

<p>Michael Crossey, Dwayne Thomas, Irvin Weinreich, Brenda Weinreich, and the Pennsylvania Alliance for Retired Americans;</p> <p>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>Respondents,</p> <p>and</p> <p>Senator Joseph B. Scarnati III, President Pro Tempore; and Senator Jake Corman, Senate Majority Leader,</p> <p>Proposed Intervenor- Respondents.</p>	<p>IN THE SUPREME COURT OF PENNSYLVANIA</p> <p>No. 108-MM-2020</p>
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**AMENDED MOTION TO INTERVENE BY JOSEPH B. SCARNATI III,
PRESIDENT PRO TEMPORE, AND JAKE CORMAN, MAJORITY
LEADER OF THE PENNSYLVANIA SENATE**

Proposed Intervenors, Joseph B. Scarnati III, Pennsylvania Senate President Pro Tempore, and Jake Corman, Senate Majority Leader (collectively, “Applicants”), by and through the undersigned counsel, originally filed a motion to intervene in this case before it was transferred from the Commonwealth Court to the Supreme Court.

The motion to intervene was filed on May 11, 2020 under the docket number 266 MD 2020 and is presently before the Supreme Court as a result of the transfer. After the case was transferred, the petitioners were granted leave to file an amended petition for review. The amended petition for review was filed on July 13, 2020. In response to the amended petition, Senators Scarnati and Corman desire to amend their motion to intervene, including the preliminary objections they intend to file if intervention is granted. They respectfully renew their request to intervene as respondents in the above-captioned proceeding, pursuant to Rule 2327 of the Pennsylvania Rules of Civil Procedure.

Senators Scarnati and Corman have been duly authorized to act in this matter by each of the members of the Senate Republican Caucus, which constitutes a majority of the Senate as a whole.

In support of this amended motion, Applicants submit the accompanying Memorandum of Law. Additionally, Applicants submit their proposed Preliminary Objections as Exhibit A.

WHEREFORE, Applicants respectfully request that the Court GRANT this Amended Motion to Intervene and permit the Applicants to intervene as respondents in this proceeding.

Dated: July 29, 2020

Respectfully submitted,

Obermayer Rebmann Maxwell
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CERTIFICATE OF SERVICE

I, Richard Limburg, certify that on the date set forth below, I caused a true and correct copy of the Motion to Intervene by Senator Joseph B. Scarnati III and Senator Jake Corman to be served on counsel of record via the Court's electronic filing system as follows:

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EXHIBIT A

**Michael Crossey, Dwayne Thomas,
Irvin Weinreich, Brenda Weinreich,
and the Pennsylvania Alliance for
Retired Americans;**

Petitioners,

v.

**Kathy Boockvar, Secretary of the
Commonwealth; and Jessica Mathis,
Director of the Bureau of Election
Services and Notaries;**

Respondents,

and

**Senator Joseph B. Scarnati III,
President Pro Tempore; and
Senator Jake Corman, Senate
Majority Leader;**

**Proposed Intervenor-
Respondents.**

**IN THE SUPREME COURT OF
PENNSYLVANIA**

No. 108-MM-2020

**PRELIMINARY OBJECTIONS OF INTERVENOR-RESPONDENTS,
JOSEPH B. SCARNATI III, PRESIDENT PRO TEMPORE, AND JAKE
CORMAN, MAJORITY LEADER OF THE PENNSYLVANIA SENATE**

Pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(1), (a)(2), (a)(3),
and (a)(5), Intervenor-Respondents, Joseph B. Scarnati III, Pennsylvania Senate

President Pro Tempore, and Jake Corman, Senate Majority Leader,¹ by and through the undersigned counsel, hereby file these Preliminary Objections to the Amended Petition for Review:

PROCEDURAL HISTORY AND FACTUAL ALLEGATIONS

1. Petitioners commenced this case in the Commonwealth Court as an original jurisdiction matter. By order dated June 17, 2020, the case was transferred from the Commonwealth Court to the Supreme Court.

2. Pursuant to Pennsylvania Rule of Appellate Procedure 106, the practice and procedures relating to original jurisdiction matters are to be in accordance with the Pennsylvania Rules of Civil Procedure.

3. Pa.R.C.P. 1028(a)(1) authorizes a party to file a preliminary objection for lack of subject matter jurisdiction.

4. Petitioners seek to have this court issue an Order that would extend the statutorily defined Election Day deadline for receipt of mail-in ballots by an additional seven days if such ballots are postmarked by Election Day, which would provide postal service marks as the standard for what is to be counted; permit voters to designate third parties to submit their mail-in ballots (so-called “ballot harvesting”); and require the state to provide prepaid postage for all mail-in ballots.

¹ Senators Scarnati and Corman have been duly authorized to act in this matter by each of the members of the Senate Republican Caucus, which constitutes a majority of the Senate as a whole.

Am. Pet. ¶ 8. Petitioners allege that Pennsylvania’s failure to implement the above procedures denies them the rights guaranteed under the Pennsylvania Constitution’s Free and Equal Elections clause, Art. I, § 5, and Equal Protection provisions. Art. I, §§ 1, 26.

5. Petitioners include an organization, the Pennsylvania Alliance for Retired Americans (“the Alliance”), which states, *inter alia*, that it is a non-profit organization with allegedly 335,389 members that “will be forced to divert resources from its ongoing mission and programs to educate and assist them to exercise their vote safely.” Am. Pet. ¶ 16.

6. Petitioners sued only the Secretary of State and the Director of the Bureau of Election Services and Notaries in their official capacities.

7. The provisions concerning mail-in ballots were added to the election code by the Act of Oct. 31, 2019, P.L. 552, No. 77 (“Act 77”).

**FIRST PRELIMINARY OBJECTION
PURSUANT TO PA.R.C.P. 1028(a)(1) – LACK OF SUBJECT MATTER
JURISDICTION FOR LACK OF RIPENESS**

8. Intervenor-Respondents incorporate paragraphs 1-7, above.

9. Ripeness is “focused on arguments that the interest asserted by the petitioner is speculative, not concrete, or would require the court to offer an advisory opinion.”

Robinson Twp. v. Commonwealth, 83 A.3d 901, 917 (Pa. 2013).

10. Petitioners’ contentions respecting the impact of COVID-19 on future elections are speculative and not sufficiently concrete to give the Court jurisdiction.

11. This is repeatedly demonstrated throughout the amended petition. Petitioners allege that difficulties during the primary were “only a glimpse of what is *likely to come*”; “[p]ublic health experts *expect* the pandemic . . . to extend well into the fall” and “*could* come in multiple waves”; “[t]here is no reason to *believe* that county election operations will fare any better in the November general election”; and “[t]here is also no indication that USPS delays are *likely to improve*.” *See, e.g.,* Am. Pet. ¶¶ 3, 21, 51, 54. Hypothetical future events are not sufficient to make a claim ripe for judicial determination.²

12. The Pennsylvania General Assembly is actively monitoring the situation and has commissioned a report specifically for the purpose of recommending modifications to the election code should they be necessary before the November general election. *See* Act of Jun. 17, 2020, P.L. 259, No. 35 (“Act 35”). The Report required from the Department of State is due in early August, at which time the General Assembly will determine, through the legislative process, what procedures,

² All of Petitioners’ claims are premised on the danger of COVID-19. However, COVID-19 is not something that is attributable to the Commonwealth. Each claim brought by Petitioners requires some action of *the state* to be the cause of their alleged harms. *See, e.g.,* Pa. Const. Art. I, § 5 (“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.” (emphasis added)); Pa. Const. Art. I, § 26 (“Neither the *Commonwealth nor any political subdivision thereof* shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” (emphasis added)). No civil power, including the Commonwealth, is burdening the rights of voters; instead, it is the presence of a novel virus that is complicating the conduct of elections.

if any, are warranted for the November elections. In addition, the Senate already held a hearing on July 23, 2020, to consider possible legislative changes for the November general election, at which the committee heard from, among others, the Secretary Boockvar and several county election officials.

13. Because Petitioners' forecast regarding the severity of the pandemic in the fall is purely speculative, and because the General Assembly has a mechanism in place to modify election procedures through the legislative process when and if necessary, this case should be dismissed.³

14. Therefore, since the Petitioners' claims are not ripe, meaning the Court lacks subject matter jurisdiction to consider the amended petition, the amended petition should be dismissed, consistent with this Court's dismissal of *Disability Rights Pa. v. Boockvar*⁴ for being speculative and failing to allege a constitutional injury.

**SECOND PRELIMINARY OBJECTION
PURSUANT TO PA.R.C.P. 1028(a)(1) – LACK OF SUBJECT MATTER
JURISDICTION FOR LACK OF INDISPENSABLE PARTIES**

15. Intervenor-Respondents incorporate paragraphs 1-14, above.

³ Because Petitioners seek a declaration that certain election provisions relating to mail-in ballot applications burden the right to vote in violation of Art. I, § 5 of the Pennsylvania Constitution, Intervenor-Respondents wish to be heard on the question of whether, under the terms of the non-severability provision at § 11 of Act 77, such a declaration and injunction would void the entire Act and deprive voters of the ability to vote by mail-in ballot.

⁴ 2020 Pa. LEXIS 2751 (Pa. 2020).

16. Pennsylvania courts lack jurisdiction when an indispensable party is not joined in the litigation. Pa.R.Civ.P. 1032(b).

17. An indispensable party is one whose “rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.” *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 581 (Pa. 2003).

18. In declaratory judgment actions, public officers charged with enforcing a challenged statute are indispensable. *See id.* at 583.

19. The County Boards of Elections (“Boards”) pay for the primary and general elections. 25 Pa. Stat. Ann. § 2645.

20. The Boards issue, receive, and store absentee and mail-in ballots. *Id.* §§ 3146.2b, 3146.6(c), 3146.8, 3150.12b, 3150.15, 3150.16(c).

21. The Boards receive, manually review, and process the applications for absentee ballots and mail-in ballot request forms. *Id.* §§ 3146.2a(a.3), 3150.12b.

22. The Boards also determine whether an applicant is eligible for an absentee or a mail-in ballot, *id.* §§ 3146.2a(a.3)(1)-(3); 3150.12b(a), and if requests for absentee or mail-in ballots are timely received. *Id.* § 3146.2a(a).

23. Petitioners repeatedly level accusations against the Boards regarding their activities and failures in administering the primary election. *See, e.g.*, Am. Pet. ¶¶ 30 (Delaware fell behind in processing mail-in ballot requests), 34-35 (counties offered fewer voting sites by consolidating polling locations), 42 (numerous counties

signaled they were unable to conduct in-person voting); *see also generally* Am. Pet. ¶ 41 (approvingly discussing what some Boards did on their own in response to COVID-19).

24. All of Petitioners’ claims impact the Boards to varying degrees and will require them to modify their procedures or expend funds in ways that the Secretary of State has no authority to order under Pennsylvania law. Therefore, if the Petitioners are to be afforded statewide relief, all of the Boards must be made parties to this action.

Therefore, because Petitioners failed to join indispensable parties—*i.e.*, the Boards—in this litigation, meaning the Court lacks subject matter jurisdiction to consider the amended petition and to grant relief against the parties before it, the amended petition should be dismissed.

**THIRD PRELIMINARY OBJECTION
PURSUANT TO PA.R.C.P. 1028(a)(1) – LACK OF SUBJECT MATTER
JURISDICTION FOR NON-JUSTICIABLE POLITICAL QUESTION**

25. Intervenor-Respondents incorporate paragraphs 1-25, above.

26. The political question doctrine is derived from separation of powers, which is “[a] basic precept of our form of government . . . that the executive, legislature and the judiciary are independent co-equal branches of government.” *Sweeney v. Tucker*, 375 A.2d 698, 705 (Pa. 1977).

27. Petitioners' claims and requested relief are related to how the Commonwealth has responded, or will continue to respond, to COVID-19.

28. The Pennsylvania Supreme Court has largely adopted the political question doctrine from the Supreme Court of the United States, including the factors outlined in *Baker v. Carr*, 369 U.S. 186 (1962). See *Sweeney v. Tucker*, 375 A.2d 698, 705-07 (Pa. 1977).

29. Three different *Baker* elements are implicated by Petitioners' claims: (1) "a textually demonstrable constitutional commitment of the issue to a coordinate political department"; (2) "a lack of judicially discoverable and manageable standards for resolving it"; and (3) "the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion." See *id.* at 706.

30. As noted above, Art. I, § 4 of the United States Constitution commits to state legislatures and Congress the authority to determine the times, places, and manner of holding federal elections. Thus, under the Constitution, the General Assembly is given the primary responsibility for making election-related laws in Pennsylvania.

31. Moreover, there exist no judicially manageable standards for determining the "fairest" and most effective procedures and methodologies that the Commonwealth must implement to address a fast-moving and continuously evolving pandemic that has impacted the entire nation.

32. Finally, developing policy responses to address an emergency like a nationwide pandemic is a quintessentially legislative responsibility, one that is outside judicial expertise to make.

33. Fundamentally, the judiciary is not the proper body to micromanage the Commonwealth's election procedures.

34. Therefore, because policy determinations regarding modifying election procedures in response to COVID-19 is a non-justiciable political question, meaning the Court lacks subject matter jurisdiction to consider the amended petition, the amended petition should be dismissed.

**FOURTH PRELIMINARY OBJECTION
PURSUANT TO PA.R.C.P. 1028(a)(2) – THE PETITION’S FAILURE TO
CONFORM TO LAW**

35. Intervenor-Respondents incorporate paragraphs 1-35, above.

36. Petitioners' requested order for the Commonwealth to provide prepaid postage for all mail-in ballots would require the Commonwealth to subsidize this expenditure. Such relief would be contrary to Art. III, § 24 of the Pennsylvania Constitution, which provides that “no money shall be paid out of the treasury except on appropriations made by law” by the General Assembly. Pa. Const. Art. III, § 24.

37. Petitioners' requested order also seeks to re-write large portions of the election code or even to create new standards out of whole cloth. This is contrary to Art. I, § 12 of the Pennsylvania Constitution, which states that “no power of

suspending laws shall be exercised unless by the legislature”; Art. 2, § 1 of the Pennsylvania Constitution, which vests the legislative power of the Commonwealth in the General Assembly; and Art. I, § 4 of the United States Constitution, which reserves to state legislatures and Congress the power of determining the times, places, and manner of holding elections for Senators and Representatives to Congress.

38. Accordingly, because the Petitioners’ requested relief would contravene the Pennsylvania Constitution, the amended petition should be dismissed.

**FIFTH PRELIMINARY OBJECTION
PURSUANT TO PA.R.C.P. 1028(a)(3) – INSUFFICIENT SPECIFICITY**

39. Intervenor-Respondents incorporate paragraphs 1-39, above.

40. Although Petitioners seek statewide relief, it is not clear whether the alleged deficiencies about which Petitioners complain are present in every county, and if so, to what extent they are present. Nor is it at all apparent exactly who is affected by the alleged deficiencies, and in what way. The amended petition is therefore insufficiently specific.

41. The pertinent question under Rule 1028(a)(3) is “whether the complaint is sufficiently clear to enable the defendant to prepare his defense,” or “whether the plaintiff’s complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense.” *Beinlich v. Conagra Foods*, 2016 Pa. Dist. & Cnty. Dec. LEXIS 60 at *12-*13 (Northumberland 2016) (citing *Rambo v.*

Greene, 906 A.2d 1232, 1236 (Pa.Super. 2006)) (holding that the complaint at issue was insufficiently specific). Under Pa.R.Civ.P. 1019(a), “[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form.” In addition, “[a]verments of time, place and items of special damage” must be “specifically stated.” Pa.R.Civ.P. 1019(f). See *Soeder v. Savitz*, 2013 Pa. Dist. & Cnty. Dec. LEXIS 19696 at *14-*15 (Allegheny 2013) (holding that the complaint was insufficiently specific); *PNC Bank v. Duraney*, 2015 Pa. Dist. & Cnty. Dec. LEXIS 19420 (Allegheny 2015) (holding that the complaint was insufficiently specific); *Kistler v. Wells Fargo Bank*, 2017 Pa. Super. Unpub. Lexis 3914 (Pa. Super. Oct. 2017) (order dismissing complaint for insufficient specificity was sustained on appeal) (non-precedential); *Bassaró v. de Levie*, 2020 Pa. Super. Unpub. LEXIS 1129 at *7-*11 (Pa. Super. Apr. 2020) (order dismissing complaint for insufficient specificity was sustained on appeal) (non-precedential).

42. Because Pennsylvania is a fact-pleading jurisdiction, a cause of action must not only give the party against whom the claim is asserted notice of what the pleader's claim is and the grounds upon which it rests, but must also summarize the facts essential to support the claim. See, e.g., *Youndt v. First Nat'l Bank of Port Allegany*, 868 A.2d 539, 544 (Pa. Super. 2005).

43. Allegations lacking the required specificity include the following:

- Paragraphs 11, 13, 14, and 15: Petitioners argue they are “concerned that the delays in mail-in ballot application processing and U.S. Postal Service delivery will disenfranchise [them] in the general election, or at the very least, will require [them] to submit [their] ballot[s] well before Election Day,” even though the November general election is still over three months away, the conditions that will prevail at that time are unknown at present, and none of Petitioners claim their mail-in ballots during the primary election were not received and counted.
- Paragraph 31: Petitioners allege that “[t]ens of thousands of mail-in ballots for which voters had timely applied were not delivered to voters’ homes until the week *after* the primary,” but provide no source of information for this claim nor specific breakdowns of where this happened and to whom.
- Paragraph 37: Petitioners claim that voting in overcrowded polling places is dangerous, but do not identify any voters who contracted COVID-19 as a result of voting in-person in allegedly overcrowded polling places during the primaries conducted in the state.
- Paragraphs 63-64: Petitioners allege that prohibiting third parties from collecting and delivering ballots imposes hardships on voters similarly situated to some of the Petitioners, but provide no information indicating

that third-party assistance would be likely to result in ballot delivery that is timelier and equally reliable and secure as USPS service. Petitioners also do not address the COVID-19 transmission risks presented by interactions with third parties outside of environments covered by guidelines issued by the Centers for Disease Control and Prevention (CDC).

- Paragraphs 66-68: Petitioners allege that requiring voters to provide postage would impose an economic hardship on some voters or increase the risk of contracting COVID-19 if voters had to go to a post office to buy stamps. Yet Petitioners provide no specific information about the number of voters who might not be able to afford to purchase stamps or who would be unwilling to travel to a post office because of COVID-19 risks.

44. Although Petitioners are only required to plead material facts and not evidence, the gaps in the amended petition for review make it impossible to know if the potential hardships identified by Petitioners are due to the Commonwealth's election laws or are caused by other reasons and, therefore, whether the constitutional challenge is as applied in certain counties or facially across the whole Commonwealth.

45. Finally, the future course of the pandemic is a matter of speculation, and in particular, it is unknown whether the conditions in the fall will be better than, worse than, or about the same as those under which the primaries were conducted.

46. Accordingly, because the amended petition lacks sufficient specificity, it should be dismissed.

**SIXTH PRELIMINARY OBJECTION
PURSUANT TO PA.R.C.P. 1028(a)(5) – LACK OF CAPACITY TO SUE**

47. Intervenor-Respondents incorporate paragraphs 1-47, above.

48. The Alliance lacks standing to sue in this case because the right to vote and the right to have one's vote counted are at issue, and the Alliance is not an entity authorized to vote in the Commonwealth.

49. To establish standing, a plaintiff must “have a direct interest in the subject-matter of the particular litigation.” *See Albert v. 2001 Legislative Reapportionment Comm’n*, 790 A.2d 989, 994 (Pa. 2002) (quoting *William Penn Parking Garage, Inc. v. Pittsburgh*, 346 A.2d 269 (Pa. 1975)).

50. In general, an association “has standing as representative of its members to bring a cause of action, even in the absence of injury to itself, if the association alleges that at least one of its members is suffering immediate or threatened injury as a result of the action challenged.” *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 917 (Pa. 2013) (quoting *Phila. Med. Soc’y v. Dep’t of Pub. Welfare*, 39 A.3d 267, 278 (Pa. 2012)).

51. Nevertheless, Pennsylvania courts have repeatedly and recently held that an association *does not* have standing, even on behalf of its members, when the right to vote and the right to have one’s vote counted is the subject of the challenge. Order ¶ 4, *League of Women Voters of Pa. v. Commonwealth*, No. 261 M.D. 2017 (Pa. Commw. Ct. filed Nov. 13, 2017) (dismissing the League of Women Voters of Pennsylvania because it was not authorized by law to exercise the right to vote in the Commonwealth); *Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002); *Albert*, 790 A.2d at 994–95.

52. “[T]he right to vote is personal,” and the rights sought to be vindicated in a challenge like the instant one are “personal and individual.” *Albert*, 790 A.2d at 995 (quoting *Reynolds v. Sims*, 377 U.S. 533, 554–55 (1964)); *see also Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (holding that “a person’s right to vote is individual and personal in nature,” and therefore, that “voters who allege facts showing disadvantage to themselves as individuals have standing to sue to remedy that disadvantage”) (internal quotations omitted).

53. When “the right to vote and the right to have one’s vote counted is the subject matter of a . . . challenge,” then “any entity not authorized by law to exercise the right to vote in this Commonwealth lacks standing.” *Albert*, 790 A.2d at 994–95; *see also Erfer*, 794 A.2d at 330 (dismissing the Pennsylvania State Democratic Committee).

54. In other words, an entity not authorized by law to exercise the right to vote in the Commonwealth *does not* have a direct, substantial, and immediate interest in litigation over the right to vote and the right to have one’s vote counted.

55. The standing decisions in *Albert* and *Erfer* are not limited to gerrymandering challenges.

56. Rather, the determinative factor regarding standing in those cases was that the petitioners sought to vindicate “the right to vote and the right to have one’s vote counted.” *Erfer*, 794 A.2d at 330; *Albert*, 790 A.2d at 994–95.

57. There is no allegation that the Alliance is an entity authorized by law to vote in the Commonwealth. *See Erfer*, 794 A.2d at 330; *Albert*, 790 A.2d at 994-95.

58. The subject matter in this case—mail-in balloting procedures—involves an “individual’s right to vote and to have that vote counted.” *Id.*

59. Because “[t]he right to vote is personal,” *Albert*, 790 A.2d at 995 (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964) (internal citations omitted)), that right inheres in individuals, not organizations. *See id.* (“[A]ny entity not authorized by law to exercise the right to vote in this Commonwealth lacks standing to challenge the reapportionment plan.”).

60. Therefore, the Alliance, as an organization without voting rights, does not have a direct interest at stake in this litigation and should thus be dismissed from this lawsuit. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 n. 3

(Pa. 2018) (noting that the Commonwealth Court dismissed the League of Women Voters from the case because, as an organization without the right to vote, it lacked standing).

61. Relatedly, and as set forth *supra*, the Alliance failed to include indispensable parties. Besides being an independently sufficient reason to sustain the Preliminary Objections, the failure to include indispensable parties also demonstrates the Alliance’s lack of standing. Many of Petitioners’ allegations are specific to the Boards. *See, e.g.*, Am. Pet. ¶¶ 30, 34-35, 42 (allegations regarding the County Boards of Elections). Accordingly, a ruling against the Commonwealth of Pennsylvania would impact the rights of the county election officials; therefore, they should be present before this Court to represent their rights. Pa.R.Civ.P. 1032(b); *see Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 346 A.2d 788, 789 (Pa. 1975); *Powell v. Shepard*, 113 A.2d 261, 264–65 (Pa. 1955).

62. Also, a ruling against the named parties will not afford complete relief to the Petitioners as the named Respondents are unable to provide what Petitioners seek. *See* Pa.R.C.P. 1028(a)(8) (allowing a Preliminary Objection for the lack of “full, complete and adequate non-statutory remedy at law”); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (“[T]here must be a causal connection between the injury and the conduct complained of—the injury has to be fairly . . . traceable to the challenged action of the defendant, and not . . . the result of independent action of

some third party not before the court. . . . [Also,] it must be likely . . . that the injury will be redressed by a favorable decision.”) (internal quotations, citations, and alterations omitted)); *Fumo v. City of Philadelphia*, 972 A.2d 487, 500 n.5 (Pa. 2009) (noting that “federal decisions on standing [are] helpful.”).

63. Therefore, for the aforementioned reasons, the Alliance lacks standing to sue.

WHEREFORE, for the reasons stated above, Intervenor-Respondents respectfully request that this Honorable Court enter an order establishing a schedule for briefing by the parties on these Preliminary Objections and setting a date for oral argument; and thereafter grant the Preliminary Objections of Intervenor-Respondents on the basis of Pa.R.C.P. 1028(a)(1) and dismiss this action in its entirety.

Dated: July XX, 2020	Respectfully submitted, Obermayer Rebmann Maxwell & Hippel LLP By: _____ Lawrence J. Tabas (ID No. 27815) Mathieu J. Shapiro (ID No. 76266) Richard Limburg (ID No. 39598) Centre Square West 1515 Market St., Suite 3400 Philadelphia, PA 19102 <i>Attorneys for Senators Joseph B. Scarnati III and Jake Corman</i> Holtzman Vogel Josefiak Torchinsky PLLC By: _____
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CERTIFICATE OF SERVICE

I, , certify that on the date set forth below, I caused a true and correct copy of the Preliminary Objections of Joseph B. Scarnati III and Jake Corman to be served on counsel of record via email, as follows:

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