

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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CAROL ANN CARTER; MONICA  
PARRILLA; REBECCA  
POYOUROWN; WILLIAM TUNG;  
ROSEANNE MILAZZO; BURT  
SIEGEL; SUSAN CASSANELLI;  
LEE CASSANELLI; LYNN  
WACHMAN; MICHAEL  
GUTTMAN; MAYA FONKEU;  
BRADY HILL; MARY ELLEN  
BALCHUNIS; TOM DEWALL;  
STEPHANIE MCNULTY; and JANET  
TEMIN,

Petitioners,

v.

**CASES CONSOLIDATED**

No. 464 M.D. 2021

VERONICA DEGRAFFENREID, in  
her official capacity as the Acting  
Secretary of the Commonwealth of  
Pennsylvania; JESSICA MATHIS, in  
her official capacity for the  
Pennsylvania Bureau of Election  
Services and Notaries,

Respondents.

PHILIP T. GRESSMAN; RON Y.  
DONAGI; KRISTOPHER R. TAPP;  
PAMELA GORKIN; DAVID P.  
MARSH; JAMES L.  
ROSENBERGER; AMY MYERS;  
EUGENE BOMAN; GARY

GORDON; LIZ MCMAHON,  
TIMOTHY G. FEEMAN; and GARTH  
ISAAK,

Petitioners,

v.

No. 465 M.D. 2021

VERONICA DEGRAFFENREID, in  
her official capacity as the Acting  
Secretary of the Commonwealth of  
Pennsylvania; JESSICA MATHIS, in  
her official capacity as Director for the  
Pennsylvania Bureau of Election  
Services and Notaries,

Respondents.

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**MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR LEAVE  
TO INTERVENE BY REPRESENTATIVE JOANNA E. MCCLINTON,  
LEADER OF THE DEMOCRATIC CAUCUS  
OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES**

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Tara L. Hazelwood (Pa. 200659)  
Lee Ann H. Murray (Pa. 79638)  
Lam D. Truong (Pa. 309555)  
Matthew S. Salkowski (Pa. 320439)  
Office of Chief Counsel, Democratic Caucus  
Pennsylvania House of Representatives  
620 Main Capitol  
Harrisburg, PA 17120  
Phone: (717) 787-3002

*Counsel for Proposed-Intervenor,  
Hon. Joanna E. McClinton, Democratic  
Leader of the Pennsylvania House of  
Representatives*

January 5, 2022

Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives, (“Proposed Intervenor”) by and through her attorneys, hereby files this Memorandum of Law supporting her Application for Leave to Intervene in the above-captioned matters (“Application”).

Proposed Intervenor is one of four leaders of the caucuses which comprise the Pennsylvania General Assembly. The other caucus leaders are Kim Ward, Republican Leader of the Pennsylvania Senate; Jay Costa, Democratic Leader of the Pennsylvania Senate; and Kerry Benninghoff, Republican Leader of the Pennsylvania House of Representatives. All four caucus leaders of the General Assembly seek intervention in these matters.<sup>1</sup>

Proposed Intervenor has a right to intervene in these matters, and respectfully requests that the Court grant her Application. Proposed Intervenor satisfies the requirements of Pa.R.C.P. 2327 and her Application should not be refused under any provision of Pa.R.C.P. 2329. As a member of the Pennsylvania House of Representatives and Leader of the House Democratic Caucus, Proposed

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<sup>1</sup> Other proposed intervenors to these matters include: Pennsylvania State Representative Bryan Cutler, Speaker of the House of Representatives; Pennsylvania State Senator Jake Corman, President *Pro Tempore* of the Pennsylvania Senate (“Proposed Republican Legislator Intervenor”); Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams (“Proposed Democratic Senator Intervenor”); and Pennsylvania State Senators Vincent J. Hughes, Wayne D. Fontana, Judy Schwank, Lisa Boscola, James Brewster, Amanda Cappelletti, Carolyn Comitta, Marty Flynn, Art Haywood, John Kane, Tim Kearney, Steve Santarsiero, Nikil Saval, Christine Tartaglione, and Lindsey Williams (“Proposed Senate Democratic Caucus Intervenor”).

Intervenor seeks to protect her ability to participate in the process exclusively vested with the General Assembly to prescribe the “Time, Places, and Manner” of congressional elections pursuant to Article I, Section 4 of the United States Constitution. In support of her Application, the Proposed Intervenor, by and through her counsel, states the following:

**I. BACKGROUND**

The above-captioned matters were initiated on December 17, 2021, with the filing of petitions for review in this Court’s original jurisdiction by Carol Ann Carter, *et al.* (“Carter Petitioners”) and Philip T. Gressman, *et al.* (“Gressman Petitioners”) (collectively, “Petitioners”). Petitioners request, *inter alia*, a declaration by this Honorable Court of the illegality of the existing district plan, an injunction precluding Respondents from using the district plan, and this Court’s adoption of a new “appropriate redistricting plan.” *See* Carter Petitioners Pet. 18-19; Gressman Petitioners Pet. 14.

The cases, originally docketed at 464 MD 2021 and 465 MD 2021, were consolidated by order of this Court on December 20, 2021. On the same day, this Honorable Court ordered that any parties wishing to intervene pursuant to Pa. R.A.P. 1531(b) file their applications by December 31, 2021, and that the Petitioners serve a copy of the Order on the Pennsylvania Senate Republican and Democratic Leaders and on the Republican and Democratic Leaders of the

Pennsylvania House of Representatives, including the Proposed Intervenor.

Proposed Intervenor timely filed her Application with this Court on December 31, 2021.

Proposed Intervenor is a duly elected member of the Pennsylvania House of Representatives representing the 191st Legislative District, including Philadelphia and Delaware counties. 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.

The House Democratic Caucus is currently made up of ninety Members of the Pennsylvania House of Representatives representing ninety different legislative districts spanning all eighteen current congressional districts across the Commonwealth. As the Leader of the House Democratic Caucus, Proposed Intervenor represents the interests of the Members of the House Democratic Caucus, who were elected to represent the interests of their constituents.

## **II. PROPOSED INTERVENOR HAS A RIGHT TO INTERVENE**

Proposed Intervenor has satisfied the requirements of Pa.R.C.P. 2327 relating to intervenors and has demonstrated that her Application should not be denied under Pa.R.C.P. 2329. Having satisfied at least one of the criteria set forth in Rule 2327 and absent any condition set forth in Rule 2329, the grant of

intervention is mandatory rather than discretionary. Thus, this Honorable Court should grant Proposed Intervenor's Application.

Under Pennsylvania law, applications for leave to intervene in an Original Jurisdiction matter before the Commonwealth Court are governed by Pa.R.A.P. 106 and 1531(b). 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." 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.

In relevant part, the Pennsylvania Rules of Civil Procedure permit a person not a party to an action to intervene if any one of the conditions set forth in Rule 2327 is met, absent the existence of any basis for refusal set forth in Rule 2329. Pa.R.C.P. 2327 and 2329. This Honorable Court has held that a grant of intervention is mandatory, not discretionary, when one of the four bases set forth in Pa.R.C.P. 2327 is satisfied "unless there exists a basis for refusal under Rule

2329.” *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Human Serv.*, 225 A.3d 902, 908 (Pa. Commw. Ct. 2020).

**A. Proposed Intervenor has Satisfied the Requirements for Intervention pursuant to Pa.R.C.P. 2327.**

The grant of intervention is mandatory where the proposed intervenor could have joined as an original party in the action or could have been joined therein.

The grant of intervention is also mandatory 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(3) and (4). *See Allegheny*, 225 A.3d at 908. To determine whether a party has a legally enforceable interest to intervene or to participate in legal actions in their official capacity 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*, 225 A.3d at 909 (discussing *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283 (Pa. Commw. Ct. 2019)). 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. Commw. 2005).

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.

Proposed Intervenor is a Member of the General Assembly, which is responsible for determining the “Time, Place and Manner” of our elections for Senators and Representatives to Congress, including the districts from which Representatives will be elected. *See* U.S. Const. Art. I § 4 and 2 U.S.C. § 2(c) (1967). Moreover, 2 U.S.C. § 2(c) requires each State to establish “**by law** a number of districts equal to the number of Representatives which such State is so entitled. *Id.* (emphasis added).

The Pennsylvania Constitution vests the Commonwealth’s legislative power in the General Assembly, which gives its Members the power to introduce and vote on legislation, including legislation setting Congressional districts. *See* PA Const. Art. II, § 1. The Petitioners are asking this Court to take the authority to introduce



and vote on legislation determining Congressional districts away from the General Assembly.

The disposition of this matter will have a clear impact on the ability of the Proposed Intervenor, as the Leader of the Democratic Caucus and a Member of the General Assembly, and the ability of the other House Democratic Members, to vote on congressional district legislation and enact congressional district maps. *See Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 808 (2015).

Thus, Proposed Intervenor, in her capacity as a member of the General Assembly, has a legally enforceable interest in these actions because Pennsylvania law does not prescribe the date by which a new congressional district map must be put in place and given the General Assembly's constitutional authority to establish the time, place and manner of elections. *See Carter v. Degraffenreid*, No. 132 M.D. 2021, slip op. at 12-13 (Pa. Commw. Ct. Sept. 2, 2021). This very Court has held that legislators, including Proposed Intervenor, have a legally enforceable interest in the submission of a proposed plan. *See id.* at 11-12. The Petitioner's request for declaratory judgments and injunctive relief related to redistricting plans would clearly infringe upon Proposed Intervenor's constitutional right and deprive her of her ability to act as a legislator. *See id.*

**B. There Exists No Basis Pursuant to Pa.R.C.P. 2329 for Refusal to Grant Proposed Intervenor’s Application.**

As provided above, Proposed Intervenor is eligible to intervene pursuant to Pa.R.C.P. 2327 (3) and (4). Once a potential intervenor has met one of the threshold requirements under Rule 2327, the Court must grant intervention but may refuse if it finds one of the following factors under Rule 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.

Pa.R.C.P. 2329.

Proposed Intervenor does not present any claim “not in subordination to and in recognition of the action.” *See* Pa.R.C.P. 2329(1). *Accord Carter v. Degraffenreid*, No. 132 M.D. 2021, slip op. at 12-13 (Pa. Commw. Ct. Sept. 2, 2021).

Neither is the interest of the Proposed Intervenor already adequately represented. As the Leader of the House Democratic Caucus, the interests of the Proposed Intervenor are not adequately represented by Petitioners in this matter as the Petitioners do not serve in the Pennsylvania House of Representatives, do not

represent the citizens of the 191st Legislative District, and have not been selected as the Leader of the House Democratic Caucus.

Proposed Intervenor’s interests are also not adequately represented by the Respondents who are officials of the executive branch of the Commonwealth, and whose responsibilities and powers regarding elections and determining congressional districts are vastly different from the legislative branch.

The Democratic Caucus of the Pennsylvania House of Representatives is an integral part of the legislative process and the system of government in this Commonwealth, including with respect to voting on and enacting districting legislation and congressional districts. While the House Democratic Caucus and the Proposed Intervenor is similarly situated in this matter to the House and Senate Republican Caucuses and the Democratic Caucus of the Senate of Pennsylvania—and the caucus leaders also seeking intervention in this matter—the interests of the Proposed Intervenor and the Members of the House Democratic Caucus she represents would not be adequately represented by the other proposed intervenors belonging to the General Assembly.<sup>2</sup>

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<sup>2</sup> A point which Carter Petitioner’s allude to in their response to Proposed Intervenor’s Application to Intervene by agreeing that if “the Court is inclined to accept the intervention of Pennsylvania’s legislators, that it should do so for all legislators who seek to intervene—not only for some.” See Carter Petitioner’s R to Rep. McClinton App. to Intervene 2-3.

The House Democratic Caucus is comprised of the elected Democratic Members of the House of Representatives. The House Democratic Caucus is one of two subparts of the Pennsylvania House of Representatives and is one of four caucuses of the General Assembly. *See Precision Marketing, Inc. v. Commonwealth of Pennsylvania, et al.*, No. 562 M.D. 2010 (Pa. Commw. Ct. 2013). The institutional authority of the General Assembly consists of 50 state senators and 203 state representatives, of which at least a majority from each chamber are necessary to pass or defeat legislation, as provided in Article II, Section 1<sup>3</sup> and Article III, Section 4<sup>4</sup> of the Pennsylvania Constitution. Proposed Intervenor has filed to intervene because the other proposed legislative intervenors do not and cannot adequately represent the interests of the General Assembly or the Members of the House Democratic Caucus, nor do they have the capacity to assert the institutional interests of the legislature in the General Assembly's efforts to vote on and enact redistricting legislation. *See Raines v. Byrd*, 521 U.S. 811, 829 (1997); *Corman v. Torres*, 287 F.Supp.3d 558 (M.D. Pa. 2018). If the Court accepts the intervention of other leaders and legislators in the General Assembly, it should do so for all legislators who seek to intervene. To be clear, the application

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<sup>3</sup> “The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.” Pa. Const. art. II, § 1.

<sup>4</sup> “No bill shall become law, unless . . . a majority of the members elected to each House is recorded thereon as voting in its favor.” Pa. Const. art. III, § 4.

to intervene filed by the Proposed Republican Legislator Intervenors was not filed on behalf of the General Assembly, as an institution, but rather only on behalf of Republican leaders in the General Assembly.

Finally, the Application is not unduly delayed and nor will it unduly delay, embarrass, or prejudice the adjudication of the rights of the parties. *See* Pa.R.C.P. 2329(3). The Application was timely filed on December 31, 2021 pursuant to the Order of this Honorable Court of December 20, 2021. Thus, Proposed Intervenor is entitled to intervene because no basis exists to deny the Application under Pa.R.C.P. 2329.

**WHEREFORE** the Proposed Intervenor respectfully requests that this Honorable Court grant her Application for Leave to Intervene in the above-captioned matters and enter Representative McClinton on the docket as Intervenor.

Respectfully Submitted,

/s/ Lam D. Truong

Tara L. Hazelwood (Pa. 200659)

Lee Ann Murray (Pa. 79638)

Lam D. Truong (Pa. 309555)

Matthew S. Salkowski (Pa. 320439)

Office of Chief Counsel, Democratic Caucus

Pennsylvania House of Representatives

620 Main Capitol

Harrisburg, PA 17120

Phone: (717) 787-3002

*Counsel for Proposed-Intervenor,  
Hon. Joanna E. McClinton, Minority  
Leader of the Pennsylvania House of  
Representatives*

January 5, 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

**Lam D. Truong**  
Office of Chief Counsel,  
Democratic Caucus  
PA House of Representatives  
Room 620 Main Capitol Building  
Harrisburg, PA 17120

## 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, which satisfies the requirements of Pa.R.A.P. 121:

**Service by PACFile eService as follows:**

All counsel of record

Respectfully submitted,

**Date:** December 31, 2021

*/s Matthew S. Salkowski*

**Matthew S. Salkowski**  
Office of Chief Counsel,  
Democratic Caucus  
PA House of Representatives  
Room 620 Main Capitol Bldg.  
Harrisburg, PA 17120