

**IN THE  
COMMONWEALTH COURT OF PENNSYLVANIA**

---

TOM WOLF, GOVERNOR OF THE	:	No. 482 MD 2022
COMMONWEALTH OF PENNSYLVANIA,	:	
AND LEIGH M. CHAPMAN, ACTING	:	
SECRETARY OF THE COMMONWEALTH	:	
OF PENNSYLVANIA,	:	
	:	
<i>Petitioners</i>	:	
	:	
v.	:	
	:	
GENERAL ASSEMBLY OF THE	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
<i>Respondent</i>	:	

**MEMORANDUM OF LAW OF INTERVENORS  
REPRESENTATIVE KERRY A. BENNINGHOFF, MAJORITY LEADER  
OF THE PENNSYLVANIA HOUSE, AND THE PENNSYLVANIA HOUSE  
REPUBLICAN CAUCUS IN OPPOSITION TO PETITIONERS’  
APPLICATION FOR SUMMARY RELIEF AND IN REPLY  
IN FURTHER SUPPORT OF THEIR PRELIMINARY OBJECTIONS  
TO THE PETITION FOR REVIEW**

---

**LAMB McERLANE PC**

Joel L. Frank (I.D. No. 46601)  
John J. Cunningham, IV (I.D. No. 70975)  
Scot R. Withers (I.D. No. 84309)  
24 E. Market Street, Box 565  
West Chester, PA 19381-0565  
610-430-8000

*Counsel to Intervenors House Majority Leader Kerry A. Benninghoff  
and the Pennsylvania House Republican Caucus*

**TABLE OF CONTENTS**

TABLE OF CITATIONS ..... iii

I. STATEMENT OF THE QUESTIONS INVOLVED ..... 1

II. STATEMENT OF THE CASE ..... 2

III. SUMMARY OF ARGUMENT ..... 5

IV. ARGUMENT ..... 7

    A. THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE PETITIONERS LACK STANDING AND CAPACITY TO SUE UNDER Pa.R.C.P. NO. 1028(A)(5) ..... 7

        1. Lack of Capacity to Sue ..... 8

        2. Lack of Standing ..... 12

    B. THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE ALL COUNTS OF THE PETITION FOR REVIEW ARE LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4) FOR LACK OF AN ACTUAL CASE OR CONTROVERSY ..... 15

    C. THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE COUNT I OF THE PETITION FOR REVIEW IS LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4) ..... 19

D.	THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE COUNT II OF THE PETITION FOR REVIEW IS LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4) .....	21
E.	THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE COUNT III OF THE PETITION FOR REVIEW IS LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4) .....	23
F.	THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE COUNT IV OF THE PETITION FOR REVIEW IS LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4) .....	25
G.	THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE COUNT V OF THE PETITION FOR REVIEW IS LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4) .....	27
H.	THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE ALL COUNTS OF THE PETITION FOR REVIEW SHOULD BE DISMISSED FOR LEGAL INSUFFICIENCY OF A NON-JUSTICIABLE POLITICAL QUESTION UNDER Pa.R.C.P. NO. 1028(a)(4), OR, IN THE ALTERNATIVE, FOR LACK OF JURISDICTION OVER A NON-JUSTICIABLE POLITICAL QUESTION UNDER Pa.R.C.P. NO. 1028(a)(1) .....	28
V.	CONCLUSION.....	30

## TABLE OF CITATIONS

### Cases

<i>Allen v. Pennsylvania Bd. of Prob. and Parole</i> , 207 A.3d 981 (Pa. Cmwlth. 2019).....	7
<i>Bayada Nurses, Inc. v. Com., Dept. of Lab. and Indus.</i> , 8 A.3d 866 (Pa. 2010).....	16
<i>Bergdoll v. Cmwlth.</i> , 858 A.2d 185 (Pa. Cmwlth. 2004).....	23
<i>Bergdoll v. Kane</i> , 731 A.2d 1261 (Pa. 1999).....	13, 19
<i>Cmwlth. ex rel. Atty. Gen. v. Griest</i> , 46 A. 505 (Pa. 1900) .....	8, 9, 11
<i>Cmwlth. v. Stern</i> , 701 A.2d 568 (Pa. 1997) .....	28
<i>Com. Cause/Pa. v. Com.</i> , 710 A.2d 108 (Pa. Cmwlth. 1998), <i>aff'd</i> , 757 A.2d 367 (Pa. 2000) .....	29
<i>Commonwealth ex rel. Corbett v. Desiderio</i> , 698 A.2d 134 (Pa. Cmwlth. 1997).....	12
<i>Commonwealth v. Greist</i> , 46 A. 505 (Pa. 1900).....	8
<i>Commonwealth v. Pennsylvania State University</i> , 317 A.2d 661 (Pa. Cmwlth. 1974).....	12
<i>Commonwealth v. Tharp</i> , 754 A.2d 1251 (Pa. 2000) .....	10
<i>Costa v. Cortes</i> , 143 A.3d 430 (Pa. Cmwlth. 2016) .....	11, 21, 28
<i>Cty. of Allegheny Dep. Sheriff's Ass'n v. Cty. of Allegheny</i> , 730 A.2d 1065 (Pa. Cmwlth. 1999).....	14
<i>Deer Creek Drainage Basin Auth. v. County Bd. of Elections</i> , 381 A.2d 103 (Pa. 1977).....	18

<i>Doe v. Johns-Manville Corp.</i> , 471 A.2d 1252, 1254 (Pa. Super. 1984).....	12
<i>Fogarty v. Hemlock Farms Community Ass’n, Inc.</i> , 685 A.2d 241 (Pa. Cmwlt. 1996).....	17
<i>Gardner v. Com., Dept. of Envtl. Resources</i> , 658 A.2d 440 (Pa. Cmwlt. 1995).....	17
<i>Gondelman v. Cmwlt.</i> , 550 A.2d 814 (Pa. Cmwlt. 1988).....	24
<i>Gondelman v. Commonwealth</i> , 554 A.2d 896 (Pa. 1989).....	10, 24
<i>Grimaud v. Cmwlt.</i> , 865 A.2d 835 (Pa. 2005).....	19, 27, 28
<i>Hamilton v. Johnson</i> , 141 A. 846 (Pa. 1928).....	14
<i>In re Admin. Or. No. 1-MD-2003</i> , 936 A.2d 1 (Pa. 2007).....	13, 14
<i>In re: Straus’s Estate</i> , 161 A. 547 (Pa. 1932).....	15
<i>Kremer v. Grant</i> , 606 A.2d 433 (Pa. 1992).....	10
<i>Lawless v. Jubelirer</i> , 789 A.2d 820 (Pa. Cmwlt. 2002).....	13
<i>League of Women Voters of Pa. v. DeGraffenreid</i> , 265 A.3d 207 (Pa. 2021).....	19, 22
<i>MacDonald, Sommer &amp; Frates v. Cty. of Yolo</i> , 477 U.S. 340 (1986).....	17
<i>Mellow v. Pizzingrilli</i> , 800 A.2d 350 (Pa. Cmwlt. 2002).....	10, 21, 28
<i>Misitis v. Steel City Piping Co.</i> , 272 A.2d 883 (Pa. 1971).....	18
<i>Northwestern Youth Servs., Inc. v. Commonwealth, Dep’t. of Welfare</i> , 1 A.3d 988 (Pa. Cmwlt. 2010).....	7
<i>Pa. Prison Soc. v. Cmwlt.</i> , 776 A.2d 971 (Pa. 2001).....	19, 20
<i>Pennsylvania Gaming Control Bd. v. City Council</i> , 928 A.2d 1255 (Pa. 2007).....	18

<i>Pennsylvania Prison Soc’y v. Commonwealth</i> , 776 A.2d 971 (Pa. 2001).....	8
<i>Pinunti v. Commonwealth, Dep’t of Labor &amp; Indus.</i> , 900 A.2d 1017 (Pa. Cmwlt. 2006),.....	13
<i>Pittsburgh Palisades Park, LLC v. Commonwealth</i> , 888 A.2d 655 (Pa. 2005).....	18
<i>Shaffer-Doan ex rel. Doan v. Com., Dept. of Pub. Welfare</i> , 960 A.2d 500 (Pa. Cmwlt. 2008).....	12
<i>Sprague v. Cortes</i> , 145 A.3d 1136 (Pa. 2016) .....	19
<i>Stander v. Kelley</i> , 250 A.2d 474 (Pa. 1969) .....	19
<i>Wm. Penn Parking Garage, Inc. v. City of Pittsburgh</i> , 346 A.2d 269 (Pa. 1975).....	13
<i>Zauflik v. Pennsbury Sch. Dist.</i> , 104 A.3d 1096 (Pa. 2014) .....	20

**Constitutional Provisions**

PA. CONST. art. I, § 2 .....	23
PA. CONST. art. I, § 30 .....	21, 23
PA. CONST. art. III .....	10
PA. CONST. art. VII, § 1.....	25, 26
PA. CONST. art. XI, § 1 .....	<i>passim</i>
PA. CONST. art. XI, § 1 .....	<i>passim</i>
U.S. CONST. art. VI, cl. 2 (“Supremacy Clause”).....	26
U.S. CONST. 26 <sup>th</sup> Amendment .....	26

**Statutes**

25 P.S. § 2621 .....9

71 P.S. § 243 .....9

71 P.S. § 273 .....9

71 P.S. § 801 .....9

42 Pa.C.S. §§ 7531-7541 .....2

**Rules**

Pa.R.A.P. 1532 .....2, 7

Pa.R.C.P. No. 1028 ..... 1, 12

**Other Authorities**

Robert E. Woodside, *Pennsylvania Constitutional Law* 9 (Murrelle Printing  
Company, Inc. 1985) ..... 8, 10

## **I. STATEMENT OF THE QUESTIONS INVOLVED**

1. Whether the Application for Summary Relief should be denied and House Intervenors' Preliminary Objections sustained because Petitioners lack standing and capacity to sue under Pa.R.C.P. No. 1028(a)(5)?
2. Whether the Application for Summary Relief should be denied and House Intervenors' Preliminary Objections sustained because the claims set forth in the Petition for Review are legally insufficient under Pa.R.C.P. No. 1028(a)(4) for lack of an actual case and controversy?
3. Whether the Application for Summary Relief based on Count I of the Petition for Review should be denied and House Intervenors' Preliminary Objections sustained because the Petition is legally insufficient under Pa.R.C.P. No. 1028(a)(4)?
4. Whether the Application for Summary Relief based on Count II of the Petition for Review should be denied and House Intervenors' Preliminary Objections sustained because the Petition is legally insufficient under Pa.R.C.P. No. 1028(a)(4)?
5. Whether the Application for Summary Relief based on Count III of the Petition for Review should be denied and House Intervenors' Preliminary Objections sustained because the Petition is legally insufficient under Pa.R.C.P. No. 1028(a)(4)?
6. Whether the Application for Summary Relief based on Count IV of the Petition for Review should be denied and House Intervenors' Preliminary Objections sustained because the Petition is legally insufficient under Pa.R.C.P. No. 1028(a)(4)?
7. Whether the Application for Summary Relief based on Count V of the Petition for Review should be denied and House Intervenors' Preliminary Objections sustained because the Petition is legally insufficient under Pa.R.C.P. No. 1028(a)(4)?

8. Whether the Application for Summary Relief should be denied and House Intervenors' Preliminary Objections sustained for legal insufficiency of a non-justiciable political question under Pa.R.C.P. No. 1028(a)(4), or, in the alternative, for lack of jurisdiction over a non-justiciable political question under Pa.R.C.P. No. 1028(a)(1)?

## **II. STATEMENT OF THE CASE**

The General Assembly, acting pursuant to its powers under Article XI, Section 1 of the Pennsylvania Constitution, voted by a majority in both the Pennsylvania House and Senate to pass Senate Bill 106 (“SB 106”), a joint resolution proposing several constitutional amendments for ultimate consideration by the citizens of the Commonwealth of Pennsylvania.

On September 23, 2022, Governor Wolf and Acting Secretary of the Commonwealth Leigh M. Chapman filed an original jurisdiction Petition for Review in the nature of a complaint under the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531-7541, asking this Court to declare SB 106 invalid and enjoin further action on the proposed constitutional amendments. On the same day the Petition for Review was filed, Petitioners filed an Application for Summary Relief pursuant to Pa.R.A.P. 1532(b). The Petition for Review and Application for Summary Relief were filed notwithstanding the fact that the constitutional amendments in SB 106 are in their procedural infancy, having only proceeded partway through the General Assembly’s process. There are other procedurally

required steps before the questions contained therein would actually appear on the ballot for voter approval by the People.

Only the initial procedural steps regarding SB 106 have already occurred: SB 106 was adopted by the current General Assembly on July 8, 2022, and was initially published throughout the Commonwealth by August 8, 2022 (three months prior to the November 8, 2022 general election). However, there are additional required procedural steps that have not yet occurred (and which may or may not occur). First, in the November 8, 2022 general election, the People elected a new General Assembly. Second, pursuant Article XI, Section 1, “in the General Assembly next afterwards chosen”, the newly elected General Assembly, in accordance with its rules and procedures, will decide whether to pass SB 106 for a second time.<sup>1</sup> Third, if the General Assembly does pass SB 106 for a second time, the Secretary of the Commonwealth must publish SB 106 once again throughout the Commonwealth. At that point, with the voters of Pennsylvania having already received significant information about SB 106, both directly (by publication) and indirectly (through the legislative process), the ballot questions and “plain English” statements would be drafted and SB 106 would only then possibly be placed on the ballot for the May 2023, or subsequent, election.

---

<sup>1</sup> For ease of reference, this Memorandum will use the phrases “second passage of SB 106”, “passed SB 106 for a second time” and similar phrases to refer to the subsequent passage of one or more of the constitutional amendments contained in SB 106.

Through the Petition for Review, Petitioners seek to avoid their ministerial duty, undo the will of the General Assembly and diminish the powers and authority of the General Assembly to act under Article XI, Section 1. Because the Petition for Review challenges the Legislature’s express constitutional authority to act, implicating separation of powers, House Majority Leader Kerry A. Benninghoff and the Pennsylvania House Republican Caucus (collectively “House Intervenors”) (as well as other legislators from the Pennsylvania House and Pennsylvania Senate) filed applications for leave to intervene in this case. By Order dated October 26, 2022, the applications to intervene filed by the legislative intervenors were granted. In granting the applications for leave to intervene, this Court issued a Memorandum Opinion recognizing the importance of the Legislature’s express constitutional authority to act:

The instant matter concerns a different, but equally important constitutionally prescribed legislative power to propose and vote on constitutional amendments, which is set forth in article XI, section 1. Also, notably, the Court stresses that the legislative process here is not yet complete under article XI, section 1, in that SB 106 comprises only the first passage of these proposed constitutional amendments, the second passage of which has yet to occur. The ruling sought by Petitioners in this case will, therefore, directly limit the General Assembly’s exclusive authority to propose constitutional amendments to the Pennsylvania Constitution and, consequently, diminish their ability to vote on such proposed amendments in the future with respect to SB 106 and beyond.

(Mem. Op., October 26, 2022, p. 20).

The Court has now directed briefing on the Preliminary Objections that have been filed to the Petition for Review by Respondent and Respondent Intervenors, as well as briefing on Petitioners' Application for Summary Relief.

### **III. SUMMARY OF ARGUMENT**

House Intervenors' Preliminary Objections to the Petition for Review should be sustained for lack of standing and capacity to sue as well as for legal insufficiency, and Petitioners' Application for Summary Relief should be denied because Petitioners have failed to show a clear right to relief on any of their claims.

First, because the Governor and the Secretary of the Commonwealth have no role, as public officials, to interfere with the right of the people to amend their charter, they lack the capacity to sue and are without standing to bring this action.

Second, the Governor and the Secretary are seeking declaratory relief, but Pennsylvania law requires the existence of an actual case or controversy which presently does not exist.

Third, Petitioners argument that Article XI, § 1 of the constitution requires separate votes of elected representatives on each proposed amendment is belied by the plain and unambiguous language of Article XI, § 1 itself.

Fourth, Petitioners argument that the proposed amendment concerning abortion involves multiple subjects and questions is simply incorrect – the

proposed amendment concerns only one subject and only one question: a constitutional right to abortion.

Fifth, Petitioners' privacy argument regarding abortion fails because although Article I, Section 1 limits the government's ability to infringe on the people's rights, it is the people who are free to determine what their rights are through the constitutional amendment process.

Sixth, Petitioners' argument regarding the voting age must be rejected because the only proposed amendment to the presently existing Article VII, Section 1 contained in SB 106 consists of placing the presently existing language into a newly enumerated subsection I(A), and adding a new subsection I(B) (regarding valid voter identification); the alleged amendment to SB 106 about which Petitioners complain simply does not exist.

Seventh, Petitioners' argument regarding the impact of the proposed amendment on other provisions of the constitution lacks merit because the proposed amendment concerning abortion does not affect, substantially or otherwise, any other constitutional provision.

Finally, Petitioners' claims in this matter constitute non-justiciable political questions, exclusively committed to the General Assembly.

#### IV. ARGUMENT

The Application is governed by Rule 1532(b) of the Pennsylvania Rules of Appellate Procedure (“Rule 1532(b)”), which provides: “At any time after the filing of a petition for review in an appellate or original jurisdiction matter, the court may on application enter judgment if the right of the applicant thereto is clear.” Pa.R.A.P. 1532(b). “In ruling on a motion for summary relief, this court must view the evidence of record in the light most favorable to the non-moving party and may enter judgment only if: (1) there are no genuine issues as to any material facts, and (2) the right to relief is clear as a matter of law.” *Northwestern Youth Servs., Inc. v. Commonwealth, Dep’t. of Welfare*, 1 A.3d 988, 990 n.1 (Pa. Cmwlth. 2010); *see also Allen v. Pennsylvania Bd. of Prob. and Parole*, 207 A.3d 981, 984 n.4 (Pa. Cmwlth. 2019).

##### **A. THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE PETITIONERS LACK STANDING AND CAPACITY TO SUE UNDER Pa.R.C.P. NO. 1028(A)(5)**

Because the Governor and the Secretary of the Commonwealth have no role, as public officials, to interfere with the right of the people to amend their charter, they lack the capacity to sue and are without standing. Consequently, the Governor and the Secretary therefore have no clear right to relief.

## 1. Lack of Capacity to Sue

In Article XI, Section 1, the authority to amend the Pennsylvania Constitution is unequivocally reserved for the People of Pennsylvania, speaking both through their elected representatives in the General Assembly and at the ballot box. “All amendments since 1790, whether proposed by convention or by the legislature, were submitted to the electorate and approved by a majority of those voting on them before they became effective.” Robert E. Woodside, *Pennsylvania Constitutional Law* 9 (Murrelle Printing Company, Inc. 1985). Article XI, Section 1 says nothing of the governor’s role in the constitutional amendment process.

Not only is Article XI, Section 1 devoid of any requirement for gubernatorial consent in the constitutional amendment process, there is no grant of authority for any kind of substantive gubernatorial participation or input into the constitutional amendment process. Instead, the role of the Executive branch is purely ministerial. *Commonwealth v. Griest*, 46 A. 505, 510 (Pa. 1900) (the Governor has no “authority to approve or disapprove of the proposed amendments”); *Pennsylvania Prison Soc’y v. Commonwealth*, 776 A.2d 971, 978 (Pa. 2001) (“an amendment of the Constitution need not be submitted to the Governor for approval or vote.”) (relying on *Griest*).

Similarly, the Secretary of the Commonwealth, whose very position was created by the General Assembly, has only those limited powers and specific duties

that have been bestowed to the Secretary by the General Assembly. *See* 25 P.S. § 2621<sup>2</sup> (“Powers and duties of the Secretary of the Commonwealth”); 71 P.S. § 243<sup>3</sup> (“Secretary of the Commonwealth”); 71 P.S. § 273<sup>4</sup> (“Elections”); 71 P.S. § 801<sup>5</sup> (“General enumeration of duties”).

Article XI, Section 1 mandates that the secretary take certain actions. PA. CONST. art. XI, § 1 (“Secretary of the Commonwealth shall cause the [proposed amendment] to be published three months before the next general election . . . .”)

As our Supreme Court stated:

**There is no other action by any department of the state government that is either required or allowed, prior to the action of the secretary. And that action of the secretary is prescribed in mandatory language**, thus, “and the secretary of the commonwealth shall cause the same to be published,” etc. **He has no discretion in the premises**. His action does not depend upon any other action whatever. It is his own personal, individual, and official duty, imperative in its character, and of the very highest and gravest obligation, because it is imposed by the constitution itself, and he can only discharge that duty by literally performing its terms.

*Griest*, 46 A. at 506 (emphasis added).

---

<sup>2</sup> Act of June 3, 1937, P.L. 1333, art. II, § 201, *as amended*.

<sup>3</sup> Act of April 9, 1929, P.L. 177, art. VII, § 703, *repealed in part* by the Act of July 31, 1968, P.L. 769, No. 240, § 609(c).

<sup>4</sup> Act of April 9, 1929, P.L. 177, art. VIII, § 803.

<sup>5</sup> Act of March 12, 1791, 3 Sm.L. 8, § 1.

Notwithstanding the absence of any legitimate or permitted role in the constitutional amendment process, Petitioners improperly seek to prevent the People from exercising their constitutional right to amend their Charter. “[T]he people of the Commonwealth have the authority to amend their state constitution as they see fit[.]” *Commonwealth v. Tharp*, 754 A.2d 1251, 1253 (Pa. 2000). *See also Gondelman v. Commonwealth*, 554 A.2d 896, 904 (Pa. 1989) (“[i]t is absurd to suggest that the rights enumerated in Article I were intended to restrain the power of the people themselves. Such a proposition loses sight of ‘the basic overriding principle of American government—that all power is in the people.’” (citing *Woodside, Pennsylvania Constitutional Law* 3)).<sup>6</sup>

“Because a proposed constitutional amendment is not a ‘law,’ the provisions of Article III relating to the enactment of legislation are inapplicable. Rather, Article XI sets forth ‘a complete and detailed process for the amendment of [the state constitution] . . . .” *Mellow v. Pizzingrilli*, 800 A.2d 350, 359 (Pa. Cmwlth. 2002) (quoting *Kremer v. Grant*, 606 A.2d 433, 436 (Pa. 1992)). Thus, an amendment “is not a legislative act at all, but a separate and specific power granted

---

<sup>6</sup> Intervenors Leader Joanna E. McClinton and the Democratic Caucus of the Pennsylvania House of Representatives argue that the Petitioners, through their Petition for Review, “seek to ensure that the People are properly informed prior to exercising their right to amend their charter.” (Brief, p. 26 no. 10). In making this argument, these Intervenors completely ignore the facts summarized in the Statement of the Case above, at page 3, which describe the many procedural steps which have not yet occurred (and may never occur) and demonstrate that the People will be sufficiently informed before any proposed constitutional amendment is actually presented to them for consideration at an election.

to the General Assembly, similar to the impeachment and trial powers granted to the House of Representatives and Senate, respectively . . . .” *Id.* “Other than the express requirements set forth in Article XI, the procedure to be used in proposing such amendments is exclusively committed to the legislature.” *Id.*; *see also Costa v. Cortes*, 143 A.3d 430, 436 (Pa. Cmwlth. 2016) (“Article XI, section 1 of the Pennsylvania Constitution vests within the General Assembly the *exclusive* authority to determine the ‘time’ and ‘manner’ amendments are to be submitted to qualified electors for approval.” (emphasis in original)).<sup>7</sup>

As such, it has been a longstanding basic principle of constitutional law that the governor “has no[] authority to approve or to disapprove of the proposed amendments” and “that his action in withholding his approval was altogether nugatory.” *Griest*, 46 A. at 510. Likewise, the secretary of state is not permitted to, for instance, “say that he cannot make the publication” of an amendment due to lack of appropriations, as it is the secretary’s “duty to try to make the publication . . . .” *Id.* In essence, the Petitioners’ challenge is an unconstitutional infringement on

---

<sup>7</sup> Intervenors Leader Joanna E. McClinton and the Democratic Caucus of the Pennsylvania House of Representatives attempt to distinguish *Costa*, (Brief, p.22 n.8), but their attempts are unavailing. Justice Brobson’s Opinion in *Costa* is very clear when it specifically states that it is the General Assembly that has the *exclusive* authority to determine the ‘time’ and ‘manner’ in which amendments are submitted to the voters. *Costa*, 143 A.3d at 436. Article XI, section 1 makes it clear that the General Assembly is the only branch of government that has the responsibility for drafting and proposing constitutional amendments.

the General Assembly's role in the amendment process and, thus, is violative of separation of powers.

Further, declaratory actions cannot be used as a “vehicle for changing the law, rather than interpreting it, or defining legal relations.” *Doe v. Johns-Manville Corp.*, 471 A.2d 1252, 1254 (Pa. Super. 1984). “Declaratory judgments are nothing more than judicial searchlights, switched on at the behest of a litigant to illuminate an existing legal right, status or other relation. They may not be used to search out new legal doctrines.” *Shaffer-Doan ex rel. Doan v. Commonwealth Dep’t. of Pub. Welfare*, 960 A.2d 500, 517 n.32 (Pa. Cmwlth. 2008). For all these reasons, Petitioners lack the capacity to sue<sup>8</sup> and assuredly cannot meet their burden of demonstrating a clear right to summary relief.

## **2. Lack of Standing**

The Petitioners here also have no standing. “A party seeking judicial resolution of a controversy in this Commonwealth must, as a prerequisite, establish that he has standing to maintain the action.” *Bergdoll v. Kane*, 731 A.2d 1261,

---

<sup>8</sup> Petitioners argue in their Brief that House Intervenors misapprehend the basis for a preliminary objection raising lack of capacity, arguing that lack of capacity refers only to general legal disability such as infancy or lunacy. (Petitioners’ Brief, pp. 15-16). However, Petitioners attempt to apply the reference to “capacity to sue” in Rule 1028(a)(5) far too narrowly. In fact, this Court has previously considered preliminary objections raising the lack of capacity to sue in the context of whether public officials had the authority or ability to act. *Commonwealth ex rel. Corbett v. Desiderio*, 698 A.2d 134, 139-40 (Pa. Cmwlth. 1997) (addressing the ability and authority of the state Attorney General to act); *Commonwealth v. Pennsylvania State University*, 317 A.2d 661 (Pa. Cmwlth. 1974) (addressing the ability and authority of the state Auditor General to act).

1268 (Pa. 1999) (citation omitted). “The core concept, of course, is that a person who is not adversely affected in any way by the matter he seeks to challenge is not ‘aggrieved’ thereby and has no standing to obtain a judicial resolution of his challenge. In particular, it is not sufficient for the person claiming to be ‘aggrieved’ to assert the common interest of all citizens in procuring obedience to the law.” *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975). Rather, the interest asserted must be “substantial,” or one “which surpasses the common interest of all citizens in procuring the obedience to the law.” *In re Admin. Or. No. 1-MD-2003*, 936 A.2d 1, 8 (Pa. 2007) (citation omitted).<sup>9</sup>

---

<sup>9</sup> Petitioners argue that the oath taken by Governor Wolf and Acting Secretary Chapman to support, obey and defend the Constitution confers standing upon them to bring the claims they have asserted in this matter. As support for this argument, Petitioners rely upon *Pinunti v. Commonwealth, Dep’t of Labor & Indus.*, 900 A.2d 1017, 2022 (Pa. Cmwlth. 2006), and *Lawless v. Jubelirer*, 789 A.2d 820, 827 (Pa. Cmwlth. 2002). Neither case supports Petitioners’ position. In *Pinunti*, four Pennsylvania licensed attorneys who routinely practice in the area of unemployment compensation brought an action challenging a change to the unemployment compensation laws that would allow non-attorney, non-employee persons to represent corporate employers at unemployment compensation hearings. The four attorney plaintiffs in *Pinunti* were directly impacted by the proposed changes in the law, *Pinunti*, 900 A.2d at 1021, unlike the circumstances of the instant case where the Governor and Acting Secretary have no role in the constitutional amendment process at issue in the Petition for Review. In *Lawless*, a member of the General Assembly and a school district board member challenged whether the then-Lieutenant Governor could contemporaneously hold the offices of State Senator and President *pro tempore* of the Senate. The *Lawless* plaintiffs were found to have standing because the issue they sought to raise otherwise was likely to go uncontested. Here, Petitioners have not argued that their claims would go unaddressed if their Petition for Review is not granted; on the contrary, if the proposed constitutional amendments ultimately are adopted, those with standing would have the opportunity to challenge those amendments.

Given that the Governor has no role in the amendment process, and given that his interests cannot surpass the interest of the electors, he necessarily cannot be aggrieved and does not have standing. Although the Secretary has a role in the amendment process, it is a mere ministerial one, or “one which a public officer is required to perform upon a given state of facts and in a prescribed manner in obedience to the mandate of legal authority.” *County of Allegheny Dep. Sheriff’s Ass’n v. County of Allegheny*, 730 A.2d 1065, 1067-68 (Pa. Cmwlth. 1999). Article XI, Section 1 clearly prescribes a basic, ministerial duty that is to be performed without the use of discretion or judgment. Further, the role of the secretary, including its role in election matters, is traditionally viewed as ministerial. *See Hamilton v. Johnson*, 141 A. 846, 847 (Pa. 1928) (“In determining whether a sufficient number of qualified electors have complied with the statutes and furnished the information made necessary, the secretary of the commonwealth acts only in a ministerial capacity. It is neither his province, nor privilege, to determine whether the statements made are true and the signer qualified to act as a nominator.”) An official must possess “something more” than an ordinary citizen to establish standing, and the official’s mere duty to carry out ministerial acts does not suffice. *In re Admin. Or. No. 1-MD-2003*, 936 A.2d 1, 8 (Pa. 2007).<sup>10</sup>

---

<sup>10</sup> Thus, for these reasons, nearly all challenges to constitutional amendments are brought by voters, or voter organizations that can establish associational standing.

Through their Petition for Review, Petitioners seek to withhold from the People the opportunity to indicate their pleasure at the ballot box as to whether they will amend their Charter. Petitioners are thereby improperly attempting to effectuate what could only be described as a Declaratory Judgment Act facilitated veto of SB 106. Accordingly, Petitioners are without standing and lack the capacity to sue Respondent, and therefore the Preliminary Objections must be sustained and Petitioners' Application for Summary Relief must be denied.

**B. THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE ALL COUNTS OF THE PETITION FOR REVIEW ARE LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4) FOR LACK OF AN ACTUAL CASE OR CONTROVERSY**

In order to assert a cause of action seeking declaratory relief, Pennsylvania law requires the existence of an actual case or controversy. *E.g., In re: Straus's Estate*, 161 A. 547, 548 (Pa. 1932).

The constitutional amendments in SB 106 are in their procedural infancy, having only proceeded partway through the General Assembly's process. There are additional procedurally required steps before the questions contained therein would actually appear on the ballot for voter approval by the People.

SB 106 was adopted by the current General Assembly on July 8, 2022, and was initially published throughout the Commonwealth by August 8, 2022 (three months prior to the November 8, 2022 general election). Next, in the November 8,

2022 general election, the People have elected a new General Assembly. Pursuant to Article XI, Section 1, “in the General Assembly next afterwards chosen”, the newly elected General Assembly, in accordance with its rules and procedures, will decide whether to pass SB 106 for a second time. If and only if the General Assembly does pass SB 106 for a second time, the Secretary of the Commonwealth then must publish SB 106 once again throughout the Commonwealth. At that point, with the voters of Pennsylvania having already received significant information about SB 106, both directly (by publication) and indirectly (through the legislative process), the ballot questions and the “plain English” statements would be drafted and SB 106 would only then be placed on the ballot for the May 2023, or subsequent, election.

Because it is merely a possibility that the proposed Constitutional amendments set forth in SB 106 may at some point in the future be ready to appear on the ballot for approval by the People, Petitioners’ claims are not currently ripe and there is no actual case or controversy that presently exists. The doctrine of ripeness “is a judicially-created principle which mandates the presence of an actual controversy.” *Bayada Nurses, Inc. v. Commonwealth Dep’t. of Labor and Indus.*, 8 A.3d 866, 874 (Pa. 2010). Courts “generally consider whether the issues are adequately developed and the hardships that the parties will suffer if review is delayed.” *Id.* (citation omitted). In the context of challenges to legislation and

regulations, “the basic rationale of ripeness is to prevent the courts, through the avoidance of premature adjudication, from entangling themselves in abstract disagreements” and to protect “from judicial interference” until a decision “has been formalized and its effects felt in a concrete way by the challenging parties.” *Id.* at 874-75. In other words, “[a] court cannot determine whether a regulation has gone ‘too far’ unless it knows how far the regulation goes.” *Gardner v. Commonwealth Dep’t. of Env’tl. Res.*, 658 A.2d 440, 445 (Pa. Cmwlth. 1995) (quoting *MacDonald, Sommer & Frates v. County of Yolo*, 477 U.S. 340, 348 (1986)).<sup>11</sup>

“Declaratory judgment is available only where an actual controversy exists; it is not appropriate to determine rights in anticipation of events that may never occur.” *Fogarty v. Hemlock Farms Cmty. Ass’n, Inc.*, 685 A.2d 241, 244 (Pa. Cmwlth. 1996). Petitioners’ Declaratory Judgment Action improperly seeks to have this Honorable Court, in essence, issue an advisory opinion on the propriety of a constitutional process that currently is incomplete, ongoing and may never come to fruition within the General Assembly. “The courts in our Commonwealth do not render decisions in the abstract or offer purely advisory opinions ....”

---

<sup>11</sup> Petitioners argue that because permission to intervene was granted in this case, the intervenors somehow cannot challenge the ripeness of the alleged dispute in this case. (*See* Brief, p.21 n.8). This argument completely misses the point of the intervention: the House Intervenors expressly sought to intervene in this case for the purpose of demonstrating, among other things, that the alleged dispute in this case *is not ripe and may never be ripe*.

*Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 659 (Pa. 2005).  
See also generally, e.g., *Misitis v. Steel City Piping Co.*, 272 A.2d 883, 884 (Pa. 1971) (“We have repeatedly followed the general rule that we will not decide a constitutional question unless absolutely necessary ....”).<sup>12</sup>

The amendments here still must be voted upon and approved by a majority of the next General Assembly, the members of which have not yet even been sworn into office.<sup>13</sup> This Court is thus being improperly requested to determine the constitutionality of a series of amendments that may never exist. **Moreover, Governor Wolf, and possibly even Acting Secretary Chapman, will not be in office if and when the amendments go into effect.** Consequently, nearly all

---

<sup>12</sup> In support of their argument that the alleged dispute in this case is ripe for determination, Petitioners cite to and rely upon several alleged news reports and related commentary that were posted on social media platforms such as [www.tiktok.com](http://www.tiktok.com) and [www.twitter.com](http://www.twitter.com). (See Brief at pp. 19-20, n. 7.) These citations, in addition to being entirely irrelevant to the legal precepts at issue, are *dehors* the record and constitute rank hearsay, which should be stricken and disregarded by this Court.

<sup>13</sup> Petitioners rely on two cases for the proposition that a dispute is ripe for declaratory relief even though the electorate has not yet voted on the question: *Pennsylvania Gaming Control Bd. v. City Council*, 928 A.2d 1255 (Pa. 2007) and *Deer Creek Drainage Basin Auth. v. County Bd. of Elections*, 381 A.2d 103 (Pa. 1977). *Pennsylvania Gaming Control* is inapposite because that case involved the question as to whether the Gaming Board has “the sole authority to locate licensed facilities in Philadelphia” or whether the City’s electorate has the right to override the Gaming Board’s decision. 928 A.2d at 1265. The Court found that it needed to act prior to the election because of “the effect [the ordinance] has already had”, *id.* at 1265. There is no such concern about the proposed constitutional amendments in this case. *Deer Creek* is also inapposite because it involved an attempt to exercise home rule charter power that was “presently causing injury”, *Deer Creek*, 381 A.2d at 107 n.7, which distinguishes it from the proposed constitutional amendments at issue here.

challenges to ballot questions and constitutional amendments are brought after they are passed a second time by the General Assembly and are published.<sup>14</sup>

Accordingly, the Petition for Review should be dismissed with prejudice as legally insufficient under Pa.R.C.P. No. 1028(a)(4), and the Application for Summary Relief must be denied.

**C. THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE COUNT I OF THE PETITION FOR REVIEW IS LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4)**

In Count I, Petitioners allege that in SB 106 “[t]he General Assembly violated Article XI, § 1 and deprived voters of their constitutional right to replace their elected representatives by failing to call for separate votes on each proposed amendment and by failing to enter the results of the separate votes on the legislative journals.” (Petition at 19, ¶ 64.)

Nowhere in the plain, unambiguous language of Article XI, Section 1 is there such a requirement. Rather, “[a]mendments to this Constitution may be proposed in the Senate or House of Representatives; and if the **same** shall be agreed to by a majority of the members elected to each House, such proposed amendment **or amendments** shall be entered on their journals with the yeas and

---

<sup>14</sup> See, e.g., *League of Women Voters of Pa. v. DeGraffenreid*, 265 A.3d 207 (Pa. 2021); *Sprague v. Cortes*, 145 A.3d 1136 (Pa. 2016); *Grimaud v. Cmwlth.*, 865 A.2d 835 (Pa. 2005); *Pa. Prison Soc. v. Cmwlth.*, 776 A.2d 971 (Pa. 2001); *Bergdoll v. Kane*, 731 A.2d 1261 (Pa. 1999); *Stander v. Kelley*, 250 A.2d 474, 476 (Pa. 1969).

nays taken thereon . . . .” PA. CONST. art. XI, § 1 (emphasis added). Afterwards, “such proposed amendment or **amendments** shall be agreed to by a majority of the members elected to each House . . . .” *Id.* (emphasis added). Any interpretation of Article XI, Section 1 must first take into account its “plain language,” the basic tenet of statutory and constitution construction. *Zauflik v. Pennsbury Sch. Dist.*, 104 A.3d 1096, 1124 (Pa. 2014).

It is only when proposed amendments are “**submitted to the qualified electors** of the State,” after the General Assembly’s second vote, and after the second publication, that the amendments “shall be voted upon separately” by the **electors**. PA. CONST. art. XI, § 1 (emphasis added). *See Pa. Prison Soc. v. Cmwlth.*, 776 A.2d 971, 981 (Pa. 2001) (“the separate vote requirement of Article XI, Section 1 . . . entails an examination of whether two or more amendments have been submitted to the electorate.”). “This requirement acts as a safeguard to ensure that our citizenry is fully informed of the proposed amendments to the Constitution in a manner that the amendments be easily understood. It guarantees that the voters may express their desires as to each constitutional amendment separately.” *Id.* at 986. There is nothing in Article XI, Section 1 that requires the General Assembly to vote separately on each constitutional amendment.

Given the unique role and prerogative the General Assembly has in the constitutional amendment process, “[o]ther than the express requirements set forth

in Article XI, the procedure to be used in proposing such amendments is exclusively committed to the legislature.” *Mellow v. Pizzingrilli*, 800 A.2d 350, 359 (Pa. Cmwlth. 2002); *see also Costa v. Cortes*, 143 A.3d 430, 436 (Pa. Cmwlth. 2016) (“Article XI, section 1 of the Pennsylvania Constitution vests within the General Assembly the *exclusive* authority to determine the ‘time’ and ‘manner’ amendments are to be submitted to qualified electors for approval.”).

Accordingly, Count I of the Petition for Review should be dismissed with prejudice as legally insufficient under Pa.R.C.P. No. 1028(a)(4) and the Application for Summary Relief must be denied.

**D. THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE COUNT II OF THE PETITION FOR REVIEW IS LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4)**

In Count II, Petitioners contend that “by adding Article I, § 30 which states “[t]his Constitution does not grant the right to taxpayer-funded abortion or any other right relating to abortion[.]”, the General Assembly has violated Article XI, Section 1 “by combining two distinct questions into a single amendment and denying voters the required opportunity to vote separately on each question.” (Petition at 20, ¶¶ 67, 69.)

The faulty premise of Petitioners’ argument is the contention that the proposed Article I, Section 30 “combin[es] two distinct questions ....” To meet the

“subject matter test of Article XI, § 1,” it must be determined whether an amendment makes “multiple changes to our Constitution – either through the addition of new provisions to our organic charter, or through the alteration of its existing provisions.” *League of Women Voters of Pa. v. DeGraffenreid*, 265 A.3d 207, 238 (Pa. 2021). If there are multiple changes, it must then be determined if the “changes function in an interrelated fashion to accomplish one singular objective . . . . If the changes the proposed amendment would make do not have this requisite interrelationship, the proposed amendment must be stricken as violative of the clear mandates of Article XI, § 1.” *Id.*

The proposed amendment concerning abortion concerns only one subject and only one question: a constitutional right to abortion. Thus, there is no need to determine whether there are multiple subjects, additions to, or deletions from the Constitution which require an inquiry into whether the amendment is “interrelated” to another subject. The proposed amendment does not substantively alter other constitutional provisions, and there is no other subject within the proposed amendment that the abortion subject is or is not dependent upon. *See DeGraffenreid*, 265 A.3d at 240-41 (finding that the Victim Rights Amendment violative of the subject matter test because it substantially altered other constitutional provisions, and the amendment contained other provisions that were not dependent upon one another and, thus, not sufficiently interrelated).

Accordingly, Count II of the Petition for Review should be dismissed with prejudice as legally insufficient under Pa.R.C.P. No. 1028(a)(4) and the Application for Summary Relief must be denied.

**E. THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE COUNT III OF THE PETITION FOR REVIEW IS LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4)**

In Count III, Petitioners contend that because the “rights to personal liberty, pursuit of happiness and privacy are inherent and infeasible rights recognized by Article I, § 1”, the proposed Article I, § 30, which states “[t]his Constitution does not grant the right to taxpayer-funded abortion or any other right relating to abortion”, is “void *ab initio*”. (Petition at 21-22, ¶¶ 73, 75 (emphasis supplied).)

By couching their objections to SB 106 in terms of the sanctity of the Pennsylvania Constitution’s Declaration of Rights, Petitioners would have this Court directly contravene the Constitution’s guarantee that:

All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and infeasible right to alter, reform or abolish their government in such manner as they may think proper.

PA. CONST. art. I, § 2.

Article I, Section 2 thus “reserves the ultimate political power to the people . . .” *Bergdoll v. Commonwealth*, 858 A.2d 185, 202 (Pa. Cmwlth. 2004), *aff’d*, 874

A.2d 1148 (Pa. 2005). Although “those rights enumerated in the Declaration of Rights [Article I, Section 1] are deemed to be inviolate and may not be transgressed by government,” Section 2 “expressly recognizes the inherent power of the people reserved in Article I as well as their ‘indefeasible right to alter, reform or abolish their government in such manner as they may think proper.’” *Gondelman v. Cmwlth.*, 554 A.2d 896, 904 (Pa. 1989). “In forming the government of this Commonwealth, the only restraint upon the people is that imposed under our federal constitution.” *Id.* at 905. Therefore, Article I, Section 1 limits the government’s ability to infringe on the people’s rights, but the people are still free to determine what their rights are. “Article I has never been used to invalidate another provision of the Pennsylvania Constitution. We now hold that one part of the Pennsylvania Constitution may not be used to challenge the constitutionality of another part of that same constitution.” *Gondelman*, 550 A.2d at 818.

Accordingly, Count III of the Petition for Review should be dismissed with prejudice as legally insufficient under Pa.R.C.P. No. 1028(a)(4) and the Application for Summary Relief must be denied.

**F. THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE COUNT IV OF THE PETITION FOR REVIEW IS LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4)**

In Count IV, Petitioners contend that SB 106 contains an amendment to Article VII, Section 1<sup>15</sup> that “states and affirms that citizens must be ‘21 years of age’ and a resident of the Commonwealth for ‘90 days’ and a resident of the election district for ‘at least 60 days’ in order to vote.” (Petition at 23, ¶ 79.)

SB 106 contains no such amendment; it merely re-numerates certain subsections. This is self-evident from the text of the amendment. Article VII, Section 1 presently states:

Every citizen 21 years of age, possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact.

1. He or she shall have been a citizen of the United States at least one month.

2. He or she shall have resided in the State 90 days immediately preceding the election.

3. He or she shall have resided in the election district where he or she shall offer to vote at least 60 days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within 60 days preceding the election.

PA. CONST. art. VII, § 1.

---

<sup>15</sup> Petitioners erroneously identify this constitutional provision as Article 1, Section 5. (Petition at 23, ¶ 79.)

The Pennsylvania Constitution has contained a minimum voting age of 21 since 1776. Of course, the minimum voting age was changed to 18 by the 26<sup>th</sup> Amendment to the United States Constitution, and this change is also reflected in the Pennsylvania Election Code. Those portions of Article VII, Section 1 inconsistent therewith are no longer in effect.

The only proposed amendment to the presently existing Article VII, Section 1 contained in SB 106 consists of placing the presently existing language into a newly enumerated subsection I(A), and adding a new subsection I(B) (regarding valid voter identification). The alleged amendment to SB 106 about which Petitioners complain simply does not exist.

Since 1971, the nationwide minimum voting age has been 18 years old, and Senate Bill 106 is not an attempt to change, nor could it change, that. For even if such a question was put before the People and not approved, the voting age in Pennsylvania would not go back to 21 years of age. *See* U.S. CONST. art. VI, cl. 2 (“Supremacy Clause”).

Accordingly, Count IV of the Petition for Review should be dismissed with prejudice as legally insufficient under Pa.R.C.P. No. 1028(a)(4) and the Application for Summary Relief must be denied.

**G. THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE COUNT V OF THE PETITION FOR REVIEW IS LEGALLY INSUFFICIENT UNDER Pa.R.C.P. NO. 1028(a)(4)**

In Count V, Petitioners without elaboration generally contend that SB 106 violates Article XI, Section 1 because it “substantively alters other constitutional provisions without fairly and accurately apprising voters of the multiple changes and without giving voters the chance to vote separately on each change.” (Petition at 24, ¶ 84.)

Because constitutional amendments “might touch other parts of the Constitution when applied,” the question under Article XI, Section 1’s separate vote requirement “is whether the single ballot question patently affects other constitutional provisions, not whether it implicitly has such an effect,” as “it is hard to imagine an amendment that would not have some arguable effect on another provision; clearly the framers knew amendments would occur and provided a means for that to happen.” *Grimaud v. Commonwealth*, 865 A.2d 835, 842 (Pa. 2005).

As discussed above, the proposed amendment concerning abortion does not affect, substantially or otherwise, any other constitutional provision. The amendment rather reaffirms Article I, Sections 1 and 25’s rights reserved for the

people. Petitioners' other claims are belied by the plain language of the proposed amendments.

Accordingly, Count V of the Petition for Review should be dismissed with prejudice as legally insufficient under Pa.R.C.P. No. 1028(a)(4) and the Application for Summary Relief must be denied.

**H. THE APPLICATION FOR SUMMARY RELIEF SHOULD BE DENIED AND THE PRELIMINARY OBJECTIONS SUSTAINED BECAUSE ALL COUNTS OF THE PETITION FOR REVIEW SHOULD BE DISMISSED FOR LEGAL INSUFFICIENCY OF A NON-JUSTICIABLE POLITICAL QUESTION UNDER Pa.R.C.P. NO. 1028(a)(4), OR, IN THE ALTERNATIVE, FOR LACK OF JURISDICTION OVER A NON-JUSTICIABLE POLITICAL QUESTION UNDER Pa.R.C.P. NO. 1028(a)(1)**

The political question doctrine is a principle of separation of powers and is designed such that “no branch should exercise the functions exclusively committed to another branch.” *Commonwealth v. Stern*, 701 A.2d 568, 570 (Pa. 1997). “A challenge to the Legislature’s exercise of a power which the Constitution commits exclusively to the Legislature presents a non-justiciable ‘political question.’” *Grimaud v. Commonwealth*, 865 A.2d 835, 847 (Pa. 2005).

As stated above, “[o]ther than the express requirements set forth in Article XI, the procedure to be used in proposing such amendments is exclusively committed to the legislature.” *Mellow v. Pizzingrilli*, 800 A.2d 350, 359 (Pa. Cmwlth. 2002); *see also Costa v. Cortes*, 143 A.3d 430, 436 (Pa. Cmwlth. 2016)

(“Article XI, section 1 of the Pennsylvania Constitution vests within the General Assembly the *exclusive* authority to determine the ‘time’ and ‘manner’ amendments are to be submitted to qualified electors for approval.”) Since “the plain language of Article XI, § 1 does not require the legislature to engage in a specific procedure while proposing amendments, we will not inquire into these internal procedures nor look beyond the recorded votes, for judicial review is precluded pursuant to the Political Question Doctrine.” *Id.* “[T]he General Assembly has exclusive power over its internal affairs and proceedings.” *Common Cause/Pa. v. Commonwealth*, 710 A.2d 108, 118 (Pa. Cmwlth. 1998), *aff’d*, 757 A.2d 367 (Pa. 2000). Petitioners’ action is, in essence, an action by the executive branch challenging powers given solely to the legislative branch, which the legislative branch can unilaterally use in its discretion.

Accordingly, because Petitioners’ claims in this matter constitute non-justiciable political questions, exclusively committed to the General Assembly, this preliminary objection should be sustained under Pa.R.C.P. No.1028(a)(4) as a demurrer, or in the alternative, should be sustained under Pa.R.C.P. No. 1028(a)(1) for lack of jurisdiction of this Court over a political question, and the Application for Summary Relief must be denied.

## V. CONCLUSION

For the foregoing reasons, Intervenor House Majority Leader Kerry A. Benninghoff and the Pennsylvania House Republican Caucus respectfully request that this Honorable Court enter an Order SUSTAINING Respondents' Preliminary Objections to the Petition for Review and an Order DENYING Petitioners' Application for Summary Relief.

Respectfully submitted,

**LAMB McERLANE PC**

Date: November 28, 2022

By: /s/ Joel L. Frank

Joel L. Frank  
Attorney I.D. No. 46601  
John J. Cunningham, IV  
Attorney I.D. No. 70975  
Scot R. Withers  
Attorney I.D. No. 84309  
24 E. Market Street, Box 565  
West Chester, PA 19381-0565  
(610) 430-8000

*Counsel to Intervenor House Majority  
Leader Kerry A. Benninghoff and the  
Pennsylvania House Republican Caucus*

**PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE**

It is hereby certified by the undersigned 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.

**LAMB McERLANE PC**

Date: November 28, 2022

By: /s/ Joel L. Frank

Joel L. Frank  
Attorney I.D. No. 46601  
John J. Cunningham, IV  
Attorney I.D. No. 70975  
Scot R. Withers  
Attorney I.D. No. 84309  
24 E. Market Street, Box 565  
West Chester, PA 19381-0565  
(610) 430-8000

*Counsel to Intervenors House Majority  
Leader Kerry A. Benninghoff and the  
Pennsylvania House Republican Caucus*