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IN THE SUPREME COURT OF PENNSYLVANIA

No. 14 EM 2015

COMMONWEALTH OF PENNSYLVANIA,

Petitioner

v.

TERRENCE WILLIAMS; and
TOM WOLF, Governor of Pennsylvania,

Respondents

BRIEF OF RESPONDENT GOVERNOR TOM WOLF

Petition for Extraordinary Relief

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PRELIMINARY STATEMENT

The Honorable Tom Wolf, the Governor of Pennsylvania, on February 13, 2015, exercised his exclusive authority under Article IV, § 9(a), of the Constitution of Pennsylvania to issue a temporary reprieve from execution by lethal injection for Respondent Terrance Williams. At the time the Governor issued his reprieve, the Department of Corrections was scheduled to carry out the execution on March 4, 2015, pursuant to a writ issued by then-Governor Tom Corbett on January 13, 2015 – just one week before he was to leave office.

As the Governor stated expressly in his reprieve order, he has determined that the execution of Williams will be stayed until the Governor has "received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment" ("Task Force"),[1] which is studying the Commonwealth's system of capital punishment as commanded by a resolution of the Senate of Pennsylvania, *see* Senate Resolution No. 6 of 2011, "and any recommendations contained therein are satisfactorily addressed."

Five days after the Governor exercised his constitutional power of reprieve, the District Attorney of Philadelphia County ("District Attorney") filed with this Honorable Court an "Emergency Petition for Extraordinary Relief." Through this

[1] The Task Force is co-chaired by Senators Stewart Greenleaf and Daylin Leach (who also currently chair the Senate's Judiciary Committee).

petition, the District Attorney asks this Court to declare the Governor's reprieve to be a legal nullity and to order that the execution of Williams be carried out by the Department of Corrections without delay.

This Court should take neither of these actions. The Governor has properly exercised his purely executive power by granting a reprieve to Williams under Pa. Const. art. IV, § 9(a). The express and unconditional constitutional power "to grant reprieves" is accorded to the Governor alone as the Commonwealth's chief executive officer. The courts have no cause under Pennsylvania law to interfere with this exercise of executive power granted by the people of the Commonwealth solely to their Governor. Thus, this Court should exercise its extraordinary jurisdiction to summarily dismiss the District Attorney's action with prejudice.

COUNTER-STATEMENT OF JURISDICTION

The District Attorney contends that this Court may assume "King's Bench" jurisdiction under 42 Pa.C.S. § 502 to review the constitutionality of an action taken by the Governor – in this case, the Governor's exercise of the power of reprieve granted to him explicitly and exclusively by Pa. Const. art. IV, § 9(a). The Governor disagrees.

This Court repeatedly has described its King's Bench power as encompassing the superintendency of the judiciary and inferior tribunals. *See In re Bruno*, 101 A.3d 635 (Pa. 2014) (King's Bench jurisdiction invoked respecting judicial disciplinary matters); *Bd. of Revision of Taxes v. City of Philadelphia*, 607 Pa. 104, 121, 4 A.3d 610, 620 (2010) ("King's Bench jurisdiction . . . allows [the Court] to exercise power of general superintendency over inferior tribunals . . . ."); *In re Dauphin County Fourth Investigating Grand Jury*, 596 Pa. 378, 386 n.3, 943 A.2d 929, 933 n.3 (2007) (same); *Carpentertown Coal & Coke Co. v. Laird*, 360 Pa. 94, 99, 61 A.2d 426, 428 (1948) (same).

The Governor is the head of the Commonwealth's Executive Department, reposed by the Constitution with "supreme executive power." Pa. Const. art. IV, § 2. In this matter, the question posed is the nature and extent of the Governor's power to exercise a constitutionally explicit, exclusive and unconditional ***executive*** power – *i.e.*, the power to grant reprieves under Pa. Const. art. IV, § 9(a). In his

exercise of constitutional executive power, the Governor most decidedly is ***not*** an "inferior tribunal" over which this Court has a "power of general superintendency." Therefore, this Court should not grant the District Attorney's petition to exercise King's Bench jurisdiction.

Though this is not a proper matter for this Court's King's Bench jurisdiction under the Pennsylvania Constitution and section 502 of the Judicial Code, the Governor does agree that the District Attorney's action against the Governor is a proper matter for immediate judicial consideration and disposition by a court of competent jurisdiction. Moreover, the constitutional question presented by the District Attorney clearly is one of "immediate public importance" that, under the circumstances, would support the Court's invocation of "extraordinary jurisdiction" under section 726 of the Judicial Code without delay. 42 Pa.C.S § 726.

Concededly, the District Attorney's claim against the Governor is not currently pending before any other court of this Commonwealth as section 726 contemplates. However, technical compliance with section 726 nevertheless can be achieved as the matter is currently presented.

The Court may exercise its extraordinary jurisdiction in this case through the following mechanism. The Court could: (1) transfer the matter to Commonwealth Court for consideration as an action commenced originally in that court under 42

Pa.C.S. § 761(a)(1); and then (2) invoke the Court's extraordinary jurisdiction under 42 Pa.C.S. § 726 to re-take the case. However, instead of exercising the mechanical maneuver of transfer and invocation of extraordinary jurisdiction, the Court could, in the "interest [of] judicial economy and expediency," "simply keep and decide" the case in the manner suggested by Justice Baer in *Pa. Gaming Control Bd. v. City Council of Philadelphia*, 593 Pa. 241, 269, 928 A.2d 1255, 1272 (2007) (Baer, J., concurring).

Exercising extraordinary jurisdiction in this way would properly allow the Court to decide the constitutional issues presented in the same expeditious and comprehensive manner as if the case were properly within the Court's King's Bench jurisdiction. At the same time, the Court would avoid an unprecedented and constitutionally untenable assumption of jurisdiction over the Governor and his exercise of executive power through the King's Bench power, which appropriately is understood to empower the Court widely and deeply to superintend ***the Judicial Department*** of the Commonwealth government specifically.

In sum, the Court could decide this case directly. But it should do so through its extraordinary jurisdiction in the procedurally appropriate manner described above; and it should reject the District Attorney's contention that King's Bench jurisdiction extends to claims made against the Governor exercising purely executive powers.

ORDER OR DETERMINATION IN QUESTION

Before the Court for review is the order of Governor Tom Wolf, issued on February 13, 2015, pursuant to his express authority under Pa. Const. art. IV, § 9(a), to grant to Respondent Terrance Williams a reprieve from execution by lethal injection. That execution had been scheduled for March 4, 2015, by warrant issued on January 13, 2015, by then-Governor Tom Corbett just one week before he left office on January 20, 2015.

The text of Governor Wolf's reprieve order follows:

> NOW THEREFORE, I, Tom Wolf, as Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me under the Constitution and the Laws of this Commonwealth, do hereby grant a temporary reprieve of the execution unto Terrance Williams until I have received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment, and any recommendations contained therein are satisfactorily addressed.

SCOPE AND STANDARD OF REVIEW

In a matter in which this Court exercises its extraordinary jurisdiction to consider pure issues of law, the scope and standard of review are plenary and *de novo*. *See Kilmer v. Elexco Land Servs., Inc.*, 605 Pa. 413, 419, 990 A.2d 1147, 1151 (2010). However, in exercising its plenary review powers, the Court accords "a judicial presumption that [its] sister branches take seriously their constitutional oaths." *Stilp v. Commonwealth*, 588 Pa. 539, 574, 905 A.2d 918, 938 (2006). The Court therefore applies the same deferential test in a constitutional challenge to an executive action as it does in a constitutional challenge to a statute. *Stroup v. Kapleau*, 455 Pa. 171, 177, 313 A.2d 237, 240 (1973). Accordingly, a Governor's executive action must be upheld "unless it clearly, palpably, and plainly violates the Constitution," and "[a]ny doubts are to be resolved in favor of a finding of constitutionality." *Stilp*, 588 Pa. at 574, 905 A.2d at 939 (citations omitted); *accord Stroup*, 455 Pa. at 177, 313 A.2d at 240.

COUNTER-STATEMENT OF QUESTION PRESENTED

Under Pa. Const. art. IV, § 9(a), which expressly and without condition empowers the Governor as the Commonwealth's chief executive "to grant reprieves" in all criminal cases except impeachment, may the Governor in his sole discretion temporarily postpone the execution of a prisoner who has been convicted of capital murder?

Suggested answer: Yes.

COUNTER-STATEMENT OF THE CASE

On January 13, 2015 – just one week before the end of his elective term of office – then-Governor Tom Corbett issued a warrant directing the Secretary of Corrections to carry out the execution of Terrance Williams on March 4, 2015. *See* 61 Pa.C.S. § 4302 (relating to issuance of warrant).

Exercising his constitutional power as the Commonwealth's supreme executive officer, Governor Tom Wolf on February 13, 2015, granted a reprieve of Williams' execution. The Governor announced in his reprieve order that the execution of Williams would not be re-scheduled "until [the Governor has] received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment, and any recommendations contained therein are satisfactorily addressed." The referenced Task Force was established on direction of the Senate of Pennsylvania, as communicated through Senate Resolution No. 6 of 2011.

In issuing a reprieve of Williams' execution, the Governor acted pursuant to Pa. Const. art. IV, § 9(a), which expressly and unqualifiedly grants to the Governor the sole and exclusive executive power "to grant reprieves." In granting a reprieve of Williams' execution, the Governor acted only to stay the execution temporarily. Williams remains convicted of first degree murder and duly sentenced by a court of this Commonwealth to die by lethal injection pursuant to 61 Pa.C.S. § 4304

(relating to method of execution). In addition, Williams remains confined by the Department of Corrections in a capital case housing unit in accordance with the Department's Capital Case Procedures protocol. Williams' status as a convicted and sentenced capital offense murderer has not been altered by the Governor's temporary reprieve of the actual administration of Williams' execution.

On February 18, 2015 – just five days after the Governor issued a reprieve of Williams' execution – the District Attorney of Philadelphia County filed with this Court an "Emergency Petition for Extraordinary Relief," asking the Court: (1) to assume King's Bench jurisdiction under Pa. Const. art. V, § 2 or, alternatively, to assume extraordinary jurisdiction under 42 Pa.C.S. § 726; (2) to nullify the Governor's reprieve; and (3) to require the Secretary of Corrections to carry out Williams' execution as scheduled by the warrant issued by former Governor Corbett.

On March 3, 2015, this Court granted further review of the District Attorney's petition and ordered that the Governor be joined as a party, but it denied the request for expedited review. Instead, the Court directed its Prothonotary to establish a briefing schedule and to list the matter for oral argument in the normal course, "so that the parties may brief the issue of the propriety of this Court's exercise of King's Bench review as well as the merits of the issues raised in the petition."

The District Attorney and his *amici* filed opening briefs on April 13, 2015. This brief is filed by the Governor in response to those briefs.

SUMMARY OF ARGUMENT

Article IV, § 9(a), of the Constitution of Pennsylvania expressly grants to the Governor – and to the Governor alone – the executive power to grant reprieves in all criminal cases except impeachment. By contrast to the greater clemency powers of pardon and commutation, as to which the Governor's executive power is delimited by the requirement that such clemency be granted only upon the recommendation of the constitutionally-established Board of Pardons, the Governor's power to grant reprieves is entirely unlimited (except in cases of impeachment under Article VI of the Constitution). This broad and unfettered executive power has been reflected in both constitutional text and historical practice since the Commonwealth's earliest days in the 17th Century.

Because the Governor's power of reprieve is not otherwise limited by the Pennsylvania Constitution, this Court has no cause to intervene to restrict the Governor's exercise of this purely executive power in this case or any other. Therefore, this Court should enter judgment in favor of the Governor and against the District Attorney of Philadelphia County.

ARGUMENT

THE GOVERNOR HAS EXERCISED AN EXECUTIVE POWER THAT IS GRANTED TO HIM EXPRESSLY AND EXCLUSIVELY BY THE PENNSYLVANIA CONSTITUTION.

A. The Plain Text of the Constitution Expresses No Relevant Limits on the Governor's Power of Reprieve.

The Pennsylvania Constitution provides, in relevant part, that "[i]n all criminal cases except impeachment the Governor shall have power . . . to grant reprieves, commutation of sentences and pardons . . . ." Pa. Const. art. IV, § 9(a). Unlike the Governor's executive authority to issue commutations and pardons, which may be employed only upon a recommendation of the five-member Board of Pardons established by Pa. Const. art. IV, § 9(b), the Governor's constitutional power to issue reprieves is not only express and unlimited, but it stands without regulation by any other body or official of government, including the General Assembly and the courts. *See* Pa. Att'y Gen. Op. 83-2 (Feb. 14, 1983) (The Governor has "exclusive authority" and "unfettered discretion to grant a reprieve after imposition of sentence and on a case by case basis.")[2]; *see also* William W. Smithers, *Treatise on Executive Clemency in Pennsylvania* 75 (Internat'l Printing Co. 1909) (In granting reprieves, the Governor "is supreme and no man,

[2] Official opinions of the Attorney General do not bind Pennsylvania courts, but they are "customarily afford[ed] great weight." *See Commonwealth ex rel. Pappert v. Coy*, 860 A.2d 1201, 1208 (Pa. Cmwlth. 2004).

governmental department or tribunal can review his action or require his reasons to be given.”).

In construing a provision of the Pennsylvania Constitution, the Court’s “ultimate touchstone is the actual language of the Constitution itself,” which “must be interpreted in its popular sense, as understood by the people when they voted on its adoption.” *Jubelirer v. Rendell*, 598 Pa. 16, 39, 953 A.2d 514, 528 (2008) (citations and internal quotations omitted). To determine the intent of the ratifying voters, courts look, *inter alia*, to “text; history (including ‘constitutional convention debates, the address to the people, [and] the circumstances leading to the adoption of the provision’); structure; underlying values; and interpretations of other states.” Thomas G. Saylor, *Prophylaxis in Modern State Constitutionalism: New Judicial Federalism and the Acknowledged, Prophylactic Rule*, 59 N.Y.U. Ann. Surv. Am. L. 283, 290 (2003) (footnotes omitted; quotation and alterations in original).

The Pennsylvania Constitution provides as follows respecting the Governor’s clemency[3] powers:

> In all criminal cases except impeachment the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in

[3] The term “clemency” refers to the granting of mercy to criminal defendants and includes pardons, commutations, reprieves, and remission of fines. *Herrera v. Collins*, 506 U.S. 390, 411-12 & n.12 (1993).

> writing of a majority of the Board of Pardons, and, in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose.

Pa. Const. art. IV, § 9(a).

As evidenced by the plain text of Article IV, § 9(a), the only limitations placed on the Governor's power to grant reprieves are that the power operates in "criminal cases," and it cannot be exercised in cases concerning "impeachment." *See id.* Apart from these limitations, the express language of Article IV, § 9(a), places no restrictions on the Governor's power to grant reprieves, which is a power that he solely holds. *See id.* Thus, given the plainly broad and virtually unrestricted grant of authority in Article IV, § 9(a), the Governor may define the reason for, and duration of, a reprieve as he sees fit. *Cf. Haugen v. Kitzhaber*, 353 Or. 715, 724, 306 P.3d 592, 598 (2013) ("[A] reprieve is 'temporary' and operates 'for an interval of time,' but need not identify the end date of that interval, as long as there is a definite end"; nor must a reprieve be granted only for a particular purpose.).

In a futile attempt to dodge the clear text of the Constitution, the District Attorney insists that to be constitutional, a reprieve of the imposition of a capital sentence may do "no more than stay . . . execution of [the] sentence for a time,"

and may be exercised to stay a death warrant only "with reference to a particular proceeding, such as a clemency proceeding before the [B]oard of [P]ardons, or a resumption of collateral review" by a court. District Attorney's Brief, at 28 (internal quotations omitted). This understanding of the meaning of a reprieve, the District Attorney contends without elaboration, "has existed in Pennsylvania since before the Declaration of Independence." *Id.* As demonstrated below, however, the District Attorney's claim is thoroughly belied by the uncontradicted understanding of the reprieve power both at English Common Law and throughout Pennsylvania's constitutional history.

B. The Reprieve Power as Understood at English Common Law was Imported into Pennsylvania's Constitution and Confirms the Unconditional Nature of the Governor's Authority.

The term "reprieve" is not defined in the Constitution, and the facially broad and unrestricted reprieve power in the Pennsylvania Constitution is consistent with the King's power to reprieve as it existed under English Common Law. The historical foundation underlying clemency, and specifically the power of reprieve, is of particular relevance in defining the term "reprieve" as it was incorporated into the Pennsylvania Constitution, because the "[p]ower of executive clemency in this country undoubtedly derived from the practice as it had existed in England." *Solesbee v. Balkcom*, 339 U.S. 9, 12 (1950); *see also* William F. Duker, *The President's Power to Pardon: A Constitutional History*, 18 Wm. & Mary L. Rev.

475, 476 (1977) (observing that clemency power in the United States "finds its root in early England" and "was applied in the American colonies"). In Pennsylvania, the Governor's power to grant reprieves embraces all of the grounds that existed in the English Common Law. Smithers, *supra*, at 78.

"The term *reprieve* is derived from *reprendre*, to keep back, and signifies the withdrawing of the sentence for an interval of time, and operates in delay of execution." Joseph Chitty, *A Treatise on the Law of the Prerogatives of the Crown; and the Relative Duties and Rights of the Subject* 97 (1820) [hereinafter Chitty, *Prerogatives of the Crown*]; *see also* Smithers, *supra*, at 67-68 ("A *reprieve* is the suspension, postponement or delay of a sentence and is commonly understood to mean only a temporary respite.").[4] Under English Common Law, reprieves were granted "by the favor of his Majesty himself, or the Judge before whom the prisoner [was] tried, on his behalf; or from the regular operation of law

[4] In *Haugen v. Kitzhaber*, the Supreme Court of Oregon recently addressed the same issue implicated in this case – namely, what constitutes a reprieve under the relevant state constitutional provision, and specifically "whether a reprieve must have a stated end date, [and] whether it may be granted only for particular purposes." 353 Or. at 717, 306 P.3d at 594. In addressing these issues, the court observed that the word reprieve was not defined in the Oregon Constitution and then assessed historical definitions of the word, stating that "[n]one of those definitions requires a reprieve to have a specified end date — a reprieve is 'temporary' and operates 'for an interval of time,' but need not identify the end date of that interval, as long as there is a definite end." *Id.* at 724, 306 P.3d at 598. The court further stated that "those definitions [also] do not indicate that a reprieve may be granted only for a particular purpose; instead, they define the word 'reprieve' by its effect, namely, the delay of execution of the recipient's sentence." *Id.* The court ultimately concluded the Governor's grant of a "reprieve because of his view that the death penalty is not 'fairly and consistently applied' and his personal belief that the death penalty does not 'bring justice' . . . was within his constitutional authority." *Id.* at 743-44, 306 P.3d at 609.

in circumstances which render[ed] an immediate execution inconsistent with humanity or justice." Chitty, *Prerogatives of the Crown*, at 97. *See also* 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 522-25 (1819) [hereinafter Chitty, *A Practical Treatise*]; 2 Matthew Hale, *Historia Placitorum Coronae: The History of the Pleas of the Crown* 412-13 (First American Edition 1847); Smithers, *supra*, at 78.

The reprieve in this case falls into the first of those categories, known at English Common Law as *ex mandato regis*, meaning of the King's mandate, or "from the mere pleasure of the Crown." Chitty, *Prerogatives of the Crown*, *supra*, at 97.[5] As Chitty explained: "This temporary mercy [was permitted to] be extended *ex mandato regis*, or from the mere pleasure of the Crown expressed in any way to the Court by whom the execution [was] to be awarded." *Id*. Once the King expressed his intention to reprieve, "the Judge of course [would] grant[] the prisoner a respite, either for a limited time ***or during the pleasure of his Majesty***." *Id.* at 97-98 (emphasis added).

Ignoring the undeniable breadth of the Crown's discretionary power to grant reprieves, both the District Attorney and *Amicus Curiae* The Pennsylvania District

[5] The term is similarly defined in case law, including *Haugen v. Kitzhaber*, which compares and discusses the various types of reprieve powers in English Common Law – including the reprieve "*ex mandatio regis*, or from the mere pleasure of the crown." *Haugen v. Kitzhaber*, 353 Or. at 732-33, 306 P.3d at 603 (citing Chitty, 1 *Practical Treatise* at 758). *Haugen* goes on to state that although "several recurring reasons tended to be the reason for granting reprieves, nothing suggests that an act of clemency had to be granted for one of those historical reasons to qualify as a reprieve." *Id.*

Attorneys Association (PDAA) argue for limits that appear to derive from the other two reprieve powers at English Common Law, both of which belonged to the judiciary: *ex arbitrio judicis*[6] and *ex necessitate legis*.[7] But any limits in English law imposed upon reprieves falling into these categories had no application to the unfettered prerogative of the Crown described as *ex mandato regis*.

The second category of reprieves, commonly referred to as *ex arbitrio judicis*, described discretionary reprieves that "proceed from the judge himself, who, from his acquaintance with all the circumstances of the trial, [was] most capable of judging when it [was] proper." Chitty, *A Practical Treatise*, *supra*, at 523. *See also* Smithers, *supra*, at 78; Hale, *supra*, at 412. In English law, the authority to grant this type of "respite belong[ed] of common right to every tribunal which [was] invested with authority to award execution." Chitty, *A Practical Treatise*, *supra*, at 523.[8]

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[6] This phrase translates to: "At, in, or upon the discretion of the judge." Black's Law Dictionary 558 (6th ed. 1990).

[7] This phrase translates to: "From or by necessity of law." Black's Law Dictionary 575 (6th ed. 1990).

[8] As described by Chitty:

> [T]his power exist[ed] even in case[s] of high treason, though the judge should [have been] very prudent in its exercise. But it [was] commonly granted where the defendant ple[d] a pardon, which, though defective in point of form, sufficiently manifest[ed] the intention of the crown to remit the sentence; where it seem[ed] doubtful whether the offense [was] not included in some general act of grace; or whether it amount[ed] to so high a crime as that charged in the indictment. The judge sometimes also allow[ed] it before judgment, or at least

The third type of reprieve at English law, a non-discretionary power, concerned "cases in which *ex necessitate legis*, the judge [was] bound to reprieve." *Id*. "Thus when a woman [was] convicted either of treason or felony, she may allege pregnancy in delay of execution." *Id.* "In order, however, to render this plea available, she must [have been] quick with child," which is a determination made by a jury following a woman's assertion of pregnancy. *Id.* at 523-24. "The other cause for which the judge [was] bound to grant a reprieve, [was] the insanity of the prisoner." *Id.* at 525. There, "[t]he judge may, if he pleases, swear a jury to enquire ex officio, whether the prisoner [was] really insane or [was] merely counterfeit[ing], and, if they find the former, he is bound to reprieve him till the ensuing session." *Id.*

In his *Treatise on Executive Clemency in Pennsylvania*, Smithers explained that the Pennsylvania Constitution authorized the Governor, ***in his sole discretion***, to grant reprieves for reasons embraced by all three categories of reprieve at English Common Law:

> While every reasonable safeguard has been thrown about the great prerogative through the constitutional restrictions upon the [G]overnor as to pardons and commutations [in the Pennsylvania Constitution], there is no limitation upon the number or nature of

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> intimate[d] his intention to do so, as when he [was] not satisfied with the verdict, and entertaine[d] doubts as to the prisoner's guilt, or when a doubt [arose], if the crime [was] not within clergy, or when, from some favorable circumstances, he intend[ed] to recommend the prisoner to mercy.

Chitty, *A Practical Treatise*, *supra,* at 523 (citations omitted).

> reprieves he may grant. His power embraces all those grounds upon which by the English Common Law the courts granted reprieves, such as *ex arbitrio judicis*, where the judge was not satisfied with the verdict, and *ex necessitate legis*, such as pregnancy of a woman convict, or insanity. It also embraces the reprieve *ex mandato regis*, which anciently was an expression of the Crown's will to the trial court. In Provincial times both the court and the governor exercised the right[,] but the latter seems to have been bound by no technical rules and reprieved indefinitely or on condition. The power in those days was used both before and after the death warrant had been issued. While the uniform executive practice since the establishment of the Commonwealth has been to exercise the power only after death warrant issued[,] there is nevertheless reason to hold that the [G]overnor has the right to suspend either sentence or execution by a reprieve. ***His discretion alone controls.***

Smithers, *supra*, at 78 (emphasis added) (citations omitted).

PDAA, citing to the *Commentaries on the Laws on England* by William Blackstone, asserts in its brief that at common law a reprieve "could be granted for only one of three reasons – each of which is specific to the convict." Brief of PDAA, at 23 (citing 2 William Blackstone, *Commentaries on the Laws of England* 312-13 (1848)). PDAA's list of three acceptable "reasons" (the reprieve granted *ex arbitrio judicis*, and the reprieves granted *ex necessitate legis* where a convicted woman is pregnant and where a convicted person becomes insane) willfully ignores the common law category of reprieve at issue here – the reprieve power held by the King *ex mandato regis*, or from the mere pleasure of the Crown. That Blackstone's Commentaries focus on the reprieve powers held by judges at English Common Law, *see* 4 William Blackstone, *Commentaries on the Laws of England*

387-89 (1769), cannot possibly be read to suggest either that the Crown lacked the power to reprieve or that the Crown's power was somehow confined to the reasons ordinarily offered by judges.

Contrary to PDAA's claim, Blackstone's Commentaries neither state nor imply that reprieves granted *ex arbitrio judicis* or *ex necessitate legis* for pregnancy or insanity were the only reasons that a reprieve could be granted at English Common Law. Rather, the language that Blackstone used in describing the reprieve power plainly suggests that he was merely delineating the reprieve powers that were most frequently exercised at that time. *See id.* at 387 (stating that a reprieve "may be" *ex arbitrio judicis*, and "may also be *ex necessitate legis*"); *see also id.* at 388 ("Another cause of regular reprieve is, if the offender becomes" insane.).[9]

In addressing a similar argument to the contention advanced by PDAA, the Supreme Court of Oregon in *Haugen*, relying on English Common Law authorities, stated: "Although . . . several recurring reasons tended to be the reason for granting reprieves [in English Common Law], nothing suggests that an act of clemency had to be granted for one of those historical reasons to qualify as a

[9] Moreover, it bears noting that in discussing reprieves, Blackstone cited to Hale, who expressly listed reprieves *ex mandato regis*, along with reprieves *ex arbitrio judicis* and reprieves *ex necessitate legis*. *See* Hale, *supra*, at 412. Indeed, another version of Blackstone describes reprieves "*ex mandato regis*, or from the mere pleasure of the Crown," as "the mode in which reprieves [were] generally granted." 4 William Blackstone, *Commentaries on the Laws of England* 464 (adapted by Robert Malcolm Kerr 1857); Respondents' Appendix at 16, 17.

reprieve"; furthermore, "nothing suggests that reprieves were required to carry a stated end date." *Haugen*, 353 Or. at 732-33, 306 P.3d at 603 (citing Chitty, *Prerogatives of the Crown*, at 97 & 98; 4 William Blackstone, *Commentaries on the Laws of England* 387-88, 390 (1769); and Chitty, *A Practical Treatise*, at 758 (1841)).

The forgoing discussion of the reprieve power as it existed in English Common Law, which included reprieves *ex mandato regis*, reprieves *ex arbitrio judicis*, and reprieves *ex necessitate legis*, reveals the intended broad and discretionary nature of the Governor's reprieve power and contradicts any suggestion that the power is limited to any particular set of reasons or to a specific period of time. In fact, as Smithers observed in his *Treatise on Executive Clemency in Pennsylvania*, "[i]n Provincial times both the court and the governor exercised the right[,] ***but the latter seems to have been bound by no technical rules and reprieved indefinitely or on condition***." Smithers, *supra*, at 78 (emphasis added). The Governor's grant of a reprieve to "Terrance Williams until [the Governor has] received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment, and any recommendations contained therein are satisfactorily addressed," is fully consistent with the reprieve power as it existed at English Common Law.

C. Pennsylvania's Constitutional History Demonstrates that the Nature and Character of the Governor's Reprieve Power Remains as Broad and Unrestricted as it Was under English Common Law.

The unlimited executive power of reprieve has been a part of the Commonwealth's organic law since colonial times – imported via English Common Law even before the enactment of Pennsylvania's first constitution in 1776. While aspects of the multi-faceted executive power of clemency have evolved through constitutional changes over time, the particular executive power of reprieve has remained virtually unchanged. Moreover, the historical practice of granting executive reprieves in Pennsylvania both confirms the common law understanding and informs the meaning of later-adopted constitutional language. Contrary to the unsupported assertions of the District Attorney, nothing in either the constitutional history or the practice of granting reprieves supports the notion that reprieves are limited to affording convicts time to seek final relief. District Attorney's Brief, at 30.

1. From William Penn through the Constitution of 1776

"When the American colonies were founded[,] the English legal conceptions of the seventeenth and eighteenth centuries were transplanted to the new world." Christen Jensen, *The Pardoning Power in the American States* 3 (Univ. of Chi.

Press 1922).[10] These transplanted English legal concepts included clemency principles and powers, with the King delegating these powers and providing for their exercise in most of the colonial charters that he granted. *See id*. at 3-4.

In 1681, King Charles II issued a charter to William Penn granting the territory of Pennsylvania with most governmental powers, including the clemency power. The charter, in relevant part, provided as follows:

> And Wee doe likewise give and grant unto the said William Penn, and his heiress and to his and their Deputies and Lieutenants, such power and authorities . . . to remitt, release, pardon and abolish, whether before Judgement or after, all crimes and offences, whatsoever committed within the said Countrey, against the said Lawes, treason and willful and malitious murder onely excepted; and in these cases, to grant reprieves until our pleasure may bee knowne therein . . . .

Charter of King Charles II of England to William Penn, at § 5 (Mar. 4, 1681). *See also* Jensen, *supra*, at 7-8; *Flavell's Case*, 8 Watts & Serg. 197, 198 (Pa. 1844).

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[10] PDAA cites to William F. Duker, *The President's Power to Pardon: A Constitutional History*, 18 Wm. & Mary L. Rev. 475, 487 (1977), for the proposition that, as stated by PDAA, "[b]y the late seventeenth century, the King's reprieve power had developed clearly defined bounds and specific limits as to: (1) the time or duration of a reprieve[;] and (2) the reasons for which a reprieve could be granted." Brief of PDAA, at 21. This assertion, however, is belied by the plain text of the Duker article, which notes that limitations were placed on the King's "power to pardon" in the late seventeenth century, but makes no mention of any limitations regarding duration or reasons placed on the power of reprieve during this time. Duker, *supra*, at 487. Moreover, as Duker makes clear, the only meaningful limit to the pardon power that arose during that time period concerned cases of impeachment, *see id*. at 487-97 – a limit that is incorporated into Pennsylvania's Constitution and, in any event, is not relevant here.

Finally, the Supreme Court of Oregon directly addressed this issue, discussing the limitations placed on the King's power of clemency in the late seventeenth century, and observing that "[n]o authority indicates that those specifically enumerated limitations [on the King's clemency power] included limitations on the *reasons* for which the [K]ing could grant clemency or, more specifically, reprieves." *Haugen*, 353 Or. at 732-33, 306 P.3d at 603 (emphasis in original).

The only limitation on the clemency power granted to Penn was that in cases of treason and murder, the reprieve would last only until the Crown's wishes were known.

From the issuance of the charter to Penn through the adoption of Pennsylvania's first constitution in 1776, the executive exercise of the reprieve power in Pennsylvania confirmed the common law understanding that that power was not limited as to purpose or duration. For example, in 1748, the Provincial Council exercised its executive power of reprieve by directing the sheriff to abstain from conducting an execution "until our Pleasure be further known." Minutes of the Provincial Council of Pennsylvania, Vol. V at 294 (June 23, 1748) [hereinafter, Minutes of the Prov. Council]. In so acting, the Council noted the opinion of the colony's Attorney General that the Royal Charter granted to the Council the power to grant a reprieve "for a definite or indefinite time, as [it should] think proper." *Id.* at 293. *See also* Minutes of the Prov. Council, Vol. V at 163-64 (Dec. 5, 1747) (directing the sheriff to "totally abstain" from an execution, without setting a time limit); Minutes of the Prov. Council, Vol. IX at 626 (Oct. 28, 1769) (executive reprieve of execution to remain in effect "during Pleasure"); Minutes of the Prov. Council, Vol. X at 43-44 (Apr. 13, 1772) (reprieve granted by the governor to last "during his Pleasure"); *Commonwealth v. Hill*, 185 Pa. 385, 390, 39 A. 1055, 1056

(1898) (recounting colonial era case where executive reprieve issued "until further order").

Against this backdrop, the Commonwealth's first constitution, adopted in 1776, vested executive power in the Supreme Executive Council and gave it broad clemency powers.[11] *See* Pa. Const. of 1776, ch. II, § 20.[12] This executive power was understood to be beyond restriction by the legislature and the court. *See* A View of the Proceedings of the Second Session of the Council of Censors (Aug. 11, 1784) (describing as "one of the great advantages" of the Commonwealth's frame of government "that there is in it a body so purely executive, that mercy can be extended in proper cases, without that solecism which must arise where those who make the laws, or those who judge, have the power of remission").

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[11] Under the Pennsylvania Constitution of 1776, "[t]he supreme executive power [was] vested in a president and council." Pa. Const. of 1776, ch. II, § 3. The Constitution of 1776 was created and enacted at a time when "the executive department in the state governments had not yet gained the confidence of the people," and "brought remembrances of royal governors and their opposition to colonial rights." Jensen, *supra*, at 9. As a result, under the 1776 Constitution, the clemency power, along with executive power more generally, was shared between governor and council. *See id.* at 9-10.

[12] The clemency provision read as follows:

> The president, and in his absence the vice-president, with the council, five of whom shall be a quorum, . . . shall have power to grant pardons, and remit fines, in all cases whatsoever, except in cases of impeachment; and in cases of treason and murder, shall have power to grant reprieves, but not to pardon, until the end of the next sessions of assembly; but there shall be no remission or mitigation of punishments on impeachments, except by act of the legislature . . . .

Pa. Const. of 1776, ch. II, § 20.

2. The Constitutions of 1790 and 1838

Following the example of the U.S. Constitution adopted in 1787, the people of Pennsylvania in 1790 reposed in their newly empowered chief executive – the Governor – the unambiguous and unconditional executive "power to . . . grant reprieves and pardons, except in cases of impeachment." Pa. Const. of 1790, art. II, § 9.[13] Governors acting under the 1790 Constitution exercised the reprieve power consistent with the understood executive prerogative to determine within his sole discretion when a sentence shall be delayed for a time. *See* 2 Pennsylvania Archives (9th series) 1327, 1330-31, 1336, 1421, 1478 (describing serial reprieves granted by the Commonwealth's first constitutional governor, Governor Thomas Mifflin, to convicted murderer Owen O'Hara); *see also* 8 Pennsylvania Archives (9th series) 6157, 6165, 6172-73, 6200, 6239, 6273-74, 6365-67, 6439 (relating to serial reprieves granted without explanation by Governor John Andrew Shulze to convicted capital murderer John Zimmerman between 1824 and 1826); 9 Pennsylvania Archives (9th series) 6504, 6603-04 (relating to serial reprieves

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[13] "As a result of state constitutional development[,] a tendency soon manifested itself in the direction of abolishing the executive council and increasing the powers of the governor." Jensen, *supra*, at 10. "This tendency resulted in the enlargement of the governor's control of clemency in [states like Pennsylvania,] which had previously shared it with the executive council . . . ." *Id*. Notably, the Constitution of 1790 vested the supreme executive power of the Commonwealth in the Governor alone, Pa. Const. of 1790, art. II, § 1, and provided: "He [the Governor] shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment." *Id.*, art. II, § 9.

granted without explanation by Governor John Andrew Shulze to convicted capital murderer John Zimmerman from 1826 to 1828).

The practice of unfettered executive grants of reprieve continued unabated under the Constitution of 1838, which made no alteration to the clemency powers that had been accorded to the Governor in 1790.[14] An early example of the exercise of executive power under the 1838 Constitution was Governor David R. Porter, who issued a reprieve on December 24, 1841, because "an effort is about to be made at the ensuing Session of the Legislature to abolish punishment by death," and thus a respite was owed to convicted murderer Thomas H. Shuster "until the action of the Legislature shall be ascertained." Respondents' Appendix at 133-36.

Later governors acting under the 1838 Constitution demonstrated their similar understanding of the unconditional executive power of reprieve. For example, Governor Andrew Gregg Curtin in 1861 and 1865 granted reprieves because, respectively, "in [his] opinion, [it was] manifestly just and proper" to do so, and he was "satisfied of the propriety" of doing so. Respondents' Appendix at 178-81, 185.

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[14] The relevant portion of the Pennsylvania Constitution of 1838 provided, in language identical to the 1790 Constitution: "He [the Governor] shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment." Pa. Const. of 1838, art. II, § 9. Although "several propositions were made in the convention [for the Constitution of 1838] to limit and control the exercise of the power of *pardon* by the executive, they were overruled, and the provision left as it stood." *Flavell's Case*, 8 Watts & Serg. at 198 (emphasis added).

In exercising this purely executive power under the Constitution of 1838 to grant indefinite reprieves, Pennsylvania governors used varied terminology. Governor Porter in 1843 issued a reprieve "until further direction be given." Respondents' Appendix 142-49. Governor William Bigler, during his single three-year term in the early 1850s, issued reprieves simply "for the present." Respondents' Appendix at 162-65; 166-67; and 168-69. In similar fashion, Governor Bigler's three immediate successors – Governors James Pollock, William F. Packer, and Andrew Gregg Curtin – issued reprieves "until such further period as shall be fixed," without further explanation. Respondents' Appendix at 170-72; 175-76; and 178-81; *see also id.* at 182-84, 188-89 (reprieves issued by Governor Curtin "until such time as may be designated"). Thus, nearly every governor who served under the Constitution of 1838 showed by word and deed that the executive power of reprieve was his alone to wield as he saw fit.

3. The Constitutions of 1874 and 1968

In 1874, the people amended the Constitution again without any change to the unconditional executive power of reprieve. The relevant language of the 1874 Constitution, contained in Article IV, § 9, was as follows:

> [The Governor] shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentence and pardons, except in cases of impeachment; but no pardon shall be granted, nor sentence commuted, except upon the recommendation in writing of the Lieutenant Governor, Secretary of the Commonwealth, Attorney General and Secretary of Internal Affairs, or any three of them, after

> full hearing, upon due public notice and in open session, and such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the Secretary of the Commonwealth.

Pa. Const. of 1874, art. IV, § 9.

While this language did condition the Governor's exercise of the ***permanent*** clemency powers of pardon and commutation of sentence on the approval of a group of other executive officials,[15] it made no change to the lesser power of reprieve. That power remained unchanged from the Constitutions of 1790 and 1838, with the Governor having sole authority to grant reprieves in all cases other than impeachment.[16]

This was fully understood by the Governor who was serving at the time that the Constitution of 1874 was adopted. Governor John F. Hartranft, who was elected under the Constitution of 1838 and re-elected after the 1874 Constitution was approved, issued numerous reprieves in 1877 and 1878 simply because he was "satisfied of the propriety of granting a reprieve," Respondents' Appendix at 190-91, and 193, and for other reprieves he gave no reason at all, *id.* at 195-196. Some 19th Century governors who succeeded Governor Hartranft – including Governors

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[15] This change is perhaps best explained by the fact that the convention debates related to clemency "were chiefly concerned with charges of the abuse of the ***pardoning*** power by the governor, a defense of past governors, and a discussion as to how this authority should be constituted in the new constitution." Jensen, *supra*, at 27 (emphasis added).

[16] Delegates to the convention did propose a number of amendments that would have curtailed the Governor's reprieve power, *see* 1 Debates of the Convention to Amend the Constitution of Pennsylvania 112-13, 146 (1873), but those amendments were later dropped.

Robert E. Pattison and James A. Beaver – similarly stated no reason for their reprieves. Respondents' Appendix at 199-201.

The long succession of governors who served from the turn of the 20th Century until the adoption of the 1968 Constitution demonstrated no change in the understanding of the purely executive and gubernatorial power of reprieve. For example, a succession of governors serving during the 1950s granted condemned prisoner David Darcy more than 20 reprieves, postponing his execution for many years. *See* Respondents' Appendix at 206-08. Similarly, Edward Hough received more than 30 reprieves over the course of at least seven years. *See* Respondents' Appendix at 209-10. Most notably, in 1961, Governor David L. Lawrence announced that he would issue reprieves to establish a moratorium on executions while a legislative committee studied capital punishment and the legislature considered a bill to repeal the death penalty. *See* Respondents' Appendix at 214-20.

When Pennsylvania adopted its next (and current) Constitution in 1968, the people, presumptively aware of the foregoing history, again made no change to the Governor's power of reprieve. *See* Pa. Const. of 1968 art. IV, § 9(a). The only clemency-related change made to the 1874 Constitution was that the recommendation required before the Governor may grant ***pardons*** and ***commutations of sentences*** was to be made by "a majority of the Board of

Pardons," which was to "consist of the Lieutenant Governor . . . , the Attorney General and three members appointed by the Governor with the consent of two-thirds of the members elected to the Senate . . . ." *See id.* § 9(a) & (b).[17]

That the Constitution of 1968 was understood to leave untouched the Governor's historically untethered power of reprieve is illustrated by the explicit promise made by then-Governor-elect Milton J. Shapp in January 1971 not to permit executions during his tenure as the Commonwealth's chief executive. *See* Respondents' Appendix at 218-21. This commitment by soon-to-be Governor Shapp (which he repeated after assuming office) was expressed just two years after

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[17] The full text of Article IV, § 9, of the Constitution, as it appeared in 1968, was as follows:

> (a) In all criminal cases except impeachment, the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose.
>
> (b) The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor with the consent of two-thirds of the members elected to the Senate, one for two years, one for four years, and one for six years, and thereafter for full terms of six years. The three members appointed by the Governor shall be residents of Pennsylvania and shall be recognized leaders in their fields; one shall be a member of the bar, one a penologist, and the third a doctor of medicine, psychiatrist or psychologist. The board shall keep records of its actions, which shall at all times be open for public inspection.

Pa. Const. of 1968, art. IV, § 9.

the 1968 Constitution was approved by the people without known challenge as to the constitutionality of the pledge.

4. The 1997 Amendments

In November 1997, the people amended Article IV, § 9, with the resulting amendments forming the text as it exists today. *See* Pa. Const. art. IV, § 9; 1997 Pa. Laws 634. While the 1997 amendment made changes related to ***pardons*** and ***commutation of sentences***,[18] it made no change to the Governor's power to grant ***reprieves***, despite the long history of granting reprieves outlined above. The express language of the current Constitution, like the constitutional history that preceded it, plainly shows that the power to grant reprieves rests solely with the Governor, and the only limitation on the exercise of that power is that it cannot operate in cases of impeachment. *See id.* § 9(a).

D. The District Attorney's Claim that What the Governor Has Done Does Not Constitute a "Reprieve" is Without Support.

Ignoring both constitutional language and history, the District Attorney contends that what the Governor has done in this case cannot be understood as a "reprieve." In effect, he argues that to constitute a reprieve, the exercise of executive clemency must: (1) be tied to a particular proceeding in which the

[18] First, in cases of ***pardons*** and ***commutation of sentences*** regarding "a sentence of death or life imprisonment," the recommendation from the Board of Pardons was changed from a majority recommendation to a "unanimous recommendation." *See* Pa. Const. art. IV, § 9(a). Second, the composition and term of the gubernatorial appointees to the Board of Pardons was altered. *See id.* § 9(b).

offender is seeking relief; and (2) be limited in time only to allow the resolution of that proceeding. *See* District Attorney's Brief, at 31-32. Neither suggested limit, however, finds any support in constitutional language or historical practice.

As discussed at length above, no version of the clemency provision in Pennsylvania's constitutions contains the limits on the reprieve power suggested by the District Attorney. While correctly observing that "[e]xecutive clemency has rarely been without limits in Pennsylvania history," *id.* at 29, the District Attorney fails to acknowledge that virtually all of those limits have been imposed on the powers of pardon and commutation. That those limits have changed over time demonstrates both that the people know how to circumscribe the Governor's clemency power when they so choose, and that the only limit the people have chosen with respect to reprieves is to bar them in cases of impeachment.

Similarly, reprieves long have been granted in Pennsylvania without any specific stated purpose and without any link to a particular proceeding. The reliance on counter examples, or on references to the usual or most common reasons offered for reprieves, both ignores history and is logically flawed. To suggest that reprieves are ***ordinarily*** granted for a particular set of reasons in no way implies that they may be granted ***only*** for those reasons, as Pennsylvania history confirms.

The bulk of the District Attorney's argument concerning the meaning of "reprieve" centers on Commonwealth Court's opinions in *Morganelli ex rel. Commonwealth v. Casey*, 641 A.2d 674 (Pa. Cmwlth. 1994) (*Morganelli I*), and *Morganelli v. Casey*, 646 A.2d 744 (Pa. Cmwlth. 1994) (*Morganelli II*). He describes those cases as "holding . . . that a reprieve *by definition* is limited in *duration* and *purpose* . . . ." District Attorney's Brief, at 33-34 (emphasis added in the District Attorney's brief); *see also id.* at 27-28.

This contention is simply inaccurate, as neither the duration nor the purpose for which a reprieve may be granted were at issue in either *Morganelli I* or *Morganelli II*. In fact, the *Morganelli* case was a mandamus action that sought to compel the Governor to issue execution warrants in two cases where the Governor had not acted at all. *See Morganelli I*, 641 A.2d at 675-76; *see also Morganelli II*, 646 A.2d at 745. In support of his failure to issue execution warrants, the Governor contended that his delay in issuing such warrants constituted an exercise of his reprieve power under Article IV, § 9, of the Pennsylvania Constitution. *Morganelli I*, 641 A.2d at 678; *see also Morganelli II*, 646 A.2d at 747. In rejecting this contention, Commonwealth Court concluded that "the constitutional power of reprieve has no meaning or relevance until after the issuance of the death warrant," and held that "[t]o exercise the constitutional power of reprieve . . . [,] the Governor . . . must *grant* the reprieve . . . [,] rather than adopt the wholly

ambiguous posture of doing nothing." *Morganelli II*, 646 A.2d at 747 (emphasis in original); *see also Morganelli I*, 641 A.2d at 678. Unlike *Morganelli*, in this case Governor Wolf has acted affirmatively in granting a reprieve to Williams from an execution warrant that had been issued by his predecessor.

In *Morganelli I*, Commonwealth Court did state in passing *dicta* that a reprieve "exists only to stay a death warrant with reference to a particular proceeding, whether that particular proceeding be in the nature of clemency action, such as pardon or commutation involving the Board of Pardons, or even some resumption of judicial investigation pursuant to a petition for habeas corpus." *Morganelli I*, 641 A.2d at 678. However, the court cited no authority for this statement; in fact, a Black's Law Dictionary definition cited earlier in the court's discussion contradicts this unsupported statement by denoting that a reprieve is "***ordinarily*** an act of clemency extended to a prisoner to afford him an opportunity to procure some amelioration of the sentence imposed." *Id.* (quoting Black's Law Dictionary, 1170 (5th ed. 1979)) (emphasis added). More importantly, the constitutional scope of the Governor's reprieve power as it relates to either purpose or duration was not presented to the court in *Morganelli*. Thus, any off-handed comments made by the court that could be construed as relating to the duration or

purpose for which a reprieve may be granted are pure *dicta* – and are unsupported by any law or precedent.[19]

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[19] In a footnote, the District Attorney contends that the Governor has ignored a statutory requirement that reprieve requests be first considered by the Board of Pardons. District Attorney's Brief, at 33-34 n.14 (citing 71 P.S. § 299(a)). No such requirement exists in the statute. Indeed, as confirmed in an official opinion issued by then-Attorney General LeRoy S. Zimmerman in 1983, section 909(a) of The Administrative Code of 1929 (71 P.S. § 299(a)) in no way acts as a limit on the Governor's power to reprieve. Pa. Att'y Gen. Op. 83-2 (Feb. 14, 1983). *See also* Robert E. Woodside, *Pennsylvania Constitutional Law*, at 390 (Murrelle Print Co. 1985) ("[T]he legislature cannot restrict the Governor's constitutionally given power. The Governor can ignore the [B]oard [of Pardons] in the matter of fines, forfeitures and reprieves. . . . The Governor *may* remit fines and grant reprieves *without* action by the Board of Pardons." (emphasis in original)).

The District Attorney's reliance on the Ohio case of *State ex rel. Maurer v. Sheward* is misplaced and does not support his argument. *See* District Attorney's Brief, at 34 n.14 (citing *State ex rel. Maurer v. Sheward*, 71 Ohio St. 3d 513, 526, 644 N.E.2d 369, 379 (1994)). In *Maurer*, the Supreme Court of Ohio ruled that the Governor of Ohio improperly had issued a pardon that did not comply with legislative regulations. *Maurer*, 71 Ohio St. 3d at 526, 644 N.E.2d at 379. However, unlike the Pennsylvania Constitution, the Constitution of Ohio expressly "authorize[d] the General Assembly to prescribe procedural regulations as to the application process for pardons," and thus "the regulations placed on the pardoning power [were] those authorized by the Constitution itself." *Id.* at 517-20, 525, 644 N.E.2d at 373-75, 379. Because Article IV, § 9, of the Pennsylvania Constitution grants the General Assembly no regulatory authority over the Governor's power of reprieve, *Maurer* offers no model for the interpretation of Pennsylvania law.

CONCLUSION

For the foregoing reasons, the Governor respectfully requests that this Honorable Court: (1) decline to exercise King's Bench jurisdiction; (2) if it assumes extraordinary jurisdiction over this matter pursuant to 42 Pa.C.S. § 726, declare that the Governor has properly exercised his power of reprieve under Pa. Const. art. IV, § 9(a); and (3) enter judgment in favor of the Governor.

Respectfully submitted,

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DATE: June 17, 2015

CERTIFICATION OF WORD COUNT

I hereby certify, pursuant to Pa.R.A.P. 2135(d), the that ***Brief of Respondent Governor Tom Wolf*** conforms with the 14,000 word limit of Pa.R.A.P. 2135(a) and that our word processing system used to prepare the brief indicates a word count of 9,372 words.

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CERTIFICATE OF SERVICE

I, H. Geoffrey Moulton, Jr., hereby certify that on this 17th day of June, 2015, the foregoing ***Brief of Respondent Governor Tom Wolf*** has been served upon counsel in the manner indicated below, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

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