

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

BLACK POLITICAL EMPOWERMENT
PROJECT, PHILADELPHIANS
ORGANIZED TO WITNESS, EMPOWER
AND REBUILD, MAKE THE ROAD
PENNSYLVANIA, ONEPA ACTIVISTS
UNITED, NEW PA PROJECT EDUCATION
FUND, CASA SAN JOSE, PITTSBURGH
UNITED, LEAGUE OF WOMEN VOTERS
OF PENNSYLVANIA, AND COMMON
CAUSE PENNSYLVANIA

Petitioners,

v.

AL SCHMIDT, in his official capacity as
Secretary of the Commonwealth,
PHILADELPHIA COUNTY BOARD OF
ELECTIONS, AND ALLEGHENY COUNTY
BOARD OF ELECTIONS,

Respondents,

and

DEMOCRATIC NATIONAL
COMMITTEE, PENNSYLVANIA
DEMOCRATIC PARTY,

Proposed Intervenor-
Petitioners.

No. 283 MD 2024

**PROPOSED INTERVENOR-PETITIONERS'
APPLICATION TO INTERVENE**

The Democratic National Committee (“DNC”) and the Pennsylvania Democratic Party (“PDP”) file this application to intervene in the litigation and to participate fully therein as intervenor-petitioners.

I. INTRODUCTION

Petitioners brought this action claiming that the Pennsylvania Constitution’s Free and Equal Elections Clause, Pa. Const. art. I, §5, prohibits respondents from refusing to count eligible voters’ timely submitted mail ballots on the ground that a voter neglected to write a date, or wrote an “incorrect” date, on the ballot-return envelope. Pet. 2. Thousands of such ballots have been discarded in each primary and general election since 2020 under the so-called date requirement, which is codified at 25 P.S. §§3146.6(a) and 3150.16(a). Pet. 3.

Resolution of this issue will significantly affect the DNC’s and PDP’s ability to carry out their core mission of electing Democratic candidates, because mail ballots that run afoul of the date requirement can be decisive in close elections. The DNC and the PDP thus seek to intervene to protect their competitive interest in a free and fair election system—a system not skewed by purposeless restrictions on the fundamental right to vote that disadvantage the DNC’s and PDP’s constituents and candidates. The DNC and PDP also seek to preserve their limited voter-education and campaign resources, which have been diverted (and would need to continue to be diverted) to address problems caused by the date requirement.

Finally, no party to this proceeding adequately represents the DNC's and the PDP's interests, interests that are substantial, direct, and immediate—thereby conferring standing to intervene. These interests, in fact, make intervention not just permissible, but mandatory. *See Larock v. Sugarloaf Township Zoning Hearing Board*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999).

The DNC and PDP adopt petitioners' petition for review in full. Pa.R.C.P. 2328(a).

II. LEGAL STANDARD

Applications to intervene in original-jurisdiction matters before this Court are governed by Pennsylvania Rule of Appellate Procedure 1531(b), which mirrors the standards set forth in Pennsylvania Rules of Civil Procedure 2326-2350. Rule 2327 denotes four categories of persons or entities that may intervene “[a]t any time during the pendency of an action,” one of which is any person or entity that “could have joined as an original party,” or that has “any legally enforceable interest” that may be affected by a judgment in the action. Pa.R.C.P. 2327(4). A “prospective intervenor” must also “establish that she has standing.” *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*, 309 A.3d 808, 843 (Pa. 2024).

If one of the bases for intervention in Rule 2327 is satisfied, intervention “shall” be granted unless (a) the proposed intervenor’s interest is already

“adequately represented” by the parties, Pa.R.C.P. 2329(2); (b) the proposed intervenor has “unduly delayed” in moving to intervene “or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties,” Pa.R.C.P. 2329(3); or (c) the proposed intervenor’s claim is “not in subordination to and in recognition of the propriety of the action,” Pa.R.C.P. 2329(1). In other words, the Pennsylvania Supreme Court has said, “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*, 740 A.2d at 313. And even if a ground for refusal exists, a court may, in an exercise of its discretion, grant intervention to a non-party that satisfies one of the four bases in Rule 2327. *See id.*

III. ARGUMENT

The DNC and PDP are entitled to intervene because a judgment in this case will affect their legally enforceable interests, and the DNC and PDP could have joined as original parties to this action with standing to litigate the claim in the action. Pa.R.C.P. 2327(3)-(4). None of the grounds for denying intervention exists: The DNC and PDP’s interests are not adequately represented by the existing parties, their intervention is timely and would not unduly delay this litigation, and their claims are “in subordination to and in recognition of the

propriety of the action,” Pa.R.C.P. 2328. Even if any ground to deny intervention were present, moreover, discretionary intervention would be warranted because the DNC and PDP have an important and currently unrepresented perspective on this significant matter of public concern.

A. The DNC and PDP each have legally enforceable, particularized interests in this matter, conferring standing and confirming that they could have brought this action themselves.

The outcome of this litigation will significantly affect the DNC’s and PDP’s legally enforceable interests in ensuring that their members can vote to elect Democratic representatives without risk of disqualification due to the date requirement. Because these interests are “substantial, direct, and immediate,” *Markham v. Wolf*, 136 A.3d 134, 139 (Pa. 2016), they also confer standing on the DNC and PDP, establishing that each organization could have been an original party here.

The DNC—the oldest continuing party committee in the United States—is the Democratic Party’s national committee as defined by 52 U.S.C. §30101(14). Declaration of Roger Lau ¶3 (“Lau Decl.”). The DNC’s organizational purposes and functions are to communicate the Democratic Party’s position and messages on issues; protect voters’ rights; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats but also to cast their

ballots for Democratic nominees and candidates. *Id.* The DNC comprises over 200 members elected by Democrats in every U.S. state and territory, including Pennsylvania. *Id.*

The PDP is the DNC's official state affiliate within Pennsylvania and oversees 67 subsidiary county committees. Declaration of Mitch Kates ¶ 6 (“Kates Decl.”). As of April 23, 2024, almost 3.9 million registered voters in Pennsylvania are affiliated with the PDP. *See April 23, 2024 Primary Voter Registration Statistics*, Pennsylvania Department of State.¹ The PDP is a “major political party” as defined in the Pennsylvania Election Code. 25 P.S. §2601. In each general, midterm, and municipal election, the PDP regularly nominates individuals for Pennsylvania's federal, state, and local offices. Kates Decl. ¶ 11. The PDP has also dedicated significant resources to encourage its supporters and constituents to vote, including by mail, and to ensure that those voters' ballots are counted. *Id.* ¶¶13, 18-27.

Mail-ballot use is widespread in Pennsylvania. In the 2020 election, 63% of all ballots submitted by voters were mail or absentee ballots. *See Pennsylvania's Election Stats*, Pennsylvania Department of State (visited Jun. 6, 2024).²

Moreover, official data reflect that the DNC's and PDP's memberships and

¹ <https://tinyurl.com/2024PAprimaryregistration>.

² <https://tinyurl.com/2020PAElectionStats>.

constituencies submitted the overwhelming majority of mail ballots. In the 2022 general election, 1.4 million Pennsylvanians requested mail ballots, approximately 68% of which were requested by Democratic voters. *See 2022 General Election Mail Ballot Requests Dep't of State, OpenData PA* (Oct. 24, 2023).³ For the 2024 primary election in Pennsylvania, over 950,000 mail ballots were requested, and again, approximately 68% of those requests were from Democratic voters.⁴

The DNC and PDP have each dedicated significant resources to encouraging their supporters and constituents to vote in Pennsylvania, including by mail. Lau Decl. ¶¶3-16; Kates Decl. ¶¶6-27. The DNC and PDP resources that have been specifically affected by the date requirement include:

- Significant time, money, and personnel invested to “cure” activities in states, like Pennsylvania, where the DNC anticipates there will be close races. These efforts involve contacting voters whose ballots have been rejected and helping them, to the extent legally permissible, perform whatever tasks are necessary to ensure that their ballots are counted. These activities divert the DNC’s and PDP’s personnel, time, and money away from affirmative election efforts to track data from counties, contact voters, and assist them in completing the curing process, which varies in each state (and in Pennsylvania, by county). The DNC conducts its “curing” activities in every county in Pennsylvania for which it has requisite data, including Philadelphia and Allegheny. Lau Decl. ¶11.

³ <https://tinyurl.com/2022PAMailBallotRequests>.

⁴ *2024 General Election Mail Ballot Requests Dep't of State, OpenData PA* (May 14, 2024), <https://tinyurl.com/2024PAMailBallotRequests>.

- Significant time, money, and personnel invested toward educating Democratic voters in Pennsylvania about the availability of mail voting and how to vote by mail in accordance with the law. Kates Decl. ¶¶20-25. These activities specifically include educating voters about the date requirement and the severe consequences of failing to “correctly” date the outer envelope of a mail ballot. Lau Decl. ¶¶6, 12. As with the curative activities, these educational projects divert the DNC’s and PDP’s resources from affirmative election efforts. *Id.* ¶¶13-14; Kates Decl. ¶27.

The DNC and PDP have expended these resources on top of the already significant time, money, and personnel invested to persuade and mobilize voters to vote through door knocking, text messaging, phone banking, mailed advertising, and digital advertising targeting every county in Pennsylvania, including Philadelphia and Allegheny. Lau Decl. ¶¶5-9. The DNC and PDP have a significant interest in not continuing to need to divert resources because the date requirement remains in force.

The DNC and PDP also have a substantial interest in protecting their members’ right to have their votes counted in Pennsylvania elections. These members include individuals qualified to vote in every county in Pennsylvania, and candidates for offices in every county in Pennsylvania. Lau Decl. ¶15. The DNC and PDP have a substantial interest in the ability of these members to vote by mail because the voters (1) provide financial support to the DNC and PDP and to DNC- and PDP-supported candidates, (2) help select the DNC’s and PDP’s leadership, and (3) help determine the DNC’s and PDP’s strategic and political direction by

electing Democratic candidates to office. *Id.* ¶16. The disqualification of eligible mail ballots under the date requirement threatens the electoral prospects of Democratic candidates up and down the ballot, which impedes the DNC's and PDP's organizational mission to promote the election of Democrats.

In recognition of the DNC's and PDP's substantial interests in the outcome of cases affecting the electoral rights of Democratic voters, Pennsylvania courts (and courts across the country) routinely grant the DNC and PDP (and comparably situated parties) intervention in similar circumstances—particularly in cases concerning restrictions on voting access and vote-counting rules that undermine the ability of one party's voters to vote or harm the electoral prospects of the party's candidates. For example, in 2022 this Court granted the DNC and PDP intervention in a lawsuit challenging a Pennsylvania statute authorizing universal mail ballots. *McLinko v. Commonwealth*, 270 A.3d 1278, 1280 n.3 (Pa. Commw. Ct. 2022). Likewise, the Third Circuit recently granted the motion of the DNC and other Democratic Party committees to intervene in a lawsuit challenging the date requirement under the federal Voting Rights Act. Order Granting Motion To Proceed As Intervenor, *Pennsylvania State Conference of NAACP Branches, et al*

v. Northampton County Board of Elections, et al, No. 23-03166 (3d Cir. Dec. 7, 2023). Other such cases are legion.⁵

B. There are no grounds to deny intervention.

None of the three grounds for denying intervention in Rule 2329 applies here.

1. Petitioners do not adequately represent the DNC’s and PDP’s interests.

No party in this litigation “*unequivocally* share[s] [the DNC’s and PDP]’s interest[s].” *Larock*, 740 A.2d at 314 (emphasis added). Although petitioners seek to expand voting rights, they are non-partisan organizations that do not mount political campaigns. Petitioners therefore do not share the DNC’s and PDP’s particular interests—*i.e.*, the election of local, state, and national Democratic Party

⁵ *E.g.*, *Paher v. Cegavske*, 2020 WL 2042365, at *4 (D. Nev. Apr. 28, 2020) (granting the DNC intervention in an election-law case brought by a conservative interest group); Order (ECF No. 35), *Donald J. Trump for President v. Bullock*, No. 6:20-cv-66 (D. Mont. Sept. 8, 2020) (granting the Democratic Congressional Campaign Committee (“DCCC”), the Democratic Senatorial Campaign Committee, and the Montana Democratic Party intervention in a lawsuit brought by four Republican party entities); *Donald J. Trump for President, Inc. v. Murphy*, 2020 WL 5229209, at *1 (D.N.J. Sept. 1, 2020) (granting the DCCC intervention in a lawsuit by a Republican candidate and party entities); Minute Entry (ECF No. 37), *Cook County Republican Party v. Pritzker*, No. 20-cv-4676 (N.D. Ill. Aug. 28, 2020) (granting the DCCC intervention in a lawsuit by a Republican party entity); *Issa v. Newsom*, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (granting the DCCC and the California Democratic Party intervention in a lawsuit by a Republican congressional candidate).

candidates to public office through the United States, including in Pennsylvania. Rather, petitioners' interests "may diverge" from those of the DNC and PDP. *Id.*

Nor do respondents adequately represent the DNC's and PDP's interests. Respondents are bound to represent all Pennsylvanians; they have no particularized interest in which candidates win an election. As the Third Circuit has explained, "when the proposed intervenors' concern is not a matter of 'sovereign interest,'" as here, "there is no reason to think the government will represent it[.]" *Kleissler v. U.S. Forest Service*, 157 F.3d 964, 972 (3d Cir. 1998).

Put simply, because the DNC's and PDP's "personal interests ... could diverge from the more general interest of" the existing parties, the DNC's and PDP's interests are not adequately represented. *D.G.A. v. Department of Human Services*, No. 1059 C.D. 2018, 2020 WL 283885, at *7 (Pa. Commw. Ct. Jan. 21, 2020).

2. The DNC's application is timely.

Petitioners initiated this litigation 10 days ago, on May 28, 2024. The Court has not yet issued any scheduling order, the initial June 10 status conference has not yet taken place, and respondents have not yet answered the petition. This motion to intervene is therefore timely—and granting the DNC and PDP intervention will not delay the timely advancement of the action, prejudice the trial or the adjudication of any rights, or otherwise harm the parties. Pa.R.C.P. 2329(3).

The DNC and PDP, moreover, share petitioners' interest in the expeditious resolution of this matter so that voters and election officials will have clarity on the rules for the November 2024 election. The DNC and PDP are accordingly prepared to brief this matter on any schedule the Court adopts.

3. The DNC's and PDP's claims are "in subordination to and in recognition of the propriety of the action."

An "application for intervention may be refused, if ... the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action." Pa.R.C.P. 2329. The meaning of this language is unclear, and there is relatively little interpretive case law. We are aware of only three Pennsylvania Supreme Court cases interpreting this ground for refusing intervention. In *Bannard v. New York State Natural Gas Corp.*, 172 A.2d 306, 313 (Pa. 1961), the court held that the provision meant that a government agency that intervened in a suit submitted to the court's jurisdiction and waived its sovereign immunity. In *Commonwealth ex rel. Chidsey v. Keystone Mutual Casualty Co.*, 76 A.2d 867, 870 (Pa. 1950), the court explained that the provision requires that "an intervenor must take the suit 'as he finds it,'" and thus is "not ... allowed to become a party to the suit merely to review what the court has done and to require demonstration of the legality and propriety of its action." And the court in *Tremont Township School District v. West Anthracite Coal Co.*, 113 A.2d 234, 237 (Pa. 1955), similarly suggested that the provision reflects "[t]he general rule ... that an intervenor must

take the suit ‘as he finds it.’” Here, the DNC and PDP do not contest that the Court would have personal jurisdiction over them if they are granted intervention. And the DNC and PDP seek intervention at the outset of this litigation, so concerns about late intervenors failing to take the suit as they find it are not relevant here.

C. Alternatively, permissive intervention is warranted.

Even if the Court were to find that one of the bases in Rule 2329 for refusing intervention is present, “the court is given the discretion” to permit intervention “where the petitioner falls within one of the classes enumerated in Rule 2327.” *Larock*, 740 A.2d at 313. As discussed, the DNC and PDP fall into two classes enumerated in Rule 2327; this Court thus has discretion to permit intervention even if it concludes that the DNC and PDP have not met the standard for mandatory intervention. If necessary, the Court should exercise its discretion to permit intervention here in view of the DNC’s and PDP’s strong interests in this suit and their unique perspectives on this issue of public importance, which would assist the Court in resolving the issues in this case.

IV. CONCLUSION

The application of the DNC and PDP to intervene should be granted.

June 7, 2024

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Respectfully submitted,

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DECLARATION OF MITCH KATES

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

BLACK POLITICAL EMPOWERMENT
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Respondents.

DECLARATION OF MITCH KATES

I, Mitch Kates, hereby declare and state upon personal
knowledge as follows:

I. Professional Experience

1. I currently serve as the Executive Director of the Pennsylvania Democratic Party (“PDP”). I have held that position since September, 2023.
2. Before that, I was the Political Director of the PDP, starting in December of 2015.

3. As Executive Director of the PDP, I work with PDP officers and oversee the administration of the State Democratic Committee and state party activities, including the endorsement of statewide candidates.
4. Additionally, I help oversee the operation of the Coordinated Campaign, a program that links all Democratic candidates on the ballot and conducts political, digital, communications, and field activities for all Democratic candidates running that cycle.
5. I also supervise campaign expenditures to help county-level parties and candidates, including mail programs.

II. PDP Generally

6. The Democratic National Committee (“DNC”) is the national umbrella organization for state parties. The PDP is the official state affiliate of DNC; what that means in practice is that nothing in our bylaws can contradict anything in the DNC bylaws (with the exception of primary endorsements in certain states). The PDP oversees 67 subsidiary county committees, whose bylaws in turn cannot contradict anything in the PDP bylaws.
7. The DNC has an interest in electing Democratic candidates and invests significant resources in state parties, including the PDP.
8. Among other things, the PDP communicates with these voters concerning the timing of and how to participate in upcoming elections; encourages them to participate in the selection of the party’s nominees; and encourages them to support the party’s nominees during the general election.
9. The PDP represents the interests of Democratic voters in Pennsylvania by supporting candidates who share these voters’ values. Presently, there are nearly four million registered Democrats throughout the Commonwealth.
10. The PDP also represents the interests of Democratic candidates by providing campaign resources, logistical support, and coordination with other candidates. The number of Democratic candidates varies by year and cycle.
11. In 2024, the PDP represents the interests of Democratic nominees for the President and Vice President, United States Senator, three statewide offices, 25 state Senate seats and virtually all of the 203 state House seats.
12. In Pennsylvania, we have state-run primaries, and the option for any qualified voter to vote by mail has become a key piece of the strategy in primaries as a tool to boost participation. The PDP endorses statewide

candidates and has an interest in its endorsed candidates prevailing in their primaries.

III. Increasing the Availability of Mail Voting Raises (And In Pennsylvania Has Raised) Voter Participation

13. The DNC and the PDP share the goal of universal voter participation. That means that we take steps to facilitate safe, secure, and convenient voting so that any eligible voter may exercise their right to vote. In our experience, allowing any qualified voter to vote by mail increases participation.
14. Using two recent state-run Democratic primaries as examples—one prior to no-excuses mail-in voting under Act 77, and one after Act 77 took effect— illustrates the point: In 2019, before Act 77 took effect, the Democratic primary participation was approximately 835,000; in 2021, by contrast, in a primary with similar offices, the turnout was over 1.1 million, a 32% increase. I believe that Act 77 is one of the principal reasons for this increase in voter participation. Typically, participation in municipal primaries is lower than participation in presidential primaries, and one of the PDP's goals is to increase participation in all elections, including municipal elections.
15. In the 2020 general election, involving a Presidential context, roughly 2.6 million voters voted by mail. Of these voters, roughly 65% or 1.7 million were registered Democrats.
16. As of October 4, 2021, over 700,000 voters had requested to be placed on the "permanent" vote by mail application list for 2021, which allows them to receive a mail-in ballot automatically for both elections this year. Of these voters, roughly 72% or 500,000 are registered Democrats. According to the Department of State, nearly 1.4 million voters have exercised this option in 2020 and 2021 combined.
17. According to the Secretary of the Commonwealth, more than 1,435,505 voters applied to vote by mail in the 2022 General Election. Of those ballot requests, 984,128, or 68.5%, were registered Democrats.

IV. PDP Made Changes in Reliance on Act 77

18. Consistent with its goal to elect Democrats to public office, the PDP examined Act 77 after its enactment and formulated its election strategy based on the new law's provisions. The passage of Act 77 caused us to make significant changes to our strategy. The PDP shifted its approach

gradually after the Act's passage, in response to changes on the ground and the law's interpretation in the courts.

19. In particular, as a result of Act 77, the PDP invested vastly more resources than before in a robust set of programs, including digital outreach, communications, field, and get-out-the-vote ("GOTV") that both encourage our voters to vote by mail and support their efforts to do so.
20. These programs consume an enormous amount of time, money, and effort. For example, our digital and communications teams educated voters on (1) the availability of mail voting for all qualified voters and (2) how to vote by mail in accordance with the requirements of the law. These efforts are conducted by mail and online.
21. Our field efforts have similarly shifted to conducting substantial voter contact around voting by mail.
22. Finally, PDP's GOTV program has fundamentally changed. Before Act 77, we conducted that program only in the four days preceding any election. Now, we work the entire *month* before the election, from when voters first receive their mail-in ballots to the receipt deadline for ballots. This vast expansion in the scope of the GOTV program has required wholesale revisions in the allocation of our resources.
23. In short, we have made far-reaching changes to how we operate as a result of Act 77, expending significant resources to do so.
24. PDP has an interest in preserving the confidence and trust it has built with voters over the present election cycles since Act 77 has been in effect.
25. Specifically, there are many voters who did not vote until they realized the simplicity of voting by mail. Many voters took advantage of the safety of voting by mail during the pandemic. The PDP put significant resources into educating and convincing these voters that mail-in voting was safe, secure, and effective through digital advertising, social media, media interviews, and online events.
26. Disqualifying votes of requested voters can create distrust in the process and discourage voters from voting.
27. The DNC and the PDP would have to invest resources in educating voters and overcoming heightened voter confusion if votes of requested voters are disqualified for technical defects.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 7, 2024

A handwritten signature in black ink, consisting of a long horizontal line followed by a stylized, cursive 'M' and 'K'.

Mitch Kates

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DECLARATION OF ROGER LAU

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Respondent.

No. 283 MD 2024

**DECLARATION OF DEMOCRATIC NATIONAL COMMITTEE DEPUTY
EXECUTIVE DIRECTOR ROGER LAU IN SUPPORT OF MOTION TO
INTERVENE**

I, Roger Lau, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts and information set forth in this declaration.

2. I am Deputy Executive Director at the Democratic National Committee (DNC). I have held this position since February 2021. In this role, I help oversee the DNC's political strategy and programming across the country.

3. The DNC is the oldest continuing party committee in the United States, and the Democratic Party's national committee as defined by 52 U.S.C. §30101(14). The DNC's organizational purposes and functions are to communicate the Democratic Party's position and messages on issues; protect voters' rights; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats but also to cast their ballots for Democratic nominees and candidates. The DNC is composed of the chair, vice chairs, and over 400 members elected by Democrats in every U.S. state and territory, including Pennsylvania.

4. In recent election cycles, the DNC has spent millions of dollars and invested significant staff and volunteer time to persuade and mobilize voters to support Democratic candidates across the country. It will continue to do so in future elections, including in 2024, to support Democratic candidates in Pennsylvania.

5. Mail and absentee voting have been critical to the DNC's Pennsylvania strategy since universal no-excuse mail voting was introduced in 2019.

6. The DNC works to accomplish its mission by, among other things, mobilizing and persuading voters. It engages in grassroots mobilization of volunteers and field organizers to conduct get-out-the-vote activities. The DNC also engages in activities to explain the voting process to eligible voters, including how voters can successfully cast their ballots and ensure those ballots are counted.

7. These activities take the form of door knocking, text messaging, and phone banking. The DNC also invests in digital communications in support of Democratic candidates throughout Pennsylvania and the rest of the country.

8. Given the DNC's mission of electing Democrats up and down the ballot, its efforts have targeted (and will target in future elections) every county in Pennsylvania, including Philadelphia and Allegheny.

9. In particular, the DNC's volunteer phone banking, volunteer texting, and other outreach programs operate statewide in Pennsylvania.

10. Because the DNC operates across the country, investing additional funds or personnel in one state will necessarily divert those resources from other states and key races.

11. The DNC also allocates funds for "curing" activities in states where it anticipates there will be close races. These efforts involve contacting voters whose ballots have been rejected and helping them perform, to the extent legally permissible, whatever tasks are necessary to ensure that their ballots are ultimately counted. These activities require the DNC to devote substantial personnel time and money to track

data from counties, contact voters, and assist them in completing the curing process, which varies in each state (and sometimes, in states like Pennsylvania, in each county). The DNC conducts its “curing” activities in every county in Pennsylvania for which it has requisite data, including Philadelphia and Allegheny.

12. Enforcing the requirement of Pennsylvania law that county boards of elections must reject an otherwise valid mail-in or absentee ballot if, in timely submitting that ballot, the voter mistakenly fails to write a correct date on the ballot return envelope, 25 P.S. §§3146.6(a) and 3150.16(a) (hereafter the “date requirement”), frustrates the DNC’s mission. It does so by erecting an obstacle to ensuring that all lawful mail ballots cast by Pennsylvanians supporting Democratic candidates are counted, thereby impairing both the voting rights of Democratic voters and the electoral prospects of Democratic candidates.

13. The date requirement has forced—and will continue to force if not enjoined—the DNC to divert personnel, time, and money away from its broader advocacy and persuasion activities, and towards educating Democratic voters in Pennsylvania about the date requirement and the severe consequences of failing to “correctly” date the outer envelope of a mail ballot.

14. More specifically, absent injunction of the date requirement, DNC personnel will be forced to continue expending time and resources researching (1) how each county, including Philadelphia and Allegheny, intends to determine whether a date written on a mail-ballot envelope is “correct” in the upcoming 2024

elections and (2) each county's procedures for curing such ballots. Because the DNC has limited resources, these forced activities come at the cost of the DNC's broader statewide get-out-the-vote and voter persuasion activities in Pennsylvania and in other states.

15. The DNC also represents the interests of voters in each county in Pennsylvania, including Philadelphia and Allegheny, who vote for Democratic candidates for positions up and down the ballot. The DNC considers those individuals to be its constituents, because they (1) provide financial support in the form of political contributions to the DNC and candidates supported by the DNC on a regular basis, (2) help select the DNC's leadership, and (3) ultimately help determine the DNC's strategic and political direction by electing Democratic candidates to office.

16. By requiring county boards to reject otherwise valid mail ballots, the date requirement actively disenfranchises DNC constituents, which significantly impairs the DNC's mission to elect Democratic candidates to office and to enact policies that support Democratic ideals and goals.

I declare under penalty of perjury that the foregoing is true.

Executed on June 7, 2024

/s/ Roger Lau
Roger Lau

CERTIFICATE OF COMPLIANCE

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/ Clifford B. Levine
CLIFFORD B. LEVINE

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served on all counsel of record on June 7, 2024 by this Court's electronic filing system.

/s/ Clifford B. Levine _____

CLIFFORD B. LEVINE

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

BLACK POLITICAL EMPOWERMENT
PROJECT, PHILADELPHIANS
ORGANIZED TO WITNESS, EMPOWER
AND REBUILD, MAKE THE ROAD
PENNSYLVANIA, ONEPA ACTIVISTS
UNITED, NEW PA PROJECT EDUCATION
FUND, CASA SAN JOSE, PITTSBURGH
UNITED, LEAGUE OF WOMEN VOTERS
OF PENNSYLVANIA, AND COMMON
CAUSE PENNSYLVANIA

Petitioners,

v.

AL SCHMIDT, in his official capacity as
Secretary of the Commonwealth,
PHILADELPHIA COUNTY BOARD OF
ELECTIONS, AND ALLEGHENY COUNTY
BOARD OF ELECTIONS,

Respondents.

and

DEMOCRATIC NATIONAL
COMMITTEE, PENNSYLVANIA
DEMOCRATIC PARTY,

Proposed Intervenor-
Petitioners.

No. 283 MD 2024

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

AND NOW, this ___ day of _____, 2024, and upon consideration of the application to intervene filed by the Democratic National Committee (“DNC”) and Pennsylvania Democratic Party (“PDP”), it is hereby ORDERED that the application is GRANTED. The Court DIRECTS the Prothonotary to enter the DNC and PDP on the docket in this matter as intervenors-petitioners, and to DOCKET their application and related materials.

BY THE COURT:

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