

<p>Michael Crossey, Dwayne Thomas, Irvin Weinreich, Brenda Weinreich, and the Pennsylvania Alliance for Retired Americans,</p> <p style="text-align: center;">Petitioners</p> <p>v.</p> <p>Kathy Boockvar, Secretary of the Commonwealth, and Jessica Mathis, Director of the Bureau of Election Services and Notaries,</p> <p style="text-align: center;">Respondents,</p> <p>Senator Joseph B. Scarnati, III, President Pro Tempore; and Senator Jake Corman, Senate Majority Leader,</p> <p>Proposed Intervenor Respondents</p>	<p style="text-align: center;">IN THE COMMONWEALTH COURT OF PENNSYLVANIA</p> <p style="text-align: center;">No. 266 MD 2020</p>
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REPLY MEMORANDUM OF LAW IN SUPPORT OF PROPOSED INTERVENOR RESPONDENTS' APPLICATION FOR INTERVENTION BY PROPOSED INTERVENOR RESPONDENTS, SENATORS JOSEPH B. SCARNATI III, AND JAKE CORMAN

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TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	2
<u>ARGUMENT</u>	3
I. PROPOSED INTERVENORS MEET THE REQUIREMENTS FOR LEGISLATIVE STANDING.	3
A. <u>Legislative Standing Is Established When A Legislator Alleges A Deprivation Or Diminution Of Legislative Authority Or An Action Threatens A Legislator’s Right To Vote.</u>	4
B. <u>Proposed Intervenors Demonstrate That Petitioners’ Requested Relief Will Diminish The Proposed Intervenors’ Legislative Authority.</u>	9
II. PETITIONERS’ LAWSUIT DIMINISHES SEVERAL LEGAL INTERESTS OF THE GENERAL ASSEMBLY.	11
A. <u>The U.S Constitution Grants Pennsylvania’s General Assembly Wide Authority To Regulate And Administer Elections.</u>	11
B. <u>Petitioners’ Requested Relief Encroaches The General Assembly’s Authority To Craft Legislation.</u>	15
C. <u>Petitioners’ Requested Relief Interferes With The General Assembly’s Authority To Appropriate Funds.</u>	17
III. THE PENNSYLVANIA SENATE AUTHORIZED INTERVENORS TO SPEAK ON ITS BEHALF IN THIS CASE.	18
<u>CONCLUSION</u>	21

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGES</u>
<i>Agre v. Wolf</i> , 284 F. Supp. 3d 591 (E.D. Pa. 2018)	12, 13, 14
<i>Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Services</i> , 225 A.3d 902 (Pa. Commw. 2020)	4, 10, 17, 20
<i>Applewhite v. Commonwealth</i> , 2014 Pa. Commw. Unpub. LEXIS 379 (Pa. Commw. April 28, 2014)	15
<i>Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n</i> , 135 S. Ct. 2652 (2015)	10, 12, 18, 19
<i>Corman v. Torres</i> , 287 F. Supp. 3d 558 (M.D. Pa. 2018)	12
<i>Council 13 v. Commonwealth</i> , 986 A.2d 63 (Pa. 2009)	15, 18
<i>Finn v. Rendell</i> , 990 A.2d 100 (Pa. Commw. 2010)	17
<i>Fumo v. City of Philadelphia</i> , 972 A.2d 487 (Pa 2009)	5, 7, 8, 18
<i>In re Guzzardi</i> , 99 A.3d. 381 (Pa. 2014)	12
<i>In re Nomination of Driscoll</i> , 847 A.2d 44 (Pa. 2004)	11, 12, 13
<i>Larson v. Pa. Turnpike Comm'n</i> , 490 A.2d 827 (Pa. 1985)	15
<i>Markham v. Wolf</i> , 136 A.3d 134 (Pa. 2016)	5, 8, 18
<i>Mt. Lebanon v. County Bd. of Elections</i> , 368 A.2d 648 (Pa. 1977)	15
<i>Shapp v. Sloan</i> , 391 A.2d 595 (Pa. 1978)	20
<i>Smiley v. Holm</i> , 285 U.S. 355 (1932)	12, 13, 14
<i>U.S. v. Classic</i> , 313 U.S. 299 (1941)	13

<i>Va. House of Delegates v. Bethune-Hill</i> , 139 S. Ct. 1945 (2019)	14, 19
<i>Warth v. Seldin</i> , 422 U.S. 490 (1975)	10
<i>Watson v. Witkin</i> , 22 A.2d 17 (Pa. 1941)	15
<i>Wilt v. Beal</i> , 363 A.2d 876 (Pa. Commw. 1976)	6
<i>Zemprelli v. Daniels</i> , 436 A.2d 1165 (Pa. 1981)	7

RULES, STATUTES AND ORDINANCES

U.S. Const. Art. I, § 4	2, 11
U.S. Const. Art. I, § 12	2
U.S. Const. Art. II § 1	2
Pa. Const. Art. I, § 12	15
Pa. Const. Art. II, §1	15
Pa. Const. Art. III, § 24	2, 5, 17
25 P.S. § 3146.6(c)	13, 16
25 P.S. § 3150.16(c)	13, 16
Pa. R. Civ. Pro. 2327(4)	3, 10, 10

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Proposed Intervenor Respondents, Joseph B. Scarnati, III, Pennsylvania Senate President Pro Tempore, and Jake Corman, Senate Majority Leader (“Proposed Intervenors”), by and through the undersigned counsel, submit this reply memorandum of law in support of Proposed Intervenor Respondents’ Application for Intervention.

INTRODUCTION

In response to the General Assembly's respective applications to intervene, Petitioners become what William F. Buckley called John Kenneth Galbraith: pyromaniacs in a field of straw men. Petitioners contend that the Senate intervenors' sole interest in this litigation is that the challenged statutes are upheld and implemented. But the Senate did not solely assert this interest. In fact, the Senate asserted four distinct interests in this litigation, and each interest is individually sufficient to establish legislative standing. Those interests include the diminishment of legislative authority delegated directly to the legislature by Article I, Section 4 of the U.S. Constitution and legislative authority located in Article II Section 1; Article I, Section 12; and Article III, Section 24 of the Pennsylvania Constitution. Petitioners' requested relief will diminish each of these rights, which are constitutionally vested in the General Assembly.

Petitioners then grasp at straws, hoping that dicta in a concurring opinion joined by no other Justice suggesting, for the first time and contrary to 44 years of Pennsylvania jurisprudence on legislative standing, a requirement that the entire General Assembly must intervene to assert its interests. This is not what the law requires, as demonstrated by several Pennsylvania cases granting legislative standing to a subset of legislators.

Nevertheless, both chambers of the General Assembly have authorized intervention and the leaders of those chambers are directly present in this litigation as representatives of their respective legislative bodies. Unable to quibble about the substance of the entire General Assembly authorizing intervention, Petitioners' arguments amount to disliking the form of authorization. In the rushed nature of this litigation, form should not be elevated over the functional reality of the authorizations.

Accordingly, for the reasons asserted in its Application, and for the reasons that follow, Proposed Intervenors have established legislative standing.

ARGUMENT

I. PROPOSED INTERVENORS MEET THE REQUIREMENTS FOR LEGISLATIVE STANDING.

Proposed Intervenors seek to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327(4), which states, in pertinent part, as follows:

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 . . .

(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. 2327(4).

Because Petitioners suit affects four legal interests that are unique to the General Assembly and, in fact, diminishes the General Assembly's authority to

exercise their legislative power, this Court should grant Proposed Intervenors' Application for Intervention. *See, e.g., Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Services*, 225 A.3d 902, 911 (Pa. Commw. 2020) (Leavitt, J.).

A. Legislative Standing Is Established When A Legislator Alleges A Deprivation Or Diminution Of Legislative Authority Or An Action Threatens A Legislator's Right To Vote.

In *Allegheny Reprod. Health Ctr.*, 225 A.3d at 904, 18 members of the Pennsylvania Senate and eight members of the Pennsylvania House of Representatives—hardly a majority—applied to this Court for intervention. This Court found that the House and Senate members satisfied the requirements of Pa.R.C.P. 2327(4) and were granted intervention. *Id.* at 905. There, petitioners requested that the Commonwealth Court declare an appropriations provision of Pennsylvania's Abortion Control Act unconstitutional and enjoin its enforcement. *See id.* at 905-06. The House and Senate members contended that this relief, if granted, would "limit their legislative power to appropriate funds...." *Id.* at 907. A single judge on the Commonwealth Court denied the intervention request, holding that the House and Senate members were not aggrieved because the General Assembly's interest in the statute ended when the statute was enacted. *See id.* The House and Senate members appealed to the full Commonwealth Court.

This Court reversed. In finding that the House and Senate members satisfied the intervention requirements, this Court reviewed the requirements to establish

legislative standing and determined that legislators can establish standing where there is a “discernible and palpable infringement on their authority as legislators ... [or in] actions alleging a diminution or deprivation of the legislator’s ... power or authority.” *Id.* at 909-10 (quoting *Fumo v. City of Philadelphia*, 972 A.2d 487, 501 (Pa. 2009)). The Commonwealth Court acknowledged the Pennsylvania Supreme Court’s more recent holding that a legislator has standing “when a legislator’s direct and substantial interest in his or her ability to participate in the voting process is negatively impacted, ... or when he or she has suffered a concrete impairment or deprivation of an official power or authority to act as a legislator...” *Id.* at 910 (quoting *Markham v. Wolf*, 136 A.3d 134, 145 (Pa. 2016)).

This Court then turned to the interest asserted by House and Senate members, which was that the relief sought by petitioners “could narrow [the proposed intervenors’] ability to exercise legislative power, particularly in the matter of appropriation.” *Id.* at 911 (citing Pa. Const. art. III, § 24). This Court agreed, stating that the petitioners’ case “related directly to the legislative power to appropriate.” *Id.* at 911. According to the Court, if the petitioners were to prevail, the effect “could bar the General Assembly from tying legislative strings to its appropriation of funds for the Medical Assistance program.” *Id.* at 912. The petitioners sought to “restrict the substance and form of appropriation bills ... [and] ... eliminate the ability of legislators to add conditional or incidental

language to a general appropriation act....” *Id.* Accordingly, the Court held that the House and Senate members sought to “preserve their voting power...and their authority to appropriate Commonwealth funds, a key legislative duty.” *Id.* at 912-13. The House and Senate members, therefore, satisfied Rule 2327(4) and were granted intervention. *Id.* at 913.

This is consistent with the Supreme Court’s and Commonwealth Court’s jurisprudence on legislative standing. The very first case in Pennsylvania to address legislative standing involved one legislator seeking to enjoin the Secretary of the Public Welfare and the State Treasurer from using a mental health facility. *Wilt v. Beal*, 363 A.2d 876, 878 (Pa. Commw. 1976). The legislator claimed standing as a taxpayer, and this Court dismissed his lawsuit for lack of standing. *Id.* at 881. This Court found that the plaintiff legislator lacked standing because this Court found “no connection between Wilt’s status as a legislator and any constitutional provision alleged to have been breached by the defendants’ actions.” *Id.* No mention was made that it was necessary for the whole General Assembly to authorize the suit. Instead, when the Court declared the principles for legislators to achieve legislative standing, this Court held that legislators must show that the action they challenge diminishes or interferes with legislative functions under the constitution. *See id.*

Next, in *Zemprelli v. Daniels*, 436 A.2d 1165 (Pa. 1981), five members of the Pennsylvania Senate brought a *quo warranto* action seeking to remove a member from the Tax Equalization Board. *Id.* at 1166. The member’s appointment to the board required a majority of the Senate to confirm. The objecting Senators said that the majority should be calculated from 50, not from total number of Senators then serving in office. *Id.* The Court held that these five members of the Senate – hardly a majority – had legislative standing because they claimed that their votes had been diluted on the basis that the board member was confirmed by a majority based on 48 Senators serving, not 50. *Id.* at 1167.

In *Fumo v. City of Philadelphia*, 972 A.2d 487 (Pa. 2009), six members of the General Assembly sought review of the issuance of a license to construct a casino on the Delaware River in Philadelphia. *Id.* at 490-91. The Supreme Court held that these six members of the General Assembly—again, hardly a majority—had standing to challenge the issuance of the license because the General Assembly alone had the authority to issue the license. *Id.* at 491. In holding that the six legislators had standing, the Supreme Court of Pennsylvania ruled that “[t]he standing of a legislator [—singular—] or council member to bring a legal challenge has been recognized in limited instances ... to protect a legislator’s [—again, singular—] right to vote on legislation... [or] in actions alleging a diminution or deprivation of the legislator’s ... power or authority.” *Id.* at 501.

Accordingly, the Court held that the six legislators had standing because they sought:

[R]edress 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. at 502. Because the legislators' claim concerned the maintenance of their vote and authority, the legislators had standing. *See id.* The full General Assembly was not required.

Finally, in *Markham v. Wolf*, 136 A.3d 134 (Pa. 2016), the Supreme Court of Pennsylvania denied standing to 4 legislators, not because the entire General Assembly did not sue, but because the legislators' asserted injury did not impact their "ability to propose, vote on or enact legislation." *Id.* at 137, 145.

The key for obtaining legislative standing in Pennsylvania, therefore, has been (1) to demonstrate that the legislator who is intervening has suffered or will suffer a deprivation or diminution of authority or (2) to protect a legislator's right to vote. *See Fumo*, 972 A.2d at 501-02; *Markham*, 136 A.2d at 145. In neither the *quo warranto* cases nor the cases alleging a usurpation of authority has the Supreme Court of Pennsylvania or the Commonwealth Court required the presence or the authorization of the entire General Assembly to establish standing.

B. Proposed Intervenors Demonstrate That Petitioners' Requested Relief Will Diminish The Proposed Intervenors' Legislative Authority.

Petitioners mischaracterize the Senators' interest as simply "seeing laws implemented." Pets.' Opp.'n to Senators' App. to Intervene at 9. Petitioners repeat this error as the main premise for denying intervention because, according to Petitioners, the Senators are adequately represented by Respondents, *id.* at 14, and because granting intervention would unduly expand and duplicate litigation. *Id.* at 16.

Contrary to Petitioners' simplistic and incorrect formulation of Proposed Intervenors' interests in this litigation, Proposed Intervenors have asserted that the relief sought by Petitioners would usurp or otherwise interfere with the following four legal interests:

- The federal constitution's grant of authority in the Pennsylvania General Assembly to enact laws concerning the times, places, and manner of elections. U.S. Const. art. I, § 4. Senate Mem. In Support of App. for Intervention at ¶¶ 4, 6.
- The legislative power of the Pennsylvania General Assembly, a power granted to the General Assembly through Article Two, Section 1 of the Pennsylvania Constitution; Senate Mem. In Support of App for Intervention at ¶¶ 4.

- The Pennsylvania Constitution’s exclusive grant of authority to suspend laws in the Pennsylvania General Assembly, which would be usurped if enforcement of Act 77’s absentee ballot received-by deadline is suspended. Pa. Const. art. 1, §12. Senate Mem. In Support of App for Intervention at ¶¶ 4-5.
- The General Assembly’s power to appropriate funds, which would be undermined if Petitioners’ request for the Commonwealth to pay the postage to mail absentee and mail-in ballots is granted. Pa. Const. art. III, §24. Senate Mem. In Support of App for Intervention at ¶¶ 4-8.

Petitioners’ proposed relief will diminish the General Assembly’s four legal interests and, therefore, this Court should grant intervention. *See Allegheny Reprod. Health Ctr.*, 225 A.3d at 911-13.

When evaluating whether the General Assembly’s asserted interests satisfy Pa.R.C.P. 2327(4), this Court must not “confus[e] weakness on the merits with the absence of...standing.” *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2663 (2015). This is because the analysis here is dependent upon the source and nature of the interest asserted, not on the merits of the claim. *See id.* (quoting and citing *Warth v. Seldin*, 422 U.S. 490, 500 (1975)). Additionally, the threshold to satisfy Pa.R.C.P. 2327(4) is lower than the threshold to establish standing. *See Allegheny Reprod. Health Ctr.*, 225 A.3d at 902.

II. PETITIONERS' LAWSUIT DIMINISHES SEVERAL LEGAL INTERESTS OF THE GENERAL ASSEMBLY.

A. The U.S Constitution Grants Pennsylvania's General Assembly Wide Authority To Regulate And Administer Elections.

The U.S. Constitution vests Pennsylvania's legislature with the authority to enact laws concerning the "Times, Places, and Manner of holding Elections for Senators and Representatives." U.S. Const. art. I, § 4; *In re Nomination of Driscoll*, 847 A.2d 44, 45 n.1 (Pa. 2004) (stating that a candidate for federal office must "abide by the election procedures in the Pennsylvania Election Code" because, unless altered by Congress, Pennsylvania's General Assembly prescribes the Times, Places and Manner of holding Elections for Senators and Representatives). This federal constitutional grant of authority provides state legislatures with "a wide discretion in the formulation of a system for the choice by the people of representatives in Congress." *In re Nomination of Driscoll*, 847 A.2d at 45 n.1 (quoting *U.S. v. Classic*, 313 U.S. 299, 311 (1941)). In interpreting the Elections Clause's Times, Places, and Manner provision, the U.S. Supreme Court has ruled:

It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.

Smiley v. Holm, 285 U.S. 355, 366 (1932).

The Pennsylvania legislature is, therefore, empowered to craft legislation regulating the administration of elections, including deadlines. *See In re Nomination of Driscoll*, 847 A.2d at 45 n.1; *see also Corman v. Torres*, 287 F. Supp. 3d 558, 573 (M.D. Pa. 2018) (three-judge court) (“The Elections Clause, therefore, affirmatively grants rights to state legislatures...”) (citing *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2668 (2015)).

Vesting the political branches of government with authority over elections makes sense because elections are “inherently political.” *In re Guzzardi*, 99 A.3d 381, 385 (Pa. 2014). In advocating for the Elections Clause, the Founders vested the state legislatures with primary authority over elections, which allowed “state legislatures to use their localized knowledge to prescribe election regulations in the first instance.” *See Agre v. Wolf*, 284 F. Supp. 3d 591, 595 (E.D. Pa. 2018) (three-judge court) (Smith, J.) (citing *The Federalist No. 59* (Alexander Hamilton)). “This essential legislative governance fosters orderly, efficient, and fair proceedings.” *In re Guzzardi*, 99 A.3d at 385. Legislatively enacted deadlines “ensure the orderly functioning of the ... election timetable so that those responsible will have sufficient time” to both prepare the ballot before general elections and canvass the returns after the election. *See id.* Legislatively crafted and enacted deadlines, therefore, require stability, uniformity, and clarity. *See id.* Court orders impacting

legislatively enacted election deadlines risk ambiguity and inconsistency. *See id.* To avoid injecting instability and ambiguity into Pennsylvania’s elections calendar, this Court should use equity with restraint. *See id.* at 386; *see also Agre*, 284 F. Supp. 3d at 595 (“Notably, Hamilton made no reference to either state or federal courts when he identified only three ways that a discretionary power over elections could be reasonably modified and disposed.”) (internal quotation marks omitted).

Petitioners’ requested relief diminishes and encroaches on this federally granted investment of authority by creating instability in the carefully crafted administration of elections. *See* Pet. Prayer for Relief ¶¶ (b)(b). In enacting Act 77, the Legislature permitted all Pennsylvania voters to vote by mail, but chose not to disrupt the election-related deadlines by extending the received-by deadline beyond Election Day. 25 P.S. §§ 3146.6(c), 3150.16(c). Seeking to alter Act 77’s carefully crafted received-by deadline and asking this Court to rewrite the legislation to compel state officials to accept ballots after 8 pm on Election Day diminishes the General Assembly’s authority to enact a comprehensive elections code. *In re Nomination of Driscoll*, 847 A.2d at 45 n.1 (quoting *Classic*, 313 U.S. at 311); *see also Smiley*, 285 U.S. at 366.

Furthermore, the Petition demands that this Court permit third parties to assist in collecting absentee and mail-in ballots, *see* Pet. Prayer for Relief ¶¶ (b)(c), despite the legislature choosing to *prohibit* this action. 25 P.S. §§ 3146.6(a);

3150.16(a). This diminishes the authority of the General Assembly to enact rules that safeguard the integrity of Pennsylvania elections. *See Smiley*, 285 U.S. at 366. Thus, Petitioners' requested relief invites the Court to substitute its judgment for that of the General Assembly, thereby subverting the General Assembly's constitutionally vested prerogative to enact comprehensive election codes, a result the Framers of the Constitution sought to avoid. *See Agre*, 284 F. Supp. 3d at 595. Petitioners other requested relief similarly interferes with the General Assembly's vested right to enact a comprehensive election code. Pet. Prayer for Relief ¶¶ (b)(a, d),

Importantly, although *Va. House of Delegates v. Bethune-Hill* held that the relief plaintiffs sought did not impact the Virginia House of Delegates authority to redistrict because the district court there permitted the House to enact a revised redistricting plan, 139 S. Ct. 1945, 1954 (2019), Petitioners here are asking this Court to enact a revised election code by extending the received by deadline past Election Day, requiring the Commonwealth to pay for postage, and asking this Court to permit third parties to deliver ballots. Pet. Prayer for Relief ¶¶ (b)(a-c). Petitioners' claimed relief invades a right vested in the Pennsylvania General Assembly by the U.S. Constitution.

B. Petitioners' Requested Relief Encroaches Upon The General Assembly's Authority To Craft Legislation.

Art. 2, §1 of the Pennsylvania Constitution vests the legislative power of the Commonwealth in the General Assembly, which consists of the House and the Senate. Similarly, Pennsylvania's Constitution vests the General Assembly with the exclusive authority to suspend laws. *See* Pa. Const. art. I, § 12.

The legislative power is defined as the power to make, repeal, *and alter* laws. *See Mt. Lebanon v. County Bd. of Elections*, 368 A.2d 648, 649 (Pa. 1977). Courts may not encroach upon the legislature's prerogative. *See id.* This means that although courts have the power to interpret laws, they cannot exercise legislative power by altering laws. *See id.* at 649-50; *see Watson v. Witkin*, 22 A.2d 17, 23 (Pa. 1941) (“[T]he duty of courts is to interpret laws, not to make them.”); *Applewhite v. Commonwealth*, 330 M.D. 2012, 2014 Pa. Commw. Unpub. LEXIS 379, *39 (Pa. Commw. April 28, 2014) (upholding grant of injunctive relief and stating that a trial court does not have the power to rewrite laws). Therefore, “no branch [of the government] should exercise the functions exclusively committed to another branch.” *Council 13 v. Commonwealth*, 986 A.2d 63, 74 (Pa. 2009). Accordingly, absent compelling evidence, the judiciary must exercise restraint from interfering with the rights and duties that are constitutionally vested in the General Assembly. *See Larson v. Pa. Turnpike Comm'n*, 490 A.2d 827, 830 (Pa. 1985) (“The judiciary must restrain itself from interference with the more political

branches of government in the absence of compelling evidence, and must be particularly wary of imposing broad solutions which remove responsibility from those to whom our statutes have entrusted it, no matter how desirable or efficient that solution may seem.”).

Petitioners’ requested relief encroaches on the legislature’s authority to make, repeal, and alter the laws. Petitioners ask this Court to alter Act 77, which establishes that the county board must receive an absentee or mail-in ballot by 8 pm on Election Day for the ballot to be counted. 25 P.S. §§ 3146.6(c), 3150.16(c). Petitioners’ requested relief alters that legislatively enacted decision by demanding that the county boards count ballots received after Election Day. *See* Pet. Prayer for Relief ¶¶ (b)(b). Petitioners further request that this Court permit third parties to assist in collecting absentee and mail-in ballots and delivering them to county election offices, despite the General Assembly *prohibiting* that practice. Pet. Prayer for Relief ¶¶ (b)(c). Petitioners further demand that this Court compel the Commonwealth to pay for the postage on absentee and mail-in ballots. Pet. Prayer for Relief ¶¶ (b)(a). Petitioners, therefore, are inviting this Court to alter legislation, not interpret it. Accordingly, the legislature’s legal rights in making and altering law will be diminished if Petitioners’ requested relief is granted.

C. Petitioners’ Requested Relief Interferes With The General Assembly’s Authority To Appropriate Funds.

Pennsylvania’s Constitution prohibits the use of any funds from the state treasury unless the legislature authorizes the funds through appropriations. Pa. Const. art. III, § 24. This means that for the Commonwealth to spend money from its treasury, the “General Assembly’s budget appropriations are an essential prerequisite.” *Council 13 v. Commonwealth*, 986 A.2d 63, 67 (Pa. 2009). “That is, without such appropriations, state monies, for the most part, may not be spent.” *Id.* Accordingly, “[t]he amount of funds [the General Assembly] appropriates and the purposes for which those funds are dedicated is a matter of legislative discretion.” *Finn v. Rendell*, 990 A.2d 100, 105 (Pa. Commw. 2010). Accordingly, this Court has granted intervention to legislators in cases involving challenges to appropriations where the result in the litigation would “seek to eliminate the ability of legislators to add conditional or incidental language to a general appropriation act...”. *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Human Servs.*, 225 A.3d 902, 912 (Pa. Commw. 2020) (Leavitt, J.). This Court considered that result a diminution of power. *See id.* at 913.

Far more than attempting to eliminate the General Assembly’s ability to add conditional language to an appropriation, Petitioners here ask this Court to *compel* the expenditure of state funds for postage. Pet. Prayer for Relief ¶¶ (b)(a). Petitioners ask this Court to order this appropriation of funds without the

prerequisite legislative authorization. *See Council 13*, 986 A.2d at 67. Accordingly, a ruling in Petitioners' favor will necessarily affect the General Assembly's legal interest in protecting its right to pass budget bills and appropriate treasury funds in its discretion. This diminution of the General Assembly's authority under Article III, Section 24 of Pennsylvania's Constitution provides an additional basis for granting intervention.

III. THE PENNSYLVANIA SENATE AUTHORIZED INTERVENORS TO SPEAK ON ITS BEHALF IN THIS CASE.

Based on the interests asserted above, Proposed Intervenors have legislative standing. Furthermore, based on the analysis above, to obtain legislative standing, authorization from the entire General Assembly is not required. Rather, the key to obtaining legislative standing is that a legislator (1) has suffered or will suffer a deprivation or diminution of authority or (2) seeks to protect the legislator's right to vote. *See Fumo*, 972 A.2d at 501-02; *Markham*, 136 A.2d at 145.

Accordingly, because the General Assembly is acting together in defense of its duly enacted Election Code, Proposed Intervenors have enhanced their standing, not merely satisfied it. *See Ariz. State Legis*, 135 S. Ct. at 2664 (stating that the Arizona State Legislature had standing as an institutional plaintiff because both chambers authorized the lawsuit).

Senators Scarnati and Corman have been duly authorized to act in this matter by each of the members of the Senate Republican Caucus, which constitute

a majority of the Pennsylvania Senate as a whole. The proposal appointing Senators Scarnati and Corman was presented to the whole caucus, and no one objected. *Cf. Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, No. 13-1314, Joint Appendix at 26-27, 46 (U.S. Dec. 2, 2014) (official records of Arizona House and Senate voting to engage in the litigation).¹

To protect the General Assembly's asserted interests, the House and Senate will necessarily defend the constitutionality of the challenged statutes so as to avoid the remedy Petitioners seek.

Accordingly, the members of the Pennsylvania House and the members of the Pennsylvania Senate have authorized their respective chamber's participation in this litigation. As outlined in Section II, *supra*, the General Assembly is intervening to protect itself from institutional injury, namely, the diminishment of legislative power. Furthermore, the General Assembly, unlike the Virginia House of Representatives in *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1953 (2019), is intervening as the institution of the General Assembly. Proposed Intervenors unquestionably have standing. *See Ariz. State Legis.*, 135 S. Ct. at 2664.

Petitioners contend that the Senators represent only a subset of the General Assembly and, therefore, cannot represent the interests of the General Assembly as

¹ Available at <https://www.brennancenter.org/sites/default/files/legal-work/AZ%20Joint%20Appendix.pdf> (last visited May 20, 2020).

a whole, especially when the asserted interests are to defend the constitutionality of the statutes. Pets.' Opp'n to Senators' App. to Intervene at 10; Pets.' Answer to House App. to Intervene at 3. But Petitioners are unable to cite a single binding Pennsylvania Supreme or Commonwealth Court case for this proposition. And in any event, both chambers of the General Assembly authorized intervention in this case and have asserted constitutionally vested interests that Petitioners' requested relief threatens to diminish. The Petitioners' contentions to the contrary amount to nothing more than complaints about the form of intervention, not the substance.

Finally, Petitioners are unable to cite any case or provide evidence where "legislator intervention has ever unduly complicated the orderly process of a judicial proceeding." *Allegheny Reprod. Health Ctr.*, 225 A.3d at 913. Moreover, Respondents are not able to adequately represent the legislative interests that the House and Senate advance here, namely the legal interest in protecting the General Assembly's both federal and state constitutionally vested rights and duties. *See id.* (citing *Shapp v. Sloan*, 391 A.2d 595, 604 (Pa. 1978)). Therefore, the Proposed Intervenors clearly have legislative standing.

CONCLUSION

For the foregoing reasons, and those stated in their Application for Intervention, this Court should grant the Proposed Intervenors' Application or intervention.

Dated: May 22, 2020

Respectfully submitted,
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CERTIFICATION OF WORD COUNT

Pursuant to Rule 2135 of the Pennsylvania Rules of Appellate Procedure, I certify that this Memorandum of Law contains 5,302 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

/s/ Mathieu J. Shapiro

Dated: May 2, 2020

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/ Mathieu J. Shapiro

Dated: May 22, 2020