

**IN THE SUPREME COURT OF PENNSYLVANIA**

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TOM WOLF, GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA, AND LEIGH M. CHAPMAN, ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA,	:	No. 73 MM 2022
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Petitioners,	:	
	:	
v.	:	
	:	
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	:	
GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Respondent.	:	

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**EMERGENCY APPLICATION FOR LEAVE TO INTERVENE  
BY SENATOR KIM WARD, MAJORITY LEADER OF THE  
PENNSYLVANIA SENATE, AND THE PENNSYLVANIA SENATE  
REPUBLICAN CAUCUS**

Senator Kim Ward, Majority Leader of the Pennsylvania Senate (“Majority Leader Ward”), and the Pennsylvania Senate Republican Caucus (“Caucus”) (together, “Senate Intervenors”) hereby submit this application for leave to intervene as Respondents in the above matter.

In support of this request, Senate Intervenors aver as follows:

1. The General Assembly, acting pursuant to its powers under Pa. Const. art. XI, § 1, voted by a majority in each chamber to pass SB 106, a joint resolution proposing constitutional amendments.

2. On July 28, 2022, Governor Wolf and Acting Secretary of the Commonwealth Leigh M. Chapman filed an Application for Invocation of King’s Bench Power, asking this Court to declare SB 106 invalid and enjoin further action on the proposed constitutional amendments.

3. Through their Application, Petitioners seek to undo the will of the General Assembly and diminish the powers and authority of the General Assembly to act pursuant to Pa. Const. art. XI, § 1.

4. Because the Application challenges the Legislature’s express constitutional authority to act, the Senate Intervenors seek to intervene.

5. A party is entitled to intervene in a matter if it satisfies any one of the requirements set forth in Pennsylvania Rule of Civil Procedure 2327. Thus, intervention “**shall** be permitted” if (1) entry of a judgment will impose liability to indemnify, (2) the intervenor will be adversely affected by a distribution of property in the custody of the court, (3) the intervenor could have joined or could have been joined as an original party, or (4) the determination of the action may affect the intervenor’s legally enforceable interest. Pa.R.C.P. No. 2327 (emphasis added).

6. An application to intervene will be refused only when one of the narrowly prescribed circumstances in Pennsylvania Rule of Civil Procedure 2329 is present. Rule 2329 provides an application may be refused if:

(1) the claim or defense of the petitioner is not subordinate 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. No. 2329(1)-(3).

7. Here, Senate Intervenors satisfy at least two of the criteria of Pennsylvania Rule of Civil Procedure 2327, and none of the circumstances in Rule 2329 is present.

8. First, both Senate Intervenors “could have joined as [] original part[ies] in this suit, or could have been joined therein[,]” because Majority Leader Ward is one of the highest ranking officials of the Pennsylvania Senate and the Caucus is a body of the Senate.

Pa.R.C.P. No. 2327(3).

9. Majority Leader Ward represents the interests of the Senate Republican members, which is the current majority party in the Senate. SB 106 passed by a vote of 28-22, with nearly every member of the Republican party voting in favor of SB 106. Because almost all of the members of the majority party voted in favor of SB 106, Majority Leader Ward represents the interests of these members whose actions Petitioners now challenge. As a Senate member herself and a representative of the majority party, Majority Leader Ward could have been joined as a party to this action.

10. The Caucus is one of two subparts of the Pennsylvania Senate (the other subpart being the Senate Democratic Caucus) and is an “integral constituent of the Senate.” *See Precision Mktg., Inc. v. Com., Republican Caucus of the Sen. of PA/ AKA Sen. of PA Republican Caucus*, 78 A.3d 667, 675 (Pa. Cmwlth. 2013). The Caucus was created with the Senate’s constitutional authority under Article II of the Pennsylvania Constitution, and it performs “essential legislative functions and administrative business in the Senate.” *See id.* at 671-75. The Caucus is composed of all Republican Senators in the Pennsylvania Senate, *see id.* at 672, who presently are a majority of the 50 total

Senators, Pa. Const. art. II, § 16. Nearly every member of the Caucus voted in favor of SB 106. As an integral part of the Senate, and thus the General Assembly, the Caucus could have been joined as party to the Application for Invocation of King's Bench Power. This is so since it encompasses nearly every Senator voting in favor of the joint resolution in the chamber and since its members include the individual members of the Senate with the power to control the legislative calendar regarding this joint resolution (which is material should the Court order further or additional legislative process) and future resolutions concerning the same subject matter.

11. Second, Majority Leader Ward, representing the majority party of the Senate, and the Caucus, composed of members of the Senate, have a legally enforceable interest in defending the General Assembly's constitutional authority, and that interest will be substantially affected if Petitioners are ultimately granted the declaratory relief they seek and SB 106 is invalidated. *See* Pa.R.C.P. No. 2327(4); *see also Allegheny Reproductive Health Center v. Pa Dep't of Human Servs.*, 225 A.3d 902, 913 (Pa. Cmwlth. 2020) (concluding

legislative intervenors had grounds to intervene where they sought to preserve their authority to vote on certain legislation in the future).

12. Because the Senate Intervenors could have joined as original parties, and this matter affects the legally enforceable interests of the Senate Intervenors, they satisfy at minimum two categories for intervention. Pa.R.C.P. No. 2327(3) & (4).

13. Finally, none of the three considerations for denying intervention are present.

14. First, Senate Intervenors' claims are in subordination to and in recognition of the propriety of the pending action, as Senate Intervenors seek to defend the rights and actions of the majority party members with regard to SB 106. Pa.R.C.P. No. 2329(1).

15. Second, Senate Intervenors' interests differ from and, therefore, are not already adequately represented by the existing parties. Petitioners seek to invalidate SB 106 and, therefore, their interests are adverse to the Senate Intervenors' interests. Respondent General Assembly also does not adequately represent the interest of the Senate Intervenors. The interests of the entire General Assembly reflect the interests of every Senator and Representative, many of whom voted

against the joint resolution and no doubt support the Petitioners' interests here. *See, e.g.,* Press Release, *Senator Jay Costa Supports Governor Wolf Led Lawsuit Against SB 106, Reaffirms Commitment to Abortion Access in PA*, Pa. Senate Democrats (July 28, 2022).<sup>1</sup> Thus the interests of the General Assembly, as a body of the whole, differ from the interests of the Senate Intervenors. Therefore, Senate Intervenors' interests are not adequately represented by the existing parties.

Pa.R.C.P. No. 2329(2).

16. Third, Senate Intervenors have not unduly delayed in making this Application nor will the intervention delay, embarrass or prejudice the trial or adjudication of rights of the parties. Petitioners filed their Application on July 28, 2022, and the Senate Intervenors filed the present Application within a few days. Respondent has not yet filed an Answer or other responsive pleading.<sup>2</sup> Moreover, Senate

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<sup>1</sup> Available at <https://pasenate.com/senator-jay-costa-supports-governor-wolf-led-lawsuit-against-sb-106-reaffirms-commitment-to-abortion-access-in-pa/>.

<sup>2</sup> Indeed, whether service on the General Assembly is yet complete is not established on the present record. As noted on the Proof of Service filed by Petitioners, Petitioners sought from certain institutional officers of the Senate and the House "agreement to accept service by electronic and first-class mail in lieu of personal service," but Petitioners did not represent that such consent had yet been granted. Thus, service on the General Assembly, as of the filing of this application to intervene, is seemingly incomplete.

Intervenors, like Petitioners, similarly seek to adjudicate this matter as swiftly as possible; thus, Senate Intervenors will not delay a final-merits decision if granted intervention. *See* Pa.R.C.P. No. 2329(3).

17. Finally, if permitted to intervene, Senate Intervenors will timely file an Answer in opposition to the Application. *See* Pa.R.C.P. No. 2328(a); *see also* Pa.R.A.P. 3309(b).

WHEREFORE, Senate Intervenors respectfully request that this Court grant this Application and grant Senate Intervenors leave to intervene as a party in this matter.

Respectfully submitted,

Dated: August 1, 2022

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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.

Dated: August 1, 2022

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	:	
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ORDER

AND NOW this \_\_\_\_ day of July 2022, upon consideration of the Emergency Application for Leave to Intervene by Senator Kim Ward, Majority Leader of the Pennsylvania Senate, and the Pennsylvania Senate Republican Caucus (together, "Senate Intervenors"), and any response thereto, it is hereby ORDERED that the Application is GRANTED and it is further ORDERED that the Senate Intervenors shall be deemed a Respondent in this matter.

BY THE COURT

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, J.