

IN THE SUPREME COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA
PARRILLA; REBECCA
POYOUROWN; 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.

No. 7 MM 2022

LEIGH M. CHAPMAN, in
her official capacity as the Acting
Secretary of the Commonwealth of
Pennsylvania; JESSICA MATHIS, in
her official capacity for the
Pennsylvania Bureau of Election
Services and Notaries,

Respondents.

PHILIP T. GRESSMAN; RON Y.
DONAGI; KRISTOPHER R. TAPP;
PAMELA GORKIN; DAVID P.
MARSH; JAMES L.
ROSENBERGER; AMY MYERS;
EUGENE BOMAN; GARY
GORDON; LIZ MCMAHON,
TIMOTHY G. FEEMAN; and GARTH
ISAAK,

Petitioners,

v.

LEIGH M. CHAPMAN, in
her official capacity as the Acting
Secretary of the Commonwealth of
Pennsylvania; JESSICA MATHIS, in
her official capacity as Director for the
Pennsylvania Bureau of Election
Services and Notaries,

Respondents.

**ANSWER OF INTERVENOR REPRESENTATIVE JOANNA E.
MCCLINTON, LEADER OF THE DEMOCRATIC CAUCUS OF THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES, TO EMERGENCY
APPLICATION FOR INTERVENTION OF PROPOSED INTERVENOR
TEDDY DANIELS**

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Representative Joanna E. McClinton, Leader of the Democratic Caucus of the
Pennsylvania House of Representatives*

Pursuant to Pa. R. App. P. 123, 531, 1531, 3309, and 42 Pa. C.S. § 726, Intervenor, Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives (“House Democratic Caucus Intervenor” or “Representative McClinton”), hereby answers the “Emergency Application of Proposed Intervenor Teddy Daniels,” (“Daniels” or “Mr. Daniels”), and, in support thereof avers the following:

I. DENIALS OF AVERMENTS

1.-38. Denied. The allegations contained in these paragraphs are denied as, after reasonable investigation, the House Democratic Caucus Intervenor is without knowledge or information sufficient to form a belief as to the truth of the averments, which are therefore denied as a matter of law. By way of further denial, the allegations contained in these paragraphs are denied as they contain the legal conclusions of Mr. Daniels and his counsel, to which no response is required, and are therefore denied as a matter of law.

WHEREFORE, the House Democratic Caucus Intervenor respectfully requests that this Court deny the Emergency Application for Intervention of Mr. Daniels.

II. ARGUMENT

The instant “Emergency Application for Intervention” is not truly a request for intervention, it is, instead a request for reconsideration or review of this Court’s

February 9, 2022 order entered pursuant to 42 Pa. C.S. § 502 in aid exercise of its extraordinary jurisdiction and King's Bench powers. As such, any "review" of such an order should be filed as a separate Application for Extraordinary Relief and as Petition for Review, separate and apart from the instant matter.¹

As this Court is well aware by order dated February 2, 2022, this Court assumed plenary jurisdiction of this matter setting forth certain deadlines to be followed by the Commonwealth Court and the parties hereto. Prior to that time, the Commonwealth Court had Original jurisdiction over this matter and had previously entered an order requiring all applications to intervene be filed on or before December 31, 2021. Mr. Daniels did not file any application for intervention at that time. On January 14, 2022, the Commonwealth Court entered an order granting some and denying other applications for intervention in this matter. Some of those denied intervenor status appealed to this Court for relief. Those applications were all denied. Mr. Daniels did request leave to intervene nor file any Application with this Court at that time.

Only now, after the Commonwealth Court's issuance of its Report and Recommendation, and this Court's February 2 and 9, 2022 Orders does Mr. Daniels appear and request to be heard.

¹ In fact, the relief sought by Mr. Daniels is to file a Petition for Review of this Court's February 9, 2022 Order, as a new and distinct cause of action naming Intervenors herein (all of them) Respondents in that proposed matter. Such relief is not similar to the commencement of a new matter before this Court, it is in fact the commencement of a new matter before this Court. As such, it should either be filed with leave of this Court as original process or as free standing Petition for Review and Application for Extraordinary Relief. *See* Ex. "A" to Emergency Application for Intervention.

It cannot be gainsaid that our rules of appellate procedure do not envision “intervention” as such a process is understood in the lower courts and controlled by Pa. R. Civ. P. 2327 and 2329. In fact, the “Note” accompanying Pa. R. App. P. 1531 states: “A nonparty may file a brief as of right under Pa.R.A.P. 531(participation by amicus curiae) and, therefore, intervention is not necessary in order to participate in the appellate court where the petition for review is filed.” *Id.* An exception to that general practice is also contained in the same note and provides:

Where, for example, a nonparty to a petition for review proceeding in the Commonwealth Court desires to be in a position to seek further review in the Supreme Court of Pennsylvania or the Supreme Court of the United States of an order of the Commonwealth Court disposing of the petition for review, the nonparty should intervene or seek leave to intervene in the Commonwealth Court at the outset, because under Pa.R.A.P. 501, party status is a prerequisite to the right to further review.

Id.

In the present case, Mr. Daniels, although apparently well acquainted with this matter prior to this Court’s entry of the February 9, 2022 Order and chose not to file based upon a legal judgment made by either he, himself, or his counsel, that prior to that date, Mr. Daniels lacked the requisite standing to intervene in this matter. Pet. 33-37. Accordingly, citing only the Pennsylvania Rules of Civil Procedure he claims his Application in this Court is timely. It is not. Mr. Daniels was required to intervene in this matter while still pending in the Commonwealth Court. *See* Pa. R. App. P. 1531 (Note). Because he failed to do so, his current Emergency Application fails.

III. CONCLUSION

For all the foregoing reasons, Intervenor Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives, respectfully requests that this Court deny the Emergency Application for Intervention of Mr. Daniels.

Respectfully submitted,

/s/ David S. Senoff

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Dated: February 14, 2022

