

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

REPRESENTATIVE BRYAN CUTLER, :
Leader of the Republican Caucus of the :
Pennsylvania House of Representatives, :
 :
Petitioner, :

v. :

No. 588 MD 2022

LEIGH M. CHAPMAN, Acting Secretary :
of the Commonwealth of Pennsylvania, :
THE PENNSYLVANIA DEPARTMENT :
OF STATE, and THE BOARD OF :
ELECTIONS OF ALLEGHENY :
COUNTY, :
 :
Respondents. :

**EMERGENCY APPLICATION FOR DISPOSITION
ON MOTION PURSUANT TO P.A.R.A.P. 1972**

Pursuant to Rules 123 and 1972 of the Pennsylvania Rules of Appellate Procedure, Intervenor Respondent Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives, by and through her undersigned counsel, hereby moves for an Order dismissing the Petition for Review in this matter as moot, and, in support thereof, states as follows:

1. Petitioner Bryan Cutler, Leader of the Republican Caucus of the Pennsylvania House of Representatives, commenced this action on December 9, 2022 challenging Writs of Election issued by Leader McClinton scheduling special

elections to fill vacancies in the 32nd, 34th and 35th Legislative Districts on February 7, 2023. Pet. for Review ¶ 28.

2. The Petition for Review seeks a declaratory judgment invalidating the Writs of Election issued by Leader McClinton and enjoining Respondents Department of State and the Board of Elections of Allegheny County from proceeding with the special elections on February 7, 2023. Pet. for Review, Prayer for Relief, p. 15.

3. Leader Cutler alleges in the Petition for Review that authority to issue writs of election is entrusted to the “presiding officer” of the House, that Rule 1 of the General Operating Rules of the House “designates the Speaker of the House as the presiding officer,” and that the new Speaker of the House would be elected on January 3, 2023. Pet. for Review, ¶¶ 43-47.

4. The named parties, Leader McClinton (as intervenor) and the Pennsylvania Democratic Party (as proposed intervenor) stipulated and agreed that the special election in the 32nd Legislative District would proceed as scheduled on February 7, 2023. The Stipulation was approved as an Order of Court on January 3, 2023.

5. The 207th Session of the General Assembly convened on January 3, 2023.

6. Representative Mark Rozzi was elected to serve as Speaker of the House on January 3, 2023.

7. Leader Cutler voted in support of Speaker Rozzi's nomination.

8. Following his election on January 3, 2023, Speaker Rozzi reaffirmed and ratified the Writs of Election issued by Leader McClinton on December 7, 2022 scheduling special elections to fill vacancies in the 34th and 35th Legislative Districts on February 7, 2023.

9. The Writ of Election issued by Speaker Rozzi with respect to the 34th District states in relevant part:

NOW THEREFORE, I, MARK ROZZI, SPEAKER OF THE HOUSE OF REPRESENTATIVES, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION OF PENNSYLVANIA AND BY THE ACTS OF ASSEMBLY IN SUCH CASE MADE AND PROVIDED, DO HEREBY COMMAND:

THAT YOU CAUSE AN ELECTION TO BE HELD IN THE THIRTY-FOURTH LEGISLATIVE DISTRICT OF THE COUNTY OF ALLEGHENY ON THE DAY ESTABLISHED IN THE WRIT ISSUED ON DECEMBER 7, 2022, BY LEADER JOANNA E. MCCLINTON TO CHOOSE A PERSON TO REPRESENT THE LEGISLATIVE DISTRICT IN THE HOUSE OF REPRESENTATIVES OF PENNSYLVANIA FOR THE REMAINDER OF THE TERM EXPIRING ON THE 1ST DAY OF DECEMBER, TWO THOUSAND AND TWENTY-FOUR, AND THAT YOU GIVE DUE AND PUBLIC NOTICE OF THE ELECTION THROUGHOUT THE DISTRICT IN THE FORM AND MANNER DIRECTED BY LAW. . . .

(Emphasis added.) (A copy of the Writ of Election is attached as Exhibit “A.”)

10. Speaker Rozzi’s January 3, 2023 Writ of Election for the 35th Legislative District includes identical language. (A copy of the writ for the 35th District is attached as Exhibit “B.”)

11. The Pennsylvania Supreme Court made clear in *Perzel* that “[t]he authority to issue a writ for a special election for a vacant seat in the General Assembly is *vested exclusively* in that body pursuant to Article II, Section 2 of the Pennsylvania Constitution.” *Perzel v. Cortes*, 870 A.2d 759, 765 (Pa. 2005) (emphasis added).

12. The Court in *Perzel* refused to consider a challenge to the validity of a writ of election where House officials—in that case, the last-elected Speaker of the House and the Majority Leader—“determined that joint issuance of a Writ of Election was the appropriate manner in which to fulfill the requirements of Article II, Section 2 of the Pennsylvania Constitution for directing a special election. . . .” *Id.*

13. The Writs of Election issued by Speaker Rozzi on January 3, 2023 confirm that the February 7, 2023 date set by Leader McClinton for the special elections in the 34th and 35th Districts is ratified, authorized, endorsed and approved the House of Representatives—the body vested with “exclusive[]” authority to issue writs of election. *Perzel*, 840 A.2d at 765.

14. The Writs of Election issued by Speaker Rozzi effectively and conclusively moot Leader Cutler's challenge to the validity of the Writs of Election issued by Leader McClinton.

15. Preparations for the special elections in the 34th and 35th Legislative Districts (as well as in the 32nd Legislative District) are well underway. The political parties have nominated candidates, ballots are being prepared for printing and delivery, and election officials are readying polling places, lining up poll workers and completing other administrative tasks necessary to fill the vacant seats in the House. *See, e.g.*, Stipulated Facts ¶¶ 24-25.

16. Accordingly, Leader McClinton hereby moves pursuant to Rule 1972 of the Pennsylvania Rules of Appellate Procedure on an emergency basis for an Order dismissing the Petition for Review as moot and dispelling any question as to the date for the special elections in the 34th and 35th Legislative Districts.

17. Rule 1972 authorizes summary dismissal on motion of any party due to "want of jurisdiction," "mootness," and "any other reason appearing on the record." Pa.R.A.P. 1972(a)(3), (4), (7).

18. Speaker Rozzi's Writs of Election moot any alleged case or controversy as to the date for the special elections for the 34th and 35th Legislative Districts.¹

¹ Leader McClinton maintains that the Petition for Review raises a non-justiciable political question and as a result there was never a case or controversy

19. Leader McClinton seeks expedited disposition of this application given the compelling public interest in obviating voter confusion, making efficient use of government resources and enabling candidates and their supporters to prepare for the election.

20. Counsel for Leader Cutler has advised that Leader Cutler opposes the relief sought in this application.

WHEREFORE, Leader McClinton respectfully requests that this Honorable Court issue an Order dismissing the Petition for Review because the alleged claim for relief was mooted by the Writs of Election reissued by Speaker Rozzi.

Respectfully submitted:

/s/ Daniel T. Brier

Daniel T. Brier

Donna A. Walsh

Richard L. Armezzani

Myers, Brier & Kelly, LLP
425 Biden Street, Suite 200
Scranton, PA 18503

/s/ Michael A. Comber

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Attorneys for Joanna E. McClinton,
Leader of the Democratic Caucus of
the Pennsylvania House of
Representatives

Date: January 4, 2023

capable of being resolved by this Court. The Writs of Election issued by Speaker Rozzi on January 3, 2023 establish that any alleged case or controversy is now moot.

VERIFICATION

I, Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives, hereby aver and state that I have read the foregoing Application which was drafted by counsel. The factual statements contained therein are true and correct to the best of my knowledge, information, and belief although the language is that of counsel and, to the extent the content of the foregoing document is that of counsel, I have relied upon counsel in making this verification.

This statement is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read "Joanna E. McClinton", written over a horizontal line.

Joanna E. McClinton

Dated: January 4, 2023

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CERTIFICATE OF COMPLIANCE

I certify that 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 requires filing confidential information and documents differently than non-confidential information and documents.

/s/ Daniel T. Brier

Daniel T. Brier

Date: January 4, 2023

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EXHIBIT “A”

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WRIT OF ELECTION

**TO LEIGH M. CHAPMAN, ACTING SECRETARY OF THE COMMONWEALTH,
AND TO RICH FITZGERALD, BETHANY HALLAM, AND SAM DEMARCO, III,
CONSTITUTING THE BOARD OF ELECTIONS OF ALLEGHENY COUNTY.**

**GREETINGS: WHEREAS, A VACANCY EXISTS IN THE OFFICE OF
REPRESENTATIVE OF THE COMMONWEALTH OF PENNSYLVANIA FOR
THE THIRTY-FOURTH LEGISLATIVE DISTRICT OF THE COUNTY OF
ALLEGHENY, CAUSED BY THE RESIGNATION OF SUMMER LYNN LEE,
THE REPRESENTATIVE-ELECT FROM SAID DISTRICT ON THE 7TH DAY
OF DECEMBER, TWO THOUSAND TWENTY-TWO.**

**NOW THEREFORE, I, MARK ROZZI, SPEAKER OF THE HOUSE OF
REPRESENTATIVES, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY
THE CONSTITUTION OF PENNSYLVANIA AND BY THE ACTS OF
ASSEMBLY IN SUCH CASE MADE AND PROVIDED, DO HEREBY
COMMAND:**

**THAT YOU CAUSE AN ELECTION TO BE HELD IN THE THIRTY-
FOURTH LEGISLATIVE DISTRICT OF THE COUNTY OF ALLEGHENY ON
THE DAY ESTABLISHED IN THE WRIT ISSUED ON DECEMBER 7, 2022, BY
LEADER JOANNA E. MCCLINTON TO CHOOSE A PERSON TO REPRESENT**

THE LEGISLATIVE DISTRICT IN THE HOUSE OF REPRESENTATIVES OF PENNSYLVANIA FOR THE REMAINDER OF THE TERM EXPIRING ON THE 1ST DAY OF DECEMBER, TWO THOUSAND AND TWENTY-FOUR, AND THAT YOU GIVE DUE AND PUBLIC NOTICE OF THE ELECTION THROUGHOUT THE DISTRICT IN THE FORM AND MANNER DIRECTED BY LAW.

GIVEN UNDER MY HAND AND THE SEAL OF THE HOUSE OF REPRESENTATIVES AT HARRISBURG, PENNSYLVANIA, THIS 3RD DAY OF JANUARY, A.D. TWO THOUSAND TWENTY-THREE.



David L. Bonior

SPEAKER OF THE HOUSE OF REPRESENTATIVES

ATTEST:

Brooke Wheeler

CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

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DEPARTMENT OF STATE

SERVICE OF THE WRITTEN WRIT AND RECEIPT OF SAME IS HEREBY

ACKNOWLEDGED THIS 4th DAY OF January, 2023

BY Jessica Mathis

EXHIBIT “B”

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WRIT OF ELECTION

**TO LEIGH M. CHAPMAN, ACTING SECRETARY OF THE COMMONWEALTH,
AND TO RICH FITZGERALD, BETHANY HALLAM, AND SAM DEMARCO, III,
CONSTITUTING THE BOARD OF ELECTIONS OF ALLEGHENY COUNTY.**

**GREETINGS: WHEREAS, A VACANCY EXISTS IN THE OFFICE OF
REPRESENTATIVE OF THE COMMONWEALTH OF PENNSYLVANIA FOR
THE THIRTY-FIFTH LEGISLATIVE DISTRICT OF THE COUNTY OF
ALLEGHENY, CAUSED BY THE RESIGNATION OF AUSTIN DAVIS, THE
REPRESENTATIVE-ELECT FROM SAID DISTRICT ON THE 7TH DAY OF
DECEMBER, TWO THOUSAND TWENTY-TWO.**

**NOW, THEREFORE, I, MARK ROZZI, SPEAKER OF THE HOUSE OF
REPRESENTATIVES, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY
THE CONSTITUTION OF PENNSYLVANIA AND BY THE ACTS OF
ASSEMBLY IN SUCH CASE MADE AND PROVIDED, DO HEREBY
COMMAND:**

**THAT YOU CAUSE AN ELECTION TO BE HELD IN THE THIRTY-FIFTH
LEGISLATIVE DISTRICT OF THE COUNTY OF ALLEGHENY ON THE DAY
ESTABLISHED IN THE WRIT ISSUED ON DECEMBER 7, 2022, BY LEADER
JOANNA E. MCCLINTON TO CHOOSE A PERSON TO REPRESENT THE**

LEGISLATIVE DISTRICT IN THE HOUSE OF REPRESENTATIVES OF PENNSYLVANIA FOR THE REMAINDER OF THE TERM EXPIRING ON THE 1ST DAY OF DECEMBER, TWO THOUSAND AND TWENTY-FOUR, AND THAT YOU GIVE DUE AND PUBLIC NOTICE OF THE ELECTION THROUGHOUT THE DISTRICT IN THE FORM AND MANNER DIRECTED BY LAW.

GIVEN UNDER MY HAND AND THE SEAL OF THE HOUSE OF REPRESENTATIVES AT HARRISBURG, PENNSYLVANIA, THIS 3RD DAY OF JANUARY, A.D. TWO THOUSAND TWENTY-THREE.



Mark L. Rozzi
SPEAKER OF THE HOUSE OF REPRESENTATIVES

ATTEST:

Brooke Wheeler
CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

RECEIVED

2023 JAN -4 AM 9:31

DEPARTMENT OF STATE

SERVICE OF THE WRITTEN WRIT AND RECEIPT OF SAME IS HEREBY

ACKNOWLEDGED THIS 4th DAY OF January, 2023

BY Jessie Math

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PROOF OF SERVICE

I, Daniel T. Brier, hereby certify that I served the forgoing Application for Disposition on Motion upon all counsel of record via the Court's PACFile eService system, which service satisfies the requirements of Pa.R.A.P. 121.

/s/ Daniel T. Brier

Daniel T. Brier

Date: January 4, 2023

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