

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

ALLEGHENY REPRODUCTIVE	:	
HEALTH CENTER, <i>et al.</i> ,	:	No. 26 MD 2019
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Petitioners,	:	
	:	
v.	:	
	:	
PENNSYLVANIA DEPARTMENT OF	:	
HUMAN SERVICES, <i>et al.</i> ,	:	
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	:	
Respondents.	:	

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**PETITIONERS' ANSWER TO THE APPLICATION FOR LEAVE TO  
INTERVENE OF REPRESENTATIVE MIKE TURZAI, ET AL.**

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Petitioners Allegheny Reproductive Health Center, Allentown  
 Women's Center, Berger & Benjamin LLP, Delaware County Women's Center,  
 Philadelphia Women's Center, Planned Parenthood Keystone, Planned Parenthood  
 Southeastern Pennsylvania, and Planned Parenthood of Western Pennsylvania

submit this Answer to the Application for Leave to Intervene of Representatives Mike Turzai, Bryan D. Cutler, Stan E. Saylor, Kerry A. Benninghoff, Marcy Toepel, Donna Oberlander, Michael Reese, and Kurt A. Masser (collectively, the “Proposed House Intervenors”).

### **INTRODUCTION**

The Proposed House Intervenors’ attempt to intervene in this challenge to the constitutionality of Pennsylvania’s prohibition on the use of Medical Assistance funding for abortions (the “Coverage Ban”) should be rejected because they cannot meet the threshold requirements for intervention. As legislators, they have no role whatsoever in implementing, enforcing, or administering the Coverage Ban. Moreover, this litigation does not call into question any unique role that they have as legislators. Finally, their interests are already being adequately represented by the Department of Human Services, which is vigorously defending the law.

Appropriately, the Respondents in this lawsuit are the government entities and individuals charged with enforcing the Coverage Ban, namely, the Pennsylvania Department of Human Services and its officers (collectively, the “Commonwealth Respondents”). The Commonwealth Respondents have filed preliminary objections requesting dismissal of Petitioners’ claims, arguing that the Coverage Ban has been deemed constitutional by the Supreme Court in *Fischer v.*

*Department of Public Welfare*, 509 Pa. 293 (1985) and that Petitioners lack standing. One day after the Commonwealth Respondents filed their preliminary objections, a group of legislators filed applications to intervene, along with their own version of preliminary objections similarly seeking dismissal of the case.

The Proposed House Intervenors claim that they should be granted party status, along with the Commonwealth Respondents, because: 1) they could have been joined as an original party; 2) they have a legally enforceable interest in the outcome of the matter; and 3) their interests will not be adequately represented by the Commonwealth Respondents. Each of these arguments fails.

First, the Proposed House Intervenors are not proper parties to this case under Pa. R.C.P. (“Rule”) 2327(3) because they are not responsible for implementing, enforcing, or administering the Coverage Ban. As a result, there was no basis to join the Proposed House Intervenors as respondents in the original Petition for Review in the Nature of a Complaint Seeking Declaratory Judgment and Injunctive Relief (“Petition for Review”).

The Proposed House Intervenors similarly lack any legally enforceable interest in this litigation sufficient to justify intervention under Rule 2327(4). Legislators’ ability to intervene under Rule 2327(4) is limited and once a legislator’s vote on legislation has been cast and counted, that legislator’s legally enforceable interest in that legislation ends.

Finally, Proposed House Intervenors' interests are more than adequately represented by the Commonwealth Respondents in this litigation. The Commonwealth Respondents filed preliminary objections to defend the Coverage Ban and dismiss the Petition for Review in its entirety. The Proposed House Intervenors fail to establish how the defense of this action is inadequate. The Commonwealth Respondents and the Proposed House Intervenors both share the same ultimate goal: to uphold the Coverage Ban enacted by the General Assembly and to have the Petition for Review dismissed. If Proposed Intervenors wish to express their views in their own words, they may do so through *amicus* briefing.

The Proposed House Intervenors' Application for Leave to Intervene should be denied.

### **ANSWERS**

1. Admitted in part; denied in part. It is admitted that Proposed House Intervenors are "members of the House of Representatives (hereinafter, 'the House')." Petitioners are without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in this paragraph, and therefore they are denied.

2. Admitted in part; denied in part. It is admitted that Representative Turzai is the Speaker of the House. 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 daily roles and responsibilities of the Speaker of the House, and therefore they are denied. By way of further answer, to the extent that Proposed House Intervenors summarize or characterize Article II, Section 9 and Article III, Section 8 of the Pennsylvania Constitution, these provisions speak for themselves, and Petitioners deny any mischaracterization of the same.

3. Admitted in part; denied in part. It is admitted that Representative Cutler is the Majority Leader of the House. 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 daily roles and responsibilities of the Majority Leader of the House, and therefore they are denied.

4. Admitted in part; denied in part. It is admitted that Representative Saylor is the Chairman of the House Appropriations Committee. 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 daily roles and responsibilities of the Chairman of the House Appropriations Committee, and therefore they are denied.

5. Admitted in part; denied in part. It is admitted that Representative Benninghoff is the Majority Whip. 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 daily roles and responsibilities of the Majority Whip, and therefore they are denied.

6. Admitted in part; denied in part. It is admitted that Representative Toepel is the Majority Caucus Chair. 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 daily roles and responsibilities of the Majority Caucus Chair, and therefore they are denied.

7. Admitted in part; denied in part. It is admitted that Representative Oberlander is the Majority Policy Committee Chair. 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 daily roles and responsibilities of the Majority Policy Committee Chair, and therefore they are denied.

8. Admitted in part; denied in part. It is admitted that Representative Reese is the Majority Caucus Secretary. 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 daily roles and responsibilities of the Majority Caucus Secretary, and therefore they are denied.

9. Admitted in part; denied in part. It is admitted that Representative Masser is the Majority Caucus Administrator. 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 daily roles and responsibilities of the Majority Caucus Administrator, and therefore they are denied.

10. Denied. The averments contained in Paragraph 10 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. Petitioners are without knowledge or information sufficient to form a belief as to whether the Legislative Leaders agree with various issues. By way of further response, the present case does not threaten to impinge upon the constitutional duties and authorities of the General Assembly or its members, and Proposed House Intervenors do not have a sufficiently substantial, direct, and immediate interest in the outcome of the present case to provide a right to intervene. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

11. Admitted in part; denied in part. It is admitted that Pa. R.C.P. 2327(3) permits intervention where "such a person could have joined as an original party in the action or could have been joined therein." The remaining averments contained in Paragraph 11 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, Proposed House Intervenors do not have a right to intervene in the present case under Rule 2327(3) because they could not have been joined as an

original party. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.A.

12. Admitted in part; denied in part. Petitioners admit that there are examples of the General Assembly being sued in constitutional challenges. By way of further response, any suggestion that Proposed House Intervenors could have been joined as original respondents in this action is denied. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.A.

13. Admitted in part; denied in part. It is admitted that Proposed House Intervenors accurately describe *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018). Any suggestion that the present case implicates core legislative functions of the General Assembly is denied. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.2.

14. Admitted in part; denied in part. It is admitted that Proposed House Intervenors accurately describe *Stilp v. Commonwealth*, 601 Pa. 429 (2009). Any suggestion that the present case implicates core legislative functions of the General Assembly or usurps the General Assembly's appropriations power is denied. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.2.

15. Admitted in part; denied in part. It is admitted that Proposed House Intervenors accurately describe *Sears v. Wolf*, 632 Pa. 147 (2015). Any



suggestion that the *Sears* case supports Proposed House Intervenors' position that they have a right to intervene in this case is denied. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.2.

16. Admitted in part; denied in part. It is admitted that Proposed House Intervenors accurately describe *Sears v. Wolf*, 632 Pa. 147 (2015). Any suggestion that the *Sears* case supports Proposed House Intervenors' position that they have a right to intervene in this case is denied. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.2.

17. Admitted in part; denied in part. It is admitted that Proposed House Intervenors accurately describe *Sears v. Wolf*, 632 Pa. 147 (2015). Any suggestion that the *Sears* case supports Proposed House Intervenors' position that they have a right to intervene in this case is denied. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.2.

18. Denied as stated. By way of further response, Petitioners deny any averments in Paragraph 18 to the extent that they are inconsistent with or mischaracterize the Petition for Review. *See* Petition for Review in the Nature of a Complaint Seeking Declaratory Judgment and Injunctive Relief ("Petition for Review") at ¶¶ 88-96. Specifically, the Petition for Review does not ask this Court to issue any type of remedy that directs the General Assembly to take action.

19. Denied. The averments in Paragraph 19 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, this case does not present a separation of powers issue. It is the role of the General Assembly to legislate and set appropriations and it is the role of the judiciary to determine whether those laws and appropriations conform to the laws of the Commonwealth, including the Pennsylvania Constitution. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.2.

20. Denied. The averments in Paragraph 20 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, Petitioners could not have included or sued the General Assembly as an original defendant in the present case because the General Assembly is not the governmental entity or officer responsible for implementing or enforcing the challenged statutes and regulations. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.A.

21. Denied. The averments in Paragraph 21 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the present case does not challenge Proposed House Intervenors' power to appropriate funds and Petitioners could not have included or sued the General Assembly as an original defendant in

the present case because the General Assembly is not the governmental entity or officer responsible for implementing or enforcing the challenged statutes and regulations. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.A.

22. Denied. The averments in Paragraph 22 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, Proposed House Intervenors do not satisfy the statutory requirements for intervention under Rule 2327(3). *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at III.B.

23. Admitted.

24. Denied. The averments in Paragraph 24 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, see Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.1.

25. Admitted in part; denied in part. It is admitted only that Proposed House Intervenors have accurately quoted from the cited cases. By way of further response, the quoted language in Paragraph 25 does not support the argument that Proposed House Intervenors have a legally enforceable interest in the outcome of the present case or that the relief Petitioners seek will diminish or

deprive Proposed House Intervenors' authority as legislators. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

26. Denied. The averments in Paragraph 26 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 26 do not support the argument that Proposed House Intervenors have a legally enforceable interest in the outcome of the present case. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

27. Denied. The averments in Paragraph 27 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 27 do not support the argument that Proposed House Intervenors have a legally enforceable pecuniary interest in the outcome of the present case. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.2.

28. Denied. The averments in Paragraph 28 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, Proposed House Intervenors do not have a legally enforceable pecuniary or constitutional interest in the outcome of the present case and the relief Petitioners seek will not diminish or deprive

Proposed House Intervenors' authority as legislators. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

29. Denied. The averments in Paragraph 29 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, Proposed House Intervenors do not have a legally enforceable interest in the outcome of the present case and do not qualify for intervention under Rule 2327(4). *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.1.

30. Denied. The averments in Paragraph 30 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, Proposed House Intervenors do not have a legally enforceable interest in the outcome of the present case and the relief Petitioners seek will not diminish or deprive Proposed House Intervenors' authority because Petitioners have asked the judiciary to review the constitutionality of a statute, a task that belongs solely to the judiciary. Moreover, Petitioners do not seek to deprive any members of the General Assembly of any rights they may exercise as legislators. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

31. Denied. The averments in Paragraph 31 are conclusions of law to which no response is required. To the extent that a response is required, those

averments are denied. By way of further response, the averments in Paragraph 31 do not support the argument that Proposed House Intervenors have a legally enforceable interest in the outcome of the present case or that the present case challenges their power to appropriate funds. While the General Assembly has the power to legislate and appropriate funds, the judiciary is charged with interpreting the laws enacted by the General Assembly and deciding whether they violate the Pennsylvania Constitution. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

32. Admitted.

33. Admitted.

34. Admitted.

35. Admitted.

36. Admitted.

37. Admitted. By way of further response, although federal law bars the use of federal Medicaid funds to cover the cost of abortion other than in cases of threat to the woman's life, rape, and incest, federal law does not prevent states from using their own state funds to provide coverage for a broader range of services. *See* Petition for Review at ¶ 53.

38. Admitted in part; denied in part. Petitioners contend that federal law bars the use of federal Medicaid funds to cover the cost of abortion

other than in cases of threat to the woman's life, rape, and incest, but federal law does not prevent states from using their own state funds to provide coverage for a broader range of services. *See* Petition for Review at ¶ 53.

39. Admitted. By way of further response, although federal law bars the use of federal Medicaid funds to cover the cost of abortion other than in cases of threat to the woman's life, rape, and incest, federal law does not prevent states from using their own state funds to provide coverage for a broader range of services. *See* Petition for Review at ¶ 53.

40. Admitted. By way of further response, although federal law bars the use of federal Medicaid funds to cover the cost of abortion other than in cases of threat to the woman's life, rape, and incest, federal law does not prevent states from using their own state funds to provide coverage for a broader range of services. *See* Petition for Review at ¶ 53.

41. Denied. The averments in Paragraph 41 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the present case does not challenge Proposed House Intervenors' power to appropriate federal funds in accordance with federal law. *See* Petition for Review at ¶ 53. Additionally, the mere fact that this case relates to Commonwealth appropriations does not provide

Proposed House Intervenors with a right to intervene. *See* Petitioners’ Brief in Opposition to Application for Leave to Intervene at § III.B.2.

42. Denied. The averments in Paragraph 42 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the present case does not challenge Proposed House Intervenors’ power to appropriate federal funds in accordance with federal law. *See* Petition for Review at ¶ 53. Additionally, the mere fact that this case relates to Commonwealth appropriations does not provide Proposed House Intervenors with a right to intervene. *See* Petitioners’ Brief in Opposition to Application for Leave to Intervene at § III.B.2.

43. Denied as stated. By way of further response, Petitioners deny any averments in Paragraph 43 to the extent that they are inconsistent with or mischaracterize the Petition for Review. *See* Petition for Review at ¶¶ 88-96 & “Wherefore” Clause.

44. Admitted.

45. Denied. The averments in Paragraph 45 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the present case does not challenge Proposed House Intervenors’ power to appropriate funds. Additionally, Petitioners are without knowledge or information sufficient to form a belief as to



whether a decision in Petitioners' favor will indirectly cause the General Assembly to appropriate Medical Assistance funds for the performance of abortion other than in cases of endangerment to the mother's life, rape, or incest. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.2.

46. Denied. The averments in Paragraph 46 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the present case does not challenge Proposed House Intervenors' power to appropriate funds. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.2.

47. Denied. The averments in Paragraph 47 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the present case does not challenge Proposed House Intervenors' power to appropriate funds. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.2.

48. Denied. The averments in Paragraph 48 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the present case does not challenge Proposed House Intervenors' power to appropriate funds. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.2.

49. Denied. The averments in Paragraph 49 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 49 do not support the argument that Proposed House Intervenors have a legally enforceable interest in the outcome of the present case or that the present case challenges their power to appropriate funds. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

50. Admitted in part; denied in part. It is admitted only that Proposed House Intervenors have accurately quoted from *Markham v. Wolf*, 635 Pa. 288, 306-06 (2016). Any suggestion that the quoted language in Paragraph 50 supports the argument that Proposed House Intervenors have a legally enforceable interest in the outcome of the present case or that the present case challenges their power to appropriate funds is denied. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

51. Admitted in part; denied in part. It is admitted that the General Assembly has appropriations power over both federal Medicaid funds and state Medical Assistance funds. Any suggestion that this power provides the Proposed House Intervenors with a right to intervene here is denied. By way of further response, the present case does not challenge Proposed House Intervenors' power to appropriate funds consistent with the Pennsylvania Constitution, as has always

been the case. *See* Petitioners’ Brief in Opposition to Application for Leave to Intervene at § III.B.2.

52. Denied. The averments in Paragraph 52 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, legislators only have a narrow right to intervene in very limited circumstances. Additionally, this action challenges the constitutionality of the current funding limitations established by the Pennsylvania coverage ban, but does not seek to directly intrude upon the General Assembly’s prerogative to establish Commonwealth spending priorities. The Proposed House Intervenors will be free to legislate and appropriate funds as they deem appropriate—and, as always, consistent with the Pennsylvania Constitution—in response to any adverse decision in this case. *See* Petitioners’ Brief in Opposition to Application for Leave to Intervene at § III.B.2.

53. Denied. The averments in Paragraph 53 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, this action challenges the constitutionality of the current funding limitations established by the Pennsylvania coverage ban, but does not seek to directly intrude upon the General Assembly’s prerogative to establish Commonwealth spending priorities. The Proposed House Intervenors will be free to legislate and appropriate funds as they deem

appropriate—and, as always, consistent with the Pennsylvania Constitution—in response to any adverse decision in this case. *See* Petitioners’ Brief in Opposition to Application for Leave to Intervene at § III.B.2.

54. Admitted.

55. Admitted.

56. Admitted.

57. Denied. By way of further response, according to the 2014 data published in the Guttmacher Institute report, “three-fourths of abortion patients were low income—49% living at less than the federal poverty level, and 26% living at 100–199% of the poverty level.” Petitioners deny any averments in Paragraph 57 to the extent that they are inconsistent with or mischaracterize the Guttmacher Institute report cited by Proposed House Intervenors. Petitioners are without sufficient knowledge or belief to respond to the remaining averments.

58. Denied. By way of further response, Proposed House Intervenors do not advance any authority for the averment that “granting Petitioners’ requested relief could result in additional Medical Assistance expenditures ranging from \$4.5 million to \$45 million,” and Petitioners are without sufficient knowledge or information to form a belief as to the truth of this averment. Proposed House Intervenors significantly overstate the fiscal impact that would result if the Commonwealth includes coverage for medically necessary

abortion procedures. This is because the vast majority of Pennsylvania's Medical Assistance beneficiaries are enrolled in managed care programs, and the Commonwealth's financial responsibility is based on risk-adjusted per member per month fees based on total medical expenses for the relevant population. Moreover, the Proposed House Intervenors' contention that additional appropriations will be necessary also fails to consider that there are women who, because of the Pennsylvania coverage ban, carry an unwanted pregnancy to term and require expensive prenatal care, hospital services in connection with delivery care, post-birth care, and then general health care for their newborn child.

59. Denied. By way of further response, Proposed House Intervenors do not advance any authority for the averment in Paragraph 59, and Petitioners are without sufficient knowledge or information to form a belief as to the truth of this averment. By way of further response, see Paragraph 58, which is incorporated here by reference.

60. Denied. By way of further response, Proposed House Intervenors do not advance any authority for the averment in Paragraph 60, and Petitioners are without sufficient knowledge or information to form a belief as to the truth of this averment. By way of further response, see Paragraph 58, which is incorporated here by reference.

61. Denied. Petitioners are without sufficient knowledge or information to form a belief as to the truth of the averment in Paragraph 61. By way of further response, see Paragraph 58, above, which is incorporated here by reference.

62. Denied. The averments in Paragraph 62 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 62 do not support the argument that Proposed House Intervenors have a legally enforceable interest in the outcome of the present case or that the present case challenges their power to appropriate funds, which it does not. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B. By way of further response, see Paragraph 58, which is incorporated here by reference.

63. Denied. The averments in Paragraph 63 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 63 do not support the argument that Proposed House Intervenors have a legally enforceable interest in the outcome of the present case or that the present case challenges Proposed House Intervenors' power to appropriate funds. Additionally, it is the judiciary's constitutional role to determine whether a state law complies

with the Pennsylvania Constitution. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

64. Denied. The averments in Paragraph 64 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 64 do not support the argument that Proposed House Intervenors have a legally enforceable interest in the outcome of the present case or that the present case challenges Proposed House Intervenors' power to appropriate funds. Additionally, it is the judiciary's constitutional role to determine whether a state law complies with the Pennsylvania Constitution. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

65. Denied. The averments in Paragraph 65 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, Proposed House Intervenors do not have a sufficient interest allowing them to intervene under Rule 2327(4). *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.1.

66. Denied. The averments in Paragraph 66 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 66 do not support the argument that a breakdown in the integrity of the legislative

process exists in the present case or that the present case challenges Proposed House Intervenors' power to appropriate funds. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

67. Denied. The averments in Paragraph 67 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 67 do not support the argument that Proposed House Intervenors have a right to intervene in the present case or that a breakdown in the integrity of the legislative process exists in the present case. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

68. Denied. The averments in Paragraph 68 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 68 do not support the argument that Proposed House Intervenors have standing to intervene in the present case or that the present case challenges Proposed House Intervenors' power to appropriate funds. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

69. Denied. The averments in Paragraph 69 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 69



do not support the argument that Proposed House Intervenors have standing to intervene in the present case or that the present case challenges Proposed House Intervenors' power to appropriate funds. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

70. Denied. The averments in Paragraph 70 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 70 do not support the argument that the present case challenges Proposed House Intervenors' power to appropriate funds. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

71. Admitted.

72. Admitted.

73. Admitted.

74. Admitted.

75. Admitted in part; denied in part. It is admitted only that the Attorney General's office has not entered its appearance in this case and has allowed the Office of the General Counsel to defend this action on behalf of the Respondents. Any suggestion that the Office of the General Counsel will not adequately defend this action is denied. By way of further response, see Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.C.1.

76. Denied. The averments in Paragraph 76 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, no legislative interests are challenged by the Petition and it is up to the judiciary to determine whether a state statute complies with the Pennsylvania Constitution. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.B.

77. Denied. The averments in Paragraph 77 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 77 do not support the argument that any actions taken by the Office of the General Counsel, the Attorney General, or the Governor are constitutionally suspect or that a breakdown in the integrity of the legislative process exists in the present case. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.C.1.

78. Admitted in part; denied in part. Petitioners admit the first sentence averred in Paragraph 78. The remaining averments in Paragraph 78 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the Respondents and the Proposed House Intervenors seek the same relief through their filed and proposed preliminary objections: that the Petition for Review be

dismissed as legally deficient. The Respondents are defending the Coverage Ban enacted by the General Assembly. *See* Petitioners’ Brief in Opposition to Application for Leave to Intervene at § III.C.1.

79. Denied. By way of further response, see Paragraph 78, above, which is incorporated here by reference.

80. Denied. The averments in Paragraph 80 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, Proposed House Intervenors do not have the right to intervene in the present case based on a purported breakdown in the legislative and constitutional processes. *See also* Petitioners’ Brief in Opposition to Application for Leave to Intervene at §§ III.B, III.C.1.

81. Admitted.

82. Denied. The averments in Paragraph 82 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, see Paragraph 78, above, which is incorporated here by reference.

83. Admitted in part; denied in part. Petitioners admit that “[t]he only named Respondents are the Department of Human Services and three of its officials, all of whom are part of the Executive Branch.” The remaining averments in Paragraph 83 are conclusions of law to which no response is required. To the

extent that a response is required, those averments are denied. By way of further response, see Paragraph 78, above, which is incorporated here by reference. *See also* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.C.1.

84. Denied. By way of further response, Petitioners deny any averments in Paragraph 84 to the extent that they are inconsistent with or mischaracterize Respondents' Unopposed Application for Enlargement of Time to File a Response to Petitioners' Petition for Review. By way of further response, see Paragraph 78, above, which is incorporated here by reference. There are no concerted efforts to exclude the Proposed House Intervenors from this litigation. Petitioners oppose the Application to Intervene and the Respondents "take no position on the two applications for leave to intervene." Ltr. from Matthew J. McLees, May 1, 2019.

85. Admitted.

86. Denied. By way of further response, Petitioners deny any averments in Paragraph 86 to the extent that they are inconsistent with or mischaracterize Respondents' Unopposed Application for Enlargement of Time to File a Response to Petitioners' Petition for Review. Petitioners and Respondents have in fact discussed timings of filings, as is normal for parties in active litigation. There are no concerted efforts to exclude the Proposed House Intervenors from this

litigation. Petitioners oppose the Application to Intervene and the Respondents “take no position on the two applications for leave to intervene.” Ltr. from Matthew J. McLees, May 1, 2019. By way of further response, see Paragraph 78, above, which is incorporated here by reference. *See also* Petitioners’ Brief in Opposition to Application for Leave to Intervene at § III.C.1.

87. Denied. The averments in Paragraph 87 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, any suggestion that the current parties to this case have had negotiations to resolve this matter by any form of consent decree is denied, and the Respondents have sought to dismiss the Petition as legally deficient. By way of further response, see Paragraph 78, above, which is incorporated here by reference. *See also* Petitioners’ Brief in Opposition to Application for Leave to Intervene at § III.C.1.

88. Admitted.

89. Denied. The averments in Paragraph 89 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, the averments in Paragraph 89 are speculative in nature, such that no response is required. By way of further response, see Paragraph 87, above, which is incorporated here by reference.

90. Denied. The averments in Paragraph 90 are speculative in nature, such that no response is required. Further, the averments in Paragraph 90 are conclusions of law to which no response is required. To the extent that a response is required, those averments are denied. By way of further response, see Paragraph 78. *See also* Petitioners' Brief in Opposition to Application for Leave to Intervene at §§ III.B, III.C.1.

91. Admitted.

92. Admitted in part; denied in part. It is admitted that Respondents filed their Preliminary Objections with the Court on April 16, 2019. The remaining allegations are denied. By way of further response, Petitioners deny any averments in Paragraph 92 to the extent that they are inconsistent with or mischaracterize the docket in the present case.

93. Admitted.

94. Denied. Granting Proposed House Intervenors' application will unnecessarily delay this case and add unnecessary costs. *See* Petitioners' Brief in Opposition to Application for Leave to Intervene at § III.C.2.

\* \* \*

WHEREFORE, Petitioners request that the Court deny Proposed House Intervenors' Application for Leave to Intervene.

Dated: May 8, 2019

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE**

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

Dated: May 8, 2019

/s/ Thomas B. Schmidt III



**CERTIFICATE OF SERVICE**

I certify that on this 8<sup>th</sup> day of May, 2019, I am this day serving the foregoing Petitioners' Answer to the Application for Leave to Intervene of Representative Mike Turzai, et al. upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121.

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