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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Crossey, Dwayne Thomas, Irvin Weinreich, Brenda Weinreich, and the Pennsylvania Alliance for Retired Americans, Petitioners, v. Kathy Boockvar, Secretary of the Commonwealth, and Jessica Mathis, Director of the Bureau of Election Services and Notaries, Respondents.	No. 266 MD 2020

PETITIONERS' JOINT ANSWER IN OPPOSITION TO SENATORS' AND REPUBLICAN COMMITTEES' APPLICATIONS FOR LEAVE TO INTERVENE

Petitioners Michael Crossey, Dwayne Thomas, Irvin Weinreich, Brenda Weinreich, ("Individual Petitioners"), and the Pennsylvania Alliance for Retired Americans ("the Alliance") (collectively, "Petitioners") submit this joint answer in opposition to the motion to intervene by Joseph B. Scarnati, III, Pennsylvania Senate President Pro Tempore, and Jake Corman, Senate Majority Leader (collectively, "Senators"), and in opposition to the application for leave to intervene filed by the Republican Party of Pennsylvania, the Republican National Committee, and the National Republican Congressional Committee (collectively, "Republican Committees").

INTRODUCTION

This Court should deny the Senators' motion and the Republican Committees' application to intervene because neither meet any of the threshold grounds for intervention under Pa. R.C.P. 2327, and even if they did, Pennsylvania courts consistently reject intervention under Pa. R.C.P.

2329(2) and (3) where, as here, Respondents adequately represent the proposed intervenors' interest and intervention will only expand, extend, and duplicate litigation proceedings.

Both the Senators and the Republican Committees seek to intervene under Pa. R.C.P. 2327(4), which requires something that neither have: a "legally enforceable interest" which will be affected by the determination in this action. The Senators cannot meet this standard because only the General Assembly possesses the lawmaking power upon which the individual Senators rely to demonstrate a legally enforceable interest. U.S. Const. art. I, § 4, cl. 1 vested "in each State by the Legislature thereof" the authority to prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives" ("Elections Clause"). But the Senators are "neither the Pennsylvania General Assembly nor a group to which Pennsylvania has delegated the Commonwealth's lawmaking power"—indeed, they cite to no resolution or otherwise from the General Assembly to suggest that they have been vested with the power to seek intervention—thus they lack Article III standing to assert violations of the Elections Clause. *Corman v. Torres*, 287 F. Supp. 3d 558, 573 (M.D. Pa.), *appeal dismissed sub nom. Corman v. Sec'y Commonwealth of Pa.*, 751 F. App'x 157 (3d Cir. 2018); *see also Disability Rights Pa. v. Boockvar*, No. 83 MM 2020, 2020 WL 2507661 (Pa. May 15, 2020) (Wecht, J., concurring); *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016). Moreover, the Senators have no role whatsoever in implementing, enforcing, or administering the Commonwealth's Election Code (nor does this suit call into question any other unique role they might have as Senators), which further confirms that the Senators do not have a "legally enforceable interest" sufficient to intervene.

Nor do the Republican Committees, which advance a generalized interest in helping the Respondents to "uphold orderly free and fair elections." Republican Committees' Application at 2. Pennsylvania courts have consistently interpreted Pa. R.C.P. 2327(4) to require an interest

"which surpasses 'the common interest of all citizens in procuring obedience to the law.'" *Biester v. Thornburgh*, 409 A.2d 848, 851 (Pa. 1979) (quoting *William Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 269, 281 (Pa. 1975)). The Republican Committees' stated interest falls well short of this standard, notwithstanding their unsubstantiated claims that Petitioners' requested relief alters the competitive environment in unspecified ways. At most, the Republican Committees have expressed a desire to maintain the current electoral procedures, which is an interest "common to the general citizenry," and is thus not a permissible ground for intervention. *Markham*, 136 A.3d at 146.

Even if the Senators and the Republican Committees did have a legally enforceable interest sufficient to intervene, this Court should follow the Pennsylvania Supreme Court's lead and refuse intervention under Pa. R.C.P. 2329(2) and 2329(3) because Respondents "already adequately represent[]" the proposed intervenors' interest, and their intervention will only expand, extend, and duplicate litigation proceedings. Indeed, "it is the Commonwealth's duty to defend the constitutionality" of its laws, and Respondents have demonstrated that they intend to do so. *Robinson Twp. v. Commonwealth*, No. 284 M.D. 2012, 2012 WL 1429454, at *4 (Pa. Commw. Ct. Apr. 20, 2012).

Ultimately, the proposed intervenors advance only generalized interests in enforcing the law, *see* Senators' Motion at ¶ 10 ("Proposed Intervenors seek to prevent a judicial determination that any provision of Act 77 of 2019 is invalid and to prevent the disruption of the statutory scheme for voting in Pennsylvania's 2020 primary and general elections"); Republican Committees' Application at ¶ 17 ("The Republican Committees . . . have a substantial and particularized interest in preserving the state election laws challenged in this action"). If that were enough to demonstrate a legally enforceable interest, the rules governing intervention would lose all meaning and every

interested Pennsylvanian would have a right to participate in voting rights litigation. Because that cannot be the case, and because the Senators and Republican Committees have no legally enforceable interest, nor any interest that is not already adequately represented by Respondents, their applications to intervene should be denied.

ANSWER TO SENATORS' PROPOSED INTERVENTION

1. This paragraph states a Pennsylvania Rule of Appellate Procedure, the content of which speaks for itself and to which no responsive pleading is required.

2. This paragraph states a Pennsylvania Rule of Civil Procedure, the content of which speaks for itself and to which no responsive pleading is required.

3. This paragraph states a Pennsylvania Rule of Civil Procedure, the content of which speaks for itself and to which no responsive pleading is required.

4. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. To the extent a response is required, they are denied. By way of further response, the *individual* Senators have no right to intervene under Pa. R.C.P. 2327(4). Although individual legislators have an interest in protecting "the power or authority of their offices" and "the potency of their right to vote" on pending legislation, *Robinson Twp. v. Com.*, 84 A.3d 1054, 1055 (Pa. 2014), they have "no legal interest in actions seeking redress for a general grievance about the correctness of governmental conduct." *Markham*, 136 A.3d at 139. "[P]rinciples of legislative standing are relevant" to determining the scope of the Senators' legally enforceable interest "for purposes of Rule No. 2327(4)." *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs.*, 225 A.3d 902, 911 (Pa. Commw. Ct. 2020). Pennsylvania courts have made clear that "a legislator lacks standing where he or she has an indirect and less substantial interest in conduct outside the legislative forum which is unrelated to the [process of voting on and approving a bill],

and akin to a general grievance about the correctness of governmental conduct." *Markham*, 136 A.3d at 145; *see also Fumo v. City of Philadelphia*, 972 A.2d 487, 501 (Pa. 2009) (recognizing that legislators do not have legislative standing absent "a discernible and palpable infringement on their authority as legislators"). Here, the Senators advance an interest in broadly protecting their right to legislate, but that interest is unrelated to the narrow and specific relief that Petitioners seek, as detailed in the paragraphs that follow. "[T]aking the unprecedented step of allowing legislators standing to intervene . . . . would seemingly permit legislators to join in any litigation in which a court might interpret statutory language in a manner purportedly inconsistent with legislative intent." *Markham*, 136 A.3d at 145. Even if the Senators were, as they allege, "duly authorized to act in this matter" by the Senate Republican Caucus—though they cite no formal enactment purporting to authorize such intervention—their "generalized grievance[s]" are insufficient to support intervention under Pa. R.C.P. 2327(4). *Id*. at 137; *see also Disability Rights Pa.*, 2020 WL 2507661 (Wecht, J., concurring) (citing the U.S. Supreme Court's rejection in *Virginia House of Delegates v. Bethune-Hill*, 139 S.Ct. 1945 (2019) of the notion that a single chamber of a bicameral legislature has standing to intervene in defense of state law, and noting that the Pennsylvania Supreme Court "previously has found the federal courts' decisions on prudential standing in the context of legislative interests to be 'helpful'").

5. Denied. Petitioners seek temporary, emergency procedures to protect the constitutional rights of Pennsylvanians to participate in a free and equal election during an ongoing public health emergency that has rendered the available voting options and procedures inaccessible. Pet. ¶¶ 19–32. Such relief supplements, rather than supplants, existing election administration procedures, and does not require the Court to enjoin the receipt deadline. The individual Senators' misstatement of Petitioners' requested relief highlights their lack of a legally

enforceable interest in this case: although the Senators claim an interest in protecting their exclusive right to suspend laws under Article I, § 12 of the Pennsylvania Constitution—which only the General Assembly as a whole would likely have standing to assert, in any event—Petitioners do not seek to *suspend* the ballot receipt deadline. Even under Petitioners' requested relief, nothing prevents election officials from enforcing the deadline on any ballots delivered in-person or through any means other than by mail. Pet. ¶¶ 3, 10, 34, 41. Finally, the individual Senators misread Article I, § 12 to suggest that only the legislature has the power to prevent the enforcement of unconstitutional laws. But that argument turns the separation of powers and the judiciary's authority on its head. The Pennsylvania Supreme Court has long recognized that the Senate cannot "usurp the judiciary's function as ultimate interpreter of the Constitution." *Zemprelli v. Daniels*, 496 Pa. 247, 257 (1981).

6. Denied. Petitioners seek temporary, emergency procedures that protect the constitutional rights of Pennsylvanians to participate in a free and equal election during an ongoing public health emergency that has rendered the available voting options and procedures inaccessible. One of those measures would provide alternative means for voters to submit ballots by mail that can be delivered after Election Day (if postmarked by Election Day) in light of the mail delivery and ballot-request-processing delays caused by COVID-19. The remainder of this paragraph contains conclusions of law to which no responsive pleading is required. To the extent a response is required, they are denied. By way of further response, the Senators misstate the law in suggesting that their power to enact election laws is absolute, or that judicial review of election procedures and orders that enforce voters' constitutional rights are contrary to the General Assembly's constitutional rights. As noted above, the Senate cannot "usurp the judiciary's function as ultimate interpreter of the Constitution." *Id.*

7. This paragraph contains conclusions of law to which no responsive pleading is required. To the extent a response is required, they are denied. By way of further response, *Corman*, 287 F. Supp. 3d at 573, recognized that U.S. Const. art. I, § 4, cl. 1 vested "in each State by the Legislature thereof" the authority to prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives" ("Elections Clause"). The plaintiffs in *Corman* included the Majority Leader of the Pennsylvania Senate and the Chairman of the Pennsylvania Senate State Government Committee, but not the Pennsylvania General Assembly. The U.S. District Court for the Middle District of Pennsylvania held that because the plaintiffs were "neither the Pennsylvania General Assembly nor a group to which Pennsylvania has delegated the Commonwealth's lawmaking power," they lacked Article III standing to assert violations of the Elections Clause, and held that the Elections Clause claims asserted in the complaint "belong, if they belong to anyone, only to the Pennsylvania General Assembly" as a whole. *Id.* So too here. The Senators, like the plaintiffs in *Corman*, do *not* represent the Pennsylvania General Assembly—to be sure, they are only a subset thereof—nor do they cite any formal enactment or otherwise to suggest that the Senators have been vested with the power to do so. *See Corman*, 287 F. Supp. 3d at 573 (recognizing that the Majority Leader of the Pennsylvania Senate and the Chairman of the Pennsylvania Senate State Government Committee were not "a group to which Pennsylvania has delegated the Commonwealth's lawmaking power").[1] As a result, the individual Senators do not have a "legally enforceable interest" in the determination of this action, and thus have no right to

[1] Denied. The fact that the Speaker of the Pennsylvania House of Representatives moved to intervene does not place the entire legislative branch before this Court. *See Disability Rights Pa.*, 2020 WL 2507661 (Wecht, J., concurring) (finding it to be "problematic" that although both proposed Senate and House intervenors averred that they had been "duly authorized" by a majority of their respective bodies, "they cite no formal enactment by the House or Senate purporting to authorize such interventions").

intervene under Pa.R.C.P 2327(4) or otherwise. The Senators' citation to *Sixty-Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 194 (1972) is likewise inapposite because in that case the intervenor was the entire Minnesota Senate—not merely a subset thereof.

8. Denied. Petitioners seek an order that would require election officials to issue all mail ballots with postage prepaid envelopes. Article III, Section 24 of the Pennsylvania Constitution has no role to play here because the General Assembly has already authorized county commissioners to appropriate funds annually for all necessary expenses for the conduct of primaries and elections, including the issuance of mail ballots to eligible voters upon timely request. *See* 25 Pa.C.S. §§ 2645, 3146.2a(3), 3150.15. Moreover, Congress recently passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which provides $400 million in emergency funds to states to "protect the 2020 elections from the effects of the novel coronavirus." Pennsylvania Dep't of State, *Help America Vote Act (HAVA) 2020 CARES Act Grant Fund*, https://www.dos.pa.gov/VotingElections/Pages/2020-Federal-Grants.aspx (last visited May 17, 2020). Respondent, Secretary of the Commonwealth, has committed to distributing additional funding (approximately $6 million) to counties from its share of the CARES Act funds to cover "increased costs related to mail-in and absentee voting," among other expenses. *Id.* Even under normal circumstances, providing pre-paid postage return envelopes would not implicate the Pennsylvania Constitution's Appropriations Clause; indeed, some counties have already taken this step. But here, the Secretary and the Department of State are in the process of distributing funding for this very purpose: to facilitate mail-in and absentee voting. The Senators' reliance on the Appropriations Clause therefore lacks merit.

9. Denied. Petitioners do not challenge the constitutionality of any provisions of Act 77. Pet. ¶¶ 3, 10, 34, 41; Mem. App. Prelim. Inj. Part IV.A.5. Petitioners are without knowledge

or information sufficient to form a belief as to the truth of the averments set forth in this paragraph pertaining to arguments on which the Senators wish to be heard, and therefore they are denied. By way of further response, Petitioners do not seek any relief that would trigger Act 77's non-severability clause. Petitioners seek temporary, emergency procedures to protect the constitutional rights of Pennsylvanians to participate in a free and equal election during an ongoing public health emergency which has rendered the available voting options and procedures inaccessible. Pet. ¶¶ 3, 10, 34, 41. Such relief does not require the Court to enjoin the ballot receipt deadline, nor would the requested relief prevent election officials from enforcing the deadline on any ballots delivered in-person, or on all mail ballots in elections that occur outside of the pandemic.

10. Denied. Petitioners are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph pertaining to the Senators' intentions, and therefore they are denied. By way of further response, Petitioners do not challenge any provision of Act 77. Regardless, to the extent that the Senators desire to prevent a judicial determination regarding the validity of a statute, such professed desire does not confer a legally enforceable interest sufficient for intervention.

11. This paragraph states a Pennsylvania Rule of Civil Procedure and contains a citation to case law, the contents of which speak for themselves and to which no responsive pleading is required.

12. Admitted.

13. Denied. On information and belief both Respondents and the Senators seek to uphold the challenged voting laws, and thus Respondents will adequately represent the Senators' interests, which should foreclose intervention by the Senators. Pennsylvania courts have made clear that, under Pa. R.C.P. 2329(2), intervention should not be permitted when the interest of a

proposed intervenor is "already adequately represented." *See, e.g.*, *Pa. Ass'n of Rural & Small Schs. v. Casey*, 613 A.2d 1198, 1200–01 (Pa. 1992) (denying intervention where "the substance of [the parties'] positions covers the substance of the positions proposed by [the intervenor]"). For example, in *Pennsylvania Association of Rural and Small Schools*, the Pennsylvania Supreme Court held that the proposed intervenor school districts' interest in upholding a school funding statute was adequately represented by the Commonwealth. The Pennsylvania Supreme Court affirmed the Commonwealth Court's conclusion that the proposed intervenors' "desire to pursue a preferred litigation strategy or defense theory was not an interest entitling [them] to intervene." *Id.* at 1201. Here, too, the Senators' interest in upholding the challenged voting laws is one that they share with Respondents and thus is already adequately represented because "it is the Commonwealth's duty to defend the constitutionality" of its laws. *Robinson Township*, 2012 WL 1429454, at *4 —in sum, their "interests coincide." *E. Am. Transp. & Warehousing, Inc. v. Evans Conger Broussard & McCrea, Inc.*, No. 071266, 2002 WL 1803718, at *3 (Pa. Com. Pl. July 31, 2002) ("Burns's interests are adequately represented in this litigation . . . [because] Eastern America's interests coincide with Burns'[s] interests, ie. [sic] recovering money from the insurers and brokers."). As this Court upheld in *In re Philadelphia Health Care Trust*, 872 A.2d 258, 262 (Pa. Commw. Ct. 2005), the interests of individual state legislators (there, a state senator and city councilman) are "adequately represented by the Attorney General" because:

> there is only one "Sovereign", and, that Sovereign is the Commonwealth of Pennsylvania. When engaged in litigation before this Court, the Sovereign must be of one mind, and, must speak with one voice.

When a proposed intervenor and a party to a suit share the same interest, triggering Pa. R.C.P. 2329(2), courts have held that intervention is not appropriate unless the party is no longer representing the shared position either due to settlement, *see Keener v. Zoning Hearing Bd. of*

Millcreek Tp., 714 A.2d 1120, 1123 (Pa. Commw. Ct. 1998), or failure to enter an appearance on appeal, *Esso Standard Oil Co. v. Taylor*, 159 A.2d 692 (Pa. 1960). *See also Atticks v. Lancaster Tp. Zoning Hearing Bd.*, 915 A.2d 713, 718 (Pa. Commw. Ct. 2007) (allowing intervention where the party that "asserted the same or similar interests" as the proposed intervenor could not represent those interests beyond the trial court level "because the [Zoning Hearing Board] is precluded from appealing the trial court's decision"). Neither are applicable here.

14. Denied. Petitioners are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph pertaining to the Senators' litigation plan, and therefore they are denied.

15. Denied. Petitioners' case challenges the Commonwealth's failure to implement adequate safeguards that protect the right to vote and ensure access to vote by mail in the midst of a public health emergency. Furthermore, as with almost all legal analysis, the outcome of this case will turn on the application of law to facts. The distinction that the Senators attempt to draw between the effects of laws and reactions to the pandemic is legally irrelevant. External influences on the voting process—whether in the form of a public health crisis, or socioeconomic factors that deny voters access to the polls—do not absolve the Commonwealth of its duty to conduct a free and equal election, nor do they permit the Commonwealth to turn a blind eye when election procedures combine with external factors to impose an undue burden on the right to vote.

16. Denied. Petitioners seek limited relief which affects only absentee or mail-in voters.

17. Admitted in part; denied in part. Admitted that the General Assembly has postponed the primary elections to June 2, 2020, and that the Pennsylvania Senate recently held a hearing on whether the primary election should be postponed even further, but denied that these actions are sufficient to ensure a free and equal election as required by the Pennsylvania Constitution and

denied to the extent the Senators suggest that the only mechanism for "adjusting rights" which affect all voters is legislative. By way of further response, the General Assembly's postponement of the primary election and the recent Senate hearing illustrates that following normal procedures in times of emergency is not enough to ensure a free and equal election. It is the prerogative of this Court—and not only the individual Senators—to determine whether the legislative response is sufficient to protect the rights of Pennsylvania voters. The June 2 primary will take place in just over two weeks; the Senators cannot shield the Commonwealth's failure to ensure a free and equal election from constitutional scrutiny under vague promises of future deliberation. Indeed, this Court can take judicial notice of the fact that the Senate of Pennsylvania has no scheduled session days until June 1, 2020, the day before the Primary Election. *See* Pennsylvania State Senate, *Senate Session Days*, https://www.legis.state.pa.us/SessionDays.cfm?Chamber=S (last visited May 17, 2020).

18. Denied. Petitioners are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph pertaining to the Senators' litigation plans, and therefore they are denied.

19. This paragraph contains statements of law, to which no responsive pleading is required. To the extent a response is required, they are denied. By way of further response, Petitioners' lawsuit does not trigger the Supreme Court's exclusive jurisdiction. First, as noted above, Petitioners do not challenge the constitutionality of the ballot receipt deadline; instead, Petitioners seek temporary, emergency safeguards—including, for instance, additional procedures that allow voters to cast emergency ballots that can be delivered after 8 p.m. on Election Day—that protect the constitutional rights of Pennsylvanians to participate in a free and equal election during an ongoing public health emergency. Pet. ¶¶ 3, 10, 34, 41; Mem. App. Prelim. Inj. Part

IV.A.5. Second, Section 1306 of Pennsylvania's Election Code has long required that ballots be submitted by the voter; thus, the prohibition on ballot delivery assistance, enacted well before Act 77, is outside the scope of Act 77's exclusive jurisdiction provision. 25 P.S. § 3146.6(a); art. XIII, § 1306 of Act of Jun. 3, 1937, P.L. 1333, No. 320; *see also In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1226 (Pa. 2004) (holding § 3146.6(a) "not provide for third-party deliveries of absentee ballots"). Article XIII-D of Act 77 simply reproduces verbatim the same prohibition on ballot delivery assistance but in a different section of the Election Code, this time titled Section 1306-D, which applies to mail-in ballots. The restatement of pre-existing law, however, does not amount to an "addition" or "amendment" that triggers Act 77's exclusive jurisdiction provision. Pennsylvania's rules of statutory construction confirm this: "[w]henever a section or part of a statute is amended . . . the portions of the statute which were not altered by the amendment shall be construed as effective from the time of their original enactment . . . ." 1 Pa.C.S. § 1953; *see also* 1 Pa.C.S. § 1961 ("Whenever a statute reenacts a former statute, the provisions common to both statutes shall date from their first adoption."). Therefore, under the Statutory Construction Act, the ban on ballot delivery assistance—whether it appears in Section 1306 or 1306-D of the Election Code—still remains a part of the law in which it was originally enacted, not Act 77. *Cf.* 1 Pa.C.S. § 1962 ("Whenever a statute is repealed and its provisions are at the same time reenacted in the same or substantially the same terms by the repealing statute, the earlier statute shall be construed as continued in active operation. All rights and liabilities incurred under such earlier statute are preserved and may be enforced.").

20. Denied. Petitioners have alleged particularized harm as a direct result of the Commonwealth's failure to implement adequate safeguards to protect the right to vote and ensure a free and equal election. Specifically, Individual Petitioners have alleged that the current election

procedures and lack of adequate safeguards will force them to choose between their health, on one hand, and the right to vote, on the other. Dwayne Thomas—a 70-year-old retired mineworker who, even in normal times, has experienced inconsistent mail delivery—has always voted in person; but as COVID-19 infections grew and social distancing became necessary to protect Mr. Thomas and others from exposure, in-person voting no longer presented a safe, feasible option for Mr. Thomas. Thomas Decl. ¶¶ 2–3.[2] While the health risks of in-person voting have driven Mr. Thomas to vote by mail, backlogs in processing mail ballot requests and the delivery delays caused by U.S. Postal Service's current operational difficulties present a significant risk that he will not be able to complete the mail voting process and have his ballot delivered by 8 p.m. on Election Day. *Id.* ¶ 4. Michael Crossey, a 69-year-old retired school teacher, is similarly concerned about exposure to COVID-19, as well as his ability to vote by mail and have his ballot delivered by the Election Day deadline. Crossey Decl. ¶¶ 2–3, 5. In fact, it took several weeks for Petitioner Crossey to receive his primary ballot—which just recently arrived—and ongoing U.S. Postal Service delays create a significant risk that his ballot will not be delivered by the Election Day deadline. *Id.* ¶ 4. Further, the Alliance has alleged that the Commonwealth's failure to implement adequate safeguards to protect the right to vote and ensure a free and equal election impedes "[t]he Alliance's mission is to ensure social and economic justice and full civil rights that retirees have earned after a lifetime of work," "threatens the electoral prospects of progressive candidates" because the supporters of those candidates "will face greater obstacles casting a vote and having their votes counted," and "makes it more difficult for the Alliance and its members to associate to effectively further their shared political purposes." Pet. ¶ 16. While the Senators imply that these injuries are too remote

[2] Citations to declarations refer to those submitted in support of Petitioners' Application for Preliminary Injunction.

or speculative, the primary election is just two weeks away. Petitioners' threatened disenfranchisement can hardly be any more imminent or concrete. *See Applewhite v. Com.*, No. 330 M.D. 2012, 2014 WL 184988, at *6 (Pa. Commw. Ct. Jan. 17, 2014) (noting potential disenfranchisement of qualified electors "is not at all speculative").

21. This paragraph contains a conclusion of law to which no responsive pleading is required. To the extent a response is required, it is denied. By way of further response, Petitioners have demonstrated their standing to challenge the Commonwealth's failure to implement adequate safeguards to protect the right to vote and ensure a free and equal election on *three* different bases. *First*, the Individual Petitioners who are attempting to vote by mail have standing to challenge their threatened disenfranchisement. *Id. at* *6. The Senators' suggestion that Petitioners still have time to cast mail-in ballots skips a crucial step in the voting process: the right to have one's ballot counted. *Stein v. Cortes*, 223 F. Supp. 3d 423, 437–38 (E.D. Pa. 2016); *see also Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964). For the reasons detailed above and in Petitioners' application for preliminary injunction, there is a significant risk that mail ballots, even if submitted as early as the date of this filing, will not be delivered by the primary election day, not to mention ballots from voters who still have another eight days to submit a request to vote by mail. *Second*, the Alliance has direct organizational standing due to impediments to its activities and mission, which will require the diversion of resources. *Compare Applewhite*, 2014 WL 184988, at *7 (noting that organizations that (a) were interested in protecting voting rights, (b) assisted voters in accessing the franchise, and (c) diverted resources as a result of the challenged law had direct organizational standing) *with* Pet. ¶ 16 (describing the Alliance's mission "ensure social and economic justice and full civil rights," its efforts to educate and assist voters, and its diversion of resources, among other direct harms). *Third*, the Alliance has associational standing to assert the rights of its

members who are forced to vote by mail due to the health risks posed by COVID-19 and are at risk of being disenfranchised. *Compare National Solid Wastes Management Association v. Casey,* 580 A.2d 893, 899 (Pa. Commw. Ct. 1990) ("An association may have standing solely as the representative of its members and may initiate a cause of action if its members are suffering immediate or threatened injury as a result of the contested action.") (collecting cases) *with* Pet. ¶ 16 (noting that "[t]he Alliance has 335,389 members" and that the Commonwealth's failure to ensure access to the franchise during the on-going COVID-19 pandemic will "deprive[] individual members [of the Alliance] of the right to vote and to have their votes counted" because there is a significant risk that their mail ballots will not be delivered by the primary election day).

22. This paragraph contains a conclusion of law to which no responsive pleading is required. To the extent a response is required, it is denied.

ANSWER TO REPUBLICAN COMMITTEES' PROPOSED INTERVENTION

The Republican Committees.

1. Denied. Petitioners are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph concerning the Republican Party of Pennsylvania's status and activities, and therefore they are denied. The remaining averments in this paragraph are conclusions of law to which no responsive pleading is required. By way of further response, the Republican Party of Pennsylvania's right to conduct its alleged activities—including "nominat[ing], promot[ing], and assist[ing] Republican candidates" by "educating, mobilizing, assisting, and turning out voters"—would not be denied or impaired by a judgment for the Petitioners, nor has it alleged that such a judgment would prevent it from participating in any other campaign activities. The Republican Party of Pennsylvania does not allege any unique harm or legal interest. Moreover, the Republican Party of Pennsylvania's alleged interest in "uphold[ing]

orderly free and fair elections for all Pennsylvanians" is shared with, and adequately represented by, Respondents Kathy Boockvar, Secretary of the Commonwealth, and Jessica Mathis, the Director of the Bureau of Election Services and Notaries ("Respondents") who are charged with ensuring that "[e]lections shall be free and equal" under Pa. Const. art. I, § 5.

2. Denied. Petitioners are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph concerning the Republican National Committee's status and activities, and therefore they are denied. The remaining averments in this paragraph are conclusions of law to which no responsive pleading is required. By way of further response, the Republican National Committee's right to conduct its alleged activities—including "educat[ing], mobiliz[ing], assist[ing], and turn[ing] out voters"—would not be denied by a judgment for the Petitioners, nor has it alleged that such a judgment would prevent it from participating in any other campaign activities. The Republican National Committee does not allege any unique harm or legal interest. Moreover, the Republican National Committee's interest in upholding "free and fair elections in accordance with [Pennsylvania's] validly enacted election laws" is shared with, and adequately represented by, Respondents, who are charged with ensuring that elections shall be free and equal under Pa. Const. art. I, § 5.

3. Denied. Petitioners are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph concerning the National Republican Congressional Committee's ("NRCC") status and activities, and therefore they are denied. The remaining averments in this paragraph are conclusions of law to which no responsive pleading is required. By way of further response, the NRCC's right to conduct its "Republican party-building activities" would not be denied by a judgment for the Petitioners, nor has it alleged that such a judgment would prevent it from participating in any other campaign activities. The NRCC does

not allege any unique harm or legal interest. Moreover, the NRCC's interest in "uphold[ing] orderly free and fair elections for all Pennsylvanians" is shared with, and adequately represented by, Respondents, who are charged with ensuring that "[e]lections shall be free and equal" under Pa. Const. art. I, § 5.

Procedural history.

4. Admitted.

5. Denied. The averments in this paragraph mischaracterize Petitioners' filings. Petitioners challenge the failure to implement temporary, emergency safeguards—including, for instance, additional procedures that allows voters to cast ballots by mail that can be delivered after 8 p.m. on Election Day—necessary to conduct a free and equal election as mandated by the Pennsylvania Constitution, and to protect the constitutional rights of Pennsylvania voters during an ongoing public health emergency. The averments in this paragraph also purport to characterize Act 77 and the proceedings leading up to its passage; the legislative language speaks for itself.

6. Denied. Petitioners do not challenge the constitutionality of any provisions of Act 77; rather, Petitioners challenge the failure to implement temporary, emergency safeguards—including, for instance, additional procedures that allows voters to cast ballots by mail that can be delivered after 8 p.m. on Election Day—necessary to conduct a free and equal election as mandated by the Pennsylvania Constitution, and to protect the constitutional rights of Pennsylvania voters during an ongoing public health emergency. It is precisely because of the COVID-19 pandemic and the dire challenges it brings that greater protections are necessary to safeguard mail-in and absentee voting, which will be occurring more than ever in the upcoming election.

7. Denied. Petitioners do not challenge the constitutionality of the ballot receipt deadline or any other provisions of Act 77; rather, Petitioners challenge the failure to implement

temporary, emergency safeguards—including, for instance, additional procedures that allow voters to cast emergency ballots that can be delivered after 8 p.m. on Election Day—necessary to conduct a free and equal election as mandated by the Pennsylvania Constitution, and to protect the constitutional rights of Pennsylvania voters during an ongoing public health emergency. Furthermore, contrary to the Republican Committees' characterization, Pennsylvania law does not mandate that *voters* pay for postage; it simply requires postage to be pre-paid. 25 Pa.C.S. §§ 3146.6, 3150.16 (requiring that "the elector shall send [mail ballots] by mail, postage prepaid"). Petitioners challenge the Commonwealth's failure to provide pre-paid postage for mail ballots issued to voters to protect their constitutional right to vote and to participate in a free and equal election during the current public health crisis in which venturing out to purchase stamps necessarily risks one's health. Finally, Petitioners do not challenge the Commonwealth's ballot verification laws, nor do they seek a declaration that 25 P.S. § 3146.8(g)(3) is unconstitutional; rather, Petitioners challenge the Respondents' failure to provide uniform guidance and training on ballot verification procedures, and specifically signature matching, which has allowed counties to adopt varying and conflicting practices, and has resulted in the arbitrary denial of the right to vote. Petitioners do challenge the constitutionality of the Commonwealth's ban on ballot delivery assistance, 25 Pa.C.S. §§ 3146.6(a), 3150.16(a), which was enacted long before Act 77, and is not governed by Act 77's exclusive jurisdiction or non-severability provisions.

8. Denied. Petitioners seek temporary, emergency procedures that protect the constitutional rights of Pennsylvanians to participate in a free and equal election during an ongoing public health emergency that has rendered the available voting options and procedures inaccessible—including, for instance, additional procedures that allows voters to cast emergency ballots that can be delivered after 8 p.m. on Election Day. Pet. ¶¶ 3, 10, 34, 41. To the extent the

averments in this paragraph purport to characterize Petitioner's filings, they are denied. Petitioners' filings and requests for relief speak for themselves.

9. Admitted.

The governing intervention standard.

10. This paragraph states a rule of civil procedure, the content of which speaks for itself and to which no responsive pleading is required.

11. This paragraph quotes case law, the content of which speaks for itself and to which no responsive pleading is required. Petitioners note, however, that intervenors must also meet one of the requirements in Pa. R.C.P. 2327—including Rule 2327(4), which requires that intervenors have a legally enforceable interest that will be affected by the determination in this action—to be permitted to intervene. Because the Republican Committees do not, as discussed below, they should not be permitted to intervene.

12. This paragraph states a rule of civil procedure, the content of which speaks for itself and to which no responsive pleading is required.

13. This paragraph states a Pennsylvania Rule of Civil Procedure and contains a citation to case law, the contents of which speak for themselves and to which no responsive pleading is required.

14. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. By way of further response, intervention is not mandatory here under Pa. R.C.P. 2329(2) because Respondents' "already adequately represent" the Republican Committees' interest, and under Pa. R.C.P. 2329(3) because intervention will only expand, extend, and duplicate litigation proceedings.

15. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. By way of further response, *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999) provides that "if the petitioner does not show himself to be within one of the four classes described in Rule 2327, intervention must be denied, irrespective of whether any of the grounds for refusal in Rule 2329 exist." Because the Republican Committees do not fall within one of the four classes described in Rule 2327, intervention must be denied.

16. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. By way of further response, the Republican Committees do not have a "legally enforceable interest" that will be affected by the determination in this action. Rather, they have only a generalized interest in helping the Respondents to "uphold orderly free and fair elections," Republican Committees' Application at 2, which does not meet the threshold requirement of Pa. R.C.P. 2327(4) because it is an interest "common to the general citizenry." *Markham*, 136 A.3d at 146. Even if it did, Pennsylvania courts consistently reject intervention under Pa. R.C.P. 2329(2) and (3) where, as here, Respondents adequately represent the proposed intervenors' interest in upholding laws, and intervention will only expand, extend, and duplicate litigation proceedings.

The Republican Committees have no legally enforceable interest in this action under Pa. R.C.P. 2327(4) because their only interest is common to the general citizenry.

17. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. To the extent that a response is required, those averments are denied. By way of further response, the Republican Committees do not allege any substantial or particularized interest in this action.

18. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. To the extent that a response is required, those averments are denied. By way of further response, the Republican Committees lack a "legally enforceable interest" because their stated interest in "seek[ing] to uphold orderly free and fair elections for all Pennsylvanians," Application at 2, is shared by the general citizenry and thus does not qualify as grounds for intervention under this Court and the Pennsylvania Supreme Court's precedent interpreting Pa. R.C.P. 2327(4). It is well established that proposed intervenors must "allege and prove an interest in the outcome of the suit which surpasses 'the common interest of all citizens in procuring obedience to the law.'" *Biester*, 409 A.2d at 851 (quoting *William Penn Parking Garage*, 346 A.2d at 281). Applying this test, Pennsylvania courts consistently deny intervention where, as here, the proposed intervenors' proffered interest is shared by the general public. *See, e.g., In re Philadelphia Health Care Tr.*, 872 A.2d at 262; *Larock*, 740 A.2d at 314; *Vartan v. Zoning Hearing Bd. of City of Harrisburg*, 636 A.2d 310, 313 (Pa. Commw. Ct. 1994); *Acorn Dev. Corp. v. Zoning Health Bd. of Upper Merion Twp.*, 523 A.2d 436, 437-38 (Pa. Commw. Ct. 1987). For example, in *Fraenzl v. Secretary of the Commonwealth of Pennsylvania*, 478 A.2d 903 (Pa. Commw. Ct. 1984), a Socialist Worker candidate filed suit to compel the Commonwealth to place her on the ballot, and this Court denied intervention by a Republican candidate for office. While the Court recognized that its "decision will no doubt have an effect on the outcome of the election," it found that the Republican candidate could "assert no legally enforceable interest in potential votes which may be lost to an additional candidate." 478 A.2d at 904. Instead, she—like the Republican Committees—had "only an interest in having the election laws properly applied, an interest she [and the Republican Committees] shares in common with every other member of the electorate." *Id.* And in *Markham*, the Supreme Court denied Pennsylvania legislators the right to intervene in

a challenge to an executive order, holding that their interests were generalized "interests common to the general citizenry." 136 A.3d at 140. Similarly, in *Biester*, the proposed intervenor asserted an interest as a taxpayer in "the prevention of a waste of tax revenue as a result of expenditures [on illegal and unconstitutional activities]." 409 A.2d at 851. Because the proposed intervenor's interest in *Biester* was "merely the same interest all citizens have in having others comply with the law or the constitution," the Supreme Court held that "such an interest is not sufficient to confer standing" either to bring a petition for review or to intervene under Rule 2327. 409 A.2d at 850 n.2, 851-52. Like the Republican candidate in *Fraenzl*, the legislators in *Markham*, and the taxpayer in *Biester*, the Republican Committees' stated interest in "seek[ing] to uphold orderly free and fair elections for all Pennsylvanians," Application at 2, is not a legally enforceable interest under Pa.R.C.P 2327(4) because it is an interest "common to the general citizenry." *Markham*, 136 A.3d at 140. Nor do the Republican Committees have a right to perpetuate unconstitutional voting practices based on their generalized assertion that a change will "alter[] or impair[]" the "current competitive electoral environment" in unspecified ways.

19. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. To the extent that a response is required, those averments are denied. By way of further response, Petitioners note that the Republican Committees ignore controlling Pennsylvania law (detailed above) in favor of cases from other jurisdictions. Moreover, *all* the cases that the Republican Committees cite are distinguishable. In *Siegel v. LePore*, 234 F.3d 1163, 1169 n.1 (11th Cir. 2001), intervention was granted to a political party only where there was no state defendant in the case. That is, of course, not true here. In *Trinsey v. Pennsylvania*, 941 F.2d 224, 226 (3d Cir. 1991), the challenged provision dealt specifically with vacancies for positions for which candidates "shall be nominated by political parties," thus giving a clear interest to

political party intervenors which is absent here. Likewise, *Anderson v. Babb*, 632 F.2d 300, 304 (4th Cir. 1980), concerned "procedures to be followed for establishing a new political party." *Id.* at 303. Here, unlike *Trinsey* and *Anderson*, the challenged provisions have nothing to do with political parties on their face, or otherwise. In *Democratic Nat'l Comm. v. Bostelmann*, No. 20-cv-249-wmc, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020), the court only permitted the Republican National Committee and Republican Party of Wisconsin to intervene because they were the "mirror-image" of the plaintiffs, the Democratic National Committee and the Democratic Party of Wisconsin. Here, Petitioners are not political parties. In *Citizens United v. Gessler*, No. 14-002266, WL 4549001, at *2 (D. Colo. Sept. 15, 2014), plaintiff Citizens United sought a declaration that it was a "press entity" exempt from certain disclosure requirements under campaign finance laws that it challenged as unconstitutional. Although the defendant and the proposed political party intervenor both asked the court to conclude that the disclosure laws were constitutional, in doing so the defendant did not "assert that a 'press entity' status does not exist under Colorado law or that such an interpretation would conflict with the plain language and meaning of the campaign finance laws." *Id.* But the proposed political party intervenors did tackle that issue and "devote a large portion of their Response brief directly replying to Citizen United's requested relief and strongly opposing the finding of any exemptions based on a plain reading of the statute." *Id.* Here, the Republican Committees point to no argument that they plan to make that Respondents will not. In *Libertarian Party of Mich. v. Johnson*, No. 12-12782, 2012 U.S. Dist. LEXIS 126096 (E.D. Mich. Sept. 5, 2012), like in *Trinsey* and *Anderson,* the challenged provision explicitly concerned political parties since it provided that no person who appeared "on the primary ballots of 1 political party shall be eligible as a candidate of any other political party at the election following that primary." As noted above, the challenged provisions at issue in this suit make no

mention of political parties. And finally, in *Hastert v. State Bd. of Elections*, 777 F. Supp. 634, 638–39 (N.D. Ill. 1991)—a congressional redistricting case in which the Illinois Legislature failed to devise a new redistricting scheme upon the loss of two congressional seats—the court "*invited any person or group desiring to participate* in the proceedings to file a petition to intervene." *Id.* at 639 (emphasis added). The court has made no such overture here, nor would one be as fitting as could be argued in the redistricting context.

20. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. To the extent that a response is required, those averments are denied. By way of further response, the Pennsylvania Alliance for Retired Americans ("the Alliance")—which has 335,389 members composed of retirees—has greater interests in this action than the generalized interest alleged by the Republican Committees because the Alliance's members face unique voting challenges, including but not limited to increased vulnerability to COVID-19 and a higher likelihood than the general population of being unable to venture outside their homes safely to procure postage or deliver their ballot without assistance.

21. Denied. The "orderly administration of Pennsylvania's elections" has *already* been upended—not by any judicial order, but by the COVID-19 pandemic and the disruptions it has imposed on the election administration process and other aspects of daily life, like mail delivery. Mem. App. Prelim. Inj. Part II. Petitioners' requested relief seeks to *alleviate* these burdens and ensure that Pennsylvania voters are not disenfranchised and have access to a free and equal election. Pet. ¶¶ 34–40.

22. Denied. By way of further response, nothing in the relief sought by Petitioners will interfere with the right of the Republican Committees to campaign for candidates of their choice or to engage in any of the other activities that they allege. Nor do the Republican Committees

explain how safeguards implemented to prevent disenfranchisement alters the structure of the competitive environment. These safeguards protect voters regardless of political affiliation and the Republican Committees fail to draw any plausible connection between the reforms that Petitioners seek and the Republican candidates' interest in winning elections. At most, the Republican Committees have alleged that voting procedures might change for some voters across the political spectrum as a result of this suit, but as the Court held in *Fraenzl* that is not sufficient to confer a legally enforceable interest as is required under Pa.R.C.P 2327(4). *See Fraenzl*, 478 A.2d at 904 (noting that although a court decision "will no doubt have an effect on the outcome of the election," a proposed intervenor "assert[s] no legally enforceable interest in potential votes which may be lost").

23. Denied. This paragraph cites *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006), in which the U.S. Supreme Court cautioned that "[c]ourt orders affecting elections, . . . can themselves result in voter confusion and consequent incentive to remain away from the polls," a risk that increases "[a]s an election draws closer." The underlying purpose of this so-called "*Purcell* principle" is to avoid "changing the electoral *status quo* just before the election," which would cause "voter confusion and electoral chaos." Richard L. Hasen, *Reining in the Purcell Principle,* 43 Fla. St. U. L. Rev. 427, 428 (2016). But here, the electoral status quo *already* has been upended—not by any judicial order, but by the COVID-19 pandemic and the "voter confusion" it is causing. Petitioners' requested relief will alleviate the burdens and confusion that the COVID-19 pandemic has injected into the electoral process and ensure that Pennsylvania voters have access to a free and equal election. Voter confusion and abstention from voting are consequent of COVID-19 and the Commonwealth's election procedures during this crisis, not any potential ruling by this Court. Because Petitioners' requested relief does nothing to *narrow* voters' opportunities to have their

votes count—and instead only *expands* them—the Republican Committees need not "spend substantial resources informing their Republican voters of changes in the law" to ensure their franchise: even if Petitioners are successful, those same Republican voters can still proceed as though this action did not exist and vote in precisely the same timeframe and manner that they otherwise would have, with their vote still being counted all the same. Ultimately, Petitioners' requested relief will result in more voters being able to cast their ballots and ensure those ballots will be counted. The requested relief, in other words, is an effort to mitigate the confusion caused by the pandemic that is interfering with voters' reasonable expectations and threatening to keep them from voting. While the Republican Committees may ultimately want to take advantage of any expanded voting opportunities that may result from Petitioners' requested relief, as is their prerogative, the prospect of additional voluntary spending to maximize voter turnout and utilize additional voting opportunities does not confer upon them a legally enforceable interest in opposing such relief. *Blunt v. Lower Merion*, 767 F.3d 247, 286 (3d Cir. 2014) (denying standing where the additional expenditures were "consistent with [the organization's] typical activities"); *National Taxpayers Union, Inc., v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995) (explaining that an organization "cannot convert its ordinary program costs into an injury in fact").

24. Denied. Intervention is unwarranted because the Republican Committees have no legally enforceable interest as is required by Pa.R.C.P 2327(4) since their alleged interest in the integrity of the election process and the orderly administration of elections is "merely the same interest all citizens have." *Biester*, 409 A.2d at 851.

Even if intervention was warranted under Pa. R.C.P. 2327(4), this Court should deny intervention under Pa. R.C.P. 2329(2) and 2329(3) because the Republican Committees' interest is adequately represented by Respondents.

25. Paragraph 25 contains citations to the Pennsylvania Rules of Civil Procedure, the contents of which speak for themselves.

26. Denied. The Republican Committees interests are adequately represented, Pa.R.C.P 2329(2), and their intervention will needlessly expand and complicate these litigation proceedings, and will delay the adjudication of Petitioners' rights, Pa. R.C.P. 2329(3).

27. Denied. This paragraph contains conclusions of law to which no responsive pleading is required.

28. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. To the extent that a response is required, those averments are denied. By way of further response, the Republican Committees have advanced a generalized interest in enforcing election laws and maintaining the status quo that is adequately represented by Respondents because "it is the Commonwealth's duty to defend the constitutionality" of its laws, *Robinson Twp.*, 2012 WL 1429454, at *4, and because "the substance of [the Respondents'] position[] covers the substance of the positions proposed by [the Republican Committees]," *Pa. Assoc. of Rural and Small Schools*, 613 A.2d at 1201—in sum, their "interests coincide." *E. Am. Transp. & Warehousing, Inc. v. Evans Conger Broussard & McCrea, Inc.*, No. 071266, 2002 WL 1803718, at *3 (Phila. C.P. July 31, 2002) ("Burns's interests are adequately represented in this litigation . . . [because] Eastern America's interests coincide with Burns'[s] interests, ie. [sic] recovering money from the insurers and brokers."). Pennsylvania Supreme Court precedent confirms that the Republican Committees' interest falls under the exception at Pa. R.C.P. 2329(2). For example, in *Pennsylvania Association of Rural and Small Schools*, 613 A.2d at 1200–01, the Pennsylvania Supreme Court held that the proposed intervenor school districts' interest in upholding a school funding statute was adequately represented by the Commonwealth, which advanced a similar interest. The Pennsylvania Supreme Court affirmed the Commonwealth Court's conclusion that the proposed intervenors' "desire to pursue a preferred litigation strategy or defense theory was

not an interest entitling [them] to intervene." *Id.* at 1201. Here, too, the Republican Committees' interest is shared with Respondents—namely, an interest in "seek[ing] to uphold orderly free and fair elections," Application at 2. Intervention based on the exception at Pa. R.C.P. 2329(2) appears to only be appropriate where, although a proposed intervenor and a party to a suit share the same interest, the party is no longer representing the shared position either due to settlement, *see Keener v. Zoning Hearing Bd. of Millcreek Tp.*, 714 A.2d 1120, 1123 (Pa. Commw. Ct. 1998), or failure to enter an appearance on appeal, *Esso Standard Oil Co. v. Taylor*, 159 A.2d 692 (Pa. 1960). *See also Atticks v. Lancaster Tp. Zoning Hearing Bd.*, 915 A.2d 713, 718 (Pa. Commw. Ct. 2007) (allowing intervention where the party that "asserted the same or similar interests" as the proposed intervenor could not represent those interests beyond the trial court level "because the [Zoning Hearing Board] is precluded from appealing the trial court's decision"). Neither are applicable here. Even if Respondents do not represent the Republican Committees' interests, the Republican Committees would still be precluded from intervening because they do not meet the threshold requirement of having a legally enforceable interest (or any other qualifying characteristic) under Pa. R.C.P. 2327.

29. Denied. Petitioners are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph as to the Republican Committees' interests, and therefore they are denied. By way of further response, the correct legal test under Pa. R.C.P. 2327(2) is not whether the proposed intervenors' interests are identical to Respondents' interests, but rather, whether the proposed intervenors' interests are "already adequately represented" by a party to the suit. The Republican Committees confirm that they share with Respondents "the same overall goal of upholding the challenged election laws," though they suggest that their interest is not adequately represented by Respondents because "their interests are

not identical." But the challenged actions in this case are "either constitutional or unconstitutional based on the legal theories petitioners advance. The [proposed intervenors'] interests, as identified, have no bearing on that determination." *Robinson Township*, 2012 WL 1429454, at *4.

30. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. To the extent that a response is required, those averments are denied. By way of further response, it is precisely *because* the Republican Committees' interests are, as they allege, "far narrower than [] the broad public interests represented by Respondents" that the Republican Committees' interests are indeed represented by Respondents: the former's purportedly narrower interests are subsumed within the Respondents' interests and legal duties. The Republican Committees' attempt to paint a distinction between public and private interests in this regard is thus a red herring. *Cf. Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 659 (7th Cir. 2013) ("[W]hen the prospective intervenor and the named party have the same goal, a presumption exists that the representation in the suit is adequate.") (internal quotation marks and alteration omitted); *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 951 (9th Cir. 2009) ("Where the party and the proposed intervenor share the same ultimate objective, a presumption of adequacy of representation applies, and the intervenor can rebut that presumption only with a compelling showing to the contrary."). Indeed, the U.S. Court of Appeals for the First Circuit considered a similar issue in *Daggett v. Comm'n on Govt'l Ethics & Elec. Pracs.*, 172 F.3d 104 (1st Cir. 1999). That case involved a challenge by the Libertarian Party of Maine and other plaintiffs to the constitutionality of the Maine Clean Elections Act. Several candidates from other political parties moved to intervene in defense of the Act, claiming that the defendant state election commission would not adequately represent their interest. Affirming the district court's denial of intervention, the First Circuit emphasized that the movants had failed to rebut "two converging presumptions:

(1) "that adequate representation is presumed where the goals of the applicants are the same as those of the plaintiff or defendant"; and (2) "that the government in defending the validity of the statute is presumed to be representing adequately the interests of all citizens who support the statute." *Id.* at 111. The First Circuit emphasized that the proposed candidate-intervenors and the state commission shared the common goal of defending the Act, and that there was no "actual conflict of interests" between them. The court held that "[t]he general notion that the Attorney General represents 'broader' interests at some abstract level is not enough" because the Attorney General was "prepared to defend" the challenged provisions in full and there was "no indication that he is proposing to compromise or would decline to appeal if victory were only partial." *Id.* at 112. In response to the proposed intervenors' concern that the Attorney General "may hesitate" to raise certain defenses, the court emphasized that "it would take more than speculation to show that he is likely to soft-pedal arguments" that are "clearly helpful to his cause." *Id.*

31. Denied. By way of further response, the Republican Committees' implied interest in "the election of particular candidates" is neither a legally cognizable interest nor an interest that is affected by the claims in this suit. *Fraenzl,* in which a Socialist Worker candidate filed suit to compel the Commonwealth to place her on the ballot and this Court denied intervention by a Republican candidate for office, is again instructive. 478 A.2d 903. While the Court recognized that its "decision will no doubt have an effect on the outcome of the election," it found that the Republican candidate could "assert no legally enforceable interest in potential votes which may be lost to an additional candidate." 478 A.2d at 904. Instead, she—like the Republican Committees—had "only an interest in having the election laws properly applied, an interest she [and the Republican Committees] shares in common with every other member of the electorate." *Id*. The Republican Committees suggest that the Respondents' interests may later diverge from theirs but

present no factual support for these predictions. *Cherry Valley Assocs. v. Stroud Tp. Bd. of Supervisors*, 530 A.2d 1039, 1041 n.6 (Pa Commw. Ct. 1987) (rejecting argument that public entity did not adequately represent proposed private-intervenors' interests as "no more than speculation which [the court] decline[s] to consider"). And courts have denied intervention based on attempts to invoke political affiliation as a proxy for adequate representation. *See, e.g.*, *Miracle v. Hobbs*, 333 F.R.D. 151, 156 (D. Ariz. 2019) ("Proposed Intervenors must do more than allege—and superficially at that—partisan bias" to establish that the defendant will not adequately represent their interests); *United States v. Alabama*, No. 2:06-cv-392-WKW, 2006 WL 2290726, at *5 (M.D. Ala. Aug. 8, 2006) (rejecting argument of proposed Democratic intervenors that the defendant would not adequately represent them because "the defendants are represented by a Republican Attorney General and the plaintiff is aligned with the Republican Party"). Moreover, the Republican Committees do not explain why they believe that candidates from a particular party are any more or less likely to be elected if Petitioners' requested relief is granted. Ultimately, the proposed intervention by the Republican Committees would do nothing more than "infuse additional politics into an already politically-divisive area of the law and needlessly complicate this case"—the last thing needed in the midst of a global pandemic and the imperative for swift emergency action. *Planned Parenthood*, 384 F. Supp. 3d 982, 990 (W.D. Wisc. 2019).

32. Admitted in part; denied in part. Petitioners admit that this action is in its early stages. Petitioners deny that Respondents have filed any preliminary objections as of the date of this filing. The remaining averments in this paragraph are conclusions of law to which no responsive pleading is required. To the extent that a response is required, those averments are denied. By way of further response, intervention will only expand, extend, and duplicate litigation proceedings.

33. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. By way of further response, the Republican Committees have no right to intervene in this case because they do not meet any of the threshold grounds for intervention listed in Pa. R.C.P. 2327, and even if they did, Pa. R.C.P. 2329(2) and 2329(3) counsels against intervention because Respondents already adequately represent their interests, and their participation in this case would unduly expand and prolong litigation proceedings.

34. Admitted in part; denied in part. Admitted that the Republican Committees attached a copy of a proposed pleading to their application. Petitioners are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph that those pleadings are what the Republican Committees would file if permitted to intervene.

WHEREFORE, Petitioners Michael Crossey, Dwayne Thomas, Irvin Weinreich, Brenda Weinreich, and the Pennsylvania Alliance for Retired Americans request that this Court deny the Senators' and the Republican Committees' requests to intervene.

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**Not admitted in Pennsylvania. Pro hac vice application forthcoming.