

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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**Docket No. 73 MM 2022**

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TOM WOLF, GOVERNOR OF THE COMMONWEALTH OF  
PENNSYLVANIA, AND LEIGH M. CHAPMAN, ACTING SECRETARY  
OF THE COMMONWEALTH OF PENNSYLVANIA,

*Petitioners,*

v.

GENERAL ASSEMBLY OF THE  
COMMONWEALTH OF PENNSYLVANIA,

*Respondent.*

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**EMERGENCY APPLICATION FOR LEAVE TO INTERVENE BY  
STATE REPRESENTATIVE JOANNA E. MCCLINTON,  
LEADER OF THE DEMOCRATIC CAUCUS  
OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES**

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NOW COMES State Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives, (“Proposed Intervenor”) by and through her attorneys, who files this emergency application for leave to intervene in the above-captioned matter pursuant to Pa.R.A.P. 1531(b) & 3009(b), and Pa.R.C.P. 2327-2329, and offers the following in support thereof:

## **Proposed Intervenor**

1. Proposed Intervenor is a duly elected member of the Pennsylvania House of Representatives representing the 191st Legislative District, including Philadelphia and Delaware counties.
2. Proposed Intervenor was elected the Minority Leader of the House of Representatives of the Commonwealth of Pennsylvania for the 2021-2022 Legislative Session by the Members-elect of the House Democratic Caucus.
3. The General Assembly consists of two chambers, the House of Representatives and the Senate, with four “integral constituent” parts referred to as the caucuses, which represent the majority and minority parties in both chambers. PA Const. Art. II, § 1; *See Precision Mktg., Inc. v. Com. Republican Caucus of the Sen. of Pa./AKA Sen. of Pa. Republican Caucus*, 78 A.3d 667, 671-75 (Pa. Cmwlth. 2013) (discussing the integral constituents of the Senate which is equally applicable to the House).
4. As an integral constituent of the General Assembly, the Democratic Caucus of the Pennsylvania House of Representatives is an essential part of the legislative process and the system of government in this Commonwealth, and as Leader of the House Democratic Caucus, Proposed Intervenor is similarly situated in this matter as the other possible legislative intervenors represented by the Leaders of the

House and Senate Republican Caucuses and the Leader of the Democratic Caucus of the Senate of Pennsylvania.

### **Procedural Background**

5. On July 28, 2022, Governor Tom Wolf and Acting Secretary of the Department of the Commonwealth of Pennsylvania Leigh M. Chapman (“Petitioners”) filed an Application for Invocation of King’s Bench Power (“Application”), which was served to Respondent General Assembly on August 1, 2022, seeking to declare Senate Bill 106 (“SB106”) invalid and enjoin further action.

6. On August 1, 2022, State Senator Kim Ward, Majority Leader of the Pennsylvania Senate, and the Pennsylvania Senate Republican Caucus (“Senate Republican Intervenors”), filed an Emergency Application for Leave to Intervene in this matter.

7. On August 2, 2022, State Representative Kerry A. Benninghoff, Majority Leader of the Pennsylvania House, and the Pennsylvania House Republican Caucus (“House Republican Intervenors”), filed an Emergency Application for Leave to Intervene in this matter.

8. On August 4, 2022, the Respondent General Assembly filed Answers to the House Republican Intervenors and the Senate Republic Intervenors’ Emergency

Applications for Leave to Intervene, stating that they did not oppose either application.

9. On August 10, 2022, State Senator Jay Costa, Minority Leader of the Pennsylvania Senate, and the Pennsylvania Senate Democratic Caucus (“Senate Democratic Intervenors”), filed an Emergency Application for Leave to Intervene.

10. With the other three caucuses of the General Assembly having filed applications seeking to intervene,<sup>1</sup> Proposed Intervenor now must seek leave to intervene and to continue as a party in the above-captioned matter to best protect the interests of the minority party in the House of Representatives, the House Democratic Caucus.

### **Standards for Intervention**

11. Applications for leave to intervene in an Original Jurisdiction matter before the Supreme Court of Pennsylvania are governed by Pa.R.A.P. 106 and 1531(b).

12. Pa.R.A.P. 106 states: “Unless otherwise prescribed by these rules the practice and procedure in matters brought before an appellate court within its original jurisdiction shall be in accordance with the appropriate general rules applicable to practice and procedure in the courts of common pleas, so far as they may be applied.”

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<sup>1</sup> See (Emerg. Appl. to Inter. House Rep. Caucus) (Emerg. Appl. to Inter. Sen. Rep. Caucus) (Emerg. Appl. to Inter. Sen. Dems.) (*herein referred to collectively as “possible legislative intervenors”*)

13. Pa.R.A.P. 1531(b) states:

A person not named as a respondent in an original jurisdiction petition for review who desires to intervene in a proceeding under this chapter, may seek leave to intervene by filing an application for leave to intervene....with the prothonotary of the court. The application shall contain a concise statement of the interest of the applicant and the ground upon which the intervention is sought.

14. In relevant part, the Pennsylvania Rules of Civil Procedure permit a person not a party to an action to intervene if: such a person 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 may be bound by a judgment in the action. Pa.R.C.P. 2327(3) and (4).

15. Once a potential intervenor has met one of the threshold requirements under Pa.R.C.P. 2327, the Court will grant intervention but may refuse if it finds one of the following factors from Pa.R.C.P. 2329:

- (1) the claim or defense of the petitioner is not in subordination to and in recognition 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 adjudication of the rights of the parties.

### **Intervention Pursuant to Pa.R.C.P. 2327(3)**

16. As stated above, Rule 2327(3) permits a party to intervene if “such a person could have joined as an original party in the action or could have been joined therein.” Pa.R.C.P. 2327(3).

17. Proposed Intervenor is the duly elected Leader of the House Democratic Caucus, the minority caucus of the House of Representatives and an integral constituent of the General Assembly. *See Precision Mktg., Inc.*, 78 A.3d at 671-75.

18. Proposed Intervenor, as well as the Members of the House Democratic Caucus who elected her Leader, could have been joined as an original party and has standing in the same manner as the other possible legislative intervenors.

19. The final version of SB106 was voted out of the House of Representatives at 9:59 PM on July 8, 2022, with a vote of 107-92. While the vast majority of the House Democratic Caucus voted against the measure and the vast majority of the House Republican Caucus voted in favor, four members of the House Republican Caucus voted against SB106 and one member of the House Democratic Caucus voted in favor.<sup>2</sup> Thus, any action seeking to review a measure voted on by the General Assembly must include all of the integral constituent parts to ensure that

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<sup>2</sup> House Roll Calls – 2021 RCS# 1156 - PA House of Representatives (July 8, 2022), [https://www.legis.state.pa.us/CFDOCS/Legis/RC/Public/rc\\_view\\_action2.cfm?sess\\_yr=2021&sess\\_ind=0&rc\\_body=H&rc\\_nbr=1156](https://www.legis.state.pa.us/CFDOCS/Legis/RC/Public/rc_view_action2.cfm?sess_yr=2021&sess_ind=0&rc_body=H&rc_nbr=1156).

all of the interests and perspectives of the varied Caucuses and their Members are given equal opportunity to present their positions.

20. Furthermore, if this Honorable Court grants leave to intervene to other possible legislative intervenors of the General Assembly, then Proposed Intervenor should also be granted her requested relief.

21. For the reasons provided above, Proposed Intervenor is presumptively entitled to intervene pursuant to Pa.R.C.P. 2327(3)

#### **Intervention Pursuant to Pa.R.C.P. 2327(4)**

22. Rule 2327(4) permits a person to intervene if the determination of such action may affect any legally enforceable interest of such person whether or not such may be bound by a judgment in the action. Pa.R.C.P. 2327(4).

23. To determine whether a party has a “legally enforceable interest” to intervene requires the court to examine the same principles governing legal standing. *See Robinson Twp. v. Commonwealth*, 84 A.3d 1054, 1055 (Pa. 2014).

There is also a difference between personal standing and legislative standing.

*Allegheny Reproductive Health Ctr. V. Pa. Dept. of Hum. Servs.*, 225 A.3d 902, 909 (Pa. Cmwlth. 2020) (discussing *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283 (Pa. Cmwlth. 2019)).

24. Personal standing requires that the aggrieved party have a substantial, direct, and immediate interest which must go beyond the abstract interest of all citizens

and show a discernable adverse effect that is unique to the aggrieved party. *See In re Phila. Health Care Trust*, 872 A.2d 258, 262 (Pa. Cmwlth. 2005).

25. By contrast, legislative standing exists only when a legislator's interest "to act as a legislator" is jeopardized. *Sunoco Pipeline, L.P.*, 217 A.2d at 1291. It is the ability of the legislator "to participate in the voting process" which must be negatively impacted. *Markham v. Wolf*, 136 A.3d at 145. A legislator must show an impact on the ability to vote and an interference with the authority of the General Assembly, not a mere personal grievance. Moreover, "a mere general interest in the litigation or an interest in an issue that is collateral to the basic issues in the case . . . or motive with respect to the litigation is not a sufficient basis for intervention . . . ." Goodrich Amram 2d, § 2327:8.

26. Proposed Intervenor is a Member of the General Assembly, in which the Pennsylvania Constitution vests the legislative power of the Commonwealth, giving its Members the ability to introduce and vote on legislation, including legislation to amend the Pennsylvania Constitution. *See PA Const. Art. II, § 1 and Art. XI.*

27. The Petitioners are raising questions regarding the legislative process and seeking to enjoin the General Assembly from advancing a Constitutional Amendment.



28. A decision in this case would impact both the ability of the individual legislators to participate in the voting process and how the General Assembly exercises its constitutional authority to propose amendments to the Pennsylvania Constitution.

29. The Proposed Intervenor is presumptively entitled to intervene pursuant to Pa.R.C.P. 2327(4), as the disposition of this matter, involving important issues surrounding the General Assembly's authority and the legislative process, will have a clear impact on the Proposed Intervenor and the Members of the House Democratic Caucus whom she represents.

**Grounds for Refusal of Intervention Pursuant to Pa.R.C.P. 2329**

30. As provided above, Proposed Intervenor is eligible to intervene pursuant to Pa.R.C.P. 2327 (3) and (4). The next step is for the Court to determine if one of the three factors under Pa.R.C.P. 2329 for refusing an application for intervention applies.

31. Proposed Intervenor does not present any claim "not in subordination to and in recognition of the action." *See* Pa.R.C.P. 2329(1).

32. The Proposed Intervenor (a) possesses the authority to vote and debate proposed state constitutional amendments and (b) exercised that authority by rejecting the unconstitutional and inappropriate attempt by the Republican House and Senate Caucuses to pass SB106.

33. In filing an application for leave to intervene in this matter, the Proposed Intervenor seeks not only to preserve the General Assembly's right granted through the Pennsylvania Constitution under Article XI, §1 to consider, debate, and vote on proposed state constitutional amendments, but also to ensure that the General Assembly abides by the dictates of our constitution when doing so.

34. Neither is the interest of the Proposed Intervenor already adequately represented by existing parties. *See* Pa.R.C.P. 2329(2).

35. Petitioners represent the interests of the Executive Branch of the Commonwealth and therefore have a separate and distinct interest from Proposed Intervenor. As a Member of the General Assembly and the Leader of the House Democratic Caucus, the interests of the Proposed Intervenor are not adequately represented by the Petitioners in this matter as they are officials of the executive branch of the Commonwealth, who do not serve in the General Assembly, do not have the power to introduce or vote on legislation, including constitutional amendments, and have not been selected as the Leader of the Democratic Members duly elected to the Pennsylvania House of Representatives.

36. Respondent General Assembly also does not adequately represent the interest of the Proposed Intervenor. Respondent General Assembly reflects the interests of the Speaker of the House of Representatives and the President Pro Tempore of the Senate of Pennsylvania, who are members of the Republican

Caucuses of the House and Senate and voted in favor of SB106. Proposed Intervenor as the Leader of a constituent part of the General Assembly seeks to protect the interests of the minority party in the House and the members of the House Democratic Caucus who opposed SB106 and the process in which the majority party advanced and ultimately passed SB106. Therefore, the interests of Respondent General Assembly, in this instance, differ from the interests of the Proposed Intervenor and Proposed Intervenor's interests are not adequately represented by the existing parties. Pa.R.C.P. 2329(2)

37. Moreover, should any of the other possible legislative intervenors be granted leave to intervene, Proposed Intervenor's interest will still not be adequately represented. None of the other possible legislative intervenors can adequately, on their own, represent the interests of the Proposed Intervenor. The Senate and House are separate bodies of the General Assembly with different operating rules and structure. Additionally, the individual caucuses represent the interests of their members and often stand in stark contrast to each other on various process and policy issues.

38. Proposed Intervenor, as the Leader of the minority caucus of the House, has an even stronger argument than the Republican possible legislative intervenors for not being properly represented by the Respondent General Assembly, which is being guided by the Speaker of the House of Representatives and the President Pro

Tempore of the Senate of Pennsylvania. The Speaker of the House of Representatives and the President Pro Tempore of the Senate of Pennsylvania are members of the majority caucuses of the House and Senate. As the majority leaders and caucuses of their respective chambers, the Republican possible legislative intervenors control the agenda and calendar of the entire General Assembly whereas members of the minority caucuses only have a voice through amendments they offer to bills called up by the majority caucuses, through statements made during floor debates, and by their individual votes.

39. Additionally, the filing of this emergency application for leave to intervene is not unduly delayed, nor will the application unduly delay, embarrass, or prejudice the adjudication of the rights of the parties. *See* Pa.R.C.P. 2329(3).

40. The Petitioners' Application was filed July 28, 2022, and subsequently served August 1, 2022. The Republican possible legislative intervenors filed their emergency applications for leave to intervene last week on August 1 and 2, 2022, respectively, a mere 10 days before Proposed Intervenor filed this application and only one day after Senate Democratic possible legislative intervenors filed their application for leave to intervene. Moreover, no responsive pleading to the Application has been filed as of the date and time that Proposed Intervenor submitted this emergency application. Finally, Proposed Intervenor, if granted

leave to intervene, will take all necessary steps to help this matter proceed quickly and without delay to avoid any prejudice to the rights of the other parties.

41. Thus, Proposed Intervenor is entitled to intervene as none of the provisions of Pa.R.C.P. 2329 apply.

42. Finally, if permitted to intervene, the Proposed Intervenor will timely file a response to the Application. *See* Pa.R.C.P. 2328(a); *see also* Pa.R.A.P. 3309(b).

**WHEREFORE** the Proposed Intervenor respectfully requests that this Honorable Court grant her application for leave to intervene in the above-captioned matter.

Respectfully Submitted,

/s/ Lam D. Truong

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**Dated:** August 11, 2022

## CERTIFICATE OF COMPLIANCE

I certify that 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.

Respectfully submitted,

/s/ Lam D. Truong

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## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am this day effectuating service of the foregoing document upon the persons and in the manner indicated below:

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