

IN THE SUPREME COURT OF PENNSYLVANIA

<p>David Ball, <i>et al.</i>,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>LEIGH M. CHAPMAN, in her official capacity as Acting Secretary of the Commonwealth, <i>et al.</i>,</p> <p style="text-align: center;">Respondents.</p>	<p>No. 102 MM 2022</p>
---	------------------------

**PETITIONERS’ OMNIBUS ANSWER TO THE PROPOSED
INTERVENORS’ APPLICATIONS FOR LEAVE TO INTERVENE**

Petitioners, by and through undersigned counsel, file the following Omnibus Answer to the Applications for Leave to Intervene filed by (1) DSCC, DCCC, Democratic National Committee and Pennsylvania Democratic Party and (2) the League of Women Voters of Pennsylvania, Philadelphians Organized to Witness, Empower and Rebuild, Black Political Empowerment Project, Common Cause Pennsylvania, the NAACP Pennsylvania State Conference, and Make the Road Pennsylvania (collectively, “Proposed Intervenors”).

Assuming *arguendo* that Proposed Intervenors meet the requirements for intervention under Rule 2327(4)¹, the Rules of Civil Procedure expressly provide

¹ But see *Carter, et al. v. Degraffenreid, et al.*, No. 132 MD 2021 (Pa. Commw. Aug. 24, 2021) (op. not reported) (rejecting intervention in a redistricting case where the proposed intervenor sought intervention in part based on Pennsylvania Rule of Civil Procedure 2327(4)).

the Court with discretion to deny intervention. Specifically, the Court may deny intervention, *inter alia*, if the Proposed Intervenors' interests are "already adequately represented" in the litigation or if the intervention would "unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties." Pa. R.C.P. 2329(2) and (3); *Wilson v. State Farm Mut. Auto. Ins. Co.*, 517 A.2d 944, 947 (Pa. 1986) (explaining, under Rules 2327 and 2329, "a mere prima facie basis for intervention is not enough . . ." and that Rule 2329 can otherwise preclude intervention to parties who have already shown a legally enforceable interest); *Braddock v. Ohnmeiss*, 867 A.2d 539, 539 n.3 (Pa. Super. 2005) ("Questions of intervention are addressed to the sound discretion of the trial court.").

Petitioners' primary concern is the risk of undue delay. *See* Pa. R.C.P. 2329(3). With less than 3 weeks until Election Day, the Court is clearly mindful of the time-sensitive nature and importance of the Petitioners' Application for the Exercise of King's Bench Power or Extraordinary Jurisdiction. If permitting intervention would prolong the adjudication of the issues raised therein, intervention should be denied under Rule 2329(3). *See Eastern Am. Transport & Warehousing, Inc. v. Evans Conger Broussard & McCrea, Inc.*, 2002 Phila. Ct. Com. Pl. LEXIS 58, 2002 WL 1803718, at *4 (Pa. Com. Pl. 2002) (denying intervention because intervention would "unnecessarily delay and complicate" the case).

Further, Rule 2329(2) is implicated here. The proposed answers filed by the Proposed Intervenors and some of the current Respondents are remarkably similar. *See Cherry Valley Assoc. v. Stroud Twp. Bd. of Supervisors*, 530 A.2d 1039, 1041 (Pa. Commw. 1987) (denying intervention because township board, which had denied building permit, adequately represented interests of proposed intervenors who opposed development); *Lakeside Park Co. v. Forshark*, 4 Pa. D. & C.2d 574 (Pa. Com. Pl. 1956) (denying intervention because issue before the court was same for defendant and proposed intervenors); *cf. Marion Power Shovel Co., Div. of Dresser Indus. v. Fort Pitt Steel Casting Co., Div. of Conval-Penn*, 426 A.2d 696, 701 n.7 (Pa. Super. 1981) (internal citation omitted) (“The interest justifying intervention must be a right or liability recognized and enforceable at law or in equity as distinguished from an . . . interest in seeing one litigant or another prevail in the proceedings.”); *Tremont Tp. School Dist. v. Western Anthracite Coal. Co.*, 113 A.2d 234, 236 (Pa. 1955) (“Since ‘legally enforceable interest’ does not have a clear and exact definition[,] the Court must necessarily exercise discretion in determining whether such an interest exists.”) (citations omitted).

WHEREFORE, Petitioners request the Court deny the Proposed Intervenors’ Application for Leave to Intervene to the extent their interests are already adequately represented by the Respondents or if such intervention would cause undue delay to the expeditious resolution of these proceedings.

Respectfully submitted,

Dated: October 20, 2022

/s/ Kathleen A. Gallagher
Kathleen A. Gallagher
PA I.D. #37950
Russell D. Giancola
PA. I.D. #200058
GALLAGHER GIANCOLA LLC
436 Seventh Avenue, 31st Floor
Pittsburgh, PA 15219
Phone: (412) 717-1900
kag@glawfirm.com
rdg@glawfirm.com

John M. Gore *
E. Stewart Crosland
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Phone: (202) 879-3939
jmgore@jonesday.com
msowardsnewton@jonesday.com
scrosland@jonesday.com

** Pro hac vice application forthcoming*

Thomas W. King, III *
Thomas E. Breth
DILLON, McCANDLESS, KING,
COULTER & GRAHAM, LLP
128 W. Cunningham St.
Butler, PA 16001
Phone: (724) 283.2200
tking@dmkcg.com
tbreth@dmkcg.com

** General Counsel, Republican Party of
Pennsylvania*

Counsel for Petitioners

**CERTIFICATION OF COMPLIANCE
WITH CASE RECORDS PUBLIC ACCESS POLICY**

I, Kathleen A. Gallagher, 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 than non-confidential information and documents.

Dated: October 20, 2022

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2022, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

GALLAGHER GIANCOLA LLC

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

Counsel for Petitioners