

Pennsylvania Supreme Court decision and opinions concerning Act 77

OPINION JUSTICE DONOHUE DECIDED: August 2, 2022 (76 pages)

Chief Justice Baer and Justices Todd and Dougherty join the opinion. Justice Wecht joins the opinion, except for its determination that Act 77 prescribed an “other method” of voting, pursuant to Article VII, Section 4 of our Constitution.

<https://www.pacourts.us/assets/opinions/Supreme/out/J-18A-E-2022mo.pdf?cb=1>

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(the Secretary) “urges this Court to distinguish or overrule the Chase and Lancaster City decisions.”

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41 Since the Twentieth Century, more than 150 substantive amendments were made to our Constitution. See Duquesne University School of Law, Texts of the Constitution, <https://www.paconstitution.org/texts-of-the-constitution/> (last visited July 11, 2022); Pa. General Assembly, Legislation Enacted, Joint Resolutions (Amendments to the Constitution) passed, https://www.legis.state.pa.us/cfdocs/legis/CL/Public/cl_view_action1.cfm?sess_yr=&sess_ind=0&cl_typ=JR&cl_nbr= (last visited July 11, 2022); Ballotpedia, List of Pennsylvania Ballot Measures, https://ballotpedia.org/List_of_Pennsylvania_ballot_measures (last visited July 11, 2022). In contrast, the federal Constitution has been amended only twenty-seven times. See U.S. CONST. amends. I-XXVII.

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By recently enacting Act 77, the legislature made a policy decision, based on the authority afforded it by our Charter, to afford all qualified voters the convenience of casting their votes by mail. However, acts of the legislature are not guaranteed to be permanent.

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52 It bears repeating that Act 77’s universal mail-in voting extends a method of voting to the entire electorate that our General Assembly has made available to voters it legislatively deemed to be absentee voters in 1963 and 1968. See *supra* pp. 40-41.

53 Our conclusion in this regard defeats Bonner’s federal claims, as the viability of those claims requires a finding that the universal mail in provisions of Act 77 are unconstitutional under the Pennsylvania Constitution. See Bonner’s Brief at 15-16 (explaining that his claims that Act 77 violate federal law and the U.S. Constitution as based on the premise that the General Assembly violated the Pennsylvania Constitution when it enacted it). As we have found no constitutional infirmity in Act 77’s universal mail in voting provisions, there is no foundation for Bonner’s claims.

CONCURRING OPINION JUSTICE WECHT DECIDED: August 2, 2022 (25 pages)

<https://www.pacourts.us/assets/opinions/Supreme/out/J-18A-E-2022co.pdf?cb=1>

DISSENTING OPINION JUSTICE MUNDY DECIDED: August 2, 2022 (24 pages)

<https://www.pacourts.us/assets/opinions/Supreme/out/J-18A-E-2022do.pdf?cb=1>

Senate Bill 413 of 2019 (passed by both Houses April 28, 2020; filed with the Secretary of the Commonwealth April 29, 2020) (emphasis added). That change, though proposed, was not adopted. If the majority were to follow precedent and invalidate Act 77, an amendment like this could easily be adopted assuming no-excuse mail-in voting has widespread popular appeal. (This is stated on page 24)

DISSENTING OPINION JUSTICE BROBSON DECIDED: August 2, 2022 (6 pages)

<https://www.pacourts.us/assets/opinions/Supreme/out/J-18A-E-2022do1.pdf?cb=1>