

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Representative Bryan Cutler,	:	
Leader of the Republican Caucus	:	
of the Pennsylvania House of	:	
Representatives,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 588 M.D. 2022
	:	
Leigh M. Chapman, Acting Secretary	:	
of the Commonwealth, The	:	
Pennsylvania Department of State,	:	
and The Board of Elections of	:	
Allegheny County,	:	
	:	
Respondents	:	

ORDER

AND NOW, January 13, 2023, upon consideration of the Emergency Application for Special Relief in the Nature of a Preliminary Injunction (Emergency Application for Special Relief), filed by Petitioner Representative Bryan Cutler, Leader of the Republican Caucus of the Pennsylvania House of Representatives; the Preliminary Objections filed by Intervenor Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives (Intervenor McClinton), and Proposed Intervenor Pennsylvania Democratic Party (PDP), respectively; the Petition for Intervention filed by Proposed Intervenor PDP, which Petitioner opposes; and Intervenor McClinton’s Emergency Application for Disposition on Motion Pursuant to Pa.R.A.P. 1972 (Emergency Application for Disposition), and the answers and Briefs in Support of and/or in Opposition thereto,

and following argument before a panel of this Court on January 11, 2023, it is hereby **ORDERED** as follows:

1. Petitioner's Emergency Application for Special Relief is **DENIED**, as Petitioner has failed to establish that he is entitled to the emergency preliminary injunctive relief he seeks. Specifically, Petitioner has failed to prove, *inter alia*, that he has a clear right to the relief he seeks, that he will suffer immediate and irreparable harm without the preliminary injunction, and that the preliminary injunction will not adversely affect the public interest. It is thus hereby **ORDERED** that the special elections to fill the vacancies in the 34th and 35th Legislative Districts of the Pennsylvania House of Representatives, currently scheduled for February 7, 2023, shall be held on that date.
2. Intervenor McClinton's Preliminary Objection as to the nonjusticiability of the claims made by Petitioner in his Petition for Review in the Nature of a Complaint for Declaratory Judgment is **SUSTAINED**, as Petitioner raises nonjusticiable political questions regarding which party in the House of Representatives has the majority and, concomitantly, who in the House of Representatives has authority to act as Majority Leader and issue writs of election for special elections to fill the enumerated vacancies following the adjournment *sine die* of the House on November 30, 2022, but prior to the House convening for the 2023-2024 session. *See Perzel v. Cortes*, 870 A.2d 759, 764 (Pa. 2005); *Sweeney v. Tucker*, 375 A.2d 698, 704-12 (Pa. 1977).¹

¹ Because this Preliminary Objection is dispositive, the Court declines to rule on Intervenor McClinton's other Preliminary Objections.

3. Proposed Intervenor PDP's Petition for Intervention and Preliminary Objections, and Intervenor McClinton's Emergency Application for Disposition are **DISMISSED AS MOOT**.

Opinion to follow.



MICHAEL H. WOJCIK, Judge

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