

IN THE SUPREME COURT OF PENNSYLVANIA

TOM WOLF, GOVERNOR OF : No. 73 MM 2022
THE COMMONWEALTH OF :
PENNSYLVANIA, AND LEIGH M. :
CHAPMAN, ACTING :
SECRETARY OF THE :
COMMONWEALTH OF :
PENNSYLVANIA, :

Petitioners :

v. :

GENERAL ASSEMBLY OF THE :
COMMONWEALTH OF :
PENNSYLVANIA, :

Respondent :

**EMERGENCY APPLICATION FOR LEAVE TO INTERVENE
OF REPRESENTATIVE KERRY A. BENNINGHOFF,
MAJORITY LEADER OF THE PENNSYLVANIA HOUSE,
AND THE PENNSYLVANIA HOUSE REPUBLICAN CAUCUS**

House Majority Leader Kerry A. Benninghoff, and the Pennsylvania House Republican Caucus (collectively the “House Intervenors”), by and through undersigned counsel, Lamb McErlane PC, hereby seek leave to intervene as party respondents in this matter, and in support thereof, aver as follows:

1. The General Assembly, acting pursuant to its powers under Pa. Const. art. XI, § 1, voted by a majority in both the Pennsylvania House and Senate to pass Senate Bill 106 (“SB 106”), a joint resolution proposing several constitutional

amendments for ultimate consideration by the citizens of the Commonwealth of Pennsylvania.

2. On July 28, 2022, Governor Wolf and Acting Secretary of the Commonwealth Leigh M. Chapman filed an Application for Invocation of this Court's King's Bench Power (the "Application"), asking this Court to declare SB 106 invalid and enjoin further action on the proposed constitutional amendments.

3. The Application was filed notwithstanding the fact that SB 106 is in its procedural infancy, having only proceeded through its first of many procedural steps before the questions contained therein would appear on the ballot for voter approval.

4. Through their Application, Petitioners seek to avoid their ministerial duty, to undo the will of the General Assembly and to diminish the powers and authority of the General Assembly to act under Pa. Const. art. XI, § 1.

5. Because the Application challenges the Legislature's express constitutional authority to act, implicating separation of powers, the House Intervenors seek to intervene.

6. A party is entitled to intervene in a matter if it satisfies any one of the requirements set forth in Pennsylvania Rule of Civil Procedure 2327. Thus, intervention "**shall** be permitted" if (1) entry of a judgment will impose liability to indemnify, (2) the intervenor will be adversely affected by a distribution of

property in the custody of the court, (3) the intervenor could have joined or could have been joined as an original party, or (4) the determination of the action may affect the intervenor's legally enforceable interest. Pa.R.C.P. No. 2327 (emphasis supplied).

7. An application to intervene will be refused only when one of the narrowly prescribed circumstances in Pennsylvania Rule of Civil Procedure 2329 is present. Rule 2329 provides an application may be refused if:

- (1) the claim or defense of the petitioner is not subordinate 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(1)-(3).

8. Here, House Intervenors satisfy at least two of the criteria of Rule 2327, and none of three considerations for denying intervention under Rule 2329 are present.

9. First, the House Intervenors "could have joined as [] original part[ies] in this suit, or could have been joined therein[,]" because Majority Leader Benninghoff is one of the highest ranking officials of the House and the Caucus is a recognized body of the House. Pa.R.C.P. No. 2327(3).

10. Majority Leader Benninghoff represents the interests of the House Republican members, which is the current majority party in the House. SB 106 passed by a vote in the House of 107-92 with nearly every member of the Republican party voting in favor of SB 106. Because almost all of the members of the majority party voted in favor of SB 106, Majority Leader Benninghoff represents the interests of these members whose actions Petitioners now challenge. As a House member himself and a representative of the majority party, Majority Leader Benninghoff could have been joined as a party to this action.

11. The Pennsylvania House organizes its members according to the two major political party affiliations, Republican and Democratic. The two subordinate organizations (Majority and Minority), which make up the House, are known as the House "caucuses". *Precision Mktg., Inc. v. Commonwealth, Republican Caucus of the Senate of PA/AKA Senate of PA Republican Caucus*, 78 A.3d 667, 672 (Pa. Cmwlth. 2013).¹ Whichever party holds the most seats in the House is considered the Majority Caucus.

12. The Majority Caucus is one of two subparts of the Pennsylvania House and is an integral constituent of the House. "When a caucus is effective, it

¹ *Precision Mktg.* specifically addresses the caucuses in the Senate, but the concept is equally applicable to the House caucuses. See *Precision Mktg.*, 78 A.3d at 672, n. 10, 11 and 12.

creates the 'constitutional majority' to pass legislation.” *Precision Mktg.*, 78 A.3d at 673.

13. As an integral part of the House, and thus the General Assembly, the House Republican Caucus could have been joined as party to the Application for Invocation of King’s Bench Power. This is because the House Republican Caucus encompasses the majority voting in favor of the joint resolution in the chamber and since its members include the individual members of the House with the power to control the legislative calendar regarding this joint resolution (which is material should the Court order further or additional legislative process) and future resolutions concerning the same subject matter.

14. The House Majority Caucus has a substantial, direct and immediate interest in the outcome of this action because if the relief requested by the Petitioners is granted, there will be a discernible and palpable unconstitutional infringement on the legislative authority of the House Majority Caucus.

15. Second, Majority Leader Benninghoff, representing the majority party of the House, and the Caucus, composed of members of the House, have a legally enforceable interest in defending the General Assembly’s constitutional authority, and that interest will be substantially affected if Petitioners are ultimately granted the declaratory relief they seek and SB 106 is invalidated. See Pa.R.C.P. No. 2327(4); *see also Allegheny Reproductive Health Ctr. v. Pennsylvania Dep’t of*

Human Servs., 225 A.3d 902, 913 (Pa. Cmwlth. 2020) (concluding legislative intervenors had grounds to intervene where they sought to preserve their authority to vote on certain legislation in the future).

16. Because the House Intervenors could have joined as original parties, and this matter affects the legally enforceable interests of the House Intervenors, they satisfy at minimum two categories for intervention. Pa.R.C.P. No. 2327(3) & (4).

17. Finally, none of the three considerations for denying intervention are present.

18. First, House Intervenors' claims are in subordination to and in recognition of the propriety of the pending action, as House Intervenors seek to defend the rights and actions of the majority party members with regard to SB 106. Pa.R.C.P. No. 2329(1).

19. Second, House Intervenors' interests differ from and, therefore, are not already adequately represented by the existing parties. Petitioners seek to invalidate SB 106 and, therefore, their interests are adverse to the House Intervenors' interests. Respondent General Assembly also does not adequately represent the interest of the House Intervenors. The interests of the entire General Assembly reflect the interests of every Senator and Representative, many of whom voted against the joint resolution and no doubt support the Petitioners' interests

here. *See, e.g.*, Press Release, *Senator Jay Costa Supports Governor Wolf Led Lawsuit Against SB 106, Reaffirms Commitment to Abortion Access in PA*, Pa. Senate Democrats (July 28, 2022).² Thus the interests of the General Assembly, as a body of the whole, differ from the interests of the House Intervenors. Therefore, House Intervenors' interests are not adequately represented by the existing parties. Pa.R.C.P. No. 2329(2).

20. Third, House Intervenors have not unduly delayed in making this Application nor will the intervention delay, embarrass or prejudice the trial or adjudication of rights of the parties. Petitioners filed their Application on July 28, 2022, and the House Intervenors filed the present Application within three business days. Respondent has not yet filed an Answer or other responsive pleading.³ Moreover, House Intervenors, like Petitioners, similarly seek to adjudicate this matter as swiftly as possible; thus, House Intervenors will not delay a final-merits decision if granted intervention. *See* Pa.R.C.P. No. 2329(3).

21. Finally, if permitted to intervene, House Intervenors will timely file a response in opposition to the Application. *See* Pa.R.C.P. No. 2328(a); *see also* Pa.R.A.P. 3309(b).

² Available at <https://pasenate.com/senator-jay-costa-supports-governor-wolf-led-lawsuit-against-sb-106-reaffirms-commitment-to-abortion-access-in-pa/>.

³ Indeed, upon information and belief, service did not occur any earlier than August 1, 2022.

WHEREFORE, House Intervenors respectfully request that this Court grant this Application and grant House Intervenors leave to intervene as party respondents in this matter.

Respectfully submitted,

LAMB McERLANE PC

Date: August 2, 2022

By: /s/ Joel L. Frank

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PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

It is hereby certified by the undersigned 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.

Respectfully submitted,

LAMB McERLANE PC

Date: August 2, 2022

By: /s/ Joel L. Frank

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