

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

NO. 149 MM 2020

IN RE NOVEMBER 3, 2020 General Election

**Petition of Kathy Boockvar, Secretary of the Commonwealth of
Pennsylvania**

**Answer of PENNSYLVANIA DEMOCRATIC PARTY, NILOFER NINA
AHMAD, ANTON ANDREW, DANILO BURGOS, AUSTIN DAVIS,
DWIGHT EVANS, ISABELLA FITZGERALD, EDWARD GAINEY,
MANUEL M. GUZMAN, JR., JORDAN A. HARRIS, ARTHUR
HAYWOOD, VINCENT HUGHES, MALCOLM KENYATTA, PATTY H.
KIM, STEPHEN KINSEY, PETER SCHWEYER, SHARIF STREET, and
ANTHONY J. WILLIAMS
to Petition to Intervene by Bryan Cutler & Kerry Benninghoff, and Motion
to Intervene of Joseph B. Scarnati, III and Jake Corman**

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ANSWER

The Pennsylvania Democratic Party, Nilofer Nina Ahmad, Anton Andrew, Danilo Burgos, Austin Davis, Dwight Evans, Isabella Fitzgerald, Edward Gainey, Manuel M. Guzman, Jr., Jordan A. Harris, Arthur Haywood, Vincent Hughes, Malcom Kenyatta, Patty H. Kim, Stephen Kinsey, Peter Schweyer, Sharif Street, and Anthony J. Williams (collectively, the “Pennsylvania Democratic Party Respondents”) file the following Answer to the Petition to Intervene by Bryan Cutler & Kerry Benninghoff, and Motion to Intervene of Joseph B. Scarnati, III and Jake Corman (collectively, the “Proposed Intervenors”).

Introduction

1. Pennsylvania Democratic Party Respondents do not oppose the intervention of Proposed Intervenors in their individual capacity as Pennsylvania Senators, Pennsylvania House members, or as members of the Pennsylvania Republican Caucus.¹

2. In their Motion, however, Senators Scarnati and Corman allege that they “have been duly authorized to act in this matter by each of the members of the Senate Republican Caucus, which constitute a majority of the Pennsylvania Senate as a whole.” (Scarnati/Corman App. at 1). Further Representatives Cutler and

¹ The Pennsylvania Democratic Party Respondents take no position on the other pending Applications for Intervention not addressed in this Answer.

Benninghoff refer to themselves as the “House Leaders.” (Cutler/Benninghoff Mem. of Law in Support of Pet. at 1).

3. Proposed Intervenors’ assertions, insofar as they allege their authority to represent the General Assembly, are flatly incorrect.

4. Under established case law, Proposed Intervenors lack standing to represent the legislature.

5. It is well-settled that individual legislators lack standing to allege institutional injuries that are “wholly abstract and widely dispersed.” *Raines v. Byrd*, 521 U.S. 811, 829 (1997).

6. Thus, although individual legislators may allege particularized injuries to themselves as individuals, they cannot purport to represent the legislative houses as a whole. *Id.* at n.10. (citations omitted) (“The two houses of Congress are legislative bodies representing larger constituencies. Power is not vested in any one individual, but in the aggregate of the members who compose the body, and its action is not the action of any separate member or number of members, but the action of the body as a whole.”).

7. In *Corman v. Torres*, the U.S. District Court for the Middle District of Pennsylvania held that, for legislators to have standing to pursue an alleged institutional injury, the legislators must command a two-thirds majority of the members of both the Senate and House of Representatives. *Corman v. Torres*, 287

F. Supp. 3d 558, 568–69 (M.D. Pa.), *appeal dismissed sub nom. Corman v. Sec’y Commonwealth of Pennsylvania*, 751 F. App’x 157 (3d Cir. 2018).

8. Here, the Proposed Intervenors can only allege that they, as individuals, are Pennsylvania legislators and members of the Republican Caucus.

9. The Proposed Intervenors do not and cannot allege that they command two-thirds majority of both chambers of the legislature as the Court in *Corman* held are required for them to have standing to make any representations to this Court on behalf of the Senate.

10. Accordingly, Proposed Intervenors cannot intervene on behalf of the Pennsylvania General Assembly as a whole or either constituent chamber.

11. Thus, the Pennsylvania Democratic Party Respondents do not oppose the intervention of Proposed Intervenors in their capacity as Pennsylvania legislators or as members of the Republican Caucus, but ask the Court to deny their request to intervene on behalf of the General Assembly or either chamber.

12. This position coheres with this Court’s holding in *Pennsylvania Democratic Party v. Boockvar et al.*, 133 MM 2020 (Pa. Sept. 3 2020) (granting intervention to Senators Scarnati and Corman in their capacity as representatives of the Caucus *only*).

Respectfully submitted,

/s/ Clifford B. Levine

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CERTIFICATE OF SERVICE

I certify that on October 8, 2020 a copy of the foregoing ANSWER was filed with the PACFile system and through that system, served upon all counsel of record as demonstrated on the Proof of Service generated thereby.

/s/ Clifford B. Levine