

In addition to this Memorandum of Law, Applicants submit their proposed Preliminary Objection to Petitioners' pleading, attached as Exhibit A, as well as a supporting Memorandum of Law.

BASES FOR PROPOSED INTERVENORS' APPLICATION

1. Pursuant to Pennsylvania Rule of Appellate Procedure 106, the practice and procedures relating to original jurisdiction matters are to be in accordance with the Pennsylvania Rules of Civil Procedure.

2. Pennsylvania Rule of Civil Procedure 2327 allows a person not named as a party to seek leave to intervene by filing an application with the court.

3. Proposed Intervenors seek to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327(4), which states, in pertinent part, as follows:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if . . .

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa.R.C.P. 2327.

4. Proposed Intervenors meet the requirements for intervention under Pa.R.C.P. 2327(4). They seek to protect the Pennsylvania Senate's exclusive constitutional rights, together with the Pennsylvania House of Representatives, of determining the times, places, and manner of holding elections under Art. 1, §4 of the U.S. Constitution and Art. 2, §1 of the Pennsylvania Constitution; of suspending laws under Art. 1, §12 of the Pennsylvania Constitution; and of appropriating funds for expenditure by the state, under Art. III, §24 of the Pennsylvania Constitution, which may be adversely affected or usurped by Petitioners' requested relief, as described below.

5. Petitioners seek the suspension of certain provisions of the Election Code concerning deadlines for the delivery, canvassing, and counting of mail-in ballots for the duration of the COVID-19 pandemic. Such relief would be contrary to Article I, §12 of the Pennsylvania Constitution, which states that “no power of suspending laws shall be exercised unless by the legislature.”

6. Petitioners further seek an order imposing new timeframes for the delivery, canvassing, and counting of mail-in ballots for the duration of the COVID-19 pandemic. Such an order would be contrary to Art. 2, §1 of the Pennsylvania Constitution, which vests the legislative power of the Commonwealth in the General Assembly, and Art I, §4 of the United States Constitution (the “Elections Clause”) which reserves to state legislatures and Congress the power of determining the times, places, and manner of holding elections for Senators and Representatives to Congress.

7. The United States District Court for the Middle District of Pennsylvania in *Corman v. Torres*, 287 F.Supp.3d 558, 573 (M.D. Pa. 2018), recognized that only the General Assembly has standing to assert its prerogatives under the Elections Clause.¹ *See also Sixty-Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 194 (1972) (granting intervention in a redistricting case to the Minnesota Senate because the district court orders directly impacted the Senate).

8. Petitioners seek an order that the Commonwealth subsidize the cost of postage for mail-in ballots. Such relief would be contrary to Article III, Section 24 of the Pennsylvania Constitution, which provides that “no money shall be paid out of the treasury except on appropriations made by law” by the General Assembly. Pa. Const. Art. III, §24.

¹ Upon information and belief, the Speaker of the Pennsylvania House of Representatives is moving to intervene this same or the following day, placing the entire legislative branch before this court.

9. Petitioners seek a declaration that certain provisions of the mail-in ballot provisions of Act 77 of 2019 burden the right to vote in violation of Art. 1, Sec. 5 of the Pennsylvania Constitution. Proposed Intervenors wish to be heard on the question whether such a declaration would void the entire Act and deprive voters of the ability to vote by mail-in ballot, under the terms of the non-severability provision in §11 of the Act.

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.

11. If the requirements for who may intervene are met, intervention shall be granted, unless the petition to intervene is unduly delayed, the interest of the proposed intervenor is already adequately represented, or the intervenor does not take the litigation as he finds it. Pa.R.C.P. 2329; *Appeal of the Municipality of Penn Hills*, 519 Pa. 164, 546 A.2d 50, 52 (1988).

12. The Proposed Intervenors have filed a motion to intervene promptly.

13. On information and belief, the named respondents do not take the same position as the Proposed Intervenors and will not adequately represent their interests.

14. Proposed Intervenors seek to intervene as respondents. They will assert defenses to petitioners' claims but will not raise claims against the named respondents that the petitioners have not raised.

15. Petitioners' case rests mainly on the effects of the pandemic on voting behavior. The Proposed Intervenors believe that the alleged burdens on the right to vote are not the result of the laws themselves, but are the result of the voters' and poll workers' reactions to the pandemic.

16. The relief petitioners seek is not limited to the named petitioners but would affect all voters, whether or not they are similarly situated or similarly burdened.

17. In such a situation, the proper mechanism for adjusting rights is legislative. The General Assembly has already taken steps to give voters more time to apply for, receive, and post their mail-in ballots by postponing the primary elections to June 2, 2020. See Act 12 of 2020, §1804-B(a). The Pennsylvania Senate has recently held hearings on whether the primary elections should be postponed even further, and/or other necessary legislative actions taken to ensure a free and fair election.

18. If allowed to intervene, Proposed Intervenors intend to file the attached preliminary objections, objecting to the petitioners' standing and to the jurisdiction of the Commonwealth Court in this case.

19. Section 13(2) of Act 77 of 2019 states that "the Pennsylvania Supreme Court has exclusive jurisdiction to hear a challenge to or to render a declaratory judgment concerning the constitutionality of a provision referred to in paragraph (1)." The provisions to which paragraph (1) refers include Article XIII-D. That Article sets forth the provisions concerning mail-in ballots.

20. Petitioners have not alleged any direct harm and only allege that they may suffer harm, if they delay to apply for mail-in or absentee ballots.

21. Since petitioners and their members have had time and still have time to apply for and cast mail-in ballots, they lack standing to seek injunctive relief.

22. Finally, petitioners' claim that the Commonwealth must subsidize the cost of postage is moot and should be dismissed.

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