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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA PARRILLA;
REBECCA POYOUROW; 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.

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.

No. 132 MD 2021

**PETITIONERS' OPPOSITION AND ANSWER TO THE APPLICATION
TO INTERVENE BY VOTERS OF THE COMMONWEALTH OF
PENNSYLVANIA**

By and through undersigned counsel, Petitioners file this Opposition and Answer to the Application for Leave to Intervene (the “Application”) filed by a new set of Voters of the Commonwealth of Pennsylvania (the “Proposed Intervenors”). In the interest of efficiency, Petitioners have not filed a separate memorandum in opposition to this Application because Proposed Intervenors’ Application suffers from the same flaws as the existing Applications to Intervene, which Petitioners have already fully briefed for this Court. Petitioners incorporate by reference here their Memorandum in Opposition to the Application to Intervene by the Pennsylvania Republican Party and Individual Republican Voters (Opp. to Republicans’ App.) and their Memorandum in Opposition to the Application for Leave to Intervene by the Republican Legislators (Opp. to Legislators’ App.) in full, *see* Pa. R. Civ. P. 1019(g) (“Any part of a pleading may be incorporated by reference in another part of the same pleading or in another pleading in the same action.”); *see also, e.g.*, Pa. R.A.P. 2137 (authorizing parties to incorporate by reference arguments made in other briefs submitted in the same matter), while briefly summarizing here why the instant Proposed Intervenors are not entitled to intervene under the Pennsylvania Rules of Civil Procedure and this Court’s precedents.

Like Proposed Republican Legislator Intervenors, the newest set of Proposed Intervenors improperly assert that this Court must grant them intervention “if their participation may be in the public interest,” App. ¶¶ 45-46 (citing *Sunoco Pipeline*

L.P. v. Dinniman, 217 A.3d 1283 (Pa. Commw. Ct. 2019)). As Petitioners have already explained in their Opposition to the Republican Legislators’ Application to Intervene, Opp. to Legislators’ App. at 10-11, this standard applies to intervention before Pennsylvania’s Public Utility Commission—not its civil courts. To intervene in Pennsylvania’s civil courts under Rule 2327(4), Proposed Intervenors must demonstrate that they have a legally enforceable interest in the litigation—an inquiry that looks to principles of legal standing. *See Application of Biester*, 487 Pa. 438, 442, 409 A.2d 848, 850 (1979) (explaining if an intervenor “lacks standing to advance the petition for review, he has no legally enforceable interest to assert as an intervenor”).

While the word “legally enforceable interest” does appear in Proposed Intervenors’ Application, they never explain what precise legally enforceable interest they have in this litigation, leaving this Court and Petitioners to guess. To the extent Proposed Intervenors prefer that a Republican-controlled General Assembly implements a new apportionment plan rather than “Democrat Justices,” App. ¶ 43, this argument (1) rests on a mischaracterization of Petitioners’ claims and relief sought, and (2) improperly attempts to transform a policy preference into a legal interest. *See Marion Power Shovel Co., Div. of Dresser Indus. v. Fort Pitt Steel Casting Co., Div. of Conval-Penn*, 285 Pa. Super. 45, 54, 426 A.2d 696, 701 n.7 (Pa. Super. Ct. 1981) (internal citation omitted) (“The interest justifying intervention

must be a right or liability recognized and enforceable at law or in equity as distinguished from an . . . interest in seeing one litigant or another prevail in the proceedings.”). As Petitioners have explained fully in their Opposition to the Application to Intervene by the first set of Republican Voters, Opp. to Republicans’ App. at 11-12, Petitioners seek only to have this Court implement a new congressional district plan “*should the General Assembly and Governor fail to do so.*” Pet. ¶ 1 (emphasis added). But even if a “Democrat” Judiciary were to later implement a congressional reapportionment plan, Proposed Intervenors do not have a legally enforceable interest in stopping them from doing so. The “direct interest” pertinent in redistricting litigation, after all, is the “personal and individual” “right to vote and the right to have one’s vote counted,” *Albert v. 2001 Legislative Reapportionment Comm’n*, 567 Pa. 670, 678-79, 790 A.2d 989, 994 (2002), not the right to have district lines drawn by one’s preferred political party.

Similarly, Proposed Intervenors’ asserted interest in ensuring their “votes for their state representatives and senators in the 2020 election” are not “nullified,” *see* App. ¶¶ 44-51, (to the extent this is even a cognizable interest) is premised on a misunderstanding of this action. Petitioners’ suit does not take away Proposed Intervenors’ asserted “inalienable right to express to his or her [representative] his or her concerns or input regarding the drawing of the various congressional districts.” App. ¶ 48. Proposed Intervenors remain free to provide their input on redistricting

to their representatives, and the General Assembly remains free to vote on a congressional apportionment plan, even as this Court works in parallel to ensure it will be ready to implement an apportionment plan “*should the General Assembly and Governor fail to do so.*” Pet. ¶ 1 (emphasis added).

To the extent the Proposed Intervenors contend they have an interest in ensuring the redistricting process is conducted in constitutional manner, *see* App. 50, that interest is far too generalized and widely shared—including, presumably, by the current parties to this litigation—to be a legally enforceable interest.¹ As the Pennsylvania Supreme Court has repeatedly explained, a general interest that all citizens share “in having others comply with the law or the constitution” is insufficient to confer standing to advance a petition or, as relevant here, to demonstrate a legally enforceable interest as an intervenor. *Biester*, 409 A.2d at 850 n.2, 851-52.

Finally, while the Proposed Intervenors assert that they are the “mirror-image” of Petitioners and therefore must be granted intervention, *see* App. ¶ 40, for all the reasons Petitioners have already explained in the Opposition to the Application to Intervene by the first set of Republican Voters, Opp. to Republicans’ App. at 10, Petitioners’ interests are simply not the same as Proposed Intervenors’ interests. In

¹ Again, because Proposed Intervenors did not explicitly define their legally enforceable interests in this litigation, Petitioners must guess what interests Proposed Intervenors contend meet this standard.

short, Petitioners allege concrete harm to their voting rights under Pennsylvania's currently constituted malapportioned districts; Proposed Intervenors have not alleged remotely similar harms and have in fact renounced any such claims against Respondents. *See* App. ¶ 59. Petitioners' interests in casting an undiluted vote is precisely the kind of personal and individual direct interest that *Albert* recognized voters have in redistricting litigation. 657 Pa. at 678-79. In contrast, Proposed Intervenors' broad interests in ensuring redistricting is conducted constitutionally and by their preferred political party fall far short of this Court's requirements to intervene. For all these reasons, Petitioners respectfully request this Court deny Proposed Intervenors' Application.

ANSWER

1. Paragraph 1 contains mere characterizations and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

2. Paragraph 2 contains mere characterizations and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

3. Paragraph 3 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

4. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 4 and on that basis deny them.

5. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that Proposed Intervenors voted in the 2020 election and on that basis denies that allegation. Paragraph 5 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

6. Paragraph 6 contains mere characterizations, legal contentions, and

conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

7. Paragraph 7 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

8. Paragraph 8 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

9. Paragraph 9 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

10. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 10 and on that basis deny them.

11. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 11 and on that basis deny them.

12. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 12 and on that basis deny them.

13. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 13 and on that basis deny them.

14. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 14 and on that basis deny them.

15. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 15 and on that basis deny them.

16. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 16 and on that basis deny them.

17. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 17 and on that basis deny them.

18. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 18 and on that basis deny them.

19. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations

in Paragraph 19 and on that basis deny them.

20. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 20 and on that basis deny them.

21. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 21 and on that basis deny them.

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

23. Paragraph 23 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

24. Paragraph 24 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

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

26. Paragraph 26 contains mere characterizations, legal contentions, and

conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

27. In response to Paragraph 27, Petitioners state that their Petition speaks for itself. Paragraph 27 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

28. Admitted.

29. Admitted.

30. Paragraph 30 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

31. Paragraph 31 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

32. Paragraph 32 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

33. Paragraph 33 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

34. Paragraph 34 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

35. Paragraph 35 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

36. Paragraph 36 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

37. Paragraph 37 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

38. Paragraph 38 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

39. Admitted in part; denied in part. Petitioners admit Pennsylvania courts have previously permitted the Republican voters to intervene in litigation. Petitioners deny this fact means Proposed Intervenors are proper intervenors in this litigation.

40. Paragraph 40 contains mere characterizations, legal contentions, and

conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

41. In response to Paragraph 41, Petitioners state that their Petition speaks for itself. Petitioners are otherwise without knowledge or information sufficient to form a belief as to the truth or falsity of whether Proposed Intervenors intend to advocate and vote for Republican candidates in the upcoming 2022 primary and general elections. Paragraph 41 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

42. Paragraph 42 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

43. Paragraph 43 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

44. Paragraph 44 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

45. Paragraph 45 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required,

Petitioners deny the allegations.

46. Paragraph 46 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

47. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of whether Proposed Intervenors voted for their legislators in the Pennsylvania General Assembly. Paragraph 41 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

48. Paragraph 48 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

49. Admitted in part; denied in part. Petitioners admit that certain redistricting data will be released to states in August. Paragraph 49 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

50. Paragraph 50 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required,

Petitioners deny the allegations.

51. Paragraph 51 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

52. Paragraph 52 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

53. Paragraph 53 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

54. Paragraph 54 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

55. Paragraph 55 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

56. After reasonable investigation, Petitioners are without knowledge or information sufficient to form a belief as to the truth or falsity of whether Proposed Intervenors voted for Republican local officials in the 2020 election. Paragraph 56 otherwise contains mere characterizations, legal contentions, and

conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

57. Admitted in part; denied in part. Petitioners admit that as of Proposed Intervenor's Application, Respondents had not yet filed a responsive pleading to their Petition and no other briefing schedule in this case has been set. Paragraph 57 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

58. Paragraph 58 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

59. Paragraph 59 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

60. Paragraph 60 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Petitioners deny the allegations.

Dated: July 2, 2021

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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.

Submitted by: Edward D. Rogers

Signature: /s/ Edward D. Rogers

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing Opposition and Answer to be served upon the following parties and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Balchunis; Tom DeWall; Stephanie
McNulty; and Janet Temin,
Petitioners

v.

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
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Respondents

PROOF OF SERVICE

I hereby certify that this 2nd day of July, 2021, I have served the attached document(s) to the persons on the date(s) and
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Possible Intervenor James Curtis Jarrett
Possible Intervenor Jeffrey Wenk
Possible Intervenor Richard Lawson
Possible Intervenor Rico Timothy Elmore
Possible Intervenor Tegwyn Hughes
Possible Intervenor Vallerie Biancaniello

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Possible Intervenor James Curtis Jarrett
Possible Intervenor Jeffrey Wenk
Possible Intervenor Richard Lawson
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Possible Intervenor James Foreman
Possible Intervenor James Maguire, Jr.
Possible Intervenor James Vasilko
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Possible Intervenor Justin Behrens
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Possible Intervenor Louisa Gaughen
Possible Intervenor Luke Negron
Possible Intervenor Lynne Ryan
Possible Intervenor Michael D. Straw
Possible Intervenor Michael Harvey
Possible Intervenor Nancy Becker
Possible Intervenor Patricia K. Poprik
Possible Intervenor Paul Nyman
Possible Intervenor Republican Party of Pennsylvania, Inc.
Possible Intervenor Rev. Todd Johnson
Possible Intervenor Sue Ann Means
Possible Intervenor Thomas Whitehead

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Edward David Rogers

(Signature of Person Serving)

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Petitioner Cassanelli, Lee
Petitioner Cassanelli, Susan
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Petitioner Hill, Brady
Petitioner McNulty, Stephanie
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Petitioner Parrilla, Monica
Petitioner Poyourow, Rebecca
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Petitioner Temin, Janet
Petitioner Tung, William
Petitioner Wachman, Lynn