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*\*Motions for Admission Pro Hac Vice Forthcoming*

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

**CIVIL DIVISION**

JIM BOGNET,

*Plaintiff,*

v.

LUZERNE COUNTY BOARD OF ELECTIONS,

*Defendant.*

Case No. 202210514

**PETITION TO INTERVENE BY  
REPRESENTATIVE MATT CARTWRIGHT AND DCCC**

Proposed Intervenor-Defendants Representative Matt Cartwright and DCCC, by and through undersigned counsel, respectfully submit this Petition to intervene as Defendants in the above-captioned proceeding pursuant to Rule 2327 of the Pennsylvania Rules of Civil Procedure.

**INTRODUCTION**

1. Plaintiff Jim Bognet has lost the 2022 general election for Pennsylvania's Eighth Congressional District to incumbent Representative Matt Cartwright by over 7,000 votes. Instead

of conceding, Bognet—a serial litigant when election matters do not go his way, *see, e.g., Bognet v. Boockvar*, Case No. 3:20-cv-215, 2020 WL 6323121 (W.D. Pa. Oct. 28, 2020) (unsuccessful challenge to 2020 election procedures), *dismissed as moot sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021); *Toth v. Chapman*, Civil No. 1:22-CV-00208, 2022 WL 821175 (M.D. Pa. Mar. 16, 2022) (unsuccessful challenge to Pennsylvania’s congressional districting maps)—raced to the courthouse door and now demands an injunction prohibiting Defendant Luzerne County Board of Elections (the “Board”) from certifying the election results.

2. The requested injunction will directly harm Proposed Intervenor. Representative Cartwright is entitled to the certification of his electoral victory. And DCCC—the Democratic Party’s congressional campaign committee—has a concrete stake in any litigation that will imperil its mission of electing Democrats such as Representative Cartwright to the U.S. House of Representatives.

3. Proposed Intervenor’s pressing interests, including the timely seating of Rep. Cartwright in the 118th Congress, are jeopardized by this litigation and are not otherwise represented by any party. Because the Board is not competing in the election—and has no stake in which campaign wins—it does not possess the same interests as Proposed Intervenor in avoiding the partisan mischief that Bognet seeks to inflict. Nor is there any other basis under Pennsylvania law for excluding Proposed Intervenor from this action.

4. Candidates and political committees are routinely granted intervention in election disputes like this one to defend their legally enforceable rights. This Court should find the Proposed Intervenor is entitled to intervene under Pennsylvania Rule of Civil Procedure 2327.

## PROPOSED INTERVENORS

6. Representative Matt Cartwright is the incumbent representing Pennsylvania's Eighth Congressional District, which includes parts of Luzerne County. If certification of his electoral victory is delayed or denied, his interests in obtaining office and fulfilling related duties—including, for example, voting for a Speaker of the House at the commencement of the 118th Congress—will be thwarted.

7. 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 Representative Cartwright. In 2022, DCCC provided millions of dollars in contributions and expenditures to persuade and mobilize voters—including voters in Luzerne County—to support congressional candidates affiliated with the Democratic Party.

## FACTUAL AND PROCEDURAL BACKGROUND

8. On Election Day, some Luzerne County polling locations lacked sufficient paper to reliably operate certain voting machines. *See* Andy Mehalshik & Vivian Muniz, *Paper Shortage Prompts Extension of Voting Hours in Luzerne County to 10 pm* (Nov. 9, 2022, 3:57 AM), <https://www.pahomepage.com/election/your-local-election-headquarters/paper-ballot-shortage-prompts-request-to-extend-voting-hours-in-luzerne-county/>.

9. The Luzerne County Bureau and the Board itself, with the support of both the Luzerne County Republican Party and Luzerne County Democratic Party, filed an emergency petition in this Court to “extend the deadline for the time the polls are to be closed for the November 8th General Election by 2 hours.” Petition, *In Re Extension of Time* at 3, No. 09970-2022.

10. At the hearing to consider the petition, the Luzerne County Republican Party withdrew its support to extend voting hours countywide and requested that ballots cast in extra hours be voted on provisional ballots.

11. Judge Lesa S. Gelb granted the extension of time, and, in an amended order, specifically accommodated the Republicans' request that votes cast during extended hours be provisional ballots. Order, *In Re Extension of Time*, 09970-2022; Amended Order, *In Re Extension of Time*, 09970-2022.

12. The Board canvassed mail-in and Election Day ballots and submitted unofficial results to the Secretary of the Commonwealth on November 16, 2022.

13. On November 18, 2022, the Board completed the counting of mail-in and provisional ballots with only the adjudication of write-ins, overvotes (meaning a voter voted for more than one candidate in a race), and stray marks remaining to be completed. *See* Jake Sawar, *Luzerne County Finishes Mail-In and Provisional Counting*, Fox56 Wolf (Nov. 18, 2022), <https://fox56.com/news/local/luzerne-county-finished-mail-in-and-provisional-counting>.

14. The Board is "confident" that it will finish its adjudication of these ballots by November 22, 2022. *See* Eric Mark, *Luzerne County election board to start review of write-in votes Monday*, 69News (Nov. 21, 2022), [https://www.wfmz.com/news/state/luzerne-county-election-board-to-start-review-of-write-in-votes-monday/article\\_f2f98a64-a748-58ba-830b-a19e53f18e60.html](https://www.wfmz.com/news/state/luzerne-county-election-board-to-start-review-of-write-in-votes-monday/article_f2f98a64-a748-58ba-830b-a19e53f18e60.html).

15. Bognet filed his Complaint on November 21, 2022. Proposed Intervenor's petition to intervene follows the very next day.

## ARGUMENT

### I. Proposed Intervenorors 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.

Pa. R.C.P. 2327.

18. Proposed Intervenorors 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, Proposed Intervenorors’ shared mission of reelecting Representative Cartwright and ensuring his full and timely participation in the 118th Congress will be directly threatened if Bognet succeeds in delaying or altering the final certification of the election results.

22. Courts routinely find that candidates are entitled to intervene in cases where election administration practices are being challenged, particularly when brought by members of the opposing party. In 2020, for example, the Court of Common Pleas granted intervention to the Democratic candidate for state senate in an action by his opponent challenging provisional ballots. *See, e.g., In re Allegheny Cnty. Provisional Ballots in the 2020 General Election*, No. 1161 C.D. 2020, 2020 WL 6867946, \*1 (Pa. Cmwlth. 2020). And Courts regularly grant intervention to party committees like DCCC as a matter of course in election-related disputes. *See, e.g., id.* (granting intervention to the Pennsylvania Democratic Party); *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, 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 mandatory 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 intervenors take 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. The Court has yet to render any substantive rulings, thus Proposed Intervenors do not 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 Intervenors' electoral interests are adequately represented by any of the parties to this action. *See, e.g., In re Barlip*, 428 A.2d 1058, 1060 (Pa. Cmwlth. 1981) (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 the Board—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 the Board’s position aligns with Proposed Intervenor’s—an uncertainty as there have been no filings in this action to indicate what position the Board will take—its interests will not be “identical.” *Id.* Because the Board is a public entity, its “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 winning the election. 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 as this Petition comes the day after Bognet filed his lawsuit. Permitting Representative Cartwright and DCCC’s intervention will neither delay the resolution of this matter nor prejudice any party, especially as the Board has yet to file a response or otherwise meaningfully litigate this case. And Proposed Intervenor’s participation in this matter will aid the Court in understanding the issues involved.

31. Because Proposed Intervenor satisfies 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 Intervenor 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, Representative Cartwright 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 22, 2022

Respectfully submitted,

By: /s/ Timothy J. Ford

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