

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<p>REPUBLICAN NATIONAL COMMITTEE, <i>et al.</i>,</p> <p>Petitioners,</p> <p>v.</p> <p>LEIGH M. CHAPMAN, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania, <i>et al.</i>,</p> <p>Respondents,</p> <p>and</p> <p>DEMOCRATIC NATIONAL COMMITTEE, <i>et al.</i>,</p> <p>Intervenors-Respondents.</p>
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No. 447 MD 2022

**DEMOCRATIC NATIONAL COMMITTEE AND
PENNSYLVANIA DEMOCRATIC PARTY RESPONSE TO
PETITIONERS’ APPLICATION FOR LEAVE TO FILE
AN AMENDED PETITION FOR REVIEW**

1. In light of the liberal standard that applies to applications for leave to amend, the DNC and PDP do not oppose petitioners’ application, provided they be given 30 days to file their preliminary objections in response to the new claims raised in the amended petition.
2. Assuming the Court grants petitioners’ application, it should make clear that it does not expect to grant any additional such applications in this litigation. The Court should not ignore the waste of resources petitioners’ conduct has engendered, nor the need for a prompt final resolution of petitioners’ claims. Petitioners filed this case over five months ago, claiming that county boards of

elections act illegally if they give Pennsylvania voters an opportunity to correct technical defects in their mail ballots so that those voters are not deprived of their fundamental right to participate in elections. Since then, the original parties and this Court—as well as the Democratic National Committee, the Pennsylvania Democratic Party, and the other entities that were permitted to intervene—have invested significant resources in litigating petitioners’ claims. That litigation included highly expedited briefing and disposition, both in this Court and in the Pennsylvania Supreme Court, of petitioners’ request for a preliminary injunction. Now, after all that investment of party and judicial resources, petitioners seek to start over, adding new claims and arguments that were available to them when they filed this case but that they, whether through inadvertence or for strategic reasons, omitted from their original petition. Voters should not be left indefinitely to endure the cloud of uncertainty that petitioners have sought to cast over the integrity of Pennsylvania elections.

3. If instead the Court denies the application, then it should also provide respondents and intervenor-respondents an opportunity to file a reply brief in support of their preliminary objections to the original petition. Petitioners’ recent response to those objections included several arguments not made in the petition (or elsewhere in this Court). These are the same arguments that petitioners seek to add in their proposed amended petition, including that the

challenged notice-and-cure procedures violate 25 P.S. §3146.8(a). Petitioners' belated raising of these arguments has unfairly denied respondents and respondent-intervenors of a chance to address them, and hence deprived this Court of the benefit of adversarial briefing on them. Allowing respondents and respondent-intervenors to file a reply addressing those arguments would thus be warranted if the application for leave to amend the petition is denied.

4. The DNC and PDP have attached a proposed order granting the application for leave to amend and giving respondents and intervenor-respondents 30 days to respond to the amended petition.

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February 13, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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.



CLIFFORD B. LEVINE

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served upon all counsel of record on February 13, 2023 by this Court's electronic filing system.



CLIFFORD B. LEVINE

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REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Petitioners,

v.

LEIGH M. CHAPMAN, in her official capacity as Acting
Secretary of the Commonwealth of Pennsylvania, *et al.*,

Respondents,

and

DEMOCRATIC NATIONAL COMMITTEE, *et al.*,

Intervenors-Respondents.

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[PROPOSED] ORDER

AND NOW, this ___ day of _____, 2023, upon consideration of the application for leave to file an amended petition for review filed by petitioners, and any responses thereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

The application is GRANTED. Petitioners shall file an amended petition for review within 7 days of this order. Respondents and intervenor-respondents shall file any preliminary objections to the amended petition, with a supporting brief, within 30 days of its filing. Petitioners shall file a single consolidated response to all preliminary objections within 30 days of the filing of the last set of such

objections. Respondents and intervenor-respondents may each file a reply to petitioners' consolidated response within 14 days of its filing.

The Court does not expect to grant any application for leave to file an additional amended petition.

BY THE COURT:

_____, J.

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