

**IN THE SUPREME COURT OF PENNSYLVANIA**

<b>The Honorable Tom Wolf,</b>	:	
<b>Governor of the Commonwealth</b>	:	
<b>of Pennsylvania,</b>	:	
	:	
<b>Petitioner</b>	:	
<b>v.</b>	:	<b>No. 104 M.M. 2020</b>
	:	
<b>Senator Joseph B. Scarnati, III,</b>	:	
<b>Senator Jake Corman, and</b>	:	
<b>Senate Republican Caucus,</b>	:	
<b>Respondents.</b>	:	

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APPLICATION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* BY  
MEMBERS OF THE DEMOCRATIC CAUCUSES OF THE PENNSYLVANIA  
HOUSE OF REPRESENTATIVES AND THE SENATE OF PENNSYLVANIA

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On June 10, 2020, Respondents filed a Petition for Review in the Nature of a Complaint in Mandamus in the Commonwealth Court of Pennsylvania requesting the court to force Governor Tom Wolf to terminate the disaster emergency declared by the Governor on March 6, 2020 and renewed on June 3, 2020 as Respondents claim House Resolution 836 requires.

On June 12, 2020 Governor Tom Wolf filed with this Court an Application for the Court to Exercise Jurisdiction Pursuant to Its King’s Bench Powers and/or Powers to Grant Extraordinary Relief.

Given the importance of this issue and the unique perspective the *Amici Curiae* can offer, the *Amici* respectfully request the Court's permission to file a Brief of *Amici Curiae* in this matter.

Given the exigency of this matter, the *Amici* have attached the Brief they propose to file as Exhibit A.

Respectfully Submitted,

/s/ Claude J. Hafner, II

Claude J. Hafner, II, (PA ID 45977)  
Ronald N. Jumper, Jr., (PA ID 64346)  
Shannon A. Sollenberger (PA ID 308878)

/s/ Tara L. Hazelwood

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June 17, 2020

# **EXHIBIT**

**A**

**IN THE SUPREME COURT OF PENNSYLVANIA**

<b>The Honorable Tom Wolf,</b>	:	
<b>Governor of the Commonwealth</b>	:	
<b>of Pennsylvania,</b>	:	
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<b>Petitioner</b>	:	
<b>v.</b>	:	<b>No. 104 M.M. 2020</b>
	:	
<b>Senator Joseph B. Scarnati, III,</b>	:	
<b>Senator Jake Corman, and</b>	:	
<b>Senate Republican Caucus,</b>	:	
<b>Respondents.</b>	:	

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BRIEF OF *AMICI CURIAE*, MEMBERS OF THE DEMOCRATIC CAUCUSES  
OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES AND THE  
SENATE OF PENNSYLVANIA, IN SUPPORT OF GOVERNOR TOM WOLF’S  
APPLICATION FOR THE COURT TO EXERCISE JURISDICTION  
PURSUANT TO ITS KING’S BENCH POWERS AND/OR POWERS TO  
GRANT EXTRAORDINARY RELIEF

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Claude J. Hafner, II, (PA ID 45977)	Tara L. Hazelwood, (PA ID 200659)
Ronald N. Jumper, Jr., (PA ID 64346)	Christopher J. King, (PA ID 318346)
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June 19, 2020

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**STATEMENT OF INTEREST OF AMICI CURIAE**

The Leaders of the Democratic Caucuses of the Pennsylvania House of Representatives (hereinafter “House Democratic Caucus”) and the Senate of Pennsylvania (hereinafter “Senate Democratic Caucus”) named below (collectively, “*Amici Curiae*”) file this brief in support of Governor Wolf’s Application for the Court to Exercise Jurisdiction Pursuant to Its King’s Bench Powers and/or Powers to Grant Extraordinary Relief (hereinafter “Application”).

State Representative Frank Dermody is a duly elected member of the Pennsylvania House of Representatives representing the 33rd House District including Allegheny and Westmoreland Counties. Representative Dermody serves as the Leader of the House Democratic Caucus. State Representative Jordan Harris is a duly elected member of the Pennsylvania House of Representatives representing the 186th House District including Philadelphia. Representative Harris serves as the Whip of the House Democratic Caucus. State Representative Joanna McClinton is a duly elected member of the Pennsylvania House of Representatives representing the 191st House District including Philadelphia. Representative McClinton serves as the Chair of the House Democratic Caucus. State Representative Rosita C. Youngblood is a duly elected member of the Pennsylvania House of Representatives representing the 198th House District including Philadelphia. Representative Youngblood serves as the Secretary of the

House Democratic Caucus. State Representative Matt Bradford is a duly elected member of the Pennsylvania House of Representatives representing the 70th House District including Montgomery County. Representative Bradford serves as the Democratic Chairman of the House Appropriations Committee. State Representative Mike Sturla is a duly elected member of the Pennsylvania House of Representatives representing the 96th House District including Lancaster County. Representative Sturla serves as the Policy Chairman of the House Democratic Caucus.

State Senator Jay Costa is a duly elected member of the Senate of Pennsylvania representing the 43rd Senate District including Allegheny County. Senator Costa serves as the Leader of the Senate Democratic Caucus. State Senator Anthony H. Williams is a duly elected member of the Senate of Pennsylvania representing the 8th Senate District including Delaware and Philadelphia Counties. Senator Williams serves as the Whip of the Senate Democratic Caucus. State Senator Vincent J. Hughes is a duly elected member of the Senate of Pennsylvania representing the 7th Senate District including Montgomery and Philadelphia Counties. Senator Hughes serves as the Democratic Chair of the Senate Appropriations Committee. State Senator Wayne D. Fontana is a duly elected member of the Senate of Pennsylvania representing the 42nd Senate District including Allegheny County. Senator Fontana services as Caucus

Chair of the Senate Democratic Caucus. State Senator Lawrence Farnese is a duly elected member of the Senate of Pennsylvania representing the 1st Senate District including Philadelphia County. Senator Farnese serves as the Secretary of the Senate Democratic Caucus. State Senator John P. Blake is a duly elected member of the Senate of Pennsylvania representing the 22nd Senate District including Lackawanna, Luzerne and Monroe Counties. Senator Blake serves as the Administrator of the Senate Democratic Caucus. State Senator Maria Collett is a duly elected member of the Senate of Pennsylvania representing the 12th Senate District including Bucks and Montgomery Counties. Senator Collett serves as the Democratic Chair of the Senate Aging and Youth Committee. State Senator Arthur Haywood is a member of the Senate of Pennsylvania representing the 4th Senate District including Montgomery and Philadelphia Counties. Senator Haywood serves as the Democratic Chairman of the Senate Health and Human Services Committee. State Senator Pam Iovino is a duly elected member of the Senate of Pennsylvania representing the 37th Senate District including Allegheny and Washington Counties. Senator Iovino serves as the Democratic Chair of the Senate Veterans Affairs and Emergency Preparedness Committee. State Senator Timothy P. Kearney is a duly elected member of the Senate of Pennsylvania representing the 26th Senate District including Chester and Delaware Counties. Senator Kearney serves as the Democratic Chair of the Senate Local Government

Committee. State Senator Katie J. Muth is a duly elected member of the Senate of Pennsylvania representing the 44th Senate District including Berks, Chester and Montgomery Counties. Senator Muth serves as the Democratic Chair of the Senate Urban Affairs and Housing Committee. State Senator Steven J. Santarsiero is a duly elected member of the Senate of Pennsylvania representing the 10th Senate District including Bucks County. Senator Santarsiero serves as the Democratic Chair of the Senate Environmental Resources and Energy Committee. State Senator Sharif Street is a duly elected member of the Senate of Pennsylvania representing the 3rd Senate District including Philadelphia County. Senator Street serves as the Democratic Chair of the Senate Banking and Insurance Committee. State Senator Lindsey M. Williams is a duly elected member of the Senate of Pennsylvania representing the 38th Senate District including Allegheny County. Senator Williams serves as the Democratic Chair of the Senate Community, Economic and Recreational Development Committee.

On March 6, 2020, Governor Tom Wolf issued a proclamation of disaster emergency throughout the Commonwealth of Pennsylvania pursuant to the Emergency Management Services Code, 35 Pa.C.S. §§ 7101-79A31 (hereinafter “Emergency Code”) in response to the global pandemic caused by the novel coronavirus COVID-19 (hereinafter “Proclamation”). The Proclamation was lawfully made pursuant to 35 Pa.C.S. § 7301(c). On June 3, 2020, the Governor

lawfully amended the Proclamation by renewing it for an additional ninety days pursuant to his authority under 35 Pa.C.S. §§ 7301(b) and (c).

On June 9, 2020, the Pennsylvania House of Representatives concurred in Senate amendments to House Resolution 836 (Printer's Number 3910) (hereinafter "H.R. 836"). The resolution purports to terminate the Proclamation pursuant to the General Assembly's power to suspend laws under Article I, Section 12 of the Pennsylvania Constitution as well as 35 Pa.C.S. § 7301(c), which provides in relevant part that "The General Assembly by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the Governor shall issue an executive order or proclamation ending the state of disaster emergency." 35 Pa.C.S. § 7301(c). H.R. 836 was signed in the Pennsylvania House of Representatives on June 9, 2020 and signed in the Senate of Pennsylvania on June 10, 2020. H.R. 836 has not been presented to Governor Wolf for his approval.

On June 10, 2020, Respondents Senate President Pro Tempore Joseph B. Scarnati, III, Senate Majority Leader Jake Corman, and the Senate Republican Caucus (collectively, "Respondents") filed a Petition for Review in the Nature of a Complaint in Mandamus in the Commonwealth Court (hereinafter "Petition"). Respondents request the Commonwealth Court to force the Governor to terminate the state of disaster emergency by proclamation pursuant to H.R. 836. On June 12, 2020 Governor Tom Wolf filed with this Court the Application.

*Amici Curiae* have a substantial interest in whether a disaster emergency continues to exist in this Commonwealth and whether presentment to the Governor of H.R. 836 is required by Article III, Section 9 of the Pennsylvania Constitution as a legislative act, or if the adoption of H.R. 836 on concurrence by the Pennsylvania House of Representatives and Senate of Pennsylvania terminated the Governor's proclamation of disaster emergency. The outcome of this matter is of great interest to the *Amici Curiae* because of its impact on their constituents and the Commonwealth as a whole, and because it will further clarify the powers vested in the Legislative and Executive branches of state government during a state of emergency. No person or entity other than the *Amici Curiae*, its members, or counsel paid in whole or in part for the preparation of this Brief, or authored in whole or in part this Brief.

## ARGUMENT

To effectuate the termination of the Proclamation, H.R. 836 must be presented to Governor Wolf for his approval pursuant to Article III, Section 9 of the Pennsylvania Constitution. The resolution is related to the General Assembly's lawmaking powers under Article III and so has no force or effect of law until it is approved by the Governor or, in the case of disapproval, approved by two-thirds of both the Pennsylvania House of Representatives and the Senate of Pennsylvania as required by the Pennsylvania Constitution. Moreover, Respondents do not represent the institutional interests of the Pennsylvania General Assembly as a whole in their efforts to force Governor Wolf to terminate the Proclamation by means of H.R. 836 or their Petition.

**I. The concurrent resolution required by 35 Pa.C.S. § 7301(c) to terminate the Proclamation is a legislative act by the General Assembly pursuant to its Article III powers.**

This Court has held that concurrent resolutions like H.R. 836 fall within the General Assembly's Article III legislative powers. *See West Shore Sch. Dist. v. Pa. Labor Relations Bd.*, 626 A.2d 1131 (Pa. 1993); *Commonwealth v. Sessoms*, 532 A.2d 775 (Pa. 1987); *Russ v. Commonwealth*, 60 A. 169 (Pa. 1905); *Commonwealth ex rel. Att'y. Gen. v. Griest*, 46 A. 505 (Pa. 1900). Respondents argue that the General Assembly's authority to terminate the Proclamation arises from its Article I, Section 12 power to suspend laws rather than its Article III

legislative powers. Pennsylvania courts have long distinguished between concurrent resolutions to amend the Pennsylvania Constitution under Article XI and concurrent resolutions as a form of legislative enactment under Article III. *See, e.g., Griest*, 46 A. 505; *Costa v. Cortes*, 143 A.3d 430 (Pa. Cmmw. Ct. 2016); *Mellow v. Pizzingrilli*, 800 A.2d 350 (Pa. Cmmw. Ct. 2002) (*en banc*). However, no such distinction exists in Pennsylvania jurisprudence between concurrent resolutions to suspend laws under Article I, Section 12 and concurrent resolutions on legislative matters pursuant to Article III.

In *Russ v. Commonwealth*, this Court explained that a concurrent resolution passed by the General Assembly that amounts to the legislative body acting “on behalf of the state” requires approval or disapproval by the Governor because such a resolution is a legislative matter. *Russ*, 60 A. at 171. More recently, Pennsylvania courts have provided further rationale to explain why a concurrent resolution seeking to terminate a proclamation of disaster emergency is an exercise of legislative power. In *Commonwealth v. Kuphal*, 500 A.2d 1205 (Pa. Super. 1985) (*en banc*), the Superior Court of Pennsylvania held that a concurrent resolution rejecting sentencing guidelines adopted by the Pennsylvania Commission on Sentencing was not an exercise of legislative authority by finding that “since the guidelines were not in effect at the time of rejection, the rejection

did not *change* the procedure sentencing judges would follow, but merely *maintain the status quo.*” *Kuphal*, 500 A.2d at 1206-07 (emphasis in original).<sup>1</sup>

While the two Attorney General opinions Respondents cite use examples of concurrent and joint resolutions that are inconsistent with the current use of concurrent resolutions, including as prescribed in the Emergency Code, the opinions remain consistent with these later cases in declaring that concurrent resolutions “make legislation or have the effect of legislating” when they enact, repeal or amend laws or statutes, have the effect of committing the Commonwealth to a certain action, or provide for the expenditure of public money. *See Concurrent Resolutions*, 7 Pa. D. & C. 672 (Pa. Att’y Gen. Feb. 3, 1926); *Joint or Concurrent Resolutions*, 24 Pa. D. 721 (Pa. Att’y Gen. June 9, 1915).

H.R. 836 is clearly a legislative act and the termination of the Proclamation is clearly a legislative matter. If given effect, H.R. 836 will not maintain the status quo existing in Pennsylvania under the Proclamation. The measure would drastically alter the enforcement and suspension of certain state laws and regulations, economic activity across a wide variety of sectors, medical and healthcare practices, public health operations, National Guard deployment and

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<sup>1</sup> Furthermore, five of the nine judges of the *en banc* panel in *Kuphal* still found that the concurrent resolution provision of the underlying statute was unconstitutional for failure to require presentment under Article III, Section 9 - an issue that this Court finally settled in favor of requiring presentment to the Governor in *Sessoms* two years later. *Kuphal*, 500 A.2d at 1207 (Beck, J., concurring) and 1214 (Spaeth, P.J., dissenting); *Sessoms*, 532 A.2d at 782.

other aspects of everyday life for millions of Pennsylvanians. It is without question that a concurrent resolution to terminate the Proclamation is a matter by the General Assembly “on behalf of the state,” as the effect of the resolution would impact every aspect of life in this Commonwealth and not just the affairs of the General Assembly. Moreover, the General Assembly itself declared that “executive orders, proclamations and regulations” issued, amended, and rescinded by the Governor pursuant to the Emergency Code “shall have the force and effect of law.” *See* 35 Pa.C.S. § 7301(b). Thus, H.R. 836 is undoubtedly a legislative matter pursuant to the General Assembly’s Article III powers because it seeks to terminate the Proclamation which itself carries the full force and effect of law.

**II. H.R. 836 must be presented to the Governor for approval.**

Any concurrent resolution related to a law, the enactment of legislation, or the lawmaking power of the Commonwealth is subject to the requirement under Section 9 of Article III for presentment to the Governor for his approval. Article III of the Pennsylvania Constitution relates to the legislative, or lawmaking, powers granted to the General Assembly under Article II, Section 1. Pa. Const. art. II, § 1. Article III, Section 9 of the Pennsylvania Constitution reads:

Every order, resolution or vote, to which the concurrence of both Houses may be necessary, except on the question of adjournment, shall be presented to the Governor and before it shall take effect be approved by him, or being disapproved, shall be repassed by two-thirds of both

Houses according to the rules and limitations prescribed in case of a bill.

Pa. Const. art. III, § 9.

As discussed above, the concurrent resolution required by 35 Pa.C.S. § 7301(c) is clearly a legislative matter within the General Assembly's Article III powers. Therefore, the resolution must be presented to and approved by the Governor, or repassed via an override vote, for it to have any legal force or effect.

As the Governor notes in his Application, although renumbered over time, Article III, Section 9 has been in existence since its inclusion as Article I, Section 23 in the Constitution of 1790. Pet'r's App. at 15 fn.16. This provision of the Pennsylvania Constitution largely tracks the language of Article I, Section 7, Clause 3 of the U.S. Constitution.<sup>2</sup> The Framers of the U.S. Constitution included this provision to foreclose on the possibility that the exercise of legislative power could be wielded through a means other than a "bill" under Article I, Section 7, Clause 2.<sup>3</sup> As James Madison observed at the Constitutional Convention in August

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<sup>2</sup> Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill. U.S. Const. art. I, § 7

<sup>3</sup> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together

of 1787, after a discussion of the danger of the legislature encroaching upon the other branches of government, “if the negative of the President was confined to *bills*, it would be evaded by acts under the form and name of resolutions, votes, [etc].” Jonathan Elliot, *Debates on the Adoption of the Federal Constitution in the Convention held at Philadelphia in 1787, Vol. 5*, Library of Congress at 431 (1845), [https://memory.loc.gov/cgi-bin/ampage?collId=lled&fileName=005/lled005.db&recNum=0&itemLink=r?ammem/hlaw:@field\(DOCID+@lit\(ed0051\)\)%230050001&linkText=1](https://memory.loc.gov/cgi-bin/ampage?collId=lled&fileName=005/lled005.db&recNum=0&itemLink=r?ammem/hlaw:@field(DOCID+@lit(ed0051))%230050001&linkText=1) (last visited June 16, 2020).

The U.S. Supreme Court has reaffirmed the importance of the presentment provisions of the U.S. Constitution to the foundation of our government:

These provisions of Art. I are integral parts of the constitutional design for the separation of powers . . . . [t]he principle of separation of powers was not simply an abstract generalization in the minds of the Framers: it was woven into the documents that they drafted in Philadelphia in the summer of 1787.

*I.N.S. v. Chadha*, 462 U.S. 919, 946 (1983). The U.S. Supreme Court ruled definitively in *Chadha* that it was unconstitutional for Congress to use a resolution to overturn an executive action, asserting, “Congress must abide by its delegation of authority until that delegation is *legislatively* altered or revoked.” *Id.* at 954-55 (emphasis added).

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with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. *Id.*

While there have long been practical exceptions to the construct that “every order, resolution or vote,” besides questions of adjournment, must be presented to the Executive, those exceptions are limited to matters that are not legislative in nature and relate to the internal operations of Congress or expressing the collective opinion of both chambers on public policy issues. In January of 1897, the U.S. Senate Committee on the Judiciary submitted a report concerning construction of a portion of Article I, Section 7 of the U.S. Constitution and addressing whether concurrent resolutions are required to be submitted to the President of the United States.<sup>4</sup> The Committee distinguished between matters of legislative mechanics and legislation, finding that the use of concurrent resolutions was:

[N]ot for the purpose of enacting legislation, but to express the sense of Congress upon a given subject, to adjourn longer than three days, to make, amend, or suspend joint rules, and to accomplish similar purposes, in which both Houses have a common interest, but with which the President has no concern.

S. Rep. No. 1335 (1897), *reprinted in* Hind’s Precedents of the House of Representatives, Vol. 4, at 330 (1907), <https://www.govinfo.gov/content/pkg/GPO-HPREC-HINDS-V4/pdf/GPO-HPREC-HINDS-V4.pdf> (last visited June 16, 2020). The Committee concluded that whether concurrent resolutions are required to be presented to the President:

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<sup>4</sup> S. Rep. No. 1335 (1897).

[M]ust depend, not upon their mere form, but upon the fact whether they contain matter which is properly to be regarded as legislative in its character and effect. If they do, they must be presented for his approval; otherwise, they need not be . . . . In brief, the nature or substance of the resolution, and not its form, controls the question of its disposition.

*Id.* at 331.

Further emphasizing the requirement that all policy-making decisions of Congress be submitted to the President is the express exception made for questions of adjournment—“the only non-legislative, non-policy-making concurrent action of the two Houses which the Constitution specifically contemplates.” Robert W. Ginnane, *The Control of Federal Administration by Congressional Resolutions and Committees*, 66 Harv. L. Rev. 569, 573 (1953).

Pennsylvania law mirrors federal law on the issue of presentment of legislative matters to the Executive. The Opinions of the Office Attorney General from 1915 and 1926 show that the interpretation of the Commonwealth’s presentment clause for resolutions is directly in line with the historical interpretations of the federal presentment clause:

Not all joint or concurrent resolutions passed by the legislature must be submitted to the Governor for his approval, but only such as make legislation or have the effect of legislating, *i.e.*, enacting, repealing or amending laws or statutes, ***or which have the effect of committing the State to a certain action*** or which provide for the expenditure of public money.

*Joint or Concurrent Resolutions*, 24 Pa. D. 721 (Pa. Att'y Gen. June 9, 1915) and *Concurrent Resolutions*, 7 Pa. D. & C. 672 (Pa. Att'y Gen. Feb. 3, 1926) (emphasis added).

In *Sessoms*, this Court determined that the General Assembly's rejection of a set of sentencing guidelines by concurrent resolution without presentment to the Governor for review violated Article III, Section 9 of the Pennsylvania Constitution. *Sessoms*, 532 A.2d at 776-77. The statute at issue in *Sessoms* is similar to 35 Pa.C.S. § 7301(c) in that it granted authority to the General Assembly by means of concurrent resolution without mention of presentment to the Governor. *Id.* This Court noted in *Sessoms*, "except as it relates to the power of each House to determine its own rules of proceedings, under our Constitution the legislative power, even when exercised by concurrent resolution, must be subject to gubernatorial review." *Id.* at 782.

In *West Shore*, this Court analyzed a provision of the Sunset Act, 71 P.S. §§ 1795.1-1795.14 (expired Dec. 22, 1991) that allowed the General Assembly to re-establish the Pennsylvania Labor Relations Board by passage of concurrent resolution without approval by the Governor. This Court found that provision of the Sunset Act violated Article III, Section 9 of the Pennsylvania Constitution because although the resolution itself was not a law, it was a legislative action which required presentment to the Governor. *West Shore*, 626 A.2d at 1135-36.

The concurrent resolutions at issue in both *Sessoms* and *West Shore* are similar in that they both had the effect of amending the rights, duties and responsibilities of government entities already established in state law. In both cases, this Court determined that the Pennsylvania Constitution required that action taken by the General Assembly to accomplish this goal through concurrent resolution be presented to the Governor for approval.

The same is true in the present matter. Under the Emergency Code, “[t]he Governor is responsible for meeting the dangers to this Commonwealth and people presented by disasters.” 35 Pa.C.S. § 7301(a). To meet this responsibility, the Governor is granted a wide array of powers under the Emergency Code once he issues a proclamation of disaster emergency. *See, e.g., id.* § 7301(d)-(f). Until the Governor terminates the proclamation or amends it by extending the disaster emergency for another ninety-day period, these powers and responsibilities of the Governor, as authorized by law, are not changed, amended, or curtailed. H.R. 836 goes further than the concurrent resolutions in either *Sessoms* and *West Shore* because it seeks to terminate—not merely enhance or restrict—an order of the Governor to respond to a disaster emergency. Thus, based on this Court’s reasoning in *Sessoms* and *West Shore*, presentment is required for H.R. 836 to have any legal force or effect on the Proclamation.

Respondent's argument that presentment of H.R. 836 to the Governor is prohibited by the separation of powers doctrine and one sentence in this Court's decision in *Friends of DeVito v. Wolf*, No. 68 MM 2020, 2020 WL 1847100 (Pa. Apr. 13, 2020), is untenable. First, the argument would suggest that the very procedure for passing laws under the Pennsylvania Constitution subordinates, unconstitutionally, the legislature to the executive branch. *See* Pa. Const. art. III, § 9 and art. IV, § 15. Further, the *DeVito* dicta is consistent with presentment of H.R. 836 under Article III, Section 9. As this Court explained in *Griest*:

After [the Pennsylvania House of Representatives and the Senate of Pennsylvania] comes the governor, in matters of legislation . . . . In [matters of legislation] the power and the will of the governor are supplemental only. His action may be final, or it may not; depending on an ultimate vote of the two houses by a two-thirds, instead of a majority, vote. If it is two-thirds, he is not an element, even in matters of legislation . . . .

*Griest*, 46 A. at 508.

In *DeVito*, this Court merely acknowledges that the possibility of terminating the Proclamation by the General Assembly through concurrent resolution exists without specifically addressing the method by which the concurrent resolution is adopted or whether presentment is required. Thus, this Court cannot be bound to find in favor of Respondents by a single sentence, as Respondents suggest, because it is axiomatic that this Court would not apply 35 Pa.C.S. § 3701(c) in such a way that would violate the Pennsylvania Constitution.

H.R. 836 seeks to terminate an order of the Governor and commit the State to a certain action. With H.R. 836, the legislature is attempting to take action outside the legislative chamber with a directive that affects the entire citizenry of the Commonwealth. Thus, under Pennsylvania law, H.R. 836 is the very definition of “legislating.” In order for the legislature to take such action, whether in the form of a bill or a resolution, it must present such action to the Governor before it may become effective as required by Article III, Section 9 of the Pennsylvania Constitution.

**III. Respondents do not represent the institutional interests of the Pennsylvania General Assembly as a whole.**

The institutional authority of the General Assembly consists of 50 state senators and 203 state representatives, of which at least a majority from each chamber are necessary to pass or defeat legislation, as provided in Article II, Section 1<sup>5</sup> and Article III, Section 4.<sup>6</sup> *Amici Curiae* submit this brief, in part, because the Respondents do not represent the interests of the General Assembly as a whole nor do they have the capacity to assert the institutional interests of the entire legislature in their efforts to force Governor Wolf to terminate the

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<sup>5</sup> “The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.” Pa. Const. art. II, § 1.

<sup>6</sup> “No bill shall become law, unless . . . a majority of the members elected to each House is recorded thereon as voting in its favor.” Pa. Const. art. III, § 4.

Proclamation by means of H.R. 836. *E.g., Raines v. Byrd*, 521 U.S. 811, 829 (1997); *see also, Corman v. Torres*, 287 F.Supp.3d 558 (M.D. Pa. 2018).

In *Corman v. Torres*, two state senators - the Republican Leader of the Senate of Pennsylvania and the Republican Chair of the Senate State Government Committee - and eight Republican members of the Pennsylvania delegation to the U.S. House of Representatives sued in federal district court, in their official capacities, after the Pennsylvania Supreme Court declared the 2011 Pennsylvania congressional redistricting map unconstitutional pursuant to the Free and Equal Elections Clause of the Pennsylvania Constitution, Pa. Const. art. I, § 5. *Corman*, 287 F.Supp.3d at 561. The legislators sought to enjoin the use of the Pennsylvania Supreme Court-issued remedial redistricting map in the 2018 election cycle. *Id.* at 562.

Significantly, the *Corman* court determined that only two legislators' votes out of the total 253 members of the Pennsylvania General Assembly could not have defeated or enacted any remedial redistricting legislation and acknowledged that the state senators, despite their leadership roles in the Senate of Pennsylvania, could not "command the two-thirds majority necessary in both chambers to override a gubernatorial veto." *Id.* at 569.

Just as two individual legislators out of 253 members of the General Assembly were insufficient in *Corman*, Respondents here fall far short of the

required majority needed in both houses to enact or defeat legislation. A mere 28 legislators, the Senate Republican Caucus, do not represent the interests of the 253-member General Assembly. To represent the General Assembly's interest there must be representation equal to a number necessary to maintain the power to enact or defeat future legislation and the two-thirds majority necessary in both chambers to override a gubernatorial veto. *See Corman*, 287 F.Supp.3d at 567 (citing *Raines*, 521 U.S. at 821). Thus, Respondents do not represent the institutional interests of the General Assembly in their action to force Governor Wolf to terminate the Proclamation by means of H.R. 836 or their Petition.

## CONCLUSION

For the forgoing reasons, *Amici Curiae* respectfully request that this Court grant Governor Wolf's Application. This Court should hold that H.R. 836 is a legislative act by the General Assembly pursuant to its Article III powers and thus is subject to the presentment requirement set forth in Article III, Section 9 of the Pennsylvania Constitution, and that H.R. 836 is null in legal force and effect until presented to the Governor and approved by him or, in the case of disapproval, passed by a two-thirds vote in both the Pennsylvania House of Representatives and the Senate of Pennsylvania.

Respectfully Submitted,

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this Brief contains 4,701 words within the meaning of Pa.R.A.P. 2135. In making this certification, I have relied upon the word count function of the word-processing system used to prepare this Brief.

I further certify that this Brief 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.

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