

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 75 MM 2020

EARL MARKEY,

Petitioner

v.

GOVERNOR TOM WOLF,

Respondent

**ANSWER TO EMERGENCY APPLICATION
FOR EXTRAORDINARY RELIEF**

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INTRODUCTION

In *Civil Rights Defense Firm, P.C., et al. v. Wolf*, 63 M.M. 2020, this Court unanimously rejected the assertion that Governor Wolf lacked authority to combat the COVID-19 pandemic pursuant to the Emergency Management Services Code. Though the pattern of illness and death brought about by the pandemic has been altered by the Commonwealth's response to it, the arguments proffered by Petitioner here have remained almost entirely the same as arguments previously presented to this Court. Those arguments were properly rejected by this Court, and that determination need not be revisited.

Though the instant application raises new issues insofar as Markey brings a facial challenge to the Governor's legal authority to issue his stay-at-home Order, rather than his Order shutting down non-essential businesses, it is in many respects a copy-and-paste reproduction of the application filed in *Civil Rights Defense Firm*. Additionally, where it deviates from the *Civil Rights Defense Firm* application, the present filing raises several issues that are not ripe for this Court's review. This Court should reject Markey's efforts to obtain an injunction of the Governor's Stay-at-Home Order so that he can be totally unrestrained during the greatest public health crisis the world has faced in over a century.

STATEMENT OF THE CASE

Since the Commonwealth filed its answer in *Civil Rights Defense Firm v. Wolf*, 63 M.M. 2020 on March 20, 2020, the number of COVID-19 cases in Pennsylvania has increased exponentially from 268 cases and 1 death, to 16,239 cases and 310 deaths. More than 1,000 Americans are dying every day due to COVID-19, double the daily death toll of both lung cancer and influenza combined.¹

Social distancing is essential to limiting the death toll of COVID-19 because this pandemic spreads primarily through person to person contact, as many as 25% of those infected are asymptomatic,² and the virus has an incubation period of up to 14 days.³ Further, the virus can remain on surfaces for days⁴ and can spread

¹ Michael James, “More than 1,000 in US die in a single day from coronavirus, doubling the worst daily death toll of the flu,” *USA Today*, <https://www.usatoday.com/story/news/nation/2020/04/01/coronavirus-kills-1-000-single-day-u-s-double-flu/5100905002/> (last visited 4/1/20).

² Apoorva Mandavilli, “Infected but Feeling Fine: The Unwitting Coronavirus Spreaders,” *The New York Times*, <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html> (last visited 4/2/20).

³ “Coronavirus Disease 2019 (COVID-19): Symptoms of Coronavirus,” CDC Website, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited 3/25/20).

⁴ “Study suggests new coronavirus may remain on surfaces for days,” National Institutes of Health, <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days> (last visited 4/2/20).

through the air within confined areas and structures.⁵ Because of these realities we must assume that anyone could be infected even if showing no symptoms. Until new drugs and vaccines become available, social distancing is our only weapon against the spread of this plague.⁶

To protect the lives and health of millions of Pennsylvanians, on March 19, 2020, Pennsylvania Governor Tom Wolf (“the Governor”) issued an Executive Order temporarily prohibiting operation of non-life sustaining businesses within the Commonwealth.

On March 22, 2020, this Court entered a *per curiam* order in *Civil Rights Defense Firm, P.C., et al. v. Wolf*, 63 MM 2020, denying legal challenges by petitioners in that action to the Governor’s authority to enter the March 19, 2020 Executive Order. Those challenges mirror exactly the challenges presented here, namely, that the Governor lacked authority to declare a disaster emergency under the Emergency Management Services Code, which empowers the Governor to “meet[] the dangers to this Commonwealth and people presented by disasters.” 35

⁵ Joshua D. Rabinowitz and Caroline R. Bartman, “These Coronavirus Exposures Might be the Most Dangerous,” *The New York Times*, <https://www.nytimes.com/2020/04/01/opinion/coronavirus-viral-dose.html> (last visited 4/2/20).

⁶ Yascha Mounk, “Cancel Everything: Social distancing is the only way to stop the coronavirus. We must start immediately,” *The Atlantic Monthly*, <https://www.theatlantic.com/ideas/archive/2020/03/coronavirus-cancel-everything/607675/> (last visited 3/23/20).

Pa.C.S. § 7301(a). *See Civil Rights Defense Firm v. Governor Tom Wolf*, 63 MM 2020, Order dated March 22, 2020. Those assertions were unanimously rejected by the Court.

On April 1, 2020, the Governor issued an Order for Individuals to Stay at Home (“the Governor’s Order” of “Stay-at-Home Order”).⁷ In addition to his inherent powers as the Commonwealth’s chief executive, the Governor invoked three separate statutory grounds for his authority to issue the Order: the Emergency Management Services Code (“Emergency Code”), 35 Pa.C.S. § 7101 *et seq.*; Sections 532(a) and 1403(a) of the Administrative Code, which outline the powers and responsibility of the Department of Health, 71 P.S. § 532; 71 P.S. § 1403(a); and the Disease Prevention and Control Law (“DPCL”), 35 P.S. § 521.1 *et seq.* The Governor ordered that:

Individuals leaving their home or place of residence to access, support, or provide life-sustaining services for themselves, another person, or a pet must employ social distancing practices as defined by the Centers for Disease Control and Prevention. Individuals are permitted to engage in outdoor activities; however, gatherings of individuals outside of the home are generally prohibited except as may be required to access, support, or provide life-sustaining services as outlined above.

⁷ A copy of this Order is attached to this brief for the Court’s convenience at Attachment A. A copy can also be found at <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200401-GOV-Statewide-Stay-at-Home-Order.pdf>.

Attachment A. This Order went into effect for all counties at 8:00 p.m. that day, and will remain in effect until April 30, 2020.

On the same day, the Secretary for the Pennsylvania Department of Health, Dr. Rachel Levine, issued her own order requiring citizens to stay at home or at their place of residence save for certain exceptions (“the Secretary’s Order”).⁸ The Secretary invoked her authority under: Section 5 of the DPCL, 35 P.S. §§ 521.1, 521.5; Sections 2102 and 2106 of the Administrative Code, 71 P.S. § 532(a) and 536; and Department regulations 28 Pa. Code §§ 27.60-27.68. She explained in detail why this order was necessary to arrest the spread of this deadly pandemic, and that given the way COVID-19 spreads and its danger to Pennsylvanians, a stay at home order was “the appropriate disease control measure . . . to prevent and control the spread of disease.”

And these efforts have saved lives. Originally, without social distancing, health experts predicted that 1.7 million Americans could die from the disease.⁹ Thanks to the preventative measures put in place and the orders enforcing social distancing by state governments, that estimate has fallen to between 100,000 and

⁸ A copy of the Secretary’s Order is attached to this brief for the Court’s convenience at Attachment B. A copy can also be found at <https://www.scribd.com/document/454418390/04-01-20-SOH-Statewide-Stay-at-Home-Order>.

⁹ Chas Danner, “CDC’s Worst-Case Coronavirus Model: 214 Million Infected, 1.7 Million Dead,” *New York Magazine*, <https://nymag.com/intelligencer/2020/03/cdcs-worst-case-coronavirus-model-210m-infected-1-7m-dead.html> (last visited 3/20/2020).

240,000 Americans.¹⁰ Some experts now believe that with continued mandatory measures in place, the estimate could be reduced even further to as low as 60,000 deaths.¹¹ While still a massive number of American deaths, this would mean that mandatory social distancing measures saved 1.6 million lives.

Petitioner in the present case is Earl Markey, who is proceeding *pro se*. Respondent is the Governor. Markey asks this Court to enjoin the Governor's April 1, 2020 Order.¹² As noted *supra*, with few exceptions, Markey's application is a nearly verbatim copy-and-paste reproduction of the application filed in *Civil Rights Defense Firm v. Wolf. Compare Markey Application*, at 7-8 ("Perhaps more importantly, at the time of the enactment of Emergency Management Services Code, 35 Pa.C.S. § 7101, *et seq.*, 1978, Nov. 26, P.L. 1332, the General Assembly was acutely aware of how to draft a statute pertaining to or otherwise including 'disease' as reflected by its enactment of the Department of Health's powers[.]") *with Civil Rights Defense Firm Application*, at 13 ("Perhaps more importantly, at the time of the enactment of Emergency Management Services Code, 35 Pa.C.S. § 7101, *et seq.*, 1978, Nov. 26, P.L. 1332, the General Assembly was acutely aware

¹⁰ Peter Baker, "Trump Confronts a New Reality Before an Expected Wave of Disease and Death," *The New York Times*, <https://www.nytimes.com/2020/04/01/us/politics/coronavirus-trump.html> (last visited 4/2/20).

¹¹ "COVID-19 Projections," Institute for Health Metrics and Evaluation, <https://covid19.healthdata.org/united-states-of-america> (last visited 4/8/20).

¹² Markey makes no reference whatsoever to the Secretary's Order.

of how to draft a statute pertaining to or otherwise including ‘disease’ as reflected by its enactment of the Department of Health’s powers[.]”).

STATEMENT OF JURISDICTION

Markey asks this Court to exercise King’s Bench jurisdiction over this matter. Governor Wolf agrees generally that the extent of his authority to combat the COVID-19 pandemic raises issues of immediate public importance. For this reason, the Commonwealth did not oppose King’s Bench jurisdiction in *Civil Rights Defense Firm v. Wolf*, 63 M.M. 2020, or in *Friends of Danny DeVito v. Wolf*, 68 M.M. 2020.

The Governor acknowledges that this matter implicates immediate issues of public importance insofar as Markey brings a facial challenge to the Governor’s legal authority to issue his stay-at-home Order. However, the Governor respectfully urges this Court to decline to exercise jurisdiction with respect to the remaining aspects of his application.

As noted *supra*, Markey’s application is largely a stale copy-and-paste reproduction of the application this Court considered, and rejected in *Civil Rights Defense Firm v. Wolf*. While the Governor appreciates that Markey is a *pro se* litigant, the haphazard manner in which he converted the filing in *Civil Rights Defense Firm*, which challenged the Governor’s authority to shut down non-essential *businesses*, into a challenge to the Governor’s authority to order

individuals to stay at home has created an incongruity between some of the issues presented and the corresponding advocacy. By way of example, Markey complains about Governor Wolf's Order outlining the waiver process for non-essential businesses to seek reclassification. But Markey does not seek a business waiver.

Additionally, because Markey goes beyond merely challenging the Governor's authority to enter the stay-at-home Order, and specifically challenges the Governor's hypothetical enforcement of that Order against him, that aspect of his claim is not ripe for review. As this Court stated in *Philadelphia Entertainment and Development Partners v. City of Philadelphia*, 937 A.2d 385, 392 (Pa. 2007), "while subject matter jurisdiction concerns the power of a court to hear a claim, the doctrine of ripeness concerns the timing of a court's intervention in litigation." The ripeness doctrine ensures that courts do not entangle themselves in abstract disagreements or render advisory opinions based on "hypothetical events that might occur in the future." *Id.* For this reason, this Court typically abstains from addressing claims challenging ordinances that have not been enforced or applied. *Id.* (citing *Bliss Excavating Co v. Lezurne County*, 211 A.2d 532 (1965) and *Roeder v. Borough of Hatfield*, 266 A.2d 691 (1970)).

Markey's contentions that he cannot go on scenic drives or engage in protests in outdoor spaces are precisely the type of abstract claims based on hypothetical events that might occur in the future which are barred by the ripeness

doctrine. Markey has not been cited for violating the Governor's Order, and his contentions regarding the consequences of engaging in these activities are purely speculative. If a challenge to a citation were presented in a real case or controversy, that challenge could and would be individually assessed by the judicial system in the ordinary course. This hypothetical issue is hardly a proper candidate for King's Bench jurisdiction.

Thus, while this Court should consider the merits of Markey's facial challenge to the validity of the Governor's Stay-at-Home Order, this Court should decline to entertain those aspects of his claims that are either duplicative of the *Civil Rights Defense Firm* application, or are not ripe for review.¹³

SUMMARY OF ARGUMENT

In less than three weeks, over 300 Pennsylvanians have died from COVID-19 and another 16,000 have been infected. However, the efforts of the Commonwealth to enforce social distancing are paying off. The curve is beginning to flatten; lives are being saved. In seeking to undo these efforts, Markey presents arguments cut-and-pasted from an earlier application this Court has already denied. In his own application, heavy on plagiarism but light on analysis, this petitioner

¹³ If this Court nonetheless considers Markey's unripe claims, for the reasons discussed *infra*, those claims are meritless.

fails to establish any of the essential elements necessary to obtain the extraordinary injunctive relief he seeks.

Both this Court and the United States Supreme Court have recognized that the welfare of the people is the supreme law. And that the Commonwealth's inherent police power to protect that welfare is correspondingly broad. The Pennsylvania Constitution, the Emergency Code, the Administrative Code, and the Disease Prevention and Control Law, charge the Executive Branch with combating public health emergencies. That COVID-19 is a natural disaster warranting a disaster emergency declaration is beyond reasonable dispute. The Governor's Order is not only authorized, and consistent with these statutes, but it is essential to protecting the welfare of the people of Pennsylvania.

Far from being vague, the Governor's Order was accompanied by three-pages of guidance and a website dedicated to specifying "allowable activities and travel," exceptions to the Order, and answers to frequently asked questions. Rarely is so much guidance provided to explain precisely the contours and boundaries of an order.

The Order is not only consistent with Constitutional principles, but it is necessary for their protection. The Governor's Order is a content neutral time, place, and manner restriction narrowly tailored to further the substantial

government interest of arresting the continued spread of COVID-19, while still allowing Markey opportunities and avenues to protest.

Similarly, the Order does not restrict Markey's right to engage in interstate travel. The entire Commonwealth is within the disaster area of this pandemic. As such, unlimited travel within the Commonwealth would directly and materially interfere with the safety and welfare of the citizens of Pennsylvania, and the Nation as a whole.

A party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm. Far from doing so in this instance, though not his objective, the granting of Markey's injunction will cause the additional unnecessary deaths of an unknowable number of Pennsylvanians. That effect alone mandates denial of the injunction. This Court should reject Markey's efforts to obtain an injunction of the Governor's Stay-at-Home Order so that he can be totally unrestrained during the greatest public health crisis the world has faced in over a century.

STANDARD

A preliminary injunction is an extraordinary, interim remedy that should not be issued unless the moving party's right to relief is clear and the wrong to be remedied is manifest. *Anglo-Am. Ins. Co. v. Molin*, 691 A.2d 929, 933 (Pa. 1997) (citing *Albee Homes, Inc. v. Caddie Homes, Inc.*, 207 A.2d 768 (Pa. 1965)).

There are six “essential prerequisites” that a party must establish to obtain preliminary injunctive relief:

- (1) that the injunction is necessary to prevent immediate and irreparable harm;
- (2) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings;
- (3) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
- (4) that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest;
- (5) that the injunction it seeks is reasonably suited to abate the offending activity; and,
- (6) that a preliminary injunction will not adversely affect the public interest.

Warehime v. Warehime, 860 A.2d 41, 46-47 (Pa. 2004). “The burden is on the party who requested preliminary injunctive relief” *Id.* “For a preliminary injunction to issue, every one of these prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the others.” *Allegheny Cty. v. Com.*, 544 A.2d 1305, 1307 (Pa. 1988). Instantly, Markey cannot satisfy any element required to obtain an injunction.

ARGUMENT

I. Markey Cannot Demonstrate a Clear Right to Relief on the Merits

A. The Commonwealth has wide latitude to address public health emergencies pursuant to its inherent police powers

Police power is reserved to the States under the Tenth Amendment of the United States Constitution. *See Hamilton v. Kentucky Distilleries & Warehouse Co.*, 251 U.S. 146, 165 (1919).¹⁴ Chief Justice John Marshall described the State police power as “that immense mass of legislation” which includes “[i]nspection laws, *quarantine laws, health laws of every description*, as well as laws for regulating internal commerce of a State[.]” *Gibbons v. Ogden*, 22 U.S. 1, 107 (1824) (emphasis added). In short, the police power gives States the ability “to protect the lives, health, morals, comfort, and general welfare of the people[.]” *Manigault v. Springs*, 199 U.S. 473, 480 (1905). A State’s authority in this regard extends to individuals and businesses alike. *See German Alliance Ins. Co. v. Hale*, 219 U.S. 307, 317 (1911).

“Once we are in this domain of the reserve power of a State we must respect the ‘wide discretion on the part of the legislature in determining what is and what is not necessary.’” *East N.Y. Sav. Bank v. Hahn*, 326 U.S. 230, 233 (1945); *see*

¹⁴ The Tenth Amendment provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people.” U.S. Const. Amend. X.

also *Price v. Illinois*, 238 U.S. 446, 452 (1915) (“[U]nless this prohibition is palpably unreasonable and arbitrary, we are not at liberty to say it passes beyond the limits of the state’s protective authority”). While a State’s authority in this regard is not unlimited, longstanding precedents from the United States Supreme Court establish that a State’s police power is at its zenith when utilized to quell the spread of infectious disease.

More than a century ago, in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), the High Court enunciated the framework by which individual constitutional rights are balanced with a State’s need to prevent the spread of disease. That framework remains in place today. *See Cruzan v. Missouri Dept. of Health*, 479 U.S. 261, 278-79 (1990).

At issue in *Jacobson* was the constitutionality of a Massachusetts law requiring all citizens to be vaccinated for smallpox, which was enacted after an outbreak. *Jacobson*, 197 U.S. at 12; *see also* Thomas Wm. Mayo, Wendi Campbell Rogaliner, and Elicia Grilley Green, “‘To Shield Thee From Diseases of the World’: The Past, Present, and Possible Future of Immunization Policy,” 13 J. Health & Life Sci. L. 3, 14 (Feb. 2020). As with Markey in the present action, the defendant in *Jacobson* argued that “his liberty [was] invaded” by the mandatory vaccination law, which he believed was “unreasonable, arbitrary, and oppressive.” *Id.* at 26.

In response, the High Court enunciated why individual liberty cannot be absolute, but is instead subject to the common good and the liberty interests of others. Specifically, the Court emphasized that “the liberty secured by the Constitution . . . does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint.” *Jacobson*, 197 U.S. at 26. The Court further explained that under such an absolutist position, liberty itself would be extinguished—“[t]here are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members.” *Id.* Legal commentators recognize the Court’s central point: “[u]nbridled individual liberty eventually clashes with the liberty interests of others, and without some legal constraints, ‘[r]eal liberty for all could not exist.’” Mayo, Rogaliner, and Green, 13 J. Health & Life Sci. L. at 9 (quoting *Jacobson*, 197 U.S. at 26).

Accordingly, the Court in *Jacobson* determined that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members” and upheld the vaccination law. *Id.* at 27; *see also Zucht v. King*, 260 U.S. 174 (1922); *Prince v. Massachusetts*, 321 U.S. 158 (1944). In such circumstances, “fundamental rights such as the right to travel and free speech may be temporarily limited or suspended.” *Smith v. Avino*, 91 F.3d 105, 109 (11th Cir 1996) (holding that it is a proper exercise of police powers in response to an

emergency to impose a curfew that curtails the movement of persons who would otherwise enjoy freedom from restriction), *abrogated on other grounds by Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998).

Consistent with the United States Supreme Court’s interpretation of State police powers, this Court has recognized that “the most important function of government is the exercise of the police power for the purpose of preserving the public health, safety and morals, and it is true that, to accomplish that purpose, the legislature may limit enjoyment of personal liberty and property.” *Gambone v. Commonwealth*, 101 A.2d 634, 636 (Pa. 1954). Echoing *Jacobson*, this Court held that with respect to police powers, the means by which it is employed must have “a real and substantial relation to the objects sought to be attained” under the particular circumstances. *Rufo v. Board of License and Inspection Review*, 192 A.3d 1113, 11120 (Pa. 2018) (quoting *Lutz v. Armour*, 151 A.2d 108, 110 (Pa. 1959)).

In *Application of Milton S. Hershey Medical Center of Pennsylvania State University*, 634 A.2d 159 (Pa. 1993), this Court considered whether, consistent with the Confidentiality of HIV-Related Information Act, 35 P.S. § 7601, *et seq.*, a state hospital could disclose a physician’s HIV status to a patient who may have been exposed to the physician’s blood. In concluding that the public interest of the

hospital and the patient outweighed the physician's personal privacy interests, this

Court stated as follows:

No principle is more deeply embedded in the law than that expressed in the maxim, "Salus populi suprema lex," [] (The welfare of the people is the supreme law), and a more compelling and consistent application of that principle than the one presented would be quite difficult to conceive.

Id. at 163 (internal citation omitted).

In Markey's view, the desire to be unrestrained during a pandemic outweighs the public's interest in fighting its spread. Both the United States Supreme Court and this Court have flatly rejected the absolutist view that individuals can trample the collective rights of society at large. The Commonwealth's inherent police powers give it the right to protect its citizens against a pandemic which threatens millions.

B. The Pennsylvania Constitution, the Emergency Management Services Code, the Administrative Code, and the Disease Prevention and Control Law, give the Executive Branch responsibility for combating public health emergencies

As an initial matter, in arguing that the Governor lacks the legal authority to issue the Stay-at-Home Order, Markey copies verbatim the argument contained in the application in *Civil Rights Defense Firm, P.C., et al. v. Wolf*, 63 MM 2020 (Pa.). *Compare Markey Application*, at 7-9 with *Civil Rights Defense Firm Application*, at 13-15. Markey adds nothing of his own to this argument. This

Court unanimously rejected this exact argument in the prior case, and should not revisit it here.

Under the Pennsylvania Constitution, the “supreme executive power” is vested in the Governor, *see* Pa. Const. Art. 4 § 2, who is also the “commander-in-chief” of the Commonwealth, responsible for its protection, *see* Pa. Const. Art. 4, § 7. In addition to these general responsibilities as the chief executive of the Commonwealth, the General Assembly has expressly supplemented and expanded the Governor’s authority to address public health emergencies. Of particular relevance here, the General Assembly enacted: (1) the Emergency Code, 35 Pa.C.S. § 7101 *et seq.*; (2) Sections 532(a) and 1404(a) of the Administrative Code, which outline the powers and responsibility of the Department of Health, 71 P.S. § 532; 71 P.S. § 1403(a); and (3) the DPCL, 35 P.S. § 521.1, *et seq.*

These statutory provisions reflect the General Assembly’s basic policy choice to grant the Governor broad powers to act quickly and decisively when faced with an imminent threat to the public’s health. Facially, all three statutes arise out of the Commonwealth’s inherent police power. *See Rufo*, 648 A.3d at 1120 (“[O]n its face the [Property Maintenance] code is an exercise of the City’s police power”).

Further, insofar as the scope of the General Assembly’s grant of this authority to the Governor requires this Court to engage in statutory construction,

this Court's analysis is guided by the Statutory Construction Act. 1 Pa.C.S. § 1501, *et seq.* Pursuant to that Act, the object of all statutory construction is to ascertain and effectuate the General Assembly's intention. 1 Pa.C.S. § 1921(a). The best indicator of legislative intent is typically found in the plain and ordinary meaning of statutory language. *See* 1 Pa.C.S. § 1903.

In making that determination, statutory language must not be read in isolation. Rather, it must be read with reference to the context in which it appears. 1 Pa.C.S. § 1921(a); *see also O'Rourke v. Commonwealth*, 778 A.2d 1194, 1201 (Pa. 2001); *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-133 (2000). This Court has repeatedly emphasized that such context includes, *inter alia*, ensuring that statutes are construed in harmony with existing law as part of a general uniform system of jurisprudence. 1 Pa.C.S. §§ 1921(c)(5) and 1932; *PECO Energy Co. v. Pennsylvania Public Utility Com'n*, 791 A.2d. 1155, 1160 (Pa. 2002); *Casey v. Pennsylvania State University*, 345 A.2d 695, 700 (Pa. 1975) (this court is bound to consider other statutes bearing upon the same or similar subjects).

With respect to the statutory framework at issue here, the General Assembly's intent is clear and unmistakable: The Governor and the Executive Branch agencies bear responsibility for navigating the Commonwealth through

public health emergencies, and have wide latitude in taking the necessary and appropriate steps to do so.

1. Emergency Management Services Code

As in *Civil Rights Defense Firm, P.C., et al. v. Wolf*, 63 MM 2020 (Pa), Markey ignores these basic principles and interprets each element of the statutory framework in isolation. Also, as in *Civil Rights Defense Firm*, Markey relies on the legal maxim of *pari materia*, asserting that COVID-19 does not fit the statutory definitions of “disaster,” “natural disaster,” or “other catastrophe” because it is not a weather-related event. *Markey Application*, at 7.

But the term “other catastrophe” is expansive and is not limited by the specific enumerated terms. Certainly, a pandemic is as much of a catastrophe as a fire or an explosion. This Court has previously recognized that such language is to be broadly construed, here to include pandemics and other types of catastrophes not specifically listed. *Accord Danganan v. Guardian Protective Services*, 179 A.3d 9 (Pa. 2018) (Consumer Protection Law which has “and includes” in definitional section interpreted broadly despite doctrine of *eiusdem generis*). In *Danganan*, this Court interpreted the statutory use of the verb “includes” in defining “trade or commerce” expansively and indicative of “an inclusive and broader view of trade and commerce than expressed by the antecedent language.” *Danganan*, 179 A.3d at 16. The use of the phrase “other catastrophe” here likewise

indicates a broad view of the catastrophes covered, expanding the list beyond those merely within the preceding examples.

Again, as in *Civil Rights Defense Firm*, Markey cites to the Counterterrorism Planning, Preparedness and Response Act, 35 P.S. § 2140.101, *et seq.*, (“Counterterrorism Act”).¹⁵ And again, he seeks to interpret these statutory provisions in isolation. Markey argues that because this statute specifically references contagious diseases, the General Assembly must have intended to exclude such a disaster from the Emergency Code. That argument, however, runs aground on the very language of the act.

In granting the Governor and Secretary authority to quarantine individuals during a terrorism or biohazard incident, the General Assembly specified in the Counterterrorism Act that “this subsection shall not require a declaration of disaster emergency by the Governor in order to be effective.” 35 P.S. § 2140.301(a). Thus, the General Assembly recognized that contagious diseases would constitute a natural or man-made disaster under the Emergency Code, but

¹⁵ This statute grants the Governor and Secretary authority to “temporarily isolate or quarantine an individual or groups of individuals through a written order” because of “the outbreak of a contagious disease or epidemic due to an actual or suspected bioterrorist or biohazardous event” 35 P.S. § 2140.301(a).

granted the Governor the flexibility to quarantine a few individuals without invoking the much larger disaster emergency authority.¹⁶

The General Assembly granted the Executive Branch many statutory tools for the exercise of its police powers in addressing a pandemic. The fact that the DPCL and Counterterrorism Act grant the Governor authority to isolate or quarantine with consultation of the Secretary of Health, does not mean the Executive loses its broad authority under the Emergency Code to manage this pandemic as circumstances warrant.

2. The Administrative Code and the Disease Prevention and Control Law

Markey does not challenge the authority of the Secretary to enter her Order, which arises from the DPCL, 35 P.S. §§ 521.1, 521.5, and the Administrative Code, 71 P.S. §§ 532(a), 536. The DPCL, 35 P.S. § 521.1 *et seq.*, states that the Department of Health can carry out appropriate control measures if there has been a report of disease. Pursuant to a rule promulgated under this Section, the Secretary is directed to “determine the appropriate disease control measure based on the disease or infection[.]” 28 Pa. Code § 27.60 (b).

¹⁶ Under Markey’s interpretation of the Emergency Management Services Code, this last sentence of Section 2140.301(a) makes no sense. *See* 1 Pa.C.S. § 1922 (when interpreting a statute, we must presume “the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable”).

Likewise, Section 2102 of the Administrative Code gives the Department of Health the duty to protect the health of the People of the Commonwealth and “to determine and employ the most efficient and practical means for the prevention and suppression of disease.” 71 P.S. § 532(a). And Section 2016 grants the Department the authority “to declare certain diseases to be communicable, . . . establish such regulations for the prevention of the spread of such diseases as the department and the Advisory Health Board shall deem necessary and appropriate[,]” and “[t]o establish and enforce quarantines, in such manner, for such period, and with such powers, as may now or hereafter be provided by law, to prevent the spread of diseases declared by law or by the department to be communicable diseases[.]” 71 P.S. § 536. The Governor acted well within his legal authority in issuing the stay-at-home order.

C. The Governor’s Order is not vague, arbitrary, discriminatory, or overly broad

In arguing that the Governor’s Order violates due process, Markey copies verbatim the argument contained in the application in *Civil Rights Defense Firm, P.C., et al. v. Wolf*, 63 MM 2020 (Pa.). Compare *Markey Application*, at 10-11 with *Civil Rights Defense Firm Application*, at 17-18. However, Markey’s arguments with respect to due process do not correspond with the issues he presents. In *Civil Rights Defense Firm*, the issues before the Court related to the Governor’s determination as to which *businesses* were non-life sustaining. Here,

Markey challenges the Governor's authority to sanction *individuals* who violate the stay-at-home directive.

There is nothing vague or arbitrary about the Governor's April 1 Order; it plainly requires all individuals in all Pennsylvania counties to stay-at-home, unless conducting life-sustaining activities. Further, in the event an individual is cited for violating the Stay-at-Home Order, that individual will have the opportunity to challenge the citation in court and appeal an unfavorable determination.

A statute is unconstitutionally vague if it is "so vague that it fails to give ordinary people fair notice of the conduct it punishes[] or so standardless that it invites arbitrary enforcement." *Johnson v. United States*, __U.S. __, 135 S. Ct. 2551, 2556, 192 L.Ed.2d 569 (2015) (citation omitted). Far from being vague, the Governor's Order was accompanied by three-page explanatory guidance, "Stay at Home Order Guidance," <https://www.scribd.com/document/452929448/03-23-20-Stay-at-Home-Order-Guidance> (last visited 4/7/20),¹⁷ and a website dedicated to specifying "allowable activities and travel," exceptions to the Order, and answers to frequently asked questions. See "Stay at Home Order," <https://www.pa.gov/guides/responding-to-covid-19/#StayatHomeOrder> (last visited 4/7/20). Both documents are written in plain English for the average reader.

¹⁷ A copy of the Guidance is attached to this brief for the Court's convenience at Attachment C.

Rarely is so much guidance provided to explain exactly how an ordinary person may comply with an order.

Markey also argues “the official Commonwealth website stat[es] citations will not be issued.” *Markey Application*, at 12. This is patently false. The website he references states unequivocally that “[l]aw enforcement maintains discretion to warn or issue citations . . .” and “[f]ailure to comply with these requirements will result in enforcement action that could include citations, fines, or license suspensions.” “Stay at Home Order Guidance,” <https://www.pa.gov/guides/responding-to-covid-19/#StayatHomeOrder> (last visited 4/7/20).

As referenced above, Markey baldly asserts that the Governor’s Order violates due process by avoiding judicial review, citing to requirements within the Counterterrorism Act, 35 P.S. § 2140.301(b). *Markey Application*, at 12. As also discussed above, however, the Governor is authorized by, *inter alia*, the Emergency Code to issue this Order. Further, anyone cited for violation of this Order has the full panoply of judicial review provided by our judicial system. Markey’s due process arguments are without merit.

D. This content neutral time, place, and manner restriction does not violate the right to protest

Markey seeks to publicly protest the Department of Health’s “continued release of misleading COVID-19 data . . .” in public outdoor spaces. *Markey Decl.* at ¶ 13. He argues, without any support, that the Governor’s Order violates his

right to “protest[] in public outdoor spaces while adhering to social distancing protocols.” *Markey Decl.* at ¶ 13; *Markey Application*, at 13. It does no such thing.

The Governor’s Order states that “[i]ndividuals are permitted to engage in outdoor activities[.]” Governor’s Order, Attachment A. The Order only prohibits “gatherings of individuals outside of the home,” unless required to access or support life-sustaining activities. *Id.* (emphasis added). Thus, Markey may engage in protests in outdoor spaces so long as he maintains social distancing of at least 6-feet from anyone else and does not participate in large gatherings. As discussed above and recognized by health experts, COVID-19 passes easily between people; avoidance of groups is essential to arresting the spread of this pandemic.

Further, the right to speak and assemble wherever, whenever, and however one chooses is not absolute.¹⁸ It has long been established that “the right of peaceful protest does not mean that everyone with opinions or beliefs to express may do so at any time and at any place. There is a proper time and place for even the most peaceful protest and a plain duty and responsibility on the part of all citizens to obey all valid laws and regulations.” *Cox. v. State of Louisiana*, 379

¹⁸ The First Amendment to the United States Constitution instructs “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble.” U.S. Const. Amend. I.¹⁸ Article I, Section 20 of the Pennsylvania Constitution provide, in pertinent part, that “citizens have a right in a peaceable manner to assemble together for their common good” Pa. Const. Art. 1, § 20.

U.S. 559, 574 (1965); *see also Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799 (1985) (“protected speech is not equally permissible in all places and at all times”); *City of Duquesne v. Fincke*, 112 A. 130, 132 (Pa. 1920) (Article 20 does not grant “the right to assemble with others, and to speak wherever he and they choose to go”).

Accordingly, States may place content neutral time, place, and manner regulations on speech and assembly “so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication.” *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 46-47 (1986). *See also Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 658 (10th Cir. 2006) (the right of assembly and expressive association are “no more absolute than the right of free speech or any other right; consequently there may be countervailing principles that prevail over the right of association”) (quoting *Walker v. City of Kansas City*, 911 F.2d 80, 89 n. 11 (8th Cir. 1990)); *Menotti v. City of Seattle*, 409 F.3d 1113, 1128-29 (9th Cir. 2005) (“As a matter of law, [the order] was not a regulation of speech content, but rather was ‘a regulation of the places where some speech may occur’”). “The principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

In *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 656 (10th Cir. 2006), a church argued that the City’s denial of a zoning variance to allow operation of a daycare center violated their First Amendment speech, assembly, and association rights because it prohibited the church from gathering together children to teach its message. The Tenth Circuit rejected this argument, concluding that “[t]he City’s zoning regulations are unrelated to the suppression of speech or assembly and do not burden any more speech or associational rights than are necessary to further the City’s substantial interest in regulating traffic, noise and pollution in a residential zone.” *Id.* at 658.

The Governor’s Order is content neutral; it does not regulate speech at all, let alone attempt to regulate speech based on content. Like the zoning ordinance in *Grace United*, the Governor’s Order is wholly unrelated to the suppression of speech or assembly. It is a public health order.

That Order is also narrowly tailored to protecting the health and lives of Pennsylvanians, as it only prohibits in-person gatherings consistent with CDC guidance in the face of a rapidly evolving public health crisis.¹⁹

¹⁹ Markey cites to only a single case in support of his argument: *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997). In *Schenck*, the High Court upheld an injunction enjoining protesters from blocking the entrances to an abortion clinic, *i.e.* “fixed” buffer zones.” *Id.* at 380-81. The Court reversed the injunction as to “floating” buffer zones, however, which would have pushed protesters into the street. *Id.* at 376-79. Importantly, the Court recognized that in determining whether a restraint on speech violates the First Amendment, a court

Finally, the Governor’s Order permits large group protests on the internet. The United States Supreme Court itself has recognized that, in the modern era, “cyberspace—the ‘vast democratic forums of the Internet’ in general, and social media in particular”—has become the quintessential forum for the exercise of First Amendment rights. *Packingham v. North Carolina*, ___ U.S. ___, 137 S. Ct. 1730, 1735 (2017) (quoting *Reno v. American Civil Liberties Union*, 521 U.S. 844, 868 (1997)). While Markey seeks to protest in a public space, most government offices are closed and many citizens are adhering to the advice of health experts and staying home. Not only is the internet an alternative avenue for speech, but in the current context, Markey is much more likely to reach an audience with his protestations on-line than outdoors.

Finally, the prohibition on approaching individuals within 6-feet or gathering in large groups is vitally necessary to protect both public health and order. As discussed above, COVID-19 spreads primarily through person-to-person contact. As to order, individuals approached too closely by a shouting individual may respond unpredictably out of fear of contagion. *See* “Police: Shots Fired After Pennsylvania Man Coughs Without Covering His Mouth Amid Coronavirus Pandemic,” KDKA CBS Pittsburgh,

must look at “the governmental interest . . . which may include an interest in public safety and order.” *Id.* at 375.

<https://pittsburgh.cbslocal.com/2020/03/31/police-say-coughing-led-to-parking-lot-assault-shots-fired/> (last visited 4/7/20).

The Governor's Order complies with the First Amendment of the U.S. Constitution and Article I, Section 20 of the Pennsylvania Constitution.

E. The Governor's Order does not violate the Constitutional right to travel

Markey argues that the Governor's Order violates his constitutional right to travel. It does not. Markey quotes from *United States v. Guest*, 383 U.S. 745, 758 (1996), to suggest that the Order is somehow inconsistent with constitutional rights. It is not. At issue before the Court in *Guest* was whether Congress had the authority to address racial discrimination by *private* actors, whose conduct deprived African Americans in Georgia of various Federal Constitutional rights, including the right to *interstate* travel. *Id.* at 757-59.

Here, Markey does not assert any restriction upon his ability to engage in interstate travel, nor does he assert any desire to engage in interstate travel. Indeed, the guidance issued by the Governor expressly permits travel to-and-from other States. *See* Attachment C.

Rather, Markey asserts that because of the Governor's Order, he cannot take scenic drives with his family. But Markey cites no authority to support this assertion. Moreover, there is no right enshrined in either the United States or Pennsylvania Constitutions of completely unfettered access to public roads at all

times and circumstances. It is axiomatic that the Commonwealth may limit the use of public highways for the purpose of promoting public safety pursuant to its inherent police powers. *Zemel v. Rusk*, 381 U.S. 1, 15-16 (1965) (the right to travel “does not mean that areas ravaged by flood, fire or pestilence cannot be quarantined when it can be demonstrated that unlimited travel to that area would directly and materially interfere with the safety and welfare of the area or the Nation as a whole”); *Maurer v. Boardman*, 7 A.2d 466, 471 (Pa. 1939) (“The state, as the owner of the highways, roads, streets and bridges of the Commonwealth [] may vacate them or make any regulation necessary for the protection of life, limb or property thereon. The plenary power . . . to regulate the use of the highways of the Commonwealth is of ancient standing”). Currently, the Commonwealth is within the disaster area of this pandemic. As such, unlimited travel within the Commonwealth would directly and materially interfere with the safety and welfare of the citizens of Pennsylvania, and the Nation as a whole. Temporarily limiting public access to the Commonwealth’s highways is necessary to enforce social distancing and thereby preserve the safety and welfare of the Commonwealth as a whole.

As there has been no restriction on Markey’s (or anyone else’s) right to engage in *interstate* travel, and the Commonwealth has the ability to limit access to public highways in order to combat the COVID-19 pandemic – just as it would if

there were a tornado, fire, or any other type of emergency – there is no merit to Markey’s contention that the Governor’s order infringes upon his constitutional right to travel.

II. Markey Has Not Demonstrated that an Injunction will Prevent Irreparable Harm

A party “seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by money damages.” *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). In order to meet this burden, there must be “concrete evidence” demonstrating actual proof of irreparable harm. *Id.* at 1002. The claimed irreparable harm cannot be based solely on speculation and hypothesis. *Id.*

Contrary to providing concrete evidence of actual irreparable harm, Markey adduced no evidence of harm, proffering only speculative concerns based upon his improper reading of the Governor’s Order. Markey claims that an injunction is necessary because the Order allegedly: (1) restrains him from traveling; and (2) restrains protests in public outdoor spaces. *Markey Application*, at 1. The Governor’s Order, however, imposes no blanket ban on travel or protest.

As to travel, the Pennsylvania State Police publicly confirmed that its officers will not be stopping members of the public traveling on the roadways to determine whether they are complying with the Order, absent some other reason

for the stop. According to Lt. Col. Scott Price, “We don’t stop cars simply to determine what someone’s reason for traveling might be, for example.”²⁰ Therefore, there is no irreparable harm here.

Moreover, while Markey raises concerns that he may not be able to protest, he does not identify where or when he wishes to protest, whether he will be protesting alone or with others, or even his intended audience for his protest. It is simply not enough for Markey to speculate that he may want to engage in certain actions in the future and may not be able to do so. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 565 (1992) (“[s]uch ‘some day’ intentions—without any description of concrete plans, or indeed even any specification of when the some day will be—do not support a finding of the ‘actual or imminent’ injury that our cases require” and in “such circumstances we have insisted that the injury proceed with a high degree of immediacy so as to reduce the possibility of deciding a case in which no injury would have occurred at all”).

Because Markey’s claimed harm is speculative and unsupported as a matter of law, he has not demonstrated irreparable harm and is not entitled to preliminary injunctive relief. *See Novak v. Commonwealth*, 523 A.2d 318, 320 (Pa. 1987)

²⁰ Matt Miller, “Troopers won’t just warn violators about Gov. Wolf’s coronavirus stay-at-home order forever, PSP official says,” Patriot News, <https://www.pennlive.com/news/2020/04/troopers-wont-just-warn-violators-about-gov-wolfs-coronavirus-stay-at-home-order-forever-bsp-official-says.html> (4/7/20).

(rejecting speculative considerations as legally sufficient to support preliminary injunction); *Sameric Corp. of Mkt. St. v. Goss*, 295 A.2d 277, 279 (Pa. 1972) (rejecting speculative considerations offered in support of preliminary injunction).

III. Entry of a Preliminary Injunction will Disrupt the Status Quo

“The sole object of a preliminary injunction is to preserve the subject of the controversy in the condition in which it is when the order is made, it is not to subvert, but to maintain the existing status until the merits of the controversy can be fully heard and determined.” *Mahanoy Township Authority v. Deaper*, 52 A.2d 653 (Pa. 1947). In other words, the goal is to keep the parties in the position they were in when the case began so as to preserve the court’s ability to decide the matter. That is not what Markey seeks here.

Markey asks this Court to return to the time before the Governor’s Stay-at-Home Order. But by the time the application was filed in this action, there were already 14,559 positive cases in Pennsylvania, in all 67 counties, and 240 deaths.²¹ Those numbers increase daily. The injunction Markey seeks is not to protect the status quo, but to threaten it. Such a change would cause a precipitous increase in the number of positive cases and deaths in the Commonwealth just as those numbers are beginning to abate. This does not protect the status quo but destroys it.

²¹ Department of Health Provides Updates on COVID-19, 1,579 New Positives Bring Statewide Total to 14,599, <https://www.media.pa.gov/pages/Health-details.aspx?newsid=764> (4/7/20).

IV. An Injunction is Against the Public Interest and Greater Harm Will Result if an Injunction is Issued

The party seeking an injunction “must show that a preliminary injunction will not adversely affect the public interest.” *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). Further, “[w]hen the issuance of an injunction will cause serious public inconvenience or loss without a corresponding great advantage to the complainant, no injunction will be granted even though the complainant would otherwise be entitled to its issuance.” *Searfoss v. Sch. Dist. of Borough of White Haven*, 156 A.2d 841, 845 (Pa. 1959).

The Governor’s Order was enacted for the sole purpose of protecting the lives of citizens of the Commonwealth and was issued only after less-restrictive measures proved ineffective at preventing the spread of COVID-19. Only after those options were exhausted did Governor Wolf issue orders closing businesses which are not life sustaining²² and requiring citizens to stay at home to “lessen the curve” of the disease. These steps were necessary to protect and preserve human life in Pennsylvania.

The issuance of the injunction Markey seeks here will not merely harm the public, it will actively contribute to the spread of COVID-19, resulting in the

²² All Non-Life-Sustaining Businesses in Pennsylvania to Close Physical Locations as of 8 PM Today to Slow Spread of COVID-19, <https://www.governor.pa.gov/newsroom/all-non-life-sustaining-businesses-in-pennsylvania-to-close-physical-locations-as-of-8-pm-today-to-slow-spread-of-covid-19/> (3/19/20).

infection of countless more Pennsylvanians. Where an adverse effect upon the public will result from the issuance of a preliminary injunction, it should not be granted. *Valley Forge Historical Soc. v. Washington Mem'l Chapel*, 426 A.2d 1123, 1129 (Pa. 1981). There can be no greater adverse effect on the public than the additional, unnecessary deaths of its individual members. That effect mandates denial of the injunction.

CONCLUSION

For these reasons, the Court should deny the application for extraordinary relief.

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CERTIFICATE OF COUNSEL

I hereby certify that this brief contains 8,130 words within the meaning of Pa. R. App. Proc. 2135. In making this certificate, I have relied on the word count of the word-processing system used to prepare the brief.

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

/s/ J. Bart DeLone

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

CERTIFICATE OF SERVICE

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

Earl Markey
26 W. College Ave.
Yardley, PA 19067

/s/ J. Bart DeLone

J. BART DeLONE
Chief Deputy Attorney General

DATE: April 9, 2020

ATTACHMENT A
Governor's Stay at Home Order



COMMONWEALTH OF PENNSYLVANIA

OFFICE OF THE GOVERNOR

ORDER OF
THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA
FOR INDIVIDUALS TO STAY AT HOME

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 that result from disasters. 35 Pa. C.S. § 7301(a); 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, 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 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 limited to specified counties directing “Individuals to Stay at Home” on March 23, 2020, and amended March 24, March 25, March 27, March 28, March 30, and March 31, 2020; and

WHEREAS, as of April 1, 2020, the Commonwealth of Pennsylvania has 5,805 positive cases of COVID-19 in sixty counties and reports 74 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: Order to Stay at Home

All individuals residing in the Commonwealth are ordered to stay at home except as needed to access, support, or provide life-sustaining business, emergency, or government services. For employees of life-sustaining businesses that remain open, the following child care services may remain open: group and family child care providers in a residence; child care facilities operating under a waiver granted by the Department of Human Services Office of Child Development and Early Learning; and, part-day school age programs operating under an exemption from the March 19, 2020, business closure Orders.

A list of life-sustaining businesses that remain open is attached to and incorporated into this Order. In addition, businesses that are permitted to remain open include those granted exemptions prior to or following the issuance of this Order.

Individuals leaving their home or place of residence to access, support, or provide life-sustaining services for themselves, another person, or a pet must employ social distancing practices as defined by the Centers for Disease Control and Prevention. Individuals are permitted to engage in outdoor activities; however, gatherings of individuals outside of the home are generally prohibited except as may be required to access, support, or provide life-sustaining services as outlined above.

Enforcement of this Order will commence immediately for all counties covered under my prior Order directing “Individuals to Stay at Home” first issued March 23, 2020, as amended. Enforcement of this Order will commence at 8:00 PM Wednesday, April 1, 2020, for all other counties.

Section 2: Effective Date and Duration

This order is effective immediately and will remain in effect until April 30, 2020. This Order supersedes all previous Orders directing “Individuals to Stay at Home.”



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

Tom Wolf
TOM WOLF
Governor

ATTACHMENT B
Secretary's Stay at Home Order

Order of the Secretary of the Pennsylvania Department of Health to Stay at Home

To protect the public from the spread of Coronavirus (COVID-19), it is necessary that all individuals residing in the Commonwealth stay at home or at their place of residence except as needed to access, support or provide life sustaining business, emergency or government services. Therefore, on this day, April 1, 2020, under the authority granted to me by law, I hereby order:

All individuals residing in the Commonwealth of Pennsylvania are to stay at home except as needed to access, support or provide life-sustaining business, emergency or government services. For employees of life-sustaining businesses that remain open, the following child care services may remain open: group and family child care providers in a residence; child care facilities operating under a waiver granted by the Department of Human Services Office of Child Development and Early Learning; and, part-day school age programs operating under an exemption from the March 19, 2020 business closure Orders.

A list of life sustaining businesses that remain open is attached to and incorporated into this Order. In addition, businesses that are permitted to remain open include those granted exemptions prior to or following the issuance of this Order.

Individuals leaving their home or place of residence to access, support or provide life sustaining services for themselves, another person or a pet must employ social distancing practices as defined by the Centers for Disease Control and Prevention. Individuals are permitted to engage in outdoor activities provided proper social distancing measures are taken, however, gatherings of individuals outside of the home are generally prohibited except as may be required to access, support or provide life sustaining business, emergency or government services as outlined above.

Enforcement of this Order will commence immediately for all counties covered under my prior Order directing “Individuals to Stay at Home”, first issued March 23, 2020, as amended March 24, March 25, March 27, March 28, March 30 and March 31, 2020. Enforcement of this Order will commence at 8:00 PM Wednesday, April 1, 2020, for all other counties.

COVID-19 is a novel virus that has rapidly spread from person-to-person across the world and is currently stretching the limits of health care systems in other states and in other countries. Before COVID-19 overtakes the Commonwealth’s health care systems, everyone must take responsible action. Every person in the Commonwealth must work together to ensure that the resources of the Commonwealth are preserved for whatever

needs may arise throughout what will undoubtedly be a long and difficult response to the crisis, and that all actions that are possible to help mitigate the spread of disease, and not contribute to it, are taken.

On March 6, 2020, the Governor issued a Proclamation of Disaster Emergency due to the emergence of COVID-19 in the United States and the Commonwealth of Pennsylvania.

On March 19, 2020, Orders directing the closure of non-life sustaining businesses were issued. Operation of non-life sustaining businesses present the opportunity for unnecessary gatherings, personal contact and interaction that will increase the risk of transmission and the risk of community spread of COVID-19.

On March 23, 2020, Stay at Home Orders for various counties were issued to attempt to slow the virus's spread. As the virus continued to spread across the Commonwealth, those Orders were amended to include additional at-risk county populations. Thirty-three counties in the Commonwealth are under a Stay at Home Order currently, yet there are increasing case counts throughout the Commonwealth, with substantial increases in cases being seen in the Northeastern and Southeastern areas of the state, as well as increasing numbers in nursing homes. As of April 1, 2020, the Commonwealth of Pennsylvania has 5,805 positive cases of COVID-19 and reports 74 deaths from the virus. Currently, there are outbreaks among some of the more vulnerable populations in the state; there are nursing homes and personal care homes within the Commonwealth that are reporting outbreaks among their staff and residents.

People infected are capable of exposing others to COVID-19 even if their symptoms are mild, such as a cough. Symptoms of COVID-19 may include fever, cough, and shortness of breath. Older adults and people who have serious chronic medical conditions are at a higher risk for serious illness. Early symptoms may also include chills, body aches, sore throat, headache, diarrhea, nausea/vomiting, and runny nose. Additionally, exposure is possible by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes. Spread by persons who are asymptomatic is becoming more and more likely. Multiple areas of the United States are experiencing "community spread" of COVID-19, which means that the illness is being transmitted through unknown sources, not from known areas of infection. Mass gatherings increase the risk of transmission and community spread.

COVID-19 is a threat to the public's health, for which the Secretary of Health may order general control measures, including, but not limited to, closure, isolation, and quarantine. This authority is granted to the Secretary of Health pursuant to Pennsylvania law. *See* Section 5 of the Disease Prevention and Control Law, 35 P.S. §§ 521.1; 521.5, sections 2102(a) and 2106 of the Administrative Code of 1929, 71 P.S. § 532(a) and 536 and the Department of Health's (Department) regulations found at 28 Pa. Code §§ 27.60-27.68 (relating to disease control measures; isolation; quarantine; movement of persons subject to isolation or quarantine; and release from isolation and quarantine). Particularly, the Department has the authority to take any disease control measure appropriate to protect

the public from the spread of infectious disease. *See* 35 P.S. §§ 521.5; 71 P.S. § 532(a), and 1402(a); 28 Pa. Code § 28.60. The Department determines that the appropriate disease control measure based upon COVID-19, the manner of its spread in the Commonwealth and in the world, and its danger to Pennsylvanians, is for individuals residing in the Commonwealth to stay at home except to obtain life-sustaining services for themselves or others as outlined in this Order to prevent and control the spread of disease.

Accordingly, the Order and directive for individuals residing in the Commonwealth to stay at home is necessary to protect the public's health. This Order is effective immediately and will remain in effect until April 30, 2020. This Order supersedes all previous Orders directing "Individuals to Stay at Home."

A handwritten signature in black ink, appearing to read "RL 22 MD". The signature is written in a cursive, fluid style.

Rachel Levine, MD
Secretary of Health

ATTACHMENT C
Stay at Home Order Guidance

STAY AT HOME ORDER GUIDANCE

INTENT

The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety. The intent of this STAY AT HOME policy is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while continuing access to life-sustaining good and services.

COUNTIES SUBJECT TO THIS POLICY

As of April 1, 2020, all counties in Pennsylvania are subject to the Governor’s and the Secretary of Health’s Orders to STAY AT HOME.

POLICY

STAY AT HOME

All individuals residing in Pennsylvania must STAY AT HOME except for certain essential activities and work to provide life-sustaining business and government services.

Individuals may leave their residence ONLY to perform any of the following allowable individual activities and allowable essential travel:

ALLOWABLE INDIVIDUAL ACTIVITIES

- Tasks essential to maintain health and safety, or the health and safety of their family or household members (including, but not limited to, pets), such as obtaining medicine or medical supplies, visiting a health care professional, or obtaining supplies they need to work from home.
- Getting necessary services or supplies for themselves or their family or household members, or to deliver those services or supplies to others, such as getting food and household consumer products, pet food, and supplies necessary to maintain the safety, sanitation, and essential operation of residences. This includes volunteer efforts to distribute meals and other life-sustaining services to those in need.
- Engaging in outdoor activity, such as walking, hiking or running if they maintain social distancing.
- To perform work providing essential products and services at a life-sustaining business (see below for details about life-sustaining business activities).
- To care for a family member or pet in another household.

ALLOWABLE ESSENTIAL TRAVEL

- Any travel related to the provision of or access to the above-mentioned individual activities or life-sustaining business activities (see below for details about life-sustaining business activities).
- Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
- Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.

- Travel to return to a place of residence from an outside jurisdiction.
- Travel required by law enforcement or court order.
- Travel required for non-residents to return to their place of residence outside the commonwealth.

EXEMPTIONS

LIFE-SUSTAINING BUSINESS ACTIVITIES

Life-sustaining business activities are exempt from this policy. On March 19, Governor Wolf ordered the closure of the physical locations of businesses that are not critical to sustaining life in a pandemic. Businesses can determine whether they are considered a life-sustaining business, and are therefore allowed to continue in-person, physical operations, by first referring to the [Governor's Order](#) and the list of life-sustaining business which is [available here](#). This list was updated to conform with guidance on [Essential Critical Infrastructure](#) (version 1.1) issued by the Department of Homeland Security Cybersecurity and Infrastructure Security Agency advisory on March 23, 2020.

If the answer remains unclear, businesses may email the Department of Community and Economic Development (DCED) for further assistance at the following email account: ra-dcedcs@pa.gov. Inquiries will be answered as promptly as possible.

Businesses that were ordered closed but believed they could help mitigate this crisis by providing a life-sustaining service were able to apply for an exemption from the closure orders until April 3, 2020 at 5PM.

All exemptions are subject to continuance of and compliance with the social distancing and other mitigation measures to protect employees and the public, including virtual and telework operations (e.g. work from home) as the primary option when available.

STATE AND LOCAL GOVERNMENTS

Governments should use best judgment in exercising their authorities and issuing implementation directives and guidance. All such decisions should appropriately balance public health and safety while ensuring the continued delivery of critical services and functions. Government employees and contractors should continue to operate under the direction of their supervisors.

INDIVIDUALS EXPERIENCING HOMELESSNESS

Individuals experiencing homelessness are not subject to this policy but are strongly urged to find shelter and government agencies are urged to take steps needed to provide shelter for those individuals.

DISPLACED STUDENTS

International students, foster youth, and any other students who would otherwise experience displacement or homelessness as a result of campus closures are exempt from this policy and may remain in campus housing.

Additionally, nothing in this policy shall be construed to affect the operations of:

- Health care or medical service providers.

- Access to life-sustaining services for low-income residents, including, but not limited to, food banks.
- Access to child care services for employees of life-sustaining businesses that remain open as follows: child care facilities operating under the Department of Human Services, Office of Child Development and Early Learning waiver process; group and family child care operating in a residence; and part-day school age programs operating under an exemption from the March 19, 2020 business closure Orders.
- The news media.
- Law enforcement.
- The federal government.
- Religious institutions. However, religious leaders are encouraged to find alternatives to in-person gatherings and to avoid endangering their congregants. Individuals should not gather in religious buildings or homes for services or celebrations until the stay at home order is lifted.

ENFORCEMENT PERIOD

Enforcement of the statewide STAY AT HOME Orders began at 8:00 PM on Monday, April 1, 2020, and will continue through April 30, 2020.

Law enforcement officers should refer to Business Closure Order Enforcement Guidance available online [here](#).

REMINDER: SOCIAL DISTANCING REQUIREMENTS

When people need to leave their places of residence in conjunction with allowable individual activities, allowable essential travel, or by virtue of exemption from this policy, the Pennsylvania Department of Health strongly encourages individuals to abide by the following social distancing requirements to greatest extent reasonably possible:

- Maintain at least six feet from other individuals.
- Wash hands with soap and water for at least 20 seconds as frequently as possible, or use hand sanitizer.
- Cover coughs or sneezes with a sleeve or elbow, not hands.
- Do not shake hands.
- Regularly clean high-contact surface areas.

ADDITIONAL INFORMATION

For the most up-to-date, reliable information, please continue to refer to the Commonwealth of Pennsylvania's website for Responding to COVID-19 in Pennsylvania: <https://www.pa.gov/guides/responding-to-covid-19/>.