

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<i>In re</i> MAY 17, 2022 GENERAL PRIMARY FOR THE REPUBLICAN NOMINEE FOR THE OFFICE OF THE UNITED STATES SENATE	No. 301 MD 2022
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APPLICATION FOR LEAVE TO INTERVENE

Proposed Intervenor-Respondents Doctor Oz for Senate and Dr. Mehmet Oz, (collectively, the “Proposed Intervenor-Respondents”), by and through undersigned counsel, respectfully submit the following Application for Leave to Intervene as Respondents in the original jurisdiction matter under Pennsylvania Rules of Appellate Procedure 106, 123, and 1531(b) and Pennsylvania Rules of Civil Procedure 2326 through 2329, and aver the following in support thereof:

PRELIMINARY STATEMENT

Doctor Oz for Senate and Dr. Mehmet Oz support and seek to uphold free and fair elections for all Pennsylvanians and the laws that guarantee the integrity of those elections. Doctor Oz for Senate is the principal campaign committee for Dr. Oz, who is currently leading the May 17, 2022, primary election to serve as the Republican candidate to represent Pennsylvania in the United States Senate.

The Petitioners have each filed a boilerplate verification that merely parrots the language of 25 P.S. §§ 3261(a) and 3262(a), seeking a recount and recanvass due to unspecified instances of fraud or error committed in the computation of the votes,

the marking of the ballots, or otherwise in connection with such ballots. Section 3261 does not require petitioners to specify any particular act of fraud or error or to offer evidence to substantiate the allegations of their petition, and indeed, Petitioners have not done so. Petitioners have, however, failed to file the security required under 25 P.S. § 3261(b). Petitioners also failed to identify why these particular election districts were selected, despite the counting and canvassing of the votes from those districts being conducted at the county level (which includes a significant number of unchallenged election districts). Petitioners request—without any basis under the Election Code—that the ballots in the election districts at issue be counted by hand.

On Tuesday, May 31, forty-seven registered Republican electors (the “Petitioners”) filed a Petition for Review in the Commonwealth Court pursuant to its original jurisdiction. The following day, on June 1, the Petitioners filed an Amended Petition for Review, amending the election districts in which they are seeking recounts. Also on June 1, the Court entered an order setting a deadline of June 3, 2022 for the Respondent County Boards of Elections to file Answers as well as for Dr. Oz and any other proposed intervenors to file applications for leave to intervene.

Doctor Oz for Senate and Dr. Oz have made significant investments in connection with this primary election and Dr. Oz is leading in the current vote count. The Proposed Intervenor-Respondents thus have a substantial and particularized

interest in defending this action. No other party to this action represents these private interests, and therefore this timely application for intervention should be granted. The Proposed Intervenor-Respondents respectfully request that the Court grant their application to intervene as Respondents, and to permit them to file of record the Answer to Petitioners' Application attached hereto.

I. BACKGROUND

A. The Proposed Intervenor-Respondents

1. Doctor Oz for Senate (the "Oz Campaign") is the principal campaign committee for Dr. Mehmet Oz, who is currently leading in the May 17, 2022, primary election to serve as the Republican candidate to represent Pennsylvania in the United States Senate. The Oz Campaign seeks to intervene on its own behalf and on behalf of its candidate, Dr. Mehmet Oz. Dr. Oz is a "candidate" as that term is defined in Election Code Section 102(a), 25 P.S. § 2602(a). *See Rowland v. Smith*, 83 Pa. D. & C. 99, 101–02 (Pa. Ct. Com. Pl. Dauphin 1952) ("candidate" under the Election Code includes one who is a candidate for nomination for President of the United States).

2. Dr. Mehmet Oz is a candidate—and current frontrunner—in the Republican primary election, and a Pennsylvania voter. On information and belief, some of ballots which Petitioners seek to be recounted contain votes for Dr. Oz and some for his opponent, Petitioner McCormick. Dr. Oz accordingly has standing in

this action, *see In re Gen. Election-1985*, 531 A.2d 836, 838 (Pa. Commw. 1987), as does his campaign committee, which shares his interest in gaining election. *Id.*; *see also McLinko v. Commonwealth*, 270 A.3d 1278, 1282 (Pa. Commw. 2022) (“In sum, a candidate has an interest beyond the interest of other citizens and voters in election matters.”).

B. Procedural history

3. On Tuesday, May 31, forty-seven (47) registered Republican electors (the “Petitioners”) filed a Petition for Review in the Commonwealth Court pursuant to its original jurisdiction, seeking a hand recount of ballots cast in 150 election districts in 12 counties.

4. The following day, on June 1, the Petitioners filed an Amended Petition for Review, amending the election districts in which they are seeking recounts.

5. Also on June 1, the Court entered an order setting a deadline of June 3, 2022 for the Respondent County Boards of Elections to file Answers as well as for Dr. Oz and any other proposed intervenors to file applications for leave to intervene.

6. This case is still in its infancy. As of the filing of this Application for Leave to Intervene, the only pleadings that have been filed in this proceeding are the Petitioners’ Petition for Review, Amended Petition for Review, and Petitioners’ Application for Reconsideration (requesting the Court to adjust the date of the

hearing and the related filing deadlines). To date, not all Respondents have entered their appearance in this action.

II. THE GOVERNING INTERVENTION STANDARD

7. “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.” *Keener v. Zoning Hearing Bd. Of Millcreek Twp.*, 714 A.2d 1120, 1123 (Pa. Commw. 1998) (citing *Bily v. Bd. of Property Assessment, Appeals and Review of Allegheny Cty.*, 44 A.2d 250 (Pa. 1945)).

8. A nonparty may file an application for leave to intervene in an original jurisdiction petition for review. Pa.R.A.P. 1531(b).

9. The standards for intervention under Pennsylvania Rules of Civil Procedure 2326 to 2329 apply to an original jurisdiction petition for review because Pennsylvania Rule of Appellate Procedure 106 (“Original Jurisdiction Matters”) applies the “general rules” for practice in the courts of common pleas—namely, the Rules of Civil Procedure—“so far as they may be applied.”

10. Moreover, Pennsylvania law affords a party an absolute right to intervene in an action if the party can satisfy any one of the categories specified in Pa. R. Civ. P. 2327. Pa. R. Civ. P. 2329; *see also Larock v. Sugarloaf Township Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999).

11. Proposed Intervenor-Respondents seek to intervene under Pennsylvania Rule of Civil Procedure 2327(3) and (4), which provide in pertinent part:

At any time during the pendency of an action, a person not a party thereto *shall be permitted to intervene therein*, subject to these rules *if*

(3) such person could have joined as an original party in the action or could have been joined therein; or

(4) *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. No. 2327(3), (4) (emphasis added); *see also Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs.*, No. 26 M.D. 2019, 2020 Pa. Commw. LEXIS 104, 2020 WL 424866, at *5 (Pa. Commw. Ct. Jan. 28, 2020) (“Pennsylvania Rule of Civil Procedure No. 2327(4) . . . permits intervention where the determination ‘*may affect any legally enforceable interest*’ of a proposed intervenor.” (quoting Pa. R.C.P. No. 2327(4) and emphasis in original)).

12. The Court should grant the application to intervene because the Court’s determination of this action may affect the Proposed Intervenor-Respondents’ legally enforceable interests, no exception applies under Rule 2329, and the Proposed Intervenor-Respondents’ participation will aid the Court.

III. BASIS FOR THE INTERVENTION

A. Doctor Oz for Senate and Dr. Oz have a substantial interest in this action.

13. Doctor Oz for Senate and Dr. Oz have a substantial and particularized interest in preserving the state election laws challenged in this action, which were enacted to ensure the structure and integrity of Pennsylvania's elections.

14. There can be no question that Doctor Oz for Senate and Dr. Oz have a direct and significant interest in preserving Dr. Oz's apparent victory in the May 2022 primary election. *See, e.g., Bush v. Gore*, 531 U.S. 98 (2000); *McLinko*, 270 A.3d at 1282.

15. Furthermore, Doctor Oz for Senate and Dr. Oz have a direct and significant interest in the proper enforcement of Pennsylvania's laws governing recounts and recanvasses, as those laws are designed to ensure "the integrity of [the] election process," *Eu v. San Fran. Cty. Democratic Centr. Comm.*, 489 U.S. 214, 231 (1989), and the "orderly administration of elections," *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008) (Op. of Stevens, J.). The relief sought by the Petitioners may alter or impair the current competitive electoral environment in Pennsylvania, in which Doctor Oz for Senate, Dr. Oz, and all other candidates for elected office invested substantial resources. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 n.5, 800 (Pa. 2018).

16. If Petitioners' action succeeds, the orderly administration of Pennsylvania's May 2022 primary election threatens to be upended.

17. Petitioners' requested relief would undercut democratically enacted laws that protect voters and candidates (including the Doctor Oz for Senate and Dr. Oz), *Caba v. Weaknecht*, 64 A.3d 39, 50 (Pa. Commw. 2013) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008)), and would change the "structur[e] of [the] competitive environment" in Pennsylvania's elections and "fundamentally alter the environment in which rival [candidates] defend their concrete interests (e.g., their interest in ... winning [elections])," *Shays v. Fed. Elec. Comm'n*, 414 F.3d 76, 86 (D.C. Cir. 2005).

B. There is no basis to deny the application for intervention.

18. Pennsylvania Rule of Civil Procedure 2329 provides that an application for intervention may be refused if: (1) the petitioner's claim or defense "is not in subordination to and in recognition of the propriety of the action"; (2) the petitioner's interest is already adequately represented; or (3) "the petitioner 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."

19. None of these factors applies to the Proposed Intervenor-Respondents.

20. First, the Proposed Intervenor-Respondents' defense in this action is in subordination to and in recognition of the action's propriety.

21. Second, no existing party adequately represents the Proposed Intervenor-Respondents' particularized interests. *See* Pa.R.C.P. No. 2329(2). The Respondents, the Secretary of the Commonwealth of Pennsylvania and the County Boards of Elections, are political appointees who do not represent any particular candidate's or campaign's interests in this case and, therefore, do represent the unique interests of the Proposed Intervenor-Respondents. The Petitioners have interests directly at odds with the Proposed Intervenor-Respondents, as the Petitioners are seeking relief not provided under the Election Code.

22. Third, the Proposed Intervenor-Respondents have not unduly delayed the submission of their application to intervene in this action, which remains in its infancy. This Application has been filed within the timeframe established by the Court. Thus, the Proposed Intervenor-Respondents' intervention will not cause any undue delay, embarrassment, or prejudice to any party, but their intervention will aid the court in resolving the important legal and factual questions before it.

IV. CONCLUSION

23. For the reasons set forth above, the Proposed Intervenor-Respondents have a clear right to intervene in this case.

24. The Proposed Intervenor-Respondents seek to intervene as Respondents in this action and will assert various defenses to the claims asserted by Petitioners but will not raise claims against Respondents.

25. If granted leave to intervene, the Proposed Intervenor-Respondents intend to file the Answer to the Amended Petition for Review attached as Exhibit A.

WHEREFORE, the Proposed Intervenor-Respondents respectfully request that this Honorable Court enter an Order granting this Application to Intervene in this matter together with any other relief the Court deems appropriate or necessary.

Respectfully submitted,

Dated: June 3, 2022

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**Pro hac vice application forthcoming*

Exhibit A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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**ANSWER AND NEW MATTER TO
AMENDED PETITION FOR RECOUNT AND RECANVASS**

Pursuant to Pennsylvania Rule 1516(b) of the Pennsylvania Rules of Appellate Procedure, Intervenor-Respondents Doctor Oz for Senate and Dr. Mehmet Oz, file this Answer and New Matter to the Amended Petition for Recount and Recanvass, (the “Amended Petition”)¹:

PRELIMINARY STATEMENT

Petitioners have each filed a boilerplate verification that merely parrots the language of 25 P.S. §§ 3261(a) and 3262(a), seeking a recount and recanvass due to unspecified instances of fraud or error committed in the computation of the votes, the marking of the ballots, or otherwise in connection with such ballots. Sections 3261 and 3262 do not require Petitioners to specify any particular act of fraud or error or to offer evidence to substantiate the allegations of their petition, and indeed,

¹ The Amended Petition professes only to “Correct Exhibit 1.” But the Amended Petition also deleted Paragraph 1 of the original Petition for Recount and Recanvass, thereby changing the corresponding paragraph numbers for all paragraphs of the Amended Petition. This Answer adheres to the paragraph numbers contained in the Amended Petition.

Petitioners have not done so. Petitioners have, however, failed to file the security required under 25 P.S. §§ 3261(b) and 3262(a.1). Petitioners also failed to identify why these particular election districts were selected, despite the counting and canvassing of the votes from those districts being conducted at the county level (which includes a significant number of unchallenged election districts). Petitioners request—without any basis under the Election Code—that the ballots in the election districts at issue be counted by hand.

Doctor Oz for Senate and Dr. Mehmet Oz oppose Petitioners’ attempt to needlessly drag out this primary election at taxpayer expense with their general, unsupported claims of “fraud or error.” For the reasons set forth below, the Amended Petition should be denied.

ANSWER

1. Paragraph 1 of the Amended Petition is admitted.
2. Paragraph 2 of the Amended Petition is admitted.
3. Paragraph 3 of the Amended Petition is denied. There were seven candidates on the May 17, 2022 Primary ballot for the United States Senate Republican nominee.
4. Paragraph 4 of the Amended Petition is admitted in part and denied in part. It is admitted that the unofficial results of the election for the Republican nominee for the United States Senate are Dr. Mehmet Oz and David H. McCormick.

The vote totals reflected in the Petition are denied. Per the Pennsylvania Department of State, the unofficial results reflect Dr. Mehmet Oz has 419,515 votes, while Mr. McCormick has 418,590 votes. See <https://www.electionreturns.pa.gov/> (last visited June 3, 2022).

5. Paragraph 5 of the Amended Petition is admitted.

6. Paragraph 6 of the Amended Petition is denied. Section 1404(g)(1)(i) of the Pennsylvania Election Code, 25 P.S. § 3154(g)(1)(i), requires a statewide recount and recanvass for statewide races in which 0.5% or less of the total votes separates the top two candidates. But the Pennsylvania Election Code does not “require” a recounting and recanvassing of the voting machines in certain election districts merely due to the “closeness of the results of the race” or the mere “possibility of human or mechanical error in the counting and tabulation of the votes casted in that race.”

7. After reasonable investigation, Doctor Oz for Senate and Dr. Mehmet Oz lack sufficient knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 7 of the Amended Petition. Doctor Oz for Senate and Dr. Mehmet Oz is not aware of any fraud or error in the computation of votes cast, in the marking of the ballots, in the canvassing of the votes cast on the machines, or otherwise in connection with the ballots or casted votes. Petitioners have failed to: (1) specify any particular act of fraud or error; (2) offer any evidence to substantiate

the boilerplate allegations in the Amended Petition; or (3) identify why these particular election districts were selected, despite the counting and canvassing of the votes from those districts being conducted at the county level (which includes a significant number of unchallenged election districts). Accordingly, to the extent further response is required, this paragraph is denied.

8. Paragraph 8 of the Amended Petition denied. There is no conflict between the sections of the Pennsylvania Election Code identified by Petitioners. The Pennsylvania Election Code requires the deposit of cash or bond to accompany “[e]very petition” for the opening of a ballot box or the recanvassing of votes cast in the voting machines of an election district, which necessarily includes petitions for recounts and recanvasses in cases resulting from a Secretary-ordered recount or recanvass. 25 P.S. §§ 3261(b), 3262(a.1). Petitioners failed to do so, rendering the Amended Petition defective. The fact that the Secretary already ordered a recount under 25 P.S. § 3154(g) does not absolve Petitioners from their obligation to post the required security. After reasonable investigation, Doctor Oz for Senate and Dr. Mehmet Oz lack sufficient knowledge or information sufficient to form a belief as to the truth of the averment that Petitioners are “prepared to file” the required security, and as such, this averment is denied; it is denied that Petitioners’ alleged preparedness to post the required security is immaterial, insofar as the Pennsylvania

Election Code requires such security to accompany the petition for recount and recanvass at the time the latter is filed.

9. Paragraph 9 of the Amended Petition sets forth conclusions of law to which no response is required. To the extent a response is required, this paragraph is denied. The Pennsylvania Election Code requires the deposit of cash or bond to accompany “[e]very petition” for the opening of a ballot box or the recanvassing of votes cast in the voting machines of an election district, which necessarily includes petitions for recounts and recanvasses in cases resulting from a Secretary-ordered recount or recanvass. 25 P.S. §§ 3261(b), 3262(a.1). Petitioners failed to do so, rendering the Amended Petition defective.

10. Paragraph 10 of the Amended Petition sets forth conclusions of law to which no response is required. To the extent a response is required, this paragraph is denied. The Pennsylvania Election Code requires the deposit of cash or bond to accompany “[e]very petition” for the opening of a ballot box or the recanvassing of votes cast in the voting machines of an election district, which necessarily includes petitions for recounts and recanvasses in cases resulting from a Secretary-ordered recount or recanvass. 25 P.S. §§ 3261(b), 3262(a.1). Petitioners failed to do so, rendering the Amended Petition defective.

11. Paragraph 11 of the Amended Petition is denied. *First*, the Pennsylvania Election Code requires the deposit of cash or bond to accompany

“[e]very petition” for the opening of a ballot box or the recanvassing of votes cast in the voting machines of an election district, which necessarily includes petitions for recounts and recanvasses in cases resulting from a Secretary-ordered recount or recanvass. 25 P.S. §§ 3261(b), 3262(a.1). Petitioners failed to do so, rendering the Amended Petition defective. *Second*, after reasonable investigation, Doctor Oz for Senate and Dr. Mehmet Oz lack sufficient knowledge or information sufficient to form a belief as to the truth of the averment that Petitioners are “prepared to file” the required security, and as such, this averment is denied; it is denied that Petitioners’ alleged preparedness to post the required security is immaterial, insofar as the Pennsylvania Election Code requires such security to accompany the petition for recount and recanvass at the time the latter is filed.

WHEREFORE, the Intervenor-Respondents Doctor Oz for Senate and Dr. Mehmet Oz respectfully request that this Honorable Court enter an Order deny the Amended Petition for Recount and Recanvass with prejudice.

NEW MATTER

1. Doctor Oz for Senate and Dr. Mehmet Oz incorporate by reference all preceding paragraphs of this pleading as if set forth at length herein.
2. The Amended Petition fails to state a claim upon which relief can be granted.

3. To the extent the Amended Petition is not supported by the verifications of three qualified electors of a county, the Amended Petition is defective with respect to such county. *See* 25 Pa.C.S. §§ 3261(a.1)(2), 3262(a)(2)(ii).

4. Doctor Oz for Senate and Dr. Mehmet Oz incorporate by reference any affirmative defense raised by any Respondent in this action as if same were set forth here at length.

I. THE COURT SHOULD DISMISS THE PETITION BECAUSE PETITIONERS FAILED TO POST THE REQUIRED CASH DEPOSITS OR BONDS

5. Petitioners purport to bring this action under 25 P.S. §§ 3261(a.1), 3262(a)(2), and 3263(a). *See* Pet. Intro.

6. Section 1701(b) of the Pennsylvania Election Code, 25 P.S. § 3261(b), directs that “[*e*]very *petition* for the opening of the ballot box under the provisions of this section shall be filed in the office of the prothonotary of the proper county, accompanied by a deposit of cash in the amount of fifty (\$50.00) dollars, or by a bond signed by the petitioners as principals and by a corporate surety to be approved by the court, in the amount of one hundred (\$100.00) dollars, conditioned on the payment to the county treasurer for the use of the county of the sum of fifty (\$50.00) dollars, in the event that, upon the opening of the ballot box, it shall not appear that fraud or substantial error was committed in the computation of the votes cast on the

ballots contained therein, or fraud in the marking of the ballots contained therein, or otherwise in connection with such ballots.” (Emphasis added).

7. Section 1702(a.1) of the Pennsylvania Election Code, 25 P.S. § 3262(a.1), directs that “[*e*]very *petition* for the recanvassing of votes cast in the voting machine, or voting machines of an election district, under the provisions of this section, shall be filed in the office of the prothonotary of the proper county accompanied by a deposit of cash in the amount of fifty (\$50) dollars, or by a bond signed by the petitioners as principals and by a corporate surety to be approved by the court in the amount of one hundred (\$100) dollars, conditioned upon the payment to the county treasurer for the use of the county of the sum of fifty (\$50) dollars, in the event that upon the recanvassing of the votes cast in a voting machine or voting machines, it does not appear that fraud or substantial error was committed in the canvassing of the votes cast on such machine or otherwise in connection with such voting machines.” (Emphasis added).

8. Thus, the Pennsylvania Election Code requires the deposit of cash or bond to accompany “[*e*]very petition” for the opening of a ballot box or the recanvassing of votes cast in the voting machines of an election district, which necessarily includes petitions for recounts and recanvasses in cases resulting from a Secretary-ordered recount or recanvass. 25 P.S. §§ 3261(b), 3262(a.1).

9. Petitioners admit that they did not do so. *See* Am. Pet. ¶¶ 8–10.

10. Accordingly, the Amended Petition is fatally defective and should be denied.

WHEREFORE, the Court should dismiss the Amended Petition.

II. THE COURT MAY NOT GRANT PETITIONERS' REQUESTED RELIEF

11. The Acting Secretary of the Commonwealth has ordered an automatic recount of the results of the May 17, 2022 primary election for the Republican nominee for U.S. Senate. *See* Am. Pet. ¶ 5, Exs. 3–4; *see also* 25 P.S. § 3154(g).

A. The Court May Not Order Petitioners' Requested Hand Recount

12. The Election Code prescribes the “procedures” that county boards of elections must follow to conduct the automatic recount ordered by the Acting Secretary. 25 P.S. § 3154(g)(5)(i).

13. In a county in which an election district uses voting machines, the procedures include provisions for making records, making visible the registering counters of the machines, reconvassing the vote cast on the machine, and unlocking the machine when warranted. *See id.* § 3154(e)(1).

14. In a county in which an election district uses paper ballots other than those used in conjunction with an electronic voting system, the procedures include opening the ballot box, recounting the vote in the ballot box, and recounting the entire vote of the district correctly. *See id.* § 3154(e)(2).

15. In a county in which an election district uses an electronic system utilizing paper ballots, the procedures include county boards choosing among “devices of a different type used for the specific election” to conduct the recount and counting “all overvotes . . . manually.” *See id.* § 3154(e)(3).

16. The automatic recount and recanvass procedures do not provide for a “hand recount” or “manual” recount of all ballots. *See id.* § 3154(e).

17. The other Election Code provisions Petitioners invoke do not authorize the Court to order a hand recount or manual recount of all ballots.

18. The only relief that the Court may order under 25 P.S. § 3261(a.1)(1) is (i) opening of the ballot boxes and (ii) “caus[ing] the entire vote of the election district to be correctly counted by persons designated by the court.”

19. The only relief that the Court may order under 25 P.S. § 3262(a)(2)(i) is (i) “mak[ing] visible the registering counter of the voting machine used” and (ii) “without unlocking the machine against voting, recanvass[ing] the vote cast in the machine.”

20. The only relief that the Court may order under 25 P.S. § 3263(a)(2) is to “correct, compute, and certify to the county board the votes justly” if it discovers “fraud or error.”

WHEREFORE, the Court may not order Petitioners’ requested relief of a hand recount.

B. The Court May Not Extend The Statutory Deadlines For The County Boards Of Elections Or The Acting Secretary

21. Petitioners acknowledge that “there is a certification deadline of June 8, 2022, for the results of the primary contest for the Republican candidate for United States Senate.” App. For Reconsideration of Am. Scheduling Order ¶ 1.

22. The Election Code requires each county board of elections to complete the automatic recount “by noon on the . . . Tuesday” following “the third Wednesday following the day of the election.” 25 P.S. § 3154(g)(5)(ii)–(iii).

23. The Election Code further requires each county board of elections to submit the results “of the recount and recanvass . . . to the secretary no later than 12 o’clock noon the day following the completion of the recount and recanvass.” *Id.* § 3154(g)(6).

24. The Secretary “shall forthwith proceed to tabulate, compute, and canvass the votes” provided by the county boards of elections. *Id.* § 3158.

25. The Election Code does not permit extension of any of these deadlines. *See id.* §§ 3154(g)(5)–(6), 3158.

26. The Election Code therefore prescribes finality in the results of any recount or recanvass ordered by the Secretary. *See id.* §§ 3154(g)(5)–(6), 3158.

WHEREFORE, the Court may not extend the deadline for county boards of elections to complete the automatic recount and recanvass ordered by the Acting Secretary, for county boards of elections to certify the results of the automatic

recount and recanvass ordered by the Acting Secretary, or for the Acting Secretary to act upon those results.

Respectfully submitted,

Dated: June 3, 2022

/s/ Kathleen A. Gallagher
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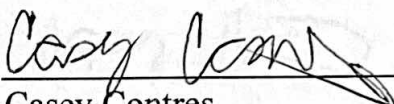
*Counsel for Intervenor-Respondents Doctor
Oz for Senate and Dr. Mehmet Oz*

**Pro hac vice application forthcoming*

VERIFICATION

I, Casey Contres, hereby aver that I am the campaign manager of Doctor Oz for Senate and that the statements of fact contained in the attached Answer and New Matter to the Amended Petition for Recount and Recanvass are true and correct to the best of my knowledge and belief, and are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: 6/3/2022

By: 
Casey Contres

**CERTIFICATION OF COMPLIANCE
WITH CASE RECORDS PUBLIC ACCESS POLICY**

I, Kathleen A. Gallagher, 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.

Dated: June 3, 2022

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher _____
Kathleen A. Gallagher
*Counsel for Intervenor-Respondents,
Doctor Oz for Senate and Dr. Mehmet Oz*

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher _____
Kathleen A. Gallagher
*Counsel for Intervenor-Respondents,
Doctor Oz for Senate and Dr. Mehmet Oz*

VERIFICATION

I, Casey Contres, hereby aver that I am the campaign manager of Doctor Oz for Senate and that the statements of fact contained in the attached Application for Leave to Intervene are true and correct to the best of my knowledge and belief, and are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: 6/3/2022

By:  _____
Casey Contres

**CERTIFICATION OF COMPLIANCE
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I, Kathleen A. Gallagher, 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.

Dated: June 3, 2022

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher _____
Kathleen A. Gallagher
*Counsel for Proposed Intervenor-Respondents,
Doctor Oz for Senate and Dr. Mehmet Oz*

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher _____

Kathleen A. Gallagher

*Counsel for Proposed Intervenor-Respondents,
Doctor Oz for Senate and Dr. Mehmet Oz*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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ORDER OF COURT

AND NOW, this ____ day of _____, 2022, upon consideration of the Application for Leave to Intervene filed by Doctor Oz for Senate and Dr. Mehmet Oz, and any opposition thereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

Said Application is GRANTED. Doctor Oz for Senate and Dr. Mehmet Oz shall participate in this action as Intervenor-Respondents.

BY THE COURT:

_____, J.