

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DAYLIN LEACH, Minority Chairman of the :
Senate Judiciary Committee and Senator :
Representing the 17th Senatorial District, :
VINCENT J. HUGHES, Senator Representing :
the 7th Senatorial District, LAWRENCE M. :
FARNESE, Senator Representing the 1st :
Senatorial District, CHERELLE L. PARKER, :
Representative for the 200th House District, :
EDWARD C. GAINEY, Representative for the :
24th House District, the CITY OF :
PHILADELPHIA, the CITY OF PITTSBURGH, :
and the CITY OF LANCASTER :

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA, :
SAMUEL H. SMITH, Speaker of the House of :
Representatives, JAMES F. CAWLEY, Lieutenant :
Governor of the Commonwealth of Pennsylvania, :
and THOMAS WINGETT CORBETT, Governor :
of the Commonwealth of Pennsylvania, :

Respondents.

No. 585 MD 2014
ORIGINAL
JURISDICTION

**PETITIONERS' MOTION FOR SUMMARY RELIEF AND ENTRY
OF JUDGMENT PURSUANT TO PA. R.A.P. 1532(B)**

Petitioners Daylin Leach, Vincent J. Hughes, Lawrence M. Farnese, Cherelle L. Parker, Edward C. Gainey, the City of Philadelphia, the City of Pittsburgh, and the City of Lancaster (“Petitioners”) move pursuant to Pa. R.A.P. 1532(b) for judgment in their favor declaring Act No. 192 of 2014 to be unconstitutional and void due to the Act’s violation of the “original purpose” and “single subject” requirements of Article III, Sections 1 and 3 of the Pennsylvania Constitution. In support of their motion, Petitioners state the following:

The Legislative History of House Bill No. 80 (“HB 80”)

1. Act No. 192 of 2014 (“Act 192”) began as HB 80 and was entitled “AN ACT Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, defining the offense of theft of secondary metal; and prescribing penalties.” The original version of HB 80 was given Printer’s No. (“PN”) 68 and was introduced into the General Assembly and referred to the House Committee on the Judiciary on January 10, 2013. HB 80, No. (“PN”) 68, Regular Session 2013-14 (a true and correct copy of which appears as Exhibit “A” hereto).

2. The original purpose of the bill was to create criminal penalties for the theft of secondary metals, such as copper and aluminum. The two-

page bill had four subsections, a definition of the offense, grading for the offense, a penalty for repeat offenders and a definition of “secondary metal.” Ex. A at 1-2.

3. According to its prime sponsor, HB 80 was introduced for the purpose of combatting the theft of copper wiring and other scrap metals used in business, and the consequent disruption of business and utility supply, as well as revenue losses. Daryl Metcalfe, House Co-Sponsorship Memorandum on Theft of Secondary Metals, Dec. 10, 2012 (a true and correct copy of which appears as Exhibit “B” hereto).

4. On June 18, 2013, June 24, 2014 and October 6, 2014, HB 80 underwent minor amendments in the House and Senate Judiciary Committees. HB 80, PN 2066, 3831 and 4248 Regular Session 2013-14 (true and correct copy of which appears as Exhibit “C”, “D” and “E” hereto). As of October 6, 2014, HB 80 was limited to the subject of creating criminal penalties for the theft of secondary metals.

5. On September 23, 2014, the House amended another bill, HB 1243, to add the provision at the core of this dispute, an amendment to 18 Pa. C.S. § 6120, granting sweeping new rights to gun advocates to enter the courts and challenge municipal legislation relating to firearms. HB 1243, PN 4179 Regular Session of 2013-14, as Amended on Second

Consideration, House of Representatives, Sep. 23, 2014 (a true and correct copy of which appears as Exhibit “G” hereto).

6. Section 6120 is entitled “Limitation on the regulation of firearms and ammunition,” and states that counties, municipalities and townships may not “in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.”

7. HB 1243, PN 4179 contained provisions that would have granted gun advocates a right of action against municipalities to challenge purported violations of Section 6120 and would have provided for the award of attorneys’ fees upon rescission or repeal of the ordinance in question or final determination.

8. On October 15, 2014, with the end of the legislative session looming, proponents in the Senate added the standing and attorneys’ fees provisions of HB 1243 to the completely unrelated HB 80, through amendment A10397. Amendment A10397 also amended HB 80 to add other provisions governing the handling by the Pennsylvania State Police of mental health records of those disqualified from possessing a firearm. Amendment A10397 (a true and correct copy of which appears as Exhibit

“H” hereto) at 1-3. None of these provisions bore any relationship to the original purpose of HB 80.

9. Following passage of Amendment A10397 on October 15, 2014, the bill became HB 80, PN 4318. HB 80, PN 4318, Regular Session of 2013-14, as Amended on Third Consideration, in Senate, Oct. 15, 2014 (a true and correct copy of which appears as Exhibit “I” hereto).

10. The House and Senate passed HB 80, PN 4318, which became Act 192, with an effective date of January 5, 2015.

Act 192 is Unconstitutional

11. Article III of the Pennsylvania Constitution has mandatory requirements for the passage of legislation, including the so-called “original purpose” and “single subject” rules of Sections 1 and 3:

Section 1. No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.

Section 3. No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.

12. Act 192 violates Article III, Section 1 because HB 80 was introduced for the purpose of prescribing criminal penalties for the theft of secondary metals, but the purpose changed during passage through the legislature to include matters which were completely unrelated to that

original purpose. *See Marcavage v. Rendell*, 936 A.2d 188 (Pa. Commw. Ct. 2007), *aff'd*, 951 A.2d 345 (Pa. 2008) (finding violation of Article III, Section 1 in relation to bill amending different provisions of Crimes Code).

13. Act 192 violates Article III, Section 3 because Act 192 contains legislation encompassing multiple subjects. *See City of Phila. v. Commw.*, 838 A.2d 566, 581 (Pa. 2003) (rejecting single subject of “municipalities”).

14. Petitioners’ right to relief is clear.

15. In support of this motion, Petitioners are simultaneously filing a brief containing the reasons in support of the motion and an appendix containing true and correct copies of the following documents:

- A. HB 80, Printer’s No. (“PN”) 68, Regular Session 2013-14;
- B. Daryl Metcalfe, House Co-Sponsorship Memorandum on Theft of Secondary Metals, Dec. 10, 2012;
- C. HB 80, PN 2066, Regular Session 2013-14;
- D. HB 80, PN 3831, Regular Session of 2013-14, Judiciary, in Senate, as Amended, June 24, 2014;
- E. HB No. 80, PN 4248, Regular Session of 2013-14, as Amended on Third Consideration, in Senate, Oct. 6, 2014;
- F. HB 1243, PN 1585;

- G. HB 1243, PN 4179 Regular Session of 2013-14, as Amended on
Second Consideration, House of Representatives, Sep. 23, 2014;
- H. Amendment A10397;
- I. HB 80, PN 4318, Regular Session of 2013-14, as Amended on Third
Consideration, in Senate, Oct. 15, 2014.
- J. Act No. 192, House No. 80, Session of 2014, as received Nov. 6, 2014
by Pa. Dep't of State;

WHEREFORE, for the foregoing reasons, petitioners pray that this
Honorable Court:

1. Declare Act 192 unconstitutional and void;
2. Enjoin Respondents from enforcing any provisions of Act 192 or
taking any actions in accordance with Act 192; and
3. Grant such other and further relief as may be just and proper.

Respectfully submitted,

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January 16, 2015

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DAYLIN LEACH, Minority Chairman of the
Senate Judiciary Committee and Senator
Representing the 17th Senatorial District,
VINCENT J. HUGHES, Senator Representing
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EDWARD C. GAINNEY, Representative for the
24th House District, the CITY OF
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COMMONWEALTH OF PENNSYLVANIA, :
SAMUEL H. SMITH, Speaker of the House of :
Representatives, JAMES F. CAWLEY, Lieutenant :
Governor of the Commonwealth of Pennsylvania, :
and THOMAS WINGETT CORBETT, Governor :
of the Commonwealth of Pennsylvania, :

Respondents.

ORDER GRANTING SUMMARY RELIEF

AND NOW, this _____ day of _____, 2015, pursuant to Rule 1532(b) of the Pennsylvania Rules of Appellate Procedure and upon consideration of Petitioners' Motion for Summary Relief along with Respondents' responses, the Court finds that petitioners' right to relief is clear.

NOW, THEREFORE, it is ORDERED AND DECREED that:

1. Petitioners' Motion for Summary Relief is granted.
2. Act No. 192 of 2014 ("Act 192") is declared unconstitutional and void; and
3. Respondents are enjoined from enforcing any provisions of Act 192 or taking any actions in accordance with Act 192.

IT IS SO ORDERED.

J.

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DAYLIN LEACH, Minority Chairman of the :
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**BRIEF IN SUPPORT OF PETITIONERS' MOTION
FOR SUMMARY RELIEF AND ENTRY OF JUDGMENT
PURSUANT TO PA. R.A.P. 1532(B)**

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I. INTRODUCTION

Act 192 of 2014 (“Act 192”) began its journey through the legislature as House Bill 80 (“HB 80”), a modest two-page bill, amending Section 3935 of Title 18, the Crimes Code. The sole subject of the bill was the establishment of criminal penalties for the “theft of secondary metal,” such as copper and aluminum wire. The bill set forth penalties and offense gradations based on the value of the metal involved and number of prior offenses.

On October 15, 2014, the penultimate day of the legislative session, the Senate amended HB 80 to provide standing to certain individuals and groups to sue municipalities which enact “an ordinance, a resolution, a regulation, rule, practice or other action” involving firearms, and to provide certain civil remedies, including the assessment of mandatory attorneys’ fees against a losing municipality. The Senate passed the amended bill the next day, and the House passed it shortly thereafter.

Act 192 unconstitutionally combines multiple laws covering multiple topics in one bill. The Pennsylvania Constitution prohibits that practice, which the framers of the 1874 Constitution found repugnant to good government. Act 192 violates both the “single subject rule” of Article III,

Section 3, which states that “[n]o bill shall be passed containing more than one subject,” and the “original purpose rule” of Section 1, which states that “no bill shall be so altered or amended, on its passage through either house, as to change its original purpose.” Because the issue is purely one of law, summary relief pursuant to Pa. R.A.P. 1532(b) is appropriate.

II. STATEMENT OF FACTS

Although the pleadings are not yet closed, the material facts in this case are all matters of public record and cannot be disputed.

Introduction of House Bill No. 80 (“HB 80”), Which Became Act 192

Act 192 began as HB 80 and was entitled “AN ACT Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, defining the offense of theft of secondary metal; and prescribing penalties.” The original version of HB 80 was given Printer’s No. 68. HB 80, No. (“PN”) 68, Regular Session 2013-14 (Exhibit “A”). The original purpose of HB 80 was to create criminal penalties for the theft of secondary metals, such as copper and aluminum. The two-page bill had four subsections, a definition of the offense, grading for the offense, a penalty for repeat offenders and a definition of “secondary metal.” Ex. A at 1-2. According to its prime sponsor, HB 80 was introduced to combat the theft of copper wiring and other scrap metals used in business, and the consequent

disruption of business and utility supply, as well as revenue losses. Daryl Metcalfe, House Co-Sponsorship Memorandum on Theft of Secondary Metals, Dec. 10, 2012 (Exhibit “B”).

HB 80 in its original form made no mention of, and had no relation to, authorizing membership organizations or gun advocates to sue municipalities over firearms legislation.

Amendments to HB 80 Prior to its Unconstitutional Repurposing

On June 18, 2013, HB 80 underwent a minor technical amendment in the House Judiciary Committee, as reflected in HB 80, PN 2066. HB 80, PN 2066, Regular Session 2013-14 (Exhibit “C”). The Senate Judiciary Committee subsequently amended the Senate version of HB 80 on June 24, 2014, to add a section amending 18 Pa. C.S. § 3503(b.1), resulting in HB 80, PN 3831. HB 80, PN 3831, Regular Session of 2013-14, Judiciary, in Senate, as Amended, June 24, 2014 (Exhibit “D”). The Senate further amended the bill on its third consideration on October 6, 2014, to add a definition for “secondary metal” to 18 Pa. C.S. § 3503(d), resulting in HB 80, PN 4248. HB No. 80, PN 4248, Regular Session of 2013-14, as Amended on Third Consideration, in Senate, Oct. 6, 2014 (Exhibit “E”) at 2.

Throughout the amendments to HB 80 that resulted in PNs 2066, 3831, and 4248, HB 80 was limited to the subject of creating criminal

penalties for the theft of secondary metals; its purpose remained as stated in the sponsorship memo (*compare* Ex. C, D, and E. *with* Ex. B at 1); and it made no mention of, and had no relation to, authorizing membership organizations or gun advocates to sue municipalities over firearms legislation.

Failure of the Unrelated House Bill No. 1243, a Bill to Amend the Uniform Firearms Act

While HB 80 was proceeding through the General Assembly, a distinct bill, HB 1243, was also under consideration. HB 1243, a bill with no relation to HB 80, was introduced into the General Assembly and referred to the House Committee on the Judiciary on April 23, 2013, as HB 1243, PN 1585. Unlike HB 80, HB 1243 concerned the gun possession rights of persons with mental health issues, and it was entitled “AN ACT Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in firearms and other dangerous articles, further providing for persons not to possess, use, manufacture, control, sell or transfer firearms and for Pennsylvania State Police.” HB 1243, PN 1585 Exhibit “F”) at 1.

On September 23, 2014, the House amended HB 1243, resulting in HB 1243, PN 4179, to add the provision at the core of this dispute, an amendment to 18 Pa. C.S. § 6120, granting sweeping new rights to gun advocates to enter the courts and challenge municipal legislation. HB 1243,

PN 4179 Regular Session of 2013-14, as Amended on Second Consideration, House of Representatives, Sep. 23, 2014 (Exhibit “G”).

Section 6120 is entitled “Limitation on the regulation of firearms and ammunition,” and states that counties, municipalities and townships may not “in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.”

HB 1243, PN 4179 contained the following remarkable provisions that would have granted gun advocates a right of action against municipalities and would have mandated the award of attorneys’ fees upon rescission or repeal of the ordinance in question or final determination.

SECTION 2. SECTION 6120 (B) OF TITLE 18 IS AMENDED AND THE SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:

§ 6120. LIMITATION ON THE REGULATION OF FIREARMS AND AMMUNITION.

* * *

(A.2) RELIEF.---A PERSON ADVERSELY AFFECTED BY AN ORDINANCE, A RESOLUTION, REGULATION, RULE, PRACTICE OR ANY OTHER ACTION PROMULGATED OR ENFORCED BY A COUNTY, MUNICIPALITY OR TOWNSHIP PROHIBITED UNDER

SUBSECTION (A) OR 53 PA. C.S. § 2962(G)
(RELATING TO LIMITATION ON MUNICIPAL POWERS)
MAY SEEK DECLARATORY OR INJUNCTIVE RELIEF AND
ACTUAL DAMAGES IN AN APPROPRIATE COURT.

(A.3) REASONABLE EXPENSES.--A COURT SHALL
AWARD REASONABLE EXPENSES TO A PERSON ADVERSELY
AFFECTED IN AN ACTION UNDER SUBSECTION (A.2)
FOR ANY OF THE FOLLOWING:

(1) A FINAL DETERMINATION BY THE COURT IS
GRANTED IN FAVOR OF THE PERSON ADVERSELY
AFFECTED.

(2) THE REGULATION IN QUESTION IS
RESCINDED, REPEALED OR OTHERWISE ABROGATED
AFTER SUIT HAS BEEN FILED UNDER SUBSECTION
(A.2) BUT BEFORE THE FINAL DETERMINATION BY THE
COURT.

Ex. G at 6. The legislation defined “reasonable expenses” to include
attorneys’ fees, as follows:

"REASONABLE EXPENSES." THE TERM INCLUDES,
BUT IS NOT LIMITED TO, ATTORNEY FEES, EXPERT
WITNESS FEES, COURT COSTS AND COMPENSATION FOR
LOSS OF INCOME.

Id. at 7.

The legislation also contained a provision defining “person adversely affected,” which is contrary to all traditional notions of aggrievement as a prerequisite for standing:

"PERSON ADVERSELY AFFECTED." ANY OF THE FOLLOWING:

(1) A RESIDENT OF THIS COMMONWEALTH WHO MAY LEGALLY POSSESS A FIREARM UNDER FEDERAL AND STATE LAW.

(2) A PERSON WHO OTHERWISE HAS STANDING UNDER THE LAWS OF THIS COMMONWEALTH TO BRING AN ACTION UNDER SUBSECTION (A.2) .

(3) A MEMBERSHIP ORGANIZATION, IN WHICH A MEMBER IS A PERSON DESCRIBED UNDER PARAGRAPHS (1) OR (2) .

Id.

The House passed HB 1243 on October 6, 2014, and sent it to the Senate, where it was assigned to the Senate Judiciary Committee and ultimately died in Committee.

HB 1243 is engrafted onto HB 80

On October 15, 2014, with HB 1243 stalled in committee, proponents in the Senate of the firearms legislation proposed, and the Senate adopted, Amendment A10397, which merged language from HB 1243 into HB 80. Amendment A10397 (Exhibit “H”) at 1-3. Following

passage of Amendment A10397, HB 80 became HB 80, PN 4318, Regular Session of 2013-14, as Amended on Third Consideration, in Senate, Oct. 15, 2014. HB 80, PN 4318, Regular Session of 2013-14, as Amended on Third Consideration, in Senate, Oct. 15, 2014 (Exhibit “I”). Reflecting its new hybrid nature, this final version of HB 80 was given a new title:

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in burglary and other criminal intrusion, further providing for the offense of criminal trespass; defining the offense of theft of secondary metal; and prescribing penalties; and, in firearms and other dangerous articles, further providing for Pennsylvania state police and for limitation on the regulation of firearms and ammunition.

HB 80, PN 4318, Regular Session of 2013-14, as Amended on Third Consideration, in Senate, Oct. 15, 2014, Ex. I at 1.

The second of two new sections the Senate added to HB 80, Section 4, amended 18 Pa. C.S. § 6120, adding new subsections (a.2), (a.3), and (b) to create a new civil right of action to “a person adversely affected” by certain ordinances, regulations, rules, practices, or other actions promulgated or enforced by a county, municipality, or township and to grant standing in the courts of the Commonwealth to bring the new civil action to individuals eligible to own a firearm and to “membership organizations” with even just a single such eligible member. *Id.* at 5-7. Except for the correction of the word “paragraphs” to “paragraph,” the text of this section is identical to the

text included in Section 2 of the stalled HB 1243, PN 4179. Amendment A10397 also amended HB 80 to add other provisions from HB 1243 relating to the handling by the Pennsylvania State Police of mental health records of those disqualified from possessing a firearm.

As amended, HB 80's contents included legislation relating to the following topics:

- (a) Criminal penalties for the theft of secondary metals (Ex. I at 1-4),
- (b) Disclosure and expungement of mental health records by the Pennsylvania State Police (*id.* at 4-5),
- (c) Creation of a civil right of action against municipalities (*id.* at 4-6),
- (d) Providing standing to a new class of firearm owners, eligible residents and "membership organizations" in contravention of well established judicial principles (*id.*), and
- (e) Providing for attorneys fees to a prevailing plaintiff (*id.* at 5-6).

As amended, HB 80 had no single purpose. The bill's original purpose was to protect the residents of the Commonwealth against secondary metal theft. The final bill had multiple disparate objectives including the unprecedented creation of a new private right of action for damages, injunctive relief and attorneys' fees against municipalities that engage in the prohibited regulation of firearms or ammunition.

Passage of HB 80

The Senate passed the final version of the bill the very next day, on October 16, 2014, returned the bill to the House, and then adjourned. The House concurred in the Senate amendments, passed the bill on October 20, 2014, and then adjourned.

On November 5, 2014, the House of Representatives reconvened, and Respondent Samuel H. Smith, as the presiding officer of the House of Representatives, signed the version of HB 80 that had been passed by the House on October 20, 2014. The next day, Lieutenant Governor Cawley, as the presiding officer of the Senate, opened a Senate session and signed the version of HB 80 that had been passed by the Senate on October 16, 2014. Governor Corbett signed HB 80, PN 4318 on the afternoon of November 6, 2014, and it is now known as Act 192.

By its terms, Act 192 became effective 60 days after the Governor's signature, on January 5, 2015.

III. Standard of Review

In challenging the constitutionality of Act 192 under Article III, Petitioners bear the burden of establishing that Act 192 “clearly, palpably and plainly” violates the Constitution. *Pennsylvanians Against Gambling Expansion Fund (“PAGE”) v. Commw.*, 877 A.2d 383, 393 (Pa. 2005)

(citing *Pa. Sch. Bds. Ass'n v. Commw. Ass'n of Sch. Adm'rs*, 805 A.2d 476, 479 (Pa. 2002)). Article I, Sections 1 and 3 are “mandatory directives governing the manner of passing legislation ... and not mere general guidelines[.]” *Marcavage v. Rendell*, 888 A.2d 940, 944 (Pa. Commw. Ct. 2005), *aff'd*, 951 A.2d 345 (Pa. 2008) (citing *City of Phila. v. Commw.*, 838 A.2d 566, 581 (Pa. 2003)). Accordingly, the Supreme Court has held that while some deference to the legislature is due, “the countervailing concern is our mandate to insure that government functions within the bounds of Constitutional prescription.” *Consumer Party of Pa. v. Commw.*, 507 A.2d 323, 333 (Pa. 1986). Justice Saylor, writing for the Supreme Court in *City of Philadelphia*, stated:

We may not abdicate this responsibility under the guise of our deference to a co-equal branch of government. While it is appropriate to give due deference to a co-equal branch of government as long as it is functioning within Constitutional constraints, it would be a serious dereliction on our part to deliberately ignore a clear Constitutional violation.

City of Phila., 838 A.2d at 581; *see also Washington v. Dep't of Pub.*

Welfare, 71 A.3d 1070, 1077 (Pa. Commw. Ct. 2013) (“These rules [Article III] are a cornerstone of our democratic process”).

Pursuant to Pa. R.A.P. 1532(b), this Court can grant summary relief “if the right of the applicant thereto is clear.” *See, e.g., Sears v. Corbett*, 2013 WL 864449 (Pa. Commw. Ct. Mar. 4, 2013) (mem. op.) (deciding

Article III, Section 3 challenge on cross-motions for summary relief and striking statute). Constitutional challenges under Article III, Sections 1 and 3, raise questions of law that are determined based on the text of the law in dispute and the public record of the legislative history. *See, e.g., Sears v. Corbett*, 49 A.3d 463, 474-78 (Pa. Commw. Ct. 2012) (determining Article III, Section 3 challenge at preliminary objection phase by examining bill text). Indeed, looking behind the law is prohibited under the enrolled bill doctrine, which bars consideration of matters outside the official record. *See, e.g., City of Phila.*, 838 A.2d at 580 (drawing distinction between inappropriately “going behind” statute as enacted by delving into mental processes of legislators and properly performing court’s duty to review “constitutional compliance predicated upon the title and content of the bill as enrolled”). Because the contents of Act 192 and its legislative history are a matter of public record, there is no need for discovery, and this case presents a pure question of law. Petitioners’ right to relief is clear, and summary adjudication is appropriate.

IV. Argument

In the seminal *City of Philadelphia* decision in 2003, the Pennsylvania Supreme Court made clear that the legislative branch must abide by the single subject and original purpose provisions of the

Pennsylvania Constitution. Act 192 violates both of these requirements because the law began as a bill setting penalties for the theft of secondary metals, but was passed with unrelated legislation granting rights of standing to gun membership organizations and regulating mental health records. Act 192 reaches far beyond the original uncontroversial purpose of HB 80 and indeed seeks to invade the province of the courts by changing traditional notions of aggrievement as a prerequisite for standing. Act 192 clearly and palpably violates the single subject and original purpose requirements of the Pennsylvania Constitution.

A. The Requirement Of Article III, Sections 1 and 3 are Mandatory

1. Article III, Sections 1 and 3

Article III, Sections 1 and 3 of the Pennsylvania Constitution state:

Article III, Section 1 - Passage of Laws

No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either house, as to change its original purpose.

Article III, Section 3 - Form of Bills

No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling a law or a part thereof.

These provisions are known as the “original purpose” and “single subject” requirements and were enacted during the 1874 reforms to the

Pennsylvania Constitution to reign in rampant legislative corruption. *PAGE*, 877 A.2d at 394. At the time, the legislature routinely engaged in practices which were repugnant to good government, including last-minute consideration of legislation, the mixing of unrelated substantive provisions in omnibus bills, arbitrary favoritism and a practice known as “log rolling” in which a single bill incorporating “a variety of distinct and independent subjects[, ...] intentionally disguising the real purpose of the bill,” or “embracing in one bill, several distinct matters, none of which singly could obtain the consent of the legislature,” is passed. *See City of Phila.*, 838 A.2d at 586 (citing Charles W. Rubendall II, *The Constitution and the Consolidated Statutes*, 80 DICK. L. REV. 118, 120 (1975)).

The framers of Article III sought “to place restraints on the legislative process and encourage an open, deliberative and accountable government.” *Pa. AFL-CIO ex rel. George v. Commw.*, 757 A.2d 917, 923 (Pa. 2000). “These constitutional provisions seek generally to require a more open and deliberative state legislative process ... that addresses the merits of legislative proposals in an orderly and rational manner.” *City of Phila.*, 838 A.2d at 589. The single subject rule is particularly important because “a bill addressing a single topic is more likely to obtain a considered review than one addressing many subjects.” *Id.* at 586.

The single subject rule and the original purpose rule work in tandem to jointly serve these policy objectives. As the Supreme Court has noted:

In practice, Article III’s dual requirements ... are interrelated, as they both act to proscribe inserting measures into bills without providing fair notice to the public and to legislators of the existence of same.

Id. Put another way, they are designed to prevent “sneak legislation.” *Pa. State Lodge v. Commw.*, 692 A.2d 609, 615 (Pa. Commw. Ct. 1997).

2. The Modern Approach to Article III Jurisprudence

Over the years, there has been an “ebb and flow” to Article III jurisprudence. *Commw. v. Neiman*, 84 A.3d 603, 617 (Castille, C.J., dissenting) (Pa. 2013). In the late 19th and early 20th Centuries, the courts took a fairly strict view of the single-subject rule. *See, e.g., Payne v. Sch. Dist. of Borough of Coudersport*, 31 A. 1072 (Pa. 1895) (striking down statute that attached certain piece of land to neighboring school district and established right to create graded school). The Supreme Court refused to accept broad general statements of a common purpose, noting that it is always possible to find a common subject at some level of generality. In evaluating whether two pieces of legislation have a common subject, the Court warned against stretching too far:

[N]o two subjects are so wide apart that they may not be brought into a common focus, if the point of view be

carried back far enough. ... Those things which have a ‘proper relation with each other,’ which fairly constitute parts of a scheme to accomplish a single general purpose, ‘relate to the same subject’ or ‘object.’

Id. at 1074.

This principle developed into the “germaneness test,” requiring that different sections of a bill be “germane” to each other. *See generally Yardley Mills Co. v. Bogardus*, 185 A. 218 (Pa. 1936); *Commw. ex rel. Woodruff v. Humphrey*, 136 A. 213 (Pa. 1927).

During the middle part of the 20th Century, the Court was far more deferential towards the legislature, but in the watershed *City of Philadelphia* ruling, decided in 2003, the Court rejected that trend and wrote:

In more recent decisions, however, and despite the continued strong public policy underlying the single-subject requirement, some Pennsylvania courts have become extremely deferential toward the General Assembly in Section III challenges. ... [T]hey have tended to apply the single-subject standard to validate legislation containing many different topics so long as those topics can reasonably be viewed as falling under one broad subject. ... [I]t has resulted in a situation where germaneness has, in effect, been diluted to the point where it has been assessed according to whether the court can fashion a single-over-arching topic to loosely relate the various subjects included in the statute under review.

838 A.2d at 587.

After expressing its disapproval, the Court went on to reassert the judiciary’s critical role in preserving constitutional order:

We believe that exercising deference by hypothesizing reasonably broad topics is appropriate to some degree There must be limits, however, as otherwise virtually all legislation, no matter how diverse in substance, would meet the single-subject requirement. ... In that event, Section 3 would be rendered impotent to guard against the evils it was designed to curtail.

Id. at 587 (emphasis added).

In *City of Philadelphia*, the Court struck down Act 230 of 2002, a statute which originally addressed citizenship requirements for board members of local business improvement district authorities, and which was amended to, among other things, reorganize the Pennsylvania Convention Center. The Commonwealth attempted to defend the statute by linking these provisions as all relating to the common subject of “municipalities.” The Court conceded that all of the provisions of Act 230 could, on some level, be considered to be related to municipalities, but found that was not enough to pass constitutional muster: “Significantly however, there is no unifying subject to which all of the provisions of the act are germane.” *Id.* at 589.

This Court has also been diligent in carrying out its constitutional duty to ensure that Article III is followed by the legislature. In *Marcavage*, the Court struck down under Article III, Section 1, a statute that began as a bill relating to the crime of agricultural crop destruction, but when passed included provisions defining the crime of ethnic intimidation. The

proponents of the law asserted that the single purpose of the bill was “amending the Crimes Code,” a justification which was soundly rejected. *See Marcavage*, 936 A.2d at 193 (“to conclude that the General Assembly could initiate a piece of legislation in the context of the Crimes Code and rely on this concept as a unifying justification for amendments to bills under the Crimes Code that have no nexus to the conduct to which the original legislation was directed would stretch the Supreme Court’s meaning of ‘reasonably broad terms’”).

Indeed, since 2003, both this Court and the Supreme Court have been far more skeptical of claims of germaneness. *See DeWeese v. Weaver*, 880 A.2d 54 (Pa. Commw. Ct. 2005) (rejecting subject of “judicial procedure” and striking down statute that required incarcerated felony sex offenders to provide DNA samples, and was amended to limit recovery for acts of negligence under doctrine of joint and several liability); *Neiman*, 84 A.3d 603 (rejecting subjects of “amendments to Title 42,” “refining civil remedies or relief,” and “judicial remedies and sanctions” and striking down statute that began as bill to alter deficiency judgment procedures after execution sale of real property and was amended to make changes to Megan’s Law); *Pa. State Ass’n of Jury Comm’rs v. Commw.*, 64 A.3d 611 (Pa. 2013) (rejecting subject of “powers of county commissioners” and striking down

statute that regulated surplus farm equipment as well as allowed certain counties to eliminate position of Jury Commissioner).

In summary, the Supreme Court and this Court have made it clear that the single subject and original purpose requirements are real and mandatory and that the courts will strike down legislation that violates these requirements. Cases cited prior to the 2003 reassertion of these principles in *City of Philadelphia* are of minimal, if any, relevance to the analysis. The correct place to start and end the analysis is with the *City of Philadelphia* decision and its progeny.

B. Act 192 Combines Multiple Subjects in a Single Bill in Violation of Article III, Section 3

Act 192 violates the single subject requirement of Article III, Section 3. The Act's first subject creates **criminal** penalties against **individuals** for the theft of secondary metals such as copper and aluminum wiring. The second subject confers standing in **civil** cases and creates remedies against **municipalities** for the enactment of gun regulations. The mixing of criminal and civil penalties, copper wire with guns, state prosecution with private rights of action, claims against individuals with claims against municipalities, is simply beyond the pale of Section 3.¹

¹ Act 192 contains additional subjects, including legislation relating to the treatment of mental health records, which bear no constitutional relationship to either the secondary metals or standing legislation. The Court need not address that issue separately, as Act

As finally passed, Act 192 included legislation relating to the following topics which have no over-arching purpose:

- (a) Criminal penalties for the theft of secondary metals (Ex. J at 1-4),
- (b) Disclosure and expungement of mental health records by the Pennsylvania State Police (*id.* at 4-5),
- (c) Creation of a civil right of action against municipalities (*id.* at 5-6),
- (d) Providing standing to a new class of firearm owners, eligible residents and “membership organizations” in contravention of well established judicial principles (*id.*), and
- (e) Providing for attorneys’ fees to a prevailing plaintiff (*id.*).

Given the legislative history of Act 192 – which began as an act criminalizing the theft of secondary metals but was amended at the last minute to include the gun provisions – the legislative dissonance is unsurprising. Two unrelated bills were joined for the purpose of expediency, in the final hours of the legislative session with a looming change in the Governor’s office.

The courts have expressed a heightened degree of skepticism in relation to such last minute legislation, which commentators have called “stealth legislation.” *City of Phila.*, 838 A.2d at 574-75. Judge Colins,

192 fails in its entirety due to the misjoinder of the secondary metals and standing provisions.

writing for the Commonwealth Court, chose the quieter epithet “24 hour legislation,” but he was quite clear that “it is exactly such 24 hour legislation that the Constitutional amendments of 1874 were meant to prohibit.” *Id.* at 575 (citing *Phila. v. Commw.*, No. 45 MD 2003, 26 (Pa. Commw. Ct. Feb. 19, 2003) (opinion accompanying preliminary injunction order)).

Here, HB 80 was a non-controversial bill about the theft of copper wire for all but the last few hours of its existence. It was only as members were packing their belongings for break that the extremely controversial gun amendment was added. Judge Colins could have been writing about this case when he wrote for the Commonwealth Court in *City of Philadelphia*:

Unfortunately, the public had no indication that such radical changes in governance were being contemplated despite the fact that, as noted, the taxpayers will be footing the bill for all of this. Pennsylvania is one of the few states that has incorporated, via its Constitution, restraints upon the Legislature’s ability to propose and pass legislation without public notice. The foregoing scenario is exactly what the framers of the [1874] Constitution meant to prevent.

Id.

Act 192 represents just the sort of last minute, hurried legislation, that Article III was designed to prevent. Assessing criminal penalties for the theft of copper wire has absolutely nothing to do with private rights of action for gun membership organizations. The multiple provisions in Act 192 are

not part of a scheme to accomplish a single general purpose as required by the Pennsylvania Constitution and must be struck down.

C. Respondents' Proffered Subjects are Legally Deficient

What then do the Respondents offer as their single subject?

The Commonwealth and Governor, represented by the Office of General Counsel,² have not provided any justification for the law. They filed preliminary objections asserting only that they are not proper parties to the proceeding, but have as yet made no attempt to identify a permissible single subject.

Respondents Lieutenant Governor Cawley and Speaker Smith, who signed Act 192 on behalf of the Senate and House, filed preliminary objections attempting to defend the case on the merits. These Respondents argue that Act 192 pertains to a single subject because both parts of Act 192 amend Title 18, Pennsylvania's Crimes Code:

57. The single subject of Act 192 is to amend the Crimes Code.

...

62. Not only does Act 192 have a single subject (amending the Crimes Code), all of Act 192's subtopics are also related in that they all amend firearms statutes or crimes that affect the ability to own a firearm.

² It is the duty of the Attorney General to represent the Commonwealth and defend the constitutionality of all statutes. Commonwealth Attorneys Act, 71. P.S. §732-204(a)(3). Here, the Attorney General refused to offer a defense, forcing the representation onto the Office of General Counsel, which reports directly to the Governor. *Id.* at §732-301(6).

Preliminary Objections of Respondents, Samuel H. Smith, Former Speaker of the House of Representatives and James F. Cawley, Lieutenant Governor of the Commonwealth of Pennsylvania (“Legislator Respondents’ Preliminary Objections”) at ¶¶ 57, 62; *see also id.* at ¶¶ 6, 31 (asserting “[t]hrough four (4) amendments in the Senate, HB 80 never wavered from its initial purpose”).

It is true that all parts of Act 192 amend provisions of the Crimes Code, but the similarity ends there. The controversial amendments at the heart of this dispute create a private right of civil action against municipalities and are not even criminal provisions.³ As indicated in *Marcavage*, the general subject of “amendments to the Crimes Code” is plainly overbroad, and Act 192, which meshes criminal and civil provisions is even broader. Other than the formality that the amended provisions are contained in Title 18, the theft of secondary metals and standing legislation have nothing to do with each other. If the Court were to accept the reasoning of the Respondents, any two criminal provisions would be related to each other, and, for that matter, any two civil provisions would be related to each other. There would be nothing left of the single subject rule.

³ The mental health reporting provisions also bear no constitutional relationship to either the secondary metals or standing legislation. The Court need not address that issue separately, as Act 192 fails in its entirety due to the misjoinder of the secondary metals and standing provisions.

The courts have summarily rejected that position. It is well established that that “having all amendments apply to a single codified statute does not, in itself, satisfy the single-subject rule.” *Washington*, 71 A.3d at 1082 (citing *DeWeese*, 880 A.2d at 58, n.10). In *Neiman*, the Supreme Court wrote, “merely because all of the various components of Act 152 amended ‘Title 42,’ this does not establish its compliance with Article III Section 3.” 84 A.3d at 613.

In analyzing Section 3 challenges, far more is required than simply looking at the number assigned to a codified title by the Legislative Reference Bureau. As the Supreme Court admonished in *Payne*, and has repeatedly reaffirmed, any two subjects may be linked if “the point of view be carried back far enough.” 31 A. at 1074. *See also Neiman*, 84 A.3d at 612; *Pa. State Ass’n of Jury Comm’rs*, 64 A.3d at 619. The standard is not whether some tenuous link exists between two parts of a statute, but whether the subjects in question can “reasonably be deemed to pertain only to [a] single topic[.]” *City of Phila.*, 838 A.2d at 590. The subjects in question must have a “proper relation to each other” and “fairly constitute parts of a scheme to accomplish a **single general purpose**.” *DeWeese v. Weaver*, 824 A.2d 364, 370 (Pa. Commw. Ct. 2003) (emphasis added).

In *City of Philadelphia and Pennsylvania State Association of Jury Commissioners*, the Supreme Court held that the subjects “municipalities” and “powers of County Commissioners” were each too broad. This reluctance to embrace extremely broad unifying principles is consistently emphasized by the cases. For example, in *Neiman*, the court, in rejecting each of the competing proffered unifying themes of “refining civil remedies or relief” and “judicial remedies and sanctions,” wrote:

[T]he proposed unifying subjects for Act 152 offered by the Commonwealth (“refining civil remedies or relief”) and the General Assembly (“judicial remedies and sanctions”) are far too expansive to satisfy Article III, Section 3, as such subjects are virtually boundless in that they could encompass, respectively, **any** civil court proceeding which could be brought in the courts of this Commonwealth, and **any** power of the judiciary to impose sanctions on, or order the payment of damages by, a party to civil litigation. We therefore decline to endorse such broad suggested topics, as they would have the effect of “rendering the safeguards of [Article III,] Section 3 inert.”

84 A.3d at 613 (emphasis in original) (quoting *PAGE*, 877 A.2d at 395).

“Crimes” is at least as broad a topic as is any of “municipalities” or “refining civil remedies or relief” or “judicial remedies and sanctions.” The Pennsylvania Crimes Code covers literally hundreds of crimes, from retail theft to homicide. It is perhaps the broadest area of the law in all of

Purdon's.⁴ There is no support for the proposition that making amendments to two provisions in the Crimes Code, in and of itself, is sufficient to squeeze them into a constitutionally mandated "one subject."

In fact, there is no single topic of legislation here, and the amendments do not even relate solely to crimes. Criminalizing the theft of secondary metals is certainly criminal legislation, but in what sense does granting a private right of action to gun membership organizations against municipalities relate to crimes at all? Any fair reading of the law is that it combines a criminal provision with a civil provision and is not directed to a single legislative topic.

Respondents are aware of the difficulty of their position and provide a fallback argument that the subtopics of Act 192 "all amend firearms statutes **or crimes that affect the ability to own a firearm.**" Legislator Respondents' Preliminary Objections at ¶ 61. Respondents Cawley and Smith claim that there is a single subject here because being convicted of a crime would potentially "affect the ability [of a citizen] to own firearms." *Id.* at ¶ 6.

⁴ The weakness of the Respondents' position is demonstrated by the legal justification provided in the preliminary objections. In arguing that amending the Crimes Code is sufficiently narrow, they cite to *Ritter v. Commonwealth*, 548 A.2d 1317, 1320 (Pa. Commw. Ct. 1988). Legislator Respondents' Preliminary Objections at ¶ 64. *Ritter* predates *City of Philadelphia* and is no longer good law.

First, it is plain that the theft of secondary metals provision is not a firearms statute. After reading the original HB 80, no one would conclude that the proposed statute criminalizing the theft of secondary metals was a piece of firearms legislation.

Second, if the Court were to accept the Respondents' position, the single subject rule would be swallowed whole. Being convicted of a crime also can affect the right to vote, to hold public office, to receive state benefits, to have custody of children, to work in certain professions, to maintain immigration status and other matters. It is difficult to imagine an effective and enforceable single subject rule where a simple link to the Crimes Code is, without more, enough to pass constitutional muster in the face of a single subject challenge.

Finally, the public notice requirement of Article III, Section 3 demands that the relationship of two provisions to each other be plain on the face of the legislation and not held in secret by the members of the legislature who control the legislative process in Harrisburg. Analysis of the single subject requirement is not a parlor game in making post hoc, abstruse connections. In *DeWeese*, the Commonwealth Court held that to survive a challenge, two provisions must have a "proper relation to each other, which fairly constitute parts of a scheme to accomplish a **single, general purpose.**"

824 A.2d at 370 (emphasis added). The court then pointed out that, while the claim that obtaining DNA from felons **could** be said to “relate to the business of the courts” which was the alleged single-subject of the law, the “**main purpose** of the bill was to assist in the investigation and apprehension of criminals.” *Id.* (emphasis added). Thus, the court made clear that it was not interested in playing theoretical mind games, but rather intended to look at the actual purpose of each provision to see if there were a true nexus.

Here, it is obvious that despite ex post facto wordplay, the purpose of introducing the original bill, HB 80, which only created criminal penalties for theft of secondary metals, was never, in any way, about affecting gun rights. The Legislator Respondents’ arguments are sophistry, conjured up after-the-fact to link together two subjects that it never occurred to anybody would be, could be, should be or are linked.

D. Act 192 Violates the Original Purpose Requirement of Article III, Section 1

Article III, Section 1 prohibits the amendment of any bill so as to “change its original purpose.” As with Section 3’s mandate that legislation contain a single-subject, the courts’ interpretation of this provision has evolved over the years. For a time, the leading modern case on this issue was *Consumer Party*. In that case there was a fairly substantial change in a

bill that was introduced to alter the powers of certain county officials and was later amended to address the salaries of legislators and other Commonwealth employees.

In analyzing an original purpose challenge, the Court set a very high bar, ruling that it is inappropriate to consider any alleged deviation in purpose between the original bill and the amended bill. Instead, the courts were instructed to only consider the bill at the time of final passage, and a challenger had to show that the bill's title, at that time, gave legislators inadequate notice of the contents of the bill so that they were prevented from being able to "vote on it with circumspection." *Consumer Party*, 507 A.2d at 335. This test proved exceedingly difficult for a challenger to meet, in part because it left unclear how much actual notice was necessary to give a legislator sufficient time for circumspection. Further, this test arguably disregarded the specific language of Article III, which spoke of a bill being "altered or amended," and not merely of providing ample notice of the final product.

In 2005, the Supreme Court agreed that the test was too stringent, and changed it. In *PAGE*, the Court began by recognizing that the *Consumer Party* test was proving difficult for the lower courts to use, and that it "has not always been strictly and faithfully followed by our lower courts," 877

A.2d at 408. The Supreme Court then acknowledged the problems with the final-product rule:

Upon closer inspection of our now close to twenty-year-old decision, we find the analysis offered in *Consumer Party* ... fails to give full significance to the language employed in the constitutional provision itself - “change its original purpose.” This verbiage certainly suggests a comparative analysis, that is, some form of comparison between the “original” purpose and a final purpose to determine whether an unconstitutional alteration or amendment has occurred so as to change the original purpose of the bill. It also suggests an aim broader than just ensuring that the title and contents of the final bill are not deceptive, but also includes a desire for some degree of continuity in object or intention.

Id. at 408.

This Court applied the new standard shortly thereafter in *Marcavage*. In that case, the petitioners challenged Act 143 of 2002, which began as a bill to amend the Crimes Code to add the crime of agricultural crop destruction. The bill was later amended to add the crime of ethnic intimidation. After being arrested and charged under the ethnic intimidation statute, the petitioners challenged Act 143 under various provisions of Article III. The respondents argued that the bill had not varied from its original purpose, which was to amend the Crimes Code. The Court soundly rejected the argument, declared the law unconstitutional under Section 1 and stated: “to conclude that the General Assembly could initiate a piece of legislation in the context of the Crimes Code and rely on this concept as a

unifying justification for amendments to bills under the Crimes Code that have no nexus to the conduct to which the original legislation was directed would stretch the Supreme Court's meaning of 'reasonably broad terms.'”
Marcavage, 936 A.2d at 193.

The Respondents' only argument on the “comparison” part of the test is the remarkable claim that a bill introduced to create criminal penalties for theft of secondary metals, and an amendment, added 22 months later, creating a civil cause of action and remedies against municipalities for passing gun ordinances, were really the same subject and aimed at the same purpose after all. Their position is that the gun amendment did not change the purpose of the original bill in the least. As discussed above, the argument is utterly without merit. We are unaware of any case law to support the proposition that an unstated, hidden purpose, that no one could possibly have discerned, can save a bill from a change-of-purpose challenge.

In addressing the “deception” test, some of the Respondents, at least, seem to believe that notice to legislators (even last minute notice) of the potential passage of legislation is sufficient. That is an incorrect reading of the law. Article III is designed to protect from deceptive practices not only individual legislators, but also the public. That is why adding major amendments on less than 24 hours notice on the last day of a legislative

session has always been viewed skeptically by the courts. *See, e.g., City of Phila.*, 838 A.2d at 575 (“it is exactly such 24 hour legislation that the Constitutional amendments of 1874 were meant to prohibit”).

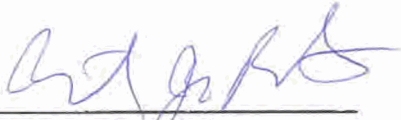
Any fair reading of Act 192 as passed reveals two wholly unrelated parts, each a stranger to the other in concept, and joined only in a marriage of political convenience. Further, this was a shot-gun marriage, rushed through at the last possible moment in an effort to sneak a bill, which had gained absolutely no traction as a free-standing bill, into the law books as the lights were being turned out on the legislative session. Act 192 started with one purpose and was hijacked by the gun lobby for a different purpose. Act 192 is unconstitutional and must be struck down.

CONCLUSION

For the reasons stated herein, the Petitioners contend that Act 192 of 2014 violates Article III, Sections 1 and 3 of the Pennsylvania Constitution, and thus should be declared unconstitutional.

Respectfully submitted,

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January 16, 2015

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DAYLIN LEACH, Minority Chairman of the
Senate Judiciary Committee and Senator
Representing the 17th Senatorial District,
VINCENT J. HUGHES, Senator Representing
the 7th Senatorial District, LAWRENCE M.
FARNESE, Senator Representing the 1st
Senatorial District, CHERELLE L. PARKER,
Representative for the 200th House District,
EDWARD C. GAINNEY, Representative for the
24th House District, the CITY OF
PHILADELPHIA, the CITY OF PITTSBURGH,
and the CITY OF LANCASTER

Petitioners,

V.

No. 585 MD 2014
ORIGINAL
JURISDICTION

COMMONWEALTH OF PENNSYLVANIA, :
SAMUEL H. SMITH, Speaker of the House of :
Representatives, JAMES F. CAWLEY, Lieutenant :
Governor of the Commonwealth of Pennsylvania, :
and THOMAS WINGETT CORBETT, :
Governor of the Commonwealth of Pennsylvania, :

Respondents.

CERTIFICATE OF COMPLIANCE WITH Pa. R.A.P. 2135

I hereby certify that the Brief in Support of Petitioners' Motion
for Summary Relief contains 6900 words, and therefore satisfies the

requirements of Rule 2135 of the Pennsylvania Rules of Appellate
Procedure.

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