Supreme Court Weighs in on Pennsylvania Election Results

By Lisa Soronen, Executive Director, State & Local Legal Center (SLLC)

Yesterday, in a one-sentence [statement](#) containing no recorded dissents, the U.S. Supreme Court refused to strike down Pennsylvania’s no-excuse absentee ballot scheme. December 8, 2020 was the “safe harbor” deadline for the votes of Pennsylvania’s presidential and vice-presidential electors to be included in the counting of electoral votes.

Challengers [claimed](#) that Pennsylvania’s no-excuse absentee ballot scheme, which the state legislature added to the Pennsylvania Election Code in 2019, violates the Pennsylvania Constitution and the U.S. Constitution. According to the challengers, “[b]eginning with the Military Absentee Ballot Act of 1839, the Pennsylvania Supreme Court consistently rejected all attempts to expand absentee voting by statute – uniformly holding that a constitutional amendment is required to expand absentee voting beyond the categories provided in the Pennsylvania Constitution.”

The Pennsylvania Supreme Court [rejected](#) the challengers’ argument based on laches—because the challenge wasn’t brought in a timely manner. Challengers waited until November 21, 2020, to challenge Pennsylvania’s no-excuse absentee ballot scheme, though a facial challenge to the law was “ascertainable” upon its enactment.



West

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According to the Pennsylvania Supreme Court: “At the time this action was filed on November 21, 2020, millions of Pennsylvania voters had already expressed their will in both the June 2020 Primary Election and the November 2020 General Election and the final ballots in the 2020 General Election were being tallied, with the results becoming seemingly apparent. Nevertheless, Petitioners waited to commence this litigation until days before the county boards of election were required to certify the election results to the Secretary of the Commonwealth. Thus, it is beyond cavil that Petitioners failed to act with due diligence in presenting the instant claim.”

Pennsylvania [argued](#) the U.S. Supreme Court shouldn’t overturn the Pennsylvania Supreme Court’s decision because the challengers didn’t claim in state court that Pennsylvania’s no-excuse absentee ballot scheme violated the federal constitution. And the challengers’ disagreement with the Pennsylvania Supreme Court’s laches ruling “asks this Court to constitutionalize huge swaths of state procedural law without any credible basis in constitutional principles or this Court’s precedents.”

Justice Alito could have rejected the challengers’ emergency motion on his own, but he referred the matter to the entire Court, which rejected.

The U.S. Supreme Court has yet to decide whether it will hear a [case](#) challenging the Pennsylvania Supreme Court’s decision extending the deadline for absentee ballots until three days after Election Day.



West

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Texas has also [asked](#) the U.S. Supreme Court to “enjoin the use of unlawful election results” in the following states because “[u]sing the COVID-19 pandemic as a justification, government officials in . . . Georgia, Michigan, and Wisconsin, and the Commonwealth of Pennsylvania . . . usurped their legislatures’ authority and unconstitutionally revised their state’s election statutes.”

The [SLLC](#) is a resource to state and local governments on the U.S. Supreme Court. CSG is a member of the SLLC.