

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

FRIENDS OF DANNY DEVITO, :
et al. : No. 68 MM 2020
Petitioners :
v. :
TOM WOLF, GOVERNOR, AND :
RACHEL LEVINE, SECRETARY OF :
PA DEPARTMENT OF HEALTH, :
Respondents :
:

**BRIEF FOR AMICUS CURIAE OF THE
CITY OF PITTSBURGH IN SUPPORT OF GOVERNOR WOLF
AND SECRETARY LEVINE’S ANSWER TO THE EMERGENCY
APPLICATION FOR EXTRAORDINARY RELIEF**

I. STATEMENT OF INTEREST OF AMICUS CURIAE

The City of Pittsburgh is the second most populated City within the Commonwealth of Pennsylvania, with a population of 303,000 residing within a 55 square mile range. It also houses approximately 18 of the hospitals serving Pennsylvania’s southwestern region. The region is home to a population of approximately 3 million people.¹

¹ <https://www.alleghenycounty.us/Health-Department/Resources/COVID-19/Information-for-Residents.aspx>. (Last visited April 2, 2020).

In its efforts to respond to advice from the United States Centers for Disease Control and Prevention, public health officials and epidemiology experts, the Mayor of the City declared a disaster emergency on March 13, 2020, in accordance with City of Pittsburgh Code and the Pennsylvania Emergency Management Code, to exercise the powers provided to a Commonwealth political subdivision in 35 Pa.C.S. §7501(d). On March 17, 2020, Pittsburgh City Council renewed and extended the effect of Mayor's Emergency Declaration until April 10, 2020. The Mayor will also be seeking a further extension of the Emergency Declaration next week. The intention of Pittsburgh's Emergency Declaration is to encourage aggressive social mitigation efforts and to allow the City of Pittsburgh to take measures to reduce the possibility of exposure to COVID-19 and to promote the health and safety of City of Pittsburgh residents. To date, no vaccine is available against this rapidly spreading disease. According to the Allegheny County Health Department, we expect that 20% of those infected will need to be hospitalized.² For southwestern Pennsylvania, that means tens of thousands of patients will need intensive care and breathing support to recover.³ "Our world-class hospitals can

² <https://www.alleghenycounty.us/Health-Department/Resources/COVID-19/Information-for-Residents.aspx>. (Last visited April 2, 2020).

³ Id.

only handle a very small portion of this number at any one time.”⁴

Between January 21st and April 2nd, 2020, 4,513 of the 213,144 COVID-19 patients in the United States have died.⁵ The recorded mortality rate of this disease, world-wide, is more than 5%.⁶

Pittsburgh’s local health department advises that “[t]he best hope we have for averting this catastrophic outcome is to take aggressive action to dramatically slow down the spread of the virus in our community. By slowing down the spread of the virus, the slower rate of spread will allow our hospitals to handle the volume of critically ill patients.”⁷

The mitigation steps taken by Governor Wolf have served to further protect the residents of the City of Pittsburgh.

II. ARGUMENT

The City of Pittsburgh (Pittsburgh), as *Amicus Curiae*, writes in support of the position of Respondents, Governor Tom Wolf and Secretary Levine. Pittsburgh is a second-class city operating under the parameters of its Home

⁴ Id.

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>. (Last visited April 2, 2020).

⁶ https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200321-sitrep-61-covid-19.pdf?sfvrsn=6aa18912_2. (Number derived from the site’s report of Global cases = 896,450. Total reported deaths = 45,526). WHO’s Risk Assessment of COVID-19 is “Very High”. (Last visited April 2, 2020).

⁷ <https://www.allegheycounty.us/Health-Department/Resources/COVID-19/Information-for-Residents.aspx>. (Last visited April 2, 2020).

Rule Charter. Pittsburgh incorporates by reference the arguments made by Governor Wolf and Secretary Levine in their Answer to the Emergency Application for Extraordinary Relief. Pittsburgh further augments the Governor's position, in particular, asking this Court to consider the potential for the overrunning of the regional health care system, should the Governor's efforts be hindered.

On March 13 2020, the Mayor of Pittsburgh declared a disaster emergency.⁸ Echoing the concerns set forth by the Governor's March 6, 2020 Proclamation of Disaster Emergency, Pittsburgh took numerous steps to protect its citizens from the COVID-19 virus. Those steps included the cancellation or limitation of large gatherings; the cancellation or limitation of events or gatherings that require a City issued permit; and the encouraged use of social distancing to prevent exposure and transmission. As of the March 13, 2020 declaration of disaster emergency by Pittsburgh, there were 20 presumed positive cases of COVID-19 cases in the Commonwealth and 2 confirmed cases within the Commonwealth. As of early this morning, April 3, 2020, the Pennsylvania Department of Health reports 7,016 confirmed cases with 90 deaths, including Allegheny County's case count of 419 and 2 deaths.⁹

⁸ See Emergency Declaration of the City of Pittsburgh (Exhibit A)

⁹ <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx> (Last visited April 2, 2020).

This is more than a 35,000% increase within twenty-one days. In the wake of this exponential growth of COVID-19, the petitioners, doggedly and myopically, seek to continue engaging in their personal business actions, without concern to the effects upon fellow Pennsylvanians. In essence, they assert that their rights to engage in commerce/activity outweigh the Governor and Secretary's rights to protect the entirety of the populace of the Commonwealth. Respondents have ably discredited the positions of the petitioner in their Answer, to the Emergency Application for Extraordinary Relief and their Brief for Respondents in Opposition to the Emergency Application for Extraordinary Relief . Pittsburgh, as host to a multitude of hospitals and health care providers servicing all of Western Pennsylvania, fully supports the Respondents efforts. Failure of efforts to contain COVID-19 "flatten the curve" will likely lead to an overwhelming of the health care resources available to Pittsburghers and residents of the surrounding areas

In 2018, the Pittsburgh region had 8,130 general hospital beds¹⁰ A recent study by the Harvard Global Health Institute, affiliated with Harvard University, determined that sixty-six percent of those beds were already occupied, leaving approximately 2740 available beds. Even a moderate

¹⁰ [.post-gazette.com/business/healthcare-business/2020/03/22/harvard-global-health-institute-univeristy-Pittsburgh-COVID-19-outbreak-hospital-beds/stories/202003](https://www.post-gazette.com/business/healthcare-business/2020/03/22/harvard-global-health-institute-univeristy-Pittsburgh-COVID-19-outbreak-hospital-beds/stories/202003)

outbreak of COVID-19, lasting for 12 months, would require 6,570 beds. The crush of patients would easily overrun the regions capacity. *Id.*

The Governor's March 19 2020 Executive Order requires the closure of all businesses that are not Life Sustaining. (March 19 Order) This order, if allowed to be carried out, will logically cause a great reduction in social interactions. Those interactions are one of, if not the primary method by which the COVID-19 virus spreads. The elimination/reduction of the spread of the virus is of great benefit to the public. Petitioners wish to strike down the entirety of the order that compels individuals to stop interacting. Such a holding would allow for unlimited human contact, resulting in exponential spread of the virus. The narrowmindedness and self-serving nature of this request is, frankly, staggering. Any reasonable person would recognize the economic difficulties inherent in a "no contact" situation, as created. Equally reasonable, however, is the recognition of the duties of the executive and administrative branches of the Commonwealth to respond to a worldwide epidemic that threatens the health and lives of all residents of Pennsylvania.

King's Bench authority is generally invoked to review an issue of public importance that requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law. *In re Bruno*, 101 A.3d at 670, *Com. v. Williams*, 634 Pa. 290, 302-03,

129 A.3d 1199, 1206 (2015) Pittsburgh agrees with all parties that the current situation justifies this Court's involvement. In *Williams*, this Court further set forth its obligations, when exercising such a review:

In exercising King's Bench authority, our "principal obligations are to conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system, all for the protection of the citizens of this Commonwealth." (citations omitted).

Id at 303.

The Court thus acts, in overseeing the integrity of the judicial system, **for the protection of the citizens of the Commonwealth** (emphasis added) Pittsburgh points out the obvious, that the physical health and well-being of the residents is equally important to them as a fair and impartial legal system. Thus, it is incumbent upon this Court to act for the well-being of all of the citizenry in this time of risk and contagion.

The evidence of the benefits to the public by the enacting, and full implementation of the order, particularly reducing social interactions, cannot reasonably be contradicted. Pittsburgh further urges this Court to review this action through the somewhat similar standards of a request for injunctive relief, which requires a party seeking extraordinary relief to show that "the preliminary injunction will **not** adversely affect the public interest. *Marcellus Shale Coal. v.*

Dep't of Env'tl. Prot. of Commonwealth, 646 Pa. 482, 530, 185 A.3d 985, 1014 (2018).

The Governor and the Secretary, with the benefit of highly trained expert staff in the area of public health, especially that of disease prevention and control, have taken reasonable – although harsh – action, explicitly authorized by the General Assembly's Emergency Management Services Code. These actions were informed by the fact that voluntary compliance with social distancing was proving insufficient to flatten the curve on the pace of community spread of COVID-19. Continued reliance upon voluntary compliance with expert advice is projected to lead to an overwhelmed healthcare system. As we've learned from the examples of other countries, definite action is necessary to have any hope of the best possible survival rate for the residents of this Commonwealth.

Pittsburgh does not make light of the sacrifices its citizens will endure during these trying times. However, on balance, the temporary loss of revenue/business cannot override the existential public health crises facing the Commonwealth and its municipalities. Where an adverse effect upon the public will result from the issuance of a preliminary injunction, it should not be granted *Valley Forge Historical Soc. v. Washington Mem'l Chapel*, 493 Pa. 491, 501, 426 A.2d 1123, 1129 (1981). Pittsburgh requests this Court recognize the severe harm that

would occur to the health care industry in Western Pennsylvania that would be caused by granting the relief requested by Petitioners.

III. CONCLUSION

Based upon the foregoing, the City of Pittsburgh requests this Honorable Court deny petitioners' Emergency Application for Extraordinary Relief.

Respectfully submitted,

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April 6, 2020

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EMERGENCY DECLARATION

Resolution providing for a Declaration of Emergency issued by the Mayor of the City of Pittsburgh in accordance with City of Pittsburgh Code §113.03 and the Pennsylvania Emergency Management Services Code, 35 Pa. C.S. §§7101 *et seq.*, as it pertains to the existing public health emergency associated with the spread of coronavirus.

Body

WHEREAS, a novel coronavirus (now known as "COVID-19") emerged in Wuhan, China, began infecting humans in December 2019, and has since spread to 89 countries, including the United States; and

WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention ("CDC") have declared COVID-19 a "public health emergency of international concern," and the U.S. Department of Health and Human Services ("HHS") Secretary has declared that COVID-19 creates a public health emergency; and

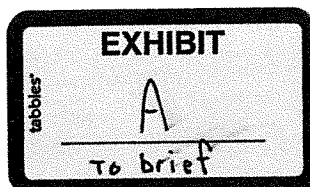
WHEREAS, the Commonwealth of Pennsylvania ("Commonwealth") has been working in collaboration with the CDC, HHS, and local health agencies since December 2019 to monitor and plan for the containment and subsequent mitigation of COVID-19; and

WHEREAS, COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death; and

WHEREAS, as of March 12, 2020, pursuant to information from the CDC, there are at least 1,215 confirmed and/or presumed positive cases of COVID-19 in the United States, including 20 presumed positive cases in the Commonwealth and 2 confirmed positive cases in the Commonwealth; and

WHEREAS, with 20 presumed positive cases and 2 confirmed positive cases in the Commonwealth as of March 12, 2020, the possible increased threat from COVID-19 constitutes a threat of imminent disaster to the health of the citizens of the City of Pittsburgh; and

WHEREAS, Governor Tom Wolf has issued a Proclamation of Disaster of Emergency dated March 6, 2020, stating in part that it is critical to prepare for and respond to suspected or



confirmed cases in the Commonwealth and to implement measures to mitigate the spread of COVID-19; and

WHEREAS, on March 12, 2020, Governor Tom Wolf recommended and encouraged events with more than 250 attendees to be canceled or postponed, strongly discouraging people from going to “recreational activities” in public places like gyms, movie theaters and stores, and asked religious leaders to use their discretion to prevent the spread of COVID-19; and

WHEREAS, on March 13, 2020, Governor Tom Wolf issued an order closing all K-12 schools in the Commonwealth of Pennsylvania for at least ten (10) business days; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency to address COVID-19; and

WHEREAS, to reduce the spread of COVID-19, the United States Centers for Disease Control and Prevention has recommend implementation of community mitigation strategies to increase containment of the virus, including cancellation of large gatherings and social distancing in smaller gatherings; and

WHEREAS, Public health officials and epidemiology experts including those from the Allegheny County Health Department have determined that coronavirus is an imminent threat to the region that is certain to impact Pittsburgh and its surrounding Western Pennsylvania municipalities; and

WHEREAS, implementation of limitations on large gatherings and use of social distancing prevent initial exposure and secondary transmission to our most vulnerable populations, and are especially important for people who are over 60 years old and those with chronic health conditions due to the higher risk of severe illness and death from COVID-19; and

WHEREAS, the worldwide outbreak of COVID-19 continues to threaten the life and health of our people and remains a public disaster affecting life, health, property and the public peace; and

WHEREAS, the Mayor of the City of Pittsburgh is authorized, in accordance with the Pennsylvania Emergency Management Services Code, 35 Pa. C.S. §7501, and City Code §113.03(c), to declare a disaster emergency subject to ratification by the Council of the City of Pittsburgh; and

WHEREAS, the Mayor and the Council of the City of Pittsburgh hereby direct the City of Pittsburgh Public Safety Director to coordinate the necessary activities for this emergency response, to take all appropriate action required to alleviate the effects of the coronavirus disaster emergency, to aid in the maintenance of essential public services, and to take any other lawful emergency response or action deemed necessary to protect public health, safety and welfare in the City of Pittsburgh:

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. The Council of the City of Pittsburgh, pursuant to the Pennsylvania Emergency Management Services Code, 35 Pa. C.S. §7501 and the City of Pittsburgh Code, Title One, Administrative, Subsection 113.03(c)(3), hereby authorize the Declaration of Disaster Emergency issued by the Mayor of the City of Pittsburgh in order to take all necessary actions and precautions to protect the local public from the dangers of the coronavirus.

Section 2. The Declaration of Disaster Emergency as authorized herein shall not be of a duration longer for a time period not in excess of seven (7) days except by or with the consent of the Council of the City of Pittsburgh in accordance with 35 Pa. C.S. §7501(b) and City Code §113.03(c)(3).

Section 3. Pursuant to 35 Pa. C.S. §7501(b), this Declaration shall activate the response, protection and recovery aspects of any and all applicable local emergency management plans including, but not limited to, those addressed in the 2001 Southwestern PA Emergency Response Group (“SWPERG”) agreement adopted by the City of Pittsburgh for mutual aid and intergovernmental cooperation as required by 35 Pa. C.S. §7503 and any other such intrastate or interstate mutual aid agreements entered into by the City of Pittsburgh pursuant to 35 Pa. C.S. §§7301 *et seq.*, 35 Pa. C.S. §7504, the Pennsylvania Intergovernmental Cooperation Act, 53 Pa. C.S. §§2301 *et seq.*, or any other applicable state or federal law, in order to furnish aid and assistance as provided therein.

Section 4. Subject to applicable law, the Mayor or his appropriate designee may adopt and implement precautionary measures to mitigate the anticipated effects of this disaster and is authorized to execute and enforce any such rules or orders that it has adopted and promulgated with regard to said precautionary measures. These measures may include, but are not limited to:

- a. the cancellation or limitation of large gatherings;
- b. the cancellation or limitation of events or gathering that require a City issued permit or permits;
- c. the encouraged use of social distancing to prevent initial exposure and secondary transmission;
- d. the cancellation or limitation of selected City services; and
- e. the cancellation or limitation of any other activities or conduct, whether of a public or private nature, that could increase exposure or secondary transmission or are otherwise risks to public health and safety.

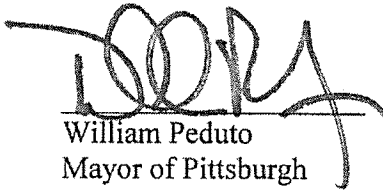
Section 5. The Mayor and the City, Director of Public Safety shall be permitted to exercise all legal authority permitted by State Statute and City Code

Section 6. Pursuant to this Declaration of Disaster Emergency, all City Departments are to work in coordination with the Director of Public Safety to implement and facilitate the provisions of this Declaration.

Section 7. In accordance with 35 Pa. C.S. §7501(b), this declaration or any related order, proclamation or statement shall be given prompt and general publicity and shall be filed promptly with the Pennsylvania Emergency Management Agency.

Section 8. As provided in 35 Pa. C.S. §7501(d), the City of Pittsburgh is authorized by this Declaration to exercise the powers provided in the Pennsylvania Emergency Management Services Code without regard to time-consuming procedures and formalities prescribed by law, except for mandatory constitutional requirements, pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes and the appropriation and expenditure of public funds.

Section 9. Any agreements entered into by the City of Pittsburgh as provided herein shall be approved as to form by the City Solicitor.



William Peduto
Mayor of Pittsburgh

CERTIFICATE OF COUNSEL

I hereby certify that this brief contains 1871 words within the meaning of Pa. R. App. Proc. 2135. In making this certificate, I have relied on the word count of the word-processing system used to prepare the brief.

I further certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Michael E. Kennedy

Michael E. Kennedy
Associate City Solicitor

CERTIFICATE OF SERVICE

I, Michael E. Kennedy, Associate City Solicitor, do hereby certify that I have this day served the foregoing application for leave to file nunc pro tunc amicus brief and the proposed brief, via electronic service, on the following:

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DATE: April 6, 2020