

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

**CIVIL RIGHTS DEFENSE FIRM,
P.C., et al.,**

Petitioners

v.

GOVERNOR TOM WOLF

Respondent

No. 63 MM 2020

**IN RE: GOVERNOR TOM WOLF’S
ORDER OF MARCH 19, 2020
CLOSING ALL “NON-ESSENTIAL”
BUSINESSES**

**PETITION OF: COSTOPOULOS,
FOSTER & FIELDS, A LAW FIRM**

No. 64 MM 2020

**GOVERNOR WOLF’S ANSWER TO THE
APPLICATIONS FOR EXTRAORDINARY RELIEF**

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INTRODUCTION

The world is suffering under a global pandemic that has touched nearly every nation and has caused the states of New York, California and Illinois to order their citizens to shelter in place. What began as two presumptive cases of the disease in Pennsylvania on March 6, 2020, has spread to 268 positive cases across 18 counties and one death in two weeks. The novel Coronavirus Disease 2019 (COVID-19) spreads “mainly from person-to-person.”¹ The Governor, through powers entrusted to him, issued an order on March 19, 2020, in an attempt to arrest or slow the spread of this pandemic within the Commonwealth and save lives.

Petitioners, a group of lawyers and firearm sellers, filed two emergency petitions to enjoin the Governor’s Order, the gravamen of which is to complain that the Governor’s Order forecloses the right to bear arms and practice law. Nothing in the order, however, prohibits an attorney from practicing law or a citizen from owning a firearm. It merely closes certain businesses to prevent contagion. As demonstrated by this filing, attorneys continue to practice their profession from home offices, as do millions of other professionals across the nation. COVID-19 presents an extraordinary challenge that requires extraordinary measures to combat. The Governor was empowered by law to combat precisely this challenge.

¹ Center for Diseases Control Website, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html> (last visited 3/20/2020).

STATEMENT OF CASE

On the eve of a new year, researchers in China identified a new virus that had infected dozens of people, now known as COVID-19, an acronym that stands for coronavirus. On January 20, 2020, cases of COVID-19 were confirmed in Japan, South Korea, and Thailand. The very next day, the first case was confirmed in the United States. Ten days later, the World Health Organization declared a global health emergency. Over the next month, COVID-19 swept the globe.² As of today, COVID-19 is a pandemic with over 270,000 cases having been reported in 184 countries, resulting in 11,200 deaths.³ One recent Center for Diseases Control (CDC) projection estimated that that COVID-19 could infect between 160 million and 214 million Americans and kill anywhere from 200,000 to 1.7 million people.⁴ That model also suggested that a U.S. epidemic could lead to the hospitalization of anywhere from 2.4 million to 21 million people.⁵ Depending on the timing, that

² Derrick Bryson Taylor, “A Timeline of the Coronavirus,” *The New York Times*, <https://www.nytimes.com/article/coronavirus-timeline.html> (last visited 3/20/2020).

³ 2019–20 coronavirus pandemic, Wikipedia, https://en.wikipedia.org/wiki/2019–20_coronavirus_pandemic (last visited 3/20/2020).

⁴ Chas Danner, “CDC’s Worst-Case Coronavirus Model: 214 Million Infected, 1.7 Million Dead,” *New York Intelligencer*, <https://nymag.com/intelligencer/2020/03/cdcs-worst-case-coronavirus-model-210m-infected-1-7m-dead.html> (last visited 3/20/2020).

⁵ *Id.*

burden could devastate the U.S. health care system, as U.S. hospitals only have a capacity of 925,000 beds and fewer than 100,000 beds for critically ill patients.⁶

In order to protect the lives and health of millions of Pennsylvanians, Governor Wolf, on March 19, 2020, issued an executive order (Governor’s Order) proclaiming the existence of a disaster emergency throughout the Commonwealth pursuant to the statutory power granted to him under 35 Pa.C.S. § 7301(a). In accordance with the general powers the Governor maintains as the executive and specific powers granted him under, *inter alia*, 35 Pa.C.S. § 7301(b) and (f), ordered that all non-life sustaining businesses cease operations. The Governor outlined in detail those businesses considered life-sustaining and those that are not. This prohibition specifically does not apply to virtual or telework operations so long as social distancing and other mitigation measures are followed. Because violation of the order risks the health and lives of Pennsylvanians, the order permits enforcement actions against such violators.⁷

Today, two sets of petitioners—the Civil Right Defense Firm, P.C., Firearms Policy Coalition, Inc., Prince Law Offices, P.C., Trop Gun Shop, LTD. And Roger Mullins (collectively Firearm Petitions) and the Costopoulos Foster & Fields Law firm (Costopoulos)—filed emergency petitions to enjoin the Governor’s Order.

⁶ *Id.*

⁷ Exhibit A of the Firearm Petitioners’ Application.

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.” *Anchel v. Shea*, 762 A.2d 346, 351 (Pa. Super. Ct. 2000).

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, the Petitioners cannot satisfy any element required to obtain an injunction.

ARGUMENT

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

A. The Governor is empowered by the Emergency Management Services Code to close certain businesses during a disaster.

Extraordinary times requires extraordinary measures to save lives. Recognizing this, the General Assembly enacted the Emergency Management Services Code, 35 Pa. C.S. § 7101 *et seq.* empowering the Governor to “meet[] the dangers to this Commonwealth and people presented by disasters.” 35 Pa.C.S. § 7301(a). The stated purpose of that statute is to, *inter alia*, “reduce vulnerability of people and communities of this Commonwealth to damage, injury and loss of life and property resulting from disasters”; “care and treat[] persons victimized or threatened by disasters”; and “strengthen the roles of the Governor . . . in prevention of, preparation for, response to and recovery from disasters.” 35 Pa.C.S. § 7103. The Governor’s powers during a disaster are broad, and include, *inter alia*, controlling the “ingress and egress to and from a disaster area, the movement of person within the area and the occupancy of premises therein” and the power to “suspend or limit the sale” of firearms. 35 Pa.C.S. § 7301(f)(7),(8).

This statute defines “disaster” as a “man-made disaster, natural disaster or war-caused disaster.” 35 Pa.C.S. § 7102. A “Natural disaster” is “[a]ny hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake,

landslide, mudslide, snowstorm, drought, fire, explosion or **other catastrophe which results in substantial damage to property, hardship, suffering or possible loss of life.**” *Id.* (emphasis added). A “Man-made disaster” is “[a]ny industrial, nuclear or transportation accident, explosion, conflagration, power failure, natural resource shortage or **other condition**, except enemy action, **resulting from man-made causes . . . which threatens or causes substantial damage to property, human suffering, hardship or loss of life.**” *Id.* (emphasis added).

The global COVID-19 pandemic is both a natural and man-made disaster, as it is a natural catastrophe driven by person-to-person contact. That contact has resulted in substantial human suffering and more than 11,000 deaths worldwide so far. Petitioners’ argument that the global COVID-19 pandemic is somehow not a disaster demonstrates a dangerous level of myopathy about the effect this pandemic could have on the citizens of the Commonwealth and our health care system if the spread of this disease is not arrested.

Petitioners rely on the legal maxim of *ejusden generis* to support their position. Their position should be rejected. Under the ordinary meaning of “catastrophe,” COVID-19 is perhaps the biggest catastrophe of our lifetimes. Petitioners pervert the plain meaning of the word and subvert the General Assembly’s purpose of protecting the citizens of Pennsylvania in an emergency situation.

Petitioners maintain that a pandemic cannot be an “other catastrophe” because the specific items listed are weather related events, except—they admit—for “explosions.” It is further debatable whether “fire” and “mudslide” are necessarily weather related. Regardless, the term “other catastrophe” is expansive and is not limited by the specific enumerated terms. 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. See *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 *ejusden generis*).

However, in the present situation, with the safety of the public in the balance, the Court should give extreme deference to the Governor. As this Court said in *Lancaster County v. PLRB*, 94 A.3d 979, 986 (Pa. 2014):

[A]n administrative agency’s interpretation [of a statute] is to be given ‘controlling weight unless clearly erroneous.’ However, when an administrative agency’s interpretation is inconsistent with the statute itself, or when the statute is unambiguous, such administrative interpretation carries little weight. Appreciating the competence and knowledge an agency possess in its relevant field, our Court [has] opined that an appellate court ‘will not lightly substitute its judgment for that of a body selected for its expertise whose experience and expertise make it better qualified than a court of law to weigh facts within its field.’

Id. As the Governor’s interpretation of the statute is certainly not clearly erroneous, the Petition should be denied.

Further, the Emergency Management Services Code is part of a comprehensive regulatory framework. The specific powers granted to the Governor under 35 Pa.C.S. § 7301(f)(7) and (f)(8) must be considered in the broader context of the powers granted to him to proclaim and respond to a disaster emergency. See 35 Pa.C.S. § 7103 (outlining the purposes of the Emergency Services Management Code as “reduc[ing] the vulnerability and people and communities of this Commonwealth to damage, injury and loss of life and property resulting from disasters.”); see generally *Peco Energy Co. v. Pa. Pub. Utility Comm’n*, 791 A.2d 1155, 1160 (Pa. 2002); *Casey v. Pa. State Univ.*, 345 A.2d 695, 700 (Pa. 1975).

Petitioners argue that if Section 7301(f)(7) grants the Governor the authority to regulate and forcibly close non-life sustaining businesses, then Section 7301(f)(8), prohibiting the sale, dispensing and transportation of alcoholic beverages, firearms, explosives, and combustibles in commerce, is rendered mere surplusage. But this is a false dichotomy. Section 7301(f)(7) and (f)(8), read together, give the Governor the authority to tailor his response to the emergency. The Governor’s response is largely directed, not at the sale of certain goods, but toward the congregating of people who, together, can widely transmit COVID-19 to one another.

There is another reason for the Judiciary to defer to the Executive in these circumstances. *Baker v. Carr*, 369 U.S. 186, 210 (1962), outlines the boundaries of when an issue falls within the political question doctrine. Pursuant to that doctrine, it is appropriate under the separation of powers to attribute finality to the actions of the political branches when there is a lack of satisfactory criteria for a judicial determination. One broad area the U.S. Supreme Court outlined, of particular relevance to natural disasters, concerned the dates and duration of hostilities. There, the U.S. Supreme Court recognized “[d]ominant is the need for finality in the political determination, for emergency natures demand a prompt and unhesitating obedience.” *Baker*, 369 U.S. at 213-214. That is the circumstance presented here.

B. The Governor’s Order does not violate Article 1, Section 1 of the Pennsylvania Constitution or the Fifth and Fourteenth Amendments to the U.S. Constitution.

The Firearm Petitioners argue that Due Process is violated because the Governor’s Order is vague. This is untrue. The Order references a list of business separated by industry as commonly used by the U.S. Bureau of Labor Statistics. See Industries by Supersector and North American Industry Classification System (NAICS) Main (NAICS) Code, U.S. Bureau of Labor Statistics https://www.bls.gov/iag/tgs/iag_index_naics.htm (last visited 3/20/2020). Any business would already know which sector it occupies and its corresponding NAICS code. Additionally, the Pennsylvania Department of Community and Economic

Development provides resources to assist businesses. COVID-19 Business Resources, <https://dced.pa.gov/resources/> (last visited 3/20/2020).

The Governor's Order is not vague, arbitrary, or discriminatory. Rather, it is a tailored response to an ever-evolving emergency.

C. The Governor's Order does not abridge the right to bear arms.

Petitioner's argument that the Governor's Order somehow impinges upon the right to bear arms is without merit. "Like most rights, the right secured by the Second Amendment is not unlimited." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). As the U.S. Supreme Court explained in *Heller*, "nothing in our opinion should be taken to cast doubt on . . . laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at 626.

This Order does not prohibit individuals from possessing firearms, it merely suspends—temporarily—a variety of stores from acting as centers of contagion. It does not single out firearm sales in its application. But even if it did, the Emergency Management Services Code specifically empowers the Governor to suspend the sale of firearms during times of disaster. 35 Pa.C.S. § 7301(f)(8).

D. The Governor's Order does not regulate the practice of law.

Petitioner's argument that the Governor's Order regulates the practice of law ignores the language of the Order and the reality of the modern practice of law.

First, the Governor’s Office has been in regular contact with the Administrative Office of Pennsylvania Courts (AOPC) for “for guidance on measures to continue protecting the health and safety of court users and court employees.” UJS Coronavirus Information, <http://www.pacourts.us/ujs-coronavirus-information> (last visited 3/20/2020). H. Geoffrey Moulton Jr., court administrator of AOPC, recently issued the following statement on this precise issue:

In the view of AOPC, restricted access to law offices and facilities by legal professionals, staff, and clients is permitted to the degree necessary to allow attorneys to participate in court functions deemed essential by a President Judge per the Supreme Court’s order of March 18, 2020, so long as social distancing and other mitigation measures are employed for the protection of lawyers, staff, and clients. Pursuant to the Governor’s order, all other business must be conducted remotely; necessary retrieval of files or other materials should be accomplished expeditiously.

Max Mitchel, “Pa. Office of Counsel OK's AOPC Guidance Saying Law Offices May Stay Open on Restricted Basis,” *The Legal Intelligencer*, <https://www.law.com/thelegalintelligencer/2020/03/20/pa-office-of-counsel-says-law-offices-may-stay-open-on-restricted-basis> (last visited 3/20/2020).

Restricted access to law offices and facilities by legal professionals, staff, and clients is permitted to the degree necessary to allow attorneys to participate in court functions deemed essential by the courts. Attorneys, therefore, are not prohibited from practicing law during the pandemic.

Second, as the Firearm Petitioners recognize, the Governor’s Order explicitly exempts “virtual or telework operations (e.g. work from home).” Firearm Petition at 7. Long gone are the need for attorneys to maintain large physical law libraries, conduct in-person meetings, or file physical documents with the Prothonotary. Electronic filing through PACFile is at least a decade old and client meetings and court hearings can, and are, being performed via video conference or telephone.

As this Court is well aware, attorneys across the Commonwealth continue to litigate, and the Court continue to operate, from home offices while we attempt to “flatten the curve” of this pandemic. In fact, a team of attorneys prepared this filing entirely electronically, as all physical offices of the Attorney General have been closed.

Under Petitioners’ theory, only this Court could condemn an unsafe structure if that structure contains a law office. This is, of course, nonsense. And none of the cases cited by petitioners remotely suggest otherwise. See *Loyd v. Fishinger*, 605 A.2d 1193 (Pa 1992) (concerning rules of ethics applied to attorney’s practice); *Com. v. Stern*, 701 A.2d 568 (Pa. 1997) (criminal statute prohibiting payment for referrals); *Shaulis v. Pennsylvania State Ethics Comm'n*, 833 A.2d 123 (Pa. 2003), abrogated by *Yocum v. Commonwealth Pennsylvania Gaming Control Bd.*, 161 A.3d 228 (Pa. 2017) (Public Official and Employee Ethics Act imposing restrictions upon former government employees who are also attorneys); *Wajert v. State Ethics*

Comm'n, 420 A.2d 439 (Pa. 1980) (Law prohibited judges from representing parties before court where they once sat). Petitioner Costopoulos cites no cases or authority in support of his petition, beyond the standard to seek a stay in *Pennsylvania Pub. Util. Comm'n v. Process Gas Consumers Grp.*, 467 A.2d 805 (Pa. 1983).

Petitioners ignore the national emergency besetting all occupations, not merely attorneys, to attempt to cabin the Governor's authority to address that very emergency. However, this Court "DECLARE[D] that a judicial emergency exists in all judicial districts, effective at close of business on March 19, 2020 . . ." and suspended all time calculations and deadlines through April 3, 2020. *In re: General Statewide Judicial Emergency*, Admin. Dkts. 531 & 532 (Pa). A judicial emergency necessitates that lawyers practice law differently than their preference.

II. 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 citizens of the Commonwealth and was issued only after less-restrictive measures proved ineffective at preventing the spread of COVID-19. Initially, the Governor ordered a two-week closure of all K-12 schools throughout the Commonwealth and announced mitigation measures in Montgomery and Delaware counties.⁸ The mitigation efforts were then expanded to include Bucks and Chester counties.⁹ Effective March 16, Governor Wolf ordered restaurants in Allegheny, Bucks, Chester, Delaware, Montgomery counties to cease dine-in services.¹⁰ Similar closures took effect state-wide on March 17 and non-essential businesses were urged

⁸ Gov. Wolf, Sec. of Health, PA Chamber Outline COVID-19 Mitigation Guidance for Pennsylvania Schools, Businesses, and Additional Closures in Delaware County, <https://www.governor.pa.gov/newsroom/gov-wolf-sec-of-health-pa-chamber-outline-covid-19-mitigation-guidance-for-pennsylvania-schools-businesses-and-additional-closures-in-delaware-county/> (3/13/20).

⁹ Gov. Wolf, Congresswoman Houlahan, Sec. of Health, Sec. of Education Outline COVID-19 Mitigation Guidance for Pennsylvania Schools and Additional Closures in Bucks and Chester Counties, <https://www.governor.pa.gov/newsroom/gov-wolf-congresswoman-houlahan-sec-of-health-sec-of-education-outline-covid-19-mitigation-guidance-for-pennsylvania-schools-and-additional-closures-in-bucks-and-chester-counties/> (3/14/20).

¹⁰ Wolf Administration Orders Restaurants and Bars to Close Dine-In Service in Mitigation Counties Including Allegheny To Stop Spread of COVID-19, <https://www.governor.pa.gov/newsroom/wolf-administration-orders-restaurants-and-bars-to-close-dine-in-service-in-mitigation-counties-to-stop-spread-of-covid-19/> (3/15/20).

to close for 14-days.¹¹ Throughout this time, the Governor and Secretary of Health repeatedly requested that all Pennsylvanians engage in social distancing and engage in safe practices such as covering coughs and sneezes with your elbow, washing hands frequently with soap and water for at least 20 seconds and using alcohol-based hand sanitizer when soap and water are not available, frequent cleaning of surfaces, and to stay home if not feeling well. The Governor asked individuals and businesses to voluntarily employ processes to allow individuals stay home, minimize contact – specifically calling for the voluntary closing of non-essential businesses, such as gyms, movie theaters and shopping malls; and the limitation of operations of bars and restaurants.¹²

But none of these measures proved effective at stopping the rapid spread of COVID-19. Indeed, last Friday, there were only 41 cases confirmed in Pennsylvania.

¹¹ Wolf Administration Updates Businesses on Guidance for COVID-19 Mitigation Efforts, <https://www.governor.pa.gov/newsroom/wolf-administration-updates-businesses-on-guidance-for-covid-19-mitigation-efforts/> (3/16/20).

¹² Gov. Wolf, Congresswoman Houlahan, Sec. of Health, Sec. of Education Outline COVID-19 Mitigation Guidance for Pennsylvania Schools and Additional Closures in Bucks and Chester Counties, <https://www.governor.pa.gov/newsroom/gov-wolf-congresswoman-houlahan-sec-of-health-sec-of-education-outline-covid-19-mitigation-guidance-for-pennsylvania-schools-and-additional-closures-in-bucks-and-chester-counties/> (3/14/20).

Today, there are 268 with 52 new cases confirmed since yesterday.¹³ Pennsylvanians refused to voluntarily engage in “social distancing” to prevent the spread of COVID-19 leaving Governor Wolf with no option other than to close non-essential businesses to “lessen the curve” of the disease. This step was necessary to protect and preserve human life in Pennsylvania. The issuance of an injunction will not merely harm the public, it will actively contribute to the spread of COVID-19 resulting in the infection of countless Pennsylvanians and additional loss of life.

III. Petitioners Cannot Demonstrate 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.” *Greenmoor, Inc. v. Burchick Const. Co.*, 908 A.2d 310, 314 (Pa. Super. 2006). In order to meet this burden, there must be “concrete evidence” demonstrating “actual proof of irreparable harm.” *Id.* The claimed “irreparable harm” cannot be based solely on speculation and hypothesis. *Id.*; *see also ECRI v. McGraw-Hill, Inc.*, 809 F.2d 223, 226 (3d Cir. 1987) (“Establishing a risk of irreparable harm is not enough. A plaintiff has the burden of proving a ‘clear showing of immediate irreparable injury.’”).

¹³ “Pa. reports 83 new coronavirus cases as state total rises to 268,” PennLive, <https://www.pennlive.com/news/2020/03/pa-reports-83-new-coronavirus-cases-state-total-rises-to-268.html> (last visited 3/20/20).

Instantly, the Petitioners have not made a showing of irreparable harm based upon a disruption in their business operations and loss of money. Petitioners are suffering the same disruption faced by all other non-essential businesses in the Commonwealth. This disruption is not actionable. Indeed, there is no precedent indicating that economic harm can constitute irreparable harm in the face of a Declaration of Disaster. Moreover, economic harm is generally insufficient in constituting irreparable harm for purposes of a preliminary injunction, particularly where that economic harm is speculative. Here, Petitioners have presented no data, studies, testimony or other evidence showing what their economic harm will be during these unprecedented times.

This Court, in *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 649, 828 A.2d 995, 1002–03 (Pa. 2003), rejected speculative financial harm as irreparable harm. In *Summit Towne Center*, a store lessor, who was seeking an injunction against a lessee, testified in terms of “domino effects” and hypotheticals in attempting to establish irreparable harm. The Supreme Court ruled that because the petitioner’s “testimony rested almost entirely on speculation and hypothesis, as he provided no concrete evidence of harm such as data relating to other stores’ lost sales, decreased retention rates, or increased vacancy rates,” that there was no evidence of immediate and irreparable harm. *Id.* at 1002-03.

So too here. Speculative testimony about *potential* customers is insufficient to obtain an injunction. See *Novak v. Commonwealth*, 523 A.2d 318, 320 (Pa. 1987) (rejecting speculative considerations as legally sufficient to support preliminary injunction); *New Castle Orthopedic Assocs. v. Burns*, 392 A.2d 1383, 1387 (Pa. 1978) (plurality) (stating that “actual proof of irreparable harm” required for preliminary injunction, and concluding that injunction granted in that case was improper because record failed to indicate irreparable harm); *Credit Alliance Corp. v. Phila. Minit–Man Car Wash Corp.*, 301 A.2d 816, 818 (Pa. 1973) (trial court properly denied preliminary injunction where no showing made of necessity to avoid immediate and irreparable harm); *Sameric Corp. of Mkt. St. v. Goss*, 295 A.2d 277, 279 (Pa. 1972) (rejecting speculative considerations offered in support of preliminary injunction).

Moreover, because Petitioners have no clear right to relief on the merits, there is no *per se* irreparable harm. Petitioners attempt to circumvent their obligation to adduce concrete evidence of irreparable harm by falling back on their arguments on the merits. The Firearms Petitioners proffer one paragraph as to harm—relying solely on *per se* harm as their basis for relief. Firearms Petition at 26-27. Petitioners’ arguments fail as a matter of law, however. Therefore, their lack of actual harm is not remedied by this theoretical concept.

In sum, Petitioners have not demonstrated any actual harm that surpasses the importance of the Declaration of Disaster, warranting continuing operation of in-person transactions at their businesses.

IV. Entry of a Preliminary Injunction will Disrupt the Status Quo and Will Not Abate Offensive Conduct.

“A preliminary injunction is designed 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 quo until the legality of the challenged conduct can be determined on the merits.” *Sheridan Broad. Networks, Inc. v. NBN Broad., Inc.*, 693 A.2d 989, 994 (Pa. Super. Ct. 1997) (quoting *In re Appeal of Little Britain*, 651 A.2d 606, 611 (Pa. Cmwlth. 1994)).

On March 6, 2020, the Governor declared a disaster emergency. Just prior to the Governor’s Order on March 19, 2020, there were 185 confirmed cases of COVID-19. This was not a “peaceable status” as implied by Petitioners. The Commonwealth was facing “an invisible danger” that needed to be contained as quickly as possible. By the next day, the confirmed virus count was 268. An injunction will not restore the status quo, because there is no status quo when dealing with a pandemic. The situation is changing by the minute and immediate action must be taken to prevent additional loss of life. The Governor’s Order is this action.

While an injunction would serve to reopen Petitioners’ business, it would not abate the offending activity. Here, the real offending activity of which Petitioners

complain is Governor Wolf's attempt to protect Pennsylvanians from the COVID-19 pandemic. Extraordinary times requires extraordinary measures to save lives and the Governor alone is charged with the responsibility to address dangers facing the Commonwealth of Pennsylvania that result from disasters.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that this brief contains 4,260 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

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CERTIFICATE OF SERVICE

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

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