

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOSEPH D. HAMM, individually and as a candidate for the Pennsylvania State House of Representatives in the 84th Legislative District; MIKE KELLY, individually and as a candidate for the United States House of Representatives 16th District; BILLY ALLRED; CHAD HORNER; CAROLYN CONNOR; and JOAN HAUSER,

Petitioners,

v.

KATHY BOOCKVAR, in her official capacity as the Secretary of the Commonwealth of Pennsylvania,

Defendant,

DNC SERVICES CORP. / DEMOCRATIC NATIONAL COMMITTEE,

Proposed Intervenor-Defendant

ORIGINAL JURISDICTION

No. 600 MD 2020

MOTION TO INTERVENE BY DNC SERVICES CORP. / DEMOCRATIC NATIONAL COMMITTEE

Proposed Intervenor-Defendant, DNC Services Corp. / Democratic National Committee (the “DNC”), by and through its undersigned counsel, respectfully submits this motion to intervene as Defendant in the above-captioned proceeding pursuant to Rule 2327 of the Pennsylvania Rules of Civil Procedure. Attached to this Motion as Exhibit A is DNC’s Proposed Answer to the Petition.

REASONS FOR PROPOSED INTERVENORS' APPLICATION

1. Pursuant to Pennsylvania Rule of Procedure 2327, a non-party may seek leave to intervene by filing an application with the court.

2. The DNC seeks to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327(4), which states, in pertinent part:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if . . .

(4) 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. The DNC meets the requirements for intervention under Pennsylvania Rule of Civil Procedure 2327(4).

4. The DNC is a national committee, as that term is defined by and used in 52 U.S.C. § 30101, dedicated to electing local, state, and national candidates of the Democratic Party to public office throughout the United States, including in Pennsylvania. The DNC has members and constituents across the Commonwealth, including eligible voters who submitted absentee and mail-in ballots in the November 3 election, and who have submitted timely provisional ballots after their absentee and mail ballots were rejected. As such, the DNC has a particular and distinct interest in Pennsylvania's election processes.

5. Petitioners ask this Court to throw out lawfully cast provisional ballots. Those ballots were cast by DNC's member voters and were cast in favor of DNC's member candidates.

6. The DNC has a concrete and protectible interest in protecting its candidates and its voters from this last-minute change of voting rules. The changes proposed by Petitioners will result in the Democratic voters being disenfranchised and could harm the electoral prospects of Democratic candidates. As such, the DNC and its members maintain a powerful and legally enforceable interest in Pennsylvania's election processes that is implicated by this lawsuit.

7. The named Defendant does not adequately represent the DNC's interests. Defendant's stake in this lawsuit is defined solely by her statutory duties to conduct elections, whereas the DNC's interest in this litigation is defined by its interest in protecting its voters and its candidates' electoral prospects. When one of the original parties to the suit is a government entity, whose positions "are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it," courts have tended to find that intervention is appropriate. *Kleissler v. U.S. Forrest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (citing *Conservation Law Found. of New England v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992), and *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996)).

8. For these reasons, courts routinely find that political party committees should be granted intervention in cases where plaintiffs seek to make it harder to vote and harder to have that vote counted. *E.g. Parnell v. Allegheny Board of Elections*, No. 20-cv-01570 (W.D. Pa. Oct. 22, 2020), ECF No. 34 (granting intervention to Democratic Congressional Campaign Committee in lawsuit regarding processing of ballots); *Donald J. Trump for President v. Bullock*, No. 20-cv-66 (D. Mon. Sept. 08, 2020), ECF No. 35 (granting Democratic Congressional Campaign Committee, Democratic Senatorial Campaign Committee, and Montana Democratic Party intervention in lawsuit filed by four Republican party entities); *Donald J. Trump for President, Inc.*, No. 20-cv-10753, 2020 WL 5229209, at *1 (D. N.J. Sept. 01, 2020) (granting Democratic Congressional Campaign Committee intervention in lawsuit by Republican candidate and party entities); *Cook County Republican Party v. Pritzker*, No. 20-cv-4676 (N.D. Ill. Aug. 28, 2020) (granting Democratic Congressional Campaign Committee intervention in lawsuit by Republican party entity); *Issa v. Newsom*, No. 20-cv-01044, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (granting Democratic Congressional Campaign Committee and California Democratic Party intervention in lawsuit by Republican congressional candidate); *Paher v. Cegavske*, No. 20-cv-00243, 2020 WL 2042365, at *4 (D. Nev. April 28, 2020) (granting Democratic National Committee and other

Democratic Party entities intervention in election law case brought by conservative interest group).

9. The DNC has promptly filed its motion to intervene and its intervention will neither delay the resolution of this matter nor prejudice any party.

10. If permitted to intervene, the DNC intends to timely file a Memorandum of Law in Opposition to Petitioners' Application for Special Relief in the Form of a Preliminary Injunction outlining the DNC's defenses more fully.

Dated: November 4, 2020

Respectfully submitted,

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**Motions for Admission Pro Hac Vice
Forthcoming*

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.

/s/ Edward Rogers
Edward Rogers

Exhibit A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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[PROPOSED] ANSWER

Intervenor-Defendant DNC Services Corp. / Democratic National Committee (“Intervenor”), by and through its attorneys, submits the following Answer to Petitioners’ Petition for Review in the Nature of a Complaint in Equity:

1. Intervenor admits that Exhibit A to the Complaint reflects an email sent by Deputy Secretary Jonathan Marks to county election officials on November 2, 2020. Intervenor denies the remaining allegations in Paragraph 1.

2. Paragraph 2 contains mere characterizations, legal contentions, and conclusions to which no response is required.

3. Intervenor admits the allegations in Paragraph 3.

4. Intervenor admits the allegations in Paragraph 4.

5. Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 5.

6. Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 6.

7. Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 7.

8. Paragraph Intervenor does not have sufficient knowledge to admit or deny the allegation in Paragraph 8.

9. Intervenor admits that Secretary Boockvar issued guidance on October 21, 2020. Intervenor otherwise denies the allegations in Paragraph 9.

10. Intervenor admits the allegations in Paragraph 10.

11. Intervenor admits the allegations in Paragraph 11.

12. Intervenor admits the allegations in Paragraph 12.

13. Intervenor admits that the quoted text appears in 25 P.S. § 3146.8.

14. Intervenor admits that the quoted text appears in *In re November 3, 2020 Gen. Election*, 149 MM 2020, 2020 WL 6252803, at *6 (Pa. Oct. 23, 2020).

15. Intervenor admits that the quoted text appears in an email describing the Secretary's October 21 guidance.

16. Paragraph 16 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Intervenor denies the allegations.

17. Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 17.

18. Intervenor admits that the quoted text appears in *In re November 3, 2020 Gen. Election*, 149 MM 2020, 2020 WL 6252803, at *6 (Pa. Oct. 23, 2020).

19. Paragraph 19 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Intervenor denies the allegations.

20. Paragraph 20 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Intervenor denies the allegations.

21. Paragraph 21 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Intervenor denies the allegations.

22. Paragraph 22 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required,

Intervenor denies the allegations.

COUNT I

23. Intervenor incorporates by reference all of its responses in the preceding and ensuing paragraphs as if fully set forth herein.

24. Paragraph 24 contains mere characterizations, legal contentions, and conclusions to which no response is required.

25. Paragraph 25 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Intervenor denies the allegations.

26. Intervenor denies the allegations in Paragraph 26.

27. Intervenor denies the allegations in Paragraph 27.

PRAYER FOR RELIEF¹

WHEREFORE, Intervenor respectfully requests that this Court:

- A. Deny that Petitioners are entitled to any relief;
- B. Dismiss the complaint in its entirety, with prejudice; and
- C. Grant such other and further relief as the Court may deem just and proper.

¹ The headings in the Complaint are not part of the allegations but to the extent that they are, Intervenor denies them as well.

Dated: November 4, 2020

Respectfully submitted,

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