

Uzoma N. Nkwonta\*  
Justin Baxenberg\*  
Daniel C. Osher\*  
Jacob D. Shelly\*  
Dan Cohen\*  
Daniela Lorenzo\*  
**ELIAS LAW GROUP LLP**  
10 G St. NE, Suite 600  
Washington, D.C. 20002  
Telephone: (202) 968-4490  
unkwonta@elias.law  
jbaxenberg@elias.law  
dosher@elias.law  
jshelly@elias.law  
dcohen@elias.law  
dlorenzo@elias.law

Timothy J. Ford (Pa. Id. No. 325290)  
Claire Blewitt Ghormoz (Pa. Id. No. 320816)  
**DILWORTH PAXSON LLP**  
1500 Market Street, Suite 3500E  
Philadelphia, PA 19102  
Telephone: (215) 575-7000  
Facsimile: (215) 575-7200  
tford@dilworthlaw.com  
cghormoz@dilworthlaw.com

*\*Motions for Admission Pro Hac Vice Forthcoming*

*Attorneys for Proposed Intervenor-Defendants*

**IN THE COURT OF COMMON PLEAS OF MONROE COUNTY, PENNSYLVANIA**

MONROE COUNTY REPUBLICAN COMMITTEE,  
JOSEPHINE FERRO, THOMAS C. WHITEHEAD, and  
PETER BEGLEY,

*Plaintiffs,*

v.

MONROE COUNTY BOARD OF ELECTIONS, JOHN  
D. CHRISTY, County Commissioner of Monroe County,  
Pennsylvania, SHARON S. LAVERDURE, County  
Commissioner of Monroe County, Pennsylvania,

*Defendants,*

FETTERMAN FOR PA, CARTWRIGHT FOR  
CONGRESS, DSCC, and DCCC,

*[Proposed] Intervenor-Defendants.*

Civil Division

Case No. 7228 CV 22

**PETITION OF FETTERMAN FOR PA, CARTWRIGHT FOR CONGRESS, DSCC, AND DCCC FOR LEAVE TO INTERVENE**

Fetterman for PA, Cartwright for Congress, DSCC, and DCCC respectfully submit this Petition for Leave to Intervene as Defendants in the above-captioned action pursuant to Pennsylvania Rules of Civil Procedure 2326 *et seq.*

**INTRODUCTION**

1. Monroe County has received nearly 14,000 mail-in and absentee ballots (“mail ballots”) for the 2022 general election; according to publicly available information, nearly 70% of these ballots have been returned by registered Democrats.<sup>1</sup> Seeking electoral advantage at the eleventh hour, the Monroe County Republican Committee, Josephine Ferro, Thomas C. Whitehead, and Peter Begley (“Plaintiffs”) now ask this Court to upend and invalidate Monroe County’s lawful election procedures and jeopardize these lawfully cast mail ballots. As such, Plaintiffs’ meritless claims threaten significant prejudice to Fetterman for PA, Cartwright for Congress, DSCC, and DCCC (“Proposed Intervenors”).

2. Proposed Intervenors are Democratic political organizations currently competing in Monroe County’s 2022 elections. Fetterman for PA is the organized political campaign supporting Lieutenant Governor John Fetterman in his bid to represent Pennsylvania in the U.S. Senate. Cartwright for Congress is the organized political campaign supporting the reelection of Matt Cartwright to represent Pennsylvania’s Eighth Congressional District. DSCC and DCCC are Democratic Party campaign committees whose missions are to elect Democratic candidates to the U.S. Senate and U.S. House of Representatives, respectively.

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<sup>1</sup> *Daily Mail Ballot Report*, Pa. Sec’y of State (Nov. 5, 2022), <https://www.vote.pa.gov/About-Elections/Pages/Election-Results.aspx>.

3. If Plaintiffs achieve the outcome they seek, voters supporting Democratic candidates, including John Fetterman and Matt Cartwright, in Monroe County will be disenfranchised, which will directly harm Proposed Intervenors' core missions and undermine their chances for electoral success. Political parties are routinely granted intervention in election administration disputes like this one to defend their legally enforceable interests in avoiding precisely these harms.

4. Proposed Intervenors' timely asserted interests are not otherwise represented in this litigation. Because the Monroe County Board of Elections and its commissioners ("Defendants") are not competing in the election, they do not possess the same pressing interest as Proposed Intervenors in avoiding the flagrant partisan advantage that Plaintiffs seek to achieve. Nor is there any other basis under Pennsylvania law for excluding Proposed Intervenors from this action.

5. For the reasons that follow, this Court should find that Proposed Intervenors are entitled to intervene under Pennsylvania Rule of Civil Procedure 2327.

### **PROPOSED INTERVENORS**

6. Fetterman for PA is the campaign committee of Lieutenant Governor John Fetterman, who is seeking election to represent Pennsylvania in the U.S. Senate.

7. Cartwright for Congress is the campaign committee of Democratic Rep. Cartwright, who is seeking reelection in Pennsylvania's eighth congressional district, which includes Monroe County.

8. 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 to the U.S. Senate. In 2022, DSCC has provided millions of dollars in contributions and expenditures to persuade and mobilize voters—including voters in Monroe County—to support senate candidates affiliated with the Democratic Party.

9. DCCC is the Democratic Party’s national congressional committee as defined by 52 U.S.C. § 30101(14). Its mission is to elect congressional candidates of the Democratic Party from across the country, including those running in Pennsylvania’s Seventh and Eighth Congressional Districts, each of which includes parts of Monroe County. In 2022, DCCC has provided millions of dollars in contributions and expenditures to persuade and mobilize voters—including voters in Monroe County—to support congressional candidates affiliated with the Democratic Party.

10. Given Democratic voters’ disproportionate use of mail voting, Proposed Intervenor cannot achieve their missions if mail ballots cast by qualified voters in Monroe County are set aside.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

11. Monroe County voters have been receiving and returning mail ballots since mid-September or earlier. *See* 25 P.S. §§ 3150.12a, 3150.15, 3146.2a(a), 3146.5(a).

12. Plaintiffs allege that Defendants have “pre-canvassed” marked ballots that voters have submitted by examining whether the voters submitted their ballots in a privacy envelope and completed the signature and date lines on the outer envelope. *See* Compl. ¶ 25. But what Defendants describe is not pre-canvassing. *See* 25 P.S. § 2602(q.1) (defining “pre-canvass” as “the *inspection and opening* of all envelopes containing official absentee ballots or mail-in ballots, the *removal of such ballots from the envelopes* and the *counting, computing and tallying of the votes* reflected on the ballots”) (emphases added); *id.* § 3150.16(b)(1) (requiring county boards to examine mail ballots as they are received).<sup>2</sup>

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<sup>2</sup> *See also* PA. DEP’T OF STATE, Guidance Concerning Examination of Absentee And Mail-In Ballot Return Envelopes at 3 (Sept. 26, 2022), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2022-11-04-DOS-Guidance-Civilian-Absentee-Mail-In-Ballot-Procedures-3.0.pdf> (noting that, during the process of “approving ballots

13. On November 4, 2022, Plaintiffs filed their Complaint and simultaneously moved for a preliminary injunction “directing that the Monroe County Board of Elections set aside” any mail ballots that Plaintiffs deem to have been improperly pre-canvassed. Mem. of Law in Support of Pls.’ Mot. for Prelim. Inj. at 6.

14. As of November 4th, 9,343 registered Democrats have returned an absentee or mail-in ballot in Monroe County, compared to only 2,443 registered Republicans.<sup>3</sup> Thus, Plaintiffs’ request that the Court “set aside any mail-in and absentee ballots” that have been handled by Defendants, Compl. at 15—presumably for potential disqualification—threatens to disenfranchise Democratic voters at a severely disproportionate rate.

15. Proposed Intervenors filed this petition on the following business day before any other activity has been reflected on the docket.

## ARGUMENT

### **I. Proposed Intervenors satisfy the requirements for intervention under Pennsylvania law.**

16. Pennsylvania Rule of Civil Procedure 2327 allows a person not named as a party in an action to seek leave to intervene by filing a petition with the court.

17. That Rule states, in pertinent part:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if . . .

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

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to be counted during pre-canvassing,” county boards “shall examine the Voter’s Declaration on the outer envelope of each returned ballot and compare the information on the outer envelope, i.e., the voter’s name and address, with the information contained in the list of absentee and mail-in voters”).

<sup>3</sup> See *Daily Mail Ballot Report*, *supra* note 1.

Pa. R.C.P. 2327.

18. Proposed Intervenors meet the requirements for intervention under Pennsylvania Rule of Civil Procedure 2327(4) because their “interests may be affected by a judgment.” *Appeal of Austerlitz*, 437 A.2d 804, 805 (Pa. Cmwlth. 1981) (citing Pa. R.C.P. 2327(4)).

19. As noted above, Democratic voters in Monroe County have submitted mail ballots at a rate of nearly four times that of Republican voters. The Election Code allows Monroe County to notify voters of defects in their mail ballots in advance of the pre-canvass so that those voters can cure the defect and ensure their ballot is counted. Plaintiffs requested declaratory relief would prevent that from occurring, disproportionately depressing the counting of ballots submitted by Democratic voters. This will directly harm Proposed Intervenors’ interest of electing Democratic candidates.

20. Similarly, Plaintiffs’ request that the Court segregate ballots that have been inspected by county officials prior to the pre-canvass—presumably for later challenge and invalidation—will result in disproportionate disenfranchisement of Democratic voters, again directly harming Proposed Intervenors’ interests.

21. If Plaintiffs are successful, Proposed Intervenors will also have to redirect their limited resources from other programs to address the impacts of the judgment on voters. This would include 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 mobilizing in person voting to minimize potential disenfranchisement.

22. Even if that were not enough to demonstrate Proposed Intervenor’s significant interest in this litigation, “because 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 Proposed Intervenors are entitled to intervene in cases where election administration practices are being challenged, particularly when brought by members of the opposing party. *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-cv01570 (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, at \*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”); *see also Paher v. Cegavske*, No. 20-cv-00243-MMD-WGC, 2020 WL 2042365, at \*4 (D. Nev. Apr. 28, 2020) (granting DNC intervention in election case brought by conservative interest group); *Donald J. Trump for President, Inc. v. Murphy*, No. 20-cv-10753 (MAS) (ZNQ), 2020 WL 5229209, at \*1 (D. N.J. Sept. 1, 2020) (granting DCCC intervention in lawsuit by Republican candidate and Party entities); *Cook Cnty. Republican Party v. Pritzker*, No. 20-cv-4676 (N.D. Ill. Aug. 28, 2020), ECF No. 37 (granting DCCC intervention in lawsuit by Republican Party entity); *Issa v. Newsom*, No. 20-cv-01044-MCE-CKD, 2020 WL 3074351, at \*4 (E.D. Cal. June 10, 2020) (granting DCCC and California Democratic Party intervention in lawsuit by Republican congressional candidate); *Donald J. Trump for President v. Bullock*, No. 20-cv-66 (D. Mont. Sept. 8, 2020), ECF No. 35 (granting DCCC, DSCC, and Montana Democratic Party intervention in lawsuit by four Republican Party entities); *cf. DCCC v. Ziriak*, No. 20-CV-211-JED-JFJ, 2020 WL 5569576, at \*2 (N.D. Okla. Sept. 17, 2020) (“DCCC and the Democratic candidates it supports . . . have an interest in ensuring that Democratic voters

in Oklahoma have an opportunity to express their will regarding Democratic Party candidates running for elections.”).

## **II. None of the exceptions to granting intervention apply.**

23. “[A] grant of intervention is mandatory where the intervenor satisfies one of the four bases set forth in Rule No. 2327 unless there exists a basis for refusal under Rule No. 2329.” *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 225 A.3d 902, 908 (Pa. Cmwlth. 2020).

24. Pennsylvania Rule of Civil Procedure 2329 allows a petition for intervention to be rejected only if: (1) the petitioner’s claim or defense “is not in subordination to and in recognition of the propriety of the action”; (2) the petitioner’s interest 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 the adjudication of the rights of the parties.” None of these exceptions apply in this case.

25. *First*, Proposed Intervenors’ defenses are in subordination to and in recognition of the propriety of the action. The purpose of this requirement is to ensure an intervenor takes the suit as they find it, 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.” *Commonwealth ex rel. Chidsey v. Keystone Mut. Cas. Co.*, 76 A.2d 867, 870 (Pa. 1950). This requirement is met. Proposed Intervenors 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.” *Wells Fargo Bank N.A. v. James*, 90 A.3d 813, 822 (Pa. Cmwlth. 2014); *cf. Peirce 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*, none of Proposed Intervenor’s partisan interests 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—like Defendants—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); *see also D.G.A. v. Dep’t of Hum. 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).

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. 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.*

29. The same is true here. Even if Defendants’ position aligns with Proposed Intervenor’s—an uncertainty as there have been no filings in this action to indicate what position Defendants will take—their interests will not be “identical.” *Id.* Because Defendants are all public officials, their “position [will be] defined by the public interest.” *Feller v. Brock*, 802 F.2d 722, 730 (4th Cir. 1986); *accord Letendre v. Currituck Cnty.*, 261 N.C. App. 537, 817 S.E.2d 920, 2018 WL 4440587, \*4 (2018) (unpublished). But Proposed Intervenor’s interests are defined by their mission of electing Democratic candidates. As a result, their interests are not adequately represented by any of the parties to this action.

30. *Third*, Proposed Intervenor has promptly filed to intervene and their intervention will neither delay the resolution of this matter nor prejudice any party. This petition comes just a single business day after Plaintiffs filed their Complaint. Permitting Proposed Intervenor’s intervention will neither delay the resolution of this matter nor prejudice any party, especially since Defendants have yet to file a response or otherwise meaningfully litigate this case. Nor will any party be prejudiced by Proposed Intervenor’s participation, which will aid the Court in understanding the issues involved.

31. Because Proposed Intervenors satisfy Pennsylvania Rule of Civil Procedure 2327 and none of the exceptions of Pennsylvania Rule of Civil Procedure 2329 apply, intervention *must* be granted.

32. Even if the Court were to find present any of the grounds for refusal of intervention enumerated in Rule 2329, it can—and should—exercise its discretion to permit Proposed Intervenors to intervene for the reasons stated above. See *MarkWest Liberty Midstream & Res., LLC v. Cecil Twp. Zoning Hearing Bd.*, No. 904 C.D. 2016, 2018 WL 357337, at \*4 (Pa. Cmwlth. Jan. 11, 2018) (“A trial court's determination of whether an application for intervention may be denied pursuant to [Rule] 2329 is discretionary.”).

### CONCLUSION

33. For the reasons stated above, Proposed Intervenors have a right to intervene in this case.

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

35. Proposed Intervenors request a Hearing on this Petition if deemed necessary.

WHEREFORE, Fetterman for PA, Cartwright for Congress, DSCC, and DCCC respectfully request this Honorable Court to grant their Petition to Intervene in this matter, and accept their Proposed Answer attached hereto as their first filing.

Dated: November 7, 2022

Respectfully submitted,

By: /s/ Timothy J. Ford  
Timothy J. Ford (Pa. Id. No. 325290)  
Claire Blewitt Ghormoz (Pa. Id. No. 320816)  
**DILWORTH PAXSON LLP**  
1500 Market Street, Suite 3500E  
Philadelphia, PA 19102  
Telephone: (215) 575-7000  
Facsimile: (215) 575-7200

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