

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LEAGUE OF WOMEN VOTERS OF	:	
PENNSYLVANIA, et al.,	:	
Petitioners,	:	
	:	
v.	:	No. 261 M.D. 2017
	:	
THE COMMONWEALTH OF	:	
PENNSYLVANIA, et al.,	:	
Respondents.	:	

ANSWER OF SECRETARY OF THE COMMONWEALTH PEDRO A. CORTÉS AND COMMISSIONER OF ELECTIONS JONATHAN MARKS IN OPPOSITION TO APPLICATION FOR LEAVE TO INTERVENE OF PROPOSED INTERVENORS

Secretary of the Commonwealth Pedro A. Cortés and Commissioner Jonathan M. Marks (hereinafter collectively referred to as “Secretary Cortés”), by and through his undersigned counsel, and pursuant to Rule 123 of the Pennsylvania Rules of Appellate Procedure, file this Answer in Opposition to the Application for Leave to Intervene (“Application”) filed by the Proposed Intervenors, thirty-four named individuals identified in the Application at 6-12, ¶¶ 16-49 (“Proposed Intervenors”). For the Court’s benefit, this response is presented as a narrative statement, rather than a point-by-point response to the numbered paragraphs of the original Application.

Secretary Cortés requests that this Honorable Court deny the Application, given that existing parties in this action are able to adequately represent the

interests of Proposed Intervenors, and Proposed Intervenors are able to participate in this litigation as *amici curiae*.

I. Respondents Turzai and Scarnati are able to represent the interests of Proposed Intervenors adequately.

Secretary Cortés harbors no doubt that each of the thirty-four Proposed Intervenors has been involved in his or her community and in the Republican Party, as asserted. Application at 1-5, ¶¶ 1-14. Yet despite their thirty-four unique stories, as far as their legal interest in this matter, it overlaps to a high degree with the interests of Respondents Michael C. Turzai and Joseph B. Scarnati, III (“Legislative Leaders”).

As leaders of the House and Senate Republican Caucuses in the General Assembly, Legislative Leaders are well-positioned to be sensitive to the needs of the Republican Party generally, and Republican candidates and elected officials (such as the candidates and the Members of Congress who will be most affected by the outcome of the present case—for whom Proposed Intervenors claim to advocate) in particular. Their interests are well-served by having a congressional delegation which will best support a Republican majority and Republican agenda in the U.S. House of Representatives. *Cf.* Application at 4-6, ¶¶ 11-14 (describing similar interests of Proposed Intervenors). On information and belief, Legislative Leaders form part of the same broad network as Proposed Intervenors, and like Proposed Intervenors, they also devote “substantial time, money, effort, and

resources” in an effort to “support and recruit Republican candidates” up and down the ticket. Application at 2, ¶ 2.

Although there may be some marginal differentiation between the thirty-four individual interests of Proposed Intervenors, and the personal, legislative, and collective partisan interests represented by Legislative Leaders, for all (or nearly all) practical purposes, there is substantial—if not complete—overlap in their interests. Moreover, the inevitable delay and complications that would be occasioned by the granting of the Application would likely postpone the resolution of this case and push a final decision past the time when election administrators and candidates will need to know congressional district boundaries.

In that “the interest of [Proposed Applicants] is already adequately represented,” the Application should be refused, and Proposed Intervenors denied leave to intervene. *Cf.* Pa.R.C.P. 2329(2).

II. Proposed Intervenors may still participate in this case as *amici curiae*.

Denial of the Application will not result in Proposed Intervenors being wholly excluded from further consideration of this case. As “non-part[ies] interested in the questions involved” in this case, they may participate as *amici curiae* under Pa.R.A.P. 531(a).

While *amici* are not entitled to participate at oral argument as of right, the Court may nevertheless permit it. Pa.R.A.P. 531(c). In any case, Proposed

Intervenors' arguments will be fully before the Court, in the form of their brief. Pa.R.A.P. 531(b). To the extent that Legislative Leaders' arguments are adequate to capture the position of Proposed Intervenors as well, participation as *amici* is the better way for Proposed Intervenors to voice their arguments.

III. Conclusion.

The Legislative Leaders currently involved in this case as Respondents have every incentive to adequately represent the interests of Republican voters and party activists across the state, and there is no indication that Legislative Leaders will present anything but a full, thorough defense of their positions. Proposed Intervenors need not intervene to express themselves; rather, the superior mode for them to convey their interest to the Court is as *amici curiae*.

For these reasons, Secretary Cortés respectfully requests that this Honorable Court deny the Application.

Respectfully submitted,

/s/ Timothy E. Gates

Timothy E. Gates
Attorney I.D. No. 202305
Chief Counsel

Kathleen M. Kotula
Attorney I.D. No. 86321
Deputy Chief Counsel

Ian B. Everhart
Attorney I.D. No. 318947
Assistant Counsel

Pennsylvania Department of State
Office of Chief Counsel
306 North Office Building
Harrisburg, PA 17120
(717) 783-0736

*Counsel for Secretary of the
Commonwealth Pedro A. Cortés and
Commissioner of Elections Jonathan
Marks*

Date: August 23, 2017

CERTIFICATE OF SERVICE

I, TIMOTHY E. GATES, hereby certify that on this 23rd day of August 2017, the foregoing **Answer of Secretary of the Commonwealth Pedro A. Cortés and Commissioner of Elections Jonathan Marks in Opposition to Application for Leave to Intervene of Proposed Intervenors** has been served upon counsel in the manner indicated below, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

VIA eService:

Michael Churchill
Benjamin D. Geffen
Mary M. McKenzie
THE PUBLIC INTEREST LAW CENTER
1709 Benjamin Franklin Parkway
2nd Floor
Philadelphia, PA 19103
Counsel for Petitioners

Linda C. Barrett
Sean M. Concannon
Thomas P. Howell
OFFICE OF GENERAL COUNSEL
333 Market Street, 17th Floor
Harrisburg, PA 17101
Counsel for Tom Wolf, Governor of Pennsylvania

(continued on next page)

Jonathan Scott Goldman
Kenneth L. Joel
PENNSYLVANIA OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
Counsel for the Commonwealth of Pennsylvania

Kathleen A. Gallagher
Carolyn Batz McGee
CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
Counsel for Michael C. Turzai and The Pennsylvania General Assembly

Brian S. Paszamant
Jason A. Snyderman
John P. Wixted
BLANK ROME LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
Counsel for Joseph B. Scarnati, III

Clifford B. Levine
Alex M. Lacey
COHEN & GRIGSBY, P.C.
625 Liberty Avenue
Pittsburgh, PA 15222-3152
Counsel for Michael J. Stack III

Lawrence J. Tabas
Rebecca L. Warren
OBERMAYER REBMANN MAXWELL & HIPPEL LLP
Centre Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102
Counsel for Intervenors

(continued on next page)

VIA First Class Mail, Postage Prepaid:

David P. Gersch
John A. Freedman
R. Stanton Jones
Helen Mayer Clark
Daniel F. Jacobson
John Robinson
Elisabeth Theodore
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
Counsel for Petitioners

Steven L. Mayer
ARNOLD & PORTER KAYE SCHOLER LLP
10th Floor, Three Embarcadero Center
San Francisco, CA 94111
Counsel for Petitioners

Andrew D. Bergman
ARNOLD & PORTER KAYE SCHOLER LLP
700 Louisiana Street, Suite 4000
Houston, TX 77002
Counsel for Petitioners

John E. Hall
CIPRIANI & WERNER, P.C.
650 Washington Road, Suite 700
Pittsburgh, PA 15228
Counsel for Michael C. Turzai and The Pennsylvania General Assembly

Jason Torchinsky
Shawn T. Sheehy
HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC
45 North Hill Drive, Suite 100
Warrenton, VA 20186
Counsel for Michael C. Turzai and Joseph B. Scarnati III

(continued on next page)

Lazar M. Palnick
1216 Heberton Street
Pittsburgh, PA 15206
Counsel for Michael J. Stack III

/s/ Timothy E. Gates
Timothy E. Gates
Chief Counsel
Pennsylvania Department of State
Office of Chief Counsel
306 North Office Building
Harrisburg, PA 17120
(717) 783-0736