

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 73 MM 2022

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

Petitioners,

v.

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

Respondent.

**PETITIONERS' ANSWER TO APPLICATIONS TO INTERVENE BY
SENATOR JAY COSTA AND SENATE DEMOCRATIC CAUCUS
AND BY HOUSE DEMOCRATIC LEADER JOANNA E. MCCLINTON**

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

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

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

The principles of legislative standing are well settled. Legislators lack standing to intervene for the purpose of defending the constitutionality of a legislative enactment and offering argument regarding the intent of the legislature, *Robinson Twp. v. Commonwealth*, 84 A.3d 1054, 1055 (Pa. 2014), or to assert grievances “about the correctness of governmental conduct,” *Markham v. Wolf*, 136 A.3d 134, 145 (Pa. 2016). Legislators have standing to participate in litigation to protect their “right to vote on legislation.” *Id.* at 143 (Pa. 2016) (quoting *Fumo v. City of Philadelphia*, 972 A.2d 487, 501 (Pa. 2009)).

Senate Majority Leader Kim Ward and House Majority Leader Kerry Benninghoff lack standing because they seek in this action to defend their individual votes and the constitutionality of SB 106, interests which were not adversely affected and which are already adequately represented by the General Assembly. *See, e.g.*, Ward Appl. To Intervene ¶ 9 (claiming to represent interests of Senate Republican members who voted for SB 106); *id.* ¶ 11 (claiming “legally enforceable interest in defending the General Assembly’s constitutional authority”); Benninghoff Appl. To Intervene ¶ 18 (“House Intervenors seek to defend the rights and actions of the majority party members with regard to SB 106”). By contrast, Senate Minority Leader Jay Costa and House Minority Leader Joanna E. McClinton have standing to intervene for the purpose of asserting the negative impact on their respective interests as legislators related to the General Assembly’s failure to adhere to the

constitutional process for amending the Constitution. *See, e.g.,* Costa Appl. To Intervene ¶ 9 (challenging “unconstitutional manner in which SB 106 was considered, debated, and voted upon); McClinton Appl. To Intervene ¶ 33 (seeking intervention “to preserve the General Assembly’s right granted through the Pennsylvania Constitution under Article XI, § 1 to consider, debate, and vote on proposed state constitutional amendments”).

Given the well-settled standing principles and the unique circumstances presented here, Petitioners Tom Wolf, Governor of the Commonwealth of Pennsylvania, and Leigh M. Chapman, Acting Secretary of the Commonwealth of Pennsylvania, do not oppose the Emergency Applications for Leave To Intervene by Senate Minority Leader Costa and the Pennsylvania Senate Democratic Caucus and by House Democratic Caucus Leader McClinton to the extent the applications are premised on legislators’ claimed special interest in the constitutional process for voting on proposed constitutional amendments in the General Assembly, including the requirement in Article XI, § 1 that each proposed amendment shall be put to a separate yea or nay vote and each proposed substantive change to the Constitution shall be voted on separately, and deviations from the constitutional process with respect to SB 106. *See generally Fumo*, 972 A.2d at 502 (where “claim reflects the state legislators’ interest in maintaining the effectiveness of their legislative authority and their vote, . . . [it] falls within the realm of the type of claim that

legislators, *qua* legislators, have standing to pursue”); *Zemprelli v. Daniels*, 436 A.2d 1165, 1167 (Pa. 1981) (individual legislators have standing to bring action “[w]here the voting process itself is . . . under attack”).

Respectfully submitted,

/s/ Daniel T. Brier

Daniel T. Brier
Donna A. Walsh
John B. Dempsey
Richard L. Armezzani

Myers, Brier & Kelly, LLP
425 Biden Street, Suite 200
Scranton, PA 18503

Gregory G. Schwab
General Counsel
Office of General Counsel
333 Market Street, 17th floor
Harrisburg, PA 17101

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

Date: August 15, 2022

PROOF OF SERVICE

I, Daniel T. Brier, hereby certify that the foregoing Answer to Applications for Leave To Intervene was served upon the following counsel via the Court's PACFile system which service satisfies the requirements of Pa.R.A.P. 121:

John J. Cunningham, IV, Esquire
Joel L. Frank, Esquire
Joseph R. Podraza, Esquire
Scott R. Withers, Esquire
Lamb McErlane, PC
24 E. Market Street
West Chester, PA 19381

Erik R. Anderson, Esquire
James J. Kutz, Esquire
Erin R. Kawa, Esquire
Sean C. Campbell, Esquire
Post & Schell, PC
17 North Second Street, 12th Floor
Harrisburg, PA 17101

Deborah R. Willig, Esquire
Amy R. Rosenberger, Esquire
John R. Bielski, Esquire
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103

Date: August 15, 2022

Matthew H. Haverstick, Esquire
Joshua J. Voss, Esquire
Shohin H. Vance, Esquire
Kleinbard LLC
Three Logan Square
1717 Arch Street, 5th Floor
Philadelphia, PA 19103

Tara L. Hazelwood, Esquire
Lam D. Truong, Esquire
Matthew S. Salkowski, Esquire
Office of Chief Counsel
Democratic Caucus
Pa. House of Representatives
Room 620, Main Capitol Building
Harrisburg, PA 17120

/s/ Daniel T. Brier

Daniel T. Brier
Attorney for Tom Wolf, Governor of
the Commonwealth of Pennsylvania,
and Leigh M. Chapman, Acting
Secretary of the Commonwealth of
Pennsylvania

CERTIFICATE OF COMPLIANCE

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

/s/ Daniel T. Brier
Daniel T. Brier

Date: August 15, 2022