

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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Nos. 310, 322 & 323 MD 2021 (CASES CONSOLIDATED)

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SENATOR JAY COSTA, ET AL.,  
*Petitioners,*

v.

SENATOR JACOB CORMAN III, ET AL.,  
*Respondents.*

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COMMONWEALTH OF PENNSYLVANIA, ET AL.,  
*Petitioners,*

v.

SENATOR CRIS DUSH, ET AL.,  
*Respondents.*

\*\*\*

ARTHUR HAYWOOD, ET AL.,  
*Petitioners,*

v.

VERONICA DEGRAFFENREID,  
*Respondent.*

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**MEMORANDUM OF LAW IN OPPOSITION TO APPLICATION  
FOR LEAVE TO INTERVENE  
BY RESPONDENTS SENATOR JAKE CORMAN, SENATOR  
CRIS DUSH, AND INTERGOVERNMENTAL OPERATIONS  
COMMITTEE**

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Matthew H. Haverstick (No. 85072)

Joshua J. Voss (No. 306853)

Shohin H. Vance (No. 323551)

Samantha G. Zimmer (No. 325650)

James G. Gorman III (No. 328376)

KLEINBARD LLC

Three Logan Square

1717 Arch Street, 5th Floor

Philadelphia, PA 19103

Ph: (215) 568-2000 | Fax: (215) 568-0140

*Attorneys for Senator Jake Corman, Senator Cris Dush, and the Intergovernmental  
Operations Committee*

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Respondents Senator Jake Corman, Senator Cris Dush, and the Intergovernmental Operations Committee (collectively, the “Committee”) hereby submit this Memorandum of Law in opposition to the Application for Leave to Intervene filed by Roberta Winters, Nichita Sandru, Kathy Foster-Sandru, Robin Roberts, Kierstyn Zolfo, Michael Zolfo, Phyllis Hilley, Ben Bowens, the League of Women Voters of Pennsylvania, Common Cause Pennsylvania, and Make the Road Pennsylvania’s (collectively, the “Applicants”). The Application should be denied, in chief part, under Pennsylvania Rule of Civil Procedure 2329 because the Applicants’ interests are already fully represented in this consolidated matter.

## **I. BACKGROUND**

On September 15, 2021, the Pennsylvania Senate, through the Committee, issued a Senate subpoena (the “Subpoena”) to Acting Pennsylvania Secretary of State Veronica DeGraffenreid. The Subpoena seeks various information relevant to an analysis of the Commonwealth’s election laws.

In the weeks that followed, three Commonwealth Court actions were filed by various individuals and entities seeking, *inter alia*, a

declaratory judgment that the voter information sought by the Subpoena is protected from disclosure.

On September 17, 2021, the first action was filed, *Costa v Corman*, No. 310 MD 2021 (Pa. Cmwlth.), by various State Senators. At least some of the *Costa* Petitioners are purporting to pursue relief in their capacity as individual voters. *See Costa* PFR ¶¶ 3-6; *see also Costa* PFR, Introduction at page 4. On September 23, 2021, the second action was filed, *Commonwealth v. Dush*, 322 MD 2021 (Pa. Cmwlth.), by the Acting Secretary, the Department, and the Commonwealth of Pennsylvania. Notably, in the *Dush* Petition for Review, the Commonwealth claims a “quasi-sovereign interest” on behalf of all voters in Pennsylvania. *See Dush* PFR ¶¶ 2, 189. On September 27, 2021, the third action was filed, *Haywood v. DeGraffenreid*, No. 323 MD 2021 (Pa. Cmwlth.). The *Haywood* Petitioners seek relief in their capacity as individual voters. *See Haywood* PFR ¶¶ 7-8.

As noted above, although recast in several different ways, the overarching relief sought by each of the three sets of Petitioners is the same: (1) a declaration that the Subpoena is invalid, unenforceable, and violative of the privacy rights of all Pennsylvania voters; and (2) an

injunction from further action to enforce the Subpoena. In recognition of this overlap, on October 4, 2021, the *Costa* matter, the *Dush* matter, and the *Haywood* matter were consolidated by this Court.

Subsequently, the parties jointly submitted an expedited proposed summary relief briefing schedule to the Court.

Also, on October 4, 2021, more than two weeks after the *Costa* matter was filed, the Applicants filed the present Application asserting nearly identical causes of action as the consolidated *Haywood*, *Costa*, and *Dush* matters. Specifically, like the Petitioners already before the Court, the Applicants' proposed Petition for Review seeks declaratory and injunctive relief forestalling compliance with the Subpoena and precluding its enforcement, asserting violation of Pennsylvania voters' right to privacy. *See* Applicants' PFR ¶¶ 133-138 (Count I); *see also* Applicants' PFR, WHEREFORE Clause.

## II. ARGUMENT

The Application should be denied because even assuming the Applicants fall within Rule of Civil Procedure 2327, denial is warranted under Rule 2329.

Pennsylvania Rule of Civil Procedure 2327 provides, in relevant part, that a non-party qualifies for intervention if the proposed intervenor could have joined or been joined in the matter or has “any legally enforceable interest” that may be affected by the determination of the pending action. Pa.R.C.P. 2327 (3), (4).<sup>1</sup> If the proposed intervenor has established the foregoing, then intervention may be refused if:

- (1) the claim or defense of the [proposed intervenor] is not in subordination to and in recognition of the propriety of the action; or
- (2) the interest of the [proposed intervenor] is already adequately represented; or
- (3) 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.Civ.P. 2329.

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<sup>1</sup> For purposes of this answer, the Committee will assume that Applicants meet one of the qualification categories for intervention under Rule 2327.

The Court should deny the Application under Rule 2329 because any purported interest by the Applicants in this action is adequately represented by the existing parties, *see* Pa.R.Civ.P. 2329(2), and permitting intervention “will unduly delay . . . the adjudication of the rights of the parties.” Pa.R.Civ.P. 2329(3).

To illustrate, the Applicants claim that their interest in combatting the Subpoena is to “assert their interests, and the interests of their members and constituents, in this constitutionally-protected information [voter information], and to prevent the disclosure of such information.” *See* Application at ¶ 5; *see also* Applicants PFR ¶¶ 133-138. These purported individual voter privacy rights, however, are already before the Court. First, in the *Costa* and *Haywood* matters, various individual voters assert similar claims directed to these same purported voter privacy rights. *See Costa* PFR, Introduction (alleging “serious consequences to the privacy rights and expectations of Pennsylvania voters”); ¶ 94 (alleging the General Assembly is not entitled to “private voter information from the SURE system”); ¶¶ 95-110 (Count III), Prayer for Relief at ¶¶ (d), (f); *Haywood* PFR ¶¶ 26-55, Prayer for Relief at ¶¶ (a)-(c) (mirroring Count III of the



*Costa* PFR). Petitioners in the *Dush* matter have also asserted identical claims to the Applicants, seeking to vindicate the same purported rights on behalf of *every voter* in Pennsylvania, which necessarily includes Applicants. *See Dush* PFR ¶ 189, Prayer for Relief at ¶ (B)(i). Indeed, the requested relief in the *Costa*, *Haywood*, and *Dush* matters is nearly identical to the one in the Applicants’ proposed Petition for Review. *Compare Costa* PFR at Prayer for Relief; *Haywood* PFR at Prayer for Relief; *Dush* PFR at Prayer for Relief, with Applicants’ PFR at WHEREFORE clause. In short, each set of Petitioners already before this Court seek the exact same relief predicated—at least in part—on the voter privacy interests alleged by the Applicants. Accordingly, Applicants and their interests are already fully represented.<sup>2</sup>

Next, given that all parties have expressed their interest in expeditious resolution of the claims presented in the consolidated actions, the inevitable delay that will result from permitting Applicants

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<sup>2</sup> To the extent the Applicants claim their interests are not adequately represented in this action because none of the parties have made the exact arguments the Applicants proffer, that claim fails. *See Cherry Valley Assocs. v. Stroud Twp. Bd. of Supervisors*, 530 A.2d 1039, 1041 (Pa. Cmwlth. 1987) (interests of residents and landowners were adequately represented by township board of supervisors; therefore, residents and landowners were not entitled to intervene in consolidated appeals from board’s denial of developer’s applications).

to intervene will prejudice the rights of the parties. *See* Pa.R.Civ.P. 2329(3). In this regard, it bears noting that in addition to the putative intervenor's diligence, the rule also requires an examination of the potential impact on the litigation from intervention. Accordingly, regardless of whether the present Application was filed with reasonable speed, the delay that would result from permitting them to intervene will prejudice the rights of the parties already in this action. Thus, Applicants' request should be denied for this additional reason.

### **III. CONCLUSION**

For the foregoing reasons, the Committee respectfully requests that this Court enter an order denying the Application.

Respectfully submitted,

Dated: October 20, 2021

s/ Matthew H. Haverstick  
Matthew H. Haverstick (No. 85072)  
Joshua J. Voss (No. 306853)  
Shohin H. Vance (No. 323551)  
Samantha G. Zimmer (No. 325650)  
James G. Gorman III (No. 328376)  
KLEINBARD LLC  
Three Logan Square  
1717 Arch Street, 5th Floor  
Philadelphia, PA 19103  
Ph: (215) 568-2000  
Fax: (215) 568-0140  
Eml: [mhaverstick@kleinbard.com](mailto:mhaverstick@kleinbard.com)  
[jvoss@kleinbard.com](mailto:jvoss@kleinbard.com)  
[svance@kleinbard.com](mailto:svance@kleinbard.com)  
[szimmer@kleinbard.com](mailto:szimmer@kleinbard.com)  
[jgorman@kleinbard.com](mailto:jgorman@kleinbard.com)

*Attorneys for Senator Jake Corman,  
Senator Cris Dush, and the  
Intergovernmental Operations  
Committee*

## WORD COUNT CERTIFICATION

I hereby certify that the above brief complies with the word count limits of Pa.R.A.P. 2135(a)(1). Based on the word count feature of the word processing system used to prepare this brief, this document contains 6748 words, exclusive of the cover page, tables, and the signature block.

Dated: October 20, 2021

s/ Matthew H. Haverstick  
Matthew H. Haverstick (No. 85072)  
KLEINBARD LLC  
Three Logan Square  
1717 Arch Street, 5th Floor  
Philadelphia, PA 19103  
Ph: (215) 568-2000  
Fax: (215) 568-0140  
Eml: [mhaverstick@kleinbard.com](mailto:mhaverstick@kleinbard.com)

*Attorneys for Senator Jake Corman,  
Senator Cris Dush, and the  
Intergovernmental Operations  
Committee*