

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. _____ MM 2020

**THE HONORABLE TOM WOLF, GOVERNOR OF THE
COMMONWEALTH OF PENNSYLVANIA,**

Petitioner

v.

**SENATOR JOSEPH B. SCARNATI, III,
SENATOR JAKE CORMAN, and SENATE
REPUBLICAN CAUCUS,**

Respondents

**GOVERNOR WOLF'S APPLICATION FOR THE COURT TO
EXERCISE JURISDICTION PURSUANT TO ITS KING'S BENCH
POWERS AND/OR POWERS TO GRANT EXTRAORDINARY RELIEF**

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INTRODUCTION

Separation of powers and checks-and-balances among the three co-equal branches of government are not merely matters of convenience or of governmental mechanism. As this Court and the United States Supreme Court have recognized, these are bedrock features of our tripartite system to implement a fundamental insight upon which our republic is founded: concentration of power in the hands of a single branch is a threat to liberty.

Respondents Senate President Pro Tempore Joseph B. Scarnati, III, Senate Majority Leader Jake Corman, and the Senate Republican Caucus, however, seek to circumvent this constitutional structure by ignoring the Presentment Clause, Article III, Section 9, and initiating a mandamus action in the Commonwealth Court. In so doing, they seek to rewrite the Pennsylvania Constitution and enlarge the authority of the Legislature to act unilaterally. Their belief that the Legislature's authority to act is somehow immune from the strictures of checks-and-balances is without limiting principle. In addition, that view has no grounding in the history or text of our Constitution, and indeed is directly contrary to this Court's jurisprudence.

Under the present circumstances, Respondents' attempt to circumvent the Constitution has real world consequences for the Commonwealth's ability to address the ongoing COVID-19 pandemic. The constitutional issues presented require this Court's immediate attention.

STATEMENT OF JURISDICTION

For the reasons discussed below, the Court has jurisdiction to take this case through its King's Bench or Extraordinary Jurisdiction. *See* PA. CONST. art. V, § 2(a), 42 Pa.C.S. § 502; 42 Pa.C.S. § 726; *Commonwealth v. Williams*, 129 A.3d 1199, 1206 (Pa. 2015).

STATEMENT OF QUESTIONS INVOLVED

- I. Given the immediate and significant importance of the constitutional questions raised by this case, should the Court assume jurisdiction over this action pursuant to its King's Bench or Extraordinary Jurisdiction?

Suggested answer: Yes.

- II. Does Article III, Section 9 of the Pennsylvania Constitution require the General Assembly to present its Concurrent Resolution (H.R. 836) to the Governor before it may have the force of law?

Suggested answer: Yes.

STATEMENT OF THE CASE

What began as two presumptive positive cases of COVID-19 in Pennsylvania on March 6, 2020, has grown to 77,999 cases and 6,162 deaths in little more than three months.¹ Throughout the United States, there are nearly 2 million confirmed cases of COVID-19, and more than 112,967 people have died from this pandemic so far.²

On March 6, 2020, Governor Wolf signed a Proclamation of Disaster Emergency pursuant to the Emergency Management Services Code (Emergency Code), 35 Pa.C.S. § 7101, *et seq.* Appendix A. This emergency proclamation allowed the Governor to issue executive orders “to protect the citizens of the Commonwealth from sickness and death[.]” *Friends of Danny DeVito v. Wolf*, 68 MM 2020, 2020 WL 1847100, at *19 (Pa. Apr. 13, 2020).

These measures have been effective. Originally, health experts projected that, without social distancing and enforced mitigation efforts, 1.7 million Americans

¹ “COVID-19 Data for Pennsylvania,” Pa. Dept. of Health, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx> (last visited 6/12/20).

² “Cases in the U.S.,” Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html?fbclid=IwAR2YGdSiJ1zk6mktakCLsCqjU-tEq9XsvLMK2fGG0vmHPIsAdMgl8C13cOU> (last visited 6/12/20)

could die from COVID-19.³ Due to the preventative measures put in place and the orders enforcing social distancing by state governments, the number of deaths so far is 112,967. While still a tragically high death toll, studies show the shutdown orders across the Nation have prevented approximately 60 million COVID-19 infections.⁴

The Commonwealth is in the process of a phased reopening.⁵ This carefully structured reopening, crafted in partnership with Carnegie Mellon University and using the Federal government's Opening Up America Guidelines, is data-driven and reliant upon quantifiable criteria for a targeted, evidence-based, regional approach.⁶ However, while the Governor's actions have ameliorated the exponential rise of

³ Chas Danner, "CDC's Worst-Case Coronavirus Model: 214 Million Infected, 1.7 Million Dead," *New York Magazine*, <https://nymag.com/intelligencer/2020/03/cdcs-worst-case-coronavirus-model-210m-infected-1-7m-dead.html> (updated 3/13/20).

⁴ Joel Achenback, et al., "Shutdowns prevented 60 million coronavirus infections in the U.S., study finds," *The Washington Post*, <https://www.washingtonpost.com/health/2020/06/08/shutdowns-prevented-60-million-coronavirus-infections-us-study-finds/> (6/8/20).

⁵ "Responding to COVID-19 in Pennsylvania," Commonwealth of Pennsylvania Website, <https://www.pa.gov/guides/responding-to-covid-19/#PhasedReopening> (last visited 5/27/20).

⁶ "Process to Reopen Pennsylvania," Governor of Pennsylvania's Website, <https://www.governor.pa.gov/process-to-reopen-pennsylvania/> (last visited 5/27/20).

COVID-19 cases in Pennsylvania, the pandemic continues to infect hundreds of Pennsylvanians every day.⁷

Pennsylvania has the 7th most cases of COVID-19 in the country.⁸ As explained by Dr. Samir Bhatt of the Imperial College London, senior author of a recent study examining the spread of COVID-19, “This is just the beginning of the epidemic: we’re very far from herd immunity. . . . The risk of a second wave happening if all interventions and precautions are abandoned is very real.”⁹ This reality is revealed by increasing case numbers in other states; at least a dozen states have seen the number of COVID-19 hospitalizations increase since Memorial Day.¹⁰ For example, Arizona’s premature opening of businesses on May 15, 2020, resulted in a 115% spike in COVID-19 cases. Since May 15, ventilated COVID-19 patients

⁷ “COVID-19 Data for Pennsylvania,” Pa. Dept. of Health, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx> (last visited 6/10/20).

⁸ “Cases in the U.S.,” Center for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited 6/12/20).

⁹ Joel Achenback, et al., “Shutdowns prevented 60 million coronavirus infections in the U.S., study finds,” The Washington Post, <https://www.washingtonpost.com/health/2020/06/08/shutdowns-prevented-60-million-coronavirus-infections-us-study-finds/> (6/8/20).

¹⁰ Madeline Holcombe, “12 states see rising Covid-19 hospitalizations as Arizona asks hospitals to activate emergency plans,” CNN, <https://www.cnn.com/2020/06/10/health/us-coronavirus-wednesday/index.html> (6/10/20).

have quadrupled in that state, forcing Arizona to activate coronavirus emergency plans.¹¹

Because the COVID-19 disaster has not yet ended, on June 3, 2020, the Governor renewed the Proclamation of Disaster Emergency. Appendix B.

On June 9, 2020, both the Pennsylvania Senate and House of Representatives adopted a concurrent resolution, numbered H.R. 836 (PN 3910) (the Concurrent Resolution or H.R. 836), seeking to terminate the disaster emergency. Appendix C. The Concurrent Resolution directs the Secretary of the Senate to notify Governor Wolf of the General Assembly's adoption of H.R. 836 with the directive that Governor Wolf issue an executive order or proclamation ending the state of disaster emergency. *See* 6/10/20 letter, Appendix D. The General Assembly refuses to present the Concurrent Resolution to the Governor for his approval or veto, as required by Article III, Section 9 of the Pennsylvania Constitution.

The next day, Respondents Senate President Pro Tempore Joseph B. Scarnati, III, Senate Majority Leader Jake Corman, and the Senate Republican Caucus

¹¹ Andrew Hay, "Arizona calls for emergency plan as COVID-19 spikes after reopening," Reuters, <https://www.reuters.com/article/us-health-coronavirus-usa-arizona/arizona-calls-for-emergency-plan-as-covid-19-spikes-after-reopening-idUSKBN23H03K> (6/9/20); *see also*, Soo Kim, "Arizona's Spike in Coronavirus Cases 'Definitely Related' to Reopening, Says Former State Health Director," Newsweek, <https://www.newsweek.com/arizonas-spike-coronavirus-cases-definitely-related-reopening-says-former-state-health-1509549> (6/9/20).

(collectively the Caucus) filed a Petition for Review in the Nature of a Complaint in Mandamus in the Commonwealth Court. The Caucus seeks a court order forcing the Governor to file a proclamation ending the state of disaster emergency.

In contravention to the Constitution itself, this resolution seeks to upend the Commonwealth's carefully planned reopening process, a move that experts have declared will further hurt our state economy and cost lives.¹² Additionally, if the emergency declaration were to end, the following protections, *inter alia*, would also end:

- Pennsylvania will lose the ability to use all Commonwealth personnel and resources necessary to combat the pandemic. 35 Pa.C.S. § 7301(d) and (f)(2).
- The Pennsylvania Emergency Management Agency (PEMA) would lose its authority to assign other agencies to respond to the disaster. 35 Pa.C.S. § 7301(f)(3).
- Due to the lack of access to disaster funding, long-term care facilities and food banks would no longer be able to use National Guard support to supplement staff, placing those most susceptible to death from COVID-19 at increased risk. 72 P.S. § 1508.

¹² See Heidi Shierholz, "When is the right time to reopen the US economy? Our panelists' verdict," The Guardian, <https://www.theguardian.com/commentisfree/2020/apr/16/when-is-the-right-time-to-reopen-the-us-economy-coronavirus-our-panelists-verdict> (4/16/20); Ross Kerber, et al., "Reopening economy too early could backfire for humans and markets, investors say," Reuters, <https://www.reuters.com/article/us-health-coronavirus-trump-investors-idUSKBN21B19E> (3/24/20). A majority of Americans are "concerned restrictions on public activities will be lifted 'too quickly.'" Pew Research Center, <https://www.people-press.org/2020/04/16/covid-19-and-the-countrys-trajectory/> (4/16/20).

- Active Pennsylvania National Guard, Department of Defense, and retired medical professionals would no longer be permitted to practice and assist Pennsylvania's hospitals, medical and long-term care facilities. 35 Pa.C.S. § 7301(f)(1).
- Burdensome eligibility requirements for more than a million Unemployment Compensation claimants would immediately go back into effect and employers would no longer receive an automatic relief from charges. 43 P.S. §§ 919.102(b) and (c) and 919.103(c) and (d).
- Public utility assistance for thousands of families and individuals would end, leaving people without water or electricity. 35 Pa.C.S. § 7301; 66 Pa.C.S. § 1501; 52 Pa.Code §§ 3.1, 3.2.
- The suspension of the Procurement Code would end, making the quick procurement of vital supplies necessary for contact tracing and testing extremely difficult. 35 Pa.C.S. § 7308(a).

Thus, should this attempt at unilateral legislative action succeed, it would have very real-world consequences and inhibit the Commonwealth's ability to protect the health and lives of its citizens.

BASIS FOR KING'S BENCH OR EXTRAORDINARY JURISDICTION

This case presents a constitutional question of immediate and significant importance. The Caucus seeks to circumvent the constitutional structure of our government in order to unilaterally end the Proclamation of Disaster Emergency. This unconstitutional action by the General Assembly has sparked confusion among the public about whether the regulatory structure designed to address the pandemic remains in place.

Two days ago, the Caucus filed a petition for review in the Commonwealth Court seeking to force the Governor to issue an executive order proclaiming the end of the COVID-19 disaster emergency in Pennsylvania. *See Senator Scarnati v. Wolf*, 344 MD 2020. They maintain that the General Assembly can unilaterally force the Governor to end the emergency proclamation through a Concurrent Resolution that need not be presented to the Governor in accordance with Article III, Section 9 of the Pennsylvania Constitution. They also maintain that the Pennsylvania Constitution confers on the General Assembly the power to suspend laws at will, without executive presentment or involvement. These positions represent an enormous expansion of the General Assembly's power and are directly contrary to our Constitution.

Because this case raises fundamental questions regarding the interplay between the Legislative and Executive branches, immediate consideration of these

issues by this Court through its King's Bench or Extraordinary Jurisdiction is warranted.

First, the Pennsylvania Supreme Court may assume, at its discretion, plenary jurisdiction over a matter of immediate public importance that is pending before another court of the Commonwealth. See 42 Pa.C.S. § 726. Second, this Court may, at its discretion, employ its inherent King's Bench jurisdiction, which allows it "to exercise power of general superintendency over inferior tribunals even when no matter is pending before a lower court." *Bd. of Revisions of Taxes, City of Philadelphia v. City of Philadelphia*, 4 A.3d 610, 620 (Pa. 2010). This latter jurisdiction arises from the court's authority as "supreme judicial power of the Commonwealth" under the Pennsylvania Constitution, PA. CONST. art. V, § 2(a), and its statutory authority to "exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722." 42 Pa.C.S. § 502.

This Court in exercising its discretion regarding extraordinary jurisdiction considers the immediacy of the issue raised, *Bd. of Revisions of Taxes*, 4 A.3d at 620; that is, whether there is some intervening need to expedite the proceeding and truncate the normal judicial process. *Commonwealth v. Morris*, 771 A.2d 721, 731 (Pa. 2001). "King's Bench authority is generally invoked to review an issue of public

importance that requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law.”

Commonwealth v. Williams, 129 A.3d 1199, 1206 (Pa. 2015).

As this Court stated in *In re Bruno*, 101 A.3d 635, 671 (Pa. 2014):

[T]he Court cannot suffer the deleterious effect upon the public interest caused by delays incident to ordinary processes of law, or deficiencies in the ordinary process of law making those avenues inadequate for the exigencies of the moment. In short, King’s Bench allows the Supreme Court to exercise authority commensurate with its “ultimate responsibility” for the proper administration and supervision of the judicial system.

Id. at 670.

In *Friends of Danny DeVito*, this Court recently exercised King’s Bench jurisdiction in a challenge by private citizens to Governor Wolf’s authority to issue an executive order pursuant to the Emergency Code.¹³ *Friends of Danny DeVito*, 2020 WL 1847100, at *8. If the challenge in *Friends of Danny DeVito* warranted this Court’s assumption of jurisdiction, then it is certainly warranted here. This case raises not only important questions regarding the Governor’s authority to issue

¹³ This Court concluded in *Friends of Danny DeVito* regarding its jurisdiction as follows: “We agree that this case presents issues of immediate and immense public importance impacting virtually all Pennsylvanians and thousands of Pennsylvania businesses, and that continued challenges to the Executive Order will cause further uncertainty. This Court hereby invokes its King’s Bench powers to decide the statutory and constitutional challenges to the Executive Order presented in Petitioners’ Emergency Application.” *Id.* at *8.

executive orders, but also important questions regarding the separation of powers under the Pennsylvania Constitution.

The exigencies of the moment require that this Court exercise its jurisdiction. This conflict between the Legislative and Executive branches is causing great confusion among the public as to whether the disaster continues and whether certain executive orders issued under the Emergency Code remain in place. This confusion is life-threatening, as individuals look to our government for guidance on how to protect themselves and their families from this deadly pandemic. Immediate action by this Court is essential to end this confusion.

The Governor and the Caucus agree as to the importance of these issues and the importance of deciding them expeditiously. The Caucus below sought expedited review, as there were no disputes of fact. Caucus Application for Expediated Summary Relief, at ¶ 4.¹⁴

Due to the importance of the issues presented and the need for immediate resolution, Governor Wolf respectfully requests that this Court assume King's Bench or Extraordinary Jurisdiction.¹⁵

¹⁴ On June 10, 2020, the Caucus also filed a Brief in Support of Application for Expedited Summary Relief in the Commonwealth Court. We will cite that brief as "Caucus Br."

¹⁵ Currently, a response is due in the Commonwealth Court to the Caucus's application for summary relief by June 18, 2020.

ARGUMENT FOR DECLARATORY RELIEF

The Court should grant the Governor relief declaring that in the absence of presentment to the Governor under Article III, Section 9 of the Pennsylvania Constitution, the General Assembly's Concurrent Resolution (H.R. 836) is a legal nullity. The purpose of the Declaratory Judgments Act (DJA) "is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and [it] is to be liberally construed and administered." 42 Pa.C.S. § 7541. Under the DJA, "any person ... whose rights, status, or other legal relations are affected by a statute ... may have determined any question of construction ... arising under the ... statute ... and obtain a declaration of rights, status, or other legal relations thereunder." 42 Pa.C.S. § 7533. Given the clear language of Article III, Section 9, declaratory relief should be granted here.

I. Absent presentment to the Governor pursuant to Article III, Section 9 of the Constitution, the Concurrent Resolution has no legal effect.

In order "to maintain the independence of the three branches of government, our system embodies a separation of powers." *Jefferson Cty. Court Appointed Employees Ass'n v. Pennsylvania Labor Relations Bd.*, 985 A.2d 697, 706 (Pa. 2009) (citing *Loving v. United States*, 517 U.S. 748, 756 (1996)). The separation of powers and checks-and-balances are not merely matters of "convenience or of governmental mechanism." *Seitzinger v. Commonwealth*, 25 A.3d 1299, 1305 (Pa. Cmwlth. 2011).

“The allocation of these powers among the three branches of government serves to avert the danger inherent in the concentration of power in any single branch or body because ‘[t]he accumulation of all powers, legislative, executive, and judicial, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.’” *Jefferson Cty.*, 985 A.2d at 706-07 (quoting *Beckert v Warren*, 439 A.2d 638, 642 (Pa. 1981), citing *The Federalist* No. 47 (James Madison)); *see also*, *Clinton v. City of New York*, 524 U.S. 417, 450 (1998) (Kennedy, J., concurring) (“concentration of power in the hands of a single branch is a threat to liberty.”).

One expression of this tripartite system in the Pennsylvania Constitution is Article III, Section 9. This Presentment Clause¹⁶ states:

Every order, *resolution* or vote, to which the *concurrence of both Houses may be necessary*, except on the question of adjournment, *shall be presented to the Governor* and *before it shall take effect* be approved by him, or being disapproved, shall be repassed by two-thirds of both Houses according to the rules and limitations prescribed in case of a bill.

¹⁶ This provision was formerly located at Article III, Section 26. It was renumbered but not otherwise changed in 1967. Identical provisions were contained in the Constitution of 1790 in Article I, Section 23, and in the Constitution of 1838 in Article I, Section 24.

PA. CONST. Art. III, § 9 (emphasis added).¹⁷ As an interpretative matter, “the polestar of constitutional analysis” begins with the plain language of the provision. See *In re Bruno*, 101 A.3d at 659.

Looking at the plain language of the Presentment Clause, it applies, explicitly, to “every” concurrent “resolution” *except* one “on the question of adjournment.” And the Clause states, unambiguously, that concurrent resolutions “shall be presented to the Governor” for approval or disapproval. The Concurrent Resolution at issue, H.R. 836, has nothing to do with adjournment. Thus, it needed to be presented to the Governor. It was not. *Prima facie*, then, the General Assembly’s failure to comply with the Presentment Clause renders the Concurrent Resolution a legal nullity. See *Commonwealth v. Sessoms*, 532 A.2d 775, 782 (Pa. 1987) (“[U]nder our Constitution the legislative power, even when exercised by concurrent resolution, must be subject to gubernatorial review”).

¹⁷ Interestingly, this Constitutional command is echoed in, and reinforced by, the Legislative Procedures Manual, one section of which states: “Every order, resolution or vote, to which the concurrence of both houses is necessary, except on the question of adjournment and except joint resolutions proposing or ratifying constitutional amendments, is presented to the Governor and before it takes effect is approved by him or, being disapproved, may be repassed by two-thirds of both houses according to the rules and limitations prescribed in case of a bill.” See 101 Pa. Code § 9.245.

II. The Caucus attempts to avoid the clear terms of the Presentment Clause.

The General Assembly refuses to comply with the Presentment Clause. In defending this unconstitutional refusal, the Caucus misstates and misapplies this Court's caselaw, including the seminal case on this issue. It also misrepresents the nature and effect of the emergency proclamation and seeks to interpret the provisions of the Pennsylvania Constitution in isolation.

In *Russ v. Commonwealth*, 60 A. 169 (Pa. 1905), this Court explained the difference between resolutions that solely involve internal matters within the General Assembly and those that reach beyond the walls of its two chambers. That case involved entertainment expenses incurred by legislators to attend the dedication of a monument in memory of President Ulysses Grant. "If both houses had simply resolved to attend the exercises in a body, and to adjourn for a day for that purpose, it would have been no concern of the Governor, and they could have gone with or without his approval[.]" *Russ*, 60 A. at 171. "[B]ut if more was embodied in the resolution, amounting practically to an enactment authorizing special committees of the Senate and House to act on behalf of the state in making suitable the recognition which both branches of the Legislature had agreed upon, it was for the Governor to approve or disapprove." *Id.* Because the concurrent resolution reached beyond the internal affairs of the General Assembly, it was "a matter in the nature of legislation." *Id.*

Following *Russ*, the seminal case addressing the issue at hand is *Commonwealth v. Sessoms*, 532 A.2d 775 (Pa. 1987). In that case, the General Assembly enacted a law creating the Pennsylvania Commission on Sentencing to promulgate guidelines to be considered by courts when imposing sentences. *Id.* at 776. The enabling statute provided that “[t]he General Assembly may by concurrent resolution reject in their entirety any initial or subsequent guidelines adopted by the commission within 90 days of their publication in the Pennsylvania Bulletin[.]” *Id.* at 776-77 (quoting the former version of 42 Pa.C.S. § 2155(b)).¹⁸ After the Commission published proposed guidelines, the General Assembly passed a concurrent resolution rejecting the guidelines and directing the Commission to revise and resubmit. *Id.* at 777. “This resolution was not presented to the governor for his review.” *Id.* The Commission subsequently passed a second set of guidelines, which were not rejected.

This Court in *Sessoms* determined that rejection of the first set of guidelines through concurrent resolution, without presentment to the Governor, violated Article

¹⁸ Notably, the current § 2155(b) states “*Subject to gubernatorial review pursuant to section 9 of Article III of the Constitution of Pennsylvania*, the General Assembly may by concurrent resolution reject in their entirety any guidelines, risk assessment instrument or recommitment ranges adopted by the commission within 90 days of their publication in the Pennsylvania Bulletin pursuant to subsection (a)(2).” 42 Pa.C.S. § 2155(b) (emphasis added). The General Assembly amended this statute to explicitly comply with Article III, Section 9.

III, Section 9. *Id.* at 782. “Because the rejection resolution here was not presented to the Governor, it should not have taken effect to block the implementation of the guidelines as initially approved by the Commission.” *Id.* And because the second set of guidelines “were the product of a rejection resolution that was not presented to the Governor in violation of Article III, § 9, they must be declared to be of no force at all.” *Id.*

As explained in *Sessoms*, the fact that the enabling statute did not include the presentment requirement was of no moment. *Id.* at 782 (“We do not find it fatal to the present legislation that it does not explicitly require presentment of a rejection resolution to the governor. We may imply such a condition to avoid finding the statute unconstitutional on its face”). As Justice Hutchinson pointed out concurring, the statutory provision at issue, “by requiring a concurrent resolution, *obviously requires the fulfillment of the constitutional procedure* [under Art. III, § 9] for the adoption of concurrent resolutions *if such a resolution is to have any legal effect.*” *Id.* at 786-787 (emphasis added). Here, Section 7301 of the Emergency Code, 35 Pa.C.S. § 7301(c), requires the concurrence of both Houses, as did the statute in *Sessoms*. As such, it can—and therefore must—be read to include the constitutional requirements of Article III, Section 9.

Below, in an attempt to escape *Sessoms*, the Caucus asserts in a footnote that the “majority opinion in *Sessoms* does not explain why the resolution at issue was

an exercise of lawmaking power under Article III, which is the issue presented here.” Brief at 25 fn.16. This is untrue. The majority opinion clearly articulates the governing rule for determining when a concurrent resolution constitutes a legislative action: “It must be emphasized, however, that except as it relates to the power of each House to determine its own rules of proceedings, under our Constitution the legislative power, even when exercised by concurrent resolution, must be subject to gubernatorial review.” *Sessoms*, 532 A.2d at 782. Thus, concurrent resolutions that reach beyond the chamber walls of each House must be presented to the Governor in compliance with Article III, Section 9. Otherwise, they have no force of law.

Rather than confront *Sessoms*, the Caucus relies instead upon *Commonwealth v. Griest*, 46 A. 505 (Pa. 1900), for the proposition that the General Assembly may pass concurrent resolutions without presentment to the Governor, so long as that resolution does not amount to some abstract understanding of “law making.” But the actual holding of *Griest* is more focused and limited. This Court in *Griest* simply recognized that the General Assembly’s authority to amend the Constitution in Article XVII (now Article XI) was distinct from its authority to legislate in Article III. *Griest*, 46 A. at 507 (“the article which provides for the adoption of an amendment is a complete system in itself, from which the submission to the governor is carefully excluded[.]”). As explained in *Griest*, the Governor plays no part in that system. Instead, the proposed amendments are presented directly to the electorate

for their approval or disapproval. *Id.* at 508. In sum, amendment of our Constitution is a process distinct from legislating.

Over a hundred years ago the Attorney General explained the scope of the Presentment Clause in light of the two then-recent court decisions construing it, *Commonwealth v. Griest*, 46 A. 505 (Pa. 1900), and *Russ v. Commonwealth*, 60 A. 169 (Pa. 1905). The Attorney General determined that not all joint or concurrent resolutions passed by the legislature have to be submitted to the Governor for approval or disapproval. *Opin. Of the Attorney General*, 24 Pa. D. 721, 723 (1915). As explained in that Opinion, based on the caselaw, and considering the substance of a series of specific recent resolutions, only resolutions that “make legislation *or have the effect of legislating*” must be so submitted. *Id.* (emphasis added). Basically, those resolutions that commit the Commonwealth to certain action, obligate public funds, or require the expenditure of public money were deemed “legislative” (and had to be presented to the Governor), while those that only seek information, make non-binding requests, or articulate views on events or issues were not.

Viewed this way, the Concurrent Resolution unquestionably would “have the effect of legislating.” There is nothing tentative or ceremonial about it. The Concurrent Resolution does not arise from a system in which the Governor is clearly excluded, from the General Assembly’s authority to regulate its own internal affairs, or from an area outside of its legislative power. The Concurrent Resolution does not

attempt to amend the Constitution or arise from Article XI. Rather, it is a legislative action ordering the Governor to affirmatively take a specific action—*i.e.*, proclaim the end of the disaster emergency— which in turn will limit how the Commonwealth may combat the pandemic, end the current suspension of certain laws and regulations, eliminate multiple executive orders, end access to the funding currently available to support the deployment of National Guard personnel in long-term care and medical facilities, reduce the emergency powers of numerous agencies, and affect the rights and lives of millions of Pennsylvanians. Because the resolution is a legislative action, it was required to have been presented to the Governor under Article III, Section 9.

The Caucus’s argument that the Concurrent Resolution is not a legislative action is also contradicted by the petition for writ of mandamus they filed in Commonwealth Court. To be entitled to a writ of mandamus, a petitioner must demonstrate, *inter alia*, “a corresponding non-discretionary duty of the public official[.]” *Green Party of Pennsylvania v. Dep’t of State Bureau of Commissions*, 168 A.3d 123, 130 (Pa. 2017). If the Concurrent Resolution were not a legislative action—for example, if it was merely ceremonial, informative, or limited to the internal affairs of the Legislature—then there would be no basis for seeking mandamus. But if the resolution has the force of law, such that mandamus could be granted, then it necessarily must comply with Article III, Section 9.

The Caucus maintains that the Resolution, in and of itself, suffices to invalidate both Governor Wolf’s March 6, 2020 proclamation declaring a disaster emergency in the Commonwealth and the Governor’s June 3, 2020 amendment and extension of that proclamation. This ignores that the proclamation and amendment were both issued pursuant to the Emergency Code and both have the force of law. As this Court succinctly put it, “[t]he Emergency Code specifically recognizes that under its auspices, the Governor has the authority to issue executive orders *and proclamations* which shall have *the full force of law*.” *Friends of Danny DeVito*, 2020 WL 1847100, at *15 (emphasis added); *see also*, 35 Pa.C.S. § 7301(b) (“proclamations . . . shall have the force and effect of law”).

Discounting the import of that fundamental observation, the Caucus has pointed to a single, separate sentence in *Friends of Danny DeVito*: “As a counterbalance to the exercise of the broad powers granted to the Governor, the Emergency Code provides that the General Assembly by concurrent resolution may terminate a state of disaster emergency at any time.” *Id.* at *9 (citing 35 Pa.C.S. § 7301(c)). The Caucus maintains that, by adopting the Concurrent Resolution, they have exercised their “right” to “terminate” the existing disaster emergency and, without more, have achieved that end.¹⁹ They are wrong.

¹⁹ By its terms, the Concurrent Resolution states that the House has “resolved” (with “the Senate concurring”) that, in accordance with 35 Pa.C.S. § 7301(c) and the General Assembly’s power under PA. CONST. Art. I, § 12 “to suspend laws,” it has

While the Emergency Code does provide that “[t]he General Assembly by concurrent resolution may terminate a state of disaster emergency at any time,” 35 Pa.C.S. § 7301(c), the General Assembly must still comply with Constitutional requirements. The General Assembly cannot act unilaterally, as it has attempted to do in this instance. Rather, it must play by all the rules and precedents governing concurrent resolutions, most notably the Presentment Clause. Pursuant to that Clause, if the Governor vetoes the resolution after presentment, the General Assembly has the ability to override that veto. *See* PA. CONST. Art. III, § 9. None of this has occurred here.

The Caucus suggests that compelling it to comply with the Presentment Clause is somehow inconsistent with the phrase “at any time” in 35 Pa.C.S. § 7301(c). It is not. It may take the appropriate action “at any time,” but it must be the constitutionally appropriate actions. The General Assembly has no right to short-circuit the carefully calibrated, legislatively- and constitutionally-prescribed process.

“terminate[d] the disaster emergency declared on March 6, 2020, as amended and renewed, in response to COVID-19[.]” The inapplicability of Article I, Section 12 to the present situation is explained below at Section III.

The Caucus attempts to make much of whether the Concurrent Resolution is or is not a “law.” This distinction is not relevant; whether a law or not, the Concurrent Resolution must be presented to the Governor.

Under Article III, Section 9, the Concurrent Resolution must be presented to the Governor. This parallels the provision that “[e]very bill which shall have passed both Houses shall be presented to the Governor” for his approval or veto, Art. IV, sec. 15. Thus, the very structure of our Constitution makes clear that just because a legislative action is or is not a law, does not mean it can be unilaterally passed without presentment to the Governor.

This Court’s caselaw is consistent with that structure. In *West Shore Sch. Dist., v. Pa. Labor Relations Bd.*, 626 A.2d 1131 (Pa. 1993), this Court explained that “a concurrent resolution signed by the Governor has the effect of law, although, the resolution in and of itself is not a law as contemplated under Article 3, Section 1.” *West Shore*, 626 A.2d at 1135. This Court made abundantly clear that resolutions still have to be presented to the Governor under Article III, Section 9. *Id.* at 1135-36.²⁰

²⁰ In that case, this Court examined a section of the Sunset Act, 71 P.S. § 1795.7 (expired), that permitted the legislature to reestablish an agency set for termination by passage of concurrent resolution without the Governor’s approval. *West Shore*, 626 A.2d at 1135-36. This Court held that such a provision was unconstitutional as it “violate[d] Article 3, Section 9 of our State Constitution.” *Id.* at 1136. While the resolution was not a law, such that it had to be enacted through a bill, it was still a legislative action requiring gubernatorial presentment.

Below, the Caucus, citing *Shapp v. Butera*, 348 A.2d 910, 913 (Pa. Cmwlt. 1975), argues that the Concurrent Resolution could not be considered a legislative action because the Emergency Proclamation it sought to end did not carry the force of law—it was merely “issued to make the public aware of some event[.]” Caucus Br., at 27-28. This is a surreal distortion of reality and also contrary to law.

In *Shapp*, the Commonwealth Court recognized three types of executive orders: (1) formal or ceremonial orders; (2) directives to subordinate executive agency officials or employees; and (3) those that implement existing constitutional or statutory law. *Shapp*, 348 A.2d at 913. While the first class are “usually issued as proclamations,” the court in *Shapp* did not state—as the Caucus contends—that all proclamations must therefore be ceremonial. Distinguishing among the three classes does not hinge on their titles, but on what they do and whether they are legally enforceable. The first and second classes of executive orders are “not legally enforceable,” whereas the third class “ha[s] the force of law.” *Id.*

The Governor’s Emergency Proclamation clearly falls within the third class. Far from being “nothing more than a declaration of fact” as the Caucus asserts, Caucus Br., at 27, the Emergency Proclamation issued numerous legally binding directives pursuant to the Emergency Code and other laws. The Emergency Proclamation ordered the following:

- The Pennsylvania Emergency Management Agency Director to assume command and control of all statewide emergency operations, including the

power to direct all Commonwealth departments and agencies deemed necessary to cope with the emergency;

- Transfer of \$20 million in unused, appropriated funds to the Pennsylvania Emergency Management Agency for associated in-state response costs and \$5 million for costs associated with the Emergency Management Assistance Compact which permits the Commonwealth to pay for assistance from other states to combat the disaster;
- All agencies to utilize emergency procurement procedures;
- Suspension of the provisions of any regulatory statute, order, rule or regulation prescribing the procedures for conduct of Commonwealth business by any Commonwealth agency to the extent any regulatory statute, order, rule or regulation prevents, hinders or delays necessary action in coping with the emergency;
- The Adjutant General to place National Guard members on active duty;
- The Commissioner of the State Police to use all available resources and personnel as necessary to assist the Pennsylvania Emergency Management Agency;
- The Secretary of the Department of Education to suspend or waive any provision of law or regulation necessary to respond to this emergency;
- The Department of Transportation to waive or suspend any laws or regulations related to the drivers of commercial vehicles if greater flexibility was needed;
- The applicable emergency response and recovery plans of local governments be activated; and
- The local governments to coordinate with the Pennsylvania Emergency Management Agency.

Most importantly, this Court has already settled the point. As this Court explained in *Friends of Danny DeVito*, “[t]he Emergency Code specifically

recognizes that under its auspices, the Governor has the authority to issue executive orders *and proclamations* which shall have *the full force of law*.” 2020 WL 1847100, at *15 (emphasis added). The Governor’s March 6 Proclamation of Disaster Emergency and June 3 Amendment to extend the March 6, 2020, Proclamation of Disaster Emergency have the force of law. 35 Pa. C.S. § 7301(b). As such, the Concurrent Resolution attempting to affect the proclamation and subsequent amendment must be presented to the Governor in accordance with our Constitution; otherwise, it is a legal nullity.

III. Article I, Section 12 of the Pennsylvania Constitution lends no support to the Caucus’s Attempt to Circumvent the Constitution.

In addition to misrepresenting this Court’s caselaw, the Caucus also seeks to interpret individual provisions of the Constitution in isolation. While acknowledging that “H.R. 836 does not suspend any laws,” *see* Caucus Br., at 40, the Caucus places heavy reliance upon Article I, Section 12 of the Pennsylvania Constitution—a clause about the power to suspend laws—claiming that it gives them the authority to bypass the Governor and act unilaterally. Article I, Section 12 reads, in full: “No power of suspending laws shall be exercised unless by the Legislature or by its authority.” PA. CONST. Art. I, § 12.

But the Caucus’s myopic reading of this provision ignores the Constitutional provisions establishing procedures for legislative action. As discussed above, Article

III, Section 9 of the Constitution plainly and unequivocally requires concurrent resolutions to be presented to the Governor.

It is axiomatic that the Constitution is an integrated whole and must be interpreted so as to effectuate all of its provisions. *Jubelirer v. Rendell*, 953 A.2d 514, 528 (Pa. 2008); *accord In re Larsen*, 812 A.2d 640, 649 (Pa. 2002). The Caucus seeks to read Article I, Section 12 in a vacuum, wholly divorced from any other provision of the Pennsylvania Constitution. But this Court has specifically rejected the notion that Article I, Section 12 is unrestrained by other provisions of the Constitution.

Specifically, in *West Phila. Achievement Charter Elementary Sch. v. Sch. Dist. of Phila.*, 132 A.3d 957, 963 (Pa. 2016), the respondents had argued that suspensions under Article I, Section 12 do not equate to making, amending, or repealing any law, and therefore were not subject to the non-delegation rule embodied in Article II, Section 1 of the Pennsylvania Constitution. In rejecting these arguments, this Court stated, “we find unavailing [r]espondents’ suggestion that the non-delegation rule does not presently apply because only statutory suspensions are involved and such suspensions are authorized by Article I, section 12.” *Id.* at 968. This Court reasoned that nothing in Article I, Section 12 suggests that it “alter[s] the restrictions on delegating legislative decision making as embodied in Article II,

Section 1.” Similarly, nothing in Article I, Section 12 suggests that it alters the presentment requirement of Article III, Section 9.

The Caucus emphasizes that the power to suspend laws being a legislative function has its origins in 17th century England and came about in response to abusive and corrupt suspensions by the monarchy. *See Caucus Br.*, at 32. But nothing about this historical repudiation of royal capriciousness validates the Caucus’s position that when Article 1, Section 12 of the *Pennsylvania Constitution* was drafted, the intent was to grant the Legislature its own monarchical unilateral ability to suspend laws without regard for the attendant Constitutional procedures for legislative action. The Caucus’s arguments are unsupported by any principle of constitutional construction, and in fact run counter to how this Court has interpreted the Constitution of this Commonwealth generally, and Article I, Section 12 in particular.

As this Court has recognized, separation of powers is not merely an empty or abstract formality; rather it is a bedrock feature of our tripartite system of governance that “prevents one branch from acting unchecked” and averts “the danger inherent in any single branch or body.” *Jefferson Cty. Ct.*, 985 A.2d at 706-07. Adopting the Caucus’s construction would constitute a dramatic increase in unchecked legislative authority.

* * *

The separation of powers and checks-and-balances among the three co-equal branches of government, are fundamental to our constitutional structure and the proper functioning of our Commonwealth. At its heart, the General Assembly's failure to comply with the Presentment Clause constitutes a serious challenge to that structure. The Legislative Branch clearly has public policy differences with the Executive Branch. But that is the time when the protections of our checks-and-balances are most necessary. To allow these protections to be disregarded at the whim of any branch for political expediency is a danger this Court must not permit.

CONCLUSION

This Court should immediately take jurisdiction of this matter. This Court should then declare that in the absence of presentment to the Governor under Article III, Section 9 of the Pennsylvania Constitution, the General Assembly's Concurrent Resolution (H.R. 836) is a legal nullity.

Respectfully submitted,

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DATE: June 12, 2020

CERTIFICATE OF COUNSEL

I hereby certify that this brief contains 6,653 words within the meaning of Pa. R. App. Proc. 2135. In making this certificate, I have relied on the word count of the word-processing system used to prepare the brief.

I further certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ J. Bart DeLone

J. BART DeLONE
Chief Deputy Attorney General
Chief, Appellate Litigation Section

Appendix A



PROCLAMATION OF DISASTER EMERGENCY

March 6, 2020

WHEREAS, a novel coronavirus (now known as “COVID-19”) emerged in Wuhan, China, began infecting humans in December 2019, and has since spread to 89 countries, including the United States; and

WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention (“CDC”) have declared COVID-19 a “public health emergency of international concern,” and the U.S. Department of Health and Human Services (“HHS”) Secretary has declared that COVID-19 creates a public health emergency; and

WHEREAS, the Commonwealth of Pennsylvania (“Commonwealth”) has been working in collaboration with the CDC, HHS, and local health agencies since December 2019 to monitor and plan for the containment and subsequent mitigation of COVID-19; and

WHEREAS, on February 1, 2020, the Commonwealth’s Department of Health activated its Department Operations Center at the Pennsylvania Emergency Management Agency’s headquarters to conduct public health and medical coordination for COVID-19 throughout the Commonwealth; and

WHEREAS, on March 4, 2020, the Director of the Pennsylvania Emergency Management Agency ordered the activation of its Commonwealth Response Coordination Center in support of the Department of Health’s Department Operations Center, to maintain situational awareness and coordinate the response to any potential COVID-19 impacts across the Commonwealth; and

WHEREAS, as of March 6, 2020, there are 233 confirmed and/or presumed positive cases of COVID-19 in the United States, including 2 presumed positive cases in the Commonwealth; and

WHEREAS, while it is anticipated that a high percentage of those affected by COVID-19 will experience mild influenza-like symptoms, COVID-19 is a disease capable of causing severe symptoms or loss of life, particularly to older populations and those individuals with pre-existing conditions; and

WHEREAS, it is critical to prepare for and respond to suspected or confirmed cases in the Commonwealth and to implement measures to mitigate the spread of COVID-19; and

WHEREAS, with 2 presumed positive cases in the Commonwealth as of March 6, 2020, the possible increased threat from COVID-19 constitutes a threat of imminent disaster to the health of the citizens of the Commonwealth; and

WHEREAS, this threat of imminent disaster and emergency has the potential to cause significant adverse impacts upon the population throughout the Commonwealth; and

WHEREAS, this threat of imminent disaster and emergency has already caused schools to close, and will likely prompt additional local measures, including affected county and municipal governments to declare local disaster emergencies because of COVID-19; and

WHEREAS, this threat of imminent disaster and emergency situation throughout the Commonwealth is of such magnitude and severity as to render essential the Commonwealth's supplementation of emergency resources and mutual aid to the county and municipal governments of this Commonwealth and to require the activation of all applicable state, county, and municipal emergency response plans.

NOW THEREFORE, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. § 7101, et seq., I do hereby proclaim the existence of a disaster emergency throughout the Commonwealth.

FURTHER, I hereby authorize the Pennsylvania Emergency Management Agency Director or his designee, to assume command and control of all statewide emergency operations and authorize and direct that all Commonwealth departments and agencies utilize all available resources and personnel as is deemed necessary to cope with this emergency situation.

FURTHER, I hereby transfer up to \$5,000,000 in unused appropriated funds to the Pennsylvania Emergency Management Agency for Emergency Management Assistance Compact expenses related to this emergency, to be decreased as conditions require, pursuant to the provisions of section 7604(a) of the Emergency Management Services Code, 35 Pa. C.S. § 7604(a). In addition, I hereby transfer up to \$20,000,000 in unused appropriated funds, to be decreased as conditions require, to the Pennsylvania Emergency Management Agency pursuant to section 1508 of the Act of April 9, 1929 (P.L.343, No. 176) (the Fiscal Code), 72 P.S. § 1508. The aforementioned funds shall be used for expenses authorized and incurred related to this emergency. These funds shall be credited to a special account established by the Office of the Budget. I hereby direct that any funds transferred herein that remain unused after all costs related to this emergency have been satisfied shall be returned to the General Fund.

FURTHER, All Commonwealth agencies purchasing supplies or services in response to this emergency are authorized to utilize emergency procurement procedures set forth in Section 516 of the Commonwealth Procurement Code, 62 Pa. C.S. § 516. This Proclamation shall serve as the written determination of the basis for the emergency under Section 516.

FURTHER, I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency. Commonwealth agencies may implement emergency assignments without regard to procedures required by other laws, except mandatory constitutional requirements, pertaining to performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and expenditures of public funds.

FURTHER, pursuant to the powers vested in me by the Constitution and laws of the Commonwealth pursuant to 51 Pa. C.S. § 508, I hereby authorize the Adjutant General of Pennsylvania to place on state active duty for the duration of the emergency disaster proclamation, such individuals and units of the Pennsylvania National Guard, for missions designated by the Pennsylvania Emergency Management Agency, as are needed to address the consequences of the aforementioned emergency.

FURTHER, I authorize the Commissioner of the Pennsylvania State Police to use all available resources and personnel in whatever manner he deems necessary during this emergency to assist the actions of the Pennsylvania Emergency Management Agency in addressing the consequences of the emergency.

FURTHER, I hereby authorize the Secretary of the Pennsylvania Department of Health, in her sole discretion, to suspend or waive any provision of law or regulation which the Pennsylvania Department of Health is authorized by law to administer or enforce, for such length of time as may be necessary to respond to this emergency.

FURTHER, I hereby authorize the Secretary of the Pennsylvania Department of Education, in his sole discretion, to suspend or waive any provision of law or regulation which the Pennsylvania Department of Education is authorized by law to administer or enforce, for such length of time as may be necessary to respond to this emergency.

FURTHER, if investigations made on my behalf determine that the Commonwealth needs greater flexibility in the application of state and federal motor carrier regulations to accommodate truck drivers involved in emergency activities during this emergency, I hereby direct the Commonwealth Department of Transportation to waive or suspend any laws or federal or state regulations related to the drivers of commercial vehicles.

FURTHER, I hereby direct that the applicable emergency response and recovery plans of the Commonwealth, counties, municipalities and other entities be activated as necessary and that actions taken to implement those plans be coordinated through the Pennsylvania Emergency Management Agency.

STILL FURTHER, I hereby urge the governing bodies and executive officers of all political subdivisions affected by this emergency to act as necessary to meet the current exigencies as legally authorized under this Proclamation, namely, by the employment of temporary workers, by the rental of equipment, and by entering into such contracts and agreements as may be required to meet the emergency, all without regard to those time consuming procedures and formalities normally prescribed by law, mandatory constitutional requirement excepted.



GIVEN under my hand and the Seal of the Governor, at the City of Harrisburg, this sixth day of March in the year of our Lord two thousand twenty, and of the Commonwealth the two hundred and forty fourth.


TOM WOLF
Governor

Appendix B

Commonwealth of Pennsylvania



Governor's Office

AMENDMENT TO PROCLAMATION OF DISASTER EMERGENCY

June 3, 2020

WHEREAS, on March 6, 2020, I declared a disaster emergency due to the coronavirus disease 2019 (COVID-19) pandemic that is devastating the country, including the Commonwealth of Pennsylvania and its citizens;

WHEREAS, my Proclamation of Disaster Emergency of March 6, 2020, will automatically expire on June 4, 2020, unless renewed by Amendment;

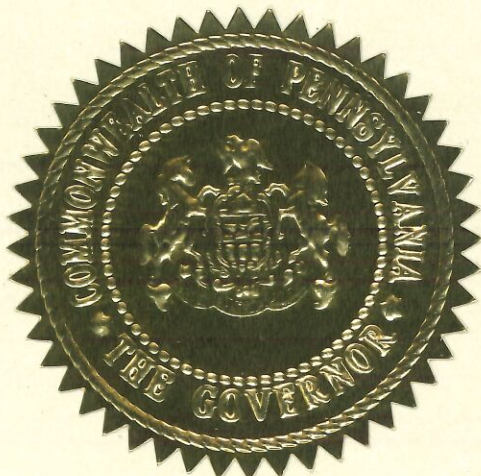
WHEREAS, as of June 3, 2020, 72,894 persons have tested positive or meet the requirements to be considered as presumed probable cases for COVID-19 in the Commonwealth in all 67 counties, and 5,667 persons are reported to have died from the virus; and

WHEREAS, the COVID-19 pandemic continues to be of such magnitude or severity that emergency action is necessary to protect the health, safety and welfare of affected citizens in Pennsylvania.

NOW THEREFORE, pursuant to the provisions of section 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. §7301(c), I do hereby order and direct as follows:

- 1. The Proclamation of Disaster Emergency of March 6, 2020, is renewed for a period of ninety days, and shall continue to apply to the Commonwealth of Pennsylvania.*
- 2. All directives, authorized actions and provisions of the March 6, 2020, Proclamation of Disaster Emergency shall remain in full force and effect until either rescinded by me or terminated by law.*

This Proclamation Amendment shall take effect immediately.



GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this third day of June two thousand twenty, the year of the commonwealth the two hundred and forty-fourth.

Tom Wolf
TOM WOLF
Governor

Appendix C

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 836 Session of
2020

INTRODUCED BY DIAMOND, COX, METCALFE, ROWE, RYAN, ZIMMERMAN,
MALONEY, STRUZZI, BOROWICZ, KEEFER, HERSHEY, RADER, NELSON,
KAUFFMAN, ECKER, GLEIM, GREGORY, KNOWLES, DUSH, JONES,
SCHEMEL, TOBASH, RAPP, MUSTELLO, PUSKARIC, WARNER, STAATS,
MENTZER, TOPPER, BERNSTINE, DOWLING, RIGBY, GREINER, GROVE,
LEWIS, GAYDOS, ROAE AND PYLE, APRIL 3, 2020

AS AMENDED, IN SENATE, JUNE 9, 2020

A CONCURRENT RESOLUTION

1 Terminating ~~in part~~ the March 6, 2020, Proclamation of Disaster <--
2 Emergency issued under the hand and Seal of the Governor,
3 Thomas Westerman Wolf.

4 ~~WHEREAS, A novel coronavirus, known as COVID-19, entered the <--~~
5 ~~United States in late January 2020 and has spread through the~~
6 ~~states, including this Commonwealth; and~~

7 ~~WHEREAS, On March 6, 2020, Governor Thomas Westerman Wolf-~~
8 ~~issued a Proclamation of Disaster Emergency, published at 50-~~
9 ~~Pa.B. 1644 (March 21, 2020), citing a threat of imminent-~~
10 ~~disaster that was projected to be of such a magnitude and-~~
11 ~~severity as to necessitate extraordinary measures to protect the-~~
12 ~~health, safety and life of this Commonwealth's citizens; and~~

13 ~~WHEREAS, Since the issuance of the Proclamation of Disaster-~~
14 ~~Emergency, the Governor and his administration have issued-~~
15 ~~executive orders intended to mitigate the spread of COVID-19,-~~

~~1 directly resulting in severe disruption to the Commonwealth and
2 its political subdivisions and which have and continue to
3 produce critical and in some cases irreversible short term and
4 long term negative economic consequences; and~~

~~5 WHEREAS, Under the provisions of the Commonwealth's Emergency
6 Management Code, specifically 35 Pa.C.S. § 7101 et seq., the
7 General Assembly authorized the Governor to make a temporary
8 proclamation or declaration of a disaster emergency by executive
9 order for a period not to exceed 90 days if the health, safety
10 or welfare of the citizens of this Commonwealth is threatened;
11 and~~

~~12 WHEREAS, On March 19, 2020, the Governor proclaimed by
13 executive order that certain business operations (termed non-
14 life sustaining) would be immediately closed for an indefinite
15 period of time while other business operations (termed life-
16 sustaining) could remain open to the public provided that the
17 business operation adhered to "social distancing practices and
18 other mitigation measures defined by the Centers for Disease
19 Control and Prevention to protect workers and patrons"; and~~

~~20 WHEREAS, Since the Governor's March 19, 2020, business
21 closure order, those business operations in this Commonwealth
22 that were forced to close have experienced significant loss,
23 massive layoffs, catastrophic economic injury and other
24 unsustainable damage, some of which will never financially
25 recover or reopen as a direct result; and~~

~~26 WHEREAS, Since the Governor's March 19, 2020, business
27 closure order, more than 1.8 million Pennsylvanians have filed
28 for unemployment benefits, or 27% of the workforce, rivaling the
29 unemployment experienced during the Great Depression; and~~

~~30 WHEREAS, In an effort to more effectively manage the~~

~~mitigation of the spread of COVID-19 while safely permitting critical businesses to reopen and allowing citizens to work, the General Assembly passed Senate Bill No. 613, Printer's No. 1636, which provided for a COVID-19 Emergency Mitigation Plan for Businesses, that required the Governor to develop a business mitigation plan for this Commonwealth following the Federal guidance provided by the Centers for Disease Control and Prevention and conforming to the March 28, 2020, Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, as published by the United States Cybersecurity and Infrastructure Security Agency (CISA); and~~

~~WHEREAS, On April 20, 2020, the Governor vetoed Senate Bill No. 613, Printer's No. 1636, positing in his veto message that, "Reopening tens of thousands of businesses too early will only increase the spread of the virus, place more lives at risk, increase the death tolls, and extend the length of economic hardships created by the pandemic"; and~~

~~WHEREAS, In response to the severe and deteriorating negative economic consequences of the Governor's March 19, 2020, business closure order on businesses and workers in this Commonwealth, the General Assembly passed House Bill No. 2388, Printer's No. 3719, which required the Secretary of Community and Economic Development to immediately issue waivers for the following business operations: vehicle dealers, lawn and garden centers, cosmetology salons and barber shops, messenger services, animal grooming services and manufacturing operations; and required the business operations to adhere to social distancing practices and other mitigation measures defined by the Centers for Disease Control and Prevention and orders issued by the Secretary of~~

1 ~~Health; and~~

2 ~~WHEREAS, On May 19, 2020, the Governor vetoed House Bill No.~~
3 ~~2388, Printer's No. 3719, positing in his veto message that,~~
4 ~~"This legislation is an infringement on the authority and~~
5 ~~responsibility of the executive and violates the separation of~~
6 ~~powers which is critical to the proper functioning of our~~
7 ~~democracy"; and~~

8 ~~WHEREAS, In continuing efforts to address the severe and~~
9 ~~unmitigated negative economic consequences to citizens seeking~~
10 ~~to purchase or sell a home in this Commonwealth, and in an~~
11 ~~effort to prevent homelessness, the General Assembly also passed~~
12 ~~House Bill No. 2412, Printer's No. 3720, which required the~~
13 ~~Secretary of Community and Economic Development to immediately~~
14 ~~issue a waiver to the Governor's March 19, 2020, business~~
15 ~~closure order to permit providers of real estate services,~~
16 ~~including legal services, residential and commercial real estate~~
17 ~~services and settlement services, to conduct business; and~~
18 ~~required the business operations to adhere to social distancing~~
19 ~~practices and other mitigation measures defined by the Centers~~
20 ~~for Disease Control and Prevention and orders issued by the~~
21 ~~Secretary of Health; and~~

22 ~~WHEREAS, On May 19, 2020, the Governor vetoed House Bill No.~~
23 ~~2412, Printer's No. 3720, positing in his veto message that,~~
24 ~~"This legislation is an infringement on the authority and~~
25 ~~responsibility of the executive and violates the separation of~~
26 ~~powers which is critical to the proper functioning of our~~
27 ~~democracy"; and~~

28 ~~WHEREAS, As a result of the disparate impact that the COVID-~~
29 ~~19 virus is having among the Commonwealth's counties, where some~~
30 ~~counties experienced few cases of COVID-19 and others~~

~~experienced wider spread of the virus, the General Assembly
passed Senate Bill No. 327, Printer's No. 1700, which, among
other COVID-19 provisions, established the COVID-19 County
Emergency Mitigation Plan for Businesses; and~~

~~WHEREAS, The COVID-19 County Emergency Mitigation Plan for
Businesses authorized the governing body of a county, in
consultation with its county emergency management agency, county
health department, county health officer or any other
appropriate health or emergency management official, to develop
and implement a countywide plan to mitigate the spread of COVID-
19 for businesses within the county; and required the business-
mitigation plan for the county follow the Federal guidance
provided by the Centers for Disease Control and Prevention and
conform to the March 28, 2020, Advisory Memorandum on
Identification of Essential Critical Infrastructure Workers
During COVID-19 Response, as published by CISA; and~~

~~WHEREAS, On May 19, 2020, the Governor vetoed Senate Bill No.-
327, Printer's No. 1700, positing in his veto message that,
"This prohibition is a legislative infringement on executive-
rule making authority and violates the separation of powers-
which is critical to the proper functioning of our democracy";-
and~~

~~WHEREAS, In response to the unprecedented and well documented-
economic harms being experienced by this Commonwealth's citizens-
and businesses, each chamber of the General Assembly has passed-
other legislation substantially similar to Senate Bill No. 613,-
House Bill No. 2388, House Bill No. 2412 and Senate Bill No.-
327, to require the Secretary of Community and Economic-
Development to issue waivers to the Governor's March 19, 2020,-
business closure order for residential and commercial-~~

~~1 construction, restaurant operations, outdoor events and curbside~~
~~2 retail services and required the business operations to adhere~~
~~3 to social distancing practices and other mitigation measures~~
~~4 defined by the Centers for Disease Control and Prevention and~~
~~5 orders issued by the Secretary of Health; and~~

~~6 WHEREAS, It is evident, notwithstanding bipartisan support~~
~~7 for these legislative efforts, and with apparent disregard to~~
~~8 the ongoing economic harm being experienced in this Commonwealth~~
~~9 by millions of citizens and businesses, that the Governor, by~~
~~10 and through his use of the temporary emergency powers under 35-~~
~~11 Pa.C.S. § 7101 et seq., has demonstrated that he will not~~
~~12 cooperatively manage the COVID 19 crisis to the benefit of all~~
~~13 Pennsylvanians; and~~

~~14 WHEREAS, Since the issuance of the March 6, 2020,~~
~~15 Proclamation of Disaster Emergency, the documented cases of~~
~~16 COVID 19 have peaked and have continuously declined; and~~

~~17 WHEREAS, Based on data provided by the Department of Health,~~
~~18 the most immediate and direct threat posed by the COVID 19 virus~~
~~19 is to older citizens and those individuals with preexisting~~
~~20 health conditions, a fact which was referenced in the seventh~~
~~21 clause of the March 6, 2020, Proclamation of Disaster Emergency~~
~~22 that has now been proven; and~~

~~23 WHEREAS, 35 Pa.C.S. § 7301(c) provides broad contemporaneous~~
~~24 authority, without preconditions, to the General Assembly to~~
~~25 terminate all or part of a state of emergency by concurrent~~
~~26 resolution at any time; and~~

~~27 WHEREAS, On April 13, 2020, the Pennsylvania Supreme Court in~~
~~28 *Friends of Danny DeVito v. Wolf* (No. 68 MM 2020, 2020 WL-~~
~~29 1847100), affirmed the General Assembly's authority to terminate~~
~~30 a state of emergency, writing that, "As a counterbalance to the~~

~~exercise of the broad powers granted to the Governor, the
Emergency Code provides that the General Assembly by concurrent
resolution may terminate a state of disaster emergency at any
time"; and~~

~~WHEREAS, The Court, in reviewing the takings without
compensation claims raised by businesses subject to the
Governor's March 19, 2020, business closure order in *Friends of
Danny DeVito v. Wolf*, also specifically affirmed that the
Emergency Code, "provides the General Assembly with the ability
to terminate the order at any time. 35 Pa.C.S. § 7301(c)";
therefore be it~~

~~RESOLVED (the Senate concurring), That the General Assembly,
in consideration of the orders issued by the Governor to
mitigate the spread of COVID-19 and the effect the orders have
had on the public health and the Commonwealth's economy, hereby
terminate in part the Proclamation of Disaster Emergency issued
on March 6, 2020, to the extent the Proclamation and the orders
issued pursuant to the Proclamation regulate the conduct of
business operations deemed non life sustaining differently than
the conduct of business operations deemed life sustaining under
the March 19, 2020, business closure order as amended; and be it
further~~

~~RESOLVED, That upon adoption of this concurrent resolution by
both chambers of the General Assembly, the Chief Clerk of the
House of Representatives shall do all of the following:~~

~~(1) Transmit a copy of this resolution to the Secretary
of the Commonwealth as an official action of the General
Assembly under the authority provided under 35 Pa.C.S. §
7301(c) to terminate all or part of a state of emergency.~~

~~(2) Transmit a copy of this resolution to the Director~~

~~of the Pennsylvania Emergency Management Agency.~~

~~(3) Transmit this resolution to the Legislative
Reference Bureau for publication in the Pennsylvania Bulletin
under 45 Pa.C.S. § 725(a)(4).~~

~~(4) Provide public notice of adoption of this resolution
by publishing a summary of it in newspapers of general
circulation in this Commonwealth within five days of adoption
by the House of Representatives and the Senate.~~

WHEREAS, 35 PA.C.S. § 7301(C) (RELATING TO GENERAL AUTHORITY <--
OF GOVERNOR) AUTHORIZES THE GOVERNOR TO DECLARE A STATE OF
DISASTER EMERGENCY; AND

WHEREAS, ON MARCH 6, 2020, THE GOVERNOR ISSUED A PROCLAMATION
DECLARING A DISASTER EMERGENCY IN RESPONSE TO THE EXISTENCE OF
COVID-19 CASES IN PENNSYLVANIA; AND

WHEREAS, ON JUNE 3, 2020, THE GOVERNOR ISSUED AN AMENDMENT TO
THE PROCLAMATION OF DISASTER EMERGENCY RENEWING THE MARCH 6,
2020, DECLARATION FOR AN ADDITIONAL 90 DAYS; AND

WHEREAS, THE JUNE 3, 2020, AMENDMENT PROVIDES THAT ALL
"DIRECTIVES, AUTHORIZED ACTIONS AND PROVISIONS" OF THE MARCH 6,
2020, PROCLAMATION SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL
RESCINDED BY THE GOVERNOR OR "TERMINATED BY LAW"; AND

WHEREAS, PURSUANT TO SECTION 12 OF ARTICLE I OF THE
CONSTITUTION OF PENNSYLVANIA, THE POWER TO SUSPEND LAWS BELONGS
TO THE LEGISLATURE; AND

WHEREAS, 35 PA.C.S. § 7301(C) AUTHORIZES THE GENERAL ASSEMBLY
BY CONCURRENT RESOLUTION TO TERMINATE A STATE OF DISASTER
EMERGENCY AT ANY TIME; AND

WHEREAS, 35 PA.C.S. § 7301(C) PROVIDES THAT UPON THE
TERMINATION OF THE DECLARATION BY CONCURRENT RESOLUTION OF THE
GENERAL ASSEMBLY, "THE GOVERNOR SHALL ISSUE AN EXECUTIVE ORDER

1 OR PROCLAMATION ENDING THE STATE OF DISASTER EMERGENCY";

2 THEREFORE BE IT

3 RESOLVED (THE SENATE CONCURRING), THAT THE GENERAL ASSEMBLY,
4 IN ACCORDANCE WITH 35 PA.C.S. § 7301(C) AND ITS ARTICLE I,
5 SECTION 12 POWER TO SUSPEND LAWS, HEREBY TERMINATE THE DISASTER
6 EMERGENCY DECLARED ON MARCH 6, 2020, AS AMENDED AND RENEWED, IN
7 RESPONSE TO COVID-19; AND BE IT FURTHER

8 RESOLVED, THAT UPON ADOPTION OF THIS CONCURRENT RESOLUTION BY
9 BOTH CHAMBERS OF THE GENERAL ASSEMBLY, THE SECRETARY OF THE
10 SENATE SHALL NOTIFY THE GOVERNOR OF THE GENERAL ASSEMBLY'S
11 ACTION WITH THE DIRECTIVE THAT THE GOVERNOR ISSUE AN EXECUTIVE
12 ORDER OR PROCLAMATION ENDING THE STATE OF DISASTER EMERGENCY IN
13 ACCORDANCE WITH THIS RESOLUTION AND 35 PA.C.S. § 7301(C); AND BE
14 IT FURTHER

15 RESOLVED, THAT UPON ADOPTION OF THIS CONCURRENT RESOLUTION BY
16 BOTH CHAMBERS OF THE GENERAL ASSEMBLY, THE CHIEF CLERK OF THE
17 HOUSE OF REPRESENTATIVES SHALL DO ALL OF THE FOLLOWING:

18 (1) TRANSMIT A COPY OF THIS RESOLUTION TO THE SECRETARY
19 OF THE COMMONWEALTH AS AN OFFICIAL ACTION OF THE GENERAL
20 ASSEMBLY UNDER THE AUTHORITY PROVIDED UNDER 35 PA.C.S. §
21 7301(C) TO TERMINATE A STATE OF EMERGENCY.

22 (2) TRANSMIT A COPY OF THIS RESOLUTION TO THE DIRECTOR
23 OF THE PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY.

24 (3) TRANSMIT THIS RESOLUTION TO THE LEGISLATIVE
25 REFERENCE BUREAU FOR PUBLICATION IN THE PENNSYLVANIA BULLETIN
26 UNDER 45 PA.C.S. § 725(A) (4) .

27 (4) PROVIDE PUBLIC NOTICE OF ADOPTION OF THIS RESOLUTION
28 BY PUBLISHING A SUMMARY OF IT IN NEWSPAPERS OF GENERAL
29 CIRCULATION IN THIS COMMONWEALTH WITHIN FIVE DAYS OF ADOPTION
30 BY THE SENATE AND THE HOUSE OF REPRESENTATIVES.

Appendix D

MEGAN MARTIN
SECRETARY OF THE SENATE

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HARRISBURG, PA 17120-3053
717-787-5920
FAX: 717-772-2344
E-MAIL: mtmartin@os.pasen.gov



Senate of Pennsylvania

June 10, 2020

The Honorable Tom Wolf
Governor of the Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120
VIA EMAIL

Dear Governor Wolf,

Please be advised that the General Assembly has adopted House Resolution No. 836, a Concurrent Resolution terminating your March 6, 2020 Proclamation of Disaster Emergency. As specified in this resolution, I am notifying you of the General Assembly's action and the directive that you issue an executive order of proclamation ending the state of disaster emergency in accordance with this resolution and 35 Pa. C.S. § 7301(c).

Respectfully,

A handwritten signature in blue ink, appearing to read "M. Martin".

Megan Martin

CERTIFICATE OF SERVICE

I, J. Bart DeLone, Chief Deputy Attorney General, do hereby certify that I have this day served the foregoing application, via U.S. First Class Mail and electronic mail, on the following:

Matthew H. Haverstick, Esq.
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Three Logan Square
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Philadelphia, PA 19103
mhaverstick@kleinbard.com

COMMONWEALTH COURT OF PENNSYLVANIA
Pennsylvania Judicial Center
601 Commonwealth Ave.
Suite 2100
P.O. Box 69185
Harrisburg, PA 17106
CommCourtFiling@pacourts.us

/s/ J. Bart DeLone

J. BART DeLONE
Chief Deputy Attorney General

DATE: June 12, 2020