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**Motions for Admission Pro Hac Vice Forthcoming
Attorneys for Proposed Intervenors DSCC and DCCC*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

REPUBLICAN NATIONAL COMMITTEE; *et al.*,
Petitioners,
v.
LEIGH M. CHAPMAN, *et al.*,
Respondents.

Case No. 447 MD 2022

APPLICATION OF DSCC AND DCCC FOR LEAVE TO INTERVENE

DSCC and DCCC submit this Application for Leave to Intervene in the above-captioned action pursuant to Pennsylvania Rules of Appellate Procedure 106, 1517, and 1531(b), and Pennsylvania Rules of Civil Procedure Chapter 2320 *et seq.*

INTRODUCTION

1. In 2019, the General Assembly approved amendments to the Election Code to allow all qualified electors to vote by mail. The underlying legislation—Act 77—received unanimous Republican support in the Senate and suffered only two Republican defections in the House. According to the Republican House Majority Leader, Act 77 was written to “lift the voice of every voter in the Commonwealth.”¹ During the 2020 elections, however, Democrats in Pennsylvania were disproportionately more likely than Republicans to cast mail-in and absentee ballots: Democrats cast nearly three times as many mail ballots as Republicans, and more than three out of every five mail-in and absentee ballots were cast by registered Democrats.²

2. Republicans subsequently turned against Act 77 and have devoted themselves to making it more difficult for Pennsylvanians to cast their ballots by mail and to have those ballots counted. In 2020 alone, Republicans (1) challenged Pennsylvania’s three-day extension of its mail-in ballot receipt deadline, *see Bognet v. Boockvar*, No. 3:20-cv-215 (W.D. Pa. Oct. 22, 2022); (2) challenged the right of voters whose mail-in ballots were rejected to exercise their right to vote by casting provisional ballots on election day, *see Hamm v. Boockvar*, No. 600 MD 2020 (Pa. Cmwlth. Nov. 3, 2020); (3) sought to throw out thousands of validly cast mail-in ballots, *see, e.g.*,

¹ House Republican Caucus, *Historic Election Reform*, <https://www.pahousegop.com/electionreform> (last visited Sept. 6, 2022).

² Holly Otterbein, *Democrats return nearly three times as many mail-in ballots as Republicans in Pennsylvania*, POLITICO (Nov. 3, 2020) (hereinafter “Otterbein”), available at <https://www.politico.com/news/2020/11/03/democrats-more-mail-in-ballots-pennsylvania-433951>.

Donald J. Trump for President, Inc. v. Boockvar, No. 2:20-cv-00966-NR (W.D. Pa. June 28, 2020); *In re: Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, No. 2020-18680 (Pa. C.C.P. Montg. Cty. Nov. 5, 2020); *In re: Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, No. 2011-00874 (Pa. C.C.P. Phila. Cty. Nov. 9, 2020); *Zicarelli v. Allegheny Cnty. Bd. of Elections*, No. GD-20-011654 (Pa. C.C.P. Allegheny Cty. Nov. 12, 2020); and (4) moved to exclude mail-in ballots from Pennsylvania and various counties' certification of the presidential election, *see, e.g., Kelly v. Pennsylvania*, No. 620 MD 2020 (Pa. Cmwlth. Nov. 20, 2020); *Zicarelli v. Allegheny Cnty. Bd. of Elections*, No. 2:20-cv-1831-NR (W.D. Pa. Nov. 25, 2020). In 2021, Republicans challenged the *entire* mail-in voting process as unconstitutional, *see McLinko v. Degraffenreid*, 244 MD 2021 (Pa. Cmwlth. July 26, 2021). And just recently, in July, fourteen Republican members of the Pennsylvania House of Representatives filed suit to eliminate Act 77 and mail-in voting entirely. *Bonner v. Chapman*, No. 364 MD 2022 (Pa. Cmwlth. July 20, 2022).

3. This lawsuit is just the latest chapter in the Republican committees' relentless attack on mail voting ahead of November's elections, this time targeting efforts of County Boards of Elections ("County Boards") to allow voters to cure easily correctable mail-in ballot defects and ensure that the "regulation of the franchise does not deny the franchise itself." *McCormick for U.S. Senate v. Chapman*, No. 286 MD 2022, 2022 WL 2900112 (Pa. Cmwlth. June 2, 2022), at *13 (quoting *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914)). In fact, it is not even the first time that high profile Republicans have sought to obtain a judgment prohibiting Pennsylvania election officials from providing cure procedures to allow lawful voters to save themselves from disenfranchisement when their mail ballots are flagged for rejection due to a defect not related to their qualifications. In 2020, the campaign of the Republican incumbent President Donald Trump

brought a case in federal court, challenging just that. In affirming the district court’s dismissal of the lawsuit, the United States Court of Appeals for the Third Circuit properly recognized that “[n]ot every voter can be expected to follow [the mail-in vote] process perfectly” and that “the Election Code says nothing about what should happen if a county notices these errors before election day.” *Donald J. Trump for President, Inc. v. Sec’y of Pennsylvania*, 830 F. App’x 377, 384 (3d Cir. 2020).

4. DSCC and DCCC are political committees with the mission to elect Democratic candidates to the U.S. Senate and House of Representatives, respectively. Their intervention in this action is imperative to protect the rights of Democratic voters to vote by mail and have those votes counted, to preserve the ability of Democratic candidates to be elected with the support of said votes, and to defend their own interests as political committees. If Petitioners succeed in enjoining County Boards from developing or implementing cure procedures, DSCC and DCCC will have to redirect substantial resources away from other critical initiatives to re-educate Democratic voters and candidates about the changing rules and to minimize the inevitable disenfranchisement that will result. As such, DSCC and DCCC have legally enforceable interests in the Pennsylvania election processes implicated by this lawsuit and have the right to intervene.

PROPOSED INTERVENOR-RESPONDENTS

5. DSCC is the Democratic Party’s national senatorial committee, as defined by 52 U.S.C. § 30101(14). Its mission is to elect candidates of the Democratic Party across the country, including in Pennsylvania, to the U.S. Senate. DSCC works to accomplish its mission by, among other things, assisting state parties throughout the country. In 2022, DSCC will provide millions of dollars in contributions and expenditures to persuade and mobilize voters to support U.S. Senate candidates who affiliate with the Democratic Party. For the 2022 election for U.S. Senate in Pennsylvania, DSCC has worked (and will continue to work) to elect the Democratic candidate,

Lt. Gov. John Fetterman, and has made (and will continue to make) substantial contributions and expenditures to support Lt. Gov. Fetterman in his candidacy.

6. DCCC is the Democratic Party's national congressional committee as defined by 52 U.S.C. § 30101(14). Its mission is to elect candidates of the Democratic Party from across the country, including those running in Pennsylvania's congressional districts, to the U.S. House of Representatives. DCCC works to accomplish its mission by, among other things, assisting state parties throughout the country, including in Pennsylvania. In 2022, DCCC will provide millions of dollars in contributions and expenditures to persuade and mobilize voters to support congressional candidates who affiliate with the Democratic Party.

FACTUAL AND PROCEDURAL BACKGROUND

7. Under Pennsylvania law, a qualified elector to vote by mail for any reason. 25 P.S. § 3150.11.

8. To be counted, a mail-in or absentee ballot (collectively, "mail ballot") must be enclosed and sealed in a secrecy envelope and placed into a second envelope. The elector must then complete and sign the form declaration printed on the second envelope and mail or drop off their ballot by 8 pm on election day. *Id.* § 3150.16(a).

9. Prior to the 2020 elections, the Pennsylvania Democratic Party sought an injunction requiring County Boards to provide notice and an opportunity to cure for electors whose mail-in ballots bore certain facial defects. The Pennsylvania Supreme Court concluded in *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020), that neither the Pennsylvania Constitution nor the Election Code require boards of election to adopt such a procedure.

10. During the 2020 general election, the Secretary of the Commonwealth encouraged—but did not require—County Boards to provide notice and an opportunity to cure facially defective ballots.

11. Then-President Trump’s campaign brought an unsuccessful challenge in federal court, primarily arguing that allowing County Boards discretion to implement cure procedures violated the United States Constitution’s Equal Protection Clause. *Donald J. Trump for President, Inc. v. Sec’y of Pa.*, 830 F. App’x 377 (3d Cir. 2020).

12. The district court dismissed the lawsuit. In affirming that dismissal, the United States Court of Appeals recognized that “[n]ot every voter can be expected to follow [the mail-in vote] process perfectly” and that “the Election Code says nothing about what should happen if a county notices these errors before election day.” *Id.* at 384. The Third Circuit further observed that “[s]ome counties stay silent and do not count the ballots; others contact the voters and give them a chance to correct their errors.” *Id.* The Third Circuit’s opinion issued on November 27, 2020.

13. Petitioners initiated these proceedings nearly two years later, after two statewide primary elections and the 2021 municipal election, by filing an original jurisdiction Petition for Review on September 1, 2022, seeking (1) a declaration that Boards are prohibited from developing and implementing cure procedures absent explicit authorization from the General Assembly; (2) a declaration that adopting cure procedures for federal elections without express authority from the General Assembly violates the Elections Clause of the U.S. Constitution; and (3) an injunction prohibiting Boards from developing or implementing cure procedures.

14. For the reasons stated above and herein, DSCC and DCCC file this Application for Leave to Intervene in accordance with Pennsylvania Rules of Appellate Procedure 106, 1517, and 1531(b), and Pennsylvania Rules of Civil Procedure Chapter 2320 *et seq.*

LEGAL STANDARD

15. A person not named as a respondent in an original jurisdiction petition for review can seek leave to intervene in the action by filing an application with the court. Pa. R.A.P. 1531(b).

The practices and procedures for original jurisdiction petitions for review must conform to the Pennsylvania Rules of Civil Procedure. Pa. R.A.P. § 106; Pa. R.A.P. § 1517.

16. Intervenor must satisfy one of four requirements to intervene in an action. Relevant here is the requirement that the intervenor show that “the determination of [the] action may affect any legally enforceable interest of” the intervenor, regardless of whether they “may be bound by a judgment in the action.” Pa. R.C.P. 2327(4).

17. If the intervenor satisfies one of the four requirements, the court *must* grant intervention. Pa. R.C.P. 2327. Courts have discretion to refuse intervention, after a hearing, *only* if (1) the intervenor’s “claim or defense . . . is not in subordination to and in recognition of the propriety of the action;” (2) the intervenor’s interest is adequately represented by the existing parties; or (3) the intervenor unduly delayed in moving to intervene or intervention would unduly delay the action. Pa. R.C.P. § 2329; *see also Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 225 A.3d 902, 908 (Pa. Cmwlth. 2020); *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Cmwlth. 1999).

ARGUMENT

I. DSCC and DCCC satisfy the requirement for intervention under Pennsylvania law.

18. DSCC and DCCC’s interests will be affected by a judgment in this action, warranting intervention. Pa. R.C.P. 2327(4).

19. “[B]ecause a political party, by statutory definition, is an organization representing qualified electors, it maintains the same interest as do its members in” fair and accessible elections. *In re Barlip*, 428 A.2d 1058, 1060 (Pa. Cmwlth. 1981). Courts therefore routinely find that political party committees like DSCC and DCCC are entitled to intervene in cases where election administration practices are being challenged. *See, e.g., In re Appointment of Dist. Att’y*, 756 A.2d 711, 713 n.5 (Pa. Cmwlth. 2000) (granting intervention to Lackawanna County Democratic Party

to intervene in support of board of elections); *Parnell v. Allegheny Bd. of Elections*, No. 20-cv-01570 (W.D. Pa. Oct. 22, 2020), ECF No. 34 (granting intervention to DCCC); *Pa. Democratic Party v. Republican Party of Pa.*, No. 16-5664, 2016 WL 6582659, *3 (E.D. Pa. Nov. 7, 2016) (recognizing Democratic party committee had standing “to protect the interests of both Democratic candidates running for office and Democratic voters”); *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (finding a political party has a “significant protectable interest” in intervening to defend its voters’ interests in vote-by-mail and its own resources spent in support of vote-by-mail).

20. DSCC and DCCC expend substantial resources on educating and assisting voters in navigating the voting process. Abraham Aff. ¶ 4; Young Aff. ¶ 4. This includes the process through which voters submit and cure mail-in ballots. *Id.* Indeed, the majority of mail-in ballots cast in Pennsylvania elections are cast by Democrats. Abraham Aff. ¶ 8; Young Aff. ¶ 5. In the 2020 general election, for example, registered Democrats returned nearly three times as many mail-in ballots as registered Republicans, and more than three out of every five mail and absentee ballots in Pennsylvania were cast by registered Democrats.³ Accordingly, DSCC, DCCC, and their members and constituents have a heightened interest in the procedures surrounding mail-in ballots and in ensuring that votes cast using these ballots are counted.

21. The relief that Petitioners request imperils DSCC’s and DCCC’s significant protectable interests in ensuring their members’ ballots are counted and in “advancing [their candidates’] overall electoral prospects.” *Issa* 2020 WL 3074351, at *3; *Pa. Democratic Party*, 2016 WL 6582659, at *3. Because of the high proportion of registered Democrats who vote using mail-in ballots, DSCC and DCCC have a cognizable interest in protecting the rights of Democratic

³ See Otterbein, *supra* note 2.

voters who have relied on mail-in voting in prior elections. These and other Democratic voters risk disenfranchisement in November's general election if Petitioners' challenge succeeds, which threatens to impede DSCC's and DCCC's missions of electing Democratic candidates to the U.S. Senate and the U.S. House of Representatives and ensuring that Democrats in Pennsylvania are not unfairly disenfranchised. *See, e.g., Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (proposed Intervenor, Democratic organizations, had significant protectable interests in ensuring election of Democratic Party candidates).

22. Further, if Petitioners are successful, DSCC and DCCC will have to redirect their limited resources from other programs to address the impacts of the judgment on voters. Abraham Aff. ¶ 9; Young Aff. ¶ 7. This includes diverting additional staff and funds to educating voters about the requirements of the mail voting procedures given the limited opportunities to cure facial defects and developing new programs to mobilize in person voting to minimize potential disenfranchisement. *Id.*

II. None of the exceptions to granting intervention apply.

23. Because DSCC and DCCC satisfy the requirements set forth under Rule 2327(4), intervention is mandatory unless the grounds for denial under Rule 2329 apply—and they do not.

24. *First*, DSCC's and DCCC's claims are "in subordination to and in recognition of the propriety of the action." Pa. R.C.P. No. 2329(1). The purpose of this requirement is to ensure an intervenor takes the suit as they find it, *Commonwealth ex rel. Chidsey v. Keystone Mut. Cas. Co.*, 76 A.2d 867, 870 (Pa. 1950), and to "prevent[] an intervenor from "becom[ing] party to the suit merely to review what the court has done and to require demonstration of the legality and propriety of its action." *Wells Fargo Bank N.A. v. James*, 90 A.3d 813, 822 (Pa. Cmwlth. 2014) (Corvey, J., dissenting) (quoting *Chidsey*, 76 A.2d at 870).

25. The requirement is met. DSCC and DCCC do not challenge the jurisdiction of this Court, nor—because the Court has yet to render any substantive rulings—do they seek to “review what the court has done.” 90 A.3d at 822; *cf. Pierce Junior Coll. v. Schumacker*, 333 A.2d 510, 513 (Pa. Cmwlth. 1975) (finding intervention for purpose of quashing appeal “clearly not in subordination to nor in recognition of the propriety of the appeal”).

26. *Second*, neither DSCC’s nor DCCC’s interests in the rights of Democratic voters, the electoral prospects of Democratic candidates, or the resources they must expend to mobilize voters and enhance turnout are adequately represented by any of the parties to this action. *See, e.g., In re Barlip*, 428 A.2d at 1060 (recognizing interest of political party in preventing “impair[ment of] its effectiveness”); *Issa*, 2020 WL 3074351, at *3 (recognizing political party’s unique interests in “ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the election procedures”).

27. Where an original party to the suit is a government entity, whose position is “necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it,” the burden of establishing inadequacy of representation by existing parties is “comparatively light.” *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (citing *Conservation L. Found. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992), and *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996)); *see also D.G.A. v. Dep’t of Human Servs.*, No. 1059 C.D. 2018, 2020 WL 283885, at *7 (Pa. Cmwlth. Jan. 21, 2020) (reversing denial of intervention where intervenors were aligned with the government’s litigation position but possessed unique and personal interests not adequately represented by government respondents); *Larock*, 740 A.2d at 314 (Pa. Cmwlth. 1999) (similar).

28. The U.S. Supreme Court's recent decision in *Berger v. North Carolina State Conference of the NAACP*, 142 S. Ct. 2191, 2203 (2022), confirms the point. In that case, several civil rights groups sued the North Carolina State Board of Elections ("NCSBE") to challenge a voter-identification law passed by the legislature and adopted over the Governor's veto. *Id.* at 2198. Although NCSBE was represented by the Attorney General, several state legislators sought to intervene alongside the NCSBE to defend the law. *Id.* The Fourth Circuit concluded *en banc* that the legislators could not intervene because their interests were adequately represented by NCSBE. *Id.* at 2200.

29. The Supreme Court reversed. It explained at the outset that this requirement "presents proposed intervenors with only a minimal challenge." *Id.* at 2195; *see also Teague v. Bakker*, 931 F.2d 259, 262 (4th Cir. 1991) (explaining the Supreme Court has held that "the burden on the applicant of demonstrating a lack of adequate representation 'should be treated as minimal.'") (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). The Supreme Court explained that while state agents may pursue "related" interests to political actors, those interests are not "identical." *Berger*, 142 S. Ct. at 2204 (quoting *Trbovich*, 404 U.S. at 538). In particular, the Court noted that state actors must "bear in mind broader public-policy implications" than those with more partisan or private interests. *Id.*

30. The same is true here. Even if Respondents' position aligns with the DSCC and DCCC—an uncertainty as there have been no filings in this action to indicate what position Respondents will take—their interests will not be "identical." *Id.* Respondents', all state actors, "position [will be] defined by the public interest." *Feller v. Brock*, 802 F.2d 722, 730 (4th Cir. 1986); *accord Letendre v. Currituck Cty.*, 261 N.C. App. 537, 817 S.E.2d 920 (Table), 2018 WL 4440587, *4 (2018) (unpublished). But DSCC and DCCC's interests are defined by its mission

and the interests of themselves, their members, and their candidates and, as such, DSCC and DCCC's interests are not adequately represented by any of the parties to this action. Abraham Aff. ¶ 11; Young Aff. ¶ 9.

31. *Third*, DSCC and DCCC timely filed their Application to Intervene barely over a week after Petitioners brought this suit. Permitting their intervention will neither delay the resolution of this matter nor prejudice any party, especially since Respondents have yet to file a response or otherwise meaningfully litigate this case. Nor will any party be prejudiced by DSCC's or DCCC's participation, which will aid the Court in understanding the factual and legal issues involved.

32. Because DSCC and DCCC meet the requirement for intervention under Pennsylvania Rule of Civil Procedure 2327 and because none of the exceptions to granting intervention apply, intervention is mandatory. In any event, even if an exception under Rule 2329 applied, the Court retains discretion to grant intervention and should allow DSCC and DCCC to join this action for the reasons set forth in this application.

CONCLUSION

33. For the reasons stated above, the Court should grant DSCC and DCCC's application to intervene in this case.

34. Pursuant to Pennsylvania Rule of Civil Procedure 2328, DSCC and DCCC are attaching a copy of the pleading that they will file in the action if permitted to intervene.

35. DSCC and DCCC request a Hearing on this Application if deemed necessary.

WHEREFORE, DSCC and DCCC respectfully request this Honorable Court to grant their Application to Intervene in this matter, and accept their Preliminary Objections attached hereto as their first filing.

Dated: September 9, 2022

Respectfully submitted,

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