

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

REPUBLICAN NATIONAL )  
COMMITTEE; NATIONAL )  
REPUBLICAN SENATORIAL )  
COMMITTEE; NATIONAL )  
REPUBLICAN CONGRESSIONAL )  
COMMITTEE; REPUBLICAN )  
PARTY OF PENNSYLVANIA; )  
DAVID BALL; JAMES D. BEE; )  
DEBRA A. BIRO; JESSE D. DANIEL; )  
GWENDOLYN MAE DELUCA; )  
ROSS M. FARBER; CONNOR R. )  
GALLAGHER; LYNN MARIE )  
KALCEVIC; LINDA S. KOZLOVICH; )  
WILLIAM P. KOZLOVICH; )  
VALLERIE SICILIANO- )  
BIANCANIELLO; S. MICHAEL )  
STREIB, Petitioners, )

v.

NO. 447 M.D. 2022

LEIGH M. CHAPMAN, in her official )  
capacity as Acting Secretary of the )  
Commonwealth of Pennsylvania; )  
JESSICA MATHIS, in her official )  
capacity as Director of the Pennsylvania )  
Bureau of Election Services and )  
Notaries, *et al.*, )  
Respondents. )

**BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO INTERVENE  
OF PROPOSED INTERVENORS-RESPONDENTS DEMOCRATIC  
NATIONAL COMMITTEE AND PENNSYLVANIA DEMOCRATIC  
PARTY**

Clifford B. Levine  
Emma F.E. Shoucair  
DENTONS COHEN & GRISGBY  
P.C.  
625 Liberty Avenue  
Pittsburgh, PA 15222-3152  
clifford.levine@dentons.com  
emma.shoucair@dentons.com

Kevin Greenberg  
Adam Roseman  
GREENBERG  
TRAURIG, LLP  
1717 Arch Street, Suite  
400  
Philadelphia, PA 19103  
greenbergk@gtlaw.com  
rosemana@gtlaw.com

Lazar Palnick  
1216 Heberton Street  
Pittsburgh, PA 15206  
lazarpalnick@gmail.com

## TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. FACTUAL BACKGROND.....	3
III. ARGUMENT.....	5
A. The Application Satisfies All The Requirements For Intervention.....	5
1. Applicants Have Legally Enforceable, Particularized Interests In This Case That Will be Affected by a Judgment in this Matter under Rule 2327(4) .....	6
2. Respondents Do Not Adequately Represent Applicants’ Interests.....	10
3. No Party Will Suffer Cognizable Prejudice From Applicants’ Intervention.....	11
IV. CONCLUSION.....	11

RETRIEVED FROM DEMOCRACYDECKET.COM

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Human Servs.</i> , 225 A.3d 902 (Pa. Commw. Ct. 1999) .....	6
<i>Benjamin ex rel. Yock v. Dep’t of Pub. Welfare</i> , 701 F.3d 938 (3d Cir. 2012) .....	11
<i>D. G.A. v. Dep’t of Human Servs.</i> , 2020 WL 283885 (Pa. Commw. Ct. Jan. 21, 2020) .....	11
<i>Fraenzel v. Secretary of the Commonwealth</i> , 478 A.2d 903 (Pa. Commw. Ct. 1984) .....	9
<i>In re Allegheny County Provisional Ballots in the 2020 Gen. Elections</i> , 241 A.3d 695, 2020 WL 6867946 (Pa. Commw. Ct. Nov. 20, 2020) .....	8
<i>In re Canvassing Observation</i> , 241 A.3d 339 (Pa. 2020) .....	8
<i>In re: Canvas of Absentee &amp; Mail-In Ballots of November 3, 2020 Gen. Election</i> , 241 A.3d 1058 (Pa. 2020) .....	8
<i>Issa v. Newsom</i> , No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351 (E.D. Cal. June 10, 2020)...	8, 10
<i>Keener v. Zoning H’rg Bd. of Millcreek Twp.</i> , 714 A.2d 1120 (Pa. Commw. Ct. 1998) .....	9
<i>Kleissler v. U.S. Forest Serv.</i> , 157 F.3d 964 (3d Cir. 1998) .....	11
<i>Larock v. Sugarloaf Twp. Zoning Hr’g Bd.</i> , 740 A.2d 308 (Pa. Commw. Ct. 1999) .....	6, 11
<i>McLinko v. Commonwealth, et al.</i> , 244 MD 2021 and <i>Bonner v. Chapman</i> , 364 MD 2022 .....	2
<i>McLinko v. Commonwealth, et al.</i> , 279 A.3, d __, 2022 WL 3039295 (Pa. Aug. 2, 2022) .....	4
<i>Memphis A. Philip Randolph Inst. v. Hargett</i> , 2 F.4th 548 (6th Cir. 2021) .....	9
<i>Sierra Club v. Morton</i> , 405 U.S. 727 (1972) .....	9
<b>Statutes</b>	
25 Pa. C.S. § 3150.11(a) .....	4

52 U.S.C. § 30101 .....3

Rules

Pa. R.A.P. 106 .....5  
Pa. R.C.P. 2327(4) .....5, 6  
Pa. R.C.P. 2329(2) .....5  
Pennsylvania Rule of Appellate Procedure 1531(b).....5  
Pennsylvania Rule of Civil Procedure 2327 .....5  
Rule 2329 ..... 5, 6, 10

Orders

*Donald J. Trump for President, Inc. v. Boockvar*,  
No. 2:20-cv-00966, ECF 309 (W.D. Pa. Aug. 3, 2020).....8  
*Donald J. Trump for President, Inc. v. Boockvar*,  
No. 4:20-cv-02078, ECF No. 72 (M.D. Pa. Nov. 12, 2020).....8  
*Libertarian Party of Pa. v. Boockvar*,  
No. 5:20-cv-2299, ECF 49 (E.D. Pa. July 8, 2020).....8  
Oral Order, *Donald J. Trump for President, Inc. v. Bucks Cty. Bd. of Elections*,  
No. 2020-05786 (Pa. Com. Pl. Nov. 17, 2020).....8  
Oral Order, *Donald J. Trump for President, Inc. v. Montgomery Cty. Bd. of  
Elections*,  
No. 2020-18680 (Pa. Com. Pl. Nov. 10, 2020).....8  
Oral Order, *Donald J. Trump for President, Inc. v. Philadelphia Cty. Bd. of  
Elections*,  
Nos. 201100874, 201100875, 201100876, 201100877, & 201100878 (Pa. Com.  
Pl. Nov. 13, 2020).....8

Proposed Intervenors-Respondents, the Democratic National Committee (“DNC”) and the Pennsylvania Democratic Party (“PDP”) (collectively “Applicants”), submit this brief in support of their Application to Intervene in this matter.

## I. INTRODUCTION

Petitioners in this litigation target mail-in and absentee voters, the majority of whom are Democrats. They seek declaratory and injunctive relief preventing county Boards of Elections from implementing procedures to notify qualified electors of potential defects in their mail-in ballots and provide these voters an opportunity to address such defects *before* 8 p.m. on Election Day, despite the fact that no prohibition on such processes exists under Pennsylvania law. Applicants should be allowed to intervene because a judgment granting Petitioners’ proposed relief would significantly affect the DNC and the PDP’s particularized interests and would injure them in a manner separate and distinct from the harm it would impose on Respondents.

Specifically, the relief Petitioners seek would disproportionately impede the ability of many of Applicants’ members and supporters to exercise their fundamental right to vote. Prohibiting counties from allowing voters to correct minor ballot defects despite the absence of any a directive from the legislature would likely create confusion amongst Applicants’ members and supporters, who have embraced mail-in voting in substantial numbers. It would also impair the electoral prospects of Applicants’

candidates by creating a disproportional burden on Democratic voters, nullifying the significant time, money, and effort that Applicants have invested in encouraging their voters to vote by mail.

Applicants here have interests distinct from those of Respondents, who have an interest in enforcing the Commonwealth's laws. Applicants have an additional interest in ensuring that as many of their members as possible are able to vote—in their primaries, to ensure that their nominees are supported by the broadest swath of their voters, and in general elections, to obtain the most votes. That interest would be acutely harmed by a declaratory judgment that would disproportionately burdening Democratic voters. In addition, the DNC and PDP have made considerable investments to inform Pennsylvania Democrats of the opportunity to vote by mail and to encourage them to do so in the upcoming General Election and elections in the future, without any expectation that county Boards of Election could be prohibited from allowing voters to correct minor errors with mail-in ballots. Only Applicants are able to fully protect these (and their other) interests in this litigation. In many cases during the 2020 election cycle, federal and state courts in Pennsylvania permitted Applicants to intervene in election-related cases. This Court recognized the appropriateness of intervention when it recently allowed Applicants to intervene in *McLinko v. Commonwealth, et al.*, 244 MD 2021 and *Bonner v. Chapman*, 364 MD 2022. Intervention should also be allowed here.

## II. FACTUAL BACKGROUND

The DNC is a national committee (as that term is defined in 52 U.S.C. § 30101) dedicated to electing local, state, and national candidates of the Democratic party to public office throughout the United States. *See* Declaration of Corey Pellington, Ex. A (hereinafter “Pellington Decl.”) ¶7. The PDP is the DNC’s coordinate party within the Commonwealth and is the largest political party by registration in Pennsylvania. *Id.* Registration information from earlier this year indicates that 3,571,594 registered voters in Pennsylvania are members of the PDP. *See Voting & Election Statistics, PENNSYLVANIA DEP’T OF STATE.*<sup>1</sup> The PDP is created by statute. *See* 25 Pa. Stat. §§ 2834 *et seq.* The PDP’s membership in Pennsylvania includes individuals qualified to vote in the Commonwealth, as well as past, present, and prospective candidates for offices throughout Pennsylvania.

The PDP nominates candidates for office in federal, state, and local elections. It does so through state-run primaries held under the same voting rules that govern Pennsylvania’s general elections. The winners of the Democratic primary go on to run in general elections. Both the DNC’s and PDP’s platforms pledge to protect all citizens’ right to vote and to pursue opportunities to expand access to the franchise, including by increasing the availability of options like mail-in voting that reduce the hurdles faced by voters who—whether for work, health, or other reasons—find it difficult to cast a ballot

---

<sup>1</sup> *See* <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Pages/VotingElectionStatistics.aspx>.

in person. Pellington Decl. ¶15. In service of these goals, the DNC and PDP have invested significant resources to encourage as many voters as possible to participate in every Democratic primary and general election in Pennsylvania. *Id.* ¶¶19-27.

Act 77 was signed into law on October 31, 2019, with bipartisan supermajority support in each house of the General Assembly. *McLinko v. Commonwealth, et al.*, 279 A.3d \_\_\_, 2022 WL 3039295, at \*1 (Pa. Aug. 2, 2022). It provides for “state-wide, universal mail-in voting.” *Id.* In particular, the Act provides that “[a] qualified mail-in elector shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article.” 25 Pa. C.S. § 3150.11(a). (The term “qualified mail-in elector” has the same meaning as “qualified elector,” *id.* § 3150.11(b), which is “any person who shall possess all of the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth,” *id.* § 2602(t).) In the wake of Act 77’s enactment, PDP members have embraced voting by mail, signing up to receive mail ballots in the 2020, 2021, and 2022 elections. Pellington Decl. ¶¶15-18. In addition, the DNC and PDP have expended significant resources to encourage their supporters and constituents to vote by mail. *Id.* ¶¶19-27. Because mail voting correlates with greater participation, Applicants have encouraged members to use the opportunity to vote by mail. *See id.* All these efforts have succeeded: 2020 election turnout in the Commonwealth was the



highest in decades, with more than 2.6 million voters casting a ballot by mail. *Id.* ¶17. Democrats cast the majority of mail-in votes. *Id.*

### III. ARGUMENT

#### A. The Application Satisfies All The Requirements For Intervention.

Pennsylvania Rule of Appellate Procedure 1531(b) governs applications to intervene in original-jurisdiction matters before this Court. Rule 1531(b) provides that intervention may be sought “by filing an application for leave to intervene ... contain[ing] a concise statement of the interest of the applicant and the grounds upon which intervention is sought.” Because the rule provides no specific standards for determining when intervention is appropriate, courts look to the intervention standard under the Pennsylvania Rules of Civil Procedure. *See* Pa. R.A.P. 106.

Pennsylvania Rule of Civil Procedure 2327 lists four categories of persons or entities that may intervene “[a]t any time during the pendency of an action,” including any person or entity that has “any legally enforceable interest” that may be affected by a judgment in that action. Pa. R.C.P. 2327(4). And Rule 2329 provides grounds for denying intervention even if an applicant falls within one of those four categories, including that the applicant’s interests are “already adequately represented.” Pa. R.C.P. 2329(2). “Considering Rules 2327 and 2329 together, the effect of Rule 2329 is that if the petitioner is a person within one of the classes described in Rule 2327, the allowance of intervention is mandatory, not

discretionary, unless one of the grounds for refusal under Rule 2329 is present.” *Larock v. Sugarloaf Twp. Zoning Hr’g Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999). But even if a ground for refusal under Rule 2329 is present, this Court still has the discretion to permit intervention. *See Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Human Servs.*, 225 A.3d 902, 908 (Pa. Commw. Ct. 1999) (citing *Larock*, 740 A.2d at 313).

**1. Applicants Have Legally Enforceable, Particularized Interests In This Case That Will be Affected by a Judgment in this Matter under Rule 2327(4).**

Rule 2327(4) indicates that intervention is proper when sought by a person or entity that has “any legally enforceable interest” that may be affected by a judgment in the action, regardless of whether that person or entity is bound by that judgment. Pa. R. C. P. 2327(4). As explained in the Application (at 5-9), Applicants have qualifying interests that would be affected by a judgment in this litigation.

As political parties, and as representatives of their members, the DNC and PDP have an institutional interest in safeguarding the right to vote, including by making voting accessible to as many qualified Pennsylvanians as possible so that as many of Applicants’ members as possible can participate in elections. Applicants thus have an interest in ensuring that Democratic voters do not face additional hurdles in casting their ballots, and that no voters are disenfranchised on account of minor errors with their mail-in or absentee ballots.

The DNC and PDP also have an interest in bolstering the electoral prospects of Democratic candidates up and down the ballot. Defending against the imposition of an extra-textual prohibition on curing minor ballot defects serves that interest, as many Democrats running for office in the Commonwealth have received and will continue to receive votes cast by mail. Petitioners' lawsuit thus threatens to reduce the number of votes cast in favor of Democratic candidates in future elections—not based on the candidates' substantive positions but in service of Petitioners' notion that not all voters, but rather mail-in voters alone, should not be able to correct minor errors with their ballots.

The DNC and PDP also have an economic interest in opposing Petitioners' proposed relief, having expended considerable resources developing programs to encouraging Democratic voters to sign up to receive a mail ballot in every election. Pellington Decl. ¶¶19-24. For example, the PDP has reoriented its get-out-the-vote and voter-protection programs to focus more heavily on Pennsylvanians who wish to vote by mail. *Id.* at ¶23. If Petitioners' requested relief is granted, Applicants' voters will run a greater risk of being disenfranchised.

Under similar circumstances, courts in Pennsylvania and around the country have granted intervention to political parties, particularly where the effect of a lawsuit would be to impose restrictions on voting access in ways that undermine the ability of one party's voters to vote, harm the electoral prospects of the party's candidates, or both. In

the 2020 election cycle alone, the national and state Democratic parties were permitted to intervene as a matter of course in at least half a dozen cases involving the Pennsylvania Election Code.<sup>2</sup> As one court explained, political parties’ interests in “(1) asserting the rights of their members to vote safely ... (2) advancing their overall electoral prospects; and (3) diverting their limited resources to educate their members on the election procedures ... are routinely found to constitute significant protectable interests” for purposes of intervention. *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at \*3 (E.D. Cal. June 10, 2020); *see also* Appl. at 7-8 (collecting similar cases).

The PDP has three and a half million members, a significant portion of whom request a mail ballot in every election in which they are eligible to do so; and the PDP has a direct interest in ensuring that each and every one of those members’ votes is counted so that the PDP’s candidates win elections. This is an interest quite distinct

---

<sup>2</sup> *See In re Canvassing Observation*, 241 A.3d 339 (Pa. 2020); *In re: Canvas of Absentee & Mail-In Ballots of November 3, 2020 Gen. Election*, 241 A.3d 1058 (Pa. 2020); *In re Allegheny County Provisional Ballots in the 2020 Gen. Elections*, 241 A.3d 695, 2020 WL 6867946 at \*1 (Pa. Commw. Ct. Nov. 20, 2020); *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-cv-02078, ECF No. 72 (M.D. Pa. Nov. 12, 2020); Oral Order, *Donald J. Trump for President, Inc. v. Montgomery Cty. Bd. of Elections*, No. 2020-18680 (Pa. Com. Pl. Nov. 10, 2020); Oral Order, *Donald J. Trump for President, Inc. v. Philadelphia Cty. Bd. of Elections*, Nos. 201100874, 201100875, 201100876, 201100877, & 201100878 (Pa. Com. Pl. Nov. 13, 2020); Oral Order, *Donald J. Trump for President, Inc. v. Bucks Cty. Bd. of Elections*, No. 2020-05786 (Pa. Com. Pl. Nov. 17, 2020); *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-cv-00966, ECF 309 (W.D. Pa. Aug. 3, 2020); *Libertarian Party of Pa. v. Boockvar*, No. 5:20-cv-2299, ECF 49 (E.D. Pa. July 8, 2020).

from that of the general public. Unlike the general public, the PDP nominates candidates by means of state-administered primaries in which only Democratic voters may participate. *See* 25 Pa. Stat. §§ 2862 *et seq.* Applicants’ interest in the administration of those primaries in a manner that allows for the greatest participation possible is distinct from the interest of the general public, which participates in those primaries only to the extent they are Democratic voters. Applicants’ interests are therefore distinct—and go well beyond a generalized interest “in having election laws properly applied,” *Fraenzel v. Secretary of the Commonwealth*, 478 A.2d 903, 904 (Pa. Commw. Ct. 1984).

Applicants’ interests are concrete, personal, and particularized: the Applicants’ interest in preserving the ability of Pennsylvania Democrats’ to cast a mail-in ballot that is counted—which, as explained, translates into substantially increased voter participation—is an interest courts routinely recognize as both cognizable and significant. *See, e.g., Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 556 (6th Cir. 2021). Further, Applicants do not have to demonstrate that their interests are unique. *See Sierra Club v. Morton*, 405 U.S. 727, 734 (1972) (“[T]he fact that ... interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process.”). It is therefore not part of the intervention standard. *See Keener v. Zoning H’rg Bd. of Millcreek Twp.*, 714 A.2d 1120, 1123 (Pa. Commw. Ct. 1998) (“The right to intervention should be accorded to

anyone having an interest of his own which *no other party on the record* is interested in protecting.” (emphasis added)).

For these reasons, Applicants have demonstrated that they have interests that would be affected by a judgment granting Petitioners’ requested relief and should be permitted to intervene on that basis.

## **2. Respondents Do Not Adequately Represent Applicants’ Interests.**

Under Rule 2329, courts may deny intervention when a proposed intervenor’s interests are already adequately represented in the litigation. As the DNC and PDP explained in their Application (at 9-10), no other party to the litigation adequately represents their interests. Other courts have recognized this in similar circumstances. As one court has explained, state officials’ interest in defending a challenged law “turn[s] on their inherent authority as state executives and their responsibility to properly administer election laws.” By contrast, the Democratic Party is “concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming ... election, advancing [its] overall electoral prospects, and allocating [its] limited resources to inform voters about the election procedures.” *Issa*, 2020 WL 3074351 at \*3. In other words, Respondents’ sovereign interests in defending the legality of enacted laws and advocating for the General Assembly’s authority are substantially different from Applicants’ political, ideological, economic, and

representative interests. As the Third Circuit has noted, “when the proposed intervenors’ concern is not a matter of ‘sovereign interest,’ there is no reason to think the government will represent it[.]” *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (quotation marks omitted).

The mere fact that two entities want the same *outcome* in a lawsuit does not mean they have identical *interests*. This is amply demonstrated by the fact that Pennsylvania courts grant intervention (and reverse denials of intervention) where, as here, intervenors are aligned with the government’s litigation position but possess unique and personal interests not adequately addressed by government respondents. *See D. G.A. v. Dep’t of Human Servs.*, 2020 WL 283885, at \*7 (Pa. Commw. Ct. Jan. 21, 2020) (citing *Benjamin ex rel. Yock v. Dep’t of Pub. Welfare*, 701 F.3d 938, 958 (3d Cir. 2012)); *Larock*, 740 A.2d at 314.

### **3. No Party Will Suffer Cognizable Prejudice From Applicants’ Intervention**

Granting intervention will not prejudice any party. Applicants are prepared to submit the attached Proposed Preliminary Objections. Further, Applicants reserve the right to file a brief in support of their Preliminary Objections and commit to comply with whatever briefing schedule the Court sets.

## **IV. CONCLUSION**

This Court should grant the DNC’s and PDP’s application to intervene and docket its proposed Preliminary Objections.

DENTONS COHEN & GRIGSBY P.C.

By: Clifford B. Levine  
Clifford B. Levine  
Pa. I.D. No. 33507  
Emma F.E. Shoucair  
PA I.D. No. 325848  
625 Liberty Avenue, 5th Floor  
Pittsburgh, PA 15222-3152  
(412) 297-4900  
clifford.levine@dentons.com  
emma.shoucair@dentons.com

GREENBERG TRAUERIG, LLP

By: /s/ Kevin Greenberg  
Kevin Greenberg  
PA I.D. 082311  
Adam Roseman  
PA I.D. No. 313809  
1717 Arch Street, Suite 400  
Philadelphia, PA 19103  
(215) 988-7800  
greenbergk@gtlaw.com  
rosemana@gtlaw.com

By: /s/ Lazar M. Palnick  
PA I.D. No. 52762  
1216 Heberton Street  
Pittsburgh, PA 15206  
(412) 661-3633  
lazarpalnick@gmail.com

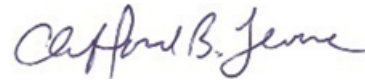
Dated: September 9, 2022

*Counsel for the Democratic National  
Committee and Pennsylvania Democratic  
Party*



## CERTIFICATE OF COMPLIANCE

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 require filing confidential information and documents differently than non-confidential information and documents.



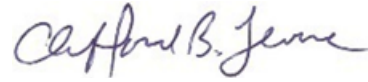
---

CLIFFORD B. LEVINE

RETRIEVED FROM DEMOCRACYDOCKET.COM

## CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served upon all counsel of record on September 9, 2022 by this Court's electronic filing system.



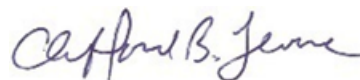
---

CLIFFORD B. LEVINE

RETRIEVED FROM DEMOCRACYDOCKET.COM

## CERTIFICATE OF LENGTH

Pursuant to Pennsylvania Rule of Appellate Procedure 2135(a), I hereby certify that this brief has a word count of 2,686, as counted by Microsoft Word's word count tool.



---

Clifford B. Levine

RETRIEVED FROM DEMOCRACYDOCKET.COM