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AOPC Chief Counsel Testifies on "King's Bench" Authority as an Important Safety Valve

HARRISBURG, August 3, 1995 — Calling the phrase "King's Bench" a misnomer, the state Court Administrator's chief counsel told a legislation committee today that the state Supreme Court's extraordinary authority to hear cases is an important safety valve which has been rarely used.

While there may be disagreement with the exercise of jurisdiction in a particular case, Chief Counsel Zygmont A. Pines said it is hard to argue against the theoretical and practical necessity of such authority in our rapidly changing and tumultuous world where expeditious justice remains a cherished ideal.

After a review of cases involving extraordinary jurisdiction dating back to 1803, Pines said: the truly essential purpose of extraordinary jurisdiction has been to protect the citizens of this Commonwealth from damage and injustice that would likely follow if Supreme Court intervention were not expeditiously exercised.

Pines noted that a recent analysis showed that in the sixteen year period from 1979 through 1994, an average of less than six extraordinary jurisdiction cases per year proceeded from briefing to decision. Those six cases contrast to between three and four thousand total filings per year in the Supreme Court.

With respect to the Supreme Court's spare application of its extraordinary jurisdiction authority, Pines quoted the Supreme Court's prothonotary as saying, "Many (extraordinary jurisdiction) cases are filed, but few are chosen."

Determining precise factors as to how any court decides to grant petitions for extraordinary jurisdiction is difficult, according to Pines. He noted four general factors from one treatise on the subject: the need for a prompt, final decision; the impact on the administration of justice; the presence of important constitutional issues; and the expeditious disposition of criminal matters.

Pines said state Supreme Court exercises of extraordinary authority have included, among others, **civil cases** involving elections and labor relations and **criminal cases** involving grand juries and the media.

Extraordinary jurisdiction is not unique to Pennsylvania, Pines told members of the state House Judiciary Committee meeting in Harrisburg today. He noted that the federal All Writs Act authorizes broad jurisdiction to the United States Supreme Court, and other federal courts, to issue writs necessary or appropriate in aid of their jurisdiction. Also, at least six other state appellate courts have specific King's Bench jurisdiction by name, while others may have similar jurisdiction in principle.

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Testimony of Zygmont A. Pines,
Chief Legal Counsel
Administrative Office of Pennsylvania Courts
August 3, 1995
House of Representatives
House Judiciary Committee

I come to you today to briefly speak on a topic that is as old as and, in fact, pre-dates this venerable Commonwealth: I speak of the so-called "King's Bench" jurisdiction of our Supreme Court.

My legal career began first as a litigator in private practice, followed by apprx. 17 years with the judiciary, first as Assistant Chief Staff attorney for the Pennsylvania Superior Court and now as Chief Counsel for the Administrative Office of Pennsylvania Courts. In addition, I have written on appellate court matters and have taught at various institutions. Therefore, I am somewhat familiar with the concept of King's Bench jurisdiction in Pennsylvania.

The term King's Bench is, of course, a misnomer for we have neither a King nor the three principal English courts of Westminster. Therefore, I will refer to the **modern** King's Bench jurisdiction as it should be properly called, that is, "plenary" or "extraordinary" jurisdiction.

The creation of extraordinary jurisdiction in this Commonwealth goes back to the "Act of 1722" when the newly created Supreme Court of Pennsylvania was given the authority to exercise King's Bench jurisdiction -- a jurisdiction that was exercised historically by the judges of the King's Bench, Common Pleas and Exchequer at Westminster. Historically, the King's Bench powers included of necessity the right to supervise and manage the other courts.

The exercise of extraordinary jurisdiction by our Supreme Court has existed since 1722 without substantial disturbance. Today, the importance of that jurisdiction is given flesh by the Constitution of our Commonwealth, specifically, Article V, sections 2 and 10(a), in which the Supreme Court is designated as the highest court of this Commonwealth with the powers of superintendence over all other courts. The Supreme Court's extraordinary jurisdiction is also recognized by statute and court rule . At the 1968 Constitutional Convention, a respected authority on our Constitution, Delegate Robert Woodside, who served as a Superior Court judge and Attorney General, referred to the King's Bench powers as an inherent jurisdiction, "powers, which, in effect, are the Commonwealth powers."

It has been commonly stated in academic journals and cases that the principal historical purpose of extraordinary jurisdiction is to prevent a subordinate judicial tribunal from exceeding or abusing its jurisdiction and to protect the Court's appellate jurisdiction.

However, as I view the various reported Supreme Court cases since 1803, **the truly essential purpose of extraordinary jurisdiction has been to protect the citizens of this Commonwealth from damage and injustice that would likely follow if Supreme Court intervention were not expeditiously exercised. In effect, extraordinary jurisdiction has operated as a necessary -- and often only -- safety valve to provide expeditious, economical and definitive justice on critical issues of public importance.**

While the theory of extraordinary jurisdiction is fluid and broad, the exercise of such authority is rare. Its exercise is purely discretionary with the Court. On many occasions, the Supreme Court has stressed the very limited availability of this jurisdiction. In the Carpentertown Coal and Coke case, the Supreme Court said:

The writ of prohibition is one which, like all other prerogative writs, is to be used only with great caution and forebearance and as an extraordinary remedy in cases of **extreme necessity**, to secure order and regularity in judicial proceedings if none of the ordinary remedies provided by law is **applicable or adequate** to afford relief.

In another case, where the Supreme Court was faced with balancing the right of the press to access pre-trial proceedings with a defendant's right to a fair trial, the Court cautioned:

The presence of an issue of immediate public importance is **not** alone sufficient to justify extraordinary relief...[W]e will not invoke extraordinary **jurisdiction** unless the record clearly demonstrates a petitioner's rights. Even a clear

showing that a petitioner is aggrieved does not assure that this Court will exercise its discretion to grant the requested relief...

How rare is this concept that we are discussing? Based on statistics provided by the prothonotary of the Supreme Court, there were approximately **97** extraordinary jurisdiction cases that proceeded from briefing to decision in the Supreme Court from 1979 to 1994. Thus, during that 16 year period, an average of less than 6 cases per year were adjudicated by the Supreme Court pursuant to its extraordinary jurisdiction. This figure of 6 cases per year should be placed in its proper context, namely the Supreme Court's annual **total** caseload of approximately 3000 to 4000 filings per year. As the prothonotary told me: "Many [extraordinary jurisdiction] cases are filed, but few are chosen."

How do these matters come before the Supreme Court? The relevant statute states that the Supreme Court can invoke its extraordinary jurisdiction on its own or in response to a petition by a party in a proceeding pending in any court. The procedural mechanism that brings these cases up to the Court include petitions for writs of mandamus, prohibition, stay or certiorari -- they all basically serve the same purpose. These extraordinary jurisdiction petitions are circulated to the entire Supreme Court for its review and vote. It is, of course, difficult to isolate any one factor that may influence the Court's decision to grant these petitions. However, one respected treatise on appellate practice has identified the following factors as important: (1) the need for a prompt, final decision, (2) the impact on the administration of justice, (3) the presence of important constitutional issues, and (4) the expeditious disposition of criminal matters.

Extraordinary jurisdiction cases are varied. The Supreme Court prothonotary's categorization of the cases from 1979 to 1994 included the following:

Civil Cases: Election cases: 5

Judicial Election cases: 12

Labor Cases: 6

Government related cases: 11

Other: 18

Criminal Cases: Grand Jury cases: 2

Other: 29

Media related cases: 4

Judicial Administration Cases: Funding cases: 4

Other: 6

To illustrate these categories, the Supreme Court exercised its extraordinary jurisdiction in the following cases or issues:

- a case of first impression holding that quasi judicial immunity insulated Commonwealth officials of the Department of Labor and Industry from criminal liability and prosecution for acts taken without bad faith or corruption

- a case upholding the constitutional power of the General Assembly to confer tort immunity upon political subdivisions

- a case involving the validity of an injunction prohibiting a strike which crippled the Philadelphia school system for three months

- a case involving the power of an investigating grand jury to call witnesses after a defendant has been formally charged with a crime

- the constitutionality of over-crowding conditions for prison inmates in which the Court held that one man/one cell was not constitutionally required

- the constitutionality of procedures to recall the mayor of Philadelphia

- the Commonwealth's right to demand a jury trial in criminal cases

- the validity of a primary election for judicial office

- the number of candidates who may be nominated for office of county commissioners

- the power of a lower appellate court to review the decision of a county's Civil Service Commission and

- the power of a judge to make or change judicial assignments in a criminal matter

And, in a recently publicized case, the Supreme Court granted a petition for extraordinary jurisdiction in a Commonwealth Court matter involving the safekeeping and disposal of infectious wastes and the right of a citizenry to a safe environment under a new statutory scheme. Personally, this is the very type of case that, I think, justifies and demands the intervention of our highest to secure finaljustice for the concerned citizens, who demand a safe environment; for the owner-operators, who face the risk of financial ruin; and for Commonwealth officials, who have the onerous obligation of making sure that highly dangerous wastes are properly handled in conformity with the new regulatory and statutory framework.

Lastly, let me say that the exercise of extraordinary jurisdiction is not only grounded in the history of this Commonwealth; it is a power that has been exercised in other jurisdictions, including the federal court system. For example, the federal All Writs Act authorizes the United States Supreme Court (and other federal courts) to issue extraordinary writs necessary or appropriate in aid of its jurisdiction. As with the practice in Pennsylvania, the Court's power to issue such extraordinary writs is broad. But discretionary principles and a due regard for the Court's pressing business have made actual use of this federal power very narrow. In addition, my quick research has indicated that the following states also recognize the common law King's Bench power or a modification for their highest courts: New Mexico, New York, Oklahoma, Wisconsin, Florida and Virginia. Of course, a similar grant of authority may exist in other states under a different name.

Thus, as we sit here today, it is important to remember that the so-called King's Bench authority has been part of the fabric of this Commonwealth since 1722. For years, that authority has been there for the citizens of this Commonwealth - for governmental officials, for the press, for criminal defendants, for political candidates, and for those concerned with this Commonwealth's common weal. While there may be disagreement with the exercise of jurisdiction in a particular case, it is hard to argue against the theoretical and practical necessity of such an authority -- of such an important safety valve -- in our rapdily changing and tumultuous world where definitive and expeditious justice on matters of public importance remains a cherished ideal.

Thank you. I will be pleased to answer any questions that you may have.