

Roberta Winters, Nichita Sandru, Kathy Foster-Sandru, Robin Roberts, Kierstyn Zolfo, Michael Zolfo, Phyllis Hilley, Ben Bowens, the League of Women Voters of Pennsylvania, Common Cause Pennsylvania and Make the Road Pennsylvania submit this Application for Leave to Intervene as co-Petitioners in the above-captioned action pursuant to Pennsylvania Rule of Appellate Procedure 1531(b) and Pennsylvania Rule of Civil Procedure 2327-2329.

1. Applicants are registered voters in the Commonwealth of Pennsylvania (“Voter Applicants”), and nonpartisan organizations dedicated to promoting American democracy and the participation of Pennsylvania voters in democracy (“Organizational Applicants”), all of whom would be impacted by the Petitioners’ Action, which may determine whether Applicants’ constitutionally-protected private personal information will be disseminated beyond any reasonable privacy expectation or constitutional limit.

2. On September 15, 2021, the Intergovernmental Operations Committee of the Pennsylvania Senate issued a subpoena to the Acting Secretary of State, purporting to compel the disclosure of constitutionally-protected private personal information of nine million registered voters in Pennsylvania, including the Applicants and their members and constituents (the “Subpoena”).

3. On September 23, 2021, Petitioners initiated this action by filing a Petition for Review seeking declaratory and injunctive relief with respect to the Subpoena.

4. The Subpoena seeks, among other things, the personally-identifying information of each and every registered voter in Pennsylvania, including the Applicants and their members and constituents. The requested information specifically includes voters' driver's license numbers and the last four digits of their social security numbers.

5. Applicants seek leave to assert their interests, and the interests of their members and constituents, in this constitutionally-protected information, and to prevent the disclosure of such information.

6. The Pennsylvania and United States Constitutions provide for a right of privacy that includes a right "to control access to, or the dissemination of, personal information about himself or herself." *Pa. State Educ. Ass'n v. Commonwealth, Dep't of Community & Econ. Development*, 637 Pa. 337, 350, 148 A.3d 142, 150 (2016). This constitutional right of privacy includes protection against unjustified and overbroad legislative subpoenas. *See, e.g., Lunderstadt v. Pennsylvania House of Representatives Select Comm.*, 513 Pa. 236, 248, 519 A.2d 408, 415 (1986); *Annenberg v. Roberts*, 333 Pa. 203, 2 A.2d 612, 617-18 (1938).

7. The Intergovernmental Operations Committee has not identified any legitimate interest in Applicants' constitutionally-protected personal information. Any as-yet unidentified interest cannot outweigh the strong privacy interests of the Applicants, and the Subpoena is not narrowly tailored to any such interest.

8. Rather, the disclosure of this confidential information will subject Applicants and their members and constituents to increased risk of identity theft and financial fraud, and further, increases the risk of interference with the electoral system and citizens' ability to cast their votes. In particular, the information the Subpoena seeks is the very information that could be used to change or tamper with voter registrations, or even votes.

9. Applicants are entitled to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327 and Pennsylvania Rule of Appellate Procedure 1531(b) because Applicants could have joined as an original party in the action, or could have been joined therein, and because the determination in this action may affect Applicants' legally enforceable privacy interests in their personal information and their right to vote.

Applicants

10. Applicants are Pennsylvania voters and nonpartisan organizations dedicated to promoting American democracy that serve, represent and have members who are Pennsylvania voters.

11. Roberta Winters is a United States citizen, a resident of Delaware County, Pennsylvania, and a registered voter in the Republican party. Ms. Winters cast votes in the November 2020 election and May 2021 primary. Ms. Winters' private information is included within the information sought by the Subpoena. Ms. Winters is concerned that the Department of State's compliance with the Subpoena and exposure of her sensitive personal information will make her more vulnerable to identity theft and further public intrusions into her private financial and personal information.

12. Nichita Sandru is a United States citizen, a resident of Monroe County, Pennsylvania, and a registered voter in the Democratic party. Mr. Sandru first registered to vote in Pennsylvania about five years ago, when he became a naturalized U.S. citizen. He cast a vote in the November 2020 election. Mr. Sandru's private information is included within the information sought by the Subpoena. Mr. Sandru is concerned that the Department of State's compliance with the Subpoena and exposure of his sensitive personal information will make him

more vulnerable to identity theft and further public intrusions into his private financial and personal information.

13. Kathy Foster-Sandru is a United States citizen, a resident of Monroe County, Pennsylvania, and a registered voter in the Democratic party. Ms. Foster-Sandru cast a vote in the November 2020 election. Ms. Foster-Sandru's private information is included within the information sought by the Subpoena. Ms. Foster-Sandru is concerned that her personally-identifying information, especially her social security number and driver's license number, will be disclosed to others without her express permission, and may be misused.

14. Robin Roberts is a United States citizen, a resident of Philadelphia County, Pennsylvania, and a registered voter in the Democratic party. Ms. Roberts cast votes in the November 2020 election and May 2021 primary. Ms. Roberts' private information is included within the information sought by the Subpoena. Ms. Roberts is concerned that her personally-identifying information will be disclosed to others without her express permission, and may be misused. She is particularly concerned about the potential for voter intimidation efforts using this information.

15. Kierstyn Zolfo is a United States citizen, a resident of Bucks County, Pennsylvania, and a registered Independent voter. Ms. Zolfo cast votes in the

November 2020 election and the May 2021 primary. Ms. Zolfo's private information is included within the information sought by the Subpoena. Ms. Zolfo is concerned that the Department of State's compliance with the Subpoena and exposure of her sensitive personal information will make her more vulnerable to identity theft and further public intrusions into her private financial and personal information. She is particularly concerned that this information would allow others to access her medical records and bank accounts, and create new credit cards, among other things.

16. Michael Zolfo is a United States citizen, a resident of Bucks County, Pennsylvania, and a registered voter in the Republican party. He cast a vote in the November 2020 election and the May 2021 primary. Mr. Zolfo's private information is included within the information sought by the Subpoena. Mr. Zolfo is concerned that the Department of State's compliance with the Subpoena and exposure of his sensitive personal information will make him more vulnerable to identity theft and further public intrusions into his private financial and personal information.

17. Phyllis Hilley is a United States citizen, a resident of Delaware County, Pennsylvania, and a registered voter in the Democratic party. She has been a registered voter for 46 years. Ms. Hilley cast votes in the November 2020

election and May 2021 primary. Ms. Hilley's private information is included within the information sought by the Subpoena. Ms. Hilley is concerned that the Department of State's compliance with the Subpoena and exposure of her sensitive personal information will make her more vulnerable to identity theft and further public intrusions into her private financial and personal information.

18. Ben Bowens is a United States citizen, a resident of Philadelphia County, Pennsylvania, and a registered voter in the Democratic party. Mr. Bowens cast votes in the November 2020 election and May 2021 primary. Mr. Bowens' private information is included within the information sought by the Subpoena. Mr. Bowens is concerned that his personally-identifying information will be disclosed to others without his express permission, and may be misused.

19. The League of Women Voters of Pennsylvania ("the League") is a nonpartisan statewide non-profit formed in August 1920. The League and its members are dedicated to helping the people of Pennsylvania safely exercise their right to vote, as protected by the law. Members of the League are registered voters in Pennsylvania and are at risk of having their private information disclosed if the Secretary complies with the Subpoena.

20. A significant part of the mission of the League is voter registration. It conducts voter registration drives, staffs nonpartisan voter registration tables and

works with local high schools to register new 18-year-old voters. The disclosure of constitutionally protected private information will interfere with the League's ability to carry out its mission of registering voters and will cause it to divert resources towards educating voters about the release of their personal information and the steps they will need to take to protect themselves from identity theft.

21. Common Cause Pennsylvania ("Common Cause") is a non-profit political advocacy organization and a chapter of the national Common Cause organization. Common Cause has approximately 36,000 members and supporters in Pennsylvania. These members live in all 67 counties of Pennsylvania. Many members of Common Cause are registered voters in Pennsylvania and are similarly at risk of having their private information disclosed if the Secretary complies with the Subpoena.

22. Common Cause seeks to increase the level of voter registration and voter participation in Pennsylvania elections, especially in communities that are historically underserved and whose populations have a low propensity for voting. Many of these communities are communities of color. If the nine million records of Pennsylvania Voters containing driver's license numbers and last four digits of Social Security numbers is released to the Committee and unknown third-party vendors, Common Cause will have to divert resources to educating voters about

how to try to protect themselves from possible identity theft as a result of the disclosure of their voter registration efforts, and monitoring the voter registration system to ensure that voter registration records are not altered or tampered with by bad actors.

23. Make the Road Pennsylvania (“Make the Road PA”) is a not-for-profit, member-led organization formed in 2014 that builds the power of the working-class in Latino and other communities to achieve dignity and justice through organizing, policy innovation, and education services. Make the Road PA’s more than 10,000 members are primarily working-class residents of Pennsylvania, many in underserved communities. Many members of Make the Road PA are registered voters in Pennsylvania and are similarly at risk of having their private information disclosed if the Secretary complies with the Subpoena.

24. Make the Road PA’s work includes voter protection, voter advocacy and voter education on, for example, how to register to vote, how to apply for mail-in/absentee ballots, how to return mail-in/absentee ballots, and where to vote. Make the Road PA has run active programs to register voters in historically underserved communities of color, especially in Berks, Bucks, Lehigh, Northampton and Philadelphia Counties. The disclosure of constitutionally protected private information will interfere with Make the Road PA’s ability to

carry out its mission of registering voters and will cause it to divert resources towards educating voters about the release of their personal information and the steps they will need to take to protect themselves from identity theft.

25. The Organizational Applicants' members and constituents have a direct, tangible interest in the protection of their personal information. These interests are germane to the organizations' purpose and the claims and relief requested in this Petition do not require the participation of individual members. It is also impractical for all members and constituents of these organizations, or all nine million registered voters in Pennsylvania, to be joined or for them to raise these claims on their own.

26. The above Applicants seek to intervene to protect their constitutionally-protected private personal information, including their driver's license number and last four digits of their social security number, from disclosure to others and to prevent the potential misuse of that information.

Applicants Have a Right to Intervene Under Rule 2327(3) and (4)

27. A party is entitled to intervene if they "could have joined as an original party in the action or could have been joined therein" or "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), (4). The application may be refused only in certain narrowly prescribed circumstances: where “(1) the claim or defense of the petition is not in subordination to and in recognition of the propriety 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 the adjudication of the rights of the parties.” Pa. R.C.P. 2329. “[A] grant of intervention is mandatory where the intervenor satisfies one of the four bases set forth in Rule No. 2327 unless there exists a basis for refusal under Rule No. 2329.” *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep’t of Human Servs.*, 225 A.3d 902, 908 (Pa. Commw. 2020).

28. Applicants satisfy the requirements of Rule 2327. First, Applicants could have joined as an original party in the action. The information sought by the Subpoena is owned by the Applicants and their members and constituents, so their interests are directly at stake. Indeed, Applicants could file a separate lawsuit at any time asserting their interests. Therefore, they easily qualify under Rule 2327(3), and are entitled to intervene on that basis alone.

29. Applicants also could have been joined by either Petitioners or Respondents, as they have a clear interest in the relief requested. In fact, this Court cannot make a decision without affording the Applicants an opportunity to be heard. *City of Harrisburg v. Prince*, 219 A.3d 602, 619 (Pa. 2019) (“before the City can perform the required balancing test . . . the donors [those whose personal information was subject to potential disclosure] must be afforded notice and an opportunity to be heard”). See also *Easton Area Sch. Dist. v. Miller*, 232 A.3d 716, 733 (Pa. 2020). For this reason as well, Applicants have a right to intervene under Rule 2327(3).

30. Applicants also have a right to intervene under Rule 2327(4). In particular, they have a substantial, constitutionally protected privacy interest in protecting their personal information or the personal information of their members and constituents. *In re T.R.*, 557 Pa. 99, 105, 731 A.2d 1276, 1279 (1999) (plurality) (“There is no longer any question that the United States Constitution and the Pennsylvania Constitution provide protections for an individual’s right to privacy . . . [including] . . . the individual’s interest in avoiding disclosure of personal matters . . .”). Every citizen’s “right of informational privacy” includes “the right of the individual to control access to, or the dissemination of, personal information about himself or herself.” *Pa. State Educ. Ass’n v. Commonwealth, Dep’t of Community & Econ. Development*, 148 A.3d 142, 150 (Pa. 2016).

31. Information that is protected by the right to privacy includes individuals' driver's license numbers and social security numbers. *Pa. State Educ. Ass'n*, at 158; *Sapp Roofing Company, Inc. v. Sheet Metal Workers' Int'l Ass'n, Local Union No. 12*, 552 Pa. 105, 713 A.2d 627 (1998); *Governor's Office of Admin. v. Purcell*, 35 A.3d 811, 821 (Pa. Commw. 2011); 18 U.S.C. §§2721, 2725(3). See also Pennsylvania Information Technology Policy No. ITP-SEC025 (March 19, 2010), https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf (defining personally identifiable information to include driver's license numbers, social security numbers and other information); Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts, section 7.0, <https://www.pacourts.us/Storage/media/pdfs/20210517/211002-477jad-attach1.pdf> (identifying confidential information to include social security numbers and driver's license numbers).

32. This right to privacy is also set forth in the Pennsylvania Constitution's prohibition against unreasonable searches and seizures. *Commonwealth v. Alexander*, 243 A.3d 177, 206 (Pa. 2020); *Lunderstadt v. Pennsylvania House of Representatives Select Comm.*, 513 Pa. 236, 248, 519 A.2d 408, 415 (1986) (applying same rule to legislative subpoenas).

33. Privacy interests are recognized as a legally-protectable interest that warrants intervention. *McMullan v. Wohlgemuth*, 444 Pa. 563, 569-70, 281 A.2d 836, 839 (1971).

34. The Subpoena seeks to compel the disclosure of the constitutionally protected private information of the Applicants and their members and constituents. Thus, Applicants have a cognizable interest in protecting the confidentiality of the information that is the subject of this action, and therefore, satisfy the requirements of Rule 2327(4).

35. The Organizational Applicants expend considerable resources for the purpose of registering voters and ensuring that eligible voters can exercise their right to vote. Their members and constituents registered to vote and chose to participate in elections based on the reasonable expectation that their private personal information would be kept confidential. Disclosure of voters' private personal information works against the mission of these organizations and would require the organizations to divert resources and expend additional sums in seeking changes to protect that information, educating their members and constituents regarding the risk to their personal information, and encouraging them to participate in the process.

36. Thus, Organizational Applicants will suffer an actual injury if injunctive relief is not granted, and this injury is casually connected to the infringement on its members and constituent's privacy rights. Further, this interest, and the consequent injury, is likely to be addressed in this litigation. Therefore, Organizational Applicants have a direct interest at stake. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79, 102 S. Ct. 1114, 1124 (1982); *Pennsylvania Prison Society v. Cortes*, 622 F.3d 215, 228 (3d Cir. 2010).

37. In addition, the Organizational Applicants' members and constituents have a direct, tangible interest in the protection of their personal information, these interests are germane to the Organizational Applicants' purpose, and the claims and relief requested in the Petition and the attached Proposed Petition for Review do not require the participation of individual members. Therefore, Organizational Applicants also have a representational or associational interest at stake, and may represent the interests of their members and constituents. *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 458-59 (1958).

The Narrow Exceptions of Rule 2329 Do Not Apply

38. When a party qualifies under Rule 2327, intervention must be granted unless the application falls within certain narrowly prescribed circumstances:

where “(1) the claim or defense of the petition is not in subordination to and in recognition of the propriety 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 the adjudication of the rights of the parties.” Pa. R.C.P. 2329.

39. These narrow circumstances are not applicable here. Applicants’ claims relate directly to the Subpoena in that the Subpoena seeks the disclosure of the very information that Applicants seek to protect. Moreover, before the constitutionally-protected personal information of Applicants and their members and constituents can be disclosed, Applicants have a right to notice and an opportunity to assert their interests. *City of Harrisburg v. Prince*, 219 A.3d 602, 619 (Pa. 2019) (“before the City can perform the required balancing test . . . the donors [those whose personal information was subject to potential disclosure] must be afforded notice and an opportunity to be heard”). *See also Easton Area Sch. Dist. v. Miller*, 232 A.3d 716, 733 (Pa. 2020). Therefore, the Applicants’ claims recognize, and relate directly to, the other claims at issue, and Applicants’ participation is in fact necessary. Applicants are not seeking to expand or change the nature of the pending action. Therefore, Rule 2329(1) does not apply.

40. The existing parties in the litigation do not adequately represent Applicants' interests because those interests "may diverge" from those of the Petitioners and Respondents. *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 314 (Pa. Commw. 1999). Petitioners are the Commonwealth, represented by the Attorney General, and Secretary Veronica Degraffenreid, as Secretary of State, who is subject to the Subpoena. Applicants are all voters, or organizations directly representing voters, who are differently and very directly impacted by the potential breach of their informational privacy. Since the existing parties do not "unequivocally share [Applicants'] interest," the application to intervene should be granted. *Id.*; see also *D.G.A. v. Dep't of Human Servs.*, No. 1059 C.D. 2018 (Pa. Commw. Jan. 21, 2020) (reversing denial of petition to intervene in administrative proceeding because "the personal interests of [proposed intervenors] in their individual welfare could diverge from the more general interest of [a governmental agency] in public welfare"); *Benjamin ex rel. Yock v. Dep't of Pub. Welfare*, 701 F.3d 938, 958 (3d Cir. 2012) (no adequate representation where agency's views are colored by public welfare rather than the more personal view of a proposed intervenor).

41. Further, here, the Petitioners have raised a number of claims which Applicants do not seek to raise. Therefore, the focus of Petitioners' efforts may diverge from the Applicants' interests. Further still, Applicants have the more

direct interest in preserving their constitutional right to privacy, and can better demonstrate the potential impact on Applicants from the disclosure of this information. For these reasons, Rule 2329(2) does not apply.

42. Finally, this Application is timely. Petitioners initiated this litigation on September 23, 2020; this Application is being filed only eleven days after this litigation was initiated. To Applicants' knowledge, Respondents have not yet answered the Petition, and no hearing before this Court has been scheduled. Applicants will adhere to any agreed schedule with respect to briefing and a hearing. Thus, the requested intervention will not delay, embarrass or prejudice the trial or the adjudication of the rights of the parties, and Rule 2329(3) does not apply.

43. Applicants have a right to seek intervention under Pa. R.C.P. 2327, and the circumstances outlined in Rule 2329 that warrant a denial of intervention are not present here.

44. A copy of the Petition for Review that Applicants intend to file if this Application is granted, setting forth in more detail the grounds for Applicants' intervention, is attached hereto as Exhibit 1. Applicants incorporate by reference the allegations contained therein.

WHEREFORE, Applicants request that the Court grant their Application for

Leave to Intervene.

Dated: October 4, 2021

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Pennsylvania; Common Cause Pennsylvania
and Make the Road Pennsylvania*

**Pro hac vice* forthcoming

VERIFICATION

I am authorized to make this verification on behalf of the Common Cause of Pennsylvania. I have read foregoing Application for Leave to Intervene, and verify that the statements contained therein are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



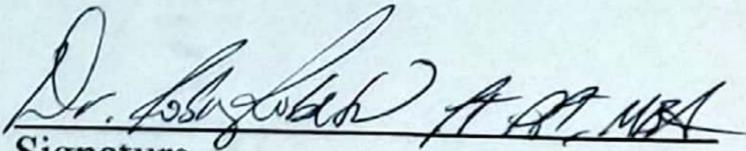
Name: Khalif Ali

Title: Executive Director, Common Cause PA

Dated: October 4, 2021

VERIFICATION

I verify that the statements made in the foregoing proposed Application to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

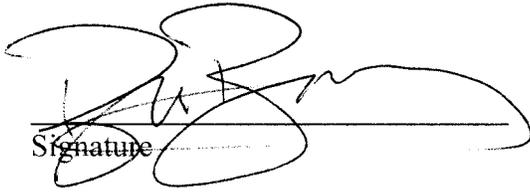

Signature

Robin Roberts
Name

Dated: October 2, 2021

VERIFICATION

I verify that the statements made in the foregoing proposed Application to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

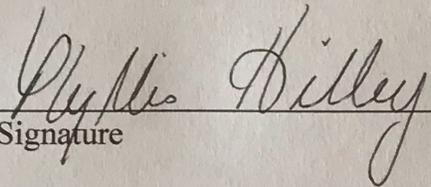

Signature

Ben Bowens
Name

Dated: October 3, 2021

VERIFICATION

I verify that the statements made in the foregoing proposed Application to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



Signature

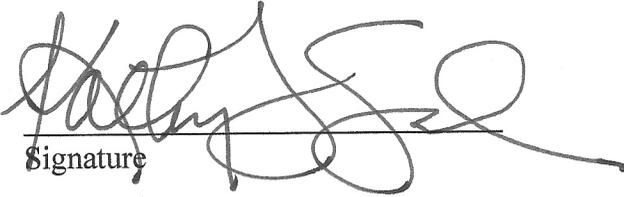
Phyllis Hilley

Name

Dated: October 3, 2021

VERIFICATION

I verify that the statements made in the foregoing proposed Application to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.


Signature

Kathy Foster-Sandru
Name

Dated: October 3, 2021

VERIFICATION

I verify that the statements made in the foregoing proposed Application to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Kierstyn P. Zolfo
Signature

Kierstyn P. Zolfo
Name

Dated: October 3, 2021

VERIFICATION

I verify that the statements made in the foregoing proposed Application to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



Signature

Nichita Sandru

Name

Dated: October 3, 2021

VERIFICATION

I am authorized to make this verification on behalf of the League of Women Voters of Pennsylvania. I have read foregoing Application for Leave to Intervene, and verify that the statements contained therein are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Terrie Griffin, President

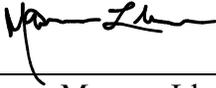
Name: *TERRIE GRIFFIN*

Title: *PRESIDENT*

Dated: October 3, 2021

VERIFICATION

I am authorized to make this verification on behalf of Make the Road Pennsylvania. I have read foregoing Application for Leave to Intervene, and verify that the statements contained therein are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



Name: Maegan Llerena
Title: Director, Make the Road, PA

Dated: October 4, 2021

VERIFICATION

I verify that the statements made in the foregoing proposed Application to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



Signature

Roberta L. Winters

Name

Dated: October 2, 2021

VERIFICATION

I verify that the statements made in the foregoing proposed Application to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



Signature

Michael Zolfo

Name

Dated: October 3, 2021

CONFIDENTIAL DOCUMENTS CERTIFICATION

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/ Keith E. Whitson
Keith E. Whitson

BY THE COURT:

_____ J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via email, this 4th day of October, 2021, upon the following:

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