

EXHIBIT “A”

Intervenor Respondents, Joseph B. Scarnati, III, Pennsylvania Senate President Pro Tempore, and Jake Corman, Senate Majority Leader,¹ by and through the undersigned counsel, object preliminarily to plaintiffs’ petition for declaratory and injunctive relief pursuant to Pa.R.C.P. 106 and 1028(a)(1) for the reasons set forth below:

1. Petitioners commenced this case in the Supreme Court as an original jurisdiction matter.
2. Pursuant to Pennsylvania Rule of Appellate Procedure 106, the practice and procedures relating to original jurisdiction matters are to be in accordance with the Pennsylvania Rules of Civil Procedure.
3. Pa.R.C.P. 1028(a)(1) authorizes a party to file a preliminary objection for lack of subject matter jurisdiction.
4. Petitioners seek relief from the “received-by” deadline for the delivery of mail-in and absentee ballots on Election Day for the duration of the COVID-19 pandemic. Petitioners allege that the “received-by” deadline burdens their right to vote in violation of Pennsylvania’s Free and Equal Elections Clause, Art. 1, §5; the Equal Protections Clause and the Due Process Clause of the Pennsylvania Constitution, Art. 1, §26 and §1; the Free Expression and Free Association Clauses, Art. I, §7 and 20, and the Absentee Voting Guarantee, Art. VII, §14.

¹ Senators Scarnati and Corman have been duly authorized to act in this matter by each of the members of the Senate Republican Caucus, which constitute a majority of the Pennsylvania Senate as a whole.

5. However, Petitioners Disability Rights Pennsylvania, SeniorLaw Center, Southeast Asian Mutual Assistance Associations Coalition, Inc. (SEAMAAC), and The Barristers' Association of Philadelphia do not have standing.

6. To establish standing, a plaintiff must “have a direct interest in the subject-matter of the particular litigation.” *See Albert v. 2001 Legislative Reapportionment Comm’n*, 790 A.2d 989, 994 (Pa. 2002) (quoting *William Penn Parking Garage, Inc. v. Pittsburgh*, 346 A.2d 269 (Pa. 1975)).

7. The subject matter in this case—mail-in balloting procedures—involves an “individual’s right to vote and to have that vote counted.” *Id.*

8. Because “[t]he right to vote is personal,” *Id.* at 995 (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964) (internal citations omitted)), that right inheres in individuals, not organizations. *See Id.* at 995 (“[A]ny entity not authorized by law to exercise the right to vote in this Commonwealth lacks standing to challenge the reapportionment plan.”).

9. Therefore, Disability Rights Pennsylvania, SeniorLaw Center, Southeast Asian Mutual Assistance Associations Coalition, Inc. (SEAMAAC), and The Barristers' Association of Philadelphia, as organizations without voting rights, do not have a direct interest at stake in this litigation and, thus, should be dismissed from this lawsuit. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 n. 3 (Pa. 2018) (noting that the Commonwealth Court dismissed the League of Women Voters from the case because, as an organization without the right to vote, it lacked standing).

10. Similarly, individual petitioner Suzanne Erb lacks standing because the harm she alleges is only speculative.

11. Suzanne Erb does not aver that she (1) has encountered any difficulties in returning—or has even attempted to return—her mail-in ballot, (2) cannot afford postage for returning her mail-in ballot, (3) requires community assistance to cast her mail-in ballot, or (4) has had her mail-in ballot rejected for signature mismatch.

12. Individual petitioner Suzanne Erb bases her claims for relief on nebulous concerns that, in the future, her ballot may not be received or processed on time, even though there are still more than four weeks until the next election.

13. Because future speculative fear is not a sufficiently “substantial interest” to confer standing to the individual petitioner, *see Erfer v. Commonwealth*, 794 A.2d 325, 329 (Pa. 2002) (holding that a party must establish “a substantial interest in the subject matter of the litigation” to be granted standing), the individual petitioner should be dismissed from this lawsuit.

WHEREFORE, Senators Joseph B. Scarnati, III and Jake Corman respectfully request that this Court dismiss Petitioners’ petition for declaratory and injunctive relief.

Dated: _____, 2020

Respectfully submitted,

Obermayer Rebmann Maxwell & Hippel LLP

By: _____

Lawrence J. Tabas (ID No. 27815)

Mathieu J. Shapiro (ID No. 76266)

Richard Limburg (ID No. 39598)

Centre Square West

1515 Market St., Suite 3400

Philadelphia, PA 19102

Attorneys for Intervenor Respondents

Joseph B. Scarnati III, and Jake Corman

Holtzman Vogel Josefiak Torchinsky PLLC

By: _____

Jason B. Torchinsky (Va. ID No. 47481)

Jonathan P. Lienhard (Va. ID No. 41648)

Philip M. Gordon (DC. ID No. 1531277)

Shawn T. Sheehy (Va. ID No. 82630)

Gineen Bresso (Md. ID No. 9912140076)

45 North Hill Drive, Suite. 100

Warrenton, VA 20186

[\(540\) 341-8808](tel:5403418808) (P)

*Attorneys for Joseph B. Scarnati III, and
Jake Corman pending approval of
application for admission pro hac vice*

CERTIFICATE OF SERVICE

I, _____, certify that on the date set forth below, I caused a true and correct copy of the Preliminary Objections of Senators Joseph B. Scarnati, III and Jake Corman, to be served on counsel of record via email, as follows:

Mary McKenzie
The Public Interest Law Center
1709 Benjamin Franklin Parkway, 2d Fl.
Philadelphia, PA 19103
267-546-1319 (Ph)

Kathryn Boockvar
Department of State
302 N. Office Bldg.
Harrisburg, PA 17120
610-804-2913 (Ph)

Kathleen Marie Kotula
Pennsylvania Department of State
Bureau of Commissions, Elections and Legislation
306 North Office Bldg.
Harrisburg, PA 17120
717-783-0736 (Ph)

Michelle D. Hangle
Hangle, Aronchick, Segal, Pudlin & Schiller
1 Logan Square, Fl. 27
Philadelphia, PA 19103-6995
215-496-7061 (Ph)

Date: May 6, 2020

Intervenor Respondents, Joseph B. Scarnati, III, Pennsylvania Senate President Pro Tempore, and Jake Corman, Senate Majority Leader,² by and through the undersigned counsel, respectfully submit this memorandum of law in support of their preliminary objections to plaintiffs’ petition for declaratory and injunctive relief pursuant to Pa.R.C.P. 106 and 1028(a)(1).

This case was commenced in the Supreme Court as an original jurisdiction matter. Pa.R.A.P. 106, the practice and procedures relating to original jurisdiction matters are to be in accordance with the Pennsylvania Rules of Civil Procedure.

Pa.R.C.P. 1028(a)(1) authorizes a party to file a preliminary objection for lack of subject matter jurisdiction.

Petitioners seek relief from the “received-by” deadline for the delivery of mail-in and absentee ballots on Election Day for the duration of the COVID-19 pandemic. Petitioners allege that the “received-by” deadline burdens their right to vote in violation of: Pennsylvania’s Free and Equal Elections Clause, Art. I, §5; the Equal Protections Clause and the Due Process Clause of the Pennsylvania Constitution, Art. I, §26 and §1; the Free Expression and Free Association Clauses, Art. I, §7 and 20, and the Absentee Voting Guarantee, Art. VII, §14.

However, Petitioners Disability Rights Pennsylvania, SeniorLaw Center, Southeast Asian Mutual Assistance Associations Coalition, Inc. (SEAMAAC), and The Barristers' Association of Philadelphia do not have standing.

² Senators Scarnati and Corman have been duly authorized to act in this matter by each of the members of the Senate Republican Caucus, which constitutes a majority of the Pennsylvania Senate as a whole.

To establish standing, a plaintiff must “have a direct interest in the subject-matter of the particular litigation.” *See Albert v. 2001 Legislative Reapportionment Comm’n*, 790 A.2d 989, 994 (Pa. 2002) (quoting *William Penn Parking Garage, Inc. v. Pittsburgh*, 346 A.2d 269 (Pa. 1975)).

The subject matter in this case—mail-in balloting procedures—involves an “individual’s right to vote and to have that vote counted.” *Id.* Because “[t]he right to vote is personal,” *Id.* at 995 (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964) (internal citations omitted)), that right inheres in individuals, not organizations. *See Id.* at 995 (“[A]ny entity not authorized by law to exercise the right to vote in this Commonwealth lacks standing to challenge the reapportionment plan.”).

Therefore, Disability Rights Pennsylvania, SeniorLaw Center, Southeast Asian Mutual Assistance Associations Coalition, Inc. (SEAMAAC), and The Barristers’ Association of Philadelphia, as organizations without voting rights, do not have a direct interest at stake in this litigation and, thus, should be dismissed from this lawsuit. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 n. 3 (Pa. 2018) (noting that the Commonwealth Court dismissed the League of Women Voters from the case because, as an organization without the right to vote, it lacked standing).

Individual petitioner Suzanne Erb lacks standing because the harm she alleges is only speculative. Ms. Erb does not aver that she (1) has encountered any difficulties in returning—or has even attempted to return—her mail-in ballot, (2) cannot afford postage for returning her mail-in ballot, (3) requires community assistance to cast her mail-in ballot, or (4) has had her mail-in ballot rejected for signature mismatch.

Individual petitioner Suzanne Erb bases her claims for relief on nebulous concerns that, in the future, her ballot may not be received or processed on time, even though there are still more than four weeks until the next election. Because future speculative fear is not a sufficiently “substantial interest” to confer standing to the individual petitioner, *see Erfer v. Commonwealth*, 794 A.2d 325, 329 (Pa. 2002) (holding that a party must establish “a substantial interest in the subject matter of the litigation” to be granted standing), the individual petitioner should be dismissed from this lawsuit.

CONCLUSION

The plaintiffs’ petition for declaratory and injunctive relief should be dismissed for all the reasons set forth above.

Dated: _____, 2020

Respectfully submitted,

Obermayer Rebmann Maxwell & Hippel
LLP

By: _____
Lawrence J. Tabas (ID No. 27815)
Mathieu J. Shapiro (ID No. 76266)
Richard Limburg (ID No. 39598)
Centre Square West
1515 Market St., Suite 3400
Philadelphia, PA 19102
*Attorneys for Intervenor Respondents
Joseph B. Scarnati III, and Jake
Corman*

Holtzman Vogel Josefiak Torchinsky
PLLC

By: _____

Jason B. Torchinsky (Va. ID No.
47481)

Jonathan P. Lienhard (Va. ID No.
41648)

Philip M. Gordon (DC. ID No.
1531277)

Shawn T. Sheehy (Va. ID No. 82630)

Gineen Bresso (Md. ID No.
9912140076)

45 North Hill Drive, Suite. 100

Warrenton, VA 20186

[\(540\) 341-8808](tel:5403418808) (P)

*Attorneys for Joseph B. Scarnati III,
and Jake Corman pending approval of
application for admission pro hac vice*