own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. To provide competent representation, a lawyer should be familiar with policies of the courts in which the lawyer practices, which include the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) A lawyer may counsel or assist a client regarding conduct expressly permitted by Pennsylvania law, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client’s proposed course of conduct.

Comment:

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense

to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8, and 5.6.

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be

insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment:

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American

18, 2019) (relating to successive contingent fee agreements). While part II.A of Formal Opinion 487 would require the client's written informed consent, Rule 1.7 does not require a writing. However, if informed consent is deemed necessary under the circumstances, written consent may benefit both the client and successor counsel for the reasons set forth in Explanatory Comment [20] to Rule 1.7.

Disputes over Fees

[6] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

[7] It is Disciplinary Board policy that allegations of excessive fees charged are initially referred to Fee Dispute Committees for resolution.

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

(b) A lawyer shall reveal such information if necessary to comply with the duties stated in Rule 3.3.

(c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interests or property of another;

(3) to prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to secure legal advice about the lawyer's compliance with these Rules;

(6) to effectuate the sale of a law practice consistent with Rule 1.17;

(7) to detect and resolve conflicts of interest from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client; or,

(8) to comply with other law or court order.

(d) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

(e) The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

Comment:

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

[5] A lawyer has duties of disclosure to a tribunal under Rule 3.3(a) that may entail disclosure of information relating to the representation. Rule 1.6(b) recognizes the paramount nature of this obligation.

Authorized Disclosure

[6] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Detection of Conflicts of Interests

[7] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends or learn that the client has caused serious harm to another person. However, to the extent that a lawyer is required or permitted to disclose a client's purposes or conduct, the client may be inhibited from revealing facts that would enable the lawyer effectively to represent the client. Generally, the public interest is better served if full disclosure by clients to their lawyers is encouraged rather than inhibited. With limited exceptions, information relating to the representation must be kept confidential by a lawyer, as stated in paragraph (a).

likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9, and 1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0(b) for the definition of "confirmed in writing" and Rule 1.0(e) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for, obtaining counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and,

(e) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

Comment:

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraph (e) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

Rule 3.9 Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

Comment:

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure. See Rules 3.3(a) through (c), 3.4 and 3.5.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer’s client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client’s compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client’s affairs conducted by government investigators or examiners. Representation in such matters is governed by Rules 4.1 through 4.4.

EMILY KINKEAD, MEMBER
20TH LEGISLATIVE DISTRICT

CAPITOL OFFICE:
106B EAST WING
P.O. BOX 202020
HARRISBURG, PENNSLVANIA 17120-2020
(717) 787-5470

DISTRICT OFFICE:
658 LINCOLN AVENUE
PITTSBURGH, PENNSLVANIA 15202
(412) 321-5523
FAX: (412) 761-2303

REPKINKEAD@PAHOUSE.NET
WWW.REPEMILYKINKEAD.COM

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES
APPROPRIATIONS
AGRICULTURE AND RURAL AFFAIRS, SECRETARY
HUMAN SERVICES
JUDICIARY
HUNGER CAUCUS, CO-CHAIR

JOINT RESOLUTIONS PROPOSING AMENDMENTS TO THE PENNSYLVANIA STATE CONSTITUTION

2021-2022 Legislative Session

Summary

Amendments to the Pennsylvania Constitution can be proposed by either the Senate or the House in the form of a joint resolution. The joint resolution must be approved by a simple majority in each chamber. Each chamber then must re-approve the text of the amendment in the next legislative session. Then the voters of Pennsylvania vote on the amendment. If it receives simple majority approval, then the amendment is added to the state constitution. There were 99 joint resolutions introduced during the 2021-2022 Legislative Session that proposed an amendment to the Pennsylvania Constitution.

Background

Article XI (Amendments), Section 1 (Proposal of amendments by the General Assembly and their adoption), of the Pennsylvania Constitution outlines the following amendment processes:

- Amendments to the Pennsylvania Constitution can be proposed in either the Senate or the House and must be approved by a simple majority in each chamber. The Secretary of the Commonwealth then must have the text of the proposed amendment printed in two newspapers in each county. Then, each chamber is required to re-approve the text of the amendment in the next legislative session. The Secretary of the Commonwealth then advertises the amendment in the same manner three months prior to the next election. Finally, the voters of Pennsylvania vote on the amendment and if it receives a simple majority, the amendment is added to the state constitution. No amendment can be voted on more frequently than once every five years. As outlined in Title 101 (General Assembly), Chapter 9 (Legislative Documents), of the Pennsylvania Code, joint resolutions are used to propose amendments to the Pennsylvania Constitution.

- Amendments can be passed in a separate manner if a major emergency threatens the Commonwealth. In this case, an amendment needs to be voted on in one regular or special session of the General Assembly and approved by at least two-thirds of each chamber. The Secretary of the Commonwealth then advertises the amendment in the

same way as in the regular amendment process and then the amendment is submitted to Pennsylvania voters at least one month after receiving the approval of the General Assembly. The amendment must receive a simple majority from the voters to be added to the state constitution.

Pennsylvania

Legislation

There were 99 joint resolutions introduced in the 2021-2022 Legislative Session that aimed to amend the Pennsylvania Constitution. Below is a brief summary of each bill.

House Bills

- House Bill 14, PN 1017 (Gregory)
    - This joint resolution proposed amending the Pennsylvania Constitution to create a two-year window for victims of childhood sexual abuse for which the statute of limitations expired to file civil lawsuits against their offenders.
    - HB 14 passed the House (187-15) on January 27, 2021; it passed the Senate (44-3) on March 23, 2021; the House concurred with Senate amendments (188-13) on March 24, 2021; and it was filed as Pamphlet Laws Resolution No. 2 of 2021 on April 20, 2021.
- House Bill 38, PN 105 (Diamond)
    - This joint resolution proposed amending the Pennsylvania Constitution to create judicial districts for the election of Pennsylvania appellate court judges.
    - HB 38 was reported from the House Judiciary Committee on January 13, 2021, received first consideration on the same day, and was re-committed to the House Judiciary Committee on November 14, 2022. No further action was taken.
- House Bill 50, PN 29 (Grove)
    - This joint resolution proposed amending the Pennsylvania Constitution to require that supplemental spending must be approved in a bill separate from the general appropriation bill.
    - HB 50 was referred to the House Appropriations Committee on January 11, 2021. No further action was taken.
- House Bill 51, PN 123 (O'Neal)

- This joint resolution proposed amending the Pennsylvania Constitution to require that surplus funds be deposited into a Budget Stabilization Reserve Fund until it reaches the volatility rate of Pennsylvania's total revenue sources.

- HB 51 was reported as amended from the House State Government Committee and received first consideration on January 13, 2021, and it was laid on the table on March 24, 2021. No further action was taken.

- House Bill 53, PN 32 (Keefer)

    - This joint resolution proposed amending the Pennsylvania Constitution to prevent the creation or use of special funds except for specific funds or purposes.

    - HB 53 was reported as mended from the House Appropriations Committee on January 11, 2021. No further action was taken.

- House Bill 55, PN 34 (Grove)

    - This joint resolution proposed amending the Pennsylvania Constitution to add race and ethnicity to the Declaration of Rights and change the Emergency Declaration provision to establish that emergency declarations only last 21 days and require legislative approval after that point.

    - HB 55 passed the House (116-86) on January 27, 2021, and was referred to the Senate Veterans Affairs and Emergency Preparedness Committee on January 28, 2021. No further action was taken.

- House Bill 71, PN 47 (Warner)

    - This joint resolution proposed amending the Pennsylvania Constitution to establish spending limits for the Commonwealth that could only be overridden by a two-thirds vote by both chambers of the General Assembly.

    - HB 71 was reported from the House State Government Committee on January 13, 2021, received second consideration on December 14, 2021, was re-reported as committed from the House Appropriations Committee on April 13, 2022, and was laid on the table April 27, 2022. No further action was taken.

- House Bill 263, PN 234 (Schemel)

    - This joint resolution proposed amending the Pennsylvania Constitution to alter the appointment of appellate judges in Pennsylvania by creating an Appellate Court Nominating Commission.

- HB 263 was referred to the House Judiciary Committee on January 26, 2021. No further action was taken.

- House Bill 302, PN 271 (Diamond)
  - This joint resolution proposed amending the Pennsylvania Constitution to eliminate the state property tax.
  - HB 302 was referred to the House Finance Committee on January 27, 2021. No further action was taken.

- House Bill 482, PN 445 (Gaydos)
  - This joint resolution proposed amending the Pennsylvania Constitution to reduce the size of the House of Representatives from 203 to 151.
  - HB 482 was referred to the House State Government Committee on February 9, 2021. No further action was taken.

- House Bill 522, PN 486 (Gaydos)
  - This joint resolution proposed amending the Pennsylvania Constitution to reduce the size of the House of Representatives from 203 to 151.
  - HB 482 was referred to the House State Government Committee on February 9, 2021. No further action was taken.

- House Bill 620, PN 582 (Keefer)
  - This joint resolution proposed amending the Pennsylvania Constitution to abolish the office of the Lieutenant Governor.
  - HB 620 was referred to the House State Government Committee on February 24, 2021. No further action was taken.

- House Bill 720, PN 707 (Gleim)
  - This joint resolution proposed amending the Pennsylvania Constitution to change the Commonwealth's fiscal period from one year to two years, thereby establishing a biennial budget for Pennsylvania.
  - HB 720 was referred to the House State Government Committee on March 1, 2021. No further action was taken.

- House Bill 735, PN 720 (Thomas)
    - This joint resolution proposed amending the Pennsylvania Constitution to increase the length of a state senator's term from 4 to 6 years and a state representative's term from 2 to 4 years. It also proposed a limit on both representatives and senators of three consecutive terms.
    - HB 735 was referred to the House State Government Committee on March 3, 2021. No further action was taken.
- House Bill 822, PN 1818 (White)
    - This joint resolution proposed amending the Pennsylvania Constitution to allow voters to file a petition to remove an elected officer in a city of the first class or a county of the first class, thereby allowing for the recall of elected officials in Philadelphia.
    - HB 822 was reported as amended from the House State Government Committee on June 15, 2021, was re-reported as committed from the House Rules Committee on September 15, 2021, and was laid on the table November 10, 2021. No further action was taken.
- House Bill 881, PN 866 (Gregory)
    - This joint resolution proposed amending the Pennsylvania Constitution to create a two-year window for victims of childhood sexual abuse for which the statute of limitations expired to file civil action.
    - HB 881 was reported from the House Judiciary Committee on March 15, 2021, and it was re-committed to the House Appropriations Committee on March 17, 2021. No further action was taken.
- House Bill 910, PN 897 (R. Mackenzie)
    - This joint resolution proposed amending the Pennsylvania Constitution to expand the property tax exemption for disabled veterans and their spouses.
    - HB 910 was reported from the House Veterans and Emergency Preparedness Committee on March 15, 2021. No further action was taken.
- House Bill 927, PN 922 (Stambaugh)

- This joint resolution proposed amending the Pennsylvania Constitution to end school district property taxes and require the legislature to enact an alternative to funding public education.

- HB 927 was referred to the House Finance Committee on March 16, 2021. No further action was taken.

- House Bill 1010, PN 1453 (Ortitay)

  - This joint resolution proposed amending the Pennsylvania Constitution to shift the responsibility to advertise constitutional amendments from the Secretary of the Commonwealth to the Legislative Reference Bureau.

  - HB 1010 passed the House (113-88) on May 24, 2021, and it was re-referred to the Senate Appropriations Committee on September 21, 2021. No further action was taken.

- House Bill 1032, PN 1073 (Sappey)

  - This joint resolution proposed amending the Pennsylvania Constitution to expand the property tax exemption to veterans regardless of wartime service.

  - HB 1032 was referred to the House Finance Committee on March 29, 2021. No further action was taken.

- House Bill 1158, PN 1251 (Gillespie)

  - This joint resolution proposed amending the Pennsylvania Constitution to base public school funding on the student enrollment of a school district in the preceding year.

  - HB 1158 was referred to the House Education Committee on April 16, 2021. No further action was taken.

- House Bill 1159, PN 1252 (Gillespie)

  - This joint resolution proposed amending the Pennsylvania Constitution to eliminate the school district property tax on residential property.

  - HB 1159 was referred to the House Finance Committee on April 16, 2021. No further action was taken.

- House Bill 1217, PN 1277 (Davanzo)

- This joint resolution proposed amending the Pennsylvania Constitution to allow the General Assembly to remove elected municipal officers from office for absenteeism and dereliction of duty.

- HB 1217 was reported from the House Local Government Committee on April 20, 2021, and it was laid on the table on June 21, 2021. No further action was taken.

- House Bill 1219, PN 1280 (Delozier)

  - This joint resolution proposed amending the Pennsylvania Constitution to add new regulations for the reapportionment of state and federal districts, allowing for 30 days for public comment on a proposed plan.

  - HB 1219 was referred to the House State Government Committee on April 19, 2021. No further action was taken.

- House Bill 1269, PN 1349 (Webster)

  - This joint resolution proposed amending the Pennsylvania Constitution to allow government employees to volunteer as poll workers.

  - HB 1269 was referred to the House State Government Committee on April 23, 2021. No further action was taken.

- House Bill 1326, PN 1426 (Thomas)

  - This joint resolution proposed amending the Pennsylvania Constitution to establish that if a budget is not enacted by June 30 in any year, the Commonwealth shall maintain state appropriations at 80% the amounts specified for the previous year.

  - HB 1326 was referred to the House State Appropriations Committee on May 5, 2021. No further action was taken.

- House Bill 1391, PN 1507 (Saylor)

  - This joint resolution proposed amending the Pennsylvania Constitution to change the procedural process in court cases involving divorce, custody, child support, alimony, and other familial matters.

  - HB 1391 was referred to the House Judiciary Committee on May 14, 2021. No further action was taken.

- House Bill 1596, PN 2178 (Wheeland)

- This joint resolution proposed amending the Pennsylvania Constitution to require voters to present valid identification to vote in an election.

- HB 1596 was reported as amended from the House State Government Committee on September 27, 2021, and it was removed from the table October 24, 2022. No further action was taken.

- House Bill 1673, PN 1876 (Day)

  - This joint resolution proposed amending the Pennsylvania Constitution to provide a population deviation of 10% or less in districts and to limit the splitting of counties, cities and incorporated towns in districts.

  - HB 1673 was referred to the House State Government Committee on June 22, 2021. No further action was taken.

- House Bill 1716, PN 2019 (Otten)

  - This joint resolution proposed amending the Pennsylvania Constitution to establish the right to local self-governance to protect health, safety, and welfare.

  - HB 1716 was referred to the House Local Government Committee on August 12, 2021. No further action was taken.

- House Bill 1717, PN 1938 (Diamond)

  - This joint resolution proposed amending the Pennsylvania Constitution to eliminate no-excuse mail-in voting.

  - HB 1717 was referred to the House State Government Committee on June 28, 2021. No further action was taken.

- House Bill 1719, PN 1946 (McClinton)

  - This joint resolution proposed amending the Pennsylvania Constitution to lower the recommendation requirement for the Board of Pardons to pardon an individual to three-fifths of the board.

  - HB 1719 was referred to the House Judiciary Committee on July 8, 2021. No further action was taken.

- House Bill 1772, PN 2009 (Rabb)

- This joint resolution proposed amending the Pennsylvania Constitution to establish ranked choice voting in Pennsylvania.

- HB 1772 was referred to the House State Government Committee on August 9, 2021. No further action was taken.

- House Bill 1815, PN 2059 (Pennycuick)

  - This joint resolution proposed amending the Pennsylvania Constitution to expand the property tax exemption to the surviving spouse of a member of the United States Armed Forces.

  - HB 1815 was referred to the House Veterans Affairs and Emergency Preparedness Committee on August 31, 2021. No further action was taken.

- House Bill 1851, PN 2093 (Freeman)

  - This joint resolution proposed amending the Pennsylvania Constitution to allow the General Assembly to establish a property tax limit threshold based on a percentage of the household income of the taxpayer.

  - HB 1851 was referred to the House Finance Committee on September 9, 2021. No further action was taken.

- House Bill 1880, PN 2508 (Ryan)

  - This joint resolution proposed amending the Pennsylvania Constitution to establish term limits for Pennsylvania judges of the Supreme Court, Superior Court, or Commonwealth Court. Each judge could serve two 10-year terms.

  - HB 1880 was reported as amended from the House Judiciary Committee on December 13, 2021, and it was laid on the table on March 30, 2022. No further action was taken.

- House Bill 1881, PN 2132 (Ryan)

  - This joint resolution proposed amending the Pennsylvania Constitution to allow judicial salaries to be lowered.

  - HB 1880 was referred to the House State Government Committee on September 20, 2021. No further action was taken.

- House Bill 1898, PN 2156 (Owlett)

- This joint resolution proposed amending the Pennsylvania Constitution to change the term length for all Pennsylvania judges and justices to 6 years.

- HB 1898 was referred to the House Judiciary Committee on September 22, 2021. No further action was taken.

- House Bill 1904, PN 2163 (Diamond)

  - This joint resolution proposed amending the Pennsylvania Constitution to eliminate judicial retention elections.

  - HB 1904 was referred to the House Judiciary Committee on September 27, 2021. No further action was taken.

- House Bill 1909, PN 2167 (Dowling)

  - This joint resolution proposed amending the Pennsylvania Constitution to add six non-lawyer members to the Judicial Conduct Board.

  - HB 1909 was referred to the House Judiciary Committee on September 27, 2021. No further action was taken.

- House Bill 1910, PN 2168 (Keefer)

  - This joint resolution proposed amending the Pennsylvania Constitution to limit the rulemaking authority of the Pennsylvania Supreme Court.

  - HB 1910 was reported from the House Judiciary Committee on March 30, 2022, and it was laid on the table June 20, 2022. No further action was taken.

- House Bill 1934, PN 2209 (Sainato)

  - This joint resolution proposed amending the Pennsylvania Constitution to expand the property tax exemption to the surviving spouse of a member of the United States Armed Forces and expand the exemption to veterans regardless of if they served in a war.

  - HB 1934 was referred to the House Finance Committee on September 29, 2021. No further action was taken.

- House Bill 1953, PN 2234 (Sainato)

  - This joint resolution proposed amending the Pennsylvania Constitution to expand the property tax exemption to the surviving spouse of a member of the

United States Armed Forces and expand the exemption to veterans regardless of if they served in a war. It is a corrected version of HB 1934.

- HB 1934 was referred to the House Veterans Affairs and Emergency Preparedness Committee on October 5, 2021. No further action was taken.

- House Bill 2013, PN 2321 (Diamond)
  - This joint resolution proposed amending the Pennsylvania Constitution to include the "right to medical freedom."
  - HB 2013 was reported from the House Health Committee on November 16, 2021, and it was laid on the table on March 28, 2022. No further action was taken.

- House Bill 2069, PN 2390 (Cutler)
  - This joint resolution proposed amending the Pennsylvania Constitution to establish that the disapproval of a regulation by the General Assembly does not need to be presented to the Governor.
  - HB 2069 was reported from the House State Government Committee on November 16, 2021, and it was removed from the table September 19, 2022. No further action was taken.

- House Bill 2070, PN 2391 (Cutler)
  - This joint resolution proposed amending the Pennsylvania Constitution to establish that an executive order from the Governor cannot be in effect for more than 21 days unless extended by the General Assembly.
  - HB 2069 was reported from the House State Government Committee on November 16, 2021, and it was removed from the table September 19, 2022. No further action was taken.

- House Bill 2141, PN 2486 (Kauffman)
  - This joint resolution proposed amending the Pennsylvania Constitution to eliminate judicial retention elections.
  - HB 2141 was reported from the House Judiciary Government Committee on December 13, 2021, and it was laid on the table March 30, 2022. No further action was taken.

- House Bill 2149, PN 2498 (Solomon)

- This joint resolution proposed amending the Pennsylvania Constitution to require elected officials to resign upon being convicted of a crime.

- HB 2149 was referred to the House State Government Committee on December 10, 2021. No further action was taken.

- House Bill 2207, PN 2572 (Grove)

  - This joint resolution proposed amending the Pennsylvania Constitution to repeal and replace the current procedure for legislative reapportionment with a "Citizens Legislative Reapportionment Commission."

  - HB 2207 was reported from the House State Government Committee on January 10, 2022, and it was removed from the table on October 26, 2022. No further action was taken.

- House Bill 2252, PN 2614 (Oberlander)

  - This joint resolution proposed amending the Pennsylvania Constitution to explicitly provide that there is no right to an abortion in state constitution.

  - HB 2252 was referred to the House Health Committee on January 20, 2022. No further action was taken.

- House Bill 2272, PN 2622 (Mihalek)

  - This joint resolution proposed amending the Pennsylvania Constitution to privatize Pennsylvania's state-run liquor system.

  - HB 2272 was reported from the House Health Committee on June 8, 2022, and it was removed from the table on September 12, 2022. No further action was taken.

- House Bill 2340, PN 2738 (Bizzarro)

  - This joint resolution proposed amending the Pennsylvania Constitution to require constitutional amendments to receive two-thirds approval from both the House and the Senate.

  - HB 2340 was referred to the House State Government Committee on February 11, 2022. No further action was taken.

- House Bill 2413, PN 2825 (M. Mackenzie)

- This joint resolution proposed amending the Pennsylvania Constitution to attach education funding to individual students.

- HB 2413 was referred to the House Education Committee on March 16, 2022. No further action was taken.

- House Bill 2432, PN 2846 (Rowe)

  - This joint resolution proposed amending the Pennsylvania Constitution to require ballot questions for new taxes or fees to be placed on the ballot in primary elections asking electors if the electors approve or disapprove.

  - HB 2432 was referred to the House Finance Committee on March 17, 2022. No further action was taken.

- House Bill 2500, PN 2865 (Hershey)

  - This joint resolution proposed amending the Pennsylvania Constitution to authorize all local taxing authorities to provide property tax relief.

  - HB 2500 was referred to the House Finance Committee on March 23, 2022. No further action was taken.

- House Bill 2539, PN 3022 (Hershey)

  - This joint resolution proposed amending the Pennsylvania Constitution to limit the ability for Pennsylvanians to vote by absentee ballot.

  - HB 2500 was referred to the House State Government Committee on April 25, 2022. No further action was taken.

- House Bill 2596, PN 3111 (Conklin)

  - This joint resolution proposed amending the Pennsylvania Constitution to prohibit individuals convicted of domestic abuse from holding public office in Pennsylvania.

  - HB 2596 was referred to the House Judiciary Committee on May 13, 2022. No further action was taken.

- House Bill 2660, PN 3194 (Kauffman)

- This joint resolution proposed amending the Pennsylvania Constitution to allow the General Assembly to establish venue in civil cases.

- HB 2660 was reported from the House Judiciary Committee on June 21, 2022, it was re-reported as committed from the House Rules Committee on September 12, 2022, and it was laid on the table on September 12, 2022. No further action was taken.

- House Bill 2762, PN 3404 (Kenyatta)

  - This joint resolution proposed amending the Pennsylvania Constitution to provide that no person convicted of seditious conspiracy against the United States can be eligible to hold elected office in Pennsylvania.

  - HB 2762 was referred to the House Judiciary Committee on August 9, 2022. No further action was taken.

- House Bill 2769, PN 3412 (Ecker)

  - This joint resolution proposed amending the Pennsylvania Constitution to provide employees the right to vote by secret ballot, including votes to unionize. This would thereby effectively ban union card check legislation.

  - HB 2769 was referred to the House State Government Committee on August 22, 2022. No further action was taken.

- House Bill 2785, PN 3424 (Ryan)

  - This joint resolution proposed amending the Pennsylvania Constitution to require the General Assembly to eliminate the school district property tax.

  - HB 2785 was referred to the House Finance Committee on August 23, 2022. No further action was taken.

- House Bill 2817, PN 3463 (Otten)

  - This joint resolution proposed amending the Pennsylvania Constitution to guarantee the right to personal reproductive liberty, including access to an abortion.

  - HB 2817 was referred to the House Health Committee on September 14, 2022. No further action was taken.

- House Bill 2904, PN 3608 (Kinsey)

    - This joint resolution proposed amending the Pennsylvania Constitution to explicitly prohibit slavery and involuntary servitude, including as a punishment for crime, in the state constitution.

    - HB 2904 was referred to the House State Government Committee on October 26, 2022. No further action was taken.

Senate Bills

- Senate Bill 2, PN 86 (K. Ward)

    - This joint resolution proposed amending the Pennsylvania Constitution to limit the duration of emergency declarations issued by the Governor to 21 days unless extended by the General Assembly. It also prohibited the denial or abridgement of equality of rights because of race and ethnicity.

    - SB 2 passed the Senate (28-20) on January 26, 2021, and it passed the House (116-86) on February 5, 2021. Because the language of the amendments passed in the prior session, the electors voted on the amendment. The amendment was approved by the electorate on May 18, 2021.

- Senate Bill 8, PN 22 (Baker)

    - This joint resolution proposed amending the Pennsylvania Constitution to create a two-year window for victims of childhood sexual abuse for which the statute of limitations expired to file civil lawsuits against their offenders.

    - SB 8 was reported from the Senate Judiciary Committee on January 25, 2021, and it was re-referred to the Senate Rules and Executive Nominations Committee on March 22, 2021. No further action was taken.

- Senate Bill 30, PN 12 (A. Williams)

    - This joint resolution proposed amending the Pennsylvania Constitution to lower the voting age to 16.

    - SB 30 was referred to the Senate State Government Committee on January 20, 2021. No further action was taken.

- Senate Bill 41, PN 24 (Phillips-Hill)

    - This joint resolution proposed amending the Pennsylvania Constitution to prohibit unfunded education mandates on school districts.

- SB 41 was referred to the Senate Education Committee on January 20, 2021. No further action was taken.

- Senate Bill 106, PN 1857 (Argall)
  - This joint resolution proposed amending the Pennsylvania Constitution to:
    - Explicitly declare that abortion is not a constitutional right in Pennsylvania;
    - Change the election process for Lieutenant Governor by allowing gubernatorial candidates to select their running mate
    - Require a voter to present a valid identification in order to vote; and
    - Eliminate the requirement that disapproval of a regulation by the General Assembly be presented to the Governor,
  - After amendments were made, SB 106 passed the Senate (28-22) on July 8, 2022, and it passed the House (107-92) on July 8, 2022.

- Senate Bill 246, PN 214 (Phillips-Hill)
  - This joint resolution proposed amending the Pennsylvania Constitution to allow for a limited constitutional convention every 20 years, if a majority of the electorate votes for it.
  - SB 246 was referred to the Senate State Government Committee on February 18, 2021. No further action was taken.

- Senate Bill 286, PN 272 (Bartolotta)
  - This joint resolution proposed amending the Pennsylvania Constitution to impose limitations on increasing state spending based on changes in average personal income and inflation.
  - SB 286 was reported from the Senate Finance Committee on March 24, 2021, and it was laid on the table on May 25, 2021. No further action was taken.

- Senate Bill 424, PN 428 (DiSanto)
  - This joint resolution proposed amending the Pennsylvania Constitution to eliminate the school property tax.

- SB 246 was referred to the Senate Finance Committee on March 15, 2021. No further action was taken.

- Senate Bill 443, PN 445 (Phillips-Hill)

  - This joint resolution proposed amending the Pennsylvania Constitution to require any supplemental appropriations to be approved by a standalone bill in the General Assembly.

  - SB 443 was referred to the Senate Appropriations Committee on March 18, 2021. No further action was taken.

- Senate Bill 457, PN 488 (Baker)

  - This joint resolution proposed amending the Pennsylvania Constitution to establish that if the Attorney General is disbarred from the practice of law in Pennsylvania, then they cannot continue to serve as Attorney General, unless the license is reinstated.

  - SB 457 was reported as amended from the Senate Judiciary Committee on March 23, 2021, and it was laid on the table on July 7, 2022. No further action was taken.

- Senate Bill 519, PN 668 (Mastriano)

  - This joint resolution proposed amending the Pennsylvania Constitution to extend the term of service for members of the General Assembly until January after the election.

  - SB 519 was reported as amended from the Senate State Government Committee on May 11, 2021, and it was laid on the table on December 13, 2021. No further action was taken.

- Senate Bill 529, PN 590 (Dush)

  - This joint resolution proposed amending the Pennsylvania Constitution to limit any future interstate compact Pennsylvania enters to 10 years with the ability to renew the compact with affirmative legislative approval.

  - SB 443 was referred to the Senate Intergovernmental Affairs Committee on April 13, 2021. No further action was taken.

- Senate Bill 537, PN 578 (Boscola)

- This joint resolution proposed amending the Pennsylvania Constitution to eliminate the property tax for homesteads and farmsteads and provides the legislature with the responsibility to provide funding to school districts.

- SB 537 was referred to the Senate Finance Committee on April 13, 2021. No further action was taken.

- Senate Bill 538, PN 556 (Boscola)

  - This joint resolution proposed amending the Pennsylvania Constitution to create a direct ballot initiative in Pennsylvania that would allow voters to propose an initiative or referendum through petition.

  - SB 538 was referred to the Senate State Government Committee on April 9, 2021. No further action was taken.

- Senate Bill 551, PN 576 (Martin)

  - This joint resolution proposed amending the Pennsylvania Constitution to eliminate the requirement for a separate ballot for judicial retention.

  - SB 551 was reported from the Senate State Government Committee on September 21, 2021, and it received second consideration and was re-referred to the Senate Appropriations Committee on October 19, 2021. No further action was taken.

- Senate Bill 578, PN 642 (Bartolotta)

  - This joint resolution proposed amending the Pennsylvania Constitution to expand the property tax exemption for disabled veterans to surviving spouse of a member of the United States Armed Forces.

  - SB 578 was reported from the Senate Veterans Affairs and Emergency Preparedness Committee on June 8, 2021, and it was laid on the table on June 25, 2021. No further action was taken.

- Senate Bill 584, PN 632 (Boscola)

  - This joint resolution proposed amending the Pennsylvania Constitution to establish an independent commission responsible for reapportionment and redistricting congressional, senatorial, and representative districts.

- SB 584 was referred to the Senate State Government Committee on April 20, 2021. No further action was taken.

- Senate Bill 585, PN 633 (Boscola)
  - This joint resolution proposed amending the Pennsylvania Constitution to create a redistricting commission that is comprised of independent citizens and provides for public consideration and comment.
  - SB 585 was referred to the Senate State Government Committee on April 20, 2021. No further action was taken.

- Senate Bill 631, PN 697 (Stefano)
  - This joint resolution proposed amending the Pennsylvania Constitution to allow the General Assembly to remove elected municipal officers from office for absenteeism and dereliction of duty.
  - SB 631 was referred to the Senate Local Government Committee on May 3, 2021. No further action was taken.

- Senate Bill 694, PN 773 (Bartolotta)
  - This joint resolution proposed amending the Pennsylvania Constitution to lower the recommendation requirement for the Board of Pardons to pardon an individual to four-fifths of the board.
  - SB 694 was referred to the Senate Judiciary Committee on May 19, 2021. No further action was taken.

- Senate Bill 735, PN 952 (J. Ward)
  - This joint resolution proposed amending the Pennsylvania Constitution to require voters to provide valid identification in order to vote.
  - SB 735 passed the Senate (30-20) on June 23, 2021, and it was referred to the House State Government Committee on June 2, 2021. No further action was taken.

- Senate Bill 774, PN 953 (Aument)
  - This joint resolution proposed amending the Pennsylvania Constitution to the Commonwealth's fiscal period from one year to two years, thereby establishing a biennial budget for Pennsylvania.

- SB 774 was referred to the Senate State Government Committee on June 23, 2021. No further action was taken.

- Senate Bill 842, PN 1047 (Boscola)
  - This joint resolution proposed amending the Pennsylvania Constitution to expand the social categorizations covered by the anti-discrimination provisions.
  - SB 842 was referred to the Senate Labor and Industry Committee on September 8, 2021. No further action was taken.

- Senate Bill 882, PN 1112 (Boscola)
  - This joint resolution proposed amending the Pennsylvania Constitution to require referendums to be done in a general election.
  - SB 882 was referred to the Senate State Government Committee on September 28, 2021. No further action was taken.

- Senate Bill 884, PN 1121 (Mastriano)
  - This joint resolution proposed amending the Pennsylvania Constitution to eliminate no-excuse mail-in voting.
  - SB 884 was referred to the Senate State Government Committee on September 28, 2021. No further action was taken.

- Senate Bill 940, PN 1214 (Argall)
  - This joint resolution proposed amending the Pennsylvania Constitution to shift the responsibility to advertise constitutional amendments from the Secretary of the Commonwealth to the Legislative Reference Bureau.
  - SB 940 was reported from the Senate State Government Committee on December 14, 2021, and it was re-referred to the Senate Appropriations Committee on December 15, 2021. No further action was taken.

- Senate Bill 946, PN 1236 (Aument)
  - This joint resolution proposed amending the Pennsylvania Constitution to establish that an executive order from the Governor cannot be in effect for more than 21 days unless extended by the General Assembly.

- SB 946 was referred to the Senate State Government Committee on November 19, 2021. No further action was taken.

- Senate Bill 947, PN 1237 (Aument)
  - This joint resolution proposed amending the Pennsylvania Constitution to establish that the disapproval of a regulation by the General Assembly does not need to be presented to the Governor.
  - SB 947 was referred to the Senate State Government Committee on November 19, 2021. No further action was taken.

- Senate Bill 956, PN 1286 (J. Ward)
  - This joint resolution proposed amending the Pennsylvania Constitution to explicitly provide that there is not right to an abortion in state constitution.
  - SB 956 was reported from the Senate Health and Human Services Committee on January 25, 2022, and it was laid on the table on October 24, 2022. No further action was taken.

- Senate Bill 959, PN 1250 (Martin)
  - This joint resolution proposed amending the Pennsylvania Constitution to establish that any emergency authority granted to a state agency expires when the disaster emergency declaration expires.
  - SB 959 was reported from the Senate State Government Committee on April 6, 2022, and it was re-referred to the Senate Appropriations Committee on April 13, 2022. No further action was taken.

- Senate Bill 1042, PN 1356 (Laughlin)
  - This joint resolution proposed amending the Pennsylvania Constitution to reduce the size of the House of Representatives from 203 to 150 and to require that each senatorial district contain three representative districts.
  - SB 1042 was referred to the Senate State Government Committee on February 3, 2022. No further action was taken.

- Senate Bill 1127, PN 1684 (Yaw)
  - This joint resolution proposed amending the Pennsylvania Constitution to require the election of a president judge among the members of the court in judicial districts with three or more members.

- SB 1127 was reported from the Senate State Government Committee on May 25, 2022, and it was re-referred to the Senate Appropriations Committee on June 28, 2022. No further action was taken.

- Senate Bill 1182, PN 1568 (Argall)
  - This joint resolution proposed amending the Pennsylvania Constitution to alter the process for electing chairman of the Legislative Reapportionment Commission.
  - SB 1182 was reported from the Senate State Government Committee on May 25, 2022, and it was laid on the able on June 28, 2022. No further action was taken.

- Senate Bill 1209, PN 1621 (Argall)
  - This joint resolution proposed amending the Pennsylvania Constitution to prohibit adjusting the population data for reapportionment purposes for any group quarters population.
  - SB 1209 was reported from the Senate State Government Committee on May 25, 2022, and it was laid on the able on June 28, 2022. No further action was taken.

- Senate Bill 1325, PN 1897 (Brooks)
  - This joint resolution proposed amending the Pennsylvania Constitution to require Supreme Court Justices to run for re-election every four years, rather than filing for retention every ten years.
  - SB 1325 was referred to the Senate State Government Committee on September 13, 2022. No further action was taken.

- Senate Bill 1342, PN 1929 (Dillon)
  - This joint resolution proposed amending the Pennsylvania Constitution to allow the General Assembly to establish a property tax limit threshold based on a percentage of the household income of the taxpayer.
  - SB 1342 was referred to the Senate Finance Committee on September 20, 2022. No further action was taken.

Received 10/13/2021 1:25:23 PM Supreme Court Middle District

Filed 10/13/2021 1:25:00 PM Supreme Court Middle District
26 MAP 2021

IN THE

Supreme Court of Pennsylvania

MIDDLE DISTRICT

No. 26 MAP 2021

ALLEGHENY REPRODUCTIVE HEALTH CENTER, ALLENTOWN WOMEN'S CENTER, DELAWARE COUNTY WOMEN'S CENTER, PHILADELPHIA WOMEN'S CENTER, PLANNED PARENTHOOD KEYSTONE, PLANNED PARENTHOOD SOUTHEASTERN PENNSYLVANIA and PLANNED PARENTHOOD OF WESTERN PENNSYLVANIA,

Appellants,

– v. –

PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES, MEG SNEAD, in her official capacity as Acting Secretary of the Pennsylvania Department of Human Services, ANDREW BARNES, in his 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,

Appellees.

On Appeal from Orders of the Commonwealth Court, dated January 28, 2020, and March 26, 2021, in the Commonwealth Court of Pennsylvania at No. 26 MD 2019

BRIEF FOR APPELLANTS

SUSAN FRIETSCHE
ID No. 65240
WOMEN'S LAW PROJECT
428 Forbes Avenue, Suite 1710
Pittsburgh, Pennsylvania 15219
(412) 281-2892
sfrietsche@womenslawproject.org

CHRISTINE CASTRO
ID No. 326694
AMAL BASS
ID No. 202954
WOMEN'S LAW PROJECT
125 S. 9th Street, Suite 300
Philadelphia, Pennsylvania 19107-5117
(215) 928-5772
abass@womenslawproject.org
ccastro@womenslawproject.org

Counsel for Appellants

(For Continuation of Appearances See Inside Cover)

COUNSEL PRESS • (888) 700-3226

DAVID S. COHEN
ID No. 88811
3320 Market Street, Suite 232
Philadelphia, Pennsylvania 19104
(215) 571-4714
dsc39@drexel.edu

THOMAS B. SCHMIDT III
ID No. 19196
DONNA L. FISHER
ID No. 39410
ADAM R. MARTIN
ID No. 321257
TROUTMAN PEPPER HAMILTON SANDERS LLP
100 Market Street
Suite 200, P.O. Box 1181
Harrisburg, Pennsylvania 17108
(717) 255-1155
thomas.schmidt@troutman.com
donna.fisher@troutman.com
adam.martin@troutman.com

JAN P. LEVINE
ID No. 43869
LEAH GREENBERG KATZ
ID No. 307413
KAITLIN L. MEOLA
ID No. 326809
TROUTMAN PEPPER HAMILTON SANDERS LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, Pennsylvania 19103
(215) 981-4000
jan.levine@troutman.com
leah.katz@troutman.com
kaitlin.meola@troutman.com

MICHAEL S. DEPRINCE
ID No. 322500
TROUTMAN PEPPER HAMILTON SANDERS LLP
401 9th Street NW, Suite 1000
Washington, DC 20004
(202) 274-2950
michael.deprince@troutman.com

Counsel for Appellants

MELISSA COHEN
Admitted Pro Hac Vice
PLANNED PARENTHOOD FEDERATION OF AMERICA
123 William Street, Floor 9
New York, New York 10038
(212) 261-4649
melissa.cohen@ppfa.org

CARRIE FLAXMAN
ID No. 78575
PLANNED PARENTHOOD FEDERATION OF AMERICA
1110 Vermont Avenue NW, Suite 300
Washington, DC 20005-6300
(301) 461-2100
carrie.flaxman@ppfa.org

Counsel for Appellants Planned Parenthood Keystone, Planned Parenthood Southeastern Pennsylvania, Planned Parenthood of Western Pennsylvania

TABLE OF CONTENTS

Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs., No. 26 MD 2019 (Pa. Commw. Ct. Jan. 28, 2020) (reported at 225 A.3d 902)

Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs., No. 26 MD 2019, (Pa. Commw. Ct. Mar. 26, 2021) (reported at 249 A.3d 598)

Doe v. Celani, No. S81-84CnC (Vt. Super. Ct. May 26, 1986)

Doe v. Wright, No. 91 CH 1958 (Ill. Cir. Ct. Dec. 2, 1994)

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

REGULATIONS

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

I. STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 42 Pa. C.S. § 723 because this is an appeal of a final order of the Commonwealth Court entered in a matter properly commenced in the Commonwealth Court pursuant to its original jurisdiction. 42 Pa. C.S. § 761(a).

II. ORDERS IN QUESTION

Appellants seek review of two Orders of the Commonwealth Court:

> AND NOW, this 28th day of January, 2020, the applications for leave to intervene filed by members of the Pennsylvania State Senate and by members of the Pennsylvania House of Representatives are hereby GRANTED.

> AND NOW, this 26th day of March, 2021, the preliminary objections of Respondents are SUSTAINED as set forth in the attached Opinion, and Petitioners' petition for review is DISMISSED.

III. SCOPE AND STANDARD OF REVIEW

For questions of law such as those presented in this case, this Court's standard of review is *de novo*, and the scope of review is plenary. *First Citizens Nat'l Bank v. Sherwood*, 879 A.2d 178, 180 (Pa. 2005). This includes questions of legislator intervention that raise pure questions of law. *Markham v. Wolf*, 136 A.3d 134, 138 (Pa. 2016). "Upon review of a decision sustaining or overruling preliminary objections, we accept as true all well-pleaded material facts set forth in the petition for review and all inferences fairly deducible from those facts. We will

affirm an order sustaining preliminary objections only if it is clear that the party filing the petition for review is not entitled to relief as a matter of law." *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 917 (Pa. 2013) (internal citations, quotations, and alterations omitted).

IV. QUESTIONS PRESENTED

1. Did the Commonwealth Court err in permitting individual members of the Senate and House to intervene as Respondents in this case?

2. Does the Pennsylvania Medicaid abortion coverage ban violate the Pennsylvania Constitution's explicit guarantee of equality on the basis of sex contained in Pa. Const. art. I, § 28 and its separate equal protection guarantee contained in Pa. Const. art. I, §§ 1, 26 & art. III, § 32?

3. Do Appellants have standing to bring these constitutional claims on behalf of their Medicaid patients who seek an abortion?

V. STATEMENT OF THE CASE

A. THE PENNSYLVANIA MEDICAL ASSISTANCE PROGRAM

Medicaid is a joint federal-state public insurance program that provides medical insurance for a wide array of covered services to eligible people with low incomes. R.126a-127a, ¶¶ 44, 45, 48. Pennsylvania's Medicaid program is known as Medical Assistance. R.126a, ¶ 44. Appellee Pennsylvania Department of Human Services ("DHS") is responsible for administering the Medical

Assistance program. R.124a, ¶ 40. DHS's Office of Medical Assistance Programs operates Medical Assistance, which includes a fee-for-service program that reimburses providers directly for covered medical services provided to enrollees, as well as a managed care program, HealthChoices, that is administered by contracted managed care organizations that receive a negotiated capitated rate from DHS to contract with health care providers to deliver covered services. R.125a-126a, ¶¶ 41, 46. As of July 1, 2018, roughly 84.6% of Medical Assistance recipients were enrolled in the HealthChoices managed care program, and 15.4% were in the fee-for-service program. R.126a, ¶ 47.[1]

The Pennsylvania Abortion Control Act prohibits the use of any Commonwealth funds to cover abortion, including the Medical Assistance program, except those abortions necessary to avert the death of the pregnant woman or to end a pregnancy caused by rape or incest. *See* 18 Pa. C.S. §§ 3215(c), (j) ("coverage ban"). No equivalent coverage ban applies to men; rather, Medical Assistance covers all reproductive health services that men need. R.128a-129a, ¶ 54. Likewise, no coverage ban applies to carrying a pregnancy to term; rather,

[1] As of July 1, 2019 (after the Petition was filed), 89.3% of Medical Assistance recipients were enrolled in HealthChoices managed care plans and 10.7% were in the fee-for-service program. Kaiser Family Foundation, Share of Medicaid Population Covered Under Different Delivery Systems, http://www.kff.org/medicaid/state-indicator/share-of-medicaid-population-covered-under-different-delivery-systems/ (last visited Sept. 17, 2021).

Medical Assistance covers all costs associated with pregnancy and childbirth, including care for medically-complicated pregnancies. R.129a, ¶ 55.

DHS has promulgated regulations implementing the coverage ban. *See* 55 Pa. Code §§ 1141.57,[2] 1163.62, 1221.57. Health care providers are prohibited from billing for services inconsistently with these regulations. *See* 55 Pa. Code §§ 1141.81, 1163.491, 1221.81, 1229.81.

B. THE IMPACT OF THE COVERAGE BAN ON PENNSYLVANIA WOMEN[3]

The coverage ban harms women in many ways. As set forth in the Petition for Review, these harms include the following:

- Low-income patients, enrolled in or otherwise eligible for Medical Assistance, are forced to pay for their abortion with money they need for essentials such as rent, utilities, food, diapers, or clothing. This is exactly the choice—between health care and basic essentials—that Medicaid was created to avoid. R.130a, 131a-132a, 137a, ¶¶ 59, 62, 77-79.

[2] Providers' reference to 55 Pa. Code § 1147.57 rather than § 1141.57 in the Petition's Wherefore clause was a typo.

[3] Providers use the terms "women" and "men" throughout this brief while recognizing that transgender men and people whose gender identity is non-binary may have female reproductive organs and be capable of pregnancy and childbirth. At the Commonwealth Court argument on preliminary objections, Legislators suggested that the existence of transgender men precludes sex-based discrimination claims such as Providers' coverage ban claims. This position is in clear tension with the ERA's purpose and ignores that pregnancy is a *sex-based* medical condition.

- The need to raise money can delay the abortion, thereby increasing the cost and complexity of the procedure and its medical risks, as well as increasing required travel for some women. R.130a-131a, 137a-139a, ¶¶ 60-61, 80-83.
- The coverage ban distorts the physician-patient and counselor-patient relationship. Instead of focusing on the patient's questions, medical needs, and contraceptive plans, a portion of the patient-provider dialogue revolves around identifying funding sources for the patient's procedure. Often, abortion providers absorb the abortion's cost (in part or in full) for Pennsylvania women on Medical Assistance. R.123a, 139a-140a, ¶¶ 36, 84-87.
- National studies show that, where Medicaid does not cover abortion, roughly one quarter of Medicaid enrollees who seek an abortion are forced to continue their pregnancy to term against their will because they cannot pay for the abortion themselves. As a result of the coverage ban, some Pennsylvania women fall within this category. These women are denied their autonomy and dignity and cannot exercise their constitutional right to terminate a pregnancy. They are also forced to face the medical risks associated with continued pregnancy and childbirth, including the fourteen-fold increase in

maternal mortality risk associated with childbirth as compared to abortion. For Black women, the maternal mortality rate associated with childbirth is three times that of white women. R.132a-133a, ¶¶ 63-68.

- Women with health problems aggravated by pregnancy (such as diabetes or heart disease), or medical conditions the treatment of which is complicated by pregnancy (such as major depression or cancer), risk sustaining severe health damage from the coverage ban. R.134a-136a, ¶¶ 69-74.
- Women who raise a child they did not want to have face an increased risk of psychosocial harm. Their education may be interrupted and their career prospects circumscribed. A year after unsuccessfully seeking an abortion, they are more likely to be impoverished, unemployed, and depressed than women who obtained an abortion. R.133a, 136a, ¶¶ 66, 75.
- All of the harms identified here fall disproportionately on women of color, because women of color disproportionately experience poverty. R.138a-139a, ¶ 83.

C. PROCEDURAL HISTORY

Appellants, seven[4] Pennsylvania corporations operating medical facilities licensed or certified by the Commonwealth to provide abortions (collectively, "Providers"), R.116a-123a, ¶¶ 2-32, filed their Petition for Review in the Nature of a Complaint Seeking Declaratory Judgment and Injunctive Relief pursuant to the Commonwealth Court's original jurisdiction on January 16, 2019. The Petition claims the coverage ban violates the Pennsylvania Equal Rights Amendment, Pa. Const. art. I, § 28 ("Pennsylvania ERA"), because it excludes abortion, a procedure sought by women as a function of their sex, and because it arises from and reinforces invidious gender stereotypes. R.140a-141a, ¶¶ 88-92. It also asserts that the coverage ban violates the Pennsylvania Constitution's equal protection guarantees, Pa. Const. art. I, §§ 1, 26; art. III, § 32, by excluding from coverage the procedures of those who exercise their fundamental right to choose abortion while covering the care of those who choose to carry their pregnancy to term. R.142a-143a, ¶¶ 93-96.

Respondents, DHS and several agency officials responsible for enforcing the challenged statute and regulations, filed preliminary objections on April 16, 2019. While DHS's preliminary objections were pending, two groups of

[4] At the time of the Petition's filing, there were eight Petitioners. However, Petitioner Berger & Benjamin LLP has since ceased operations. On May 28, 2020, the Commonwealth Court granted the uncontested application to remove Berger & Benjamin as Petitioner.

individual Pennsylvania legislators sought to intervene as respondents (collectively, "Legislators").[5] Following briefing and argument, their applications for leave to intervene were denied on June 21, 2019.[6] *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs.*, No. 26 MD 2019 (Pa. Commw. Ct. June 21, 2019) ("Simpson Op."). The Commonwealth Court granted reconsideration by Order dated July 22, 2019. After reargument, a three-judge panel[7] granted Legislators' applications on January 28, 2020. *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs.*, No. 26 MD 2019 (Pa. Commw. Ct. Jan. 28, 2020) ("Panel Op.").

DHS and Legislators completed their preliminary objection filings and briefing on February 27, 2020. The Commonwealth Court held oral argument *en banc* on October 14, 2020,[8] and on March 26, 2021, dismissed the Petition. *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs.*, No. 26 MD 2019, (Pa. Commw. Ct. Mar. 26, 2021) ("PObj. Op.").

---

[5] Eighteen senators, comprising 36% of the Pennsylvania Senate, and eight representatives, comprising 4% of the Pennsylvania House, filed two separate applications to intervene.

[6] Judge Robert Simpson presided.

[7] President Judge Mary Hannah Leavitt and Judges Michael H. Wojcik and Bonnie Brigance Leadbetter.

[8] President Judge Mary Hannah Leavitt and Judges Renée Cohn Jubelirer, Patricia A. McCullough, Anne E. Covey, Michael H. Wojcik, Christine Fizzano Cannon, and Ellen Ceisler.

The court's opinion first sustained DHS's preliminary objection that Providers do not have standing to bring this lawsuit on behalf of their patients because they "lack standing to vindicate the constitutional rights of third parties." *Id.* at 15. Judge Ellen Ceisler dissented on this point, concluding that Providers "argue persuasively" that Pennsylvania precedent "confers standing in the circumstances of this case." *Id.* at EC-2.

On the merits, the court unanimously held that Providers' constitutional claims were foreclosed by this Court's 1985 decision in *Fischer v. Department of Public Welfare*, 502 A.2d 114 (Pa. 1985). Without addressing Providers' substantive arguments that *Fischer* should be overturned, the Commonwealth Court concluded simply that, because *Fischer* addressed the same legal claims that are presented in this case, "[t]he petition for review does not state a claim upon which relief can be granted." PObj. Op. 20.[9]

On April 26, 2021, Providers filed their Notice of Appeal and Jurisdictional Statement, and this Court noted probable jurisdiction on August 2, 2021.

VI. SUMMARY OF ARGUMENT

The coverage ban unconstitutionally discriminates against pregnant women enrolled in Medical Assistance who choose abortion. There is no sex-

[9] The Commonwealth Court did not address House Legislators' preliminary objections related to separation of powers, federal preemption, and mandamus.

specific medical care for men that Medical Assistance excludes from coverage. Furthermore, Medical Assistance covers pregnancy and childbirth, but excludes abortion. These discriminatory coverage provisions violate the Pennsylvania Constitution's Equal Rights Amendment and equal protection guarantees.

Although the Commonwealth Court was bound to follow the Pennsylvania Supreme Court's 1985 ruling in *Fischer*, this Court is not, and should overrule this grievously flawed and harmful decision. Not only was *Fischer* poorly reasoned at the time it was decided, but an independent assessment shows that doctrinal and factual developments since 1985 undermine its legitimacy. Rather than reaffirm *Fischer*, this Court should restore to the Pennsylvania ERA the power and vitality promised by its plain language and recognized by this Court in a body of vibrant case law following its ratification. Far from being a mere echo of federal law, the ERA prohibits Pennsylvania from carving out abortion, a sex-linked medical service, from its Medicaid program. The coverage ban's infringement upon the fundamental right to abortion likewise violates the more robust equal protection provisions of the Pennsylvania Constitution. This Court should declare that the coverage ban discriminates against indigent women who exercise their reproductive choice because it covers all pregnancy-related services for women who choose to continue their pregnancies but excludes coverage for women who choose to have abortions.

On the question of standing, contrary to the Commonwealth Court's opinion, a well-developed and longstanding body of decisions from this Court establishes that Providers have standing in this case. Their interests fit within Pennsylvania's traditional standing test, a test this Court has repeatedly used to determine whether a plaintiff can assert the constitutional rights of a third party. Properly applying this test here yields the same conclusion the U.S. Supreme Court and every state supreme court that has addressed the issue has reached: abortion providers are proper plaintiffs to assert their patients' constitutional rights.

Finally, Legislators are improper intervenors. They do not have a legally enforceable interest in the constitutionality of the coverage ban because the requested relief does not impinge on their authority as legislators. The Commonwealth Court's incorrect holding to the contrary relied on the flawed belief that Providers are seeking to dictate how the General Assembly should budget and appropriate funds. Instead, Providers request only that the coverage ban be declared unconstitutional and its enforcement enjoined. If this Court were to affirm the Commonwealth Court's decision allowing intervention, individual legislators effectively will have a boundless right to intervene in any suit that could possibly impact legislative appropriations. Under this Court's well-established precedent, a legislator's right to intervene exists only where the issues in the matter would establish a "concrete impairment" or "palpable infringement" of a specific

legislative right. Because Legislators' general interest in this constitutional challenge does not clear this high bar, the panel's decision granting intervention should be reversed.

VII. ARGUMENT

A. PROVIDERS HAVE STANDING TO CHALLENGE THE COVERAGE BAN ON BEHALF OF THEIR PATIENTS.

The Commonwealth Court's decision denying standing to Providers to litigate their patients' constitutional claims[10] is a singular outlier among federal and state court decisions that have considered the issue and ignores or misreads this Court's standing jurisprudence. Providers have alleged multiple ways—all of which must be taken as true for purposes of deciding the case at this stage—in which they are substantially, directly, and immediately adversely affected by the Pennsylvania coverage ban. R.139a-140a, ¶¶ 84-87. Thus, Providers have standing to bring this challenge on behalf of their patients.

1. Under this Court's Well-Established Jurisprudence, Providers Have Standing.

This Court applies the same basic standing rules whether a plaintiff seeks to raise its own rights or those of a third party. "The core concept of these rules is that a person who is not adversely affected in any way by the matter he

[10] The Commonwealth Court also rejected the "[a]lternative[]" argument that Providers have standing to sue to vindicate their own rights. PObj. Op. 13-14. However, Providers are not seeking standing to raise their own rights. R.124a, ¶ 39. Thus, this part of the Commonwealth Court's opinion addresses an issue not raised in this case.

seeks to challenge is not 'aggrieved' thereby and has no standing to obtain a judicial resolution of his challenge." *William Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 269, 280 (Pa. 1975).

In *William Penn Parking*, this Court elaborated on the three basic requirements to show who exactly is "aggrieved": litigants can bring suit when they have a substantial, direct, and immediate interest in the matter being litigated. *Id.* at 286. Regarding the first prong, the Court said that "the requirement of a 'substantial' interest simply means that the individual's interest must have substance—there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." *Id.* at 282. Regarding the second, the Court wrote that "'direct' simply means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which he complains." *Id.* And finally, regarding "immediate," the Court said this term means that the interest must not be "a remote consequence of the judgment." *Id.* at 283.

Of particular importance to the case here is that *William Penn Parking* developed and applied these rules in a case in which the litigants were raising the rights of a third party not before the court. In that case, parking lot operators were challenging the imposition of a city tax on their patrons. *Id.* at 287. As a result of their patrons having to pay the tax, the parking lot operators alleged that the

operators "will suffer substantial losses of net income due to a reduced patronage of their facilities." *Id.* at 288. The City of Pittsburgh objected that only the patrons paying the tax could challenge its validity, not the parking lot operators. *Id.* Without adopting any special test for third-party standing, the Court analyzed the substantial, direct, and immediate factors to conclude that the parking lot operators could raise the claims of their patrons. On the first two factors, the Court wrote that "[s]urely the interest [the parking lot operators] claim is direct, for a declaration that the ordinance is invalid would obviate either injury alleged. It is also substantial, for they claim pecuniary loss rather than merely relying upon an abstract interest in full compliance with the law." *Id.* at 289. On the final factor of immediacy, the Court explained that "[w]hile the tax falls initially upon the patrons of the parking operators, it is levied upon the very transaction between them. Thus the effect of the tax upon their business is removed from the cause by only a single short step." *Id.*

This case is on all fours with *William Penn Parking*. Just as the parking lot operators claimed they were harmed by their patrons being taxed unlawfully, Providers here claim that they are injured by a legal harm done to their patients. In *William Penn Parking*, the substantial harm was lost business for the parking lot operators; here, Providers' substantial harm is increased expenditures in covering patients' costs, lost staff time in working to help patients obtain funding,

and an altered provider-patient relationship because of interactions that focus on financial matters rather than exclusively on medical issues. R.139a-140a, ¶¶ 84-87. These are concrete harms that cannot be considered abstract or shared by the general public. Moreover, just as in *William Penn Parking*, the Providers' interest is "direct" because striking down the coverage ban would "obviate [the] injury alleged" to Providers, as there would no longer be a barrier to Medicaid abortion coverage for low-income patients. 346 A.2d at 289. And, finally, just as in *William Penn Parking*, their interest is "immediate" because there is "only a single short step" between Medicaid coverage for Providers' patients and alleviating the harm Providers claim. *Id.* If parking lot operators have standing to challenge a purportedly unlawful tax on their patrons, then certainly abortion providers have standing to challenge a claimed infringement of their patients' constitutional rights.

In *William Penn Parking*, this Court understood that it was applying its ordinary standing principles to a case of third-party standing. In particular, in the section of the opinion discussing the parking lot operators' ability to raise the rights of their patrons (instead of their own rights), this Court examined two U.S. Supreme Court cases involving third-party standing, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and *Truax v. Raich*, 239 U.S. 33 (1915). *See William Penn Parking*, 346 A.2d at 289. The Court described both as follows: "In each case the regulation was directed to the conduct of persons other than the plaintiff. However,

the fact that the regulation tended to prohibit or burden transactions between the plaintiff and those subject to the regulation sufficed to afford the plaintiff standing." *Id*.[11] Here, as in these two cases and *William Penn Parking*, the coverage ban burdens transactions between the Providers and those subject to the regulation, their patients, thus sufficing to afford Providers standing.

An additional standing case involving rights of parties not before the court cited and overruled in *William Penn Parking* bolsters Providers' standing claim: *Northwestern Pennsylvania Automatic Phonograph Ass'n v. Meadville*, 59 A.2d 907 (Pa. 1948). *See William Penn Parking*, 346 A.2d at 290. The Court said that the 1948 decision rejecting standing for a jukebox owners association raising the rights of businesses that lease their machines was wrongly decided because it "exhibit[ed] an insufficient appreciation of the importance of secondary effects" on the association. *Id.* As Providers here have pled, Medicaid patients suffer greatly from the coverage ban, but the secondary effects on Providers themselves are substantial, direct, and immediate. R.139a-140a, ¶¶ 84-87.

Since *William Penn Parking* was decided, this Court has repeatedly assessed third-party standing under the basic three-pronged standing test. For instance, in *Robinson Township*, this Court found standing for a doctor to assert the

[11] Both cases cited by this Court are widely considered early examples of the third-party standing doctrine. *See* Henry P. Monaghan, *Third Party Standing*, 84 Colum. L. Rev. 277, 287 (1984) ("[T]hese cases are now widely understood as early illustrations of jus tertii [third-party] standing.").

rights of his patient. 83 A.3d at 924-25. The doctor explained many ways in which he himself was harmed, but the Commonwealth argued that his harm "is based on the rights of his patients." *Id.* at 923-24. Addressing a very similar situation as Providers here allege, the Court wrote that "[t]he Commonwealth's attempt to redefine Dr. Khan's interests and minimize the actual harm asserted is unpersuasive [because he] must choose between equally unappealing options and where the third option, here refusing to provide medical services to a patient, is equally undesirable." *Id.* at 924. Accordingly, the Court found the doctor's interests substantial, direct, and immediate, concluding that the outcome of the case will affect whether the doctor "will accept patients and may affect subsequent medical decisions in treating patients." *Id.* The same is true here. Providers are faced with the choice Dr. Khan faced: the "unappealing" option of accepting Medicaid patients despite the coverage ban and incurring higher costs, increased staff time, and medically-unnecessary patient counseling and the "equally undesirable" option of "refusing to provide medical services to a patient" because Medicaid will not cover their care. Just as Dr. Khan had standing to raise the rights of his patients in *Robinson Township* when faced with that choice, under well-established standing principles, Providers have standing as well.

This Court also found standing in *Dauphin County Public Defender's Office v. Court of Common Pleas*, for public defenders to raise claims on behalf of

their possible future clients. 849 A.2d 1145, 1148-49 (Pa. 2004). In its briefing to this Court, the defendant claimed that a general challenge to new eligibility requirements for representation must be made by a "criminal defendant who will go unrepresented unless he retains counsel." Brief for Respondent, *Dauphin Cnty. Pub. Defender's Office v. Court of Common Pleas*, 849 A.2d 1145 (Pa. 2004) (No. 145 MM 2003). This Court flatly rejected this attempt to deny standing by applying the three *William Penn Parking* factors. *Dauphin Cnty.*, 849 A.2d at 1148-49. The lesson from this case is the same as that from *William Penn Parking*: this Court does not use any special test in cases of third-party standing, but rather uses the traditional substantial, direct, and immediate factors in order to determine if a party is aggrieved and has standing. *Id.* Moreover, Providers' claim of standing on behalf of their future patients here shares all the hallmarks of the public defenders' claim of standing on behalf of their future clients.

Finally, even in a case that rejected an attempt by a plaintiff to assert the rights of others, this Court made clear that it broadly accepts claims of third-party standing under its traditional standing analysis. In *In re Hickson*, 821 A.2d 1238 (Pa. 2003), this Court found that an attorney lacked standing to seek judicial review of the district attorney's disapproval of the attorney's private criminal complaint against state parole agents who shot and killed a man who had no relationship to the attorney. *Id.* at 1245-46. This Court denied standing because the

attorney had "not established any peculiar, individualized interest in the outcome of the litigation that is greater than that of any other citizen." *Id.* at 1245. While the Court made clear that *this* plaintiff did not have standing, it recognized that *other* possible plaintiffs raising the rights of others would be judged by whether the injury was substantial, direct, and immediate. *Id.* In fact, the Court broadly conceived who could have standing beyond relatives and explained that "it is possible that other individuals who are not related to the victim may be able to [meet the standing test]." *Id.* Thus, without using the term, *Hickson* recognized that plaintiffs have standing to raise the rights of others not before the court if they satisfy the traditional *William Penn Parking* test.

The Commonwealth Court's decision effectively ignored this Court's jurisprudence applying traditional standing factors to third-party standing cases. It did recite the *William Penn Parking* factors, *see* PObj. Op. 8, but it improperly applied a "zone of interests" test and equated it with *William Penn Parking*'s "immediate" prong. The Commonwealth Court reasoned that Providers' harm is not part of the protected interests in either the Abortion Control Act or the Pennsylvania Constitution. PObj. Op. 15.

The Commonwealth Court's use of the "zone of interests" test as the equivalent of the "immediate" prong of this Court's standing test is error. In 2010, this Court recognized that its precedents had been "arguably unclear" about

whether the "zone of interests" test was an additional factor of standing analysis and held that it was not. *Johnson v. American Standard*, 8 A.3d 318, 333 (Pa. 2010). "When the standards for substantiality, directness, and immediacy are readily met, the inquiry into aggrievability, and therefore standing, ends." *Id.* This Court continued that if the immediacy prong is not apparent, a court "may (and should)" conduct a "zone of interests" analysis but that "such a consideration is merely a guideline that may be used to find immediacy, and not as an absolute test." *Id.* The Commonwealth Court did exactly what this Court warned against—it used the "zone of interests" analysis as an "absolute test" to determine if the Providers' interest was immediate.

Instead, the Commonwealth Court should have looked solely at whether the harm alleged by Providers had an immediate causal connection to the coverage ban. As analyzed above, the harm Providers allege is the result of caring for patients without Medicaid coverage because of the coverage ban and is, like the harm to the parking lot operators from their patrons being taxed in *William Penn Parking*, "removed from the cause by only a single short step." 346 A.2d at 289. This connection satisfies the immediacy requirement, which means the Commonwealth Court should not have considered "zone of interests," let alone made it a test.

2. If this Court Adopts the Commonwealth Court's Test for Third-Party Standing, Providers Meet that Test.

If this Court were to adopt the specific test for third-party standing from *Singleton v. Wulff*, 428 U.S. 106 (1976), used by the Commonwealth Court and the U.S. Supreme Court, that test also necessitates finding Providers have standing here. In *Singleton,* a case factually identical to this case, the U.S. Supreme Court allowed abortion providers to assert the constitutional rights of their patients in challenging a state's ban on Medicaid coverage of abortion. *Id.* The Court's plurality opinion initially found that the providers had met the basic federal Article III requirements of standing, having suffered concrete injury in being denied payment for abortions through the state's Medicaid program. *Id.* at 112-13. The Court then found that the providers could raise their patients' claims because the lawsuit met two additional requirements for third-party standing: (a) that "the enjoyment of the [third party's] right is inextricably bound up with the activity the litigant wishes to pursue," and (b) there is a "genuine obstacle" to the third party asserting their own rights. *Id.* at 114-16.

The U.S. Supreme Court found both of these additional elements present when abortion providers assert their patients' constitutional interests. As to the closeness of the relationship, the Court explained that a patient cannot obtain an abortion without the abortion provider, making the provider "uniquely qualified to litigate the constitutionality of the State's interference with, or discrimination

against, that decision." *Id.* at 117. As to the patient obstacles, the Court recognized two barriers: the threat to the patient's privacy from the inevitable publicity in a high-profile lawsuit and the impending mootness of the case given the dwindling nature of the window to have an abortion. *Id.* at 117-18. Therefore, the Court concluded that "it generally is appropriate to allow a physician to assert the rights of women patients as against governmental interference with the abortion decision." *Id.* at 118. Because Providers here are, as in *Singleton*, also abortion providers challenging the state's ban on Medicaid coverage of abortion, if this Court were to adopt the principles from that case for assessing claims of third-party standing, it would require a finding of third-party standing in this case as well.

The Commonwealth Court engaged in analytical gymnastics to reach the remarkable conclusion that while the test from *Singleton* applied to this case, the factual analysis—of identical facts—did not.[12] POBj. Op. 9-14. The Commonwealth Court attempted to differentiate *Singleton* for three reasons: first, that the court "ha[d] no way of knowing that the patients on whose behalf [Providers] purport to speak even want this assistance"; second, that no facts show

[12] The irony here is that the Commonwealth Court took a stricter view of standing than the U.S. Supreme Court even though Pennsylvania standing law is more flexible and expansive than federal standing law. *See Fumo v. City of Phila.*, 972 A.2d 487, 500 n.5 (Pa. 2009) (noting that in Pennsylvania standing is merely prudential whereas under federal law standing is both constitutional and prudential); *Armstead v. Zoning Bd. of Adjustment*, 115 A.3d 390, 402 (Pa. Commw. Ct. 2015) (Pellegrini, J., concurring) ("Pennsylvania courts are much more expansive in finding standing than their federal counterparts.").

Providers' interests are interwound with their patients' rights; and third, that there was no reason why the patients impacted by the coverage ban could not have brought their own claims. *Id.* at 12.

The Commonwealth Court's reasoning is unsupportable. First, the Commonwealth Court's assertion that it could not know whether Providers speak on behalf of their patients rests on a clear misunderstanding of Providers' claims. The court wrote that Providers "do not have standing to vindicate the constitutional rights of *all women on Medical Assistance*, some of whom may not be their patients, and who may or may not agree with the claims asserted on their behalf in the petition for review." *Id.* at 14 (emphasis added). To the contrary, the Petition clearly indicates that Providers sue only on behalf of a focused subset of women on Medical Assistance: "[Providers] sue on behalf of their patients who seek abortions and who are enrolled in or eligible for Medical Assistance, but whose abortions are not covered because of the Pennsylvania coverage ban." R.124a, ¶ 39. Thus, the Commonwealth Court's rejection of this element of third-party standing is fundamentally flawed.

Focusing on the actual group on whose behalf Providers sue leads to a different conclusion than the Commonwealth Court reached. It is self-evident that low-income abortion patients want Providers' assistance because they go to abortion clinics seeking an abortion. The realities of poverty are such that the price

of an abortion is beyond the capacity of an indigent patient to pay. As explained in depth by expert Colleen M. Heflin: "Given that low-income households are already struggling to get by each month, there is no margin for these households to handle an unexpected expense, such as to cover abortion services for an unwanted pregnancy." R.161a, ¶ 19. Given this reality, it defies logic to state that there is no way to know whether a low-income patient who goes to an abortion clinic seeking an abortion would actually "want [the] assistance" of having Medicaid pay for the abortion at no cost to the patient. PObj. Op. 12.

Second, patients and their medical providers are sufficiently connected such that the provider is a proper representative of the patients' interests. The U.S. Supreme Court explained this in clear terms in *Singleton*, stating that "[a]side from the woman herself, therefore, the physician is *uniquely qualified* to litigate the constitutionality of the State's interference with, or discrimination against, that decision." 428 U.S. at 117 (emphasis added); *see also June Medical Services v. Russo*, 140 S. Ct. 2103, 2119 (2020) (plurality opinion) (describing providers as the "most 'obvious' claimants"). The Commonwealth Court offered no explanation for rejecting this analysis other than stating that Pennsylvania courts are not bound by the standing jurisprudence of the U.S. Supreme Court. PObj. Op. 11-12. While that is axiomatically true, simply disagreeing with the U.S. Supreme Court without any supporting rationale is not legal reasoning. Nor is it

persuasive reasoning given the intimate connection between medical providers and patients, a connection long-recognized by this Court. *See, e.g.*, *Thierfelder v. Wolfert*, 52 A.3d 1251, 1274 (Pa. 2012) (recognizing the "relationship based on trust and the general duty of care that any doctor owes to his patients"); *Althaus v. Cohen*, 756 A.2d 1166, 1169-70 (Pa. 2000) (describing the "professional obligations and legal duties" related to the care a doctor provides to the patient); *see also* Br. for *Amicus Curiae* Medical Organizations. Applying these "legal and ethical obligations" doctors have to their patients, this Court has previously granted doctors the right to sue on behalf of their patients. *See Robinson Twp.*, 83 A.3d at 924-25.

Finally, the Commonwealth Court claimed that it could "ascertain no reason" why abortion patients could not sue on their own behalf, PObj. Op. 12, but both Judge Ceisler's dissenting opinion, *see id.* at EC-4, and *Singleton* set forth "several obstacles" in depth:

> For one thing, she may be chilled from such assertion by a desire to protect the very privacy of her decision from the publicity of a court suit. A second obstacle is the imminent mootness, at least in the technical sense, of any individual woman's claim. Only a few months, at the most, after the maturing of the decision to undergo an abortion, her right thereto will have been irrevocably lost, assuming, as it seems fair to assume, that unless the impecunious woman can establish Medicaid eligibility she must forgo abortion. *It is true that these obstacles are not insurmountable* [but] there seems little loss in terms

> of effective advocacy from allowing its assertion by a physician.

428 U.S. at 117-18 (emphasis added); *see also* Br. for *Amicus Curiae* National Women's Law Center (discussing violent and coercive targeting of pregnant patients by anti-abortion extremists).[13]

Moreover, that some abortion patients do sue on their own, *see* PObj. Op. 13 (discussing *Fischer v. Dep't of Pub. Welfare*, 444 A.2d 774 (Pa. Commw. Ct. 1982)[14]), does not mean *every* abortion case requires an abortion patient as plaintiff. Were that the case, then standing would have been defeated in each of this Court's aforementioned third-party standing cases: the parking patrons could have sued in *William Penn Parking*; the patients could have sued in *Robinson Township*; and the indigent criminal defendants could have sued in

[13] The barriers preventing abortion patients from directly suing to enjoin abortion restrictions are so impenetrable that it is no wonder that eliminating third-party standing in abortion litigation is a prize sought by anti-abortion policy groups. *See* Elizabeth Slattery, "Revisiting Third-Party Standing in the Context of Abortion," Heritage Foundation (Mar. 4, 2020), http://www.heritage.org/life/report/revisiting-third-party-standing-the-context-abortion.

[14] Although this iteration of *Fischer* did involve a patient as plaintiff, the Commonwealth Court in that case also approved an abortion provider having standing on behalf of patients. In that ruling, an evenly divided *en banc* panel of the Commonwealth Court denied a preliminary objection based on the doctrine of third-party standing. 444 A.2d at 781-82. The three judges who voted to sustain the preliminary objection on standing did so because the abortion provider alleged no injury other than that which a general taxpayer would have. *Id*. at 779. Here, Petitioners have extensively detailed how they themselves are harmed by the funding ban, *see* R.139a-140a, ¶¶ 84-87, which this Court must accept as true at this stage of the case. Therefore, the opinion from the three judges who argued against standing in the Commonwealth Court's *Fischer* decision is not applicable here.

Dauphin County.[15] However, never has this Court or the U.S. Supreme Court required an "insurmountable" obstacle to establish third-party standing; rather, as the U.S. Supreme Court made clear in *Singleton*, genuine obstacles that make it more difficult (though not impossible) for the third party to litigate suffice. *See also, e.g.*, *Powers v. Ohio*, 499 U.S. 400 (1991) (recognizing third-party standing for criminal defendants to challenge racial exclusion of jurors even though jurors could potentially sue on their own behalf); *King v. Governor of N.J.*, 767 F.3d 216, 244 n.28 (3d Cir. 2014) (stating that even where a third party manages to overcome obstacles, standing is "not necessarily preclude[d]").

The *Singleton* factors support third-party standing here. Because of the intimate relationship between doctors who provide abortions and their patients, which this Court has previously recognized, the patients' rights are inextricably intertwined with Providers' ability to care for them, making Providers "fully, or very nearly, as effective a proponent of the right" as their patients. 428 U.S. at 115. And like the patients in *Singleton*, abortion patients face several "genuine obstacle[s such that] the third party's absence from court loses its tendency to suggest that [her] right is not truly at stake, or truly important to [her]." *Id.* at 116.

[15] And in *Hickson*, this Court would have required the decedent's estate to bring its own action rather than suggesting alternative plaintiffs.

Thus, if this Court adopts and applies *Singleton* to resolve this case, Providers meet its test and can properly assert the rights of their patients here.

3. Every State and U.S. Supreme Court Decision to Address the Issue Has Granted Abortion Providers Third-Party Standing to Assert the Rights of Their Patients.

Affirming the Commonwealth Court's decision denying standing for abortion providers on behalf of their patients would make Pennsylvania an outlier. The U.S. Supreme Court has repeatedly allowed abortion providers to assert the rights of their patients, and every state supreme court to directly or indirectly address this issue has done the same. Pennsylvania should join this unanimous chorus.

Singleton established the basic principle that abortion providers can sue on behalf of their patients. Last year, Louisiana directly attacked *Singleton*, but the U.S. Supreme Court answered the challenge unequivocally: "We have long permitted abortion providers to invoke the rights of their actual or potential patients in challenges to abortion-related regulations [and this] long line of well-established precedents foreclose[s] [Louisiana's] belated challenge to the plaintiffs' standing." *June Medical*, 140 S. Ct. at 2118-20 (plurality opinion) (citing nine Supreme Court cases other than *Singleton* that allowed abortion providers to sue on behalf of their patients); *id.* at 2139 n.4 (Roberts, C.J.,

concurring in judgment) (agreeing with the plurality to form a majority on this point).

Other state supreme courts are in uniform agreement with the U.S. Supreme Court. Indeed, eleven state supreme courts have addressed this issue and specifically held that abortion providers have standing to litigate on behalf of their patients,[16] and at least twelve others have allowed, without discussion, an abortion provider to raise patient claims.[17] *In fact, Providers are not aware of a single state supreme court rejecting a claim that abortion providers have standing to raise their patients' constitutional claims.* The Alaska Supreme Court's observation about this area of the law is, aside from the Commonwealth Court decision below, just as true today as it was twenty years ago: "That physicians have standing to

[16] *Comprehensive Health of Planned Parenthood of Kan. and Mid-Mo. v. Kline*, 197 P.3d 370 (Kan. 2008); *Feminist Women's Health v. Burgess*, 651 S.E.2d 36 (Ga. 2007); *Planned Parenthood of Kan. and Mid-Mo. v. Nixon*, 220 S.W.3d 732 (Mo. 2007) (en banc); *State v. Planned Parenthood of Alaska*, 35 P.3d 30 (Alaska 2001); *Armstrong v. State*, 989 P.2d 364 (Mont. 1999); *Pro-Choice Miss. v. Fordice*, 716 So. 2d 645 (Miss. 1998); *N.M. Right to Choose v. Johnson*, 975 P.2d 841 (N.M. 1998); *Planned Parenthood League v. Bell*, 677 N.E.2d 204 (Mass. 1997); *Davis v. Fieker*, 952 P.2d 505 (Okla. 1997); *Cheaney v. State*, 285 N.E.2d 265 (Ind. 1972); *Ballard v. Anderson*, 484 P.2d 1345 (Cal. 1971).

[17] *Planned Parenthood of the Heartland v. Reynolds*, 915 N.W.2d 206 (Iowa 2018); *Gainesville Woman Care v. State*, 210 So. 3d 1243 (Fla. 2017); *MKB Management Corp. v. Burdick*, 855 N.W.2d 31 (N.D. 2014) (per curiam); *Hope Clinic for Women v. Flores*, 991 N.E.2d 745 (Ill. 2013); *Humphreys v. Clinic for Women*, 796 N.E.2d 247 (Ind. 2003); *Simat Corp. v. Ariz. Health Care Cost Containment Sys.*, 56 P.3d 28 (Ariz. 2002); *Bell v. Low Income Women of Tex.*, 95 S.W.3d 253 (Tex. 2002); *Planned Parenthood of Middle Tenn. v. Sundquist*, 38 S.W.3d 1 (Tenn. 2000); *Hope v. Perales*, 634 N.E.2d 183 (N.Y. 1994); *Women's Health Ctr. v. Panepinto*, 446 S.E.2d 658 (W.V. 1993); *Right to Choose v. Byrne*, 450 A.2d 925 (N.J. 1982); *Simopoulos v. Commonwealth*, 277 S.E.2d 194 (Va. 1981).

challenge abortion laws on behalf of prospective patients seems universally settled." *Planned Parenthood of Alaska*, 35 P.3d at 34.

The Commonwealth Court has offered no reason why Pennsylvania should become a singular outlier on this issue that has been universally settled for almost half a century. The correct application of this Court's well-established principles of standing compels reversal of the Commonwealth Court's order denying Petitioners standing to raise the constitutional rights of their patients.

B. THE COVERAGE BAN VIOLATES THE PENNSYLVANIA CONSTITUTION'S EQUAL RIGHTS AMENDMENT.

This Court should overrule *Fischer*. Its holding with respect to the Pennsylvania ERA was legally incorrect, illogical, and based on a flawed, long-discredited analytical framework for reviewing pregnancy-based classifications. Moreover, *Fischer* relies exclusively on federal constitutional law rather than the independent and textually-distinct Pennsylvania ERA. It is long past time to overrule *Fischer* and conclude that the coverage ban violates the Pennsylvania ERA.

1. The Pennsylvania ERA Categorically Prohibits the Use of Sex-Based Legislative Classifications.

For half a century, the Pennsylvania ERA has proclaimed that "[e]quality 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. In the years following the ERA's adoption in 1971, this Court's cases applying and interpreting this core constitutional principle had two notable features. First, this Court recognized that the ERA established an absolute ban on legislative classifications that confer different benefits or burdens on women and men. *See Henderson v. Henderson*, 327 A.2d 60, 62 (Pa. 1974). In *Henderson*, this Court stated emphatically:

> The thrust of the Equal Rights Amendment is to insure equality of rights under the law and to eliminate sex as a basis for distinction. The sex of citizens of this Commonwealth is no longer a permissible factor in the determination of their legal rights and legal responsibilities. The law will not impose different benefits or different burdens upon the members of a society based on the fact that they may be man or woman.

Id.; *see also* Phyllis W. Beck & Joanne Alfano Baker, *An Analysis of the Impact of the Pennsylvania Equal Rights Amendment*, 3 Widener J. Pub. L. 743, 745 (1994) (noting this Court's "absolutist interpretation" of the ERA).

Second, this Court has looked especially probingly at sex-based classifications rooted in traditional gender stereotypes. To the extent a statutory scheme's differential benefits and burdens "rely on and perpetuate stereotypes," this Court subjects them to intense and unflinching judicial review. *Hartford Accident & Indem. Co. v. Ins. Comm'r of the Commonwealth*, 482 A.2d 542, 548 (Pa. 1984) (striking sex-based insurance rates). Recognizing that laws arising from

traditional gender stereotypes harm both men and women, *Hartford* noted that "[w]e have not hesitated to effectuate the Equal Rights Amendment's prohibition of sex discrimination by striking down statutes and common law doctrines 'predicated upon traditional or stereotypic roles of men and women.'" *Id*. (quoting *Commonwealth ex rel. Spriggs v. Carson*, 368 A.2d 635, 639 (Pa. 1977)).

In the years between Pennsylvania's adoption of the ERA and *Fischer*, this Court consistently and emphatically applied these absolute principles to invalidate an array of sex-discriminatory laws. *See, e.g.*, *Hartford*, 482 A.2d at 548; *Spriggs*, 368 A.2d at 639-40 ("Tender Years Doctrine") (plurality opinion); *Adoption of Walker*, 360 A.2d 603, 605 (Pa. 1976) (statutory distinction between unwed mothers and unwed fathers); *Butler v. Butler*, 347 A.2d 477, 480 (Pa. 1975) (wife's entitlement to constructive trust if husband obtains wife's property without adequate consideration); *Commonwealth v. Santiago*, 340 A.2d 440, 445-46 (Pa. 1975) (common law presumption that married woman, committing a crime in her husband's presence, was unwilling participant); *DiFlorido v. DiFlorido*, 331 A.2d 174, 180 (Pa. 1975) (property acquired in anticipation of or during marriage and which has been possessed and used by both spouses will, in the absence of contrary evidence, "be presumed to be held jointly by the entireties"); *Henderson*, 327 A.2d at 62 (statutory scheme awarding alimony *pendente lite* and counsel fees only to wife and not husband); *Commonwealth v. Butler*, 328 A.2d 851, 855-57 (Pa. 1974)

(statutory parole eligibility for women but not men); *Conway v. Dana*, 318 A.2d 324, 326 (Pa. 1974) (presumption that father must bear principal burden of financial support for couple's children); *Hopkins v. Blanco*, 320 A.2d 139, 140 (Pa. 1974) (sex-specific loss of consortium claims). At the same time that Pennsylvania courts were applying the ERA to invalidate discriminatory statutes and common law doctrines, the Pennsylvania legislature and Attorneys General obviated the need to litigate dozens of other discriminatory statutes and rules by repealing them, suspending them, or conforming them to sex-equitable standards.[18]

As this line of precedent demonstrates, this Court applied the ERA's sex equality rule to strike down legislative classifications that apportion benefits and burdens unequally between men and women, with particular vigor where the sex-based classification is grounded in gender stereotypes.

[18] *See, e.g.*, Pa. Att'y Gen. Op. No. 69 (1971) (cosmetologists may treat men's as well as women's hair); Pa. Att'y Gen. Op. No. 71 (1971) (ERA impliedly repealed provision of Child Labor Law, 43 P.S. § 48, prohibiting female but not male minors between 12-21 years old from employment as newspaper carriers); Pa. Att'y Gen. Op. No. 150 (1972) (declaring unenforceable provisions of the Parole Act, 61 P.S. § 331.28, limiting hiring of female parole officers for only those positions needed to supervise female parolees); Pa. Att'y Gen. Op. No. 41 (1973) (declaring unenforceable 4 P.S. § 30.310 denying women eligibility for wrestling and boxing licenses); Pa. Att'y Gen. Op. Nos. 62, 72 (1973) (suspending state statutory provisions preventing women from choosing to use their married or unmarried surname on drivers' licenses, vehicle registrations, and voter registration applications); Pa. Att'y Gen. Op. No. 75-30 (1975) (declaring void and unenforceable 61 P.S. § 55, which prohibited official visitors from interviewing prisoners who were not the same sex); Pa. Att'y Gen. Op. No. 76-6 (1976) (extending death benefits for state employees killed in line of duty to surviving spouses regardless of sex).

2. *Fischer* Abandoned the ERA's Powerful Command and Now Should Be Overruled.

In a complete departure from the ERA precedent discussed above, *Fischer* focused neither on the language of the ERA nor, other than summarily, on the body of jurisprudence construing that constitutional provision. *Fischer*, 502 A.2d at 126. Instead, the *Fischer* Court wrote that pregnancy is "unique as to have no concomitance in the male of the species" and hence is beyond the ERA's reach. *Id*. Thus, *Fischer* held that the coverage ban is not discriminatory because differential treatment is "reasonably and genuinely based" on women's reproductive capacity. *Id.* at 125 (quoting *People v. Salinas*, 551 P.2d 703, 706 (Colo. 1976)).

This Court should overrule *Fischer*. As this Court has recently noted, "[W]e underscore that we are not bound to follow precedent when it cannot bear scrutiny, either on its own terms or in light of subsequent developments." *William Penn Sch. Dist. v. Pa. Dep't of Educ*., 170 A.3d 414, 456 (Pa. 2017); *see also, e.g.*, *Yocum v. Commonwealth*, 161 A.3d 228 (Pa. 2017) (re-evaluating and overruling in part *Shaulis v. Pa. State Ethics Comm'n*, 833 A.2d 123 (Pa. 2003)). As the *William Penn* Court explained, "When presented with a case that hinges upon our interpretation and application of prior case law, the validity of that case law *always* is subject to consideration, and we follow the exercise of our interpretive function wherever it leads." *Id.* at 457 (emphasis added). Further, this Court has stated that

"the doctrine of stare decisis does not apply to pronouncements that are not adequately supported in reason." *Commonwealth v. Resto*, 179 A.3d 18, 22 (Pa. 2018).[19] Following the exercise of the interpretive function here leads to the clear conclusion that *Fischer* was not adequately supported in reason and must be abandoned.

3. The Coverage Ban Is a Prohibited Sex-Based Classification Arising from and Perpetuating Gender Stereotypes.

Here, the coverage ban, on its face, apportions Medicaid benefits unequally, excluding funding for an extremely common, sex-linked medical need of women while funding all reproductive medical needs for men. The coverage ban confers different benefits and burdens on the basis of sex, explicitly removing coverage for medical care for a sex-linked characteristic—the ability to become pregnant—from otherwise comprehensive coverage. Women enrolled in Medical Assistance are treated differently "on the basis of a physical condition peculiar to their sex. This is sex discrimination pure and simple." *Cerra v. E. Stroudsburg Area Sch. Dist.*, 299 A.2d 277, 280 (Pa. 1973). The coverage ban is therefore explicitly sex-based, in the same way that a hypothetical Medicaid program

[19] This Court recently quoted the former Chief Justice Robert von Moschzisker on this point: "If, after thorough examination and deep thought, a prior judicial decision seems wrong in principle or manifestly out of accord with modern conditions of life, it should not be followed as a controlling precedent, where departure therefrom can be made without unduly affecting contract rights or other interests calling for consideration." *Balentine v. Chester Water Auth.*, 191 A.3d 799, 810 n.5 (Pa. 2018).

covering uterine cancer treatment but not prostate cancer treatment would necessarily be explicitly sex-based, and thus invalid under the ERA.

Fischer adopted a broad exception to the ERA: where a classification turns on physical characteristics unique to one sex, differential treatment does not implicate equality concerns. *Fischer* postulated that "[i]n this world there are certain immutable facts of life which no amount of legislation may change. As a consequence, there are certain laws which necessarily will only affect one sex." 502 A.2d at 125. This broad exception for physical characteristics unique to one sex ignores the reality that to treat people differently on account of characteristics unique to one sex *is* to treat them differently on account of their sex. It exempted wholesale those classifications that turn on sex-linked physical characteristics, *id.* at 126, without analyzing the harm inflicted on women or whether the classification arose from or furthered prohibited stereotypes. With this misstep, *Fischer* removed from the ERA's reach discrimination stemming from women's reproductive capacity—the very characteristic that has historically been invoked to justify unfavorable treatment of women. *See, e.g.*, *Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 729 (2003) (surveying history of state sex discrimination based on stereotypes of women's "maternal function"); *Coleman v. Court of Appeals of Md.*, 566 U.S. 30, 56 (2012) (Ginsburg, J., dissenting) (noting that "pregnancy provided a central justification for the historic discrimination against

women"); Reva B. Siegel, *Employment Equality Under the Pregnancy Discrimination Act of 1978*, 94 Yale L. J. 929, 956 (1985) ("Women may raise a pregnancy-specific equality claim because society has consistently selected that 'difference' as a basis for their economic subordination."); *see also* Br. for *Amici Curiae* New Voices for Reproductive Justice, *et al*. (discussing history of coercive policies targeting women of color based on racialized gender stereotypes about reproduction).[20]

In removing discrimination based on reproductive capacity from the ERA's reach, *Fischer* ignored the ERA's goal of "eliminat[ing] sex as a basis for distinction." *Henderson*, 327 A.2d at 62. There is no valid limiting principle confining *Fischer* to regulation of abortion: taken to its logical conclusion, *Fischer*'s rationale could render the ERA powerless to address any disparate treatment involving any physical differences between men and women, including overt pregnancy discrimination—regardless of whether the physical difference played into and reinforced social stereotypes.

[20] A wealth of legal scholarship supports this principle. *See, e.g.*, Brief for Petitioner, *Struck v. Sec'y of Def.*, 409 U.S. 1071 (1972) (No. 72-178), at *38-46 ("[E]xaltation of woman's unique role in bearing children has, in effect, denied women equal opportunity to develop their individual talents and capacities and has impelled them to accept a dependent, subordinate status in society."); Michele Goodwin, *Challenging the Rhetorical Gag and TRAP: Reproductive Capacities, Rights, and the Helms Amendment*, 112 NW. U. L. REV. 1417, 1420 (2018) (noting that "[c]ourts played a profound role in conscribing women to second-class citizenship that denied them broad civic participation . . . by declaring that so-called laws of nature dictate women bearing children").

If all "physical characteristics unique to one sex" can be the basis of valid legislative classifications, discrimination based on reproductive capacity would be beyond the reach of the Pennsylvania ERA. Yet such discrimination is at the heart of sex inequality and should trigger more intense judicial review because "state control of a woman's reproductive capacity and exaggeration of the significance of biological difference has historically been central to the oppression of women." Sylvia Law, *Rethinking Sex and the Constitution*, 132 U. Penn. L. Rev. 955, 1008 (1984); *see also* Dorothy Roberts, *Killing the Black Body: Race, Reproduction and the Meaning of Liberty* 6 (2017) ("[R]egulating Black women's reproductive decisions has been a central aspect of racial oppression in America."). That such discrimination exacts a profound economic and social price from women is amply supported by the allegations in the Petition. *See supra* Part V.B.

Even if the coverage ban were conceptualized as a facially neutral provision, it would still run afoul of the ERA for two reasons. First, the ERA's remedial purpose—to ensure equality of rights under the law and to eliminate sex as a basis for distinction—prohibits even legislative schemes that appear neutral in form but are discriminatory in fact.[21] For example, in eliminating the overtly sex-based common law presumption that all property acquired during marriage was

[21] In this respect, the Pennsylvania ERA is more expansive than the federal Equal Protection Clause, which requires disparate impact claims to show evidence of an invidious discriminatory intent. *See Personnel Admin. v. Feeney*, 442 U.S. 256 (1979).

owned by the husband, this Court in *DiFlorido* rejected the lower court's alternative method of determining ownership according to who paid for the household good in question—a method that, while neutral on its face, "would fail to acknowledge the [e]qually important and often substantial nonmonetary contributions made by either spouse." 331 A.2d at 179. In ensuring that the Court's sex-neutral solution did not perpetuate structural gender inequality for the less wealthy spouse, the Court chose an approach that promoted not only formal, facial equality, but also substantive equality eradicating the disparate impact of the challenged practice. *See also Kemether v. Pa. Interscholastic Athletic Ass'n*, 1999 WL 1012957, at *20, No. 96-cv-6986 (E.D. Pa. Nov. 8, 1999) (finding an ERA violation where a practice "purport[s] to treat men and women equally" but "has the effect of perpetuating discriminatory practices" and thereby "placing an unfair burden on women").

Second, beyond its formal sex classification analysis, *Fischer* also ignored the unconstitutional gender stereotypes undergirding the coverage ban. Legal distinctions "predicated upon traditional or stereotypic roles of men and women" are incompatible with the ERA. *See Hartford*, 482 A.2d at 583 (quoting *Spriggs*, 368 A.2d at 639); *Hopkins*, 320 A.2d at 140-41. The coverage ban is entirely rooted in a gender-based stereotype. It buttresses the primacy of

childbearing and childrearing for women and, in doing so, expresses the state's disapproval of women who reject the maternal role:

> State restrictions on abortion rest on an implicit value judgment that women's natural roles as mothers take precedence over other aspects of their lives, including their own health, and that women cannot be trusted to make the moral determination themselves of whether to carry a pregnancy to term.

Deborah L. Brake & Susan Frietsche, "Women on the Court and the Court on Women," in *The Supreme Court of Pennsylvania: Life and Law in the Commonwealth, 1684-2017* at 167 (John J. Hare, ed. 2018). Thus, the coverage ban "rel[ies] on and perpetuate[s] stereotypes" as to the responsibilities and capabilities of men and women, in violation of the ERA. *See Hartford*, 482 A.2d at 548.

Fischer treated this important anti-stereotyping principle dismissively. Even though it twice quoted from cases that recognized how critical assessing stereotyping is, *Fischer*, 502 A.2d at 125 (quoting *Hartford*, 482 A.2d at 548); *id.* at 126 (quoting *Salinas*, 551 P.2d at 706), the Court brushed this principle aside and never addressed it.

4. The *Edmunds* Factors Require an Independent Interpretation of the Pennsylvania ERA Untethered to Federal Equal Protection Jurisprudence.

The ERA was added as an amendment to the Pennsylvania Constitution with the specific intention of providing greater protection from sex

discrimination than the federal Constitution offered at the time of the ERA's adoption. *Butler*, 328 A.2d at 856. Yet *Fischer*'s state constitutional analysis deliberately mirrored U.S. Supreme Court doctrine regarding the federal Equal Protection Clause, explicitly centering its analysis on "the relevant federal constitutional authorities." 502 A.2d at 118.

Tellingly, *Fischer*'s discussion of the ERA looked only fleetingly at the actual language of the ERA, which has no federal analog, and did not mine the body of state case law construing the ERA. This superficial treatment of the ERA is attributable in part to the *Fischer* Court's decision to define the protected classification not as sex, but as abortion, while offering as sole authority for that interpretive choice a dissenting opinion from the Massachusetts Supreme Court relying on the U.S. Supreme Court decision in *Harris v. McRae*, 448 U.S. 297 (1980). *See Fischer*, 502 A.2d at 125 & n.16 (citing *Moe v. Sec'y of Admin. & Fin.*, 417 N.E.2d 387, 405 (Mass. 1981) (Hennessy, C.J., dissenting)). In *Harris*, the U.S. Supreme Court found the federal coverage ban did not offend the federal Constitution, but did not consider Pennsylvania's constitutional provisions. 448 U.S. at 326.

Fischer determined that pregnancy-based classifications are beyond the reach of the ERA. *Id.* This line of reasoning tracked the widely critiqued U.S. Supreme Court decision *Geduldig v. Aiello*, 417 U.S. 484 (1974), which upheld a

pregnancy exclusion in a California disability insurance program based on the determination that pregnancy discrimination is not a form of sex discrimination under the Fourteenth Amendment's Equal Protection Clause. *Geduldig*, decided three years after the Pennsylvania ERA was ratified, does not control Pennsylvania law[22] and has lost vitality as federal precedent. As a leading sex discrimination scholar explained:

> Shortly after the Court decided *Geduldig*, the Court tried applying *Geduldig* to federal employment discrimination law and was roundly rebuked by the Congress, which amended Title VII in 1978 to clarify that distinctions on the basis of pregnancy are distinctions on the basis of sex, and to prohibit pregnancy discrimination in employment. . . . Citations to *Geduldig* in the Court's equal protection cases stop after these developments in the mid 1970s.

Reva B. Siegel, *The Pregnant Citizen, From Suffrage to Present*, 19th Amend. Ed. Georgetown L.J. 167, 208 n.229 (2020); *see also* Law, *Rethinking Sex*, *supra*, at 983-84 (describing widespread scholarly criticism of *Geduldig*). By the time *Fischer* decided that discrimination on the basis of decisions around pregnancy

[22] *Geduldig* has been cited just once by this Court, in 1974 as a counterpoint to the heightened level of scrutiny this Court uses under the ERA. *See Butler*, 328 A.2d at 858 n.20. *Geduldig* has never again appeared in this Court's opinions. Likewise, other Pennsylvania courts have cited it only five times, and not since 1984.

was not a form of sex discrimination, the federal precedent upon which it drew was already a dead letter.[23]

This Court should interpret Pennsylvania's unique constitutional provision independently of the federal Equal Protection Clause. For example, in rejecting insurers' argument that the state action doctrine rendered sex-discriminatory insurance rates not actionable under the ERA, *Hartford* drew a line in the sand against leveling the ERA down to the standards developed under federal equal protection case law:

> The rationale underlying the "state action" doctrine is irrelevant to the interpretation of the scope of the Pennsylvania Equal Rights Amendment, a state constitutional amendment adopted by the Commonwealth as part of its own organic law. The language of that enactment, not a test used to measure the extent of federal constitutional protections, is controlling.

Hartford, 482 A.2d at 586.

Fischer's interpretive error becomes even more obvious when analyzed through the subsequently-developed *Edmunds* framework for determining when to read the Pennsylvania Constitution more expansively than the federal Constitution. The *Edmunds* factors require analysis of:

[23] And continues to be a dead letter today. *See, e.g., Coleman*, 566 U.S. at 39 (explaining why there was no history of sex discrimination proven in the case by stating that "Congress did not document any pattern of States excluding pregnancy-related illnesses from sick-leave or disability-leave policies," thus assuming that had Congress done so it would have proven a history of sex discrimination).

1. the text of the Pennsylvania constitutional provision;

2. the history of the provision, including Pennsylvania case law;

3. related case law from other states;

4. policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.

Commonwealth v. Edmunds, 586 A.2d 887, 895 (Pa. 1991). Because this test had not yet been developed when *Fischer* was decided, Providers' ERA claim should be analyzed under this new framework. Doing so inevitably supports the conclusion that the ERA, unlike the extant interpretation of the Equal Protection Clause, prohibits excluding abortion from Medicaid coverage.

(a) *Edmunds* Factors: Text of Pennsylvania Constitution

With the ERA, the Pennsylvania Constitution contains an explicit prohibition against sex discrimination: "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. In contrast, the U.S. Constitution contains no such explicit prohibition. Rather, it guarantees "equal protection of the laws" with no mention of sex. It is only through judicial interpretation that the U.S. Constitution protects against some forms of sex discrimination. *See generally Craig v. Boren*, 429 U.S. 190 (1976). The federal Equal Rights Amendment has never been added to the U.S. Constitution. Thus, the Pennsylvania Constitution has

unique text explicitly prohibiting sex discrimination that the U.S. Constitution does not contain.

(b) *Edmunds* Factors: Historical Backdrop of the ERA

At the time the ERA was adopted in 1971, there is little question that a classification that disadvantaged women on the basis of pregnancy was widely regarded as facial sex discrimination. The ERA lacks legislative history, but contemporaneous interpretations of other sex discrimination prohibitions provide insight into its proper interpretation. Although these sources do not interpret the ERA itself, they demonstrate that, at the time of the ERA's adoption, the general understanding in Pennsylvania—by the Pennsylvania Human Relations Commission, the Attorney General, and this Court—was that the legal concept of sex discrimination included discrimination on the basis of pregnancy.[24]

In 1970 and 1971, the Pennsylvania Human Relations Commission issued guidelines interpreting the Human Relations Act's prohibition against sex discrimination to include discrimination against pregnant and postpartum women. Pa. Human Relations Comm'n, *Guidelines on Discrimination Because of Sex,* 1(24) Pa. Bull. 707-08 (Dec. 19, 1970) (forbidding, pursuant to the Human

[24] Ruth Bader Ginsburg detailed the contemporaneous understanding in the early 1970s that the proposed *federal* ERA also would preclude discrimination based on pregnancy. *See* Brief for Women's Law Project and American Civil Liberties Union as *Amici Curiae, General Electric v. Gilbert,* 429 U.S. 125 (1976) (Nos. 74-1589 and 74-1590).

Relations Act's prohibition against sex discrimination, discriminating against employees because they took time away from work due to childbirth); Pa. Human Relations Comm'n, *Guidelines on Discrimination Because of Sex*, 1(80) Pa. Bull. 2359 (Dec. 25, 1971) (same).

Shortly after, in 1974, the Pennsylvania Attorney General issued an opinion finding that discrimination against pregnant women constituted sex discrimination under Section 962(a) of the Human Relations Act. Pa. Att'y Gen. Op. No. 9 (1974). At issue were three provisions of the Unemployment Compensation Law that conclusively presumed that pregnant and postpartum women were incapable of working and hence ineligible for unemployment compensation benefits in the months before and after childbirth.[25] The Attorney General held that all three provisions "unlawfully discriminate against women on the basis of their sex," noting that while there was no reason to reach the constitutional question, it was "apparent" that the pregnancy exclusion also raised "serious questions" under the Pennsylvania ERA. *Id.* at n.1. Indeed, the stereotypes about pregnancy operating in the unemployment compensation system, pushing women out of the workforce and consigning them exclusively to a maternal role,

[25] 43 P.S. § 801(d)(2) (presuming all women unable to work and hence ineligible for unemployment compensation from their eighth month of pregnancy until a month after childbirth); 43 P.S. § 802(b)(1) (pregnancy leave not "necessitous and compelling" circumstance entitling employee to unemployment benefits); 43 P.S. § 802(f) (employee laid off by employer because of pregnancy ineligible for unemployment benefits for 90 days before and 30 days after childbirth).

illustrate that pregnancy discrimination is ineluctably part and parcel of discrimination against women.

Less than two years after the ERA was ratified, this Court held that a school district's termination of a pregnant employee constituted sex discrimination under the Human Relations Act. *Cerra*, 299 A.2d at 280. Noting that the termination occurred "solely because of pregnancy," this Court explained that pregnant women were "discharged from their employment on the basis of a physical condition peculiar to their sex. *This is sex discrimination pure and simple*." *Id*. (emphasis added). Thus, at the time when Pennsylvania adopted the ERA, this Court recognized that women who are treated differently "on the basis of a physical condition peculiar to their sex" are subjected to "sex discrimination pure and simple." *Id.*[26]

Significantly, at the same time Pennsylvania courts were elaborating the contours of the ERA, the U.S. Supreme Court was developing its own sex discrimination jurisprudence, never adopting strict scrutiny for sex discrimination cases. *See Frontiero v. Richardson*, 411 U.S. 677 at 691 (1973) (Powell, J.,

[26] The *Fischer* Court committed plain error in reading *Cerra* for the proposition that pregnancy discrimination is not a form of sex discrimination. *Fischer*, 502 A.2d at 125. The *Fischer* Court actually elided from its opinion the critical sentence that acknowledges that pregnancy is "a physical condition peculiar to [the female] sex," *Cerra*, 299 A.2d at 280, and that disadvantaging a woman on the basis of that peculiarly female physical condition is sex discrimination "pure and simple." This error formed the basis of the central legal argument supporting *Fischer*'s ERA holding.

concurring in judgment) (failing to provide the fifth vote for a majority opinion designating strict scrutiny as appropriate for sex-based classifications). The subsequent Pennsylvania Supreme Court cases endorsing and applying *Henderson*'s "no longer a permissible factor" standard came both before and after the U.S. Supreme Court explicitly adopted the intermediate scrutiny test in 1976 in *Craig v. Boren*. 429 U.S. at 197 ("To withstand constitutional challenge, previous cases establish that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.").

That this Court did not embrace the less protective federal standard that was emerging at the same time further supports the conclusion that this Court interprets the ERA as providing greater protection against sex discrimination than the U.S. Supreme Court does under the Equal Protection Clause. In the words of a Connecticut court determining whether to read its ERA as coextensive with the federal Constitution, "To equate our ERA with the [E]qual [P]rotection [C]lause of the federal [C]onstitution would negate its meaning given that our state adopted an ERA while the federal government failed to do so. Such a construction is not reasonable." *Doe v. Maher,* 515 A.2d 134, 160-61 (Conn. Super. Ct. 1986).

(c) *Edmunds* Factors: Other States

There are currently seventeen states that cover abortion in their state Medicaid programs.[27] Twelve of these states provide this coverage because their courts held that excluding abortion violates their state constitutions. Among the states that cover abortion are three of the six states that border Pennsylvania—New York and Maryland, which cover abortion by statute, and New Jersey, which does so by court decision.

Of the twelve states that cover abortion because of a court decision, two have specifically ruled that the exclusion of abortion from their state Medicaid program violated their state's Equal Rights Amendment. *See Maher*, 515 A.2d at 134; *N.M. Right to Choose*, 975 P.2d at 859.[28] The New Mexico Supreme Court's

---

[27] At the time of the Petition's filing, there were sixteen states that covered abortion in their state Medicaid programs. R.128a, ¶ 53. Since then, Maine has added abortion to its Medicaid program, bringing the total to seventeen. *See* 305 Ill. Comp. Stat. 5/5-5; Me. Rev. Stat. Ann. tit. 22, § 3196; Md. Code Regs. 10.09.02.04; N.Y. Soc. Serv. Law § 365-a(2); Wash. Rev. Code § 74.09.520; Wash. Admin. Code § 182-532-120(7)(b); *Dep't of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904 (Alaska 2001); *State v. Planned Parenthood Great Nw.*, 436 P.3d 984, 1004-05 (Alaska 2019); *Simat Corp. v. Ariz. Health Care Cost Containment Sys.*, 56 P.3d at 34 (Ariz.); *Comm. to Defend Reprod. Rights v. Myers*, 625 P.2d 779, 798 (Cal. 1981); *Doe v. Maher*, 515 A.2d at 160-61 (Conn.); *Doe v. Wright*, No. 91 CH 1958 (Ill. Cir. Ct. Dec. 2, 1994); *Humphreys v. Clinic for Women, Inc.*, 796 N.E.2d at 259-60 (Ind.); *Moe v. Sec'y of Admin. & Fin.*, 417 N.E.2d at 405 (Mass.); *Women of Minn. v. Gomez*, 542 N.W.2d 17, 31-32 (Minn. 1995); *Right to Choose v. Byrne*, 450 A.2d at 937 (N.J.); *N.M. Right to Choose v. Johnson*, 975 P.2d at 859 (N.M.); *Doe v. Celani*, No. S81-84CnC (Vt. Super. Ct. May 26, 1986); State of Hawaii Dep't of Hum. Servs., Med-QUEST Div., Mem. No. FFS-1512: *Revised Guidelines for Submittal and Payment of Induced/Intentional Termination of Pregnancy (ITOP) Claims* (2015).

[28] The other ten states rule on different state constitutional grounds. Only one state supreme court has held that the coverage ban does not violate its state's ERA. *See Bell v. Low Income Women of Texas*, 95 S.W. 3d 253 (Tex. 2002). However, *Bell* is inapposite, insofar as

extensive analysis is particularly instructive here. The court examined the principles behind its own ERA, which is almost identical to Pennsylvania's. *See* N.M. Const. art. II, § 18 ("Equality of rights under law shall not be denied on account of the sex of any person."). The court held that this explicit prohibition against sex discrimination goes beyond the federal constitutional standards for sex discrimination and that discrimination against pregnant women is discrimination based on sex. *N.M. Right to Choose*, 975 P.2d at 853-56. The court reasoned that it "would be error to conclude that men and women are not similarly situated with respect to a classification simply because the classifying trait is a physical characteristic unique to one sex." *Id.* at 854. Rather, the court looked beyond the facial classification in the law to whether the law disadvantaged women. *Id.* The court recognized that the government does not have "the power to turn the capacity [to bear children], limited as it is to one gender, into a source of social disadvantage" and that "women's biology and ability to bear children have been used as a basis for discrimination against them." *Id.* (citations omitted); *see also Maher*, 515 A.2d at 160 ("By adopting the ERA, Connecticut determined that the state should no longer be permitted to disadvantage women because of their sex

---

Texas uniquely requires that Medicaid coverage match federal law for all procedures, and the Texas court applied almost exclusively U.S. Supreme Court precedent rather than state precedent to conduct its state ERA analysis.

including their reproductive capabilities."). The New Mexico court found that the law was facially discriminatory because

> there is no comparable restriction on medically necessary services relating to physical characteristics or conditions that are unique to men. Indeed, we can find no provision in the Department's regulations that disfavors any comparable, medically necessary procedure unique to the male anatomy. . . . Thus, [it] undoubtedly singles out for less favorable treatment a gender-linked condition that is unique to women.

N.M. Right to Choose, 975 P.2d at 856. This well-reasoned opinion is persuasive given the similarities between the Pennsylvania and New Mexico ERAs. *See* Linda J. Wharton, *State Equal Rights Amendments Revisited: Evaluating Their Effectiveness in Advancing Protection Against Sex Discrimination,* 36 Rutgers L.J. 1201, 1249-53 (2005).

(d) *Edmunds* Factors: Policy Considerations

The decades since *Fischer* have ushered in a better understanding around the connection between abortion access and women's equality. This connection shows that women need to be able to control their reproductive lives, including having real access to abortion, to be fully equal in society.

While early abortion cases did not draw this connection, more recent ones have. The U.S. Supreme Court recognized the importance of abortion access to women's equality starting with *Planned Parenthood v. Casey*, when it stated that "[t]he ability of women to participate equally in the economic and social life

of the Nation has been facilitated by their ability to control their reproductive lives." 505 U.S. 833, 856 (1992) (plurality opinion). Justice Ginsburg later wrote for four Justices in dissent in *Gonzales v. Carhart* when she explained that "legal challenges to undue restrictions on abortion procedures do not seek to vindicate some generalized notion of privacy; rather, they center on a woman's autonomy to determine her life's course, and thus to enjoy equal citizenship stature." 550 U.S. 124, 172 (2007) (Ginsburg, J., dissenting). Commentators have also noted an implicit equality thread throughout *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016). *See* Linda Greenhouse & Reva B. Siegel, *The Difference a Whole Woman Makes: Protection for the Abortion Right After* Whole Woman's Health, 126 Yale L.J.F. 149, 163 (2016) ("Concern for protecting women's liberty, equality, and dignity guides the majority's close scrutiny . . . .").

Thus, while American abortion jurisprudence had little recognition of the importance of abortion access to women's equality at the time of *Fischer*, that has changed in the decades since. When women do not have access to abortion as an option in controlling their reproductive lives, they are not able to participate fully and equally in all aspects of society. *See generally* R.129a-139a, ¶¶ 56-83. *Fischer* did not address this aspect of equality, but the years since have shown its vitality.

Furthermore, voluminous empirical research has been published in the decades following *Fischer* showing the deleterious impact the coverage ban has on indigent women. As detailed in the Petition and the five supporting expert affidavits filed with it—which must be accepted as true for purposes of considering these preliminary objections—denying indigent women access to abortion through the coverage ban has devastating effects on their lives. R.129a-139a, ¶¶ 56-83; Expert Decl. of Colleen M. Heflin, R.146a-171a; Expert Decl. of Elicia Gonzales, R.191a-201a; Expert Decl. of Terri-Ann Thompson, R.202a-221a; Expert Decl. of Courtney Ann Schreiber, R.228a-254a; Expert Decl. of Sarah C. Noble, R.286a-313a. As a result of the coverage ban, it is estimated that one-quarter of Pennsylvania women who would otherwise choose to have an abortion are forced to carry their pregnancies to term. R.132a, ¶¶ 63, 64.

When women are forced to carry an unwanted pregnancy to term, they are denied control over whether or not to have children, their plans for the future, their financial status, and their ability to participate equally in society. R.132a-133a, ¶ 65. Their education may be interrupted and their job and career prospects circumscribed. R.133a, ¶ 66. As a result, one year after unsuccessfully seeking an abortion, they are more likely to be impoverished, unemployed, and depressed than women in similar circumstances who were able to obtain an abortion. *Id*.

Moreover, when denied a wanted abortion, women are more likely to suffer physical and mental health problems. The risk of death is fourteen times higher for carrying a pregnancy to term than it is for abortion, and Black women have a maternal mortality rate that is three times that of white women. *Id.* ¶ 67. This risk is particularly acute in Pennsylvania, where almost thirteen women die within forty-two days of the end of pregnancy for every 100,000 live births in the state, a rate that has doubled since 1994. *Id.* ¶ 68.

Short of death, women who are denied an abortion will face other health risks associated with carrying a pregnancy to term, such as permanent disability, weakened immune system, threats to every major organ in the body, exacerbation of pre-existing conditions, and life-threatening medical conditions such as preeclampsia and eclampsia. R.134a-135a, ¶¶ 69-72. Continuing a pregnancy also threatens women's mental health, as pregnancy and childbirth can lead to increased vulnerability to mental health issues. R.135a, ¶ 73. In particular, denying a wanted abortion can inflict severe psychological distress on women, as they are forced to live for months with an unwanted pregnancy. R.136a, ¶ 74. Finally, they are also subject to the physical and emotional risks of interpersonal violence, which can escalate during pregnancy. *Id.* ¶ 75; *see also* Carly O'Connor-Terry et al., *Challenges of Seeking Reproductive Health Care in People*

Experiencing Intimate Partner Violence, J. Interpersonal Violence 1 (Sept. 24, 2020) (reporting the same in Pennsylvania).

Women on Medical Assistance who are nonetheless able to pay for an abortion on their own also suffer because of the coverage ban. Women who are in deep poverty—which, by definition, includes almost everyone on Medical Assistance—can be pushed even deeper into poverty by having to pay for the abortion and other related costs, such as transportation, overnight housing, and childcare. R.137a, ¶¶ 77-79. Raising money takes time, which delays the abortion, thus increasing the price and also increasing the risk of complications. R.137a-138a, ¶¶ 80-81.

The harms described here do not fall evenly on Pennsylvania women. Women of color in Pennsylvania are more likely to be poor than white women and are more likely to rely on Medical Assistance for health care. R.138a-139a, ¶ 83. Thus, they are less able to afford out-of-pocket costs for their abortion compared with their white counterparts. *Id.* The fact that this harm falls with special cruelty on women of color who face a historical legacy of reproductive coercion should trigger more, not less, exacting scrutiny. *See Harris*, 448 U.S. at 344 (Marshall, J., dissenting).

***

Fischer's ERA holding should be overruled. It was wrong when it was decided, as its ERA analysis was flawed, unsupported, and not tied to Pennsylvania jurisprudence. Moreover, in the 36 years following *Fischer*, there have been major doctrinal shifts and factual developments around independently interpreting the Pennsylvania Constitution, as well as the connection between abortion and sex equality. Since 1985, there has been a widespread repudiation of *Fischer*'s conclusion that pregnancy discrimination is not encompassed within sex discrimination. Furthermore, there has been an emerging recognition in both federal and state case law of the importance of abortion to women's equality. Finally, a vibrant body of scholarship and empirical evidence has demonstrated the harm that coerced pregnancy and childbearing inflict on women, particularly women of color. These developments show that *Fischer*'s ERA analysis is "manifestly out of accord with modern conditions of life [and] should not be followed as controlling precedent." *Ayala v. Phila. Bd. of Pub. Educ.*, 305 A.2d 877, 888 (Pa. 1973). Accordingly, this Court should hold that the coverage ban violates the Pennsylvania ERA.[29]

[29] This case does not raise, nor is it necessary for this Court to resolve, the hypothetical questions of whether every classification involving a physical characteristic unique to men or women is a sex-based classification, and whether there could ever be a sex-based classification involving unique physical characteristics that could survive scrutiny under the Pennsylvania ERA. Where, as here, the coverage ban is so plainly intertwined with traditional gender roles and where the resulting harm to women is profound, there is no danger that the ERA will exceed its constitutional purpose by invalidating a genuinely neutral and non-discriminatory classification. Where the presence of unique physical characteristics raises a question of whether the

C. THE COVERAGE BAN VIOLATES THE PENNSYLVANIA CONSTITUTION'S GUARANTEE OF EQUAL PROTECTION.

Fischer's equal protection analysis misconstrued the protected equality interest by declaring that the coverage ban "does not concern the right to an abortion," 502 A.2d at 116, and instead limited its inquiry to "the purported right to have the state subsidize the individual exercise of a constitutionally protected right," *id*. at 121. *Fischer*'s formulation of the equality-based right mischaracterized the claim. In this case, as in *Fischer*, Providers do not assert a generalized right to state subsidy. Rather, Providers claim that when states subsidize health care, they must do so in ways that do not place unequal burdens on the exercise of constitutionally-protected rights.[30] In other words, *if* pregnancy and childbirth are covered, abortion must be *as well*. *Fischer* simply did not address this argument.

Fischer declined to analyze the coverage ban under the Pennsylvania Constitution's equal protection provisions independently from federal precedent. Instead, *Fischer* simply adopted the federal court decisions in *Maher v. Roe*, 432

---

classification is discriminatory, exceedingly strict judicial review is warranted. *See N.M. Right to Choose*, 975 P.2d 841, 854-56.

[30] Just as a government-run voter transportation service that refused to convey Republicans to the polls would be an equal protection violation, not because there is a right to be driven to the polls but because, if the government undertakes this service, it must do so evenhandedly.

U.S. 464, 479-80 (1977), and *Harris*, 448 U.S. at 316-17,[31] even though it was not bound by either case in reviewing the coverage ban under the Pennsylvania Constitution. A review of Providers' equal protection claims under the *Edmunds* factors supports a more expansive reading of the state constitution's equal protection provisions than their federal counterpart and leads to the conclusion that the coverage ban violates the Pennsylvania Constitution.

1. *Edmunds* Factors: Text of Pennsylvania Constitution

There is no express equal protection clause in the Pennsylvania Constitution; however, this Court has gleaned equality guarantees from several constitutional provisions reflecting equality concerns.

Article I, section 1 guarantees the inherent rights of humankind:

> All [persons] are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

Pa. Const. art. I, § 1. Article I, section 26 expressly prohibits discriminating against individuals in the exercise of their civil rights:

> Neither 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 civil right.

[31] Both *Maher*, 432 U.S. at 749, and *Harris*, 448 U.S. at 316-17, upheld similar coverage bans, but purely based on federal constitutional provisions.

Pa. Const. art. I, § 26. Article III, section 32 prohibits local and special laws:

> The 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.

These provisions collectively guarantee equal protection of the law and prohibit discrimination based on the exercise of a civil right. *Love v. Borough of Stroudsburg*, 597 A.2d, 1137, 1139 (Pa. 1991). As the text of these provisions deviates markedly from the federal Equal Protection Clause, *see* U.S. Const. amend. XIV, § 1 ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."), this Court has not tied the construction of these provisions to the very dissimilar federal provision.

2. *Edmunds* Factors: History and Pennsylvania Case Law

The three equal protection provisions have separate origins but collectively constitute Pennsylvania's equality guarantee. Article I, section 1 dates back to the original Declaration of Rights adopted by the Pennsylvania constitutional convention of 1776. Seth F. Kreimer, *Still Living After Fifty Years: A Census of Judicial Review Under the Pennsylvania Constitution of 1968*, 71 Rutgers U. L. Rev. 287, 355 (2018). It has been readopted multiple times with the same wording, most recently in 1968. *Id.* Article III, section 32 dates to 1874 but was modified to its current form in 1967. *Id.* at 356. Article I, section 26 also dates

to 1967. *Id.* This Court has repeatedly referred to these provisions collectively as the "equal protection provisions of the Pennsylvania Constitution." *See, e.g.*, *Klein v. Commonwealth*, 555 A.2d 1216, 1224 (Pa. 1989) (plurality opinion). Importantly, none shares the origin of the federal Equal Protection Clause, which came about in 1868 to combat continuing discrimination against Black people following the end of slavery.

Under the Pennsylvania provisions, this Court has explained the proper framework for analyzing an equal protection claim involving fundamental rights: "[W]here a suspect classification has been made *or a fundamental right has been burdened*, another standard of review is applied: that of strict scrutiny." *Love*, 597 A.2d at 1139 (emphasis added) (citing *James v. Se. Pa. Transp. Auth.*, 477 A.2d 1302, 1306 (1984)). Although this Court has used the federal equal protection framework as a "guiding principle," it analyzes issues under this framework "while incorporating Pennsylvania-specific considerations regarding *enhanced* privacy interests." *Commonwealth v. Alexander*, 243 A.3d 177, 205 (Pa. 2020) (emphasis added). *Fischer* rightly acknowledged this point, stating that this Court interprets the state constitution in "a more generous manner" to "afford the citizens of this Commonwealth greater liberties than they would otherwise enjoy" under the federal Constitution, 502 A.2d at 121, but then failed to apply this principle to the coverage ban.

Legal scholarship on the history and origin of the Pennsylvania equal protection provisions confirms that Pennsylvania recognizes a stronger equality right than the federal Equal Protection Clause. Article I, section 1 has broader language than the U.S. Constitution and has repeatedly been analyzed under a "distinctive doctrinal framework." Kreimer, *supra,* at 329-30. Article I, section 26 was designed, according to state constitutional law expert Professor Robert Williams, "to reach beyond [] the Fourteenth Amendment." Robert F. Williams, *A "Row of Shadows": Pennsylvania's Misguided Lockstep Approach to Its State Constitutional Equality Doctrine*, 3 Widener J. Pub. L. 343, 364 (1993). And Article III, section 32 was, in contrast to the Equal Protection Clause's anti-slavery origins, "meant to correct a very different kind of unequal treatment, grounded mainly in the area of 'economics and social welfare.'" Donald Marritz, *Making Equality Matter (Again): The Prohibition Against Special Laws in the Pennsylvania Constitution*, 3 Widener J. Pub. L. 161, 184-85 (1993). These historical differences merit, as this Court has repeatedly recognized, interpreting the equality provisions of the Pennsylvania Constitution in a manner that gives greater protection to equality than the U.S. Constitution. *See generally* Br. for *Amicus Curiae* ACLU.

In failing to recognize that the Pennsylvania Constitution contains distinct and broader guarantees of liberty and equality, *Fischer* ignored the

powerful protection for individual autonomy in Article I, section 1—protection that is broad enough to include the right to reproductive autonomy. In that provision, the framers made clear that certain rights are reserved to the people of the Commonwealth because all people "have certain inherent and indefeasible rights." This Court has described this provision as "an enumeration of the fundamental individual human rights possessed by the people of this Commonwealth that are specifically exempted from the powers of Commonwealth government to diminish." *League of Women Voters v. Commonwealth*, 178 A.3d 737, 803 (Pa. 2018).

In fact, within this right, this Court has repeatedly referred to the right to procreate as a fundamental right. In *Nixon v. Dep't of Pub. Welfare*, this Court listed "certain rights considered fundamental, such as the right to privacy, the right to marry, and the right to procreate." 839 A.2d 277, 287 (Pa. 2003); *see also Ladd v. Real Estate Comm'n*, 230 A.3d 1096, 1108 (Pa. 2020) (contrasting the non-fundamental right of choosing a particular occupation with the fundamental "rights to privacy, marry, or procreate"). More recently, Justice Donohue has repeated and expanded this list: "the right to privacy, the right to marry, the right to procreate and the right to make child-rearing decisions." *Yanakos v. UPMC*, 218 A.3d 1214, 1231 (Pa. 2019) (Donohue, J., concurring). The decision whether to terminate a

pregnancy or carry it to term is part and parcel of these already recognized rights to procreate and make child-rearing decisions.

This Court also has recognized that a broad right to privacy is implicit in the constitutional guarantees included in Article I, section 1. Over fifty years ago, this Court stated that the right to privacy is rooted in people's "inherent and indefeasible rights" to pursue their own happiness: "One of the pursuits of happiness is privacy. The right of privacy is as much property of the individual as the land to which he holds title and the clothing he wears on his back." *See Commonwealth v. Murray*, 223 A.2d 102, 109 (Pa. 1966). In *Murray*, this Court explained the paramount importance of Article I, section 1's strong commitment to individual privacy: "The greatest joy that can be experienced by mortal man is to feel himself master of his fate—this in small as well as big things. . . . Everything else in comparison is dross and sawdust." *Id.* at 110. Just last year, in reiterating that there is an "implicit right to privacy in this Commonwealth," *Alexander*, 243 A.3d at 206, this Court recognized that the Pennsylvania right to privacy is premised on the Pennsylvania constitutional provisions "afford[ing] greater protection to [its] citizens" than the U.S. Constitution, *id.* at 181.

Since *Murray*, this Court has recognized at least two different aspects of this right to privacy—decisional autonomy and bodily integrity—that together support the right to decide whether to carry or terminate a pregnancy. In 1983, this

Court stated clearly that an essential part of the right to privacy is the "freedom to make certain important decisions." *Denoncourt v. Commonwealth, State Ethics Comm'n*, 470 A.2d 945, 948 (Pa. 1983). Pursuant to this right, individuals have a protected privacy interest in independent decision-making over important personal matters such as marriage, family formation, and child rearing. *See id.*

Decisional autonomy principles likewise protect the right to make important life decisions, including certain decisions related to sex and sexuality, free from sanctions arising from the moral judgments of others. In *Commonwealth v. Bonadio*, this Court held that a statute criminalizing "voluntary deviate sexual intercourse" infringed upon the Pennsylvania Constitution's equal protection guarantees, specifically the right to liberty. 415 A.2d 47, 50-52 (Pa. 1980) (plurality opinion). Importantly, the Court remarked that "the police power should properly be exercised to protect each individual's right to be free from interference in defining and pursuing his own morality but not to enforce a majority morality on persons whose conduct does not harm others." *Id.* at 50; *see also Fabio v. Civil Serv. Comm'n of City of Phila.*, 414 A.2d 82, 89 (Pa. 1980) (recognizing that decisional autonomy also applies to an individual's decision to engage in extramarital sex). The decision whether or not to form a family is among the most personal, important decisions a woman can make in her lifetime; it can profoundly alter every aspect of her life, including her health, education, employment,

economic stability, and family dynamics. *Roe v. Wade*, 410 U.S. 113, 153 (1973); *see also* Expert Decl. of Terri-Ann Thompson, R.202a-221a. Thus, this broad right to decisional autonomy in matters involving reproduction and sexuality also includes the right to choose to end or continue a pregnancy.

Beyond decisional autonomy, the Pennsylvania Constitution's protection of privacy also includes the right to bodily integrity. As this Court wrote in *John M. v. Paula T.*, the Pennsylvania Constitution guarantees "clear privacy interests in preserving [] bodily integrity." 571 A.2d 1380, 1386 (Pa. 1990); *Coleman v. Workers' Comp. Appeal Bd. (Ind. Hosp.)*, 842 A.2d 349, 354 (Pa. 2004); *Cable v. Anthou*, 699 A.2d 722, 725-26 (Pa. 1997) (noting a woman "had an undeniable right to her bodily integrity, and to be free from invasions into her body"). This bodily integrity right necessarily includes the right to decide whether or not to continue a pregnancy because without it, a woman is no longer a "master of [her] fate." *Murray*, 223 A.2d at 110. Thus, because Article I, section 1's broad protections of individual rights include the fundamental rights to marry, procreate, and make child-rearing decisions, as well as a robust privacy right protecting decisional autonomy and bodily integrity in matters of reproduction, this Court should hold that the Pennsylvania Constitution protects women's right to decide whether or not to continue a pregnancy.

Once this right is recognized, Article I, section 26 and Article III, section 32 require that the government cannot favor one exercise of the right over another. Contrary to *Fischer*'s reliance on federal constitutional precedent, the text and history of Article I, Section 26 and Article III, section 32 support the conclusion that their neutrality command offers greater protection than the federal Equal Protection Clause. As this Court has observed about these equal protection provisions:

> While there may be a correspondence in meaning and purpose between the two, the language of the Pennsylvania Constitution is substantially different from the federal constitution. We are not free to treat that language as though it was not there. Because the Framers of the Pennsylvania Constitution employed these words, the specific language in our constitution cannot be readily dismissed as superfluous.

Kroger Co. v. O'Hara Twp., 392 A.2d 266, 274 (1978).

Specific to Article I, section 26, the text explicitly prohibits the Commonwealth from denying "the enjoyment of any civil right" and "discriminat[ion] against any person in the exercise of any civil right." *See* Pa. Const. art. I, § 26. This explicit prohibition should be interpreted in accordance with the obvious meaning of such words to avoid rendering portions of it "mere surplusage," *Allegheny Cnty. Sportsmen's League v. Rendell*, 860 A.2d 10, 19, (Pa. 2004), and to honor the provision's purpose of prohibiting discrimination against people exercising their civil rights. Williams, *supra*, at 361-62. Further prohibiting

discrimination against fundamental rights is Article III, section 32, which by its text prohibits "special laws." This Court has said that the purpose of this provision is to require "that like persons in like circumstances should be treated similarly by the sovereign." *Pa. Tpk. Comm'n v. Commonwealth*, 899 A.2d 1085, 1094 (Pa. 2006); *Kroger*, 392 A.2d at 274. Pennsylvania courts apply this provision more strictly to "areas of economics and social welfare" than the federal Constitution does, requiring classifications to be based on real distinctions relevant to the purpose of the statute. Marritz, *supra*, at 202-05. Providers' equality claims under these provisions should be applied in accordance with their text and underlying spirit—not, as *Fischer* did, in accordance with the inapplicable language and doctrine of the federal Equal Protection Clause.

Fischer erred in misconstruing the right implicated by the coverage ban to be an alleged entitlement to subsidized abortions. Providers do not argue in their equal protection claim that the Pennsylvania Constitution compels the state to fund abortions. Rather, Providers argue that *if* the Commonwealth chooses to establish a Medical Assistance program for medically necessary services for low-income Pennsylvanians (which the Commonwealth is not required to do), it cannot choose to cover one way of exercising a fundamental right but then omit covering a different way to exercise that same right. *See William Penn Sch. Dist.*, 170 A.3d at 458; *see also Planned Parenthood of Alaska*, 28 P.3d at 909 ("[W]hile the State

retains wide latitude to decide the manner in which it will allocate benefits, it may not use criteria which discriminatorily burden the exercise of a fundamental right." (quoting *Moe*, 417 N.E.2d at 401)). Stated more specifically, the Commonwealth cannot fund all of the expenses associated with continuing a pregnancy and none of the expenses for terminating a pregnancy because this discriminatory coverage infringes on the fundamental right of reproductive choice, thus violating the equal protection provisions of the Pennsylvania Constitution. *See* Kathryn Kolbert & David H. Gans, *Responding to* Planned Parenthood v. Casey*: Establishing Neutrality Principles in State Constitutional Law*, 66 Temp. L. Rev. 1151, 1168-69 (1993).

Accordingly, the Pennsylvania Constitution's Declaration of Rights protects the abortion right as a fundamental right, and the coverage ban is a discriminatory funding scheme that impinges on that fundamental right in violation of the Constitution's equal protection provisions.

3. *Edmunds* Factors: Other States

Other state supreme courts have reached conclusions contrary to *Fischer*. In fact, the majority of state courts—including eight courts of last resort—have interpreted constitutional guarantees of privacy and/or equality similar to the Pennsylvania Constitution's as affording greater protection for abortion than the federal Constitution. *See* Linda J. Wharton, Roe *at Thirty-Six and Beyond:*

Enhancing Protection for Abortion Rights Through State Constitutions, 15 Wm. & Mary J. Race, Gender & Soc. Just. 469, 501-02 n.189 (2009) (collecting cases). In 1981, for example, the Massachusetts Supreme Judicial Court noted that the right to abortion is among the protected guarantees of privacy in the state constitution, which it has interpreted to protect rights beyond the federal Constitution. *Moe*, 417 N.E.2d at 399. In recognizing the right to abortion, the court explained that it is "but one aspect of a far broader constitutional guarantee of privacy" linked to a person's strong interest in "self-determination" and "being free from nonconsensual invasion of [her] bodily integrity." *Id.* at 398-99 (citations omitted).

Two years ago, the Kansas Supreme Court recognized that the Kansas Bill of Rights and its explicit right to liberty and pursuit of happiness grant women a right to personal autonomy, which includes the right to terminate a pregnancy. *See Hodes & Nauser v. Schmidt*, 440 P.3d 461, 486 (Kan. 2019). The court stated:

> At the core of the natural rights of liberty and the pursuit of happiness is the right of personal autonomy, which includes the ability to control one's own body, to assert bodily integrity, and to exercise self-determination. This ability enables decision-making about issues that affect one's physical health, family formation, and family life. Each of us has the right to make self-defining and self-governing decisions about these matters.

Id. at 484; *see id.* at 482 (citing *Murray*, 223 A.2d 102).

The Supreme Court of Minnesota also recognized abortion as a fundamental right implied in the state constitution's protection of privacy. *See Women of Minn.*, 542 N.W.2d 17. The court held:

> The right of procreation without state interference has long been recognized as one of the basic civil rights of man . . . fundamental to the very existence and survival of the race. We can think of few decisions more intimate, personal, and profound than a woman's decision between childbirth and abortion. Indeed, this decision is of such great import that it governs whether the woman will undergo extreme physical and psychological changes and whether she will create lifelong attachments and responsibilities. We therefore conclude that the right of privacy under the Minnesota Constitution encompasses a woman's right to decide to terminate her pregnancy.

Id. at 27 (internal quotations and citation omitted).

Most state courts that have reviewed similar coverage bans for abortion declined to follow the reasoning of *Harris v. McRae* and *Maher v. Roe*. These courts have ruled that denying poor women coverage for abortion while fully funding childbirth is coercive and violates their right to reproductive choice under their respective state constitutions. *See, e.g.*, *Planned Parenthood of Alaska*, 28 P.3d 904; *Maher*, 515 A.2d at 158-59 ("The Connecticut equal protection clauses require the state when extending benefits to keep them free of unreasoned distinctions that can only impede [the] open and equal exercise of fundamental rights." (citation omitted)); *Right to Choose*, 450 A.2d at 935 ("Once [the legislature] undertakes to fund medically necessary care attendant upon pregnancy

[the] government must proceed in a neutral manner."); *Comm. to Defend Reprod. Rights*, 625 P.2d at 798 ("Once the state furnishes medical care to poor women in general, it cannot withdraw part of that care solely because a woman exercises her constitutional right to choose to have an abortion.").[32]

4. *Edmunds* Factors: Policy Considerations

Fischer not only fails at the abstract analytical level, but also ignores the practical realities of its calamitous impact. Similarly, DHS and Legislators wholly ignore the real-world context in which the coverage ban operates. Women eligible for and enrolled in Medicaid are poor by definition and lack the financial resources to afford medical services absent the Medical Assistance program. Bans on abortion coverage target this group of women—who are disproportionately women of color and experience intersecting forms of discrimination—because they are the least able to overcome financial coercion designed to override their reproductive decisions. *See* Melissa Murray, *Race-Ing Roe: Reproductive Justice, Racial Justice, and the Battle for* Roe v. Wade, 134 Harv. L. Rev. 2025, 2051–52 (2021); H. Pa. Legis. Journal No. 164-62, at 2244-45 (1980) (identifying legislative purpose of coverage ban to be ending abortion for women in poverty).

[32] In contrast, Florida and Michigan have followed *Harris* and *Maher* in part because the courts have held that, unlike in Pennsylvania, their equal protection provisions do not provide greater protection than the federal Equal Protection Clause. *See A Choice for Women, v. Fla. Agency for Health Care Admin.*, 872 So. 2d 970, 973 (Fla. Dist. Ct. App. 2004); *Doe v. Dep't of Soc. Servs.*, 487 N.W.2d 166, 174-76 (Mich. 1992).

The coverage ban forces women with low incomes seeking abortion to choose between continuing an unwanted pregnancy and using money that they would have otherwise used for daily necessities, such as shelter, food, clothing, electricity or diapers, to pay for the procedure. R.137a, ¶ 79; Expert Decl. of Colleen M. Heflin, R.146a-171a. In this way, discriminatory funding schemes like the coverage ban act as a *de facto* abortion ban. *See, e.g.*, *Maher*, 515 A.2d at 152 (stating that the impact of the ban is the same "as if the state were to affirmatively rule that poor women were prohibited from obtaining an abortion"); *Women of Minn.*, 542 N.W.2d at 29 (labeling the coverage ban "just as effective[ly] as [] an outright denial of [abortion] rights through criminal and regulatory sanctions"). As a result, some women with low incomes will be forced by the coverage ban to carry their pregnancies to term against their wishes, risking their mental and physical health. R.132a, ¶¶ 63-64; Expert Decl. of Courtney Ann Schreiber, R.228a-254a; Expert Decl. of Sarah C. Noble, R.286a-313a.

***

Framing the right at issue properly—not as a right to subsidized abortions but rather as a right to equal treatment of constitutionally-protected choices—shows that the coverage ban burdens a fundamental right in violation of the equal protection provisions of the Pennsylvania Constitution. For these reasons, this Court should overturn *Fischer* and hold that the coverage ban impinges on the

fundamental right to choose abortion by discriminating against women for seeking to exercise their right to reproductive choice.

5. The Coverage Ban Does Not Pass Strict Scrutiny.

Because it did not correctly perceive the interests at stake, *Fischer* applied rational basis review to the coverage ban and opined that the ban would also have passed intermediate scrutiny. *See Fischer*, 502 A.2d at 122-23. However, when a statute burdens the exercise of a fundamental right, as here, "another standard of review is applied: that of strict scrutiny." *Love*, 597 A.2d at 1139 (citing *James v. Se. Pa Transp. Auth.*, 477 A.2d 1302, 1306 (1984)).

Strict scrutiny requires the government classification to be "narrowly tailored and [] necessary to achieve a compelling state interest." *Klein*, 555 A.2d at 1225 (plurality opinion). Because the coverage ban not only impinges on a woman's fundamental right to terminate a pregnancy, but also selectively denies a benefit based on the exercise of a fundamental right, the Pennsylvania Constitution requires the state to show that the coverage ban is narrowly tailored to advance a compelling state interest, which it cannot do.

The asserted state interest is preserving the life and health of fetuses and women.[33] 18 Pa. C.S. § 3202(a). Even assuming this interest is compelling

[33] The coverage ban cannot be deemed to serve any state interest in cost reduction because the costs associated with continuing a pregnancy to term—which are fully covered by Medical Assistance—greatly exceed the expenses associated with terminating a pregnancy. *See* Br. for *Amicus Curiae* National Health Law Center.

throughout pregnancy, the state's interest in fetal life does not justify overriding a woman's fundamental right to make decisions about her own life course as well as her health and well-being. Women who are unable to access abortion are denied autonomy and dignity, and their plans for the future, financial status, and ability to participate equally in society are put at risk. *See* R.132a-136a, ¶¶ 65-75. Moreover, as the record demonstrates, there are numerous risks associated with pregnancy that, while not life-endangering, wreak profound harm on a woman's health and well-being. *Id*. The state's interest in promoting childbirth cannot outweigh a woman's constitutionally protected interest in making these important decisions about her life and health for herself. *Fischer* wrongly omitted from its analysis the woman's interest in her autonomy, health, bodily integrity, and privacy rights when it concluded the coverage ban would withstand heightened scrutiny. 502 A.2d at 122-23.

The majority of courts that have analyzed similar funding restrictions under heightened standards of review find that women's decisional autonomy regarding their own health and well-being comes first. *See, e.g.*, *Byrne*, 450 A.2d at 937 ("A woman's right to choose to protect her health by terminating her pregnancy outweighs the State's asserted interest in protecting a potential life at the expense of her health."); *Comm. to Defend Reprod. Rights*, 625 P.2d at 781 ("[T]he asserted state interest in protecting fetal life cannot constitutionally claim

priority over the woman's fundamental right of procreative choice."); *Maher*, 515 A.2d at 157 (concluding that under the federal and state constitutions the government's interest in protecting potential life "cannot outweigh the health of the woman at any stage of the pregnancy"); *Planned Parenthood of Alaska*, 28 P.3d at 913 ("[A]lthough the State has a legitimate interest in protecting a fetus, at no point does that interest outweigh the State's interest in the life and health of the pregnant woman.").

Nor is the coverage ban narrowly drawn to achieve the state's professed interests in preserving the life and health of fetuses and women. *See* 18 Pa. C.S. § 3202(a). Contrary to the state's claims, the coverage ban harms women's health, *see* R.132a-139a, ¶¶ 65-83, and in doing so also compromises women's future ability to have healthy pregnancies. R.128a-129a, ¶ 54. In Pennsylvania, the rate of maternal death has more than doubled since 1994, with alarming disparities among Black women. *See* Br. for *Amici Curiae* New Voices for Reproductive Justice (Black women in Pennsylvania are three times more likely than white women to die from pregnancy-related complications). There are less restrictive measures that would effectively advance the state's professed

interest in preserving the life and health of fetuses and women without infringing upon a protected constitutional right.[34]

Because it fails both parts of the strict scrutiny test, the coverage ban is unconstitutional under state equal protection provisions.

D. LEGISLATORS ARE NOT PROPER INTERVENORS IN THIS CASE.

1. Only in Very Narrow Circumstances Are Individual Legislators Permitted to Intervene.

Intervention is permitted when, *inter alia*, "the determination of such action may affect any legally enforceable interest of such person." Pa. R.C.P. No. 2327(4).[35] This requirement "owes its origin to the desire of the courts to prevent the curious and the meddlesome from interfering with litigation not affecting their rights." Goodrich Amram 2d, § 2327:8. In other words, "a mere general interest in

[34] For example, the state could implement policies and programs that: "1) address racial and ethnic inequities that contribute to disparities in pregnancy outcomes, [and] 2) increase early and adequate prenatal care." Pa. Dep't of Health, Pregnancy-Associated Deaths in Pennsylvania, 2013–2018, 27 (2020), http://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/Pregnancy%20Associated%20Deaths%202013-2018%20FINAL.pdf; *see also* Aasta Mehta et al., Phila. Maternal Mortality Rev. Comm., Improving Outcomes: Maternal Mortality in Philadelphia, 21 (2020) https://www.phila.gov/media/20210322093837/MMRReport2020-FINAL.pdf (recommending, *inter alia*, paid parental leave).

[35] Legislators also sought intervention pursuant to Pa. R.C.P. No. 2327(3), but the Commonwealth Court declined to rule on this issue. Panel Op. at 19 n.15. To the extent Legislators still press this basis for intervention, it is foreclosed because they are not responsible for implementing, enforcing, or administering the coverage ban and thus Providers could not have properly joined them in the original action here. *See generally Wagaman v. Attorney General*, 872 A.2d 244 (Pa. Commw. Ct. 2005).

the litigation, or an interest in an issue that is collateral to the basic issues in the case . . . is not a sufficient basis for intervention." *Id.*

In considering intervention by individual legislators (as opposed to the entire General Assembly), this Court has held that they have a legally enforceable interest only "where there [i]s a discernible and palpable infringement on their authority as legislators." *Robinson Twp.*, 84 A.3d at 1054, 1055 (alteration in original). This Court has further explained that legislator standing is limited to situations when the legislator's "ability to participate in the voting process is negatively impacted or when he or she has suffered a concrete impairment or deprivation of an official power or authority to act as a legislator." *Markham*, 136 A.3d at 145; *Fumo*, 972 A.2d at 500-01.

These principles dictate that legislators are not afforded a general right to intervene for the purpose of defending the constitutionality of a statute. *See Robinson Twp.*, 84 A.3d at 1055. Rather, this Court has stated that once "votes which [legislators] are entitled to make have been cast and duly counted, their interest as legislators ceases." *Markham*, 136 A.3d at 141.

2. The Commonwealth Court Misapplied this Court's Standard for Intervention, Improperly Expanding the Right of Legislators to Intervene.

Legislators assert that they have a legally enforceable interest in this litigation because a ruling that the coverage ban is unconstitutional would impinge

upon their appropriations powers. But the outcome on the merits here will not diminish Legislators' voting power, prohibit them from voting on any subject matter, or substantively impinge on their right to pass legislation or appropriate funds in the future. *See Healthsystem Ass'n of Pa. v. Commonwealth*, 77 A.3d 587, 598 (Pa. 2013) (stating that "regardless of the extent to which the political branches are responsible for budgetary matters, they are not permitted to enact budget-related legislation that violates the constitutional rights of Pennsylvania citizens"). In granting intervention, the panel mistook Providers' request to declare the coverage ban unconstitutional for a demand to dictate the substance and form of appropriations bills. Panel Op. 15. But under settled precedent, that a ruling on the constitutionality of a statute *may* prompt the General Assembly to take action is insufficient to satisfy the standard to establish a legally enforceable interest necessary to permit intervention.

As this Court has repeatedly held, an intervenor's claimed interest in an action must be more than ephemeral—it must be "substantial, direct, and immediate," *In re Francis Edward McGillick Found.*, 642 A.2d 467, 469 (Pa. 1994), and the harm must be "concrete" and "palpable," *Fumo*, 972 A.2d at 500-01.[36] To this end, this Court held in *Markham* that "diluting the substance of a

[36] The limited availability of legislative intervention was recognized by several of Legislators' colleagues when they proposed House Bill 1021, which would offer legislators intervention rights in constitutional challenges. The memorandum introducing the bill explained,

previously enacted statutory provision is not an injury which legislators, as legislators, have standing to pursue." 136 A.3d at 145. And consistent with this precedent, Judge Simpson rightly recognized that "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." Simpson Op. at 16-17.

The Commonwealth Court panel's reasoning unduly expands the narrow circumstances under which individual legislators can intervene. Under that court's theory, any time a constitutional challenge might theoretically touch on appropriations, individual legislators will have a legally enforceable interest in the matter. Such a scenario is exactly what this Court sought to avoid in *Markham* when it cautioned against the slippery slope of legislators intervening in every challenge to government action. 136 A.3d at 145. Judge Simpson properly heeded this warning when he concluded that "there is no inherent, ongoing right to vote on future annual appropriations bills." Simpson Op. 16. He further stated that

---

"[c]urrently, the grounds on which the General Assembly can participate as a party in these lawsuits is *extremely narrow*." Memorandum from Reps. Torren C. Ecker & Paul Schemel to All House Members, Cases Challenging State Statutes (Feb. 19, 2019), www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20190&cosponId=28423 (emphasis added).

grounding standing in such a basis would result in "no obvious limiting principle for a standing analysis based on voting on future appropriation bills," as such a "boundless approach" would allow any legislator to intervene in any action involving state government. *Id.*

If the panel's ruling is affirmed, it would be difficult to imagine a scenario in which individual legislators would *not* have standing to intervene in a constitutional challenge under Rule 2327(4).[37] As one example, any lawsuit relating to sovereign immunity could satisfy Legislators' test for legislative intervention. If a court's decision interpreted sovereign immunity more narrowly, the Commonwealth could be open to greater liability which would implicate future appropriations. In reality, if the panel's position is accepted, any judicial action involving any Commonwealth agency or subdivision could impact how the government expends funds and—under the panel's reasoning—would justify intervention by individual legislators. Moreover, permitting intervention of two small groups of legislators in this case invites virtually-unbounded individual legislator intervention in future cases, burdening litigants and the lower courts with all the expense, delay, and complexity inherent in sprawling multi-party actions and raising questions of legislative encroachment upon coordinate branches. This

[37] Indeed, as Legislators expressly stated, to accept their argument would be to afford legislators a right to intervene "anytime there's a matter that impacts the budget." *See* Oral Argument Tr. at 30:16-20, R.586a.

dramatic expansion of a case to possibly include numerous parties with no real connection to the matter other than a general interest in the outcome is contrary to this Court's precedent.

3. If the Commonwealth Court's Decision Is Affirmed, Pennsylvania Law Would Have a Uniquely Broad View of Legislator Standing.

Not only is the panel's unbounded interpretation of individual legislator standing inconsistent with Pennsylvania precedent—it would put Pennsylvania law at odds with other jurisdictions that have found legislator standing to be limited.

For instance, under Maryland's similar intervention rules, Maryland's highest court denied intervention to legislators in *Duckworth v. Deane*, where they sought to intervene in a constitutional challenge to a same-sex marriage ban. 903 A.2d 883, 886 (Md. 2006). The court held that "an individual member of the General Assembly, or eight out of a total of 188 members, ordinarily have no greater legal interest in an action challenging the constitutionality of a statute than other Maryland residents have." *Id.* at 892. Like the attempted-intervenors in *Duckworth*, Legislators here are no different from other Pennsylvania residents who might have an opinion about the constitutionality of the coverage ban.

Indeed, neither Legislators nor the panel cited to any other jurisdiction that has held that legislators have an unbridled right to intervene in any suit simply

because the outcome could impact the state budget. Conversely, other courts have considered whether a judicial decision impacting the state budget or Legislators' ability to enact potentially unconstitutional laws warrant intervention and have held that it does not. *See, e.g.*, *Planned Parenthood of Wis. v. Kaul*, 384 F. Supp. 3d 982, 988 (W.D. Wis. 2019) ("[T]he desire to reenact invalidated legislation hardly serves as a cogent basis for intervening."), *aff'd on other grounds*, 942 F.3d 793 (7th Cir. 2019). This is because, as the Wisconsin Court of Appeals recognized, allowing intervention in cases where the interpretation of a statute or constitutional provision is at issue "would open the door to similar intervention in any case with policy or budgetary ramifications." *Helgeland v. Wisconsin Municipalities*, 724 N.W.2d 208, 219-20 (Wis. Ct. App. 2006), *aff'd,* 745 N.W.2d 1 (Wis. 2008); *accord* Simpson Op. 16.[38]

The Commonwealth Court's decision to permit Legislators to intervene based on the theory that striking down the coverage ban would affect their role in appropriations, if affirmed, would make individual legislators' right to intervene uniquely broad in Pennsylvania.

[38] In reaching its decision to permit intervention, the panel relied on an inapposite 60-year-old Michigan Supreme Court case, *Lewis v. State*, 90 N.W.2d 856, 860 (Mich. 1958), which simply had nothing to do with intervention. *See* Panel Op. 15-16.

4. The Commonwealth Court's Holding that Legislators' Interests Were Not Adequately Represented Is Premature.

Even if this Court finds that intervention was proper under Rule 2327(4), the panel did not make factual findings demonstrating that Legislators' interests were not adequately represented by DHS. Pa. R.C.P. No. 2329(2). In fact, such a finding would be difficult, as DHS and Legislators have the same interest in this suit: defending the constitutionality of the coverage ban. *See, e.g.*, *Pa. Ass'n of Rural & Small Sch. v. Casey*, 613 A.2d 1198, 1200-01 (Pa. 1992).

The panel did not make specific findings that would support its conclusion that Legislators' interests diverge from those of DHS and would not otherwise be adequately represented. Instead, it relied on dicta in Judge Simpson's opinion, contemplating that Legislators' "interest may not be adequately represented by the Department 'given the vastly different responsibilities and powers of the executive and legislative branches of government as they relate to the coverage ban.'" Panel Op. 18 (quoting Simpson Op. 17). This conjecture is not supported by the reality that DHS has aggressively opposed Providers' claims—including by raising an objection to Providers' standing, an objection not raised by Legislators. DHS's position thus gives the Court two separate theories on which to dispose of this lawsuit and more than adequately represents Legislators' asserted

interests. *See Casey*, 613 A.2d at 1201 (denying intervention when the proposed intervenor's "main interests" are already adequately represented).

VIII. CONCLUSION

For the foregoing reasons, Providers ask this Court to reverse the Commonwealth Court on all issues.

Dated: October 13, 2021

Respectfully Submitted,

By: */s/ Susan Frietsche*

Susan Frietsche (PA 65240)
WOMEN'S LAW PROJECT
428 Forbes Avenue, Suite 1710
Pittsburgh, PA 15219
(412) 281-2892
Counsel for Appellants

Christine Castro (PA 326694)
Amal Bass (PA 202954)
WOMEN'S LAW PROJECT
125 S 9th Street, Suite 300
Philadelphia, PA 19107-5117
(215) 928-5772
Counsel for Appellants

David S. Cohen (PA 88811)
3320 Market Street, Suite 232
Philadelphia, PA 19104
(215) 571-4714
Counsel for Appellants

Jan P. Levine (PA 43869)
Leah Greenberg Katz (PA 307413)
Kaitlin L. Meola (PA 326809)
TROUTMAN PEPPER
HAMILTON SANDERS LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103-2799
(215) 981-4000
Counsel for Appellants

Michael S. DePrince (PA 322500)
TROUTMAN PEPPER
HAMILTON SANDERS LLP
401 9th Street NW, Suite 1000
Washington, DC 20004
(202) 220-1200
Counsel for Appellants

Thomas B. Schmidt III (PA 19196)
Donna L. Fisher (PA 39410)
Adam R. Martin (PA 321257)
TROUTMAN PEPPER
HAMILTON SANDERS LLP
100 Market Street, Suite 200
P.O. Box 1181
Harrisburg, PA 17108-1181
(717) 255-1155
Counsel for Appellants

Melissa Cohen (admitted *pro hac vice*)
PLANNED PARENTHOOD
FEDERATION OF AMERICA
123 William Street, Floor 9
New York, NY 10038
(212) 261-4649
Counsel for Appellants Planned Parenthood Keystone, Planned Parenthood Southeastern Pennsylvania, Planned Parenthood of Western Pennsylvania

Carrie Flaxman (PA 78575)
PLANNED PARENTHOOD
FEDERATION OF AMERICA
1110 Vermont Avenue NW, Suite 300
Washington, DC 20005-6300
(301) 461-2100
Counsel for Appellants Planned Parenthood Keystone, Planned Parenthood Southeastern Pennsylvania, Planned Parenthood of Western Pennsylvania

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: October 13, 2021 */s/ Susan Frietsche*

CERTIFICATE OF COMPLAINCE WITH RULE 2135(D)

I, Susan Frietsche, hereby certify that Brief for Appellants complies with the word count limitation from this Court's September 9, 2021, Order, because it contains 19,952 words, excluding the parts exempted by Pa. R.A.P. 2135(b). This Certificate is based on the word count of the word processing system used to prepare this Brief.

Dated: October 13, 2021 */s/ Susan Frietsche*

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

---

[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:
>
> (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.
>
> (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

---

[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

---

[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

---

[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
>
> (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
>
> (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

---

[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.

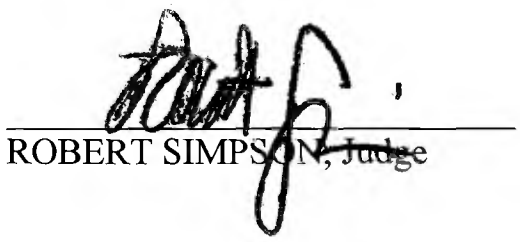
Proposed Intervenors also have no role in implementing, enforcing or administering the coverage ban and, notably, the agency and officials who do are already named as Respondents in this action. Moreover, I cannot accept Proposed Intervenors' overly broad contention that they can be joined as parties 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

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
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	:	

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

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
	:	Argued: October 4, 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	:	

RECEIVED
JAN 30 2019
T. B. SCHMIDT

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION
BY PRESIDENT JUDGE LEAVITT FILED: January 28, 2020

Before this Court are two applications for leave to intervene. The first was filed by 18 members of the Pennsylvania State Senate[1] (Proposed Senate

[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. Folmer filed a Praecipe to Withdraw as a Proposed Senate Intervenor on September 19, 2019.

Intervenors) and the second was filed by eight members of the Pennsylvania House of Representatives[2] (Proposed House Intervenors) (collectively, Proposed Intervenors). On June 21, 2019, the Court denied both applications to intervene in *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services* (Pa. Cmwlth., No. 26 M.D. 2019, filed June 21, 2019) (single judge opinion by Judge Robert Simpson) (*Allegheny I*). Proposed Intervenors requested reargument, which this Court granted on July 22, 2019. Thereafter, the Court heard argument on whether Proposed Intervenors are entitled to intervene under Pennsylvania Rule of Civil Procedure No. 2327(3) and (4). Concluding that they have established grounds for intervention under Rule No. 2327(4), we grant the applications to intervene.

Background

On January 16, 2019, 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, Reproductive Health Centers) filed a petition for review in the nature of a complaint seeking declaratory and injunctive relief against the Pennsylvania Department of Human Services; Teresa Miller, Secretary of Human Services; Leesa Allen, Executive Deputy Secretary for Medical Assistance Programs; and Sally Kozak, Deputy Secretary for the Office of Medical Assistance Programs (collectively, Department).

---

[2] 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 Committee Chair Donna Oberlander.

In their petition for review, Reproductive Health Centers allege that they provide approximately 95 percent of the abortion services performed in the Commonwealth. Their patients include women enrolled in Medical Assistance,[3] which provides health insurance coverage to low-income persons. Medical Assistance coverage includes family planning and pregnancy-related care, such as prenatal care, obstetrics, childbirth, neonatal and post-partum care. However, Pennsylvania's Abortion Control Act[4] prohibits the expenditure of appropriated state and federal funds for abortion services unless (1) necessary to avert the death of the pregnant woman; (2) the pregnancy resulted from rape; or (3) the pregnancy resulted from incest. 18 Pa. C.S. §3215(c). Regulations promulgated by the Department prohibit Medical Assistance coverage for abortions except in these three circumstances. *See* 55 Pa. Code §§1141.57, 1163.62 and 1221.57.

The petition of Reproductive Health Centers contains two counts. Count I asserts that the Abortion Control Act and the Department's regulations, known as the "coverage ban," violate Pennsylvania's Equal Rights Amendment[5] because they deny coverage of a medical procedure that can be used only by women. Count II asserts that the coverage ban violates several other provisions of the Pennsylvania Constitution, *i.e.*, Article I, Sections 1 and 26 and Article III, Section 32,[6] that establish the guarantee of equal protection of the laws. Reproductive Health

---

[3] Medical Assistance "is a joint federal and state program, and must be administered consistent with both federal and state law." *Eastwood Nursing and Rehabilitation Center v. Department of Public Welfare*, 910 A.2d 134, 136 (Pa. Cmwlth. 2006) (internal footnote and emphasis omitted).

[4] 18 Pa. C.S. §§3201-3220.

[5] It 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.

[6] Article I, Section 1 states:

Centers contend that the coverage ban restricts indigent women in the exercise of their right to terminate a pregnancy and thereby violates the Pennsylvania Constitution.

Reproductive Health Centers request this Court to declare 18 Pa. C.S. §3215(c) and (j) and the related regulations unconstitutional and to enjoin their enforcement.[7] In *Fischer v. Department of Public Welfare*, 502 A.2d 114, 116 (Pa.

> All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

PA. CONST. art. I, §1. Section 26 states:

> Neither 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 civil right.

PA. CONST. art. I, §26. Article III, Section 32 states, in relevant part, as follows:

> The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law....

PA. CONST. art. III, §32.

[7] Section 3215(c) of the Abortion Control Act states:

> (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:
>
> > (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.
> >
> > (3) When abortion is performed in the case of pregnancy caused by incest which, prior to the performance of the abortion, has been

1985), our Supreme Court considered a 1985 constitutional challenge to the Abortion Control Act and rejected the claim that the case even concerned "the right

---

> 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.

18 Pa. C.S. §3215(c). Section 3215(j) states:

> (j) Required statements.--No Commonwealth agency shall make any payment from Federal or State funds appropriated by the Commonwealth for the performance of any abortion pursuant to subsection (c)(2) or (3) unless the Commonwealth agency first:
>
> > (1) receives from the physician or facility seeking payment a statement signed by the physician performing the abortion stating that, prior to performing the abortion, he obtained a non-notarized, signed statement from the pregnant woman stating that she was a victim of rape or incest, as the case may be, and that she reported the crime, including the identity of the offender, if known, to a law enforcement agency having the requisite jurisdiction or, in the case of incest where a pregnant minor is the victim, to the county child protective service agency and stating the name of the law enforcement agency or child protective service agency to which the report was made and the date such report was made;
> >
> > (2) receives from the physician or facility seeking payment, the signed statement of the pregnant woman which is described in paragraph (1). The statement shall bear the notice that any false statements made therein are punishable by law and shall state that the pregnant woman is aware that false reports to law enforcement authorities are punishable by law; and
> >
> > (3) verifies with the law enforcement agency or child protective service agency named in the statement of the pregnant woman whether a report of rape or incest was filed with the agency in accordance with the statement.
>
> The Commonwealth agency shall report any evidence of false statements, of false reports to law enforcement authorities or of fraud in the procurement or attempted procurement of any payment from Federal or State funds appropriated by the Commonwealth pursuant to this section to the district attorney of appropriate jurisdiction and, where appropriate, to the Attorney General.

18 Pa. C.S. §3215(j).

to an abortion." It held that the funding restrictions in the Abortion Control Act did not offend Pennsylvania's Equal Rights Amendment or Article I, Sections 1 and 26 and Article III, Section 32 of the Pennsylvania Constitution. Reproductive Health Centers argue that *Fischer* was incorrectly decided; conflicts with recent developments in Pennsylvania law; and is inconsistent with the modern-day understanding that any restriction on a woman's reproductive autonomy is a form of sex discrimination. They further seek a declaration that abortion is a fundamental right under the Pennsylvania Constitution.

Allegheny I Ruling

On April 17, 2019, Proposed Intervenors filed their respective applications for leave to intervene.[8] On May 21, 2019, the Court held a hearing and heard oral argument. No evidence was proffered.

Proposed Intervenors asserted that they qualified for intervention under the Pennsylvania Rules of Civil Procedure. Specifically, they invoked Rule No. 2327(3), which authorizes intervention for persons that could have been named in the original action, and Rule No. 2327(4), which authorizes intervention for persons with a legally enforceable interest at issue. Reproductive Health Centers opposed their intervention, arguing that the Proposed Intervenors lacked standing to defend the constitutionality of a statute that was enacted in 1982.

---

[8] On April 16, 2019, the Department filed preliminary objections in the nature of a demurrer to the petition for review filed by Reproductive Health Centers, asserting *Fischer v. Department of Public Welfare*, 502 A.2d 114 (Pa. 1985), established that Section 3215(c) and (j) of the Abortion Control Act is constitutional. The Department also asserts Reproductive Health Centers lack standing because they cannot sue on behalf of their patients. On April 17, 2019, Proposed House Intervenors also filed preliminary objections in the nature of a demurrer to the petition for review. On July 31, 2019, this Court suspended the briefing schedule on the preliminary objections until disposition of the applications for leave to intervene.

This Court denied intervention, reasoning, *inter alia*, that a putative intervenor must establish that he is "aggrieved," which requires "a substantial, direct and immediate interest in the outcome of the litigation" in order to be deemed to have standing. *Allegheny I*, slip op. at 14 (quoting *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003)). The Court concluded that Proposed Intervenors were not aggrieved, noting that the "last iteration of the coverage ban was voted on and went into effect in 1989...." *Id.* at 15. At that point, the interest of Proposed Intervenors ended. The Court dismissed the argument of Proposed Intervenors that the outcome of this litigation will limit their legislative power to appropriate funds as "tenuous." *Id.* at 16.

On July 22, 2019, this Court granted reargument to consider the challenge of Proposed Intervenors to the decision in *Allegheny I*.

Reargument Issues

Proposed Intervenors challenge this Court's denial of intervention on three grounds. First, they argue that the Court erred in holding that Proposed Intervenors had to establish the level of standing that is needed by a plaintiff to initiate a legal action. Second, they argue that the Court erred in holding that Proposed Intervenors could not have been named as parties in the action, a basis for intervention under Rule No. 2327(3). Third, they argue that the Court erred in holding they did not establish a legally enforceable interest in preserving the scope of their power to legislate, a basis for intervention under Rule No. 2327(4). However, Proposed Intervenors agree with this Court's holding with respect to Rule No. 2329, *i.e.*, that the Proposed Intervenors' interest in this litigation was not adequately represented by the Department.

Pennsylvania Law on Intervention

Intervention is governed by the Pennsylvania Rules of Civil Procedure. Rule No. 2327 states 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 upon such person to indemnify in whole or in part the party against whom judgment may be entered; or
>
> (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 been named as an original party in the action or could have been joined therein; or
>
> (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. The corollary rule on intervention is found at Rule No. 2329, which sets forth the reasons for denying intervention. It states as follows:

> Upon the filing of the petition and after hearing, of which due notice shall be given to all parties, the court, if the allegations of the petition have been established and are found to be sufficient, shall enter an order allowing intervention; but 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.

PA. R.C.P. No. 2329.

This Court has held that a grant of intervention is mandatory where the intervenor satisfies one of the four bases set forth in Rule No. 2327 unless there exists a basis for refusal under Rule No. 2329. We reasoned as follows:

> Considering Rules 2327 and 2329 together, the effect of Rule 2329 is that *if the petitioner is a person within one of the classes described in Rule 2327, the allowance of intervention is mandatory, not discretionary, unless one of the grounds for refusal under Rule 2329 is present.* Equally, if the petitioner does not show himself to be within one of the four classes described in Rule 2327, intervention must be denied, irrespective of whether any of the grounds for refusal in Rule 2329 exist. Thus, the court is given the discretion to allow or to refuse intervention only where the petitioner falls within one of the classes enumerated in Rule 2327 *and* only where one of the grounds under Rule 2329 is present which authorizes the refusal of intervention.

Larock v. Sugarloaf Township Zoning Hearing Board, 740 A.2d 308, 313 (Pa. Cmwlth. 1999) (internal citations omitted and emphasis added).

Proposed Intervenors argue that they are "such" persons identified as appropriate intervenors in Rule No. 2327(3) and (4) and, further, there exist no grounds for refusal of intervention under Rule No. 2329. Thus, they contend that the grant of their applications for leave to intervene was mandatory and that this Court erred in otherwise holding in *Allegheny I*.

I.

We begin with Pennsylvania Rule of Civil Procedure No. 2327(4) which permits intervention where the determination "*may affect* any legally enforceable interest" of a proposed intervenor. PA. R.C.P. No. 2327(4) (emphasis added). Proposed Intervenors assert that the litigation initiated by Reproductive Health Centers will certainly affect their power to legislate, *i.e.*, a "legally enforceable interest," particularly in the area of appropriating funds. Indeed, the petition for review rests expressly on Article III, Section 32 of the Pennsylvania Constitution, which is part of Chapter E, entitled "Restrictions on Legislative Power." *See* Petition for Review, ¶94 at 29. Proposed Intervenors argue that this litigation, if successful, will enlarge the restrictions on legislative power that are specified in Article III, Section 32 and create new restrictions.

There is a difference between personal standing and legislative standing, which difference this Court addressed in *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283 (Pa. Cmwlth. 2019). Therein, we explained that personal standing requires a party to have a direct, immediate, and substantial interest in order to initiate litigation. *See William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280 (Pa. 1975). Nevertheless, a legislator that lacks personal standing may be able to initiate litigation in his legislative capacity, where the legislator can demonstrate an injury to his ability "to act as a legislator." *Sunoco Pipeline*, 217 A.3d at 1291.

Legislative standing was first addressed by this Court in *Wilt v. Beal*, 363 A.2d 876 (Pa. Cmwlth. 1976). There, State Representative Wilt sought to enjoin the Secretary of Public Welfare from using a newly constructed geriatric center as a mental healthcare facility; his standing as a legislator to initiate the action was

challenged. This Court summarized the relevant principles of legislative standing as follows:

> [L]egislators ... are granted standing to challenge executive actions when specific powers unique to their functions under the Constitution are diminished or interfered with. 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. We find this distinction to be sound for it is clear that certain additional duties are placed upon members of the legislative branch which find no counterpart in the duties placed upon the citizens the legislators represent.

Id. at 881 (internal footnote omitted). Legislators have duties not shared with citizens, but enforcement of existing statutory law is not a special concern of legislators.

In *Fumo v. City of Philadelphia*, 972 A.2d 487 (Pa. 2009), state legislators challenged the City's issuance of a license for the construction of a casino upon submerged lands in the Delaware River. They asserted that the City's action had usurped their legislative authority to regulate riverbeds, a prerogative belonging solely to the General Assembly. The Supreme Court agreed, explaining as follows:

> 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. The standing of a legislator or council member to bring a legal challenge has been recognized in limited instances in order to permit the legislator to seek redress for an injury the legislator or council member claims to have suffered in his official capacity, rather than as a private citizen. Legislative standing has been recognized in the context of actions brought to protect a legislator's right to vote on legislation or a council member's viable authority to approve municipal action. Legislative standing also has been recognized in actions alleging

> a diminution or deprivation of the legislator's or council member's power or authority. At the same time, however, legislative standing has not been recognized in actions seeking redress for a general grievance about the correctness of governmental conduct.

Id. at 501. Because the City had invaded the legislature's exclusive authority to regulate riverbeds, the Supreme Court concluded that the legislators had legislative standing to challenge the City's action.[9]

More recently, our Supreme Court addressed legislative standing in *Markham v. Wolf*, 136 A.3d 134 (Pa. 2016). In that case, state legislators sought to intervene in a civil action challenging an executive order that authorized home healthcare workers to organize. The Supreme Court listed the requirements of legislative standing as follows:

> 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*, 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* (finding standing due to alleged usurpation of legislators' authority to vote on licensing).

Id. at 145. Conversely, 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.

---

[9] The legislators did not have standing to challenge the manner in which the license was issued because that claim did not "demonstrate any interference with or diminution in the state legislators' authority as members of the General Assembly[.]" *Fumo*, 972 A.2d at 502.

Id. The Supreme Court concluded that the legislators did not demonstrate that the executive order impacted their "ability to propose, vote on or enact legislation." *Id.* Indeed, they were free to enact legislation that would overrule the executive order. In short, the legislators lacked the legally cognizable interest required for intervention.

Proposed Intervenors assert that *Markham* is distinguishable and did not hold that legislators had to meet the standards of *William Penn Parking,* 346 A.2d 269, merely to intervene in existing litigation. Rather, they argue that the standards for intervention are governed by the rules of procedure that govern a tribunal's proceedings. In *Sunoco Pipeline,* 217 A.3d at 1288, this Court acknowledged this point. We noted that the standard for intervention in a proceeding before the Public Utility Commission is easily satisfied. *See* 52 Pa. Code §5.72(a)(3) (Public Utility Commission regulation permitting intervention where it "may be in the public interest."). Thus, it does not follow that because a legislator was permitted to intervene in a Commission proceeding that he has standing to initiate a proceeding before the Commission. Simply, the test for standing to initiate litigation is not co-terminus with the test for intervention in existing litigation

Nevertheless, the principles of legislative standing are relevant to a determination of whether a putative intervenor has demonstrated a "legally enforceable interest" for purposes of Rule No. 2327(4). Here, Proposed Intervenors argue that the outcome sought by Reproductive Health Centers could narrow their ability to exercise "legislative power," particularly in the matter of appropriation. Under Article III, Section 24 of the Pennsylvania Constitution, state government cannot expend funds "except on appropriations made by law" by the General

Assembly. PA. CONST. art. III, §24.[10] The ruling sought by Reproductive Health Centers will directly limit the General Assembly's exclusive authority to appropriate moneys from the treasury, a principle long recognized by our Supreme Court. Accordingly, in *Shapp v. Sloan,* 391 A.2d 595 (Pa. 1978), the Supreme Court held that executive branch agencies cannot spend moneys obtained by federal grants unless and until those funds are appropriated by the legislature. Proposed Intervenors argue that because the instant litigation "may affect" their power to appropriate funds, they are entitled to intervene under Rule No. 2327(4).

Reproductive Health Centers deny that they seek to expand the restrictions on legislative power set forth in Article III, noting that this petition for review only cites Article III, Section 32 because it is part of the construct of equal protection in the Pennsylvania Constitution. They also argue that legislators have no interest in the enforcement of the Abortion Control Act and, in support, invoke *Robinson Township v. Commonwealth*, 84 A.3d 1054, 1055 (Pa. 2014). In that case, legislators were denied intervention in a constitutional challenge to "Act 13" of the Oil and Gas Act.[11] The legislators wanted to offer "their perspective on the correctness of governmental conduct, *i.e.,* that the General Assembly did not violate the substantive and procedural strictures of the Pennsylvania Constitution in enacting Act 13." *Id.* at 1055. The Supreme Court rejected this proffer because it

---

[10] Article III, Section 24 states:

> No money shall be paid out of the treasury, except on appropriations made by law and on warrant issued by the proper officers; but cash refunds of taxes, licenses, fees and other charges paid or collected, but not legally due, may be paid, as provided by law, without appropriation from the fund into which they were paid on warrant of the proper officer.

PA. CONST. art. III, §24.

[11] Act 13 is codified at 58 Pa. C.S. §§2301-3504.

did not relate to a "defense of the potency of their right to vote," and legislators do not have the right to offer "their perspective on the correctness of their conduct." *Id.*

What distinguishes this case from *Markham* or *Robinson Township* is that the instant litigation relates directly to the legislative power to appropriate. To be sure, this Court dismissed this argument as "tenuous at best" in *Allegheny I. See Allehgheny I,* slip op. at 16. Proposed Intervenors challenge this dismissive statement as conclusory and unfounded. They argue that the object of this litigation is to change the substance and manner by which the General Assembly can appropriate funds in the future for the Medical Assistance program. We agree.

Article III of the Pennsylvania Constitution is entirely dedicated to the subject of "legislation." It imposes standards for the form and consideration of bills and their passage and contains numerous provisions that relate directly to appropriations. *See, e.g.*, Article III, Section 3 (Form of Bills), Section 11 (Appropriation Bills),[12] and Section 24 (Paying Out Public Moneys). PA. CONST. art. III, §§3, 11, 24. A general appropriation act often contains language that is conditional or incidental to the subject of appropriation. *See, e.g., Commonwealth ex rel. Greene v. Gregg*, 29 A. 297, 298 (Pa. 1894) (holding that designating funds for Supreme Court prothonotary was permissible incidental language in a general appropriation act). Opinions of the Pennsylvania Attorney General have repeatedly approved the use of incidental language in a general appropriations act. *See, e.g.*, Op. Atty. Gen. No. 59 (1958), and Op. Atty. Gen. No. 12 (1957). Indeed, the use of

---

[12] It states:

> The general appropriation bill shall embrace nothing but appropriations for the executive, legislative and judicial departments of the Commonwealth, for the public debt and for public schools. All other appropriations shall be made on separate bills, each embracing but one subject.

PA. CONST. art. III, §11.

conditional language in a general appropriation act enjoys wide currency in many states. As the Michigan Supreme Court has explained,

> The tieing of legislative strings to appropriation of state funds for governmental purposes has never been considered as adding a second object to an appropriation law[.]

Lewis v. State, 90 N.W.2d 856, 860 (Mich. 1958) (quoting an opinion of the Michigan Attorney General).

The Abortion Control Act is part of the Crimes Code. If Reproductive Health Centers are successful in their litigation, the challenged provisions will be rendered null and void. However, the constitutional principle Reproductive Health Centers seek to establish will extend beyond the statute and the Department's regulations. It could bar the General Assembly from "tieing legislative strings" to its appropriation of funds for the Medical Assistance program. Reproductive Health Centers freely acknowledge this point. They believe that if they succeed in this litigation, the general appropriation act could not, for example, condition funding of Medical Assistance to coverage of only those reproductive health services that will ensure a full-term pregnancy. Similarly, the general appropriation act could not tie Medical Assistance funding for abortion services to the availability of federal funds.[13]

Reproductive Health Centers seek to restrict the substance and form of appropriation bills. They seek to eliminate the ability of legislators to add conditional or incidental language to a general appropriation act insofar as it relates

---

[13] In *Fischer*, 502 A.2d at 119, our Supreme Court discussed the Hyde Amendment, which limits federal funding of abortion to life-threatening situations, and observed that in *Harris v. McRae*, 448 U.S. 297 (1980), the federal limit had been held not to contravene the right of indigent women to abortion in other circumstances.

to providing coverage of reproductive health services for indigent woman enrolled in Medical Assistance. Likewise, they seek to expand the prohibition against special laws in Article III, Section 32 to eliminate the General Assembly's power to decide the circumstances under which abortion services will be funded by the treasury.

Proposed Intervenors seek to do more than offer "their perspective on the correctness of their conduct." *Robinson Township*, 84 A.3d at 1055. Article III is peculiar to the legislative branch of state government, imposing both strictures and responsibilities. Proposed Intervenors seek to preserve their voting power as it currently exists under Article III and their authority to appropriate Commonwealth funds, a key legislative duty. As our Supreme Court has explained, the "General Assembly enacts the legislation establishing those programs which the state provides for its citizens and appropriates the funds necessary for their operation. The executive branch implements the legislation by administering the programs." *Shapp*, 391 A.2d at 604. In doing so, the executive branch must abide by "the requirements and restrictions of the relevant legislation, and within the amount appropriated by the legislature." *Id. See also Jubelirer v. Rendell*, 953 A.2d 514, 529 (Pa. 2008).

Proposed Intervenors seek to preserve their authority to propose and vote on funding legislation in the future. The constitutional authority of the members of the General Assembly to control the Commonwealth's finances constitutes a legally enforceable interest that entitles them to intervene and be heard before the Court rules in this matter.

We conclude that Proposed Intervenors have established grounds to intervene pursuant to Rule No. 2327(4) and so hold.

II.

Rule No. 2329 prohibits intervention if the interest of the proposed intervenor is already adequately represented or intervention will cause undue delay or prejudice. PA. R.C.P. No. 2329(2) and (3).[14] Proposed Intervenors claim that their interest is not shared with the Department. In fact, in *Allegheny I*, this Court acknowledged that Proposed Intervenors' interest may not be adequately represented by the Department "given the vastly different responsibilities and powers of the executive and legislative branches of government as they relate to the coverage ban." *Allegheny* I, slip op. at 17. Nor has prejudice been shown. As noted by Proposed Senate Intervenors, "although there are multiple Proposed Intervenors, they speak herein with one, unified voice – a voice that represents an entirely different set of long-term interests and goals from [the Department]." Proposed Senate Intervenors' Brief at 17. The Department has no legally enforceable interest in matters relating to Commonwealth appropriations. An executive branch agency is simply not in a position to represent Proposed Intervenors' interest in the exercise of legislative power under Article III of the Pennsylvania Constitution.

Reproductive Health Centers counter that even if intervention was appropriate under Rule No. 2327, this Court should deny intervention because Proposed Intervenors will unduly delay, embarrass or prejudice the case in contravention of Rule No. 2329(3). They contend that the sheer number of Proposed Intervenors will unnecessarily complicate the matter. However, Reproductive Health Centers cite neither precedent nor evidence to support their contention that

---

[14] Rule No. 2329(l) applies to cases where "the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action[.]" PA. R.C.P. No. 2329(1). This subsection is not at issue in this case.

legislator intervention has ever unduly complicated the orderly process of a judicial proceeding.

As held in *Allegheny I*, Proposed Intervenors' interest in the case will not be represented by the Department. This holding is unassailable under *Shapp v Sloan,* 391 A.2d at 604. Reproductive Health Centers' contention that Proposed Intervenors will cause prejudice or delay relies upon no more than speculation and, thus, is rejected as unfounded.

Conclusion

For all the above reasons, we conclude that Proposed Intervenors have established grounds to intervene pursuant to Rule No. 2327(4) and have established that none of the grounds for refusal set forth in Rule No. 2329 are applicable.[15] Accordingly, we grant Proposed Intervenors' applications for leave to intervene.

MARY HANNAH LEAVITT, President Judge

Judge Fizzano Cannon did not participate in the decision in this case.

[15] Because we grant intervention pursuant to Rule No. 2327(4), we need not decide whether Proposed Intervenors are also entitled to intervention under Rule No. 2327(3).

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
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	:	

ORDER

AND NOW, this 28th day of January, 2020, the applications for leave to intervene filed by members of the Pennsylvania State Senate and by members of the Pennsylvania House of Representatives are hereby GRANTED.

Pursuant to this Court's order of July 31, 2019 (granting a stay pending disposition of the applications for leave to intervene), Respondents shall file a brief in support of their preliminary objections within 30 days of this order.

MARY HANNAH LEAVITT, President Judge

Certified from the Record

JAN 28 2020

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Allegheny Reproductive Health Center, Allentown Women's Center, 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
	:	Argued: October 14, 2020
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 MARY HANNAH LEAVITT, President Judge[1]
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge

OPINION
BY PRESIDENT JUDGE LEAVITT FILED: March 26, 2021

[1] This case was assigned to the opinion writer before January 4, 2021, when Judge Leavitt completed her term as President Judge.

Petitioners are Allegheny Reproductive Health Center, Allentown Women's Center, Delaware County Women's Center, Philadelphia Women's Center, Planned Parenthood Keystone, Planned Parenthood Southeastern Pennsylvania, and Planned Parenthood of Western Pennsylvania (collectively, Reproductive Health Centers). They are medical providers licensed by the Commonwealth of Pennsylvania to provide abortion services. Reproductive Health Centers have filed a petition for review seeking declaratory and injunctive relief, asserting that Sections 3215(c) and (j) of the Abortion Control Act[2] are unconstitutional because they discriminate against pregnant women enrolled in Medical Assistance who choose to have an abortion.

Respondents are the Pennsylvania Department of Human Services; the Secretary of Human Services, Teresa Miller; the Executive Deputy Secretary of Human Services, Leesa Allen; and the Deputy Secretary for the Office of Medical Assistance Programs, Sally Kozak (collectively, Commonwealth Respondents). The Commonwealth Respondents have moved to dismiss the petition, asserting that Reproductive Health Centers lack standing to raise constitutional claims that belong to other persons, *i.e.*, women enrolled in Medical Assistance. The Commonwealth Respondents also assert, along with the Intervenors,[3] that the petition for review fails to state a legally cognizable claim under the Pennsylvania Constitution.

---

[2] 18 Pa. C.S. §3215(c), (j).

[3] Senate Intervenors are Senators Joseph B. Scarnati, III, Jacob Corman, Ryan Aument, Michele Brooks, John DiSanto, John Gordner, Scott Hutchinson, Wayne Langerhole, Daniel Laughlin, Scott Martin, Robert Mensch, Michael Regan, Mario Scavello, Patrick Stefano, Judy Ward, Kim Ward, Eugene Yaw, and David Arnold. On February 9, 2021, the parties filed a stipulation to dismiss Senators Scarnati and Arnold from the action. On February 10, 2021, the Court marked the action discontinued and ended as to Senators Scarnati and Arnold.

For the reasons that follow, we sustain the preliminary objections and dismiss the petition.

Background

Medicaid is a joint federal-state public program that provides medical services to low-income persons; in Pennsylvania, it is known as Medical Assistance and administered by the Department of Human Services. Petition for Review ¶40, ¶¶44-45. Medical Assistance includes a Fee-for-Service program that "reimburses providers directly for covered medical services provided to enrollees" as well as a managed care program, HealthChoices, that "pays a per enrollee amount to managed care organizations that agree to reimburse health care providers that provide care for enrollees." *Id.* ¶46. "With some exceptions, Medical Assistance enrollees are required to enroll with a managed care organization participating in HealthChoices rather than the Fee-for-[S]ervice program." *Id.* ¶47.

Medical Assistance covers family planning and pregnancy-related care, including prenatal care, obstetrics, childbirth, neonatal, and post-partum care. Petition for Review ¶48. Medical Assistance does not cover nontherapeutic abortions. *Id.* ¶50. Pennsylvania's Abortion Control Act[4] prohibits the expenditure of appropriated state and federal funds for abortion services except where (1) necessary to avert the death of the pregnant woman, (2) the pregnancy resulted from rape, or (3) the pregnancy resulted from incest. 18 Pa. C.S. §3215(c). Likewise, regulations of the Department of Human Services prohibit Medical Assistance

---

House Intervenors are Representatives Bryan D. Cutler, Stan E. Saylor, Kerry A. Benninghoff, Marcy Toepel, Donna Oberlander, Michael Reese, Kurt A. Masser, and Martin T. Causer.

[4] 18 Pa. C.S. §§3201-3220.

coverage for abortions, except in the above-listed exceptional cases.[5] *Id.* ¶50. Collectively, the Abortion Control Act and the Department's regulations are referred to as the "coverage ban." *Id.* ¶¶49-50.

On January 16, 2019, Reproductive Health Centers filed a petition for review seeking declaratory and injunctive relief in order to end this coverage ban. Reproductive Health Centers provide approximately 95% of the abortion services performed in the Commonwealth. Petition for Review ¶33. Their patients include women enrolled in Medical Assistance. *Id.* ¶57. The coverage ban prohibits Reproductive Health Centers from billing or being reimbursed for abortion services provided to women enrolled in Medical Assistance whose pregnancies do not fall into one of the three above-enumerated exceptions. *Id.* ¶52.

The petition alleges that the coverage ban harms women enrolled in Medical Assistance because they are forced to choose between continuing their pregnancy to term or using funds needed for essentials of life to pay for an abortion procedure. Petition for Review ¶59. Because the facilities in Pennsylvania that perform abortions are few in number, some women must travel significant distances to obtain a safe and legal abortion. *Id.* ¶60. If abortion were a covered procedure, some of those transportation costs would be reimbursed by Medical Assistance. *Id.* The coverage ban causes women on Medical Assistance to delay an abortion while they raise funds to pay for the procedure. *Id.* ¶61. Although Reproductive Health Centers assist their Medical Assistance patients to obtain this funding, they are not always successful. *Id.* ¶62. The coverage ban has forced many women to carry their pregnancies to term against their will. *Id.* ¶¶63-64.

---

[5] *See* 55 Pa. Code §§1141.57, 1163.62 and 1221.57.

The petition alleges that the coverage ban has also caused direct harm to Reproductive Health Centers. Specifically, the coverage ban forces them to divert money and staff from "other mission-central work" to help women enrolled in Medical Assistance who lack the funds to pay for their abortions. Petition for Review ¶84. Reproductive Health Centers "regularly subsidize (in part or in full) abortions for Pennsylvania women on Medical Assistance who are not able to pay the fee on their own." *Id.* ¶85. Reproductive Health Centers expend "valuable staff resources to assist patients in securing funding from private charitable organizations that fund abortion[s] for women on Medical Assistance." *Id.* ¶86. Staff must also delve "into personal matters that the patient may not wish to discuss," *i.e.*, whether the pregnancy was the result of rape or incest. *Id.* ¶87.

The petition for review contains two counts. Count I asserts that the coverage ban violates Article I, Section 28 of the Pennsylvania Constitution, commonly referred to as Pennsylvania's Equal Rights Amendment,[6] because it denies coverage of a medical procedure that can be used only by women. Count II asserts that the coverage ban violates several other provisions of the Pennsylvania

---

[6] The Equal Rights Amendment provides:

> Equality of rights under the law shall not be abridged in the Commonwealth of Pennsylvania because of the sex of the individual.

PA. CONST. art. I, §28.

Constitution, specifically Article I, Sections 1[7] and 26[8] and Article III, Section 32,[9] that establish the guarantee of equal protection of the laws. Asserting that the coverage ban unconstitutionally restricts indigent women in the exercise of their right to terminate a pregnancy, Reproductive Health Centers request this Court to declare the coverage ban unconstitutional and to enjoin its enforcement.

The Commonwealth Respondents, along with the Senate Intervenors and the House Intervenors, have filed preliminary objections in the nature of a demurrer. Specifically, they assert that the petition for review fails to state a cause of action upon which relief can be granted. In addition, the Commonwealth Respondents assert that Reproductive Health Centers lack standing to vindicate the individual constitutional rights of other parties, *i.e.*, all women enrolled in Medical Assistance.[10]

---

[7] This Section states:

> All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

PA. CONST. art. I, §1.

[8] This Section provides:

> Neither 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 civil right.

PA. CONST. art. I, §26.

[9] This Section states, in part:

> The 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.

[10] Four *amici curiae* briefs were filed in support of Reproductive Health Centers' position. *Amici* are: (1) The National Health Law Program; (2) New Voices for Reproductive Justice and Pennsylvania and National Organizations Advocating for Black Women and Girls; (3) Members of the Democratic Caucuses of the Senate of Pennsylvania and the Pennsylvania House of

Preliminary Objections

In reviewing preliminary objections in the nature of a demurrer, this Court "must accept as true all well pleaded material allegations in the petition for review, as well as all inferences reasonably deduced therefrom." *Buoncuore v. Pennsylvania Game Commission*, 830 A.2d 660, 661 (Pa. Cmwlth. 2003). We are not required to accept as true "conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion." *Id.* For this Court to sustain preliminary objections, "it must appear with certainty that the law will not permit recovery[.]" *McCord v. Pennsylvania Gaming Control Board*, 9 A.3d 1216, 1218 n.3 (Pa. Cmwlth. 2010) (quotation omitted). Where there is any doubt, this Court will overrule the preliminary objections. *Fumo v. Hafer*, 625 A.2d 733, 734 (Pa. Cmwlth. 1993).

I. Standing

We begin with the assertion of the Commonwealth Respondents that Reproductive Health Centers lack standing to initiate litigation to vindicate the constitutional rights of their patients enrolled in Medical Assistance. Although the petition for review alleges that the coverage ban causes Reproductive Health Centers to provide abortion services at a loss, the Commonwealth Respondents respond that these alleged pecuniary and administrative harms do not fall within the zone of interests protected by the Equal Rights Amendment and the equal protection clause of the Pennsylvania Constitution, or by the Abortion Control Act. In short, the Commonwealth Respondents assert that Reproductive Health Centers lack standing to bring this action either in their own right or on behalf of women enrolled in Medical Assistance who seek an abortion.

Representatives; and (4) The Pennsylvania Religious Coalition for Reproductive Justice (PARCRJ).

Generally, "a party seeking judicial resolution of a controversy 'must establish as a threshold matter that he has standing to maintain the action.'" *Johnson v. American Standard*, 8 A.3d 318, 329 (Pa. 2010) (quoting *Fumo v. City of Philadelphia*, 972 A.2d 487, 496 (Pa. 2009)). Our Supreme Court explained in the seminal case *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975), that

> [t]he core concept, of course, is that a person who is not adversely affected in any way by the matter he seeks to challenge 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.

Id. at 280-81 (footnote omitted).

In determining whether a person is aggrieved, courts consider whether the person has a substantial, direct, and immediate interest in the claim sought to be litigated. *Fumo*, 972 A.2d at 496. In this regard, our Supreme Court has established the following principles:

> 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, ... and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question.

South Whitehall Township Police Service v. South Whitehall Township, 555 A.2d 793, 795 (Pa. 1989) (citations omitted). The "keystone to standing in these terms is

that the person must be negatively impacted in some real and direct fashion." *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016) (quoting *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005)). Critically, our Court has held that generally a "party may not contest the constitutionality of a statute because of its effect on the putative rights of other persons or entities." *Philadelphia Facilities Management Corporation v. Biester*, 431 A.2d 1123, 1131 (Pa. Cmwlth. 1981) (citations omitted).

Reproductive Health Centers contend that they have standing to assert the constitutional rights of others, *i.e.*, their patients enrolled in Medical Assistance. They point out that this Court has specifically allowed medical professionals to assert the constitutional rights of their patients. The Commonwealth Respondents rejoin that this was allowed in the narrow circumstance where the constitutional interests of those medical providers and their patients were inextricably entwined. They contend that circumstance does not exist here.

In *Harrisburg School District v. Harrisburg Education Association*, 379 A.2d 893 (Pa. Cmwlth. 1977), two labor unions representing striking teachers of the school district appealed a trial court order enjoining their teacher members from picketing at the homes of school board members. The trial court held that the school district had standing to represent the interests of its school board members. This Court held otherwise, concluding that the school board members' right to privacy was not "inextricably bound up" with the school district's collective bargaining interests. *Id.* at 896. Additionally, there was no obstacle to the school board members bringing an action on their own to protect their privacy interests.

In reaching this conclusion, this Court applied the analytical paradigm developed in *Singleton v. Wulff*, 428 U.S. 106 (1976), for determining a litigant's

standing to assert the constitutional rights of others. In *Singleton*, drawing on precedent, the United States Supreme Court held, first, that courts should not adjudicate constitutional rights unnecessarily because, *inter alia*, it may be that the holders of these rights do not wish to assert them. Second, the Supreme Court held, as characterized by this Court, that

> third parties themselves usually will be the best proponents of their own rights. The courts depend upon effective advocacy, and therefore should *prefer to construe legal rights only when the most effective advocates of those rights are before them.*

Harrisburg School District, 379 A.2d at 895 (emphasis added). Using the *Singleton* analytical framework, this Court concluded that the Harrisburg School District lacked standing. The school district's collective bargaining interests were not inextricably connected to the privacy interests of its board members to feel secure in their homes.

In *Pennsylvania Dental Association v. Department of Health*, 461 A.2d 329 (Pa. Cmwlth. 1983), the dental association challenged an amendment to the standard agreement between Pennsylvania Blue Shield and each participating dentist, which had been approved by the Pennsylvania Department of Health.[11] The amendment gave Blue Shield access to patient files when necessary to audit the dentist. The dental association asserted that this contract amendment violated the

---

[11] An organization does not have standing by virtue of its purpose. *See Armstead v. Zoning Board of Adjustment of City of Philadelphia*, 115 A.3d 390, 399-400 (Pa. Cmwlth. 2015). Nevertheless, an organization may have standing to bring a cause of action if at least one of its members has standing individually. *North-Central Pennsylvania Trial Lawyers Association v. Weaver*, 827 A.2d 550, 554 (Pa. Cmwlth. 2003). "Where the organization has not shown that any of its members have standing, the fact that the challenged action implicates the organization's mission or purpose is not sufficient to establish standing." *Americans for Fair Treatment, Inc. v. Philadelphia Federation of Teachers*, 150 A.3d 528, 534 (Pa. Cmwlth. 2016).

constitutional right to privacy of its members and their patients. This Court held that the dental association had standing because the privacy interests of its member dentists were "inextricably bound up" with the privacy interests of their patients. *Id.* at 331. We explained that

> *unless individual patients had some means of knowing that the effect of the [Blue Shield amendment] may be to disclose some medical information which they may be entitled to withhold* by invoking their constitutional claim of privacy, the only way those rights could be protected would be by the dentist who is responsible for the patient's records.

Id. (emphasis added).

As noted above, this Court adopted the *Singleton* analytical framework in *Harrisburg School District.* We later confirmed that adoption in *Pennsylvania Dental Association*, stating that the "exceptions set forth in *Singleton* appl[y]." *Pennsylvania Dental Association*, 461 A.2d at 331. It is not lost on the Court that in *Singleton,* the United States Supreme Court held that licensed physicians had standing to challenge the constitutionality of a Missouri statute excluding Medicaid coverage of abortions that were not medically indicated. It does not follow, however, that the *Singleton* holding requires the conclusion that Reproductive Health Centers have standing to challenge Pennsylvania's coverage ban in this Court.

In federal courts, standing jurisprudence springs from Article III of the United States Constitution, which requires a case in controversy. *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 617 (1989). Our Supreme Court has explained that in Pennsylvania's state courts, standing precepts are not derived from the Pennsylvania Constitution, and, further, our state courts "are not governed by Article III and are thus not bound to adhere to the federal definition of standing." *In re Hickson*, 821

A.2d 1238, 1243 n.5 (Pa. 2003). Pennsylvania's standing doctrine "is a prudential, judicially-created tool meant to winnow out those matters in which the litigants have no direct interest in pursuing the matter." *Id.* at 1243. *Singleton's* grant of standing to physicians to challenge the Missouri coverage ban under the United States Constitution is interesting but irrelevant because Reproductive Health Centers are in state court and assert only state constitutional claims.

Standing in Pennsylvania's courts requires a substantial, direct, and immediate interest in the matter sought to be litigated. *William Penn Parking*, 346 A.2d at 280-82. That prime directive informs our application of the *Singleton* paradigm to determine whether Reproductive Health Centers have standing to assert the claims of some of their patients that the coverage ban violates their rights under the Equal Rights Amendment and the equal protection clause of the Pennsylvania Constitution.

We conclude that the application of the *Singleton* paradigm leads to a different conclusion in this case. First, to allow Reproductive Health Centers to assert the rights of others will require this Court to rule on constitutional questions when the Court has no way of knowing that the patients on whose behalf Reproductive Health Centers purport to speak even want this assistance. Second, the petition for review does not allege facts to show that the interests of Reproductive Health Centers are "inextricably bound up" with the equal protection rights of their patients. *Harrisburg School District*, 379 A.2d at 896. By contrast, in *Pennsylvania Dental Association*, the interest of the dentists and their patients were aligned perfectly on their shared constitutional right of privacy. Third, we can ascertain no reason, and none is alleged, why women enrolled in Medical Assistance cannot assert the constitutional claims raised in the petition for review on their own behalf.

Unlike the patients in *Pennsylvania Dental Association*, who had no way of knowing that their privacy interests were at stake, the patients of Reproductive Health Centers will be informed, in advance, that abortion services are not covered by Medical Assistance. There is no obstacle to these patients initiating litigation on their own behalf, and none is alleged in the petition for review.

In *Fischer v. Department of Public Welfare*, 444 A.2d 774 (Pa. Cmwlth. 1982) (*Fischer I*), the lead petitioner was a taxpayer, but other petitioners were indigent women advised to terminate their pregnancies for medical reasons. Thereafter a second amended petition for review was filed, and the case was tried before the Commonwealth Court. This Court, in a single-judge opinion by Judge McPhail, concluded that the coverage ban violated the equal protection clause and the Equal Rights Amendment of the Pennsylvania Constitution. *Fischer v. Department of Public Welfare*, 482 A.2d 1137 (Pa. Cmwlth. 1984) (*Fischer II*).[12] Notably, the Department of Public Welfare challenged the standing of some of the petitioners, including clergy and non-profit organizations, at trial. However, this Court held that the issue of standing had been waived because it had not been raised in the Department's pleading. *Id.* at 1139, n.11. The history of the *Fischer* litigation shows that women enrolled in Medical Assistance are fully able to pursue the constitutional claims raised in the instant petition for review without the assistance of their medical providers.

---

[12] Thereafter, the Department of Public Welfare filed exceptions to the *decree nisi* entered by Judge McPhail. In an *en banc* decision, this Court sustained the exceptions in part. *Fischer v. Department of Public Welfare*, 482 A.2d 1148 (Pa. Cmwlth. 1984) (*Fischer III*). This Court held that the Abortion Control Act did not violate the Equal Rights Amendment or the equal protection clause of the Pennsylvania Constitution. It affirmed the injunction against enforcing the requirement that the victim of rape or incest report its occurrence within 72 hours to qualify for Medical Assistance coverage of an abortion. The Department did not appeal this injunction. *Fischer v. Department of Public Welfare*, 502 A.2d 114, 117 n.8 (Pa. 1985) (*Fischer IV*).

We conclude that Reproductive Health Centers do not have standing to vindicate the constitutional rights of all women on Medical Assistance, some of whom may not be their patients, and who may or may not agree with the claims asserted on their behalf in the petition for review. The interests of Reproductive Health Centers are not inextricably bound up with the equal protection interests of all women enrolled in Medical Assistance.

Alternatively, Reproductive Health Centers assert that they have standing because they perform abortions at a financial loss. Petition for Review ¶36. Specifically, they "lose money" because they "regularly subsidize (in part or in full) abortions for Pennsylvania women on Medical Assistance who are not able to pay the fee on their own." *Id.* ¶85. Further, their staff must assist patients to secure funding and question patients about personal matters to determine if they qualify for a coverage ban exception. *Id.* ¶¶84-87. Reproductive Health Centers acknowledge that the purpose of Pennsylvania's Equal Rights Amendment is to prohibit "sex-based discrimination by government officials in Pennsylvania." *Id.* ¶89. Likewise, they acknowledge that equal protection provisions guarantee "equal protection of the law" and prohibit "discrimination."[13] *Id.* ¶94. Reproductive Health Centers do not allege that they have been the victim of sex discrimination or denied equal protection of the law in violation of the Pennsylvania Constitution.

The harms to Reproductive Health Centers identified in their pleading are administrative or pecuniary, which do not bear a causal relationship to the constitutional claims presented in their petition for review. As such, their interest in

[13] As determined by the *Fischer IV* Court, the right at issue is the "purported right to have the state subsidize the individual exercise of a constitutionally protected right, when it chooses to subsidize alternative constitutional rights." *Fischer IV,* 502 A.2d at 121. *Fischer IV* established that there is no fundamental right to have the state fund the exercise of the right to an abortion.

the litigation they seek to advance is not "substantial, direct[,] and immediate." *Funk v. Wolf*, 144 A.3d 228, 243 (Pa. Cmwlth. 2016) (quoting *Fumo*, 972 A.2d at 496). An "immediate" interest requires a "causal connection between the action complained of and the injury to the party challenging it." *South Whitehall Township Police Service*, 555 A.2d at 795. Stated otherwise, to have standing, the litigant must show that its interest falls "arguably within the zone of interests sought to be protected or regulated by the statute or constitutional guarantee in question." *Application of Biester*, 409 A.2d 848, 851 n.6 (Pa. 1979) (citation omitted) (quotations omitted).

Here, the interest "protected or regulated" by the coverage ban is "the life and health of the women subject to abortion and to protect the life and the health of the child subject to abortion." 18 Pa. C.S. §3202(a). The interests sought to be protected by the Pennsylvania Constitution are the guarantee to equal protection of the laws and the prohibition against discrimination on the basis of sex. Reproductive Health Centers' asserted administrative and pecuniary interests do not fall within the "zone of interests" addressed in either the Abortion Control Act or the Pennsylvania Constitution.

Applying the principles established in *William Penn Parking* and *Harrisburg School District*, we hold that Reproductive Health Centers lack standing to vindicate the constitutional rights of third parties, who may or may not agree with this litigation brought on their behalf. They have not alleged harms to their own interests that are protected by the provisions of the Pennsylvania Constitution that they seek to vindicate. Accordingly, we will sustain the Commonwealth Respondents' demurrer to the petition for review for the reason that Reproductive Health Centers lack standing.

II. Failure to State a Claim

In *Fischer IV*, 502 A.2d 114, the Pennsylvania Supreme Court considered each constitutional claim raised in the petition for review *sub judice*. At the outset, the Supreme Court stated that "[t]his case does not concern the right to an abortion." *Id.* at 116. Rather, the Supreme Court defined the question as whether, "because this Commonwealth provides funds to indigent women for a safe delivery," it is "equally obliged to fund an abortion." *Id.* The Supreme Court concluded that the answer was no. It held, expressly, that the coverage ban did not violate any of the provisions of the Pennsylvania Constitution cited in the instant petition for review. This Court is bound by the decisions of the Pennsylvania Supreme Court. *Zauflik v. Pennsbury School District*, 72 A.3d 773, 783 (Pa. Cmwlth. 2013). On this basis, the Commonwealth Respondents and the Intervenors have demurred to the instant petition for review.

In *Fischer IV*, the appellants were a taxpayer, several women enrolled in medical assistance who were pregnant and desired nontherapeutic abortions, a clergyman, medical providers of abortion services and a charitable organization that counseled rape victims (collectively, *Fischer* appellants). The *Fischer* appellants challenged the constitutionality of the coverage ban, arguing that it violated the following provisions of the Pennsylvania Constitution: the equal protection guarantees contained in Article I, Section 1 and Article III, Section 32; the anti-discrimination prohibition in Article I, Section 26; and the Equal Rights Amendment in Article I, Section 28.

Beginning with the *Fischer* appellants' equal protection claim, our Supreme Court explained that Article I, Section 1, and Article III, Section 32[14]

[14] This section provides:

guarantee the citizens of this Commonwealth equal protection under the law. Nevertheless, a citizen's right to engage in an activity free of government interference does not require the Commonwealth to provide the means to do so. However, when the Commonwealth funds an activity, it must fund it for all, unless there is a constitutionally valid reason to limit that funding.

The Supreme Court framed the *Fischer* appellants' constitutional issue as the "purported right to have the state subsidize the individual exercise of a constitutionally protected right, when it chooses to subsidize alternative constitutional rights." *Fischer IV*, 502 A.2d at 121. Noting that "financial need" did not create a suspect class, *id.* at 122, the Supreme Court applied the rational

---

> The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law:
>
> 1. Regulating the affairs of counties, cities, townships, wards, boroughs or school districts:
>
> 2. Vacating roads, town plats, streets or alleys:
>
> 3. Locating or changing county seats, erecting new counties or changing county lines:
>
> 4. Erecting new townships or boroughs, changing township lines, borough limits or school districts:
>
> 5. Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury:
>
> 6. Exempting property from taxation:
>
> 7. Regulating labor, trade, mining or manufacturing:
>
> 8. Creating corporations, or amending, renewing or extending the charters thereof:
>
> Nor shall the General Assembly indirectly enact any special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

PA. CONST. art. III, §32.

relationship test.[15] This requires that the legislative classification be directed at the accomplishment of a legitimate governmental interest and operate in a manner that is neither arbitrary nor unreasonable. *Id.* at 123.

In the case of the coverage ban, the legislative classification distinguishes abortions necessary to save the life of the mother from nontherapeutic abortions. The Supreme Court concluded that this classification relates to the stated legislative objective of life preservation because it encourages "the birth of a child in all situations except where another life would have to be sacrificed." *Id.* at 122. Further, the stated purpose of "preserving potential life" was accomplished by the coverage ban because "it accomplishes the preservation of the maximum amount of lives, *i.e.*, those unaborted new babies, and those mothers who will survive though their fetus be aborted." *Id.* at 122-23.[16]

The Supreme Court next considered the *Fischer* appellants' argument that the state punished women who elected abortions in violation of Article I, Section 26 of the Pennsylvania Constitution, which provides that citizens are not to be harassed or punished for the exercise of their constitutional rights. The Supreme Court rejected this claim, explaining that Article I, Section 26 cannot be construed

> as an entitlement provision; nor can it be construed in a manner which would preclude the Commonwealth, when acting in a manner consistent with state and federal equal protection

---

[15] The Supreme Court also held that even if an intermediate level of scrutiny was appropriate, the coverage ban would pass "constitutional muster." *Fischer IV*, 502 A.2d at 123.

[16] Although the *Fischer* appellants did not raise claims under the United States Constitution, our Supreme Court observed that the federal limitation on funding abortions, known as the Hyde Amendment, Pub. L. 96-123, §109, 93 Stat. 926, had been sustained by the United States Supreme Court, which reasoned that the government's choice to favor childbirth over abortion did not offend the United States Constitution. *Fischer IV*, 502 A.2d at 120.

> guarantees, from conferring benefits upon certain members of a class unless similar benefits were accorded to all.

Fischer IV, 502 A.2d at 123. The Supreme Court concluded that the Commonwealth has "merely decided not to fund [abortion] in favor of an alternative social policy," and this decision did not offend Article I, Section 26. *Fischer IV*, 502 A.2d at 124.

The Supreme Court then turned to the argument of the *Fischer* appellants that the classification between pregnant women who choose to give birth and pregnant women who choose to have an abortion offended the Equal Rights Amendment in Article I, Section 28 of the Pennsylvania Constitution. The *Fischer* appellants argued that because medically necessary services for men were covered and a medically necessary abortion, which can only affect women, was not covered, "the state has adopted a standard entirely different from that which governs eligibility for men." *Fischer IV*, 502 A.2d at 124 (quotation omitted). The Supreme Court rejected the notion that the legislative classification in question related to sex.

The Supreme Court explained that the purpose and intent of the Equal Rights Amendment

> is to insure equality of rights under the law and to eliminate sex as the basis for distinction. The sex of citizens of this Commonwealth is no longer a permissible factor in the determination of their legal rights and legal responsibilities. The law will not impose different benefits or different burdens upon the members of a society based on the fact that they may be a man or a woman.

Id. (quoting *Henderson v. Henderson*, 327 A.2d 60, 62 (Pa. 1974)). The classification in the coverage ban related to a procedure, abortion, and to a woman's voluntary choice. *Id.* at 125. It did not impose a benefit or burden on the basis of the citizen's sex simply because the procedure involved "physical characteristics

unique to one sex." *Id.* (quoting *People v. Salinas*, 551 P.2d 703, 706 (Colo. 1976)). Thus, the Supreme Court held that the coverage ban did not violate Pennsylvania's Equal Rights Amendment.

Reproductive Health Centers raise the precise constitutional claims that were raised in *Fischer IV*, 502 A.2d 114, and unequivocally rejected by the Supreme Court. Reproductive Health Centers acknowledge that "*Fischer* [*IV*] is precedential" but argue that it was "wrongly decided." Reproductive Health Centers' Brief at 2. They contend that our Supreme Court's holding was "poorly reasoned at the time it was decided" and that "legal developments since the decision also undermine its legitimacy." *Id.* at 2-3. Even if they are correct, this Court is bound by *Fischer IV* and is "powerless to rule that decisions of [our Supreme] Court are wrongly decided and should be overturned." *Griffin v. Southeastern Pennsylvania Transportation Authority*, 757 A.2d 448, 451 (Pa. Cmwlth. 2000) (citations omitted).[17] In short, any argument that *Fischer IV* was wrongly decided must be presented to the Pennsylvania Supreme Court. *See Griffin*, 757 A.2d at 451.

The petition for review does not state a claim upon which relief can be granted. All of its legal claims have been addressed, and rejected, by our Supreme Court in *Fischer IV*, 502 A.2d 114.

---

[17] *Amicus Curiae* PARCRJ argues that intermediate courts have refused to follow the Pennsylvania Supreme Court's decisions on "rare occasions" and that this Court should do so here. PARCRJ Brief at 17-18. PARCRJ cites a decision of the Pennsylvania Superior Court in *Manley v. Manley*, 164 A.2d 113, 119-20 (Pa. Super. 1960), that declined to follow *Matchin v. Matchin*, 6 Pa. 332 (1847), a Supreme Court decision holding that a wife in a divorce action could not raise insanity as a defense. *Matchin* had been severely criticized by courts of other jurisdictions and commentators on the subject of divorce, and subsequent Supreme Court rulings had weakened its precedential value. *Manley*, 164 A.2d at 120. Indeed, for 65 years, the Supreme Court made no reference to *Matchin*. By contrast, our Supreme Court has not called into question the *Fischer IV* decision.

Conclusion

We hold that Reproductive Health Centers lack standing to challenge the coverage ban on the basis of the constitutional rights belonging to third parties and sustain the demurrer of the Commonwealth Respondents. Because the petition for review fails to state a claim upon which relief can be granted, we sustain the demurrer of the Commonwealth Respondents and the Intervenors. Accordingly, we dismiss the petition for review.

s/Mary Hannah Leavitt
Mary Hannah Leavitt, President Judge

Judge Brobson and Judge Crompton did not participate in the decision in this case.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Allegheny Reproductive Health Center, Allentown Women's Center, 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
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	:	

ORDER

AND NOW, this 26th day of March, 2021, the preliminary objections of Respondents are SUSTAINED as set forth in the attached Opinion, and Petitioners' petition for review is DISMISSED.

s/Mary Hannah Leavitt
Mary Hannah Leavitt, President Judge

Certified from the Record
MAR 26 2021
And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Allegheny Reproductive Health Center, Allentown Women's Center, 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
	:	ARGUED: October 14, 2020
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 MARY HANNAH LEAVITT, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge

CONCURRING AND DISSENTING OPINION
BY JUDGE CEISLER

FILED: March 26, 2021

I concur with the outcome reached by the majority. However, I respectfully disagree with the majority's conclusion that Petitioners lack standing to bring this action.

Petitioners (Providers) are medical providers asserting that Pennsylvania's statutory restriction under 18 Pa. C.S. § 3215(c) (Coverage Ban) on public abortion funding for recipients of publicly funded medical benefits (Medical Assistance) is a violation of patients' rights under the Pennsylvania Constitution's equal rights and equal protection guarantees. *See* Pa. Const. art. I, §§ 1, 26, 28; art. III, § 32. Respondents, various Commonwealth parties (Commonwealth), contend Providers lack standing to assert claims on behalf of non-party patients. However, applicable precedents demonstrate that Providers have standing based on their connection to their patients and their allegations of direct harm to themselves.

Providers aver that they collectively provide about 95% of all abortions performed in Pennsylvania. Pet. for Review, ¶ 56. Providers further aver that they are suing on behalf of their patients receiving Medical Assistance who seek abortions but are ineligible for Medical Assistance coverage of the cost because of the Coverage Ban. *Id.*, ¶ 39. Providers also assert that they themselves are directly harmed by the Coverage Ban's funding limitation for abortions, because they have to divert money and staff time from other work to help their patients who cannot afford an abortion, they subsidize abortions for women who cannot afford them, they expend staff resources to assist patients in securing private funding for abortions, and they are required to explore personal matters with their patients to determine whether one of the Coverage Ban's exceptions applies. *Id.*, ¶¶ 36, 58, 84-87.

The Commonwealth argues these averments are insufficient to confer third-party standing for Providers to assert constitutional challenges on behalf of non-

party patients. In my view, Providers have standing, and the Commonwealth's preliminary objection on this issue should be overruled.

The Commonwealth cites authorities for the general proposition that standing requires allegations of direct harm. The Commonwealth argues Providers have not pleaded sufficient direct harm. However, the Commonwealth offers no analysis or authority relating specifically to medical providers and their patients.

By contrast, Providers offer detailed analysis and citations of authorities directly on point. Providers argue persuasively that analogous United States Supreme Court authority, adopted by this Court as applicable in Pennsylvania, confers standing in the circumstances of this case.

Singleton v. Wulff

In *Singleton v. Wulff*, 428 U.S. 106 (1976), two physicians challenged a Missouri statute that limited public funding of abortions to cases where abortion was medically indicated. The defendants filed a pre-answer motion challenging the plaintiffs' standing. A plurality of the United States Supreme Court held that the physicians had standing to bring constitutional claims on behalf of Medical Assistance patients seeking abortions. *Id.* at 118.

The plurality observed that the standing issue raised two distinct questions. The first question was whether the plaintiffs had alleged an "injury in fact," a sufficiently concrete interest in the outcome of the litigation to invoke a federal court's jurisdiction. *Id.* at 112. The plurality concluded that the physicians had alleged a sufficiently concrete interest in the outcome, because they stated they had performed and would continue to perform abortions for which they would be entitled to reimbursement if not for the challenged statute. If the physicians prevailed, the plurality reasoned, they would benefit by receiving payment from the state.

However, because this first inquiry relates solely to invoking ***federal*** jurisdiction, it is not involved here.

The second standing question is "whether, as a prudential matter, the plaintiff[s] are proper proponents of the particular legal rights on which they base their suit." *Id.* The plurality easily concluded that the physicians had standing to the extent they were asserting ***their own*** "constitutional rights to practice medicine." *Id.* at 113. The real issue was whether the physicians had standing to assert claims based on ***the rights of their patients***. *Id.*

The plurality observed that standing to assert constitutional rights of third parties should be accorded sparingly. The true holders of the rights at issue may not wish them asserted, and in any event, they themselves are usually the best proponents of their own rights. *Id.* at 114. Therefore, the plurality formulated a two-part test for standing to assert the rights of third parties:

First, the relationship between the litigant and the third party whose rights are asserted must be such that "the right is inextricably bound up with the activity the litigant wishes to pursue. . . ." *Id.* Further, the relationship between the litigant and the third party must be such that the litigant is "fully, or very nearly, as effective a proponent of the right" as the third party. *Id.* at 115 (citing doctor-patient relationships in *Griswold v. Connecticut*, 381 U.S. 479, 481 (1965), and *Doe v. Bolton*, 410 U.S. 179, 188-89 (1973)).

Second, the third party must lack the ability to assert her own right. There must be "some genuine obstacle to such assertion, [such that] the third party's absence from court loses its tendency to suggest that [her] right is not truly at stake, or truly important to [her], and the party who is in court becomes by default the right's best available proponent." *Id.* at 116 (noting, for example, that forcing a third

party to assert her own right to remain anonymous "'would result in nullification of the right at the very moment of its assertion.'" *Id.* (quoting *NAACP v. Alabama*, 357 U.S. 449, 459 (1958)).

Applying the first factor, the parties' relationship, the plurality found:

> The closeness of the relationship is patent . . . . ***A woman cannot safely secure an abortion without the aid of a physician***, and an impecunious woman cannot easily secure an abortion without the physician's being paid by the State. The woman's exercise of her right to an abortion, whatever its dimension, is therefore necessarily at stake here. Moreover, the constitutionally protected abortion decision is one in which the physician is intimately involved. *See Roe v. Wade*, 410 U.S. [113,] 153-156 [(1973)]. ***Aside from the woman herself, therefore, the physician is uniquely qualified to litigate the constitutionality of the State's interference with, or discrimination against, that decision***.

Singleton, 428 U.S. at 117 (emphasis added).

Applying the second factor, the plurality recognized "several obstacles" to women's ability to assert their own abortion rights, including their desire to maintain the privacy of their decisions and the "imminent mootness" of any individual claim. *Id.* The plurality acknowledged these obstacles could be overcome: a woman might bring suit under a pseudonym; she might avoid mootness and retain her right to litigate after pregnancy because the issue was "capable of repetition yet evading review"; and a class action might be possible. *Id.* Regarding the class action, however, the plurality observed that "if the assertion of the right is to be 'representative' to such an extent anyway, there seems little loss in terms of effective advocacy from allowing its assertion by a physician." *Id.* at 117-18.

Accordingly, applying the two factors it had identified, the plurality concluded "that ***it generally is appropriate to allow a physician to assert the rights***

of women patients as against governmental interference with the abortion decision . . . ." *Id.* at 118 (emphasis added).

Harrisburg School District v. Harrisburg Education Association

Singleton, standing alone, is not binding authority here for three reasons: it was a plurality opinion, it related only to claims under the federal constitution, and it analyzed standing only in relation to claims in federal courts. However, in *Harrisburg School District v. Harrisburg Education Association*, 379 A.2d 893 (Pa. Cmwlth. 1977) (*en banc*), ***this Court expressly adopted the Singleton plurality's two-factor analysis*** for determining standing to assert a third party's constitutional rights in Pennsylvania courts. *Id.* at 896.

In *Harrisburg School District*, the school district sued the teachers' union, seeking injunctive relief to stop striking teachers from picketing the school board members' private homes. The claim asserted the board members' privacy rights under the Pennsylvania Constitution. The union filed preliminary objections challenging the school district's standing to assert the board members' individual constitutional rights.

After quoting extensively from the *Singleton* plurality opinion, this Court held:

> Singleton . . . offers two "factual elements" for consideration in determining whether the general rule that one may not claim standing to vindicate the constitutional rights of others should not apply[:] the first, whether the relationship of the litigant to the third party is such that enjoyment of the right by the third party is inextricably bound up with the activity the litigant seeks to pursue; and the second, whether there is some obstacle to the assertion by the third party of his own right. ***We adopt this rule for standing to assert third party constitutional rights.***

Id. (emphasis added).

This Court found standing absent under the facts of *Harrisburg School District*. However, this Court expressly acknowledged the conclusion in *Singleton* that under the two-factor test, physicians had standing to assert a constitutional challenge to an abortion funding restriction on behalf of their patients. *Id.*

In short, the analysis of the United States Supreme Court plurality in *Singleton* concluded that physicians have standing to assert constitutional claims on behalf of their clients in federal court. This Court in *Harrisburg School District* concluded that the analytical framework applied in *Singleton* is also applicable to constitutional standing in Pennsylvania. Taken together, *Singleton* and *Harrisburg School District* strongly support Providers' standing to assert their patients' constitutional rights here.

Pennsylvania Dental Association v. Department of Health

In *Pennsylvania Dental Association v. Department of Health*, 461 A.2d 329 (Pa. Cmwlth. 1983) (*en banc*), the Pennsylvania Dental Association (PDA) alleged that statutory and regulatory amendments to reporting and file inspection requirements for dentists would violate the constitutional privacy rights of dental patients. The Department of Health (DOH) challenged the PDA's standing to assert the constitutional rights of patients. Citing *Singleton* and *Harrisburg School District*, this Court found that dentists had standing to assert their patients' constitutional rights:

> [U]nless individual patients had some means of knowing that the effect of the [new] regulation may be to disclose some medical information which they may be entitled to withhold by invoking their constitutional claim of privacy, the only way those rights could be protected would be by the dentist who is responsible for the patient's records. We are of the opinion that the exception set forth in *Singleton* applies and that PDA has standing to raise this issue.

Pa. Dental Ass'n, 461 A.2d at 331.

Fischer v. Department of Public Welfare

This Court's evenly divided decision in *Fischer v. Department of Public Welfare*, 444 A.2d 774, 776 (Pa. Cmwlth. 1982) (*en banc*), is not to the contrary. In *Fischer*, the petitioners challenged the Coverage Ban's limitations on Medical Assistance for abortions. They argued that public funding should be available to women whose physicians recommended abortions to preserve their health, even if their lives were not in imminent danger. Further, they contended that abortion coverage should be available to Medical Assistance recipients seeking abortions on religious grounds.[1] They also challenged the notice provisions that were part of the Coverage Ban at that time, which required a woman to notify criminal authorities within 72 hours of a rape or discovery of a pregnancy resulting from incest, in order to be eligible for Medical Assistance coverage for the related abortion.

In addition to women who were receiving Medical Assistance, the petitioners in *Fischer* included physicians and nonprofit providers of counseling and other services to Medical Assistance recipients. The physicians asserted the Coverage Ban would cause them direct economic hardship and would prevent them from providing necessary medical services according to their best medical judgment. *Id.* at 776.

---

[1] One petitioner in *Fischer v. Department of Public Welfare*, 444 A.2d 774, 776 (Pa. Cmwlth. 1982) (*en banc*), claimed the tenets of her faith supported the abortion she was seeking. As one three-judge opinion (Craig opinion) in *Fischer* explained, "certain religious sects deem abortion to be the only moral response to certain pregnancies including those which will result in great suffering on the part of the pregnant woman or great danger to her health short of the threat of death necessary for reimbursement under the [statutory restriction on public abortion funding contained in 18 Pa. C.S. § 3215(c) (Coverage Ban)]." *Id.* at 782. Thus, the religious argument was closely aligned with the health preservation argument.

The respondents filed preliminary objections challenging the standing of the physicians and counseling entities to assert claims relating to the Coverage Ban's reporting requirements. This Court's *en banc* panel was evenly split three to three on that issue. Thus, neither three-judge opinion is precedential.

1. Blatt Opinion

One three-judge group (Blatt opinion) would have upheld the challenge to standing. The Blatt opinion reasoned:

> There are clearly no allegations that the petitioner-doctors are in any way harmed or that the nonprofit organizational petitioners suffer any direct harm to themselves as a result of the reporting requirements. Absent such allegations of direct, substantial and immediate injury to such petitioners themselves we must conclude that the doctors and these organizations do not have standing to bring this action. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, . . . 346 A.2d 269 ([Pa.] 1975).

Fischer, 444 A.2d at 779. The Blatt opinion observed, "[W]e cannot say that mere concern for or attempts to aid a certain class of persons automatically endows [sic] an organization with standing to sue on their behalf." *Id.* Notably, the Blatt opinion did not mention the analysis of *Singleton* or *Harrisburg School District*. Thus, it appears the Blatt opinion was issued without the benefit of considering the most closely applicable precedents. Its reasoning is arguably contrary to those decisions.

Moreover, the Blatt opinion is distinguishable. First, in *Fischer*, the only challenge to standing related to reporting requirements for victims of rape and incest who were seeking to terminate the resulting pregnancies. The reporting requirements did not bear the same close relation to physicians' services that the abortions themselves did. Further, here, Providers expressly pleaded that they do and will continue to incur direct damages of the same type alleged in *Singleton* due

to providing abortion services for which they are not reimbursed. Therefore, the Blatt opinion's reasoning against standing is inapplicable here.[2]

2. Craig Opinion

By contrast, the other three-judge panel in *Fischer* (Craig opinion) would have overruled the preliminary objection to standing. Relying on *Singleton* and *Harrisburg School District*, the Craig opinion concluded that the physicians in *Fischer* were alleging the same kinds of direct financial damages that helped to confer standing in *Singleton* and *Harrisburg School District*. *Fischer*, 444 A.2d at 781-82.

As stated above, Providers here pleaded the same sorts of direct financial damage. *See* Pet. for Review, ¶¶ 36, 58, 84-87. The Craig opinion therefore offers persuasive authority that Providers have standing here.

Conclusion

Based on all of the authorities discussed above, I conclude that Providers have standing to maintain this action. Therefore, I respectfully dissent on that issue.

Ellen Ceisler

ELLEN CEISLER, Judge

[2] In addition, although not mentioned in the Blatt opinion, it is notable that in *Fischer*, a number of patients were parties and were asserting their own constitutional rights, thus undermining the existence of any genuine obstacle to their assertion of such rights. Therefore, the rationale behind the plurality rule in *Singleton v. Wulff*, 428 U.S. 106 (1976), was at least partially absent.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Jane Doe et al.,
Plaintiffs

v.

Robert Wright, Director,
Illinois Department of Public
Aid, Defendant

No. 91 CH 1958

ORDER

This matter coming before the Court for ruling on the parties' Cross-Motions for summary judgment, the parties appearing through counsel, IT IS HEREBY ORDERED THAT:

1. Plaintiffs' Cross-Motion for Summary Judgment is granted, on the grounds that 305 ILCS 5/5-5 and 5/6-1 and their accompanying regulations are in violation of the Constitution of the State of Illinois.

2. Defendant is hereby enjoined from enforcing 305 ILCS 5/5-5 and 5/6-1 and their accompanying regulations ~~in a manner that~~ insofar as they deny reimbursement for abortion necessary to protect a woman's health although not necessary to preserve her life.

3. Defendant is ordered to provide reimbursement through the State's medical assistance programs for abortions necessary to protect a woman's health.

4. Defendant's Cross Motion for Summary Judgment is denied.

ENTER: DEC 2 1994

Judge Judge's No.

Atty No.
Name
Attorney for
Address
City
Telephone

No. 91922
S. Wisnicki for Plaintiffs
303 N. LaSalle St.
Chicago, IL 60601
(312) 201-9740

printed on recycled paper

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

CHITTENDEN COUNTY COURT
FILED IN CLERKS OFFICE

MAY 26 1986

FRANCIS G. [illegible]
CLERK

STATE OF VERMONT

CHITTENDEN COUNTY, ss.

JANE DOE On behalf of herself and all others similarly situated v. VERONICA CELANI, Commissioner of the Department of Social Welfare	CHITTENDEN SUPERIOR COURT DOCKET NO. S81-84CnC

OPINION AND ORDER

The Plaintiff seeks to enjoin the Defendant from denying Medicaid coverage to indigent Vermonters for medically necessary abortions.

The parties have submitted the case to the Court for a final decision on the legal issues raised by the pleadings and the Stipulation of Facts filed September 3, 1985.

On January 27, 1984, this Court preliminarily enjoined the Commissioner from denying Medicaid coverage to the named Plaintiff for a medically necessary abortion. On September 28, 1984, the preliminary injunctive relief was continued and extended to cover the class that Plaintiff represents. This class is defined as:

> [a]ll indigent pregnant women in Vermont who qualify for Medicaid and whose pregnancy is not life threatening but for whom an abortion is medically necessary and who desire an abortion.

The Commissioner's denial of Medicaid was based upon Department of Social Welfare Regulation M617, which states:

> Providers will be reimbursed by Vermont Medicaid for abortions performed only under circumstances for which Federal Financial Participation is available.

Regulation M617 was adopted after the passage of the so-called Hyde Amendment to a federal appropriations bill. In its current version the Hyde Amendment limits federal reimbursement for abortions to situations where the life of the woman would be endangered if the fetus were carried to term.

Except for the restriction contained in Regulation M617 Vermont provides Medicaid coverage for all medically necessary non-experimental procedures and the Federal Government reimburses the State pursuant to Title XIX of the Social Security Act, 42 U.S.C.A. §§1396 - 1396q (West 1983 & Supp. 1985). But for the provisions of the Hyde Amendment, medically necessary abortions would qualify for reimbursement under the joint Federal-State Medicaid program according to the terms of both Title XIX and 33 V.S.A. §§2901-2903. Prior to passage of the first Hyde Amendment the Vermont Department of Social Welfare provided Medicaid coverage for medically necessary abortions.

Even without Regulation M617, Vermont would still receive full reimbursement for all medically necessary services, except non-life threatening abortions. See, e.g. Moe v. Secretary of Administration, 417 N.E.2d 387, 391 (Mass. 1981).

Plaintiff and all other members of the class by categorical definition are eligible for Medicaid. Plaintiff has one non-functioning kidney and one partially functioning transplanted

kidney. In Plaintiff's case, the continuation of her pregnancy posed serious medical risks. Her physician indicated that these risks included adverse effects on the viability of her transplanted kidney from spontaneous abortion; serious complications directly related to the pregnancy, such as, high blood pressure and seizures resulting from a further decrease in the functioning of her transplanted kidney (which is only partly functional) and, finally, kidney failure which would require dialysis treatment to sustain her life. This medical opinion was confirmed by a second physician. Both doctors indicated that an abortion was medically necessary.

The adoption of Regulation M617 sets up the only exception to the clearly established public policy of providing health care services to the indigent for all conditions requiring medically necessary non-experimental procedures. Indeed, it is clear that Regulation M617 is not so much an exception to the stated public policy of providing medically necessary services to the indigent, as it is a complete negation of that policy as it relates to one medically necessary service.

Vermont passed its medical assistance program, 33 V.S.A. §§2901 - 2904 in 1967 under Title XIX of the Federal Social Security Act. Title XIX was passed

> [f]or the purpose of enabling each State, as far as practicable under the conditions in such state, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, ...

42 U.S.C.A. §1396.

The Commissioner reads into the Vermont statute which

provides for a medical assistance program a federal appropriations restriction which opposes the legislative goal of the program.

Unlike some other jurisdictions, Vermont does not prefer childbirth over abortion as a matter of public policy. Defendant advances two reasons for Regulation M617. She maintains that without federal reimbursement she does not have administrative authority to fund medically necessary procedures for which federal reimbursement is unavailable. She also maintains that funding medically necessary abortions in non-life-threatening pregnancies would increase the State's financial contribution to the Medicaid program due to the denial of federal reimbursement.

It should be noted that under the facts as stipulated, if in one year all 264 abortions are paid for entirely out of state funds at a normal cost of $200.00, the cost to the State would be $52,800.00. If federal funding were available at the rate of 67.06 percent, which it is not, savings to the State would be $35,407.68. If those 264 pregnancies went to term and resulted in normal births, at a cost of $1,225.00, the total cost would be $323,400.00. With federal reimbursement available at 67.06 per cent the cost to the State of these procedures would be $106,527.96. Thus, the cost to the State of funding live births with federal reimbursement is slightly over three times the cost of State funding for abortions without federal funding.

The State has failed to demonstrate a connection between the regulation and the only public purpose claimed, that of saving money. The regulation's sole demonstrable effect is to negate the purpose of the enabling statute under which it was

promulgated. The only purpose to which Regulation M617 relates rationally is to favor childbirth over abortion. But the State disavows this as public policy of the State of Vermont. [1] This disavowal leaves the Commissioner with no rational reason for retaining or enforcing Regulation M617.

Clearly the Federal Constitution as interpreted by the United States Supreme Court in Harris v. McRae, 448 U.S. 297 (1980), does not provide protection to Plaintiff in this situation. The question therefore is whether or not Regulation M617 impermissibly impinges upon some protection afforded or right guaranteed by the Vermont Constitution. See, State v. Badger, 141 Vt. 430, 438 (1982).

Initially it should be noted that the Vermont Constitution provides more protection for the individual than the United States Constitution, and delineates rights not recognized or guaranteed by that document. These textual differences provide a valid basis for independent analysis, and a determination that greater protection is provided by the Vermont Constitution. State v. Jewett, 146 Vt. 221 (1985).

---

[1] Were the state to assert favoring childbirth over abortion as a public policy Regulation M617 would fall as an impermissible infringement of constitutionally guaranteed rights. Beecham v. Leahy, 130 Vt. 164, 169 (1972); see, Right to Choose v. Byrne, 450 A.2d 925 (N.J. 1982); Moe v. Secretary of Administration, 417 N.E.2d 387 (Mass. 1981); Committee to Defend Reproductive Rights v. Myers, 29 Cal.3d 352, 172 Cal.Rptr 866, 625 P.2d 770 (1981); but see, Fischer v. Commonwealth, 502 A.2d 114 (Pa. 1985); cf. Planned Parenthood Association v. Department of Human Resources, 687 P.2d 785 (Ore. 1984).

Article One of Chapter One of the Vermont Constitution provides: "That all men are born equally free and independent and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending of life, liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; . . ."

The language in Article One was obviously influenced by that portion of the United States Declaration of Independence which states: "We hold these truths to be self-evident; that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. . . ."

It is significant that the United States Constitution contains no such language.

It is perhaps more significant that Article One of the Vermont Constitution is not an isolated statement in that document. Several other articles in Chapter One deal with equality and protection of rights, including Articles Four, Five, Six, Seven, Nine and Eighteen.

Of particular relevance is Article Seven, which provides in relevant part

> That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community, and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community;. . . .

Greater protection for the individual under the Vermont

Constitution also derives from the nature of state government exercising its reserved sovereign power to promote and protect the health and welfare of its inhabitants. See, Jewett at 227. The Ninth and Tenth Amendments of the Federal Constitution, recognizing the concern for the federal-state balance of power, explicitly recognize that additional rights and protections are retained by the people as inhabitants of the states. See, Id.

The Vermont Bill of Rights was adopted prior to the existence of the United States Constitution, and was retained in the Constitution of the State of Vermont after the United States Constitution was adopted and ratified in the state. The retention, unaltered in substance, of additional human rights guarantees and constraints on governmental action indicates a deliberate and still enduring intent on the part of Vermont to recognize greater protections and benefits for its inhabitants under the rule of law than those recognized federally. The Vermont Supreme Court has "never intimated that the meaning of the Vermont Constitution is identical to the federal document. Indeed, [it has] at times interpreted our constitution as protecting rights which were explicitly excluded from federal protection." Badger at 449.

While the Federal Constitution establishes minimum levels below which states cannot go in treating individuals, it has never been questioned but that states can, and often do, afford persons within their jurisdiction more protection for individual rights. See, e.g. McRae at 311, n. 16, PruneYard Shopping Center v. Robins, 447 U.S. 74, 81 (1980). States are free to provide

additional protections by statute, and are obligated to do so by the terms of their own constitutions. "[O]ne of the strengths of our federal system is that it provides a double source of protection for the rights of our citizens." Brennan, State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489, 503 (1977).

It is this Court's duty and function to examine for constitutionality and to determine the precise meaning of our own constitutional provisions provided "no federal proscriptions are transgressed," In re E.T.C., 141 Vt. 275, 278 (1982); and obligation to determine the constitutional validity of the regulation in question. Badger at 449; Vermont Woolen Corporation v. Wackerman, 122 Vt. 219, 225 (1960).

Article Seven protects individuals against the discriminatory provision of government benefits by proscribing any particular emolument or advantage granted to only part of a community, whether or not that benefit affects fundamental rights. Article One gives constitutional stature to individuals' unalienable rights to health in the form of happiness, safety and the ability to enjoy life. Article One also protects individuals against discriminatory government treatment affecting fundamental constitutionally protected rights.

The safety of all Vermonters is promoted by the ready availability of adequate health care and the delivery of necessary health services. There is, therefore, a direct relationship between the availability of medically necessary services and the constitutionally guaranteed unalienable right to pursue and

obtain happiness and safety and to enjoy life. Health is central to personal safety and happiness. From medical well-being one may well say all other benefits flow. Faced with a threat to one's health, one's safety is integrally at risk. When one seeks a health service which is medically necessary, one is seeking, by definition, what is indispensable for the protection of one's health and safety. In a health care provider's judgment, a medically necessary service is essential for the treatment of a condition which if left untreated would affect adversely one's health.

This case does not present an issue involving the freedom of choice to obtain an abortion so much as it concerns an unequal protection by the State of indigent inhabitants' unconstitutionally protected right to personal health, safety and happiness. At issue is the constitutional validity of Regulation M617 when tested against the constitutionally protected fundamental right to personal safety and the constitutional prohibition against unequal provision of governmental benefits.

Recognizing that many of our inhabitants are not in a position to financially pursue happiness and safety and to enjoy life, it has long been the policy of the state to provide the necessities of life to qualified indigent persons. See, e.g. 33 V.S.A. Chap. 38, §3001(4).

Congress recognized the financial burden such programs place on the states, and provided for reimbursement to the

states which established appropriate assistance programs, e.g. 42 U.S.C.A. §§1396 - 1396q.

Consistent with the objectives of providing greater access to health care for indigents, a state is free under federal law "to include in its Medicaid plan those medically necessary abortions for which federal reimbursement is unavailable." McRae at 311, n.16. Although this Court does not rely on federal law in reaching its decision it does note that no federal proscriptions have been transgressed in arriving at a decision. See, In re E.T.C. at 278.

The purpose of these assistance programs is to place the indigent in a position to obtain services on an equal basis with those more fortunate people who can obtain these services for themselves. The Vermont Medicaid program was established to "furnish medical assistance [to those] . . . whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C.A. §1396; 33 V.S.A. §2901.

Regulation M617 singles out one necessary medical service and denies access to indigents for reasons which have nothing to do with promoting access to health care. Regulation M617 discriminates not only against indigents versus non-indigents, but between indigents seeking the medical procedure in question and those indigents seeking any other medically necessary service, all of which are reimburseable to providers by the State. More particularly Regulation M617 creates a single instance where the availability of reimbursement is conditioned on whether a woman's life or her health is threatened.

Regulation M617 impinges directly on the constitutionally guaranteed right to safety. It increases the danger to health by precluding access by indigents to a necessary medical procedure. It also treats Vermonters unequally by singling out small group of people for denial of access to medically necessar care.

Once the State has established a program of emoluments and advantages to a community of Vermonters, under Article Seven, it must ensure that the establishment and administration of that program is carried out for the common benefit, protection and security of that community. This prohibits discrimination among the provision of benefits once those benefits are being provided

The Vermont Supreme Court has set a standard under Article by which to measure the constitutionality of regulatory legislation. See, State v. Ludlow Supermarkets, Inc., 141 Vt.261 (1982 The Court's general concern was "with the propriety of the legislature's exercise of its general police power, and whether that power has been exercised so as to affect all citizens equally." Ludlow Supermarkets at 265. That concern generated the following constitutional tests. "[I]nequalities [in impact] are not fatal with respect to constitutional standards if the underlying policy supporting the regulation is a compelling one, and the unbalanced impact is, as a practical matter, a necessary consequence of the most reasonable way of implementing that policy." State v. Ludlow Supermarkets, Inc., 141 Vt. 261, 265 (1982).

> Classifications are permissible only
>
> if a case of necessity can be established for overriding the prohibition of Article 7 by reference to the 'common benefit, protection, and security of the people.'
>
> Given the breadth of the police power, . . .its exercise, even in the presence of other generalized restraints on state action, may be supported if premised on an appropriate and overriding public interest.

Id. at 268.

The Commissioner has failed to establish a case of necessity by failing to show any compelling public policy which Regulation M617 implements. She has failed to establish any rational basis for the regulation. The only necessary consequence of Regulation M617, besides favoring childbirth over abortion, is piecemeal and selective dismantling of the legislative policy of providing medical assistance.

"[The] objective of favoring one part of the community over another is totally irreconcilable with the Vermont Constitution." Ludlow Supermarkets at 269. Once benefits are granted to a part of the community they must further a goal independent of the preference awarded. Id. This proposition applies to the selective withholding of benefits. One person's preference is another person's discrimination. Medical assistance furthers the independent goals of improving the level of health of Vermonters and lessening the impact of economic inequalities on the protection of fundamental rights to health, safety and enjoyment of life. By contrast, Regulation M617 bears no rational relation to any independent public policy goal.

The Commissioner maintains that under §§2901 and 2902 of the Vermont Medical Assistance Act, that state Medicaid funds can only be used to pay for services for which federal reimbursement is available. She argues that because the Hyde Amendment limits Medicaid funds to the states under Title XIX, by state law the Commissioner must follow suit. However, state law compels the opposite conclusion.

A Court's primary object in interpreting a statute is to ascertain and give effect to legislative purpose. Paquette v. Paquette, 146 Vt. 83, 86 (1985).

Absent compelling indications that administrators' construction is wrong the Court must follow those conclusions. Petition of Village of Hardwick Electric Department, 143 Vt. 437, 444 (1983), so long as they are "'reasonably related to the purposes of the enabling legislation.'" Farmers Production Credit Association of South Burlington v. State of Vermont, 144 Vt. 581, 584 (1984)[quoting Committee to Save the Bishop's House, Inc. v. Medical Center Hospital of Vermont, Inc., 137 Vt. 142, 150 (1979)].

3 V.S.A. §203 provides that "[t]he commissioner or board at the head of each department herein specified shall exercise only the powers and perform the duties imposed by law on such department." This statute together with 3 V.S.A. §212, (which creates and enumerates the various administrative departments) have been construed by the Vermont Supreme Court to mean that "the Legislature has established that authority in an administrative

department cannot arise through implication. An explicit grant of authority is required." Miner v. Chater, 137 Vt. 330, 333 (1979).

33 V.S.A. §2901 empowers the Commissioner of the Department of Social Welfare to administer a medical assistance program under Title XIX of the Social Security Act. Section 2901 provides that the Commissioner shall issue regulations not in conflict with federal regulations under Title XIX of the Social Security Act. It does not preclude the Commissioner from taking measures to protect individuals' health above and beyond federal ones.

33 V.S.A. §2902 provides: "In determining whether a person is medically indigent, the commissioner shall prescribe and use the minimum income standard or requirement for eligibility which will permit the receipt of federal matching funds under Title XIX of the Social Security Act."

Regulation M617 negates the clear legislative intent of the Vermont Medical Assistance Act, thereby providing compelling indications that the Commissioner has erred in her construction of the statute. A regulation such as M617 which creates an unjust result and which also runs contrary to a clear legislative purpose goes against the "fundamental rule in regard to any statute that no unjust or unreasonable result is presumed to have been contemplated by the Legislature." Nolan v. Davidson, 134 Vt. 295, 299 (1976).

The Commissioner interprets the statute to mean that she

has the power to withhold medical assistance based simply on the availability of federal funding. Nowhere does the statute so provide or imply. The fact that federal grants to state programs established under federal law can be limited and shaped by Congressional policies does not give state administrators power to ignore the mandate of state statutes. "[U]nder our constitutional system, administrative agencies are subject to the same checks and balances which apply to our three formal branches of government. An agency must operate for the purposes and within the bounds authorized by its enabling legislation, or this Court will intervene." In re Agency of Administration, State Buildings Division, 141 Vt. 68, 75 (1982). An administrative desire to synchronize funding with that reimburseable with federal funds, simply because a federal statute restricts reimbursement, is not within authorized bounds when that action is not expressly permitted by the enabling legislation.

Section 2902 merely says that the state definitions of a medically indigent person must be the same as federal guidelines provide in order for matching funds to be available. Section 2902 does not address limitations on medically necessary procedures for which a state may provide reimbursements to providers. Section 2902 only limits the "who" receiving medical assistance, it provides no authority for limiting the "what" of medically necessary services based on availability of federal funding.

Both Title XIX and 33 V.S.A. §§2901 and 2902 predate the Hyde Amendment and therefore cannot have contemplated that the

language at issue could have applied to limit funding based on selected procedures rather than on levels of income and resources. Indeed, Title XIX and 33 V.S.A. Chapter 36 were passed initially on a premise of universal access to all medically necessary procedures. The aberration to this universality, as embodied in the Hyde Amendment and Regulation M617 does nothing but further a social policy couched in terms of favoring childbirth over abortion at the expense of the health of the mother, which is antithetical to the medical assistance purpose of protecting health by equalizing and facilitating universal access to all medically necessary health care.

Nothing in Chapter 36 of 33 V.S.A. or Title XIX of the Federal Social Security Act suggests that federal matching funds for all other medically necessary services would be endangered if the State should choose independently to fund procedures for which federal funds are unavailable. The Commissioner points to no authority, state or federal, which compels the conclusion that independent state funding beyond that matched by federal funding endangers federal funding already available. There is no mandate in federal law which prohibits states from funding medically necessary abortions where the life of the mother is not threatened. The reverse, if anything, was implied by the Roe v. Wade, 410 U.S. 113 (1977), decision and its progeny. Maher v. Doe, 432 U.S. 464 (1977) and McRae held that no federal obligation existed to fund the right protected by the Federal Constitution to choose an abortion. Despite these holdings, the freedom of states to fund such abortions was explicitly

acknowledged, McRae at 311, n.16.

State funding for medically necessary abortions under Vermont's medical assistance program would have no effect on forfeiture of state eligibility for federal funds for reimbursable medical procedures. Therefore, Regulation M617 has no sound fiscal basis in light of the law and the facts stipulated to by the parties and adopted by the Court.

The only effect which the limitation on federal reimbursement embodied in the Hyde Amendment has, is to not provide federal reimbursement to abortions in instances of non-life threatening pregnancies. Absent Regulation M617, and despite the Hyde Amendment, Vermont would still receive federal reimbursement for a percentage of the costs of all other medically necessary services. See Moe v. Secretary of Administration and Finance, 417 N.E.2d 387, 391 (Mass. 1981)["Thus, the relief sought here would not jeopardize Federal reimbursement for other services provided by the Massachusetts Medicaid program."]

The onus is not on the Commissioner to find authority to fund medically necessary abortions, that funding is mandated by the language and purpose of the Medical Assistance Act and Title XIX. The onus on her is to provide a purpose for Regulation M617 which is expressly authorized and reasonably related to the purpose of medical assistance, Farmer's Production Credit Association at 584, Miner at 333. Patently that relation is missing and Defendant is exercising power beyond that delegated to her under the enabling act.

Regulation M617 operates contrary to the purpose of the Vermont Medical Assistance Act. "Article 5 of the bill of rights of this state expressly reserves to the legislature the right to regulate this [police] power. . . . But in exercising this right, the legislature cannot deprive a citizen of an essential right secured by the bill of rights or constitution,. . . ." State v. Hodgson, 66 Vt. 134 (1893), aff'd 168 U.S. 262 (1897). This exercise of administrative power violates Article Five of Chapter One of the Vermont Constitution in two ways. First, Regulation M617 impinges on the exclusive power of the Legislature to regulate the police power. Second, Regulation M617 exercises police power so as to deprive certain Vermonters of their constitutionally guaranteed rights to health and safety, and does so in a discriminatory manner.

Regulation M617 violates Vermont Constitutional principles of separation of powers and the accountability of officers of government to the people. The Commissioner's violation of 3 V.S.A. §§203 and 212 violates the principle of Chapter I, Article Six that to exercise authority which creates policy there must first be accountability to the people via popular elections, see, Welch v. Seery, 138 Vt. 126, 128 (1980). The cases decided under Chapter II, §2, 5 and 6, reach the same conclusions of unconstitutionality based on principles of separation of powers. State v. Auclair, 110 Vt. 147 (1939); Village of Waterbury v. Melendy, 109 Vt. 441 (1938). By contrast to Article Six of Chapter I, these Chapter II sections allow

direct recourse to the courts in the event of their violation.

The Commissioner's expansion of her authority with a result contrary to the purpose envisioned for that statute by the Legislature violates the separation of powers required by the Vermont Constitution in Chapter II, §5. Cf., State v. Jacobs, 144 Vt. 70, 75 (1984).

Plaintiff has failed to establish grounds to take her out of the scope of the general Vermont rule that attorneys' fees are not recoverable as an element of damages. Albright v. Fish, 138 Vt. 585, 590-91 (1980). Therefore, Plaintiff's request for attorneys' fees is denied.

ORDER

This Court finds Department of Social Welfare Regulation M617 unconstitutionally null and void. IT IS THEREFORE ORDERED: The State of Vermont, through its Department and Commissioner of Social Welfare is permanently enjoined from enforcing Regulation M617 or any other regulation which purports to deny reimbursement for medically necessary abortions.

Dated at Burlington, Vermont, this 23rd day of May, 1986.

Hilton H. Dier, Jr.
SUPERIOR JUDGE

AFFIDAVIT OF SERVICE

DOCKET NO 26 MAP 2021

----------X

ALLEGHENY REPRODUCTIVE HEALTH CENTER, ALLENTOWN WOMEN'S CENTER, DELAWARE COUNTY WOMEN'S CENTER, PHILADELPHIA WOMEN'S CENTER, PLANNED PARENTHOOD KEYSTONE, PLANNED PARENTHOOD SOUTHEASTERN PENNSYLVANIA and PLANNED PARENTHOOD OF WESTERN PENNSYLVANIA,

– v. –

PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES, MEG SNEAD, in her official capacity as Acting Secretary of the Pennsylvania Department of Human Services, ANDREW BARNES, in his 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

----------X

I, Elissa Diaz, swear under the pain and penalty of perjury, that according to law and being over the age of 18, upon my oath depose and say that:

on October 13, 2021

I served the within Brief for Appellants in the above captioned matter upon:

Eugene K. Cuccarese
Department of Human Services
Pa-Dhs-Office of General Counsel
Piatt Place 301 Fifth Avenue Suite 430
Pittsburgh PA 15222
(412) 565-2557
Attorney for Appellee, Pennsylvania Department of Human Services, et al

David Russell Dye
Katherine Marie Fiz Patrick
Teresa Roos McCormack
Philip Joseph Murren
Ball Murren & Connell LLC
2303 Market St.
Camp Hill PA 17011
(717) 232-8731
Attorney for Appellee, Bryan D. Cutler, et al

Brian S. Paszamant
Jason Adam Snyderman
John Patrick Wixted
Blank Rome LLP
One Logan Sq 130 N 18th St.
Philadelphia PA 19103
(215) 569-5791
Attorney for Appellee, Jacob Corman, et. al.

Thomas Paul Howell
Doris M. Leisch
Governor's Office of General Counsel
333 Market St. 17th Fl
Harrisburg PA 17101
(717) 783-6563
Attorney for Appellee, Pennsylvania Department of Human Services, et al

Matthew John McLees
Department of Human Services
625 Forster St 3rd Fl West
Harrisburg PA 17120
(717) 783-2800
Attorney for Appellee, Pennsylvania Department of Human Services, et al

via electronic service, or Express Mail for any party NOT registered with the PacFile system by depositing 2 copies of same, enclosed in a postal-paid, properly addressed wrapper, in an official depository maintained by United States Postal Service.

Upon acceptance by the Court of the PacFiled document, copies will be filed with the Court within the time provided in the Court's rules.

Sworn to before me on October 13, 2021

/s/ Robyn Cocho
_____

Robyn Cocho
Notary Public State of New Jersey
No. 2193491
Commission Expires January 8, 2022

/s/ Elissa Diaz

Job # 307876

TABLE OF CONTENTS

CONSTITUTION
of the
COMMONWEALTH OF PENNSYLVANIA

ARTICLE I. DECLARATION OF RIGHTS

ARTICLE II. THE LEGISLATURE

ARTICLE III. LEGISLATION

A. PROCEDURE

B. EDUCATION

C. NATIONAL GUARD

D. OTHER LEGISLATION SPECIFICALLY AUTHORIZED

E. RESTRICTIONS ON LEGISLATIVE POWER

ARTICLE IV. THE EXECUTIVE

ARTICLE V. THE JUDICIARY

SCHEDULE TO JUDICIARY ARTICLE

COURTS OTHER THAN IN THE CITY OF PHILADELPHIA AND ALLEGHENY COUNTY

JUSTICES, JUDGES AND JUSTICES OF THE PEACE

MAGISTRATES, ALDERMEN AND JUSTICES OF THE PEACE AND MAGISTERIAL DISTRICTS OTHER THAN IN THE CITY OF PHILADELPHIA

ARTICLE VIII. TAXATION AND FINANCE

ARTICLE IX. LOCAL GOVERNMENT

ARTICLE X. PRIVATE CORPORATIONS

ARTICLE XI. AMENDMENTS

SCHEDULE NO. 1 (ADOPTED WITH THE CONSTITUTION)

CONSTITUTION
of the
COMMONWEALTH OF PENNSYLVANIA

Constitution of 1874. The Constitution of 1874 was adopted November 3, 1873, by a Constitutional Convention which was called pursuant to the act of April 11, 1872 (P.L.53, No.42). The Constitution was ratified at a special election held December 16, 1873, and went into effect January 1, 1874. This Constitution was amended in 1901, 1909, 1911, 1913, 1915, 1918, 1920, 1922, 1923,

1928, 1933, 1937, 1943, 1945, 1949, 1951, 1953, 1955, 1956, 1957, 1958, 1959, 1961, 1963 and 1965. By statute, 1 Pa.C.S. § 906, the Constitution, as adopted by referendum of December 16, 1873, shall be known and may be cited as the Constitution of 1874.

Constitution of 1968. The Constitution of 1874 was modified and renumbered by extensive amendments on May 17, 1966, November 8, 1966, and May 16, 1967; and by proclamation of the Governor of July 7, 1967, P.L.1063, pursuant to the act of August 17, 1965 (P.L.345, No.180). Proposals 1 through 7 to amend the Constitution were recommended by a Constitutional Convention which was called pursuant to the act of March 15, 1967 (P.L.2, No.2). The proposals were approved by the electorate on April 23, 1968. By statute, 1 Pa.C.S. § 906, the Constitution, as amended by referenda of May 17, 1966, November 8, 1966, May 16, 1967, and April 23, 1968, and as numbered by proclamation of the Governor of July 7, 1967, shall be known and may be cited as the Constitution of 1968.

Section Headings. Section headings were not contained in the Constitution as adopted by referendum of December 16, 1873, but were either added by various constitutional amendments or promulgated on June 11, 1974, P.L.1573, by the Director of the Legislative Reference Bureau with the approval of the Attorney General under statutory authority contained in 1 Pa.C.S. § 905.

Explanation of Amendment Notes. Unless otherwise noted, amendments are referred to by date of adoption by the electorate together with a reference to the applicable joint resolution (J.R.) or, in rare cases, concurrent resolution (C.R.) adopted by the General Assembly and the page in the Laws of Pennsylvania (P.L.) in which the joint resolution or concurrent resolution was published.

PREAMBLE

WE, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution.

ARTICLE I
DECLARATION OF RIGHTS

Sec.

Adoption. Unless otherwise noted, the provisions of Article I were adopted December 16, 1873, 1874 P.L.3, effective January 1, 1874.

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE THAT--

§ 1. Inherent rights of mankind.

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

§ 2. Political powers.

All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

§ 3. Religious freedom.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

§ 4. Religion.

No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.

§ 5. Elections.

Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

§ 6. Trial by jury.

Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case. Furthermore, in criminal cases the Commonwealth shall have the same right to trial by jury as does the accused.

(May 18, 1971, P.L.765, J.R.1; Nov. 3, 1998, P.L.1328, J.R.2)

§ 7. Freedom of press and speech; libels.

The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible

for the abuse of that liberty. No conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury; and in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Constitutionality. The provisions of section 7 relating to criminal libel were declared unconstitutional by the Supreme Court of Pennsylvania in Commonwealth v. Armao, 446 Pa. 325, 286 A.2d 626 (1972).

§ 8. Security from searches and seizures.

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

§ 9. Rights of accused in criminal prosecutions.

In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself. (Nov. 6, 1984, P.L.1306, J.R.2; Nov. 7, 1995, 1st Sp.Sess., P.L.1151, J.R.1; Nov. 4, 2003, P.L.459, J.R.1)

1995 Amendment. Joint Resolution No. 1 amended section 9. The passage of Joint Resolution No.1 was declared unconstitutional by Bergdoll v. Kane 731 A.2d 1261 (1999) and the language was reverted.

§ 10. Initiation of criminal proceedings; twice in jeopardy; eminent domain.

Except as hereinafter provided no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. Each of the several courts of common pleas may, with the approval of the Supreme Court, provide for the initiation of criminal proceedings therein by information filed in the manner provided by law. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured. (Nov. 6, 1973, P.L.452, J.R.2)

§ 11. Courts to be open; suits against the Commonwealth.

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

§ 12. Power of suspending laws.

No power of suspending laws shall be exercised unless by the Legislature or by its authority.

§ 13. Bail, fines and punishments.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

§ 14. Prisoners to be bailable; habeas corpus.

All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

(Nov. 3, 1998, P.L.1327, J.R.1)

§ 15. Special criminal tribunals.

No commission shall issue creating special temporary criminal tribunals to try particular individuals or particular classes of cases.

(May 16, 1967, P.L.1035, J.R.1)

§ 16. Insolvent debtors.

The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law.

§ 17. Ex post facto laws; impairment of contracts.

No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

§ 18. Attainder.

No person shall be attainted of treason or felony by the Legislature.

§ 19. Attainder limited.

No attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth.

(May 16, 1967, P.L.1035, J.R.1)

§ 20. Right of petition.

The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.

§ 21. Right to bear arms.

The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.

§ 22. Standing army; military subordinate to civil power.

No standing army shall, in time of peace, be kept up without the consent of the Legislature, and the military shall in all cases and at all times be in strict subordination to the civil power.

§ 23. Quartering of troops.

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

§ 24. Titles and offices.

The Legislature shall not grant any title of nobility or hereditary distinction, nor create any office the appointment to which shall be for a longer term than during good behavior.

§ 25. Reservation of powers in people.

To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

(May 16, 1967, P.L.1035, J.R.1)

1967 Amendment. Joint Resolution No.1 repealed former section 25 and renumbered former section 26 to present section 25.

§ 26. No discrimination by Commonwealth and its political subdivisions.

Neither 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 civil right.

(May 16, 1967, P.L.1035, J.R.1)

1967 Amendment. Joint Resolution No.1 added present section 26 and renumbered former section 26 to present section 25.

§ 27. Natural resources and the public estate.

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

(May 18, 1971, P.L.769, J.R.3)

1971 Amendment. Joint Resolution No.3 added section 27.

§ 28. Prohibition against denial or abridgment of equality of rights because of sex.

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.

(May 18, 1971, P.L.767, J.R.2)

1971 Amendment. Joint Resolution No.2 added section 28.

§ 29. Prohibition against denial or abridgment of equality of rights because of race and ethnicity.

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the race or ethnicity of the individual.

(May 18, 2021, P.L.493, J.R.1)

2021 Amendment. Joint Resolution 1 added section 29.

ARTICLE II
THE LEGISLATURE

Sec.

17. Legislative Reapportionment Commission.

Adoption. Unless otherwise noted, the provisions of Article II were adopted December 16, 1873, 1874 P.L.3, effective January 1, 1874.

§ 1. Legislative power.

The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.

§ 2. Election of members; vacancies.

Members of the General Assembly shall be chosen at the general election every second year. Their term of service shall begin on the first day of December next after their election. Whenever a vacancy shall occur in either House, the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term.

§ 3. Terms of members.

Senators shall be elected for the term of four years and Representatives for the term of two years.

§ 4. Sessions.

The General Assembly shall be a continuing body during the term for which its Representatives are elected. It shall meet at 12 o'clock noon on the first Tuesday of January each year. Special sessions shall be called by the Governor on petition of a majority of the members elected to each House or may be called by the Governor whenever in his opinion the public interest requires.
(Nov. 3, 1959, P.L.2158, J.R.1; May 16, 1967, P.L.1036, J.R.2)

§ 5. Qualifications of members.

Senators shall be at least 25 years of age and Representatives 21 years of age. They shall have been citizens and inhabitants of the State four years, and inhabitants of their respective districts one year next before their election (unless absent on the public business of the United States or of this State), and shall reside in their respective districts during their terms of service.

§ 6. Disqualification to hold other office.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under this Commonwealth to which a salary, fee or perquisite is attached. No member of Congress or other person holding any office (except of attorney-at-law or in the National Guard or in a reserve component of the armed forces of the United States) under the United States or this Commonwealth to which a salary, fee or perquisite is attached shall be a member of either House during his continuance in office.
(May 16, 1967, P.L.1036, J.R.2)

§ 7. Ineligibility by criminal convictions.

No person hereafter convicted of embezzlement of public moneys, bribery, perjury or other infamous crime, shall be eligible to the General Assembly, or capable of holding any office of trust or profit in this Commonwealth.

§ 8. Compensation.

The members of the General Assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for service upon committee or otherwise. No member of either House shall during the term for which he may have been elected, receive any increase of salary, or mileage, under any law passed during such term.

§ 9. Election of officers; judge of election and qualifications of members.

The Senate shall, at the beginning and close of each regular session and at such other times as may be necessary, elect one of its members President pro tempore, who shall perform the duties of the Lieutenant Governor, in any case of absence or disability of

that officer, and whenever the said office of Lieutenant Governor shall be vacant. The House of Representatives shall elect one of its members as Speaker. Each House shall choose its other officers, and shall judge of the election and qualifications of its members.

§ 10. Quorum.

A majority of each House shall constitute a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members.

§ 11. Powers of each house; expulsion.

Each House shall have power to determine the rules of its proceedings and punish its members or other persons for contempt or disorderly behavior in its presence, to enforce obedience to its process, to protect its members against violence or offers of bribes or private solicitation, and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the Legislature of a free State. A member expelled for corruption shall not thereafter be eligible to either House, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

§ 12. Journals; yeas and nays.

Each House shall keep a journal of its proceedings and from time to time publish the same, except such parts as require secrecy, and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journal.

§ 13. Open sessions.

The sessions of each House and of committees of the whole shall be open, unless when the business is such as ought to be kept secret.

§ 14. Adjournments.

Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

§ 15. Privileges of members.

The members of the General Assembly shall in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

§ 16. Legislative districts.

The Commonwealth shall be divided into 50 senatorial and 203 representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

(Apr. 23, 1968, P.L.App.3, Prop. No.1)

1968 Amendment. Proposal No.1 amended and consolidated former sections 16 and 17 into present section 16. The schedule to Proposal No.1 provided that section 16, if approved by the electorate voting on April 23, 1968, shall become effective the year following that in which the next Federal decennial census is officially reported as required by Federal law.

§ 17. Legislative Reapportionment Commission.

(a) In each year following the year of the Federal decennial census, a Legislative Reapportionment Commission shall be constituted for the purpose of reapportioning the Commonwealth. The commission shall act by a majority of its entire membership.

(b) The commission shall consist of five members: four of whom shall be the majority and minority leaders of both the Senate and the House of Representatives, or deputies appointed by each of them, and a chairman selected as hereinafter provided. No later than 60 days following the official reporting of the Federal decennial census as required by Federal law, the four members shall be certified by the President pro tempore of the Senate and the Speaker of the House of Representatives to the elections officer of the Commonwealth who under law shall have supervision over elections.

The four members within 45 days after their certification shall select the fifth member, who shall serve as chairman of the commission, and shall immediately certify his name to such elections officer. The chairman shall be a citizen of the Commonwealth other than a local, State or Federal official holding an office to which compensation is attached.

If the four members fail to select the fifth member within the time prescribed, a majority of the entire membership of the Supreme Court within 30 days thereafter shall appoint the chairman as aforesaid and certify his appointment to such elections officer.

Any vacancy in the commission shall be filled within 15 days in the same manner in which such position was originally filled.

(c) No later than 90 days after either the commission has been duly certified or the population data for the Commonwealth as determined by the Federal decennial census are available, whichever is later in time, the commission shall file a preliminary reapportionment plan with such elections officer.

The commission shall have 30 days after filing the preliminary plan to make corrections in the plan.

Any person aggrieved by the preliminary plan shall have the same 30-day period to file exceptions with the commission in which case the commission shall have 30 days after the date the exceptions were filed to prepare and file with such elections officer a revised reapportionment plan. If no exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(d) Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within 30 days after the filing thereof. If the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission and directing the commission to reapportion the Commonwealth in a manner not inconsistent with such order.

(e) When the Supreme Court has finally decided an appeal or when the last day for filing an appeal has passed with no appeal taken, the reapportionment plan shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly until the next reapportionment as required under this section 17.

(f) Any district which does not include the residence from which a member of the Senate was elected whether or not scheduled for election at the next general election shall elect a Senator at such election.

(g) The General Assembly shall appropriate sufficient funds for the compensation and expenses of members and staff appointed by the commission, and other necessary expenses. The members of the commission shall be entitled to such compensation for their services as the General Assembly from time to time shall determine, but no part thereof shall be paid until a preliminary plan is filed. If a preliminary plan is filed but the commission fails to file a revised or final plan within the time prescribed, the commission members shall forfeit all right to compensation not paid.

(h) If a preliminary, revised or final reapportionment plan is not filed by the commission within the time prescribed by this section, unless the time be extended by the Supreme Court for cause shown, the Supreme Court shall immediately proceed on its own motion to reapportion the Commonwealth.

(i) Any reapportionment plan filed by the commission, or ordered or prepared by the Supreme Court upon the failure of the commission to act, shall be published by the elections officer once in at least one newspaper of general circulation in each senatorial and representative district. The publication shall contain a map of the Commonwealth showing the complete reapportionment of the General Assembly by districts, and a map showing the reapportionment districts in the area normally served by the newspaper in which the publication is made. The publication shall also state the population of the senatorial and representative districts having the smallest and largest population and the percentage variation of such districts from the average population for senatorial and representative districts. (Apr. 23, 1968, P.L.App.3, Prop. No.2; Nov. 3, 1981, P.L.601, J.R.1; May 15, 2001, 2000 P.L.1057, J.R.1)

2001 Amendment. Joint Resolution No.1 of 2000 relettered subsec. (f) to subsec. (g), subsec. (g) to subsec. (h) and subsec. (h) to subsec. (i) and added a new subsec. (f).

1981 Amendment. Joint Resolution No.1 amended subsecs. (a) and (b).

1968 Amendment. Proposal No.2 amended and renumbered former section 18 to present section 17. The schedule to Proposal No.2 provided that section 17, if approved by the electorate voting on April 23, 1968, shall become effective the year following that in which the next Federal decennial census is officially reported as required by Federal law.

Prior Provisions. Former section 17 was amended and consolidated with present section 16 by amendment of April 23, 1968, P.L.App.3, Prop. No.1.

2021 Correction. The reference to "commission's" in the second paragraph of subsec. (c) was incorrect. The Legislative Reference Bureau effectuated the correction.

ARTICLE III
LEGISLATION

A. PROCEDURE

Sec.

B. EDUCATION

C. NATIONAL GUARD

D. OTHER LEGISLATION SPECIFICALLY AUTHORIZED

E. RESTRICTIONS ON LEGISLATIVE POWER

Adoption. Unless otherwise noted, the provisions of Article III were adopted December 16, 1873, 1874 P.L.3, effective January 1, 1874.

Subdivision Headings. The subdivision headings of Article III were added by amendment of May 16, 1967, P.L.1037, J.R.3.

A. PROCEDURE

§ 1. Passage of laws.

No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.

§ 2. Reference to committee; printing.

No bill shall be considered unless referred to a committee, printed for the use of the members and returned therefrom.
(May 16, 1967, P.L.1037, J.R.3)

§ 3. Form of bills.

No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.
(May 16, 1967, P.L.1037, J.R.3)

§ 4. Consideration of bills.

Every bill shall be considered on three different days in each House. All amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill and before the final vote is taken, upon written request addressed to the presiding officer of either House by at least 25% of the members elected to that House, any bill shall be read at length in that House. No bill shall become a law, unless on its final passage the vote is taken by yeas and nays, the names of the persons voting for and against it are entered on the journal, and a majority of the members elected to each House is recorded thereon as voting in its favor.
(May 16, 1967, P.L.1037, J.R.3)

§ 5. Concurring in amendments; conference committee reports.

No amendment to bills by one House shall be concurred in by the other, except by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof; and reports of committees of conference shall be adopted in either House only by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting recorded upon the journals.

§ 6. Revival and amendment of laws.

No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length.

§ 7. Notice of local and special bills.

No local or special bill shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or the thing to be effected may be situated, which notice shall be at least 30 days prior to the introduction into the General Assembly of such bill and in the manner to be provided by law; the evidence of such notice having been published, shall be exhibited in the General Assembly, before such act shall be passed.

Prior Provisions. Former section 7 was renumbered to present section 32 and present section 7 was renumbered from former section 8 by amendment of May 16, 1967, P.L.1037, J.R.3.

§ 8. Signing of bills.

The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the General Assembly, after their titles have been publicly read immediately before signing; and the fact of signing shall be entered on the journal.

Prior Provisions. Former section 8 was renumbered to present section 7 and present section 8 was renumbered from former section 9 by amendment of May 16, 1967, P.L.1037, J.R.3.

§ 9. Action on concurrent orders and resolutions.

Every order, resolution or vote, to which the concurrence of both Houses may be necessary, except on the questions of adjournment or termination or extension of a disaster emergency declaration as declared by an executive order or proclamation, or portion of a disaster emergency declaration as declared by an executive order or proclamation, shall be presented to the Governor and before it shall take effect be approved by him, or being disapproved, shall be repassed by two-thirds of both Houses according to the rules and limitations prescribed in case of a bill.

(May 18, 2021, P.L.493, J.R.1)

Prior Provisions. Former section 9 was renumbered to present section 8 and present section 9 was renumbered from former section 26 by amendment of May 16, 1967, P.L.1037, J.R.3.

§ 10. Revenue bills.

All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.

Prior Provisions. Former section 10 was renumbered to present section 17 and present section 10 was renumbered from former section 14 by amendment of May 16, 1967, P.L.1037, J.R.3.

§ 11. Appropriation bills.

The general appropriation bill shall embrace nothing but appropriations for the executive, legislative and judicial

departments of the Commonwealth, for the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.
(May 16, 1967, P.L.1037, J.R.3)

1967 Amendment. Joint Resolution No.3 renumbered former section 11 to present section 26 and amended and renumbered former section 15 to present section 11.

§ 12. Legislation designated by Governor at special sessions.

When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session.

Prior Provisions. Former section 12 was repealed and present section 12 was renumbered from former section 25 by amendment of May 16, 1967, P.L.1037, J.R.3.

§ 13. Vote denied members with personal interest.

A member who has a personal or private interest in any measure or bill proposed or pending before the General Assembly shall disclose the fact to the House of which he is a member, and shall not vote thereon.

Prior Provisions. Former section 13 was renumbered to present section 27 and present section 13 was renumbered from former section 33 by amendment of May 16, 1967, P.L.1037, J.R.3.

B. EDUCATION

§ 14. Public school system.

The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.
(May 16, 1967, P.L.1037, J.R.3)

1967 Amendment. Joint Resolution No.3 renumbered former section 14 to present section 10 and amended and renumbered section 1 of former Article X (Education) to present section 14.

§ 15. Public school money not available to sectarian schools.

No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.
(May 16, 1967, P.L.1037, J.R.3)

1967 Amendment. Joint Resolution No.3 renumbered former section 15 to present section 11 and renumbered section 2 of former Article X (Education) to present section 15.

C. NATIONAL GUARD

§ 16. National Guard to be organized and maintained.

The citizens of this Commonwealth shall be armed, organized and disciplined for its defense when and in such manner as may be directed by law. The General Assembly shall provide for maintaining the National Guard by appropriations from the Treasury of the Commonwealth, and may exempt from State military service persons having conscientious scruples against bearing arms.
(May 16, 1967, P.L.1037, J.R.3)

1967 Amendment. Joint Resolution No.3 renumbered former section 16 to present section 24 and amended and renumbered section 1 of former Article XI (Militia) to present section 16.

D. OTHER LEGISLATION SPECIFICALLY AUTHORIZED

§ 17. Appointment of legislative officers and employees.

The General Assembly shall prescribe by law the number, duties and compensation of the officers and employees of each House, and no payment shall be made from the State Treasury, or be in any way authorized, to any person, except to an acting officer or employee elected or appointed in pursuance of law.

Prior Provisions. Former section 17 was renumbered to present section 30 and present section 17 was renumbered from former section 10 by amendment of May 16, 1967, P.L.1037, J.R.3.

§ 18. Compensation laws allowed to General Assembly.

The General Assembly may enact laws requiring the payment by employers, or employers and employees jointly, of reasonable compensation for injuries to employees arising in the course of their employment, and for occupational diseases of employees, whether or not such injuries or diseases result in death, and regardless of fault of employer or employee, and fixing the basis of ascertainment of such compensation and the maximum and minimum limits thereof, and providing special or general remedies for the collection thereof; but in no other cases shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property, and in case of death from such injuries, the right of action shall survive, and the General Assembly shall prescribe for whose benefit such actions shall be prosecuted. No act shall prescribe any limitations of time within which suits may be brought against corporations for injuries to persons or property, or for other causes different from those fixed by general laws regulating actions against natural persons, and such acts now existing are avoided.

(Nov. 2, 1915, P.L.1103, J.R.3)

Prior Provisions. Former section 18 was renumbered to present section 29 and present section 18 was renumbered from former section 21 by amendment of May 16, 1967, P.L.1037, J.R.3.

§ 19. Appropriations for support of widows and orphans of persons who served in the armed forces.

The General Assembly may make appropriations of money to institutions wherein the widows of persons who served in the armed forces are supported or assisted, or the orphans of persons who served in the armed forces are maintained and educated; but such appropriations shall be applied exclusively to the support of such widows and orphans.

(May 16, 1967, P.L.1037, J.R.3)

§ 20. Classification of municipalities.

The Legislature shall have power to classify counties, cities, boroughs, school districts, and townships according to population, and all laws passed relating to each class, and all laws passed relating to, and regulating procedure and proceedings in court with reference to, any class, shall be deemed general legislation within the meaning of this Constitution.

(Nov. 6, 1923, P.L.1119, J.R.3; May 16, 1967, P.L.1037, J.R.3)

1967 Amendment. Joint Resolution No.3 renumbered former section 20 to present section 31 and amended and renumbered former section 34 to present section 20.

1923 Amendment. Joint Resolution No.3 added present section 20 (formerly section 34).

§ 21. Land title registration.

Laws may be passed providing for a system of registering, transferring, insuring of and guaranteeing land titles by the State, or by the counties thereof, and for settling and determining adverse or other claims to and interest in lands the

titles to which are so registered, transferred, insured, and guaranteed; and for the creation and collection of indemnity funds; and for carrying the system and powers hereby provided for into effect by such existing courts as may be designated by the Legislature. Such laws may provide for continuing the registering, transferring, insuring, and guaranteeing such titles after the first or original registration has been perfected by the court, and provision may be made for raising the necessary funds for expenses and salaries of officers, which shall be paid out of the treasury of the several counties.
(Nov. 2, 1915, P.L.1104, J.R.4; May 16, 1967, P.L.1037, J.R.3)

1967 Amendment. Joint Resolution No.3 renumbered former section 21 to present section 18 and amended and numbered present section 21.
1915 Amendment. Joint Resolution No.4 added the provisions of this section without article or section number.

§ 22. State purchases.

The General Assembly shall maintain by law a system of competitive bidding under which all purchases of materials, printing, supplies or other personal property used by the government of this Commonwealth shall so far as practicable be made. The law shall provide that no officer or employee of the Commonwealth shall be in any way interested in any purchase made by the Commonwealth under contract or otherwise.
(May 16, 1967, P.L.1037, J.R.3)

1967 Amendment. Joint Resolution No.3 repealed former section 22 and added present section 22. The subject matter of present section 22 was formerly contained in section 12.

§ 23. Change of venue.

The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law.

§ 24. Paying out public moneys.

No money shall be paid out of the treasury, except on appropriations made by law and on warrant issued by the proper officers; but cash refunds of taxes, licenses, fees and other charges paid or collected, but not legally due, may be paid, as provided by law, without appropriation from the fund into which they were paid on warrant of the proper officer.
(Nov. 7, 1961, P.L.1783, J.R.1)

Prior Provisions. Former section 24 was repealed and present section 24 was renumbered from former section 16 by amendment of May 16, 1967, P.L.1037, J.R.3.

§ 25. Emergency seats of government.

The General Assembly may provide, by law, during any session, for the continuity of the executive, legislative, and judicial functions of the government of the Commonwealth, and its political subdivisions, and the establishment of emergency seats thereof and any such laws heretofore enacted are validated. Such legislation shall become effective in the event of an attack by an enemy of the United States.
(Nov. 5, 1963, P.L.1401, J.R.3; May 16, 1967, P.L.1037, J.R.3)

1967 Amendment. Joint Resolution No.3 renumbered former section 25 to present section 12 and amended and renumbered former section 35 to present section 25.
1963 Amendment. Joint Resolution No.3 added present section 25 (formerly section 35).

§ 26. Extra compensation prohibited; claims against the Commonwealth; pensions.

No bill shall be passed giving any extra compensation to any

public officer, servant, employee, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim against the Commonwealth without previous authority of law: Provided, however, That nothing in this Constitution shall be construed to prohibit the General Assembly from authorizing the increase of retirement allowances or pensions of members of a retirement or pension system now in effect or hereafter legally constituted by the Commonwealth, its political subdivisions, agencies or instrumentalities, after the termination of the services of said member.
(Nov. 8, 1955, P.L.2055, J.R.1)

Rejection of Proposed 1981 Amendment. The question of amending section 26 to permit the General Assembly to authorize the retirement benefits or pensions payable to beneficiari s who are spouses of members ont or pension system, as more fully set forth in Joint Resolution No.2 of 1981, was submitlect ors at the municipal election on November 3, 1981, and was rejected. Section 1 of Article XI prohibits the submission of an amendment more often than once in five years.

Prior Provisions. Former section 26 was renumbered to present section 9 and present section 26 was renumbered from former section 11 by amendment of May 16, 1967, P.L.1037, J.R.3.

§ 27. Changes in term of office or salary prohibited.

No law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment.

Prior Provisions. Former section 27 was repealed and present section 27 was renumbered from former section 13 by amendment of May 16, 1967, P.L.1037, J.R.3.

E. RESTRICTIONS ON LEGISLATIVE POWER

§ 28. Change of permanent location of State Capital.

No law changing the permanent location of the Capital of the State shall be valid until the same shall have been submitted to the qualified electors of the Commonwealth at a general election and ratified and approved by them.
(May 16, 1967, P.L.1037, J.R.3)

§ 29. Appropriations for public assistance, military service, scholarships.

No appropriation shall be made for charitable, educational or benevolent purposes to any person or community nor to any denominational and sectarian institution, corporation or association: Provided, That appropriations may be made for pensions or gratuities for military service and to blind persons 21 years of age and upwards and for assistance to mothers having dependent children and to aged persons without adequate means of support and in the form of scholarship grants or loans for higher educational purposes to residents of the Commonwealth enrolled in institutions of higher learning except that no scholarship, grants or loans for higher educational purposes shall be given to persons enrolled in a theological seminary or school of theology.
(Nov. 7, 1933, P.L.1557, J.R.1; Nov. 2, 1937, P.L.2875, J.R.3-A; Nov. 5, 1963, P.L.1401, J.R.2)

Prior Provisions. Former section 29 was repealed and present section 29 was renumbered from former section 18 by amendment of May 16, 1967, P.L.1037, J.R.3.

Cross References. Section 29 is referred to in section 17 of Article VIII (Taxation and Finance).

§ 30. Charitable and educational appropriations.

No appropriation shall be made to any charitable or educational

institution not under the absolute control of the Commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House.

Prior Provisions. Former section 30 was repealed and present section 30 was renumbered from former section 17 by amendment of May 16, 1967, P.L.1037, J.R.3.

§ 31. Delegation of certain powers prohibited.

The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.

Notwithstanding the foregoing limitation or any other provision of the Constitution, the General Assembly may enact laws which provide that the findings of panels or commissions, selected and acting in accordance with law for the adjustment or settlement of grievances or disputes or for collective bargaining between policemen and firemen and their public employers shall be binding upon all parties and shall constitute a mandate to the head of the political subdivision which is the employer, or to the appropriate officer of the Commonwealth if the Commonwealth is the employer, with respect to matters which can be remedied by administrative action, and to the lawmaking body of such political subdivision or of the Commonwealth, with respect to matters which require legislative action, to take the action necessary to carry out such findings.

(May 16, 1967, P.L.1037, J.R.3; Nov. 7, 1967, P.L.1056, J.R.9)

1967 Amendment. Joint Resolution No.3 repealed former section 31 and renumbered former section 20 to present section 31.

§ 32. Certain local and special laws.

The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law:

1. Regulating the affairs of counties, cities, townships, wards, boroughs or school districts:
2. Vacating roads, town plats, streets or alleys:
3. Locating or changing county seats, erecting new counties or changing county lines:
4. Erecting new townships or boroughs, changing township lines, borough limits or school districts:
5. Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury:
6. Exempting property from taxation:
7. Regulating labor, trade, mining or manufacturing:
8. Creating corporations, or amending, renewing or extending the charters thereof:

Nor shall the General Assembly indirectly enact any special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

(May 16, 1967, P.L.1037, J.R.3)

1967 Amendment. Joint Resolution No.3 repealed former section 32 and amended and renumbered former section 7 to present section 32.

Cross References. Section 32 is referred to in section 13 of Article IX (Local Government).

ARTICLE IV
THE EXECUTIVE

Sec.

Adoption. Unless otherwise noted, the provisions of Article IV were adopted December 16, 1873, 1874 P.L.3, effective January 1, 1874.

§ 1. Executive Department.

The Executive Department of this Commonwealth shall consist of a Governor, Lieutenant Governor, Attorney General, Auditor General, State Treasurer, and Superintendent of Public Instruction and such other officers as the General Assembly may from time to time prescribe.
(May 16, 1967, P.L.1044, J.R.4)

References in Text. The Superintendent of Public Instruction, referred to in section 1, is now the Secretary of Education.

§ 2. Duties of Governor; election procedure; tie or contest.

The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed; he shall be chosen on the day of the general election, by the qualified electors of the Commonwealth, at the places where they shall vote for Representatives. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the President of the Senate, who shall open and publish them in the presence of the members of both Houses of the General Assembly. The person having the highest number of votes shall be Governor, but if two or more be equal and highest in votes, one of them shall be chosen Governor by the joint vote of the members of both Houses. Contested elections shall be determined by a committee, to be selected from both Houses of the General Assembly, and formed and regulated in such manner as shall be directed by law.

§ 3. Terms of office of Governor; number of terms.

The Governor shall hold his office during four years from the third Tuesday of January next ensuing his election. Except for the Governor who may be in office when this amendment is adopted, he shall be eligible to succeed himself for one additional term.
(May 16, 1967, P.L.1044, J.R.4)

§ 4. Lieutenant Governor.

A Lieutenant Governor shall be chosen jointly with the Governor by the casting by each voter of a single vote applicable to both offices, for the same term, and subject to the same provisions as the Governor; he shall be President of the Senate. As such, he may vote in case of a tie on any question except the final passage of a bill or joint resolution, the adoption of a conference report or the concurrence in amendments made by the House of Representatives.

(May 16, 1967, P.L.1044, J.R.4)

§ 4.1. Attorney General.

An Attorney General shall be chosen by the qualified electors of the Commonwealth on the day the general election is held for the Auditor General and State Treasurer; he shall hold his office during four years from the third Tuesday of January next ensuing his election and shall not be eligible to serve continuously for more than two successive terms; he shall be the chief law officer of the Commonwealth and shall exercise such powers and perform such duties as may be imposed by law.

(May 16, 1978, 1977 P.L.365, J.R.4)

1978 Amendment. Joint Resolution No.4 added section 4.1.

Vacancy in Existing Office. Section 2 of Joint Resolution No.4 provided that upon approval of this amendment by the electors, there shall be a vacancy in the office of Attorney General which shall be filled as provided herein.

§ 5. Qualifications of Governor, Lieutenant Governor and Attorney General.

No person shall be eligible to the office of Governor, Lieutenant Governor or Attorney General except a citizen of the United States, who shall have attained the age of 30 years, and have been seven years next preceding his election an inhabitant of this Commonwealth, unless he shall have been absent on the public business of the United States or of this Commonwealth. No person shall be eligible to the office of Attorney General except a member of the bar of the Supreme Court of Pennsylvania.

(May 16, 1967, P.L.1044, J.R.4; May 16, 1978, 1977 P.L.365, J.R.4)

§ 6. Disqualification for offices of Governor, Lieutenant Governor and Attorney General.

No member of Congress or person holding any office (except of attorney-at-law or in the National Guard or in a reserve component of the armed forces of the United States) under the United States or this Commonwealth shall exercise the office of Governor, Lieutenant Governor or Attorney General.

(May 16, 1967, P.L.1044, J.R.4; May 16, 1978, 1977 P.L.365, J.R.4)

§ 7. Military power.

The Governor shall be commander-in-chief of the military forces of the Commonwealth, except when they shall be called into actual service of the United States.

(May 16, 1967, P.L.1044, J.R.4)

§ 8. Appointing power.

(a) The Governor shall appoint a Secretary of Education and such other officers as he shall be authorized by law to appoint. The appointment of the Secretary of Education and of such other officers as may be specified by law, shall be subject to the consent of two-thirds or a majority of the members elected to the Senate as is specified by law.

(b) The Governor shall fill vacancies in offices to which he appoints by nominating to the Senate a proper person to fill the vacancy within 90 days of the first day of the vacancy and not thereafter. The Senate shall act on each executive nomination within 25 legislative days of its submission. If the Senate has not voted upon a nomination within 15 legislative days following such submission, any five members of the Senate may, in writing,

request the presiding officer of the Senate to place the nomination before the entire Senate body whereby the nomination must be voted upon prior to the expiration of five legislative days or 25 legislative days following submission by the Governor, whichever occurs first. If the nomination is made during a recess or after adjournment sine die, the Senate shall act upon it within 25 legislative days after its return or reconvening. If the Senate for any reason fails to act upon a nomination submitted to it within the required 25 legislative days, the nominee shall take office as if the appointment had been consented to by the Senate. The Governor shall in a similar manner fill vacancies in the offices of Auditor General, State Treasurer, justice, judge, justice of the peace and in any other elective office he is authorized to fill. In the case of a vacancy in an elective office, a person shall be elected to the office on the next election day appropriate to the office unless the first day of the vacancy is within two calendar months immediately preceding the election day in which case the election shall be held on the second succeeding election day appropriate to the office.

(c) In acting on executive nominations, the Senate shall sit with open doors. The votes shall be taken by yeas and nays and shall be entered on the journal.

(Nov. 2, 1909, P.L.948, J.R.1; May 16, 1967, P.L.1044, J.R.4; May 20, 1975, P.L.619, J.R.1; May 16, 1978, 1977 P.L.365, J.R.4)

§ 9. Pardoning power; Board of Pardons.

(a) In all criminal cases except impeachment the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, and, in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose.

(b) The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor with the consent of a majority of the members elected to the Senate for terms of six years. The three members appointed by the Governor shall be residents of Pennsylvania. One shall be a crime victim, one a corrections expert and the third a doctor of medicine, psychiatrist or psychologist. The board shall keep records of its actions, which shall at all times be open for public inspection.

(May 16, 1967, P.L.1044, J.R.4; May 20, 1975, P.L.619, J.R.1; Nov. 4, 1997, P.L.634, J.R.2)

§ 10. Information from department officials.

The Governor may require information in writing from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

(May 16, 1967, P.L.1044, J.R.4)

§ 11. Messages to the General Assembly.

He shall, from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he may judge expedient.

§ 12. Power to convene and adjourn the General Assembly.

He may, on extraordinary occasions, convene the General Assembly, and in case of disagreement between the two Houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months. He shall have power to convene the Senate in extraordinary session by proclamation for the transaction of Executive business.

§ 13. When Lieutenant Governor to act as Governor.

In the case of the death, conviction on impeachment, failure to qualify or resignation of the Governor, the Lieutenant Governor shall become Governor for the remainder of the term and in the case of the disability of the Governor, the powers, duties and emoluments of the office shall devolve upon the Lieutenant Governor until the disability is removed.
(May 16, 1967, P.L.1044, J.R.4)

Cross References. Section 13 is referred to in section 14 of this article.

§ 14. Vacancy in office of Lieutenant Governor.

In case of the death, conviction on impeachment, failure to qualify or resignation enant Governor, or in case he should beco e Governor under section 13 of this artisident pro tempore o the Senate shall become Lieutenant Governor for the remain er of these of the disability of the Lieutenant Governor, the pow rs, duties and emoluments ofshall devolve upon the President pro tempore of the Senate until the disability is red there be no ieutenant Governor, the President pro tempore of the Senat shall becoif a vacancy shall occur in the office of Governor and in case of the disability of the Governor, the powers, duties and emoluments of the office shall devolve upon the President pro tempore of the Senate until the disability is removed. His seat as Senator shall become vacant whenever he shall become Governor and shall be filled by election as any other vacancy in the Senate.
(May 16, 1967, P.L.1044, J.R.4)

§ 15. Approval of bills; vetoes.

Every bill which shall have passed both Houses shall be presented to the Governor; if he approves he shall sign it, but if he shall not approve he shall return it with his objections to the House in which it shall have originated, which House shall enter the objections at large upon their journal, and proceed to re-consider it. If after such re-consideration, two-thirds of all the members elected to that House shall agree to pass the bill, it shall be sent with the objections to the other House by which likewise it shall be re-considered, and if approved by two-thirds of all the members elected to that House it shall be a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each House, respectively. If any bill shall not be returned by the Governor within ten days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of the Commonwealth, and give notice thereof by public proclamation within 30 days after such adjournment.

§ 16. Partial disapproval of appropriation bills.

The Governor shall have power to disapprove of any item or items of any bill, making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the Executive veto.

§ 17. Contested elections of Governor, Lieutenant Governor and Attorney General; when succeeded.

The Chief Justice of the Supreme Court shall preside upon the trial of any contested election of Governor, Lieutenant Governor or Attorney General and shall decide questions regarding the admissibility of evidence, and shall, upon request of the committee, pronounce his opinion upon other questions of law

involved in the trial. The Governor, Lieutenant Governor and Attorney General shall exercise the duties of their respective offices until their successors shall be duly qualified.
(May 16, 1978, 1977 P.L.365, J.R.4)

§ 18. Terms of office of Auditor General and State Treasurer; number of terms; eligibility of State Treasurer to become Auditor General.

The terms of the Auditor General and of the State Treasurer shall each be four years from the third Tuesday of January next ensuing his election. They shall be chosen by the qualified electors of the Commonwealth at general elections but shall not be eligible to serve continuously for more than two successive terms. The State Treasurer shall not be eligible to the office of Auditor General until four years after he has been State Treasurer.
(May 16, 1967, P.L.1044, J.R.4)

1967 Amendment. Joint Resolution No.4 repealed former section 18 and added present section 18. The subject matter of present section 18 was contained in former section 21.

Initial Terms of Office. For terms of office of State Treasurer and Auditor General first elected under present section 18, see the schedule to Joint Resolution No.4 of 1967 in the appendix to the Constitution.

§ 19. State seal; commissions.

The present Great Seal of Pennsylvania shall be the seal of the State. All commissions shall be in the name and by authority of the Commonwealth of Pennsylvania, and be sealed with the State seal and signed by the Governor.
(May 16, 1967, P.L.1044, J.R.4)

1967 Amendment. Joint Resolution No.4 repealed former section 19 and renumbered former section 22 to present section 19.

§ 20. Disaster emergency declaration and management.

(a) A disaster emergency declaration may be declared by executive order or proclamation of the Governor upon finding that a disaster has occurred or that the occurrence or threat of a disaster is imminent that threatens the health, safety or welfare of this Commonwealth.

(b) Each disaster emergency declaration issued by the Governor under subsection (a) shall indicate the nature, each area threatened and the conditions of the disaster, including whether the disaster is a natural disaster, military emergency, public health emergency, technological disaster or other general emergency, as defined by statute. The General Assembly shall, by statute, provide for the manner in which each type of disaster enumerated under this subsection shall be managed.

(c) A disaster emergency declaration under subsection (a) shall be in effect for no more than twenty-one (21) days, unless otherwise extended in whole or part by concurrent resolution of the General Assembly.

(d) Upon the expiration of a disaster emergency declaration under subsection (a), the Governor may not issue a new disaster emergency declaration based upon the same or substantially similar facts and circumstances without the passage of a concurrent resolution of the General Assembly expressly approving the new disaster emergency declaration.
(May 18, 2021, P.L.493, J.R.1)

2021 Amendment. Joint Resolution 1 added section 20.

ARTICLE V
THE JUDICIARY

Sec.

Adoption. Unless otherwise noted, the provisions of present Article V were adopted April 23, 1968, P.L.App.16, Prop. No.7, effective January 1, 1969.

Prior Provisions. Former Article V (The Judiciary) was repealed by amendment of April 23, 1968, P.L.App.16, Prop. No.7.

§ 1. Unified judicial system.

The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system.
(Apr. 26, 2016, 2015 P.L.607, J.R.2)

§ 2. Supreme Court.

The Supreme Court (a) shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth;

(b) shall consist of seven justices, one of whom shall be the Chief Justice; and

(c) shall have such jurisdiction as shall be provided by law.

§ 3. Superior Court.

The Superior Court shall be a statewide court, and shall consist of the number of judges, which shall be not less than seven judges, and have such jurisdiction as shall be provided by this Constitution or by the General Assembly. One of its judges shall be the president judge.
(Nov. 6, 1979, P.L.581, J.R.1)

Selection of President Judge. Section 11(b) of the schedule to this article contains special provisions relating to the selection of the president judge of the Superior Court.

§ 4. Commonwealth Court.

The Commonwealth Court shall be a statewide court, and shall consist of the number of judges and have such jurisdiction as shall be provided by law. One of its judges shall be the president judge.

§ 5. Courts of common pleas.

There shall be one court of common pleas for each judicial district (a) having such divisions and consisting of such number

of judges as shall be provided by law, one of whom shall be the president judge; and

(b) having unlimited original jurisdiction in all cases except as may otherwise be provided by law.

§ 6. Community courts; Philadelphia Municipal Court.

(a) In any judicial district a majority of the electors voting thereon may approve the establishment or discontinuance of a community court. Where a community court is approved, one community court shall be established; its divisions, number of judges and jurisdiction shall be as provided by law.

(b) The question whether a community court shall be established or discontinued in any judicial district shall be placed upon the ballot in a primary election by petition which shall be in the form prescribed by the officer of the Commonwealth who under law shall have supervision over elections. The petition shall be filed with that officer and shall be signed by a number of electors equal to 5% of the total votes cast for all candidates for the office occupied by a single official for which the highest number of votes was cast in that judicial district at the last preceding general or municipal election. The manner of signing such petitions, the time of circulating them, the affidavits of the persons circulating them and all other details not contained herein shall be governed by the general laws relating to elections. The question shall not be placed upon the ballot in a judicial district more than once in any five-year period.

(c) In the City of Philadelphia there shall be a municipal court. The number of judges and the jurisdiction shall be as provided by law. This court shall exist so long as a community court has not been established or in the event one has been discontinued under this section.

(Apr. 26, 2016, 2015 P.L.607, J.R.2)

2016 Amendment. Joint Resolution No.2 of 2015 amended the section heading and subsec. (c).

§ 7. Justices of the peace; magisterial districts.

(a) In any judicial district, other than the City of Philadelphia, where a community court has not been established or where one has been discontinued there shall be one justice of the peace in each magisterial district. The jurisdiction of the justice of the peace shall be as provided by law.

(b) The General Assembly shall by law establish classes of magisterial districts solely on the basis of population and population density and shall fix the salaries to be paid justices of the peace in each class. The number and boundaries of magisterial districts of each class within each judicial district shall be established by the Supreme Court or by the courts of common pleas under the direction of the Supreme Court as required for the efficient administration of justice within each magisterial district.

§ 8. Other courts.

The General Assembly may establish additional courts or divisions of existing courts, as needed, or abolish any statutory court or division thereof.

§ 9. Right of appeal.

There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law.

Cross References. Section 9 is referred to in section 26 of the schedule to this article.

§ 10. Judicial administration.

(a) The Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace, including authority to temporarily assign judges and justices of the peace from one court or district to another as it deems appropriate.

(b) The Supreme Court shall appoint a court administrator and may appoint such subordinate administrators and staff as may be necessary and proper for the prompt and proper disposition of the business of all courts and justices of the peace.

(c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the Judicial Branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions. Notwithstanding the provisions of this section, the General Assembly may by statute provide for the manner of testimony of child victims or child material witnesses in criminal proceedings, including the use of videotaped depositions or testimony by closed-circuit television.

(d) The Chief Justice and president judges of all courts with seven or less judges shall be the justice or judge longest in continuous service on their respective courts; and in the event of his resignation from this position the justice or judge next longest in continuous service shall be the Chief Justice or president judge. The president judges of all other courts shall be selected for five-year terms by the members of their respective courts. A Chief Justice or president judge may resign such position and remain a member of the court. In the event of a tie vote for office of president judge in a court which elects its president judge, the Supreme Court shall appoint as president judge one of the judges receiving the highest number of votes.

(e) Should any two or more justices or judges of the same court assume office at the same time, they shall cast lots forthwith for priority of commission, and certify the results to the Governor who shall issue their commissions accordingly.
(Nov. 4, 2003, P.L.459, J.R.1; Apr. 26, 2016, 2015 P.L.607, J.R.2)

2016 Amendment. Joint Resolution No.2 of 2015 amended subsec. (d).

2003 Amendment. Joint Resolution No.1 amended subsec. (c).

Cross References. Section 10 is referred to in sections 11, 16 of the schedule to this article.

§ 11. Judicial districts; boundaries.

The number and boundaries of judicial districts shall be changed by the General Assembly only with the advice and consent of the Supreme Court.

Cross References. Section 11 is referred to in section 27 of the schedule to this article.

§ 12. Qualifications of justices, judges and justices of the peace.

(a) Justices, judges and justices of the peace shall be citizens of the Commonwealth. Justices and judges, except the judges of the traffic court in the City of Philadelphia, shall be

members of the bar of the Supreme Court. Justices and judges of statewide courts, for a period of one year preceding their election or appointment and during their continuance in office, shall reside within the Commonwealth. Other judges and justices of the peace, for a period of one year preceding their election or appointment and during their continuance in office, shall reside within their respective districts, except as provided in this article for temporary assignments.

(b) Justices of the peace shall be members of the bar of the Supreme Court or shall complete a course of training and instruction in the duties of their respective offices and pass an examination prior to assuming office. Such courses and examinations shall be as provided by law.

(Apr. 26, 2016, 2015 P.L.607, J.R.2)

2016 Amendment. Joint Resolution No.2 of 2015 amended subsec. (b).

§ 13. Election of justices, judges and justices of the peace; vacancies.

(a) Justices, judges and justices of the peace shall be elected at the municipal election next preceding the commencement of their respective terms of office by the electors of the Commonwealth or the respective districts in which they are to serve.

(b) A vacancy in the office of justice, judge or justice of the peace shall be filled by appointment by the Governor. The appointment shall be with the advice and consent of two-thirds of the members elected to the Senate, except in the case of justices of the peace which shall be by a majority. The person so appointed shall serve for a term ending on the first Monday of January following the next municipal election more than ten months after the vacancy occurs or for the remainder of the unexpired term whichever is less, except in the case of persons selected as additional judges to the Superior Court, where the General Assembly may stagger and fix the length of the initial terms of such additional judges by reference to any of the first, second and third municipal elections more than ten months after the additional judges are selected. The manner by which any additional judges are selected shall be provided by this section for the filling of vacancies in judicial offices.

(c) The provisions of section 13(b) shall not apply either in the case of a vacancy to be filled by retention election as provided in section 15(b), or in the case of a vacancy created by failure of a justice or judge to file a declaration for retention election as provided in section 15(b). In the case of a vacancy occurring at the expiration of an appointive term under section 13(b), the vacancy shall be filled by election as provided in section 13(a).

(d) At the primary election in 1969, the electors of the Commonwealth may elect to have the justices and judges of the Supreme, Superior, Commonwealth and all other statewide courts appointed by the Governor from a list of persons qualified for the offices submitted to him by the Judicial Qualifications Commission. If a majority vote of those voting on the question is in favor of this method of appointment, then whenever any vacancy occurs thereafter for any reason in such court, the Governor shall fill the vacancy by appointment in the manner prescribed in this subsection. Such appointment shall not require the consent of the Senate.

(e) Each justice or judge appointed by the Governor under section 13(d) shall hold office for an initial term ending the first Monday of January following the next municipal election more than 24 months following the appointment.

(May 20, 1975, P.L.619, J.R.1; May 16, 1978, 1977 P.L.364, J.R.3;

Nov. 6, 1979, P.L.581, J.R.1)

1979 Amendment. Joint Resolution No.1 amended subsec. (b).

Appointment of Judges of Statewide Courts. The question of appointing justices and judges of statewide courts under subsec. (d) was submitted to the electors at the primary election on May 20, 1969, and was rejected. Accordingly, the Judicial Qualifications Commission does not exist.

Cross References. Section 13 is referred to in sections 14, 15 of this article; section 28 of the schedule to this article.

§ 14. Judicial Qualifications Commission.

(a) Should the method of judicial selection be adopted as provided in section 13(d), there shall be a Judicial Qualifications Commission, composed of four non-lawyer electors appointed by the Governor and three non-judge members of the bar of the Supreme Court appointed by the Supreme Court. No more than four members shall be of the same political party. The members of the commission shall serve for terms of seven years, with one member being selected each year. The commission shall consider all names submitted to it and recommend to the Governor not fewer than ten nor more than 20 of those qualified for each vacancy to be filled.

(b) During his term, no member shall hold a public office or public appointment for which he receives compensation, nor shall he hold office in a political party or political organization.

(c) A vacancy on the commission shall be filled by the appointing authority for the balance of the term.

Status of Commission. The question of appointing justices and judges of statewide courts under section 13(d) of this article was submitted to the electors at the primary election on May 20, 1969, and was rejected. Accordingly, the Judicial Qualifications Commission does not exist.

Cross References. Section 14 is referred to in section 23 of the schedule to this article.

§ 15. Tenure of justices, judges and justices of the peace.

(a) The regular term of office of justices and judges shall be ten years and the regular term of office for judges of the municipal court in the City of Philadelphia and of justices of the peace shall be six years. The tenure of any justice or judge shall not be affected by changes in judicial districts or by reduction in the number of judges.

(b) A justice or judge elected under section 13(a), appointed under section 13(d) or retained under this section 15(b) may file a declaration of candidacy for retention election with the officer of the Commonwealth who under law shall have supervision over elections on or before the first Monday of January of the year preceding the year in which his term of office expires. If no declaration is filed, a vacancy shall exist upon the expiration of the term of office of such justice or judge, to be filled by election under section 13(a) or by appointment under section 13(d) if applicable. If a justice or judge files a declaration, his name shall be submitted to the electors without party designation, on a separate judicial ballot or in a separate column on voting machines, at the municipal election immediately preceding the expiration of the term of office of the justice or judge, to determine only the question whether he shall be retained in office. If a majority is against retention, a vacancy shall exist upon the expiration of his term of office, to be filled by appointment under section 13(b) or under section 13(d) if applicable. If a majority favors retention, the justice or judge shall serve for the regular term of office provided herein, unless sooner removed or retired. At the expiration of each term a justice or judge shall be eligible for retention as provided

herein, subject only to the retirement provisions of this article. (Apr. 26, 2016, 2015 P.L.607, J.R.2)

2016 Amendment. Joint Resolution No.2 of 2015 amended subsec. (a).

Cross References. Section 15 is referred to in section 13 of this article.

§ 16. Compensation and retirement of justices, judges and justices of the peace.

(a) Justices, judges and justices of the peace shall be compensated by the Commonwealth as provided by law. Their compensation shall not be diminished during their terms of office, unless by law applying generally to all salaried officers of the Commonwealth.

(b) Justices, judges and justices of the peace shall be retired on the last day of the calendar year in which they attain the age of 75 years. Former and retired justices, judges and justices of the peace shall receive such compensation as shall be provided by law. Except as provided by law, no salary, retirement benefit or other compensation, present or deferred, shall be paid to any justice, judge or justice of the peace who, under section 18 or under Article VI, is suspended, removed or barred from holding judicial office for conviction of a felony or misconduct in office or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute.

(c) A former or retired justice or judge may, with his consent, be assigned by the Supreme Court on temporary judicial service as may be prescribed by rule of the Supreme Court. (May 18, 1993, P.L.577, J.R.1; May 15, 2001, 2000 P.L.1057, J.R.1; Nov. 8, 2016, 2015 P.L.605, J.R.1)

2016 Amendment. Joint Resolution No.1 of 2015 amended subsec. (b).

§ 17. Prohibited activities.

(a) Justices and judges shall devote full time to their judicial duties, and shall not engage in the practice of law, hold office in a political party or political organization, or hold an office or position of profit in the government of the United States, the Commonwealth or any municipal corporation or political subdivision thereof, except in the armed service of the United States or the Commonwealth.

(b) Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court. Justices of the peace shall be governed by rules or canons which shall be prescribed by the Supreme Court.

(c) No justice, judge or justice of the peace shall be paid or accept for the performance of any judicial duty or for any service connected with his office, any fee, emolument or perquisite other than the salary and expenses provided by law.

(d) No duties shall be imposed by law upon the Supreme Court or any of the justices thereof or the Superior Court or any of the judges thereof, except such as are judicial, nor shall any of them exercise any power of appointment except as provided in this Constitution.

Cross References. Section 17 is referred to in section 18 of this article.

§ 18. Suspension, removal, discipline and other sanctions.

(a) There shall be an independent board within the Judicial Branch, known as the Judicial Conduct Board, the composition, powers and duties of which shall be as follows:

(1) The board shall be composed of 12 members, as follows: two judges, other than senior judges, one from the courts of common

pleas and the other from either the Superior Court or the Commonwealth Court, one justice of the peace who need not be a member of the bar of the Supreme Court, three non-judge members of the bar of the Supreme Court and six non-lawyer electors.

(2) The judge from either the Superior Court or the Commonwealth Court, the justice of the peace, one non-judge member of the bar of the Supreme Court and three non-lawyer electors shall be appointed to the board by the Supreme Court. The judge from the courts of common pleas, two non-judge members of the bar of the Supreme Court and three non-lawyer electors shall be appointed to the board by the Governor.

(3) Except for the initial appointees whose terms shall be provided by the schedule to this article, the members shall serve for terms of four years. All members must be residents of this Commonwealth. No more than three of the six members appointed by the Supreme Court may be registered in the same political party. No more than three of the six members appointed by the Governor may be registered in the same political party. Membership of a judge or justice of the peace shall terminate if the member ceases to hold the judicial position that qualified the member for the appointment. Membership shall terminate if a member attains a position that would have rendered the member ineligible for appointment at the time of the appointment. A vacancy shall be filled by the respective appointing authority for the remainder of the term to which the member was appointed. No member may serve more than four consecutive years but may be reappointed after a lapse of one year. The Governor shall convene the board for its first meeting. At that meeting and annually thereafter, the members of the board shall elect a chairperson. The board shall act only with the concurrence of a majority of its members.

(4) No member of the board, during the member's term, may hold office in a political party or political organization. Except for a judicial member, no member of the board, during the member's term, may hold a compensated public office or public appointment. All members shall be reimbursed for expenses necessarily incurred in the discharge of their official duties.

(5) The board shall prescribe general rules governing the conduct of members. A member may be removed by the board for a violation of the rules governing the conduct of members.

(6) The board shall appoint a chief counsel and other staff, prepare and administer its own budget as provided by law, exercise supervisory and administrative authority over all board staff and board functions, establish and promulgate its own rules of procedure, prepare and disseminate an annual report and take other actions as are necessary to ensure its efficient operation. The budget request of the board shall be made by the board as a separate item in the request submitted by the Supreme Court on behalf of the Judicial Branch to the General Assembly.

(7) The board shall receive and investigate complaints regarding judicial conduct filed by individuals or initiated by the board; issue subpoenas to compel testimony under oath of witnesses, including the subject of the investigation, and to compel the production of documents, books, accounts and other records relevant to the investigation; determine whether there is probable cause to file formal charges against a justice, judge or justice of the peace for conduct proscribed by this section; and present the case in support of the charges before the Court of Judicial Discipline.

(8) Complaints filed with the board or initiated by the board shall not be public information. Statements, testimony, documents, records or other information or evidence acquired by the board in the conduct of an investigation shall not be public information. A justice, judge or justice of the peace who is the subject of a complaint filed with the board or initiated by the board or of an

investigation conducted by the board shall be apprised of the nature and content of the complaint and afforded an opportunity to respond fully to the complaint prior to any probable cause determination by the board. All proceedings of the board shall be confidential except when the subject of the investigation waives confidentiality. If, independent of any action by the board, the fact that an investigation by the board is in progress becomes a matter of public record, the board may, at the direction of the subject of the investigation, issue a statement to confirm that the investigation is in progress, to clarify the procedural aspects of the proceedings, to explain the rights of the subject of the investigation to a fair hearing without prejudgment or to provide the response of the subject of the investigation to the complaint. In acting to dismiss a complaint for lack of probable cause to file formal charges, the board may, at its discretion, issue a statement or report to the complainant or to the subject of the complaint, which may contain the identity of the complainant, the identity of the subject of the complaint, the contents and nature of the complaint, the actions taken in the conduct of the investigation and the results and conclusions of the investigation. The board may include with a report a copy of information or evidence acquired in the course of the investigation.

(9) If the board finds probable cause to file formal charges concerning mental or physical disability against a justice, judge or justice of the peace, the board shall so notify the subject of the charges and provide the subject with an opportunity to resign from judicial office or, when appropriate, to enter a rehabilitation program prior to the filing of the formal charges with the Court of Judicial Discipline.

(10) Members of the board and its chief counsel and staff shall be absolutely immune from suit for all conduct in the course of their official duties. No civil action or disciplinary complaint predicated upon the filing of a complaint or other documents with the board or testimony before the board may be maintained against any complainant, witness or counsel.

(b) There shall be a Court of Judicial Discipline, the composition, powers and duties of which shall be as follows:

(1) The court shall be composed of a total of eight members as follows: three judges other than senior judges from the courts of common pleas, the Superior Court or the Commonwealth Court, one justice of the peace, two non-judge members of the bar of the Supreme Court and two non-lawyer electors. Two judges, the justice of the peace and one non-lawyer elector shall be appointed to the court by the Supreme Court. One judge, the two non-judge members of the bar of the Supreme Court and one non-lawyer elector shall be appointed to the court by the Governor.

(2) Except for the initial appointees whose terms shall be provided by the schedule to this article, each member shall serve for a term of four years; however, the member, rather than the member's successor, shall continue to participate in any hearing in progress at the end of the member's term. All members must be residents of this Commonwealth. No more than two of the members appointed by the Supreme Court may be registered in the same political party. No more than two of the members appointed by the Governor may be registered in the same political party. Membership of a judge or justice of the peace shall terminate if the judge or justice of the peace ceases to hold the judicial position that qualified the judge or justice of the peace for appointment. Membership shall terminate if a member attains a position that would have rendered that person ineligible for appointment at the time of the appointment. A vacancy on the court shall be filled by the respective appointing authority for the remainder of the term to which the member was appointed in the same manner in which the

original appointment occurred. No member of the court may serve more than four consecutive years but may be reappointed after a lapse of one year.

(3) The court shall prescribe general rules governing the conduct of members. A member may be removed by the court for a violation of the rules of conduct prescribed by the court. No member, during the member's term of service, may hold office in any political party or political organization. Except for a judicial member, no member of the court, during the member's term of service, may hold a compensated public office or public appointment. All members of the court shall be reimbursed for expenses necessarily incurred in the discharge of their official duties.

(4) The court shall appoint staff and prepare and administer its own budget as provided by law and undertake actions needed to ensure its efficient operation. All actions of the court, including disciplinary action, shall require approval by a majority vote of the members of the court. The budget request of the court shall be made as a separate item in the request by the Supreme Court on behalf of the Judicial Branch to the General Assembly. The court shall adopt rules to govern the conduct of proceedings before the court.

(5) Upon the filing of formal charges with the court by the board, the court shall promptly schedule a hearing or hearings to determine whether a sanction should be imposed against a justice, judge or justice of the peace pursuant to the provisions of this section. The court shall be a court of record, with all the attendant duties and powers appropriate to its function. Formal charges filed with the court shall be a matter of public record. All hearings conducted by the court shall be public proceedings conducted pursuant to the rules adopted by the court and in accordance with the principles of due process and the law of evidence. Parties appearing before the court shall have a right to discovery pursuant to the rules adopted by the court and shall have the right to subpoena witnesses and to compel the production of documents, books, accounts and other records as relevant. The subject of the charges shall be presumed innocent in any proceeding before the court, and the board shall have the burden of proving the charges by clear and convincing evidence. All decisions of the court shall be in writing and shall contain findings of fact and conclusions of law. A decision of the court may order removal from office, suspension, censure or other discipline as authorized by this section and as warranted by the record.

(6) Members of the court and the court's staff shall be absolutely immune from suit for all conduct in the course of their official duties, and no civil action or disciplinary complaint predicated on testimony before the court may be maintained against any witness or counsel.

(c) Decisions of the court shall be subject to review as follows:

(1) A justice, judge or justice of the peace shall have the right to appeal a final adverse order of discipline of the court. A judge or justice of the peace shall have the right to appeal to the Supreme Court in a manner consistent with rules adopted by the Supreme Court; a justice shall have the right to appeal to a special tribunal composed of seven judges, other than senior judges, chosen by lot from the judges of the Superior Court and Commonwealth Court who do not sit on the Court of Judicial Discipline or the board, in a manner consistent with rules adopted by the Supreme Court. The special tribunal shall hear and decide the appeal in the same manner in which the Supreme Court would hear and decide an appeal from an order of the court.

(2) On appeal, the Supreme Court or special tribunal shall

review the record of the proceedings as follows: on the law, th scope of review is plenary; on the facts, the scope oflearly er oneous; and, as to sanctions, the scope of review is whether the s anctions imposed were lawful. The Supreme Court or special tribunal may revise or reject an order of the court upon a determination that the order did not sustain this standard of review; otherwise, the Supreme Court or special tribunal shall affirm the order of the court.

(3) An order of the court which dismisses a complaint against a judge or justice of the peace may be appealed by the board to the Supreme Court, but the appeal shall be limited to questions of law. An order of the court which dismisses a complaint against a justice of the Supreme Court may be appealed by the board to a special tribunal in accordance with paragraph (1), but the appeal shall be limited to questions of law.

(4) No justice, judge or justice of the peace may participate as a member of the board, the court, a special tribunal or the Supreme Court in any proceeding in which the justice, judge or justice of the peace is a complainant, the subject of a complaint, a party or a witness.

(d) A justice, judge or justice of the peace shall be subject to disciplinary action pursuant to this section as follows:

(1) A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for conviction of a felony; violation of section 17 of this article; misconduct in office; neglect or failure to perform the duties of office or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity or is prohibited by law; or conduct in violation of a canon or rule prescribed by the Supreme Court. In the case of a mentally or physically disabled justice, judge or justice of the peace, the court may enter an order of removal from office, retirement, suspension or other limitations on the activities of the justice, judge or justice of the peace as warranted by the record. Upon a final order of the court for suspension without pay or removal, prior to any appeal, the justice, judge or justice of the peace shall be suspended or removed from office; and the salary of the justice, judge or justice of the peace shall cease from the date of the order.

(2) Prior to a hearing, the court may issue an interim order directing the suspension, with or without pay, of any justice, judge or justice of the peace against whom formal charges have been filed with the court by the board or against whom has been filed an indictment or information charging a felony. An interim order under this paragraph shall not be considered a final order from which an appeal may be taken.

(3) A justice, judge or justice of the peace convicted of misbehavior in office by a court, disbarred as a member of the bar of the Supreme Court or removed under this section shall forfeit automatically his judicial office and thereafter be ineligible for judicial office.

(4) A justice, judge or justice of the peace who files for nomination for or election to any public office other than a judicial office shall forfeit automatically his judicial office.

(5) This section is in addition to and not in substitution for the provisions for impeachment for misbehavior in office contained in Article VI. No justice, judge or justice of the peace against whom impeachment proceedings are pending in the Senate shall exercise any of the duties of office until acquittal.

(May 18, 1993, P.L.577, J.R.1)

1993 Amendment. Joint Resolution No.1 deleted former section 18 and added present section 18.

Cross References. Section 18 is referred to in section 16 of this article.

SCHEDULE TO JUDICIARY ARTICLE

COURTS OTHER THAN IN THE CITY OF PHILADELPHIA AND ALLEGHENY COUNTY

Sec.

JUSTICES, JUDGES AND JUSTICES OF THE PEACE

MAGISTRATES, ALDERMEN AND JUSTICES OF THE PEACE AND MAGISTERIAL DISTRICTS OTHER THAN IN THE CITY OF PHILADELPHIA

PROTHONOTARIES AND CLERKS OTHER THAN IN THE CITY OF PHILADELPHIA

THE CITY OF PHILADELPHIA

ALLEGHENY COUNTY

THE CITY OF PITTSBURGH

CAUSES, PROCEEDINGS, BOOKS AND RECORDS

COMMISSION AND BOARD

GENERAL PROVISIONS

25. Dispensing with trial by jury.
26. Writs of certiorari.
27. Judicial districts.
28. Referendum.
29. Persons specially admitted by local rules.

Adoption. The provisions of the Schedule to the Judiciary Article were adopted April 23, 1968, P.L.App.16, Prop. No.7, effective January 1, 1969.

This schedule is a part of this judiciary article, and it is intended that the provisions contained herein shall have the same force and effect as those contained in the numbered sections of the article.

This article and schedule, unless otherwise stated herein, shall become effective on January 1, 1969. In this schedule where the word "now" appears it speaks from the date of adoption of this schedule; where the word "present" appears it speaks from the effective date hereof.

COURTS OTHER THAN IN THE CITY OF PHILADELPHIA AND ALLEGHENY COUNTY

§ 1. The Supreme Court.

The Supreme Court shall exercise all the powers and, until otherwise provided by law, jurisdiction now vested in the present Supreme Court and, until otherwise provided by law, the accused in all cases of felonious homicide shall have the right of appeal to the Supreme Court.

Partial Suspension by Statute. Section 1 (except insofar as it relates to the powers of the Supreme Court) was superseded and suspended by section 509(c) of the act of July 31, 1970 (P.L.673, No.223), known as the Appellate Court Jurisdiction Act of 1970, now repealed, and by section 26(a) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976.

§ 2. The Superior Court.

Until otherwise provided by law, the Superior Court shall exercise all the jurisdiction now vested in the present Superior Court. The present terms of all judges of the Superior Court which would otherwise expire on the first Monday of January in an odd-numbered year shall be extended to expire in the even-numbered year next following.

Partial Suspension by Statute. The first sentence of section 2 was superseded and suspended by section 509(c) of the act of July 31, 1970 (P.L.673, No.223), known as the Appellate Court Jurisdiction Act of 1970, now repealed, and by section 26(a) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976.

§ 3. Commonwealth Court.

The Commonwealth Court shall come into existence on January 1, 1970. Notwithstanding anything to the contrary in this article, the General Assembly shall stagger the initial terms of judges of the Commonwealth Court.

§ 4. The courts of common pleas.

Until otherwise provided by law, the several courts of common pleas shall exercise the jurisdiction now vested in the present courts of common pleas. The courts of oyer and terminer and general jail delivery, quarter sessions of the peace, and orphans' courts are abolished and the several courts of common pleas shall also exercise the jurisdiction of these courts. Orphans' courts in judicial districts having separate orphans' courts shall become

orphans' court divisions of the courts of common pleas and the court of common pleas in those judicial districts shall exercise the jurisdiction presently exercised by the separate orphans' courts through their respective orphans' court division.

Suspension by Statute. Section 4 was superseded and suspended in part by section 509(c) of the act of July 31, 1970 (P.L.673, No.223), known as the Appellate Court Jurisdiction Act of 1970, now repealed, and was superseded and suspended by section 26(a) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976.

§ 5. Orphans' court judges.

In those judicial districts having separate orphans' courts, the present judges thereof shall become judges of the orphans' court division of the court of common pleas and the present president judge shall become the president judge of the orphans' court division of the court of common pleas for the remainder of his term without diminution in salary.

§ 6. Courts of common pleas in multi-county judicial districts.

Courts of common pleas in multi-county judicial districts are abolished as separate courts and are hereby constituted as branches of the single court of common pleas established under this article in each such judicial district.

§ 7. Community courts.

In a judicial district which establishes a community court, a person serving as a justice of the peace at such time:

(a) May complete his term exercising the jurisdiction provided by law and with the compensation provided by law, and

(b) Upon completion of his term, his office is abolished and no judicial function of the kind heretofore exercised by a justice of the peace shall thereafter be exercised other than by the community court.

JUSTICES, JUDGES AND JUSTICES OF THE PEACE

§ 8. Justices, judges and justices of the peace.

Notwithstanding any provision in the article, a present justice, judge or justice of the peace may complete his term of office.

§ 9. Associate judges.

The office of associate judge not learned in the law is abolished, but a present associate judge may complete his term.

§ 10. Retention election of present justices and judges.

A present judge who was originally elected to office and seeks retention in the 1969 municipal election and is otherwise eligible may file his declaration of candidacy by February 1, 1969.

§ 11. Selection of president judges.

(a) Except in the City of Philadelphia, section 10(d) of the article shall become effective upon the expiration of the term of the present president judge, or upon earlier vacancy.

(b) Notwithstanding section 10(d) of the article the president judge of the Superior Court shall be the judge longest in continuous service on such court if such judge was a member of such court on the first Monday of January 1977. If no such judge exists or is willing to serve as president judge the president judge shall be selected as provided by this article.

(Nov. 6, 1979, P.L.581, J.R.1)

MAGISTRATES, ALDERMEN AND JUSTICES OF THE PEACE AND MAGISTERIAL DISTRICTS OTHER THAN IN THE CITY OF PHILADELPHIA

§ 12. Magistrates, aldermen and justices of the peace.

An alderman, justice of the peace or magistrate:

(a) May complete his term, exercising the jurisdiction provided by law and with the method of compensation provided by law prior to the adoption of this article;

(b) Shall be deemed to have taken and passed the examination required by this article for justices of the peace if he has completed one full term of office before creation of a magisterial district, and

(c) At the completion of his term, his office is abolished.

(d) Except for officers completing their terms, after the first Monday in January, 1970, no judicial function of the kind heretofore exercised by these officers, by mayors and like officers in municipalities shall be exercised by any officer other than the one justice of the peace elected or appointed to serve in that magisterial district.

§ 13. Magisterial districts.

So that the provisions of this article regarding the establishment of magisterial districts and the instruction and examination of justices of the peace may be self-executing, until otherwise provided by law in a manner agreeable to this article, the following provisions shall be in force:

(a) The Supreme Court or the courts of common pleas under the direction of the Supreme Court shall fix the number and boundaries of magisterial districts of each class within each judicial district by January 1, 1969, and these magisterial districts, except where a community court has been adopted, shall come into existence on January 1, 1970, the justices of the peace thereof to be elected at the municipal election in 1969. These justices of the peace shall retain no fine, costs or any other sum that shall be delivered into their hands for the performance of any judicial duty or for any service connected with their offices, but shall remit the same to the Commonwealth, county, municipal subdivision, school district or otherwise as may be provided by law.

(b) Classes of magisterial districts.

(i) Magisterial districts of the first class shall have a population density of more than 5,000 persons per square mile and a population of not less than 65,000 persons.

(ii) Magisterial districts of the second class shall have a population density of between 1,000 and 5,000 persons per square mile and a population of between 20,000 persons and 65,000 persons.

(iii) Magisterial districts of the third class shall have a population density of between 200 and 1,000 persons per square mile and a population of between 12,000 persons and 20,000 persons.

(iv) Magisterial districts of the fourth class shall have a population density of between 70 and 200 persons per square mile and a population of between 7,500 persons and 12,000 persons.

(v) Magisterial districts of the fifth class shall have a population density of under 70 persons per square mile and a population of between 4,000 persons and 7,500 persons.

(c) Salaries of justices of the peace.

The salaries of the justices of the peace shall be as follows:

(i) In first class magisterial districts, $12,000 per year,

(ii) In second class magisterial districts, $10,000 per year,

(iii) In third class magisterial districts, $8,000 per year,

(iv) In fourth and fifth class magisterial districts, $5,000 per year.

(v) The salaries here fixed shall be paid by the State Treasurer and for such payment this article and schedule shall be sufficient warrant.

(d) Course of training, instruction and examination. The course of training and instruction and examination in civil and criminal law and procedure for a justice of the peace shall be devised by the Department of Public Instruction, and it shall

administer this course and examination to insure that justices of the peace are competent to perform their duties.

Suspension by Statute. Section 13 was superseded and suspended by section 26(a) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976.

References in Text. The Department of Public Instruction, referred to in section 13(d), is now the Department of Education.

§ 14. Magisterial districts.

Effective immediately upon establishment of magisterial districts and until otherwise prescribed the civil and criminal procedural rules relating to venue shall apply to magisterial districts; all proceedings before aldermen, magistrates and justices of the peace shall be brought in and only in a magisterial district in which occurs an event which would give rise to venue in a court of record; the court of common pleas upon its own motion or on application at any stage of proceedings shall transfer any proceeding in any magisterial district to the justice of the peace for the magisterial district in which proper venue lies.

PROTHONOTARIES AND CLERKS OTHER THAN IN THE CITY OF PHILADELPHIA

§ 15. Prothonotaries, clerks of courts, clerks of orphans' courts.

Until otherwise provided by law, the offices of prothonotary and clerk of courts shall become the offices of prothonotary and clerk of courts of the court of common pleas of the judicial district, and in multi-county judicial districts of their county's branch of the court of common pleas, and the clerk of the orphans' court in a judicial district now having a separate orphans' court shall become the clerk of the orphans' court division of the court of common pleas, and these officers shall continue to perform the duties of the office and to maintain and be responsible for the records, books and dockets as heretofore. In judicial districts where the clerk of the orphans' court is not the register of wills, he shall continue to perform the duties of the office and to maintain and be responsible for the records, books and dockets as heretofore until otherwise provided by law.

THE CITY OF PHILADELPHIA

§ 16. Courts and judges.

Until otherwise provided by law: (a) the court of common pleas shall consist of a trial division, orphans' court division and family court division.

(b) The judges of the court of common pleas shall become judges of the trial division of the court of common pleas provided for in this article and their tenure shall not otherwise be affected.

(c) The judges of the county court shall become judges of the family court division of the court of common pleas and their tenure shall not otherwise be affected.

(d) The judges of the orphans' court shall become judges of the orphans' court division of the court of common pleas and their tenure shall not otherwise be affected.

(e) As designated by the Governor, 22 of the present magistrates shall become judges of the municipal court and six shall become judges of the traffic court, and their tenure shall not otherwise be affected.

(f) One of the judges of the court of common pleas shall be president judge and he shall be selected in the manner provided in section 10(d) of this article. He shall be the administrative head

of the court and shall supervise the court's judicial business.

(g) Each division of the court of common pleas shall be presided over by an administrative judge, who shall be one of its judges and shall be elected for a term of five years by a majority vote of the judges of that division. He shall assist the president judge in supervising the judicial business of the court and shall be responsible to him. Subject to the foregoing, the judges of the court of common pleas shall prescribe rules defining the duties of the administrative judges. The president judge shall have the power to assign judges from each division to each other division of the court when required to expedite the business of the court.

(h) Until all members of the municipal court are members of the bar of the Supreme Court, the president judge of the court of common pleas shall appoint one of the judges of the municipal court as president judge for a five-year term or at the pleasure of the president judge of the court of common pleas. The president judge of the municipal court shall be eligible to succeed himself as president judge for any number of terms and shall be the administrative head of that court and shall supervise the judicial business of the court. He shall promulgate all administrative rules and regulations and make all judicial assignments. The president judge of the court of common pleas may assign temporarily judges of the municipal court who are members of the bar of the Supreme Court to the court of common pleas when required to expedite the business of the court.

(i) The Governor shall appoint one of the judges of the traffic court as president judge for a term of five years or at the pleasure of the Governor. The president judge of the traffic court shall be eligible to succeed himself as president judge for any number of terms, shall be the executive and administrative head of the traffic court, and shall supervise the judicial business of the court, shall promulgate all administrative rules and regulations, and shall make all judicial assignments.

(j) The exercise of all supervisory and administrative powers detailed in this section 16 shall be subject to the supervisory and administrative control of the Supreme Court.

(k) The prothonotary shall continue to exercise the duties of that office for the trial division of the court of common pleas and for the municipal court.

(l) The clerk of quarter sessions shall continue to exercise the duties of that office for the trial division of the court of common pleas and for the municipal court.

(m) That officer serving as clerk to the county court shall continue to exercise the duties of that office for the family division of the court of common pleas.

(n) The register of wills shall serve ex officio as clerk of the orphans' court division of the court of common pleas.

(o) The court of common pleas shall have unlimited original jurisdiction in all cases except those cases assigned by this schedule to the municipal court and to the traffic court. The court of common pleas shall have all the jurisdiction now vested in the court of common pleas, the court of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' court, and county court. Jurisdiction in all of the foregoing cases shall be exercised through the trial division of the court of common pleas except in those cases which are assigned by this schedule to the orphans' court and family court divisions of the court of common pleas. The court of common pleas through the trial division shall also hear and determine appeals from the municipal court and traffic court.

(p) The court of common pleas through the orphans' court division shall exercise the jurisdiction heretofore exercised by the orphans' court.

(q) The court of common pleas through the family court

division of the court of common pleas shall exercise jurisdiction in the following matters:

(i) Domestic Relations: desertion or nonsupport of wives, children and indigent parents, including children born out of wedlock; proceedings for custody of children; divorce and annulment and property matters relating thereto.

(ii) Juvenile Matters: dependent, delinquent and neglected children and children under 18 years of age, suffering from epilepsy, nervous or mental defects, incorrigible, runaway and disorderly minors 18 to 20 years of age and preliminary hearings in criminal cases where the victim is a juvenile.

(iii) Adoptions and Delayed Birth Certificates.

(r) The municipal court shall have jurisdiction in the following matters:

(i) Committing magistrates' jurisdiction in all criminal matters.

(ii) All summary offenses, except those under the motor vehicle laws.

(iii) All criminal offenses for which no prison term may be imposed or which are punishable by a term of imprisonment of not more than two years, and indictable offenses under the motor vehicle laws for which no prison term may be imposed or punishable by a term of imprisonment of not more than three years. In these cases, the defendant shall have no right of trial by jury in that court, but he shall have the right of appeal for trial de novo including the right to trial by jury to the trial division of the court of common pleas. Until there are a sufficient number of judges who are members of the bar of the Supreme Court serving in the municipal court to handle such matters, the trial division of the court of common pleas shall have concurrent jurisdiction over such matters, the assignment of cases to the respective courts to be determined by rule prescribed by the president judge of the court of common pleas.

(iv) Matters arising under The Landlord and Tenant Act of 1951.

(v) All civil claims involving less than $500. In these cases, the parties shall have no right of trial by jury in that court but shall have the right of appeal for a trial de novo including the right to trial by jury to the trial division of the court of common pleas, it being the purpose of this subsection to establish an expeditious small claims procedure whereby it shall not be necessary for the litigants to obtain counsel. This limited grant of civil jurisdiction shall be co-extensive with the civil jurisdiction of the trial division of the court of common pleas.

(vi) As commissioners to preside at arraignments, fix and accept bail, issue warrants and perform duties of a similar nature.

The grant of jurisdiction under clauses (iii) and (v) of this subsection may be exercised only by those judges who are members of the bar of the Supreme Court.

(s) The traffic court shall have exclusive jurisdiction of all summary offenses under the motor vehicle laws.

(t) The courts of oyer and terminer and general jail delivery, quarter sessions of the peace, the county court, the orphans' court and the ten separate courts of common pleas are abolished and their jurisdiction and powers shall be exercised by the court of common pleas provided for in this article through the divisions established by this schedule.

(u) The office of magistrate, the board of magistrates and the present traffic court are abolished.

(v) Those judges appointed to the municipal court in accordance with subsection (e) of this section who are not members of the bar of the Supreme Court shall be eligible to complete their present terms and to be elected to and serve for one

additional term, but not thereafter.

(w) The causes, proceedings, books, dockets and records of the abolished courts shall become those of the court or division thereof to which, under this schedule, jurisdiction of the proceedings or matters concerned has been transferred, and that court or division thereof shall determine and conclude such proceedings as if it had assumed jurisdiction in the first instance.

(x) The present president judges of the abolished courts and chief magistrate shall continue to receive the compensation to which they are now entitled as president judges and chief magistrate until the end of their present terms as president judges and chief magistrate respectively.

(y) The offices of prothonotary and register of wills in the City of Philadelphia shall no longer be considered constitutional offices under this article, but their powers and functions shall continue as at present until these offices are covered in the Home Rule Charter by a referendum in the manner provided by law.

(z) If a community court is established in the City of Philadelphia, a person serving as a judge of the municipal or traffic court at that time:

(i) Notwithstanding the provisions of subsection (v) of this section, may complete his term exercising the jurisdiction provided by law and with the compensation provided by law; and

(ii) At the completion of his term, his office is abolished and no jurisdiction of the kind exercised by those officers immediately after the effective date of this article and schedule shall thereafter be exercised other than by the community court.

Partial Suspension by Statute. Subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (r), (s), (t), (u), (w) and (except as provided in section 22 of Act 142 of 1976) (z) of section 16 were superseded and suspended by section 26(a) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976, and, effective upon the date upon which the provision is or was suspended by general rule, subsections (o), (p) and (q) of section 16 were superseded and suspended by section 26(b) of Act 142.

ALLEGHENY COUNTY

§ 17. Courts.

Until otherwise provided by law:

(a) The court of common pleas shall consist of a trial division, an orphans' court division and a family court division; the courts of oyer and terminer and general jail delivery and quarter sessions of the peace, the county court, the orphans' court, and the juvenile court are abolished and their present jurisdiction shall be exercised by the court of common pleas. Until otherwise provided by rule of the court of common pleas and, except as otherwise provided in this schedule, the court of common pleas shall exercise the jurisdiction of the present court of common pleas and the present county court through the trial division. Until otherwise provided by rule of the court of common pleas, the jurisdiction of the present orphans' court, except as otherwise provided in this schedule, shall be exercised by the court of common pleas through the orphans' court division.

(b) Until otherwise provided by rule of the court of common pleas, the court of common pleas shall exercise jurisdiction in the following matters through the family court division:

(i) Domestic Relations: Desertion or nonsupport of wives, children and indigent parents, including children born out of wedlock; proceedings, including habeas corpus, for custody of children; divorce and annulment and property matters relating thereto.

(ii) Juvenile Matters: All matters now within the jurisdiction of the juvenile court.
(iii) Adoptions and Delayed Birth Certificates.

Suspension by Statute. Section 17 was superseded and suspended by section 26(b) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976, effective upon the date upon which the provision is or was suspended by general rule.

§ 18. Judges.

Until otherwise provided by law, the present judges of the court of common pleas shall continue to act as the judges of that court; the present judges of the county court shall become judges of the court of common pleas; the present judges of the orphans' court shall become judges of the orphans' court division of the court of common pleas; the present judges of the juvenile court shall become judges of the family court division of the court of common pleas.

Suspension by Statute. Section 18 was superseded and suspended by section 26(a) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976.

§ 19. President judges.

The present president judge of the court of common pleas may complete his term as president judge; the present president judge of the orphans' court shall be the president judge of the orphans' court division of the court of common pleas for the remainder of his term as president judge, and the present president judge of the county court shall be the president judge of the family court division of the court of common pleas for the remainder of his term as president judge, all these without diminution of salary as president judge. The president judge of the trial division shall be selected pursuant to section 20 of this schedule.

§ 20. President judges; court divisions.

Until otherwise provided by law, the trial division, the orphans' court division and ourt division of the court of common p eas shall each be presided over by a presideo shall be one of the judges of such division and shall be elected for a term of f a majority vote of the judges of that division. He shall assist t e president judge of common pleas in supervising the judicial bus iness of the court and shall be responsible to him. Subject to the foregoing, the judges of the court of common pleas shall prescribe rules defining the duties of the president judges. The president judge of the court of common pleas shall have the power to assign judges from one division to another division of the court when required to expedite the business of the court. The exercise of these supervisory and administrative powers, however, shall be subject to the supervisory and administrative powers of the Supreme Court.

Suspension by Statute. Section 20 was superseded and suspended by section 26(a) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976.

Cross References. Section 20 is referred to in section 19 of this schedule.

THE CITY OF PITTSBURGH

§ 21. Inferior courts.

Upon the establishment of magisterial districts pursuant to this article and schedule, and unless otherwise provided by law, the police magistrates, including those serving in the traffic court, the housing court and the city court shall continue as at present. Such magistrates shall be part of the unified judicial system and shall be subject to the general supervisory and

administrative authority of the Supreme Court. Such magistrates shall be subject to the provisions of this article and schedule regarding educational requirements and prohibited activities of justices of the peace.

Suspension by Statute. Section 21 was superseded and suspended by section 26(a) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976.

CAUSES, PROCEEDINGS, BOOKS AND RECORDS

§ 22. Causes, proceedings, books and records.

All causes and proceedings pending in any abolished court or office of the justice of the peace shall be determined and concluded by the court to which jurisdiction of the proceedings has been transferred under this schedule and all books, dockets and records of any abolished court or office of the justice of the peace shall become those of the court to which, under this schedule, jurisdiction of the proceedings concerned has been transferred.

COMMISSION AND BOARD

§ 23. Judicial Qualifications Commission.

The selection of the first members of the Judicial Qualifications Commission provided for in section 14 (a) of this article shall be made as follows: The Governor shall appoint the four non-lawyer members for terms of, respectively, one year, three years, five years and seven years, no more than two of whom shall be members of the same political party. The Supreme Court shall appoint the three non-judge members of the bar of the Supreme Court of Pennsylvania for terms, respectively, of two years, four years and six years, no more than two of whom shall be members of the same political party.

Status of Commission. The question of appointing justices and judges of statewide courts under section 13(d) of this article was submitted to the electors at the primary election on May 20, 1969, and was rejected. Accordingly, the Judicial Qualifications Commission does not exist.

§ 24. Judicial discipline.

(a) The members of the Judicial Inquiry and Review Board shall vacate their offices 90 days after the adoption of the amendment to section 18 of this article, and all proceedings pending before the Judicial Inquiry and Review Board and all records shall be transferred to the Judicial Conduct Board for further proceedings.

(b) Of the members initially appointed to the Judicial Conduct Board, the judge appointed by the Supreme Court shall serve a four-year term, and the judge appointed by the Governor shall serve a three-year term. The justice of the peace initially appointed shall serve a two-year term. Of the three non-judge members of the bar of the Supreme Court initially appointed, the first appointed by the Governor shall serve a three-year term, the next appointed by the Governor shall serve a two-year term, and the non-judge member of the bar of the Supreme Court appointed by the Supreme Court shall serve a one-year term. Of the six non-lawyer electors initially appointed, the first appointed by the Governor and the first appointed by the Supreme Court shall serve a four-year term, the next appointed by the Governor and the next appointed by the Supreme Court shall serve a three-year term, and the next appointed by the Governor and the next appointed by the Supreme Court shall serve a two-year term.

(c) Of the three judges initially appointed to the Court of Judicial Discipline, the first appointed by the Supreme Court

shall serve a four-year term, the next appointed by the Supreme Court shall serve a three-year term, and the judge appointed by the Governor shall serve a two-year term. The justice of the peace initially appointed shall serve a one-year term. Of the non-judge members of the bar initially appointed, the first appointed shall serve a four-year term, and the next appointed shall serve a three-year term. Of the two non-lawyer electors initially appointed, the non-lawyer elector appointed by the Governor shall serve a three-year term, and the non-lawyer elector appointed by the Supreme Court shall serve a two-year term.
(May 18, 1993, P.L.577, J.R.1)

GENERAL PROVISIONS

§ 25. Dispensing with trial by jury.

Until otherwise provided by law, the parties, by agreement filed, may in any civil case dispense with trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same; and the judgment thereon shall be subject to writ of error as in other cases.

Suspension by Statute. Section 25 was superseded and suspended by section 26(b) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976, effective upon the date upon which the provision is or was suspended by general rule.

Partial Suspension by Court Rule. Section 25 was suspended November 5, 1975, by Pennsylvania Rule of Appellate Procedure No. 5105(g), effective July 1, 1976, insofar as inconsistent with the Rules of Appellate Procedure. By amendment of December 11, 1978, effective December 30, 1978, the former provisions of Rule No. 5105(g) are now contained in Rule No. 5101(d).

§ 26. Writs of certiorari.

Unless and until changed by rule of the Supreme Court, in addition to the right of section 9 of this article, the judges f the courts of common pleas, within theirjudicial districts, sha l have power to issue writs of certiorari to the municipal court n the City of Philadelphia, justices of the peace and inferior courts not of record and to cause their proceedings to be brought before them, and right and justice to be done.

§ 27. Judicial districts.

Until changed in accordance with section 11 of this article, the number and boundaries of judicial districts shall remain as at present.

Suspension by Statute. Section 27 was superseded and suspended by section 26(a) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976.

§ 28. Referendum.

The officer of the Commonwealth who under law shall have supervision over elections shall cause the question provided for in section 13(d) of this article to be placed on the ballot in the 1969 primary election throughout the Commonwealth.

Status of Commission. The question of appointing justices and judges of statewide courts under section 13(d) of this article was submitted to the electors at the primary election on May 20, 1969, and was rejected. Accordingly, the Judicial Qualifications Commission does not exist.

§ 29. Persons specially admitted by local rules.

Any person now specially admitted to practice may continue to practice in the court of common pleas or in that division of the court of common pleas and the municipal court in the City of Philadelphia which substantially includes the practice for which

such person was previously specially admitted.

ARTICLE VI
PUBLIC OFFICERS

Sec.

Adoption. Unless otherwise noted, the provisions of present Article VI (formerly Article XII) were adopted December 16, 1873, 1874 P.L.3, effective January 1, 1874, and the article was renumbered from XII to VI by proclamation of the Governor of July 7, 1967, P.L.1063. See also proclamation of the Governor of July 14, 1966, 1965 P.L.1945.

Prior Provisions. Former Article VI was repealed by amendment of May 17, 1966, 1965 P.L.1928, J.R.10. The subject matter of present Article VI was formerly contained in Articles VI (Impeachment and Removal from Office), VII (Oath of Office) and XII (Public Officers).

Cross References. Article VI is referred to in sections 16, 18 of Article V (The Judiciary).

§ 1. Selection of officers not otherwise provided for in Constitution.

All officers, whose selection is not provided for in this Constitution, shall be elected or appointed as may be directed by law.

(Nov. 2, 1909, P.L.948, J.R.1; May 17, 1966, 1965 P.L.1928, J.R.10)

1966 Amendment. Joint Resolution No.10 renumbered former section 1 of this article to present section 4 and amended and renumbered section 1 of former Article XII to present section 1.

§ 2. Incompatible offices.

No member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this State to which a salary, fees or perquisites shall be attached. The General Assembly may by law declare what offices are incompatible.

(May 17, 1966, 1965 P.L.1928, J.R.10)

1966 Amendment. Joint Resolution No.10 renumbered former section 2 of this article to present section 5 and renumbered section 2 of former Article XII to present section 2.

§ 3. Oath of office.

Senators, Representatives and all judicial, State and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation before a person authorized to administer oaths.

"I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity."

The oath or affirmation shall be administered to a member of the Senate or to a member of the House of Representatives in the hall of the House to which he shall have been elected.

Any person refusing to take the oath or affirmation shall forfeit his office.
(May 17, 1966, 1965 P.L.1928, J.R.10)

1966 Amendment. Joint Resolution No.10 renumbered former section 3 to present section 6 and added present section 3.

§ 4. Power of impeachment.

The House of Representatives shall have the sole power of impeachment.
(May 17, 1966, 1965 P.L.1928, J.R.10)

1966 Amendment. Joint Resolution No.10 renumbered former section 4 to present section 7 and renumbered former section 1 to present section 4.

§ 5. Trial of impeachments.

All impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.
(May 17, 1966, 1965 P.L.1928, J.R.10)

1966 Amendment. Joint Resolution No.10 amended and renumbered former section 2 to present section 5.

§ 6. Officers liable to impeachment.

The Governor and all other civil officers shall be liable to impeachment for any misbehavior in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.
(May 17, 1966, 1965 P.L.1928, J.R.10)

1966 Amendment. Joint Resolution No.10 amended and renumbered former section 3 to present section 6.

§ 7. Removal of civil officers.

All civil officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime. Appointed civil officers, other than judges of the courts of record, may be removed at the pleasure of the power by which they shall have been appointed. All civil officers elected by the people, except the Governor, the Lieutenant Governor, members of the General Assembly and judges of the courts of record, shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate.
(May 17, 1966, 1965 P.L.1928, J.R.10)

Constitutionality. A statute that conflicts with the removal provisions provided under this section is unconstitutional unless the statute that provides for the alternative removal process predates this section. See South Newton Township Electors v. Bouch, 838 A.2d 643 (Pa. 2003).

1966 Amendment. Joint Resolution No.10 amended and renumbered former section 4 to present section 7.

ARTICLE VII
ELECTIONS

Sec.

days.
4. Method of elections; secrecy in voting.
5. Electors privileged from arrest.
6. Election and registration laws.
7. Bribery of electors.
8. Witnesses in contested elections.
9. Fixing election districts.
10. Viva voce elections.
11. Election officers.
12. Disqualifications for service as election officer.
13. Contested elections.
14. Absentee voting.

Adoption. Unless otherwise noted, the provisions of present Article VII (formerly Article VIII) were adopted December 16, 1873, 1874 P.L.3, effective January 1, 1874. The present article heading was amended May 16, 1967, P.L.1048, J.R.5, and the article was renumbered from VIII to VII by proclamation of the Governor of July 7, 1967, P.L.1063.

Prior Provisions. Former Article VII (Oath of Office) was repealed by amendment of May 17, 1966, 1965 P.L.1928, J.R.10. The subject matter is now contained in section 3 of Article VI (Public Officers).

§ 1. Qualifications of electors.

Every citizen 21 years of age, possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact.

1. He or she shall have been a citizen of the United States at least one month.

2. He or she shall have resided in the State 90 days immediately preceding the election.

3. He or she shall have resided in the election district where he or she shall offer to vote at least 60 days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within 60 days preceding the election.

(Nov. 5, 1901, P.L.881, J.R.1; Nov. 7, 1933, P.L.1559, J.R.5; Nov. 3, 1959, P.L.2160, J.R.3; May 16, 1967, P.L.1048, J.R.5)

Age of Electors. The age at which a citizen is entitled to vote was changed from 21 to 18 years of age. See Amendment XXVI to the Constitution of the United States and section 701 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

§ 2. General election day.

The general election shall be held biennially on the Tuesday next following the first Monday of November in each even-numbered year, but the General Assembly may by law fix a different day, two-thirds of all the members of each House consenting thereto: Provided, That such election shall always be held in an even-numbered year.

(Nov. 2, 1909, P.L.948, J.R.1; May 16, 1967, P.L.1048, J.R.5)

§ 3. Municipal election day; offices to be filled on election days.

All judges elected by the electors of the State at large may be elected at either a general or municipal election, as circumstances may require. All elections for judges of the courts for the several judicial districts, and for county, city, ward, borough, and township officers, for regular terms of service, shall be held on the municipal election day; namely, the Tuesday next following the first Monday of November in each odd-numbered

year, but the General Assembly may by law fix a different day, two-thirds of all the members of each House consenting thereto: Provided, That such elections shall be held in an odd-numbered year: Provided further, That all judges for the courts of the several judicial districts holding office at the present time, whose terms of office may end in an odd-numbered year, shall continue to hold their offices until the first Monday of January in the next succeeding even-numbered year.
(Nov. 2, 1909, P.L.948, J.R.1; Nov. 4, 1913, P.L.1477, C.R.3; May 16, 1967, P.L.1048, J.R.5)

§ 4. Method of elections; secrecy in voting.

All elections by the citizens shall be by ballot or by such other method as may be prescribed by law: Provided, That secrecy in voting be preserved.
(Nov. 5, 1901, P.L.882, J.R.2)

§ 5. Electors privileged from arrest.

Electors shall in all cases except treason, felony and breach or surety of the peace, be privileged from arrest during their attendance on elections and in going to and returning therefrom.

§ 6. Election and registration laws.

All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State, except that laws regulating and requiring the registration of electors may be enacted to apply to cities only, provided that such laws be uniform for cities of the same class, and except further, that the General Assembly shall by general law, permit the use of voting machines, or other mechanical devices for registering or recording and computing the vote, at all elections or primaries, in any county, city, borough, incorporated town or township of the Commonwealth, at the option of the electors of such county, city, borough, incorporated town or township, without being obliged to require the use of such voting machines or mechanical devices in any other county, city, borough, incorporated town or township, under such regulations with reference thereto as the General Assembly may from time to time prescribe. The General Assembly may, from time to time, prescribe the number and duties of election officers in any political subdivision of the Commonwealth in which voting machines or other mechanical devices authorized by this section may be used.
(Nov. 5, 1901, P.L.881, J.R.1; Nov. 6, 1928, 1927 P.L.1050, J.R.13; May 16, 1967, P.L.1048, J.R.5)

1967 Amendment. Joint Resolution No.5 repealed former section 6 and amended and renumbered former section 7 to present section 6.

§ 7. Bribery of electors.

Any person who shall give, or promise or offer to give, to an elector, any money, reward or other valuable consideration for his vote at an election, or for withholding the same, or who shall give or promise to give such consideration to any other person or party for such elector's vote or for the withholding thereof, and any elector who shall receive or agree to receive, for himself or for another, any money, reward or other valuable consideration for his vote at an election, or for withholding the same, shall thereby forfeit the right to vote at such election, and any elector whose right to vote shall be challenged for such cause before the election officers, shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received.

Prior Provisions. Former section 7 was renumbered to present section 6 and present section 7 was renumbered from former section 8 by amendment of May 16, 1967, P.L.1048, J.R.5.

§ 8. Witnesses in contested elections.

In trials of contested elections and in proceedings for the investigation of elections, no person shall be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceedings except for perjury in giving such testimony.

Prior Provisions. Former section 8 was renumbered to present section 7 and present section 8 was renumbered from former section 10 by amendment of May 16, 1967, P.L.1048, J.R.5.

§ 9. Fixing election districts.

Townships and wards of cities or boroughs shall form or be divided into election districts of compact and contiguous territory and their boundaries fixed and changed in such manner as may be provided by law.

(Nov. 6, 1928, 1927 P.L.1043, J.R.6; Nov. 2, 1943, P.L.917, J.R.1)

Prior Provisions. Former section 9 was repealed and present section 9 was renumbered from former section 11 by amendment of May 16, 1967, P.L.1048, J.R.5.

§ 10. Viva voce elections.

All elections by persons in a representative capacity shall be viva voce or by automatic recording device publicly indicating how each person voted.

(May 16, 1967, P.L.1048, J.R.5)

1967 Amendment. Joint Resolution No.5 renumbered former section 10 to present section 8 and amended and renumbered former section 12 to present section 10.

§ 11. Election officers.

District election boards shall consist of a judge and two inspectors, who shall be nicipal elections for such terms as ma be provided by law. Each elector shall have tvote for the judge a d one inspector, and each inspector shall appoint one clerk. The n board for any new district shall be selected, and vacancies in election boards fill be provided by law. Election officers sha l be privileged from arrest upon days of elehile engaged in mak ng up and transmitting returns, except upon warrant of a court j udge thereof, for an election fraud, for felony, or for wanton breach of the peace. In cities they may claim exemption from jury duty during their terms of service.

(Nov. 6, 1945, P.L.1419, J.R.3; May 16, 1967, P.L.1048, J.R.5)

1967 Amendment. Joint Resolution No.5 renumbered former section 11 to present section 9 and renumbered former section 14 to present section 11.

§ 12. Disqualifications for service as election officer.

No persons shall be qualified to serve as an election officer who shall hold, or shall within two months have held any office, appointment or employment in or under the government of the United States, or of this State, or of any city, or county, or of any municipal board, commission or trust in any city, save only notaries public and persons in the National Guard or in a reserve component of the armed forces of the United States; nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve, save only to such subordinate municipal or local offices, below the grade of city or county offices, as shall be designated by general law.

(May 16, 1967, P.L.1048, J.R.5)

1967 Amendment. Joint Resolution No.5 renumbered former section 12 to present section 10 and amended and renumbered former section 15 to present section 12.

§ 13. Contested elections.

The trial and determination of contested elections of electors of President and Vice-President, members of the General Assembly, and of all public officers, whether State, judicial, municipal or local, and contests involving questions submitted to the electors at any election shall be by the courts of law, or by one or more of the law judges thereof. The General Assembly shall, by general law, designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto; but no such law assigning jurisdiction, or regulating its exercise, shall apply to any contest arising out of an election held before its passage.
(May 16, 1967, P.L.1048, J.R.5)

1967 Amendment. Joint Resolution No.5 repealed former section 13 and amended and renumbered former section 17 to present section 13.

§ 14. Absentee voting.

(a) The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

(b) For purposes of this section, "municipality" means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.
(Nov. 5, 1957, P.L.1019, J.R.1; May 16, 1967, P.L.1048, J.R.5; Nov. 5, 1985, P.L.555, J.R.1; Nov. 4, 1997, P.L.636, J.R.3)

1967 Amendment. Joint Resolution No.5 renumbered former section 14 to present section 11 and amended and renumbered former section 19 to present section 14.

1957 Amendment. Joint Resolution No.1 added present section 14 (formerly section 19).

ARTICLE VIII
TAXATION AND FINANCE

Sec.

17. Special emergency legislation.

Adoption. Unless otherwise noted, the provisions of present Article VIII (formerly Article IX) were adopted December 16, 1873, 1874 P.L.3, effective January 1, 1874. The article number was changed from IX to VIII by proclamation of the Governor of July 7, 1967, P.L.1063.

Prior Provisions. Former Article VIII (Suffrage and Elections) was renumbered to Article VII by proclamation of the Governor of July 7, 1967, P.L.1063.

§ 1. Uniformity of taxation.

All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.
(Nov. 6, 1923, P.L.1117, J.R.1; Nov. 4, 1958, 1957 P.L.1021, J.R.3; Nov. 7, 1961, P.L.1785, J.R.6; Nov. 2, 1965, P.L.1908, J.R.2; Apr. 23, 1968, P.L.App.9, Prop. No.5)

1968 Amendment. Section 4 of Proposal No.5 provided that the amendment to section 1 shall take effect as soon as possible but no later than July 1, 1970.

§ 2. Exemptions and special provisions.

(a) The General Assembly may by law exempt from taxation:

(i) Actual places of regularly stated religious worship;

(ii) Actual places of burial, when used or held by a person or organization deriving no private or corporate profit therefrom and no substantial part of whose activity consists of selling personal property in connection therewith;

(iii) That portion of public property which is actually and regularly used for public purposes;

(iv) That portion of the property owned and occupied by any branch, post or camp of honorably discharged servicemen or servicewomen which is actually and regularly used for benevolent, charitable or patriotic purposes; and

(v) Institutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution.

(b) The General Assembly may, by law:

(i) Establish standards and qualifications for private forest reserves, agricultural reserves, and land actively devoted to agricultural use, and make special provision for the taxation thereof;

(ii) Establish as a class or classes of subjects of taxation the property or privileges of persons who, because of age, disability, infirmity or poverty are determined to be in need of tax exemption or of special tax provisions, and for any such class or classes, uniform standards and qualifications. The Commonwealth, or any other taxing authority, may adopt or employ such class or classes and standards and qualifications, and except as herein provided may impose taxes, grant exemptions, or make special tax provisions in accordance therewith. No exemption or special provision shall be made under this clause with respect to taxes upon the sale or use of personal property, and no exemption from any tax upon real property shall be granted by the General Assembly under this clause unless the General Assembly shall provide for the reimbursement of local taxing authorities by or through the Commonwealth for revenue losses occasioned by such exemption;

(iii) Establish standards and qualifications by which local taxing authorities may make uniform special tax provisions applicable to a taxpayer for a limited period of time to encourage improvement of deteriorating property or areas by an individual, association or corporation, or to encourage industrial development

by a non-profit corporation; and

(iv) Make special tax provisions on any increase in value of real estate resulting from residential construction. Such special tax provisions shall be applicable for a period not to exceed two years.

(v) Establish standards and qualifications by which local taxing authorities in counties of the first and second class may make uniform special real property tax provisions applicable to taxpayers who are longtime owner-occupants as shall be defined by the General Assembly of residences in areas where real property values have risen markedly as a consequence of the refurbishing or renovating of other deteriorating residences or the construction of new residences.

(vi) Authorize local taxing authorities to exclude from taxation an amount based on the assessed value of homestead property. The exclusions authorized by this clause shall not exceed 100% of the assessed value of each homestead property within a local taxing jurisdiction. A local taxing authority may not increase the millage rate of its tax on real property to pay for these exclusions.

(c) Citizens and residents of this Commonwealth, who served in any war or armed conflict in which the United States was engaged and were honorably discharged or released under honorable circumstances from active service, shall be exempt from the payment of all real property taxes upon the residence occupied by the said citizens and residents of this Commonwealth imposed by the Commonwealth of Pennsylvania or any of its political subdivisions if, as a result of military service, they are blind, paraplegic or double or quadruple amputees or have a service-connected disability declared by the United States Veterans Administration or its successor to be a total or 100% permanent disability, and if the State Veterans' Commission determines that such persons are in need of the tax exemptions granted herein. This exemption shall be extended to the unmarried surviving spouse upon the death of an eligible veteran provided that the State Veterans' Commission determines that such person is in need of the exemption.

(Apr. 23, 1968, P.L.App.9, Prop. No.5; May 15, 1973, P.L.451, J.R.1; Nov. 8, 1977, P.L.361, J.R.1; Nov. 6, 1984, 1982 P.L.1478, J.R.2; Nov. 5, 1985, P.L.556, J.R.2; Nov. 4, 1997, P.L.633, J.R.1; Nov. 7, 2017, 2018 P.L.1197, J.R.1)

2018 Amendment. Joint Resolution No.1 of 2017 amended subsec. (b)(vi).

Rejection of Proposed 1989 Amendment. The question of amending subsection (b) to permit local taxing authorities to reduce tax rates on residential real property to the extent of additional revenues obtained from personal income taxes, as more fully set forth in Joint Resolution No.1 of 1989, was submitted to the electors at the municipal election on May 16, 1989, and was rejected. Section 1 of Article XI prohibits the submission of an amendment more often than once in five years.

1985 Amendment. Joint Resolution No.2 amended subsec. (c).

1984 Amendment. Joint Resolution No.2 of 1982 added subsec. (b)(v).

1973 Amendment. Joint Resolution No.1 amended subsec. (b)(i).

1968 Amendment. Proposal No.5 renumbered former section 2 to present section 5 and added present section 2. Section 4 of Proposal No.5 provided that section 2 shall take effect as soon as possible but no later than July 1, 1970.

§ 3. Reciprocal exemptions.

Taxation laws may grant exemptions or rebates to residents, or estates of residents, of other States which grant similar exemptions or rebates to residents, or estates of residents, of

Pennsylvania.
(Nov. 6, 1928, 1927 P.L.1049, J.R.12)

1928 Amendment. Joint Resolution No.12 added present section 3 (formerly section 1B).

Prior Provisions. Former section 3 was renumbered to present section 6 and present section 3 was renumbered from section 1B by amendment of April 23, 1968, P.L.App.9, Prop. No.5.

§ 4. Public utilities.

The real property of public utilities is subject to real estate taxes imposed by local taxing authorities. Payment to the Commonwealth of gross receipts taxes or other special taxes in replacement of gross receipts taxes by a public utility and the distribution by the Commonwealth to the local taxing authorities of the amount as herein provided shall, however, be in lieu of local taxes upon its real property which is used or useful in furnishing its public utility service. The amount raised annually by such gross receipts or other special taxes shall not be less than the gross amount of real estate taxes which the local taxing authorities could have imposed upon such real property but for the exemption herein provided. This gross amount shall be determined in the manner provided by law. An amount equivalent to such real estate taxes shall be distributed annually among all local taxing authorities in the proportion which the total tax receipts of each local taxing authority bear to the total tax receipts of all local taxing authorities, or in such other equitable proportions as may be provided by law.

Notwithstanding the provisions of this section, any law which presently subjects real property of public utilities to local real estate taxation by local taxing authorities shall remain in full force and effect.
(Apr. 23, 1968, P.L.App.9, Prop. No.5)

1968 Amendment. Proposal No.5 added present section 4. Section 4 of Proposal No.5 provided that section 4 shall take effect July 1, 1970, unless the General Assembly earlier provides enabling legislation in accordance therewith.

Prior Provisions. Former section 4 was both repealed and renumbered to present section 7 by amendment of April 23, 1968, P.L.App.5, Prop. No.3.

§ 5. Exemption from taxation restricted.

All laws exempting property from taxation, other than the property above enumerated, shall be void.

Prior Provisions. Former section 5 was repealed by amendment of April 23, 1968, P.L.App.5, Prop. No.3, and present section 5 was renumbered from former section 2 by amendment of April 23, 1968, P.L.App.9, Prop. No.5.

§ 6. Taxation of corporations.

The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the Commonwealth shall be a party.
(Apr. 23, 1968, P.L.App.9, Prop. No.5)

1968 Amendment. Proposal No.5 amended and renumbered former section 3 to present section 6.

Prior Provisions. Former section 6 was renumbered to present section 8 by amendment of April 23, 1968, P.L.App.5, Prop. No.3.

§ 7. Commonwealth indebtedness.

(a) No debt shall be incurred by or on behalf of the Commonwealth except by law and in accordance with the provisions of this section.

(1) Debt may be incurred without limit to suppress insurrection, rehabilitate areas affected by man-made or natural

disaster, or to implement unissued authority approved by the electors prior to the adoption of this article.

(2) The Governor, State Treasurer and Auditor General, acting jointly, may (i) issue tax anticipation notes having a maturity within the fiscal year of issue and payable exclusively from revenues received in the same fiscal year, and (ii) incur debt for the purpose of refunding other debt, if such refunding debt matures within the term of the original debt.

(3) Debt may be incurred without limit for purposes specifically itemized in the law authorizing such debt, if the question whether the debt shall be incurred has been submitted to the electors and approved by a majority of those voting on the question.

(4) Debt may be incurred without the approval of the electors for capital projects specifically itemized in a capital budget, if such debt will not cause the amount of all net debt outstanding to exceed one and three-quarters times the average of the annual tax revenues deposited in the previous five fiscal years as certified by the Auditor General. For the purposes of this subsection, debt outstanding shall not include debt incurred under clauses (1) and (2) (i), or debt incurred under clause (2) (ii) if the original debt would not be so considered, or debt incurred under subsection (3) unless the General Assembly shall so provide in the law authorizing such debt.

(b) All debt incurred for capital projects shall mature within a period not to exceed the estimated useful life of the projects as stated in the authorizing law, and when so stated shall be conclusive. All debt, except indebtedness permitted by clause (2) (i), shall be amortized in substantial and regular amounts, the first of which shall be due prior to the expiration of a period equal to one-tenth the term of the debt.

(c) As used in this section, debt shall mean the issued and outstanding obligations of the Commonwealth and shall include obligations of its agencies or authorities to the extent they are to be repaid from lease rentals or other charges payable directly or indirectly from revenues of the Commonwealth. Debt shall not include either (1) that portion of obligations to be repaid from charges made to the public for the use of the capital projects financed, as determined by the Auditor General, or (2) obligations to be repaid from lease rentals or other charges payable by a school district or other local taxing authority, or (3) obligations to be repaid by agencies or authorities created for the joint benefit of the Commonwealth and one or more other State governments.

(d) If sufficient funds are not appropriated for the timely payment of the interest upon and installments of principal of all debt, the State Treasurer shall set apart from the first revenues thereafter received applicable to the appropriate fund a sum sufficient to pay such interest and installments of principal, and shall so apply the money so set apart. The State Treasurer may be required to set aside and apply such revenues at the suit of any holder of Commonwealth obligations.

(Nov. 5, 1918, 1917 P.L.1264, J.R.1; Nov. 6, 1923, P.L.1118, J.R.2; Apr. 23, 1968, P.L.App.5, Prop. No.3)

1968 Amendment. Proposal No.3 amended and renumbered former section 4 to present section 7.

Prior Provisions. Former section 7 was repealed by amendment of April 23, 1968, P.L.App.11, Prop. No.6.

Cross References. Section 7 is referred to in sections 15, 16 of this article.

§ 8. Commonwealth credit not to be pledged.

The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association nor shall

the Commonwealth become a joint owner or stockholder in any company, corporation or association.
(Apr. 23, 1968, P.L.App.5, Prop. No.3)

1968 Amendment. Proposal No.3 amended and renumbered former section 6 to present section 8.

Prior Provisions. Former section 8 was repealed by amendment of April 23, 1968, P.L.App.11, Prop. No.6.

§ 9. Municipal debt not to be assumed by Commonwealth.

The Commonwealth shall not assume the debt, or any part thereof, of any county, city, borough, incorporated town, township or any similar general purpose unit of government unless such debt shall have been incurred to enable the Commonwealth to suppress insurrection or to assist the Commonwealth in the discharge of any portion of its present indebtedness.
(Apr. 23, 1968, P.L.App.5, Prop. No.3)

§ 10. Audit.

The financial affairs of any entity funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audits made in accordance with generally accepted auditing standards.

Any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth shall not be charged with the function of auditing that transaction after its occurrence.
(Apr. 23, 1968, P.L.App.7, Prop. No.4)

1968 Amendment. Proposal No.4 amended and renumbered former section 14 to present section 10. Section 3 of Proposal No.4 provided that section 10 shall take effect as soon as possible but no later than July 1, 1970.

Prior Provisions. Former section 10 was repealed by amendment of April 23, 1968, P.L.App.11, Prop. No.6.

§ 11. Gasoline taxes and motor license fees restricted.

(a) All proceeds from gasoline and other motor fuel excise taxes, motor vehicle registration fees and license taxes, operators' license fees and other excise taxes imposed on products used in motor transportation after providing therefrom for (a) cost of administration and collection, (b) payment of obligations incurred in the construction and reconstruction of public highways and bridges shall be appropriated by the General Assembly to agencies of the State or political subdivisions thereof; and used solely for construction, reconstruction, maintenance and repair of and safety on public highways and bridges and costs and expenses incident thereto, and for the payment of obligations incurred for such purposes, and shall not be diverted by transfer or otherwise to any other purpose, except that loans may be made by the State from the proceeds of such taxes and fees for a single period not exceeding eight months, but no such loan shall be made within the period of one year from any preceding loan, and every loan made in any fiscal year shall be repayable within one month after the beginning of the next fiscal year.

(b) All proceeds from aviation fuel excise taxes, after providing therefrom for the cost of administration and collection, shall be appropriated by the General Assembly to agencies of the State or political subdivisions thereof and used solely for: the purchase, construction, reconstruction, operation and maintenance of airports and other air navigation facilities; aircraft accident investigation; the operation, maintenance and other costs of aircraft owned or leased by the Commonwealth; any other purpose reasonably related to air navigation including but not limited to the reimbursement of airport property owners for property tax expenditures; and costs and expenses incident thereto and for the

payment of obligations incurred for such purposes, and shall not be diverted by transfer or otherwise to any other purpose.
(Nov. 6, 1945, P.L.1418, J.R.1; Nov. 3, 1981, P.L.603, J.R.2)

1981 Amendment. Joint Resolution No.2 amended and lettered existing provisions subsec. (a) and added subsec. (b).

1945 Amendment. Joint Resolution No.1 added present section 11 (formerly section 18).

Prior Provisions. Former section 11 was repealed by amendment of April 23, 1968, P.L.App.5, Prop. No.3, and present section 11 was renumbered from former section 18 by amendment of April 23, 1968, P.L.App.9, Prop. No.5.

§ 12. Governor's budgets and financial plan.

Annually, at the times set by law, the Governor shall submit to the General Assembly:

(a) A balanced operating budget for the ensuing fiscal year setting forth in detail (i) proposed expenditures classified by department or agency and by program and (ii) estimated revenues from all sources. If estimated revenues and available surplus are less than proposed expenditures, the Governor shall recommend specific additional sources of revenue sufficient to pay the deficiency and the estimated revenue to be derived from each source;

(b) A capital budget for the ensuing fiscal year setting forth in detail proposed expenditures to be financed from the proceeds of obligations of the Commonwealth or of its agencies or authorities or from operating funds; and

(c) A financial plan for not less than the next succeeding five fiscal years, which plan shall include for each such fiscal year:

(i) Projected operating expenditures classified by department or agency and by program, in reasonable detail, and estimated revenues, by major categories, from existing and additional sources, and

(ii) Projected expenditures for capital projects specifically itemized by purpose, and the proposed sources of financing each.
(Apr. 23, 1968, P.L.App.7, Prop. No.4)

1968 Amendment. Proposal No.4 added present section 12. Section 3 of Proposal No.4 provided that section 12 shall take effect as soon as possible but no later than July 1, 1970.

Prior Provisions. Former section 12 was repealed by amendment of April 23, 1968, P.L.App.5, Prop. No.3.

§ 13. Appropriations.

(a) Operating budget appropriations made by the General Assembly shall not exceed the actual and estimated revenues and surplus available in the same fiscal year.

(b) The General Assembly shall adopt a capital budget for the ensuing fiscal year.
(Apr. 23, 1968, P.L.App.7, Prop. No.4)

1968 Amendment. Proposal No.4 added present section 13. Section 3 of Proposal No.4 provided that section 13 shall take effect as soon as possible but no later than July 1, 1970.

Prior Provisions. Former section 13 was repealed by amendment of April 23, 1968, P.L.App.5, Prop. No.3.

§ 14. Surplus.

All surplus of operating funds at the end of the fiscal year shall be appropriated during the ensuing fiscal year by the General Assembly.
(Apr. 23, 1968, P.L.App.7, Prop. No.4)

1968 Amendment. Proposal No.4 renumbered former section 14 to present section 10 and added present section 14. Section 3 of

Proposal No.4 provided that section 14 shall take effect as soon as possible but no later than July 1, 1970.

§ 15. Project "70".

In addition to the purposes stated in Article VIII, section 7 of this Constitution, the Commonwealth may be authorized by law to create debt and to issue bonds to the amount of $70,000,000 for the acquisition of land for State parks, reservoirs and other conservation and recreation and historical preservation purposes, and for participation by the Commonwealth with political subdivisions in the acquisition of land for parks, reservoirs and other conservation and recreation and historical preservation purposes, subject to such conditions and limitations as the General Assembly may prescribe.
(Nov. 5, 1963, P.L.1403, J.R.5)

1963 Amendment. Joint Resolution No.5 added present section 15 (formerly section 24).

Prior Provisions. Former section 15 was repealed by amendment of April 23, 1968, P.L.App.11, Prop. No.6, and present section 15 was renumbered from section 24 by amendment of April 23, 1968, P.L.App.9, Prop. No.5.

Repeal of Section. Section 4 of Proposal No.3 of 1968 provided that, effective when the last bonds have been issued under its authority, section 24 (now section 15) is repealed.

Cross References. Section 15 is referred to in section 16 of this article.

§ 16. Land and Water Conservation and Reclamation Fund.

In addition to the purposes stated in Article VIII, section 7 of this Constitution, the Commonwealth may be authorized by law to create a debt and issue bonds in the amount of $500,000,000 for a Land and Water Conservation and Reclamation Fund to be used for the conservation and reclamation of land and water resources of the Commonwealth, including the elimination of acid mine drainage, sewage, and other pollution from the streams of the Commonwealth, the provision of State financial assistance to political subdivisions and municipal authorities of the Commonwealth of Pennsylvania for the construction of sewage treatment plants, the restoration of abandoned strip-mined areas, the control and extinguishment of surface and underground mine fires, the alleviation and prevention of subsidence resulting from mining operations, and the acquisition of additional lands and the reclamation and development of park and recreational lands acquired pursuant to the authority of Article VIII, section 15 of this Constitution, subject to such conditions and liabilities as the General Assembly may prescribe.
(May 16, 1967, P.L.1055, J.R.8)

1967 Amendment. Joint Resolution No.8 added present section 16 (formerly section 25).

Prior Provisions. Former section 16 was repealed by amendment of April 23, 1968, P.L.App.5, Prop. No.3, and present section 16 was renumbered from section 25 by amendment of April 23, 1968, P.L.App.9, Prop. No.5.

Repeal of Section. Section 4 of Proposal No.3 of 1968 provided that, effective when the last bonds have been issued under its authority, section 25 (now section 16) is repealed.

§ 17. Special emergency legislation.

(a) Notwithstanding any provisions of this Constitution to the contrary, the General Assembly shall have the authority to enact laws providing for tax rebates, credits, exemptions, grants-in-aid, State supplementations, or otherwise provide special provisions for individuals, corporations, associations or nonprofit institutions, including nonpublic schools (whether sectarian or nonsectarian) in order to alleviate the danger,

damage, suffering or hardship faced by such individuals, corporations, associations, institutions or nonpublic schools as a result of Great Storms or Floods of September 1971, of June 1972, or of 1974, or of 1975 or of 1976.

(b) Notwithstanding the provisions of Article III, section 29 subsequent to a Presidential declaration of an emergency or of a major disaster in any part of this Commonwealth, the General Assembly shall have the authority by a vote of two-thirds of all members elected to each House to make appropriations limited to moneys required for Federal emergency or major disaster relief. This subsection may apply retroactively to any Presidential declaration of an emergency or of a major disaster in 1976 or 1977.

(Nov. 7, 1972, 1st Sp.Sess., P.L.1970, J.R.1; Nov. 4, 1975, P.L.622, J.R.2; Nov. 8, 1977, P.L.362, J.R.2)

1977 Amendment. Joint Resolution No.2 amended and lettered existing provisions subsec. (a) and added subsec. (b) under the emergency provisions of Article XI. For preamble to amendment, see section 1 of Joint Resolution No.2 in the appendix to the Constitution.

1975 Amendment. Joint Resolution No.2 amended section 17 under the emergency provisions of section 1(a) and (b) of Article XI. For preamble to amendment, see section 1 of Joint Resolution No.2 in the appendix to the Constitution.

1972 Amendment. Joint Resolution No.1 added present section 17 under the emergency provisions of section 1(a) and (b) of Article XI. For preamble to amendment, see section 1 of Joint Resolution No.1 in the appendix to the Constitution.

Prior Provisions. Former section 17 was repealed by amendment of April 23, 1968, P.L.App.5, Prop. No.3.

ARTICLE IX
LOCAL GOVERNMENT

Sec.

Adoption. Unless otherwise noted, the provisions of present Article IX were adopted April 23, 1968, P.L.App.11, Prop. No.6. For effective date of 1968 amendment, see section 3 of Proposal No.6 of 1968 in the appendix to the Constitution.

Prior Provisions. Former Article IX was renumbered Article VIII by proclamation of the Governor of July 7, 1967, P.L.1063. The subject matter of present Article IX was contained in part in former Articles IX (Taxation and Finance), XIII (New Counties), XIV (County Officers) and XV (Cities and City Charters).

§ 1. Local government.

The General Assembly shall provide by general law for local government within the Commonwealth. Such general law shall be

uniform as to all classes of local government regarding procedural matters.

Interpretation of Section. Section 3 of Proposal No.6 of 1968 provided that the second sentence of section 1 shall be construed so as to be consistent with the jurisdiction of the Constitutional Convention.

§ 2. Home rule.

Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment or repeal of a home rule charter shall be by referendum. The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment or repeal presented to the electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality. A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.

Cross References. Section 2 is referred to in section 13 of this article.

§ 3. Optional plans.

Municipalities shall have the right and power to adopt optional forms of government as provided by law. The General Assembly shall provide optional forms of government for all municipalities. An optional form of government shall be presented to the electors by initiative, by the governing body of the municipality, or by the General Assembly. Adoption or repeal of an optional form of government shall be by referendum.

§ 4. County government.

County officers shall consist of commissioners, controllers or auditors, district attorneys, public defenders, treasurers, sheriffs, registers of wills, recorders of deeds, prothonotaries, clerks of the courts, and such others as may from time to time be provided by law.

County officers, except for public defenders who shall be appointed as shall be provided by law, shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified; all vacancies shall be filled in such a manner as may be provided by law.

County officers shall be paid only by salary as provided by law for services performed for the county or any other governmental unit. Fees incidental to the conduct of any county office shall be payable directly to the county or the Commonwealth, or as otherwise provided by law.

Three county commissioners shall be elected in each county. In the election of these officers each qualified elector shall vote for no more than two persons, and the three persons receiving the highest number of votes shall be elected.

Provisions for county government in this section shall apply to every county except a county which has adopted a home rule charter or an optional form of government. One of the optional forms of county government provided by law shall include the provisions of this section.

§ 5. Intergovernmental cooperation.

A municipality by act of its governing body may, or upon being required by initiative and referendum in the area affected shall, cooperate or agree in the exercise of any function, power or responsibility with, or delegate or transfer any function, power or responsibility to, one or more other governmental units

including other municipalities or districts, the Federal government, any other state or its governmental units, or any newly created governmental unit.

§ 6. Area government.

The General Assembly shall provide for the establishment and dissolution of government of areas involving two or more municipalities or parts thereof.

§ 7. Area-wide powers.

The General Assembly may grant powers to area governments or to municipalities within a given geographical area in which there exists intergovernmental cooperation or area government and designate the classes of municipalities subject to such legislation.

§ 8. Consolidation, merger or boundary change.

Uniform Legislation.--The General Assembly shall, within two years following the adoption of this article, enact uniform legislation establishing the procedure for consolidation, merger or change of the boundaries of municipalities.

Initiative.--The electors of any municipality shall have the right, by initiative and referendum, to consolidate, merge and change boundaries by a majority vote of those voting thereon in each municipality, without the approval of any governing body.

Study.--The General Assembly shall designate an agency of the Commonwealth to study consolidation, merger and boundary changes, advise municipalities on all problems which might be connected therewith, and initiate local referendum.

Legislative Power.--Nothing herein shall prohibit or prevent the General Assembly from providing additional methods for consolidation, merger or change of boundaries.

Interpretation of Section. Section 3 of Proposal No.6 of 1968 provided that the first paragraph of section 8 on Uniform Legislation shall be construed so as to be consistent with the jurisdiction of the Constitutional Convention.

§ 9. Appropriation for public purposes.

The General Assembly shall not authorize any municipality or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual. The General Assembly may provide standards by which municipalities or school districts may give financial assistance or lease property to public service, industrial or commercial enterprises if it shall find that such assistance or leasing is necessary to the health, safety or welfare of the Commonwealth or any municipality or school district. Existing authority of any municipality or incorporated district to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual, is preserved.

§ 10. Local government debt.

Subject only to the restrictions imposed by this section, the General Assembly shall prescribe the debt limits of all units of local government including municipalities and school districts. For such purposes, the debt limit base shall be a percentage of the total revenue, as defined by the General Assembly, of the unit of local government computed over a specific period immediately preceding the year of borrowing. The debt limit to be prescribed in every such case shall exclude all indebtedness (1) for any project to the extent that it is self-liquidating or self-supporting or which has heretofore been defined as self-liquidating or self-supporting, or (2) which has been approved by referendum held in such manner as shall be provided by law. The provisions of this paragraph shall not apply to the City or County of Philadelphia.

Any unit of local government, including municipalities and school districts, incurring any indebtedness, shall at or before the time of so doing adopt a covenant, which shall be binding upon it so long as any such indebtedness shall remain unpaid, to make payments out of its sinking fund or any other of its revenues or funds at such time and in such annual amounts specified in such covenant as shall be sufficient for the payment of the interest thereon and the principal thereof when due.

§ 11. Local reapportionment.

Within the year following that in which the Federal decennial census is officially reported as required by Federal law, and at such other times as the governing body of any municipality shall deem necessary, each municipality having a governing body not entirely elected at large shall be reapportioned, by its governing body or as shall otherwise be provided by uniform law, into districts which shall be composed of compact and contiguous territory as nearly equal in population as practicable, for the purpose of describing the districts for those not elected at large.

§ 12. Philadelphia debt.

The debt of the City of Philadelphia may be increased in such amount that the total debt of said city shall not exceed 13 1/2% of the average of the annual assessed valuations of the taxable realty therein, during the ten years immediately preceding the year in which such increase is made, but said city shall not increase its indebtedness to an amount exceeding 3% upon such average assessed valuation of realty, without the consent of the electors thereof at a public election held in such manner as shall be provided by law.

In ascertaining the debt-incurring capacity of the City of Philadelphia at any time, there shall be deducted from the debt of said city so much of such debt as shall have been incurred, or is about to be incurred, and the proceeds thereof expended, or about to be expended, upon any public improvement, or in construction, purchase or condemnation of any public utility, or part thereof, or facility therefor, if such public improvement or public utility, or part thereof, or facility therefor, whether separately, or in connection with any other public improvement or public utility, or part thereof, or facility therefor, may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon. The method of determining such amount, so to be deducted, shall be as now prescribed, or which may hereafter be prescribed by law.

In incurring indebtedness for any purpose the City of Philadelphia may issue its obligations maturing not later than 50 years from the date thereof, with provision for a sinking fund to be in equal or graded annual or other periodical installments. Where any indebtedness shall be or shall have been incurred by said City of Philadelphia for the purpose of the construction or improvement of public works or utilities of any character, from which income or revenue is to be derived by said city, or for the reclamation of land to be used in the construction of wharves or docks owned or to be owned by said city, such obligations may be in an amount sufficient to provide for, and may include the amount of the interest and sinking fund charges accruing and which may accrue thereon throughout the period of construction, and until the expiration of one year after the completion of the work for which said indebtedness shall have been incurred.

No debt shall be incurred by, or on behalf of, the County of Philadelphia.

§ 13. Abolition of county offices in Philadelphia.

(a) In Philadelphia all county offices are hereby abolished, and the city shall henceforth perform all functions of county

government within its area through officers selected in such manner as may be provided by law.

(b) Local and special laws, regulating the affairs of the City of Philadelphia and creating offices or prescribing the powers and duties of officers of the City of Philadelphia, shall be valid notwithstanding the provisions of section 32 of Article III of this Constitution.

(c) All laws applicable to the County of Philadelphia shall apply to the City of Philadelphia.

(d) The City of Philadelphia shall have, assume and take over all powers, property, obligations and indebtedness of the County of Philadelphia.

(e) The provisions of section 2 of this article shall apply with full force and effect to the functions of the county government hereafter to be performed by the city government.

(f) Upon adoption of this amendment all county officers shall become officers of the City of Philadelphia, and until the General Assembly shall otherwise provide, shall continue to perform their duties and be elected, appointed, compensated and organized in such manner as may be provided by the provisions of this Constitution and the laws of the Commonwealth in effect at the time this amendment becomes effective, but such officers serving when this amendment becomes effective shall be permitted to complete their terms.

§ 14. Definitions.

As used in this article, the following words shall have the following meanings:

"Municipality" means a county, city, borough, incorporated town, township or any similar general purpose unit of government which shall hereafter be created by the General Assembly.

"Initiative" means the filing with the applicable election officials at least 90 days prior to the next primary or general election of a petition containing a proposal for referendum signed by electors comprising 5% of the number of electors voting for the office of Governor in the last gubernatorial general election in each municipality or area affected. The applicable election official shall place the proposal on the ballot in a manner fairly representing the content of the petition for decision by referendum at said election. Initiative on a similar question shall not be submitted more often than once in five years. No enabling law shall be required for initiative.

"Referendum" means approval of a question placed on the ballot, by initiative or otherwise, by a majority vote of the electors voting thereon.

ARTICLE X
PRIVATE CORPORATIONS

Sec.

Adoption. Present Article X was adopted (without article number) November 8, 1966, 1965 P.L.1909, J.R.3, and the article number was supplied by proclamation of the Governor of July 7, 1967, P.L.1063.

Prior Provisions. Former Article X (Education) was repealed and former sections 1 and 2 were transferred to sections 14 and 15, respectively, of Article III (Legislation) by amendment of May

16, 1967, P.L.1037, J.R.3. The subject matter of present Article X was formerly contained in Article XVI which was repealed by amendment of November 8, 1966, 1965 P.L.1909, J.R.3.

§ 1. Certain unused charters void.

The charters and privileges granted prior to 1874 to private corporations which had not been organized in good faith and commenced business prior to 1874 shall be void.

§ 2. Certain charters to be subject to the Constitution.

Private corporations which have accepted or accept the Constitution of this Commonwealth or the benefits of any law passed by the General Assembly after 1873 governing the affairs of corporations shall hold their charters subject to the provisions of the Constitution of this Commonwealth.

§ 3. Revocation, amendment and repeal of charters and corporation laws.

All charters of private corporations and all present and future common or statutory law with respect to the formation or regulation of private corporations or prescribing powers, rights, duties or liabilities of private corporations or their officers, directors or shareholders may be revoked, amended or repealed.

§ 4. Compensation for property taken by corporations under right of eminent domain.

Municipal and other corporations invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements and compensation shall be paid or secured before the taking, injury or destruction.

ARTICLE XI
AMENDMENTS

Sec.

Adoption. Unless otherwise noted, the provisions of present Article XI (formerly Article XVIII) were adopted December 16, 1873, 1874 P.L.3, effective January 1, 1874. The present article heading was amended on May 16, 1967, P.L.1052, J.R.6, and the article was renumbered from XVIII to XI by proclamation of the Governor of July 7, 1967, P.L.1063.

Prior Provisions. Former Article XI (Militia) was repealed and its provisions (section 1) transferred to section 16 of Article III (Legislation) by amendment of May 16, 1967, P.L.1037, J.R.3.

§ 1. Proposal of amendments by the General Assembly and their adoption.

Amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe; and, if

such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted they shall be voted upon separately.

(a) In the event a major emergency threatens or is about to threaten the Commonwealth and if the safety or welfare of the Commonwealth requires prompt amendment of this Constitution, such amendments to this Constitution may be proposed in the Senate or House of Representatives at any regular or special session of the General Assembly, and if agreed to by at least two-thirds of the members elected to each House, a proposed amendment shall be entered on the journal of each House with the yeas and nays taken thereon and the official in charge of statewide elections shall promptly publish such proposed amendment in at least two newspapers in every county in which such newspapers are published. Such amendment shall then be submitted to the qualified electors of the Commonwealth in such manner, and at such time, at least one month after being agreed to by both Houses as the General Assembly prescribes.

(b) If an emergency amendment is approved by a majority of the qualified electors voting thereon, it shall become part of this Constitution. When two or more emergency amendments are submitted they shall be voted on separately.

(May 16, 1967, P.L.1052, J.R.6)

1967 Amendment. Joint Resolution No.6 added subsecs. (a) and (b).

SCHEDULES TO CONSTITUTION OF PENNSYLVANIA

SCHEDULE NO. 1 (ADOPTED WITH THE CONSTITUTION)

Sec.

23. Prothonotary of Philadelphia County.
24. Aldermen.
25. Magistrates in Philadelphia.
26. Term of present officers.
27. Oath of office.
28. County commissioners and auditors.
29. Compensation of present officers.
30. Renewal of oath of office.
31. Enforcing legislation.
32. An ordinance declared valid.
33. City commissioners of Philadelphia.

Adoption. The provisions of Schedule No.1 were adopted December 16, 1873, 1874 P.L.3, effective January 1, 1874.

Partial Repeal of Schedule. See section 2 of Proposal No.7 of 1968 in the appendix to the Constitution for provisions relating to the partial repeal of Schedule No.1.

That no inconvenience may arise from the changes in the Constitution of the Commonwealth, and in order to carry the same into complete operation, it is hereby declared, that:

§ 1. When to take effect.

This Constitution shall take effect on the first day of January, in the year one thousand eight hundred and seventy-four, for all purposes not otherwise provided for therein.

§ 2. Former laws remain in force.

All laws in force in this Commonwealth at the time of the adoption of this Constitution not inconsistent therewith, and all rights, actions, prosecutions and contracts shall continue as if this Constitution had not been adopted.

§ 3. Election of Senators.

At the general election in the years one thousand eight hundred and seventy-four and one thousand eight hundred and seventy-five, Senators shall be elected in all districts where there shall be vacancies. Those elected in the year one thousand eight hundred and seventy-four shall serve for two years, and those elected in the year one thousand eight hundred and seventy-five shall serve for one year. Senators now elected and those whose terms are unexpired shall represent the districts in which they reside until the end of the terms for which they were elected.

§ 4. Election of Senators (continued).

At the general election in the year one thousand eight hundred and seventy-six, Senators shall be elected from even-numbered districts to serve for two years, and from odd-numbered districts to serve for four years.

§ 5. Election of Governor.

The first election of Governor under this Constitution shall be at the general election in the year one thousand eight hundred and seventy-five, when a Governor shall be elected for three years; and the term of the Governor elected in the year one thousand eight hundred and seventy-eight and of those thereafter elected shall be for four years, according to the provisions of this Constitution.

§ 6. Election of Lieutenant Governor.

At the general election in the year one thousand eight hundred and seventy-four, a Lieutenant Governor shall be elected according to the provisions of this Constitution.

§ 7. Secretary of Internal Affairs.

The Secretary of Internal Affairs shall be elected at the first general election after the adoption of this Constitution; and, when the said officer shall be duly elected and qualified, the office of Surveyor General shall be abolished. The Surveyor General in office at the time of the adoption of this Constitution shall continue in office until the expiration of the term for

which he was elected.

§ 8. Superintendent of Public Instruction.

When the Superintendent of Public Instruction shall be duly qualified the office of Superintendent of Common Schools shall cease.

§ 9. Eligibility of present officers.

Nothing contained in this Constitution shall be construed to render any person now holding any State office for a first official term ineligible for re-election at the end of such term.

§ 10. Judges of Supreme Court.

The judges of the Supreme Court in office when this Constitution shall take effect shall continue until their commissions severally expire. Two judges in addition to the number now composing the said court shall be elected at the first general election after the adoption of this Constitution.

§ 11. Courts of record.

All courts of record and all existing courts which are not specified in this Constitution shall continue in existence until the first day of December, in the year one thousand eight hundred and seventy-five, without abridgment of their present jurisdiction, but no longer. The court of first criminal jurisdiction for the counties of Schuylkill, Lebanon and Dauphin is hereby abolished, and all causes and proceedings pending therein in the county of Schuylkill shall be tried and disposed of in the courts of oyer and terminer and quarter sessions of the peace of said county.

§ 12. Register's courts abolished.

The register's courts now in existence shall be abolished on the first day of January next succeeding the adoption of this Constitution.

§ 13. Judicial districts.

The General Assembly shall, at the next session after the adoption of this Constitution, designate the several judicial districts as required by this Constitution. The judges in commission when such designation shall be made shall continue during their unexpired terms judges of the new districts in which they reside; but, when there shall be two judges residing in the same district, the president judge shall elect to which district he shall be assigned, and the additional law judge shall be assigned to the other district.

§ 14. Decennial adjustment of judicial districts.

The General Assembly shall, at the next succeeding session after each decennial census and not oftener, designate the several judicial districts as required by this Constitution.

§ 15. Judges in commission.

Judges learned in the law of any court of record holding commissions in force at the adoption of this Constitution shall hold their respective offices until the expiration of the terms for which they were commissioned, and until their successors shall be duly qualified. The Governor shall commission the president judge of the court of first criminal jurisdiction for the counties of Schuylkill, Lebanon and Dauphin as a judge of the court of common pleas of Schuylkill county, for the unexpired term of his office.

§ 16. President judges; casting lots; associate judges.

After the expiration of the term of any president judge of any court of common pleas, in commission at the adoption of this Constitution, the judge of such court learned in the law and oldest in commission shall be the president judge thereof; and when two or more judges are elected at the same time in any judicial district they shall decide by lot which shall be president judge; but when the president judge of a court shall be re-elected he shall continue to be president judge of that court. Associate judges not learned in the law, elected after the

adoption of this Constitution, shall be commissioned to hold their offices for the term of five years from the first day of January next after their election.

§ 17. Compensation of judges.

The General Assembly, at the first session after the adoption of this Constitution, shall fix and determine the compensation of the judges of the Supreme Court and of the judges of the several judicial districts of the Commonwealth; and the provisions of the fifteenth section of the article on Legislation shall not be deemed inconsistent herewith. Nothing contained in this Constitution shall be held to reduce the compensation now paid to any law judge of this Commonwealth now in commission.

§ 18. Courts of Philadelphia and Allegheny Counties; organization in Philadelphia.

The courts of common pleas in the counties of Philadelphia and Allegheny shall be composed of the present judges of the district court and court of common pleas of said counties until their offices shall severally end, and of such other judges as may from time to time be selected. For the purpose of first organization in Philadelphia the judges of the court number one shall be Judges Allison, Pierce and Paxson; of the court number two, Judges Hare, Mitchell and one other judge to be elected; of the court number three, Judges Ludlow, Finletter and Lynd; and of the court number four, Judges Thayer, Briggs and one other judge to be elected. The judge first named shall be the president judge of said courts respectively, and thereafter the president judge shall be the judge oldest in commission; but any president judge, re-elected in the same court or district, shall continue to be president judge thereof. The additional judges for courts numbers two and four shall be voted for and elected at the first general election after the adoption of this Constitution, in the same manner as the two additional judges of the Supreme Court, and they shall decide by lot to which court they shall belong. Their term of office shall commence on the first Monday of January, in the year one thousand eight hundred and seventy-five.

§ 19. Organization of courts in Allegheny County.

In the county of Allegheny, for the purpose of first organization under this Constitution, the judges of the court of common pleas, at the time of the adoption of this Constitution, shall be the judges of the court number one, and the judges of the district court, at the same date, shall be the judges of the common pleas number two. The president judges of the common pleas and district court shall be president judge of said courts number one and two, respectively, until their offices shall end; and thereafter the judge oldest in commission shall be president judge; but any president judge re-elected in the same court, or district, shall continue to be president judge thereof.

§ 20. When re-organization of courts to take effect.

The organization of the courts of common pleas under this Constitution for the counties of Philadelphia and Allegheny shall take effect on the first Monday of January, one thousand eight hundred and seventy-five, and existing courts in said counties shall continue with their present powers and jurisdiction until that date, but no new suits shall be instituted in the courts of nisi prius after the adoption of this Constitution.

§ 21. Causes pending in Philadelphia; transfer of records.

The causes and proceedings pending in the court of nisi prius, court of common pleas, and district court in Philadelphia shall be tried and disposed of in the court of common pleas. The records and dockets of said courts shall be transferred to the prothonotary's office of said county.

§ 22. Causes pending in Allegheny County.

The causes and proceedings pending in the court of common pleas in the county of Allegheny shall be tried and disposed of in the

court number one; and the causes and proceedings pending in the district court shall be tried and disposed of in the court number two.

§ 23. Prothonotary of Philadelphia County.

The prothonotary of the court of common pleas of Philadelphia shall be first appointed by the judges of said court on the first Monday of December, in the year one thousand eight hundred and seventy-five, and the present prothonotary of the district court in said county shall be the prothonotary of the said court of common pleas until said date when his commission shall expire, and the present clerk of the court of oyer and terminer and quarter sessions of the peace in Philadelphia shall be the clerk of such court until the expiration of his present commission on the first Monday of December, in the year one thousand eight hundred and seventy-five.

§ 24. Aldermen.

In cities containing over fifty thousand inhabitants, except Philadelphia, all aldermen in office at the time of the adoption of this Constitution shall continue in office until the expiration of their commissions, and at the election for city and ward officers in the year one thousand eight hundred and seventy-five one alderman shall be elected in each ward as provided in this Constitution.

§ 25. Magistrates in Philadelphia.

In Philadelphia magistrates in lieu of aldermen shall be chosen, as required in this Constitution, at the election in said city for city and ward officers in the year one thousand eight hundred and seventy-five; their term of office shall commence on the first Monday of April succeeding their election. The terms of office of aldermen in said city holding or entitled to commissions at the time of the adoption of this Constitution shall not be affected thereby.

§ 26. Term of present officers.

All persons in office in this Commonwealth at the time of the adoption of this Constitution, and at the first election under it, shall hold their respective offices until the term for which they have been elected or appointed shall expire, and until their successors shall be duly qualified, unless otherwise provided in this Constitution.

§ 27. Oath of office.

The seventh article of this Constitution prescribing an oath of office shall take effect on and after the first day of January, one thousand eight hundred and seventy-five.

§ 28. County commissioners and auditors.

The terms of office of county commissioners and county auditors, chosen prior to the year one thousand eight hundred and seventy-five, which shall not have expired before the first Monday of January in the year one thousand eight hundred and seventy-six, shall expire on that day.

§ 29. Compensation of present officers.

All State, county, city, ward, borough and township officers in office at the time ion of this Constitution, whose compensatio n is not provided for by salaries alone, shall continue to receive the compensation allowed them by law until the expiration of their respective terms of office.

§ 30. Renewal of oath of office.

All State and judicial officers heretofore elected, sworn, affirmed, or in office when this Constitution shall take effect, shall severally, within one month after such adoption, take and subscribe an oath, or affirmation, to support this Constitution.

§ 31. Enforcing legislation.

The General Assembly at its first session, or as soon as may be after the adoption of this Constitution, shall pass such laws as may be necessary to carry the same into full force and effect.

§ 32. An ordinance declared valid.

The ordinance passed by this Convention, entitled "An ordinance for submitting the amended Constitution of Pennsylvania to a vote of the electors thereof," shall be held to be valid for all the purposes thereof.

§ 33. City commissioners of Philadelphia.

The words "county commissioners," wherever used in this Constitution and in any ordinance accompanying the same, shall be held to include the commissioners for the city of Philadelphia.

SCHEDULE NO. 2
(AMENDMENTS OF NOVEMBER 2, 1909)

Sec.

Adoption. The provisions of Schedule No.2 were adopted November 2, 1909, P.L.948, J.R.1.

Partial Repeal of Schedule. See section 2 of Proposal No.7 of 1968 in the appendix to the Constitution for provisions relating to the partial repeal of Schedule No.2.

§ 1. Adjustments of terms of public officers.

That no inconvenience may arise from the changes in the Constitution of the Commonwealth, and in order to carry the same into complete operation, it is hereby declared that--

In the case of officers elected by the people, all terms of office fixed by act of Assembly at an odd number of years shall each be lengthened one year, but the Legislature may change the length of the term, provided the terms for which such officers are elected shall always be for an even number of years.

The above extension of official terms shall not affect officers elected at the general election of one thousand nine hundred and eight; nor any city, ward, borough, township, or election division officers, whose terms of office, under existing law, end in the year one thousand nine hundred and ten.

In the year one thousand nine hundred and ten the municipal election shall be held on the third Tuesday of February as heretofore; but all officers chosen at that election to an office the regular term of which is two years, and also all election officers and assessors chosen at that election, shall serve until the first Monday of December in the year one thousand nine hundred and eleven. All officers chosen at that election to offices the term of which is now four years, or is made four years by the operation of these amendments or this schedule, shall serve until the first Monday of December in the year one thousand nine hundred and thirteen. All justices of the peace, magistrates, and aldermen, chosen at that election, shall serve until the first Monday of December in the year one thousand nine hundred and fifteen. After the year nineteen hundred and ten, and until the Legislature shall otherwise provide, all terms of city, ward, borough, township, and election division officers shall begin on the first Monday of December in an odd-numbered year.

All city, ward, borough, and township officers holding office at the date of the approval of these amendments, whose terms of office may end in the year one thousand nine hundred and eleven, shall continue to hold their offices until the first Monday of December of that year.

All judges of the courts for the several judicial districts, and also all county officers, holding office at the date of the approval of these amendments, whose terms of office may end in the year one thousand nine hundred and eleven, shall continue to hold their offices until the first Monday of January, one thousand nine hundred and twelve.

APPENDIX TO
CONSTITUTION OF PENNSYLVANIA

Supplementary Provisions of Constitutional Amendments

1967, MAY 16, P.L.1044, J.R.4

Schedule. Terms of State Treasurer and Auditor General.

That no inconvenience may arise from changes in Article IV of the Constitution of this Commonwealth, it is hereby declared that the State Treasurer and Auditor General first elected after this amended article becomes effective shall serve terms beginning the first Tuesday in May next following their election and expiring four years from the third Tuesday in January next ensuing their election.

Explanatory Note. Joint Resolution No.4 added section 18 and made other changes in Article IV.

1968, APRIL 23, P.L.APP.3, PROP. NO.1

Schedule. Effective date of amendment.

The foregoing amendment to Article II of the Constitution of Pennsylvania if approved by the electorate voting on April 23, 1968, shall become effective the year following that in which the next Federal decennial census is officially reported as required by Federal law.

Explanatory Note. Proposal No.1 amended and consolidated former sections 16 and 17 into present section 16 of Article II.

1968, APRIL 23, P.L.APP.3, PROP. NO.2

Schedule. Effective date of amendment.

The foregoing amendment to Article II of the Constitution of Pennsylvania if approved by the electorate voting on April 23, 1968, shall become effective the year following that in which the next Federal decennial census is officially reported as required by Federal law.

Explanatory Note. Proposal No.2 amended and renumbered former section 18 to present section 17 of Article II.

1968, APRIL 23, P.L.APP.5, PROP. NO.3

§ 4. Repeals.

Effective when the last bonds have been issued under their authority, sections 24 and 25 of Article VIII of the Constitution of Pennsylvania are hereby repealed.

References in Text. Sections 24 and 25 were renumbered to present sections 15 and 16, respectively, of Article VIII by Proposal No.5 of 1968.

1968, APRIL 23, P.L.APP.7, PROP. NO.4

§ 3. Effective date of amendments.

The following schedule is adopted: Sections 10, 12, 13 and 14 of Article VIII shall take effect as soon as possible, but no later than July 1, 1970.

1968, APRIL 23, P.L.APP.9, PROP. NO.5

§ 4. Effective date of amendments.

Sections 1 and 2 shall take effect as soon as possible, but no later than July 1, 1970. Section 4 shall take effect July 1, 1970, unless the General Assembly earlier provides enabling legislation in accordance therewith.

Explanatory Note. Proposal No.5 amended section 1, added sections 2 and 4 and renumbered or amended other sections of Article VIII.

1968, APRIL 23, P.L.APP.11, PROP. NO.6

§ 3. Effective date and interpretation of amendments.

This new article and the repeal of existing sections shall take effect on the date of approval by the electorate, except that the following sections shall take effect on the effective date of legislation adopted pursuant to the sections or the date indicated below, whichever shall first occur.

The first, third and fourth paragraphs of section 8 shall take effect two years after the effective date. The second sentence of section 1, the fourth sentence of section 2, all of section 3, the third paragraph of section 4, and the first paragraph of section 10 shall take effect four years after the effective date. The second sentence of section 1 and the first paragraph of section 8 on Uniform Legislation shall be construed so as to be consistent with the jurisdiction of this Convention.

Explanatory Note. Proposal No.6 added present Article IX and repealed sections in Articles VIII, XIII, XIV and XV.

1968, APRIL 23, P.L.APP.16, PROP. NO.7

§ 2. Repeals.

Article V of the Constitution of Pennsylvania is repealed in its entirety, and those provisions of Schedules No. 1 and No. 2 are repealed to the extent they are inconsistent with this article and attached schedule.

Explanatory Note. Proposal No.7 added present Article V.

1972, NOVEMBER 7, 1ST SP.SESS., P.L.1970, J.R.1

§ 1. Preamble.

Millions of Pennsylvanians have suffered greatly from the ravages of the most disastrous flood in the history of the Commonwealth. This flood has left devastation in its wake. Thousands of people have been left homeless and countless industrial and commercial establishments and public facilities have been damaged or destroyed.

It is imperative that the victims of this disaster immediately receive the fullest possible aid from both the public and private

sectors in order to clean up and rebuild the affected areas of the Commonwealth.

In addition, many Pennsylvanians suffered greatly as a result of the Great Storm or Flood of September, 1971.

The General Assembly desires to alleviate such storm or economic deprivation caused by the flood, but is limited in its efforts by rigid restrictions in the Constitution of the Commonwealth of Pennsylvania. The safety and welfare of the Commonwealth requires prompt amendment to the Constitution of the Commonwealth of Pennsylvania.

The following amendment to the Constitution of the Commonwealth of Pennsylvania is proposed in accordance with the emergency provisions contained in subsections (a) and (b) of section one of the eleventh article thereof:

That article eight of the Constitution of the Commonwealth of Pennsylvania be amended by adding a new section to read:

* * *

Explanatory Note. Joint Resolution No.1 added section 17 of Article VIII.

1975, NOVEMBER 4, P.L.622, J.R.2

§ 1. Preamble.

Many Pennsylvanians have suffered greatly from the ravages of great storms or floods few years. The great storms or floods of 1 74 and 1975 are additional major disastloss of life and great damage and destruction to property of individuals, industrial and commercial establishments and public facilities.

It is imperative that the victims of these disasters immediately receive the fullest possible aid from both the public and private sectors in order to clean up and rebuild the affected areas of the Commonwealth and that persons in the Commonwealth be eligible for the maximum available aid from the government of the United States.

The General Assembly desires to alleviate such storm or economic deprivation caused by the floods but is limited in its efforts by rigid restrictions in the Constitution of the Commonwealth of Pennsylvania. The safety and welfare of the Commonwealth requires prompt amendment to the Constitution of the Commonwealth of Pennsylvania.

The following amendment to the Constitution of the Commonwealth of Pennsylvania is proposed in accordance with the emergency provisions contained in subsections (a) and (b) of section one of the eleventh article thereof:

That section seventeen of article eight of the Constitution of the Commonwealth of Pennsylvania be amended to read:

* * *

1977, NOVEMBER 8, P.L.362, J.R.2

§ 1. Preamble.

Many Pennsylvanians have suffered greatly from the ravages of Great Storms and Floods in recent years. The Great Storms or Floods of 1974, 1975, 1976 and 1977 were additional major disasters causing loss of life and great damage and destruction to property of individuals, industrial and commercial establishments and public facilities.

It is imperative that the victims of these disasters receive the fullest possible aid from both the Federal Government and the Commonwealth in order to accomplish a speedy recovery.

The Congress of the United States, through enactment of the

Disaster Relief Act of 1974, Public Law 93-288, has authorized the making of certain disaster relief grants. The General Assembly wishes to make such Federal disaster relief grants, or other grants made available from Federal programs hereafter enacted, available to eligible individuals and families in order to alleviate the deprivation caused by storms or floods which have occurred in the past and seeks to address those emergencies of future years. However, the General Assembly is limited by rigid restrictions in the Constitution of the Commonwealth of Pennsylvania. The safety and welfare of the Commonwealth requires the prompt amendment to the Constitution to aid those already inflicted by the Great Storms of 1976 or 1977 and any future emergency that may strike Commonwealth citizens.

Therefore, the following amendment to the Constitution of the Commonwealth of Pennsylvania is proposed in accordance with the emergency provisions of Article XI thereof:

That section 17 of Article VIII be amended to read:

* * *

1978, MAY 16, 1977 P.L.365, J.R.4

§ 2. Vacancy in existing office of Attorney General.

Upon approval of this amendment by the electors, there shall be a vacancy in the office of Attorney General which shall be filled as provided herein.

Explanatory Note. Joint Resolution No.4 added section 4.1 and amended sections 5, 6, 8 and 17 of Article IV.