[J-30B-2023, J-30C-2023] [MO: Dougherty, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JESSICA SHIRLEY, INTERIM ACTING SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ACTING CHAIRPERSON OF THE ENVIRONMENTAL QUALITY BOARD	:	No. 85 MAP 2022 Appeal from the Order of the Commonwealth Court at No. 41 MD 2022 dated June 28, 2022. ARGUED: May 24, 2023
v.	:	
PENNSYLVANIA LEGISLATIVE REFERENCE BUREAU, VINCENT C. DELIBERATO, JR., DIRECTOR OF THE LEGISLATIVE REFERENCE BUREAU, AND AMY J. MENDELSOHN, DIRECTOR OF THE PENNSYLVANIA CODE AND BULLETIN	:	
APPEAL OF: CITIZENS FOR PENNSYLVANIA'S FUTURE, SIERRA CLUB, AND CLEAN AIR COUNCIL, Possible Intervenors	:	
JESSICA SHIRLEY, INTERIM ACTING SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ACTING CHAIRPERSON OF THE ENVIRONMENTAL QUALITY BOARD	:	No. 87 MAP 2022 Appeal from the Order of the Commonwealth Court at No. 41 MD 2022 dated July 8, 2022. ARGUED: May 24, 2023
v.	:	
PENNSYLVANIA LEGISLATIVE REFERENCE BUREAU, VINCENT C. DELIBERATO, JR., DIRECTOR OF THE LEGISLATIVE REFERENCE BUREAU, AND AMY J. MENDELSOHN, DIRECTOR	:	

OF THE PENNSYLVANIA CODE AND BULLETIN	:
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APPEAL OF: CITIZENS FOR PENNSYLVANIA'S FUTURE, SIERRA CLUB, AND CLEAN AIR COUNCIL,	:
	:
Possible Intervenors	:

CONCURRING AND DISSENTING OPINION

JUSTICE MUNDY **DECIDED: July 18, 2024**

I agree with the majority that this appeal is moot to the extent it seeks review of a preliminary injunction that has been superseded by a permanent injunction. I respectfully dissent, however, from the majority's holding that the Commonwealth Court abused its discretion in denying Appellants' application to intervene.

I. Appealability

Initially, I offer a few thoughts on the immediate appealability of an order denying intervention, and how they apply to this case. As the majority develops, for an interlocutory trial court order to be immediately appealable under the collateral-order doctrine, it must satisfy three elements: separability, importance, and irreparable loss. Thus, it must be true that (1) the order is separable from the main cause of action, (2) the right involved is too important to be denied review, and (3) the claim will be lost if review is postponed until final judgment in the case. *See* Majority Op. at 17 (quoting Pa.R.A.P. 313(b)). As the majority additionally recognizes, this standard is to be applied "narrowly" because the collateral-order doctrine comprises an exception to the final-order rule with its aim to prevent delay stemming from piecemeal review of interlocutory trial court orders. *See id*. at 17. Even under a narrow construction, it seems to me prong (1) will generally be true of an intervention-denial order. Such an order would appear almost always to be

separate from the main cause of action. With that said, I believe the majority has not applied prongs (2) and (3) narrowly.

First, as for prong (2), the importance prong, the majority's analysis is limited to stating that Appellants wish to intervene to protect their "environmental well-being," and those interests are shared by the public. *See* Majority Op. at 18. I believe this description glosses over some important details. The issues before the Commonwealth Court were whether the RGGI regulation effectuated an unconstitutional tax in violation of the separation of powers principle, whether it was *ultra vires* under the Air Pollution Control Act, and whether DEP complied with the Commonwealth Documents Law.[1] There is little doubt the challenged regulation amounts to a major new direction in energy policy for Pennsylvania that has the potential to affect, not only the environment, but the availability of affordable electricity for low-income citizens and the presence of jobs in Pennsylvania's energy sector. It thus involves an examination of social policy issues and a balancing of competing goals and factors, which is ordinarily the task of the General Assembly. *See Rice v. Diocese of Altoona-Johnstown*, 255 A.3d 237, 256 (Pa. 2021) (citing *Lance v. Wyeth*, 85 A.3d 434, 454 n.26 (Pa. 2014)). Under these circumstances, the interests of Pennsylvania citizens affected by the claims before the Commonwealth Court include, most centrally, their interest in having new taxes levied by the General Assembly and not

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[1] *See Ziadeh v. Pa. LRB*, Nos. 41 M.D. 2022, *slip op*. at at 8-9 (Pa. Cmwlth. July 8, 2022) (summarizing the Senate Intervenors' five counterclaims). The counterclaims are set forth in *McDonnell v. Pa. LRB*, No. 41 M.D. 2022, Intervenor Respondents' Answer with New Matter & Counterclaims at ¶¶ 153-228 (Pa. Cmwlth. filed March 3, 2022).

The Senate Intervenors claimed the regulation was, in effect, a tax because the auction proceeds would generate $443 million, nearly tripling DEP's entire budget, and only six percent of those proceeds would be consumed by the cost of administering and overseeing the CO_2 trading program. The Commonwealth Court eventually cited these factors in crediting the Senate Intervenors' position and permanently enjoining the Secretary from enforcing the regulation's provisions. *See Ziadeh v. Pa. LRB*, No. 41 M.D. 2022, *slip op*. at 11-12, 2023 WL 7170737, at *5-*6 (Pa. Cmwlth. Nov. 1, 2023).

by an administrative agency – and, more generally, their interest in having major energy policy decisions made in compliance with statutory law, or alternatively, made by their elected representatives rather than an entity whose members they cannot hold accountable at the ballot box.

Appellants clearly agree with the specific policy goals underlying Pennsylvania's RGGI participation, but it seems attenuated to say they accordingly have an enforceable "right" that is too important to be denied review to have such regulations be enacted by an administrative agency instead of the legislative body. The majority avoids such difficulties by simply taking Appellants' word for it that their right should be characterized solely in terms of their environmental objectives without any reference to the issues raised before the trial court, and that those goals are shared by the public at large and go beyond the litigation at hand. To my mind this departs from the "narrow" approach we have endorsed for collateral review, and our requirement that every element of the collateral order doctrine be "clearly present before collateral appellate review is allowed," so as to avoid "undue corrosion of the final order rule." *Shearer v. Hafer*, 177 A.3d 850, 858 (Pa. 2018) (internal quotation marks and citations omitted). I would, instead, critically examine Appellants' contention, as we have done relative to other litigants, *see, e.g.*, *Geniviva v. Frisk*, 725 A.2d 1209, 1213-14 (Pa. 1999); *Shearer*, 177 A.3d at 859, and conclude there is no important right, deeply rooted in public policy and shared by the public at large, to have the government require that Pennsylvania's electricity producers participate in RGGI through the administrative regulation challenged in this matter.

Relying on *In re Barnes Foundation*, 871 A.2d 792 (Pa. 2005), and *K.C. v. L.A.*, 128 A.3d 774 (Pa. 2015), the majority also concludes prong (3) is satisfied here because if the order is not reviewed right now, Appellants' "right to intervene" will be lost forever. Majority Op. at 18 (citing *K.C.*, 128 A.3d at 780; *Barnes*, 871 A.2d at 794). This raises

some questions. Should *Barnes* (and derivatively, *K.C.*) be read to encompass such a "lost forever" precept? Even if it should, does that mean the claim at issue will be lost forever every time intervention is denied, if such denial is not made immediately appealable? And while the majority does all of this in an attempt to assess jurisdiction first, followed by merits review, is it really possible for an appellate court to evaluate jurisdiction to entertain an immediate appeal of an intervention-denial order without at least some consideration of the merits of that order?

To proffer brief answers to these questions, it seems to me, first, that *Barnes* does not rule out the possibility that a party whose interlocutory appeal of an intervention-denial order was quashed might try a second time to appeal that order after the trial court issues a final order. *Barnes* indicated that an intervention-denial order "must be appealed within 30 days of its entry . . ., or not at all," *Barnes*, 871 A.2d at 794, but it said nothing about what would happen if the person *did* appeal within 30 days and the appeal was quashed. One possibility is for this Court to construe *Barnes* to allow merits review after a final trial court order issues, so long as the party preserved its appellate rights by at least trying to take an appeal within 30 days of the intervention-denial order. Such allowance would arguably prevent all such orders from being deemed collateral orders on the grounds that, then, prong (3) of the collateral order doctrine would never be met. The benefit would be avoiding piecemeal review and the delay it entails, but such a rule could necessitate a do-over of the trial level proceedings if it turns out intervention was improperly denied, thereby rendering the first time through a mere dress rehearsal and causing even greater delay. *See generally Jackson v. Hendrick*, 446 A.2d 226, 230 (Pa. 1982) (noting belated intervention prejudices both the prevailing party and the adjudicatory process). Although this precise issue is not raised in the instant appeal, it will have to be addressed in another phase of this litigation. *See, e.g.*, *Shirley v. Pa. Legislative Reference Bureau*, 113 MAP

2023, Order (Pa. June 7, 2024) (deferring jurisdictional review of Constellation Energy's appeal of an intervention-denial order to the merits briefing stage, where Constellation had previously tried to appeal such order under the collateral order doctrine, but that appeal was quashed).

Here, though, the majority's cursory treatment seems to go to the other extreme and suggest prong (3) is always met in the intervention-denial context. This would mean that, as long as the importance prong is satisfied, appellate jurisdiction is always secure. The majority offers a two-sentence analysis of this topic as follows:

> Third, a party who is denied intervention and who satisfies the requirements of Rule 313 must appeal from the order denying intervention within thirty days of its entry or lose the right to appeal the order entirely. Consequently, Nonprofits' right to intervene will be lost forever if they are not permitted to appeal from the decision denying intervention.

Majority Op. at 18 (citations omitted). The majority reaches this conclusion by framing the "claim" under prong (3) as the "right to intervene." I find this framing in tension with other cases in which the "right" under prong (2) and the "claim" under prong (3) have been viewed as substantially overlapping.[2] Further, I am not as certain as the majority that in an intervention-denial setting, prong (3) is always met. For example, even if the ability to intervene will be lost forever, there may be other ways the party can vindicate its asserted rights. *See, e.g.*, *Mortg. Elec. Registration Sys. v. Malehorn*, 16 A.3d 1138, 1143 (Pa. Super. 2011) (finding prong (3) unmet where the disappointed intervenor had other

[2] *See, e.g.*, *Commonwealth v. Harris*, 32 A.3d 243, 249 (Pa. 2011) (important right not to disclose material covered by psychologist-client privilege would be destroyed if review of discovery order awaited appeal after final judgment); *see also Commonwealth v. Wright*, 78 A.3d 1070, 1078 (Pa. 2013) (finding the importance of the right to waive counsel and act *pro se* under prong (2) overlapped with the irreparability inquiry under prong (3) because an erroneous denial of that right would harm society's interests in the finality of criminal proceedings that were considered in connection with the importance prong).

forums in which she could protect her property rights). This would mean the claim will not be "irreparably lost" for Rule 313(b) purposes.

Here, it seems to me Appellants' environmental interests are fully vindicable through the legislative process in which they face no barriers to participation. In this sense, the present controversy is qualitatively different from one in which the government has affirmatively acted in a way that is alleged to infringe upon the challenger's constitutional rights. In that type of setting, it would be unsatisfactory to relegate the challenger to the legislative process: Pennsylvania's courts stand open to protect its citizens' civil rights from governmental overreach. But in this matter the government has taken no action that is claimed to violate Appellants' rights. To the contrary, Appellants *favor* the action the government has taken; they seek to intervene only so they can be another voice in defending the government from the present legal challenge – all while the government is already "vigorously defending" its own actions. *Ziadeh v. Pa. LRB*, Nos. 41 & 247 M.D. 2022, *slip op*. at 20 (Pa. Cmwlth. July 8, 2022). And there is no impediment to their having that voice as *amici curiae*. Because, as developed above, it is far from clear Appellants have any enforceable right to force Pennsylvania electricity producers to participate in RGGI – or at least to do so via the regulations promulgated by DEP – it is hard to conclude they have asserted any right too important to be denied review that will be irreparably lost if they are not permitted to intervene.

To the extent the above embraces factors that impact upon the merits of the intervention-denial order while evaluating its appealability, as previously noted I question whether the two can be strictly separated. In fact, this Court has issued decisions that are difficult to reconcile. In *Pennsylvania Association of Rural & Small Schools v. Casey*, 613 A.2d 1198 (Pa. 1992), we quashed an appeal from an intervention-denial order on the basis that the litigant's interests were adequately represented by another party. *See*

id. at 1201. But adequate representation by another has nothing to do with the collateral order doctrine; it relates only to a permissible basis for the trial court to deny intervention under Pa.R.A.P. 2329 where a prospective intervenor satisfies one of the initial grounds for intervention under Pa.R.A.P. 2327. At the other end of the spectrum, in *Markham v. Wolf*, 136 A.3d 134 (Pa. 2016), we implied in a footnote that all intervention-denial orders are automatically appealable as collateral orders in light of the holding in *Barnes*. *See id*. at 138 n.4.

Under my reading of our decisional law on this topic, an intervention-denial order may or may not be appealable, largely depending on the appellate court's evaluation of the importance of the right the prospective intervenor seeks to vindicate – an evaluation that overlaps with a merits assessment of whether the trial court's order should be affirmed. In this respect, our intermediate court explained in an earlier case that

> the merits of the petition to intervene necessarily are considered as part of the analysis to determine whether the claim asserted is "too important to be denied review" [under the collateral-order doctrine]. . . . The appellant must at a minimum show actual entitlement to intervene under the applicable Rules of Civil Procedure in order to meet this test.

Cogan v. County of Beaver, 690 A.2d 763 (Pa. Cmwlth. 1997). The upshot, in my view, is that the appealability of an order denying intervention cannot be assessed without some consideration of its validity. From a purist's point of view, this mixes two distinct issues – appealability and correctness. But short of making intervention-denial orders categorically appealable as collateral orders, there would appear no other way to remain true to the wording of Rule 313(b) and the concept that exceptions to the final order doctrine are to be narrowly applied. Moreover, refusing to engage in some review along these lines could fail to uphold each litigant's constitutional right to take at least one appeal. *See* PA. CONST. art. V, § 9.

II. Merits

A. Standing to intervene

As recounted by the majority, on the question of whether Appellants had standing to intervene under Rule 2327, *see* Pa.R.Civ.P. 2327(4) (providing a person may intervene who establishes that the outcome of the action may affect a legally-enforceable interest of that person), the trial court held Appellants as organizations lacked standing, but they attained associational standing because at least one of their individual members testified concerning alleged harms they suffered, which they attributed to emissions from power generation using fossil fuels. *But cf. FDA v. Alliance for Hippocratic Medicine*, ___ U.S. ___, ___, 2024 WL 2964140, at *15-*19 (U.S. June 13, 2024) (Thomas, J., concurring) (offering a critique of the concept of associational standing and arguing it cannot be supported under Article III). These alleged harms, which are deemed by the majority to affect legally-enforceable interests, stem from, *inter alia*, the individuals' responses to perceived changes in the air and weather. They include such mental impressions as concerns that the weather has worsened over the past 25 years, apprehensions about dehydration and overheating, and "eco-anxiety" – all of which they attribute to the climate and their perceptions about climate change. *See* Majority Op. at 27-28.

In terms of expert evidence, the majority relies on the intervention hearing testimony of Dr. Deborah Gentile, an allergy and immunology physician, who testified on behalf of the Clean Air Council. *See id*. at 28-30. The trial court qualified Dr. Gentile as an expert in the health effects of air pollution generated by power plants, but her testimony was broader than that, as it covered matters of public policy including her predictions concerning the environmental impact of the challenged regulation – a topic in which she had no expertise. *See, e.g.*, N.T., May 11, 2022, at 373-74 (reflecting Dr. Gentile's testimony that the RGGI rules will reduce air pollution in Pennsylvania). She admitted on

cross-examination that the EPA's air-quality standards were already being met at all monitoring sites in Pennsylvania, *see id*. at 379, and that she had no knowledge of whether "leakage" from other states would offset prospective air improvements in Pennsylvania attributable to RGGI participation.[3] She noted, in this regard, that she was "not an expert on that at all." *Id*. at 380-81; *see also id*. at 381 ("I'm not an expert in how power is generated and moved across the grid.").

Dr. Raymond Najjar, an expert in atmospheric science, climate change, and climate modeling, also testified for Appellants regarding the connection between carbon emissions and a warming atmosphere. Although he confessed to having only "basic" familiarity with RGGI, *id*. at 313, he stated without qualification that it "will reduce the amount of carbon dioxide in the atmosphere" – although it was unclear how he arrived at that conclusion or whether he had any specialized knowledge concerning the electricity-generation industry or regulatory policy. He appeared to support RGGI on the basis that "we all have to do our part" while acknowledging carbon emissions from elsewhere can affect Pennsylvania just as much as Pennsylvania emissions. *See id*. at 314 (explaining it "doesn't really matter where [carbon dioxide] comes from").[4] The Commonwealth Court nonetheless characterized all of Appellants' evidence as "insufficient" and found it was unclear from the record how RGGI participation would affect air quality in Pennsylvania:

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[3] For purposes of the hearing, leakage was stated to mean that fossil-fuel-fired plants in neighboring states would produce more electricity and more emissions due to operational reductions by Pennsylvania power plants attributable to this state's participation in RGGI. *Id*. at 380. Presumably, some of the emissions and electricity generated in those states would travel across state lines into Pennsylvania.

[4] As the majority recites, Dr. Najjar did testify that an elevated carbon level "makes people die," but he clarified that 5,000 tons of carbon dioxide "will lead to one death between now and [the year] 2100." *Id*. at 306. He also did not address the topic of leakage, *see supra* note 3, as he appeared to assume carbon reductions in Pennsylvania would not be offset by increased carbon output in neighboring states.

> No party presented evidence as to the number of CO_2 allowances that will be available for auction if the Commonwealth joins RGGI . . . and how that translates to lower emissions at this time. There was no evidence of how many sources are subject to emissions limitations and how those limitations would affect Pennsylvania covered sources.

Ziadeh v. Pa. LRB, No. 41 M.D. 2022, *slip op*. at 19 (Pa. Cmwlth. July 8, 2022).

As the majority develops, intervention under Rule 2327(4) requires an interest that is substantial, direct, and immediate. *See Markham*, 136 A.3d at 140. In other words, a prospective intervenor must have standing. *See Application of Beister*, 409 A.2d 848, 850-51 & n.2 (Pa. 1979). A substantial, direct, and immediate interest is one where the interest surpasses that of all citizens in procuring obedience to the law, the challenged action is the cause of party's harm, and the causal connection is neither remote nor speculative. *See Trust Under Will of Ashton*, 260 A.3d 81, 88 (Pa. 2021). As well, standing impliedly presumes the judicial relief sought can remedy the alleged harm. Without that predicate, Pennsylvania's judicial resources would be wasted on litigation where the requested relief will have no beneficial effect. Thus, standing in this jurisdiction has been phrased in terms of an ability to seek "judicial redress," *Sears v. Wolf*, 118 A.3d 1091, 1102 (Pa. 2015), to seek "civil redress," *Morrison Informatics v. Members 1st Fed. Credit Union*, 139 A.3d 636, 640 (Pa. 2016), and the like, *see generally Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 492 (Pa. 2021) (Wecht, J., concurring) ("At its core, standing is a flexible construct that enables judicial redress when the government has engaged in conduct or enacted laws that infringe the rights held by the citizenry."), and this is quite consistent with the redressability facet of Article III standing in the federal system.[5] Finally, standing requires not only a substantial, direct, and immediate interest,

[5] *See, e.g.*, *Hein v. Freedom From Religion Found.*, 551 U.S. 587, 598 (2007) (observing Article III standing involves an injury fairly traceable to the defendant's conduct which is likely to be redressed by the relief sought); *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 45-46 (1976) (standing requires a "substantial likelihood" that prevailing in the litigation will result in the plaintiffs receiving the benefit they seek); *see also Alliance for* (continued…)

it requires an interest the law protects. *See S. Bethlehem Assocs. v. Zoning Hearing Bd. of Bethlehem Twp.*, 294 A.3d 441, 447 (Pa. 2023) (denying standing where the litigant's interest in maintaining market share and pricing free from market competition was substantial, direct, and immediate, but it was not one the law protects).

The majority presently endorses the trial court's finding that Appellants' individual members have a legally enforceable interest in the outcome of this litigation. This appears to reflect a shift by this Court to a more lenient standard than it used in the past relative to standing to intervene in litigation that calls into question a statute's constitutionality. Recently, in *Allegheny Reproductive Health Center v. DHS*, 309 A.3d 808 (Pa. 2024), the plaintiffs challenged a statute that prevented taxpayer dollars from being used to pay for abortions. This Court denied an application to intervene filed by legislative parties seeking to uphold the provision. Although that issue involved legislative standing, which is its own topic, this Court added that denial of intervention was especially appropriate because the prospective intervenors' "interest is merely defending the constitutionality of the Coverage Exclusion, making their interests no greater than that of the general citizenry." *Id*. at 846. Here, too, Appellants are seeking to vindicate an interest shared by "the general citizenry" – their interest in a clean environment. *See* PA. CONST. art I, § 27 (requiring the Commonwealth to conserve and maintain natural resources "for the benefit of all the people"). Allowing Appellants to bootstrap their members' individualized concerns about the weather and climate change into associational standing in this context appears particularly generous on the part of this Court.

Hippocratic Medicine, ___ U.S. at ___ n.1, 2024 WL 2964140, at *6 n.1 (observing that, even if a plaintiff was harmed by state action, redressability "can still pose an independent bar" if the case is not "of the kind 'traditionally redressable in federal court'") (quoting *United States v. Texas*, 599 U.S. 670, 676 (2023)).

To see just how generous, consider that only four years ago we resolved a dispute in which certain parties filed a petition challenging an Election Code provision requiring mail-in ballots to be received by election day. One such challenger, the Pennsylvania Alliance for Retired Americans, was described by the Associated Press as a "major Democratic political group," and "the main super PAC supporting . . . presidential nominee Joe Biden." *Crossey v. Boockvar*, 108 MM 2020, Concurring and Dissenting Statement of Chief Justice Saylor, at 2 (filed Aug. 21, 2020) (quoting Jonathan Tamari, *A Key Democratic Group is Suing to Ease Pennsylvania's Vote-By-Mail Laws*, THE PHILADELPHIA INQUIRER (Apr. 22, 2020)). When Republican organizations sought to intervene as additional respondents, this Court denied the request notwithstanding that they presented "numerous reasons why they ha[d] particularized interests" in the matter, including assertions that they devoted substantial resources toward voter education and turnout. *Id*. at 1. This Court denied relief in spite of the high public importance of the issues raised, which, if anything, should have counseled in favor of a liberal approach to intervention.

As developed above, presently several of Appellants' members testified to their perceptions concerning air quality, the weather, and changes in the weather, as well as their lay opinions that such perceived changes are caused by climate change more broadly. In this latter respect, they also testified about their own anxiety concerning the environment, which they termed "eco-anxiety," and which the majority presently credits as a basis for standing. *See* Majority Op. at 29.[6] While these witnesses' desire for a healthy environment and a stable climate are, as noted, shared by all Pennsylvanians, on this record any suggestion that implementation of the challenged RGGI regulation will, in fact, redress those harms is speculative. Yet, in the context of this case, these witnesses

[6] If a person's individual anxiety over the climate and government policy regarding the environment constitutes a basis for standing, this could call into question the precept that harm to ideological interests is insufficient to confer standing.

are deemed to have a sufficient, legally-enforceable interest in the outcome such that their lay beliefs and personal anxieties comprise a valid basis for associational standing on the part of Appellants. And this is true even though the salient challenge to the RGGI regulation is based on the dual contentions, not directly related to Article I, Section 27, that it violates separation of powers and comprises an unconstitutional tax. The conclusion seems inescapable, then, that this Court is now broadening the foundation for standing to intervene beyond the comparatively narrow confines applied in the earlier controversies mentioned above.

B. Adequate representation by another party

The majority also faults the trial court for denying intervention pursuant to Rule 2329(2). *See* Pa.R.Civ.P. 2329(2) (permitting the court to deny intervention where "the interest of the petitioner is already adequately represented"). The majority reasons that a person who thinks up a new, "nonfrivolous argument," Majority Op. at 31, may not be denied intervention under that rule, whereas intervention may be denied to someone who forwards essentially the same arguments as the existing party or whose new arguments are frivolous. *See id*. at 30-32.

This line of reasoning does have the benefit of giving meaning to the "adequately" qualifier in Rule 2329(2). But on this issue as well, the majority's present stance signals that the Court is now prepared to offer prospective intervenors more latitude than it did in the past. Referencing *Crossey* again, the political organizations who sought to intervene and argue in favor of enforcing the Election Code were denied that opportunity notwithstanding that the only named respondent, the Secretary of the Commonwealth, had by that time withdrawn her preliminary objections and affirmatively aligned her position with that of the petitioners, expressly favoring the judicial relief they sought and disfavoring enforcement of the law. *See Crossey v. Boockvar*, 108 MM 2020, Praecipe

to Withdraw Certain of Respondents' Preliminary Objections Based on United States Postal Service's Announcement of Statewide Mail Delays Affecting General Election, at 7 (filed Aug. 13, 2020). A similar dynamic was evident in *Allegheny Reproductive*, where the sole party defendant was on record as disagreeing with the very statute it was charged with defending on remand against the strictest level of judicial scrutiny. *See Allegheny Reproductive*, 309 A.3d at 998 n.1 (Mundy, J., dissenting from denial of intervention). In both of those circumstances, this Court denied intervention to persons who actually *favored* upholding and applying the statute in question when no existing party in the case supported that result.

Here, by contrast, not only is Appellants' core position – that the challenged RGGI regulation is valid and should be implemented – identical to that of DEP, Appellants seek no other relief beyond what DEP is already requesting. Yet, because they are advancing their own argument in favor of the same relief, they cannot be denied intervention. In prior disputes, the fact a prospective intervenor forwarded its own arguments as to why the challenged legislation was valid was of no moment; here it is dispositive. In prior disputes, the fact the governmental entity charged with enforcing the law disagreed with the law or sought to avoid enforcing it did not move this Court to allow intervention by parties who wished to defend the law and have it enforced; here, intervention is granted although the governmental agency involved is already "vigorously defending" the challenged regulation. *Ziadeh v. Pa. LRB*, Nos. 41 & 247 M.D. 2022, *slip op*. at at 20 (Pa. Cmwlth. July 8, 2022).

III. Conclusion

Because the majority's extraordinarily lenient approach to intervention in this matter is difficult to reconcile with our prior cases, I respectfully dissent from its present holding that the Commonwealth Court abused its discretion in denying Appellants'

application to intervene. Nevertheless, this Court is evidently making a fresh start and I would hope that in future cases it will evenhandedly apply its newfound liberality with respect to entities seeking to intervene in important constitutional litigation.