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* *Pro hac vice application
forthcoming*

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

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

Petitioners,

v.

Berks County Board of Elections,

Respondent.

Civil Division
No. 24-17027

Statutory Appeal
Election Matter

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

INTRODUCTION

1. On November 14, 2024, Respondent Berks County Board of Elections (the “Board”) determined that it would count certain provisional ballots that were missing one or both signatures of the Judge of Elections and/or Minority Inspector.

2. The Board’s decision to count these ballots, which were undisputedly cast by qualified Pennsylvania voters, was correct. To refuse to count ballots on the sole basis of the minor technicalities highlighted by Petitioners would have been unlawful several times over, violating 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), the Pennsylvania Constitution, *see* Pa. Const. art. I, § 5, the Help America Vote Act, *see* 52 U.S.C. § 21082, and the United States Constitution, *see Ne. Ohio Coal. 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, federal voting rights protections, and the serious constitutional concerns that would be created by refusing to count these provisional ballots.

4. Proposed Intervenors DSCC and Bob Casey for Senate, Inc. (the “Casey Campaign”) 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. As explained more fully below, Proposed Intervenors have a legally enforceable interest in preventing Petitioners from succeeding in their effort to discard 32 ballots in a closely contested election while the vote count is still being determined.

5. Because Proposed Intervenors are entitled to intervene in this matter under Pennsylvania Rule of Civil Procedure 2327, and because none of the factors that could prevent their intervention under Rule 2329 are present, Proposed Intervenors respectfully request that the Court grant this motion to intervene.

INTERESTS OF PROPOSED INTERVENORS

6. 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 to the U.S. Senate. In Pennsylvania, among other states, DSCC works to accomplish its mission by assisting state parties 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 and because Senator Casey's reelection efforts will be harmed.

7. 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 provisional ballots solely because of poll worker errors or minor technicalities, 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

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

8. 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).

9. 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, including the DSCC, have also been allowed by courts to intervene in similar cases. *See Order, Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, No. 23-3166 (3d Cir. Jan. 3, 2024), ECF No. 129 (granting DSCC intervention).

10. 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 apply here.

11. 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)).

12. Rule 2329 provides three grounds upon which “an application for intervention may be refused”: first, if the proposed intervenor’s “claim or defense . . . is not in subordination to and in recognition of the propriety of the action[;]” second, if “the interest of the [proposed intervenor] is already adequately represented[;]” 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.

13. Because none of these circumstances apply, the Court should grant this motion to intervene.

14. *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.

15. *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 in defeating the threat that this suit poses to his competitive prospects in the 2024 general election. 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 same ballots that Proposed Intervenors seek to ensure are counted, and thus it is plain that Petitioners do not represent Proposed Intervenors' interests.

16. The named Respondent 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.* § 3050(a.4)(4) (adjudication of provisional ballots). In contrast, Proposed Intervenors' interest in this litigation is to support Senator Casey's electoral prospects—a goal the Board does not share.

17. Permitting private entities, like Proposed Intervenors, to intervene is particularly warranted where, as here, the named respondents are a government

entity and government actors (like the Board) with positions that “are necessarily colored by [their] 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)).

18. *Third*, this intervention is timely. Proposed Intervenors have promptly sought intervention, with this motion coming mere days after Petitioners filed their Petition for Review and before any hearing on the Petition. Proposed Intervenors will abide by any deadlines set by the Court in this matter.

19. 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

20. The Board's decision to count the disputed provisional ballots was correct and should be upheld because any decision to reject these ballots would have violated state and federal law, along with the guarantees of the Pennsylvania Constitution and U.S. Constitution.

* * *

WHEREFORE, Proposed Intervenors respectfully request that this Honorable Court enter an order granting this Motion 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 19, 2024

Respectfully submitted,

/s/ Jason A. Ulrich

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* *Pro hac vice application forthcoming*

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

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

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.

/s/ Jason A. Ulrich

Jason A. Ulrich (PA 205221)

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2024, I caused a true and correct copy of this document to be served on all counsel of record.

/s/ Jason A. Ulrich

Jason A. Ulrich (PA 205221)

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

Christie Roberts
Executive Director, DSCC

Dated: 11/19/2024

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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.

Tiernan Donohue

Dated: 11/19/2024

Tiernan Donohue
Campaign Manager, Bob Casey for Senate, Inc.

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