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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DOUG McLINKO, Petitioner, v. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF STATE, et al., Respondents.	**CASES CONSOLIDATED** No. 244 MD 2021

TIMOTHY BONNER, et al., Petitioners, v. VERONICA DEGRAFFENREID, in her official capacity as Acting Secretary of the Commonwealth of Pennsylvania, et al., Respondents.	No. 293 MD 2021

MEMORANDUM IN OPPOSITION TO THE APPLICATION TO INTERVENE BY BUTLER COUNTY REPUBLICAN COMMITTEE, YORK COUNTY REPUBLICAN COMMITTEE, AND WASHINGTON COUNTY REPUBLICAN COMMITTEE

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Respondents, the Department of State of the Commonwealth of Pennsylvania and Acting Secretary of the Commonwealth Veronica Degraffenreid, file this Memorandum in Opposition to the Application to Intervene (the "Application to Intervene" or "App.") of the Butler County Republican Committee, the York County Republican Committee, and the Washington County Republican Committee ("Proposed Intervenors").

I. INTRODUCTION

This consolidated litigation, a challenge to the constitutionality of the mail-in ballot provisions of Pennsylvania's Act 77 of 2019, has been pending in this Court for nearly two months. Petitioner Doug McLinko, an elected member of the Bradford County Board of Elections, filed his Petition on July 26, 2021; the Bonner Petition, filed by elected officials representing, *inter alia*, Butler, Washington, and York Counties, followed. Now, Proposed Intervenors seek to file a petition for review that would assert claims identical to those already made by Petitioner McLinko and the Bonner Petitioners. As set forth below, the Court should deny the Application to Intervene because (1) Proposed Intervenors' purported interests in this litigation are insufficient to give them standing to sue, (2) Proposed Intervenors' interests are already adequately represented by the Bonner Petitioners, and (3) Proposed Intervenors have unreasonably delayed in

seeking leave to file claims that are substantively indistinguishable from the claims already pending in this action.

II. FACTUAL BACKGROUND

A. Pennsylvania's Act 77

In 2019, with the support of a bipartisan supermajority of both legislative chambers, the Pennsylvania General Assembly enacted Act 77 of 2019, which made several important updates and improvements to Pennsylvania's Election Code. Act of Oct. 31, 2019 (P.L. 552, No. 77), 2019 Pa. Legis. Serv. 2019-77 (S.B. 421) (West) ("Act 77"). Act 77 included provisions that, for the first time, offered the option of mail-in voting to Pennsylvania electors who did not qualify for absentee voting. *See* 25 Pa. Stat. §§ 3150.11–3150.17. This change was a significant development that made it easier for all Pennsylvanians to exercise their fundamental right to vote and brought the state in line with the practice of dozens of other states. Act 77's other provisions included the elimination of straight-ticket voting, changes to registration and ballot deadlines, and modernization of various administrative requirements.

Reflecting the complex negotiations and policy tradeoffs that were involved in persuading a Republican-controlled legislature and a Democratic Governor to support the legislation, the General Assembly included a nonseverability provision stating that invalidation of certain sections of the Act, including the mail-in ballot

provisions and the straight-ticket voting provisions, would void almost all of the Act. *See* Act 77 § 11. The General Assembly also understood that implementing such a significant overhaul of Pennsylvania's voting laws would be a lengthy, complex, and resource-intensive endeavor. It also understood the risk of bad-faith gamesmanship, namely, the possibility that certain actors might wait to see the electoral results of Act 77's grand bipartisan compromise before determining whether to challenge it, filing suit only if and when the political effects of the statute were perceived as unfavorable to the would-be petitioners' partisan interests. The General Assembly therefore sought to ensure that any challenges to the constitutionality of Act 77's major provisions, including mail-in voting, would be resolved before Act 77 was implemented. Section 13(3) of Act 77 thus provided that all constitutional challenges to Act 77 had to be brought within 180 days of the statute's effective date. *See* Act 77 § 13(3).

Act 77 was signed into law and became effective on October 31, 2019. The statutory 180-day period for challenges to the law expired on April 28, 2020.

B. Procedural History

1. The McLinko and Bonner Actions

Petitioner Doug McLinko, an elected member of the Bradford County Board of Elections, filed his original Petition for Review on July 26, 2021, nearly 21 months, and three elections, after Act 77 was enacted. In his Petition (as amended

on September 29, 2021, "McLinko Pet."), Petitioner McLinko argues that Act 77 is unconstitutional pursuant to the Pennsylvania Constitution and two Pennsylvania Supreme Court decisions. (*See* McLinko Pet. ¶¶ 11-41.) Petitioner McLinko seeks a declaration that Act 77 is unconstitutional. (*See* McLinko Pet. at pp. 14-15.) The day after he filed his original Petition, Petitioner McLinko also filed an Application for Expedited Briefing and Summary Relief.

After Respondents opposed that application and filed their own cross-motion – but before oral argument – another group of Petitioners, the Bonner Petitioners, filed a Petition for Review ("Bonner Pet.") and sought consolidation of the two actions. The Bonner Petitioners are members of the Pennsylvania House of Representatives members representing, *inter alia*, portions of Butler, Washington, and York Counties.[1] The Bonner Petitioners make the same arguments as the McLinko Petitioners for Act 77's unconstitutionality under the Pennsylvania Constitution. Bonner Pet. ¶¶ 56-78. The Bonner Petition also includes two counts alleging that Act 77 violates the United States Constitution. (*See* Bonner Pet. ¶¶ 79-90.) Like the McLinko Petitioners, the Bonner Petitioners seek declaratory relief; they also seek injunctive relief. (*See* Bonner Pet. at p. 25.)

[1] According to the Bonner Petition, Representative Timothy Bonner's district includes a portion of Butler County; Representative P. Michael Jones resides in York County; Representative Aaron J. Bernstine's district includes a portion of Butler County; Representative Dawn W. Keefer's district includes a portion of York County; and Representative Donald "Bud" Cook's district includes a portion of Washington County. Bonner Pet. ¶¶ 3-4, 11, 13, 16.

The Court initially denied the Bonner Petitioners' request for consolidation and heard oral argument on the cross-applications for summary relief in the McLinko action only. After argument, however, the Court rescinded its previous order denying consolidation and consolidated the McLinko and Bonner actions on an expedited schedule. Only after briefing on the parties' cross-applications for summary relief was complete, after Petitioner McLinko filed an amended Petition for Review, after the Democratic National Committee and Pennsylvania Democratic Party sought leave to intervene as respondents, and with briefing on Respondents' preliminary objections to both Petitions for Review nearly complete, did Proposed Intervenors file their Application to Intervene.

2. Proposed Intervenors' Petition for Review and Application to Intervene

Proposed Intervenors' Proposed Petition for Review ("Intervenor Pet.") is substantively indistinguishable from the McLinko and Bonner Petitions for Review. Like Petitioner McLinko and the Bonner Petitioners, Proposed Intervenors assert that Act 77 is unconstitutional under the Pennsylvania Constitution, (Intervenor Pet. ¶¶ 30-33); like Petitioner McLinko and the Bonner Petitioners, Proposed Intervenors rely on the same Pennsylvania Supreme Court caselaw, (*id.* ¶¶ 34-38); and like Petitioner McLinko and the Bonner Petitioners, Proposed Intervenors seek a declaration that Act 77 is unconstitutional, (*id.* at p. 10).

Proposed Intervenors rely primarily on two sets of purported interests that warrant their intervention. First, Proposed Intervenors point to interests associated with "how they allocate their resources": that they are responsible for "voter registration efforts[,]" "assisting Republican voters with questions regarding proper voting practices[,]" "advancing the policies and principles of the Republican Party[,]" "assisting candidates in their election campaigns[,]" and "getting out the Republican vote[.]" (Br. in Support of App. at 7, 8.) Second, Proposed Intervenors point to their members' "associational rights": the "right to vote for and elect Republican candidates[.]" (*Id.* at 7, 10.) As show below, none of these interests are sufficient to confer standing, nor are they unique to Proposed Intervenors.

III. ARGUMENT

A. The Proposed Intervenors' Asserted Interests Do Not Meet the Criteria for Intervention Set Forth in Pa. R. Civ. P. 2327

To establish a right to intervene, Proposed Intervenors must first show that they meet one of the four threshold criteria set forth in Pennsylvania Rule of Civil Procedure 2327. *See In re Phila. Health Care Trust*, 872 A.2d 258, 261 (Pa. Commw. Ct. 2005) ("[I]f the petitioner does not show himself to be within one of the four classes described in Rule 2327, intervention must be denied[.]" (emphasis omitted)). Proposed Intervenors contend that this Court must grant their application to intervene because they meet two of the Rule 2327 criteria: that they "could have joined as an original party in the action or could have been joined therein," Pa. R.

Civ. P. 2327(3), and that the determination of this action may affect a legally enforceable interest that they hold, Pa. R. Civ. P. 2327(4). (Br. in Support of App. at 7-13.[2]) Contrary to Proposed Intervenors' assertions, Proposed Intervenors' purported interests are not sufficient to warrant intervention, nor could Proposed Intervenors have joined as original parties in this action.

1. Proposed Intervenors Fail to Identify a Legally Enforceable Interest in This Action

Proposed Intervenors incorrectly contend that their identified interests are sufficient to support intervention in this matter. This Court described the nature of the requisite legal interest for intervention in *In re Philadelphia Health Care Trust*, 872 A.2d 258 (Pa. Commw. Ct. 2005). In affirming the trial court's denial of a motion to intervene, this Court observed that the proposed intervenors had failed to demonstrate "an interest which is substantial, direct, and immediate." *Id.* at 262 (quoting *In re Francis Edward McGillick Found.*, 642 A.2d 467, 469 (Pa. 1994)). As the Court explained, a legally enforceable interest is one that would be sufficient to establish standing. *Id.*; *see also Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016) (observing that "whether Appellants were properly denied intervenor

[2] In their Application to Intervene, but not in their Brief in support thereof, Proposed Intervenors also contend that they satisfy Rule 2327(1). (*See* App. ¶ 47). Rule 2327(1) authorizes intervention where "the entry of a judgment ... or the satisfaction of such judgment will impose any liability upon [the intervenor] to indemnify in who or in part the party against whom judgment may be entered[.]" Pa. R. Civ. P. 2327(1). Because Proposed Intervenors seek to intervene as a Petitioner, Rule 2327(1) plainly does not apply, as "entry of judgment" cannot "impose liability" on a petitioner.

status … turns on whether they satisfy our standing requirements"). In particular, to qualify as "substantial," the interest at issue must be "peculiar" and "individualized," *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005); "'there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law,'" *In re Phila. Health Care Trust*, 872 A.2d at 262 (quoting *In re Francis Edward McGillick Found.*, 642 A.2d 467, 469 (Pa. 1994)); *accord Markham*, 136 A.3d at 143 (explaining that "a generalized grievance regarding the workings of government that all citizens share[]" is insufficient to confer standing). Further, "a 'direct' interest mandates a showing that the matter complained of 'caused harm to the party's interest,' i.e., a causal connection between the harm and the violation of law." *Pittsburgh Palisades Park*, 888 A.2d at 660 (citations omitted). Proposed Intervenors do not satisfy these requirements.

(a) Proposed Intervenors' General Interest in Resource Allocation Is Not Sufficient to Confer Standing in this Action

Proposed Intervenors' first enumerated interest, their allocation of resources, is not actionable under Pennsylvania law. First, Proposed Intervenors argue that they reallocated a portion of their limited resources to educate voters about mail-in voting, when they would have otherwise spent these funds on supporting Republican candidates. (*See* Br. in Support of App. at 9-10; *see also* Ex. 1 to App.,

¶ 11; Ex. 2 to App., ¶ 11; Ex. 3 to App., ¶ 11.) But, despite Proposed Intervenors' rhetorical use of the word "forced," *see id.*, this reallocation was voluntary. Act 77 does not *impose* any financial costs on anyone; it *permitted* voters to vote by mail, in addition to already existent manners of voting (in-person and absentee). Thus, rather than being "forced" to spend anything, Proposed Intervenors *chose* to reallocate resources in response to Act 77. If Proposed Intervenors had spent zero dollars educating their members about voting by mail, those members still could have voted in-person or absentee, just as they were able to in prior elections. Further, Respondents spent tens of millions of dollars to educate voters throughout the state – Democrats and Republicans alike – about the effects of Act 77. (*See* Aff. of Jonathan Marks in Support of Respondents' Cross-App. for Summary Relief, ¶¶ 11-12.) Thus, Act 77 did not create a *de jure* or *de facto* obligation that Proposed Intervenors reallocate their resources.

Where, as here, an organization's alleged injury-in-fact "results not from any actions taken by [the defendant], but rather from the [organization's] own budgetary choices[,]" that spending is not an injury for standing purposes. *Fair Emp't Council of Greater Washington, Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276 (D.C. Cir. 1994); *accord Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012) (citing *Fair Emp't Council*, 28 F.3d at 1276); *United Poultry Concerns v. Chabad of Irvine*, 743 F. App'x 130, 131 (9th Cir. 2018) (same); *Donald J. Trump for*

Pres., Inc. v. Way, No. 20-10753, 2020 WL 6204477, at *11 (D.N.J. Oct. 22, 2020) (same); *see also Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 288 (3d Cir. 2014) (stating that plaintiff cannot "manufacture standing by choosing to expend resources") (citation and quotation omitted)). As a result, Proposed Intervenors' voluntary allocation of resources is not a sufficient interest to confer standing or warrant intervention under Pennsylvania law.

Proposed Intervenors are also incorrect that their resource allocation injury, to the extent that it is tied to "uncertainty" about Act 77's constitutionality, is directly, i.e., causally, related to enforcement of Act 77. In each of the three affidavits submitted by Proposed Intervenors, the affiants at least partially attribute Proposed Intervenors' resource reallocation to "uncertainty surrounding the constitutionality of Act 77." (Ex. 1 to App., ¶ 9; Ex. 2 to App., ¶ 9; Ex. 3 to App., ¶ 9; *see also* Br. in Support of App. at 9.) This uncertainty, however, results entirely from *litigation* and not from enforcement of Act 77. As Proposed Intervenors themselves state: "the uncertainty and impact *of the case* creates the 'dilemma' for the County Republican Intervenors to either utilize their resources to promote mail-in ballots o[r] [sic] in-person voting." (Br. in Support of App. at 10 (emphasis added).) But for Proposed Intervenors' injury to be actionable, there must be "a causal connection between the harm and *the violation of law*." *Pittsburgh Palisades Park*, 888 A.2d at 660 (emphasis added). Thus, although the alleged

violation of the law, according to Proposed Intervenors, is enforcement of Act 77, Proposed Intervenors appear to attribute their injury to something else entirely: the uncertainty about the status of Act 77 created by litigants (including themselves, if the Application to Intervene is granted). Simply put, Proposed Intervenors cannot rely on an interest – uncertainty – that is a byproduct entirely of litigation rather than of the alleged unconstitutionality of Act 77 asserted in the litigation.

(b) Proposed Intervenors Cannot Assert Their Members' Associational Right to Vote for and Elect Republican Candidates

Proposed Intervenors' second identified interest, their members' associational right to "vote for and elect republican candidates," (Br. in Support of App. at 10), is also insufficient to confer standing. When an organization seeks to sue on behalf of its members, the organization "'allege[s] that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought the suit.'" *Concerned Taxpayers of Allegheny County v. Com.*, 382 A.2d 490, 493 (Pa. Commw. Ct. 1978) (quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975)). Here, the alleged members' alleged injury – their right to vote for and elect Republican candidates – is not actionable.

As an initial matter, Proposed Intervenors do not demonstrate how Act 77 burdens or limits the ability of any voter – Republican or Democrat – to elect the

candidate of his or her choice. To the contrary, Act 77 makes it *easier* to vote by creating a new method of voting – vote by mail – in addition to the already existent methods of voting. Thus, Proposed Intervenors do not and cannot establish that Act 77 injures its members (let alone substantially injures them), as would be required for the members themselves to have standing. *See Pittsburgh Palisades Park*, 888 A.2d at 660.

Further, Proposed Intervenors' alleged associational injury is not actionable for purposes of standing, because it is not specific to the individual or individuals asserting the injury. There "must be some discernible adverse effect to some interest *other than the abstract interest of all citizens* in having others comply with the law." *In re Phila. Health Care Trust*, 872 A.2d at 262 (quotation and citation omitted). Here, Act 77 applies equally to all voters. All voters have the same ability to vote by mail or vote in-person. Thus, any injury to voters' "right to vote" would be a paradigmatic generalized injury "suffered equally by all voters and [that] is not 'particularized' for standing purposes." *Bognet v. Sec'y Commonwealth of Pa.*, 980 F.3d 336, 356 (3d Cir. 2020), *cert. granted, judgment vacated on mootness grounds sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021); *accord Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020), *cert. denied*, 141 S. Ct. 1379 (2021) (No injury where "'no single voter is specifically disadvantaged'" (citing *Bognet*, 980 F.3d at 356)); *see also Pennsylvania Voters*

All. v. Ctr. County, 496 F. Supp. 3d 861, 869 (M.D. Pa. 2020), *appeal dismissed sub nom. Pennsylvania Voters All. v. County of Ctr.*, No. 20-3175, 2020 WL 9260183 (3d Cir. Nov. 23, 2020), *and cert. denied sub nom. Pennsylvania Voters All. v. Ctr. County, Pennsylvania*, 141 S. Ct. 1126 (2021) (rejecting as generalized injury claim that "right to vote has been infringed because it now might be more difficult for [plaintiffs] to elect their preferred candidate"). Because Proposed Intervenors' associational injury is generalized rather than specific, it is not actionable as a matter of law.[3]

2. Because Proposed Intervenors Lack Standing to Sue, They Could Not Have Joined as an Original Party

Although Proposed Intervenors assert that they are entitled to intervene as of right because they "could have joined as an original party in the action" under Pa.R.C.P. 2327(3), their lack of standing to sue, *see supra* pp. 7-13, is equally fatal to intervention under this provision. Under Rule 2327(3), a party "must have standing—a real property interest—at the time intervention is sought[.]" *Realen*

[3] To the extent Proposed Intervenors' Application to Intervene alludes to any other possible interests supporting intervention, such as the possible "dilution" of their members' votes, Proposed Intervenors omitted them from their Brief in Support of the Application to Intervene and therefore appear to have abandoned them. In any event, courts across the country, including Pennsylvania federal courts, have rejected allegations of vote dilution as a possible basis for standing where the dilution would, as here, be shared equally by all voters: A vote "counted illegally, 'has a mathematical impact on the final tally and thus on the proportional effect of every vote, but no single voter is specifically disadvantaged.' Such an alleged 'dilution' is suffered equally by all voters and is not 'particularized' for standing purposes. The courts to consider this issue are in accord." *Bognet*, 980 F.3d at 355-57 (citation omitted, collecting cases); *accord Wood*, 981 F.3d at 1314.

Valley Forge Greenes Associates v. Upper Merion Tp. Zoning Hrg. Bd., 941 A.2d 739, 743 (Pa. Commw. Ct. 2008); *see also Markham*, 136 A.3d at 139 ("[P]ursuant to the Pennsylvania Rules of Civil Procedure, in order to intervene, individuals must have standing, Pa.R.C.P. 2327(3), (4), and to establish standing, one must have an interest that is substantial, direct, and immediate." (citation in original)). Because Proposed Intervenors lack standing to sue, they could not have joined as an original party under Rule 2327(3).

B. Even If Proposed Intervenors Could Satisfy the Criteria in Rule 2327, Their Application Would Properly Be Denied Under Rule 2329

Although failure to come within one of the categories set forth in Rule 2327 necessarily precludes intervention, satisfaction of the Rule is not similarly dispositive. Rule of Civil Procedure 2329 sets forth several factors that give a court discretion to refuse an application for intervention, even if the proposed intervenor has made an adequate showing under Rule 2327.

> [A]n application for intervention may be refused, if …
>
> …
>
> (2) the interest of the petitioner is already adequately represented; or
>
> (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.

Pa. R. Civ. P. 2329(2), (3). Here, even if Proposed Intervenors could bring

themselves within Rule 2327, the factors set forth in paragraphs (2) and (3) would each weigh heavily in favor of a discretionary denial of intervention.

1. Proposed Intervenors' Interests Are Already Adequately Represented

Proposed Intervenors' interests in this litigation – (1) their need to spend resources on Republican voter education and registration, and to promote Republican candidates (particularly in Butler, York, and Washington Counties) and (2) their associational interest in their members' right to vote and elect Republicans – are clearly represented by the other petitioners in this action.

First, the Bonner Petitioners share and represent Proposed Intervenors' interest in spending resources and time to promote the Republican Party. The Bonner Petitioners are Republican voters and Republican elected officials who were elected as Republican candidates.[4] Moreover, the Bonner Petitioners include elected officials and voters (and future candidates) from or representing Butler, York, and Washington Counties, Proposed Intervenors' counties. (*See* Bonner Pet. ¶¶ 3, 4, 11, 13, 16.) The Bonner Petitioners therefore share Proposed Intervenors'

[4] The Bonner Petitioners' political party registration is a matter of public record of which the Court may take judicial notice. *See City of Philadelphia v. Frempong*, No. 68 C.D. 2019, 2020 WL 1969472, at *4 (Pa. Commw. Ct. Apr. 24, 2020) ("'We may take judicial notice of official court records and public documents, including the entries in a civil docket sheet.'" (quoting *City of Phila. v. Frempong*, No. 1115 C.D. 2018 (Pa. Commw. Ct. August 20, 2019) (slip op. at 6 n.5)).

interests in "leading voter registration efforts *within their respective counties*;" "assisting Republican voters with questions regarding proper voting practices;" advancing the policies and principles of the Republican Party *within their counties*;" "assisting candidates in their election campaigns; and" 'getting out the Republican vote,' *in their respective counties*." (Br. in Support of App. at 8 (emphasis added).) Nothing about these tasks is unique to the local Republican parties; local Republican voters and candidates, like the Bonner Petitioners, undeniably pursue these same interests.

It would be absurd for Proposed Intervenors to claim otherwise. When Proposed Intervenors claim an interest in "assisting candidates in their election campaigns," the Republican candidates about whom they are speaking *are* the Bonner Petitioners. Likewise, to the extent Proposed Intervenors more specifically attribute their interest to having to spend time and money on educating Republican voters about mail-in ballots, (*see id.* at 9), the Bonner Petitioners – who must run for election every two years as members of the Pennsylvania House of Representatives – again share that interest, as candidates who will run in the same counties as those represented by Proposed Intervenors.

Second, the Bonner Petitioners also share Proposed Intervenors' associational interest in their members' right to vote and elect Republicans. As noted above, at least one of the Bonner Petitioners is a Republican voter or elected

official from each of Butler, York, and Washington Counties. That means that the associational rights of voters that Proposed Intervenors are asserting are rights that *belong to* the Bonner Petitioners or the Bonner Petitioners' constituents. There is no daylight between the interests of Proposed Intervenors and the Bonner Petitioners: they are one and the same. The Court should exercise its direction and deny the Application to Intervene under Rule 2329(2).

2. Proposed Intervenors Unduly Delayed in Filing Their Application for Intervention

Proposed Intervenors – like Petitioner McLinko and the Bonner Petitioners—have unduly delayed in bringing their claims. As shown in Respondents' applications for summary relief regarding the McLinko Petition and Bonner Petition, Petitioner McLinko delayed almost 21 months after Act 77's enactment to file suit; the Bonner Petitioners delayed exactly 22 months after Act 77's enactment to file suit. Proposed Intervenors, however, are the worst offenders yet. Not only did they delay the longest, nearly 24 months after Act 77 was enacted, to assert their purported interests, but their substantive claims are *identical* to those brought by Petitioner McLinko and the Bonner Petitioners,[5] and yet they "sat by while observing matters" in this action. *Township of Radnor v. Radnor Recreational, LLC*, 859 A.2d 1, 5 (Pa. Commw. Ct. 2004). Moreover, Proposed

[5] The same is not true of the Democratic National Committee and the Pennsylvania Democratic Party, which also recently sought leave to intervene. These potential intervenors seek to defend the statute, not to have it declared unconstitutional.

Intervenors themselves recognize that the interests on which they rely to support their Application for Intervention undeniably accrued in 2020: "Specifically, the County Republican Intervenors felt the strain of the equitable considerations of Act 77 in the 2020 election cycle and fear the same impacts again." (Brief in Support of App. at 9; *see also* Ex. 1 to App., ¶ 11; Ex. 2 to App., ¶ 11; Ex. 3 to App., ¶ 11.[6]) Because Proposed Intervenors have unduly delayed without any possible excuse,[7] their Application to Intervene should be denied under Rule 2329(3).

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that Proposed Intervenors' Application to Intervene be denied.

Respectfully submitted,

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Dated: October 22, 2021

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[6] "In the 2020 election cycle, our Committee did not have sufficient financial resources to create specific mailers to educate Republican voters regarding the appropriate way to request, complete, and return a mail-in ballots in [Washington, Butler and York Counties]. The Committee was forced to take space away from mailers designed to support Republican candidates and use that space to educate Republican voters regarding Act 77. This was not an effective way to overcome all of the confusion related to Act 77. If held to be constitutional, significant additional resources will be needed in the future." (Ex. 1 to App., ¶ 11; Ex. 2 to App., ¶ 11; Ex. 3 to App., ¶ 11.)

[7] Proposed Intervenors do not attempt to explain their undue delay in bringing their claims.

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CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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

Dated: October 22, 2021

/s/ Michele D. Hangley
Michele D. Hangley