

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 90 MM 2020

Private Properties, LLC, a Pennsylvania Limited Liability Company, Chester Properties, LLC, a Pennsylvania Limited Liability Company, and the Pennsylvania Residential Owners Association, a Pennsylvania Non-Stock Non-Profit on Behalf of all Similarly Situated Parties,
Petitioners,

v.

Tom Wolf, Governor of the Commonwealth of Pennsylvania and
Josh Shapiro, Attorney General of Commonwealth of Pennsylvania,

Respondents.

PETITIONERS' ANCILLARY BRIEF

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<u>Landlord and Tenant Act of 1951</u>	

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Executive Order of May 21, 2020

Executive Order of May 7, 2020

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Article 1, Section 1 of the Pennsylvania Constitution

Article IV, Section 15 of the Pennsylvania Constitution

Article V §13(a-c)

Article V, Section 10 (a) of the Pennsylvania Constitution

PA Constitution Article 2, Section 1

PA Constitution, Article 4, Section 2

Pa. Const. art. V, § 2 (a)

Pa. Const. art. V, § 2(c)

Pa. Const. Art. V, §2

Pa. Const. Art. V. §10(c)

STATEMENT OF JURISDICTION

This Supreme Court is vested with jurisdiction under Const. Art 5, §2 which provides in relevant part that the Supreme Court “shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth,” Pa. Const. art. V, § 2 (a). And further that, the Supreme Court “shall have such jurisdiction as shall be provided by law.” Pa. Const. art. V, § 2(c).

The King’s Bench authority is codified as: “The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and 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.A. § 502.

EXECUTIVE ORDER IN QUESTION

The Executive Order of May 7, 2020, provides in pertinent part:

*ORDER OF THE GOVERNOR OF THE COMMONWEALTH OF
PENNSYLVANIA FOR STAYING THE NOTICE REQUIREMENTS FOR
CERTAIN ACTIONS RELATED TO THE DISPOSSESSION OF PROPERTY*

NOW THEREFORE, pursuant to the authority vested in me and my Administration by the laws of the Commonwealth of Pennsylvania, I do hereby ORDER and PROCLAIM as follows:

Section 2:

Commencing on May 11, 2020, the notice requirements mandated by the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act are stayed for 60 days, thereby tolling the ability to commence the timelines necessary for the initiation of eviction proceedings. All eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act cannot commence for 60 days until July 10, 2020. All eviction timelines must be computed with a start date of July 10, 2020, at which point any previously delivered Landlord and Tenant Act of 1951 and Manufactured Home Community Rights Act notices will be deemed delivered and any eviction proceedings may commence. The eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act may proceed from that point forward in the normal course of action.

Section 3: Effective Date and Duration

This order is effective immediately and will remain in effect until July 10, 2020.

[SEAL] *GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this seventh day of May two thousand twenty, the year of the commonwealth the two hundred and forty-fourth.*

TOM WOLF
Governor

SCOPE OF REVIEW AND STANDARD OF REVIEW

This matter implicates the interpretation and application of the Pennsylvania Constitution of 1968, as amended. Accordingly, this inquiry is subject to *de novo* and plenary review. Commonwealth v. Cromwell Twp., 613 Pa. 1, 32 A.3d 639, 646 (2011).

STATEMENT OF THE QUESTIONS INVOLVED

- I. WHETHER THE EXECUTIVE ORDER OF MAY 7, 2020 VIOLATES THE SEPARATION OF POWERS DOCTRINE?

(Suggested Answer – Yes)

- II. WHETHER THE EXECUTIVE ORDER OF MAY 7, 2020 VIOLATES THE PROPERTY OWNERS’ RIGHT TO SUBSTANTIVE DUE PROCESS?

(Suggested Answer – Yes)

STATEMENT OF THE CASE

A. Statement of the Form of Action

On March 6, 2020, Governor Wolf issued a proclamation of Disaster Emergency and stated: “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.”. (Appendix A).

This Court thereafter entered orders managing the courts of the Commonwealth during the Disaster Emergency, including its per curiam Order dated April 28, 2020, at Numbers 531 and 532 in its Judicial Administration Docket (Appendix B).

Thereafter, on May 7, 2020, Governor Wolf issued the Executive Order precluding access to the courts by real estate property owners who would seek a

judgment for possession of real property. The Executive Order provides: “*All eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951. . . .cannot commence for 60 days until July 10, 2020.*” (Appendix C)

B. Form of Action and Procedural History of the Case

The Petitioners, Private Properties, LLC and Chester Properties, LLC are Pennsylvania limited liability companies and own residential rental properties in the Commonwealth. The Petitioner, Pennsylvania Residential Owners Association, is a Pennsylvania non-profit association whose members include over 20 affiliated chapters throughout Pennsylvania, the individual members of which chapters own and operate thousands of residential rental homes and apartments in the Commonwealth.

The Petitioners commenced this matter on May 12, 2020, with the filing of an Emergency Application under authority of the King’s Bench challenging the Executive Order. The Respondents filed an Answer to the Application for Extraordinary Relief on May 18, 2020.

The Petitioners, thereafter, filed application for leave to file a reply to the Respondents’ answer which was granted by Order of Court dated May 27, 2020.

On May 27, 2020, this Court issued an Order granting the Petition for Extraordinary Relief only to the extent this court determined to exercise jurisdiction and set forth an expedited briefing schedule.

The Cities of Philadelphia and Pittsburgh and Action Housing, Inc. were granted leave to and filed amicus briefs in support of Respondents.

C. Prior Determinations

None. No dispute is pending in a lower court and is filed with this Court under its original jurisdiction.

D. Chronological Statement of Facts

This Court entered its per curiam Order dated April 28, 2020, at Numbers 531 and 532 in its Judicial Administration Docket (Appendix B). Pursuant to Rule of Judicial Administration 1952 (1) and this Court's constitutionally conferred general supervisory and administrative authority over all courts and magisterial district judges under Article V, Section 10 (a) of the Pennsylvania Constitution, this court extended by its April 28, 2020, order its statewide judicial emergency order through June 1, 2020.

This Court's April 28, 2020 Order specifically provides that beginning May 4, 2020, Pennsylvania courts generally shall be open to conduct court business, and further specifically provided that this Court's prior order staying dispossession of property, including evictions, ejectments or other displacements from a residence based upon the failure to make a monetary payment through April 30, 2020, was

extended through May 11, 2020, “at which time the statewide suspension of procedures related to dispossession of property shall cease”. (Appendix B).

On May 21, 2020, Respondent Governor Wolf issued an amending Executive Order which provides in its entirety as:

**AMENDMENT TO THE ORDER
OF THE GOVERNOR OF THE COMMONWEALTH OF
PENNSYLVANIA FOR STAYING THE NOTICE
REQUIREMENTS FOR CERTAIN ACTIONS RELATED TO
THE DISPOSSESSION OF PROPERTY**

I hereby amend my Order for “Staying the Notice Requirements for Certain Actions Related to the Dispossession of Property” dated May 7, 2020.

The Order is amended to add a Section 4 to the Order as follows:

Section 4: Scope of Order

The provisions of this Order and the suspension of the Acts under this Order apply only to matters involving the nonpayment of monies as well as to those proceedings related to removal of any tenant solely because the tenant has held over or exceeded the term of a lease. The Order does not apply to suspend notice requirements relating to evictions for breaches of any other covenants.

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

TOM WOLF

Governor

SUMMARY OF ARGUMENT

This is a matter of first impression. The Governor’s Executive Order of May 7, 2020, as amended by Executive Order of May 21, 2020, undermines the foundational Constitutional predicate that our government is constituted of three separate and co-equal branches of government. The Executive Order manifests an unlawful concentration of power in the Executive, which left unchecked, jeopardizes, and encroaches upon the independent powers of the General Assembly to legislate and this Court’s authority to administer to the Court system.

ARGUMENT FOR APPELLANT

Introduction

The Emergency Management Services Code, *35 Pa. C.S.A. §7301 et seq.* (2014)(“Emergency Code”) vests the Governor with limited authority to suspend provisions of regulatory statutes proscribing the procedures for the conduct of Commonwealth business, or the orders, rules and regulations of Commonwealth agencies. Upon the declaration of a disaster emergency, the Emergency Code vests with the Governor specific, defined emergency management powers, including, inter alia, to “[s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the others, 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 the emergency;” to “[u]tilize all available resources of the Commonwealth Government and each political subdivision of this Commonwealth as reasonably necessary to cope with the disaster emergency;” to “[t]ransfer the direction, personnel or functions of Commonwealth agencies or units thereof for the purpose of performing or facilitating emergency services;” to “[d]irect and compel the evacuation of all or part of the population from any stricken or threatened area within this Commonwealth if this action is necessary for the preservation of life or other disaster mitigation, response or recovery;” to “[c]ontrol ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein;” and to “[s]uspend or limit the sale, dispensing or transportation or alcoholic beverages, firearms, explosives and combustibles.” See *35 Pa.C.S. §§ 7301(f)(1),(2),(3),(7),(8)*.

The Emergency Code does not authorize the Governor under the cloak of Executive Order to violate the separation of powers and invade the exclusive Constitutional authority of its sister branches of government to amend Law, to suspend substantive rights provided under Law, or to shutter the doors to the Courts.

The Executive Order of May 7th, as originally entered and as amended, impermissibly dictates the internal operations and procedures of the Courts by restricting access and precluding Court administration of pending cases and

controversies. The plain effect of the Executive Order is to dictate to this Court the processing of landlord and tenant civil actions which have previously been filed, are pending hearing, court filings which have been reduced to judgment and await execution, and preclude new court filings.

The Executive Order also unlawfully legislates by invalidating the express statutory allowance of the Landlord and Tenant Act of 1951 (“Landlord and Tenant Act”) to permit waiver of the Notice to Quit allowing immediate access to the Courts without prior statutory notice. It is the sole province of the General Assembly to amend the Landlord and Tenant Act to strike an affirmative statutory right, not the discretion of the Executive.

The Executive Order of May 7, 2020, targets residential property owners from acting to evict tenants “from their homes or residences” “when a landlord. . . intends to evict the tenant and/or lessee for nonpayment of rent;” The Executive Order however would equally deny commercial property owners access to the Courts when it denies access by restricting: “All eviction timelines must be computed with a start date of July 10, 2020. . . and any eviction proceedings may commence.”

The Executive Order as originally promulgated would further deny real property possession proceedings by property owners for non-monetary reasons including criminal acts, nuisance and drug related offenses. While this broad and overinclusive prohibition was modified by the Amendment of May 21st, even the

Executive Order as amended does not distinguish between evictions for non-payment of rent in the months preceding the Disaster Emergency, delaying commencement or continuation of real property possession proceedings pending before the Emergency.

The suppression of the important right to process current pending matters and to deny access the Courts was made even more abhorrent with Executive Order of May 21, 2020. The Governor now identifies and selects a discrete subset of litigant parties to deny only them access to the Courts. Again, though, both commercial and residential property owners remain targets of the Governor's Executive Order. Further, the extension of the timeframe set forth in the Executive Orders of May 7th and May 21st clearly extends beyond sixty days from the Governor's Declaration of Disaster Emergency on March 6th, which sixty-day period expired on May 5th. The Executive order extends more than another sixty days beyond the expiration of that authority, and more than sixty days beyond the May 7th executive order itself.

I. THE EXECUTIVE ORDER OF MAY 7, 2020 VIOLATES THE SEPARATION OF POWERS DOCTRINE.

The Executive Order states that the Governor “is authorized to issue regulations to temporarily suspend or modify for a period not to exceed sixty (60) days any public health, safety, zoning, transportation (within or across this Commonwealth) or other requirement of statute or regulation within this Commonwealth for which I deem the suspension or modification essential to provide temporary housing for disaster victims.” *35 Pa.C.S. §7302(a)*. The broad

powers granted to the Governor in the Emergency Code are grounded in the Commonwealth's general police power. Friends of DeVito v. Wolf, 2020 Pa. LEXIS 1987. The Executive branch, however, has misrepresented its limited police power authority under the Emergency Code.

The doctrine of the separation of governmental powers into the legislative, executive and judicial [branches] has been inherent in the structure of this Commonwealth's government since its inception. Commonwealth v. Sutley, 474 Pa. 256, 261 378 A.2d 780,782 (1977). The judicial branch has not ceded its power to the Governor to act upon its behalf in regulating statutes such as the landlord tenant law.

While the Governor has expansive emergency management powers, those powers are limited to the suspension of provisions of "any regulatory statute prescribing the procedures for conduct of the Commonwealth business, or other 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 the emergency." 35 Pa.C.S. §7301(f)(1). The effect of the Executive Order is an attempt to regulate the administration of the courts and such an attempt is outside of the police powers granted under the Emergency Code. Of the many powers enumerated in the Emergency Code, the ability or authority to change or contradict an emergency order

from the judiciary is not found. While this Commonwealth has never been faced with a pandemic of this magnitude, it is difficult to imagine that 35 Pa.C.S. §7302(a) is meant to support an Executive Order that both deprives landlords of access to the courts and exerts executive supremacy over the Judicial branch in violation of Article V of the Pennsylvania Constitution.

The May 7th and May 21st Executive Orders can be classified into one of three permissible types: (1) proclamations for ceremonial purposes; (2) directives to subordinate officials for the execution of executive branch duties; and (3) interpretation of statutory or other law. Markham v. Wolf, 647 Pa. 642, 190 A.3d 1175 (2018). The Executive Order of May 7, 2020, (Appendix B), without the underpinning of legal authority, involves the third type of Executive Order defined by the Court. While the Governor may issue executive orders, he or she must not infringe upon the powers of the other two branches of our government...Markham, 647 at 656, 190 A.3d at 1183 (2018). “[A]ny executive order that, in essence, creates law, is unconstitutional.” Id.

The Executive Orders being appealed in this matter *sui juris* were not issued based on a constitutional or statutory provision as there is no authority under the State Constitution that permits the Executive to direct matters conferred solely upon the judicial branch. The Governor's power is to execute the laws and not to create or

interpret them. As set forth in Shapp v. Butera, 22 Pa. Commw. 229, 236, 348 A.2d 910, 914 (1975):

It is clear to us that the Executive Branch, through executive orders, is not permitted under our system of government to usurp the judicial prerogative to interpret constitutional or statutory provisions. If such power was granted, those interpretations would be subject to change at least every four years, and the law would be filled with uncertainty. Furthermore, the only legal enforcement procedure available to the Executive Branch of government is through the Judicial Branch.

The Pennsylvania Constitution provides that the Supreme Court “shall be the highest court of the Commonwealth and in this Court shall be reposed the supreme judicial power of the Commonwealth [and] shall have such jurisdiction as shall be provided by law.” Pa. Const. Art. V, §2.

Article V, (10) of the Pennsylvania Constitution provides in pertinent part:

- (a) The Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace, including authority to temporarily assign judges and justices of the peace from one court or district to another as it deems appropriate.
- (c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require...

Under Article V. Section 10(c) of the state constitution, the Supreme Court shall have the power to prescribe general rules governing the conduct of all courts so

long as such rules are consistent with the Pennsylvania Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the Pennsylvania General Assembly to determine the jurisdiction of any court..., nor suspend, nor alter any statute of any limitation or repose. All laws shall be suspended to the extent they are inconsistent with the rules prescribed under these provisions. Payne v. Commonwealth Department of Corrections, 582 Pa. 375 (2005), 871 A.2d 795. It was under this guideline that the Court entered its Emergency Order of Statewide Judicial Administration applicable from May 1, 2020 through June 1, 2020.

The judiciary is a constituent or coordinate part of government; it is not subordinate to other powers, nor does it depend for existence on the legislative will. Its powers come directly from the people, without intervening agency. From the very nature of its time-honored powers, it should be kept a separate, distinct and independent entity in government... The domain of the judiciary is in the field of the administration of justice under the law; it interprets, construes and applies the law. Sutley citing Commonwealth v. Widovich, et al, 295 Pa. 311, 322, 145 A.295, 299 (1929).

Courts have long recognized that the judicial branch is not subordinate to the other branches of government but is coequal, distinct and independent. By limiting landlords' access to the courts, the Executive Order is unconstitutional.

In this Court’s recent decision in DeVito, Justice Donohue writing for the majority carefully considered the balance of the Governor’s powers under the Emergency Management Services Code, 35 PA C.S.A. section 7101 et seq, applicable sections of the Administrative Code, 71 PS Section 532; 71 PS Section 1403 (1) and the Disease Prevention and Control Law, 35 P.S. Section 521.1-521.25. This court in DeVito acknowledged that the Governor derives broad authority and directs him to “take care that the laws be faithfully executed”, PA Constitution, Article 4, Section 2. DeVito carefully considered the respondent Wolf’s statutory authority to issue the executive order therein questioned, finding that the Legislature by its enactment of the cited statutes ceded broad authority to the Executive in these limited circumstances. However, Respondent Wolf’s May 7th Executive Order, by contrast, is not grounded in the broad powers granted to the Governor in the Commonwealth’s Police Power nor in any specific law. This Court did not cede its authority to supervise the courts in any way to the Governor, instead actually asserting that authority in its orders including the Order of April 28th.

This Court has stated that “our courts have integrated to some extent the separation of powers doctrine and Article V of the Pennsylvania Constitution,” noting that “[t]he separation of powers doctrine ... stands for the proposition ‘that the executive, legislative, and judicial branches of government are equal. Under this doctrine, the courts may “invalidate statutory provisions that intrude on the judicial

prerogative to regulate” a particular area of law. Zauflik v. Pennsbury Sch. Dist., 72 A.3d 773, 785–86 (Pa.Cmwlth. 2013), aff'd, 629 Pa. 1, 104 A.3d 1096 (2014). (Cites omitted.) In Zauflik, this Court's inquiry focused on the Supreme Court's supervisory powers under Article V, Section 10(c) of the Pennsylvania Constitution to regulate the practice of law. “[G]uided by the specific authority vested in the Supreme Court through Article V of the Pennsylvania Constitution,” this Court stated that “the separation of powers doctrine provides authority for the courts of the Commonwealth to invalidate statutory provisions that intrude on the judicial prerogative to regulate the practice of law,” and concluded that there can be a violation of the separation of powers doctrine if legislative action “impairs the independence of the judiciary in its administration of justice.” Id. at 786. The attempt by the Governor to direct the functions of the courts is no different than the legislature attempting to regulate the practice of law. The Governor’s issuance of the Executive Orders “impairs the independence of the judiciary in its administration of justice” and therefore, should be invalidated.

Accordingly, the Governor is without the power to regulate any aspect of the operation of the judiciary and the issuance of the Executive Orders of May 7, 2020 and May 21, 2020 are an intrusion upon the right of the judicial branch to direct matters of the courts, violating the Separation of Separation of Powers Doctrine.

As was found in Sutley, any encroachment upon the judicial power by the legislature is offensive to the fundamental scheme of our government. It follows that the encroachment by the subject Executive Order upon the judiciary is equally as offensive to the fundamental scheme of our government. The attempt by the Governor to impose his will by fiat and alter not only the Court's Executive Order of April 28, 2020, but also the very substance of the Landlord and Tenant Act of 1951, is an assault upon the Court's authority. Under the Pennsylvania Constitution, as more specifically set forth in Article V §13(a-c), only the Supreme Court shall exercise general supervisory authority over all the courts... The Supreme Court shall have the power to prescribe general rules governing practice, procedures and conduct of all courts... The Executive Order, by denying access to the courts and extending the deadline beyond that ordered by the Supreme Court, clearly usurps the authority of the Supreme Court, and contradicts and renders the court action of April 28, 2020 as it relates to evictions, a nullity.

The Judiciary has not issued any order or statement agreeing to cede its power to the Governor, nor has it moved to amend the Constitution to allow the Governor the power to change the rules of civil procedure. In Payne, the Courts stated the power to establish rules of procedure for state courts is exclusive [to the Supreme Court]. The Court further went on to reject the notion that the General Assembly exercised concurrent power in that regard. Payne, 582 Pa. at 385. The Pennsylvania

Constitution grants the judiciary – and the judiciary alone – power over rulemaking. Id. The Executive Order is unconstitutional and interferes with this Court’s exclusive rulemaking authority. By the issuance of the Executive Order, the Governor has clearly interfered and attempted to override the Court’s rulemaking authority.

The Governor recognizes the separation of powers and aggressively protects his constitutional turf when the authority of the Executive Branch is challenged. Most recently, on May 19, 2020, the Governor, pursuant to Article IV, Section 15 of the Pennsylvania Constitution, returned House Bill 2412 to the legislature without his approval. The Governor in his memo returning the legislation stated that he viewed “this legislation [as] an infringement on the authority and responsibility of the executive and a violation of the separation of powers, which is critical to the proper function of our democracy.” Just as the legislative action set forth in HB 2412 was considered by Respondent Wolf to be “an infringement on the authority and responsibility of the executive and a violation of the separation of powers” so is the issuance of the Executive Order an infringement on the authority and responsibility of the Judiciary and the General Assembly. In entering the Executive Order, the Governor did exactly what he accused the legislature of attempting – violating the separation of powers critical to the proper functioning of our democracy.

It is respectfully requested that this Honorable Court decree that Section 2 of the May 7th Executive Order and the May 21st Executive Order are invalid and unconstitutional acts of the Executive under the separation of powers doctrine.

II. THE EXECUTIVE ORDER OF MAY 7, 2020 VIOLATES THE PROPERTY OWNERS' RIGHT TO SUBSTANTIVE DUE PROCESS.

“Substantive due process is the “esoteric concept interwoven within our judicial framework to guarantee fundamental fairness and substantial justice,” Commonwealth v. Stipetich, 539 Pa. 428, 652 A.2d 1294, 1299 (1995) (Cappy, J. dissenting), and its precepts protect fundamental liberty interests against infringement by the government. The Executive Order violates the Petitioners’ substantive due process rights when it denies the Petitioners and similarly situated persons the right to access to the courts and impermissibly impedes the right to the use and enjoyment of their real properties in compliance with Law.

For substantive due process rights to attach there must first be the deprivation of a property right or other interest that is constitutionally protected. Hence, when confronted with a constitutional challenge premised upon substantive due process grounds, the threshold inquiry is whether the challenged governmental act, in this case an Executive Order, purports to restrict or regulate a constitutionally protected right. Commonwealth v. Burnsworth, 543 Pa. 18, 669 A.2d 883, 889 (1995).

A. COURT ACCESS AND THE RIGHT TO A REMEDY ARE FUNDAMENTAL RIGHTS PROTECTED BY THE CONSTITUTION

Access to the Courts and the right to seek redress are protected constitutional rights in this Commonwealth. The right of access to the Courts is memorialized in our Constitution at Article 1, Section 11 which mandates that:

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

This Court has held that it is the constitutional right of every person who finds it necessary or desirable to repair to the courts for protection of legally recognized interests to have justice administered without denial or delay. This Court recognized that Article 1, Section 11 “provided that where a legal injury is sustained, there shall and will always be access to the courts of this Commonwealth.” Masloff v. Port Auth. of Allegheny County, 531 Pa. 416, 613 A.2d 1186, 1190 (1992). “It is fundamental to our common law system that one may seek redress for every substantial wrong.” Ayala v. Philadelphia Board of Public Education, 453 Pa. 584, 305 A.2d 877 (1973).

B. THE RIGHT USE, ENJOY AND PROTECT PROPERTY RIGHTS IS A FUNDAMENTAL RIGHT PROTECTED BY THE CONSTITUTION

“The right of landowners in this Commonwealth to use their property as they wish, unfettered by governmental interference except as necessary to protect the interests of the public and of neighboring property owners, is of ancient origin, recognized in the *Magna Carta*, and now memorialized in Article I, Section 1 of the Pennsylvania Constitution.” See In re Realen Valley Forge Greenes Assoc., 576 Pa. 115, 130, 838 A.2d 718, 727 (2003) (voiding an ordinance that was designed to prevent development of property and to “freeze” its substantially undeveloped state in order to serve the public interest as “green space”). Article 1, Section 1 of the Pennsylvania Constitution provides citizens of this Commonwealth with certain substantive Due Process rights. That Section states:

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

Pa. Const. Art. 1, § 1. Where a law unreasonably restricts an individual's right to the use and enjoyment of his property, the legislation is subject to constitutional attack under Article 1, Section 1 of the Pennsylvania Constitution. See, McSwain v. Comwlth., 520 A.2d 527, 529 (Pa.Cmwlth. 1987) (citing Concord Twp. Appeal, 439 Pa. 466, 268 A.2d 765 (1970) and Nat'l Land & Inv. Co. v. Easttown Twp. Bd. of Adj., 419 Pa. 504, 215 A.2d 597 (1965)); see also, Herrit v. Code Mgmt Appeal Bd. of City of Butler, 704 A.2d 186, 189 (Pa. Cmwlth. 1997); PA Northwestern Distributors, Inc. v. Zoning Hearing Bd. of Twp. of Moon, 526 Pa. 186, 584 A.2d

1372 (1991). Furthermore, the operation of a business is a protected property right. See, e.g., Rothrock v. Rothrock Motor Sales, Inc., 584 Pa. 297, 883 A.2d 511, 516 (2005) (recognizing “Pennsylvania's traditional view [on] employer's inherent right to operate its business as it chooses”). The May 7, 2020, Executive Order impinges upon the rights of Petitioners by prohibiting the exercise of their constitutionally protected property rights.

C. THE EXECUTIVE ORDERS ARE SUBJECT TO INTERMEDIATE LEVEL OF SCRUTINY AND WILL BE SUSTAINED ONLY WHEN THE ORDERS ARE SUBSTANTIALLY RELATED TO AN IMPORTANT GOVERNMENTAL INTEREST

Under the Pennsylvania Constitution, when a law is alleged to infringe upon a citizen’s substantive Due Process rights, the court is required to engage in a “means-end review.” As explained by the Supreme Court in Nixon v. Commonwealth, 576 Pa. 385, 839 A.2d 277, 287 (2003):

While the General Assembly may, under its police power, limit [a citizens inalienable substantive due process rights] by enacting laws to protect the public health, safety, and welfare, any such laws are subject to judicial review and a constitutional analysis. Gambone v. Commonwealth, 375 Pa. 547, 101 A.2d 634, 636-37 (1954); Krenzelak v. Krenzelak, 503 Pa. 373, 469 A.2d 987, 993 (1983).

The constitutional analysis applied to the laws that impede upon these inalienable rights is a means-end review, legally referred to as a substantive due process analysis. See Adler v. Montefiore Hosp. Ass'n of Western Pennsylvania, 453 Pa. 60, 311 A.2d 634, 640-41 (1973); see also Moore v. City of East Cleveland,

Ohio, 431 U.S. 494, 500-05, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977). Under that analysis, courts must weigh the rights infringed upon by the law against the interest sought to be achieved by it, and also scrutinize the relationship between the law (the means) and that interest (the end). See Adler, 311 A.2d at 640-41; In re Martorano, 464 Pa. 66, 346 [576 Pa. 400] A.2d 22, 26 (1975); see also Moore, 431 U.S. at 500-05, 97 S.Ct. 1932; Lawrence v. Texas, 539 U.S. 558, ----, 123 S.Ct. 2472, 2477, 156 L.Ed.2d 508 (2003); Wolff v. McDonnell, 418 U.S. 539, 558, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) ("The touchstone of due process is protection of the individual against arbitrary action of the government."). 576 Pa. 385, 400-401, 839 A.2d 277, 287.

The first step in a Substantive Due Process analysis under the Article 1, Section 1 of the Pennsylvania Constitution is to determine the level of scrutiny.

This Supreme Court explained:

[T]here are three different types of classifications calling for three different standards of judicial review. The first type--classifications implicating neither suspect classes nor fundamental rights--will be sustained if it meets a "rational basis" test.... In the second type of cases, where a suspect classification has been made or a fundamental right has been burdened, another standard of review is applied: that of strict scrutiny.... Finally, in the third type of cases, if "important," though not fundamental rights are affected by the classification, or if "sensitive" classifications have been made, the United States Supreme Court has employed what may be called an intermediate standard of review, or a heightened standard of review.

Jae v. Good, 2008 WL 1775273, (Pa. Cmwlth. 2008) (quoting James v. Southeastern Pa. Transp. Authority, 505 Pa. 137, 145, 477 A.2d 1302, 1305-1306 (1984)) (citations omitted); See also, Nixon, 576 Pa. at 385, 839 A.2d at 287. (Where the right affected is fundamental, “such as the right to privacy, the right to marry, and the right to procreate,” strict judicial scrutiny is applied and the statute “may only be deemed constitutional if it is narrowly tailored to a compelling state interest.”) Khan v. State Board of Auctioneer Examiners, 577 Pa. 166, 842 A.2d 936, 946 (2004)(If the law restricts other important, though not fundamental rights, the Courts uphold the statute if a heightened standard of scrutiny is applied to an “important” governmental purpose.)

Restrictions on access to the Courts and restrictions on a right to a remedy have been accorded an intermediate level of scrutiny. This Court in Yanakos held, that “[S]tatutes which infringe on the right to a remedy—and other important rights—are subject to a heightened level of scrutiny. *See James*, 477 A.2d at 1306 (applying a heightened standard of review when analyzing a law which restricted the plaintiff’s “important interest in access to the courts”); *see also Smith*, 516 A.2d at 311 (Noting that the “important interest in access to the courts ... should be examined pursuant to an intermediate standard of review.”). Yanakos v. UPMC 218 A.3d 1214, 1222–23 (Pa. 2019), *reargument denied*, 224 A.3d 1255 (Pa. 2020). In order for this Executive Order, which infringes on the Article I, Section 11 right to a remedy to

pass intermediate scrutiny, it must be substantially or closely related to an important government interest. Id. at 1225.

Because the Executive Order of May 7th, as amended by Executive Order of May 21st, curtails the important constitutional right to access to the courts and the right to a remedy, this Court should apply intermediate scrutiny to determine whether the Orders are substantially related to achieving an important government interest. Under this intermediate standard, to withstand constitutional challenge, classifications “must serve important governmental objectives and must be substantially related to [the] achievement of those objectives.” Zauflik, 72 A.3d at 790–91; Craig v. Boren, 429 U.S. 190, 197, 97 S.Ct. 451, (1976). While there is no question housing rights are important governmental objectives, the means by which the Executive Order is attempting to meet those objectives, wholesale deprivation of Petitioners’ right to access to the courts, cannot be found to be substantially related to achieve those objectives. One option for the Executive branch is to provide temporary housing as contemplated under the Emergency Code.

Similarly, this Court imposes an intermediate level of scrutiny when governmental actions regulate real property rights: “the municipality may utilize zoning measures that are substantially related to the protection and preservation of such an interest.” *See* National Land and Investment Co. v. Easttown Township Board of Adjustment, 419 Pa. 504, 215 A.2d 597, 607 (1966). In re Realen Valley

Forge Greenes Associates, 576 Pa. 115, 131, 838 A.2d 718, 728 (2003), this Court stated:

The substantive due process inquiry, involving a balancing of landowners' rights against the public interest sought to be protected by an exercise of the police power, must accord substantial deference to the preservation of rights of property owners, within constraints of the ancient maxim of our common law, *sic utere tuo ut alienum non laedas*. 9 Coke 59—So use your own property as not to injure your neighbors. A property owner is obliged to utilize his property in a manner that will not harm others in the use of their property, and zoning ordinances may validly protect the interests of neighboring property owners from harm. Citing *Hopewell Township Board of Supervisors v. Golla*, 499 Pa. 246, 452 A.2d 1337, 1341–42 (1982).

Hence, consistent with the function of judicial review when the validity of a zoning ordinance is challenged, is to engage in a meaningful inquiry into the reasonableness of the restriction on land use in light of the deprivation of landowner's freedom thereby incurred, *Id.*, 452 A.2d at 1342. Judicial review in this matter, where Petitioners rights to use their land are being restricted, is to engage in a meaningful inquiry into the reasonableness of the restriction on land use. Due process is protection of the individual against arbitrary action of the government and allowing the Executive Orders to stand, is a violation of Petitioners' due process rights.

D. THE EXECUTIVE ORDER OF MAY 7, 2020, AS AMENDED, VIOLATES THE PETITIONERS' RIGHT TO SUBSTANTIVE DUE PROCESS OF LAW.

As discussed, *infra*, the Executive Orders impermissibly shutter the doors of the Courts without express statutory authorization or Constitutional authority.

Respondent Wolf is not empowered to invade upon this Court's exclusive and Constitutionally mandated power to administer the Courts; nor would the Respondent be entitled to post the National Guard on the steps of the General Assembly to preclude assembly of the representatives to do the business of the Commonwealth based upon a decree of emergency under the Emergency Code.

Respondent Wolf does not reference any imputed power under the Constitution; or provide any inferential interpretation of any Constitutional provision in support of the Executive Order - - there is none. The Respondent simply argues that extension of the general police power is imputed (because there is no express authorization) within the Emergency Code to preclude and suspend access to the Courts, a remedy protected under the Constitution. (Response to Petition at p. 4). Respondent Wolf argues that the important governmental interest is the Covid 19 pandemic and to avoid dislocation of residents. Yet, the Respondent does not explain why the Courts should be closed when much of the Commonwealth is moving to lesser restrictions which have been referred to as "yellow" or "green" and that the State Stores are open for curbside pick-up. As will be discussed, the classification of real property owners for suspension of important Constitutional Rights is not only artificially constrained, it is irrational and fails to support any legitimate police power goal.

The act of issuance of the Executive Orders brings the Executive Branch in direct conflict with the Judicial Branch. This Court in its Emergency Order at Nos. 531 and 532 Judicial Administration Docket established operating procedures which account for the effects of the pandemic to maintain operational aspects of the courts and to limit physical contact between the general public and court personnel. The Executive Orders are a full frontal assault on this Court's Emergency Order which directs that Pennsylvania courts shall generally be open with restrictions upon in-person proceedings while according President Judges the discretion to address specific local conditions. And specifically, this Court expressed special direction to matters dealing with "Dispossession of Property" wherein this Court Ordered: "All terms of those Orders related to dispossession of residences ARE EXTENDED until May 11, 2020, at which time the statewide suspension of procedures related to disposition of property SHALL CEASE." The act of the Respondent is a clear intrusion into this Court's exclusive right and authority to be remedied only by Order of this Court invalidating the same.

The Executive Order, as amended, denies ALL litigants of landlord and tenant matters currently pending before the Court with the right to pursue the matter to judgment or to enforce a judgment previously entered. The Executive Orders do not simply extend time, they interfere with the active conduct of the courts to administer to current matters which are not reliant on statutory notices, i.e. the notice to quit.

Respondents address the constitutional matter raised by merely stating that “the Governor’s Order does not foreclose bringing evictions and foreclosures; it merely extends the time on statutory preconditions, after which, lenders and landlords may commence foreclosure and eviction actions. None of these actions usurp the Court’s powers under Article V of the Pennsylvania Constitution”. The Governor is without the constitutional authority to “merely extend time”. The Judiciary has not issued any order or statement agreeing to cede its power to the Governor, nor has it moved to amend the Constitution to allow the Governor the power to change the rules of civil procedure. In Payne, the Courts stated the power to establish rules of procedure for state courts is exclusive [to the Supreme Court]. The Court further went on to reject the notion that the General Assembly exercised concurrent power in that regard. Payne, 582 Pa. at 385. The Pennsylvania Constitution grants the judiciary – and the judiciary alone – power over rulemaking. *Id.* The matter of proceeding in landlord and tenant actions is procedural in nature and therefore, regulation of such is committed to the exclusive authority of the Pennsylvania Supreme Court under Pa. Const. art. V. §10(c). Forester v. Hansen, 2006 Pa. Super. 137, 901 A.2d 548. Accordingly, the Executive Order is unconstitutional and interferes with this Court’s exclusive rulemaking authority. By the issuance of the Executive Order, the Governor has clearly interfered and attempted to override the Court’s rulemaking authority.

The Executive Order further deprives real property owners of their Constitutionally protected rights by denying them the ability to collect rent on properties and make them productive. The Executive Order of May 7, 2020, denies property owners with the most fundamental right to deny use and possession of their real properties to third parties who are unwilling and unable to satisfy the rental obligation for their retention or are otherwise in non-monetary default. The Executive Orders do not lessen the burden upon the property owners to satisfy ongoing obligations to mortgage lenders, taxing authorities, insurance carriers and for the general and extraordinary obligations of maintenance and repair. Indeed, the Executive Order of May 7th, denies the property owners with the most basic right to seek redress in this Court for protection of their property interests.

The Executive Orders at their core are irrational and illogical and have no real regulatory basis when they have significant, unintended and unlawful impacts. A quick survey of the background of the Executive Order of May 7, 2020 provides the rationale (and purpose) for the Order. The background provides in pertinent part the underlying rationale for imposing restrictions to deny court access for “All eviction proceedings” and “All eviction timelines”:

“WHEREAS, the Supreme Court of Pennsylvania issued Orders that acted to prevent the judiciary from effectuating an eviction, ejection or other displacement from a residence based upon a failure to make a monetary payment, but the statewide judicial suspension of procedure related to the disposition property extends only until May 11, 2020 (emphasis added).

And,

“WHEREAS, the movement and/or displacement of individual residing in Pennsylvania from their homes or residences during the current stage of the disaster emergency constitutes a public health danger to the Commonwealth in the form of unnecessary movement that increases the risk of community spread of COVID-19;

The Executive Order of May 7, is not substantially, let alone rationally, related to its stated purpose of protecting Commonwealth residents from displacement from their residential homes. The Executive Order by its terms is not closely tailored to the intended purpose when it denies ALL property Owners from access to the Courts, including commercial, industrial and residential. The Order by its terms denies ALL property owners from seeking possession for monetary and non-monetary reasons for matters currently pending before the Court. Indeed, the Executive Order denies ALL property owners with any and all right to protect their real property by denying access to the Courts.

The Executive Order of May 21, 2020, further illustrates how irrational and illogical the unintended regulatory impacts are as compared to the intended regulatory purpose. The Executive Order of May 21 provides:

The provisions of this Order and the suspension of the Acts under this Order apply only to matters involving the nonpayment of monies as well as to those proceedings related to removal of any tenant solely because the tenant has held over or exceeded the term of a lease. The Order does not apply to suspend notice requirements relating to evictions for breaches of any other covenants.

The Executive Order now creates artificial classifications of tenants that default for politically “good reasons” and those that default for socially “bad reasons”. The amended Executive Order continues to deny access to the courts by commercial, industrial and residential property owners excepting those that may assert a non-monetary default - - excepting for the non-monetary default of an over stay. If you are a resident and are evicted for a nonmonetary reason, i.e. not paying insurance, causing a nuisance or acting in a criminal manner, you are still being displaced; a condition intended to be avoided by the express purpose of the Executive Orders.

In summary, the Executive Order is not even rationally related to the articulated purpose and is arbitrary in its effect when it so overly envelopes the important rights of access to the Courts of ALL property owners, current litigants and those property owners that require protection of their property rights from the Courts.

The executive Order also deny the Petitioners the substantive rights accorded them by the General Assembly. The express powers articulated in the Emergency Code (other than for creation of emergency housing) do not authorize Respondent Wolf to modify or amend, or suspend the substantive rights of property owners contained in the Landlord and Tenant Act. The General Assembly expressly accorded specific legislative standing requirements under the Landlord Tenant Act which may be permissively waived by the parties to a lease agreement. Section 501

of the Landlord and Tenant Act imposes a standing requirement which is waivable and provides in pertinent part:

(a) A landlord desirous of repossessing real property from a tenant except real property which is a mobile home space as defined in the act of November 24, 1976, (P.L. 1176, No. 261), known as the "Mobile Home Park Rights Act," may notify, in writing, the tenant to remove from the same at the expiration of the time specified in the notice under the following circumstances, namely (1) upon the termination of a term of tenant, (2) or upon forfeiture of the lease for breach of its conditions, (3) or upon the failure of the tenant, upon demand, to satisfy any rent reserved and due.

(b) The notice above provided for may be for lesser time or may be waived by the tenant if the lease so provides.

(c) The notice provided for in this section may be served personally on the tenant, or by leaving the same at the principal building upon the premises, or by posting the same conspicuously on the leased premises.

The statutory provisions in the Landlord and Tenant Act under Section 501, are expressly waivable, do not involve the action or interaction with a Commonwealth agency, and do not involve an order of a Commonwealth agency. The Respondents do not appreciate that once a litigant is in court, has a pending civil matter, or when as here, the Notice to Quit may be waived, the Governor is without authority to intrude into the operation and administration of the court system *via* an Executive extension of time. The Executive Orders unlawfully direct the Courts not to process landlord and tenant matters which were pending as of the date that the Emergency was declared by the Governor, directs the courts not to permit litigants to

enforce real property possession judgments previously entered in the courts and directs this Court not to permit filings when there is no “precondition” to the filing of the civil matter.

In addition to usurping the powers of the Court, Respondent Wolf’s Executive Order unlawfully amends the Pennsylvania Landlord and Tenant Act, and thereby invades the province of the legislature, the third coequal branch of government in Pennsylvania, charged with the power to pass laws under PA Constitution Article 2, Section 1. In essence, the Executive Order legislates a restriction upon the affirmative terms of the Landlord and Tenant Act *and* as previously stated, this Court has held that: “any executive order that, in essence, creates law, is unconstitutional.” Markham, 647 at 656, 190 A.3d at 1183. The Respondent Wolf’s Executive Order constitutes an attempt at legislation, which is the exclusive province of the legislative branch of government. (“Foundationally, the legislature creates the laws, Pa. Const. art. II, § 1”). Markham, 647 at 646, 190 A.3d 1177.

The Respondents are unable to demonstrate that the Executive Orders are in furtherance of an important governmental interest and that its means are closely related to the governmental purpose when they internally conflict, provide irrational classifications of property owners, and are not rationally related to the articulated purpose. Therefore, those portions of Executive Order of May 7, 2020, which thereby restrict, delay and suspend the notice requirements under the Landlord and

Tenant Act and restrict, delay and deny access to the Courts for real property eviction proceedings under the Landlord and Tenant Act should be invalidated.

III. THE ISSUES PRESENTED IN FRIENDS OF DANNY DEVITO V. WOLF ARE DISCRETE, NOT INVOLVED IN THE INSTANT PETITION AND CONCERN A DIFFERENT EXECUTIVE ORDER.

This part of the argument is included to address an anticipated argument by the Respondents which was raised in their answer to the Petition for extraordinary relief.

This Court's decision in the matter of Friends of Danny Devito v. Wolf, 2020 Pa. LEXIS 1987 (Pa. April 13, 2020), did not address and did not resolve any issue raised in the instant Kings Bench Petition; and in fact, concerned a different Executive Order dealing with wholly different regulatory restrictions.

The matter of the DeVito related to a challenge of the Governor's authority to order closure of physical business operations deemed non-essential. The Petitioners therein asserted that the closure order constituted a regulatory act without procedural due process, a taking compensable at Law and usurped the important individual rights of free speech and assembly protected by the Pennsylvania Constitution. In Devito, the parties did not assert that the Governor's act in any manner denied access to the Court apparatus nor constituted an impermissible intrusion into the exclusive power of this Court to administer court proceedings and operations of the Court, plenary

powers vested solely in this Court. To the contrary, the separation of powers issue raised in Devito related to the claim that the Executive Order of March 19, 2020, constituted an impermissible legislative act.

This Court summarily resolved the “separation of powers” issue at page forty three of the decision wherein it held:

“the Emergency Code. . . ., expressly authorizes the Governor to declare a disaster emergency and thereafter to control the ‘ingress and egress to and from a disaster area, the movement of persons within the area’ . . .”

The Respondents herein proceed to make other irrelevant legal arguments. At page 11 of the Response, the Respondents assert that the notice under the Loan Interest Protection Law and the Homeowners Emergency Assistance Act somehow equates to the provision in the Landlord and Tenant Act related to the Notice to Quit provision. The Petitioners herein do not assert that the Governor is without authority to stay the regulatory process which requires agency face to face meetings and agency processing. The Emergency Code, 35 Pa. C.S.A §(f)(1), specifically authorizes the Governor to: “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.” (*Emphasis added*)

The statutory provision in the Landlord Tenant Act under Section 501, are expressly waivable¹, do not involve the action or interaction with a Commonwealth agency, and do not involve an order of a Commonwealth agency.

The remaining arguments fashioned by the Respondents related to administrative proceedings as a “precondition” to the filing of a civil matter are again without merit and are designed solely to obfuscate. There is no argument that many statutes provide for “administrative proceedings” which must be exhausted before the filing of a civil action. The Respondent does not appreciate that once a litigant is in court, has a pending civil matter, or when as here, the Notice to Quit may be waived, then the Governor is without authority to intrude into the operation and administration of the court system. The Executive Order unlawfully directs the Courts not to process landlord and tenant matters which were pending as of the date that the Emergency was declared by the Governor, directs the courts not to permit litigants to enforce real property possession judgments previously entered in the courts and directs this Court not to permit filings when there is no “precondition” to the filing of the civil matter.

¹ 501(b): The notice above provided for may be for lesser time or may be waived by the tenant if the lease so provides.

CONCLUSION:

For the reasons stated above, Petitioners respectfully request this Honorable Court invalidate those portions of Executive Orders of May 7, 2020 and May 21, 2020, which thereby restrict, delay and suspend the notice requirements under the Landlord and Tenant Act of 1951 and restrict, delay and deny access to the Courts for real property eviction proceedings under the Landlord and Tenant Act of 1951.

Respectfully submitted,



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**APPENDIX A
PROCLAMATION OF DISASTER
EMERGENCY**



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
TOM WOLF
Governor

APPENDIX B
SUPREME COURT ORDER DATED APRIL 28,
2020

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

IN RE: GENERAL STATEWIDE JUDICIAL EMERGENCY : Nos. 531 and 532 Judicial
: Administration Docket
:

***EMERGENCY ORDER OF STATEWIDE JUDICIAL ADMINISTRATION
APPLICABLE FROM MAY 1, 2020, THROUGH JUNE 1, 2020***

PER CURIAM

AND NOW, this 28th day of April, 2020, pursuant to Rule of Judicial Administration 1952(A) and the Pennsylvania Supreme Court's constitutionally-conferred general supervisory and administrative authority over all courts and magisterial district judges, *see* PA. CONST. art. V, §10(a), this Court DIRECTS that the general, statewide judicial emergency declared in this Court's Order of March 16, 2020, IS EXTENDED through June 1, 2020.

From the time of the Court's Order of March 16, 2020, Pennsylvania's courts have remained operational, albeit with significant limitations due to the current pandemic, including restricted public access to court facilities. Beginning May 4, 2020, unless otherwise provided by a local emergency order, Pennsylvania courts generally SHALL BE OPEN to conduct all court business. However, all IN-PERSON ACCESS AND PROCEEDINGS SHALL BE STRICTLY LIMITED according to the terms of this Order or a more restrictive order issued by a local court under its authorized emergency powers.



The courts' priorities SHALL REMAIN CENTERED on their critical functions;¹ however, courts SHALL PUT FORWARD THEIR BEST EFFORTS to accomplish the timely administration of justice in all other matters, subject to the constraints and safety considerations set forth below.

This Order prospectively replaces the Second Supplemental Order of April 1, 2020, issued at the above dockets, which SHALL REMAIN IN EFFECT until that Order expires on its own terms. The explanatory background information set forth in that Order, as well as the Order of March 18, 2020, is incorporated here by reference.

The Court further explains and DIRECTS as follows:

I. Background

Per the request of the Commonwealth's Secretary of Health, Pennsylvania courts have been generally closed to the public for over one month, subject to a series of general and specific directives and exceptions centered on the continuous performance of the courts' most critical functions. The Secretary's concern -- shared by all Justices of this Court -- is with safeguarding the health and safety of court personnel, court users, and members of the public in light of the risks posed by the COVID-19 virus. In view of the ongoing public health crisis, this Court finds that a further extension of the statewide judicial emergency is necessary.

¹ As reflected below, the present Order employs the term "critical functions" to include the tasks referred to in prior orders as "essential" ones. This approach recognizes that - since the prevailing circumstances have required several extensions of this Court's emergency declaration -- it has now become incumbent upon the courts to undertake a broader range of functions to assure the proper administration of justice.

Some local courts have utilized the procedures specified in Rule of Judicial Administration 1952 and/or this Court's prior orders to declare local emergencies. Such local emergencies REMAIN IN FULL FORCE AND EFFECT, empowering President Judges in those districts to continue to exercise emergency powers under Rule 1952(B)(2). Extant local emergency orders and directives, including any provisions of these affecting time calculations or deadlines, SHALL REMAIN IN FULL FORCE AND EFFECT until they expire or are rescinded locally.

Should other President Judges deem it prudent to exercise emergency powers above and beyond the authority and latitude provided in this Order, they may file a declaration of an emergency in their districts with the Supreme Court Prothonotary in the Eastern, Western, or Middle District Office, as appropriate for the particular local judicial district. Such a declaration generally SHALL BE SELF-EFFECTUATING subject to any subsequent order by this Court or the local court, with the understanding that the temporary suspension or modification of any statewide court rules other than those addressed in this Order shall first require an application to this Court pursuant to Rule of Judicial Administration 1952(B)(2)(m).

In the jurisdictions with prevailing local emergencies, self-effectuating extensions may be filed. However, any declaration extending a local emergency beyond June 1, 2020, should provide supporting reasoning.²

² If a docket number has been assigned to the judicial district for emergency purposes, any further order concerning administrative directives or other matters associated with the local judicial emergency should be captioned so as to indicate that docket number. For convenience, declarations of emergency and associated local orders may be transmitted via electronic mail to: Irene.Bizzoso@pacourts.us.

II. The Safety of Judges, Court Staff, Court Users, and Others

To the extent they are not already in place, all court leaders **MUST IMPLEMENT AND MAINTAIN** procedures that restrict potential COVID-19 exposure which could result from interactions of judges, court staff, and county agency staff among themselves and with or among members of the public present at court facilities. Among other measures, President Judges may restrict access to court facilities so that appropriate social distancing can be maintained. To the degree practicable in light of the necessity for some in-person appearances and proceedings, safety measures should be employed that are as consistent as possible with the federal and state executive guidance associated with countering the spread of the COVID-19 virus. To the extent that hearings and conferences can be held in the presence of counsel only, the courts **SHALL PERMIT** the parties' physical presence to be excused. In all events, any necessary in-person proceedings **SHALL BE HELD** in courtrooms designated by the individual courts of common pleas to minimize person-to-person contact.

Consistent with the previous guidance, and subject to the direction of President Judges, all courts -- including magisterial district courts -- are encouraged to consider deciding matters on the papers and/or to conduct court proceedings through the use of advanced communication technologies,³ to the extent that constitutional requirements

³ Advanced communication technology includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail. See Pa.R.J.A. No. 1952(A)(2)(e) & comment (citing Rule of Criminal Procedure 103 for the definition of advanced communication technology).

can be satisfied. Any state or local rule that impedes a judge's ability to utilize available technologies to limit in-person contact is suspended through June 1, 2020.

The Administrative Office of Pennsylvania Courts stands ready to provide guidance to courts concerning local implementation of technological resources. In the absence of a certification as provided in Part III of this Order, no proceeding should be delayed solely on account of the present public health crisis that could reasonably be conducted using available advanced communication technologies in a manner that is consistent with constitutional requirements.

III. Court Filings and Time Limitations and Deadlines

The suspensions of time calculations and deadlines indicated in this Court's previous orders and in any order of an intermediate or local court SHALL REMAIN IN EFFECT for the time specified in those orders. In all events, legal papers or pleadings (other than commencement of actions where statutes of limitations may be in issue) which are required to be filed between March 19, 2020, and May 8, 2020, generally SHALL BE DEEMED to have been filed timely if they are filed by close of business on May 11, 2020. Upon adequate notice, however, President Judges or presiding judges may enforce deadlines prior to May 11, 2020, in the critical-functions arena.

President Judges are HEREBY INVESTED with substantial discretion in connection with the enforcement of time deadlines and are DIRECTED to ensure that the enforcement of any deadline does not create an unreasonable risk to the health or safety of court personnel, attorneys, court users, or the general public.

Should any attorney or *pro se* litigant believe that the enforcement of a time deadline or participation in any proceeding poses a significant danger to the health of

one or more persons, or that compliance or participation is unreasonable or impossible in light of restrictions arising out of the Governor's prevailing orders and directives, he or she may file a certification detailing the reasons with the court having jurisdiction over the litigation. Upon receipt of such a certification, the presiding judge SHALL SET a deadline for responses and provide a reasonable opportunity to be heard to all parties.

All courts SHALL PROVIDE FOR COURT FILINGS BY MEANS OTHER THAN IN-PERSON DELIVERY WHENEVER POSSIBLE. Any state or local rule that impedes such alternative means of filing is suspended through June 1, 2020.

Attorneys are encouraged to conduct depositions remotely, via telephone, videoconference, or similar means. Absent articulable and specific concerns about reliability or other relevant considerations, court reporters need not be present in the same locations as witnesses and/or counsel.

Depositions of and required appearances for doctors, nurses, or other healthcare professionals who are substantially involved in responding to the COVID-19 public health emergency ARE SUSPENDED for the duration of this Order.

IV. Priorities

The performance of critical court functions, ensuring that parties' rights are protected, remains of the highest priority. Consistent with this Court's previous Orders, such functions include:

A. Intermediate Courts

- a. Election matters;
- b. Children's Fast-Track matters;
- c. Matters credibly labeled as emergency filings; and
- d. Any other function deemed by a President Judge to be critical consistent with constitutional limitations.

B. Courts of Common Pleas

- a. Election matters;
- b. Emergency bail review and habeas corpus hearings;
- c. Gagnon I hearings;
- d. Bench warrant hearings pursuant to Rule of Criminal Procedure 150;
- e. Juvenile delinquency detention;
- f. Juvenile shelter, adjudication and disposition, and permanency hearings;
- g. Temporary protection from abuse hearings;
- h. Emergency petitions for child custody or pursuant to any provision of the Juvenile Act;
- i. Emergency petitions for guardianship;
- j. Civil mental health reviews, see 50 P.S. §7302;
- k. Emergency equity civil matters (injunctions and stays);
- l. Any pleading or motion relating to public health concerns and *involving immediate and irreparable harm*;

- m. Commencement of a civil action, by *praecipe* for a writ of summons, for purposes of tolling a statute of limitations;⁴
 - n. Any other function deemed by a President Judge to be critical consistent with constitutional requirements.
- C. Magisterial District Courts, Philadelphia Municipal Court, Philadelphia Arraignment Court Magistrates and Pittsburgh Municipal Court, Arraignment Division**
- a. Preliminary arraignments (bail setting) forailable cases;
 - b. Criminal case filings and subsequent processing;
 - c. Preliminary hearings for incarcerated persons only;
 - d. Issuance of search warrants;
 - e. Emergency protection from abuse petitions; and
 - f. Any other function deemed by a President Judge to be critical consistent with constitutional limitations.

V. Open Courts

In proceedings as to which a right to public and press access would otherwise exist, provision must be made to ensure some reasonable means of access. For example, with respect to a proceeding conducted using audio-visual means, such public access may be effectuated during the proceeding by providing live-stream access, or by making a recording available as soon as possible after the proceeding has been concluded.

⁴ If a court of original jurisdiction is closed to filings, the alternative mechanism for filing of an emergency *praecipe* in the Superior Court shall remain in place, as set forth in the March 24, 2020 Order.

VI. Jury Trials

Jury trials, both criminal and civil, remain **SUSPENDED** and will be scheduled for a date in the future by the courts. Local court leaders **SHALL ASSESS** options for resumption of jury trials consistent with prevailing health-and-safety norms.

VII. Payments

Per the Orders of March 18 and April 1, 2020, in-person payments to Magisterial District Courts were suspended, but payments could be accepted by mail, electronically (online), or by telephone as permitted in the Magisterial District Court receiving the payment. The effect of that Order is extended until May 11, 2020. To the extent that a payor was or is entitled to a payment determination hearing under these Orders or the extension provided herein, a missed payment or default **SHALL NOT RESULT** in the issuance of an arrest warrant for failure to make payment, nor shall the non-payment result in driving privileges being suspended, prior to such hearing.

On and after May 11, 2020, payments should be accepted by mail, electronically (online), or by telephone as may be permissible in the court receiving the payment, and the use of such means is strongly encouraged. Payments may be made in person, however, if other means are not available to the payor, as may be permissible in the Magisterial District Court receiving the payment pursuant to authorization by the President Judge.

VIII. Prompt Trial

Rule of Criminal Procedure 600(C) remains **SUSPENDED** in all judicial districts through at least June 1, 2020. The purport of this directive is that the time period of the statewide judicial emergency continuing through at least June 1, 2020, **SHALL BE EXCLUDED** from the time calculation under Rule 600(C). Nothing in this Order,

however, or its local implementation, shall affect a criminal defendant's right to a speedy trial under the United States and Pennsylvania Constitutions – albeit that the circumstances giving rise to this Order and the suspension may be relevant to the constitutional analysis.

IX. Children's Fast Track Appeals

This Court's "Order Regarding Alternative Filing Procedure for Children's Fast Track Appeals," dated March 27, 2020, SHALL REMAIN IN FULL FORCE AND EFFECT through at least June 1, 2020. This Order approved the Superior Court's provision for filing children's fast track appeals upon a certification that filing in the court of original jurisdiction is impractical due to the closure of court facilities.

X. Guidance to Legal Professionals

To the degree necessary, attorneys should counsel their clients that the public health emergency can in no way be used to secure strategic advantage in litigation, including by means of dilatory conduct. In such instances, it may be useful to explain that the duties of a lawyer as advocate continue during the COVID-19 crisis, including the duty to expedite litigation (Rule 3.2 of the Rules of Professional Conduct), the duty of candor toward the tribunal (Rule 3.3 of the Rules of Professional Conduct), and the duty of fairness to opposing party and counsel (Rule 3.4 of the Rules of Professional Conduct).

As previously prescribed with respect to Courts of Common Pleas, the Court continues to AUTHORIZE AND ENCOURAGE use by legal professionals of advanced communication technology to the greatest extent possible. In addition, updated guidance has been provided by the executive branch explaining that:

[A]lthough law offices remain generally closed and lawyers and staff should continue to perform all work remotely to the extent possible, lawyers and staff may access physical offices on a limited basis as necessary to render legal services that cannot practically be completed through the use of advanced communication technology, and which are being rendered to comply with a court directive or deadline, or to meet client needs that are critical to the client's health or safety, including, but not limited to, matters of healthcare, incompetence, incapacitation, end-of-life decision making, government benefits necessary to sustain life and access healthcare and income, or legal functions necessary for the operation of government at all levels. Any in-person activity shall be subject to the Orders of Secretary of Health providing for building safety measures (issued April 5, 2020) and business safety measures (issued April 15, 2020), including any amendments, and related Department of Health guidance.

INDUSTRY OPERATION GUIDANCE, *Uploaded by Governor Tom Wolf*, <https://www.scribd.com/document/452553026/UPDATED-4-30pm-April-27-2020-Industry-Operation-Guidance> (last visited April 28, 2020).⁵

Lawyers accessing their offices for the purposes set forth above are expected to comply with the Secretary's Orders concerning building and worker safety. *See supra* note 5.

⁵ The referenced Orders of the Secretary of Health are as follows: ORDER OF THE SECRETARY OF THE PA. DEP'T OF HEALTH DIRECTING BUILDING SAFETY MEASURES (April 5, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200405-SOH-Building-Safety-Measures.pdf> (last visited April 28, 2020); and ORDER OF THE SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF HEALTH DIRECTING PUBLIC HEALTH SAFETY MEASURES FOR BUSINESSES PERMITTED TO MAINTAIN IN-PERSON OPERATIONS (April 15, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf> (last visited April 28, 2020).

XI. Dispossession of Property

Per this Court's Orders of March 18 and April 1, 2020 -- in view of the economic effects of the COVID-19 pandemic -- no officer, official, or other person employed by the Pennsylvania Judiciary at any level is authorized to effectuate an eviction, ejection, or other displacement from a residence based upon the failure to make a monetary payment through April 30, 2020. All terms of those Orders related to dispossession of residences ARE EXTENDED until May 11, 2020, at which time the statewide suspension of procedures related to dispossession of property SHALL CEASE. The Court takes judicial notice that certain filings, charges, and acts relating to dispossession will remain subject to temporary restraints on account of other directives, including provisions of the federal Coronavirus Aid, Relief, and Economic Security Act. See 15 U.S.C. §9058.

A True Copy Patricia Nicola
As Of 04/28/2020

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

APPENDIX C
EXECUTIVE ORDER OF MAY 7, 2020



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR

**ORDER OF THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA
FOR STAYING THE NOTICE REQUIREMENTS FOR CERTAIN ACTIONS
RELATED TO THE DISPOSSESSION OF PROPERTY**

WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention (“CDC”) have declared a novel coronavirus (“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, as of March 6, 2020, I proclaimed the existence of a disaster emergency throughout the Commonwealth pursuant to 35 Pa. C.S. § 7301(c); and

WHEREAS, I am charged with the responsibility to address dangers facing the Commonwealth of Pennsylvania and its residents that result from disasters. 35 Pa. C.S. § 7301(a); and

WHEREAS, in executing the extraordinary powers outlined above, I am further authorized during a disaster emergency to issue, amend and rescind executive orders, proclamations and regulations and those directives shall have the force and effect of law. 35 Pa. C.S. § 7301(b); and

WHEREAS, in addition to general powers, during a disaster emergency I am authorized specifically to control ingress and egress to and from a disaster area and the movement of persons within it and the occupancy of premises therein. 35 Pa. C.S. § 7301(f); and

WHEREAS, I am authorized to issue regulations to temporarily suspend or modify for a period not to exceed 60 days any public health, safety, zoning, transportation (within or across this Commonwealth) or other requirement of statute or regulation within this Commonwealth for which I deem the suspension or modification essential to provide temporary housing for disaster victims. 35 Pa. C.S. § 7302(a); and

WHEREAS, in addition to my authority, my Secretary of Health has the authority to determine and employ the most efficient and practical means for the prevention and suppression of disease. 71 P.S. § 532(a), 71 P.S. § 1403(a); and

WHEREAS, these means include isolation, quarantine, and any other control measure needed. 35 P.S. § 521.5; and

WHEREAS, I previously issued an Order directing “Individuals to Stay at Home” on April 1, 2020, as subsequently amended; and

WHEREAS, the Supreme Court of Pennsylvania issued Orders that acted to prevent the Judiciary from effectuating an eviction, ejection or other displacement from a residence based upon a failure to make a monetary payment, but this statewide judicial suspension of procedures related to the dispossession of property extends only until May 11, 2020; and

WHEREAS, certain filings, charges and acts relating to the dispossession of property remain subject to temporary restraints on account of other directives, including provisions of the federal Coronavirus Aid, Relief and Economic Security Act (CARES Act, P.L. 116-136; See also 15 U.S.C. § 9058), or Orders issued by local courts (e.g., Order No. 31 of 2020 of the First Judicial District of Pennsylvania, Administrative Governing Board of the First Judicial District of Pennsylvania, In re: Continuation of Judicial Emergency which directs that "The issuance of residential writs of possession, and the execution or enforcement of residential writs of possession issued by the Court of Common Pleas Office of Judicial Records before this date, remain STAYED until June 1, 2020 or until further order of court. Relief from the stay provided by this Order may be sought by filing an Emergency Petition setting forth the reason(s) for such relief."); and

WHEREAS, the CARES Act and other existing federal law and rules involving consumer protections related to single-family mortgages and certain multifamily dwellings creates confusion and uncertainty for the residents of the Commonwealth as to who has eviction and foreclosure protections related to COVID-19 remediation; and

WHEREAS, Pennsylvania law, the Loan Interest and Protection Law, 41 P.S. §101 et. seq. (Act 6) and the Homeowners Emergency Assistance Act, 35 P.S. § 1680.41 et. seq. (Act 91) requires that notice be provided to debtors for each and every foreclosure action that is initiated; and

WHEREAS, the Act 91 mandates that a mortgagor have a face-to-face meeting with a consumer credit counseling agency to attempt to resolve the delinquency or default by restructuring the loan payment schedule or otherwise and face-to-face meetings create a public health danger; and

WHEREAS, the Landlord and Tenant Act of 1951, 68 P.S. §250.101 et. seq., and the Manufactured Home Community Rights Act, 68 P.S. §398.1 et. seq., require that notice be provided to tenants and/or lessees when a landlord or manufactured home community owner intends to evict the tenant and/or lessee for nonpayment of rent; and

WHEREAS, the movement and/or displacement of individuals residing in Pennsylvania from their homes or residences during the current stage of the disaster emergency constitutes a public health danger to the Commonwealth in the form of unnecessary movement that increases the risk of community spread of COVID-19; and

WHEREAS, as of May 7, 2020, the Commonwealth of Pennsylvania has 52,915 persons who have tested positive or meet the requirements as probable cases for COVID-19 in all sixty-seven counties and reports 3,416 deaths from the virus.

NOW THEREFORE, pursuant to the authority vested in me and my Administration by the laws of the Commonwealth of Pennsylvania, I do hereby ORDER and PROCLAIM as follows:

Section 1:

Commencing on May 11, 2020, the notice requirements mandated by Act 6 and Act 91 are stayed for 60 days, thereby tolling the ability to commence the timelines and necessary Act 6 and Act 91 compliance that must be satisfied prior to the initiation of foreclosure actions. All foreclosures requiring compliance with Act 6 and Act 91 cannot commence for 60 days until July 10, 2020. All foreclosure timelines must be computed with a start date of July 10, 2020, at which point any previously delivered Act 6 and Act 91 notices will be deemed delivered and any foreclosure process may commence. The foreclosure actions requiring Act 6 and 91 compliance may proceed from that point forward in the normal course of action.

Section 2:

Commencing on May 11, 2020, the notice requirements mandated by the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act are stayed for 60 days, thereby tolling the ability to commence the timelines necessary for the initiation of eviction proceedings. All eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act cannot commence for 60 days until July 10, 2020. All eviction timelines must be computed with a start date of July 10, 2020, at which point any previously delivered Landlord and Tenant Act of 1951 and Manufactured Home Community Rights Act notices will be deemed delivered and any eviction proceedings may commence. The eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act may proceed from that point forward in the normal course of action.

Section 3: Effective Date and Duration

This order is effective immediately and will remain in effect until July 10, 2020.



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

Tom Wolf
TOM WOLF
Governor

CERTIFICATE OF COUNSEL

I hereby certify that this brief contains 8,903 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/ Bradley S. Dornish
Bradley S. Dornish, Esquire

CERTIFICATE OF SERVICE

I hereby certify that I have served this Petitioners' Ancillary Brief upon counsel of record by electronic service.

J. Bart DeLone
Chief Deputy Attorney General of Pennsylvania
Chief, Appellate Litigation Section

Sean A. Kirkpatrick
Senior Deputy Attorney General of Pennsylvania

Keli Neary
Executive Deputy Attorney General of Pennsylvania


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Community Legal Services

Rachel Lee Blake, Esq.
RHLS

DATE: June 1, 2020


Mary Elizabeth Fischman, Esquire
PA I. D. 200390

CERTIFICATE OF COMPLIANCE

I 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.

Submitted by: Petitioner

Signature: Mary Elizabeth Fischman

Name: Mary Elizabeth Fischman

Attorney No. (if applicable): 200390