

I. INTRODUCTION

SARS-CoV-2, which causes Coronavirus disease 2019 (COVID-19), is a highly contagious virus that is a serious threat to public health and that has impacted every part of the globe. Pennsylvania has seen a similar unprecedented burden of COVID-19 and has taken equally unprecedented measures to save lives and reduce the number of deaths caused by the COVID-19 virus. This response has included Orders issued by the Secretary of the Department of Health that, inter alia, limit the size of public gatherings to reduce the spread of this virus. And these efforts are succeeding.

This decision to respond aggressively has proven to be an essential and effective measure to reduce the spread of COVID-19 and ultimately save an unrealized number of Pennsylvanians' lives. When individuals choose to ignore those safeguards—such as by holding an event anticipating 100,000 attendees—they put the lives of Pennsylvanians at risk and threaten to reverse the significant progress that has been made to resolve this crisis. That dangerous conduct must be stopped before it can occur. As a result, Petitioner, Commonwealth of Pennsylvania, Department of Health (“Department of Health” or “Department”), has initiated this action seeking Special Relief in the Form of a Preliminary Injunction and submits this Memorandum of Law in Support of its Application.

II. PROCEDURAL HISTORY

The Department of Health has filed a Petition for Review seeking injunctive relief. Contemporaneously with the Petition, the Department filed an Application for Emergency Relief in the Nature of an Ex Parte Preliminary Injunction.

III. FACTUAL HISTORY

In late 2019, SARS-CoV-2, the virus that causes the Coronavirus disease 2019 (“COVID-19”) began to spread around the globe. COVID-19 is a serious threat to public health in the Commonwealth. (Declaration of Dr. Rachel Levine, M.D., (“Levine Dec.”) at ¶ 4.) COVID-19 can result in serious symptoms such as fever, chills, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea, and could lead to the death of those infected with it. (*Id.* at 5.)

The primary form of transmission of COVID-19 is via respiratory droplets produced by an infected person, such as through a cough or sneeze. (*Id.* at ¶ 6.) Because of this mode of transmission, COVID-19 is most easily spread in situations where large groups of individuals are in close contact, *i.e.* within six feet of each other. (*Id.* at 7.) The United States Center for Disease Control (“CDC”) has issued guidelines to mitigate the spread of COVID-19 in the interest of public

health, including limiting the size of large gatherings and events based on state and local law. (*Id.* at 10.) Particularly, CDC guidelines recommend prohibiting gatherings where it would be difficult for individuals to maintain a distance of at least six feet apart and attendees travel from outside the local area. (*Id.* at 11.)

On March 19, 2020, the Governor of Pennsylvania issued an Executive Order requiring that all non-life-sustaining businesses in Pennsylvania cease in-person operations in order to mitigate the spread of COVID-19. (*Id.* at 12.) In the months following the Governor’s Executive Order, cases of COVID-19 slowly began to decline, and the Governor announced the process to reopen Pennsylvania. (*Id.* at 13.) As part of this process, certain counties would reopen on a limited basis, with certain restrictions, when statistical data demonstrated that those counties had successfully reduced the spread of COVID-19. (*Id.* at 13.) However, even under the least restrictive reopening phase, the “Green Phase,” significant steps are required to prevent cases of COVID-19 from spiking. (*Id.*) Accordingly, by Order dated May 27, 2020 (“May 27 Order”), the Secretary of Health for the Commonwealth of Pennsylvania issued an order implementing the phased reopening plan and lifting certain restrictions on businesses that had been ordered to close to prevent the spread of COVID-19. (Petition, Ex. A. (the “Green Phase Order”). Under the Green Phase Order, businesses may reopen with certain

restrictions, however, mitigation efforts are still required. (*Id.*) Particularly, the Green Phase Order provides:

Any gathering for a planned or spontaneous event of greater than 250 individuals is prohibited. This includes, but is not limited to, a concert, fair, festival, conference, sporting event, movie showing, or theater performance.

(Levine Dec., ¶ 20.)¹

Spring Carlisle is a car show that is scheduled to take place at the Carlisle, Pennsylvania Fairgrounds in Cumberland County from June 17, 2020 to June 20, 2020. (*Id.* at 20.) Cumberland Valley Visitors Bureau, which is the tourism arm of Cumberland Area Economic Development Corporation, states on its website that “Spring Carlisle plays host to 100,000 collector and classic automotive enthusiasts from around the world who traverse the Carlisle PA Fairgrounds to buy, sell and celebrate all things automotive.” (*Id.* at 21.) Events such as Spring Carlisle are at a high risk for spreading COVID-19 and undoing the mitigation efforts that the Commonwealth has worked so hard to achieve. (*Id.* at 22.)

In apparent recognition that its proposed event would violate existing orders Carlisle, working with others operating on its behalf, sought a waiver of the 250 person limit. That request was denied. The result should have been that

¹ By Order dated June 11, 2020, the Green Phase Order was amended to include Cumberland County. (Petition, Levine Dec., Ex. B.)

Carlisle either did not hold Carlisle Spring or that it did so in a manner permitted under the Orders. But its actions make clear that it intends to do neither. Instead it intends to risk exposure for tens of thousands of people by operating in violation of the Orders.

On July 16, 2020, the Secretary of Health issued a letter to Respondent, the organizer of Spring Carlisle, requesting that it confirm in writing that it will adhere to the requirements of the Green Phase Order, including the prohibition on gatherings of 250 individuals or more, and all other Orders governing mitigation efforts in the Commonwealth. (*Id.* at 24; Petition, Ex. C.) Respondent did not reply to the July 16, 2020 Letter. (Levine Dec. at ¶ 25).

IV. ARGUMENT

A. Standard for Preliminary Injunctive Relief

A preliminary injunction is appropriate where: (1) relief is “necessary to prevent immediate and irreparable harm”; (2) a “greater injury will occur from refusing the injunction than from granting it”; (3) the injunction will restore the parties to the status quo; (4) the plaintiff is likely to succeed on the merits; (5) the injunction sought is “reasonably suited to abate the offending activity”; and (6) the injunction “will not adversely affect the public interest.” *Warehime v. Warehime*, 860 A.2d 41, 46-47 (Pa. 2004) (citation omitted); *Greater Nanticoke Area Educ.*

Ass'n v. Greater Nanticoke Area School Dist., 938 A. 2d 1177, 1183-4 (Pa. Cmwlth. 2007).

With respect to the clear right-to-relief element, the court “need not finally decide the merits of the challenger's substantive claims; rather, . . . the inquiry is whether the challenger has presented a substantial legal question that must be resolved to determine the parties' rights and obligations.” *See Marcellus Shale Coal. v. Dep't of Env'tl. Prot. of Pa.*, 185 A.3d 985, 987 (Pa. 2018) (citing *T.W. Phillips Gas & Oil Co. v. Peoples Natural Gas Co.*, 492 A.2d 776, 780-81 (Pa. Cmwlth. 1985)). The “status quo to be preserved by a preliminary injunction is the last peaceable, lawful, noncontested status which preceded the pending controversy.” *Id.* Irreparable harm is found where the injury cannot be compensated by monetary damages or there is a statutory violation.

Commonwealth v. Snyder, 977 A.2d 28, 41 (Pa. Cmwlth. 2009). And the *status quo* to be preserved is the last actual, peaceable, lawful, noncontested status which preceded the pending controversy. *The Woods at Wayne Homeowners Ass'n v. Gambone Bros. Constr. Co., Inc.*, 893 A.2d 196, 204 n.10 (Pa. Cmwlth.), *appeal denied*, 588 Pa. 767, 903 A.2d 1235 (Pa. 2006).

B. An Injunction is Necessary to Prevent Irreparable Harm to the Health and Safety of the Commonwealth

An injunction requiring Respondent to abide by the Green Phase Order is necessary to prevent irreparable harm in the form of increased spread of

COVID-19. The requirements and restrictions set forth in the Green Phase Order are necessary to continue to mitigate the spread of COVID-19 and protect the health and safety of people in the Commonwealth. As noted above, large public gatherings where people come within close contact with each other are especially at risk for the transmission of COVID-19. Spring Carlisle is subject to the limitation on gatherings of 250 people or more. Allowing it to gather crowds that are several hundred times the applicable limit will undoubtedly cause irreparable harm in the form of increased spread of COVID-19, undoing months of mitigation efforts, which necessitated the shutdown of all non-life-sustaining businesses within Pennsylvania. It cannot be overstated that the threat of COVID-19 includes the most irreparable harm imaginable: the risk of death from the disease, a fate suffered by over 6,000 Pennsylvanians to date.

Moreover, a violation of law constitutes irreparable harm as a matter of law. *Philips Bros. Elec. Contractors, Inc. v. Valley Forge Sewer Auth.*, 999 A.2d 652, 657-58 (Pa. Cmwlth. 2010). The Green Phase Order was issued by the Secretary pursuant to her 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 § 27.60. Thus, the failure to abide by the Green Phase Order is irreparable harm per se as a violation of Commonwealth law.

C. Greater Injury Will Result in the Form of Increased Risk of Infection and Spread of COVID-19

Any injury to Respondent, who chose to proceed the face of the May 27 Order, pales in comparison to the risk of increased infection of COVID-19 and the potential for serious illness or death for the tens of thousands of attendees (and increased transmission to citizens of the Commonwealth who do not attend). Respondent is required only to limit the attendance of the event to 250 individuals at a time. At most, this would result in diminished attendance and profits for Respondent. The loss of profits cannot adequately balance the loss of lives of thousands of Commonwealth residents and those from neighboring states. This balancing test does not even account for the grave economic harm throughout the Commonwealth that could occur from increased spread of COVID-19.

D. The Injunction Will Restore the Parties to the Status Quo Prior to the Unlawful Gathering

The Department clearly meets the injunction standard for maintaining the status quo. The last “peaceable, lawful, noncontested status” preceding the instant dispute, *Gambone Bros. Constr. Co., Inc.*, 893 A.2d at 204 n.10, was before the Spring Carlisle event began. The Department clearly contested Respondent proceeding with the event without adhering to the Green Phase Order and the Respondent proceeded without complying with the limitation that gatherings

include no more than 250 individuals. Thus, the status quo consists of the day before the Spring Carlisle event began.

E. The Order is Clear and Enforceable, thus Petitioner is Likely to Prevail on the Merits

The May 27 Order is a valid exercise of the Secretary of Health's statutory authority. As the head of the Department of Health, the Secretary is charged with "exercise[ing] the powers and perform[ing] the duties by law vested in and imposed upon the department." 71 P.S. §§ 66, 1401(b). The Department is given the responsibility to "protect the health of the people of this Commonwealth, and to determine and employ the most efficient and practical means for the prevention and suppression of disease." 71 P.S. § 532(a). Under this broad mandate, the Secretary was within her powers to issue the May 27 Order and Amendment thereto.

Further, the Disease Control and Prevention Act of 1955 (the "Act") imposes additional responsibilities to the Department of Health to take measures to control the and prevent the spread of contagious diseases. Under the Act, the Department "shall be responsible for the prevention and control of communicable and non-communicable disease in any municipality which is not served by a local board or department of health" and "shall carry out appropriate control measures in such manner and in such place as is provided by rule or regulation." 35 P.S. §§ 521.3(b); 521.5. Thus, the Department of Health is responsible for disease

prevention and as such is fully within its rights to seek to enforce the order.

Accordingly, the Order is enforceable against Respondent.

Moreover, Respondent acknowledged the validity of the May 27 Order when it sought a waiver. In light of the enforceability of the order, and the Respondent's violation of it, Petitioner has a strong likelihood of success on the merits.

F. An Injunction Against the Carlisle Spring Show is Reasonably Necessary to Prevent the Irreparable Harm

Without an injunction, the Spring Carlisle will draw large crowds and pose a serious risk of public harm. In order to prevent the prevent the spread of COVID-19 and reverse months of progress to save lives in the region, an injunction requiring Respondent to comply with the May 27 Order and limit itself to 250 attendees is necessary.

G. The Public Interest Will be Served by Preventing the Spread of a Deadly Infectious Disease.

As of June 16, 2020, the date of this filing, the number of positive or probable cases of COVID-19 is 79,483 and the number of deaths is 6,276. Without months of difficult decisions and sacrifices by individuals and businesses throughout the Commonwealth, those numbers would be much higher. If Respondent is allowed to flout the mitigation efforts set forth in the Green Phase Order, the sacrifices made by Pennsylvanians would be severely diminished.

Because of the way COVID-19 spreads, from person to person, the thousands infected at the Carlisle Springs event would go on to infect tens of thousands more, resulting in severe illness or death, even for those who did not choose to attend. The effects of the event would be felt not only by those in attendance, but by the entire population of the Commonwealth. The Department is charged with protecting the safety of residents of the Commonwealth and the Orders issued by the Secretary are designed to serve the public interest by preventing the spread of a terrible and deadly disease. Accordingly, the public interest can only be served by enforcement of the Green Phase Order and an injunction requiring Respondent to abide by the terms of that order.

V. CONCLUSION

The Department of Health, which is responsible for the health and safety of the citizens of the Commonwealth, seeks to enforce and uphold the Order issued by the Secretary of Health to protect the residents of the Commonwealth from the spread of COVID-19. Respondent has refused to abide by the requirements of the Order necessary to protect the health and safety of Pennsylvania citizens. As a result, the Department of Health's Application should be granted and the Respondent should be enjoined from proceeding without adhering to the requirements of the Order.

Respectfully submitted,



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Dated: June 17, 2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the United Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

A handwritten signature in black ink, appearing to read 'B. Downey', with a stylized flourish at the end.

Brian P. Downey (PA 59891)

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirement of Pa. R.A.P. 121 and 1514(c).

Service by hand delivery, addressed as follows:

Carlisle Productions, Inc.
1000 Bryn Mawr Road
Carlisle, PA 17013

Based on the nature of the relief requested, I have also served Carlisle Productions, Inc. by serving its CFO and treasurer via email:

HaroldB@carlisleevents.com



Brian P. Downey (PA 59891)

Date: June 17, 2020

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