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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

FAITH GENSER and FRANK MATIS, Petitioners, vs. BUTLER COUNTY BOARD OF ELECTIONS, Respondent.

CIVIL DIVISION

No. MSD-2024-40116

ELECTION APPEAL

PROTHONOTARY'S
 OFFICE-BUTLER CO.
 ENTERED & FILED
 2024 MAY -7 A 8:49

I. NOTICE

You are herewith notified that the attached matter will be presented to Assigned Judge Yeager on Tuesday, May 7, 2024, at 9:00 a.m.

II. CERTIFICATE OF NOTICE/SERVICE

I gave reasonable prior notice of filing and a copy of this document to all Counsel of Record on May 6, 2024 by: Personal Service Fax Mail Other (explain) Email

III. INFORMATION FOR COURT ADMINISTRATOR

Is this an original filing in this case? Yes No

Judge Assignment:

Joseph Kubit (courtroom 1) William Robinson (courtroom 2) Michael Yeager (courtroom 3) William Shaffer (courtroom 7) Robert Yeatts (courtroom 7)
 Other _____

Adverse party position? OPPOSED CONSENTS UNOPPOSED Unknown
 (To Petitioners) (To Respondent)

I certify all the above statements are true and correct.

Date: May 6, 2024

/s/ Clifford B. Levine
 Clifford B. Levine

*Counsel for Proposed Intervenor, the
 Pennsylvania Democratic Party*

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

FAITH GENSER and FRANK MATIS,

Petitioners,

vs.

BUTLER COUNTY BOARD OF
ELECTIONS,

Respondent.

: CIVIL DIVISION

: Civil Action No. MSD-2024-40116

: ELECTION APPEAL

: Hon. S. Michael Yeager

: **PETITION TO INTERVENE OF
THE PENNSYLVANIA
DEMOCRATIC PARTY**

: Filed on Behalf of:
The Pennsylvania Democratic Party

: Counsel of Record for
this Party:

: Clifford B. Levine
Pa. Id. No. 33507

: David F. Russey
Pa. Id. No. 84184

: Christian J. Myers
Pa. Id. No. 333955

: Dentons Cohen & Grigsby P.C.
625 Liberty Avenue, 5th Floor
Pittsburgh, PA 15222-3152
Ph: (412) 297-4900
Fax: (412) 209-1975
clifford.levine@dentons.com
david.russey@dentons.com
christian.myers@dentons.com

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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

FAITH GENSER and FRANK MATIS,

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vs.

BUTLER COUNTY BOARD OF
ELECTIONS,

Respondent.

CIVIL DIVISION

No. MSD-2024-40116

ELECTION APPEAL

NOTICE OF PRESENTATION

TAKE NOTICE, that the Pennsylvania Democratic Party (“Proposed Intervenor”) will present the attached PETITION TO INTERVENE to the Honorable Dr. S. Michael Yeager, President Judge, in the Court of Common Pleas of Butler County, Pennsylvania, Courtroom #3, West Diamond Street, Butler, Pennsylvania 16001, on Tuesday, May 7, 2024, at 9:00 a.m., or as soon thereafter as suits the convenience of the Court.

Counsel for Proposed Intervenor has consulted with Benjamin Geffen and Witold Walczak, counsel for Petitioners, Faith Genser and Frank Matis, and contacted Kathleen Goldman, counsel for Respondent, Butler County Board of Elections. Attorneys Geffen and Walczak have indicated that their clients consent to Proposed Intervenor’s request to intervene in this matter. Although Counsel for Proposed Intervenor was unable to communicate with Attorney Goldman, Attorney Goldman indicated consent to the Republican National Committee and the Republican Party of Pennsylvania’s Petition for Leave to Intervene in this matter.

As this matter is scheduled for a hearing at 10:30 a.m. on May 7, 2024, and in light of the above-referenced consent, Proposed Intervenor asks that the attached Petition be considered on an emergency basis pursuant to Rule L208.3(a)(3). Proposed Intervenors are unable to provide the five-day advance notice of the presentation of a motion required by Rule L208.3(a)(5).

Respectfully submitted,

DENTONS COHEN & GRIGSBY P.C.

By: /s/ Clifford B. Levine

Clifford B. Levine (Pa. Id. No. 33507)

David F. Russey (Pa. Id. No. 84184)

Christian J. Myers (Pa. Id. No. 333955)

625 Liberty Avenue, 5th Floor

Pittsburgh, PA 15222-3152

Ph: (412) 297-4900

Fax: (412) 209-1975

clifford.levine@dentons.com

david.russey@dentons.com

christian.myers@dentons.com

Dated: May 6, 2024

*Counsel for Proposed Intervenor, the
Pennsylvania Democratic Party*

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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

FAITH GENSER and FRANK MATIS,

Petitioners,

vs.

BUTLER COUNTY BOARD OF
ELECTIONS,

Respondent.

CIVIL DIVISION

No. MSD-2024-40116

ELECTION APPEAL

PETITION TO INTERVENE OF THE PENNSYLVANIA DEMOCRATIC PARTY

Proposed Intervenor, the Pennsylvania Democratic Party (the "PDP"), respectfully files this Petition to Intervene in the above-captioned case and to participate fully therein as an intervenor. In support of its Petition, the PDP states the following:

Introduction

1. Faith Genser and Frank Matis ("Petitioners") argue that the Butler County Board of Elections ("Respondent") violated Pennsylvania constitutional and statutory election law by denying them the opportunity to cure defects in their mail-in ballots. Petitioners also argue that Respondent misinterpreted Pennsylvania Supreme Court precedent that involves the process of notice and cure.

2. The PDP has a legally enforceable, particularized interest in this matter. Neither Petitioners nor Respondent adequately represent the PDP's interests, which also are broader than Petitioners' asserted interests. The PDP's intervention will not affect the schedule set forth in this matter.

Background

3. The PDP is the largest political party by registration in Pennsylvania. *See* Ex. 1, Declaration of Mitch Kates (“Declaration”), dated May 6, 2024. As of May 6, 2024, 3,894,887 registered voters in Pennsylvania are members of the PDP. *Voting & Election Statistics*, PA. DEP’T OF STATE, <https://bit.ly/4bnoOKo> (last visited May 6, 2024).

4. The PDP is a major political party, 25 P.S. § 2831(a), and the “State committee” for the Democratic Party in Pennsylvania, *id.* § 2834. In each general, midterm, and municipal election, the PDP regularly nominates individuals for Pennsylvania’s federal, state, and local offices.

5. The Butler County Ballot Curing Policy states that, upon request, a list of voters who submitted ballots containing a “Deficiency” “shall be made available to the Party Committees,” defined as “the Butler County Democratic Committee and the Butler County Republican Committee, as designated by their respective state organizations.” *See Butler County Ballot Curing Policy*, (adopted May 2, 2023; modified Feb. 14, 2024), <https://bit.ly/3JPBMVu>.

Legal Standard

6. Applications to intervene are governed by the standards set forth in Pennsylvania Rules of Civil Procedure 2326-2350.

7. Rule 2372 enumerates four categories of persons or entities that may intervene “[a]t any time during the pendency of an action,” including any person or entity that has “any legally enforceable interest” that may be affected by a judgment in the action. Pa.R.Civ.P. 2327(4).

8. Rule 2329 provides certain permissive grounds for refusal to permit the intervention of a person who fits within the parameters of Rule 2327, including that such person's interest is "already adequately represented." Pa.R.Civ.P. 2329(2).

9. "Considering Rules 2327 and 2329 together, the effect of Rule 2329 is that if the petitioner is a person within one of the classes described in Rule 2327, the allowance of intervention is mandatory, not discretionary, unless one of the grounds for refusal under Rule 2329 is present." *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999).

10. Even if a ground for refusal under Rule 2329 is present, the Court still possesses discretion to permit intervention. *Id.*

The PDP's Intervention Is Appropriate in This Case.

11. First, the PDP has an interest in intervening in lawsuits regarding general election procedure. Pennsylvania state and federal courts have permitted political parties to intervene in cases addressing such procedure. *See, e.g., Pierce v. Allegheny Cnty. Bd. of Elections*, 324 F. Supp. 2d 684 (W.D. Pa. 2003).

12. The PDP also has an interest in both educating its members about notice-and-cure procedures and encouraging voters to cure deficient ballots. The PDP coordinates with county Democratic party and committee organizations to alert voters to the opportunity to cure deficient ballots that can be cured. *See Ex. 1, Declaration.*

13. Similarly, the PDP has an interest in ensuring that all votes are counted. *See id.*

14. Second, neither Petitioners nor Respondent adequately represent the PDP's interests.

15. For example, the PDP seeks to ensure that its candidates prevail and that its millions of members have the fullest opportunity to vote afforded by law. By contrast, neither Respondent nor Petitioners have such concerns.

16. Third, the PDP's interests here exceed in scope those asserted by Petitioners.

17. Petitioners are two individual voters, without associational interests with candidates, officeholders, and millions of registered Democratic voters, like those of the PDP.

18. Finally, the PDP is aware of this Court's April 29, 2024 Order. The PDP's intervention will not affect the scheduled hearing set for May 7, 2024.

Conclusion

19. For the reasons set forth above, the PDP's intervention is appropriate in this case.

WHEREFORE, the Pennsylvania Democratic Party respectfully requests that the Court GRANT this Petition to Intervene and DIRECT the Butler County Prothonotary to enter the name of the Pennsylvania Democratic Party in this matter as an Intervenor.

Respectfully submitted,

DENTONS COHEN & GRIGSBY P.C.

By: /s/ Clifford B. Levine

Clifford B. Levine (Pa. Id. No. 33507)
David F. Russey (Pa. Id. No. 84184)
Christian J. Myers (Pa. Id. No. 333955)

625 Liberty Avenue, 5th Floor
Pittsburgh, PA 15222-3152
Ph: (412) 297-4900
Fax: (412) 209-1975
clifford.levine@dentons.com
david.russey@dentons.com
christian.myers@dentons.com

Dated: May 6, 2024

*Counsel for Proposed Intervenor, the
Pennsylvania Democratic Party*

EXHIBIT 1

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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

FAITH GENSER and FRANK MATIS,

Petitioners,

vs.

BUTLER COUNTY BOARD OF
ELECTIONS,

Respondent.

CIVIL DIVISION

No. MSD-2024-40116

ELECTION APPEAL

DECLARATION OF MITCH KATES

I am an adult individual over 21 years of age and have personal knowledge of the matters set forth herein.

1. I reside in Ben Avon, Pennsylvania.
2. I am the Executive Director of the Pennsylvania Democratic Party (the "PDP").
3. I make this Declaration in support of the PDP's Petition to Intervene in the above-captioned matter.
4. The PDP is a major political party under the Pennsylvania Election Code. In each general, midterm, and municipal election, the PDP regularly nominates individuals for Pennsylvania's federal, state, and local offices.
5. The PDP is the largest political party by registration in the Commonwealth.
6. The PDP has expended and continues to expend significant resources to educate candidates, electors and voting officials regarding adherence to the Election Code.
7. The PDP has dedicated significant resources to encourage its supporters and constituents to vote, including to vote by mail.
8. The Butler County Board of Elections has adopted a Ballot Curing Policy that permits voters to cure certain deficiencies in mail-in ballots.

9. The Butler County Ballot Curing Policy states that, upon request, a list of voters who submitted ballots containing a “Deficiency” to “Party Committees,” defined as “the Butler County Democratic Committee and the Butler County Republican Committee, as designated by their respective state organizations.”

10. The PDP has an interest in encouraging voters to cure deficient ballots. The PDP coordinates with county Democratic party and committee organizations to alert voters to the opportunity to cure deficient ballots that can be cured.

11. Similarly, the PDP has an interest in ensuring that all votes are counted.

The statements contained in this Declaration are true and correct to the best of my personal knowledge. I make this Declaration subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Date: May 6, 2024

Mitch Kates

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

FAITH GENSER and FRANK MATIS,

Petitioners,

vs.

BUTLER COUNTY BOARD OF
ELECTIONS,

Respondent.

CIVIL DIVISION

No. MSD-2024-40116

ELECTION APPEAL

**[PROPOSED] ORDER GRANTING THE APPLICATION TO INTERVENE OF THE
PENNSYLVANIA DEMOCRATIC PARTY**

AND NOW, this ___ day of May, 2024, upon consideration of the Petition to Intervene of the Pennsylvania Democratic Party, it is hereby ORDERED that the Petition is GRANTED. The Court DIRECTS the Prothonotary to enter the Pennsylvania Democratic Party on the docket in this matter as an Intervenor.

BY THE COURT:

_____, P. J.
President Judge S. Michael Yeager

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Petition to Intervene was served via email, this 6th day of May, 2024, on the following:

Marian K. Schneider (Pa. Id. No. 50337)
Stephen A. Loney (Pa. Id. No. 202535)
Kate Steiker-Ginzberg (Pa. Id. No. 332236)
ACLU of Pennsylvania
P.O. Box 60173
Philadelphia, PA 19102
(215) 592-1513
mschneider@aclupa.org
sloney@aclupa.org
ksteiker-ginzberg@aclupa.org

Witold J. Walczak (Pa. Id. No. 62976)
Richard T. Ting (Pa. Id. No. 200438)
ACLU of Pennsylvania
P.O. Box 23058
Pittsburgh, PA 15222
(412) 681-7864
vwalczak@aclupa.org
rting@aclupa.org

Kathleen Jones Goldman (Pa. Id. No. 90380)
Buchanan Ingersoll & Rooney, P.C.
Union Trust Building
501 Grant Street, Suite 200
Pittsburgh, PA 15219
(412) 562-1401
kathleen.goldman@bipc.com

Counsel for Respondent

Mary M. Mckenzie (Pa. Id. No. 47434)
Benjamin D. Geffen (Pa. Id. No. 310134)
Public Interest Law Center
1500 JFK Blvd., Suite 802
Philadelphia, PA 19102
mmckenzie@pubintl.org
(267) 546-1319
bgeffen@pubintl.org
(267) 546-1308

Martin J. Black (Pa. Id. No. 54319)
Steven F. Oberlander (Pa. Id. No. 334207)
Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
martin.black@dechert.com
(215) 994-2664
steven.oberlander@dechert.com
(215) 994-2411

Counsel for Petitioners

Kathleen A. Gallagher (Pa. Id. No. 37950)
Brian M. Adrian (Pa. Id. No. 81461)
The Gallagher Firm, LLC
436 Seventh Avenue, 31st Floor
Pittsburgh, PA 15219
(412) 308-5512
kag@gallagherlawllc.com
bma@gallagherlawllc.com

John M. Gore
E. Stewart Crosland
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939
jmgore@jonesday.com
scrosland@jonesday.com

Thomas W. King, III (Pa. Id. No. 21580)
Thomas E. Breth (Pa. Id. No. 66350)
Dillon, McCandless, King, Coulter, &
Graham, LLP
128 W. Cunningham Street
Butler, PA 16001
(724) 283-2200
tking@dmkcg.com
tbreth@dmkcg.com

*Counsel for Proposed Intervenor-
Respondents, Republican National Committee
and Republican Party of Pennsylvania*

/s/ Clifford B. Levine

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VERIFICATION

I hereby aver that the statements of fact contained in the attached *Petition to Intervene of the Pennsylvania Democratic Party* are true and correct to the best of my knowledge and belief and are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Mitch Kates', written over a diagonal watermark.

By:

Mitch Kates, Executive Director
The Pennsylvania Democratic Party

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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 than non-confidential information and documents.

Submitted by: The Pennsylvania Democratic Party

Signature: /s/ Clifford B. Levine

Name: Clifford B. Levine

Attorney No. (if applicable): 33507

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