

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

REPRESENTATIVE BRYAN CUTLER, :
LEADER OF THE REPUBLICAN :
CAUCUS OF THE PENNSYLVANIA :
HOUSE OF REPRESENTATIVES :

Petitioner, :

v. :

Docket No. __ 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 :

NOTICE TO PLEAD

To: Leigh M. Chapman, Acting Secretary of the Commonwealth
The Pennsylvania Department of State
The Board of Elections of Allegheny County

As required by Pennsylvania Rule of Appellate Procedure 1516(b), Pa.R.A.P.

1516(b), you are hereby notified to file a written response to the enclosed Petition

for Review in the Nature of a Complaint for Declaratory Judgment within 30 days from service hereof or a judgment may be entered against you.

McNEES WALLACE & NURICK LLC

Date: December 9, 2022

By: _____

Kandice K. Hull

Kandice Kerwin Hull

I.D. No. 86345

Drew Crompton

I.D. No. 69227

Ryan Gonder

I.D. No. 321027

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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LEADER OF THE REPUBLICAN :
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Petitioner, :

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SECRETARY OF THE :
COMMONWEALTH, THE :
PENNSYLVANIA DEPARTMENT OF :
STATE, and THE BOARD OF :
ELECTIONS OF ALLEGHENY :
COUNTY :

Respondents :

**PETITION FOR REVIEW IN THE NATURE OF A
COMPLAINT FOR DECLARATORY JUDGMENT**

Petitioner Bryan D. Cutler, in his capacity as the duly elected member of Pennsylvania House of Representatives for the 100th Legislative District and as Leader of the Republican Caucus of the House of Representatives (“Representative Cutler”), by and through his counsel, McNees Wallace & Nurick LLC, hereby brings this Petition for Review in the Nature of a Complaint for Declaratory Judgment against Respondents, Leigh M. Chapman, Acting Secretary of the Commonwealth

(“Acting Secretary Chapman”), the Pennsylvania Department of State (“DOS”), and the Board of Elections of Allegheny County (“Board of Elections”). In support thereof, Petitioner avers as follows:

INTRODUCTION

1. Representative Cutler brings this action to challenge the validity of three writs of election relating to three vacancies in the House of Representatives.

2. On December 7, 2022, Joanna E. McClinton, the duly elected member of the House of Representatives for the 191st Legislative District and Leader of the Democratic Caucus of the House of Representatives (“Representative McClinton”), issued three writs of election relating to three vacancies in the House of Representatives to DOS and to the Board of Elections.

3. The writs of election schedule special elections to fill all three vacancies for February 7, 2023.

4. Pursuant to the Pennsylvania Constitution, as well as the Election Code,¹ the authority to issue writs of election rests with the presiding officer of the House of Representatives, which is, in effect, the Speaker of the House.

5. In the event of a vacancy in the Office of Speaker of the House of Representatives, the Act of January 10 1968, P.L. 925, authorizes the Majority

¹ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

Leader to carry out the duties of the Speaker of the House, including issuing writs of election.

6. Representative McClinton is neither the Speaker nor the Majority Leader of the House of Representatives.

7. Thus, Representative McClinton issued the writs of election at issue without constitutional or statutory authority.

8. In light of this, Representative Cutler respectfully requests this Court enter an order declaring the writs of election issued by Representative McClinton invalid as a matter of law such that DOS and the Board of Elections may not proceed with holding the February 7, 2023 special elections.

JURISDICTION

9. This Court has original jurisdiction over the present action pursuant to Section 761(a)(2) of the Judicial Code, 42 Pa.C.S. § 761(a)(2), because it is an action commenced by an officer of the Commonwealth in his official capacity.

10. This Court also has original jurisdiction over this action pursuant to Section 761(a)(1) of the Judicial Code because it is an action against the Commonwealth government and its officers.

PARTIES

11. As set forth above, Petitioner is Representative Cutler, who is the duly elected member of the House of Representative for the 100th Legislative District. Representative Cutler is also the Leader of the Republican Caucus of the House of Representatives. Until the expiration of the 206th General Assembly on November 30, 2022 at 11:59 p.m., Representative Cutler was the duly elected Speaker of the House of Representatives.

12. Respondents are Leigh M. Chapman, the Acting Secretary of the Commonwealth, DOS, and the Board of Elections.

13. The Election Code mandates that writs of election be delivered to the Secretary of the Commonwealth and the Boards of Elections for each County in which citizens will be voting, in this case Allegheny County.

14. The Election Code imposes upon DOS and the Boards of Elections various duties for administering elections.

STATEMENT OF FACTS

15. As prescribed in the Election Code, Pennsylvania's 2022 General Election was held on November 8, 2022.

16. As with every general election, all 203 seats of the House of Representatives were up for election in the 2022 General Election.

17. The results of the 2022 General Election reflect that 102 of the Democratic Party's candidates won seats in the House of Representatives and that 101 of the Republican Party's candidates won seats in the House of Representatives.

18. On October 9, 2022, prior to the 2022 General Election, Anthony DeLuca, the duly elected member of the House of Representatives for the 32nd District and candidate for reelection ("former Representative DeLuca"), passed away.

19. Former Representative DeLuca's death occurred too close to the 2022 General Election to remove his name from the ballot.

20. As such, former Representative DeLuca's name appeared on the ballot for the 2022 General Election and, despite his death, he was reelected to the House of Representatives.

21. Former Representative DeLuca's pre-election death created a vacancy in the House of Representatives.

22. On November 30, 2022, the last day of the 206th General Assembly, then-Speaker Cutler issued a writ of election to DOS and the Board of Elections setting a special election for February 7, 2023, to fill former Representative DeLuca's seat in the General Assembly. A true and correct copy of the writ of

election issued by then-Speaker Cutler on November 30, 2022 is attached hereto as Exhibit A.

23. DOS acknowledged receipt of the foregoing writ of election on the same day of its execution. *See id.*

24. With the pre-election death of former Representative DeLuca, the membership of the Democratic Caucus of the House of Representatives was comprised of 101 members of the House of Representatives on December 1, 2022, the start of the 207th General Assembly, which is one member short of a majority.

25. Despite being one member short of a majority, Representative McClinton declared herself to be Majority Leader of the House of Representatives on December 7, 2022, and subsequently had a Judge of the Court of Common Pleas of Delaware County administer the oath of office to her on the House floor. A true and correct copy of a press release issued by Representative McClinton announcing her swearing in as Majority Leader is attached hereto as Exhibit B.

26. That same day, two members of the House of Representatives, Austin A. Davis, duly elected member of the House of Representatives for the 35th Legislative District and the Lieutenant Governor-elect (“former Representative Davis”), and Summer L. Lee, the duly elected member of the House of Representatives for the 34th Legislative District and member-elect of the United

States House of Representatives (“former Representative Lee”), resigned their seats in the Pennsylvania House of Representatives. A true and correct copy of former Representative Davis’ resignation letter is attached hereto as Exhibit C. A true and correct copy of former Representative Lee’s resignation letter is attached hereto as Exhibit D.

27. The resignations of former Representatives Davis and Lee on December 7, 2022, reduced the membership of the Democratic Caucus of the House of Representatives to 99 members.

28. Notwithstanding the fact that the membership of Democratic Caucus of the House of Representatives does not comprise a majority of the members of the House, Representative McClinton issued writs of elections on December 7, 2022, to DOS and the Board of Elections setting special elections for February 7, 2023, to fill the seats of former Representatives DeLuca, Davis, and Lee. True and correct copies of the writs of election issued by Representative McClinton on December 7, 2022, are attached hereto as Exhibits E, F, and G.

29. On the same day, but following the foregoing events, the non-partisan Pennsylvania Legislative Reference Bureau issued a “Legal Opinion” regarding the question of “[w]hether the Democratic Caucus holds a majority of seats in the House

of Representatives.” A true and correct copy of the Legal Opinion of the Legislative Reference Bureau is attached hereto as Exhibit H.

30. Upon review of the law and the results of the 2022 General Election, the Legislative Reference Bureau concluded that the Democratic Caucus does not hold a majority of seats in the House of Representatives. Exhibit H at 2.

31. In this regard, the Legislative Reference Bureau wrote that “[w]hile the Democratic Party won a total of 102 elections to the House of Representatives at the 2022 general election, the Democratic Caucus is able to seat only 101 members due to the death of a member-elect, falling short of the 102 members necessary for a majority.” *Id.*

32. That same day, Acting Secretary Chapman rejected the writ of election issued by then-Speaker Cutler regarding former Representative DeLuca’s seat as premature. A true and correct copy of Acting Secretary Chapman’s December 7, 2022 letter is attached hereto as Exhibit I.

33. Representative Cutler disputes that Acting Secretary Chapman was correct in rejecting the writ of election issued by him on November 30, 2022.

COUNT I – DECLARATORY JUDGMENT
(Representative Cutler v. All Respondents)

34. Representative Cutler incorporates paragraphs 1 through 33 as though set forth herein.

35. Representative Cutler brings this claim pursuant to the Declaratory Judgments Act.

36. Section 7532 of the Declaratory Judgements Act provides that “[c]ourts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” 42 Pa.C.S. § 7532.

37. Pursuant to its authority under the Declaratory Judgments Act, Representative Cutler respectfully requests this Court declare the writs of election issued by Representative McClinton invalid such that DOS and the Board of Elections should not proceed with holding the February 7, 2023 special elections.

38. As set forth above, there are presently three vacancies in the House of Representatives.

39. Former Representative DeLuca’s seat became vacant upon his death.

40. Former Representative Davis’ seat became vacant upon his resignation on December 7, 2022.

41. Former Representative Lee’s seat also became vacant upon her resignation on December 7, 2022.

42. Article II, Section 2 of the Pennsylvania Constitution sets forth that when a vacancy occurs in either chamber of the General Assembly, “the presiding

officer [of that chamber] shall issue a writ of election to fill such vacancy for the remainder of the term.” PA. CONST. art. II, § 2.

43. Likewise, Section 628 of the Election Code provides, in relevant part, that

[w]henver a vacancy shall occur in either house of the General Assembly whether or not it then be in session, the presiding officer of such house shall, within ten (10) days after the happening of the vacancy, issue a writ of election to the proper county board or boards of election and to the Secretary of the Commonwealth, for a special election to fill said vacancy, which election shall be held at the next ensuing primary, municipal or general election scheduled at least sixty (60) days after the issuance of the writ or such other earlier date which is at least sixty (60) days following the issuance of the writ as the presiding officer may deem appropriate

25 P.S. § 2778.

44. Rule 1 of the 2021-2022 General Operating Rules of the House of Representatives designates the Speaker of the House as the presiding officer.²

45. There is currently no Speaker of the House of Representatives.

46. Representative Cutler ceased to hold the office of Speaker of the House of Representatives at 11:59 p.m. on November 30, 2022, the last day of the 206th General Assembly. *See* PA. CONST. art. II, § 2.

² The 2021-2022 General Operating Rules of the House of Representatives are publicly available on the House’s website: <https://www.house.state.pa.us/rules.cfm>.

47. The earliest a new Speaker will be elected by the members of the House of Representatives is January 3, 2022, the first day the 207th General Assembly convenes. *See* PA. CONST. art. II, § 4.

48. Section 21.13 of the Act of January 10 1968, P.L. 925, provides that “[i]f any vacancy shall occur during the recess of the Legislature in the office of the Speaker of the House of Representative, the duties of said office shall be performed by the Majority Leader of the House of Representatives.” 46 P.S. § 41.121m.

49. The Pennsylvania Supreme Court has held that Section 21.13 of the foregoing Act authorizes the Majority Leader to issue writs of election between the adjournment of the House of Representatives and the start of the next legislative session. *Perzel v. Cortes*, 870 A.2d 759, 764 (Pa. 2005).

50. On December 7, 2022, Representative McClinton declared herself Majority Leader of the House of Representatives and subsequently held a swearing-in ceremony on the House floor where a Judge of the Court of Common Pleas of Delaware County administered the oath of office. *See* Exhibit B.

51. The same day, Representative McClinton issued the three writs of election at issue. *See* Exhibits E, F, and G.

52. Representative McClinton issued the writs of election at issue without constitutional or statutory authority as she is neither Speaker of the House of Representatives nor is she Majority Leader.

53. Representative McClinton does not claim to be Speaker of the House of Representatives.

54. She does, however, claim to be Majority Leader of the House of Representatives. *See* Exhibit B. This claim is without support.

55. The term “Majority Leader” is not defined in the Act of January 10 1968, P.L. 925.

56. Section 1903(a) of the Statutory Construction Act of 1972 provides that when interpreting statutes, the “[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage.” 1 Pa.C.S. § 1903(a).

57. As such, “where a court needs to define an undefined term, it may consult dictionary definitions for guidance.” *Sheppleman v. City of Chester Aggregated Pension Fund*, 271 A.3d 938, 949 (Pa. Cmwlth. 2021) (quoting *THW Group, LLC v. Zoning Bd. of Adjustment*, 86 A.3d 330, 336 (Pa. Cmwlth. 2014)).

58. Black’s Law Dictionary defines the term “Majority Leader” as “[t]he legislator in charge of the legislative caucus that has the most members” “Majority Leader,” *Black’s Law Dictionary* (11th ed. 2019).

59. Article II, Section 16 of the Pennsylvania Constitution sets the number of seats in the House of Representatives at 203. PA. CONST. art. II, § 16.

60. Thus, a majority of the House of Representatives is 102 members.

61. As such, the Majority Leader is the leader of the caucus with 102 members or the caucus with the most members if no single caucus has 102 members.

62. The results of the 2022 General Election reflect 102 of the Democratic Party’s candidates won seats in the House of Representatives and that the 101 of the Republican Party’s candidates won seats in the House of Representatives.

63. However, on December 1, 2022, the first day of the 207th General Assembly, the Democratic Caucus of the House of Representatives was only able to seat 101 members due to the pre-election death of former Representative DeLuca.

64. In *Zemprelli v. Daniels*, 436 A.2d 1165 (Pa. 1981), the Pennsylvania Supreme Court examined who qualifies as a member of the General Assembly for purposes of establishing a majority.

65. The Court ultimately held that members of the General Assembly include those “members elected, living, sworn, and seated.” *Id.* at 1172.

66. As former Representative DeLuca passed away prior to December 1, 2022, the first day of the 207th General Assembly, the Democratic Caucus of the House of Representatives cannot claim to have ever had a majority of 102 living members or more members than the Republican Caucus.

67. The resignations of former Representatives Davis and Lee on December 7, 2022 has further reduced the membership of the Democratic Caucus of the House of Representatives to 99 members.

68. Absent 102 living members, Representative McClinton has no basis to claim the title Majority Leader.

69. As Representative McClinton is not the Majority Leader of the House of Representatives, she had no authority to issue the writ of elections. *See* 46 P.S. § 41.121m.

70. This is consistent with the Legal Opinion issued by the Legislative Reference Bureau on December 7, 2022. *See* Exhibit H.

71. Thus, the writ of elections at issue in this action are invalid.

WHEREFORE, Representative Cutler is entitled to a declaration that the writs of election by Representative McClinton on December 7, 2022, are invalid as a matter of law.

PRAYER FOR RELIEF

Accordingly, based upon the foregoing, Representative Cutler respectfully requests this Court enter judgment declaring that the writs of election issued by Representative McClinton on December 7, 2022, are invalid as a matter of law and, therefore, that DOS and the Board of Elections may not proceed with holding the February 7, 2023 special elections.

McNEES WALLACE & NURICK LLC

Date: December 9, 2022

By: Kandice R. Hull

Kandice Kerwin Hull

I.D. No. 86345

Drew Crompton

I.D. No. 69227

Ryan Gonder

I.D. No. 321027

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Attorneys for Petitioner

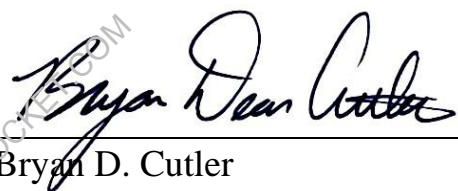
VERIFICATION

I, Bryan D. Cutler, hereby certify that the facts in the foregoing are true and correct to the best of my knowledge and belief. I make this statement subject to the penalties of Section 4904 of the Crimes Code, 18 Pa.C.S. § 4904, relating to unworn falsification to authorities

Dated: December 9, 2022

By: _____

Bryan D. Cutler

A handwritten signature in black ink, appearing to read "Bryan D. Cutler", is written over a horizontal line. The signature is cursive and stylized.

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EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

WRIT OF ELECTION

TO LEIGH M. CHAPMAN, ACTING SECRETARY OF THE COMMONWEALTH, AND
TO RICH FITZGERALD, BETHANY HALLAM, AND SAMUEL 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-SECOND LEGISLATIVE DISTRICT OF THE COUNTY OF ALLEGHENY,
CAUSED BY THE DEATH OF ANTHONY M. DeLUCA, THE REPRESENTATIVE
FROM SAID DISTRICT, ON THE 9TH DAY OF OCTOBER, TWO THOUSAND
TWENTY-TWO.

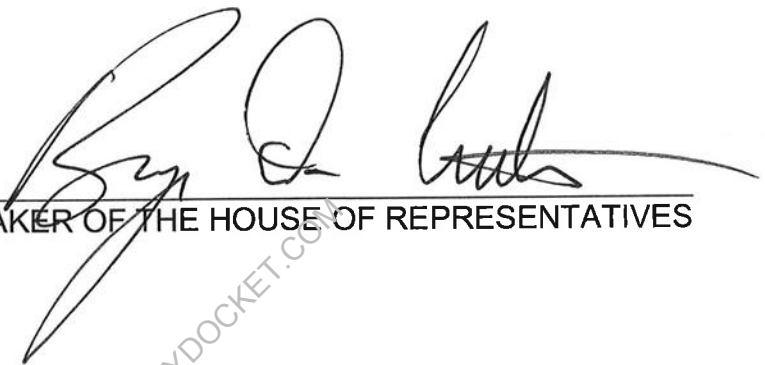
NOW, THEREFORE, I, BRYAN CUTLER, SPEAKER OF THE HOUSE OF
REPRESENTATIVES BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE
CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA, AND BY THE
ACT OF ASSEMBLY IN SUCH CASE MADE AND PROVIDED, DO HEREBY
COMMAND:

THAT YOU CAUSE AN ELECTION TO BE HELD IN THE SAID COUNTY OF
ALLEGHENY, ON THE 7TH DAY OF FEBRUARY, TWO THOUSAND TWENTY-THREE
TO CHOOSE A PERSON TO REPRESENT SAID LEGISLATIVE DISTRICT IN THE
HOUSE OF REPRESENTATIVES OF PENNSYLVANIA, FOR THE REMAINDER OF
THE TERM EXPIRING NOVEMBER 30TH, TWO THOUSAND TWENTY-FOUR, AND

THAT YOU GIVE DUE AND PUBLIC NOTICE OF SAID ELECTION THROUGHOUT
SAID 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 30 DAY OF November, TWO
THOUSAND TWENTY-TWO.




SPEAKER OF THE HOUSE OF REPRESENTATIVES

ATTEST:


CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

SERVICE OF THE WRITTEN WRIT AND RECEIPT OF SAME IS HEREBY

ACKNOWLEDGED THIS 30th DAY OF November 2022

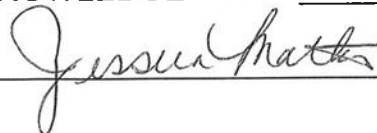
BY .

EXHIBIT B

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McClinton sworn in as House Majority Leader

Rep. Joanna E. McClinton December 7, 2022

HARRISBURG, Dec. 7 – Today, state Rep. Joanna McClinton, D-Phila./Delaware, was sworn in for the 2023/24 legislative session. As House majority leader, McClinton becomes the House's presiding officer. She is the first woman in Pennsylvania history to serve in that role.

House Democrats won the majority of districts in the Nov. 8 General Election. As majority leader, McClinton's appointment as presiding officer is established by law and consistent with legal precedent set in 2004, when the majority leader, Republican Sam Smith, R-Jefferson, served as the House's presiding officer on Dec. 9, 2004, to schedule a special election to fill a seat vacated by a Republican lawmaker in the 189th legislative district.

"Pennsylvanians cast their ballots in the free and fair 2022 General Election. The results of that election are not in dispute and in the majority of legislative districts - 102 out of 203 - the people of Pennsylvania voted to elect a Democrat to represent them in the House of Representatives. Pennsylvania's voters have spoken, and the will of the people is the ultimate authority in this Commonwealth," McClinton said.

"If there was a mandate delivered to the General Assembly, it is to work together in a bipartisan manner. Our caucus embraces this mandate, because it means we're going to have to fundamentally change the way our chamber operates. Our caucus will govern in a way that is representative of our diverse commonwealth. Rather than bottling up bills in committee just because they were introduced by the opposing party, we'll welcome debate on policy ideas to strengthen and improve them. We will stay grounded in the needs of the Pennsylvanians who sent us to Harrisburg to represent them, not partake in political games at the expense of our communities. Rather than take advantage of parliamentary procedure to advance a partisan agenda, we will collaborate with our partners across the aisle, across the building in the Senate, and with the incoming gubernatorial administration.

"After more than a decade of Republican management, today is a fresh start. A day for new leaders, new perspectives and new collegiality. I am confident that together we can do amazing things to advance our commonwealth."

As majority leader and presiding officer, McClinton's first official action was to set the date for three special elections to replace lawmakers from Allegheny County. Special elections for the 32nd district, vacated by Rep. Tony DeLuca, who died in October; the 34th district vacated by Rep. Summer Lee, who was elected to Congress; and the 35th district, vacated by Lt. Governor-elect Austin Davis are set for Feb. 7, 2023.

"To ensure every Pennsylvanian has representation and to restore the state House to its full complement as quickly as possible, I set the special elections for early February," McClinton said. "By having all three elections on the same day, hopefully we can maximize voter awareness and participation."

In her role as majority leader, McClinton will also serve as acting speaker until a speaker is elected. This is consistent with precedent set during the 2003/04 session when Majority Leader John Perzel, R-Phila., served as acting speaker for several weeks following the death of Speaker Matt Ryan, R-Delaware.

In her role as acting speaker, McClinton set the House session schedule for the first 60 days of the legislative session. McClinton has served the 191st district, which includes portions of southwest and west Philadelphia and Yeadon and Darby boroughs in Delaware County since August 2015, when she won a special election. In 2018, she was elected the House Democratic Caucus chair, the first woman and African American to hold that post, and in 2020 she was elected to serve as Democratic leader. McClinton is the first woman to serve as a floor leader of either party in the 246-year history of the state House of Representatives.

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EXHIBIT C

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AUSTIN DAVIS, MEMBER
35TH LEGISLATIVE DISTRICT

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(717) 783-1018
FAX: (717) 780-4779

627 LYSLE BOULEVARD
MCKEESPORT, PENNSYLVANIA 15132
(412) 664-0035
FAX: (412) 664-0039

3905 MAIN STREET
MUNHALL, PENNSYLVANIA 15120
(412) 476-3046
FAX: (412) 476-3048



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

APPROPRIATIONS
INSURANCE
CONSUMER AFFAIRS
TRANSPORTATION
POLICY

DELEGATIONS

ALLEGHENY COUNTY HOUSE DEMOCRATIC
DELEGATION, CHAIRMAN

CAUCUSES

CAREER & TECHNICAL EDUCATION
PA LEGISLATIVE BLACK CAUCUS
EARLY CHILDHOOD EDUCATION
CRIMINAL JUSTICE REFORM
MANUFACTURING
AFTER SCHOOL
BLUEGREEN
CLIMATE
HUNGER
STEEL
YMCA
SAFE

December 6, 2022

Honorable Joanna McClinton
Majority Leader
Pennsylvania House of Representatives
423 Main Capitol
Harrisburg, PA 17120

Leader McClinton:

I, Austin A. Davis, hereby resign my position as a Pennsylvania State Representative for the 2023-2024 legislative session effective at 10:30 AM on Wednesday, December 7, 2022. It has been my honor to represent the 35th Legislative District in Allegheny County.

Yours In Service

A handwritten signature in black ink, reading "Austin A. Davis".
Austin A. Davis

2022 DEC -7 AM 11:31

HOUSE
LEGISLATIVE SERVICES

EXHIBIT D

RETRIEVED FROM DEMOCRACYDOCKET.COM

SUMMER LEE, MEMBER
34TH LEGISLATIVE DISTRICT

258 EAST WING
P.O. BOX 202034
HARRISBURG, PENNSYLVANIA 17120-2034
(717) 783-1914
FAX: (717) 705-2554

501 BRADDOCK AVENUE, SUITE #105
BRADDOCK, PENNSYLVANIA 15104-9998
(412) 273-3400
FAX: (412) 273-3434



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

EDUCATION
HEALTH
JUDICIARY
POLICY COMMITTEE

PENNSYLVANIA LEGISLATIVE BLACK CAUCUS
VICE CHAIR
ALLEGHENY COUNTY DELEGATION
CLIMATE CAUCUS
PA SAFE CAUCUS
WOMEN'S CAUCUS
WOMEN'S HEALTH CAUCUS

December 6, 2022

Dear Majority Leader Joanna McClinton –

I, Summer Lee, hereby resign my position as a Member of the Pennsylvania House of Representatives for the 2023-2024 legislative session effective 10:00 AM on Wednesday, December 7, 2022.

Sincerely Yours,

A handwritten signature in cursive script that reads "Summer Lee".

Summer Lee
Representative
Pennsylvania House District 34

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HOUSE
LEGISLATIVE SERVICES
2022 DEC -7 AM 11:31

EXHIBIT E

RETRIEVED FROM DEMOCRACYDOCKET.COM

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-SECOND LEGISLATIVE DISTRICT OF THE COUNTY OF
ALLEGHENY, CAUSED BY THE DEATH OF ANTHONY M. DELUCA, THE
REPRESENTATIVE-ELECT FROM SAID DISTRICT ON THE 9TH DAY OF
OCTOBER, TWO THOUSAND TWENTY-TWO.**

**NOW, THEREFORE, THE HOUSE OF REPRESENTATIVES BEING
ADJOURNED SINE DIE AND THUS A VACANCY CURRENTLY EXISTING IN
THE OFFICE OF SPEAKER, I, JOANNA E. MCCLINTON, MAJORITY LEADER
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-SECOND
LEGISLATIVE DISTRICT OF THE COUNTY OF ALLEGHENY ON THE 7TH**

DAY OF FEBRUARY, TWO THOUSAND TWENTY-THREE, 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 7TH DAY OF DECEMBER, A.D. TWO THOUSAND TWENTY-TWO.



ATTEST:

Brooke Wheeler

CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

[Signature]
MAJORITY LEADER OF THE
HOUSE OF REPRESENTATIVES

SERVICE OF THE WRITTEN WRIT AND RECEIPT OF SAME IS HEREBY

ACKNOWLEDGED THIS 7th DAY OF December, 2022

BY

Jason Maith

EXHIBIT F

RETRIEVED FROM DEMOCRACYDOCKET.COM

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, THE HOUSE OF REPRESENTATIVES BEING
ADJOURNED SINE DIE AND THUS A VACANCY CURRENTLY EXISTING IN
THE OFFICE OF SPEAKER, I, JOANNA E. MCCLINTON, MAJORITY LEADER
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 7TH**

DAY OF FEBRUARY, TWO THOUSAND TWENTY-THREE, 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 7TH DAY OF DECEMBER, A.D. TWO THOUSAND TWENTY-TWO.




MAJORITY LEADER OF THE
HOUSE OF REPRESENTATIVES

ATTEST:


CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

SERVICE OF THE WRITTEN WRIT AND RECEIPT OF SAME IS HEREBY

ACKNOWLEDGED THIS 7th DAY OF December, 2022


BY .

EXHIBIT G

RETRIEVED FROM DEMOCRACYDOCKET.COM

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, THE HOUSE OF REPRESENTATIVES BEING
ADJOURNED SINE DIE AND THUS A VACANCY CURRENTLY EXISTING IN
THE OFFICE OF SPEAKER, I, JOANNA E. MCCLINTON, MAJORITY LEADER
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 7TH**

DAY OF FEBRUARY, TWO THOUSAND TWENTY-THREE, 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 7TH DAY OF DECEMBER, A.D. TWO THOUSAND TWENTY-TWO.




MAJORITY LEADER OF THE
HOUSE OF REPRESENTATIVES

ATTEST:


CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

SERVICE OF THE WRITTEN WRIT AND RECEIPT OF SAME IS HEREBY

ACKNOWLEDGED THIS 7th DAY OF December, 2022

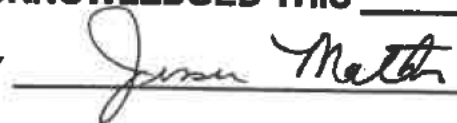
BY 

EXHIBIT H

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Commonwealth of Pennsylvania

Legislative Reference Bureau

December 7, 2022

LEGAL OPINION

This opinion is issued to the requestor and the requestor's staff for individual use. The Legislative Reference Bureau issues only advisory opinions and does not issue rulings or binding legal opinions.

Vin

Vincent C. DeLiberato, Jr.

Director

SUBJECT: Whether the Democratic Caucus holds a majority of seats in the House of Representatives.

TO: Jake Smeltz
Chief of Staff
Rep. Bryan Cutler, Republican Leader

FROM: Peter Klein *PLK*
Associate Counsel

QUESTION PRESENTED

Does the Democratic Caucus hold a majority of seats in the House of Representatives for the 2022-2024 session?

BRIEF ANSWER

No. While the Democratic Party won a total of 102 elections to the House of Representatives at the 2022 general election, the Democratic Caucus is able to seat only 101 members due to the death of a member-elect, falling short of the 102 members necessary for a majority.

STATEMENT OF FACTS

On the basis of a phone call between Vince DeLiberato, Director of the Legislative Reference Bureau, and Jake Smeltz, Chief of Staff to Republican Leader Bryan Cutler, this legal opinion has been issued.

DISCUSSION

There is disagreement as to which caucus holds a majority in

the House of Representatives {hereinafter referred to as the House} for the 2022-2024 legislative session. The Democratic Party won a total of 102 House elections at the November 8, 2022, general election, but the House Democratic Caucus is able to seat only 101 members due to the death of member-elect Anthony DeLuca. The vacant seat will be filled at a special election. Pa. Const. (2018 Ed.) Art. II, § 2, *Purdon's Statutes* Art. 2, § 2 (2011). The Republican party won 101 House elections, and is able to seat all of its elected members. The House comprises 203 seats, so a caucus would need 102 seats to have a majority.

The House Democratic Caucus does not have a majority in the House. The limited caselaw on this topic suggests that the House Democratic Caucus may only count its 101 living members toward a majority, short of the 102 members necessary for a majority. The House is thereby left without a majority caucus.

Our Supreme Court ventured into similar territory in deciding who qualifies as a member "elected to the Senate" for the purposes of establishing a majority vote on a gubernatorial appointment under Article IV, § 8(a) of the Pennsylvania Constitution. *Zemprelli v. Daniels*, 496 Pa. 247, 251, 436 A.2d 1165, 1166 (1981); see Pa Const. (2018 Ed.) Art. IV, § 8(a), *Purdon's Statutes*, Const. Art. 4, § 8(a) (2011). At the time of

the vote, 25 members constituted a majority due to only 48 of the possible 50 Senators taking office: one member had not yet taken the oath of office, and one member resigned his position to become State Treasurer. *Id.* at 250 n.1, 436 A.2d at 1166 n.1. A number of Senators sued, arguing that the 25 votes in favor of the appointment did not constitute a majority of the Senate's full 50-member complement.

The *Zemprelli* Court rejected petitioners' argument. Senate Rule XXII(8), currently Senate Rule 20(g), stated that "[a] majority of the Senators elected shall mean a majority of the Senators elected, living, sworn, and seated." *Id.* at 250, 436 A.2d at 1166. The *Zemprelli* Court adopted the definition of elected member under Senate Rule XXII(8) and affirmed the appointee's confirmation by the 25 member majority vote of the Senators elected, living, sworn, and seated. *Id.* at 261, 436 A.2d at 1172. With apologies for any crassness, Mr. DeLuca, while elected, is not living. Such a member would not count toward a caucus's majority under *Zemprelli*.

It can be argued that *Zemprelli* does not apply to the current set of facts. The most recent House general operating rules also use the phrase "majority of the members elected" but do not have a similar rule stating what constitutes a majority

vote. See, e.g., House Rule 77 (2021-2022) (requiring majority vote to change a House operating rule).¹ Nor do the House Rules contain a provision defining what constitutes a House member. To that end, the *Zemprelli* Court does not explicitly state that the Court would have come to the same conclusion absent a Senate Rule defining what constitutes a majority.

That argument, however, would likely fail. The *Zemprelli* Court provides enough detailed analysis and reasoning to suggest it would have reached the same result without Senate Rule XXII(8) guiding its decision. The majority requirement under Article IV, § 8 is intended to require participation by the Senate as a body, as opposed just to a quorum. *Id.* at 259, 436 A.2d at 1171. Rather than merely absent, the Senate's two missing members were not entitled to vote. Including vacant seats in the total number of elected members would require a majority vote greater than the majority of the members qualified to vote since neither vacant seat could actually cast a vote. *Id.* To make its point, the Court presented a hypothetical in which half of the Senate membership are killed in a disaster. *Id.* at 260, 436 A.2d at 1171. If the deceased members' seats counted toward the majority, the Senate would be incapable of taking any action requiring a majority

¹ The House Operating Rules use the phrases "majority vote of the members elected" and "majority vote of the members" interchangeably. The phrases are used to describe the vote necessary to change, add, modify or delete a House Operating Rule. House Rule 77 (2021-2022).

vote. *Id.*

Likewise, taking a literal meaning of "member elected" would lead to a situation in which "members elected" outnumber the total number of constitutionally mandated members. *Id.* To describe such a situation, the *Zemprelli* Court posited another hypothetical in which "members elected" would include a senator who dies or resigns and the member elected to fill the seat, effectively allowing two members to hold the same seat. *Id.* (emphasis added). The *Zemprelli* Court's hypothetical suggests that a seat left vacant by the death of a member could not be used to calculate a majority of the members elected.

It should be noted that the *Zemprelli* decision contemplated the Senate's constitutional duty to provide advice and consent regarding gubernatorial appointments. House Majority Leader, on the other hand, is not a constitutional office. Likewise, the constitution does not speak to any role that a majority caucus plays in selecting the House Speaker or other officers. Pa. Const. (2018 Ed.) Art. II, § 9, *Purdon's Statutes* Art. 2, § 9 (2011). That is, the determination of a majority caucus does not implicate the kind of constitutional concerns raised in *Zemprelli*, and a court, assuming this is not a political question, might not utilize the *Zemprelli* Court's policy

arguments in determining who constitutes a member for the purposes of electing a Majority Leader.

The Pennsylvania Supreme Court has seemingly, though not explicitly, lowered the *Zemprelli* bar for qualifying as a member to simply elected and living. In *Perzel v. Cortes*, the Court upheld a writ of election issued by then Majority Leader Samuel Smith and Rep. John Perzel, the immediately preceding Speaker of the House, after the start of the newly elected members' terms but prior to the start of session. 582 Pa. 103, 870 A.2d 759 (2005). Our Constitution requires that the presiding officer of the House issue a writ of election to fill any vacancy. *Id.* at 106, 870 A.2d at 761; see also Pa. Const. (2018 Ed.) Art. II, § 2, *Purdon's Statutes* Art. 2, § 2 (2011). The House general operating rules at the time stated that the Speaker is the presiding officer. *Perzel* at 106, 870 A.2d at 761.

A Speaker, however, had not yet been elected. *Id.* The Majority Leader assumes the duties of the Speaker during any recess of the House in which the office of Speaker is vacant. *Id.* at 106-07, 870 A.2d at 761; see section 21.13 of the act of January 10, 1968 (1967) (P.L.925, No.417), as added December 10, 1979 (P.L.488, 492, No.104), 46 P.S. § 42.121m (2020). Both Speaker and Majority Leader signed the writ of election and

submitted the writ to Secretary of the Commonwealth Cortes on December 7, 2004. *Id.* at 106, 870 A.2d at 761. Secretary Cortes rejected the writ as invalid due to neither member as yet being sworn or seated. *Id.* at 107, 870 A.2d at 762.

To cure this infirmity, the Republican Caucus, which Secretary Cortes did not dispute was the majority caucus, elected Rep. Smith as Majority Leader on December 9, 2004. *Id.* at 107 n.3, 870 A.2d at 761 n.3. Judge Batton of the Dauphin County Court of Common Pleas administered the oath of office to Rep. Smith that same day. *Id.* at 107, 870 A.2d at 762. Majority Leader Smith, newly sworn into office, and Rep. Perzel reissued the writ of election to Secretary Cortes. *Id.* Secretary Cortes again rejected the writ as invalid due, in part, to the lack of a presiding officer with the authority to issue the writ. *Id.* at 108, 870 A.2d at 762.

The *Perzel* Court held, in pertinent part, that Rep. Smith held the office of House Majority Leader and had the authority to issue the writ of election during a vacancy in the office of House Speaker. *Id.* at 110-11, 870 A.2d at 763-64. While Secretary Cortes questioned the ability of a common pleas court judge to swear in a member of the House, he conceded that matters related to seating an individual member were solely within the discretion

of House members. *Id.* at 110, 870 A.2d at 763. As such, and without further explanation, the Court upheld Rep. Smith as Majority Leader "as that term is used in Section 21.13." *Id.* Notably, the Court quoted Secretary Cortes as not questioning "issues pertaining to the seating of an individual member" in regards to the swearing in of Rep. Smith. *Id.* (emphasis added). The Court, then, seems to consider seating and swearing in as one and the same.

The Court did not speak as to whether Rep. Perzel was also sworn into office or what effect his signature had on the writ of election as an unsworn, but living and elected, member of the House. The Court did take notice of the House tradition that a House Speaker who is reelected, and whose party remains in the majority, continues to carry out the duties of Speaker during the period between December 1 and the first Tuesday of January when the General Assembly comes back into session. *Id.* at 110 n.7, 870 A.2d at 763, n.7. The Court failed to discuss the interplay between section 21.13, which clearly contemplates the inability of the previous Speaker to issue a writ of election during adjournment, and the House tradition of a former Speaker who is reelected to office wielding the powers of Speaker during the recess.

The *Perzel* decision stands for the proposition that an individual who is elected and living counts as a member of a particular caucus for the purpose of determining a majority caucus and electing a Majority Leader. The *Perzel* Court accepted the Republican Caucus's election of Rep. Smith as Majority Leader, despite none of the members as yet being sworn or seated. While *Perzel* functionally, though not explicitly, dilutes *Zemprelli's* requirement that a member must also be sworn and seated, we see no reason to further extend *Perzel* to overrule *Zemprelli's* requirement that a member must be living.

Both cases contemplated a living member. The *Zemprelli* Court makes this point explicit: a member must be "elected, living, sworn, and seated." *Zemprelli* at 262, 436 A.2d at 1172. The *Perzel* Court does so implicitly. In upholding Rep. Smith's election to Majority Leader, the *Perzel* Court suggests that a vote is necessary. A deceased individual, regardless of his election victory, simply cannot cast a vote. It would be a step too far to suggest a member must vote, and therefore be alive, to elect a Majority Leader, but not require that member to be alive to count toward the majority caucus. At the very least, the *Perzel* decision is silent on the requirements necessary to be considered a member of the House.

It can be argued that the *Zemprelli* and *Perzel* decisions should be distinguished from the current facts. Both *Zemprelli* and *Perzel* contemplated constitutionally required duties. House Majority Leader, on the other hand, is not a constitutional office. Likewise, the constitution does not speak to the role a majority caucus plays in selecting the House Speaker or other officers. Pa. Const. (2018 Ed.) Art. II, § 9, *Purdon's Statutes* Art. 2, § 9 (2011). That is, the determination of a majority caucus does not implicate the kind of constitutional concerns raised in *Zemprelli* or *Perzel*, and a court, assuming this is not a political question, might not utilize the *Zemprelli* or *Perzel* policy arguments in determining who constitutes a member for the purposes of electing a Majority Leader.

We are confined, however, to the state of the law as it is and are not concerned with how a court might decide. Under *Zemprelli*, however diluted by *Perzel*, an individual must be elected and living to qualify as a member of the legislature. Including members in a caucus who are elected but not living would overrule *Zemprelli* and *Perzel*, which only a court can do.

Under *Zemprelli* and *Perzel*, the Democratic Caucus has 101 members who are living and elected. The Republican Caucus has the same number. Neither caucus can claim the 102 members necessary

for a majority and the House is left without a majority caucus until a special election fills the vacant seat.

CONCLUSION

Under current law, an individual must at least be elected and living to qualify as a member of a legislative caucus. The Democratic Party won 102 House elections at the November 2022 general election, but the House Democratic Caucus is able to seat only 101 members due to the death of member-elect Anthony DeLuca. The House Democratic Caucus falls short of the 102 members necessary for a majority.

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EXHIBIT I

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

December 7, 2022

VIA EMAIL AND HAND DELIVERY

Brooke Wheeler, Chief Clerk
Pennsylvania House of Representatives
129 Main Capitol Building
Harrisburg, PA 17120-2020

Re: Writ of Election for the 32nd Legislative District

Dear Chief Clerk Wheeler:

As you are aware, on December 3, 2022, my staff acknowledged receipt of the document entitled a "writ of election" signed by Bryan Cutler, the then-Speaker of the House of Representatives, and dated November 30, 2022. This document directed that a special election be held in Allegheny County on February 7, 2023, for "a person to represent [the 32nd] Legislative District in the House of Representatives of Pennsylvania, for the remainder of the term expiring November 30th, [2024]." Unfortunately, that document is a nullity, and therefore I must reject it.

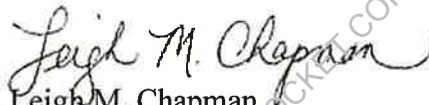
When Representative Anthony DeLuca died on October 9, 2022, a vacancy in that seat occurred immediately. However, the term of such vacancy expired on November 30, 2022—that is, the end of the then-current legislative session and Representative DeLuca's then-unexpired term. Section 628 of the Election Code, 25 P.S. § 2778, requires that at least 60 days elapse between a writ of special election and the date of the special election. Because a writ may only fill an unexpired term, and less than one day of Representative DeLuca's term remained unexpired on the date that then-Speaker Cutler provided the document, no special election could be held to fill such term.

In addition, per Section 628 of the Election Code, 25 P.S. § 2778, a writ of election is required within 10 days of the vacancy. As set forth above, Representative DeLuca died on October 9, 2022. The Office did not receive a writ of election within 10 days of that date. As such, the document that was provided to this Office was untimely and ineffective with respect to seeking an election to fill Representative DeLuca's unexpired term ending in 2022.

Finally, Representative DeLuca was re-elected to a new two-year term at the November 8, 2022, General Election. Thus, a new vacancy for his seat was created on December 1, 2022, as the term of service of legislators begins on the first day of December next following their election. *See* Pa. Const., art. II, sec. 2. Therefore, the first date for issuance of a writ of election for the current term was December 1, 2022. Because the document issued by then-Speaker Cutler was dated November 30, 2022 but purported to fill the term that concludes in 2024 that had not yet commenced, that document was premature. As such, that document could not validly seek to fill a vacancy in Representative DeLuca's unexpired term ending in 2024, which vacancy would not occur until the following day, when the next term and legislative session begins under our Constitution.

As such, for the foregoing reasons, the writ is being returned.

Sincerely,

A handwritten signature in cursive script that reads "Leigh M. Chapman".

Leigh M. Chapman
Acting Secretary of the Commonwealth

Enclosure

cc: Allegheny County Board of Elections (w/out enclosure)

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CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

McNEES WALLACE & NURICK LLC

Date: December 9, 2022

By: Kandice K. Hull
Kandice K. Hull

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2022, I will cause a true and correct copy of the foregoing Petition for Review in the Nature of a Complaint for Declaratory Judgment to be served via hand delivery on Respondents, as follows:

Leigh M. Chapman, Acting Secretary of the Commonwealth
302 North Office Building
401 North Street
Harrisburg, PA 17120

Pennsylvania Department of State
306 North Office Building
401 North Street
Harrisburg, PA 17120

Board of Elections of Allegheny County
542 Forbes Avenue, Suite 601
Pittsburgh, PA 15219

Pennsylvania Office of Attorney General
16th Floor
Strawberry Square
Harrisburg, PA 17120

McNEES WALLACE & NURICK LLC

Date: December 9, 2022

By: 
Kandice K. Hull