

IN THE SUPREME COURT OF PENNSYLVANIA

No. 149 MM 2020

IN RE: NOVEMBER 3, 2020 GENERAL ELECTION

**PETITION OF KATHY BOOCKVAR,
SECRETARY OF THE COMMONWEALTH,**

**BRYAN CUTLER, SPEAKER OF THE PENNSYLVANIA HOUSE OF
REPRESENTATIVES, KERRY BENNINGHOFF, MAJORITY LEADER
OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES,**

Proposed-Intervenor Respondents.

**REPLY BRIEF IN SUPPORT OF PETITION TO INTERVENE BY
SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES
BRYAN CUTLER AND MAJORITY LEADER OF THE PENNSYLVANIA
HOUSE OF REPRESENTATIVES KERRY BENNINGHOFF**

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Speaker of the Pennsylvania House of Representatives Bryan Cutler (“Speaker Cutler”) and Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff (“Leader Benninghoff”; collectively the “House Leaders”) hereby file this Reply Brief supporting their Petition to Intervene under Pa. R. Civ. P. 2328.¹

The House Leaders wish to draw the Court’s attention to the fact that their Application for Intervention is unopposed, with even the parties who filed Answers emphatically stating that they did not oppose the House Leaders’ intervention in this case. (“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.” Pennsylvania Democratic Party Respondents Answer at ¶ 1; “the Secretary does not oppose intervention by the . . . proposed Legislative Intervenors (Speaker of the House of Representatives Bryan Cutler and Majority Leader Kerry Benninghoff).” Secretary Boockvar Answer at pp. 3-4.).

While it is undoubtedly proper to permit the House Leaders to intervene in this case based on the legal merits of their Petition to Intervene, the unopposed nature of their proposed intervention confirms that the House Leaders should be allowed to

¹ The House Leaders file this combined Reply Brief addressing issues raised by both Secretary Boockvar and the Pennsylvania Democratic Party Respondents in their respective Answers in order to reduce the administrative burden on the Court, as both Answers raise the same issues.

intervene in this case to allow their voices to be heard in this important matter concerning the conduct and integrity of the Commonwealth's elections.

The House Leaders, however, also wish to address a couple of collateral points raised in the respective Answers of Secretary Boockvar and the Pennsylvania Democratic Party Respondents.

First, Secretary Boockvar argued that “[t]he applications [*sic*] filed by the [House Leaders], however, is defective to the extent it proposes to assert preliminary objections challenging the authority of this Court.” Secretary Boockvar Answer at p. 4.

The House Leaders respectfully submit that they raised no such issue in their pleadings. The House Leaders' preliminary objection was in the form of a demurer, on the basis that Secretary Boockvar's Petition was legally insufficient pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4). *See* House Leaders Preliminary Objection ¶¶ 13-40. Accordingly, Secretary Boockvar's statement is off base.

Next, in their Answer, the Pennsylvania Democratic Party Respondents objected to the reference of Representatives Cutler and Benninghoff as “House Leaders” in the intervention application. Pennsylvania Democratic Party Respondents Answer at ¶ 2.

Speaker Cutler, as Speaker of the House of Representatives, and Leader Benninghoff, as Majority Leader of the House of Representatives, hold two of the

highest offices in the Pennsylvania House of Representatives. As such, the references to them as “House Leaders” in this Reply Brief and the Intervention Petition accurately reflect their offices.²

The House Leaders’ Intervention Application affirms that they are seeking to intervene in this case in their individual capacities as legislators. *See* Petition to Intervene at ¶ 40 (“The House Leaders, as individual legislators, are permitted to intervene as a matter of right in this case as they have enforceable interests that may be adversely affected by the relief sought by Petitioner.”).

While the House Leaders do not concede the validity of the legal arguments made by the Pennsylvania Democratic Party Respondents in Paragraphs 4-10 of their Answer and reserve the right to fully brief the legal issues raised should the need later arise in this case or another, these matters are immaterial to the present intervention where the House Leaders are seeking to intervene as “individual legislators” (*id.*) and “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.” Pennsylvania Democratic Party Respondents Answer at ¶ 1.

² Speaker Cutler and Leader Benninghoff have consistently used the term “House Leaders” to refer to themselves in a number of cases in both this Court and Commonwealth Court. *See, e.g., Disability Rights Pa., v. Boockvar*, 2020 WL 2820467 (Pa. 2020); *Crossey v. Boockvar*, No. 108 MM 2020, *Pennsylvania Democratic Party v. Boockvar*, ___ A.3d ___, 2020 WL 5554644 (Pa. 2020); and *NAACP Pennsylvania State Conference v. Boockvar*, No. 364 MD 2020.

For the foregoing reasons, the House Leaders' Petition to Intervene should be granted, and they should be admitted as Respondents in this case.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

Pursuant to Rule 2135 of the Pennsylvania Rules of Appellate Procedure, I certify that this Reply Brief contains 734 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

/s/ Zachary M. Wallen

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CERTIFICATE OF COMPLIANCE

I hereby certify that this filing 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.

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