

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioner,

v.

LEIGH M. CHAPMAN, ACTING
SECRETARY OF THE
COMMONWEALTH, THE
PENNSYLVANIA DEPARTMENT OF
STATE, AND THE BOARD OF
ELECTIONS OF ALLEGHENY
COUNTY,

Respondents.

588-MD-2022

**MEMORANDUM OF LAW IN SUPPORT OF
PA DEMS APPLICATION TO INTERVENE**

This matter facially constitutes a dispute on whether or not there should be special elections for State Representative from the 32nd, 34th and 35th House Districts. The Pennsylvania Democratic Party (“PA Dems”) seeks to intervene through both immediate standing, as a major party authorized to select the

candidates for such special elections, and through associational standing on behalf of its over eighty thousand registered voters residing in these three House Districts.

Standard for Intervention

The grant or denial of a Petition to Intervene is governed by the standards set forth in Pennsylvania Rules of Civil Procedure 2326-2350. Rule 2327 denotes 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 the action. Pa. R. Civ. P. 2327(4). By contrast, Rule 2329 provides certain grounds for refusal to permit the intervention of a person who fits within the parameters of Rule 2327, including that such person’s interests are “already adequately represented.” Pa. R. Civ. 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 Tp. Zon. Hearing Bd.*, 740 A.2d 308, 313 (Pa. Cmmw. Ct. 1999).

Even if a ground for refusal under Rule 2329 is present, the Court still possesses discretion to permit intervention. *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).

Intervention for PA Dems is Appropriate

PA Dems meets the standard for mandatory intervention because it possesses multiple legally enforceable interests that may be affected by a judgment in the action. Pa. R. Civ. P. 2327(4).

Specifically, Plaintiffs' requested relief would invalidate a process to nominate candidates and allow voters to select from those nominees. The voters will choose on the date first selected by the then-majority Republican leadership and then agreed-to by the now-majority Democratic leadership.

PA Dems has already selected a candidate and filed a nomination certificate in the 32nd District and will, this weekend, select candidates, and on Monday will file nomination certificates in the 34th and 35th Districts. PA Dems has already expended significant resources and begun campaigning in reliance on the February 7 date.

Aside from its direct standing as a statutory participant in the nomination process, PA Dems also represents tens of thousands of its members, and its three selected or to-be-selected candidates, and their interests. Candidates and voters share interests in an effective and fair election and, voters interests further include ensuring that they are not needlessly unrepresented for an even longer period of time.

The factors that would weigh against intervention under Rule 2329 are inapplicable to the PA Dems in this instance.

As mandatory intervention is appropriate, and no factor mitigates against intervention, PA Dems believes intervention is appropriate and asks the Court to allow intervention and, upon intervention, to docket the initial filing (an alternative application for emergency relief) attached to the application for intervention.

Respectfully submitted,

GREENBERG TRAUIG, LLP

Dated: December 15, 2022

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