

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

**THE HONORABLE TOM WOLF,  
GOVERNOR OF THE  
COMMONWEALTH OF  
PENNSYLVANIA,**

**Petitioner**

**v.**

**SENATOR JOSEPH B. SCARNATI,  
III, SENATOR JAKE CORMAN, AND  
SENATE REPUBLICAN CAUCUS**

**Respondents**

**No. 104 MM 2020**

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**GOVERNOR TOM WOLF’S RESPONSE IN OPPOSITION TO  
RESPONDENT’S APPLICATION TO FILE A SUPPLEMENTAL BRIEF**

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On June 19, 2020, Respondents (the Caucus) filed an application for leave to file a supplemental brief in this pending King’s Bench matter. This application is improper, and should be denied.

The Caucus’s application begins with a very selective, truncated chronology. Conspicuously absent is the complete chronology of events leading up to the Caucus’s present request. That chronology is as follows:

- On June 12, 2020, Governor Wolf filed an Application for Extraordinary Relief. That document, including briefing, was served on the Caucus on that date. Also on that date, this Court instructed the Caucus to file either an

answer, or a letter stating that an answer would not be filed, no later than 12:00 noon on June 17, 2017.

- On June 15, having reviewed Governor Wolf’s filing, and referencing and citing to it, the Caucus informed this Court that they had nothing to add that was not already addressed in their Commonwealth Court filing. The Caucus explained to the Court:

In terms of the merits of the Application, the [Caucus], as noted by Petitioner, *see* Appl. at 13 n.14, ha[s] already filed a substantive brief in the Commonwealth Court, *see Scarnati v. Wolf*, No. 344 MD 2020, and the [Caucus] rel[ies] on the same to the extent the Court is looking for a response on the merits.

- On June 17, the Court entered a *per curiam* order exercising jurisdiction over this matter, and stating “[a]s requested by Respondents, the Court will decide the issues raised in the Petitioner’s Application based upon the filings submitted to this Court and to the Commonwealth Court in *Scarnati v. Wolf*, 344 MD 2020.”
- Between the June 17 deadline set by this Court, and June 19, a number of entities filed *amicus curiae* briefs detailing the reach and impact of the Caucus’s attempted unilateral legislative action.

In its present application, the Caucus makes the extraordinary claim that it should be given leave to file a supplemental brief, two days after the briefing deadline set by this Court, because it has now had the benefit of reviewing Governor

Wolf's filing. But the Caucus had every opportunity – indeed every obligation – to comply with this Court's deadlines and review Governor Wolf's filing, and did so, *before* submitting its no-answer letter to the Court. The Caucus's no-answer letter made clear that its view on the merits was set forth fully in its Commonwealth Court brief.

The Caucus further makes the nonsensical argument that its proposed supplemental brief should be considered a "reply brief," because, in its view, the Caucus would have had the ability to file a reply brief if this action had remained in the Commonwealth Court. But this matter is not before the Commonwealth Court. That action has been stayed.

Before *this Court*, the Caucus is the respondent. Accordingly, the Caucus had the opportunity and obligation to file a timely responsive brief to Governor Wolf's application, as this Court instructed it to do. *See generally*, Pa.R.A.P. 3309.<sup>1</sup> Instead, the Caucus chose to have its Commonwealth Court filing serve as its responsive brief. The Caucus has no right to "reply" to its own responsive brief. Furthermore, there is nothing in this Court's rules that enable a party to raise untimely arguments on a rolling basis, at any time before a decision. Yet that is precisely what the Caucus seeks to do here.

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<sup>1</sup> *See also*, Pennsylvania Appellate Practice, King's Bench Matters: Rule 3309 Application for Extraordinary Relief, 20A West's Pa. Prac., Appellate Practice § 3309:6.

This action is about the Caucus's flagrant disregard for the coordinate branches of Government, and the proper constitutional procedures concerning those branches. The Caucus believes that when it is inconvenient to follow longstanding rules and procedures, no matter how fundamental, it need not do so. Its attempt to circumvent this Court's briefing procedures is consistent with this disregard. The Caucus's application to file a supplemental brief to its own responsive brief, well out of time and at the eleventh hour, is improper and should be denied.

Respectfully submitted,

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DATE: June 22, 2020

## CERTIFICATE OF SERVICE

I, J. Bart DeLone, Chief Deputy Attorney General, do hereby certify that I have this day served the foregoing response, via PACFile, on the following:

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*/s/ J. Bart DeLone*

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J. BART DeLONE  
Chief Deputy Attorney General

DATE: June 22, 2020