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IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 102 MM 2022

DAVID BALL, ET AL.,

Petitioners

v.

LEIGH M. CHAPMAN, ACTING SECRETARY OF THE COMMONWEALTH, ET AL.,

Respondents

LEIGH M. CHAPMAN AND JESSICA MATHIS'S ANSWER IN OPPOSITION TO THE APPLICATION TO INTERVENE BY BRYAN CUTLER, SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES, KERRY BENNINGHOFF, MAJORITY LEADER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES, THE PENNSYLVANIA HOUSE REPUBLICAN CAUCUS, JAKE CORMAN, PRESIDENT PRO TEMPORE OF THE PENNSYLVANIA SENATE, KIM WARD, MAJORITY LEADER OF THE PENNSYLVANIA SENATE, AND THE PENNSYLVANIA SENATE REPUBLICAN CAUCUS

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October 25, 2022

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Respondents, Leigh M. Chapman and Jessica Mathis, by and through undersigned counsel, file this Answer in Opposition to the Application to Intervene filed by Bryan Cutler, Speaker of the Pennsylvania House of Representatives; Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives; the Pennsylvania House Republican Caucus; Jake Corman, President Pro Tempore of the Pennsylvania Senate; Kim Ward, Majority Leader of the Pennsylvania Senate; and the Pennsylvania Senate Republican Caucus ("Proposed Legislative Intervenors"). The Application to Intervene should be denied for three reasons.

First, the Application fails to demonstrate that intervention is appropriate under Pennsylvania Rule of Civil Procedure 2327. Proposed Legislative Intervenors have the burden to show that "all the requirements of Rule 2327 are met." *See Johnson v. Tele-Media Co. of McKean Cnty.*, 90 A.3d 736, 742 (Pa. Super. Ct. 2014). They fail to carry that burden here.

This case is about the interpretation of a previously enacted statutory provision. Proposed Legislative Intervenors acknowledge as such in the opening line of their Application when they state that this case "concerns a critically important interpretation of the Commonwealth's Election Code, enacted by the Legislative Intervenors." Appl. for Intervention ¶ 1. Yet, courts have consistently found that legislators have standing to intervene "only in limited circumstances,"

that is, "only when a legislator's direct and substantial interest in his or her ability to participate in the voting process is negatively impacted . . . or when he or she has suffered a concrete impairment or deprivation of an official power or authority to act as a legislator." *Markham v. Wolf*, 136 A.3d 134, 145 (Pa. 2016). In those limited circumstances, the injury must be "personal to the legislator, as a legislator," and does not extend to conduct "unrelated to the voting or approval process" of legislating. *Id.*

Proposed Legislative Intervenors make no argument that a decision in this case will impact their ability to propose or vote on legislation or their "right to act as legislators." *See id.* Their motion is solely based on the fact that this Court will be interpreting the Election Code which "could result in the usurpation of [their] interests in legislating for Pennsylvania election rules and procedures." Appl. for Intervention ¶ 2. But, as this Court has already found when denying legislators' application to intervene in *Markham v. Wolf*, claims of separation-of-powers interests are not sufficient when they have no impact "on [the legislators'] right to act as legislators." 136 A.3d at 145. Otherwise, this expansive view of legislative standing "would seemingly permit legislators to join in any litigation in which a court might interpret statutory language in a manner purportedly inconsistent with legislative intent." *Id.*

The legislature has its own recourse to remedy any disagreement it has with a court's interpretation of a statute: pass legislation. *See id.* Nothing in this case would hinder the ability of any legislator to do just that.

Proposed Legislative Intervenors mistakenly rely on *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services* in which the Commonwealth Court permitted legislators to intervene because the relief sought in that case would "extend beyond the statute and the Department's regulations" and "could bar the General Assembly from 'tieing legislative strings' to its appropriation of funds." 225 A.3d 902, 912 (Pa. Commw. Ct. 2020). Nothing in this case would tie the hands of the General Assembly from proposing and voting on future election legislation or inhibit the ability of any legislators to legislate in any way. Proposed Legislative Intervenors have failed to carry their burden to show that intervention is proper under Rule 2327 and therefore their Application should be denied.[1]

[1] As the discussion above makes clear, just as Proposed Legislative Intervenors have no legally enforceable interest in this lawsuit, *see* Pa. R. Civ. P. 2327(4), they could not have been named as original parties, *see* Pa. R. Civ. P. 2327(3). The cases Proposed Legislative Intervenors cite are inapposite. *See Appeal of Denny Bldg. Corp.*, 127 A.2d 724, 726, 729 (Pa. 1956) (where law allowed any person aggrieved by issuance of city license to appeal, owners and occupants of houses on which building corporation performed deficient work, which was initially licensed by the city, were properly allowed to intervene in appeal); *Harrington v. Phila. City Employees Federal Credit Union*, 364 A.2d 435, 437-41 (Pa. Super. Ct. 1976) (where certain individuals who had been elected to a credit union's board of directors and were then denied their elected positions or

Second, even if this Court finds that Proposed Legislative Intervenors have met their burden under Rule 2327, this Application has been filed entirely too late and should therefore be denied pursuant to Rule 2329(3), which allows intervention to be refused if, among other reasons, the party "has unduly delayed." That is the case here.

Proposed Legislative Intervenors waited to seek leave to intervene until more than a week after Petitioners filed their application for King's Bench jurisdiction, which asked this Court to exercise jurisdiction based on the purported urgency of this case. And while Proposed Legislative Intervenors waited, ten other parties sought to intervene and had their applications decided by this Court.[2]

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removed filed a suit in equity, two individuals who had likewise "been precluded from taking office" but had not been named as original parties were entitled to intervene).

The other cases cited by Proposed Legislative Intervenors involve challenges to redistricting maps in which the petitioners sued certain legislative leaders, among others. *See League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018); *Erfer v. Commonwealth*, 794 A.2d 325 (Pa. 2022), abrogated by *League of Women Voters*, 178 A.3d 737. These leaders were sued because the maps they helped create were being directly challenged. Left unexplained by Proposed Legislative Intervenors is how these redistricting cases support Proposed Legislative Intervenors' intervention in *this* case, which concerns the interpretation of statutory provisions that are more than seventy years old.

[2] The Black Political Empowerment Project, Common Cause Pennsylvania, Make the Road Pennsylvania, Philadelphia Organized to Witness, Empower and Rebuild, the League of Women Voters of Pennsylvania, and the NAACP Pennsylvania State Conference all filed an application to intervene on October 19, 2022. The Democratic Congressional Campaign Committee, the Democratic National Committee, the Democratic Senatorial Campaign Committee, and the Pennsylvania Democratic Party also filed an application to intervene on October

More than that, before Proposed Legislative Intervenors asked to join this case, this Court had granted the application to exercise its King's Bench authority and issued an expedited briefing schedule. Proposed Legislative Intervenors proffer no excuse for their unreasonable delay.

Third, Proposed Legislative Intervenors intend to contribute to this case little more than a series of post-hoc, self-serving statements about legislative intent. As Justice Wecht observed in his concurrence in *Snyder Brothers, Inc. v. Pennsylvania Public Utility Commission*, this Court should be "skeptical about the utility of examining . . . floor statements to discern correctly each legislator's own subjective motivations, much less the collective intent of the entire body." 198 A.3d 1056, 1082 (Wecht, J., concurring). This is even more true when the intent is manufactured after the fact. *See Dist. of Columbia v. Heller*, 554 U.S. 570, 605 (2008) ("Legislative history, of course, refers to the pre-enactment statements of those who drafted or voted for a law . . . . 'Postenactment legislative history,' a deprecatory contradictory in terms, refers to statements . . . made after [the law's] enactment and [that] hence could have no effect on the [legislature's] vote."); *accord Commonwealth v. Lynn*, 114 A.3d 796, 827 (Pa. 2015); *see also City Neighbors Charter Sch. v. Baltimore City Bd. of Sch. Comm'rs*, 906 A.2d 388, 404

19, 2022. The Court ruled on these applications on October 21, 2022, granting some and denying others.

n.8 (Md. Ct. Spec. App. 2006) (rejecting "*post hoc* declarations of intent by four individual legislators" as irrelevant to determining legislative intent).[3]

Proposed Legislative Intervenors had every opportunity after this suit was filed to timely seek intervention. Their Application at this late hour offers merely self-serving statements concerning statutory language passed decades before Proposed Legislative Intervenors were members of the General Assembly. Their Application should therefore be denied.

[3] The statutory language that is central to this case has been in the Election Code for decades. Language regarding what makes the declaration "sufficient" was part of the original Election Code. Act of June 3, 1937, P.L. 1333, No. 320, § 1330, 1937 Pa. Laws 1333, 1444. The General Assembly added the language that a voter "shall . . . date" the declaration in 1945. Act of Mar. 9, 1945, P.L. 29, No. 17, sec. 10, § 1306, 1945 Pa. Laws 29, 37.

October 25, 2022

Respectfully submitted,

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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: October 25, 2022

/s/ *Jacob B. Boyer*
Jacob B. Boyer