

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA
PARRILLA; REBECCA
POYOUROWN; WILLIAM TUNG;
ROSEANNE MILAZZO; BURT
SIEGEL; SUSAN CASSANELLI;
LEE CASSANELLI; LYNN
WACHMAN; MICHAEL
GUTTMAN; MAYA FONKEU;
BRADY HILL; MARY ELLEN
BALCHUNIS; TOM DEWALL;
STEPHANIE MCNULTY; and JANET
TEMIN,

Petitioners,

CASES CONSOLIDATED

v.

No. 464 M.D. 2021

VERONICA DEGRAFFENREID, in
her official capacity as the Acting
Secretary of the Commonwealth of
Pennsylvania; JESSICA MATHIS, in
her official capacity for the
Pennsylvania Bureau of Election
Services and Notaries,

Respondents.

PHILIP T. GRESSMAN; RON Y.

DONAGI; KRISTOPHER R. TAPP;
PAMELA GORKIN; DAVID P.
MARSH; JAMES L.
ROSENBERGER; AMY MYERS;
EUGENE BOMAN; GARY
GORDON; LIZ MCMAHON,
TIMOTHY G. FEEMAN; and GARTH
ISAAK,

Petitioners,

v.

No. 465 M.D. 2021

VERONICA DEGRAFFENREID, in
her official capacity as the Acting
Secretary of the Commonwealth of
Pennsylvania; JESSICA MATHIS, in
her official capacity as Director for the
Pennsylvania Bureau of Election
Services and Notaries,

Respondents.

**APPLICATION FOR LEAVE TO INTERVENE BY
REPRESENTATIVE JOANNA E. MCCLINTON,
LEADER OF THE DEMOCRATIC CAUCUS
OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES**

NOW COMES Representative Joanna E. McClinton, Leader of the
Democratic Caucus of the Pennsylvania House of Representatives, (“Proposed
Intervenor”) by and through her attorneys, who files this application for leave to
intervene in the above-captioned matters pursuant to Pa.R.A.P. 1531(b) and
Pa.R.C.P. Nos. 2327-2329, and offers the following in support thereof:

Proposed Intervenor

1. Proposed Intervenor is a duly elected member of the Pennsylvania House of Representatives representing the 191st Legislative District, including Philadelphia and Delaware counties.
2. Proposed Intervenor was elected the Minority Leader of the House of Representatives of the Commonwealth of Pennsylvania for the 2021-2022 Legislative Session by the Members-elect of the House Democratic Caucus.
3. As the Leader of the House Democratic Caucus, Proposed Intervenor represents the interests of the Members of the House Democratic Caucus and in turn, their constituents in this matter.
4. The House Democratic Caucus is currently made up of ninety Members of the Pennsylvania House of Representatives representing ninety different legislative districts across the Commonwealth.
5. The Democratic Caucus of the Pennsylvania House of Representatives is an integral part of the legislative process and the system of government in this Commonwealth, similarly situated in this matter as the House and Senate Republican Caucuses and the Democratic Caucus of the Senate of Pennsylvania.

Procedural Background

6. On December 17, 2021, Petitioners filed petitions for review in this Court's original jurisdiction. The cases, originally docketed at 464 MD 2021 and 465 MD 2021, were consolidated by order of this Court on December 20, 2021.

7. Petitioners request, *inter alia*, a declaration by this Honorable Court of the illegality of the existing district plan, an injunction precluding Respondents from using the district plan, and this Court's adoption of a new "appropriate redistricting plan." *See Carter v. Degraffenried*, 464 MD 2021 at 4 (Pa. Commw. Ct. 2021).

8. On the same day, this Honorable Court ordered that any parties wishing to intervene pursuant to Pa. R.A.P. 1531(b) file their applications by December 31, 2021, and that the above-captioned petitioners serve a copy of the Order on the Pennsylvania Senate Majority and Democratic Leaders and on the Pennsylvania House of Representatives Majority and Democratic Leaders. This includes the Proposed Intervenor.

9. This Honorable Court in its order dated December 20, 2021 also directed that:

- a. Parties challenging proposed interventions file answers to petitions to intervene within 4 days of their filing;
- b. Parties wishing to submit proposed Congressional districting plans do so by January 28, 2022;

- c. If the General Assembly and the Governor do not adopt a redistricting plan by January 30, 2022, this Honorable Court will select a plan from those submitted; and
- d. In the event this Honorable Court is required to do so, the parties will proceed to a hearing on the matter, as well as on any revisions to the 2022 election schedule/calendar, on January 31, 2022.

See Carter v. Degraffenried, 464 MD 2021 (Pa. Commw. Ct. Consolidation Order filed Dec. 20, 2021); *Gressman v. Degraffenreid*, 465 MD 2021 (Pa. Commw. Ct. Consolidation Order filed Dec. 20, 2021).

10. Proposed Intervenor now seeks leave to intervene in the above-captioned matter and to continue as a party in this action.

Standards for Intervention

11. Applications for leave to intervene in an Original Jurisdiction matter before the Commonwealth Court are governed by Pa.R.A.P. 106 and 1531(b).

12. Pa.R.A.P. 106 states: “Unless otherwise prescribed by these rules the practice and procedure in matters brought before an appellate court within its original jurisdiction shall be in accordance with the appropriate general rules applicable to practice and procedure in the courts of common pleas, so far as they may be applied.”

13. Pa.R.A.P. 1531(b) states:

A person not named as a respondent in an original jurisdiction petition for review who desires to intervene in a proceeding under this chapter, may seek leave to intervene by filing an application for leave to

intervene....with the prothonotary of the court. The application shall contain a concise statement of the interest of the applicant and the ground upon which the intervention is sought.

14. In relevant part, the Pennsylvania Rules of Civil Procedure permit a person not a party to an action to intervene if: such a person could have joined as an original party in the action or could have been joined therein, or; the determination of such action may affect any legally enforceable interest of such person whether or not such may be bound by a judgment in the action. Pa.R.C.P. 2327(3) and (4).

15. Once a potential intervenor has met one of the threshold requirements under Pa.R.C.P. No. 2327, the Court will grant intervention but may refuse if it finds one of the following factors from Pa.R.C.P. 2329:

- (1) the claim or defense of the petitioner is not in subordination to and in recognition of the action; or
- (2) the interest of the petitioner is already adequately represented; or
- (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass, or prejudice the trial or adjudication of the rights of the parties.

Intervention Pursuant to Pa.R.C.P. 2327(3)

16. As stated above, Rule 2327(3) permits a party to intervene if “such a person could have joined as an original party in the action or could have been joined therein.” Pa.R.C.P. 2327(3).

17. Petitioners aver that they are “citizens of the United States and are registered to vote in Pennsylvania” *Carter v. Degraffenried*, 464 MD 2021 at 6 (Pa. Commw. Ct. 2021).

18. Proposed Intervenor is a citizen of the Commonwealth of Pennsylvania, a resident of the 3rd Congressional District, and a registered voter of this Commonwealth.

19. As a fellow citizen and registered voter of this Commonwealth, Proposed Intervenor, in addition to the Members of the House Democratic Caucus which she represents, has standing in the same manner as the Petitioners and fellow legislative movants to intervene in this matter.

20. Furthermore, if this Honorable Court grants leave to intervene to other possible legislative intervenors of the General Assembly,¹ then Proposed Intervenor should also be granted her requested relief.

21. For the reasons provided above, Proposed Intervenor is presumptively entitled to intervene pursuant to Pa.R.C.P. No. 2327(3).

¹ See (Appl. to Inter. Rep. Leaders.) (Appl. to Inter. Sen. Leaders.) (Appl. to Inter. Sen Dems.) (herein referred to as “possible legislative intervenors”)

Intervention Pursuant to Pa.R.C.P. 2327(4)

22. Rule 2327(4) permits a person to intervene if the determination of such action may affect any legally enforceable interest of such person whether or not such may be bound by a judgment in the action. Pa.R.C.P. 2327(4).

23. To determine whether a party has a “legally enforceable interest” to intervene requires the court to examine the same principles governing legal standing. *See Robinson Twp. v. Commonwealth*, 84 A.3d 1054, 1055 (Pa. 2014).

There is also a difference between personal standing and legislative standing.

Allegheny Reproductive Health Ctr. V. Pa. Dept. of Hum. Servs., 225 A.3d 902, 909 (Pa. Cmwlth. 2020) (discussing *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283 (Pa. Cmwlth. 2019)).

24. Personal standing requires that the aggrieved party have a substantial, direct, and immediate interest which must go beyond the abstract interest of all citizens and show a discernable adverse effect that is unique to the aggrieved party. *See In re Phila. Health Care Trust*, 872 A.2d 258, 262 (Pa. Commw. 2005).

25. By contrast, legislative standing exists only when a legislator’s interest “to act as a legislator” is jeopardized. *Sunoco Pipeline, L.P.*, 217 A.2d at 1291. It is the ability of the legislator “to participate in the voting process” which must be negatively impacted. *Markham v. Wolf*, 136 A.3d at 145. A legislator must show an impact on the ability to vote and an interference with the authority of the

General Assembly, not a mere personal grievance. Moreover, “a mere general interest in the litigation or an interest in an issue that is collateral to the basic issues in the case . . . or motive with respect to the litigation is not a sufficient basis for intervention” Goodrich Amram 2d, § 2327:8.

26. Proposed Intervenor is a Member of the General Assembly which is responsible for determining the “Time, Place and Manner” of elections for our Senators and Representatives to Congress and the districts from which Representatives will be elected. *See* U.S. Const. Art. I § 4 and 2 U.S.C. § 2(c) (1967). Moreover, 2 U.S.C. § 2(c) requires each State to establish “**by law** a number of districts equal to the number of Representative which such State is so entitled. *Id.* (emphasis added).

27. The Pennsylvania Constitution vests the Commonwealth’s legislative power in the General Assembly, which gives its Members the power to introduce and vote on legislation, including legislation setting Congressional districts. *See* PA Const. Art. II, § 1.

28. The Petitioners are asking this Court to take the authority to introduce and vote on legislation determining Congressional districts away from the General Assembly.

29. The disposition of this matter will have a clear impact on the ability of the Proposed Intervenor, as the Minority Leader of the Democratic Caucus and a

Member of the General Assembly, and the ability of the other House Democratic Members, to vote on Congressional districts legislation and clearly interferes with the authority of the General Assembly.

Grounds for Refusal of Intervention Pursuant to Pa.R.C.P. 2329

30. As provided above, Proposed Intervenor is eligible to intervene pursuant to Pa.R.C.P. 2327 (3) and (4). The next step is for the Court to determine if one of the three factors under Pa.R.C.P. 2329 is present.

31. Proposed Intervenor does not present any claim “not in subordination to and in recognition of the action.” *See* Pa.R.C.P. 2329(1).

32. Neither is the interest of the Proposed Intervenor already adequately represented. *See* Pa.R.C.P. 2329(2). As the Leader of the House Democratic Caucus, the interests of the Proposed Intervenor are not adequately represented by the petitioners in this matter as they do not serve in the Pennsylvania House of Representatives, do not represent the citizens of the 191st Legislative District, and have not been selected as the Leader of the Democratic Members duly elected to the Pennsylvania House of Representatives.

33. Proposed Intervenor’s interests are also not adequately represented by the Respondents who are officials of the executive branch of the Commonwealth, and whose responsibilities and powers regarding elections and determining congressional districts are vastly different from the legislative branch.

34. Furthermore, should any of the other possible legislative intervenors be granted leave to intervene, Proposed Intervenor's interest will still not be adequately represented. Neither the possible Republican legislative intervenors, nor the possible Senate Democratic legislative intervenors, can adequately, on their own, represent the interests of the Proposed Intervenor, the ninety Members of the House Democratic Caucus, the House of Representatives of the Commonwealth of Pennsylvania, or the General Assembly as a whole.

35. Neither is this application for leave to intervene unduly delayed, nor will the application unduly delay, embarrass, or prejudice the adjudication of the rights of the parties. *See* Pa.R.C.P. 2329(3). This Application being properly filed on or before December 31, 2021 clearly meets the timeliness requirements established by this Honorable Court in its order of December 17, 2021.

36. Thus, Proposed Intervenor is entitled to intervene notwithstanding the provisions of Pa.R.C.P. 2329.

Adoption of Pleadings by Reference

37. Proposed Intervenor hereby adopts the Petitioners' December 17, 2021, petitions for review with the understanding that a subsequent legislative adoption of a redistricting plan may render them moot and also with the understanding that the Proposed Intervenor may pursue alternative forms of relief or defenses if granted leave to intervene.

WHEREFORE the Proposed Intervenor respectfully requests that this Honorable Court grant her application for leave to intervene in the above-captioned matter.

Respectfully Submitted,

/s/ Lam D. Truong

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Dated: December 31, 2021

VERIFICATION

I, Representative Joanna E. McClinton, hereby verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Joanna E. McClinton", written in a cursive style.

Representative Joanna E. McClinton

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CERTIFICATE OF COMPLIANCE

I certify 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.

Respectfully submitted,

s/ Lam D. Truong

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am this day effectuating service of the foregoing document upon the persons and in the manner indicated below:

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Respectfully submitted,

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