

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SENATOR JAY COSTA, SENATOR :
ANTHONY H. WILLIAMS, SENATOR : **CASES**
VINCENT J. HUGHES, SENATOR STEVEN : **CONSOLIDATED**
J. SANTARSIERO, AND SENATE :
DEMOCRATIC CAUCUS, : No. 310 MD 2021

Petitioners, :

V. :

SENATOR JACOB CORMAN III, SENATE :
PRESIDENT PRO TEMPORE, SENATOR :
CRIS DUSH, AND SENATE SECRETARY- :
PARLIAMENTARIAN MEGAN MARTIN, :
Respondents. :

COMMONWEALTH OF PENNSYLVANIA, :
PENNSYLVANIA DEPARTMENT OF : No. 322 MD 2021
STATE, AND VERONICA :
DEGRAFFENREID, ACTING SECRETARY :
OF THE COMMONWEALTH OF :
PENNSYLVANIA, :

Petitioners, :

V. :

SENATOR CRIS DUSH, SENATOR JAKE :
CORMAN, AND THE PENNSYLVANIA :
STATE SENATE INTERGOVERNMENTAL :
OPERATIONS COMMITTEE, :
Respondents. :

ARTHUR HAYWOOD :
JULIE HAYWOOD, : No. 323 MD 2021

V. :

VERONICA DEGRAFFENREID, ACTING :
SECRETARY OF STATE, :
COMMONWEALTH OF PENNSYLVANIA, :
Respondents. :

ORDER

AND NOW this _____ day of October 2021, upon consideration of the Expedited Application for Leave to Intervene by the Intergovernmental Operations Committee (the “Committee”), it is hereby **ORDERED** that the Application is **GRANTED** and it is further **ORDERED** that the Committee shall be deemed a party respondent in the matter *Haywood v. DeGraffenreid*, No. 323 MD 2021 (Pa. Cmwltth.).

BY THE COURT:

, J.

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COMMONWEALTH OF PENNSYLVANIA, :
PENNSYLVANIA DEPARTMENT OF : No. 322 MD 2021
STATE, AND VERONICA :
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OF THE COMMONWEALTH OF :
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ARTHUR HAYWOOD :
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V. :

VERONICA DEGRAFFENREID, ACTING :
SECRETARY OF STATE, :
COMMONWEALTH OF PENNSYLVANIA, :
Respondents. :

**EXPEDITED APPLICATION FOR LEAVE TO INTERVENE
BY INTERGOVERNMENTAL OPERATIONS COMMITTEE**

Under Pa.R.A.P. 1531(b) and Pa.R.C.P. 2327-2329, the Intergovernmental Operations Committee (the “Committee”) hereby submits this expedited application for leave to intervene as a party respondent in the matter *Haywood v. DeGraffenreid*, No. 323 MD 2021 (Pa. Cmwlth.) (the “*Haywood* matter”). In support of this request, the Committee avers as follows:

1. On September 15, 2021, the Pennsylvania Senate, through the Committee, issued a Senate subpoena (the “Subpoena”) to Acting Pennsylvania Secretary of State Veronica DeGraffenreid. The Subpoena is aimed at seeking voter information relevant to an analysis of the Commonwealth’s election laws.

2. Petitioners Arthur Haywood and Julie Haywood submitted a Petition for Review to this Court on September 27, 2021. That Petition, in general, seeks a declaratory judgment that the voter information sought by the Subpoena be declared protected from disclosure. The Petition also seeks related injunctive relief.

3. The Committee is not named as a respondent in the *Haywood* matter. The *Haywood* matter only names Acting Secretary DeGraffenreid as a respondent.

4. The *Haywood* Petition seeks analogous relief to other matters presently before this Court captioned *Costa v Corman*, No. 310 MD 2021 (Pa. Cmwlth.) and *Commonwealth v. Dush*, 322 MD 2021 (Pa. Cmwlth.) (the “*Corman* matter” and the “*Dush* matter,” respectively). The Committee is a named respondent in the *Dush* matter.

5. In fact, the *Haywood* matter, the *Corman* matter, and the *Dush* matter were consolidated by this Court on October 4, 2021 because they all focus on the Subpoena.¹ As such, the Committee has a direct interest in the *Haywood* matter and seeks leave to assert its interests.

¹ By order, this Court has consolidated the *Haywood* matter, the *Corman* matter, and the *Dush* matter. But because those matters involve different parties in different party alignments, and certain unique claims, the Committee assumes the consolidation order was not a “complete consolidation” order, and that thus the three actions maintain their separate identity. See *Kincy v. Petro*, 2 A.3d 490, 494 (Pa. 2010) (“separate actions cannot be consolidated to the extent the actions lose their separate identities and become a single action what we will refer to as ‘complete consolidation’—unless the actions involve the same parties, subject matter, issues, and defenses[]”); see also *Azinger v. Pennsylvania R. Co.*, 105 A. 87, 87-88 (Pa. 1918). For that reason, and out of an abundance of caution, the Committee is filing this Application notwithstanding the consolidation order.

6. Under Pennsylvania Rule of Civil Procedure 2327, a party is entitled to intervene if they “could have joined as an original party in the action or could have been joined therein” or “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(3), (4).

7. Here, the Committee is entitled to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327 and Pennsylvania Rule of Appellate Procedure 1531(b) because it could and should have been joined as an original respondent in this action (just like it was in the consolidated *Dush* matter) and because the determination in this action may affect the Committee’s ability to perform its duties, namely issue subpoenas in its investigatory role. *See* Pa.R.C.P. No. 2327(3), (4). Moreover, as admitted on the face of the *Haywood* Petition, this matter cannot be adjudicated without ruling on the Committee’s Subpoena. Thus, the Committee meets the requirements of Rule 2327.

8. Having established that the Committee is entitled to intervene under Rule 2327, the only remaining avenue to deny intervention is if one of the exceptions to intervention apply. Under

Pennsylvania Rule of Civil Procedure 2329, an application to intervene may be refused only in the following situations: “(1) the claim or defense of the petition is not in subordination to and in recognition of the propriety of the action; or (2) the interest of the petitioner is already adequately represented; or (3) the petitioner 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.

9. None of the foregoing exceptions apply to the Committee. First, it is indisputable that the Committee’s defense in the *Haywood* matter would focus on the Subpoena. If permitted to intervene, the Committee will argue that the Haywoods are not entitled to their requested relief and that the Subpoena is a proper exercise of legislatively granted authority under the Pennsylvania Constitution, statutes, and rules of the Senate. Accordingly, Rule 2329(1) does not apply to the Committee.

10. Second, the Committee’s interest in this matter is presently not represented at all in the *Haywood* matter. In fact the opposite is true because Respondent DeGraffenreid’s interest is adverse to the

Committee's interest. Indeed, in the consolidated *Dush* matter, Acting Secretary DeGraffenreid filed suit against the Committee in relation to the Subpoena. Accordingly, because of the significant and material differences between the interests of DeGraffenreid and the Committee in this matter, the Committee's interests are not adequately represented by the Acting Secretary. *See* Pa.R.C.P. No. 2329(2).

11. Third, the Committee has not unduly delayed making the present Application, *see* Pa.R.C.P. No. 2329(3); indeed, the Application is filed with the Court within two weeks of the filing of the *Haywood* Petition and within days of the Court consolidating this matter with the *Corman* and *Dush* matters.

12. In short, the Committee has a direct, immediate, and substantial interest in the outcome of the *Haywood* matter. The Committee's interest is direct because its Subpoena is at the heart of the *Haywood* matter, as pleaded on the face of the Petition. The Committee's interest is immediate because a briefing schedule in the consolidated matters has not yet begun, but will begin imminently. The Committee's interest is substantial because its power to investigate and serve subpoenas in furtherance of its legislative investigation are

recognized rights of under the Pennsylvania Constitution and are directly at issue in this matter.

13. Next, in light of the consolidated briefing schedule requested by the parties yesterday, the Committee requests that the Court grant expedited review and approval of this Application, especially since this matter has already been consolidated with the *Corman* matter and *Dush* matter.

14. Finally, per Pa.R.A.P. 3707, before filing this Application with the Court, the Committee sought the concurrence or non-concurrence from counsel for the Haywoods as well as from counsel for the Acting Secretary. Counsel for each advised that their respective parties do not object to the Committee's intervention in this matter.

WHEREFORE, the Committee respectfully requests that the Court grant this Application and grant the Committee leave to intervene as a party respondent.

Respectfully submitted,

Dated: October 7, 2021


s/ Matthew H. Haverstick
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*Attorneys for the Intergovernmental
Operations Committee*

VERIFICATION

I, Senator Cris Dush, Chair of the Intergovernmental Operations Committee, verify that the statements made in the foregoing Application are true and correct to the best of my knowledge, information, and belief. I make this verification subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 10/6/2021



Senator Cris Dush
Chair of the Intergovernmental
Operations Committee

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Arthur Haywood : 323 MD 2021
Julie Haywood, :
Petitioners :
v.
Veronica DeGraffenreid
Acting Secretary of State
Commonwealth of Pennsylvania,
Respondent

PROOF OF SERVICE

I hereby certify that this 7th day of October, 2021, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served: Stephen Ronald Kovatis
Service Method: eService
Email: skovatis@attorneygeneral.gov
Service Date: 10/7/2021
Address: 21 S.12th street, 3rd floor
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Phone: 215--56-0-2940
Representing: Respondent Veronica DeGraffenreid

Served: Tamika N. Washington
Service Method: eService
Email: tneesquire@yahoo.com
Service Date: 10/7/2021
Address: 21 South 12th Street
Suite 100
Philadelphia, PA 19107
Phone: 215--66-5-9250
Representing: Petitioner Arthur Haywood
Petitioner Julie Haywood

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Matthew Hermann Haverstick

(Signature of Person Serving)

Person Serving: Haverstick, Matthew Hermann
Attorney Registration No: 085072
Law Firm:
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1717 Arch St Fl 5
Philadelphia, PA 19103
Representing: Possible Intervenor Intergovernmental Operations Committee