

IN THE SUPREME COURT OF PENNSYLVANIA

No. 136 MM 2024

The Republican National Committee and the Republican Party of
Pennsylvania,

Petitioners,

v.

All 67 County Boards of Elections (see back cover for list),

Respondents.

APPLICATION FOR LEAVE TO INTERVENE OF DSCC AND BOB CASEY FOR SENATE, INC.

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** Pro hac vice application
forthcoming*

Counsel for Proposed Intervenors DSCC and Bob Casey for Senate, Inc.

Adams County Board of Elections; Allegheny County Board of Elections; Armstrong County Board of Elections; Beaver County Board of Elections; Bedford County Board of Elections; Berks County Board of Elections; Blair County Board of Elections; Bradford County Board of Elections; Bucks County Board of Elections; Butler County Board of Elections; Cambria County Board of Elections; Cameron County Board of Elections; Carbon County Board of Elections; Centre County Board of Elections; Chester County Board of Elections; Clarion County Board of Elections; Clearfield County Board of Elections; Clinton County Board of Elections; Columbia County Board of Elections; Crawford County Board of Elections; Cumberland County Board of Elections; Dauphin County Board of Elections; Delaware County Board of Elections; Elk County Board of Elections; Erie County Board of Elections; Fayette County Board of Elections; Forest County Board of Elections; Franklin County Board of Elections; Fulton County Board of Elections; Greene County Board of Elections; Huntingdon County Board of Elections; Indiana County Board of Elections; Jefferson County Board of Elections; Juniata County Board of Elections; Lackawanna County Board of Elections; Lancaster County Board of Elections; Lawrence County Board of Elections; Lebanon County Board of Elections; Lehigh County Board of Elections; Luzerne County Board of Elections; Lycoming County Board of Elections; McKean County Board of Elections; Mercer County Board of Elections; Mifflin County Board of Elections; Monroe County Board of Elections; Montgomery County Board of Elections; Montour County Board of Elections; Northampton County Board of Elections; Northumberland County Board of Elections; Perry County Board of Elections; Philadelphia County Board of Elections; Pike County Board of Elections; Potter County Board of Elections; Schuylkill County Board of Elections; Snyder County Board of Elections; Somerset County Board of Elections; Sullivan County Board of Elections; Susquehanna County Board of Elections; Tioga County Board of Elections; Union County Board of Elections; Venango County Board of Elections; Warren County Board of Elections; Washington County Board of Elections; Wayne County Board of Elections; Westmoreland County Board of Elections; Wyoming County Board of Elections; and York County Board of Elections,

Respondents.

INTRODUCTION

Recently, county boards of election across the Commonwealth have been engaged in their ordinary and routine post-election canvass of ballots. As part of this process, the county boards for Bucks County and Philadelphia County have announced that they will count timely and valid absentee and mail-in ballots (collectively, “mail ballots”) that were returned in an outer return envelope with a missing or incorrect handwritten date on the pre-printed voter declaration. Those decisions were correct. Refusing to count those ballots solely because of a missing or incorrect handwritten date would have violated the Free and Equal Elections Clause of the Pennsylvania Constitution. See Pa. Const. art. I, § 5. Indeed, the Commonwealth Court has expressly concluded as much in two successive, well-reasoned opinions. See *Baxter v. Phila. Bd. of Elections*, No. 1305 C.D. 2024, 2024 WL 4614689 (Pa. Commw. Ct. Oct. 30, 2024), *stay issued*, 2024 WL 4650792 (Pa. Nov. 1, 2024) (Mem.); *Black Pol. Empowerment Project v. Schmidt*, No. 283 M.D. 2024, 2024 WL 4002321 (Pa. Commw. Ct. Aug. 30, 2024), *vacated on other grounds*, 322 A.3d 221 (Pa. 2024) (Mem.).¹

¹ These decisions were stayed and vacated, respectively, for procedural reasons unrelated to the Commonwealth Court’s repeated conclusion, on the merits, that it would be “unconstitutional” to reject a qualified voter’s ballot due to the date requirement. *Baxter*, 2024 WL 4614689, at *18; *Black Pol. Empowerment Project*, 2024 WL 4002321, at *1, *35 (same).

The Republican National Committee and the Republican Party of Pennsylvania (collectively, “RNC” or “Petitioners”), however, ask this Court to turn a blind eye to those serious constitutional concerns and invoke its extraordinary King’s Bench power to short-circuit the regular judicial review process and disenfranchise lawful Pennsylvania voters. See *generally* Petitioners’ Appl. for the Exercise of King’s Bench Power or Extraordinary Jurisdiction.

Proposed Intervenors DSCC and Bob Casey for Senate, Inc. (“Casey Campaign”) (collectively, “Proposed Intervenors”) are, respectively, the Democratic Party’s national senatorial committee and the organized political campaign in support of the reelection of Bob Casey Jr. to the office of U.S. Senator for Pennsylvania in the November 2024 general election. The RNC wants this Court to order county boards to discard ballots in an election for which Senator Casey is a candidate and in which votes are still being tabulated. As explained more fully below, Proposed Intervenors have a legally enforceable interest in this suit, both to protect Pennsylvanians who cast their ballots for Senator Casey and to defend their competitive interests in an ongoing vote-counting process. These interests clearly entitle Proposed Intervenors to intervene in this matter, and none of the factors that could prevent their intervention are present. Accordingly, Proposed

Intervenors respectfully request that this Court grant their application for leave to intervene and allow them to participate in this action to oppose the RNC's request.

INTERESTS OF PROPOSED INTERVENORS

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, including in Pennsylvania, to the U.S. Senate. DSCC works to accomplish its mission by, among other things, assisting state parties throughout the country, including in Pennsylvania, and mobilizing and supporting voters. DSCC has spent millions of dollars in contributions and expenditures to persuade and mobilize voters to support U.S. Senate candidates who affiliate with the Democratic Party, including Senator Casey. If Petitioners obtain the relief they seek, DSCC will suffer injury both because Democratic voters will be disenfranchised and Senator Casey's reelection efforts will be harmed.

The Casey Campaign is the duly organized political campaign in support of the reelection of Senator Bob Casey Jr. to the office of U.S. Senator for Pennsylvania in the November 2024 general election. Senator Casey is the Democratic Party candidate for Senate in Pennsylvania and a sitting U.S. Senator. The Casey Campaign has a core interest in ensuring

that its supporters' votes are counted and that Senator Casey is re-elected to the U.S. Senate. If the RNC is successful in this attempt to compel county boards to disqualify mail ballots solely because they lack a correct handwritten date on the voter declaration pre-printed on the outer envelope, they will directly harm the Casey Campaign because this effort will unlawfully disenfranchise supporters of Senator Casey and impair his electoral prospects.

LEGAL STANDARD

Rule 1531(b) of the Pennsylvania Rules of Appellate Procedure authorizes intervention in an original action before an appellate court. In original jurisdiction petitions for review, the practices and procedures set out in the Pennsylvania Rules of Civil Procedure apply. See Pa. R.A.P. 106; Pa. R.A.P. 1517.

Under the Pennsylvania Rules of Civil Procedure, “[a]t any time during the pendency of an action, a person not a party thereto shall be permitted to intervene” if they satisfy one of four requirements. Pa. R.C.P. 2327. As relevant here, a party may intervene if “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(4); see

also *Shirley v. Pennsylvania Legislative Reference Bureau*, 318 A.3d 832, 852 (Pa. 2024) (quoting Pa. R.C.P. 2327).

Where a proposed intervenor “com[es] within one of the classes described in Rule 2327,” the grant of intervention “is mandatory, unless one of the grounds for refusal of intervention enumerated in Rule 2329 is present.” *Shirley*, 318 A.3d at 853 (quoting *In re Pennsylvania Crime Comm’n*, 453 Pa. 513, 309 A.2d 401, 408 n.11 (1973)).

ARGUMENT

I. Proposed Intervenors satisfy the requirements for intervention.

“Whether a potential party has a legally enforceable interest permitting intervention under Rule 2327(4) turns on whether they satisfy [the] standing requirements” under Pennsylvania law. *Shirley*, 318 A.3d at 852 (cleaned up). Standing, in turn, generally “is an inquiry into whether the [party] has demonstrated aggrievement, by establishing a substantial, direct and immediate interest in the outcome of the litigation.” *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 917 (2013) (cleaned up). And as this Court has explained, “a ‘substantial’ interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law; a ‘direct’ interest requires a showing that the matter

complained of caused harm to the party's interest." *Pennsylvania Med. Soc. v. Dep't of Pub. Welfare of Com.*, 39 A.3d 267, 278 (2012).

Proposed Intervenors easily satisfy this standard. As one of the two principal campaigns competing in a still unresolved election for the U.S. Senate, the Casey Campaign clearly has a "substantial" interest in the outcome of this case, which concerns whether to count ballots in said election. Courts routinely allow political candidates and campaigns to intervene in cases dealing with county boards' decisions about whether to count ballots in races in which those candidates are competing. See, e.g., *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1069 (Pa. 2020) (noting trial court's grant of motion to intervene by candidate in appeal challenging county board's decision to count mail ballots); *In re Six Ballots in the 2024 Gen. Primary Election*, No. 629 C.D. 2024, 2024 WL 3290384, at *1–2 (Pa. Commw. Ct. July 3, 2024) (same). Political party committees have also been allowed by courts to intervene in similar cases, including the DSCC in litigation over the precise date requirement at issue in this matter. See *Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, No. 23-3166, Doc. 129 (3d Cir. Jan. 3, 2024) (granting DSCC intervention).

This Court should do the same. Proposed Intervenors plainly have a “substantial, direct and immediate interest” in the outcome of this litigation. *Robinson Twp.*, 83 A.3d at 917. Namely, this suit was filed by a political party committee that seeks to defeat Senator Casey’s reelection. The RNC is expressly asking this Court to order county boards across the state to discard ballots in a race in which Senator Casey is a candidate. If this effort succeeds, supporters of Senator Casey and other candidates supported by DSCC will be disenfranchised in this and future elections. That, in turn, directly harms the electoral prospects of Senator Casey and future DSCC-backed candidates. Proposed Intervenors are therefore entitled to intervene in this action to advance their interests and the interests of Senator Casey’s supporters.

II. None of the exceptions to granting intervention apply here.

Rule 2329 provides three grounds upon which “an application for intervention may be refused.” Pa. R.C.P. 2329. First, if the proposed intervenor’s “claim or defense . . . is not in subordination to and in recognition of the propriety of the action.” Pa. R.C.P. 2329(1). Second, if “the interest of the [proposed intervenor] is already adequately represented.” Pa. R.C.P. 2329(2). And third, if the proposed intervenor “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.” Pa. R.C.P. 2329(3). Because none of these circumstances apply, this Court should grant the motion to intervene.

First, Proposed Intervenors’ defense is “in subordination to and in recognition of the propriety of the action.” Pa.R.C.P. 2329(1). “The general rule is that an intervenor must take the suit ‘as he finds it.’” *Commonwealth ex rel. Chidsey v. Keystone Mut. Cas. Co.*, 76 A.2d 867, 870 (Pa. 1950) (cleaned up). Proposed Intervenors take this suit as they find it, and simply ask that this Court deny the RNC any relief.

Second, Proposed Intervenors’ interests are not adequately represented in this action. This Court’s inquiry into adequate representation asks both “whether there is of record a party who technically represents the interests of the intervenor and . . . whether such representatives are in fact performing their function of representation in a proper and efficient manner.” *Shirley*, 318 A.3d at 853 (cleaned up). It is self-evident that the RNC does not represent the interests of either DSCC or the Casey Campaign. The RNC, after all, is committed to Senator Casey’s defeat and has asked this Court to order county boards to throw out the very same ballots that Proposed Intervenors seek to ensure are counted.

Nor do Respondents—all 67 county boards of elections—adequately represent Proposed Intervenors’ interests. Respondents’ stake in this lawsuit is defined by their statutory duties to conduct elections and administer the electoral system. See, e.g., 25 P.S. § 2642 (powers and duties of boards of elections). In contrast, Proposed Intervenors’ interests are defined by their objective in supporting Senator Casey’s electoral prospects (a goal Respondents do not share) and advocating for the enfranchisement of his supporters (a goal Respondents may share only as consistent with their statutory duties). Permitting private entities like Proposed Intervenors to intervene is particularly warranted where, as here, Respondents are government parties with positions that “are necessarily colored by [their] view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it[.]” *Kleissler v. U.S. Forrest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998).

Third, Proposed Intervenors’ intervention is timely, and there has been no undue delay. Proposed Intervenors have promptly sought intervention, with this application coming just the day after the filing of the RNC’s King’s Bench Application. Further, Proposed Intervenors will abide by any deadlines that this Court may set in this matter.

III. This Court should allow Proposed Intervenors to intervene even if it concludes that any of the exceptions apply.

Alternatively, even if one of the Rule 2329 circumstances were to apply, this Court should exercise its discretion to permit Proposed Intervenors to intervene. *Cf. Shirley*, 318 A.3d at 853 (noting that, where a proposed intervenor satisfies Rule 2327, a court has discretion to allow intervention even if one of the grounds present in Rule 2329 is present); *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999) (similar). Proposed Intervenors' clear and direct interests in this urgent and time-sensitive matter amply justify intervention irrespective of any finding the Court may make as to the factors enumerated in Rule 2329. Indeed, it would be fundamentally unfair for this Court to adjudicate ballots affecting the outcome of the pending U.S. Senate race without the involvement of one of the principal campaigns competing in that race.

CONCLUSION

For the reasons stated above, Proposed Intervenors' application for leave to intervene should be granted.

Dated: November 15, 2024

Respectfully submitted,

/s/ Adam C. Bonin

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Counsel for Proposed Intervenor DSCC and Bob Casey for Senate, Inc.

CERTIFICATE OF COMPLIANCE WITH PA.R.A.P. 127

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

/s/ Adam C. Bonin

Adam C. Bonin, PA 80929

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2024, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

/s/ Adam C. Bonin

Adam C. Bonin, PA 80929

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VERIFICATION

I verify that the fact averments made in the foregoing Application for Leave to Intervene are true and correct to the best of my knowledge, information, and belief. I understand that false statements made therein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification and authorities.

Christie Roberts

Christie Roberts
Executive Director, DSCC

Dated: November 15, 2024

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Tiernan Donohue

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Campaign Manager, Bob Casey for Senate, Inc.

Dated November 15, 2024

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