Received 6/10/2020 1:36:45 PM Commonwealth Court of Pennsylvania

Filed 6/10/2020 1:36:00 PM Commonwealth Court of Pennsylvania
344 MD 2020

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SENATOR JOSEPH B. SCARNATI, III, SENATOR JAKE CORMAN, and SENATE REPUBLICAN CAUCUS, Petitioners,	No. ___MD 2020
v.	
THE HONORABLE TOM WOLF, GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA, Respondent.	

NOTICE TO PLEAD

TO: THE HONORABLE TOM WOLF, GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA

You are hereby notified to file a written response to the enclosed petition for review within thirty (30) days from service hereof or a judgment may be entered against you.

Dated: June 10, 2010

/s/ Matthew H. Haverstick

Matthew H. Haverstick (No. 85072)
KLEINBARD LLC
Three Logan Square
1717 Arch Street, 5th Floor
Philadelphia, PA 19103
Ph: (215) 568-2000
Fax: (215) 568-0140
Eml: mhaverstick@kleinbard.com

Attorney for Petitioners

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SENATOR JOSEPH B. SCARNATI, III, SENATOR JAKE CORMAN, and SENATE REPUBLICAN CAUCUS,	:	
Petitioners,	:	No. ___MD 2020
v.	:	
THE HONORABLE TOM WOLF, GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA,	:	
Respondent.	:	

PETITION FOR REVIEW
IN THE NATURE OF A COMPLAINT IN MANDAMUS

Pursuant to Pa.R.A.P. 1501 and 1513, Petitioners Senator Joseph B. Scarnati, III, Senator Jake Corman, and the Senate Republican Caucus (collectively, "the Senators") do hereby bring this petition for review in the nature of a complaint in mandamus against Respondent Governor Tom Wolf, and in support thereof, aver as follows:

I. JURISDICTION

1. This petition for review is an action against an officer of the Commonwealth acting in his official capacity, and it is also an action by Commonwealth officers acting in their official capacities; accordingly, this Court has original jurisdiction under 42 Pa.C.S. § 761(a)(1) & (2).

II. PARTY SEEKING RELIEF

2. Petitioner Senator Joseph B. Scarnati, III is the duly elected Pennsylvania Senator representing Senate District 25, which covers Cameron, Clearfield, Clinton, Elk, Jefferson, McKean, Potter, and Tioga Counties. Senator Scarnati is the Senate President Pro Tempore.

3. Petitioner Senator Jake Corman is the duly elected Pennsylvania Senator representing Senate District 34, which covers Centre, Huntingdon, Juniata, and Mifflin Counties. Senator Corman is the Senate Majority Leader.

4. Petitioner Senate Republican Caucus is one of two subparts of the Pennsylvania Senate and is an integral constituent of the Senate. *See Precision Mktg., Inc. v. Com., Republican Caucus of the Sen. of PA/AKA Sen. of PA Republican Caucus*, 78 A.3d 667, 675 (Pa. Cmwlth. 2013). All members of the Senate Republican Caucus voted to adopt HR 836.

5. The Senators, in their official capacities as Senators under Article II of the Pennsylvania Constitution, have been injured by Governor Wolf's refusal to act, as further described herein, as follows:

a. The Senators' votes on HR 836 have been effectively nullified, and vetoed without authority and without further

recourse, by Governor Wolf's failure to fulfill his mandatory and ministerial duty under 35 Pa.C.S. § 7301(c);

b. The Senators' shared authority under Article I, Section 12 of the Pennsylvania Constitution to control suspending laws has been diminished and eliminated by Governor Wolf's failure to fulfill his mandatory and ministerial duty under 35 Pa.C.S. § 7301(c); and

c. Governor Wolf's refusal to act is based on his demand that the General Assembly present HR 836 to him under Article III, Section 9, accordingly, Governor Wolf is demanding that the Senators and the rest of the General Assembly affirmatively perform a legislative act that is not required under the Pennsylvania Constitution.

III. GOVERNMENT UNIT WHOSE INACTION IS IN ISSUE

6. Respondent Governor Tom Wolf is the duly elected Governor of the Commonwealth of Pennsylvania.

7. Despite a majority of the Senate and the House of Representatives adopting HR 836, Governor Wolf has refused to perform the mandatory and ministerial duty of issuing an executive order or proclamation ending the state of disaster emergency originally declared March 6, 2020 and amended and renewed on June 3, 2020.

IV. GENERAL STATEMENT OF MATERIAL FACTS

8. On March 6, 2020, Governor Wolf issued a Proclamation of Disaster Emergency declaring the existence of a disaster emergency throughout the Commonwealth under Section 7301(c) of the Emergency

Management Services Code, 35 Pa.C.S. § 7301(c). The March 6, 2020 Proclamation is attached as Exhibit A (hereafter, "the March 6 Proclamation").

9. Under the March 6 Proclamation, the stated "imminent disaster" proclaimed by Governor Wolf was the "threat from COVID-19."

10. On June 3, 2020, Governor Wolf issued a Proclamation of Disaster Emergency amending and renewing the state of disaster emergency related to COVID-19 declared in the March 6 Proclamation. A copy of the June 3, 2020 Proclamation is attached as Exhibit B.

11. Section 7301(c) of the Emergency Management Services Code provides that the General Assembly "by concurrent resolution may terminate a state disaster emergency at any time."

12. The Supreme Court has described this provision "[a]s a counterbalance to the exercise of the broad powers granted to the Governor," and has re-stated, plainly, what the provision means on its face: "the General Assembly by concurrent resolution may terminate a state of disaster emergency at any time." *Friends of Danny DeVito v. Wolf*, 68 MM 2020, 2020 WL 1847100, at *9 (Pa. Apr. 13, 2020).

13. A majority of the Senate, including the Senators, adopted a Concurrent Resolution, numbered HR 836 (PN 3910), on June 9, 2020.

14. A majority of the House adopted HR 836 (PN 3910) on June 9, 2020. A copy of HR 836, as adopted by the House and the Senate, is attached as Exhibit C.

15. HR 836 provides, in relevant part, as follows: "the General Assembly, in accordance with 35 Pa.C.S. § 7301(c) and its Article I, Section 12 power to suspend laws, hereby terminate the disaster emergency declared on March 6, 2020, as amended and renewed, in response to COVID-19[.]"

16. The Chief Clerk of the House was directed under HR 836 to take various steps to officially disseminate it after its adoption, including by:

a. transmitting a copy of the Concurrent 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 a state of emergency;

b. transmitting a copy of the Concurrent Resolution to the Director of the Pennsylvania Emergency Management Agency;

c. transmitting the Concurrent Resolution to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin under 45 Pa.C.S. § 725(a)(4); and

d. causing to be published a summary of the Concurrent Resolution in newspapers of general circulation in the Commonwealth.

17. Upon the adoption of HR 836, the Secretary of the Senate was instructed to notify Governor Wolf of the General Assembly's adoption of HR 836 with the directive that Governor Wolf issue an executive order or proclamation ending the state of disaster emergency in accordance with the Resolution and 35 Pa.C.S. § 7301(c).

18. Despite HR 836, Governor Wolf has refused to meet his mandatory and ministerial duty to issue an executive order or proclamation ending the COVID-19 state of disaster emergency.

19. Instead, Governor Wolf has demanded that HR 836 be presented to him under Article III, Section 9 of the Pennsylvania Constitution.

20. Section 7301(c) of the Emergency Management Services Code provides that if the General Assembly terminates a state of disaster emergency by concurrent resolution, then the Governor must immediately act, without discretion, to formally end his prior proclamation, stating as follows: "Thereupon, the Governor shall issue

an executive order or proclamation ending the state of disaster emergency."

21. Section 7301(c) of the Emergency Management Services Code does not state that the concurrent resolution must then be presented to the Governor for his review and approval: on the face of statute, the concurrent resolution is immediately effective and requires the Governor to immediately act "[t]hereupon" its adoption.

22. A reading of Section 7301(c) requiring the Governor to review and approve a concurrent resolution would render the "at any time language" meaningless and superfluous, because, in fact, the General Assembly could not end a state of disaster emergency at all, let alone at the time of its choosing.

23. Article III, Section 9 does not apply to HR 836, which is a resolution under 35 Pa.C.S. § 7301(c), because it is not an exercise of lawmaking under Article III, and is an exercise of the General Assembly's exclusive power to suspend laws under Article I, Section 12.

24. Accordingly, HR 836 is effective and does not need to be presented to Governor Wolf under either 35 Pa.C.S. § 7301(c) or under Article III, Section 9 of the Pennsylvania Constitution.

25. HR 836 has triggered an immediate, mandatory duty for Governor Wolf to act.

V. STATEMENT OF RELIEF SOUGHT

COUNT I: MANDAMUS

26. The foregoing Paragraphs are incorporated by reference as if set forth in full herein.

27. Governor Wolf has a mandatory duty under 35 Pa.C.S. § 7301(c) to issue an executive order or proclamation ending the COVID-19 state of disaster emergency.

28. Governor Wolf has failed and refused to perform his mandatory duty to act upon HR 836 by issuing an executive order or proclamation ending the COVID-19 state of disaster emergency.

29. Governor Wolf's failure to issue an executive order or proclamation ending the COVID-19 state of disaster emergency is unlawful, unreasonable, and without just cause.

30. Governor Wolf has no discretion to refuse to issue an executive order or proclamation ending the COVID-19 state of disaster emergency.

31. The Senators have no adequate remedy at law to compel Respondent to perform his mandatory duty.

WHEREFORE, the Senators pray the Court:

(1) Enter judgment against Governor Wolf commanding him to issue an executive order or proclamation ending the state of disaster emergency related to COVID-19; and

(2) Grant such further relief as may be just under the circumstances.

Respectfully submitted,

Dated: June 10, 2020

/s/ Matthew H. Haverstick

Matthew H. Haverstick (No. 85072)
Mark E. Seiberling (No. 91256)
Joshua J. Voss (No. 306853)
Shohin Vance (No. 323551)
KLEINBARD LLC
Three Logan Square
1717 Arch Street, 5th Floor
Philadelphia, PA 19103
Ph: (215) 568-2000
Fax: (215) 568-0140
Eml: mhaverstick@kleinbard.com
mseiberling@kleinbard.com
jvoss@kleinbard.com
svance@kleinbard.com

Attorneys for Petitioners

VERIFICATION

I hereby verify that the statements made in the foregoing Petition for Review are true and corrected based upon my personal knowledge or information and belief. I understand that false statements therein are subject to penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: June 10, 2020

/s/ Joseph B. Scarnati III
Senator Joseph B. Scarnati, III

VERIFICATION

I hereby verify that the statements made in the foregoing Petition for Review are true and corrected based upon my personal knowledge or information and belief. I understand that false statements therein are subject to penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: June 10, 2020

/s/ Jake Corman
Senator Jake Corman, on behalf of himself and the Senate Republican Caucus

Exhibit A

COMMONWEALTH OF PENNSYLVANIA

OFFICE OF THE GOVERNOR

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 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

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

Exhibit 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

Exhibit C

SENATE AMENDED

PRIOR PRINTER'S NOS. 3521, 3828, 3881, 3903

PRINTER'S NO. 3910

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

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

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

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

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

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

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

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

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

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

~~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~~

~~Health; and~~

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

~~WHEREAS, In continuing efforts to address the severe and unmitigated negative economic consequences to citizens seeking to purchase or sell a home in this Commonwealth, and in an effort to prevent homelessness, the General Assembly also passed House Bill No. 2412, Printer's No. 3720, which required the Secretary of Community and Economic Development to immediately issue a waiver to the Governor's March 19, 2020, business closure order to permit providers of real estate services, including legal services, residential and commercial real estate services and settlement services, to conduct business; 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 Health; and~~

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

~~WHEREAS, As a result of the disparate impact that the COVID-19 virus is having among the Commonwealth's counties, where some 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~~

~~construction, restaurant operations, outdoor events and curbside retail services 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 Health; and~~

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

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

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

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

~~WHEREAS, On April 13, 2020, the Pennsylvania Supreme Court in *Friends of Danny DeVito v. Wolf* (No. 68 MM 2020, 2020 WL 1847100), affirmed the General Assembly's authority to terminate 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

OR PROCLAMATION ENDING THE STATE OF DISASTER EMERGENCY";
THEREFORE BE IT

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

RESOLVED, THAT UPON ADOPTION OF THIS CONCURRENT RESOLUTION BY BOTH CHAMBERS OF THE GENERAL ASSEMBLY, THE SECRETARY OF THE SENATE SHALL NOTIFY THE GOVERNOR OF THE GENERAL ASSEMBLY'S ACTION WITH THE DIRECTIVE THAT THE GOVERNOR ISSUE AN EXECUTIVE ORDER OR PROCLAMATION ENDING THE STATE OF DISASTER EMERGENCY IN ACCORDANCE WITH THIS RESOLUTION AND 35 PA.C.S. § 7301(C); 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 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 SENATE AND THE HOUSE OF REPRESENTATIVES.