

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**TOM WOLF, Governor of the
Commonwealth of Pennsylvania,
and LEIGH M. CHAPMAN,
Acting Secretary of the
Commonwealth of Pennsylvania,**

Petitioners,

v.

No. 482 MD 2022

**GENERAL ASSEMBLY OF THE
COMMONWEALTH OF
PENNSYLVANIA,**

Respondent.

**PETITIONERS’ ANSWER TO HOUSE REPUBLICAN
INTERVENORS’ PRELIMINARY OBJECTIONS**

Petitioners Tom Wolf, Governor of the Commonwealth of Pennsylvania, and Leigh M. Chapman, Acting Secretary of the Commonwealth of Pennsylvania, by and through their undersigned counsel, state the following as their Answer to the Preliminary Objections filed by Intervenors House Majority Leader Kerry A. Benninghoff and the Pennsylvania House Republican Caucus (referred to collectively hereinafter as “House Republican Intervenors”):

1. Admitted in part and denied in part. It is admitted that Senate Bill No. 106 of 2021 (“SB 106”) contains multiple constitutional amendments and was passed by majority vote in both chambers of the General Assembly on July 8, 2022. It is denied that the General Assembly adhered to the mandatory procedure in Article

XI, § 1 and that SB 106 is properly considered by the citizens of the Commonwealth of Pennsylvania. The General Assembly violated the mandatory procedure in Article XI, § 1 in passing SB 106 and, as a result, SB 106 is “incurabl[y] defect[ive]” and may not properly be presented for consideration by voters. *Kremer v. Grant*, 606 A.2d 433, 439 (Pa. 1992).

2. Admitted in part and denied in part. It is admitted that Petitioners filed a Petition for Review in this Court on September 23, 2022. The remaining allegations in Paragraph 2 purport to characterize Petitioners’ Petition for Review which is in writing and speaks for itself and therefore the allegations are denied.

PRELIMINARY OBJECTION NO. 1

3-11. Denied. The allegations in Paragraphs 3 through 11 constitute conclusions of law to which no responsive pleading is required and are denied.

WHEREFORE, for the reasons set forth in Petitioners’ opposition brief which was filed on November 10, 2022, the House Republican Intervenors’ Preliminary Objection under Pa. R. Civ. P. 1028(a)(5) asserting lack of standing and lack of capacity to sue is without merit and should be overruled.

PRELIMINARY OBJECTION NO. 2

12-13. Denied. The allegations in Paragraphs 12 and 13 constitute conclusions of law to which no responsive pleading is required and are denied. By way of further

response, Paragraph 1 of this Answer is incorporated by reference as if set forth fully herein.

14. Admitted in part and denied in part. It is admitted that SB 106 was passed by majority vote in both chambers of the General Assembly on July 8, 2022, SB 106 was published in local newspapers on August 2-7, 2022, September 1-7, 2022, and October 1-7, 2022, and a new General Assembly was elected on November 8, 2022. It is denied that voters received information concerning how their representatives would have voted on the multiple amendments in SB 106. The omnibus vote on the multiple amendments in SB 106 violated the requirement in Article XI, § 1 that “yeas and nays” be taken on a proposed “amendment or amendments,” Pa. Const. art. XI, § 1, and deprived voters of their constitutional right to replace representatives who do not share their views on the proposed amendments. *See Kremer*, 606 A.2d at 438 (Article XI, § 1 is intended “to let the public ascertain the attitude of the candidates for election to the General Assembly” and afford them “an opportunity to . . . elect individuals to the next General Assembly with different attitudes”). The remaining allegations in Paragraph 14 constitute conclusions of law to which no responsive pleading is required and are denied.

15-18. Denied. The allegations in Paragraphs 15 through 18 constitute conclusions of law to which no responsive pleading is required and are denied.

WHEREFORE, for the reasons set forth in Petitioners' opposition brief which was filed on November 10, 2022, the House Republican Intervenors' Preliminary Objection under Pa. R. Civ. P. 1028(a)(4) asserting legal insufficiency is without merit and should be overruled.

PRELIMINARY OBJECTION NO. 3

19. Admitted.

20-24. Denied. The allegations in Paragraphs 20 through 24 constitute conclusions of law to which no responsive pleading is required and are denied.

WHEREFORE, for the reasons set forth in Petitioners' opposition brief which was filed on November 10, 2022, the House Republican Intervenors' Preliminary Objection under Pa. R. Civ. P. 1028(a)(4) challenging the legal sufficiency of Count I of the Petition for Review is without merit and should be overruled.

PRELIMINARY OBJECTION NO. 4

25. Denied. The allegations in Paragraph 25 purport to characterize the Petition for Review which, being in writing, speaks for itself and therefore the allegations are denied.

26-29. Denied. The allegations in Paragraphs 26 through 29 constitute conclusions of law to which no responsive pleading is required and are denied.

WHEREFORE, for the reasons set forth in Petitioners' opposition brief which was filed on November 10, 2022, the House Republican Intervenors' Preliminary

Objection under Pa. R. Civ. P. 1028(a)(4) challenging the legal sufficiency of Count II of the Petition for Review is without merit and should be overruled.

PRELIMINARY OBJECTION NO. 5

30. Denied. The allegations in Paragraph 30 purport to characterize the Petition for Review which, being in writing, speaks for itself and therefore the allegations are denied.

31-32. Denied. The allegations in Paragraphs 31 and 32 constitute conclusions of law to which no responsive pleading is required and are denied.

WHEREFORE, for the reasons set forth in Petitioners' opposition brief which was filed on November 10, 2022, the House Republican Intervenors' Preliminary Objection under Pa. R. Civ. P. 1028(a)(4) challenging the legal sufficiency of Count III of the Petition for Review is without merit and should be overruled.

PRELIMINARY OBJECTION NO. 6

33. Denied. The allegations in Paragraph 33 purport to characterize the Petition for Review which, being in writing, speaks for itself and therefore the allegations are denied.¹

34. Denied. The allegations in Paragraph 34 constitute conclusions of law to which no responsive pleading is required and are denied.

¹ The House Republican Intervenors correctly note that there is a typographical error in Paragraph 79 of the Petition for Review. The reference in that paragraph to the Constitution should be to Article VII, § 1.

35. Denied. The allegations in Paragraph 35 purport to characterize the Constitution which, being in writing, speaks for itself and therefore the allegations are denied.

36-40. Denied. The allegations in Paragraphs 36 through 40 constitute conclusions of law to which no responsive pleading is required and are denied.

WHEREFORE, for the reasons set forth in Petitioners' opposition brief which was filed on November 10, 2022, the House Republican Intervenors' Preliminary Objection under Pa. R. Civ. P. 1028(a)(4) challenging the legal sufficiency of Count IV of the Petition for Review is without merit and should be overruled.

PRELIMINARY OBJECTION NO. 7

41. Denied. The allegations in Paragraph 41 purport to characterize the Petition for Review which, being in writing, speaks for itself and therefore the allegations are denied.

42-46. Denied. The allegations in Paragraphs 42 through 46 constitute conclusions of law to which no responsive pleading is required and are denied.

WHEREFORE, for the reasons set forth in Petitioners' opposition brief which was filed on November 10, 2022, the House Republican Intervenors' Preliminary Objection under Pa. R. Civ. P. 1028(a)(4) challenging the legal sufficiency of Count V of the Petition for Review is without merit and should be overruled.

PRELIMINARY OBJECTION NO. 8

47-50. Denied. The allegations in Paragraphs 47 through 50 constitute conclusions of law to which no responsive pleading is required and are denied.

WHEREFORE, for the reasons set forth in Petitioners' opposition brief which was filed on November 10, 2022, the House Republican Intervenors' Preliminary Objection under Pa. R. Civ. P. 1028(a)(1) and (4) asserting legal insufficiency and lack of jurisdiction is without merit and should be overruled.

Respectfully submitted:

Gregory G. Schwab
General Counsel
Office of General Counsel
225 Main Capitol Building
Harrisburg, PA 17120

/s/ Daniel T. Brier
Daniel T. Brier
Donna A. Walsh
Richard L. Armezzani
Myers, Brier & Kelly, LLP
425 Biden Street, Suite 200
Scranton, PA 18503

Attorneys for Tom Wolf, Governor of the Commonwealth of Pennsylvania, and
Leigh M. Chapman, Acting Secretary of the Commonwealth of Pennsylvania

Date: November 21, 2022

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that requires filing confidential information and documents differently than non-confidential information and documents.

/s/ Daniel T. Brier _____
Daniel T. Brier

Date: November 21, 2022

PROOF OF SERVICE

I, Daniel T. Brier, hereby certify that I served the forgoing Answer upon all counsel of record via the Court's PACFile eService system, which service satisfies the requirements of Pa.R.A.P. 121.

/s/ Daniel T. Brier
Daniel T. Brier

Date: November 21, 2022