

IN THE SUPREME COURT OF PENNSYLVANIA

No. 133 MM 2020

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

v.

KATHY BOOCKVAR, *et al.*,
Respondents.

**NOTICE OF INTERVENTION OF SENATE DEMOCRATIC LEADER,
STATE SENATOR JAY COSTA, ON BEHALF OF THE SENATE
DEMOCRATIC CAUCUS, AND HOUSE DEMOCRATIC LEADER, STATE
REPRESENTATIVE FRANK DERMODY, ON BEHALF OF THE HOUSE
DEMOCRATIC CAUCUS**

Notice is hereby given that Senator Jay Costa and Representative Frank Dermody, hereby file this Amended Application for Intervention 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 8, 2020

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**AMENDED APPLICATION FOR INTERVENTION OF SENATE
DEMOCRATIC LEADER, STATE SENATOR JAY COSTA, ON BEHALF
OF THE SENATE DEMOCRATIC CAUCUS, AND HOUSE
DEMOCRATIC LEADER, STATE REPRESENTATIVE FRANK
DERMODY, ON BEHALF OF THE HOUSE DEMOCRATIC CAUCUS**

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September 8, 2020

Proposed-Intervenor Respondents, State Senator Jay Costa, Democratic Leader of the Senate of Pennsylvania, and State Representative Frank Dermody, Democratic Leader of the Pennsylvania House of Representatives, by and through the undersigned counsel, are duly authorized as elected leaders of the Senate and House Democratic Caucuses to file this Amended Application for Leave to Intervene, as a party respondent pursuant to Pa.R.C.P. 2327 (3) and (4) and Pa.R.A.P. 1531 (b).¹

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. State Representative Frank Dermody is a duly elected member of the Pennsylvania House of Representatives representing the 33rd House District, including Allegheny and Westmoreland Counties, and was elected by the members of the House Democratic Caucus to serve as the House Democratic Leader.

¹ 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 members of the Senate and House Democratic Caucuses.

3. On July 10, 2020, 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.
4. 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:
 - a. Whether the Election 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 Election Code authorizes the use of drop boxes and satellite sites for the collection of absentee and mail-in 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 requirement in the Election Code that a poll watcher be a resident of the county in which they are registered to vote is constitutional. ¶¶ 142-161.
5. 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.

6. 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).
7. On August 24, 2020, Senate President Pro Tempore Joseph B. Scarnati, III and Senate Majority Leader Jake Corman ("Senate Republican Leaders") filed a Motion to Intervene with the Commonwealth Court in this matter.
8. By order of this Court dated September 3, 2020, the Motion to Intervene by the Senate Republican Leaders was granted.
9. Today, September 8, 2020, Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives ("House Republican Leaders") filed a Petition to Intervene with this Court.
10. In response to the Senate and House Republican Leaders' intervention filings and due to the Court granting intervention to the Senate Republican Leaders, Senator Costa and Representative Dermody are now compelled to file this Application to Intervene to protect the interests of the Senate and House Democratic Caucuses and call attention to the fact that the Senate and House Republican Caucuses do not represent the entire institutional interests of the

General Assembly 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.²

11. Further, it is vital that the interests of the minority party in both chambers of the General Assembly be included in the Court's deliberations concerning interpretation of the Election Code changes made in Act 77 of 2019 and Act 12 of 2020.

12. Senator Costa and Representative Dermody agree 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.

13. 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,

² In support of this Application, Senator Costa and Representative Dermody incorporate 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.

the Commonwealth faces the added complications of holding the General Election during the COVID-19 pandemic and with serious disruptions in postal services.

14. Because of the expedited nature of this matter, Senator Costa and Representative Dermody seek leniency from the Court in consideration of this Amended Application for Intervention.

Respectfully submitted,

/s/Claude J. Hafner, II
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Counsel for Proposed-Intervenor Respondents

September 8, 2020

VERIFICATION

I, Jay Costa, verify that I have reviewed the above captioned Amended Application for Intervention 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.

Democratic Leader

Senate of Pennsylvania

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September 8, 2020

CERTIFICATE OF COMPLIANCE

I hereby certify that this application 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/Tara L. Hazelwood

Tara L. Hazelwood (Pa. 200659)

Chief Counsel

Office of Chief Counsel

Democratic Caucus

Pennsylvania House of Representatives

September 8, 2020

CERTIFICATE OF SERVICE