IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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, Petitioners	:	
v.	:	No. 26 M.D. 2019
	:	Heard: May 21, 2019
Pennsylvania Department of Human Services, Teresa Miller, in her official capacity as Secretary of the Pennsylvania Department of Human Services, Leesa Allen, in her official capacity as Executive Deputy Secretary for the Pennsylvania Department of Human Service's Office of Medical Assistance Programs, and Sally Kozak, in her official capacity as Deputy Secretary for the Pennsylvania Department of Human Service's Office of Medical Assistance Programs, Respondents	:	

BEFORE: HONORABLE ROBERT SIMPSON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: June 21, 2019**

Before the Court are two separate Applications for Leave to Intervene, one filed by 18 members of the Pennsylvania Senate (Proposed Senate Intervenors)

and one by eight members of the Pennsylvania House of Representatives (Proposed House Intervenors) (collectively, Proposed Intervenors).[1] For the reasons that follow, the Applications are denied.

I. Background

The facts as described in the Petition for Review (Petition) are as follows. Medical Assistance, Pennsylvania's Medicaid program, is a public insurance system that provides eligible Pennsylvanians with medical insurance for covered medical services. Pennsylvania operates two Medical Assistance programs: fee-for-service, which reimburses providers directly for covered medical services provided to enrollees, and HealthChoices, a managed care program. The Department of Human Services (DHS) is the agency responsible for administering Pennsylvania's Medical Assistance programs.

Medical Assistance covers comprehensive medical care for its enrollees, including family planning services and pregnancy-related care such as prenatal care, obstetrics, childbirth, neonatal and post-partum care. However, federal law establishes that federal Medicaid funds may not be used for the performance of an abortion, except in cases of endangerment to the mother's life or

[1] The Senate members' application was filed by President pro tempore Senator Joseph B. Scarnati, III, Majority Leader Senator Jacob Corman, and Senators Ryan Aument, Michele Brooks, John DiSanto, Michael Folmer, John Gordner, Scott Hutchinson, Wayne Langerholc, Daniel Laughlin, Scott Martin, Robert Mensch, Michael Regan, Mario Scavello, Patrick Stefano, Judy Ward, Kim Ward, and Eugene Yaw. The House members' application was filed by Speaker Mike Turzai, House Majority Leader Bryan D. Cutler, Chairman of the House Appropriations Committee Stan E. Saylor, House Majority Whip Kerry A. Benninghoff, House Majority Caucus Chair Marcy Toepel, House Majority Caucus Secretary Michael Reese, House Majority Caucus Administrator Kurt A. Masser, and House Majority Policy Commtitee Chair Donna Oberlander.

a pregnancy resulting from rape or incest. See, e.g., 42 U.S. Code § 1397ee(c). Of importance here, Section 3215(c) of Pennsylvania's Abortion Control Act, 18 Pa.C.S. § 3215(c),[2] commonly referred to as the coverage ban, prohibits the expenditure of **state and federal funds** for the performance of an abortion unless the procedure is necessary to avert the death of the pregnant woman, or the pregnancy is caused by rape or incest. As such, DHS has promulgated regulations implementing the Pennsylvania coverage ban which prohibit Medical Assistance coverage for abortions except in these three circumstances. See Pa. Code §§ 1147.57 (payment conditions for necessary abortions), 1163.62 (payment for inpatient

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[2] Section 3215(c) provides as follows:

> **(c) Public funds.**--No 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:
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> (1) When abortion is necessary to avert the death of the mother on certification by a physician. When such physician will perform the abortion or has a pecuniary or proprietary interest in the abortion there shall be a separate certification from a physician who has no such interest.
>
> (2) When abortion is performed in the case of pregnancy caused by rape which, prior to the performance of the abortion, has been reported, together with the identity of the offender, if known, to a law enforcement agency having the requisite jurisdiction and has been personally reported by the victim.
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> (3) When abortion is performed in the case of pregnancy caused by incest which, prior to the performance of the abortion, has been personally reported by the victim to a law enforcement agency having the requisite jurisdiction, or, in the case of a minor, to the county child protective service agency and the other party to the incestuous act has been named in such report.

Section 3215(j) of the Abortion Control Act, 18 Pa.C.S. § 3215(j), sets forth certain requirements that must be satisfied before a Commonwealth agency disburses state or federal funds for the performance of an abortion pursuant to one of the enumerated exceptions.

hospital services), and 1221.57 (payment for clinic and emergency room services). Health care providers are also prohibited from billing through either the fee-for-service or HealthChoices managed care program for services inconsistent with the Medical Assistance regulations, and they are subject to sanctions for doing so. See 55 Pa. Code §§ 1141.81, 1163.491, 1221.81 and 1229.81.[3]

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 (collectively, Petitioners) all provide medication and/or surgical abortion services in the Commonwealth. Collectively, Petitioners provide approximately 95% of the abortions performed in the Commonwealth. Many of Petitioners' patients are low income women who are either enrolled in or eligible for Medical Assistance benefits. Due to the coverage ban, these patients cannot use Medical Assistance to cover an abortion procedure unless they fall within one of the three exceptions.

Therefore, on January 16, 2019, Petitioners filed the Petition in this Court's original jurisdiction claiming the coverage ban and its implementing regulations violate Pennsylvania's Equal Rights Amendment (ERA)[4] because they single out and exclude abortion, a procedure sought singularly by women as a

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[3] For ease of reference, all of the challenged regulations will collectively be referred to throughout the Opinion as the implementing regulations.

[4] Article I, Section 28 of the Pennsylvania Constitution, known as the ERA, states: "Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual." Pa. Const., art. I, § 28.

function of their sex, from coverage under Pennsylvania's Medical Assistance programs. Petitioners point out that there is no similar statute or regulation that singles out or excludes from Medical Assistance coverage any sex-based healthcare consultations or procedures for men. Petitioners assert that women are denied coverage for essential health care services solely on the basis of their sex, and that the coverage ban flows from and reinforces gender stereotypes in violation of the ERA. Petitioners further claim that the coverage ban violates the equal protection provisions of the Pennsylvania Constitution[5] because it singles out and excludes women from exercising their fundamental right to choose to terminate a pregnancy, while covering other procedures and health care related to pregnancy and childbirth.

Among other things, Petitioners assert that the coverage ban interferes with the ability of low income women in Pennsylvania to access the abortion care they need because they have to pay out-of-pocket for abortion services. Petitioners assert that some women on Medical Assistance who seek abortions in Pennsylvania are forced to delay abortion care in order to raise funds for their procedures, and this delay sometimes leads to women being past the gestational stage to be able to obtain an abortion. In addition, Petitioners assert that some women on Medical Assistance

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[5] Article I, Section 1 of the Pennsylvania Constitution guarantees that all persons "have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty ... and of pursuing their own happiness." Pa. Const., art. I, § 1. Article I, Section 26 states that "[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any right." Pa. Const., art. I, § 26. Article III, Section 32 provides, in relevant part, that "[t]he General Assembly shall pass no local or special law in any case which has been or can be provided for by general law." Pa. Const., art. III, § 32. That section is akin to the equal protection clause of the Fourteenth Amendment, and "has been recognized as implicating the principle that like persons in like circumstances should be treated similarly ...." Robinson Township v. Commonwealth, 83 A.3d 901, 987 (Pa. 2013) (quotation omitted). See also Fischer v. Department of Public Welfare, 502 A.2d 114, 120 (Pa. 1985) ("Article I[,] § 1 and Article III[,] § 32, have generally been considered to guarantee the citizens of this Commonwealth equal protection under the law.").

are forced to continue their pregnancies to term against their will because they are simply unable to acquire the necessary funds to pay for the procedure. Petitioners also claim that they themselves lose money due to the coverage ban and implementing regulations because they regularly subsidize abortions for Pennsylvania women on Medical Assistance who are not able to pay for the procedure on their own. Petitioners further claim that they expend valuable staff resources to assist patients in securing funding from private charitable organizations to cover the costs of abortions for low income women, and that the coverage ban interferes with Petitioners' counseling of patients by forcing them to discuss painful personal matters such as whether the sex that led to conception was non-consensual or with a family member.

As for the requested relief, Petitioners seek an order from this Court declaring that the coverage ban and its implementing regulations are unconstitutional and, therefore, enjoining their enforcement. They further seek a declaration that abortion is a fundamental right under the Pennsylvania Constitution.

The Petition names as Respondents DHS, as the agency responsible for administering Pennsylvania's Medical Assistance programs; Teresa Miller, Secretary of DHS; Leesa Allen, DHS's Executive Deputy Secretary for Medical Assistance Programs; and Sally Kozak, DHS's Deputy Secretary for the Office of Medical Assistance Programs (collectively, Respondents or DHS). On April 16, 2019, Respondents filed Preliminary Objections to the Petition asserting both a demurrer and lack of standing. Respondents assert that in Fischer v. Department of Public Welfare, 502 A.2d 114 (Pa. 1985), the Pennsylvania Supreme Court held that

the coverage ban does not violate the constitutional provisions upon which Petitioners base their claims. Since this Court lacks the authority to overrule the binding precedent of Fischer, Respondents assert that Petitioners have failed to state a claim upon which relief may be granted. Respondents also assert that Petitioners lack standing to challenge the coverage ban on behalf of their patients who are not parties to this action, and that Petitioners have not alleged harm to a protected interest as required to demonstrate they have standing to sue in their own right.

On April 17, 2019, the Proposed Senate Intervenors and Proposed House Intervenors each filed an Application for Leave to Intervene (Application) in this matter.[6] Pennsylvania Rule of Civil Procedure (Pa. R.C.P.) Number 2327 governs who may intervene in a civil action and provides 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
>
> (1) the entry of a judgment in such action or the satisfaction of such judgment will impose any liability

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[6] Pennsylvania Rule of Appellate Procedure 1531(b), Pa.R.A.P. 1531(b), provides:

> **(b) Original jurisdiction petition for review proceedings.** A person not named as a respondent in an original jurisdiction petition for review, who desires to intervene in a proceeding under this chapter, may seek leave to intervene by filing an application for leave to intervene (with proof of service on all parties to the matter) with the prothonotary of the court. The application shall contain a concise statement of the interest of the applicant and the grounds upon which intervention is sought.

Pursuant to Pa.R.A.P. 106 and 1517, the Pennsylvania Rules of Civil Procedure govern applications to intervene in original jurisdiction matters before this Court, in particular Rules 2326 through 2329.

> upon such person to indemnify in whole or in part the party against whom judgment may be entered; or
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> (2) such person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof; or
>
> (3) such person could have joined as an original party in the action or could have been joined therein; or
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> (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. In particular, Proposed Intervenors argue that they qualify for intervenor status pursuant to subsections 3 and 4 of Rule 2327 because they could have been joined as original parties in this matter and because the determination of this case may affect their legally enforceable interests. The Applications have been fully briefed, were argued before this Court and are ripe for review.[7]

II. Discussion

A. Proposed Intervenors' Arguments

Proposed Intervenors first argue that they should be permitted to intervene because they could have originally been joined as respondents. They point to MCT Transportation Inc. v. Philadelphia Parking Authority, 60 A.3d 899 (Pa. Cmwlth. 2013), wherein this Court recognized that "[m]embers of the General Assembly may participate or be named defendants in a constitutional challenge to a statute ...." Id. at 904 n.7. Proposed Intervenors point to several cases involving constitutional challenges where Senator Scarnati or the General Assembly were named as respondents or were permitted to intervene, including William Penn

[7] On April 17, 2019, the Proposed Intervenors also submitted Preliminary Objections to be filed if they are granted intervenor status. Notably, Proposed Intervenors' Preliminary Objections contain objections not asserted by Respondents, including those based upon federal preemption and separation of powers arguments.

School District v. Pennsylvania Department of Education, 170 A.3d 414 (Pa. 2017), Leach v. Commonwealth, 141 A.3d 426 (Pa. 2016), and League of Women Voters v. Commonwealth, 178 A.3d 737 (Pa. 2018). Proposed Intervenors argue that Pa. R.C.P. No. 2327(3) is not contingent upon whether the proposed intervenor has standing, or upon any criteria other than a demonstration that he or she could have joined or been joined as an original party. During oral argument they also asserted that they did not need to satisfy the test for standing because they were seeking to intervene as respondents rather than petitioners. Because Petitioners could have originally joined the Proposed Intervenors as respondents in this action challenging the constitutionality of the coverage ban, they should be permitted to intervene.

Proposed Intervenors also argue that they should be permitted to intervene pursuant to Pa. R.C.P. No. 2327(4) because they have a legally enforceable interest in protecting the scope of their legislative authority under the Pennsylvania Constitution. They assert that the Pennsylvania Supreme Court expressly held in Fischer that the coverage ban does *not* violate the equal protection guarantees contained in Article I, Section 1 and Article III, Section 32 of the Pennsylvania Constitution; therefore, the Proposed Intervenors currently have the authority to propose and/or vote for legislation that contains certain funding limitations. If Petitioners are successful in their ultimate goal of overturning Fischer, it will create new constitutional constraints on the General Assembly's authority to legislate and allocate funds, and the Proposed Intervenors will lose some of their authority to appropriate money from the State Treasury pursuant to Article II, Section 1 and Article III, Section 24 of the Pennsylvania Constitution. As such, Proposed Intervenors claim that they will suffer an injury personal to them as legislators;

therefore, this case is distinguishable from the recent Supreme Court decision in Markham v. Wolf (Markham II), 136 A.3d 134 (Pa. 2016).

Proposed Intervenors further argue that while Petitioners seek relief exclusively from DHS and its officials, DHS can only disburse funds in a manner authorized by legislation enacted by the General Assembly. They claim that in reality, Petitioners are seeking an order from this Court compelling the General Assembly to pass legislation that provides funding for abortions in all instances. Proposed Intervenors argue that this raises separation of powers concerns and implicates their exclusive power as legislators to appropriate Commonwealth funds. They further argue that if Petitioners prevail, the General Assembly may need to amend the coverage ban or pass new legislation. Therefore, they should be permitted to intervene so they may be heard on important questions concerning how much funding needs to be provided for abortion services, the manner in which the funding can or must be disbursed, or whether the General Assembly may impose other conditions, limitations or regulations on abortions and abortion-related services.

Finally, Proposed Intervenors argue that their interests are different from and not adequately represented by the named Respondents. They note that the named Respondents are all part of the executive branch of government and do not share the Proposed Intervenors' interest or duties in the appropriations process. They further claim that the Respondents' Preliminary Objections fail to raise all of the constitutional issues related to the General Assembly's appropriations power that arise from Petitioners' claims, and that this failure could negate or usurp the General Assembly's authority to make, or refuse to make, certain appropriations. Therefore,

Proposed Intervenors claim there is no basis to refuse the Applications under Pa. R.C.P. No. 2329[8] and they should be granted leave to intervene.

B. Petitioners' Arguments

Petitioners argue that the Applications should be denied because Proposed Intervenors lack standing to intervene. They argue that Proposed Intervenors have no role as legislators in implementing, enforcing or administering the coverage ban; therefore, there was no basis to join them as respondents in the Petition. Legislators are not and should not be afforded the general right to intervene in every case that challenges the constitutionality of a statute. See Robinson Township v. Commonwealth, 84 A.3d 1054 (Pa. 2014) (per curiam); First Philadelphia Preparatory Charter School v. Commonwealth, 179 A.3d 128 (Pa. Cmwlth. 2018).

Petitioners further argue that the Proposed Intervenors do not have standing because they lack a legally enforceable interest in this litigation. Petitioners note that legislators are only deemed to have such an interest in limited

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[8] Rule 2329 provides that an application for intervention shall be granted if the allegations have been established and are found to be sufficient. Pa. R.C.P. No. 2329. However, the rule also provides that:

> an application for intervention may be refused, if
> (1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or
> (2) the interest of the petitioner is already adequately represented; or
> (3) 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.

Id.

circumstances, "where there [i]s a discernible and palpable infringement on their authority as legislators." Robinson Township, 84 A.3d at 1055 (quoting Fumo v. City of Philadelphia, 972 A.2d 487 (Pa. 2009)). As our Supreme Court recently reiterated, once "votes which [legislators] are entitled to make have been cast and duly counted, their interest as legislators ceases." Markham II, 136 A.3d at 141 (quoting Wilt v. Beal, 363 A.2d 876 (Pa. Cmwlth. 1976)). Petitioners claim they are not asking the Court to dictate how the General Assembly should budget and appropriate funds, merely to determine the constitutionality of the coverage ban, a power clearly committed to the judicial branch. As such, this litigation does not affect the Proposed Intervenors' appropriations power, their role as legislators has ended, and the separation of powers arguments are without merit.

Finally, Petitioners argue that the Applications should be denied because Proposed Intervenors' interest is adequately represented by the named Respondents, who are vigorously defending the constitutionality of the coverage ban. The fact that Proposed Intervenors may prefer a different litigation strategy or defense theory than that chosen by the Respondents is not an interest entitling them to intervene. Petitioners further argue that Proposed Intervenors have made no showing that the Respondents' defense of the coverage ban will be inadequate, and allowing them to intervene will unnecessarily complicate this litigation.

C. Analysis

First, I must address Proposed Intervenors' argument that standing plays no part in the intervention analysis here because they could have been joined as original parties, or because they are attempting to intervene as respondents rather

than as petitioners. It is well established that parties seeking to intervene must satisfy the standing requirements. See Markham II, 136 A.3d at 140; Markham v. Wolf (Markham I), (Pa. Cmwlth., No. 176 M.D. 2015, filed June 3, 2015), slip op. at 3 ("Standing is the touchstone by which we analyze applications to intervene."). Neither the Rules of Civil Procedure nor caselaw interpreting the rules regarding intervention make any distinction in the analysis based upon a proposed intervenor's status as petitioner versus respondent. To the contrary, Senator Scarnati sought to intervene as a respondent in Robinson Township, and both this Court and our Supreme Court utilized the standing requirements to analyze his application. Moreover, the concept of standing is inextricably linked to the question of intervention as Pa. R.C.P. No. 2327(4), upon which Proposed Intervenors specifically rely, states that an individual may intervene if the determination of the action may affect his or her legally enforceable interest.

I find unpersuasive the cases upon which Proposed Intervenors rely for their argument that standing principles are inapplicable if they could have joined or been joined as a party under Pa. R.C.P. No. 2327(3). While Proposed Intervenors were joined or intervened in a number of cases, there is no indication in any of the reported decisions that joinder was contested. Intervention is vigorously contested here. Because Proposed Intervenors' analysis presents such a significant departure from the traditional standing analysis, I decline to embark on that path without more express guidance from our Supreme Court.

For the foregoing reasons, Proposed Intervenors' argument in favor of side-stepping standing is without merit, and I now turn to the standard for demonstrating standing.

To have standing, a person must be aggrieved, meaning he or she "has a substantial, direct and immediate interest in the outcome of the litigation." Fumo, 972 A.2d at 496 (citing In re Hickson, 821 A.2d 1238, 1243 (Pa. 2003)). As our Supreme Court has explained:

> A "substantial" interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A "direct" interest requires a showing that the matter complained of caused harm to the party's interest. An "immediate" interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it. Yet, if that person is not adversely affected in any way by the matter he seeks to challenge[, he] is not "aggrieved" thereby and has no standing to obtain a judicial resolution of his challenge. In particular, it is not sufficient for the person claiming to be "aggrieved" to assert the common interest of all citizens in procuring obedience to the law.

In re Hickson, 821 A.2d at 1243 (internal citations omitted).

Our courts have specifically used these standing criteria when examining cases where legislators seek to bring or intervene in cases based upon their special status as legislators. In its recent decision in Markham II, our Supreme Court reviewed caselaw from both state and federal courts regarding the issue of legislative standing and distilled the following:

> legislative standing is appropriate only in limited circumstances. Standing exists only when a legislator's direct and substantial interest in his or her ability to participate in the voting process is negatively impacted, *see Wilt,* [363 A.2d at 881,] or when he or she has suffered a concrete impairment or deprivation of an official power or authority to act as a legislator, *see Fumo*[, 972 A.2d at 501] (finding standing due to alleged usurpation of legislators' authority to vote on licensing). These are injuries personal to the legislator, as a legislator. By contrast, 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 voting or approval process, and akin to a general grievance about the correctness of governmental conduct, resulting in the standing requirement being unsatisfied. *Id.* (rejecting standing where legislators' interest was merely disagreement with way administrator interpreted or executed her duties, and did not interfere with legislators' authority as members of the General Assembly).

136 A.3d at 145.

Upon consideration of the above principles, I conclude that Proposed Intervenors are not aggrieved because their interest in the coverage ban and its implementing regulations is too indirect and insubstantial. The latest iteration of the coverage ban was voted on and went into effect in 1989; therefore, this litigation does not directly affect the Proposed Intervenors' ability to vote on legislation, nor does it dilute their vote. See Wilt, 363 A.2d at 881 ("Once, however, votes which they are entitled to make have been cast and duly counted, their interest as legislators ceases. Some other nexus must then be found to challenge the allegedly unlawful action."). Simply put, once the votes on the coverage been were counted and it was signed into law, the legislators' connection with the transaction as legislators ended,

and they retained no personal stake in the outcome of their vote which differs from the stake of every citizen in seeing the law is observed. Id.

In particular, there is no inherent, on-going right to vote on future annual appropriations bills that refuse to provide funding for certain services such as abortions. I view this interest as too indirect and insubstantial to support a conclusion of aggreviement, as that term is understood in the standing context. See Markham II, 136 A.3d. at 145-46. Further, there is no obvious limiting principle for a standing analysis based on voting on future appropriation bills. Conceivably, such a boundless approach would enable any and all legislators to intervene in any matter involving state government. Concomitantly, as this argument is the main basis upon which Proposed Intervenors seek to distinguish our Supreme Court's recent decision in Markham II, I reject the attempt to distinguish the decision, and I adopt it as controlling here.

With all due respect, Proposed Intervenors' argument that the outcome of this case directly affects their appropriations power is tenuous at best. Petitioners' request for relief seeks a declaration that the coverage ban and its implementing regulations are unconstitutional, and an order enjoining their enforcement, as well as a declaration that abortion is a fundamental right in the Commonwealth. Despite Proposed Intervenors' arguments to the contrary, Petitioners are not asking the Court to mandate that the General Assembly enact specific legislation that funds abortion. Petitioners essentially admit in their brief to this Court that such mandamus relief would most likely violate the principle of separation of powers. Moreover, the mere fact that the General Assembly may want or need to propose additional legislation

if a court finds the coverage ban unconstitutional, and that this legislation may potentially involve the appropriation of funds, is not enough to establish a concrete, immediate impairment or deprivation of an official power or authority to act as a legislator. See Markham II, 136 A.3d at 145. Again, Proposed Intervenors' argument defeats the principle behind the standing requirement and goes against the reasoning developed in our cases analyzing legislative standing.

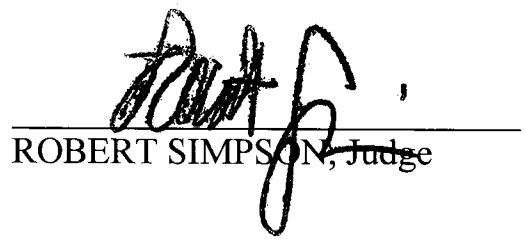
Proposed Intervenors also have no role in implementing, enforcing or administering the coverage ban and, notably, the agency and officials who do are already named as Respondents in this action. Moreover, I cannot accept Proposed Intervenors' overly broad contention that they can be joined as parties in **any** action challenging the constitutionality of a statute. If this were the case, there would have been no need for the legislative standing inquiry undertaken in Robinson Township. Such a blanket rule goes against the very purpose of the standing concept, which is to ensure that the parties are truly aggrieved or adversely affected by the matter they seek to challenge, above and beyond the common interest of all citizens of the Commonwealth. I also note that Proposed Intervenors' reliance upon MCT Transportation is misplaced, as that case specifically recognized that members of the General Assembly are not necessary parties in cases involving constitutional challenges to a statute. 60 A.3d at 904 n.7.

Nevertheless, I am not convinced Proposed Intervenors' interest in this litigation is adequately represented by the Respondents, given the vastly different responsibilities and powers of the executive and legislative branches of government as they relate to the coverage ban. However, because Proposed Intervenors failed to

show that they fall within one of the classes described in Pa. R.C.P. No. 2327, intervention must be denied regardless of whether any grounds for refusal of intervention exist. See LaRock v. Sugarloaf Township Zoning Hearing Board, 740 A.2d 308 (Pa. Cmwlth. 1999).

III. Conclusion

For the foregoing reasons, the Applications are denied. Proposed Intervenors may participate in this litigation as *amici curiae*, if they so desire.



ROBERT SIMPSON, ~~Judge~~

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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ORDER

AND NOW, this 21st day of June, 2019, following argument on the Applications for Leave to Intervene filed by members of the Pennsylvania Senate and House of Representatives, the Applications are hereby **DENIED**.

ROBERT SIMPSON, Judge

Certified from the Record

JUN 21 2019

And Order Exit