

IN THE SUPREME COURT OF PENNSYLVANIA

No. 102 MM 2022

DAVID BALL, et al.

Petitioners,

BRYAN CUTLER, SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES, KERRY BENNINGHOFF, MAJORITY LEADER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES, AND THE PENNSYLVANIA HOUSE REPUBLICAN CAUCUS, AND JAKE CORMAN, PRESIDENT PRO TEMPORE OF THE PENNSYLVANIA SENATE, KIM WARD, MAJORITY LEADER OF THE PENNSYLVANIA SENATE, AND THE PENNSYLVANIA SENATE REPUBLICAN CAUCUS,

Proposed-Intervenor Petitioners,

v.

LEIGH M. CHAPMAN, ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, et al.,

Respondents.

APPLICATION TO INTERVENE BY BRYAN CUTLER, SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES, KERRY BENNINGHOFF, MAJORITY LEADER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES, THE PENNSYLVANIA HOUSE REPUBLICAN CAUCUS, JAKE CORMAN, PRESIDENT PRO TEMPORE OF THE PENNSYLVANIA SENATE, KIM WARD, MAJORITY LEADER OF THE PENNSYLVANIA SENATE, AND THE PENNSYLVANIA SENATE REPUBLICAN CAUCUS

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of Representatives Kerry Benninghoff, the
Pennsylvania House Republican Caucus,
President Pro Tempore of the Pennsylvania
Senate Jake Corman, Majority Leader of the
Pennsylvania Senate Kim Ward, and the
Pennsylvania Senate Republican Caucus*

Proposed Intervenor, Bryan Cutler, Speaker of the Pennsylvania House of Representatives, Kerry Benninghoff, the Pennsylvania House Republican Caucus, Majority Leader of the Pennsylvania House of Representatives, Jake Corman, President Pro Tempore of the Pennsylvania Senate, Kim Ward, Majority Leader of the Pennsylvania Senate, and the Pennsylvania Senate Republican Caucus (collectively, “Legislative Intervenor”), by and through their undersigned counsel, hereby move to intervene as respondents in the above-captioned proceeding under Rule 2328 of the Pennsylvania Rules of Civil Procedure.

In support of this Application, the Legislative Intervenor submit a:

- (1) Memorandum of Law in Support of Application to Intervene by Speaker of the Pennsylvania House of Representatives Bryan Cutler, Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff, President Pro Tempore of the Pennsylvania Senate Jake Corman, and Majority Leader of the Pennsylvania Senate Kim Ward, which is filed contemporaneously herewith;
- (2) Proposed Joinder in Petitioners’ Application for the Exercise of King’s Bench Power or Extraordinary Jurisdiction, which the Legislative Intervenor will file in this action if permitted to intervene, are attached as **Exhibit “A”**;
- (3) Proposed Order, granting this Petition, is attached as **Exhibit “B”**;

(4) Verifications, affirming the truth of the factual statements set forth in this Petition, are attached as **Exhibit “C”**.

WHEREFORE, the Legislative Intervenors respectfully request that the Court **GRANT** this Application to Intervene and allow the Legislative Intervenors to intervene as petitioners in this action.

Dated: October 24, 2022

Respectfully submitted,

/s/ Zachary M. Wallen

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EXHIBIT A

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Proposed-Intervenor Petitioners,

v.

LEIGH M. CHAPMAN, ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, et al.,

Respondents.

JOINDER IN PETITIONERS' APPLICATION FOR THE EXERCISE OF KING'S BENCH POWER OR EXTRAORDINARY JURISDICTION BY BRYAN CUTLER, SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES, KERRY BENNINGHOFF, MAJORITY LEADER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES, THE PENNSYLVANIA HOUSE REPUBLICAN CAUCUS, JAKE CORMAN, PRESIDENT PRO TEMPORE OF THE PENNSYLVANIA SENATE, KIM WARD, MAJORITY LEADER OF THE PENNSYLVANIA SENATE, AND THE PENNSYLVANIA SENATE REPUBLICAN CAUCUS

Proposed Intervenor, Bryan Cutler, Speaker of the Pennsylvania House of Representatives, Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives, the Pennsylvania House Republican Caucus, Jake Corman, President Pro Tempore of the Pennsylvania Senate, Kim Ward, Majority Leader of the Pennsylvania Senate, and the Pennsylvania Senate Republican Caucus (collectively, “Legislative Intervenor”) hereby join in Petitioners’ Application for the Exercise of King’s Bench Power or Extraordinary Jurisdiction (the “Application”).

The Legislative Intervenor further note that the relief sought by Petitioners, namely, “order[ing] county boards of elections to segregate all absentee or mail-in ballots received for the 2022 general election that do not comply with the date requirement because they are undated or incorrectly dated” and “[d]eclar[ing] that absentee and mail-in ballots that are undated or incorrectly dated cannot be included in the pre-canvass or canvass under the Election Code, 25 P.S. §§ 3146.6(a), 3150.16(a)”,¹ is necessary to effectuate the comprehensive Election Code enacted by the Legislative Intervenor as members of the General Assembly.

Above all, in a matter of statutory interpretation like this one, “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the

¹ By its Order dated October 21, 2022, this Court has already assumed King’s Bench authority over the instant appeal and ordered an expedited briefing schedule as requested by the Petitioners.

intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions . . . When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa. C.S. § 1921.

Here, the black letter text of the Election Code requires that “[t]he elector *shall* then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election. . .” 25 P.S. § 3146.6(a); 25 P.S. § 3150.16(a) (emphasis added). And as “the plain language in a statute is the best indicator of the General Assembly’s intent . . . the General Assembly must have intended [the subject provisions of the Election Code] to mean just what it clearly says . . .” *Saw Creek Cmty. Ass’n v. Cty. Of Pike*, 866 A.2d 260, 265 (Pa. 2005) (citing 1 Pa. C.S. § 1921).

While “all things being equal, the law will be construed liberally in favor of the right to vote at the same time, we cannot ignore the clear mandates of the Election Code.” *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1231 (Pa. 2004); *see also In re Canvass of Nov. 3, 2020 Gen. Election*, 241 A.3d at 1079 (Dougherty, J., concurring and dissenting) (“the meaning of the terms ‘date’ and ‘sign’ — which were included by the legislature — are self-evident, they are not subject to interpretation, and the statutory language expressly

requires that the elector provide them.”) (emphasis in original); *id.* (Wecht, J., concurring) (the date and sign “requirement is stated in unambiguously mandatory terms, and nothing in the Election Code suggests that the legislature intended that courts should construe its mandatory language as directory.”)

And while the requested relief will result in a small number of absentee and mail-in ballots not being counted, “[e]ven the most permissive voting rules must contain some requirements, and the failure to follow those rules constitutes the forfeiture of the right to vote, not the denial of that right.” *Ritter v. Migliori*, 142 S. Ct. 1824, 1825 (2022) (Alito, J., dissenting).

Finally, the power to construct a comprehensive Election Code matter is firmly within the power of the General Assembly. Article VII, § 1 of the Pennsylvania Constitution states that the “laws requiring and regulating the registration of electors” are only to be enacted by members of the General Assembly. Article VII, § 14 takes it further, stating “[t]he **Legislature** shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence . . . may vote[.]” *Id.* (emphasis added). Article I, § 4 of the United States Constitution affirms that “[t]he times, places and manner of holding elections for Senators and Representatives, shall be prescribed **in each state by the legislature thereof**[.]” *Id.* (emphasis added).

The requirement in question was a part of the General Assembly's comprehensive Election Code. The General Assembly's clear determination and judgment that absentee and mail-in electors must date and sign their ballots was made "in the context of erecting a broader election scheme that authorizes other forms of voting and has many . . . safeguards in place to catch or deter fraud and other illegal voting practices." *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 396 (W.D. Pa. 2020). "In this larger context, the Court cannot say that the balance Pennsylvania struck across the Election Code was unreasonable, illegitimate, or otherwise not sufficiently weighty to justify . . ." *Id.* (internal citations omitted). This Court should therefore uphold that unequivocal statutory requirement.

For those reasons, and those contained in Petitioners' Application which are incorporated by reference in their entirety, the Legislative Intervenors respectfully request that this Court grant the Application and order the county boards of elections to segregate all absentee or mail-in ballots received for the 2022 general election that do not comply with the date requirement because they are undated or incorrectly dated, and to declare that absentee and mail-in ballots that are undated or incorrectly dated cannot be included in the pre-canvass or canvass under the Election Code, and to grant such other relief as this Court deems just and proper.

Dated: October 24, 2022

Respectfully submitted,

/s/ Zachary M. Wallen

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Pennsylvania Senate Kim Ward, and the
Pennsylvania Senate Republican Caucus*

CERTIFICATE OF COMPLIANCE

I hereby 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/ Zachary M. Wallen

*Counsel for Proposed-Intervenor Petitioners
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Representatives Bryan Cutler, Majority
Leader of the Pennsylvania House of
Representatives Kerry Benninghoff, the
Pennsylvania House Republican Caucus,
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Senate Jake Corman, Majority Leader of the
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Dated: October 24, 2022

EXHIBIT B

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Proposed-Intervenor Petitioners,

LEIGH M. CHAPMAN, ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, et al.,

Respondents.

[PROPOSED] ORDER

Now, this ____ day of October, 2022, upon consideration of the Application to Intervene filed by Speaker of the Pennsylvania House of Representatives Bryan Cutler, Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff, the Pennsylvania House Republican Caucus, President Pro Tempore of the Pennsylvania Senate Jake Corman, Majority Leader of the Pennsylvania

Senate Kim Ward, and the Pennsylvania Senate Republican Caucus, it is hereby
ORDERED, ADJUDGED, and DECREED that the Application is **GRANTED**.

SO ORDERED BY THE COURT:

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EXHIBIT C

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VERIFICATION

I, Bryan Cutler, Speaker of the Pennsylvania House of Representatives, deposes and says, subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, that the allegations set forth in the foregoing *Application to Intervene* are true and correct to the best of my knowledge, information, and belief.



BRYAN CUTLER

Speaker

PA House of Representatives

Date: October 24, 2022

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VERIFICATION

I, Jake Corman, President Pro Tempore of the Pennsylvania Senate, deposes and says, subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, that the allegations set forth in the foregoing *Application to Intervene* are true and correct to the best of my knowledge, information, and belief.



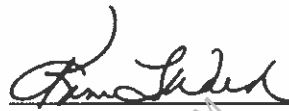
JAKE CORMAN
President Pro Tempore
PA Senate

Date: October 24, 2022

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VERIFICATION

I, Kim Ward, Majority Leader of the Pennsylvania Senate, and on behalf of the Pennsylvania Senate Republican Caucus, deposes and says, subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, that the allegations set forth in the foregoing *Application to Intervene* are true and correct to the best of my knowledge, information, and belief.



KIM WARD
Majority Leader
PA Senate

Date: October 24, 2022

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Proposed Intervenors, Bryan Cutler, Speaker of the Pennsylvania House of Representatives, Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives, the Pennsylvania House Republican Caucus, Jake Corman, President Pro Tempore of the Pennsylvania Senate, Kim Ward, Majority Leader of the Pennsylvania Senate, and the Pennsylvania Senate Republican Caucus (collectively, “Legislative Intervenors”) hereby file this Memorandum of Law supporting their Application to Intervene under Pa. R. Civ. P. 2328 in the above-captioned Application for the Exercise of King’s Bench Power or Extraordinary Jurisdiction (the “Application”) filed by David Ball, James D. Bee, Jesse D. Daniel, Gwendolyn Mae DeLuca, Ross M. Farber, Lynn Marie Kalcevic, Vallerie Siciliano-Biancaniello, S. Michael Streib, Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania (“Petitioners”) docketed in the Supreme Court of Pennsylvania at 102 MM 2022.

As set forth in detail below, the Legislative Intervenors meet the requirements for intervention under Pa. R. Civ. P. 2328 and seek to protect their authority, as legislators in the Pennsylvania General Assembly (the “General Assembly”), of legislating for elections in Pennsylvania, and suspending any laws relating to elections, which this case could significantly affect. The Legislative Intervenors show as follows:

I. PRELIMINARY STATEMENT

1. The present case concerns a critically important interpretation of the Commonwealth's Election Code, enacted by the Legislative Intervenors through their constitutional authority to legislate for the Commonwealth's elections.

2. Given that the issues before the Court could result in the usurpation of the Legislative Intervenors' interests in legislating for Pennsylvania election rules and procedures, including any suspension of election laws, the Legislative Intervenors seek to intervene in the present matter to preserve those constitutional prerogatives and their ability to act as legislators.

3. Despite the clear directive of the General Assembly that absentee and mail-in ballots must be both dated and signed in order to be counted, that mandatory requirement remains in a state of flux.

4. While multiple decisions of the Commonwealth Court (as well as the U.S. District Court for the Eastern District of Pennsylvania) initially upheld the power of the General Assembly to enact a comprehensive set of regulations concerning the administration of the Commonwealth's elections, since then, a now-vacated decision from the U.S. Third Circuit Court of Appeals, separate decisions from the Commonwealth Court relying heavily on the vacated analysis of the Third Circuit, and nonbinding guidance from the Department of State have created confusion as to how this year's General Election shall be conducted.

5. To so misinterpret the Election Code, as some respondents suggest, would ignore the constitutional role of the General Assembly and usurp the Legislative Intervenor's authority to legislate for Pennsylvania election rules and procedures, including any suspension of election laws.

6. The Legislative Intervenor has an enforceable interest in this case, and no reasons exist for refusing to allow them to intervene. The Legislative Intervenor should be permitted to intervene as a matter of right.

II. BACKGROUND

7. Proposed Intervenor, Bryan Cutler, Speaker of the Pennsylvania House of Representatives, Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives, Jake Corman, President Pro Tempore of the Pennsylvania Senate, and Kim Ward, Majority Leader of the Pennsylvania Senate, are four of the highest ranking officials in the Pennsylvania General Assembly.

8. The Pennsylvania Senate and the Pennsylvania House of Representatives together comprise the General Assembly of the Commonwealth of Pennsylvania (the "General Assembly"), which, as the state legislature of Pennsylvania, is given authority to prescribe the "Times, Places, and Manner of holding elections" by Article I, Section 4, clause 1 of the U.S. Constitution.

9. Leader Benninghoff represents the interests of the House Republican Members, who constitute the current majority party in the House, and Leader Ward

represents the interests of the Senate Republican Members, who constitute the current majority party in the Senate.

10. Proposed Intervenor, the House Republican Caucus and Senate Republican Caucus, are, respectively, one of two subparts of the bicameral General Assembly and are an “integral constituent of” each body.” *Precision Mktg., Inc. v. Commonwealth*, 78 A.3d 667, 675 (Pa. Commw. Ct. 2013). Each Caucus was created with each chamber’s constitutional authority under article II of the Pennsylvania Constitution, and each caucus performs “essential legislative functions and administrative business. . . .” *Id.* Each respective caucus is composed of all of the Republican legislators, and each caucus presently constitutes a majority in each chamber. Pa. Const. art. II, § 16.

11. The election administration procedure that is the subject of this litigation is part of the Election Code enacted by the General Assembly – of which all Legislative Intervenor are members – pursuant to its constitutional authority to set the time, place and manner of elections.

12. Pursuant to the plain text of the Election Code, the General Assembly unambiguously mandated that once marking his or her ballot, the absentee or mail-in voter shall:

then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed ‘Official Election Ballot.’ This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the

elector's county board of election and the local election district of the elector. **The elector *shall* then fill out, date and sign the declaration printed on such envelope.** Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

25 P.S. §§ 3146.6(a), 3150.16(a) (emphasis added).

13. The procedure in question has been a requirement in Pennsylvania for absentee ballots since the statutory creation of absentee voting for the general public in the Commonwealth in 1963. *See* Act No. 37, Session of 1963, Pub. L. No. 707, § 22 (amending Section 1306 of the Election Code (25 P.S. § 3146.6) to apply beyond military voters) (“The elector shall then fill out, date[,] and sign the declaration printed on such envelope.”).

14. In 2019, when the General Assembly expanded the ability to vote by mail by creating a new category of “no excuse” mail-in voting through Act 77 of 2019, the same procedure of filling out, dating, and signing the envelope was applied to mail-in voters. *See* 25 P.S. § 3150.16(a).

15. During the canvassing of absentee and mail-in ballots for the November 3, 2020 General Election, litigation ensued concerning how county election boards should apply the “fill out, date, and sign” language contained in the Election Code. *See, e.g., In re 2,349 Ballots in the 2020 Gen. Election*, No. 1162 CD 2020, 2020 Pa. Commw. Unpub. LEXIS 560, (Pa. Commw. Ct. filed Nov. 19, 2020), *overruled by In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d

1058 (Pa. 2020) (holding that the Allegheny County Board of Elections should set aside absentee and mail-in ballots lacking the date of the elector's signature).

16. This Court consolidated the various cases and entered its decision on November 23, 2020. *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058. In deciding the case, three Justices held that the “fill out, date[,] and sign” statutory language was mandatory (Justice Dougherty, joined by then-Chief Justice Saylor and Justice Mundy), three Justices (Justice Donohue, joined by Justice Baer and Justice Todd) held that it was not, while the seventh Justice, Justice Wecht, entered a concurring opinion holding that the requirement to date and sign “is stated in unambiguously mandatory terms, and nothing in the Election Code suggests that the legislature intended that courts should construe its mandatory language as directory.” *Id.* at 1079 (Wecht, J., concurring). As such, Justice Wecht opined that “in future elections [after November 3, 2020], I would treat the date and sign requirement as mandatory in both particulars, with the omission of either item sufficient without more to invalidate the ballot in question.” *Id.*

17. Justice Wecht, however, cited to specific issues related to the 2020 General Election, and held that he “would apply my interpretation only prospectively. So despite my reservations about the OAJC’s analysis, I concur in its disposition of these consolidated cases.” *Id.* at 1079-80.

18. Following this decision, and in the leadup to the beginning of the 2022 election calendar, the Commonwealth Court initially adhered to this construction, and denied parties' requests to count undated absentee and mail-in ballots. *See In re Election in Region 4 for Downingtown Sch. Bd. Precinct Uwchlan 1*, 272 A.3d 993 (Pa. Commw. Ct. 2022), *allocatur denied*, 273 A.3d 508 (Pa. 2022); *Ritter v. Lehigh Cty. Bd. of Elections*, 272 A.3d 989 (Pa. Commw. Ct. 2022), *allocatur denied* 271 A.3d 1285 (Pa. 2022).

19. However, other courts then upended these carefully constructed election administration procedures – procedures that were previously upheld by Pennsylvania state courts and the United States District Court. *See Migliori v. Lehigh Cty. Bd. of Elections*, 2022 U.S. Dist. LEXIS 46352 (E.D. Pa. 2022).

20. First, the Third Circuit Court of Appeals issued an opinion – now vacated by the Supreme Court of the United States – holding that Pennsylvania's statutory requirement violated the Materiality Provision of the Voting Rights Act, a civil rights statute dealing with discrimination pertaining to voter registration that has no applicability to a non-discriminatory election administration statute. *See Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022), *cert. granted and judgment vacated*, *Ritter v. Migliori*, No. 22-30, 2022 U.S. LEXIS 4530 (U.S. Oct. 11, 2022) (Mem.).

21. Then during the pendency of the appeal of the Third Circuit's decision, the Commonwealth Court, by a pair of unpublished decisions which relied heavily on

the Third Circuit’s now vacated analysis in *Migliori*, also declined to uphold the “unambiguously mandatory terms” of the Election Code. *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d at 1079 (Wecht, J., concurring); see *Chapman v. Berks Cty. Bd. of Elections*, 2022 Pa. Commw. Unpub. LEXIS 390 (Pa. Commw. Ct. Aug. 19, 2022) (single judge op.); *McCormick v. Chapman*, 2022 Pa. Commw. Unpub. LEXIS 319 (Pa. Commw. Ct. June 2, 2022) (single judge op.).

22. Given the surrounding confusion stemming from these varying outcomes, as well as the current guidance provided by the Department of State, the Legislative Intervenor is pleased that this Court has decided to hear this case in order to offer finality and certainty to these procedures.

23. The Legislative Intervenor submit a Joinder in Petitioners’ Application, which they seek to file in this case, as **Exhibit “A”** to their accompanying Application to Intervene. The Legislative Intervenor will also file a brief on the issues outlined in this Court’s October 21, 2022 Order.

III. THE LEGISLATIVE INTERVENORS HAVE A RIGHT TO INTERVENE

24. Under Pennsylvania law, a party has an absolute right to intervene in a legal proceeding if it satisfies any one of the categories enumerated in Pa. R. Civ. P. 2327. See *id.*; Pa. R. Civ. P. 2329; see also *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999).

25. Pa. R. Civ. P. 2327 states that intervention *shall* be permitted if a person not a party to the underlying case “(3) . . . could have joined as an original party in the action or could have been joined therein; or (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.” *Id.* (emphasis added).

26. The grant of intervention is mandatory where the intervenor satisfies one of the four bases set forth in Pa. R. Civ. P. 2327. *Larock*, 740 A.2d at 313 (“[I]f the petitioner is a person within one of the classes described in Rule 2327, the allowance of intervention is mandatory, not discretionary . . .”) (internal citations omitted).

27. Pennsylvania courts have established “that the inquiry to determine whether a party has standing to initiate litigation is different than the inquiry to determine whether a party can intervene in existing litigation.” *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1288 (Pa. Commw. Ct. 2019); *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Human Servs.*, 225 A.3d 902, 909 (Pa. Commw. Ct. 2020) (“There is a difference between personal standing and legislative standing”).

28. Indeed, “[s]tanding to file a formal complaint requires the moving party to have a direct, immediate, and substantial interest in the subject matter of the controversy. . . . Conversely, a person seeking to intervene in a proceeding need have only an ‘interest of such nature that participation . . . may be in the public interest.’” *Sunoco Pipeline*, 217 A.3d at 1288-89 (citation omitted).

29. While the test for standing to initiate litigation is stricter than it is to intervene, the principles of legislative standing are relevant to whether a legally enforceable interest exists. *Allegheny Reprod. Health Ctr.*, 225 A.3d 902.

30. Because the Legislative Intervenors have enforceable interests at play and could have been original parties to this case, they must be permitted to intervene as of right under Pa. R. Civ. P. 2327(3) and (4).

A. Determination of This Action Will Affect the Legislative Intervenors' Legally Enforceable Interests in Legislating for Pennsylvania Elections.

31. The Legislative Intervenors have an enforceable interest to legislate for elections in Pennsylvania, whether creating new laws or suspending or repealing existing laws. Because the Legislative Intervenors are seeking to intervene into an existing case and are not filing an independent case, merely showing an enforceable interest is sufficient to intervene. *See Sunoco Pipeline*, 217 A.3d at 1288. Pennsylvania law affirms that the Legislative Intervenors' authority to legislate and appropriate for elections not only rises to an enforceable interest to intervene, it also rises to a level to warrant independent standing to bring suit. *See Fumo v. City of Philadelphia*, 972 A.2d 487 (Pa. 2009). Intervention is therefore mandatory here.

32. Legislators can initiate litigation, and by extension, can intervene in cases where they "can demonstrate an injury to [their] ability 'to act as a legislator.'" *Allegheny Reprod. Health Ctr.*, 225 A.3d at 909 (citation omitted).

33. Pennsylvania courts have specifically found that negative impacts on a legislator's "ability to participate in the voting process" qualify as legally enforceable interests sufficient to warrant intervention. *Id.* at 910, 913 (citation omitted); *see also Coleman v. Miller*, 307 U.S. 433, 438 (1939) ("[Legislators] have a plain, direct and adequate interest in maintaining the effectiveness of their votes."); *Fumo*, 972 A.2d at 492.

34. In *Fumo v. City of Philadelphia*, this Court found that a Pennsylvania city's issuance of a license for the construction of a casino on a Pennsylvania river invaded individual legislators' exclusive authority to regulate riverbeds. 972 A.2d at 501-3.

35. This Court in *Fumo* held:

[w]e conclude that the state legislators have legislative standing The state legislators seek redress for an alleged usurpation of their authority as members of the General Assembly; ***aim to vindicate a power that only the General Assembly allegedly has***; and ask that this Court uphold their right as legislators to cast a vote or otherwise make a decision on licensing the use of the Commonwealth's submerged lands.

Id. (emphasis added); *see also NAACP Pa. State Conference v. Boockvar*, No. 364 MD 2020, Memorandum and Order (Pa. Commw. Ct. filed August 24, 2020) (attached hereto as Exhibit 1) (granting intervention of individual state legislators in election case on the basis of *Fumo v. City of Philadelphia*, 972 A.2d 487).

36. Like regulating riverbeds, regulating elections in Pennsylvania is an exclusively legislative function that is left to legislators in the Pennsylvania House

and Senate. *Abraham v. Shapp*, 400 A.2d 1249 (Pa. 1979) (“It is the responsibility of the legislature by appropriate legislation to provide the procedures for elections to public office.”).

37. Moreover, that power derives from the Pennsylvania and United States Constitutions, as numerous provisions in the respective Constitutions affirm that the power to legislate election laws rests with Pennsylvania legislators.

38. Article VII, section 1 of the Pennsylvania Constitution states that the “laws requiring and regulating the registration of electors” are only to be enacted by members of the General Assembly. Article VII, section 14 takes it further, stating “[t]he **Legislature** shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence . . . may vote[.]” *Id.* (emphasis added). And Article I, Section 4 of the United States Constitution affirms that “[t]he times, places and manner of holding elections for Senators and Representatives, shall be prescribed **in each state by the legislature thereof**[.]” *Id.* (emphasis added).

39. This Court acknowledged “[t]he power to regulate elections is a legislative one, and has been exercised by the general assembly since the foundation of the government.” *Winston v. Moore*, 91 A. 520, 522 (Pa. 1914) (citing *Patterson v. Barlow*, 60 Pa. 54 (Pa. 1869)); *In re Guzzardi*, 99 A.3d 381 (Pa. 2014) (“Subject to constitutional limitations, the Pennsylvania General Assembly may require such

practices and procedures as it may deem necessary to the orderly, fair, and efficient administration of public elections in Pennsylvania.”).

40. Affirming legislators’ authority to regulate elections, this Court went so far as to say that the “the judiciary should act with restraint, in the election arena, subordinate to express statutory directives.” *In re Guzzardi*, 99 A.3d at 386.

41. Moreover, article I, section 12 of the Pennsylvania Constitution establishes that only legislators have the power to suspend laws in Pennsylvania. *See also Wolf v. Scarnati*, 233 A.3d 679, 702 (Pa. 2020) (“The suspension of statutes, like the amendment, repeal, or enactment of statutes, is a legislative action.”).

42. Indeed, state law can solely be created, suspended, repealed or modified by the General Assembly. *In re Guzzardi*, 99 A.3d at 381; Pa. Const. art. I, § 12 (“No power of suspending laws shall be exercised unless by the Legislature or by its authority.”); Pa. Const. art. VII, §§ 1, 14.

43. If this Court were to heed the calls of various respondents to engage in the judicial rewriting of the Election Code concerning settled law, it would render any future legislative (and judicial) action meaningless through continuous litigation and re-litigation until the “right” result was achieved, notwithstanding the violence to our constitutional norms.

44. Not only would such a rewriting usurp the Legislative Intervenors’ authority to determine the times, places, and manner of holding elections under the

Pennsylvania and United States Constitutions, this would further improperly seek to turn Pennsylvania courts into legislatures, which is constitutionally unsound. Pa. Const. art. VII, § 14; U.S. Const. art. I, § 4; *Council 13 v. Commonwealth*, 986 A.2d 63, 74 (Pa. 2009) (“[N]o branch [of the government] should exercise the functions exclusively committed to another branch.”).

45. Indeed, “the power of courts to formulate pronouncements of public policy is sharply restricted; otherwise they would become judicial legislatures rather than instrumentalities for the interpretation of law. Generally speaking, the Legislature is the body to declare the public policy of a state and to ordain changes therein.” *Mamlin v. Genoe (City of Phila. Police Beneficiary Ass’n)*, 17 A.2d 407, 409 (Pa. 1941).

46. Such a judicial rewriting would be at best a significant diminution, and at worst a complete upheaval, of the Legislative Intervenors’ authority to legislate and suspend laws governing elections. *Fumo*, 972 A.2d at 501 (“The standing of a legislator . . . to bring a legal challenge has been recognized in limited instances . . . to protect a legislator’s right to vote on legislation . . . [or] in actions alleging a diminution or deprivation of the legislator’s . . . power or authority.”).

47. Either way, determination of this action affects the Legislative Intervenors’ legally enforceable interests to pass, modify, repeal and suspend election laws in Pennsylvania, showing they *shall* be permitted to intervene into this case as a matter

of right and that they have standing to do so. *Id.* at 502 (“the claim reflects the state legislators’ interest in maintaining the effectiveness of their legislative authority and their vote, and for this reason, falls within the realm of the type of claim that legislators, qua legislators, have standing to pursue.”).

48. Countless Pennsylvania cases have permitted legislators to intervene in cases affecting their legislative authority, including in other recent election cases. *See, e.g., Crossey v. Boockvar*, No. 108 MM 2020, 2020 Pa. LEXIS 4519 (Pa. filed August 21, 2020); *NAACP Pa. State Conference v. Boockvar*, No. 364 MD 2020, Memorandum and Order (Pa. Commw. Ct. filed August 24, 2020) (citing *Fumo*, 972 A.2d 487); *Fumo*, 972 A.2d at 502 (finding six individual legislators had standing to protect authority to regulate riverbeds); *Allegheny Reprod. Health Ctr.*, 225 A.3d at 913 (allowing eighteen (18) members of the Pennsylvania Senate and eight members of the Pennsylvania House of Representatives to intervene); *Leach v. Commonwealth*, 118 A.3d 1271, 1273 n.2 (Pa. Commw. Ct. 2015) (President of Senate individually allowed to intervene in constitutional challenge to legislation); *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108, 112 n.3 (Pa. Commw. Ct. 1998) (Speaker of House and President of Senate individually granted leave to intervene in matter concerning constitutionality of enactment of legislation); *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020) (granting intervention of Senate President and Majority Leader on behalf of the Republican Senate Caucus,

while denying intervention of Speaker Cutler and Leader Benninghoff “given that adequate advocacy has been provided . . .”); *Carter v. Degraffenreid*, 132 MD 2021, Memorandum Opinion and Order (Pa. Commw. Ct. filed Sep. 2, 2021) (single judge op.) (attached hereto as Exhibit 2) (permitting Speaker Cutler, Leader Benninghoff, the President Pro Tempore, and Leader Ward to intervene, as they “have a legally enforceable interest because . . . they, as members of the General Assembly, have the constitutional authority to establish the time, place, and manner of elections Any potential infringement of that right may diminish or deprive Legislators of their ability to act as legislators.” *Id.* at *12-13 (internal citation omitted)).

49. Pennsylvania courts have affirmed that “[s]tanding for legislators claiming an institutional injury is no different than traditional standing” *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016) (holding there is no special category for legislative standing). In traditional cases, an individual does not have to intervene as a general body – corporation, club, partnership, etc. – for impingement of interests specific to the individual. If the individual possesses an interest that will be adversely affected by a lawsuit, then she can intervene as a matter of right. *See Keener v. Zoning Hearing Bd. of Millcreek Twp.*, 714 A.2d 1120, 1123 (Pa. Commw. Ct. 1998) (“The right to intervention should be accorded to anyone having an interest of his own which no other party on the record is interested in protecting”). It is no different for legislators. *Markham*, 136 A.3d at 140.

50. Here, the Legislative Intervenors are permitted to intervene in this case as a matter of right as they have enforceable interests, namely their “constitutional authority to establish the time, place, and manner of elections” that may be adversely affected by this action. *Carter v. Degraffenreid*, 132 MD 2021.

B. The Legislative Intervenors Could Have Joined as an Original Party in the Action or Could Have Been Joined Herein.

51. Pennsylvania courts routinely find that persons with special interests implicated in an action could have joined as original parties. *Appeal of Denny Bldg. Corp.*, 127 A.2d 724 (Pa. 1956) (finding that intervention is appropriate when parties “have an obvious special interest apart from that of the general public which would certainly have justified their joining as original parties in the action”).

52. As is shown above, the Legislative Intervenors have a special interest in this action. *See Harrington v. Philadelphia City Employees Fed. Credit Union*, 364 A.2d 435, 441 (Pa. Super. Ct. 1976) (holding that candidates “could have been an original party or could have been joined in the action . . . [because they] had interests which would be drastically affected by the outcome of the equity action”).

53. As such, the Legislative Intervenors could have joined as original parties in this action, and, in fact, have been named as original respondents in numerous cases seeking to alter laws, including those relating to elections, that the General Assembly passed.

54. For example, in *League of Women Voters v. Commonwealth*, a case where petitioners challenged the constitutionality of a redistricting plan enacted by the General Assembly, then-Speaker Mike Turzai and then-President Pro Tempore Joseph B. Scarnati III were named as original respondents. 178 A.3d 737 (Pa. 2018).

55. *Erfer v. Commonwealth* is another case where Matthew J. Ryan, as Speaker of the Pennsylvania House, and Robert Jubelirer, as President Pro Tempore of the Pennsylvania Senate, were named as original respondents in a case questioning the constitutionality of and seeking to change a federal congressional district map. 794 A.2d 325 (Pa. 2002).

56. The Legislative Intervenors could have been joined as original parties in this action given its impact on their ability to act as legislators through their constitutional power to set the time, place, and manner of elections, and therefore, Legislative Intervenors must be allowed to intervene here as a matter of right.

C. None of the Reasons Allowing for Refusal of the Application to Intervene Exist.

57. The Legislative Intervenors have established they are permitted to intervene in this case. Given this showing, Rule 2329 provides for only three reasons that could allow refusal of the Legislative Intervenors' right to intervene in this case, and none of them are implicated here. Pa. R. Civ. P. 2329.

58. First, the Legislative Intervenors' intervention is not in subordination to and in recognition of the propriety of the action because the Legislative Intervenors seek to defend their legislative authority that is presently in question.

59. Second, the Legislative Intervenors' interests are not already adequately represented by the Petitioners in the case because the Legislative Intervenors' interests in legislating for elections are only possessed by them individually and no other party can adequately represent these interests. *Shapp v. Sloan*, 391 A.2d 595, 607 (Pa. 1978) (allowing intervention based partly on finding that "the General Assembly cannot delegate its legislative powers" and thus has the unique authority to defend them).

60. The individuals and political party committees which comprise the Petitioners are "simply not in a position to represent Proposed Intervenors' interest in the exercise of legislative power under Article III of the Pennsylvania Constitution." *Allegheny Reprod. Health Ctr.*, 225 A.3d at 913. A direct challenge to legislative functions implicates an interest unique to legislators. *See also* U.S. Const. art. I, § 4, cl. 1.

61. Moreover, given the pending *Moore* case before the Supreme Court of the United States concerning the question of the regulation of federal elections, granting intervention here makes sense in order to ensure the constitutional interest of the General Assembly is properly represented in the resolution of the present matter. *See*

Moore v. Harper, 142 S.Ct. 2901 (2022) (granting writ of certiorari); *see also* U.S. Const. art. I, § 4, cl. 1.

62. Finally, the Legislative Intervenors have not unduly delayed in filing this intervention application, and it will not unduly delay, embarrass or prejudice the trial, or adjudication of the rights of the parties, because the Legislative Intervenors are filing this intervention application within a week of the filing of the Petitioners' Application.

63. While the Legislative Intervenors acknowledge that the Court has ordered a highly expedited briefing schedule in this matter, the Legislative Intervenors will submit all briefing in a timely manner as ordered by the Court, which will give the Respondents as much time to respond to the arguments raised by the Legislative Intervenors as those made by Petitioners. The Legislative Intervenors' presence in this case will further bring before the Court arguments and law that otherwise would not be present.

64. There is no basis allowing for refusal of the Legislative Intervenors' right to intervene into this case.

WHEREFORE, for the foregoing reasons, the Legislative Intervenors respectfully request that the Court grant their Application to intervene and enter the proposed order attached as **Exhibit "B"** to the accompanying petition, granting the

Legislative Intervenors' request to intervene in this action, and grant such other relief as this Court deems just and proper.

Dated: October 24, 2022

Respectfully submitted,

/s/ Zachary M. Wallen

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**Pro hac vice application forthcoming*

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House of Representatives Bryan Cutler,
Majority Leader of the Pennsylvania House
of Representatives Kerry Benninghoff, the
Pennsylvania House Republican Caucus,
President Pro Tempore of the Pennsylvania
Senate Jake Corman, Majority Leader of the
Pennsylvania Senate Kim Ward, and the
Pennsylvania Senate Republican Caucus*

CERTIFICATION OF WORD COUNT

Pursuant to Rule 2135 of the Pennsylvania Rules of Appellate Procedure, I certify that this Memorandum of Law contains 4,741 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

/s/ Zachary M. Wallen

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Representatives Kerry Benninghoff, the
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President Pro Tempore of the Pennsylvania
Senate Jake Corman, Majority Leader of the
Pennsylvania Senate Kim Ward, and the
Pennsylvania Senate Republican Caucus*

Dated: October 24, 2022

CERTIFICATE OF COMPLIANCE

I hereby 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/ Zachary M. Wallen

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President Pro Tempore of the Pennsylvania
Senate Jake Corman, Majority Leader of the
Pennsylvania Senate Kim Ward, and the
Pennsylvania Senate Republican Caucus*

Dated: October 24, 2022

EXHIBIT 1

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NAACP Pennsylvania State	:	
Conference,	:	
Petitioner	:	
	:	
v.	:	No. 364 M.D. 2020
	:	
Kathy Boockvar, Secretary of the	:	
Commonwealth, and Jessica Mathis,	:	
Director of the Bureau of Election	:	
Services and Notaries,	:	
Respondents	:	

MEMORANDUM AND ORDER

Presently before the Court are the Motion to Intervene of President Pro Tempore Joseph B. Scarnati III and Pennsylvania Senate Majority Leader Jake Corman (Senate Leaders) and the Petition to Intervene of Speaker of the Pennsylvania House of Representatives Bryan Cutler and Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff (House Leaders) (collectively, Legislative Leaders). Petitioner NAACP Pennsylvania State Conference opposes the Legislative Leaders' intervention on legal grounds. There are no genuine issues of material fact that need to be resolved by way of a hearing.

AND NOW, this 24th day of August, 2020, in consideration of the foregoing, it is hereby ORDERED:

1. Legislative Intervenors' applications to intervene are **GRANTED**. *See Fumo v. City of Philadelphia*, 972 A.2d 487 (Pa. 2009).
2. The hearing on the applications to intervene, previously tentatively scheduled for Wednesday, August 26, 2020, beginning at 10:00 a.m., via WebEx video conferencing, is **CANCELLED**.

3. The Prothonotary shall docket the Senate Leaders' and the House Leaders' preliminary objections, attached to their applications to intervene.

4. To the extent Petitioner wishes to file a responsive brief(s) in opposition to Legislative Leaders' respective preliminary objections, it may do so. Petitioner may choose to file a single brief in opposition to all pending preliminary objections. Consistent with this Court's July 30, 2020 Order, all briefs in opposition shall be filed on or before Thursday, August 27, 2020.



P. KEVIN BROBSON, Judge

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Certified from the Record

AUG 24 2020

And Order Exit

EXHIBIT 2

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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 M.D. 2021
Held: August 24, 2021

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

Filed: September 2, 2021

Petitioners¹ filed a petition for review (Petition) addressed to this
Court's original jurisdiction. The Petition seeks, among other things, a

declaration

¹ Petitioners are Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roseanne Milazzo, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael

that the Commonwealth of Pennsylvania's 2018 congressional district map is unconstitutional and may not be used for the 2022 election year. Currently, the Court considers three applications for leave to intervene. Speaker of the Pennsylvania House of Representatives Bryan Cutler; Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff; President Pro Tempore of the Pennsylvania Senate Jake Corman; and Majority Leader of the Pennsylvania Senate Kim Ward (collectively, Legislators) filed the first application for leave to intervene. The Republican Party of Pennsylvania and Individual Republican Voters² (collectively, Republican Party) filed the second application for leave to intervene, and Voters of the Commonwealth of Pennsylvania (Voters of Commonwealth)³ filed the third

Guttman, Maya Fonkeu; Brady Hill; Mary Ellen Balchunis, Tom DeWall, Stephanie McNulty, and Janet Temin. Each named petitioner is a United States citizen and registered voter in Pennsylvania and intends to advocate and vote for Democratic candidates. *Id.*

² The application for leave to intervene identifies the following individuals as proposed intervenors: Patricia K. Poprik, David Torres, Billy Lanzilotti, Nancy Becker, Michael D. Straw, James Depp, Joseph P. Vichot, Justin Behrens, Thomas Whitehead, Lee Becker, Louis Capozzi, Kirk Radanovic, Paul Nyman, James McGuire, Jr., Kristine L. Eng, Donna Cosmello, James Foreman, David Ball, James Vasilko, Lynne Ryan, Cynthia Kirk, Daryl Metcalfe, Luke Negron, Sue Ann Means, Reverend Todd Johnson, Michael Harvey, and Louisa Gaughen. *See* Appl. for Leave to Intervene by Proposed Intervenors the Republican Party of Pennsylvania and Individual Republican Voters, ¶¶ 2-28. The application provides each proposed intervenor's congressional district number; any position within the Republican Party that he or she may hold or has held in the past; where applicable, an indication of whether the individual is considering running for public office; and the individual's participation in the election process whether it be volunteering/advocating for a Republican candidate or intent to vote for Republican candidates.

³ "Voters of the Commonwealth of Pennsylvania" is not an organization but rather is used to generally refer to the named proposed intervenors in the application. The application is brought on behalf of Haroon Bashir, Vallerie Biancaniello, Debra A. Biro, Tegwyn Hughes, James D. Bee, Richard L. Lawson, David Dillon, Rico Timothy Elmore, Barbara Steinour, James Curtis Jarrett, Jeffrey Wenk, and Donald Beishl, Jr. *See* Appl. for Leave to Intervene by Voters of the Commonwealth of Pennsylvania, ¶¶ 10-21. The application identifies the voter by name, general area of residency and congressional district number, as well as the individual's intention in voting in the 2022 elections. *Id.* Each allegation also indicates that the proposed intervenor voted for his/her General Assembly representatives with the expectation that the representatives would have the authority to enact a new congressional district map based on the 2020 Census data.

application. All proposed intervenors seek to be aligned with Respondents Veronica Degraffenreid, Acting Secretary of the Commonwealth of Pennsylvania, and Jessica Mathis, Director for the Pennsylvania Bureau of Election Services and Notaries (collectively, Secretary). Petitioners oppose all three applications, while the Secretary opposes only the applications of the Republican Party and Voters of Commonwealth. After hearing held August 24, 2021 and argument on the issue, we grant Legislators' application but deny the applications of the Republican Party and Voters of Commonwealth based on our conclusion that they lack a legally enforceable interest in the Petition and that they could not be named as original parties to the action.

I. Petition for Review

The Petition provides details regarding the results of the 2020 Census, the dates by which the United States (U.S.) Secretary of Commerce must provide the President of the United States and the states with the apportionment data, and the effect of the Covid-19 pandemic on the delivery of that data. The Petition further explains that, while the Commonwealth's population increased from the last decennial census, the 2020 Census shows that the Commonwealth will lose a representative seat in the U.S. House of Representatives. Starting with the upcoming 2022 elections, the Commonwealth will have 17 representatives in the House of Representatives, one fewer than the current 18 representatives. The Commonwealth's congressional district map must be redrawn to accommodate for the loss of a seat in the House of Representatives.

Petitioners claim that the Commonwealth's current congressional districts are malapportioned due to shifts in population within the Commonwealth.

They believe that the congressional districts in which they live are overpopulated, while other districts are underpopulated, and that, consequently, their votes for members of the U.S. House of Representatives are diluted.

The Petition observes that Pennsylvania law does not set a deadline by which a new congressional district map must be put in place prior to the first congressional election following a census. According to Petitioners, it is in the best interest of voters, candidates, and the Commonwealth's entire electoral apparatus to have a new, final congressional district map in place prior to February 15, 2022, the date on which candidates may begin collecting signatures for placement on the primary election ballot.

The Petition informs that the Commonwealth's current congressional district map was drawn by the Pennsylvania Supreme Court in *League of Women Voters of Pennsylvania v. Commonwealth*, 181 A.3d 1083 (Pa. 2018), after the Republican-controlled General Assembly and Democratic Governor failed to agree upon a new congressional district map following the Supreme Court's invalidation of the Commonwealth's 2011 congressional district map. The current political climate has not changed since 2018, as Republican representatives maintain the majority in both houses of the General Assembly and Governor Tom Wolf is a Democrat. For these reasons, Petitioners contend that it is unlikely that the "political branches" of the government will agree upon a new congressional district map.

Petitioners allege that the current congressional district map violates: (1) article I, section 5 of the Pennsylvania Constitution (free and equal elections

clause);⁴ (2) 2 U.S.C. §2c (relating to districting for House of Representatives);⁵ (3) article I, section 20 of the Pennsylvania Constitution (relating to right to petition);⁶ and (4) Article I, Section 2 of the U.S. Constitution (relating to qualifications for member of the House of Representatives).⁷ Petitioners seek a declaration that the

⁴ Article I, section 5 of the Pennsylvania Constitution, PA. CONST. art. I, § 5, states: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

⁵ 2 U.S.C. §2c provides:

In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a(a) of this title, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress).

⁶ Article I, section 20 of the Pennsylvania Constitution, PA. CONST. art. I, § 20, provides: “The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.”

⁷ Article I, Section 2 of the U.S. Constitution, U.S. CONST. art. I, § 2, provides:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and

Commonwealth's current congressional district map violates the above constitutional provisions; an injunction enjoining the Secretary, her agents, officers, employees, and successors from implementing, enforcing, or giving effect to the 2018 congressional district map; establishment of a schedule that will enable the Court to adopt and implement a new congressional district map by a date certain should the political branches fail to enact such a map by that time; implementation of a new congressional district map that complies with the U.S. and Pennsylvania Constitutions in the event that the political branches do not enact a new map by a date certain; an award of attorneys' fees, costs, and disbursements; and an award of any other relief the Court deems just and proper.

II. Applications for Leave to Intervene

A. Standards for Intervention

Although this matter was filed in the Court's original jurisdiction, the right to intervene is governed by Pennsylvania Rules of Civil Procedure Nos. 2326-

within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

2350. Rule No. 2327, titled “Who May Intervene,” provides in relevant part and as asserted by the proposed intervenors:

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

....

(3) such person could have joined as an original party in the action or could have been joined therein; or

(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. No. 2327.⁸

Rule No. 2329, titled “Action of Court on Petition,” declares:

Upon the filing of the petition and after hearing, of which due notice shall be given to all parties, the court, if the allegations of the petition have been established and are found to be sufficient, shall enter an order allowing intervention; but an application for intervention may be refused, if

(1) the claim or defense of the petitioner 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

⁸ Pursuant to Pennsylvania Rule of Civil Procedure No. 2328(a), the proposed intervenors attached to their respective applications for leave to intervene copies of the pleading that they would file if permitted to intervene. Each group of proposed intervenors would file preliminary objections to the Petition. Pa. R.C.P. No. 2328(a).

(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. No. 2329.

The determination of whether a proposed intervenor has a “legally enforceable interest” calls for “a careful exercise of discretion and consideration of all the circumstances involved,” *Realen Valley Forge Greenes Associates v. Upper Merion Township Zoning Hearing Board*, 941 A.2d 739, 744 (Pa. Cmwlth. 2008) (citations omitted), because the exact boundaries of the “legally enforceable interest” limitation in Rule No. 2327(4) are not clear. *Id.* Nevertheless, an applicant for intervention must have some right, either legal or equitable, that will be affected by the proceedings. *See generally Keener v. Zoning Hearing Board of Millcreek Township*, 714 A.2d 1120, 1122 (Pa. Cmwlth. 1998).

At this point, it is important to note that although we summarize the applications for leave to intervene, the Court has considered the entirety of the applications and supporting briefs, the law cited therein, the replies to Petitioners’ and the Secretary’s opposition to the intervention applications, and the arguments, testimony and exhibits presented at the August 24, 2021 hearing in our determination of whether to grant intervention in this case.

B. Legislators’ Application

Legislators’ application for leave to intervene asserts that the named legislators are the highest-ranking members of their respective chambers, that the Republican Caucuses of their chambers have authorized them to seek intervention, and that the U.S. Constitution empowers the General Assembly to establish the time, place, and manner of elections to Congress, which includes the authority to redistrict.

See U.S. CONST. art. I, § 4 (stating that the time, place and manner of elections are left to the states' legislatures). Legislators seek to intervene pursuant to Pa. R.C.P. No. 2327(3) and (4) to vindicate their authority to redistrict the Commonwealth.

Legislators' memorandum in support of their application expands upon the reasons why they should be permitted to intervene. They first claim that they could have been named as original parties to the action or could have been joined therein because they have a special interest in the action.⁹ That special interest is Petitioners' alleged desire to divest Legislators of their constitutional authority to conduct congressional redistricting. Legislators also claim that their participation is required by the Declaratory Judgments Act,¹⁰ which mandates that all persons who have or claim any interest that would be affected by a declaration be made parties to the action, and that absent their participation, no declaration may prejudice their rights. 42 Pa. C.S. § 7540(a). Legislators also claim a legally enforceable interest in defending their constitutional authority to prescribe the time, place, and manner of holding elections, which includes the authority to enact congressional district maps. *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787, 808 (2015) (“redistricting is a legislative function, to be performed in

⁹ Legislators claim that they could have been joined as original parties because it is not uncommon for the courts to allow legislators to intervene in actions challenging the constitutionality of, or seeking to alter, redistricting plans. We reject such a blanket assertion. The cases upon which Legislators rely involved legislator participation *after* a redistricting plan was implemented and later challenged.

We also reject any reliance on *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1288 (Pa. Cmwlth. 2019), as supporting the right to intervene based on a special interest. *Sunoco* addressed standing to *initiate* formal complaints before the Pennsylvania Public Utility Commission and did not directly involve the issue of intervention in formal complaint proceedings. Regardless, the Commission's regulations provide the standards upon which intervention may be granted. There is no statutory or regulatory law addressing intervention in cases such as the one currently before the Court.

¹⁰ 42 Pa. C.S. §§ 7531-7541.

accordance with the State's prescriptions for lawmaking . . ."). They claim that Petitioners asked the Court to take over this process even before the General Assembly has the necessary tools to redistrict and to impose unreasonable deadlines.

The law is well settled as to legislator standing when seeking to intervene. In *Markham v. Wolf*, 136 A.3d 134 (Pa. 2016), legislators sought to intervene in an action challenging an executive order that authorized direct care workers to organize. This Court denied the legislators' application for leave to intervene, which the Supreme Court affirmed. In doing so, the Supreme Court identified the requirements for legislator standing.

Standing exists only when the legislator's direct and substantial interest in his or her ability to participate in the voting process is negatively impacted, *see* [*Wilt v. Beal*, 363 A.2d 876 (Pa. Cmwlth. 1976)], or when he or she has suffered a concrete impairment or deprivation of an official power or authority to act as a legislator, *see* [*Fumo v. City of Philadelphia*, 972 A.2d 487 [Pa. 2009),] (finding standing due to alleged usurpation of legislators' authority to vote on licensing).

Conversely, a legislator lacks standing

where he or she has an indirect and less substantial interest in conduct outside the legislative forum which is unrelated to the voting or approval process, and akin to a general grievance about the correctness of governmental conduct, resulting in the standing requirements being unsatisfied.

Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services, 225 A.3d 902 (Pa. Cmwlth. 2020)¹¹ (quoting *Markham*, 136 A.3d at 145).

The Supreme Court has held that

members of the General Assembly have sufficient interest to participate in legal action in their official capacity and based upon their special status “where there [i]s a discernable and palpable infringement on their authority as legislators.” A legislator’s legal interest has been recognized “to protect [the] legislator’s right to vote on legislation” and “in actions alleging a diminution or deprivation of the legislator’s . . . power or authority.” But, a legislator has no legal interest “in actions seeking redress for a general grievance about the correctness of government conduct.”

Robinson Township v. Commonwealth, 84 A.3d 1054, 1054 (Pa. 2014) (alterations in original; citations omitted) (affirming Commonwealth Court order denying legislators intervention in action challenging constitutionality of amendments to the Oil and Gas Act¹²). The principles of legislator standing are therefore relevant to the issue of whether the putative intervenor has demonstrated the legally enforceable interest required of Pa. R.C.P. No. 2327(4).

We disagree with Petitioners’ claims that Legislators lack a legally enforceable interest in this matter because the Petition does not seek to deprive Legislators of their authority to redistrict the congressional district map and that

¹¹ The opinion appearing at 225 A.3d 902 (Pa. Cmwlth. 2020), addresses legislator standing. Thereafter, on March 26, 2021, the Court issued an order sustaining the respondents’ preliminary objections and dismissing the petition for review. The petitioners filed an appeal to the Supreme Court, which remains pending. See *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services* (Pa. Cmwlth., No. 26 M.D. 2019, filed March 26, 2021), *appeal pending*, (Pa., No. 26 MAP 2021).

¹² 58 Pa. C.S. §§ 3201-3274.

Legislators are mischaracterizing the Petition as such. Among other things, the Petition seeks an order establishing a date certain by which the Court will take control of the redistricting process should the General Assembly and Governor fail to act. Pennsylvania law, however, does not establish a date by which a new congressional district map must be put in place. While Petitioners correctly cite *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), for the proposition that there is nothing in the law prohibiting the court from establishing a deadline for enactment of a new congressional map, it is noteworthy that the petitioners in *Mellow* were eight senators who sought nearly the same relief as that sought here, and several members of the state House of Representatives and Senate were permitted to intervene. When the Supreme Court exercised plenary jurisdiction in *Mellow* and appointed a judge of this Court as master to conduct hearings and report to the Supreme Court, Judge Craig directed that the parties, including intervenors, submit their proposed congressional district plans by a date certain.

At this juncture, it is not known how the redistricting process will proceed. But it seems clear that Legislators' ability to legislate would be impaired if the Court imposes a deadline on the General Assembly and the Governor to put in place a new congressional district map and takes control of the redistricting process. Likewise, Legislators would have a legally enforceable interest in the submission of a proposed plan for the Court's consideration if called upon to draw a new congressional district map, as in the *Mellow* case.

We therefore grant Legislators' application for leave to intervene. They have a legally enforceable interest because Pennsylvania law does not prescribe the date by which a new congressional district map must be put in place and because they, as members of the General Assembly, have the constitutional authority to

establish the time, place, and manner of elections, which includes the authority to redistrict. *Arizona State Legislature*. Any potential infringement of that right may diminish or deprive Legislators of their ability to act as legislators.

C. Republican Party's Application and Voters of Commonwealth's Application

We next consider the applications for leave to intervene filed by the Republican Party and Voters of Commonwealth. Both applications claim that the Republican Party, including the individual Party Voters, and Voters of Commonwealth could have been named as original parties. We disagree. Clearly, the Republican Party, the individual Republican Voters, and Voters of Commonwealth could not be joined as petitioners because they oppose Petitioners' requested relief. Similarly, they could not be joined as respondents because Petitioners' claims do not affect their liabilities. *See* Pa. R.C.P. No. 2229(b) ("A [petitioner] may join as [respondents] persons against whom the [petitioner] asserts any right to relief . . . in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact *affecting the liabilities of all such persons* will arise in the action.") (emphasis added).¹³ This factor militates against granting the Republican Party's and Voters of Commonwealth's applications for leave to intervene.

¹³ The Republican Party notes that the Court has permitted intervention in other cases, specifically *League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 n.5 (Pa. 2018). There, the Supreme Court noted that a judge of this Court, acting as master, permitted certain Republican voters, who included announced or potential candidates for Congress and other active members of the Republican Party, to intervene. The Court did not state the basis upon which intervention was granted, and our review of this Court's docket in *League of Women Voters* (Pa. Cmwlth., No. 261 M.D. 2017), indicates that the Court's order did not set forth its reasons for granting intervention.

We now address whether the Voters of Commonwealth or the Republican Party has shown a legally enforceable interest. For its part, the Voters of Commonwealth claim that they seek to intervene to preserve the existing framework that the General Assembly and Governor have until the first day to circulate nomination petitions to implement a new congressional district map. They claim that they are “mirror images” of Petitioners because they intend to advocate on behalf of Republican candidates in 2022. Voters of Commonwealth suggest that if the Court grants Petitioners the relief requested, such relief would curtail the ability of the Republican-controlled General Assembly to represent their interests. This would diminish or nullify their votes and would take away local officials’ constitutional duty to redistrict the Commonwealth. Local officials are more familiar with their constituents than Supreme Court jurists.

Voters of Commonwealth suggest that they have a special interest that allows them to intervene, that being that this matter may be of public interest. They allege an inalienable right to express and present their concerns regarding drawing of the congressional district map, and if this Court imposes a date certain by which the political branches must act or takes over the redistricting process, the General Assembly will be divested of its authority to draw the new map.¹⁴ A court drawing

¹⁴ The Court admitted Voters of Commonwealth Exhibit 1, which contains the Affidavits of Tegwyn Hughes, Debra A. Biro, James Curtis Jarrett, James D. Bee, and Jeffrey Wenk, subject to Petitioners’ and the Secretary’s objections to the legal conclusions stated within the affidavits. The Affidavits largely echo the averments in the application for leave to intervene and are uniform for the most part. The affiants attest to their residency, registration as qualified electors in the Commonwealth, regularity in voting, voting with the expectation that their representatives would engage in the redistricting process based on the 2020 Census and ability to contact their representatives, and their intention in contacting their representatives relating to the new congressional district map. Each affiant states that he/she has an interest in the contours of his/her congressional districts and an inalienable right to express to his/her representatives concerns regarding redistricting under the First Amendment, U.S. CONST. amend. I. Further, affiants state that the Secretary does not have authority regarding redistricting and therefore does not represent the affiants’ interest.

the congressional district map will turn a legislative process into a judicial one, according to Voters of Commonwealth. Finally, newly enacted redistricting maps have been subject to voter challenges.

As for a legally enforceable interest, the Republican Party argues that it has an interest in expanding its power within the Commonwealth government and that redistricting is fundamentally about political power. It maintains that it has a legally enforceable interest in (1) the allocation of its resources, (2) advocating for its interest and that of its members in areas that are bipartisan, (3) who draws the new congressional district map, that being the Republican-controlled General

They conclude that they have a substantial and particularized interest in preserving the existing framework that the General Assembly and the Governor have until the first day to circulate nomination petitions to implement a new district plan. Petitioners' requested relief would deprive them of their ability to contact their legislators regarding redistricting, thus nullifying their vote for a representative. Further, Petitioners' request that the Court invalidate the current congressional map would deprive affiants of their right to representation should a special election be needed in their district.

The Court also permitted Voters of Commonwealth to provide an additional exhibit after the proceedings, which Voters filed on August 26, 2021. Voters filed a supplemental affidavit in support of the Voters' application for leave to intervene by Vallerie Biancaniello. The affidavit is the same as those presented in Voters of Commonwealth Exhibit 1. The Secretary promptly responded, indicating that she does not object to the affidavit on hearsay grounds or the Court's consideration of the affidavit in lieu of live testimony, but she does object to the legal conclusions stated therein. Petitioners object on the same basis as the Secretary.

Upon review, we sustain the objections to the legal conclusions stated within each affidavit, including that: (1) the affiant has a substantial and particularized interest in preserving the existing framework; (2) the requested relief would have the effect of preventing the affiant from being able to interact with the elected representatives regarding redistricting and nullifies the affiants' votes in the 2020 election; (3) if the Court grants the requested relief, the General Assembly will be deprived of its authority to draw new congressional districts and deprive the affiant of his/her ability to provide input to his/her representative thus infringing on the affiant's free speech rights; (4) the affiants' votes would be nullified and their interests of having their representatives exercise their full scope of constitutional duties with respect to redistricting would be infringed; and (5) the affiants could be deprived of their right to representation if the current map is declared unconstitutional and a special election must take place before a new map is enacted. In sustaining the objections to the Exhibits, we did not consider the stated conclusions in our disposition of this matter.

Assembly or the Justices of the Supreme Court, who are mostly Democrats, (4) a change in the environment in how rival parties defend their concrete interests, (5) recruiting of candidates, (6) risk of confusion to voters, and (7) associational interests.¹⁵ See PA. CONST. art. I, § 20 (“The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested

¹⁵ The Republican Party presented the testimony of Angela Alleman, Executive Director of the Pennsylvania GOP. Mrs. Alleman oversees all operations of the Party. She explained her concerns if the Supreme Court draws the congressional district map, including the removal of power to do so by the General Assembly, the Party’s ability to work with its legislators to influence the map but inability to advocate before the Supreme Court, and the Party’s diversion of funds to have experts prepare and analyze any map drawn by the Supreme Court. She believes that it is unfair to create a deadline for the General Assembly to act, especially when it is not clear when the 2020 Census data will be available. Mrs. Alleman stated that the uncertainty of the congressional district map affects candidate recruitment and makes it impossible for incumbents to know whether their districts will be realigned and the possibility that if realigned, whether the incumbent will be running against another incumbent. She acknowledged that regardless of who draws the new congressional district map, the Republican Party will have to spend money to educate voters, and for “get out and vote” campaigns. Mrs. Alleman agreed that Republican Party members may speak to their legislators regardless of who draws the map, and that the Republican Party has no power to make the General Assembly do what the Party wants. For Mrs. Alleman, the issue with the Petition is the request for a deadline by which the General Assembly and Governor must act and the allocation of the Party’s resources depending on who draws the congressional district map. She believes that if the General Assembly draws the map, the Republican legislators will negotiate the best possible map for the Party. Expenses the Republican Party would incur if the Supreme Court draws the map include legal fees, including fees for intervening in this action, expert fees for analyzing and preparing maps, and the diversion of the Party’s resources. The Court finds Mrs. Alleman’s testimony credible but not persuasive on the issue of whether the Republican Party has a legally enforceable interest.

The Court admitted 12 affidavits of the individual Republican Party members: Nancy Becker, James Depp, Thomas Whitehead, Louis Capozzi, Kirk Radanovic, Kristine L. Eng, David Ball, James Vailko, Daryl Metcalfe, Sue Ann Means, and Michael Harvey, and Justin Behrens. The affidavits are substantially the same and attest that the affiant is a U.S. citizen and registered voter in Pennsylvania; the district in which the affiant resides; the affiant’s participation in the election-related/Republican Party activities; the affiant is a long-time supporter of the Republican party; and that Petitioners’ and the Secretary are affiliated with the affiant’s political opponents, and that, therefore, they will not advocate for a congressional district map that represents the affiant’s interest as a supporter and/or official of the Republican Party. The affidavits also attest to the affiant’s resources invested in advocating on behalf of the Republican Party, including activities that may be affected by the Supreme Court’s drawing of the congressional district map.

with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.”).

First, the Court rejects the Voters of Commonwealth and the Republican Party’s argument that because they have a special interest in the matter, they are permitted to intervene. Both proposed intervenors rely on *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283 (Pa. Cmwlth. 2019), but in that case, the primary issue was whether a senator had standing, either as a legislator or as a private citizen, to initiate a formal complaint with the Pennsylvania Public Utility Commission; the question of intervention was not at issue in *Sunoco*. The brief discussion of intervention was limited to distinguishing between standing to initiate a formal complaint and standing to intervene, which the Commission’s regulations expressly address. Years ago, in *Application of Biester*, 409 A.2d 848 (Pa. 1979), our Supreme Court established the standards for intervention. In *Biester*, a taxpayer sought to intervene in an action seeking to impanel a statewide investigative grand jury. The Court, after initially allowing the taxpayer to intervene, later vacated its order granting intervention. The Court determined that to intervene, the taxpayer must meet the “substantial, direct, and immediate” test set forth in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975). That standard remains the law in this Commonwealth. *Markham*, 136 A.3d at 139 (“in order to intervene, individuals must have standing, Pa. R.C.P. [No.] 2327(3), (4), and to establish standing, one must have an interest that is substantial, direct[,] and immediate”). To have a substantial interest, the proposed intervenor’s concern in the outcome of the action must surpass “the common interest of all citizens in procuring obedience to the law.” *Markham*, 136 A.3d at 140. An interest is direct if the matter will cause

harm to the party's interest, and the concern is immediate "if that causal connection is not remote or speculative." *Id.*

We conclude that the Voters of Commonwealth and individual Republican Voters fail to meet the "substantial, direct, and immediate" test. Neither the individual Republican Voters, regardless of political interest, or Voters of Commonwealth have an interest that surpasses the interest of all qualified and registered voters in the Commonwealth. Based on the preliminary 2020 Census data, the Commonwealth will lose a seat in the U.S. House of Representatives and thus our current congressional district map must be redrawn. As counsel for Voters of Commonwealth stated, the current congressional district map is malapportioned across the state. *Every elector*, therefore, has an interest in redrawing a congressional district map that meets constitutional standards. Thus, the individual Republican Voters and Voters of Commonwealth do not have a substantial interest that surpasses the common interest of all citizens.¹⁶

The Republican Party, identified as non-profit organization, has no legally enforceable interest either. Based on our review, it appears that the Republican Party is complaining about what role it may play in the redistricting process, a role that is not protected by law. Redistricting, however, is fundamentally about protecting the one-person one-vote principle, that is, all votes have equal power as near as possible. *See Gray v. Sanders*, 372 U.S. 368, 381 (1963); *Holt v. 2011 Legislative Reapportionment Commission*, 38 A.3d 711, 739 (Pa. 2012). The

¹⁶ We further disagree that Voters of Commonwealth are the "mirror image" of Petitioners because they will advocate for Republican candidates in 2022, whereas, Petitioners allege, they will advocate for Democratic candidates. Petitioners allege that the congressional districts in which they live are overpopulated as evidenced by the 2020 Census and, thus, their voting power is diluted. *See Voters of Commonwealth*, Appl. for Leave to Intervene, ¶¶ 10-21. Voters of Commonwealth do not speculate how their congressional districts may be affected by redistricting.

activities of the Republican Party, and how the Party allocates its resources, do not constitute a legally enforceable interest in how the congressional district map is determined and by whom. The case law cited by the Republican Party does not stand for the proposition that the asserted interests constitute legally enforceable interests sufficient to confer standing to intervene. The case law cited by the Secretary, rather, suggests otherwise and is more persuasive. *Cf. Gill v. Whitford*, 138 S. Ct. 1916, 1932 (2018) (recognizing that under the U.S. Supreme Court’s precedent, achieving a party majority in the legislature is a collective political interest, not an individual legal interest recognized by law); *see also Pennsylvania Voters Alliance v. Centre County*, 496 F. Supp. 3d 861, 868 (M.D. Pa. 2020) (recognizing that “‘statewide harm’ to a voter’s interest in ‘collective representation in the legislature’” or “in ‘influencing the legislature’s overall composition and policymaking’” is insufficient to support standing under Article III of the U.S. Constitution, U.S. CONST. art. III; “[t]o the extent that the latter interest is recognized, it is ‘embodied in [an individual’s] right to vote for [his or her] representative’”) (quoting *Gill*, 138 S. Ct. at 1931); *Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002) (recognizing that Democratic committee lacked standing to challenge reapportionment plan because it was not an entity authorized to exercise the right to vote), *abrogated on other grounds by League of Women Voters*, 178 A.3d 737.

Moreover, we conclude that the Republican Party’s, individual Republican Voters,’ and Voters of Commonwealth’s claimed interests are speculative and not immediate. The U.S. Census Bureau has released the redistricting data to the states, with the final redistricting data toolkit to be delivered by September 30, 2021. *See* <https://www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census-results.html> (last visited August 30, 2021).

Therefore, our General Assembly can begin the process of moving forward with a new congressional district plan based on the Census data received. There is nothing preventing the Voters of Commonwealth, the individual Republican Voters, and the Republican Party from exercising their First Amendment and associational rights to make their positions known to their respective legislators.

Because we conclude that the Republican Party, the individual Republican Voters, and Voters of Commonwealth have failed to show that they have legally enforceable interests in these proceedings, we deny their applications for leave to intervene.

III. Conclusion

The General Assembly and the Governor are vested with authority to draw a new congressional district map. Pennsylvania law, however, does not provide a date by which they must act. The relief that Petitioners seek, the setting of a deadline by which the political branches must act, or taking control of the redistricting process, potentially infringes upon that authority. Accordingly, Legislators have shown a legally enforceable interest entitling them to intervene in this matter. *Markham; Allegheny Reproductive Health Center*; Pa. R.C.P. No. 2327(4).

Conversely, the Republican Party and Voters of Commonwealth have failed to demonstrate that they could be joined as original parties to the action or that they have a legally enforceable interest that would entitle them to intervene in this matter. Pa. R.C.P. No. 2327(3), (4).

Accordingly, the application for leave to intervene filed by Legislators is granted, and the applications for leave to intervene filed by the Republican Party and Voters of Commonwealth are denied.

MICHAEL H. WOJCIK, Judge

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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.

No. 132 M.D. 2021

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

ORDER

NOW 2nd day of September, 2021, upon consideration of the Applications for Leave to Intervene filed on behalf of (1) Speaker of the Pennsylvania House of Representatives Bryan Cutler, Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff, President Pro Tempore of the Pennsylvania Senate Jake Corman, and Majority Leader of the Pennsylvania Senate Kim Ward (collectively, Legislators); (2) the Republican Party of Pennsylvania and Individual Republican Voters (collectively, Republican Party); and (3) Voters of the

Commonwealth of Pennsylvania (Voters of Commonwealth), and after hearing and argument on the issue, it is hereby ordered as follows.

Legislators' Application for Leave to Intervene is **GRANTED**. The Prothonotary shall accept for filing Legislators' Preliminary Objections to the Petition for Review, attached to Legislators' June 1, 2021 Application for Leave to Intervene.

Respondents¹ shall file and serve their brief in support of their preliminary objections (4 copies) within 14 days of the exit date of this order.

Legislators shall file and serve their brief in support of their preliminary objections (4 copies) within 14 days of the exit date of this order. Petitioners shall file and serve their brief in opposition to Legislators' preliminary objections within 14 days of service of Legislators' brief. Upon completion of the briefing schedule, the Prothonotary shall list the preliminary objections on the appropriate argument list.

The Applications for Leave to Intervene filed by the Republican Party and the Voters of the Commonwealth are **DENIED**. The Republican Party's Application for Extraordinary Relief, attached to its Application for Leave to Intervene, is **DISMISSED AS MOOT**.

¹ Although Respondents filed preliminary objections, it appears that they have not filed their brief in support thereof. Petitioners, however, filed their brief in opposition to Respondents' preliminary objections on August 2, 2021.

Voters of the Commonwealth Exhibits 1 and 2 are admitted to the record. Petitioners' and Respondents' objections to the legal conclusions in the Voters of the Commonwealth's Exhibit 1 and Exhibit 2 are **SUSTAINED**.

MICHAEL H. WOJCIK, Judge

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