

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

APPLICATION FOR LEAVE TO INTERVENE OF THE SPEAKER OF THE HOUSE MIKE TURZAI, MAJORITY LEADER BRYAN D. CUTLER, MAJORITY CHAIR OF THE APPROPRIATIONS COMMITTEE STAN E. SAYLOR AND MEMBERS OF THE MAJORITY LEADERSHIP OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES: REP. KERRY A. BENNINGHOFF, REP. MARCY TOEPEL, REP. DONNA OBERLANDER, REP. MICHAEL REESE and REP. KURT A. MASSER

Pursuant to Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. No. 106 and 1531(b), and Pennsylvania Rules of Civil Procedure, Pa. R.C.P. No. 2326 through 2329, the Speaker of the Pennsylvania House of Representatives, Mike

Turzai (“Speaker Turzai”), the Majority Leader of the House, Bryan D. Cutler (“Leader Cutler”), the Chairman of the House Appropriations Committee, Stan E. Saylor (“Chairman Saylor”), Majority Whip Kerry A. Benninghoff, Majority Caucus Chair Marcy Toepel, Majority Caucus Secretary Michael Reese, Majority Caucus Administrator Kurt A. Masser, and Majority Policy Committee Chair Donna Oberlander, herein referred to, collectively, as the “Legislative Leaders” hereby apply for leave to intervene in this matter.

In this action, the Petitioners are asking the Court to, among other things, declare unconstitutional and enjoin the enforcement of statutory provisions – namely, 18 Pa. C.S. § 3215(c) and (j) – that legislatively designate a purpose for which appropriated funds cannot be used within the context of the Medical Assistance program, which is Pennsylvania’s Medicaid program. Those provisions establish, in particular, that “[n]o Commonwealth funds and no federal funds which are appropriated by the Commonwealth shall be expended by any State or local government agency for the performance of abortion,” except in specifically enumerated situations. 18 Pa. C.S. § 3215(c). If the Court were to grant the relief that Petitioners request, its decision would upend a longstanding statutory expenditure rule (*i.e.*, that appropriated funds generally cannot be spent on abortions). Given that the Commonwealth’s appropriations power is vested exclusively in the General Assembly, the Petitioner’s requested relief will have an

immediate, substantial and negative impact on the General Assembly’s budgetary and appropriations decision-making authority. In their official capacities, the Legislative Leaders have a sufficient interest to participate in this matter as parties. Because the Legislative Leaders’ interests are not otherwise adequately represented here, and because this Application to Intervene is timely filed, the Court should grant the Legislative Leaders’ leave to intervene. In support of this application, the Legislative Leaders state as follows:

THE LEGISLATIVE LEADERS

1. All of the Legislative Leaders are duly elected members of the House of Representatives (hereinafter, “the House”). Upon assuming their positions in the House, the Legislative Leaders, in accordance with Article VI, Section 3 of the Pennsylvania Constitution, took an oath that they would “support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth” and “discharge the duties of [their] office with fidelity.”

2. As the elected Speaker of the House, Speaker Turzai is a constitutional officer whose position is established by Article II, Section 9 of the Pennsylvania Constitution. His responsibilities include presiding over the House and signing all of the bills that the General Assembly passes. *See* Pa. Const. art. III, § 8.

3. As the Majority Leader of the House, Leader Cutler leads debate on the House floor, compiles the majority's calendar, chairs the House Rules Committee and oversees the administration of majority caucus functions.

4. As the Chairman of the House Appropriations Committee, Chairman Saylor leads the committee as it assists the House by reviewing and analyzing appropriations bills, proposing amendments to those bills, and reviewing and assessing the administration of appropriations statutes by Pennsylvania's agencies.

5. As Majority Whip, Representative Kerry A. Benninghoff serves to assist the floor leader and generally communicates the position of the Majority Caucus regarding various policy initiatives.

6. As Majority Caucus Chair, Representative Marcy Toepel assists the majority leader with policy development and presides over meetings of the House Majority Caucus.

7. As Majority Policy Committee chair, Representative Donna Oberlander conducts hearings about important issues and gathers testimony and information from key stakeholders to develop and guide policy so that the legislation being crafted in Harrisburg reflects the priorities of the people of Pennsylvania.

8. As Majority Caucus Secretary, Representative Michael Reese is responsible for recording all caucus legislative activities.

9. As Majority Caucus Administrator, Representative Kurt A. Masser is responsible for assisting the Speaker and Leader in the administration of the House of Representatives.

10. All of the Legislative Leaders have an interest in officially addressing all matters which threaten to impinge upon the constitutional duties and authority of the General Assembly. All of the Legislative Leaders agree with the Pennsylvania Supreme Court's conclusion in *Fischer v. Department of Public Welfare*, 502 A.2d 114 (Pa. 1985) that, under Article I, Sections 1, 26, and 28 and Article III, Section 32 of the Pennsylvania Constitution, 18 Pa. C.S. § 3215(c) and (j) are constitutional. All of the Legislative Leaders agree that a court challenge which threatens to disturb the central holding of *Fischer v. Department of Public Welfare* will impact the General Assembly's Constitutional authority to determine spending priorities within the Commonwealth. All of the Legislative Leaders agree that legislative intervention in this matter is required in order for the Legislative Leaders to adequately defend the authority and constitutional powers which are exclusively vested in the General Assembly.

INTERVENTION STANDARD

I. Legislative Leaders are Entitled to Intervene Under the Pennsylvania Rules of Civil Procedure

11. The Legislative Leaders have a right to intervene under Rule 2327 of the Pennsylvania Rules of Civil Procedure, which states that a person may be permitted to intervene when “such a person could have joined as an original party in the action or could have been joined therein.” Pa. R.C.P. No. 2327(3).

12. There are numerous examples of the General Assembly being sued over the passage of an alleged unconstitutional statute or when their appropriations power is called into question.

13. In the *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018), the Commonwealth of Pennsylvania, the General Assembly and other legislative and administrative officials were sued for enacting an allegedly unconstitutional statute which resulted in assertedly gerrymandered voting districts. This action implicated a core legislative function and the General Assembly was joined as an original Defendant.

14. In *Stilp v. Commonwealth*, 601 Pa. 429, 974 A.2d 491 (2009), Gene Stilp sued the Commonwealth of Pennsylvania, the General Assembly and various individual members of the General Assembly over an allegedly unconstitutional receipt of compensation provided to members of the General Assembly in excess of the salary and mileage as provided in the Pennsylvania Constitution. This action

challenged the General Assembly's authority to make certain appropriations to the legislature's internal operating budget.

15. Finally, in *Sears v. Wolf*, 632 Pa. 147 (2015) the then-Corbett administration, as well as the Speaker of the House of Representatives and the President Pro-Tempore of the Senate, were sued for discontinuing and defunding the adultBasic low-cost health insurance program. Initially, the Commonwealth Court upheld the legislative leaders' preliminary objections stating: "we conclude that the doctrine of sovereign immunity bars such relief against Respondents General Assembly and its elected, presiding officers herein and we sustain their preliminary objection in this regard. *Sears v. Corbett*, 49 A.3d 463, 472–73 (Pa. Cmwlth. 2012), rev'd and vacated on other grounds, see *Sears v. Wolf*, 632 Pa. 147, 118 A.3d 1091 (2015).

16. On appeal, the Pennsylvania Supreme Court allowed this portion of the Commonwealth Court's decision in *Sears* to stand and further stated: "[t]he Commonwealth Court majority also found that the Speech and Debate Clause found in Article II, Section 15 of the Pennsylvania Constitution foreclosed any type of judicial order directing the General Assembly to enact new legislation." *Id.* note 11.

17. While the *Sears* litigation involved the General Assembly as original Respondents, it is instructive to demonstrate the importance of the General Assembly's participation in such cases when, like the present action, the legislatures'

power to appropriate necessary funds is challenged.

18. Petitioners in the instant matter claim that the General Assembly has fashioned an unconstitutional statutory appropriations scheme and request that the judiciary require that the General Assembly make certain appropriations which it has, in keeping with federal law, declined to make.

19. This matter too presents a potential Separation of Powers conflict of constitutional dimensions between the legislative and the judicial branches of the government, inasmuch as the Petitioners seek to have the judicial branch invalidate the funding scheme the legislative branch fashioned in its exclusive appropriations power and cause it to appropriate funds for purposes it has heretofore refused to finance.

20. Petitioners could have included and sued the General Assembly as an original defendant due to the allegedly unconstitutional funding statute.

21. Because the claims presented in the present matter allege an unconstitutional statutory scheme and because the allegations directly challenge and impact the Legislature's exclusive budgetary authority, the Legislative Leaders very well could have been included as original Respondents.

22. Therefore, the Legislative Leaders satisfy the statutory requirements for intervention and their Application should be granted.

II. Legislative Leaders Possess a Unique, Constitutional and Legally Enforceable Interest in the Outcome of the Matter

23. Rule 2327 of the Pennsylvania Rules of Civil Procedure provides that “[a]t 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. No. 2327(4).

24. In determining whether, in their official capacities, members of the General Assembly have a “legally enforceable interest” in an action, Pennsylvania courts have drawn upon the principles governing legislative standing.

25. In taking this approach, our Supreme Court has explained that legislative standing exists when “state legislators seek redress for an alleged usurpation of their authority as members of the General Assembly.” *Fumo v. City of Philadelphia*, 601 PA 322, 972 A.2d 487, 502 (2009). “Members of the General Assembly have sufficient interest to participate in a legal action in their official capacity and based upon their special status [as legislators] where there is a discernible and palpable infringement on their authority as legislators.” *Robinson Township v. Commonwealth*, 624 Pa. 219, 221, 84 A.3d 1054, 1055 (2014) (*per curiam*) (internal quotation and brackets omitted). “A legislator’s legal interest has been recognized,” the court explained, “to protect the legislator’s right to vote on

legislation and in actions alleging a diminution or deprivation of the legislator's...power or authority." *Id.* (internal quotation and brackets omitted); *see also Markham v. Wolf*, 136 A.3d 134, 145 (Pa. 2016) (observing that legislative standing arises out of "injuries personal to the legislator, as a legislator").

26. Our Supreme Court has also noted that the evolution of the concept of a 'legally enforceable interest' for legislators "reflects a sensible approach. Legislators and council members have been permitted to bring actions based upon their special status where there was a discernible and palpable infringement on their authority as legislators." *Fumo*, 972 A.2d at 501.

27. The Commonwealth Court has previously determined that the Department of Public Welfare (now the Department of Human Services) held a legally enforceable pecuniary interest in recovering a portion of a settlement agreement in order to recoup expenditures made on behalf of a citizen. *Jordan ex rel. Jordan v. Western Pennsylvania Hospital*, 961 A.2d 220, 226 (Pa. Cmwlth. 2008) ("[W]e conclude that the trial court erred in declining to grant the Department's request to intervene.").

28. Here, the Legislative Leaders, in their official capacities, have a legally enforceable interest, which is pecuniary and constitutional in nature and deeply rooted in the General Assembly's unique budgetary and appropriations power.

29. That legally enforceable interest is threatened by the determination of this matter, and the nature of the coercive relief demanded, and the Court should conclude that they qualify for intervention under Rule 2327(4).

30. If the Petitioners were to obtain the mandatory relief that they are seeking, it will represent a direct and immediate infringement on the Legislative Leaders', as well as on all of the Representatives' "authority as legislators." *Robinson Township*, 624 Pa. at 221.

31. This is because "[t]he framers gave to the General Assembly the exclusive power to pay money out of the state treasury without regard to the source of the funds. In contrast, nowhere in our Constitution is the executive branch given any right or authority to appropriate public monies for any purpose." *Shapp v. Sloan*, 480 Pa. 449, 465, 391 A.2d 595, 603 (1978). Perforce, our Constitution has denied that authority to the judicial branch as well.

32. The Medicaid program is a joint federal-state program under which eligible individuals may obtain payment for select health care services. *See, e.g.*, 42 U.S.C. §§ 1396 *et seq.*

33. Pennsylvania implements the Medicaid program, through statutes and regulations, in the form of the "Medical Assistance" program. *See, e.g.*, 62 P.S. §§ 441.1 *et seq.*

34. In the General Appropriation Act of 2018, the General Assembly made appropriations of federal Medicaid funds and state Medical Assistance funds in order to finance the Medical Assistance program for the 2018-2019 fiscal year. *See generally*, Section 222 of the General Appropriation Act of 2018, Act No. 2018-1A, P.N. 3747.

35. From these appropriations, the Department of Human Services distributes payments for Medical Assistance benefits in two ways. First, through the fee-for-service program, it directly reimburses health care providers for the costs of the covered services that they provide to Medical Assistance enrollees. Second, through the Community HealthChoices program, the Department makes payments to managed care organizations that reimburse providers for the costs of the covered services that they provide to enrollees. The Department, in this regard, pays the managed care organizations a capitated per-enrollee, per-month amount.

36. The vast majority of enrollees receive their Medical Assistance coverage by enrolling with managed care organizations that participate in the Community HealthChoices program, as opposed to receiving it through the fee-for-service system.

37. Federal statutory law establishes that federal Medicaid funds may not be used for the performance of an abortion, except in cases of rape, incest or to avert the death of the mother. *See, e.g.*, 42 U.S. Code § 1397ee(c).

38. Consistent with this restriction, 18 Pa. C.S. § 3215(c) provides that “[n]o...Federal funds which are appropriated by the Commonwealth shall be expended by any State or local government agency for the performance of abortion, except” to avert the death of the mother or in cases of rape or incest.

39. Furthermore, 18 Pa. C.S. § 3215(c) establishes that, subject to the same three exceptions, “[n]o Commonwealth funds shall be expended by any State or local government agency for the performance of abortion[.]”

40. The provision at 18 Pa. C.S. § 3215(j), in turn, establishes that “[n]o Commonwealth agency shall make any payment from Federal or State funds appropriated by the Commonwealth for the performance of any abortion pursuant to” the rape or incest exception “unless the Commonwealth agency first” meets certain criteria.

41. Regarding the use of federal funds, the Pennsylvania Supreme Court has clearly articulated that “[t]he funds which Pennsylvania receives from the federal government do not belong to officers or agencies of the executive branch. They belong to the Commonwealth. The agency or official who is authorized to apply for federal funds does so only on behalf of the Commonwealth. The federal grants are made to the State, not to a single branch of state government.” *Shapp v. Sloan*, 480 Pa. 449, 468, 391 A.2d 595, 604 (1978). Therefore, the determination of the most appropriate use of all Commonwealth funds, even funds with federal origins, rests

with the General Assembly – not the Department of Human Services. The Legislative Leaders should be granted leave to intervene because, as to the Federal funds covered by the challenged statutory provisions, it is the General Assembly, rather than an executive agency, that is most involved in designating the uses to which those funds will – or will not – be put.

42. These principles are likewise embodied in the regulations at 55 Pa. Code §§ 1141.57 (physicians’ services), 1163.62 (inpatient hospital services), and 1221.57 (clinic and emergency room services), which Petitioners refer to collectively as the “implementing regulations.”

43. Against this backdrop, Petitioners invoke Article I, Sections 1, 26, and 28 and Article III, Section 32 of the Pennsylvania Constitution and claim that, notwithstanding our Supreme Court’s decision in *Fischer*, the provisions at 18 Pa. C.S. § 3215(c) and (j) (and their implementing regulations) are unconstitutional. *See* Petition for Review at ¶¶ 88-96 & Wherefore Clause.

44. As relief, the Petitioners ask the Court to, among other things, declare unconstitutional and “enjoin enforcement of the Pennsylvania coverage ban, 18 Pa. C.S. § 3215(c) & (j), and its implementing regulations, 55 Pa. Code §§ 1147.57, 1163.62, 1221.57[.]” *Id.* at Wherefore Clause.

45. The logical consequence of granting Petitioners’ requested relief is that, directly contrary to the Legislature’s budgeting authority and in contravention of

federal law, the General Assembly would be forced 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 also id.* at 1 (Petitioners are seeking "a court order requiring the Department of Human Services" to "cover[] abortion through Medical Assistance").

46. Historically, courts have closely guarded the exclusive authority vested in the General Assembly to control appropriating Commonwealth monies.

47. Under Article II, Section 1 and Article III, Section 24 of the Pennsylvania Constitution, the power to make appropriations is vested exclusively in the General Assembly. *See Shapp v. Sloan*, 391 A.2d at 601 (Pa. 1978) ("The appropriations power in this Commonwealth is vested in the General Assembly."); *Commonwealth ex rel. Schnader v. Liveright*, 161 A. 697, 707 (Pa. 1932) ("The legislature in appropriating is supreme within the limits of the revenue and moneys at its disposal."); *Common Cause of Pennsylvania v. Commonwealth*, 668 A.2d 190, 205 (Pa. Cmwlth. 1995) ("The power to appropriate moneys lies exclusively with the legislative branch.").

48. "The right of the General Assembly to appropriate funds from the State Treasury is expressly mandated by our Constitution itself." *See Shapp v. Sloan*, 391 A.2d at 607.

49. The Pennsylvania Supreme Court has already found that standing is rightly conferred upon a governmental body, such as the General Assembly, when its fiscal authority and budgeting obligations are threatened. *See, City of Philadelphia v. Schweiker*, 579 Pa. 591, 613 (2004).

50. Additionally, “legislators, as legislators, are granted standing to challenge executive actions when specific powers unique to their function under the Constitution are diminished or interfered with.” *Markham v. Wolf*, 635 Pa. 288, 308-309 (2016) *Donohue, J. concurring, citing Wilt v. Beal*, 363 A.2d 876, 881 (Pa. Cmwlth. 1976).

51. The General Assembly’s appropriations power extends to appropriations of both federal Medicaid funds and state Medical Assistance funds. *See Shapp*, 391 A.2d at 604 (the fact that “the executive agency or official must use federal monies within the program for which they were intended and must provide an accounting to show that they were so used, does not lead to the conclusion that the funds are under that official’s control and outside the control of the legislature”).

52. Legislators must be allowed to challenge actions which, in violation of the Separation of Powers doctrine, intrude upon the General Assembly’s prerogative to establish spending priorities within the Commonwealth.

53. Therefore, if this Court granted Petitioners’ requested relief, the Legislative Leaders, working with the other members of the General Assembly,

would need to determine whether and to what extent, in response to a judicially-imposed mandate, they needed to enact appropriations-related legislation.

54. The General Assembly, in order to ensure that it was not in violation of federal statutory law, would have to ensure that federal Medicaid funds were not expended for the performance of abortions, except in cases of endangerment to the mother's life, rape, or incest. *See, e.g., Shapp*, 391 A.2d at 605 (“The federal government may impose conditions and limitations upon the monies it allocates to the states and the General Assembly must stay within those guidelines or refuse the grant.”).

55. The Petitioners allege, in this regard, that “[t]he cost of an abortion in Pennsylvania ranges from several hundred dollars to several thousand[.]” Petition for Review at ¶ 77.

56. The Pennsylvania Department of Health has reported 30,011 abortions in Pennsylvania in 2017¹.

57. According to 2016 data, approximately 75% of abortion are performed on economically disadvantaged women.² This represents approximately 22,500

1. https://www.health.pa.gov/topics/HealthStatistics/VitalStatistics/Documents/Pennsylvania_Annual_Abortion_Report_2017.pdf.

2. In 2014, 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.
<https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>.

abortions performed on women who are economically disadvantaged and, arguably eligible for coverage under Pennsylvania's Medical Assistance program.

58. Based upon the verified statements made in Petitioners' petition for review regarding the range of costs for an abortion, granting Petitioners' requested relief could result in additional Medical Assistance expenditures ranging from \$4.5 million to \$45 million.

59. This increase would be on top of the Commonwealth's current budgetary crisis.

60. If the Court grants Petitioners' requested relief, the General Assembly may be forced to cut funding for all family planning services under the Medical Assistance program or alter their budgeting scheme in many other ways yet to be determined.

61. Alternatively, the Court's ruling would require a significant increase in Medical Assistance funds to be spent for the performance of abortions, generally. The General Assembly would need to determine whether it needed to make new or supplemental appropriations in order to ensure that there were enough appropriated funds, in total, to fulfill the various other (existing) purposes and requirements of the Medical Assistance program, as well as comply with a judicial mandate to appropriate funds to finance the performance of abortions. *See, e.g.*, 55 Pa. Code § 1101.31 (scope of Medical Assistance benefits).

62. By altering a longstanding statutory expenditure rule, the Court's decision would have an immediate and substantial impact on the budgetary and appropriations planning and actions by the Legislative Leaders as well as the entire General Assembly as a legislative body.

63. Determining the scope of Medicaid coverage is an exclusive function of the General Assembly as a part of its sole and exclusive power to appropriate Commonwealth funds.

64. Forcing the General Assembly to alter the Commonwealth's budgetary priorities and to act contrary to federal law treads upon the Separation of Powers doctrine by means of judicial incursion into appropriations choices reserved to the General Assembly alone.

65. It follows that, under Pennsylvania Rule of Civil Procedure 2327(4), the Legislative Leaders have a sufficient interest for them to intervene in this matter, in their official capacities.

III. The Legislative Leaders Have Standing to Intervene to Prevent Breakdown in the Legislative Process

66. The Legislative Leaders and the General Assembly as a body may intervene when the constitutionally mandated appropriations process fails or is being thwarted.

67. The Pennsylvania Supreme Court has previously concluded that

members of the General Assembly have a grave stake in assuring that the actions of another governmental body or office, which touch upon the General Assembly's authority, will pass constitutional muster. *See generally, Zemprelli v. Daniels*, 496 Pa. 247, 436 A.2d 1165 (1981); *Scarnati v. Wolf*, 135 A.3d 200 (Pa. Cmwlth. 2015) *rev'd in part on other grounds*, 643 Pa. 474 (2017).

68. The Legislative Leaders have standing to pursue an action when “the claim reflects the legislators’ interests in maintaining the effectiveness of their legislative authority . . .” *Fumo*, 972 A.2d at 502.

69. Also, state legislators have legislative standing to pursue a claim in order to “seek redress for an alleged usurpation of their authority as members of the General Assembly.” *Id.*

70. Presently, the Legislative Leaders have a special interest in assuring that the constitutional process of making appropriations and the General Assembly's authority granted under the constitution is not thwarted or usurped.

71. The Commonwealth Attorneys Act imposes a positive duty upon the Attorney General to defend the constitutionality of all Pennsylvania laws.

72. The Commonwealth Attorneys Act mandates that: “It shall be the duty of the Attorney General to uphold and defend the constitutionality of all statutes so as to prevent their suspension or abrogation in the absence of a controlling decision by a court of competent jurisdiction.” 71 P.S. § 732-204 (a)(3).

73. The Commonwealth Attorneys Act further provides that: “[t]he Attorney General may, upon determining that it is more efficient or otherwise in the best interest of the Commonwealth, authorize the General Counsel or the counsel for an independent agency to initiate, conduct, or defend any particular litigation or category of litigation in his stead.” 71 P.S. § 732-204 (c).

74. At this time, the Attorney General has not, nor has anyone from his office, entered an appearance in this matter but has allowed the Office of General Counsel to defend the statute in his stead on behalf of Respondents.

75. Legislative Leaders assert that, as the chief executive of the executive branch of the government, Governor Wolf is unable to adequately represent the very specific, different and potentially opposing interests of the legislative branch of government.

76. The General Assembly cannot abandon its constitutional duty and simply leave it to the governor and the executive branch to defend their legislative interests.

77. In an earlier case, an alleged breakdown in the integrity of the legislative process was found to be sufficient to support legislative standing when the Governor’s actions were constitutionally suspect. “To the extent that the Governor’s actions are not constitutionally compliant, the proper legislative process as a whole, and the General Assembly’s role in that process might have been

thwarted,” *Scarnati v. Wolf*, 135 A.3d 200 (Pa. Cmwlth. 2015).

78. Here, the Attorney General’s designee has a constitutional duty to defend the laws which are passed by the General Assembly and signed by the Governor. Upon review of the preliminary objections filed by the Office of General Counsel on behalf of Respondents, the Attorney General’s designee has failed to raise all of the constitutional issues relating to the General Assembly’s appropriations power. That failure could negate or usurp the General Assembly’s authority to make, or refusal to make, certain appropriations. Therefore, the Legislative Leaders must be permitted to intervene to uphold the constitutional process and their authority under that process.

79. The Governor’s failure to comprehensively defend that exclusive legislative authority constitutes the type of breakdown in the constitutional process which necessitates legislative standing under both *Fumo* and *Scarnati*.

80. The Court should therefore grant leave for the Legislative Leaders to intervene.

IV. The Legislative Leaders’ Interest Is Not Otherwise Adequately Represented

81. A consideration in granting an Application for Intervention is whether “the interest of the Petitioner is already adequately represented.” *See* Pa. R.C.P. No. 2329(2).

82. The Legislative Leaders' unique, Constitutional and legally enforceable interest is not adequately represented by the named Respondents, who do not have the same constitutional responsibilities in the appropriations process.

83. The only named Respondents are the Department of Human Services and three of its officials, all of whom are part of the Executive Branch and therefore do not share the Legislative Leaders' interest or duties in the appropriations process. *See Shapp*, 391 A.2d at 603 (“nowhere in our Constitution is the executive branch given any right or authority to appropriate public monies for any purpose”); *see also Jubelirer v. Rendell*, 953 A.2d 514, 529 (Pa. 2008).

84. Respondents' [Second] Unopposed Application for Enlargement of Time to File A Response to Petitioners' Petition for Review, raises concern that the Petitioners and Respondents are discussing a stipulated process to conclude the matter without consideration of the General Assembly's unique interests.

85. Respondents' March 29th Application states: “Counsel for Petitioners and counsel for Respondents have been engaged in ongoing discussions in regards to an expeditious path to proceed with this litigation.” Respondents Unopposed Application, ¶4, p.2.

86. This statement indicates that the Petitioners and the administration are engaged in negotiations that could prejudice the authority of the General Assembly

without being provided an opportunity to represent its position in the determination of this case.

87. The Commonwealth Attorneys Act would likewise conceivably permit the parties, with the approval of the Attorney General, to agree to a consent decree or other disposition of this case at this stage without considering the General Assembly's unique and exclusive Constitutional interests in the appropriations process.

88. The Commonwealth Attorneys Act provides:

The Attorney General shall not agree to the entry of a consent decree in any action against the Commonwealth or any agency without the approval of the Governor and notice to the General Assembly through the offices of the Secretary of the Senate and the Chief Clerk of the House of Representatives. 71 P.S. § 732-204(e).

89. The parties could, with the consent of the Attorney General, agree to a resolution of this case without the actual consent or approval of the General Assembly, resulting in a diminution and usurpation of the General Assembly's constitutionally mandated authority to make, or refuse to make, specific appropriations.

90. Such a possibility requires that the Legislative Leaders be granted leave to intervene in this matter, in their official capacities, to protect the General Assembly's constitutional authority.

**V. The Legislative Leaders Have Not Unduly Delayed Making
Application for Intervention**

91. An Application for Intervention may be refused if “the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” *See* Pa. R.C.P. No. 2329(3).

92. This litigation is in its infancy. Respondents have only filed their initial Preliminary Objections with the Court on April 16, 2019; Petitioners have 30 days to respond to that filing.

93. A scheduling order has not yet been issued by the Court and no discovery has commenced.

94. Neither Petitioners nor Respondents will be prejudiced or inconvenienced in any way by granting Proposed Intervenors’ Application to Intervene and accepting Legislative Leaders’ Preliminary Objections at this early stage of the litigation.

Conclusion

Legislative Leaders assert that they hold an essential, unique and constitutional interest in the outcome of this litigation; their unique and constitutional interest is not adequately represented by any other party; and, their application for intervention is timely and will not prejudice any party or delay the litigation.

If they are permitted to intervene, the Legislative Leaders ask that their attached Preliminary Objections to the Petition for Review be deemed filed. A Proposed Order is likewise attached to this application.

RELIEF SOUGHT

WHEREFORE, for the reasons stated above, the Legislative Leaders respectfully request that the Court grant them leave to intervene to defend this important matter which threatens a core and exclusive duty of the General Assembly.

Respectfully submitted,

April 17, 2019

/s/ Teresa R. McCormack _____

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VERIFICATION

I, Rod Corey, as Chief Counsel to the House Republican Caucus, hereby verify that I am authorized by the House Republican Caucus to speak for and make the foregoing assertion on their behalf. I further verify that the factual averments in the foregoing Application for Leave to Intervene are true and correct to the best of my knowledge and information or belief. I make this verification subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

April 17, 2019



Rod Corey
Chief Counsel to the House Republican Caucus

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121. **Service by PACFile eService upon:**

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Pennsylvania Governor's Office of General Counsel
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Date: April 17, 2019

Service via Certified Mail To:

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Harrisburg, Pennsylvania 17120

/s/ David R. Dye

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ALLEGHENY REPRODUCTIVE :
HEALTH CENTER, *et al.*, :
 :
 :
 Petitioners, :
 : Docket No. 26 M.D. 2019
 :
 v. :
 :
 :
 PENNSYLVANIA DEPARTMENT OF :
HUMAN SERVICES, *et al.*, :
 :
 :
 Respondents. :

ORDER

AND NOW, this ___ day of _____, 2019, upon consideration of the Application for Leave to Intervene of the Speaker of the Pennsylvania House of Representatives, Mike Turzai, the Majority Leader of the House, Bryan D. Cutler and the Chairman of the House Appropriations Committee, Stan E. Saylor, Majority Whip Kerry A. Benninghoff, Majority Caucus Chair Marcy Toepel, Majority Caucus Secretary Michael Reese, Majority Caucus Administrator Kurt A. Masser, and Majority Policy Committee Chair Donna Oberlander, and any response thereto, it is hereby ordered that (1) the request for leave to intervene is granted and (2) Intervenors' Preliminary Objections which accompany the Application to Intervene are deemed filed.