

**IN THE SUPREME COURT OF PENNSYLVANIA**

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**NO. 11 MM 2022**

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**KERRY BENNINGHOFF, Individually and as Majority Leader of the  
Pennsylvania House of Representatives,**

**Petitioner,**

**v.**

**2021 LEGISLATIVE REAPPORTIONMENT COMMISSION,**

**Respondent.**

**ANSWER OF JOANNA E. MCCLINTON TO PETITIONER'S  
APPLICATION FOR ORDER LIMITING BRIEFING**

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Attorneys for Joanna E. McClinton,  
Leader of the Democratic Caucus of the Pennsylvania House of Representatives  
and Member of the Legislative Reapportionment Commission

On the eve of the filing deadline, and without citation to any authority, Appellant Kerry Benninghoff now seeks to silence Joanna E. McClinton, a co-member of the Legislative Reapportionment Commission, by denying her the opportunity to participate in his appeal from the final state reapportionment plan. His application should be denied for a host of reasons.

*First*, his unprecedented request is plainly violative of Rule 1531(a) of the Pennsylvania Rules of Appellate Procedure. As this Court recognized in *Holt II*, as a member of the Legislative Reapportionment Commission, Leader McClinton was a party to the proceeding below, *Holt v. 2011 Legislative Reapportionment Comm'n*, 67 A.3d 1211, 1225 n.12 (Pa. 2013) (“The commissioners are also parties . . . .”), and therefore has an absolute right to intervene in this appeal under Rule 1531(a), Pa. R. App. P. 1531(a) (“A party to a proceeding before a government unit that resulted in a quasijudicial order may intervene as of right . . . .”). There is no authority in the appellate rules or elsewhere for denying or limiting this important right. Leader Benninghoff’s inability to cite any authority for his extraordinary request alone warrants its rejection.

*Second*, refusing to recognize Leader McClinton’s right to intervene will deprive Leader McClinton of the right to respond to baseless claims, including repeated personal references to Leader McClinton and her motives, raised by Leader Benninghoff in his filings, and to Leader Benninghoff’s new challenges to

the expert testimony which Leader McClinton proffered to the Commission. *See, e.g.,* Benninghoff Br. at 6, 49-51, 68-69, 72-76. Leader Benninghoff plainly seeks to shield the new expert reports he submitted to this Court with his brief from fair critique. This Court will benefit from development of the record and balanced expert analysis of the final House plan. To secure the constitutionally guaranteed right to reputation, Pa. Const. art. I, § 1, and allow for a fully developed record on critical expert issues, Leader McClinton must be allowed to respond to Leader Benninghoff's filings on the schedule set by the Court and within the limits provided by the applicable appellate rules.

*Third,* Leader Benninghoff's application is too late. He waited until the eve of the final filing deadline to ask that Leader McClinton be limited in her presentation although he was served with her notice of intervention on March 4, 2022. In short, Leader Benninghoff took ample advantage of his opportunity to be heard in this Court. Leader McClinton should be afforded her right to be heard.

Put simply, Leader McClinton has a right to intervene and participate fully in these appeals and there is no basis for denying that right. Leader Benninghoff's application to reject or limit Leader McClinton's submissions should be denied.

Respectfully submitted:

/s/ Daniel T. Brier

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Date: March 10, 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 requires filing confidential information and documents differently than non-confidential information and documents.

/s/ Daniel T. Brier

Daniel T. Brier

Date: March 10, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing Notice of Intervention upon counsel via the Court's PACFile System which service satisfies the requirements of Pa. R. App. P. 121.

/s/ Daniel T. Brier  
Daniel T. Brier

Date: March 10, 2022