

PROPOSED INTERVENORS' APPLICATION TO INTERVENE

Proposed Intervenors, Republican National Committee, and Republican Party of Pennsylvania (hereinafter the “**Applicants**”), by and through their undersigned counsel, respectfully file the within Application to Intervene (the “**Application**”) in the above-referenced matter, seeking to participate fully therein as Intervenors. If permitted to intervene, Applicants request to incorporate by reference and will join and incorporate herein by reference thereto the Preliminary Objections and Brief filed by Dr. Mehmet Oz, Republican Primary Election candidate for the United State Senate and the Dr. Oz for Senate Committee, which were filed with the Court on May 24, 2022. In support of this Application, the Applicants state as follows:

Introduction

1. On May 23, 2022, Petitioners David McCormick for U.S. Senate and David H. McCormick, Republican Primary Election candidate for the United State Senate, (hereinafter jointly “Petitioners”) filed a Petition for Review in the nature of a Complaint in Equity seeking declaratory relief under and pursuant to the Declaratory Judgment Act, 42 Pa. C.S. 7541(a).

2. Petitioners’ Petition for Review seeks in relevant part relief in the form of an Order declaring that “timely returned absentee and mail-in ballots

may not be rejected due to the lack of a date in the declaration on the exterior envelope;” that directs “Respondent Boards to canvass any timely returned absentee and mail-in ballot that lacks a date on its exterior envelope and no other deficiencies or irregularities;” that directs “Respondent Boards to report to the Pennsylvania Department of State the unofficial results of the canvass, 25 P.S. § 3154(f), of any timely returned absentee and mail-in ballot that lacks a date on its exterior envelope and no other deficiencies or irregularities;” and that enjoins “Respondent Boards to take all other steps necessary to effectuate this Court’s declaration”.

Applicant Republican National Committee (“RNC”)

3. The Applicant Republican National Committee (hereinafter “RNC”) is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14).

4. The RNC manages the Republican Party's business at the national level, including development and promotion of the Party's national platform and fundraising and election strategies; supports Republican candidates for public office at all levels across the country, including those on the ballot in Pennsylvania; and assists state parties throughout the country to elect Republican candidates, including, the Republican candidate in Pennsylvania for the United States Senate.

5. The RNC will make significant contributions and expenditures in support of Republican candidates, including, but not limited to, the Republican candidate in the Commonwealth of Pennsylvania for the United States Senate.

6. The RNC has a substantial and particularized interest in ensuring that Pennsylvania carries out free and fair elections. In particular, the legislature in the Commonwealth of Pennsylvania has statutorily required that mail-in ballots be dated by the elector. The Supreme Court of Pennsylvania has affirmed that mail-in ballots must be dated by the elector. The RNC has an interest in assuring that elections involving Republican candidates are conducted in accordance with the laws of the Commonwealth of Pennsylvania and as affirmed by the Supreme Court of Pennsylvania.

Applicant Republican Party of Pennsylvania

7. The Applicant Republican Party of Pennsylvania is duly constituted, organized and exists in accordance with the laws of the Commonwealth of Pennsylvania with its party headquarters located at 112 State Street, City of Harrisburg, Dauphin County, Commonwealth of Pennsylvania 17101. 25 P.S. §§ 2831, et seq., and 2861, et seq.

8. Applicant Republican Party of Pennsylvania represents the interests of approximately 3,517,090 registered Republican electors within the Commonwealth of Pennsylvania. See 2020 Report to the General Assembly: Administration of Voter Registration in Pennsylvania, dated June 2021.

9. The Republican Party of Pennsylvania manages the Republican Party's business at the State level, including development and promotion of the Party's state platform and fundraising and election strategies; supports Republican candidates for public office at all levels across the Commonwealth of Pennsylvania; and assists county parties throughout the Commonwealth to elect Republican candidates, including, the Republican candidate in Pennsylvania for the United States Senate.

10. The Republican Party of Pennsylvania will make significant contributions and expenditures in support of Republican candidates throughout the Commonwealth, including, but not limited to, the Republican candidate for the United States Senate.

11. The Republican Party of Pennsylvania has a substantial and particularized interest in ensuring that Pennsylvania carries out free and fair elections. In particular, the legislature in the Commonwealth of Pennsylvania has statutorily required that mail-in ballots be dated by the

elector. The Supreme Court of Pennsylvania has affirmed that mail-in ballots must be dated by the elector. The RNC has an interest in assuring that all elections involving Republican candidates are conducted in accordance with the laws of the Commonwealth of Pennsylvania and as affirmed by the Supreme Court of Pennsylvania.

12. Candidate McCormick is a registered member and candidate of the Republican Party of Pennsylvania.

13. Candidate McCormick is one of seven Republican candidates running in the Republican Primary Election to represent the Republican Party of Pennsylvania in the General Election for the United States Senate.

14. If successful in the Primary Election, Candidate McCormick will be the Applicants' candidate in the General Election for the United States Senate.

15. The Applicants have a vested interest in assuring that Pennsylvania's Republican Primary Election—and all future elections—is conducted in strict accordance with the laws of the Commonwealth of Pennsylvania as well as the Constitutions of the United States and the Commonwealth of Pennsylvania.

16. Petitioner McCormick's Petition for Review seeks declaratory relief that, if granted, may directly impact the outcome of the Republican

Primary Election, and as such, will determine the Applicants' candidate in the General Election for the United States Senate.

17. Each of the Republican candidates in the Primary Election for the United States Senate may be impacted by the Court's Order in this matter. Any Order entered by this Court in this matter will affect any other candidate seeking the nomination of the Republican Party within the Commonwealth of Pennsylvania, and will also have an effect on all future elections (which will include Republican candidates). The Proposed Relief is in direct convention of Act 77 and Pennsylvania law and would be contrary to the decision of the Pennsylvania Supreme Court relative to this matter.

Legal Standard

18. 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)).

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

20. “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.

21. 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.

22. “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)).

23. 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).

24. “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 Pa. Commw. Unpub. LEXIS 535, 2021 WL 4735059, at *1 (Pa. Commw. September 2, 2021) (citing *Realen Valley Forge Greenes Associates v. Upper Merion Township Zoning Hearing Board*, 941 A.2d 739, 744 (Pa. Cmwlth. 2008) (citations omitted)).

25. “[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. Cmwlth. 1998)).

26. 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).

27. “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.*

28. 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

29. Paragraphs 1 through 28 of this Application are incorporated herein as if fully set forth.

30. The Applicant RNC has the statutory authority, right and obligation to protect, defend and represent the interests of all Republican voters and Republican candidates throughout the United States.

31. The Applicant Republican Party of Pennsylvania has the statutory authority, right and obligation to protect, defend and represent the interests of all Republican voters and Republican candidates throughout the Commonwealth of Pennsylvania.

32. Section 2831 of Pennsylvania's Election Code provides, in relevant part, as follows:

[a]ny party or political body. . . shall nominate all its candidates for any of the offices provided for in this act, ... in accordance with the provisions of this act and party rules.

25 P.S. § 2831.

33. In accordance with Section 2861, the Secretary of the Commonwealth has determined that the Applicant is the political party

representing the interests of the registered Republicans within the Commonwealth of Pennsylvania. 25 P.S. § 2861.

34. Section 2862 of Pennsylvania’s Election Code provides for the nomination of candidates and party officers at primaries, and states in relevant part, as follows:

[a]ll candidates of political parties, as defined in [25 P.S. § 2831], for the offices of United States Senator, ... shall be elected at primaries held in accordance with the provisions of this act, ...

25 P.S. § 2862.

35. The Applicants have direct and significant interests in the continued enforcement of Pennsylvania’s laws governing mail-in and absentee ballots as those laws are designed to ensure “the integrity of [the] election process,” *Eu v. San Fran. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989), and the “orderly administration” of elections, *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008) (op. of Stevens, J.). Were these validly enacted laws to be cast aside—and the recent decisions of this Court and the Pennsylvania Supreme Court turned on their head—the current competitive electoral environment in Pennsylvania, in which the Republican Committees invest substantial resources in support of Republican candidates to try to win elections, would be altered or impaired.

See *League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 n.5, 800 (Pa. 2018).

36. Courts routinely recognize that political parties have interests supporting intervention in litigation concerning elections and election procedures. See, e.g., *Harriet Tubman Freedom Fighters Corp. v. Lee*, Doc. 34, No. 4:21-cv-242 (N.D. Fla. July 6, 2021); *Florida Rising Together v. Lee*, Doc. 52, No. 4:21-cv-201 (N.D. Fla. July 6, 2021); *Fla. State Conference of Branches & Youth Units of NAACP v. Lee*, Doc. 43, No. 4:21-cv-187 (N.D. Fla. June 8, 2021); *League of Women Voters of Fla. v. Lee*, Doc. 72, No. 4:21-cv-186 (N.D. Fla. June 4, 2021); *Sixth District of the African Methodist Episcopal Church v. Kemp*, Minute Order, No. 1:21-cv-1284 (N.D. Ga. June 4, 2021); *Siegel v. LePore*, 234 F.3d 1163, 1169 n.1 (11th Cir. 2001); *Trinsey v. Pennsylvania*, 941 F.2d 224, 226 (3d Cir. 1991); *Anderson v. Babb*, 632 F.2d 300, 304 (4th Cir. 1980); *Democratic Nat'l Comm. v. Bostelmann*, No. 20-cv-249-wmc, 2020 U.S. Dist. LEXIS 54269, 2020 WL 1505640, at *5 (W.D. Wisc. Mar. 28, 2020); *Citizens United v. Gessler*, No. 14-002266, 2014 U.S. Dist. LEXIS 128669, 2014 WL 4549001, at *2 (D. Colo. Sept. 15, 2014); *Libertarian Party of Michigan v. Johnson*, No. 12-12782, 2012 U.S. Dist. LEXIS 126096 (E.D. Mich. Sept. 5, 2012); *Radogno v. Ill. State Bd. of Elections*, No. 1:11-cv-4884, 2011 U.S. Dist. LEXIS 134520, 2011 WL

5868225, *1 (N.D. Ill. Nov. 22, 2011); *Hastert v. State Bd. of Elections*, 777 F. Supp. 634, 639 (N.D. Ill. 1991). Indeed, courts generally recognize that political parties have “an interest in the subject matter of [a] case,” when “changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the ... Republican Party.” See *Ohio Democratic Party v. Blackwell*, No. 04-1055, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005).

37. If Petitioners’ action succeeds, the orderly administration of Pennsylvania’s elections will be upended, a week *after* the primary election was conducted.

38. Not only would this undercut democratically enacted laws that protect voters and candidates (including the Applicants’ members), *Caba v. Weaknecht*, 64 A.3d 39, 50 (Pa. Commw. 2013), it would change the “structure of the competitive environment” in Pennsylvania’s elections and “fundamentally alter the environment in which [the Applicants] defend their concrete interests (e.g. their interest in ... winning [elections]),” *Shays v. Fed. Elec. Comm’n*, 414 F.3d 76, 86 (D.C. Cir. 2005).

39. The Applicants possess legally enforceable interests in ensuring that elections which determine the Republican candidates, including, the Republican candidate for the United States Senate, are conducted in

accordance with laws of the Commonwealth of Code and the Constitutions of the United States and the Commonwealth.

40. The Applicants meet the requirements of Pa.R.C.P. No. 2329. Likewise, the Applicant are not barred by the exception listed in Pa.R.C.P. No. 2329.

41. The determination of the within action may affect the legally enforceable interests of the Applicants.

42. The Applicants' interests surpass the common interest of the citizens of the Commonwealth of Pennsylvania, the Petitioner, and/or the Respondents in this action.

43. The ultimate determination of this case will affect all the parties in the litigation as well as individuals not a party to the present case, including, but not limited to, the Applicants and the Republican candidates in the Republican Primary Election for the United States Senate.

44. The Applicants' interests, statutory rights, and authority are not, and will not, be adequately represented by any of the existing parties.

45. If granted intervention, the Applicants adopt by reference and join in the Preliminary Objections and Brief filed by Dr. Mehmet Oz, Republican candidate for the United States Senate, and the Dr. Oz for Senate Committee, on May 24, 2022, in their entirety pursuant to Pa. R.C.P. 2328(a).

46. The Applicants will not unduly delay, embarrass, or prejudice the trial or adjudication of the parties' rights.

47. On May 24, 2022, the Acting Secretary of the Commonwealth issued Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes, directing County Boards of Election to act contrary to the Pennsylvania Supreme Court's decision in *In re Canvass of Absentee and mail-in Ballots*, 241 A.3d 1058 (2020), and the applicable provisions of the Election Code.

WHEREFORE, Proposed Intervenors, Republican National Committee ("RNC") and Republican Party of Pennsylvania, respectfully request that this Honorable Court grant them leave to intervene and join the Preliminary Objections and brief filed by Dr. Mehmet Oz, Republican Primary Election candidate for the United States Senate and the Dr. Oz for Senate Committee, along with any other leave deemed appropriate by the Court.

Respectfully Submitted,

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

Date: May 24, 2022

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VERIFICATION

I, Stuart Keckler, Director of Operations of the Republican Party of Pennsylvania, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge and belief. This verification is made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.


Date: 5/24/2022


Stuart Keckler

VERIFICATION

I, Michael Reed, Chief of Staff of the Republican National Committee, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge and belief. This verification is made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.

Date: 5/25/2022


Michael Reed

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

PROPOSED ORDER

AND NOW, this ___ day of May 2022, upon consideration of the within Application to Intervene, and any opposition thereto, it is hereby ORDERED that said Application is GRANTED; and the Proposed Intervenors, the Republican National Committee, and the Republican Party of Pennsylvania, are GRANTED leave to intervene and join the Preliminary Objections and brief filed by Dr. Mehmet Oz, Republican Primary Election candidate for the United State Senate and the Dr. Oz for Senate Committee.

J.