

**Michael Crossey, Dwayne Thomas,
Irvin Weinreich, Brenda Weinreich,
and the Pennsylvania Alliance for
Retired Americans;**

Petitioners,

v.

**Kathy Boockvar, Secretary of the
Commonwealth; and Jessica Mathis,
Director of the Bureau of Election
Services and Notaries;**

Respondents,

and

**Senator Joseph B. Scarnati III,
President Pro Tempore; and
Senator Jake Corman, Senate
Majority Leader,**

**Proposed Intervenor-
Respondents.**

**IN THE SUPREME COURT OF
PENNSYLVANIA**

No. 108-MM-2020

**PETITION TO GRANT INTERVENTION AND MOTION TO AMEND
BRIEFING SCHEDULE BY JOSEPH B. SCARNATI III,
PRESIDENT PRO TEMPORE, AND JAKE CORMAN, MAJORITY
LEADER OF THE PENNSYLVANIA SENATE**

Proposed Intervenors, Joseph B. Scarnati III, Pennsylvania Senate President
Pro Tempore, and Jake Corman, Senate Majority Leader (collectively, the
“Senators”),¹ by and through the undersigned counsel, respectfully petition this

¹ The Senators have been duly authorized to act in this matter by each of the members of the Senate Republican Caucus, which constitutes a majority of the Pennsylvania Senate as a whole.

Court to grant their timely filed Motion to Intervene in light of the Respondents' abandonment of two of its four preliminary objections. If intervention is granted, the Senators request amendment of the briefing schedule.

Named Respondents, in their Praecipe to Withdraw Certain Preliminary Objections, have made it abundantly clear that they have forsaken defense of the Commonwealth's laws, and thus they no longer adequately represent the interests of the State or the Senate—if they ever did so to begin with. Therefore, this Court should immediately grant intervention to the Senators, and other proposed intervenors, so that a party exists to properly defend the laws of the Commonwealth.

Furthermore, the withdrawal of a potential dispositive preliminary objection by Respondents prejudices the proposed intervenors. The only remedy to this prejudice is to immediately grant the Senators intervention and to revise the briefing schedule to allow the full briefing on the Senators' Preliminary Objections.

I. INTERVENTION IS MANDATORY BECAUSE THE RESPONDENTS DO NOT ADEQUATELY REPRESENT THE PROPOSED INTERVENORS.

“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.*, 714 A.2d 1120, 1123 (Pa. Comm. Ct. 1998) (citing *Bily v. Allegheny County Board of Property Assessment, Appeals and Review*, 353 Pa. 49,

44 A.2d 250 (1945)). Pennsylvania Rule of Civil Procedure 2327² allows a person not named as a party to seek leave to intervene by filing an application with the court. The Senators sought to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327(3) and (4), which states, in pertinent part, as follows:

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. 2327 (emphasis added).

As was previously argued in the Senators' Motion to Intervene in the Commonwealth Court and the Amended Motion to Intervene in this Court, the Senators meet the requirements for intervention under Pennsylvania Rule of Civil Procedure 2327(3) and/or (4). *See* Mot. Intervene (Comm. Ct., May 11, 2020); Amend. Mot. Intervene (Pa., July 29, 2020).³

² Pursuant to Pennsylvania Rule of Appellate Procedure 106, the practice and procedures relating to original jurisdiction matters are to be in accordance with the Pennsylvania Rules of Civil Procedure.

³ Intervention is appropriate under 2327(3) and/or (4) because the Senators seek to, *inter alia*, protect their exclusive constitutional rights, together with those of the Pennsylvania House of Representatives, of: (1) determining the times, places, and manner of holding elections under Art. I, § 4 of the United States Constitution and Art. II, § 1 of the Pennsylvania Constitution; (2) suspending laws under Art. I, § 12 of the Pennsylvania Constitution; (3) appropriating funds for expenditure by the state, under Art. III, § 24 of the Pennsylvania Constitution; and (4) preserving the General Assembly's prerogative to empower the Executive Branch to modify election procedures through emergency orders in accordance with law. Any of the forgoing reasons are sufficient to mandate intervention. The power granted to the General Assembly by the Pennsylvania and U.S. Constitutions stands to be permanently diminished or usurped by Petitioner's requested relief.

Once a putative intervenor qualifies for intervention under Pa. R.C.P. 2373, the petition may then only be refused if, in relevant part, “the interest of the petitioner is already adequately represented. . . .” Pa. R.C.P. No. 2329.⁴ Inadequacy of representation can arise under multiple scenarios. One such scenario is the failure of an existing respondent to raise arguments in support of its defense. *See Ackerman v. North Huntingdon*, 425 Pa. 194, 196-97 (Pa. 1967) (allowing intervention when party-defendant failed to “take exceptions” to a court’s decree). Another is when a respondent agrees to a petitioner’s proposed relief. *See Keener v. Zoning Hearing Bd.*, 714 A.2d 1120, 1123 (Pa. Comm. Ct. 1988) (holding a lack of adequate representation when a town entered into a settlement agreement with the opposing party). The Respondents have never adequately represented the interest of the Senators and, after abandoning several defenses, certainly no longer do so.

On August 13, 2020, the Respondents filed a Praecipe to Withdraw Certain of Respondents’ Preliminary Objections due to certain hearsay averments by the United

⁴ Subsection 3 of Rule 2329 provides that intervention may be denied if “the petitioner had unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the . . . adjudication of the rights of the parties.” It is inarguable that the Senators’ Motion to Intervene was timely. This action was originally filed in the Commonwealth Court on April 22, 2020, and the Senators moved to intervene on May 11, 2020. *See* Senators’ Mot. Intervene (Comm. Ct., May 11, 2020). The Senators’ intervention was never ruled upon because the Commonwealth Court denied Petitioners’ Motion for Preliminary Injunction. Mem. Op. (Comm. Ct., May 28, 2020). The case was then transferred from the Commonwealth Court to this Court on June 17, 2020. Petitioners then filed an Amended Petition on July 13, 2020. The Senators then filed an Amended Application for Intervention on July 29, 2020. This Court has yet to rule on the Senators’ Application.

States Postal Service (“USPS”). Respondents not only withdrew their ripeness and standing arguments, which stated in part that “Petitioners’ predictions were ‘simply too speculative . . . to state a claim for relief,’” Praecipe at 5, but also stated they “agree that . . . this Court should order” Petitioners’ requested relief. Praecipe at 7; *id. at* 4 n.4. This sudden turnabout was brought on by a letter from the General Counsel of the USPS. Nothing in this letter is dispositive of anything related to this litigation and is certainly no reason to withdraw an argument that has the same force today as it did prior to the letter. Petitioners’ claims still remain too speculative for this Court’s consideration.

As the Respondents have abandoned several defenses and have now concurred with the relief Petitioners seek as to at least one claim, they no longer represent the interest of the Senators and the Senate majority that authorized them to act in this matter. Therefore, the Senators should immediately be granted intervention.

II. ONCE INTERVENTION IS GRANTED, THE COURT SHOULD RESET DEADLINES TO ALLOW FOR THE SENATORS’ FULL PARTICIPATION AS A PARTY.

Once intervention is granted to the Senators—and potentially other intervening parties—this Court should reset the deadlines to allow for full briefing on the merits of the Senators’ Preliminary Objections. This is even more vital now that the Respondent has withdrawn two preliminary objections. The Senators do not

withdraw any of their proposed preliminary objections based on the letter from the USPS.

Respectfully submitted,

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Dated: August 18, 2020

CERTIFICATE OF SERVICE

I, Richard Limburg, certify that on the date set forth below, I caused a true and correct copy of the Motion to Intervene by Senator Joseph B. Scarnati III and Senator Jake Corman to be served on counsel of record via email, as follows:

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