

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

DOUG MCLINKO,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF STATE, and VERONICA  
DEGRAFFENREID, in her official capacity as Acting  
Secretary of the Commonwealth of Pennsylvania,

Respondents,

TIMOTHY BONNER et al.,

Petitioners,

v.

VERONICA DEGRAFFENREID et al.,

Respondents,

and

DEMOCRATIC NATIONAL COMMITTEE, and THE  
PENNSYLVANIA DEMOCRATIC PARTY,

Proposed Intervenors-Respondents.

Nos. 244 MD 2021  
293 MD 2021

**PROPOSED INTERVENORS-RESPONDENTS’  
SUPPLEMENT TO APPLICATION TO INTERVENE  
ADDRESSING ISSUE RAISED AT ORAL ARGUMENT**

Proposed intervenors-respondents, the Democratic National Committee and the Pennsylvania Democratic Party, submit this supplement to their application to intervene.

At the October 22 hearing on the application, counsel for the *Bonner* petitioners raised an argument not made in their response to the application. They argued that allowing intervention here would be unprecedented because there has never been a case in which an entity was permitted to intervene to defend against a claim that a statute is facially unconstitutional, where the appropriate government official was already defending the statute’s constitutionality. In fact, there have been many such cases, both in the federal courts and in the Pennsylvania courts, including:

- *Buckley v. Valeo*, 424 U.S. 1, 9 & n.5 (1976) (per curiam) (in a facial challenge to the Federal Election Campaign Act, “[I]eave to intervene was granted to various groups and individuals,” including the “Center for Public Financing of Elections, Common Cause, [and] the League of Women Voters of the United States”);
- *Clean Air Council v. Department of Labor & Industry of Commonwealth of Pennsylvania*, 2017 WL 56125 (Pa. Commw. Ct. Jan. 5, 2017) (Pennsylvania Builders Association allowed to intervene to oppose a constitutional challenge to the 2011 amendments to Pennsylvania Construction Code Act);
- *Pennsylvania State Association of Jury Commissioners v. Commonwealth*, 74 A.3d 333 (Pa. Commw. Ct. 2013) (County Commissioners Association of Pennsylvania allowed to intervene to oppose a constitutional challenge to Act 4 of 2013);
- *Feldman v. Arizona Secretary of State’s Office*, 840 F.3d 1057, 1065 (9th Cir. 2016) (Republican party permitted to intervene as a defendant in an action challenging an Arizona law that prohibits most individuals from collecting early ballots from another person);
- *New Georgia Project v. Raffensperger*, No. 1:21-CV-01229-JPB, 2021 WL 2450647, at \*1 (N.D. Ga. June 4, 2021) (in a facial constitutional challenge to Georgia’s new voting bill, the Republican National Committee, the National Republican Senatorial Committee, the

Georgia Republican Party, and other organizations allowed to intervene);

- *Nielsen v. DeSantis*, No. 4:20CV236-RH-MJF, a2020 WL 6589656, at \*1 (N.D. Fla. May 28, 2020) (three organizations affiliated with the Republican Party permitted to intervene in a constitutional challenge to Florida’s voting procedures);
- *Greenville County Republican Party Executive Committee v. Way*, No. CV 6:10-1407-MGL, 2013 WL 12385313, at \*1 (D.S.C. Aug. 30, 2013) (individuals, the South Carolina Independence Party, the South Carolina Constitution Party, and other organizations were permitted to intervene in a Republican Party lawsuit challenging South Carolina’s election laws);
- *Baldus v. Members of Wisconsin Government Accountability Board*, 849 F. Supp. 2d 840 (E.D. Wis. 2012) (three-judge panel) (per curiam) (in a challenge to Wisconsin statutes establishing new legislative and congressional districts, Republican members of the state’s congressional delegation were permitted to intervene as defendants); and
- *Idaho Republican Party v. Ysursa*, 765 F. Supp. 2d 1266, 1268 (D. Idaho 2011) (in a case to defend Idaho’s use of an open primary to select candidates for the general election, intervention permitted by (1) Idaho voters unaffiliated with any political party, (2) the American Independent Movement of Idaho, and (3) the Committee for a Unified Independent Party).

## CONCLUSION

The application for intervention should be granted.

October 25, 2021

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

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.

/s/ Clifford B. Levine

CLIFFORD B. LEVINE

## **CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing document was served upon all counsel of record on October 25, 2021 by this Court's electronic filing system.

/s/ Clifford B. Levine

CLIFFORD B. LEVINE