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*\* Pro hac vice application  
forthcoming*

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**IN THE COURT OF COMMON PLEAS OF  
ERIE COUNTY, PENNSYLVANIA**

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David McCormick; Republican  
National Committee; and Republican  
Party of Pennsylvania,

*Petitioners,*

v.

Erie County Board of Elections,

*Respondent.*

Civil Division

No. 2024-12842

Election Appeal

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**APPLICATION FOR LEAVE TO INTERVENE OF  
DSCC AND BOB CASEY FOR SENATE, INC.**

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## INTRODUCTION

1. On November 14, 2024, Respondent Erie County Board of Elections (the “Board”) determined that it would count one hundred twenty (120) provisional ballots that were missing signatures of the Judge of Elections, the Minority Inspector, or both, in the November 5, 2024 General Election.<sup>1</sup>

2. The Board’s decision was correct. The ballots at issue were undisputedly cast by qualified Pennsylvania voters. To refuse to count ballots on the sole basis of a missing election official’s signature would have violated the Election Code. *See* 25 P.S. § 3050(a.4)(5)(ii) (expressly limiting the circumstances in which a voter’s provisional ballot shall not be counted). And, by faulting voters for the errors of election officials, such refusal would further violate the guarantees of the Pennsylvania Constitution and the U.S. Constitution. *See* Pa. Const. art. I, § 5; *see also Ne. Ohio Coalition for Homeless v. Husted*, 696 F.3d 580, 597 (6th Cir. 2012); *Hoblock v. Albany Cnty. Bd. of Elections*, 487 F. Supp. 2d 90, 97 (N.D.N.Y. 2006).

3. Petitioners David McCormick, the Republican National Committee, and the Republican Party of Pennsylvania see it differently. They ask this Court to turn a blind eye to the plain text of the Election Code and to the serious constitutional concerns that would be created by refusing to count these provisional ballots.

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<sup>1</sup> A transcript of the November 14, 2024 meeting of the Board is attached as Exhibit A.

4. With apparent indifference to these consequences and the fundamental voting rights of Pennsylvanians, Petitioners have brought this appeal under 25 P.S. § 3157, asking this Court to reverse the Board's decision and disenfranchise over one hundred Pennsylvanians who no one disputes are qualified to vote. *See* Pet. for Review in the Nature of a Statutory Appeal at 8.

5. Proposed Intervenors DSCC and Bob Casey for Senate, Inc. are, respectively, the Democratic Party's national senatorial committee and the organized political campaign in support of Bob Casey Jr. for the office of U.S. Senator for Pennsylvania in the November 2024 General Election.

6. Petitioners ask this Court to discard numerous ballots in an election for which Senator Casey is a candidate and in which the vote count is still being determined. As explained more fully below, Proposed Intervenors thus have a legally enforceable interest in this suit that entitles them to intervene in this matter under Pennsylvania Rule of Civil Procedure 2327, and none of the factors that would prevent their intervention under Rule 2329 is present.

7. Accordingly, Proposed Intervenors respectfully request that the Court grant this application for leave to intervene and allow them to intervene as respondents in this action.

## INTERESTS OF PROPOSED INTERVENORS

8. DSCC is the Democratic Party's national senatorial committee, as defined by 52 U.S.C. § 30101(14). Its mission is to elect candidates of the Democratic Party across the country, including in Pennsylvania, to the U.S. Senate. DSCC works to accomplish its mission by, among other things, assisting state parties throughout the country, including in Pennsylvania, and mobilizing and supporting voters. DSCC has spent millions of dollars in contributions and expenditures to persuade and mobilize voters to support U.S. Senate candidates who affiliate with the Democratic Party, including Senator Casey. If Petitioners obtain the relief they seek, DSCC will suffer injury both because Democratic voters will be disenfranchised in current and future elections, and Senator Casey's reelection efforts will be harmed.

9. Bob Casey for Senate, Inc. ("the Casey Campaign") is the duly organized political campaign in support of the election of Bob Casey Jr. to the office of U.S. Senator for Pennsylvania in the November 2024 general election. Senator Casey is the Democratic Party candidate for U.S. Senate in Pennsylvania and a sitting U.S. Senator. The Casey Campaign has a core interest in ensuring that its supporters' votes are counted and that Senator Casey is re-elected to the U.S. Senate. If Petitioners are successful in their attempt to compel the Board to discount mail ballots solely because they lack a correct handwritten date on the voter declaration

pre-printed on the outer envelope, they will unlawfully disenfranchise supporters of Senator Casey, harming the Casey Campaign by impairing Senator Casey's electoral prospects.

### **GROUND ON WHICH INTERVENTION SHOULD BE GRANTED**

10. Proposed Intervenors should be granted intervention pursuant to Pennsylvania Rules of Civil Procedure 2327 and 2329.

#### **I. Proposed Intervenors are entitled to intervene under Rule 2327.**

11. Pursuant to Rule 2327 of the Pennsylvania Rules of Civil Procedure, “[a]t any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein” if “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. 2327(4).

12. Courts routinely allow political candidates to intervene in appeals from county board decisions about whether to count ballots in races in which those candidates are competing. *See, e.g., In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1069 (Pa. 2020) (noting trial court's grant of motion to intervene by candidate in appeal challenging county board's decision to count mail ballots); *In re Six Ballots in the 2024 Gen. Primary Election*, No. 629 C.D. 2024, 2024 WL 3290384, at \*1–2 (Pa. Commw. Ct. July 3, 2024) (same). Political party committees have also been allowed by courts to intervene in

similar cases, including the DSCC in litigation over the precise date requirement at issue in this matter. *See Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.*, No. 23-3166, Doc. 129 (3d Cir. Jan. 3, 2024) (granting DSCC intervention).

13. This Court should do the same. Proposed Intervenors plainly have a powerful and legally enforceable interest in this action. This suit is being brought by Senator Casey’s opponent in the 2024 general election and seeks to have ballots discarded in that very race. If Petitioners’ suit succeeds, supporters of Senator Casey who are unquestionably qualified to vote and who did in fact vote for him in the 2024 general election will be disenfranchised. That, in turn, directly harms Senator Casey’s electoral prospects. Proposed Intervenors are therefore entitled to intervene in this action to advance their interests and the interests of Senator Casey’s supporters under Rule 2327.

## **II. None of the exceptions to granting intervention applies here.**

14. Where a proposed intervenor “com[es] within one of the classes described in Rule 2327,” the grant of intervention “is mandatory, unless one of the grounds for refusal of intervention enumerated in Rule 2329 is present.” *Shirley v. Pa. Legis. Reference Bureau*, 318 A.3d 832, 853 (Pa. 2024) (quoting *In re Pa. Crime Comm’n*, 309 A.2d 401, 408 n.11 (Pa. 1973)).

15. Rule 2329 provides three grounds upon which “an application for intervention may be refused.” Pa.R.C.P. 2329. First, if the proposed intervenor’s

“claim or defense . . . is not in subordination to and in recognition of the propriety of the action.” Pa.R.C.P. 2329(1). Second, if “the interest of the [proposed intervenor] is already adequately represented.” Pa.R.C.P. 2329(2). And third, if the proposed intervenor “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. 2329(3).

16. Because none of these circumstances applies, this Court should grant this application to intervene.

17. *First*, Proposed Intervenors’ defense is “in subordination to and in recognition of the propriety of the action.” Pa.R.C.P. 2329(1). “The general rule is that an intervenor must take the suit ‘as he finds it.’” *Commonwealth ex rel. Chidsey v. Keystone Mut. Cas. Co.*, 76 A.2d 867, 870 (Pa. 1950) (cleaned up). Proposed Intervenors take this suit as they find it, and simply ask that this Court deny Petitioners any relief.

18. *Second*, Proposed Intervenors’ interests are not adequately represented in this action. As explained above, Proposed Intervenors have interests that will be directly affected by this action, including interests in the enfranchisement of Senator Casey’s supporters and the threat that this suit poses to his competitive prospects in the 2024 general election. *See supra* Section I. No other party provides “representation to a satisfactory or acceptable extent” of these interests, *Shirley*, 318

A.3d at 852 (citing dictionary definition). Petitioners, including Senator Casey’s opponent, have asked this Court to throw out the very same ballots that Proposed Intervenors seek to ensure are counted, and thus it is plain that Petitioners do not represent Proposed Intervenors’ interests.

19. The named Respondent, the Erie County Board of Elections, also does not adequately represent Proposed Intervenors’ interests. The Board’s stake in this lawsuit is defined solely by its statutory duties to conduct elections *See, e.g.*, 25 P.S. § 2642 (powers and duties of boards of elections); *id.* § 3146.8(g)(3) (adjudication of absentee and mail-in ballots). In contrast, Proposed Intervenors’ interest in this litigation is defined by their interest in supporting Senator Casey’s electoral prospects—a goal the Board simply does not share—and advocating for the enfranchisement of his supporters—a goal the Board may share only insofar as consistent with its statutory duties. Permitting private entities, like Proposed Intervenors, to intervene is particularly warranted where, as here, the original respondent is a government entity (like the Board) with positions that “are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it[.]” *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (citing *Conservation L. Found. of New England v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992) and *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996)).



20. *Third*, this intervention is timely. Proposed Intervenors have promptly sought intervention, with this Application coming just two days after the filing of the Petition for Review, and Proposed Intervenors will abide by any deadlines set by the Court in this matter.

21. Alternatively, even if one of the Rule 2329 circumstances were to apply, this Court should exercise its discretion to permit Proposed Intervenors to intervene. *Cf. Shirley*, 318 A.3d at 853 (noting that, where a proposed intervenor satisfies Rule 2327, a court has discretion to allow intervention even if one of the grounds present in Rule 2329 is present); *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999) (similar). Proposed Intervenors' clear and direct interests in this urgent and time-sensitive matter amply justify intervention irrespective of any finding the Court may make as to the factors enumerated in Rule 2329.

### **STATEMENT OF THE DEFENSE ASSERTED**

22. The Board's decision to count the one hundred twenty (120) provisional ballots at issue was correct and should be upheld, because to refuse to count those ballots would have violated Pennsylvania's Election Code, along with the guarantees of the Pennsylvania Constitution and the U.S. Constitution.

\* \* \*

WHEREFORE, Proposed Intervenors respectfully request that this Honorable Court enter an order granting this Application for Leave to Intervene and entering the attached Proposed Answer. Proposed Intervenors further respectfully request that they be provided with the opportunity to submit a memorandum of law in advance of any hearing or decision in this matter.

Dated: November 18, 2024

Respectfully submitted,

*/s/ Timothy D. McNair*

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*Counsel for Proposed Intervenors DSCC and Bob Casey for Senate, Inc.*

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

I hereby 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.

/s/ Timothy D. McNair  
Timothy D. McNair (PA 34304)

**CERTIFICATE OF SERVICE**

I hereby certify that on November 18, 2024, I caused a true and correct copy of this document to be served on all counsel of record via email upon:

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## VERIFICATION

I verify that the fact averments made in the foregoing Application to Intervene are true and correct to the best of my knowledge, information, and belief. I understand that false statements made therein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification and authorities.

*Christie Roberts*

Dated: 1111812124

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Christie Roberts  
Executive Director, DSCC

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*Tiernan Donohue*

Dated: 1111712124

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