

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<p>REPUBLICAN NATIONAL COMMITTEE, <i>et al.</i>,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>LEIGH M. CHAPMAN, in her official capacity as Acting Secretary of the Commonwealth, <i>et al.</i>,</p> <p style="text-align: center;">Respondents.</p>	<p>No. 447 MD 2022</p>
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**PETITIONERS' RESPONSE AND ANSWER TO
THE DSCC's AND DCCC'S APPLICATION FOR INTERVENTION**

Petitioners, by and through undersigned counsel, file the following Response and Answer to the Application for Intervention filed by the Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee (collectively, "Proposed Intervenors").

I. Response

Assuming *arguendo* that Proposed Intervenors meet the requirements for intervention under Rule 2327(4)¹, the Rules of Civil Procedure expressly provide the Court with discretion to deny intervention. Specifically, this Court may deny

¹ But see *Carter, et al. v. Degraffenreid, et al.*, No. 132 MD 2021 (Pa. Commw. Aug. 24, 2021) (op. not reported) (rejecting intervention in a redistricting case where the proposed intervenor relied upon *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1288 (Pa. Commw. 2019) and sought intervention in part based on Rule of Civil Procedure 2327(4)).

intervention, *inter alia*, if Proposed Intervenors’ interests are “already adequately represented” in the litigation or if the intervention would “unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” Pa. R.C.P. 2329(2) and (3); *Wilson v. State Farm Mut. Auto. Ins. Co.*, 512 Pa. 486, 517 A.2d 944, 947 (1986) (explaining, under Rules 2327 and 2329, “a mere prima facie basis for intervention is not enough . . .” and that Rule 2329 can otherwise preclude intervention to a party who has already shown a legally enforceable interest); *Braddock v. Ohnmeiss*, 867 A.2d 539, n.3 (Pa. Super. 2005) (“Questions of intervention are addressed to the sound discretion of the trial court.”).

Petitioners’ primary concern is the risk of undue delay. *See* Pa. R.C.P. 2329(3). In setting a schedule in this matter—including scheduling a hearing on Petitioners’ Motion for Preliminary Injunction for September 28, 2022 with Stipulations due by September 19, 2022—the Court is clearly mindful of the time sensitive nature and importance of the Petition. If permitting intervention alters the Court’s schedule or the hearing date, or prolongs the hearing, intervention should be denied under Rule 2329(3). *See Eastern Am. Transport & Warehousing, Inc. v. Evans Conger Broussard & McCrea, Inc.*, 2002 Phila. Ct. Com. Pl. LEXIS 58, 2002 WL 1803718, at *4 (Pa. Com. Pl. 2002) (denying intervention because intervention would “unnecessarily delay and complicate” the case).

Further, Rule 2329(2) is implicated in several ways. *First*, a review of Proposed Intervenors' proposed preliminary objections indicates that the proposed preliminary objections raise issues of legal interpretation, **none** of which is unique to Proposed Intervenors and **all** of which could be raised by some or all of the Respondents—in particular the Respondents who have adopted the challenged notice and cure procedures—leading to the conclusion that the interests of the Proposed Intervenors can be adequately represented by Respondents. In the same vein, the answers to the Application for Preliminary Injunction filed by the Proposed Intervenors and some of the current Respondents are remarkably similar. *See Cherry Valley Assoc. v. Stroud Tp. Bd. Of Supervisors*, 530 A.2d 1039, 1041 (Pa. Commw. 1987) (denying intervention because township board, which had denied building permit, adequately represented interests of proposed intervenors who opposed development); *Lakeside Park Co. v. Forshark*, 4 Pa. D. & C.2d 574 (Pa. Com. Pl. 1956) (denying intervention because issue before the court was same for defendant and proposed intervenors); *cf. Marion Power Shovel Co., Div. of Dresser Indus. v. Fort Pitt Steel Casting Co., Div. of Conval-Penn*, 426 A.2d 696, 701 n.7 (Pa. Super. 1981) (internal citation omitted) (“The interest justifying intervention must be a right or liability recognized and enforceable at law or in equity as distinguished from an . . . interest in seeing one litigant or another prevail in the proceedings.”); *Tremont Tp. School Dist. v. Western Anthracite Coal. Co.*, 113 A.2d 234, 236 (Pa. 1955)

(“Since ‘legally enforceable interest’ does not have a clear and exact definition[,] the Court must necessarily exercise discretion in determining whether such an interest exists.”) (citations omitted).

Second, there are two separately-represented groups of proposed intervenors that have sought leave to intervene. Certainly, to the extent the Court determines that the interests of the Proposed Intervenors are not already adequately represented, there is no need to allow two separately-represented groups from the same political party to intervene to make the same or similar arguments. One intervenor could raise all the purportedly pertinent arguments, thus “adequately representing” the interests of the other three proposed intervenors. *See Pennsylvania Ass’n of Rural and Small Schools v. Casey*, 531 Pa. 439, 613 A.2d 1198, 1199-1201 (1992) (upholding denial of intervention because interests were already adequately represented by existing intervenors or parties). Likewise, limiting any intervention to only one group will help ensure that this action can be effectively and efficiently managed by the Court. *See Eastern Am. Transp. & Warehousing, Inc.*, 2002 Phila. Ct. Com. Pl. LEXIS 58, 2002 WL 1803718, at *4 (denying intervention under Rule 2329(3) where there were already many parties in the case and allowing intervention “would unnecessarily delay and complicate” the case).

WHEREFORE, Petitioners request the Court deny the Proposed Intervenors’ Application for Leave to Intervene to the extent their interests are already adequately

represented by the Respondents or if such intervention would cause undue delay to the expeditious resolution of these proceedings.

II. Answer²

1. Petitioners are without sufficient knowledge or information to admit or deny the allegations in this paragraph and therefore specifically deny them.

2. The allegations in the first sentence of this paragraph are specifically denied. The remainder of the allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

3. The allegations in this paragraph are specifically denied. It is further denied that the issues raised in the instant Petition and those raised in the cases cited in the Application are the same, particularly since the cited action(s) sought not to establish appropriate procedures and rules for a yet to occur election, but to strike down millions of cast ballots in an election that had already taken place.

4. The first sentence of this paragraph is admitted. The remainder of the allegations in this Paragraph are legal conclusion to which no response is required, and to the extent a response is deemed required, they are specifically denied.

² The following numbered paragraphs correspond to the paragraphs in Proposed Intervenor's application for leave to intervene. By way of further response, Petitioners incorporate by reference its Response and its response to each paragraph of this Answer as if set forth at length herein. *See* Part I, *supra*.

5. The first sentence of this paragraph is admitted. Petitioners are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph and therefore specifically deny them.

6. The first sentence of this paragraph is admitted. Petitioners are without sufficient knowledge or information to admit or deny the remaining allegations in this Paragraph and therefore specifically deny them.

7. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, the statute speaks for itself.

8. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, the statute speaks for itself.

9. The first sentence of this paragraph is admitted. The second sentence is specifically denied because it does not accurately state the holding in the cited case.

10. The allegations of this paragraph are admitted, although doing so was contrary to the law for the reasons set forth in the Petition.

11. The allegations in this paragraph are legal conclusions to which no response is required and, to the extent a response is deemed required, they are specifically denied.

12. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

13. The allegations of this paragraph are denied as stated because the Petition speaks for itself.

14. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

15. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied because the cited Rules speak for themselves.

16. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied because the cited Rules speak for themselves.

17. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied because the cited Rules speak for themselves.

18. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

19. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

20. Because of the last sentence in this paragraph, the allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

21. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

22. Petitioners are without sufficient knowledge or information to admit or deny the allegations in this paragraph and therefore specifically deny them.

23. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

24. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

25. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

26. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

27. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

28. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

29. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

30. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

31. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

32. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

33. The allegations in this paragraph are legal conclusions to which no response is required, and to the extent a response is deemed required, they are specifically denied.

34. Admitted that the proposed pleadings are attached. Denied that the issues raised in proposed pleadings have legal merit.

35. Admitted that Proposed Intervenors ask for a hearing in Paragraph 35.

WHEREFORE, Petitioners request the Court deny the Proposed Intervenors' Application for Leave to Intervene to the extent their interests are already adequately represented by the Respondents or if such intervention would cause undue delay to the expeditious resolution of these proceedings.

Respectfully submitted,

Dated: September 19, 2022

/s/ Kathleen A. Gallagher
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**CERTIFICATION OF COMPLIANCE
WITH CASE RECORDS PUBLIC ACCESS POLICY**

I, Kathleen A. Gallagher, certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Dated: September 19, 2022

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Counsel for Petitioners

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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2022, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Counsel for Petitioners

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