

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.

DEGRAFFENREID, et al.,

Respondents,

and

BUTLER COUNTY REPUBLICAN COMMITTEE; YORK COUNTY REPUBLICAN COMMITTEE; and WASHINGTON COUNTY REPUBLICAN COMMITTEE.

Proposed Intervenors-Petitioners.

**Nos.: 244 M.D. 2021
293 M.D. 2021 (Consolidated)**

PROPOSED INTERVENORS-PETITIONERS', BUTLER COUNTY REPUBLICAN COMMITTEE, YORK COUNTY REPUBLICAN COMMITTEE, and WASHINGTON COUNTY REPUBLICAN COMMITTEE, APPLICATION TO INTERVENE

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**PROPOSED INTERVENORS-PETITIONERS', BUTLER COUNTY
REPUBLICAN COMMITTEE, YORK COUNTY REPUBLICAN
COMMITTEE, and WASHINGTON COUNTY REPUBLICAN
COMMITTEE, APPLICATION TO INTERVENE**

Proposed Intervenors-Petitioners, Butler County Republican Committee, York County Republican Committee, and Washington County Republican Committee (collectively referred to as the "**County Republican Intervenors**"), by and through their undersigned counsel, respectfully file the within Application to Intervene (the "**Application**") in the above-referenced consolidated litigation, and to participate fully therein as Intervenors-Petitioners. If permitted to intervene, the County Republican Intervenors request to file the Petition for Review attached as **Exhibit "A."** In support of the within Application, the County Republican Intervenors further state as follows:

Introduction

1. Generally, Act 77, P.L. 552, No. 77 (hereinafter "**Act 77**"), was enacted by the Pennsylvania General Assembly, amending Pennsylvania's Election Code, 25 P.S. § 2601, *et seq.*, and specifically expanding voting by mail-in ballot in the Commonwealth of Pennsylvania.

2. Act 77 was the most sweeping and expansive change to the Pennsylvania Election Code since it was enacted in 1937.

3. The County Republican Intervenors submit that Act 77 violates the Constitution of the Commonwealth of Pennsylvania because it permits all electors to vote by mail without qualifying for a constitutionally prescribed exemption. See Act 77 and “qualified mail-in elector.” See *also* 25 P.S. § 2602.

4. More germane to their argument herein, and not specific to any of the current Petitioners in the litigation, the constitutionality of Act 77 will significantly impact the allocation and direction of the County Republican Intervenors’ resources.

Proposed Intervenor-Petitioners

5. Proposed Intervenor-Petitioners, defined here as the “County Republican Intervenors,” are the Republican Party Committees of Butler County, York County, and Washington County, Pennsylvania.

6. The Republican County Committees are specifically authorized to exist and act by virtue of the Bylaws of the Republican Party of Pennsylvania, a political party and non-profit corporation, representing 3.2 million Pennsylvanians.

7. The Republican County Committees are formed pursuant to the Bylaws of the Republican Party of the Commonwealth of Pennsylvania and Sections 2831 and 2837 of the Election Code.

8. Butler County has approximately 143,556 registered voters, 79,600 of which are registered Republicans, and 43,322 of which are registered Democrats.¹

9. Butler County had approximately 7,729 voters vote by mail in the 2021 primary election of which 2,496 were Republican voters and 7,504 were Democratic voters.

10. York County has 304,975 registered voters, 156,953 of which are registered Republicans, and 98,375 of which are registered Democrats.²

11. York County had approximately 25,574 voters vote by mail in the 2021 primary election of which 8,068 were Republican voters and 15,372 were Democrat voters.³

12. Washington County has 145,050 registered voters, 65,838 of which are registered Republicans, and 61,523 of which are registered Democrats.⁴

¹ <https://www.butlercountypa.gov/DocumentCenter/View/2765/SUMMARY-REPORT-PDF>.

²<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Pages/VotingElectionStatistics.aspx>

³https://yorkcountypa.gov/images/pdf/election/2021_Primary/Final_Report_Primary_sept_2021.pdf

⁴ <https://www.co.washington.pa.us/DocumentCenter/View/12090/5-18-21-Municipal-Primary-Official-Results>

13. Washington County had approximately 9,229 voters vote by mail in the 2021 primary election of which 1,802 were Republican voters and 7,005 were Democratic voters.

14. The County Republican Intervenors have a direct and substantial interest in the constitutional, proper, and orderly conduct of elections within their respective counties, and will be significantly harmed if Act 77 is unconstitutional.

15. Moreover, the County Republican Intervenors are responsible for: leading efforts for voter registration within their respective counties; assisting Republican voters with questions regarding proper voting practices; advancing the policies and principles of the Republican Party within their Counties; assisting candidates in their election campaigns; and “getting out the Republican vote” in their respective counties.

16. Likewise, the County Republican Intervenors do not wish to engage in constitutionally infirm activities, and every unconstitutional vote will diminish the votes constitutionally cast in each such county.

Legal Standard

17. It is well-settled that “[i]ntervention is ‘a procedural step by which a person not a party to an action is admitted or permitted to become a party to the action on his own application.’” *Socy. Hill Civic Ass'n v. Philadelphia*

Bd. of License & Inspection Rev., 905 A.2d 579, 585 (Pa. Cmmw. 2006) (citing *Bannard v. New York State Natural Gas Corp.*, 404 Pa. 269, 279, 172 A.2d 306, 312 (1961)).

18. "Intervention is permitted 'only where the party seeking it has an interest in or will be affected by the pending litigation.'" *Id.*

19. "At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein...if

(1) the entry of a judgment in such action or the satisfaction of such judgment will impose any liability upon such person to indemnify in whole or in part the party against whom judgment may be entered; or

(2) such person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof; or

(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. No. 2327.

20. Additionally, Pennsylvania Rule of Civil Procedure 2329, titled, "Action of Court on Petition," declares:

Upon the filing of the petition, and after hearing...the court, if the allegations of the petition have been established and are found to be sufficient, shall enter an order allowing intervention; but an application for intervention may be refused, if

- (1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or
- (2) the interest of the petitioner is already adequately represented; or
- (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.

Pa.R.C.P. No. 2329.

21. “Generally, pendency, for purposes of intervention, has been defined as the state of an undetermined proceeding since in those cases in which intervention has been allowed, there was a pending proceeding with further steps remaining to be taken before the case was concluded.” See *Time for intervention, generally; allowable during pendency of action*, 3 Standard Pennsylvania Practice 2d § 14:374 (citing *In re Estate of Albright*, 545 A.2d 896 (1988)).

22. In sum, intervention is to be granted where the proposed intervenor is within a class set forth in Rule 2327 and no grounds for refusal are present under Rule 2329. See *Allegheny Rep. Health Ctr. v. Pa. Dep’t of Human Servs.*, 225 A.3d 902, 908 (Pa. Cmmw. 1999) (citing *Larock*, 740 A.2d at 313).

23. “The determination of whether a proposed intervenor has a ‘legally enforceable interest’ calls for ‘a careful exercise of discretion and consideration of all the circumstances involved,” *Carol Ann Carter; Monica*

Parrilla; Rebecca Poyourow; William Tung; Roseanne Milazzo; Burt Siegel; Susan Cassanelli; Lee Cassanelli; Lynn Wachman; Michael Guttman; Maya Fonkeu; Brady Hill; Mary Ellen Balchunis; Tom DeWall; Stephanie McNulty; and Janet Temin, Petitioners v. Veronica Degraffenreid, in her official capacity as the Acting Sec. of the Cmmw. of Pennsylvania; Jessica Mathis, in her official capacity as Dir. for the Pennsylvania Bureau of Election Services and Notaries, Respondents, 132 M.D. 2021, 2021 WL 4735059, at *1 (Pa. Cmmw. September 2, 2021) (citing *Realen Valley Forge Greenes Associates v. Upper Merion Township Zoning Hearing Board*, 941 A.2d 739, 744 (Pa. Cmwth. 2008) (citations omitted)).

24. “[A]n applicant for intervention must have some right, either legal or equitable, that will be affected by the proceedings.” *Id.* (citing *Keener v. Zoning Hearing Board of Millcreek Township*, 714 A.2d 1120, 1122 (Pa. Cmwth. 1998)).

25. The test to intervene in the Commonwealth of Pennsylvania can be best summarized as meeting the “‘substantial, direct, and immediate,’ test set forth in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975).” See *Carter, et al.*, 132 M.D. 2021, 2021 WL 4735059, at *17 (Pa. Cmmw. September 2, 2021).

26. “To have a substantial interest, the proposed intervenor's concern in the outcome of the action must surpass ‘the common interest of all citizens in procuring obedience to the law.’” *Id.*

27. Lastly, here, Pennsylvania Rule of Appellate Procedure 1531(b) allows a person not named as a respondent in an original jurisdiction petition to seek leave to intervene by filing an application with the court.

Argument for Intervention

28. The pleadings in this consolidated litigation well establish that this case concerns the constitutionality of Act 77.

29. The ultimate determination of the constitutionality of Act 77 will affect all the parties in the litigation, including the County Republican Intervenors, albeit in varying ways.

30. Whether Act 77 is found to be constitutional, or not, will directly impact the County Republican Intervenors for reasons not articulated by the current parties.

31. Petitioners' consolidated claims in the underlying litigation affect the County Republican Intervenors for different reasons; although, they all stem from Act 77.

32. It is incontrovertible that Act 77 drastically changed voting in the Commonwealth of Pennsylvania.

33. For the first time, certain ballots were able to be cast without needing to go to the polls without a constitutional excuse (no-excuse absentee ballots).

34. Although some voters chose to cast their ballots by mail, many voters in the County Republican Intervenors' districts opted to vote in person.

35. Many voters chose not to vote by mail based upon a variety of concerns with the questions of how, when, and where to cast their mail-in ballots, and also whether such votes were being legally/constitutionally cast.

36. It's also unquestioned that the Democratic National Committee and the Pennsylvania Democratic Party outspent, and out resourced, their Republican counterparts and the County Republican Intervenors.

37. If Act 77 remains the law in the Commonwealth of Pennsylvania, the County Republican Intervenors, will have to devote much more of their allocated resources targeted toward mail-in voting.

38. These efforts will have to be undertaken by the County Republican Intervenors to educate their constituents.

39. These efforts will cost a significant amount of money and necessitate a significant amount of time by the County Republican Intervenors.

40. The allocation of financial resources; prioritizing the efforts of volunteers; prioritizing get-out-the-vote efforts and communications; and similar activities, all without knowing whether Act 77 and its provisions are constitutional have created a burden on all the County Republican Intervenors. See the Affidavits of David Ball, Jeffrey Piccola, and Alexander H. Lindsay, Jr., attached hereto and incorporated as if fully set forth at length herein as **Exhibits “1, 2, and 3”** to the Proposed Petition for Review.

41. As a result, the Petitioners in the litigation do not adequately represent the County Republican Intervenors' interests here.

42. Although the County Republican Intervenors share in the disputed validity of Act 77, that is not their primary objective in requesting intervention.

43. Instead, the County Republican Intervenors specifically seek to have their localized county by county interests adequately represented in this litigation.

44. The distinction between the Petitioners' interests, and the County Republican Intervenors' interests, is critical because it will affect all similarly situated counties that have a majority of citizens, Republican or otherwise, that vote in person and will protect against dilution of their votes by unconstitutionally cast mail in ballots.

45. The County Republican Intervenors' interests here exceed those asserted by the Petitioners in the underlying litigation, who primarily seek a constitutional challenge to Act 77.

46. Finally, and as the Proposed Intervenors-Respondents, the Democratic National Committee and the Pennsylvania Democratic Party suggest, any review of Act 77 and the direct impact on "the most fundamental of all rights should of course not be imposed lightly." See Proposed Intervenors-Respondents Application for Intervention p. 10.

47. In sum, the County Republican Intervenors meet the standard for intervention because:

(1) the entry of a judgment in such action or the satisfaction of such judgment will impose any liability upon such person to indemnify in whole or in part the party against whom judgment may be entered; or

Here, the constitutionality, or not, of Act 77 will directly impact how the County Republican Intervenors' resources are allocated and how they will otherwise be harmed by exclusion of intervention.

(3) such person could have joined as an original party in the action or could have been joined therein; or

Here, the County Republican Intervenors could have filed, and will file, the Petition for Review attached here as Exhibit "A" for all the reasons as set forth therein.

(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."

Here, the determination of the constitutionality of Act 77 will affect the legally enforceable interests of the County Republican Intervenors by how they allocate their resources and advise their constituents.

48. The County Republican Intervenors meet the “substantial, direct, and immediate” test because their interest in the outcome of the action surpasses “the common interest of all citizens in procuring obedience to the law.”

49. The County Republican Intervenors also have a legal and equitable right that will be affected by the proceedings.

50. Here, the County Republican Intervenors are charged with the representation of the Republican interests of the voters of their county.

51. That interest surpasses the common interest of all citizens in voting because it influences how Republican voters are informed of their right and eligibility to vote as well as the associational rights, representational rights and individual rights asserted.

52. Accordingly, the County Republican Intervenors’ interests are not, and will not, be adequately represented by any of the existing parties.

53. The County Republican Intervenors’ have not unduly delayed in filing this Application which is being filed before the pleadings and briefing are closed in this matter.

54. The County Republican Intervenors will not unduly delay, embarrass, or prejudice the trial or adjudication of the parties' rights.

55. Further, the Commonwealth has suggested in its filings in the consolidated case that "other," Petitioners might have a stronger claim to standing than Mr. McLinko. These Proposed-Petitioners suggest that although Mr. McLinko certainly has standing, that these Proposed-Petitioners should readily satisfy even the Commonwealth's limited concept of standing.

WHEREFORE, Proposed Intervenor-Petitioners, the County Republican Intervenors, respectfully request that this Honorable Court grant them leave to file their Petition for Review.

Respectfully Submitted,

**Dillon, McCandless, King,
Coulter & Graham L.L.P.**

Date: October 18, 2021

By: /s/ Thomas W. King, III

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*Counsel for Proposed Intervenors-
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Nos.: 244 M.D. 2021

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PROPOSED INTERVENORS-
PETITIONERS', BUTLER COUNTY
REPUBLICAN COMMITTEE, YORK
COUNTY REPUBLICAN
COMMITTEE, and WASHINGTON
COUNTY REPUBLICAN
COMMITTEE, [PROPOSED]
PETITION FOR REVIEW

Counsel of Record for Proposed
Intervenors-Petitioners:

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NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this Petition for Review and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dauphin County Lawyer Referral Service
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-7536

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PROPOSED INTERVENORS-PETITIONERS', BUTLER COUNTY REPUBLICAN COMMITTEE, YORK COUNTY REPUBLICAN COMMITTEE, and WASHINGTON COUNTY REPUBLICAN COMMITTEE, [PROPOSED] PETITION FOR REVIEW

NOTICE TO PLEAD

TO: RESPONDENTS.

You are hereby notified to file a written response to the enclosed Petition for Review within thirty (30) days from service hereof or a judgment may be entered against you.

Respectfully Submitted,

**Dillon, McCandless, King,
Coulter & Graham L.L.P.**

Date: October 18, 2021

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**PROPOSED INTERVENORS-PETITIONERS', BUTLER COUNTY
REPUBLICAN COMMITTEE, YORK COUNTY REPUBLICAN
COMMITTEE, and WASHINGTON COUNTY REPUBLICAN
COMMITTEE, [PROPOSED] PETITION FOR REVIEW**

Proposed Intervenors-Petitioners, Butler County Republican Committee ("Butler County G.O.P."), York County Republican Committee ("York County G.O.P."), and Washington County Republican Committee ("Washington County G.O.P.") (collectively referred to as the "County Republican Intervenors"), by and through their undersigned counsel, respectfully file the within Proposed Petition for Review in the above-referenced consolidated litigation, averring in support thereof as follows:

I. JURISDICTION

1. This Court has original jurisdiction under 42 Pa.C.S. § 761(a)(1).
2. This action is in the nature of a Declaratory Judgment action pursuant to 42 Pa.C.S. § 7531, *et seq.*

II. PARTIES

3. Proposed Intervenor-Petitioners, defined here as the County Republican Intervenors, are the Republican Party Committees of Butler County, York County, and Washington County, Pennsylvania.

4. The Republican County Committees are specifically authorized to exist and act by virtue of the Bylaws of the Republican Party of

Pennsylvania, a political party and non-profit corporation, representing 3.2 million Pennsylvanians.

5. The Republican County Committees are formed pursuant to the Bylaws of the Republican Party of the Commonwealth of Pennsylvania and pursuant to Sections 2831 and 2837 of the Election Code.

6. Butler County has approximately 143,556 registered voters, 79,600 of which are registered Republicans, and 43,322 of which are registered Democrats.¹

7. Butler County had approximately 7,729 voters vote by mail in the 2021 primary election of which 2,496 were Republican voters and 7,504 were Democratic voters.

8. York County has 304,975 registered voters, 156,953 of which are registered Republicans, and 98,375 of which are registered Democrats.²

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10. Washington County has 145,050 registered voters, 65,838 of which are registered Republicans, and 61,523 of which are registered Democrats.⁴

11. Washington County had approximately 9,229 voters vote by mail in the 2021 primary election of which 1,802 were Republican voters and 7,005 were Democratic voters.

12. The County Republican Intervenors have a direct and substantial interest in the proper and orderly conduct of elections within their respective counties.

13. Moreover, the County Republican Intervenors are responsible for: leading efforts for voter registration within their respective counties; assisting Republican voters with questions regarding proper voting practices; advancing the policies and principles of the Republican Party within their Counties; and assisting candidates in their election campaigns; and the organization of “get-out-the-vote” efforts.

14. Respondents are the Department of State of the Commonwealth of Pennsylvania and Veronica Degraffenreid, Secretary of State, in her official capacity.

⁴<https://www.co.washington.pa.us/DocumentCenter/View/12090/5-18-21-Municipal-Primary-Official-Results>

III. STANDING OF COUNTY REPUBLICAN INTERVENORS

15. The County Republican Intervenors have representational and organizational standing to challenge Act 77 as political committees representing the interests of Republican electors within their respective Counties.

16. As the Republican Party Committees of their respective counties, Proposed-Intervenors represent the interests of their members, who are more likely to vote in person rather than utilizing mail-in ballots.

17. As the Republican Party Committees of their respective counties, Proposed-Intervenors are responsible for decisions related to the allocation of financial resources to assist committee members and voters in preparing for elections as well as to organize "get-out-the-vote" efforts and communications.

18. The question of the constitutionality of Act 77 creates uncertainty and confusion regarding the use of no-excuse mail-in ballots and thus has left the proper method of voting for County Republican Intervenors' members unclear.

19. The question of the constitutionality of Act 77 creates uncertainty and confusion regarding the County Republican Intervenors' allocation of financial resources for "get-out-the-vote" efforts regarding mail-in ballots.

20. The question of the constitutionality of Act 77 also inhibits the County Republican Intervenors from assisting candidates in their election campaigns, leading efforts for voter registration in their respective counties, and advancing the policies and principles of the Republican Party within their counties.

21. Additionally, the County Republican Intervenors do not wish to engage in constitutionally infirm activities, and every unconstitutional vote will diminish the votes constitutionally cast in each such county.

22. The County Republican Intervenors specifically seek to have their localized county by county interests adequately represented in this litigation.

IV. FACTS

23. Act 77, P.L. 552, No. 77 (Act 77), was passed by the Pennsylvania General Assembly in October of 2019.

24. Act 77 set forth amendments to Pennsylvania's Election Code, 25 P.S. § 2601, *et seq.* ("Election Code").

25. Among the changes made by Act 77 were changes to Pennsylvania's voting by mail-in ballot for qualified mail-in electors.

26. Following Act 77's implementation, Pennsylvania's Election Code defines a "qualified mail-in elector" as a qualified elector. 25 P.S. § 2602(z.6).

27. Pennsylvania's Election Code further defines a "qualified elector," as any person who shall possess the qualifications for voting in the Commonwealth of Pennsylvania. 25 P.S. § 2602(t).

28. These changes to Pennsylvania's mail-in voting requirements permit any qualified elector to vote by mail for any reason, so long as the elector is qualified to vote in the Commonwealth of Pennsylvania. 25 P.S. § 3150.11(a).

29. The implementation of Act 77 and its amendments to Pennsylvania's Election Code violate Article VII, § I, of the Pennsylvania Constitution.

V. ARGUMENT

30. Article VII, § I, of the Pennsylvania Constitution provides that in order to be a qualified elector for an election in the Commonwealth, an individual must be (1) 18 years of age or older; (2) a citizen of the United States for at least one month; (3) a resident of Pennsylvania for at least 90 days immediately prior to the date of the election; and (4) a resident of the

election district where the individual shall "offer to vote" at least 60 days prior to the election. Pa. Const. Art. VII, § 1.

31. The sole exception to this requirement for an elector to physically present their ballot at the time and place so appointed is contained in Article VII, § 14 of the Pennsylvania Constitution.

32. This exception provides that an elector may vote by absentee ballot when they (1) are absent from their residence on election day due to business; (2) are unable to attend due to illness or disability; (3) are unable to attend due to the observance of a religious holiday; or (4) are unable to vote due to election day duties. Pa. Const. Art. VII, § 14.

33. Accordingly, Act 77's amendments are violative of the Pennsylvania Constitution as they provide for no-excuse mail-in voting despite the clearly enumerated exceptions to in-person voting contained in Article VII, Section 14 of the Pennsylvania Constitution.

34. In the case of *In re Contested Election in Fifth Ward of Lancaster City*, the Pennsylvania Supreme Court struck down P.L. 309 of 1923 as violative of the Pennsylvania Constitution as the Act authorized voting by mail-in ballots in situations not contemplated by Pennsylvania's 1874 Constitution.

35. P.L. 309 of 1923 permitted any elector, not physically present in their election district as a result of that elector's business or occupation to vote by mail.

36. However, the 1874 Pennsylvania Constitution only authorized mail-in voting in situations where an elector was in the military. Pa. Const. Art. VIII, § 6 (1874).

37. In declaring P.L. 309 of 1923 unconstitutional, the Pennsylvania Supreme Court held that, "[t]he Legislature can confer the right to vote only upon those designated by the fundamental law, and subject to the limitations therein fixed." *In re Contested Election in Fifth Ward of Lancaster City*, 126 A. 199, 201 (Pa. 1924); citing *McCafferty v. Guyer*, 59 Pa. 109, 1868 WL 6998 (Pa. 1868).

38. The Court further stated that, "[h]owever laudable the purpose of the act of 1923, it cannot be sustained. If it is deemed necessary that such legislation be placed upon our statute books, then an amendment to the Constitution must be adopted permitting this to be done." *In re Contested Election*, 126 A. at 201.

39. Rather than a legislative enactment of Act 77, the General Assembly was required to effectuate a formal Amendment to Pennsylvania's

Constitution to amend Article VII, Section 1 to provide for expanded mail-in voting.

40. Indeed, this process was attempted in 2019 when SB 411 was introduced as a Joint Resolution to properly amend Article VII, Section 1 of the Pennsylvania Constitution to provide for no-excuse mail-in ballots.

41. However, such a constitutional amendment was never passed, leaving the language in Article VII, Section 1 as the enforceable standard governing the use of mail-in ballots by qualified electors.

42. The County Republican Intervenors meet the “substantial, direct, and immediate” test because their interest in the outcome of the action surpasses “the common interest of all citizens in procuring obedience to the law.”

43. Here, the County Republican Intervenors are charged with the representation of the Republican interests of the voters of their county.

44. That interest surpasses the common interest of all citizens in voting because it influences how Republican voters are informed of their right and eligibility to vote as well as the associational rights, representational rights and individual rights asserted.

45. The allocation of financial resources; prioritizing the efforts of volunteers; prioritizing get-out-the-vote efforts and communications; and

similar activities, all without knowing whether Act 77 and its provisions are constitutional have created a burden on all the County Republican Intervenors. See the Affidavits of David Ball, Jeffrey Piccola, and Alexander H. Lindsay, Jr., attached hereto and incorporated as if fully set forth at length herein as respectively **Exhibits “1, 2, and 3.”**

46. County Republican Intervenors have no other remedy at law to provide for the constitutional conduct of elections within the Commonwealth of Pennsylvania.

WHEREFORE, Petitioners respectfully request that the Court review and declare unconstitutional Act 77, P.L. 552, No. 77 (Act 77) as more fully set forth herein, and further request:

1. An order declaring that 25 P.S. Chapter 14, Article XIII-D violates the Pennsylvania Constitution;
2. An order declaring that Act 77 and 25 P.S. Chapter 14, Article XIII-D are void and unenforceable; and
3. Such other relief that this Honorable Court deems appropriate.

Respectfully Submitted,

**Dillon, McCandless, King,
Coulter & Graham L.L.P.**

Date: October 18, 2021

By: /s/ Thomas W. King, III
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*Counsel for Proposed Intervenors-
Petitioners*

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.

DEGRAFFENREID, et al.,

Respondents,

and

BUTLER COUNTY REPUBLICAN
COMMITTEE; YORK COUNTY
REPUBLICAN COMMITTEE; and
WASHINGTON COUNTY
REPUBLICAN COMMITTEE.

Proposed Intervenors-
Petitioners,

Nos.: 244 M.D. 2021
293 M.D. 2021

AFFIDAVIT OF DAVE BALL

EXHIBIT 1

EXHIBIT A

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF BUTLER : ss.
:

AFFIDAVIT OF DAVE BALL

1. I, Dave Ball, currently serve as the Chairman of the Washington County Republican Committee (hereinafter "Committee"), Washington County, Commonwealth of Pennsylvania. The Chairman is one of five Committee officers elected by its members. Further, I am a registered Republican, a voter and a resident of Washington County, Commonwealth of Pennsylvania.

2. As the Chairman of the Committee, I am familiar with the 2020 and 2021 goals, activities, finances, and operations of the Committee. Further, I am familiar with the impact that the provisions of Act 77, P.L. 552, No. 77 of 2019, (hereinafter "Act 77") had on the Committee's effort to elect Republican candidates in Washington County, the Commonwealth of Pennsylvania, and the United States.

3. The Committee believes that Act 77 and its various provisions related to mail-in ballots are in violation of the Constitution of the Commonwealth of Pennsylvania, and as such Act 77 is unconstitutional.

EXHIBIT 1

EXHIBIT A

4. Personally, as a registered Republican, a voter, and a resident of Washington County, I believe that Act 77 and its various provisions related to mail-in ballots are in violation of the Constitution of the Commonwealth of Pennsylvania, and as such Act 77 is unconstitutional.

5. The pending legal challenge to the constitutionality of Act 77 has created significant uncertainty within Washington County and within our Committee in that the Committee must make decisions related to, but not limited to, the allocation of financial resources; prioritizing the efforts of our volunteers; prioritizing our get-out-the-vote efforts and communications; and similar activities, all without knowing whether Act 77 and its provisions are constitutional.

6. Since its approval, Act 77 and its provisions have faced significant legal challenges which have produced much uncertainty and confusion regarding the appropriate manner for Republicans in Washington County to legally cast their votes for Republican candidates. Some of this litigation has directly related to the issue of whether mail-in ballots should or should not be counted based upon the provisions of Act 77. The decision of the Pennsylvania Supreme Court in *Kelly v. Commonwealth of Pennsylvania, et al*, 240 A.3d 1255 (2020), was based upon "laches" and did not therefore finally decide the issue of the constitutionality of the Act.

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7. The pending litigation will have a direct impact upon the Committee, its members associational rights, and our right to vote for and elect Republican candidates within Washington County, the Commonwealth of Pennsylvania, and the United States.

8. Regardless of the ultimate determination of the Court, the Committee seeks a binding legal determination regarding the constitutionality of Act 77.

9. The Committee and its efforts are harmed by the uncertainty surrounding the constitutionality of Act 77. The Committee has limited financial and human resources which must be allocated in a proper and efficient manner to elect Republican candidates. If our limited financial and human resources are allocated to encourage and educate Republican voters to utilize mail-in ballots, and Act 77 is held to be unconstitutional, those resources will have been wasted and our efforts to elect Republican candidates severely harmed.

10. Since its approval, there has been tremendous confusion related the appropriate way to request, complete, and return a mail-in ballot in Washington County. This confusion has significantly harmed our Committee's effort within Washington County.

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11. In the 2020 election cycle, our Committee did not have sufficient financial resources to create specific mailers to educate Republican voters regarding the appropriate way to request, complete, and return a mail-in ballots in Washington County. The Committee was forced to take space away from mailers designed to support Republican candidates and use that space to educate Republican voters regarding Act 77. This was not an effective way to overcome all of the confusion related to Act 77. If held to be constitutional, significant additional resources will be needed in the future.

12. Our Republican Committee members are harmed by the uncertainty surrounding the constitutionality of Act 77. Our members volunteer countless hours to elect Republican candidates, including, a significant amount of time on election day. These members face a dilemma: whether to utilize mail-in ballots, which would provide them with more time on election day to support Republican candidates; or vote in-person on election day and have less time to support Republican candidates. If they select the former and Act 77 is held to be unconstitutional, their mail-in ballots and the Republican votes will not be counted.

13. As a voter, I am also harmed by the uncertainty surrounding the constitutionality of Act 77. Like many of our Committee members, I am not eligible for an absentee ballot. I must decide whether to utilize a "no-fault"

EXHIBIT 1

EXHIBIT A

mail-in ballot and take the risk that my mail-in ballot and Republican vote may not be counted if Act 77 is unconstitutional and/or that my in-person vote at my polling place may be diluted or diminished by votes cast by virtue of an unconstitutional process.

I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief. I declare, certify, verify, or state under penalty of perjury that the foregoing is true and correct, under *18 Pa. C.S. §4904* relating to unsworn declarations under penalty of perjury.

October 18, 2021
Date

Dave M Ball
Dave Ball

EXHIBIT 1

EXHIBIT A

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.

DEGRAFFENREID, et al.,

Respondents,

and

**BUTLER COUNTY REPUBLICAN
COMMITTEE; YORK COUNTY
REPUBLICAN COMMITTEE; and
WASHINGTON COUNTY
REPUBLICAN COMMITTEE.**

Proposed Intervenors-
Petitioners,

Nos.: 244 M.D. 2021
293 M.D. 2021

**AFFIDAVIT OF JEFFREY
PICCOLA**

EXHIBIT 2

EXHIBIT A

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF BUTLER

:
:
:

ss.

AFFIDAVIT OF JEFFREY PICCOLA

1. I, Jeffrey Piccola, currently serve as the Chair of the York County Republican Committee (hereinafter "Committee"), York County, Commonwealth of Pennsylvania. The Chair is one of five Committee officers elected by its members. Further, I am a registered Republican, a voter and a resident of York County, Commonwealth of Pennsylvania.

2. As the Chair of the Committee, I am familiar with the 2020 and 2021 goals, activities, finances, and operations of the Committee. Further, I am familiar with the impact that the provisions of Act 77, P.L. 552, No. 77 of 2019, (hereinafter "Act 77") had on the Committee's effort to elect Republican candidates in York County, the Commonwealth of Pennsylvania, and the United States.

3. The Committee believes that Act 77 and its various provisions related to mail-in ballots are in violation of the Constitution of the Commonwealth of Pennsylvania, and as such Act 77 is unconstitutional.

4. Personally, as a registered Republican, a voter, and a resident of York County, I believe that Act 77 and its various provisions related to

EXHIBIT 2

EXHIBIT A

mail-in ballots are in violation of the Constitution of the Commonwealth of Pennsylvania, and as such Act 77 is unconstitutional.

5. The pending legal challenge to the constitutionality of Act 77 has created significant uncertainty within York County and within our Committee in that the Committee must make decisions related to, but not limited to, the allocation of financial resources; prioritizing the efforts of our volunteers; prioritizing our get-out-the-vote efforts and communications; and similar activities, all without knowing whether Act 77 and its provisions are constitutional.

6. Since its approval, Act 77 and its provisions have faced significant legal challenges which have produced much uncertainty and confusion regarding the appropriate manner for Republicans in York County to legally cast their votes for Republican candidates. Some of this litigation has directly related to the issue of whether mail-in ballots should or should not be counted based upon the provisions of Act 77. The decision of the Pennsylvania Supreme Court in *Kelly v. Commonwealth of Pennsylvania, et al*, 240 A.3d 1255 (2020), was based upon "laches" and did not therefore finally decide the issue of the constitutionality of the Act.

7. The pending litigation will have a direct impact upon the Committee, its members associational rights, and our right to vote for and

EXHIBIT 2

EXHIBIT A

elect Republican candidates within York County, the Commonwealth of Pennsylvania, and the United States.

8. Regardless of the ultimate determination of the Court, the Committee seeks a binding legal determination regarding the constitutionality of Act 77.

9. The Committee and its efforts are harmed by the uncertainty surrounding the constitutionality of Act 77. The Committee has limited financial and human resources which must be allocated in a proper and efficient manner to elect Republican candidates. If our limited financial and human resources are allocated to encourage and educate Republican voters to utilize mail-in ballots, and Act 77 is held to be unconstitutional, those resources will have been wasted and our efforts to elect Republican candidates severely harmed.

10. Since its approval, there has been tremendous confusion related the appropriate way to request, complete, and return a mail-in ballot in York County. This confusion has significantly harmed our Committee's effort within York County.

11. In the 2020 election cycle, our Committee did not have sufficient financial resources to create specific mailers to educate Republican voters regarding the appropriate way to request, complete, and return a mail-in

EXHIBIT 2

EXHIBIT A

ballots in York County. The Committee was forced to take space away from mailers designed to support Republican candidates and use that space to educate Republican voters regarding Act 77. This was not an effective way to overcome all of the confusion related to Act 77. If held to be constitutional, significant additional resources will be needed in the future.

12. Our Republican Committee members are harmed by the uncertainty surrounding the constitutionality of Act 77. Our members volunteer countless hours to elect Republican candidates, including, a significant amount of time on election day. These members face a dilemma: whether to utilize mail-in ballots, which would provide them with more time on election day to support Republican candidates; or vote in-person on election day and have less time to support Republican candidates. If they select the former and Act 77 is held to be unconstitutional, their mail-in ballots and the Republican votes will not be counted.

13. As a voter, I am also harmed by the uncertainty surrounding the constitutionality of Act 77. Like many of our Committee members, I am not eligible for an absentee ballot. I must decide whether to utilize a "no-fault" mail-in ballot and take the risk that my mail-in ballot and Republican vote may not be counted if Act 77 is unconstitutional and/or that my in-person vote

EXHIBIT 2

EXHIBIT A

at my polling place may be diluted or diminished by votes cast by virtue of an unconstitutional process.

I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief. I declare, certify, verify, or state under penalty of perjury that the foregoing is true and correct, under 18 Pa. C.S. §4904 relating to unsworn declarations under penalty of perjury.

October 18, 2021
Date

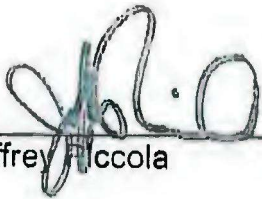

Jeffrey Piccola

EXHIBIT 2

EXHIBIT A

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
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Respondents,

TIMOTHY BONNER, et al.,

Petitioners,

v.

DEGRAFFENREID, et al.,

Respondents,

and

**BUTLER COUNTY REPUBLICAN
COMMITTEE; YORK COUNTY
REPUBLICAN COMMITTEE; and
WASHINGTON COUNTY
REPUBLICAN COMMITTEE.**

Proposed Intervenors-
Petitioners,

Nos.: 244 M.D. 2021
293 M.D. 2021

AFFIDAVIT OF ALEXANDER H.
LINDSAY, JR.

EXHIBIT 3

EXHIBIT A

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF BUTLER : ss.
 :

AFFIDAVIT OF ALEXANDER H. LINDSAY, JR.

1. I, Alexander H. Lindsay, Jr., currently serve as the Chairman of the Butler County Republican Committee (hereinafter "Committee"), Butler County, Commonwealth of Pennsylvania. The Chairman is one of five Committee officers elected by its members. Further, I am a registered Republican, a voter and a resident of Butler County, Commonwealth of Pennsylvania.

2. As the Chairman, I am familiar with the 2020 and 2021 goals, activities, finances, and operations of the Committee. Further, I am familiar with the impact that the provisions of Act 77, P.L. 552, No. 77 of 2019, (hereinafter "Act 77") had on the Committee's effort to elect Republican candidates in Butler County, the Commonwealth of Pennsylvania, and the United States.

3. The Committee believes that Act 77 and its various provisions related to mail-in ballots are in violation of the Constitution of the Commonwealth of Pennsylvania, and as such Act 77 is unconstitutional.

4. Personally, as a registered Republican, a voter, and a resident of Butler County, I believe that Act 77 and its various provisions related to mail-in ballots are in violation of the Constitution of the Commonwealth of Pennsylvania, and as such Act 77 is unconstitutional.

5. The pending legal challenge to the constitutionality of Act 77 has created significant uncertainty within Butler County and within our Committee in that the Committee must make decisions related to, but not limited to, the allocation of financial resources; prioritizing the efforts of our volunteers; prioritizing our get-out-the-vote efforts and communications; and similar activities, all without knowing whether Act 77 and its provisions are constitutional.

6. Since its approval, Act 77 and its provisions have faced significant legal challenges which have produced much uncertainty and confusion regarding the appropriate manner for Republicans in Butler County to legally cast their votes for Republican candidates. Some of this litigation has directly related to the issue of whether mail-in ballots should or should not be counted based upon the provisions of Act 77. The decision of the Pennsylvania Supreme Court in *Kelly v. Commonwealth of Pennsylvania, et al*, 240 A.3d 1255 (2020), was based upon "laches" and did not therefore finally decide the issue of the constitutionality of the Act.

EXHIBIT 3

EXHIBIT A

7. The pending litigation will have a direct impact upon the Committee, its members associational rights, and our right to vote for and elect Republican candidates within Butler County, the Commonwealth of Pennsylvania, and the United States.

8. Regardless of the ultimate determination of the Court, the Committee seeks a binding legal determination regarding the constitutionality of Act 77.

9. The Committee and its efforts are harmed by the uncertainty surrounding the constitutionality of Act 77. The Committee has limited financial and human resources which must be allocated in a proper and efficient manner to elect Republican candidates. If our limited financial and human resources are allocated to encourage and educate Republican voters to utilize mail-in ballots, and Act 77 is held to be unconstitutional, those resources will have been wasted and our efforts to elect Republican candidates severely harmed.

10. Since its approval, there has been tremendous confusion related the appropriate way to request, complete, and return a mail-in ballot in Butler County. This confusion has significantly harmed our Committee's effort within Butler County. Our Committee prepared an Election Reform Report which details the confusion and impact of Act 77. A true and correct copy of

EXHIBIT 3

EXHIBIT A

the Report is attached hereto as Appendix "A" and incorporated herein by reference.

11. In the 2020 election cycle, our Committee did not have sufficient financial resources to create specific mailers to educate Republican voters regarding the appropriate way to request, complete, and return a mail-in ballots in Butler County. The Committee was forced to take space away from mailers designed to support Republican candidates and use that space to educate Republican voters regarding Act 77. This was not an effective way to overcome all of the confusion related to Act 77. If held to be constitutional, significant additional resources will be needed in the future.

12. Our Republican Committee members are harmed by the uncertainty surrounding the constitutionality of Act 77. Our members volunteer countless hours to elect Republican candidates, including, a significant amount of time on election day. These members face a dilemma: whether to utilize mail-in ballots, which would provide them with more time on election day to support Republican candidates; or vote in-person on election day and have less time to support Republican candidates. If they select the former and Act 77 is held to be unconstitutional, their mail-in ballots and the Republican votes will not be counted.

EXHIBIT 3

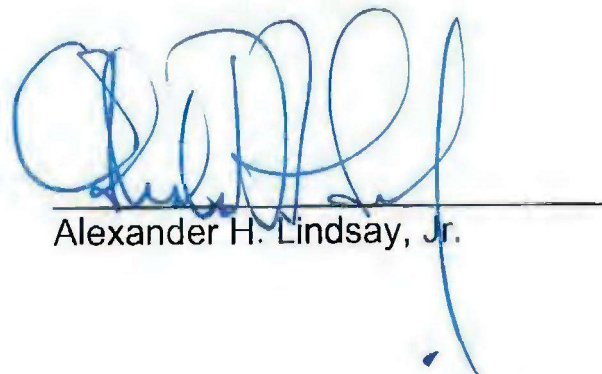
EXHIBIT A

unconstitutional, their mail-in ballots and the Republican votes will not be counted.

13. As a voter, I am also harmed by the uncertainty surrounding the constitutionality of Act 77. Like many of our Committee members, I am not eligible for an absentee ballot. I must decide whether to utilize a “no-fault” mail-in ballot and take the risk that my mail-in ballot and Republican vote may not be counted if Act 77 is unconstitutional and/or that my in-person vote at my polling place may be diluted or diminished by votes cast by virtue of an unconstitutional process.

I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief. I declare, certify, verify, or state under penalty of perjury that the foregoing is true and correct, under *18 Pa. C.S. §4904* relating to unsworn declarations under penalty of perjury.

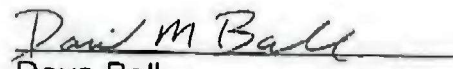
October 18, 2021
Date



Alexander H. Lindsay, Jr.


VERIFICATION

I, Dave Ball, Chair of the Washington County Republican Committee, am authorized to make this verification. I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of perjury of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.


Dave Ball

VERIFICATION

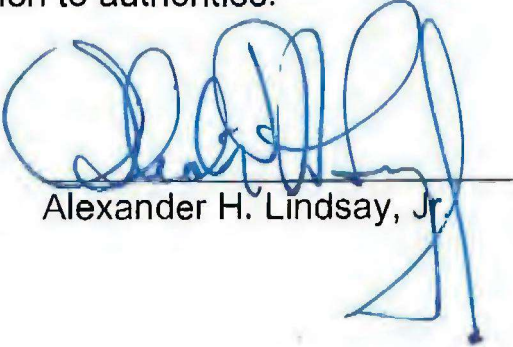
I, Jeffrey Piccola, Chair of the York County Republican Committee, am authorized to make this verification. I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of perjury of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Jeffrey Piccola

VERIFICATION

I, Alexander H. Lindsay, Jr., Chair of the Butler County Republican Committee, am authorized to make this verification. I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of perjury of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Alexander H. Lindsay, Jr.


CERTIFICATE OF COMPLIANCE

I 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.

/s/ Thomas W. King, III
Thomas W. King, III


VERIFICATION

I, Dave Ball, Chair of the Washington County Republican Committee, am authorized to make this verification. I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of perjury of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.


Dave Ball

VERIFICATION

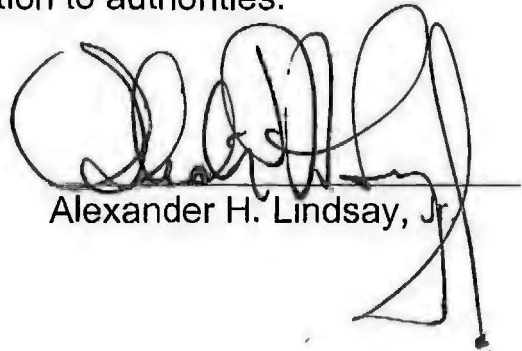
I, Jeffrey Piccola, Chair of the York County Republican Committee, am authorized to make this verification. I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of perjury of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Jeffrey Piccola

VERIFICATION

I, Alexander H. Lindsay, Jr., Chair of the Butler County Republican Committee, am authorized to make this verification. I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of perjury of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Alexander H. Lindsay, Jr.

CERTIFICATE OF COMPLIANCE

I 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.

/s/ Thomas W. King, III
Thomas W. King, III

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DOUG MCLINKO,

Petitioner,

v.

**COMMONWEALTH OF
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OF STATE, and VERONICA
DEGRAFFENREID,** in her official
capacity as Acting Secretary of the
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Petitioners,

v.

DEGRAFFENREID, et al.,

Respondents,

and

**BUTLER COUNTY REPUBLICAN
COMMITTEE; YORK COUNTY
REPUBLICAN COMMITTEE; and
WASHINGTON COUNTY
REPUBLICAN COMMITTEE.**

Proposed Intervenors-
Petitioners.

Nos.: 244 M.D. 2021

293 M.D. 2021 (Consolidated)

PROPOSED ORDER

PROPOSED ORDER

AND NOW, this ___ day of _____, 202__, upon consideration of the **PROPOSED INTERVENORS-PETITIONERS', BUTLER COUNTY REPUBLICAN COMMITTEE, YORK COUNTY REPUBLICAN COMMITTEE, and WASHINGTON COUNTY REPUBLICAN COMMITTEE, APPLICATION TO INTERVENE**, and any opposition thereto, it is hereby ORDERED that the Proposed Intervenors-Petitioners' Application is GRANTED and the Intervenor-Petitioners' Proposed Petition, attached to their Application as "Exhibit A," is deemed filed and the clerk shall enter it upon the docket.

_____. J.