

PHILADELPHIA COURT OF COMMON PLEAS  
**PETITION/MOTION COVER SHEET**

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE:
<i>Do not send Judge courtesy copy of Petition/Motion/Answer/Response.                  Status may be obtained online at <a href="http://courts.phila.gov">http://courts.phila.gov</a></i>	

**CONTROL NUMBER:**  
**80-22083680**  
**(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)**

August \_\_\_\_\_ Term, 2022  
 \_\_\_\_\_  
 Month Year  
 No. 220801916

Charles P. Kuhar, Sr.  
 \_\_\_\_\_  
 vs.  
 City of Philadelphia  
 \_\_\_\_\_

Name of Filing Party:  
 Defendant Abortion Liberation Fund of Pennsylvania  
 \_\_\_\_\_  
 (Check one)  Plaintiff  Defendant  
 (Check one)  Movant  Respondent

**INDICATE NATURE OF DOCUMENT FILED:**  
 Petition (Attach Rule to Show Cause)  Motion  
 Answer to Petition  Response to Motion

Has another petition/motion been decided in this case?  Yes  No  
 Is another petition/motion pending?  Yes  No  
 If the answer to either question is yes, you must identify the judge(s):  
 Judge Joshua Roberts

TYPE OF PETITION/MOTION (see list on reverse side) <b>Preliminary Injunction</b>	PETITION/MOTION CODE (see list on reverse side) <b>PRINJ</b>
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ANSWER/RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding):  
 Preliminary Injunction

**I. CASE PROGRAM**  
**Is this case in the (answer all questions):**  
**A. COMMERCE PROGRAM**  
 Name of Judicial Team Leader: \_\_\_\_\_  
 Applicable Petition/Motion Deadline: \_\_\_\_\_  
 Has deadline been previously extended by the Court?  
 Yes  No  
**B. DAY FORWARD/MAJOR JURY PROGRAM — Year \_\_\_\_\_**  
 Name of Judicial Team Leader: \_\_\_\_\_  
 Applicable Petition/Motion Deadline: \_\_\_\_\_  
 Has deadline been previously extended by the Court?  
 Yes  No  
**C. NON JURY PROGRAM**  
**Date Listed:** no date listed  
**D. ARBITRATION PROGRAM**  
**Arbitration Date:** \_\_\_\_\_  
**E. ARBITRATION APPEAL PROGRAM**  
 Date Listed: \_\_\_\_\_  
**F. OTHER PROGRAM:** \_\_\_\_\_  
 Date Listed: \_\_\_\_\_

**II. PARTIES (required for proof of service)**  
 (Name, address and **telephone number** of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)  
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**III. OTHER**

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

/s/ Aliza R. Karetnick \_\_\_\_\_ October 13, 2022 \_\_\_\_\_ Aliza R. Karetnick \_\_\_\_\_ 82395  
 (Attorney Signature/Unrepresented Party) (Date) (Print Name) (Attorney I.D. No.)

**The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.**

## Instructions for Completing Petition/Motion Cover Sheet

A Petition/Motion Cover Sheet must be attached to all Petitions, Motions, Answers or Responses filed, except for Discovery Motions and Motions for Extraordinary Relief. Sanctions will be imposed if the Cover Sheet is inaccurately completed.

Please Note the following:

1. **ANSWER or RESPONSE DATE.** The Motion Clerk shall enter the "Answer" or "Response" Date on the Cover Sheet. All Responses to Motions and Answers to Petitions must be filed with the Prothonotary and submitted to the Motion Clerk on or before the Response Date. **Note:** Summary Judgment Motions have a 30 day Response period. Except for those Motions identified in Phila.Civ.R. \*208.3(a) and (b), all other Motions have a 20 day Response period.
2. **ARGUMENT DATE.** The Motion Clerk shall enter the Argument Date and location on the Cover Sheet, as appropriate.
3. **CONTROL NUMBER.** The Motion Clerk shall assign a Control Number to all Petitions and Motions. The Responding parties must enter this Control Number on the Cover Sheet accompanying their Answer or Response.
4. **NATURE OF DOCUMENT FILED.** The filing party must check whether the document being filed is a Petition (in which case a Rule to Show Cause Order must be attached), a Motion, an Answer to a Petition, or a Response to a Motion. The parties must indicate whether another Petition or Motion is outstanding or has been decided and, if so, must identify the Judge(s) to whom such prior Petitions or Motions had been assigned.
5. **PETITION OR MOTION TYPES.** The parties must utilize the following Petition or Motion Codes and Types (and the Motion Clerk is authorized to change a filing party's designation to reflect the correct Petition or Motion Code and Type):

CODE	MOTIONS	CODE	MOTIONS	CODE	MOTIONS
MTSAL	Motion for Additional Distribution of Sale Proceeds	MTJNP	Motion for Entry of Judgment of Non Pros	MTRWT	Motion to Return Writ of Possession or Execution
MTPHV	Motion for Admission Pro Hac Vice	MTSUP	Motion for Entry of Supersedeas	MTSAN	Motion for Sanctions
MTSVR	Motion for Alternative Service	MTEXP	Motion for Expungement of Record	MT229	Motion for Sanctions for Failure to Deliver Settlement Funds
MTAMJ	Motion to Amend Judgment	MTEOT	Motion for Extension of Time to file Certificate of Merit	MTSAS	Motion to Set Aside Sheriff's Sale
MTAMD	Motion to Amend Pleading	MTEXT	Motion for Extension of Time to answer/respond)	MTSAA	Motion to Set Aside Award
MTGAL	Motion to Appoint Guardian Ad Litem	PTEXR	Motion for Extraordinary Relief	MTIPP	Motion to Settle Incompetent/Incapacitated Person's Estate
MTAPC	Motion for Appointment of a Conservator	MTNPT	Motion to File Nunc Pro Tunc	MTSPR	Motion to Stay Proceedings
MTMCF	Motion for Approval and Distribution of Minor's Compromise	MTFJUS	Motion to File Under Seal	MTWOE	Motion to Stay Writ of Execution
MTWRD	Motion for Approval & Distribution of Wrongful Death & Survival Action	PTFMV	Motion to Fix Fair Market Value	MTSTK	Motion to Strike Pleading
MTAPS	Motion to Approve Transfer of Structured Settlement	MTINT	Motion for Interpleader	MTSJD	Motion for Summary Judgment (30 day hold)
MTADH	Motion for Assessment of Damages Hearings	MTINV	Motion to Intervene	MTRAE	Motion for Supplementary Relief in Aid of Execution
MTAMV	Motion to Auction Motor Vehicles	MTIOP	Motion to Invalidate Opt-Outs (Class Action cases)	MTRDM	Motion to Reassess Damages
MTBIF	Motion to Bifurcate	MTJAD	Motion to Join Additional Defendant	MTRRF	Motion for Reimbursement of Fees
MTCIA	Motion to Certify Order for Interlocutory Appeal	MTJPL	Motion for Judgment on the Pleadings	MTRFL	Motion to Release Bond
MTCNM	Motion to Change Name	MTJUR	Motion for Jury Out of Time	MTRDS	Motion to Remove Case from Deferred Status
MTCLC	Motion for Class Action Certification	MTLIM	Motion in Limine	MTSRC	Motion to Seal Record
MTCMP	Motion to Compel Discovery	MTMJS	Motion to Mark Judgment Satisfied	MTSEV	Motion to Sever Cases
MTCPs	Motion to Compel Payment of Settlement	MTMVR	Motion to Obtain Motor Vehicle Records	MTSPP	Motion for Specific Performance
MTCOM	Motion to Complete Terms of Sheriff's Sale	MTOPN	Motion to Open/Strike Confessed Judgment	MTTFR	Motion to Transfer
MTCST	Motion to Confirm Settlement	MTPAR	Motion for Partition	MTTRJ	Motion to Transfer Judgment
MTCNS	Motion to Consolidate Actions	MTPIC	Motion for Payment into Court	MTFTV	Motion for Title to Vehicle
MTCON	Motion for Continuance	MTPRE	Motion to Pay Rent into Escrow Account	MTWDA	Motion to Withdraw Appearance
MTCOR	Motion for Coordination of Actions	MTSYS	Motion to Postpone Sheriff's Sale	MTWPS	Motion for Writ of Possession
MTCRT	Motion to Correct Record	PTTMF	Motion for Post Trial Relief	MTWRS	Motion for Writ of Seizure
MTCNF	Motion for Counsel Fees	MTPCD	Motion for Pre-Complaint Discovery	MTMIS	Miscellaneous Motion
PTDOM	Motion for Delay Damages	PRINJ	Motion for Preliminary Injunction		
MTDJT	Motion to Demand Jury Trial	MTPSA	Motion for Preliminary Settlement Approval (Class Action Cases)	<b>CODE</b>	<b>PETITIONS</b>
DPROB	Motion to Determine Preliminary Objections	MTPDE	Motion to Preserve Documents and Evidence	PTAAR	Petition to Appoint Common Law Arbitrator
MTDSC	Motion to Discontinue Case	MTIFP	Motion to Proceed In Forma Pauperis	PTARC	Petition to Appoint a Receiver
MTDIS	Motion to Dismiss for Forum Non Conveniens	MTPRO	Motion for Protective Order	PTCAR	Petition to Compel Arbitration
MTDCN	Motion to Disqualify Counsel	MTQSH	Motion to Quash	PTCAW	Petition to Confirm Arbitration Award
MTEMG	Emergency Motion	MTRCS	Motion for Reconsideration	PTCST	Petition to Confirm Settlement
MTEST	Motion to Enforce Settlement	MTRPR	Motion to Redeem Premises	PTFCT	Petition for Contempt
MTJDG	Motion for Entry of Default Judgment	MTREF	Motion to Release Escrow Funds	PTOJD	Petition to Open Default Judgment
		MTOPT	Motion to Remove Opt-Out of the Proposed Settlement Agreement (Class Action Cases)	PTSNP	Petition to Open Judgment of Non Pros
				PTEMG	Emergency Petition

6. **CASE PROGRAM.** The party shall check the program to which the case is assigned and provide the requested program data.
7. **PARTIES.** The filing parties shall set forth the name, address and telephone number of all counsel of record and unrepresented parties, and must attach a stamped addressed envelope for each attorney of record and unrepresented party.
8. **OTHER.** The parties shall enter other relevant important information in this box – such as request for stay, emergency designation etc. – placing the Motion Clerk on notice of special handling or request.
9. **SIGNATURE LINE.** The Cover Sheet must be signed, dated and, if applicable, the attorney ID number must be provided.
10. **SERVICE.** A copy of the file-stamped Petition, Motion, Answer, Response and attachments must be served on all parties of record immediately after filing as required by Pa.R.C.P. 206.6, and Pa.R.C.P. 440.

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CHARLES P. KUHAR, SR., <i>et al.</i> ,	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
Plaintiffs,	:	
	:	August Term 2022
v.	:	
	:	No. 220801916
CITY OF PHILADELPHIA, <i>et al.</i> ,	:	
	:	<b>ORAL ARGUMENT REQUESTED</b>
Defendants.	:	

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**DEFENDANT ABORTION LIBERATION FUND OF PENNSYLVANIA'S  
RESPONSE IN OPPOSITION TO PLAINTIFFS' THIRD AMENDED MOTION  
FOR SPECIAL AND PRELIMINARY INJUNCTION**

Defendant Abortion Liberation Fund of Pennsylvania (“ALF”), by and through its undersigned counsel, files this Response in Opposition to the Third Amended Emergency Motion for Preliminary Injunction filed by Plaintiffs Charles P. Kuhar, Sr., Theresa Kuhar and the Pro-Life Coalition of PA, Inc. (together “Plaintiffs”). In support of its Response, ALF incorporates by reference the accompanying Brief in Opposition to the Third Amended Emergency Motion for

Preliminary Injunction as if fully set forth herein and responds as follows to the numbered averments of Plaintiffs' Motion:

1. Admitted. By way of further response, ALF states that the Third Amended Complaint for Injunctive and Declaratory Relief referenced at Paragraph 1 fails to state a claim for relief for the reasons set forth in ALF's Preliminary Objections, which are fully incorporated by reference herein.

2. Admitted in part and denied in part. ALF admits upon information and belief that Plaintiff Charles P. Kuhar, Sr., is a resident of the City of Philadelphia. ALF is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 2, and they are therefore denied.

3. Admitted in part and denied in part. ALF admits upon information and belief that Plaintiff Theresa M. Kuhar, is a resident of the City of Philadelphia. ALF is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 3, and they are therefore denied.

4. Admitted in part and denied in part. ALF admits upon information and belief that Plaintiff, Pro-Life Coalition of PA, Inc. ("Pro-Life Coalition") is located at the address identified at Paragraph 4. The remaining averments of Paragraph 4 contain conclusions of law concerning standing and "associational interest" as to which no response is required. ALF is without knowledge or information sufficient to form a belief as to the truth of the remaining factual averments of Paragraph 4, and they are therefore denied.

5. Admitted.

6. Admitted.

7. Denied. Paragraph 7 incorporates all averments in Plaintiffs' Third Amended Complaint for Declaratory Judgment and Injunctive Relief, which contains 72 paragraphs of mixed factual allegations and conclusions of law. For the additional reasons set forth in ALF's concurrently filed Preliminary Objections, which are fully incorporated herein by reference, this averment is denied.

8. Admitted in part and denied in part as stated. The cited press release speaks for itself, and any characterization thereof is denied.

9. Admitted.

10. Admitted in part and denied in part as stated. ALF admits that it provides funding for, among other things, abortions for individuals experiencing poverty in Pennsylvania. The website cited at Paragraph 10 speaks for itself, and any characterization thereof is denied.

11. Admitted in part and denied in part. ALF admits the facts set forth in the referenced Joint Stipulation of Facts entered into between Plaintiffs and ALF on September 28, 2022. ALF is without knowledge or information sufficient to form a belief as to the truth of all facts set forth in any other stipulation entered into by the City of Philadelphia.

12. ALF's responses to Paragraphs 1 through 11 of Plaintiffs' Motion are incorporated by reference as if fully set forth herein.

13. Paragraph 13 consists of statements of law to which no response is required.

14. Denied. Paragraph 14 consists of conclusions of law to which no response is required. To the extent that this paragraph contains any factual averments warranting a response, they are denied.

15. Paragraph 15 consists of statements of law to which no response is required.

16. Paragraph 16 consists of statements of law to which no response is required.

17. Paragraph 17 consists of statements and conclusions of law to which no response is required.

18. Paragraph 18 consists of statements of law to which no response is required.

19. Paragraph 19 consists of statements of law to which no response is required.

20. Paragraph 20 consists of statements of law to which no response is required.

21. Paragraph 21 consists of statements and conclusions of law to which no response is required.

22. Admitted in part and denied in part as stated. ALF has admitted, by way of the Joint Stipulation of Facts, that it intends to use the funds contributed by the City of Philadelphia, at least in part, to provide financial assistance for individuals to pay for abortions in Pennsylvania. ALF is presently without knowledge or information sufficient to state what the circumstances surrounding future abortions will be but does not intend to limit its use of the funds contributed by the City only to cases involving rape, incest or the safety of the pregnant person.

23. Paragraph 23 consists of conclusions of law to which no response is required. To the extent that this paragraph contains any factual averments warranting a response, they are denied.

24. Denied. Paragraph 24 consists of conclusions of law to which no response is required. To the extent that this paragraph contains any factual averments warranting a response, they are denied.

25. Denied. Paragraph 25 consists of conclusions of law to which no response is required. To the extent that this paragraph contains any factual averments warranting a response, they are denied.

26. Admitted in part and denied in part. ALF admits that abortion is legal in Pennsylvania, and that any individual is free to donate to ALF. ALF denies the statement that the requested injunction does not create any risk of harm to the public.

27. Denied. Paragraph 27 consists of conclusions of law to which no response is required. To the extent that this paragraph contains any factual averments warranting a response, they are denied.

28. Denied. Paragraph 28 consists of conclusions of law to which no response is required. To the extent that this paragraph contains any factual averments warranting a response, they are denied.

29. Denied. Paragraph 29 consists of conclusions of law to which no response is required. To the extent that this paragraph contains any factual averments warranting a response, they are denied.

30. Denied. Paragraph 30 consists of conclusions of law to which no response is required. To the extent that this paragraph contains any factual averments warranting a response, they are denied.

31. Denied. Paragraph 31 consists of conclusions of law to which no response is required. To the extent that this paragraph contains any factual averments warranting a response, they are denied.

32. Denied.

33. Admitted.

WHEREFORE, ALF respectfully requests that this Honorable Court enter an Order denying Plaintiffs' Third Amended Motion for Special and Preliminary Injunction, sustain ALF's

accompanying Preliminary Objections, and dismiss Plaintiffs' claims as a matter of law with prejudice.

Respectfully submitted,

Dated: October 13, 2022

By:

/s/ Aliza R. Karetnick

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CHARLES P. KUHAR, SR., <i>et al.</i> ,	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
Plaintiffs,	:	
	:	August Term 2022
v.	:	
	:	No. 220801916
CITY OF PHILADELPHIA, <i>et al.</i> ,	:	
	:	<b>ORAL ARGUMENT REQUESTED</b>
Defendants.	:	

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**DEFENDANT ABORTION LIBERATION FUND OF PENNSYLVANIA'S BRIEF  
IN OPPOSITION TO PLAINTIFFS' THIRD AMENDED MOTION  
FOR SPECIAL AND PRELIMINARY INJUNCTION**

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Defendant Abortion Liberation Fund of Pennsylvania (“ALF”), by and through its undersigned counsel, files this Brief in Opposition to the Third Motion for Preliminary Injunction filed by Plaintiffs Charles P. Kuhar, Sr., Theresa Kuhar and the Pro-Life Coalition of PA, Inc. (together “Plaintiffs”).

## **I. INTRODUCTION**

Plaintiffs’ attempt to challenge a recent contribution the City of Philadelphia (the “City”) made to ALF is facially flawed. The statutes Plaintiffs seek to enforce do not provide them with a private right of action, and Plaintiffs cannot state a claim for violation of the Pennsylvania Constitution. Their claims simply do not support any form of relief, preliminary or otherwise, no amendment can fix Plaintiffs’ defective claims. Reduced, Plaintiffs merely disapprove of the City’s decision to make a contribution to ALF, a non-profit organization with whose mission Plaintiffs presumably disagree. They can point to no law conferring the right to hash out their disagreement in the courts, and no authority allowing Plaintiffs to enjoin the recipient of a charitable contribution from using the funds. The patent inability to succeed on the merits of any of their claims is reason alone to deny Plaintiffs the extraordinary preliminary relief they seek.

Even if Plaintiffs’ pleadings had identified a single cognizable claim, they cannot meet their burden to establish the other essential elements of a preliminary injunction motion. Critically, the injunction they seek would merely prevent expenditure of money, which is classically addressable at law and does not constitute irreparable harm. Moreover, Plaintiffs cannot identify any harm they would suffer in the absence of an injunction, whereas a preliminary injunction would do serious harm to ALF and those its mission serves. Accordingly, ALF asks this Court to deny Plaintiffs’ motion for preliminary injunction, sustain ALF’s accompanying preliminary objections, and dismiss Plaintiffs’ claims as a matter of law with prejudice.

## **II. MATTER BEFORE THE COURT**

Plaintiffs' Third Amended Motion for Preliminary Injunction.<sup>1</sup> While Plaintiffs label their Motion as an "Emergency Motion," this Court has recognized that "Plaintiffs are no longer pursuing the Motions for Special and Preliminary Injunctions filed under Control Nos. 22082985 and 22083415 on an emergency basis," thus converting the Motion to a standard request for preliminary injunction. (8/29/22 Order.)

## **III. STATEMENT OF QUESTIONS INVOLVED**

Whether Plaintiffs, who have brought no viable legal claims, have no standing and face no harm, are nevertheless entitled to a preliminary injunction?

*Suggested Answer: No*

## **IV. ALLEGATIONS OF THE COMPLAINT AND PROCEDURAL HISTORY**

Plaintiffs are City residents and a non-profit association that purports to "represent[] the interests of its affiliates and supporters," including the Kuhars. (Third Am. Compl. ¶¶ 9-11.) On or about July 1, 2022, the City contributed \$500,000 to ALF, a private non-profit organization, out of the City's general fund, primarily consisting of municipal tax revenue and certain unrestricted funds deposited in the City's coffers from state and federal sources. (*Id.* ¶¶ 28-33.) Consistent with its mission, ALF intends to spend the funds contributed by the City to expand access to

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<sup>1</sup> Plaintiffs filed their initial preliminary injunction motion on August 16, 2022 (Control No. 22088295) and subsequently filed several amended motions seeking the same relief: a First Amended Motion for Special and Preliminary Injunction on August 19, 2022 (Control No. 22083680); a Second Amended Motion for Special and Preliminary Injunction on October 3, 2022 (Control No. 22100071), and this Third Amended Motion for Special and Preliminary Injunction (Control No. 22101510). While Plaintiffs' filings have triggered four separate control numbers, each of the last three is labeled as an "Amended" version of No. 22082985 and places the same matter before the Court. Accordingly, this Opposition constitutes ALF's response to all four filings.

abortions for individuals experiencing poverty, which will include providing financial assistance for individuals to pay, in whole or in part, for abortions in Pennsylvania.

On August 16, 2022, Plaintiffs filed a Complaint and an Emergency Motion for Special and Preliminary Injunction in the Philadelphia Court of Common Pleas against the City of Philadelphia, Mayor James Kenney, City Treasurer Jacqueline Dunn, and City Controller Rebecca Rhynhart in their official capacities (the “City Defendants”), attempting to challenge the legality of the City’s contribution to ALF. That initial application for preliminary relief sought an order preventing the City “from transferring funds to the Abortion Liberation Fund of Pennsylvania” pending further proceedings. On August 19, 2022, Plaintiffs amended their request for preliminary relief to clarify that Philadelphia had sent the funds to ALF before this case was filed, and they updated the requested relief to seek an order enjoining ALF “from spending any of the \$500,000 it received from the City.” On August 23, 2022, Plaintiffs filed an Amended Complaint adding ALF as a Defendant. ALF and the City Defendants filed Preliminary Objections to Plaintiffs’ Amended Complaint on September 15, 2022 and September 16, 2022, respectively. Both ALF and the City Defendants also submitted separate Responses in Opposition to Plaintiffs’ Motion for Preliminary Injunction on September 16, 2022, and all motions were set to be heard by the Court on October 14, 2022.

In lieu of a response to the preliminary objections, the Kuhars filed a Second Amended Complaint for Injunctive and Declaratory Relief adding references to Pennsylvania Constitutional provisions, and reciting elements of taxpayer standing, while also dropping their unsupportable claims for surcharge, mandamus and violations of the Sunshine Act. On October 12, 2022, before ALF or the City Defendants had a chance to respond, Plaintiffs sought leave to and filed a Third Amended Complaint for Injunctive and Declaratory Relief (the “Third Amended Complaint”) to

add the Pro-Life Coalition as a party. Plaintiffs filed their Third Amended Motion for Preliminary Injunction on October 10, 2022.

## V. ARGUMENT

### A. Applicable Legal Standard.

Plaintiffs bear a hefty burden to establish a clear right to a preliminary injunction. *See Gwynedd Props., Inc. v. Lower Gwynedd Twp.*, 615 A.2d 836, 838 (Pa. Commw. Ct. 1992) (citing *T.W. Phillips Gas & Oil Co. v. Peoples Nat. Gas Co.*, 492 A.2d 776 (Pa. Commw. Ct. 1985)). The preliminary relief they seek represents an “extraordinary remedy,” *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1005 (Pa. 2003) (citing *Mazzie v. Commonwealth*, 432 A.2d 985, 988 (Pa. 1981)), available only if Plaintiffs establish each of six indispensable elements. *See Cnty. of Allegheny v. Commonwealth*, 544 A.2d 1305, 1307 (Pa. 1988) (“For a preliminary injunction to issue, every one of the[ ] prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the others.”). Specifically, the Supreme Court of Pennsylvania requires the “party seeking the injunction” to show that:

1. “an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages,” *Summit Towne Centre*, 828 A.2d at 1001 (citing *Singzon v. Dep't of Pub. Welfare*, 436 A.2d 125, 127-28 (Pa. 1981)); *John G. Bryant Co. v. Sling Testing & Repair, Inc.*, 369 A.2d 1164, 1167-68 (Pa. 1977); *Ala. Binder & Chem. Corp. v. Pa. Indus. Chem. Corp.*, 189 A.2d 180, 184 (Pa. 1963));
2. “greater injury would result from refusing an injunction than from granting it, and, concomitantly,...issuance of an injunction will not substantially harm other interested parties in the proceedings,” *id.* (citing *Maritrans GP, Inc v. Pepper, Hamilton & Scheetz*, 602 A.2d 1277, 1283 (Pa. 1992); *Valley Forge Hist. Soc’y v. Washington Mem’l Chapel*, 426 A.2d 1123, 1128-29 (Pa. 1981); *Ala. Binder & Chem. Corp.*, 189 A.2d at 184);
3. “a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct,” *id.* (citing *Valley Forge Hist. Soc’y*, 426 A.2d at 1128-29; *Herman v. Dixon*, 141 A.2d 576, 577-78 (Pa. 1980));
4. “the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits,”



*id.* (citing *Anglo-Am. Ins. Co. v. Molin*, 691 A.2d 929, 933-34 (Pa. 1997); *Maritrans GP*, 602 A.2d at 1283-84; *Shenango Valley Osteopathic Hosp. v. Dep’t of Health*, 451 A.2d 434, 440 (Pa. 1982); *Singzon*, 436 A.2d at 127-28);

5. “the injunction it seeks is reasonably suited to abate the offending activity,” *id.* (citing *John G. Bryant Co.*, 369 A.2d at 1167-71; *Albee Homes, Inc. v. Caddie Homes, Inc.*, 207 A.2d 768, 771-73 (Pa. 1965)); **and**
6. “a preliminary injunction will not adversely affect the public interest,” *id.* (citing *Maritrans GP*, 602 A.2d at 1283; *Philadelphia v. Dist. Council 33*, 598 A.2d 256, 260-61 (Pa. 1991)).

Because Plaintiffs’ request fails to establish even one of these elements, much less all six, the Motion must be denied. *See Maritrans GP*, 602 A.2d at 1282-83 (requirements for preliminary injunction are “essential prerequisites”); *Cnty. of Allegheny*, 544 A.2d at 1307.

**B. Plaintiffs Cannot Satisfy Their Burden Under the Preliminary Injunction Standard.**

*1. Plaintiffs cannot prevail on the merits of claims that do not exist.*

We start with the element concerning likelihood of success on the merits because it is so clearly dispositive in this case. Plaintiffs’ entire argument on the merits consists of two paragraphs with zero citation to legal authority. (Pls.’ Mem. at 9-10.) Plaintiffs’ continued inability to identify any authority in support of their claims is especially striking given that they are now on their *fourth* attempt to support a request for preliminary injunction. Indeed, Plaintiffs had the benefit of ALF’s arguments on the merits when crafting their last two amendments. While they took the opportunity to add a short paragraph of factual assertions about the funds at issue (*id.* at 10), Plaintiffs *still* proved unable to locate any legal support for the merits.<sup>2</sup> That is because there is no authority

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<sup>2</sup> The only cases cited in this section of Plaintiffs’ argument stand for the unremarkable proposition that a plaintiff need not establish an “absolute right to relief” but is instead required to establish a *prima facie* right to relief to satisfy this element of a preliminary injunction request. (Pls.’ Mem. at 7 (citing *Synthes USA Sales, LLC v. Harrison*, 83 A.3d 242, 249 (Pa. Super. Ct. 2013); *T.W. Phillips Gas Co.*, 492 A.2d at 780. Plaintiffs *still* cannot cite any authority in support of their argument on the actual merits of their claims here.

backing up their novel and extraordinary position in this case. Ultimately, Plaintiffs cannot obtain injunctive relief—preliminary or otherwise—for the simple reason that they have not brought a viable claim. The statutes on which their claims hinge do not confer a right of action to any private party, and the Pennsylvania constitutional provisions they invoked more recently are facially inapplicable as a matter of law.

As set forth more fully in ALF’s Brief in Support of Preliminary Objections,<sup>3</sup> which is incorporated herein by reference, neither the Pennsylvania Welfare Code (62 P.S. § 453, *et seq.*), the Pennsylvania Abortion Control Act (18 Pa. C.S. § 3215(c) (1-3), *et seq.*), nor the federal Hyde Amendment<sup>4</sup> confers any private right of action allowing private litigants, like Plaintiffs, to challenge the City’s contribution to ALF. Although courts sometimes look to “some other indicia of legislative intent” in the absence of statutory language expressly creating a private right of action, *Alfred M. Lutheran Distribs. v. A.P. Weilersvacher, Inc.*, 650 A.2d 83, 87 (Pa. Super. Ct 1994) (citations omitted), there is no such indicia here. For purposes of their request for preliminary injunction, Plaintiffs cannot possibly show that they are likely to prevail on the merits of claims that do not exist as a matter of law. *See, e.g., Ash v. Cort*, 350 F. Supp. 227, 232 (E.D. Pa. 1972), *aff’d*, 471 F.2d 811 (3d Cir. 1973) (“Plaintiff has failed to prove that there is a likelihood of success on the merits, in that . . . plaintiff has no private right of action”). Addition

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<sup>3</sup> A true and correct copy of ALF’s Preliminary Objections and Brief in Support are attached hereto as Exhibit A.

<sup>4</sup> In the Third Amended Complaint, Plaintiffs removed the citation to the Hyde Amendment in the 2022 Consolidated Appropriations Act. Instead, they broadly allege that Defendants violated the “the Federal Hyde Amendment.” (*See* Third Am. Compl ¶¶ 22, 27, 49, 56, 63, 66.) This change does not alter the result, as Plaintiffs can point to no provision of the Hyde Amendment conferring a private right of action. If anything, Plaintiffs’ removal of specificity in their claims renders their pleading subject to dismissal pursuant to Pa. R.C.P. No. 1028(a)(3).

of the Pro-Life Coalition does not aid Plaintiffs in this regard because no private party—not any individual taxpayer or association—has a viable right of action under any of the statutes they cite.

Pennsylvania courts use a three-part test to determine the existence of an implied right of action, which asks: (1) is the plaintiff part of a class for whose “especial” benefit the statute was enacted; (2) is there an indication of legislative intent to create or deny a remedy; and (3) is an implied cause of action consistent with the underlying purpose of the legislative scheme? *MERSCORP, Inc. v. Del. Cnty.*, 207 A.3d 855, 870 n.14 (Pa. 2019) (citing *Estate of Witthoeft v. Kiskaddon*, 733 A.2d 623, 626 (Pa. 1999)). The primary inquiry in applying these factors is the intent of the legislature. *See Alfred M. Lutheran Distribs.*, 650 A.2d at 87 (“Each of the above factors is not entitled to equal weight, however, and the central focus remains whether the legislature intended to create, either expressly or by implication, a private cause of action.”).

Plaintiffs soundly fail this test and can point to no basis for assuming that the General Assembly or federal Congress intended to create a cause of action for private individuals or associations to enforce any of these statutes. *First*, the relied upon statutes were not created for the benefit of individual taxpayers or any association purporting to represent the interests of taxpaying members. *Second*, Plaintiffs do not and cannot articulate any identifiable desire by the legislature to create a statutory vehicle for private litigants to seek a remedy. *Third*, an implied right of action is unnecessary to fulfill the underlying purpose of the statutes, which are focused on the appropriate *allocation* of funding. *Cf. Alexander v. Sandoval*, 532 U.S. 275, 289 (2001) (“Statutes that focus on the person regulated rather than the individuals protected create ‘no implication of an intent to confer rights on a particular class of persons.’” (citation omitted)).

Plaintiffs’ Motion does not hint at any showing they might make to overcome the above deficiencies on the merits of their claims. And, Plaintiffs’ two-paragraph conclusory argument

about the merits of their claims does not identify any legal foundation for private parties to maintain claims against a municipality—much less an organization receiving a charitable donation—under the statutes or theories referenced.

The addition of inapt quotations from the Pennsylvania Constitution do not save Plaintiffs’ flawed claims. Even assuming private parties’ ability to sue for municipal violations of the Pennsylvania Constitution, Plaintiffs have failed to identify any constitutional provision that might conceivably apply here. For one thing, they rely entirely on provisions governing “appropriations,” not expenditures of the type ALF received. An appropriation is defined in part as “the legislative designation of a certain amount of money being set aside, allotted or assigned for a specific purpose....” *Common Cause v. Commonwealth*, 668 A.2d 190, 205 (Pa. Commw. Ct. 1995); *see also Commonwealth v. Perkins*, 21 A.2d 45, 48 (Pa. 1941) (defining appropriations as “a designation of money raised by taxation to be withdrawn from the public treasury for a specifically designated purpose.”). Articles III and IX limit the legislature’s ability to appropriate funds, but once appropriated, the executive can lawfully spend the set aside funds. *Common Cause*, 668 A.2d at 206 (“[W]hile the legislature is free to appropriate, subject of course to the constitutional procedures and prohibitions...the purposes to which appropriated funds are to be devoted, the legislative branch may not micro-manage the executive’s power to administer appropriated funds by earmarking the non-governmental recipients thereof.”).

In fiscal year 2022, City Council *appropriated* from the General Fund \$16,069,700 to the Office of the Director of Finance for the category of “Contributions, Indemnities and Taxes.” (Third Am. Compl. Ex. A at Section V, ¶ 2.34.)<sup>5</sup> This category includes contributions – that is,

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<sup>5</sup> Plaintiffs do not allege that City Council’s appropriation to the Office of the Director of Finance was unlawful.

expenditures – to non-profit organizations such as ALF. (City Defs.’ Prelim. Obj. to Pls.’ First Am. Compl. at 5); *see also Common Cause*, 668 A.2d at 206 (holding that the legislature may not appropriate funds directly to private entities, but the recipients of those appropriated funds may choose to direct the funds to private entities in the form of expenditures).

The Constitutional provisions upon which Plaintiffs hang their hat are inapplicable to the funds ALF received for at least two more reasons.<sup>6</sup> *First*, Article III, § 29 states that 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.” The cases interpret this provision as dealing with situations in which “public money may properly be expended in the course of educational activities having a connection with church-related institutions.” *Rhoades v. Sch. Dist. of Abington Twp.*, 226 A.2d 53, 69 (Pa. 1967) (Roberts, J., concurring).<sup>7</sup> Article III does not, as Plaintiffs would have this Court believe, prohibit appropriations to nonsectarian and nondenominational institutions or persons for charitable, educational, or benevolent purposes. *See Busser v. Snyder*, 128 A. 80 (Pa. 1925). *Second*, Article IX, § 9 “was designed to prevent municipal corporations from joining as stockholders in hazardous business ventures, loaning. . . credit for such purposes, or granting gratuities to persons or associations where not in pursuit of some governmental purpose.” *Downing v. Sch. Dist. of City*

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<sup>6</sup> Article III, § 30 focuses on the requirements for appropriations “to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools...except by a vote of two-thirds of all the members elected to each House.” Clearly, ALF is not a “charitable or educational institution” as contemplated in Article III, and application of it to the facts of this case would inexorably require approval of two-thirds of the legislature for every contribution made to a non-profit entity.

<sup>7</sup> The case cites Art. III, § 18 of the Pennsylvania Constitution, which is the prior iteration of Art. III, § 29 and contains identical language as the modern provision. (*See* Amendment of May 16, 1967 Renumbered as Art. III. § 29).

of *Erie*, 147 A. 239, 241 (Pa. 1929).<sup>8</sup> The purpose of the section “was not to prevent the municipal corporation from entering into engagements to carry out a proper governmental purpose, though the incurring of indebtedness results.” *Id.* at 240.

ALF also incorporates by reference the City’s arguments on the merits of Plaintiffs’ claims. Even if these Plaintiffs could theoretically state a claim under any of the statutes or constitutional provisions referenced in the operative complaint, Plaintiffs cannot establish a likelihood that they would prevail on the merits as to the foundational premise of their claims—*i.e.*, that the City’s contribution to ALF actually consisted of any state or federal funds.

Finally, even if some aggrieved party could theoretically bring any of those claims, Plaintiffs cannot establish they have standing to do so. *See* ALF Prelim. Obj. to Third Am. Compl. ¶¶ 30-38.

2. *Plaintiffs have identified no immediate and irreparable harm that cannot be adequately compensated by damages.*

To obtain a preliminary injunction, “there must be a clear showing that *the petitioner* will suffer irreparable injury if the injunction is not granted.” *Moyer v. Davis*, 446 A.2d 1355, 1357 (Pa. Commw. Ct. 1982), *aff’d*, 460 A.2d 754 (Pa. 1983) (emphasis added) (citing *Cardamone v. Univ. of Pittsburgh*, 384 A.2d 1228 (Pa. Super. Ct. 1978)). Thus, Plaintiffs must show both that *they* will be harmed in the absence of an injunction, and that such harm would be irreparable. They have done neither. *First*, Plaintiffs’ Third Amended Complaint and Motion for Preliminary Injunction are devoid of any allegations identifying any way in which expenditure of the funds at issue would cause them any harm, much less irreparable harm. Plaintiffs’ Motion contains only conclusory statements that the Pro-Life Coalition and its “affiliated individuals and

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<sup>8</sup> The case cites Art. IX, § 7 of the Pennsylvania Constitution, which is the prior iteration of Art. IX, § 9 and contains the same substantive language as the modern provision.

supporters...are being irreparably harmed” for the purposes of arguing standing (Pls.’ Mem. at 6), but they make no attempt to identify how the petitioners here are actually being harmed. Such conclusory references to “harm” designed to establish minimal standing requirements—which Plaintiffs did not do in any event—are insufficient to satisfy the critical irreparable harm element for extraordinary preliminary relief. *See, e.g., HAPCO v. City of Phila.*, 482 F. Supp. 3d 337, 361 n.134 (E.D. Pa. 2020) (noting that plaintiff established associational standing to bring claims but holding it failed to support irreparable harm for preliminary injunction); *see also Rodes v. Commonwealth*, 279 A.2d 782, 783-84 (Pa. Commw. Ct. 1971) (explaining that a “general catalogue of averments” is insufficient to show that the plaintiffs will suffer “irreparable harm”).

*Second*, the “harm” at which Plaintiffs’ requested injunction is directed has to do with expenditure of money, which is not irreparable. It is axiomatic that any injury plaintiffs in a civil action may be able to prove at trial based on an expenditure or misallocation of funds could be compensated through money damages. As the D.C. Circuit stated in an oft-cited case involving a materially indistinguishable irreparable harm element for preliminary relief under federal law:

The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

*Va. Petroleum Jobbers Assn. v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *see also, e.g., Sampson v. Murray*, 415 U.S. 61, 88, (1974) (quoting *Va. Petroleum Jobbers*, 259 F.2d at 925); *Keen v. City of Phila.*, 555 A.2d 962, 964 (Pa. Commw. Ct. 1989) (same).

Plaintiffs’ Motion tellingly does not grapple with the question of whether they would have an adequate remedy at law. Rather, they simply repeat the assertion that any statutory violation is *per se* irreparable. (Pls.’ Mem. at 6.) Plaintiffs overplay this hand, relying exclusively on cases

that involve *continuing* statutory violations. *E.g., Shaeffer v. City of Lancaster*, 754 A.2d 719, 823 (Pa. Commw. Ct. 2000) (citing *Pa. Pub. Util. Comm'n v. Israel*, 52 A.2d 317 (Pa. 1947)). These cases rest on the premise that: “For one to *continue* such unlawful conduct constitutes irreparable injury.” *Pa. Pub. Util. Comm'n v. Israel*, 52 A.2d at 321 (emphasis added); *see also Commonwealth v. Nat'l Fed'n of the Blind*, 370 A.2d 732, 738 (1977) (expressly distinguishing *PUC v. Israel* where the record “does not clearly establish that violations are continuing”).

The only violation alleged here has already occurred, and Plaintiffs cannot establish that the further expenditure of donated funds by ALF would constitute a continuing violation. The statutory provisions that Plaintiffs allege have been violated relate solely to expenditures by government agencies, not private parties, for the purposes of funding abortion care. *See* 62 P.S. § 453 (providing that “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” (emphasis added)); 18 Pa.C.S. § 3215(c) (same). As the purported statutory violation has already occurred, and in the absence of a continuing violation by the local government defendants, Plaintiffs’ *per se* irreparable harm argument fails.

3. *The balance of harms weighs against preliminary injunction.*

Plaintiffs’ failure to identify any actual harm they would suffer in the absence of an injunction also renders them unable to show that “greater injury would result from refusing an injunction than from granting it.” *Summit Towne Centre*, 828 A.2d at 1001 (citing *Maritrans GP*, 602 A.2d at 1283; *Valley Forge Hist. Soc’y*, 426 A.2d at 1128-29; *Ala. Binder & Chem. Corp.*, 189 A.2d at 184). Plaintiffs’ entire argument on this point assumes the imagined violation of statutory provisions is *per se* harm justifying the extraordinary step of issuing an injunction. That assumption is flawed for the reasons stated in the previous section, and Plaintiffs do not even attempt to articulate how they might actually be harmed if ALF is



permitted to operate unencumbered by the political views of private citizens, other non-profits with competing missions, or their creative attorneys.

Meanwhile, Plaintiffs also make no attempt to establish that “issuance of an injunction will not substantially harm other interested parties in the proceedings.” *Id.* Instead, they baldly assert that the only impact on defendants will be to prevent them “from violating state and federal law,” (Pls.’ Mem. at 8), ignoring the impact on ALF, its mission, and the people served by that mission.

4. *The requested injunction will not properly restore the status quo.*

As to ALF, the *status quo ante* is that this non-profit organization can lawfully operate and allocate the funds it receives from charitable donations in furtherance of its mission, which includes funding lawful abortions in Pennsylvania. ALF is not a government entity and has not even arguably violated any of the statutory restrictions cited in the Third Amended Complaint, all of which are directed solely at government agencies. Thus, the requested injunction would inject restrictions on ALF’s operations that have never before existed. Doing so would disrupt the *status quo*, not restore it.

5. *The requested injunction is not directed at any offending activity.*

To establish a right to preliminary injunction, Plaintiffs must also establish that “the injunction [they] seek[] is reasonably suited to abate the offending activity.” *Summit Towne Centre*, 828 A.2d at 1001 (citing *John G. Bryant Co.*, 369 A.2d at 1167-71; *Albee Homes, Inc.*, 207 A.2d at 771-73). As noted, however, Plaintiffs have identified no “offending activity” as to ALF, and the injunction they seek would only punish a non-profit that is not in violation of any law.

**VI. RELIEF**

If the Court finds Plaintiffs' allegations lacking on even one of the foregoing elements, it must deny Plaintiffs' request for preliminary relief. For all of the reasons set forth above, and in ALF's and the City's Preliminary Objections, as well as the City's Opposition to Plaintiffs' Motion for Preliminary Injunction, ALF respectfully requests that this Court deny Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted,

Dated: October 13, 2022

By: /s/ Aliza R. Karetnick

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*Attorneys for Defendant  
Abortion Liberation Fund of Pennsylvania*

# **EXHIBIT A**

**NOTICE TO PLEAD**

TO THE PLAINTIFFS: You are hereby notified to file a written response to these Preliminary Objections within twenty (20) days from service hereof or a judgment may be entered against you.

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CHARLES P. KUCHAR, SR., <i>et al.</i> ,	:	COURT OF COMMON PLEAS
Plaintiffs,	:	PHILADELPHIA COUNTY
vs.	:	August Term 2022
CITY OF PHILADELPHIA, <i>et al.</i> ,	:	No. 220801916
Defendants.	:	<b>ORAL ARGUMENT REQUESTED</b>
	:	

**DEFENDANT ABORTION LIBERATION FUND OF PENNSYLVANIA’S  
PRELIMINARY OBJECTIONS TO PLAINTIFFS’ THIRD AMENDED COMPLAINT**

Defendant Abortion Liberation Fund of Pennsylvania (“ALF”), by and through its undersigned counsel, files these Preliminary Objections to the Third Amended Complaint<sup>1</sup> of Charles P. Kuhar, Sr., Theresa Kuhar, (together, “the Kuhars”) and the Pro-Life Coalition of PA, Inc. (the “Pro-Life Coalition”) (collectively, “Plaintiffs”) against the City of Philadelphia and ALF (collectively, the “Defendants”). In support, ALF submits and incorporates the attached Brief, and states as follows:

1. The Kuhars are City residents and taxpayers who support the Pro-Life Coalition, a non-profit corporation whose mission is to “protect the sanctity of human life.” (Third Am. Compl. ¶¶ 9–11.)

2. On or about July 1, 2022, the City contributed \$500,000 to ALF, a private non-profit organization, out of the City’s general fund, which primarily consists of municipal tax revenue, as well as certain unrestricted funds deposited in the City’s coffers from state and federal sources. (*Id.* at ¶¶ 30–32.)

3. Plaintiffs contend ALF will use the funds “to pay, in whole or in part, for abortions in Pennsylvania.” (*Id.* at ¶ 18.)

4. On August 16, 2022, the Kuhars filed a Complaint in the Philadelphia Court of Common Pleas against the City of Philadelphia, Mayor James Kenney, City Treasurer Jacqueline Dunn, and City Controller Rebecca Rhynhart in their official capacities (the “City Defendants”),

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<sup>1</sup> A copy of the Third Amended Complaint is attached as Exhibit 1.

attempting to challenge the legality of the City's contribution to ALF under various state statutes and the federal Hyde Amendment.

5. Then, on August 23, 2022, the Kuhars filed an Amended Complaint for Injunctive and Declaratory Relief (the "Amended Complaint"), adding ALF as a Defendant. They also filed a related Motion for Preliminary Injunction against the City Defendants and ALF, which was scheduled for hearing before the Honorable Joshua Roberts on October 14, 2022.

6. ALF and the City Defendants filed Preliminary Objections to Plaintiffs' Amended Complaint on September 15, 2022 and September 16, 2022, respectively. Both ALF and the City Defendants also submitted separate Responses in Opposition to Plaintiffs' Motion for Preliminary Injunction on September 16, 2022.

7. In lieu of a response, the Kuhars filed a Second Amended Complaint for Injunctive and Declaratory Relief adding references to the Pennsylvania Constitution and to the standard elements of taxpayer standing, while also dropping their unsupportable claims for surcharge, mandamus, and violations of the Sunshine Act.

8. On October 12, 2022, before ALF or the City Defendants had a chance to respond, Plaintiffs sought leave to and filed a Third Amended Complaint for Injunctive and Declaratory Relief (the "Third Amended Complaint") to add the Pro-Life Coalition to this case. Plaintiffs also filed a Third Amended Motion for Preliminary Injunction on October 10, 2022.

9. As set forth in more detail below, the absence of factual and legal support for Plaintiffs' claims requires dismissal of the Third Amended Complaint, a fact that no amendment can cure.

10. The Pennsylvania Rules of Civil Procedure (the “Rules”) authorize preliminary objections in the nature of a demurrer for legal insufficiency of a pleading. Pa. R. Civ. P. 1028(a)(4); *Kelly v. Kelly*, 887 A.2d 788, 790–91 (Pa. Super. Ct. 2005). A demurrer challenges the complaint as failing to set forth a cause of action upon which relief can be granted. *Id.*; *Giordano v. Ridge*, 737 A.2d 350, 352 (Pa. Commw. Ct. 1999). If a claim is legally insufficient on its face such that the law will not permit recovery, dismissal is appropriate. *Giordano*, 737 A.2d at 352.

11. Rule 1028(a)(5) further authorizes the Court to grant preliminary objections for “lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.” Pa. R. Civ. P. 1028(a)(5). A preliminary objection pursuant to Rule 1028(a)(5) should be sustained when plaintiff lacks standing to assert claims. *Atiyeh v. Commonwealth*, No. 312 M.D. 2012, 2013 Pa. Commw. Unpub. LEXIS 416, at \*12-13 n.15 (Pa. Commw. Ct. May 28, 2013).

12. When considering preliminary objections, all well-pleaded factual allegations and reasonable inferences should be accepted as true. Unwarranted inferences, conclusions of law, argumentative allegations, or opinions, however, need not be. *Erie Cnty. League of Women Voters v. Dep’t of Env’t Res.*, 525 A.2d 1290, 1291 (Pa. Commw. Ct. 1987). A pleading consisting merely of unwarranted inferences and argumentative allegations (as opposed to properly pleaded statements of fact) cannot withstand a demurrer. *Giordano*, 737 A.2d at 352. Indeed, dismissal with prejudice is appropriate where, as here, amendment would be futile. *Carlino v. Whitpain Inv.*, 453 A.2d 1385, 1388–89 (1982).

**First Preliminary Objection Pursuant to Pa. R. Civ. P. 1028(a)(4):  
No Private Right of Action.**

13. Defendant incorporates by reference the foregoing paragraphs as if fully set forth herein.

14. Plaintiffs contend the City's contribution to ALF constitutes a violation of the Pennsylvania Human Services Code (62 P.S. § 453, *et seq.*); the Pennsylvania Abortion Control Act (18 Pa. C.S. § 3215(c) (1-3), *et seq.*); and, the federal Hyde Amendment.<sup>2</sup>

15. Plaintiffs' claims are sorely misguided as a matter of law and fact, but this Court need not grapple with the merits because none of these statutes confers a private right of action allowing private litigants, like Plaintiffs, to challenge the City's contribution to ALF.<sup>3</sup> *See generally* 62 P.S. § 453, *et seq.*; 18 Pa. C.S. § 3215(c)(1-3), *et seq.*

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<sup>2</sup> In the Third Amended Complaint, Plaintiffs removed the citation to the Hyde Amendment in the 2022 Consolidated Appropriations Act. Instead, they broadly allege that Defendants violated the "the Federal Hyde Amendment." (*See* Third Am. Compl ¶¶ 22, 27, 49, 56, 63, 66.) This claim is vague and fails to include sufficient specificity for Defendant ALF to discern the precise basis for recovery. Pa. R.C.P. No. 1028(a)(3).

<sup>3</sup> Plaintiffs cannot seek a declaratory judgment where the underlying substantive law does not provide for a private right of action. *See, e.g., Graziano v. Wetzel*, 2021 Pa. Commw. Unpub. LEXIS 570, at \*24 (Pa. Commw. Ct. Nov. 9, 2021) (table) (ruling that plaintiff could not seek a declaration under the Pennsylvania Regulatory Review Act ("RRA") because the RRA did not contain a private right of action); *cf. Williams v. Nat'l Sch. of Health Tech.*, 836 F. Supp. 273, 281 (E.D. Pa. 1993) (finding where there was no private cause of action, allowing the plaintiffs to proceed with a "declaratory judgment action... is tantamount to allowing a private cause of action"); *In re Comcast Corp. Cable TV Rate Regulation*, CIVIL ACTION No. 93-6628, 1994 U.S. Dist. LEXIS 16044, at \*18-20 (E.D. Pa. Nov. 9, 1994) ("Plaintiffs' request for declaratory judgment cannot create a private right of action that does not otherwise exist."). The absence of any other remedy is not a sufficient basis for the court to imply a private cause of action where none exists.



16. And, although courts sometimes look to “some other indicia of legislative intent” in the absence of statutory language expressly creating a private right of action, *Alfred M. Lutheran Distribs. v. A.P. Weilersvacher, Inc.*, 650 A.2d 83, 87 (Pa. Super. Ct 1994) (citations omitted), there is no such indicia here. Indeed, there is not even a whiff of intent enabling private litigants to enforce the statutes at issue.

17. Pennsylvania courts use a three-part test to determine the existence of an implied right of action, which asks: (1) is the plaintiff part of a class for whose “especial” benefit the statute was enacted; (2) is there an indication of legislative intent to create or deny a remedy; and (3) is an implied cause of action consistent with the underlying purpose of the legislative scheme? *MERSCORP, Inc. v. Del. Cnty.*, 207 A.3d 855, 870 n.14 (Pa. 2019) (citing *Estate of Witthoef v. Kiskaddon*, 733 A.2d 623, 626 (Pa. 1999)).

18. Plaintiffs soundly fail this test. *First*, the relied upon statutes were created to limit the use of state and federal funds, not for the benefit of individual taxpayers or organizations. *Second*, Plaintiffs do not and cannot articulate any identifiable desire by the legislature to create a statutory vehicle for private litigants to seek a remedy. *Third*, an implied right of action is unnecessary to fulfill the underlying purpose of the statutes, which are focused on the appropriate *allocation* of funding. *Cf. Alexander v. Sandoval*, 532 U.S. 275, 289 (2001) (“Statutes that focus on the person regulated rather than the individuals protected create ‘no implication of an intent to confer rights on a particular class of persons.’” (citation omitted)).

19. The primary inquiry in applying these factors is the intent of the legislature. *See Alfred M. Lutheran Distribs.*, 650 A.2d at 87 (“Each of the above factors is not entitled to equal weight, however, and the central focus remains whether the legislature intended to create, either

expressly or by implication, a private cause of action.” (citation omitted)). The case *Solomon v. United States Healthcare Systems of Pennsylvania*, is instructive on this point. The *Solomon* court analyzed whether there was a private right of action for violations of the Health Care Act. 797 A.2d 346, 352 (Pa. Super. Ct. 2002). Considering the plain text of the statute and corresponding regulations, the court held “the Act reveals no indication of legislative intent, explicit or implicit, to create a private remedy.” *Id.* at 353. On appeal, the Superior Court agreed.

20. As in *Solomon*, none of the statutes at issue here, or their corresponding regulations, even hint at legislative intent, explicit or implicit, to create a private remedy for litigants like Plaintiffs to challenge the City’s contribution to ALF.<sup>4</sup> To the contrary, the Pennsylvania Human Services Code focuses on eligibility requirements and restrictions for persons receiving public assistance and suggests that enforcement authority for violations rests with the Pennsylvania Department of Human Services or other government authorities. *See generally* 62 P.S. § 401 *et seq.* The Code specifically tasks the Department of Human Services with “maintaining uniformity in the administration of public welfare, including general assistance, throughout the Commonwealth.” *See* 62 P.S. § 402. And, the Public Assistance Code, within which 62 P.S. § 453 is situated, explicitly authorizes criminal penalties and investigations relating to the misuse of public assistance funds. *See, e.g.*, 62 P.S. §§ 481–485. While these sections do not overtly address

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<sup>4</sup> Plaintiffs may argue that *Palmiter v. Commonwealth Health Systems, Inc.*, supports finding a private right of action even though not specifically delineated under the statute. 260 A.3d 967, 976 (Pa. Super. Ct. 2021). *Palmiter*, however, is roundly distinguishable. First, the litigation was initiated by a terminated employee, and second, the legislation [Medical Marijuana Act] “delineates the rights afforded employees who are certified [marijuana] users, but also sets forth the rights of employers to discipline employees who are in violation of the terms of certified use.” *Id.* at 975. Unlike *Palmiter*, the statutes relied upon by Plaintiffs in the instant matter do not outline specific benefits or rights allowing them to challenge the City’s contributions to ALF.

62 P.S. § 453, they suggest that allegedly improper allocations of public assistance funds should be addressed by the government, not private litigants. *See, e.g., Cnty. of Butler v. CenturyLink Commc'ns., LLC*, 207 A.3d 838, 852 (Pa. 2019) (finding no private right of action where the Legislature “provided sufficient indicia evincing its intention to centralize enforcement authority in the relevant state agency”).

21. The Pennsylvania Abortion Control Act similarly indicates that enforcement authority for that statute lies with the State Board of Medical Education and Licensure, rather than private litigants. *See, e.g., 18 Pa. C.S. § 3219; cf. Gutherman v. Ne. Women's Ctr., Inc.*, No. 87-8150, 1989 U.S. Dist. LEXIS 7498, at \*8 (E.D. Pa. June 30, 1989) (holding private litigants lacked standing to challenge a contract under the Abortion Control Act, which is “to be enforced by the State Board of Medical Education and Licensure” (citation omitted)). Sections of the Pennsylvania Abortion Control Act, part of the Commonwealth’s criminal code, also provide for certain criminal and civil penalties and permit the Pennsylvania Department of Health to levy civil penalties against providers who violate the statute’s restrictions. *See generally* 18 Pa. C.S. §§ 3205(c), 3213(f), 3217, 3218. Like these sections, purported violations of 18 Pa. C.S. § 3215(c) should be addressed by a governmental entity, not private litigants.

22. Finally, the Hyde Amendment is an appropriations bill for the U.S. Department of Health and Human Services. Plaintiffs do not specify which portion of the Hyde Amendment they seek to enforce in their Third Amended Complaint, nor do they point to any language in the text of the Amendment indicating that Congress proposed to give taxpayers or associations a right of action to enforce this Amendment. And, while some courts have ruled that certain Medicaid recipients have a private right of action to sue for purported violations of the Medicaid Act (which is modified by the Hyde Amendment), *see, e.g., Planned Parenthood S. Atl. v. Kerr*, 27 F.4th 945,

954 (4th Cir. 2022) (authorizing plaintiffs to sue government defendants under 42 U.S.C. § 1983 to enforce the Medicaid Act), no court has found a similar right of action for others, *cf. Tarsney v. O’Keefe*, 225 F.3d 929, 939 (8th Cir. 2000) (holding taxpayers lacked standing to enforce the Medicaid statute because “they are not the intended beneficiaries of the amendment since they are not seeking reimbursement or medical services” (citation omitted)).

23. Further supporting the lack of legislative intent for a private remedy under any of these statutes is that both the Pennsylvania and federal legislatures regularly create private statutory causes of action. *See, e.g., Alfred M. Lutheran Distribs.*, 650 A.2d at 88 (citing examples). “As made plain by these other statutes, the General Assembly [and Congress] clearly know[] how to draft *legislation* so as to grant an individual the right to maintain a private statutory cause of action.” *Id.* The fact that the General Assembly and Congress omitted a similar provision from each of these statutes weighs heavily against finding a private right of action in the instant litigation.

24. Even if there were a private right of action under any of these statutes – which there is not – private litigants, such as Plaintiffs, are clearly not the designated statutory beneficiaries. *Cf. Williams v. City of Phila.*, 164 A.3d 576, 593 (Pa. Commw. Ct. 2017) (explaining that some courts “have recognized an implied private right of action to enforce provisions of the Food Stamp Act, but the defendants in all of these cases were public officials, and the plaintiffs were all individuals who had been denied Food Stamp benefits” (citing *Posr v. City of New York*, No. 11 Civ 986 (PGG), 2012 U.S. Dist. LEXIS 137672, at \*26 (S.D.N.Y. 2012))); *Tarsney*, 225 F.3d at 939 (holding taxpayers were not intended beneficiaries of Medicaid statute as modified by the Hyde Amendment); *Gutherman*, 1989 U.S. Dist. LEXIS 7498, at \*8 (holding private litigants did not have standing to challenge contract under the Abortion Control Act). In other words, although

an implied right of action may exist where the plaintiff is part of a class for whose benefit the statute was enacted, Plaintiffs here did not and cannot cite any intended statutory benefit to them.<sup>5</sup>

**Second Preliminary Objection Pursuant to Pa. R. Civ. P. 1028(a)(4): Failure to State a Claim Under the Pennsylvania Constitution**

25. Defendant incorporates by reference the foregoing paragraphs as if fully set forth herein.

26. Plaintiffs' Third Amended Complaint fails to state a claim under Articles III or IX of the Pennsylvania Constitution, which apply only to appropriations, not expenditures or the executive's administration of appropriated funds. The City's contribution to ALF was an expenditure, not an appropriation, and the Third Amended Complaint fails to allege any facts to the contrary.

27. An appropriation is defined in part as "the legislative designation of a certain amount of money being set aside, allotted or assigned for a specific purpose..." *Common Cause v. Commonwealth*, 668 A.2d 190, 205 (Pa. Commw. Ct. 1995); *see also Commonwealth v. Perkins*, 21 A.2d 45, 48 (Pa. 1941) (defining appropriations as "a designation of money raised by taxation to be withdrawn from the public treasury for a specifically designated purpose."). Articles III and IX limit the legislature's ability to appropriate funds, but once appropriated, the executive can lawfully spend the set aside funds. *Common Cause*, 668 A.2d at 206 ("[W]hile the legislature is free to appropriate, subject of course to the constitutional procedures and prohibitions...the

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<sup>5</sup> To the extent Plaintiffs rely on *SEIU Healthcare Pennsylvania v. Commonwealth*, 104 A.3d 495, 508 (Pa. 2014), it is inapt. In *SEIU*, the plaintiffs – nurses, nurses' union representatives, and five state legislators – challenged the Commonwealth's decision to close health centers and furlough nursing staff. In this case, Plaintiffs seek to personally regulate the City's expenditures and enjoin ALF, the recipient of these funds.

purposes to which appropriated funds are to be devoted, the legislative branch may not micro-manage the executive's power to administer appropriated funds by earmarking the non-governmental recipients thereof.”).

28. In fiscal year 2022, City Council appropriated from the General Fund \$16,069,700 to the Office of the Director of Finance for the category of “Contributions, Indemnities and Taxes.” (Third Am. Compl. Ex. A at Section V, ¶ 2.34).<sup>6</sup> This category includes contributions – that is, expenditures – to non-profit organizations such as ALF. (*See* City Defs.’ Prelim. Obj. to Pls.’ First Am. Compl. at 5); *see also Common Cause*, 668 A.2d at 206 (holding that the legislature may not appropriate funds directly to private entities, but the recipients of those appropriated funds may choose to direct the funds to private entities in the form of expenditures).

29. In addition, the Constitutional provisions upon which Plaintiffs hang their hat are inapplicable to the funds ALF received.<sup>7</sup> *First*, Article III, § 29 states that 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.” The cases interpret this provision as dealing with situations in which “public money may properly be expended in the course of educational activities having a connection with church-related institutions.” *Rhoades v.*

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<sup>6</sup> Plaintiffs do not allege that City Council’s appropriation to the Office of the Director of Finance was unlawful.

<sup>7</sup> Article III, § 30 focuses on the requirements for appropriations “to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools...except by a vote of two-thirds of all the members elected to each House.” Clearly, ALF is not a “charitable or educational institution” as contemplated in Article III, and application of it to the facts of this case would inexorably require approval of two-thirds of the legislature for every contribution made to a non-profit entity.

*Sch. Dist. of Abington Twp.*, 226 A.2d 53, 69 (Pa. 1967) (Roberts, J., concurring).<sup>8</sup> Article III does not, as Plaintiffs would have this Court believe, prohibit appropriations to nonsectarian and nondenominational institutions or persons for charitable, educational, or benevolent purposes. *See Busser v. Snyder*, 128 A. 80 (Pa. 1925).

30. *Second*, Article IX, § 9 “was designed to prevent municipal corporations from joining as stockholders in hazardous business ventures, loaning. . . credit for such purposes, or granting gratuities to persons or associations where not in pursuit of some governmental purpose.” *Downing v. Sch. Dist. of City of Erie*, 147 A. 239, 241 (Pa. 1929).<sup>9</sup> The purpose of the section “was not to prevent the municipal corporation from entering into engagements to carry out a proper governmental purpose, though the incurring of indebtedness results.” *Id.* at 240.

**Third Preliminary Objection Pursuant to Pa. R. Civ. P. 1028(a)(5):  
Lack of Standing.**

31. Defendant incorporates by reference the foregoing paragraphs as if fully set forth herein.

32. Plaintiffs lack standing to pursue any claims against ALF under the Pennsylvania Human Services Code, Abortion Control Act, or the federal Hyde Amendment. A party “seeking judicial resolution of a controversy . . . must establish as a threshold matter that he [or she] has standing to maintain the action.” *Fumo v. City of Phila.*, 972 A.2d 487, 496 (Pa. 2009). The core

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<sup>8</sup> The case cites Art. III, § 18 of the Pennsylvania Constitution, which is the prior iteration of Art. III, § 29 and contains identical language as the modern provision. (*See* Amendment of May 16, 1967 Renumbered as Art. III. § 29).

<sup>9</sup> The case cites Art. IX, § 7 of the Pennsylvania Constitution, which is the prior iteration of Art. IX, § 9 and contains the same substantive language as the modern provision.

inquiry into standing focuses on whether “the individual initiating the legal action has been ‘aggrieved.’” *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 659 (Pa. 2005) (citations omitted). To establish that he or she has been ‘aggrieved,’ a litigant must “show that he [or she] has a substantial, direct and immediate interest in the outcome of the litigation.” *See City of Phila. v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003) (quoting *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003)). Neither the Kuhars nor the Pro-Life Coalition can satisfy these threshold requirements.

33. The Kuhars make no effort to identify any substantial, direct, and immediate interest in the outcome of this litigation. Instead, they rely only on “taxpayer standing,” a narrow doctrine that allows taxpayers to file lawsuits in certain instances when they cannot meet traditional standing requirements. (*See* Third Am. Compl. ¶ 25.)

34. In Pennsylvania, taxpayers can only establish “taxpayer standing” to challenge a governmental act if: (1) the governmental action would otherwise go unchallenged; (2) those directly and immediately affected by the complained-of matter are beneficially affected and not inclined to challenge the action; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other persons are better situated to assert the claim. *Fumo*, 72 A.2d at 504 (quoting *Stilp v. Commonwealth*, 940 A.2d 1232, 1233 (Pa. 2007)); *see also In re Application of Biester*, 409 A.2d 848, 852 (Pa. 1979). Each of these requirements must be satisfied to establish taxpayer standing. *Id.*

35. The Kuhars acknowledge the relevant legal standard in their Third Amended Complaint by regurgitating its requirements. (*See* Third Am. Compl. ¶¶ 19–25); *see also, e.g., Atiyeh*, 2013 Pa. Commw. Unpub. LEXIS 416, at \*19 (“Here, the Petition simply lists the five



established criteria without description or explanation of how Petitioners fall within the *Biester* taxpayer exception. Therefore, the allegations of the Petition are insufficient to confer taxpayer standing upon Petitioners under the *Biester* standard.”). But, they do not and cannot allege facts suggesting they meet any of these requirements. The Kuhars offer nothing more than conclusory statements that the City’s contribution will otherwise go unchallenged, that redress through other channels is unavailable, and that no other persons are better situated to assert the claims set forth herein. (See Third Am. Compl. ¶¶ 20, 23–24.)

36. The Kuhars’ bald statement as to the last element in particular is demonstrably false; as explained in detail above, all of the statutes at issue contemplate some type of government enforcement or interest in accounting for the allocation and expenditure of state and federal funds. Indeed, the state and federal agencies responsible for overseeing the allocation and expenditure of such funds would seemingly have a greater interest in challenging the City’s contribution to ALF than Plaintiffs, regardless of whether they have yet done so. See, e.g., *Stilp*, 940 A.2d at 1234–35 (ruling that Auditor General was better situated than taxpayer to seek a declaratory judgment that he had additional audit power); see also, e.g., *Fumo*, 972 A.2d at 506 (“[T]he fact that more appropriate governmental parties have not elected to challenge a particular governmental decision cannot be enough on its own to generate taxpayer standing – particularly where those executive authorities are not ‘beneficially affected’ by the decision”). As a result, the Kuhars’ assertion that they are in the best position to pursue these claims is entirely untenable.

37. The Pro-Life Coalition fares no better. Under Pennsylvania law, “[a]n association [only] has standing to bring an action on behalf of its members where at least one of its members is suffering an immediate or threatened injury as a result of the challenged action.” See *Americans for Fair Treatment, Inc. v. Phila. Fedn. of Teachers*, 150 A.3d 528, 533 (Pa. Commw. Ct. 2016)

(citations omitted). To establish standing on this basis, “the plaintiff organization must allege sufficient facts to show that at least one of its members has a substantial, direct, and immediate interest.” *Id.* (citations omitted). Where, as here, “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.” *Id.* (citing *Armstead v. Zoning Bd. of Adjustment of the City of Phila.*, 115 A.3d 390, 399–400 (Pa. Commw. Ct. 2015) and *Concerned Taxpayers of Allegheny Cnty. v. Commonwealth*, 382 A.2d 490, 494 (Pa. Commw. Ct. 1978)).

38. As argued, the Kuhars themselves fail to allege any immediate interest in this case. They seek only to proceed as taxpayers, but cannot meet the requirements for taxpayer standing, which associational standing does not cure. *See Americans for Fair Treatment*, 150 A.3d at 537–38 (ruling that non-profit organization lacked associational standing to sue on behalf of taxpayer members who could not satisfy taxpayer standing requirements); *see also Concerned Taxpayers of Allegheny Cnty.*, 382 A.2d at 493-94 (“Although an association or, in this case, a nonprofit corporation, may assert the interests of its members, and taxpayers may [in narrow circumstances] challenge alleged unlawful expenditures, the requirements of a direct, immediate, and substantial injury remain.”).

39. Finally, the Pro-Life Coalition does not otherwise explain how any of its members are aggrieved by the City’s contribution to ALF, and cannot identify any harm the organization itself will suffer in connection with the City’s contribution, other than noting that “the outcome of this case is directly related to its mission.” (Third Am. Compl. ¶ 11.) The law is clear – the Pro-Life Coalition “cannot establish standing simply by virtue of its organizational purpose.” *See Armstead*, 115 A.3d at 399–400 (citing *Spahn v. Zoning Bd. of Adjustment of the City of Phila.*, 977 A.2d 1132, 1152 (Pa. 2008)).

WHEREFORE, pursuant to the Pennsylvania Rules of Civil Procedure 1028(a)(4) and 1028 (a)(5), ALF respectfully requests this Court strike and dismiss with prejudice all counts of the Third Amended Complaint lodged against it.

Respectfully submitted,

Dated: October 13, 2022

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CHARLES P. KUHAR, SR., <i>et al.</i> ,	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
Plaintiffs,	:	
	:	August Term 2022
vs.	:	
	:	No. 220801916
CITY OF PHILADELPHIA, <i>et al.</i> ,	:	
	:	<b>ORAL ARGUMENT REQUESTED</b>
Defendants.	:	

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**BRIEF IN SUPPORT OF DEFENDANT  
ABORTION LIBERATION FUND OF PENNSYLVANIA'S  
PRELIMINARY OBJECTIONS TO PLAINTIFFS' THIRD AMENDED COMPLAINT**

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Defendant Abortion Liberation Fund of Pennsylvania (“ALF”), by and through its undersigned counsel, and pursuant to Rule 1028 of the Pennsylvania Rules of Civil Procedure, respectfully submits this brief in support of its Preliminary Objections to Plaintiffs’ Third Amended Complaint.

## **I. INTRODUCTION**

In this case, two Philadelphia residents – Charles P. Kuhar and Theresa Kuhar (together, “the Kuhars”) – along with non-profit corporation Pro-Life Coalition of PA, Inc. (the “Pro-Life Coalition”) (collectively, “Plaintiffs”) attempt to challenge a recent monetary contribution by the City of Philadelphia (the “City”) to ALF, a non-profit organization with whose mission Plaintiffs presumably disagree. Plaintiffs broadly allege the City’s recent contribution to ALF violated Pennsylvania’s Human Services Code, Criminal Code, the Pennsylvania Constitution, and the federal Hyde Amendment, and they seek declaratory and injunctive relief to prevent ALF from using the funds.

Despite taking four bites at the proverbial apple in less than two months, Plaintiffs are still unable to state any claim for relief. Their sole claim for declaratory and injunctive relief fails for at least three reasons. *First*, no private right of action exists under the Pennsylvania Human Services Code, Abortion Control Act, or the federal Hyde Amendment. *Second*, Plaintiffs do not state a cognizable claim for violations of the Pennsylvania Constitution because Titles III and IX apply only to appropriations, not expenditures or the executive’s administration of appropriated funds. *Third*, as a threshold matter, Plaintiffs fail to meet the essential criteria to establish taxpayer or associational standing under Pennsylvania law. The Court should grant ALF’s preliminary objections, dismiss Plaintiffs’ claims with prejudice, and shut down this wasteful pursuit before more time and resources are expended litigating groundless and futile claims.

## **II. MATTER BEFORE THE COURT**

Defendant ALF's Preliminary Objections to Plaintiffs' Third Amended Complaint.

## **III. STATEMENT OF QUESTIONS INVOLVED**

*Question:* Whether there is a private right of action under the Pennsylvania Human Services Code (62 P.S. § 453, *et seq.*), the Abortion Control Act (18 Pa. C.S. § 3215(c), *et seq.*), or the federal Hyde Amendment?

*Suggested Answer:* No

*Question:* Whether Plaintiffs have stated a cognizable claim under the Pennsylvania Constitution for which relief can be granted?

*Suggested Answer:* No

*Question:* Whether the Plaintiffs have standing to assert claims under the Pennsylvania Human Services Code, the Abortion Control Act, or the federal Hyde Amendment against ALF?

*Suggested Answer:* No

## **IV. ALLEGATIONS OF THE COMPLAINT AND PROCEDURAL HISTORY**

The Kuhars are City residents and taxpayers who support the Pro-Life Coalition, a non-profit corporation whose mission is to “protect the sanctity of human life.” (Third Am. Compl. ¶¶ 9–11.) On or about July 1, 2022, the City contributed \$500,000 to ALF, a private non-profit organization, out of the City's general fund, which primarily consists of municipal tax revenue, as well as certain unrestricted funds deposited in the City's coffers from state and federal sources. (*Id.* at ¶¶ 30–32.) Plaintiffs contend ALF will use the funds “to pay, in whole or in part, for abortions in Pennsylvania.” (*Id.* at ¶ 18.)

On August 16, 2022, the Kuhars filed a Complaint in the Philadelphia Court of Common Pleas against the City of Philadelphia, Mayor James Kenney, City Treasurer Jacqueline Dunn, and City Controller Rebecca Rhynhart in their official capacities (the “City Defendants”), attempting

to challenge the legality of the City's contribution to ALF under various state statutes and the federal Hyde Amendment. Then, on August 23, 2022, the Kuhars filed an Amended Complaint for Injunctive and Declaratory Relief (the "Amended Complaint"), adding ALF as a Defendant. They also filed a related Motion for Preliminary Injunction against the City Defendants and ALF, which was scheduled for hearing before the Honorable Joshua Roberts on October 14, 2022.

ALF and the City Defendants filed Preliminary Objections to Plaintiffs' Amended Complaint on September 15, 2022 and September 16, 2022, respectively. Both ALF and the City Defendants also submitted separate Responses in Opposition to Plaintiffs' Motion for Preliminary Injunction on September 16, 2022. In lieu of a response, the Kuhars filed a Second Amended Complaint for Injunctive and Declaratory Relief adding references to Pennsylvania Constitutional provisions, and reciting elements of taxpayer standing, while dropping their unsupportable claims for surcharge, mandamus, and violations of the Sunshine Act. On October 12, 2022, before ALF or the City Defendants had a chance to respond, Plaintiffs sought leave to and filed a Third Amended Complaint for Injunctive and Declaratory Relief (the "Third Amended Complaint") to add the Pro-Life Coalition as a party. Plaintiffs also filed a Third Amended Motion for Preliminary Injunction on October 10, 2022.

## V. ARGUMENT

### A. Applicable Legal Standard.

The Pennsylvania Rules of Civil Procedure (the “Rules”) authorize preliminary objections in the nature of a demurrer for legal insufficiency of a pleading. Pa. R. Civ. P. 1028(a)(4); *Kelly v. Kelly*, 887 A.2d 788, 790–91 (Pa. Super. Ct. 2005). A demurrer challenges the complaint as failing to set forth a cause of action upon which relief can be granted. *Id.*; *Giordano v. Ridge*, 737 A.2d 350, 352 (Pa. Commw. Ct. 1999). If a claim is legally insufficient on its face such that the law will not permit recovery, dismissal is appropriate. *Giordano*, 737 A.2d at 352. Rule 1028(a)(5) further authorizes the Court to grant preliminary objections for “lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.” Pa. R. Civ. P. 1028(a)(5). A preliminary objection pursuant to Rule 1028(a)(5) should be sustained when plaintiff lacks standing to assert claims. *Atiyeh v. Commonwealth*, No. 312 M.D. 2012, 2013 Pa. Commw. Unpub. LEXIS 416, at \*12-13 n.15 (Pa. Commw. Ct. May 28, 2013).

When considering preliminary objections, all well-pleaded factual allegations and reasonable inferences should be accepted as true. Unwarranted inferences, conclusions of law, argumentative allegations, or opinions, however, need not be. *Erie Cnty. League of Women Voters v. Dep’t of Env’t Res.*, 525 A.2d 1290, 1291 (Pa. Commw. Ct. 1987). A pleading consisting merely of unwarranted inferences and argumentative allegations (as opposed to properly pleaded statements of fact) cannot withstand a demurrer. *Giordano*, 737 A.2d at 352. Indeed, dismissal with prejudice is appropriate where, as here, amendment would be futile. *Carlino v. Whitpain Inv.*, 453 A.2d 1385, 1388–89 (1982).

**B. Preliminary Objection Pursuant to Pa. R. Civ. P. 1028(a)(4): No Private Right of Action.**

Plaintiffs contend the City’s contribution to ALF constitutes a violation of the Pennsylvania Human Services Code (62 P.S. § 453, *et seq.*); the Pennsylvania Abortion Control Act (18 Pa. C.S. § 3215(c) (1-3), *et seq.*); and, the federal Hyde Amendment.<sup>1</sup> Plaintiffs’ claims are sorely misguided as a matter of law and fact, but this Court need not grapple with the merits because none of these statutes confer a private right of action allowing private litigants, like Plaintiffs, to challenge the City’s contribution to ALF.<sup>2</sup> *See generally* 62 P.S. § 453, *et seq.*; 18 Pa. C.S. § 3215(c)(1-3), *et seq.* And, although courts sometimes look to “some other indicia of legislative intent” in the absence of statutory language expressly creating a private right of action, *Alfred M. Lutheran Distribs. v. A.P. Weilersvacher, Inc.*, 650 A.2d 83, 87 (Pa. Super. Ct 1994) (citations omitted), there is no such indicia here. Indeed, there is not even a whiff of intent enabling private litigants to enforce the statutes at issue.

Pennsylvania courts use a three-part test to determine the existence of an implied right of action, which asks: (1) is the plaintiff part of a class for whose “especial” benefit the statute was

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<sup>1</sup> In the Third Amended Complaint, Plaintiffs removed the citation to the Hyde Amendment in the 2022 Consolidated Appropriations Act. Instead, they broadly allege that Defendants violated the “the Federal Hyde Amendment.” (*See* Third Am. Compl. ¶¶ 22, 27, 49, 56, 63, 66.) This claim is vague and fails to include sufficient specificity for Defendant ALF to discern the precise basis for recovery. Pa. R.C.P. No. 1028(a)(3).

<sup>2</sup> Plaintiffs cannot seek a declaratory judgment where the underlying substantive law does not provide for a private right of action. *See, e.g., Graziano v. Wetzel*, 2021 Pa. Commw. Unpub. LEXIS 570, at \*24 (Pa. Commw. Ct. Nov. 9, 2021) (table) (ruling that plaintiff could not seek a declaration under the Pennsylvania Regulatory Review Act (“RRA”) because the RRA did not contain a private right of action); *cf. Williams v. Nat’l Sch. of Health Tech.*, 836 F. Supp. 273, 281 (E.D. Pa. 1993) (finding where there was no private cause of action, allowing the plaintiffs to proceed with a “declaratory judgment action... is tantamount to allowing a private cause of action”); *In re Comcast Corp. Cable TV Rate Regul.*, No. 93-6628, 1994 U.S. Dist. LEXIS 16044, at \*18-20 (E.D. Pa. Nov. 9, 1994) (“Plaintiffs’ request for declaratory judgment cannot create a private right of action that

enacted; (2) is there an indication of legislative intent to create or deny a remedy; and (3) is an implied cause of action consistent with the underlying purpose of the legislative scheme? *MERSCORP, Inc. v. Del. Cnty.*, 207 A.3d 855, 870 n.14 (Pa. 2019) (citing *Estate of Witthoef v. Kiskaddon*, 733 A.2d 623, 626 (Pa. 1999)). Plaintiffs soundly fail this test. *First*, the statutes were created to limit the use of state and federal funds, not for the benefit of individual taxpayers or organizations. *Second*, Plaintiffs do not and cannot articulate any identifiable desire by the legislature to create a statutory vehicle for private litigants to seek a remedy. *Third*, an implied right of action is unnecessary to fulfill the underlying purpose of the statutes, which are focused on the appropriate *allocation* of funding. *Cf. Alexander v. Sandoval*, 532 U.S. 275, 289 (2001) (“Statutes that focus on the person regulated rather than the individuals protected create ‘no implication of an intent to confer rights on a particular class of persons.’” (citation omitted)).

The primary inquiry in applying these factors is the intent of the legislature. *See Alfred M. Lutheran Distribs.*, 650 A.2d at 87 (“Each of the above factors is not entitled to equal weight, however, and the central focus remains whether the legislature intended to create, either expressly or by implication, a private cause of action.” (citation omitted)). The case *Solomon v. United States Healthcare Systems of Pennsylvania*, is instructive on this point. The *Solomon* court analyzed whether there was a private right of action for violations of the Health Care Act. 797 A.2d 346, 352 (Pa. Super. Ct. 2002). Considering the plain text of the statute and corresponding regulations, the court held “the Act reveals no indication of legislative intent, explicit or implicit, to create a private remedy.” *Id.* at 353. On appeal, the Superior Court agreed.

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does not otherwise exist.”). The court should not imply a private cause of action simply because Plaintiffs have no other remedy available to them.

As in *Solomon*, none of the statutes at issue here, or their corresponding regulations, even hint at legislative intent, explicit or implicit, to create a private remedy for litigants like Plaintiffs to challenge the City’s contribution to ALF.<sup>3</sup> To the contrary, the Pennsylvania Human Services Code focuses on eligibility requirements and restrictions for persons receiving public assistance and suggests that enforcement authority for violations rests with the Pennsylvania Department of Human Services or other government authorities. *See generally* 62 P.S. § 401 *et seq.* The Code specifically tasks the Department of Human Services with “maintaining uniformity in the administration of public welfare, including general assistance, throughout the Commonwealth.” *See* 62 P.S. § 402. And, the Public Assistance Code, within which 62 P.S. § 453 is situated, explicitly authorizes criminal penalties and investigations relating to the misuse of public assistance funds. *See, e.g.*, 62 P.S. §§ 481–485. While these sections do not overtly address 62 P.S. § 453, they suggest that allegedly improper allocations of public assistance funds should be addressed by the government, not private litigants. *See, e.g., Cnty. of Butler v. CenturyLink Commc’ns., LLC*, 207 A.3d 838, 852 (Pa. 2019) (finding no private right of action where the Legislature “provided sufficient indicia evincing its intention to centralize enforcement authority in the relevant state agency”).

The Pennsylvania Abortion Control Act similarly indicates that enforcement authority for that statute lies with the State Board of Medical Education and Licensure, rather than private

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<sup>3</sup> Plaintiffs may argue that *Palmiter v. Commonwealth Health Systems, Inc.*, supports finding a private right of action even though not specifically delineated under the statute. 260 A.3d 967, 976 (Pa. Super. Ct. 2021). *Palmiter*, however, is roundly distinguishable. First, the litigation was initiated by a terminated employee, and second, the legislation [Medical Marijuana Act] “delineates the rights afforded employees who are certified [marijuana] users, but also sets forth the rights of employers to discipline employees who are in violation of the terms of certified use.” *Id.* at 975. Unlike *Palmiter*, the statutes relied upon by Plaintiffs in the instant matter do not outline specific benefits or rights allowing them to challenge the City’s contributions to ALF.

litigants. *See, e.g.*, 18 Pa. C.S. § 3219; *cf. Gutherman v. Ne. Women’s Ctr., Inc.*, No. 87-8150, 1989 U.S. Dist. LEXIS 7498, at \*8 (E.D. Pa. June 30, 1989) (holding private litigants lacked standing to challenge a contract under the Abortion Control Act, which is “to be enforced by the State Board of Medical Education and Licensure” (citation omitted)). Sections of the Pennsylvania Abortion Control Act, part of the Commonwealth’s criminal code, also provide for certain criminal and civil penalties and permit the Pennsylvania Department of Health to levy civil penalties against providers who violate the statute’s restrictions. *See generally* 18 Pa. C.S. §§ 3205(c), 3213(f), 3217, 3218. Like these sections, purported violations of 18 Pa. C.S. § 3215(c) should be addressed by a governmental entity, not private litigants.

Finally, the Hyde Amendment is an appropriations bill for the U.S. Department of Health and Human Services. Plaintiffs do not specify which portion of the Hyde Amendment they seek to enforce in their Third Amended Complaint, nor do they point to any language in the text of the Amendment indicating that Congress proposed to give taxpayers or associations a right of action to enforce this Amendment. And, while some courts have ruled that certain Medicaid recipients have a private right of action to sue for purported violations of the Medicaid Act (which is modified by the Hyde Amendment), *see, e.g., Planned Parenthood S. Atl. v. Kerr*, 27 F.4th 945, 954 (4th Cir. 2022) (authorizing plaintiffs to sue government defendants under 42 U.S.C. § 1983 to enforce the Medicaid Act), no court has found a similar right of action for others, *cf. Tarsney v. O’Keefe*, 225 F.3d 929, 939 (8th Cir. 2000) (holding taxpayers lacked standing to enforce the Medicaid statute because “they are not the intended beneficiaries of the amendment since they are not seeking reimbursement or medical services” (citation omitted)).

Further supporting the lack of legislative intent for a private remedy under any of these statutes is that both the Pennsylvania and federal legislatures regularly create private statutory



causes of action. *See, e.g., Alfred M. Lutheran Distributions*, 650 A.2d at 88 (citing examples). “As made plain by these other statutes, the General Assembly [and Congress] clearly know[] how to draft legislation so as to grant an individual the right to maintain a private statutory cause of action.” *Id.* The fact that the General Assembly and Congress omitted a similar provision from each of these statutes weighs heavily against finding a private right of action in the instant litigation.

Even if there were a private right of action under any of these statutes – which there is not – private litigants, such as Plaintiffs, are clearly not the designated statutory beneficiaries. *Cf. Williams v. City of Phila.*, 164 A.3d 576, 593 (Pa. Commw. Ct. 2017) (explaining that some courts “have recognized an implied private right of action to enforce provisions of the Food Stamp Act, but the defendants in all of these cases were public officials, and the plaintiffs were all individuals who had been denied Food Stamp benefits” (citing *Posr v. City of New York*, No. 11 Civ 986 (PGG), 2012 U.S. Dist. LEXIS 137672, at \*26 (S.D.N.Y. 2012))); *Tarsney*, 225 F.3d at 939 (holding taxpayers were not intended beneficiaries of Medicaid statute as modified by the Hyde Amendment); *Gutherman*, 1989 U.S. Dist. LEXIS 7498, at \*8 (holding private litigants did not have standing to challenge contract under the Abortion Control Act). In other words, although an implied right of action may exist where the plaintiff is part of a class for whose benefit the statute was enacted, Plaintiffs here did not and cannot cite any intended statutory benefit to them.<sup>4</sup>

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<sup>4</sup> To the extent Plaintiffs rely on *SEIU Healthcare Pennsylvania v. Commonwealth*, 104 A.3d 495, 508 (Pa. 2014), it is inapt. In *SEIU*, the plaintiffs – nurses, nurses’ union representatives, and five state legislators – challenged the Commonwealth’s decision to close health centers and furlough nursing staff. In this case, Plaintiffs seek to personally regulate the City’s expenditures and enjoin ALF, the recipient of these funds.

**C. Preliminary Objection Pursuant to Pa. R. Civ. P. 1028(a)(4): Failure to State a Claim under the Pennsylvania Constitution**

Plaintiffs' Third Amended Complaint fails to state a claim under Articles III or IX of the Pennsylvania Constitution, which apply only to appropriations, not expenditures or the executive's administration of appropriated funds. The City's contribution to ALF was an expenditure, not an appropriation, and the Complaint fails to allege any facts to the contrary.

An appropriation is defined in part as "the legislative designation of a certain amount of money being set aside, allotted or assigned for a specific purpose...." *Common Cause v. Commonwealth*, 668 A.2d 190, 205 (Pa. Commw. Ct. 1995); *see also Commonwealth v. Perkins*, 21 A.2d 45, 48 (Pa. 1941) (defining appropriations as "a designation of money raised by taxation to be withdrawn from the public treasury for a specifically designated purpose."). Articles III and IX limit the legislature's ability to appropriate funds, but once appropriated, the executive can lawfully spend the set aside funds. *Common Cause*, 668 A.2d at 206 ("[W]hile the legislature is free to appropriate, subject of course to the constitutional procedures and prohibitions...the purposes to which appropriated funds are to be devoted, the legislative branch may not micro-manage the executive's power to administer appropriated funds by earmarking the non-governmental recipients thereof.").

In fiscal year 2022, City Council appropriated from the General Fund \$16,069,700 to the Office of the Director of Finance for the category of "Contributions, Indemnities and Taxes." (Third Am. Compl. Ex. A at Section V, ¶ 2.34.)<sup>5</sup> This category includes contributions – that is, expenditures – to non-profit organizations such as ALF. (*See City Defs.' Prelim. Obj. to Pls.' First Am. Compl. at 5*); *see also Common Cause*, 668 A.2d at 206 (holding that the legislature may not

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<sup>5</sup> Plaintiffs do not allege that City Council's appropriation to the Office of the Director of Finance was unlawful.

appropriate funds directly to private entities, but the recipients of those appropriated funds may choose to direct the funds to private entities in the form of expenditures).

In addition, the Constitutional provisions upon which Plaintiffs hang their hat are inapplicable to the funds ALF received.<sup>6</sup> *First*, Article III, § 29 states that 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.” The cases interpret this provision as dealing with situations in which “public money may properly be expended in the course of educational activities having a connection with church-related institutions.” *Rhoades v. Sch. Dist. of Abington Twp.*, 226 A.2d 53, 69 (Pa. 1967) (Roberts, J., concurring).<sup>7</sup> Article III does not, as Plaintiffs would have this Court believe, prohibit appropriations to nonsectarian and nondenominational institutions or persons for charitable, educational, or benevolent purposes. *See Busser v. Snyder*, 128 A. 80 (Pa. 1925). *Second*, Article IX, § 9 “was designed to prevent municipal corporations from joining as stockholders in hazardous business ventures, loaning. . . credit for such purposes, or granting gratuities to persons or associations where not in pursuit of some governmental purpose.” *Downing v. Sch. Dist. of City of Erie*, 147 A. 239, 241 (Pa. 1929).<sup>8</sup> The purpose of the section “was not to prevent the municipal corporation from entering into

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<sup>6</sup> Article III, § 30 focuses on the requirements for appropriations “to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools...except by a vote of two-thirds of all the members elected to each House.” Clearly, ALF is not a “charitable or educational institution” as contemplated in Article III, and application of it to the facts of this case would inexorably require approval of two-thirds of the legislature for every contribution made to a non-profit entity.

<sup>7</sup> The case cites Art. III, § 18 of the Pennsylvania Constitution, which is the prior iteration of Art. III, § 29 and contains identical language as the modern provision. (*See* Amendment of May 16, 1967 Renumbered as Art. III. § 29).

<sup>8</sup> The case cites Art. IX, § 7 of the Pennsylvania Constitution, which is the prior iteration of Art. IX, § 9 and contains the same substantive language as the modern provision.

engagements to carry out a proper governmental purpose, though the incurring of indebtedness results.” *Id.* at 240.

**D. Preliminary Objection Pursuant to Pa. R. Civ. P. 1028(a)(5): Lack of Standing.**

Plaintiffs lack standing to pursue any claims against ALF under the Pennsylvania Human Services Code, Abortion Control Act, or the federal Hyde Amendment. A party “seeking judicial resolution of a controversy . . . must establish as a threshold matter that he [or she] has standing to maintain the action.” *Fumo v. City of Phila.*, 972 A.2d 487, 496 (Pa. 2009). The core inquiry into standing focuses on whether “the individual initiating the legal action has been ‘aggrieved.’” *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 659 (Pa. 2005) (citations omitted). To establish that he or she has been ‘aggrieved,’ a litigant must “show that he [or she] has a substantial, direct and immediate interest in the outcome of the litigation.” *See City of Phila. v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003) (quoting *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003)). Neither the Kuhars nor the Pro-Life Coalition can satisfy these threshold requirements.

**1. The Kuhars Fail to Satisfy the Requirements for Taxpayer Standing.**

The Kuhars make no effort to identify any substantial, direct, and immediate interest in the outcome of this litigation. Instead, they rely only on “taxpayer standing,” a narrow doctrine that allows taxpayers to file lawsuits in certain instances when they cannot meet traditional standing requirements. (*See* Third Am. Compl. ¶ 25.) In Pennsylvania, taxpayers can only establish “taxpayer standing” to challenge a governmental act if:

(1) the governmental action would otherwise go unchallenged; (2) those directly and immediately affected by the complained-of matter are beneficially affected and not inclined to challenge the action; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other persons are better situated to assert the claim.

*Fumo*, 72 A.2d at 504 (quoting *Stilp v. Commonwealth*, 940 A.2d 1232, 1233 (Pa. 2007)); *see also In re Application of Biester*, 409 A.2d 848, 852 (Pa. 1979). Each of these requirements must be satisfied to establish taxpayer standing. *Id.*

The Kuhars acknowledge the relevant legal standard in their Third Amended Complaint by regurgitating its requirements. (*See* Third Am. Compl. ¶¶ 19–25); *see also, e.g., Atiyeh*, 2013 Pa. Commw. Unpub. LEXIS 416, at \*19 (“Here, the Petition simply lists the five established criteria without description or explanation of how Petitioners fall within the *Biester* taxpayer exception. Therefore, the allegations of the Petition are insufficient to confer taxpayer standing upon Petitioners under the *Biester* standard.”). But, they do not and cannot allege facts to satisfy any of the five requirements. The Kuhars’ conclusory statements that the City’s contribution will otherwise go unchallenged, that redress through other channels is unavailable, and that no other persons are better situated to assert the claims set forth herein is insufficient. (*See* Third Am. Compl. ¶¶ 20, 23–24.) And the Kuhars’ bald statement regarding the last element is demonstrably false; as explained in detail above, all of the statutes at issue contemplate some type of government enforcement or interest in accounting for the allocation and expenditure of state and federal funds. Indeed, the state and federal agencies responsible for overseeing the allocation and expenditure of such funds would seemingly have a greater interest in challenging the City’s contribution to ALF than Plaintiffs, regardless of whether they have yet done so. *See, e.g., Stilp*, 940 A.2d at 1234–35 (ruling that Auditor General was better situated than taxpayer to seek a declaratory judgment that he had additional audit power); *see also, e.g., Fumo*, 972 A.2d at 506 (“[T]he fact that more appropriate governmental parties have not elected to challenge a particular governmental decision cannot be enough on its own to generate taxpayer standing – particularly where those executive

authorities are not ‘beneficially affected’ by the decision.”). As a result, the Kuhars’ assertion that they are in the best position to pursue these claims is entirely untenable.

## **2. The Pro-Life Coalition Fails to Satisfy the Requirements for Associational Standing.**

The Pro-Life Coalition fares no better. Under Pennsylvania law, “[a]n association [only] has standing to bring an action on behalf of its members where at least one of its members is suffering an immediate or threatened injury as a result of the challenged action.” *See Americans for Fair Treatment, Inc. v. Phila. Fedn. of Teachers*, 150 A.3d 528, 533 (Pa. Commw. Ct. 2016) (citations omitted). To establish standing on this basis, “the plaintiff organization must allege sufficient facts to show that at least one of its members has a substantial, direct, and immediate interest.” *Id.* (citations omitted). Where, as here, “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.” *Id.* (citing *Armstead v. Zoning Bd. of Adjustment of the City of Phila.*, 115 A.3d 390, 399–400 (Pa. Commw. Ct. 2015) and *Concerned Taxpayers of Allegheny Cnty. v. Commonwealth*, 382 A.2d 490, 494 (Pa. Commw. Ct. 1978)).

As argued, the Kuhars themselves fail to allege any immediate interest in this case. They seek only to proceed as taxpayers, but cannot meet the requirements for taxpayer standing, which associational standing does not cure. *See Americans for Fair Treatment*, 150 A.3d at 537–38 (ruling that non-profit organization lacked associational standing to sue on behalf of taxpayer members who could not satisfy taxpayer standing requirements); *see also Concerned Taxpayers of Allegheny Cnty.*, 382 A.2d at 493-94 (“Although an association or, in this case, a nonprofit corporation, may assert the interests of its members, and taxpayers may [in narrow circumstances] challenge alleged unlawful expenditures, the requirements of a direct, immediate, and substantial injury remain.”).

Finally, the Pro-Life Coalition does not otherwise explain how any of its members are aggrieved by the City’s contribution to ALF, and cannot identify any harm the organization itself will suffer in connection with the City’s contribution, other than noting that “the outcome of this case is directly related to its mission.” (Third Am. Compl. ¶ 11.) The law is clear – the Pro-Life Coalition “cannot establish standing simply by virtue of its organizational purpose.” *See Armstead*, 115 A.3d at 399–400 (citing *Spahn v. Zoning Bd. of Adjustment of the City of Phila.*, 977 A.2d 1132, 1152 (Pa. 2008)).

**VI. RELIEF**

For the foregoing reasons, ALF respectfully requests this Court strike and dismiss with prejudice all counts of the Third Amended Complaint lodged against it.

Respectfully submitted,

Dated: October 13, 2022

By: /s/ Aliza R. Karetnick

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I caused the foregoing Opposition to Plaintiffs' Third Amended Motion for Special and Preliminary Injunction to be served, together with all papers in support thereof, upon the following parties in the manners indicated below:

via electronic filing:

*Attorneys for Plaintiffs*

*Attorneys for Defendant, City of Philadelphia*

Dated: October 13, 2022

By: /s/ Aliza R. Karetnick

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<hr/>	:	COURT OF COMMON PLEAS
CHARLES P. KUHAR, SR., <i>et al.</i> ,	:	PHILADELPHIA COUNTY
Plaintiffs,	:	
v.	:	August Term 2022
	:	
CITY OF PHILADELPHIA, <i>et al.</i> ,	:	No. 220801916
	:	
Defendants.	:	
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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, upon consideration of the Plaintiffs' Third Amended Motion for Special and Preliminary Injunction and the responses thereto, it is hereby ORDERED that Plaintiffs' Motion is DENIED.

BY THE COURT:

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