

**IN THE SUPREME COURT OF PENNSYLVANIA**

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No. 133 MM 2020

PENNSYLVANIA DEMOCRATIC PARTY; *et al.*,  
Petitioners,

v.

KATHY BOOCKVAR, *et al.*,  
Respondents.

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**NOTICE OF INTERVENTION *NUNC PRO TUNC* OF SENATE  
DEMOCRATIC LEADER, STATE SENATOR JAY COSTA, ON BEHALF  
OF THE SENATE DEMOCRATIC CAUCUS**

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Notice is hereby given that Senator Jay Costa, hereby files this Application to Intervene in this matter pursuant to Pa.R.C.P. 2327 (3) and (4) and Pa.R.A.P. 1531 (b).

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September 7, 2020

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No. 133 MM 2020

PENNSYLVANIA DEMOCRATIC PARTY; *et al.*,  
Petitioners,

v.

KATHY BOOCKVAR, *et al.*,  
Respondents.

---

**APPLICATION FOR LEAVE TO INTERVENE *NUNC PRO TUNC* OF  
SENATE DEMOCRATIC LEADER, STATE SENATOR JAY COSTA, ON  
BEHALF OF THE SENATE DEMOCRATIC CAUCUS**

---

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September 7, 2020

**APPLICATION FOR LEAVE TO INTERVENE  
BY SENATOR JAY COSTA**

State Senator Jay Costa has been duly authorized as elected leader of the Senate Democratic Caucus to file this Application for Leave to Intervene, nunc pro tunc, as a party respondent pursuant to Pa.R.C.P. 2327 (3) and (4) and Pa.R.A.P. 1531 (b).<sup>1</sup>

1. State Senator Jay Costa is a duly elected member of the Senate of Pennsylvania representing the 43rd Senate District, including Allegheny County, and was elected by the members of the Senate Democratic Caucus to serve as the Senate Democratic Leader.
2. On July 10, Petitioner Pennsylvania State Democratic Party as well as multiple individuals who are also congressional, state senatorial or state legislative candidates for election at the 2020 General Election filed the underlying petition with this court.
3. In the Petition for Declaratory and Injunctive Relief, Petitioners raised the following issues regarding the interpretation of Act 77—2019 and curative Act 12—2020, amendments to the Pennsylvania Elections Code:

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<sup>1</sup> This Application for Intervention includes several individuals who are participants in the original Petition for Declaratory and Injunctive Relief in their individual capacity. This Application includes those individuals in their official capacity as Senators and members of the Senate Democratic Caucus.

- a. Whether the Elections Code provides procedures that ballots received after 8 p.m. on election day are counted if postmarked on the date of the General Election—November 3, 2020. ¶¶ 101-121
  - b. Whether the Elections Code authorizes the use of Drop Boxes and Satellite Sites for the collection of Absentee and Mail Ballots. ¶¶ 80-100.
  - c. Whether the Election Code fails to provide statutory authority to set aside absentee or mail in ballots because the voter failed to use the Secrecy Envelopes and therefore prohibits invalidating “Naked Ballots.” ¶¶ 124-141.
  - d. The Election Code’s requirement that a Poll Watcher be a resident of the county in which they are registered to vote is constitutional. ¶¶ 142-161.
4. On August 16, 2020, Respondent Kathy Boockvar in her capacity as Secretary of the Commonwealth of Pennsylvania filed an Application with the Pennsylvania Supreme Court for the Court to Exercise Extraordinary Jurisdiction over the instant Commonwealth Court case, *Pa. Democratic Party v. Boockvar*, docketed at 407 MD 2020.
  5. By order of this Court dated September 1, 2020, Respondent Boockvar’s Application was granted and this Court assumed jurisdiction pursuant to 42 Pa.C.S. § 726 (relating to extraordinary jurisdiction).

6. On August 24, 2020, Senate President Pro Tempore Joseph B. Scarnati, III and Senate Majority Leader Jake Corman filed a Motion to Intervene with the Commonwealth Court in this matter.
7. By order of this Court dated September 3, 2020, the application of Senator Scarnati, President Pro Tem of the Pennsylvania State Senate and Jake Corman, Majority Leader of the Pennsylvania State Senate was granted.
8. In response to the Senate Republican Leaders' Motion to Intervene and due to this Court granting the application, Senator Costa is now compelled to file this Application to Intervene to call attention to the fact that the Senate Republican Caucus does not represent the entire institutional interests of the Senate of Pennsylvania in this matter or in the other case pending before this Court, *Crossey, et al. v. Boockvar* case, at 266 MD 2020, in which the House and Senate Republican Leaders on behalf of the Republican Caucuses separately filed for intervention.<sup>2</sup>
9. Further, it is vital that the interests of the minority party in the State Senate concerning implementation of the Elections Code changes made in Act 77 of 2019 and Act 12 of 2020 be included in the Court's deliberations.

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<sup>2</sup> In support of this Application, Senator Costa incorporates by reference the arguments made in the *AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT SECRETARY KATHY BOOCKVAR'S APPLICATION FOR THE COURT TO EXERCISE EXTRAORDINARY JURISDICTION* filed by Representative Dermody and Senator Costa with this Court on September 1, 2020 at 133 MM 2020.

10. Senator Costa agrees with the Secretary of the Commonwealth that this case, as well as the case of *Crossey, et al. v. Boockvar*, involve issues of immediate and significant public importance that directly affect the constitutional rights of Pennsylvanians and that the issues raised by Petitioners should be reviewed and decided as expeditiously as possible.
11. The General Election is to be held on Tuesday, November 3, 2020, which allows little time for legislative resolution of the outstanding issues raised in the underlying cases. The coordination and preparation between the Department of State and local election officials for an election usually takes months. This year, the Commonwealth faces the added complications of holding the General Election during the COVID-19 pandemic and with serious disruptions in postal services.
12. Senator Costa was unable to comply with the requirements of Pa.R.C.P 1531(b) because of the expedited nature of this matter. Therefore, Senator Costa seek leniency from the Court in consideration of his application and respectfully request permission to file the proposed Application for Intervention.

Respectfully submitted,

/s/ Claude J. Hafner, II  
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September 7, 2020

**VERIFICATION**

I, Jay Costa, verify that I have reviewed the above captioned Application for Leave to Intervene *Nunc Pro Tunc* and the information contained in this are true and correct to the best of my personal knowledge, information and belief.

/s/ Jay Costa, Jr.  
Jay Costa, Jr.  
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Date: September 7, 2020



**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief 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.

*/s/ Ronald N. Jumper, Jr.*

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## **CERTIFICATE OF SERVICE**

I, Ronald N. Jumper, Jr, Deputy Chief Counsel, Senate Democratic Caucus  
do hereby certify that I have served the foregoing application, via the following:

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