

IN THE SUPREME COURT OF PENNSYLVANIA

Kerry Benninghoff, individually,	:	
and as Majority Leader of the	:	
Pennsylvania House of	:	
Representatives,	:	
	:	
Petitioners,	:	No. 11 MM 2022
	:	
v.	:	
	:	
2021 Legislative Reapportionment	:	
Commission,	:	
	:	
Respondent.	:	

**ANSWER OPPOSING PETITIONER’S APPLICATION
FOR ORDER LIMITING BRIEFING BY INTERVENOR
DEMOCRATIC LEADER MCCLINTON**

The Court should deny Petitioner’s Application, because:

1. Intervenor Democratic Leader McClinton properly filed a notice of intervention because she was a participant in the proceedings before the Commission. *See* Pa.R.A.P. 1531 (“A party to a proceeding before a government unit that resulted in a quasijudicial order may intervene as of right in a proceeding under this chapter related to such order by filing a notice of intervention”); Pa.R.A.P. 3321 (“Unless otherwise ordered,

appeals under Section 17(d) of Article II of the Constitution of Pennsylvania shall be governed by Chapter 15 (judicial review of government determinations).”).

2. Intervention allows parties in agency proceedings to keep participating in the proceedings on appeal where, under the Pennsylvania Rules of Appellate Procedure, those participants are not automatically made parties to the appeal. *See* Pa.R.A.P. 1531, Explanatory Comment-1979.

3. Intervenors who intervene on the same side as the automatic Respondent are regularly allowed to file their own briefs—with their own 14,000 word limit. Though the Rules allow joinder in briefs of similarly aligned appellees, *see* Pa.R.A.P. 2137, the Rules never require such joinder.

4. Further, Leader McClinton may advance different arguments from the Commission or rebut the arguments of Petitioner in a different way.

5. On the very first page of his brief, Majority Leader Benninghoff specifically criticizes statements that Leader McClinton made outside the context of Commission proceedings.

6. Leader Benninghoff also makes specific reference to statements and papers prepared by members of Leader McClinton's staff.

7. Leader McClinton should be allowed to respond to the arguments directed specifically at her and her team, in addition to responding more generally to claims made by Leader Benninghoff, including Leader Benninghoff's claim that the plan championed by Leader McClinton dilutes the votes of people of color in the Commonwealth and is a racial gerrymander.

8. Leader McClinton was also the sponsor of the resolution reallocating certain prisoner data, which Leader Benninghoff argues was impermissible.

9. Further, Leader McClinton retained three of the experts that presented reports and testimony to the Commission and whose testimony Leader Benninghoff criticizes.

10. Leader McClinton's brief will likely aid the Court in understanding the background for the prisoner data reallocation resolution and the opinions of the experts she retained.

11. There is no fundamental unfairness in allowing Leader McClinton to file a brief.

12. As mentioned above, multiple respondents routinely file separate briefs. In fact, the Rules recognize that multiple briefs may be filed. *See* Pa.R.A.P. 2137; *see also* Pa.R.A.P. 2185(3) (“If the time for filing a brief is established by reference to service of a preceding brief and more than one such preceding brief is filed, the deadline for filing the subsequent brief shall be calculated from the date on which the last timely filed preceding brief is served.”).

13. Further, unlike Leader Benninghoff’s now-denied application for leave to file a reply brief and for oral argument, Leader McClinton’s brief will not delay the expedited proceedings of this Court.

14. Leader McClinton made clear in her Notice of Intervention that she intends to file her answer and brief at the same time the Commission files its brief and answer.

Respectfully submitted,

March 10, 2022

/s/ Robert L. Byer

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently from non-confidential information and documents.

/s/ Robert L. Byer _____