COMMONWEALTH OF MASSACHUSETTS
SJC-12983

Supreme Judicial Court

DAWN DESROSIERS, and DAWN DESROSIERS D/B/A HAIR 4 YOU, and SUSAN KUPELIAN, and NAZARETH KUPELIAN, and NAZ KUPELIAN SALON, and CARLA AGRIPPINO-GOMES, and TERRAMIA, INC., and ANTICO FORNO, INC., and JAMES P. MONTORO, and PIONEER VALLEY BAPTIST CHURCH INCORPORATED, and KELLIE FALLON, and BARE BOTTOM TANNING SALON, and THOMAS E. FALLON, and THOMAS E. FALLON D/B/A UNION STREET BOXING, and ROBERT WALKER, and APEX ENTERTAINMENT LLC, and DEVENS COMMON CONFERENCE CENTER LLC, and LUIS MORALES, and VIDA REAL EVANGELICAL CENTER, and BEN HASKELL, and TRINITY CHRISTIAN ACADEMY OF CAPE COD, *Petitioners*,

v.

CHARLES D. BAKER, JR., in his official capacity as the Governor of the Commonwealth of Massachusetts, *Respondent*.

ON RESERVATION AND REPORT FROM THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

REPLY BRIEF OF PETITIONERS

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Dated: September 2, 2020

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INTRODUCTION

Petitioners seek to restore constitutional governance to the Commonwealth not only for the sake of constitutional principles, but also for the health and welfare of Massachusetts residents. Governor Baker's decrees have extended COVID-19's misery to virtually everyone, including the healthy, by unnecessarily creating social, economic, educational, and spiritual crises on top of the health crisis. His decrees were doomed to failure—not for want of good intention or effort, but because the executive department is ill-suited to the task of securing the health and welfare of citizens simultaneously.

The legislative department, with centuries of experience combating infectious diseases, is eminently capable of rapidly restoring Massachusetts to its pre-coronavirus vitality. Hundreds of healthcare professionals and local boards of health across the Commonwealth stand ready to implement the Public Health Act to craft community-specific solutions to address their communities' unique needs. If broader regulations are necessary, the General Court can pass additional disease-mitigation measures. Securing ***both*** residents' health ***and*** welfare ***is*** possible, but only if this Court restores the rule of law that has been breached during this health crisis. It is therefore the duty of the Supreme Judicial Court to invalidate Governor Baker's declaration of a Civil Defense State of Emergency and declare that all Orders issued pursuant to it are invalid and unenforceable.

ARGUMENT

I. GOVERNOR BAKER'S ASSERTION THAT HE MAY DEFINE THE SCOPE OF HIS OWN AUTHORITY DUE TO THE PANDEMIC'S SEVERITY IS COUNTER-CONSTITUTIONAL

A. Governor Baker Cannot Avoid Application of *Ejusdem Generis* to Establish the Outer Limit of the Civil Defense Act's General Statutory Terms

Ejusdem generis is a canon of statutory interpretation that Massachusetts courts apply to ***every*** statutory list containing "general terms which follow specific ones" to "matters similar to those specified" if those terms are not defined elsewhere in the statute. *See, e.g.*, *Commonwealth v. Escobar*, 479 Mass. 225, 228 (2018) (collecting cases) (internal quotations omitted). The canon's application is not, contrary to Respondent's claim, limited to "unclear" statutory language.[1] Resp.Br. 32. Indeed, the case he cites in support of his erroneous proposition cuts the other way. This Court has explained that if a general phrase in a statute is not limited by the preceding specific words "the more general term would always strip the more specific terms of any meaning whatsoever." *Escobar*, 479 Mass. at 229.[2]

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[1] Other canons such as *expressio unius*, *noscitur a sociis*, *casus omissus*, and non-surplusage would also support Petitioners' reading of the relevant statutes.

[2] The Pennsylvania Supreme Court did not hold that the "canon of *ejusdem generis* is inapplicable to the interpretation of the term 'natural disaster[,]'" as Respondent claims. Resp.Br. 32. The court instead said that *ejusdem generis* is "used for the sole purpose of determining the intent of the [legislature,]" so it cannot contradict legislative intent. *See Friends of DeVito v. Wolf*, 227 A.3d 872, 889 (Pa. 2020).

Respondent also never explains why this Court should ignore the qualifier "other," which precedes "natural causes." "Other" is a qualifier serving to "cabin ['natural causes'] even further[.]" *See Mammoet USA, Inc. v. Entergy Nuclear Gen. Co.*, 64 Mass. App. Ct. 37, 42 (2005).

B. The Phrase "Other Natural Causes" Does Not Empower the Governor to Decide *Which* Natural Causes Fall Under the Civil Defense Act

By reading the statute as granting him "broad discretion … to determine whether a disaster arises from an "other natural cause[,]" Respondent offers this Court no limiting principle to his power. *See* Resp.Br. 25. No authority supports such a broad reading of the Act, including the 1943 Attorney General's Opinion upon which Respondent relies. The 1943 Opinion—issued during World War II and under a war powers statute—simply noted that "in the interest of the war effort," the governor ***might*** have authority to construct a bridge. Op. of the Atty. Gen., at 68 (Aug. 18, 1943) (Resp.Br. Add. 215-17). That Opinion, in other words, not only examined an entirely different statute "arising out of the present [war] emergency," it merely suggested that the governor may decide ***how*** to address what was statutorily defined as an emergency. *Id.* at 69. It is flat wrong to represent that the Opinion granted to the governor the authority to determine ***which*** emergencies can be considered civil defense emergencies. *Id.* at 69. It said nothing of the sort, and Respondent points to no authority construing the Civil

Defense Act (or "CDA") in accordance with his novel and boundless interpretation.

This Court cannot defer to the Governor's definition of the limits of his own authority—which he claims to be "any and all authority over persons and property[.]" Resp.Br. 28 (quoting St. 1950, c. 639, § 7). Statutory interpretation is a core judicial function. *Compare Boston Police Patrolmen's Ass'n v. City of Boston*, 435 Mass. 718, 719 (2002) ("Statutory interpretation is a question of law for the court.") *with* Decl. of Rights, art. XXX. With good reason, this Court has never deferred to a governor's interpretation of the scope of his or her authority, nor should it start now. *See, e.g.*, *Levy v. Acting Governor*, 436 Mass. 736, 745-46 (2002) (rejecting governor's claim that she was entitled to deference for her actions because the nature of the challenge itself was to whether the governor had authority to act in the first instance).

C. Governor Baker Offers No Authority to Support His Assertion that a Pandemic Is a Civil Defense Emergency

The 156th General Court knew of the existence of the Public Health Act and its intended purpose of suppressing the spread of disease. It would therefore have had no reason to include ***any*** disease within the ambit of the CDA—no matter how "extraordinary." *See Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd.*, 457 Mass. 663, 673 (2010).

Governor Baker has offered two arguments in support of his unprecedented request that ***this*** Court—rather than the General Court—add "extraordinary circumstances" to the CDA, and both are unavailing. He first provides statistics regarding the seriousness of COVID-19, which petitioners do not dispute, but that have no bearing on the question before this Court: is a pandemic a ***civil defense*** emergency under the Act? Respondent next leans upon a Pennsylvania Supreme Court case, the outcome of which depended on ***dissimilar*** statutory language and authority. In *Friends of DeVito*, Governor Wolf did ***not*** rely on a civil defense statute. *DeVito*, 227 A.3d at 880. Unlike the CDA in Massachusetts, Pennsylvania does not limit the term "disaster emergency." 35 Pa. Cons. Stat. § 7102. "Disaster" itself is broadly defined in Pennsylvania as a "man-made disaster, natural disaster or war-caused disaster[.]" *Id.* The statutory analysis in *DeVito* is therefore inapplicable to ***this*** matter.[3]

Massachusetts is unlike Pennsylvania. The General Court chose to divide emergency authority and responsibility among ***three separate*** statutory schemes: (1) the Civil Defense Act; (2) the Department of Public Health (DPH) Act; and (3) the Public Health Act—depending on the nature of the emergency at hand. The Governor cannot conflate the separate Acts to expand his own authority.

[3] Respondent's reliance on Florida law is also misplaced. The Florida Supreme Court not explain its reasoning in its one-page unpublished decision. *Abramson v. Desantis*, No. SC20-646, 2020 Fla. LEXIS 1054, *1 (June 25, 2020).

D. Governor Baker's Interpretation of the Civil Defense Act Creates Statutory Disharmony with the Public Health Act

This Court has ruled that "[i]n the ***absence*** of explicit legislative commands to the contrary, we construe statutes to harmonize and not to undercut each other." *Sch. Comm. of Newton v. Newton Sch. Custodians Ass'n, Local 454*, 438 Mass. 739, 751 (2003) (emphasis added). The CDA and the PHA must therefore be ***harmonized*** so that they ***do not*** conflict. Governor Baker has turned that concept on its head, asserting that Petitioners

> point to no "explicit legislative commands" in G.L. c. 111 that preclude the Governor from acting under the CDA to supplement actions taken by the Department of Public Health and local health boards pursuant to c. 111.

Resp.Br. 36. The Governor's argument unabashedly "disharmonizes" the statutes. A chart identifying the Orders that disharmonize the PHA from the CDA is attached as Addendum Exhibit B.

II. NEITHER THE SERIOUSNESS OF THE HEALTH CRISIS NOR LEGISLATIVE FECKLESSNESS AUTHORIZES GOVERNOR BAKER'S SEPARATION OF POWERS VIOLATIONS

A. Respondent's Orders Interfere with Legislative Functions

Breaches of Article XXX's separation of powers occur when one branch of government "interfere[s] with the functions of [another] branch of government." *Opinion of the Justices*, 375 Mass. 795, 813 (1978). This Court has been clear that "it is for the Legislature, and not the executive branch, to determine finally which

social objectives or programs are worthy of pursuit." *Id.* at 833. Indeed, "[i]t is not within the Governor's official competence to decide that the objectives of any validly enacted law are unwise and, therefore, that no effort will be made to accomplish such objectives." *Id.* at 834.

Respondent wrongly conflates permissible ***discretionary*** acts in executing laws, with his unconstitutional ***refusal*** to execute pandemic-mitigation policies enacted by the legislature pursuant to the PHA. *See* Resp.Br. 39. While Respondent may believe that the Civil Defense Act would better protect against disease than the PHA, this is merely an expression of his "view[] regarding the social utility or wisdom of the law[,]" which is not a governor's constitutional prerogative. *Opinion of the Justices*, 375 Mass. at 834-35. Displacing legislative policy with executive policy violates Article XXX by "defeating legislative objectives."[4] *Id.*

To support his assertion that the legislature may "make any part of the CDA 'inoperative by the adoption of a joint resolution[,]'" Respondent cites the Pennsylvania case, *Friends of DeVito*. Resp.Br. 43. He neglects to mention, however, that the General Assembly's attempt to end Governor Wolf's state of emergency by joint resolution was "a legal nullity." *Wolf v. Scarnati*, No. 104 MM 2020, 2020 Pa. LEXIS 3603, *55 (Pa. July 1, 2020). The court held that a joint

[4] All Orders violate Article XXX, as shown in Addendum Exhibit A.

resolution ending the state of emergency required Governor Wolf's signature or a veto-override in the General Assembly. *See id.* A veto-proof supermajority in the General Court ending the Civil Defense State of Emergency is chimerical.[5] Indeed, Governor Baker's logic turns the separation of powers on its head; rather than have a constitution under which single-branch lawmaking is forbidden, he would create a regime that permits his single-branch lawmaking unless overturned by a veto-proof majority in both houses of the legislature.

B. The General Court's Duty to Legislate the Police Power Is Nondelegable and Governor Baker Has No Authority to Dispense with the Law

The legislature may only delegate "the ***details*** of a policy established by the General Court[,]" not its lawmaking authority.[6] *See Risk Mgmt. Found. v. Comm'r of Ins.*, 407 Mass. 498, 507 (1990) (emphasis added). The General Court did not delegate the legislative authority to enact, amend, or dispense with the law to the governor, even if (*arguendo*) a pandemic is a civil defense emergency. Nor could the legislature do so, because the Massachusetts Constitution "prohibits the

[5] Similarly unavailing is Respondent's argument that the legislature could refuse to fund the governor's actions. *See* Resp.Br. 37. The Orders require no appropriations and the governor could veto any attempt to interrupt funding during the fiscal year.

[6] Respondent is wrong to state that Petitioners have not made a nondelegation argument. *See, e.g.*, Pet.Br. 34 ("[T]he Power to Legislate Cannot Be Delegated to Another Branch").

executive department from exercising legislative power." *Opinion of the Justices*, 430 Mass. 1201, 1203-04 (1999).

Respondent's discretionary authority is limited to implementing the details of legislative policy. Many of Governor Baker's Orders, however, cross the line—from effectuating legislative policy into enacting his own.

The CDA allows the "***suspension*** of the operation of [law]" in certain circumstances. St. 1950, c. 639, § 7(k) (emphasis added). Neither the Massachusetts Constitution nor the CDA authorizes the governor to dispense with the law. "Suspension" temporarily nullifies the law, affecting all people equally. *In re Picquet*, 22 Mass. 65, 69-70 (1827). In the event of an earthquake, for example, Governor Baker may ***suspend*** the law to close ***all*** businesses, churches, schools, parks, and beaches. But that is not what he has done here. He has instead donned the mantle and crown and pointed his royal scepter to ***dispense*** with the law, by closing and reopening ***some*** businesses, churches, schools, parks, and beaches under his conditions. "Suspending" and "dispensing" are not the same thing, and this Court has "not [found] any such dispensing power in the constitution."[7] *Id.*

[7] A chart identifying the Orders that unconstitutionally dispense with the law is attached as Addendum Exhibit C.

Respondent has not attempted to reconcile his assertion that the CDA's authority to ***suspend*** the law is somehow the equivalent of his ***dispensing*** with it, by which he grants benefits to some, and not to others, who are similarly situated. In addition to his Orders inflicting criminal penalties unequally on similarly situated individuals, Respondent has decreed his own civil penalties. Thus, even if a pandemic were a civil defense emergency, at least 20 Orders still violate Article XXX because Governor Baker is implementing forbidden executive policy and dispensing with the law.

C. The General Court Has Not Ratified Respondent's *Ultra Vires* and Unconstitutional Acts, Nor Could It

There are three primary reasons as to why the General Court has not ratified Governor Baker's violation of the separation of powers. First, the legislature cannot ratify the governor's ***unconstitutional*** acts. It is that simple.

Second, the General Court could ratify Governor Baker's *ultra vires* acts ***only*** "if the Legislature could have originally granted such authority to the officer, provided vested rights are not impaired by such subsequent legislation." *Nichols v. Comm'r of Pub. Welfare*, 311 Mass. 125, 128-29 (1942). Because the legislature could not delegate its lawmaking authority to the governor (*see supra* § II.B), it lacks the authority to ratify his efforts at lawmaking. Moreover, the General Court has "no power to suspend the operation of a general law in favor of an individual[,]" as Governor Baker has done with his Orders. Article X guarantees

individuals "a right to be protected … in the enjoyment of his life, liberty, and property, according to standing laws." *Comm'r of Pub. Health v. Burke Mem. Hosp.*, 366 Mass. 734, 741-42 (1975).

> It is manifestly contrary to the first principles of civil liberty and natural justice, and to the spirit of our constitution and laws, that any one citizen should enjoy privileges and advantages, which are denied to all others under like circumstances[.]

Id. at 742. At least 20 Orders unconstitutionally bestow privileges and advantages to some, over others who are similarly situated. *See supra* n.7. Each Petitioner's liberty and property interests—interests protected by standing laws—have been injured by the governor's Orders that unconstitutionally dispense with the law, which even the legislature could not dispense. *Burke Mem. Hosp.*, 366 Mass. at 742-43.

Third, the fact that the legislature has not passed an express ratification of the Civil Defense State of Emergency or declared its own state of emergency is irrelevant to the questions presented, as is Respondent's opinion that laws have been passed that "approvingly acknowledge the state of emergency" (Resp.Br. 31). *See Dir. of Civ. Def. Agency v. Civil Serv. Com.*, 373 Mass. 401, 409 (1977) (explaining that legislative inaction could not be taken as approval or disapproval of a governor's requests to validate his acts). Regardless, the legislature could not ratify Governor Baker's declaration or Orders.

III. GOVERNOR BAKER'S ORDERS HAVE VIOLATED PETITIONERS' CONSTITUTIONAL RIGHTS

A. *Jacobson* Does Not Afford Deference to Governor Baker's Deprivations of Petitioners' Liberty and Property Interests

The United States Supreme Court has held that disease-mitigation policy "was for the ***legislative department*** to determine in the light of all the information it had or could obtain." *Jacobson v. Massachusetts*, 197 U.S. 11, 30 (1905) (emphasis added). The Court concluded that it would violate the separation of powers for the ***court*** to determine the best means for protecting the public against disease. *Id.* Governor Baker is therefore wrong to assert that *Jacobson* stands for the proposition that the court should defer to the executive department's disease-mitigation policies. His argument offends the separation of powers as much as the *Jacobson* plaintiffs'.

Jacobson explained that

> the police power of a State must be held to embrace, at least, such reasonable regulations ***established directly by legislative enactment*** as will protect the public health and the public safety.
>
> * * *
>
> The good and welfare of the Commonwealth, of which the legislature is primarily the judge, is the basis on which the police power rests in Massachusetts.

Id. at 27 (emphasis added). Cambridge experienced a smallpox breakout—a disease that would kill 300 million people in the Twentieth Century.[8] The ***local***

[8] UN News *available at* https://news.un.org/en/story/2020/05/1063582.

board of health, acting pursuant to law, required residents to be vaccinated. *Id.* The Court noted that the legislature "may invest local bodies" with "authority to safeguard the public health[.]" *Id.* at 25. This policy bore a substantial relation to the threat smallpox posed. *Id.* at 35. "[T]he ***legislature*** has the right to pass laws which, according to the common belief of the people, are adapted to prevent the spread of contagious diseases." *Id.*

Not only is Governor Baker wrong about *Jacobson*'s holding, *Jacobson* indicts his usurpation of the General Court's authority to enact the PHA to prevent the spread of contagious diseases. If Governor Baker's argument prevails and his Orders have primacy over the will of the General Court, such a ruling "would conflict with the spirit of the Constitution, and would sanction measures opposed to a republican form of government." *Id.*

B. Governor Baker's Orders Are Subject to Strict Scrutiny, but Under Any Scrutiny, They Violate Petitioners' Due Process Rights

Petitioners do not contend that their substantive due process or property rights are absolute. They contend that these rights may not be burdened or deprived without due process of law, as they have been by the Governor's Orders. Pet's Brief at 36. Respondent has ignored Petitioners' argument that their due process rights are protected by standing laws. Since the Orders are not standing laws, they are subject to strict scrutiny; they are not entitled to the same standard of review as lawfully enacted legislation. *Id.*

Nevertheless, Respondent pleads that his policies are "eminently reasonable and far from arbitrary." Resp.Br. 49. The cases he cites that require a showing of conscience-shocking or arbitrariness, however, do not address circumstances such as this, where an executive is dispensing with the law. *Compare Sacramento v. Lewis*, 523 U.S. 833 (1998) (police chase resulting in death is not a denial of substantive due process); *United States v. Salerno*, 481 U.S. 739 (1987) (fairness is required before denial of substantive due process by legislative action); *In re Dutil*, 437 Mass. 9 (2002) (due process challenges to legislation adhere to the same standards as those applied to federal due process), *with* Resp.Br.49. Executive-made law—if valid, which dispensations are not—must meet a higher standard than rational basis when it burdens substantive rights. Dispensing with the law is itself arbitrary and shocking.

Even if the Court does not require Governor Baker to justify his Orders under strict scrutiny, his orders fail because they are arbitrary. As discussed in § II(B) and n.7, Respondent's dispensing with the law has granted benefits to some Commonwealth residents while burdening Petitioners. This is inherently arbitrary, a fact conceded by the governor's admission "that the Orders necessarily entail some line-drawing[.]" Resp.Br. 52-53. Such lines are not his to draw.

C. Governor Baker's Claim that the Constitution Affords Fewer Due Process Protections from Executive Overreach During a Pandemic Is Wrong

Governor Baker argues that "the Due Process Clause does not entitle individuals to notice and an opportunity to be heard before the government acts to stem a large-scale public health crisis." Resp.Br. 54. His is far too broad a reading of *Compagnie Francaise*. The quarantine of specific foreign ships entering Louisiana was the product of the Board of Health's authority pursuant to legislative authorization. *See Compagnie Francaise De Navigation v. Louisiana State Bd. of Health*, 186 U.S. 380, 386 (1902). Respondent's dispensing with the law is not legislatively authorized and is, in fact, forbidden.

Respondent also argues that his Orders are "prospective rules of general application" which do not require notice or hearing before depriving Petitioners of their liberty and property interests. Resp.Br. 55. Even assuming *arguendo* that this analysis is relevant to the Orders,[9] the depriving act must be made pursuant to a lawfully enacted regulation, not executive fiat. If the Orders are "policy-type

[9] Unlike *Florida E.C.R.*, the Orders single-out Petitioners, as their liberty and property deprivations were not "applicable across the board" to all other organizations, or even between themselves. *United States v. Florida E.C.R. Co.*, 410 U.S. 224, 246 (1973). Moreover, administrative law cannot justify the Orders' lack of due process, since the governor is excluded from the definition of an "agency" under the APA. G.L. c. 30A, § 1(2). Notably, the Supreme Court did not require a formal hearing in *Florida E.C.R.* because the rule in question was a "legislative-type judgment." *Florida E.C.R.*, 410 U.S. at 246.

rules or standards" (Resp.Br. 57), the Massachusetts APA requires a public hearing prior to implementation because the Orders are "punishable by fine or imprisonment[.]" G.L. c. 30A, § 2. Governor Baker has not held a public hearing for ***any*** of his Orders. The cases Respondent cites suggest that, at a minimum, Petitioners should have been afforded an opportunity to provide written comments prior to each Order. *See, e.g.*, *Florida E.C.R.*, 410 U.S. at 246.

D. Governor Baker's Orders Violate Petitioners' Rights to Assembly Because They Are Overly Broad and Vague

Governor Baker asserts that his Orders are content-neutral and narrowly tailored (Resp.Br. 58), but the Orders speak for themselves.[10] Not a single assembly-related Order is content-neutral or narrowly tailored. For instance, under Order 46, political and religious gatherings are not subject to the Order's limitations. Exempting such gatherings is not the concern. The concern arises from Petitioners' desire to participate in indoor and outdoor assemblies of the same size and nature as the exempt events. Additionally, Order 46 does not define "political expression." Is a barbeque with an election yard sign exempt? Such broad and vague decrees invite discriminatory enforcement, punish otherwise constitutional behavior, and are invalid.

[10] A chart identifying the Orders that regulate assembly is attached as Addendum Exhibit D.

IV. GOVERNOR BAKER'S STRAWMAN DEFENSES SHOULD BE SET ASIDE

Governor Baker's callous dismissal of the life and livelihood-altering harms suffered by Petitioners—and by extension, all Massachusetts residents—is a shameless eleventh-hour ploy to avoid judicial scrutiny. He jointly petitioned this Court to decide whether his "emergency orders violate the plaintiffs' constitutional rights to procedural and substantive due process and free assembly[.]" J. Pet. to Transfer. Justice Lenk granted his request. J.A. 55-57. Yet ***now*** he asserts that his Orders have not "personally affected" Petitioners? Resp.Br. 45. Governor Baker's audacious assertion belies his stipulation to the facts regarding the nature of Petitioners' interests and his Orders' connection to those interests (J.A. 58-59), obtusely ignores the Amended Complaint's allegations of concrete and particularized harms to Petitioners' liberty and property interests because of his Orders (J.A. 27-39, 41-51), and retracts his prior acknowledgement of Massachusetts's "unselfish compliance" with his Orders (J.A. 167).

Additionally, Governor Baker's suggestion that anything in the case could be moot due to his dispensing Orders on reopening (Resp.Br. 53 n.25) is ridiculous given the possibility of his unilaterally reversing those orders at any time. That "most" Petitioners are in Phases I-III (Resp.Br. 49) is irrelevant, since at least two

(Robert Walker and Apex Entertainment) may be in Phase IV[11] and Governor Baker reserves to himself the ostensible authority to move any or all to Phase IV or to close the entire state at any time. Whether Governor Baker's Orders violate Petitioners' constitutional rights must be decided by this Court, despite Respondent's desperate belated effort to avoid such scrutiny.

CONCLUSION

Petitioners respectfully request that the Supreme Judicial Court declare that Governor Baker's March 10, 2020 Civil Defense State of Emergency is without statutory authority and is void; that all COVID19 Orders issued pursuant to the Civil Defense State of Emergency violate the separation of powers and are void; that the identified COVID19 Orders violate the restriction on dispensing with the laws and Petitioners' rights to due process and peaceable assembly; and for such other relief that the Court may deem just and proper.

[11] Petitioner Walker does not concede this point, but acknowledges that state authorities believe a portion of Apex Entertainment may be Phase IV.

Respectfully submitted,

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Dated: September 2, 2020

CERTIFICATE OF COMPLIANCE

This Brief of Petitioners complies with the rules of the Supreme Judicial Court that pertain to the filing of briefs, including, but not limited to: Rule 16(a)(13) (addendum); Rule 16(e) (references to the record); Rule 18 (appendix to the briefs); Rule 20 (form and length of briefs, appendices, and other documents); and Rule 21 (redaction).

In compliance with the applicable length limit of Rule 20, Petitioners used proportionally spaced Times New Roman font in 14-point, in Microsoft® Word for Microsoft 365 MSO (16.0.13001.20338) 64-bit counts the number of non-excluded words at 4,446.

Michael P. DeGrandis

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2020, the foregoing Brief of Petitioners in the matter of *Desrosiers, et al. v. Baker*, SJC-12983, in the Supreme Judicial Court, was filed electronically with the Clerk of Court to be served by operation of the Court's CM/ECF system upon all counsel of record in the above-captioned case. Courtesy copies will also be emailed to Respondent.

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EXHIBIT A

Orders Violating Decl. of Rights, art. XXX

Civil Defense Act State of Emergency Executive Orders Invalid for Violating Separation of Powers | Decl. of Rights, art. XXX

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-	3/12/2020	65	66	Prohibiting Gatherings of More than 250 People
-	3/15/2020	67	68	Temporarily Closing All Public and Private Elementary and Secondary Schools
-	3/15/2020	69	70	Expanding Access to Telehealth Services and to Protect Health Care Providers
-	3/15/2020	71	72	Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink
-	3/15/2020	73	74	Authorizing the Registrar of Motor Vehicles to Temporarily Extend Licenses, Permits, and Other Identification Cards
-	3/17/2020	75	76	Expanding Access to Physician Services
-	3/17/2020	77	79	Extending the Registrations of Certain Licensed Health Care Professionals
-	3/18/2020	80	82	Extending the Registrations of Certain Licensed Professionals
-	3/18/2020	83	85	Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs
-	3/20/2020	86	87	Authorizing Actions to Reduce in-Person Transactions Associated with the Licensing, Registration, and Inspection of Motor Vehicles
-	3/20/2020	88	89	Permitting the Temporary Conditional Deferral of Certain Inspections of Residential Real Estate
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No.	Date	Joint Appendix		Order
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28	4/21/2020	154	155	Extending the Temporary Closure of All Public and Private Elementary and Secondary Schools
29	4/28/2020	156	157	Revised Order Allowing for Remote Participation for the Governor's Council
30	4/28/2020	158	160	Further Extending the closing of Certain Workplaces and the Prohibition on Gatherings of More than 10 People
31	5/1/2020	161	163	Requiring Face Coverings in Public Places Where Social Distancing is Not Possible
32	5/15/2020	164	165	Temporarily Extending COVID-19 Order No. 13
33	5/18/2020	166	174	Implementing a Phased Reopening of Workplaces and Imposing Workplace Safety Measures to Address COVID-19
34	5/18/2020	175	178	Expanding Access to and Use of State Beaches and Addressing Other Outdoor Recreational Activities
35	6/1/2020	179	186	Clarifying the Progression of the Commonwealth's Phased Workplace Re-Opening Plan and Authorizing Certain Re-Opening Preparations at Phase II Workplaces
36	6/1/2020	187	189	Authorizing Re-Opening Preparations for Child Care Programs
37	6/6/2020	190	199	Authorizing the Re-Opening of Phase II Enterprises
38	6/6/2020	200	203	Revised Order Regulating Gatherings Throughout the Commonwealth
39	6/12/2020	204	207	Second Order Authorizing Actions to Limit In-Person Transactions at the Registry of Motor Vehicles
40	6/19/2020	208	209	Further Advancing the Re-Opening of Phase II Enterprises
41	6/26/2020	210	213	Authorizing the Reopening of Child Care Programs and Rescinding Eight COVID-19 Orders
42	7/1/2020	214	217	Resuming State Permitting Deadlines and Continuing to Extend the Validity of Certain State Permits
43	7/2/2020	218	226	Authorizing the Re-Opening of Phase III Enterprises
44	7/2/2020	227	230	Second Revised Order Regulating Gatherings Throughout the Commonwealth
45	7/24/2020	231	235	Instituting a Mandatory 14-Day Quarantine Requirement for Travelers Arriving in Massachusetts
46	8/7/2020	236	240	Third Revised Order Regulating Gatherings Throughout the Commonwealth
47	8/11/2020	241	243	Extension of Second Order Authorizing Actions to Limit In-Person Transactions at the Registry of Motor Vehicles
48	8/18/2020	244	246	Amending the Administration of Penalties Issued Pursuant to Certain COVID-19 Orders

EXHIBIT B

Orders Disharmonizing Public Health Act with Civil Defense Act

Civil Defense Act State of Emergency Executive Orders Disharmonizing Public Health Act (G.L. pt. I, tit. XVI, c. 111) from Civil Defense Act (St. 1950, c. 639)

No.	Date	Joint Appendix		Order
-	3/12/2020	65	66	Prohibiting Gatherings of More than 250 People
-	3/15/2020	67	68	Temporarily Closing All Public and Private Elementary and Secondary Schools
-	3/15/2020	71	72	Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink
-	3/18/2020	83	85	Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs
13	3/23/2020	90	118	Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People
15	3/25/2020	121	122	Extending the Temporary Closing of All Non-Emergency Child Care Programs
16	3/25/2020	123	124	Extending the Temporary Closure of All Public and Private Elementary and Secondary Schools
21	3/31/2020	137	139	Extending the Closing of Certain Workplaces and the Prohibition on Gatherings of More than 10 People
22	4/2/2020	140	141	Limiting Access to and Use of State Beaches
27	4/21/2020	152	153	Extending the Temporary Closing of All Non-Emergency Child Care Programs
28	4/21/2020	154	155	Extending the Temporary Closure of All Public and Private Elementary and Secondary Schools
30	4/28/2020	158	160	Further Extending the closing of Certain Workplaces and the Prohibition on Gatherings of More than 10 People
31	5/1/2020	161	163	Requiring Face Coverings in Public Places Where Social Distancing is Not Possible
32	5/15/2020	164	165	Temporarily Extending COVID-19 Order No. 13
33	5/18/2020	166	174	Implementing a Phased Reopening of Workplaces and Imposing Workplace Safety Measures to Address COVID-19
34	5/18/2020	175	178	Expanding Access to and Use of State Beaches and Addressing Other Outdoor Recreational Activities
35	6/1/2020	179	186	Clarifying the Progression of the Commonwealth's Phased Workplace Re-Opening Plan and Authorizing Certain Re-Opening Preparations at Phase II Workplaces
36	6/1/2020	187	189	Authorizing Re-Opening Preparations for Child Care Programs
37	6/6/2020	190	199	Authorizing the Re-Opening of Phase II Enterprises
38	6/6/2020	200	203	Revised Order Regulating Gatherings Throughout the Commonwealth
39	6/12/2020	204	207	Second Order Authorizing Actions to Limit In-Person Transactions at the Registry of Motor Vehicles
40	6/19/2020	208	209	Further Advancing the Re-Opening of Phase II Enterprises
41	6/26/2020	210	213	Authorizing the Reopening of Child Care Programs and Rescinding Eight COVID-19 Orders
43	7/2/2020	218	226	Authorizing the Re-Opening of Phase III Enterprises
44	7/2/2020	227	230	Second Revised Order Regulating Gatherings Throughout the Commonwealth
45	7/24/2020	231	235	Instituting a Mandatory 14-Day Quarantine Requirement for Travelers Arriving in Massachusetts

No.	Date	Joint Appendix		Order
46	8/7/2020	236	240	Third Revised Order Regulating Gatherings Throughout the Commonwealth
48	8/18/2020	244	246	Amending the Administration of Penalties Issued Pursuant to Certain COVID-19 Orders

EXHIBIT C

Orders Violating Decl. of Rights arts., X & XX and U.S. Const., amend. XIV

Civil Defense Act State of Emergency Executive Orders Invalid for Violating Due Process | Decl. of Rights, arts. X & XX | U.S. Const. amend. XIV

No.	Date	Joint Appendix		Order
-	3/12/2020	65	66	Prohibiting Gatherings of More than 250 People
-	3/15/2020	71	72	Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink
-	3/18/2020	83	85	Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs
13	3/23/2020	90	118	Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People
15	3/25/2020	121	122	Extending the Temporary Closing of All Non-Emergency Child Care Programs
21	3/31/2020	137	139	Extending the Closing of Certain Workplaces and the Prohibition on Gatherings of More than 10 People
30	4/28/2020	158	160	Further Extending the closing of Certain Workplaces and the Prohibition on Gatherings of More than 10 People
31	5/1/2020	161	163	Requiring Face Coverings in Public Places Where Social Distancing is Not Possible
32	5/15/2020	164	165	Temporarily Extending COVID-19 Order No. 13
33	5/18/2020	166	174	Implementing a Phased Reopening of Workplaces and Imposing Workplace Safety Measures to Address COVID-19
34	5/18/2020	175	178	Expanding Access to and Use of State Beaches and Addressing Other Outdoor Recreational Activities
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36	6/1/2020	187	189	Authorizing Re-Opening Preparations for Child Care Programs
37	6/6/2020	190	199	Authorizing the Re-Opening of Phase II Enterprises
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40	6/19/2020	208	209	Further Advancing the Re-Opening of Phase II Enterprises
43	7/2/2020	218	226	Authorizing the Re-Opening of Phase III Enterprises
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45	7/24/2020	231	235	Instituting a Mandatory 14-Day Quarantine Requirement for Travelers Arriving in Massachusetts
46	8/7/2020	236	240	Third Revised Order Regulating Gatherings Throughout the Commonwealth
48	8/18/2020	244	246	Amending the Administration of Penalties Issued Pursuant to Certain COVID-19 Orders

EXHIBIT D

Orders Violating Decl. of Rights, art. XIX and U.S. Const., amends. I & XIV

Civil Defense Act State of Emergency Executive Orders Invalid for Violating Peaceable Assembly | Decl. of Rights, art. XIX | U.S. Const. amends. I & XIV

No.	Date	Joint Appendix		Order
-	3/12/2020	65	66	Prohibiting Gatherings of More than 250 People
-	3/15/2020	67	68	Temporarily Closing All Public and Private Elementary and Secondary Schools
-	3/15/2020	69	70	Expanding Access to Telehealth Services and to Protect Health Care Providers
-	3/15/2020	71	72	Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink
-	3/18/2020	83	85	Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs
13	3/23/2020	90	118	Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People
15	3/25/2020	121	122	Extending the Temporary Closing of All Non-Emergency Child Care Programs
16	3/25/2020	123	124	Extending the Temporary Closure of All Public and Private Elementary and Secondary Schools
21	3/31/2020	137	139	Extending the Closing of Certain Workplaces and the Prohibition on Gatherings of More than 10 People
22	4/2/2020	140	141	Limiting Access to and Use of State Beaches
27	4/21/2020	152	153	Extending the Temporary Closing of All Non-Emergency Child Care Programs
28	4/21/2020	154	155	Extending the Temporary Closure of All Public and Private Elementary and Secondary Schools
30	4/28/2020	158	160	Further Extending the closing of Certain Workplaces and the Prohibition on Gatherings of More than 10 People
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36	6/1/2020	187	189	Authorizing Re-Opening Preparations for Child Care Programs
37	6/6/2020	190	199	Authorizing the Re-Opening of Phase II Enterprises
38	6/6/2020	200	203	Revised Order Regulating Gatherings Throughout the Commonwealth
40	6/19/2020	208	209	Further Advancing the Re-Opening of Phase II Enterprises
41	6/26/2020	210	213	Authorizing the Reopening of Child Care Programs and Rescinding Eight COVID-19 Orders
43	7/2/2020	218	226	Authorizing the Re-Opening of Phase III Enterprises
44	7/2/2020	227	230	Second Revised Order Regulating Gatherings Throughout the Commonwealth
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No.	Date	Joint Appendix		Order
46	8/7/2020	236	240	Third Revised Order Regulating Gatherings Throughout the Commonwealth
48	8/18/2020	244	246	Amending the Administration of Penalties Issued Pursuant to Certain COVID-19 Orders

EXHIBIT E

Massachusetts Constitutional Provisions

Art. X. Right of Protection and Duty of Contribution; Taxation; Taking Private Property for Public Use.

Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the commonwealth, or by a county, city or town, of more land and property than are needed for the actual construction of such highway or street; provided, however, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions.

ALM Constitution Pt. 1, Art. XIX

Current through June 26, 2020

Annotated Laws of Massachusetts > A CONSTITUTION OR FORM OF GOVERNMENT > PART THE FIRST A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

Art. XIX. Right of People to Instruct Representatives and Petition Legislature.

The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

End of Document

ALM Constitution Pt. 1, Art. XX

Current through June 26, 2020

Annotated Laws of Massachusetts > A CONSTITUTION OR FORM OF GOVERNMENT > PART THE FIRST A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

Art. XX. Power to Suspend the Laws or Their Execution.

The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

End of Document

ALM Constitution Pt. 1, Art. XXX

Current through June 26, 2020

Annotated Laws of Massachusetts > A CONSTITUTION OR FORM OF GOVERNMENT > PART THE FIRST A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

Art. XXX. Separation of Executive, Judicial, and Legislative Departments.

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

End of Document

EXHIBIT F

United States Constitutional Provisions

USCS Const. Amend. 1, Part 1 of 7

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > Amendments > Amendment 1 Religious and political freedom.

Amendment 1 Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

End of Document

USCS Const. Amend. 14, Part 1 of 14

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > Amendments > Amendment 14

Amendment 14

Sec. 1. [Citizens of the United States.]All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. [Representatives—Power to reduce apportionment.]Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. [Disqualification to hold office.]No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. [Public debt not to be questioned—Debts of the Confederacy and claims not to be paid.]The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. [Power to enforce amendment.]The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

End of Document

EXHIBIT G

Civil Defense Act, St. 1950, c. 639 (Spec. L. c. S31)

ALM Spec L ch. S31, § 1

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 1. Definitions.

In this act, unless the context otherwise requires, the following words shall have the following meanings:—

"Civil defense" shall mean the preparation for and the carrying out of all emergency functions, other than functions for which military forces other than the national guard are primarily responsible, for the purpose of minimizing and repairing injury and damage resulting from disasters caused by attack, sabotage or other hostile action; or by riot or other civil disturbance; or by fire, flood, earthquake or other natural causes. Said functions shall include specifically, but without limiting the generality of the foregoing, firefighting and police services other than the actual control or suppression of riot or other civil disturbance, medical and health services, rescue, engineering and air-raid warning services, evacuation of persons and household pets and service animals, as defined by the Federal Emergency Management Agency, pursuant to *42 U.S.C. Section 5170b*, from stricken areas, emergency welfare services, communications, radiological, chemical and other special weapons of defense, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions.

"Local organization for civil defense" shall mean an organization created in accordance with the provisions of this act by state or local authority to perform local civil defense functions.

Any emergency plan of operations shall include strategies to support the needs of people with household pets and the needs of household pets under their care, including service animals. The local organization for civil defense shall take appropriate steps to educate the public regarding the resources available in the event of an emergency and the importance of emergency preparedness planning.

History

1950, 639, § 1; 1968, 579, § 1; *2014, 54, §§ 1, 2*.

End of Document

ALM Spec L ch. S31, § 2

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 2. Creation of Massachusetts Emergency Management Agency and Office of Emergency Preparedness; Term, Salary, Powers and Duties of Director.

There is hereby created within the executive branch of the commonwealth a division of civil defense to be known as the "Massachusetts Emergency Management Agency and office of emergency preparedness" hereinafter called the "Massachusetts Emergency Management Agency", which shall be under the direction of a director of civil defense hereinafter called the "director". The governor shall, with the advice and consent of the council, appoint the director to serve during his pleasure. The director shall devote his full time to his duties under this act, shall not hold any other public office and the position of director shall be classified in accordance with section forty-five of chapter thirty of the General Laws and the salary shall be determined in accordance with section forty-six C of said chapter thirty. He shall co-ordinate the activities of all organizations for civil defense within the commonwealth, and shall co-operate and maintain liaison with civil defense agencies of other states and the federal government, shall, subject to the direction and control of the governor, be the executive head of the Massachusetts Emergency Management Agency, and shall have such additional authority, duties and responsibilities authorized by this act as may be prescribed by the governor, and shall be responsible to the governor for carrying out the program for civil defense of the commonwealth. The director may, within the limits of the amount appropriated therefor, appoint such experts, clerks and other assistants as the work of the Massachusetts Emergency Management Agency may require and may remove them, and may make such expenditures as may be necessary in order to execute effectively the purposes of this act. Such employees shall not be subject to chapter thirty-one of the General Laws. The director and other personnel of the Massachusetts Emergency Management Agency shall be provided with suitable office space, furniture, equipment and supplies in the same manner as provided for personnel of other state departments.

History

1950, 639, § 2; 1970, 112; 1981, 699, § 83; *1991, 138, § 381*.

End of Document

ALM Spec L ch. S31, § 2A

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 2A. Construction of Fallout Shelters; Standards.

The director shall establish standards for the construction of fallout shelters designed to protect the members of a family unit from the effects of enemy attack and shall file the same with the inspector of buildings in each city and town. As used in this section the term “family unit” shall mean a group of persons living together and sharing at least in part their living quarters and accommodations.

A fallout shelter built in accordance with such standards in any location upon any residential property shall be deemed to be an accessory use to such property and, as long at it shall be used exclusively as a fallout shelter, shall not be deemed to violate any provisions of any zoning ordinance or by-law. Such a shelter shall not be deemed to violate the provisions of any building code with respect to the materials or method of construction used, but shall be subject to all administrative provisions of any applicable building code, including, without limiting the generality of the foregoing, any provisions relating to application for and issuance of permits, fees, inspection, appeals, penalties and enforcement. The inspector of buildings of the city or town where any such fallout shelter is to be build may waive any provisions of any applicable building code requiring the employment of a licensed builder, provided, he is satisfied that the proposed shelter can be constructed by an unlicensed person without serious danger to himself or others.

Said director shall also establish standards for shelters other than those designed to protect members of a family unit, and inspectors of buildings may grant deviations from the applicable building codes pending the establishment of such standards.

History

1962, 350.

End of Document

ALM Spec L ch. S31, § 2B

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 2B. Designation of Nuclear Power Plant Areas.

The director shall designate certain areas of the commonwealth as “nuclear power plant areas”. For purposes of this section, said areas shall consist of all communities located within a ten mile radius of a nuclear power plant, whether or not said power plant is located within the commonwealth.

The director shall annually publish and release to local officials of each political subdivision within areas preparedness and response plans which will permit the residents of said areas to evacuate or take other protective actions in the event of a nuclear accident. Copies of such plans shall be made available to the public upon request for a fee which is not to exceed the cost of reproduction.

The director shall also annually publish and release through local officials to the residents of the said areas emergency public information. Such information shall include warning and altering provision, evacuation routes, reception areas, and other recommended actions for each area.

The director shall propose procedures for annual review by state and local officials of the preparedness and response plans with regard for, but not limited to, such factors as changes in traffic patterns, population densities, and new construction of schools, hospitals, industrial facilities, and the like. Opportunity for full public participation in such review including a public hearing, shall be provided pursuant to section two of chapter thirty A.

History

1979, 796, § 24.

End of Document

ALM Spec L ch. S31, § 3

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 3. Creation of Defense Council; Membership; Duties.

There is hereby created an unpaid civil defense advisory council hereinafter called the “defense council”, the members of which shall be appointed by the governor. The defense council shall include such department heads and other officers of the commonwealth as the governor may deem necessary and the director of the Massachusetts Emergency Management Agency. The governor shall appoint the chairman of said defense council to serve during his pleasure. Said defense council shall be in the executive branch of the government and shall serve under the governor and shall be subject to his supervision and control. Said defense council shall advise the governor and the director on matters pertaining to civil defense.

History

1950, 639, § 3; *1991, 138, § 381*.

End of Document

ALM Spec L ch. S31, § 4

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 4. Powers and Duties of Governor, Generally.

The governor shall have general direction and control of the Massachusetts Emergency Management Agency, and shall be responsible for carrying out the provisions of this act and may assume direct operational control over any or all parts of the civil defense functions within the commonwealth; he may at the request of the director authorize the employment of such technical, clerical, stenographic or other personnel, and may make such expenditures, within the appropriation therefor or from other funds made available to him for the purposes of civil defense or to deal with disaster or threatened disaster should it occur, as may be necessary to carry out the purposes of this act. He may co-operate with the federal government, and with other states and private agencies in all matters pertaining to the civil defense of the commonwealth and the nation, may propose a comprehensive plan and program for the civil defense of the commonwealth, and in accordance with said plan and program may institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of civil defense organizations in advance of actual disaster as he may deem necessary. He may make studies and surveys to ascertain the capabilities of the commonwealth for civil defense and to plan for the most efficient emergency uses thereof, may delegate any administrative authority vested in him under this act, and may appoint, in co-operation with local authorities, metropolitan area directors.

History

1950, 639, § 4; *1991, 138, § 381*.

End of Document

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

§ 5. Proclamation of State of Emergency; Power to Seize or Possess Personal and Real Property; Awards to Owners of Seized Property.

Because of the existing possibility of the occurrence of disasters of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action, in order to insure that the preparations of the commonwealth will be adequate to deal with such disasters, and generally to provide for the common defense and to protect the public peace, health, security and safety, and to preserve the lives and property of the people of the commonwealth, if and when the congress of the United States shall declare war, or if and when the President of the United States shall by proclamation or otherwise inform the governor that the peace and security of the commonwealth are endangered by belligerent acts of any enemy of the United States or of the commonwealth or by the imminent threat thereof; or upon the occurrence of any disaster or catastrophe resulting from attack, sabotage or other hostile action; or from riot or other civil disturbance; or from fire, flood, earthquake or other natural causes; or whenever because of absence of rainfall or other cause a condition exists in all or any part of the commonwealth whereby it may reasonably be anticipated that the health, safety or property of the citizens thereof will be endangered because of fire or shortage of water or food; or whenever the accidental release of radiation from a nuclear power plant endangers the health, safety, or property of people of the commonwealth, the governor may issue a proclamation or proclamations setting forth a state of emergency.

(a) Whenever the governor has proclaimed the existence of such a state of emergency, he may employ every agency and all members of every department and division of the government of the commonwealth to protect the lives and property of its citizens and to enforce the law. Any member of any such department or division so employed shall be entitled to the protection of existing applicable provisions of law relative to any type of service of the commonwealth as well as the protection afforded by this act.

(b) After such proclamation has been made, the governor may, in the event of disaster or shortage making such action necessary for the protection of the public, take possession (1) of any land or building, machinery or equipment; (2) of any horses, vehicles, motor vehicles, aircraft, ships, boats or any other means of conveyance, rolling stock of steam, diesel, electric railroads or of street railways; (3) of any cattle, poultry and any provisions for man or beast, and any fuel, gasoline or other means of propulsion which may be necessary or convenient for the use of the military or naval forces of the commonwealth or of the United States, or for the better protection or welfare of the commonwealth or its inhabitants as intended under this act. He may use and employ all property of which possession is taken, for such times and in such manner as he shall deem for the interests of the commonwealth or its inhabitants, and may in particular, when in his opinion the public exigency so requires, lease, sell, or, when conditions so warrant, distribute gratuitously to or among any or all of the inhabitants of the commonwealth anything taken under clause (3) of this paragraph. If real estate is seized under this paragraph a declaration of the property seized containing a full and complete description shall be filed with the register of deeds in and for the county in which the seizure is located, and a copy of said declaration furnished the owner. If personal property is seized under this paragraph the civil defense

authorities by whom seized shall maintain a docket containing a permanent record of such personal property, and its condition when seized, and shall furnish a true copy of the docket recording to the owner of the seized property. He shall, with the approval of the council, award reasonable compensation to the owners of the property which he may take under the provisions of this section, and for its use, and for any injury thereto or destruction thereof caused by such use.

(c) Any owner of property of which possession has been taken under paragraph (b), to whom no award has been made, or who is dissatisfied with the amount awarded him by the governor, with the approval of the council, as compensation, may file a petition in the superior court, in the county in which he lives or has a usual place of business, or in the county of Suffolk, to have the amount to which he is entitled by way of damages determined. The petitioner and the commonwealth shall severally have the right to have such damages assessed by a jury, upon making claim, in such a manner as may be provided, within one year after the date when possession of the property was taken under paragraph (b), except that if the owner of the property is in the military service of the United States at the time of the taking, it shall be brought within one year after his discharge from the said military service.

(d) Any owner of property of which possession has been taken under this act, to whom no award has been made, or who is dissatisfied with the amount awarded him as compensation by the governor, with the approval of the council, may have his damages assessed under chapter seventy-nine of the General Laws, instead of proceeding under the provisions of this act. If any such taking, in itself, constitutes an appropriation of property to the public use, compensation may be recovered therefor under chapter seventy-nine of the General Laws from the body politic, or corporate, appropriating such property.

History

1950, 639, § 5; 1958, 425, § 1; 1968, 579, § 2; 1979, 796, § 26.

End of Document

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

§ 6. Cooperation with Federal and Sister State Authorities.

The governor shall have the power and authority to cooperate with the federal authorities and with the governors of other states in matters pertaining to the common defense or to the common welfare, and also so to co-operate with the military and naval forces of the United States and of the other states, and to take any measures which he may deem proper to carry into effect any request of the President of the United States for action looking to the national defense or to the public safety.

History

1950, 639, § 6.

End of Document

§ 7. Additional Powers of Governor During State of Emergency.

During the effective period of so much of this act as is contingent upon the declaration of a state of emergency as hereinbefore set forth, the governor, in addition to any other authority vested in him by law, shall have and may exercise any and all authority over persons and property, necessary or expedient for meeting said state of emergency, which the general court in the exercise of its constitutional authority may confer upon him as supreme executive magistrate of the commonwealth and commander-in-chief of the military forces thereof, and specifically, but without limiting the generality of the foregoing, the governor shall have and may exercise such authority relative to any or all of the following:—

(a) Health or safety of inmates of all institutions.

(b) Maintenance, extension or interconnection of services of public utility or public-service companies, including public utility services owned or operated by the commonwealth or any political subdivision thereof.

(c) Policing, protection or preservation of all property, public or private, by the owner or person in control thereof, or otherwise.

(d) Manufacture, sale, possession, use or ownership of (1) fireworks or explosives, or articles in simulation thereof; (2) means or devices of communication other than those exclusively regulated by federal authorities; (3) articles or objects (including birds and animals) capable of use for the giving of aid or information to the enemy or for the destruction of life or property.

(e) Transportation or travel on Sundays or week-days by aircraft, watercraft, vehicle or otherwise, including the use of registration plates, signs or markers thereon.

(f) Labor, business or work on Sundays or legal holidays.

(g) Assemblages, parades or pedestrian travel, in order to protect the physical safety of persons or property.

(h) Public records and the inspection thereof.

(i) Regulation of the business of insurance and protection of the interests of holders of insurance policies and contracts and of beneficiaries thereunder and of the interest of the public in connection therewith.

(j) Vocational or other educational facilities supported in whole or in part by public funds, in order to extend the benefits or availability thereof.

(k) The suspension of the operation of any statute, rule or regulation which affects the employment of persons within the commonwealth when, and at such times as such suspension becomes necessary in the opinion of the governor to remove any interference, delay or obstruction in connection with the production, processing or transportation of materials which are related to the prosecution of war or which are necessary because of the existence of a state of emergency.

(*l*)Regulation of the manner and method of purchasing or contracting for supplies, equipment or other property or personal or other services, and of contracting for or carrying out public works, for the commonwealth or any of its agencies or political subdivisions, including therein housing authorities.

(m) Receipt, handling or allocation of money, supplies, equipment or material granted, loaned or allocated by the federal government to the commonwealth or any of its agencies or political subdivisions.

(n) Protection of depositors in banks, and maintenance of the banking structure of the commonwealth.

(o) Variance of the terms and conditions of licenses, permits or certificates of registration issued by the commonwealth or any of its agencies or political subdivisions.

(p) Regulating the sale of articles of food and household articles.

(q) Modification or variation in the classifications established under sections forty-five to fifty, inclusive, of chapter thirty of the General Laws and sections forty-eight to fifty-six, inclusive, of chapter thirty-five of the General Laws.

History

1950, 639, § 7; 1953, 500, § 1.

End of Document

ALM Spec L ch. S31, § 8

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 8. Executive Orders, General Regulations, and Written Instructions of Governor; Violations; Penalties.

The governor may exercise any power, authority or discretion conferred on him by any provision of this act, either under an actual proclamation of a state of emergency as provided in section five or in reasonable anticipation thereof and preparation therefor, by the issuance or promulgation of executive orders or general regulations, or by instructions to such person or such department or agency of the commonwealth, including the Massachusetts Emergency Management Agency, or of any political subdivision thereof, as he may direct by a writing signed by the governor and filed in the office of the state secretary. Any department, agency or person so directed shall act in conformity with any regulations prescribed by the governor for its or his conduct.

Whoever violates any provision of any such executive order or general regulation issued or promulgated by the governor, for the violation of which no other penalty is provided by law, shall be punished by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or both.

History

1950, 639, § 8; 1968, 579, § 4; *1991, 138, § 381*.

End of Document

ALM Spec L ch. S31, § 8A

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 8A. Inconsistent Laws, Rules, Regulations, etc.

Any provision of any general or special law or of any rule, regulation, ordinance or by-law to the extent that such provision is inconsistent with any order or regulation issued or promulgated under this act shall be inoperative while such order or such last-mentioned regulation is in effect; provided that nothing in this section shall be deemed to affect or prohibit any prosecution for a violation of any such provision before it became inoperative.

History

1950, 639, § 8A.

End of Document

ALM Spec L ch. S31, § 9

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 9. [Repealed.]

End of Document

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

§ 10. Entrance Upon Private Property to Enforce Certain Laws, Rules, Regulations, etc.

During any blackout or during the period between the air raid warning and the following "all clear" signal, regular, special and reserve members of the police and fire forces of the commonwealth or of its political subdivisions, and members of the state guard and the armed forces of the United States, while in uniform, may enter upon private property for the purpose of enforcing blackout or air-raid precaution rules, regulations or orders issued by or under authority of the governor. Such members may at any time enter upon private property in compliance with the written order of the governor, for the sole purpose of enforcing the laws, rules, regulations, by-laws or ordinances specifically set forth by the governor in such orders; provided, that nothing in this section shall be construed or deemed to prohibit any entry upon private property otherwise authorized by law. Any entry made under the aforegoing provision shall be reported by the person making such entry forthwith to the director of the local organization for civil defense.

History

1950, 639, § 10.

End of Document

§ 11. Auxiliary Firemen and Police.

(a) The mayor and city council in cities and the selectmen in towns, or such other persons or bodies as are authorized by law to appoint firemen or policemen, may appoint, train and equip volunteer, unpaid auxiliary firemen and auxiliary police and may establish and equip such other volunteer, unpaid public protection units as may be approved by said Massachusetts Emergency Management Agency and may appoint and train their members. Coats and other like garments issued hereunder to be worn as outer clothing by auxiliary firemen shall bear on the back the letters C. D. five inches in height and helmets so issued shall be yellow. Every such fireman, unless wearing a coat or other like garment and helmet issued as aforesaid, shall, while on duty as such, wear an arm band bearing the letters C. D. Chapters thirty-one, thirty-two and one hundred and fifty-two of the General Laws shall not apply to persons appointed hereunder. Coats, shirts and other garments to be worn as outer clothing by auxiliary police officers shall bear a shoulder patch with the words “Auxiliary Police” in letters not less than one inch in height.

(b) Cities and towns may be ordinance or by-law, or by vote of the aldermen, selectmen, or board exercising similar powers, authorize their respective police departments to go to aid another city or town at the request of said city or town in the suppression of riots or other forms of violence therein, and, while in the performance of their duties in extending such aid, the members of such departments shall have the same powers, duties, immunities and privileges as if performing the same within their respective cities or towns. Any such ordinance, by-law or vote may authorize the head of the police department to extend such aid subject to such conditions and restrictions as may be prescribed therein. Any city or town aided under and in accordance with this section shall compensate any city or town rendering aid as aforesaid for the whole or any part of any damage to its property sustained in the course of rendering the same and shall reimburse it in whole or in part for any payments lawfully made to any member of its police department or to his widow or other dependents on account of injuries or death suffered by him in the course of rendering aid as aforesaid or of death resulting from such injuries.

(c) The head of the fire or police department of any city, town or district of the commonwealth shall, after the issuing of any proclamation provided for in this act, order such portion of his department, with its normal equipment, as the governor may request, for service in any part of the commonwealth where the governor may deem such service necessary for the protection of life and property. When on such service, police officers and firemen shall have the same powers, duties, immunities and privileges as if they were performing their duties within their respective cities, towns or districts. The commonwealth shall compensate any city, town or district for damage to its property sustained in such service and shall reimburse it for any payments lawfully made by it to any member of its police or fire department or to his widow or other dependents on account of injuries sustained by him in such service or of death resulting from such injuries. Persons appointed to the auxiliary police force in a city or town shall exercise or perform such of the powers or duties of police officers as may be prescribed by the appointing authority including but not limited to replacing and performing the duties of regular personnel who may be actually engaged in the direct control or suppression of riots or other civil disturbance, and no civil defense personnel shall be so utilized in any such direct riot control activities; provided, that said powers or duties shall not be exercised or performed by them except while they are on active duty and

displaying an authorized badge or other insignia after being called to such duty by the head of the police force of such city or town to meet a situation which, in his opinion, cannot be adequately handled by the regular police force and by the reserve police force if any, of such city or town. Auxiliary police in towns, but not in cities, may be authorized by the appointing authorities to exercise the powers conferred by section ten of this act upon members of regular, special or reserve police forces of said towns, except as provided above.

(d) Auxiliary police shall not be sent to another city or town pursuant to the provisions of paragraphs (b) and (c) of this section or any other provisions of law, except upon the order of the head of the police force of the city or town in which such auxiliary police were appointed provided, that auxiliary police shall not be so dispatched to another city or town unless they are authorized by the appointing authority to exercise or perform the full powers or duties of police officers subject to the limitation in paragraph (b) relating to direct riot control activities, except that auxiliary police appointed in a town shall not while performing their duties in a city, exercise the powers conferred by section ten of this act upon members of regular, special or reserve police forces of said town. When on such service, auxiliary police shall have the same powers, duties, immunities and privileges, except as provided above, as if they were performing their duties within their respective cities and towns.

(e) When participating in any training exercise ordered or authorized by the director, policemen and fire fighters shall have the same powers, duties, immunities and privileges as if they were performing their duties within their respective cities, towns or districts. The commonwealth shall compensate any city, town or district for damage to its property sustained in such training, and shall reimburse it for any payments lawfully made by it to any member of its police or fire department or to his widow or other dependents on account of injuries sustained by him in such training or of death resulting from such injuries.

History

1950, 639, § 11; 1951, 434; 1951, 486; 1957, 684; 1958, 180; 1964; 6; 1968, 579, § 3; *1991, 138, § 381*.

End of Document

§ 11A. Civil Defense Claims Board; Indemnification of Auxiliary Forces and Volunteers; Survivor Benefits; Procedure in Filing Claims.

There shall be in the Massachusetts Emergency Management Agency a civil defense claims board consisting of three members as follows: The chairman of the industrial accident board or such person as shall be designated by him in writing from time to time, the chairman of the commission on administration and finance or such person as shall be designated by him in writing from time to time, and such assistant attorney general as the attorney general shall designate in writing from time to time. The director of civil defense or such person as shall be designated by him in writing from time to time shall be the secretary of the board. The board shall act upon and decide claims filed under this section, and shall have power to adopt and from time to time revise rules and regulations necessary or apt for the expeditious handling and decision of such claims. No hearing shall be held upon any claim unless the board so orders, but nothing herein contained shall prevent the board from ordering and holding a hearing upon any claim, and for such purpose the board shall have power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and produce books and papers. Any person so subpoenaed who shall refuse to attend or to be sworn or affirm or to answer any question or produce any book or paper pertinent to the matter under consideration by the board shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months or both.

Every person appointed under paragraph (a) of section eleven of this act and every volunteer, unpaid person appointed by the director of civil defense under section two of this act who, while participating in training, or performing duty, in the city or town in which he is appointed or in another city or town in this commonwealth or in another state under or pursuant to any provision of this act or of any mutual aid arrangement or interstate compact made under authority thereof, shall without fault or neglect on his part sustain loss of or damage to his property by reason of such participation in training or performance of duty, shall be indemnified by the commonwealth for such loss or damage; but said indemnification shall not exceed fifty dollars for any one accident. Every such person who, while so participating in training or performing duty, shall by reason thereof without fault or neglect on his part sustain personal injury, shall be indemnified by the commonwealth for the reasonable hospital, medical and surgical expenses incurred by him or in his behalf by reason of such injury, and also for his loss of earning capacity, if any; but such indemnification for loss of earning capacity shall not exceed for any one week a sum equal to thirty-five dollars plus two dollars and fifty cents for each person wholly dependent on such person within the meaning of section thirty-five A of chapter one hundred and fifty-two of the General Laws. Every such person who, while so participating in training or performing duty, shall by reason thereof without fault or neglect on his part receive any of the injuries specified in section thirty-six of said chapter one hundred and fifty-two shall be indemnified by the commonwealth at the rate and for the period specified in said section thirty-six except that any determination required by said section to be made by the industrial accident board shall be made by the civil defense claims board. If any such person is killed while, and by reason of, so participating in training or performing duty, or if any such person dies from injuries received, or as a natural and proximate result of undergoing a hazard, while, and by reason of, so participating in training or performing duty, the

reasonable expense of his burial, not exceeding five hundred dollars, shall be paid by the commonwealth, which shall also pay to his dependents the following annuities. To the widow, so long as she remains unmarried, an annuity not exceeding fifteen hundred dollars a year, increased by not exceeding three hundred and twelve dollars for each child of such person during such time as such child is under the age of eighteen or over said age and physically or mentally incapacitated from earning; and, if there is any such child and no widow or the widow later dies, such an annuity as would have been payable to the widow had there been one or had she lived, to or for the benefit of such child, or of such children in equal shares, during the time aforesaid; and, if there is any such child and the widow remarries, in lieu of the aforesaid annuity to her, an annuity not exceeding five hundred and twenty dollars to or for the benefit of each such child during the time aforesaid; and, if there is no widow and no such child, an annuity not exceeding one thousand dollars to or for the benefit of the father or mother of the deceased, or to or for the benefit of an unmarried or widowed sister of the deceased with whom he was living at the time of his death, if such father, mother or sister was dependent upon him for support at the time of his death, during such time as such beneficiary is unable to support himself or herself and does not marry.

No indemnification or payment of any kind shall be made by the commonwealth under this section unless a claim therefor in writing, on a form approved by the civil defense claims board, is filed with the secretary thereof within ninety days after the loss of or damage to property or the personal injury or the death, as the case may be, nor unless a duplicate copy of such claim is filed within said period with the director of the local organization for civil defense or, in the case of persons appointed under section two of this act, with the director of civil defense. As soon as reasonably may be after the receipt by such director of such duplicate copy, he shall file with the secretary of the civil defense claims board, on a form approved by such board, as complete a report as may be concerning such claim and his recommendation with respect to the allowance thereof. No decision shall be made by the civil defense claims board upon a claim unless such report and recommendation relative thereto has been filed with its secretary. The decision of the civil defense claims board upon a claim shall constitute the final determination thereof; and there shall be no review thereof or appeal therefrom, but nothing contained herein shall be construed to prevent the board from reconsidering any decision.

The provisions of this section shall not apply to any injury or death, or to any loss, damage or expense, for which any federal law heretofore or hereafter passed shall provide reimbursement, indemnification or compensation.

Any contrary provision of this section notwithstanding, the civil defense claims board is hereby authorized to approve in its sole discretion a claim in accordance with the provisions of this section notwithstanding that the person by or on account of whom said claim shall have been filed was not appointed as required by paragraph (a) of section eleven of this act, provided, that said person, at the time of the occurrence out of which said claim shall have originated, was in good faith actually participating in civil defense training or performing civil defense duty, as an unpaid volunteer, under the supervision or at the direction of a person actually or apparently authorized to direct or supervise such person in such training or duty; and provided, further, that said person, previous to the occurrence out of which such claim shall have originated, shall have enrolled, registered or otherwise previously signified his intention of joining the civil defense organization concerned. A decision of the board approving or denying a claim by or on account of such person shall constitute the final determination thereof and there shall be no review thereof or appeal therefrom, provided, however, that nothing contained herein shall be construed to prevent the board from reconsidering any such decision.

A volunteer, unpaid director of a local organization for civil defense appointed under section thirteen of this act shall be deemed an appointee under paragraph (a) of section eleven of this act for the purposes of this section only, provided, that the duplicate copy of any claim filed under this section by or on account of such local director shall be filed with the appointing authority designated in said section thirteen, and said appointing authority shall report and recommend to the civil defense claims board concerning such claim.

History

1951, 547; 1955, 607, §§ 1, 2; 1956, 560, §§ 1, 2; *1991, 138, § 381*.

End of Document

ALM Spec L ch. S31, § 11B

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 11B. Employee, Defined.

The word “employee” as used in clause (1) of section five of chapter forty and in section one hundred A of chapter forty-one of the General Laws, shall include, for the purposes of said sections, a person appointed under the provisions of paragraph (a) of section eleven of this act, while performing his properly assigned training or duties.

History

1956, 401, § 1.

End of Document

ALM Spec L ch. S31, § 12

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 12. Immunity from Civil Liability for Commonwealth, Political Subdivisions or Persons Engaged in Civil Defense Activities.

On and after a declaration of an emergency neither the commonwealth nor any political subdivision thereof, nor other agencies, nor any person engaged in any civil defense activities while in good faith complying with or attempting to comply with this act or any other rule or regulation promulgated pursuant to the provisions of this act, shall be civilly liable for the death of or any injury to persons or damage to property as result of such activity except that the individual shall be liable for his negligence. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this act, or under the workmen's compensation law, or under any pension law, or under any other special and general law nor the right of any such person to receive any benefits or compensation under any act of congress.

No city or town shall be liable for any damage sustained to person or property as the result of an authorized blackout.

History

1950, 639, § 12.

End of Document

ALM Spec L ch. S31, § 12A

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 12A. Immunity From Civil Liability for Owner of Real Estate or Premises Used to Shelter Persons During Enemy Attack.

Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to a city or town a license or privilege, or otherwise permits a city or town, to inspect, designate and use the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending or mock enemy attack shall, together with his successors in interests, if any, not be civilly liable for negligently causing the death of, or injury to, any person, or for loss of, or damage to, the property of such person on or about such real estate or premises under such license, privilege or other permission, and section fifteen of chapter one hundred and eighty-six of the General Laws shall not be deemed to apply to any agreement granting such license or privilege or to such other permission, whether such agreement is executed, or such other permission is given, before or after the effective date of this section.

History

1951, 460.

End of Document

ALM Spec L ch. S31, § 13

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 13. Establishment of Local Civil Defense Organizations; Duties; Powers of Political Subdivisions During Disasters.

Each political subdivision of the commonwealth is hereby authorized and directed to establish a local organization for civil defense in accordance with the state civil defense plan and program.

Each local organization for civil defense shall have a director, who shall, in the case of a city, be appointed by the mayor, or in a city having the Plan E form of government by the city manager, and in towns shall be appointed by the selectmen, or in towns having a town manager by the manager, and who shall have direct responsibility for the organization, administration and operation of such local organization for civil defense, subject to the direction and control of such appointing authority. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of section seven of this act.

In carrying out the provisions of this act, each political subdivision in which any disaster, as described in section one, occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of the extreme emergency situation, without regard to time-consuming procedures and formalities prescribed by law, excepting 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.

History

1950, 639, § 13.

End of Document

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

§ 14. Local Civil Defense Organizations to Render Mutual Aid.

The director of each local organization for civil defense may, in collaboration with other public and private agencies within the commonwealth, develop or cause to be developed mutual aid arrangements for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. Such arrangements shall be consistent with the state civil defense plan and program, and in time of emergency it shall be the duty of each local organization for civil defense to render assistance in accordance with the provisions of such mutual aid arrangements. The director of each local organization for civil defense may, subject to the approval of the governor, enter into mutual aid arrangements with civil defense agencies or organizations in other states for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted.

History

1950, 639, § 14.

ALM Spec L ch. S31, § 15

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 15. Appropriations by Political Subdivisions for Local Civil Defense Organizations; Commonwealth and Political Subdivisions May Accept Gifts, Grants, or Loans for Civil Defense.

Each political subdivision shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision, for the payment of expenses of its local organization for civil defense.

Whenever the federal government or any agency or officer thereof, or any person, firm or corporation, shall offer to the commonwealth, or to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes of civil defense, the commonwealth, acting through the governor, or such political subdivision, acting through its governing body, may accept such offer, and upon acceptance the governor or governing body of such political subdivision, may authorize any officer of the commonwealth, or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of the commonwealth, or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

History

1950, 639, § 15.

End of Document

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

§ 15A. Indebtedness Incurred by Political Subdivisions for Payment of Local Civil Defense Organization.

For the purpose of meeting expenditures authorized under section fifteen, a city, town, district or county may raise such sums as may be necessary by taxation, or by transfer from available funds, or may borrow from time to time and may issue bonds or notes therefor. For the purpose of meeting expenditures authorized under section fifteen, counties may borrow through their county commissioners. Each authorized issue shall constitute a separate loan, and such loans shall be paid in not more than five years from their dates and shall bear on their face the words (city, town, district or county) Civil Defense Loan, Act of 1950. Indebtedness incurred under this act by a city, town or district shall be in excess of the statutory limit, but shall, except as provided herein, be subject to chapter forty-four of the General Laws, exclusive of the limitation contained in the first paragraph of section seven thereof. Indebtedness incurred by a county under this act shall, except as provided herein, be subject to the provisions of chapter thirty-five of the General Laws. No indebtedness shall be incurred under the provisions of this section without the approval of a majority of the members of the emergency finance board established under section one of chapter forty-nine of the acts of nineteen hundred and thirty-three, upon such terms and conditions as said board shall determine. The members of the board aforesaid, when acting under this act, shall receive from the commonwealth compensation to the same extent as provided for services under chapter three hundred and sixty-six of the acts of nineteen hundred and thirty-three, as amended, including chapter seventy-four of the acts of nineteen hundred and forty-five, as amended.

History

1950, 639, § 15A; 1951, 580, § 1.

ALM Spec L ch. S31, § 15B

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 15B. Financial Offices of Political Subdivisions to File Annual Reports of Expenditures.

The city auditor, town accountant, or, if there is no such officer, the town treasurer, district treasurer and county treasurer, of every city, town, district and county making expenditures under authority of section fifteen or section fifteen A of this act shall file annually with the director of accounts of the department of corporations and taxation of the commonwealth a report of liabilities incurred and expenditures made under authority of sections fifteen and fifteen A in such form and detail as said director may require.

History

1950, 639, § 15B; 1951, 580, § 2; 1953, 532; 1955, 25.

End of Document

ALM Spec L ch. S31, § 15C

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 15C. Interconnection of Water Distribution Systems.

Any city or town, water district, water supply district, fire and water district, fire district or water company may contract with any other such city, town, district or water company for the interconnection of their water distribution systems and for providing and using any necessary pumping equipment for the supplying of water for domestic, fire and other purposes. The supplying of water for domestic purposes for extended periods shall be subject to the provisions of section forty of chapter forty of the General Laws. Such interconnections made with the works of the metropolitan district commission or any municipality, district or water company supplied therefrom shall be subject to the provisions of chapter ninety-two of the General Laws.

History

1951, 531.

End of Document

ALM Spec L ch. S31, § 16

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 16. Utilization of State and Local Departments, Agencies, Officers, and Personnel.

In carrying out the provisions of this act, the governor and the executive officers, or governing bodies of the political subdivisions of the commonwealth, are directed to utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the commonwealth, and of the political subdivisions thereof, to the maximum extent practicable; and the officers and personnel of all such departments, offices and agencies of the commonwealth, and of the political subdivisions thereof, to the maximum extent practicable; and the officers and personnel of all such departments, offices and agencies are directed to co-operate with and extend such services and facilities to the governor and to the civil defense organizations of the commonwealth upon request.

The governor may assign to a state agency any activity concerned with disaster preparedness and relief of a nature related to the existing powers and duties of such agency, and it shall thereupon become the duty of such agency to undertake and carry out such activity on behalf of the commonwealth.

History

1950, 639, § 16.

End of Document

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

§ 16A. Administration of District Courts and Municipal Court of City of Boston During State of Emergency; Transfer of Matters From Boston Juvenile Court.

During a state of emergency, the administrative justice of the district courts may direct that a district court shall be held at any place or places, including other district courthouses, outside the district of which said court has jurisdiction, and at such times, including Sundays, as he may direct; and said administrative justice may direct justices, clerks, probation officers and any other personnel of other district courts to act as such in a district court other than their own; and with the concurrence of the administrative justice of the municipal court of the city of Boston, the administrative justice of the district courts may direct any district court to hold sessions in the said municipal courthouse, and may employ such justices, clerks, probation officers or other personnel of said municipal court as the administrative justice of the said municipal court may designate; and the administrative justice of the municipal court of the city of Boston may direct that said court shall be held at any place or places outside the district over which said court has jurisdiction, and at such times, including Sundays, as he may direct; and with the concurrence of the administrative justice of the district courts, the administrative justice of the municipal court of the city of Boston may direct that the municipal court hold sessions in any district courthouse, and may employ such justices, clerks, probation officers or other personnel of any district court as the administrative justice of the district court may designate; and with the concurrence of the administrative justice of the superior court, the administrative justice of the district courts or the administrative justice of the municipal court of the city of Boston may order the holding of sessions of any district court or said municipal court in any premises of the superior court that the administrative justice of the superior court may designate; and with the concurrence of the justice of the Boston juvenile court and the administrative justice of the district courts, jurisdiction over any matters pending in said juvenile court may be transferred to another court as defined in section fifty-two of chapter one hundred and nineteen of the General Laws, and jurisdiction of any matter so transferred shall remain therein after the termination of the emergency unless the administrative justice of the district courts and the justice of the Boston juvenile court concur that said matter ought to be transferred back to the Boston juvenile court. In the event of the absence from the commonwealth, illness or other disability of the justice of the Boston juvenile court, the administrative justice of the district courts may act as aforesaid without his concurrence; and in the event of any such disability of any of said administrative justices to act as aforesaid, any other justice previously designated by any of said administrative justices may act in his stead, or if no such designation has been made, or if a justice so designated is similarly disabled, or in any other instance where the chief justice of the supreme judicial court shall deem it necessary, the chief justice of the supreme judicial court may act in his stead or designate any other justice of any court so to act.

History

1968, 579, § 5; 1978, 478, § 16.

End of Document

ALM Spec L ch. S31, § 17

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 17. Civil Defense Organizations to be Apolitical.

No organization for civil defense established under the authority of this act shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes.

History

1950, 639, § 17.

End of Document

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

§ 18. Loyalty Requirements of Persons Associated With Civil Defense Organizations; Oath.

No person shall be employed or associated in any capacity in any civil defense organization established under this act who advocates, or has advocated, a change by force or violence in the constitutional form of the government of the United States, or in this commonwealth, or the overthrow of any government in the United States by force or violence, or who has been convicted of, or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for civil defense shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this commonwealth, which oath shall be substantially as follows:—

"I, _____ do solemnly swear (or affirm) that I will support and defend the constitution of the United States and the constitution of the Commonwealth of Massachusetts against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties on which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates, the overthrow of the government of the United States or of this commonwealth by force or violence; and that during such time as I am a member of the (name of civil defense organization), I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this commonwealth by force or violence."

History

1950, 639, § 18.

ALM Spec L ch. S31, § 19

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 19. Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the act which can be given effect without the invalid provision or application; and to this end the provisions of this act are declared to be severable.

History

1950, 639, § 19.

End of Document

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

§ 20. Cooperation With Governor and Civil Defense Director; Supremacy of Governor's Orders, Rules and Regulations.

It shall be the duty of the members of, and of each and every officer, agent and employee of every political subdivision of this commonwealth and of each member of all other governmental bodies, agencies and authorities of any nature whatsoever fully to co-operate with the governor and the director of civil defense in all matters affecting civil defense. The governor is authorized to make, amend and rescind orders, rules and regulations pertaining to civil defense, and it shall be unlawful for any municipality or other subdivision or any other governmental agency of this commonwealth to adopt any rule or regulation or to enforce any such rule or regulation that may be at variance with any such order, rule or regulation established by the governor. Each such organization shall have available for inspection at its office all orders, rules and regulations made by the governor, or under his authority. In the event of a dispute on the question of whether or not any such rule or regulation is at variance with an order, rule or regulation established by the governor under this act, the determination of the governor shall control.

History

1950, 639, § 20.

ALM Spec L ch. S31, § 20A

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 20A. Designated Substitutes for Commissioners and Department Heads.

The commissioner or head of each executive or administrative department of the commonwealth, including the state secretary, the attorney general, the treasurer and receiver-general, and the auditor, and the director or head of each division in each such department, shall designate, by name or position, five persons in his respective department or division who shall exercise, successively, his duties in the event of his absence or disability. Each such designation shall be subject to approval by the governor and council and shall be in effect until revoked by the officer who made such designation. Persons designated under this section to perform the duties of a department or division head in his absence or disability shall perform such duties only in succession to persons so authorized under any other provision of general or special law.

History

1962, 767.

End of Document

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

§ 20B. Filling Certain Vacancies by Governor Without Advice and Consent of Council.

Any vacancy in any office which, by reason of the provisions of any statute, is to be filled by the governor, with the advice and consent of the council, may, in the event of a vacancy therein resulting from enemy attack and in the event that enemy attack or the effects thereof prevents a quorum of the council from assembling, be filled by the governor without the advice and consent of the council. Any appointment made under the authority of this section shall be temporary, pending appointment in the usual manner, with the advice and consent of the council, when circumstances shall permit.

History

1962, 767.

End of Document

ALM Spec L ch. S31, § 20C

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 20C. Removal of Certain Officers by Governor Without Advice and Consent of Council.

Any officer who, by reason of the provisions of any statute, may be removed by the governor, with the advice and consent of the council, may, in the event that enemy attack or the effects thereof prevents a quorum of the council from assembling, be removed by the governor without such advice and consent, provided that the removal is for grounds that would be grounds for removal with the advice and consent of the council. Any removal made under the authority of this section shall be temporary, pending removal in the usual manner, with the advice and consent of the council, when circumstances shall permit. Pending such removal with the advice and consent of the council, the governor may fill any vacancy resulting from a removal effected under the authority of this section, by appointment thereto without the advice and consent of the council.

History

1962, 767.

End of Document

ALM Spec L ch. S31, § 21

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 21. Expenditure of Appropriations by Massachusetts Emergency Management Agency

For the purpose of carrying out the provisions of this act, the Massachusetts Emergency Management Agency may expend such sums as may hereafter be appropriated therefor.

History

1950, 639, § 21; *1991, 138, § 381*.

End of Document

ALM Spec L ch. S31, § 22

Current through Chapters 1-119 of the 2020 Legislative Session of the 191st General Court.

Annotated Laws of Massachusetts > SPECIAL LAWS (Chs. S1 - S143) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 - S41) > TITLE III CIVIL DEFENSE, MILITARY AFFAIRS AND VETERANS (Chs. S31 — S41) > Chapter S31 Civil Defense Act (§§ 1 — 22)

§ 22. Inoperativeness of Act.

This act or any part hereof shall become inoperative by the adoption of a joint resolution to that effect by the house and senate acting concurrently.

History

1950, 639, § 22; 1952, 269; 1953, 491.

End of Document

EXHIBIT H

Mass. APA, G.L. c. 30A, §§ 1 & 2

Current through Chapters 1-164 of the 2020 Legislative Session of the 191st General Court.

§ 1. Definitions.

For the purposes of this chapter—

(1)“Adjudicatory proceeding” means a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing. Without enlarging the scope of this definition, adjudicatory proceeding does not include (a) proceedings solely to determine whether the agency shall institute or recommend institution of proceedings in a court; or (b) proceedings for the arbitration of labor disputes voluntarily submitted by the parties to such disputes; or (c) proceedings for the disposition of grievances of employees of the commonwealth; or (d) proceedings to classify or reclassify, or to allocate or reallocate, appointive offices and positions in the government of the commonwealth; or (e) proceedings to determine the equalized valuations of the several cities and towns; or (f) proceedings for the determination of wages under section twenty–six T of chapter one hundred and twenty–one.

(2)“Agency”, any department, board, commission, division or authority of the state government or subdivision of any of the foregoing, or official of the state government, authorized by law to make regulations or to conduct adjudicatory proceedings, but does not include the following: the legislative and judicial departments; the governor and council; military or naval boards, commissions or officials; the department of correction; the department of youth services; the parole board; the division of dispute resolution of the division of industrial accidents; the personnel administrator; the civil service commission; and the appellate tax board.

(3)“Party” to an adjudicatory proceeding means:—(a) the specifically named persons whose legal rights, duties or privileges are being determined in the proceeding; and (b) any other person who as a matter of constitutional right or by any provision of the General Laws is entitled to participate fully in the proceeding, and who upon notice as required in paragraph (1) of section eleven makes an appearance; and (c) any other person allowed by the agency to intervene as a party. Agencies may by regulation not inconsistent with this section further define the classes of persons who may become parties.

(4)“Person” includes all political subdivisions of the commonwealth.

(4A)“Proposed regulation”, a proposal by an agency to adopt, amend or repeal an existing regulation.

(5)“Regulation” includes the whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it, but does not include (a) advisory rulings issued under section eight; or (b) regulations concerning only the internal management or discipline of the adopting agency or any other agency, and not substantially affecting the rights of or the procedures available to the public or that portion of the public affected by the agency’s activities; or (d) regulations relating to the use of the public works, including streets and highways, when the

substance of such regulations is indicated to the public by means of signs or signals; or (e) decisions issued in adjudicatory proceedings.

(5A)“Small business”, a business entity or agriculture operation, including its affiliates, that: (i) is independently owned and operated; (ii) has a principal place of business in the commonwealth; and (iii) would be defined as a “small business” under applicable federal law, as established in the United States Code and promulgated from time to time by the United States Small Business Administration.

(6)“Substantial evidence” means such evidence as a reasonable mind might accept as adequate to support a conclusion.

History

1954, 681, § 1; 1959, 511, § 1, 1965, 725; 1966, 14, § 42; 1966, 497; 1968, 120, § 1; 1969, 808, § 2; 1969, 838, § 8; 1970, 712, § 2; 1974, 361, § 1; 1974, 835, § 50; 1975, 817, § 1; 1978, 552, § 13; 1979, 795, § 3; 1985, 572, § 5; *1998, 161, § 232*; *2010, 240, §§ 65, 66*.

End of Document

Current through Chapters 1-164 of the 2020 Legislative Session of the 191st General Court.

§ 2. Prerequisites to Adoption, Amendment or Repeal of Regulations Requiring Public Hearing.

A public hearing is required prior to the adoption, amendment, or repeal of any regulation if: (a) violation of the regulation is punishable by fine or imprisonment; or, (b) a public hearing is required by the enabling legislation of the agency or by any other law; or, (c) a public hearing is required as a matter of constitutional right.

Prior to the adoption, amendment, or repeal of any regulation as to which a public hearing is required, an agency shall hold a public hearing. Within the time specified by any law, or, if no time is specified, then at least twenty–one days prior to the date of the public hearing, the agency shall give notice of such hearing by (a) publishing notice of such hearing in such manner as is specified by any law, or, if no manner is specified, then in such newspapers, and, where appropriate, in such trade, industry or professional publications as the agency may select; (b) notifying any person to whom specific notice must be given, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person required to be notified; (c) notifying any person or group filing a written request for notice of agency rule making hearings such request to be renewed annually in December, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person or group required to be notified; and (d) filing a copy of such notice with the state secretary.

The notice shall refer to the statutory authority under which the action is proposed; give the time and place of the public hearing; either state the express terms or describe the substance of the proposed regulation; and include any additional matter required by any law.

A small business impact statement shall be filed with the state secretary on the same day that the notice is filed and shall accompany the notice. Notwithstanding section 6, the state secretary shall include the full text of said small business impact statement on the electronic website of the state secretary; provided, however that the full text of the small business impact statement may also he inspected and copied in the office of the state secretary during business hours.

That small business impact statement shall include, but not be limited to, the following:

(1)an estimate of the number of small businesses subject to the proposed regulation;

(2)projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;

(3)the appropriateness of performance standards versus design standards;

(4)an identification of regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation; and

(5)an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth;

The public hearing shall comply with any requirements imposed by law, but shall not be subject to the provisions of this chapter governing adjudicatory proceedings.

If the agency finds that immediate adoption, amendment or repeal of a regulation is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice and a public hearing would be contrary to the public interest, the agency may dispense with such requirements and adopt, amend or repeal the regulation as an emergency regulation. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the state secretary under section five. An emergency regulation shall not remain in effect for longer than three months unless during that time the agency gives notice and holds a public hearing as required in this section, and files notice of compliance with the state secretary.

This section does not relieve any agency from compliance with any law requiring that its regulations be approved by designated persons or bodies before they become effective.

History

1954, 681, § 1; 1969, 808, § 3; 1976, 459, § 2; *2010, 240, § 67*; *2011, 142, § 7*; *2012, 165, § 114*.

End of Document

EXHIBIT I

35 Pa. Cons. Stat. § 7102

35 Pa.C.S. § 7102

Pa.C.S. documents are current through 2020 Regular Session Act 77; P.S. documents are current through 2020 Regular Session Act 77

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes > Title 35. Health and Safety (Pts. II — VI) > Part V. Emergency Management Services (Chs. 71 — 79A) > Chapter 71. General Provisions (Subchs. A — B) > Subchapter A. Preliminary Provisions (§§ 7101 — 7104)

§ 7102. Definitions.

The following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Agency." The Pennsylvania Emergency Management Agency.

"Council." The Pennsylvania Emergency Management Council.

"Custodial child care facility." A child day care center as defined under section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, or nursery school licensed or regulated by the Commonwealth.

"Disaster." A man-made disaster, natural disaster or war-caused disaster.

"Disaster emergency." Those conditions which may by investigation made, be found, actually or likely, to:

(1)affect seriously the safety, health or welfare of a substantial number of citizens of this Commonwealth or preclude the operation or use of essential public facilities;

(2)be of such magnitude or severity as to render essential State supplementation of county and local efforts or resources exerted or utilized in alleviating the danger, damage, suffering or hardship faced; and

(3)have been caused by forces beyond the control of man, by reason of civil disorder, riot or disturbance, or by factors not foreseen and not known to exist when appropriation bills were enacted.

"Disaster emergency-related work." The repair, renovation, installation, construction or rendering of services or other business activities that relate to infrastructure that has been damaged, impaired or destroyed by a disaster.

"Emergency management." The judicious planning, assignment and coordination of all available resources in an integrated program of prevention, mitigation, preparedness, response and recovery for emergencies of any kind, whether from attack, man-made or natural sources.

"Emergency services." The preparation for and the carrying out of functions, other than functions for which military forces are primarily responsible, to prevent, minimize and provide emergency repair of injury and damage resulting from disasters, together with all other activities necessary or incidental to the preparation for and carrying out of those functions. The functions include, without limitation, firefighting services, police services, medical and health services, rescue, engineering, disaster warning services, communications, radiological, shelter, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation,

emergency resources management, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to civilian protection.

"Infrastructure." Real and personal property and equipment that is owned or used by any of the following that service multiple customers or citizens:

(1)A communications network.

(2) An electric generation, transmission and distribution system.

(3)A gas distribution system that provides the facilities and equipment for producing, generating, transmitting, distributing or the furnishing of gas directly to the end customer.

(4)A public or private water pipeline.

"Local emergency." The condition declared by the local governing body when in their judgment the threat or actual occurrence of a disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby. A local emergency arising wholly or substantially out of a resource shortage may be declared only by the Governor, upon petition of the local governing body, when he deems the threat or actual occurrence of a disaster to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby.

"Local organization." A local emergency management organization.

"Man-made disaster." Any industrial, nuclear or transportation accident, explosion, conflagration, power failure, natural resource shortage or other condition, except enemy action, resulting from man-made causes, such as oil spills and other injurious environmental contamination, which threatens or causes substantial damage to property, human suffering, hardship or loss of life.

"Natural disaster." Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, landslide, mudslide, snowstorm, drought, fire, explosion or other catastrophe which results in substantial damage to property, hardship, suffering or possible loss of life.

"Out-of-State business." A business entity whose services are requested by a registered business, the Commonwealth or a political subdivision of the Commonwealth for purposes of performing disaster emergency-related work in this Commonwealth. The term includes a business entity that is affiliated with a registered business in this Commonwealth solely through common ownership. The out-of-State business may not have any of the following:

(1)A presence in this Commonwealth, excluding prior disaster emergency-related work performed under section 7308(b)(1) (relating to laws suspended during emergency assignments).

(2) Any registration, tax filing or nexus in this Commonwealth within the past three calendar years.

"Out-of-State employee." An employee who does not work in this Commonwealth, unless the employee is performing disaster emergency-related work during a period under section 7308(b)(1).

"Person." An individual, corporation, association, partnership, limited liability company, business trust, government entity, including the Commonwealth, foundation, public utility, trust or estate.

"Political subdivision." Any county, city, borough, incorporated town or township.

"Resource shortage." The absence, unavailability or reduced supply of any raw or processed natural resource, or any commodities, goods or services of any kind which bear a substantial relationship to the health, safety, welfare and economic well-being of the citizens of this Commonwealth.

"Registered business." Any business entity that is registered to do business in this Commonwealth prior to a declared disaster or emergency.

"War-caused disaster." Any condition following an attack upon the United States resulting in substantial damage to property or injury to persons in the United States caused by use of bombs, missiles, shellfire, nuclear, radiological, chemical or biological means, or other weapons or overt paramilitary actions, or other conditions such as sabotage.

History

Act 1978-323 (S.B. 1104), P.L. 1332, § 1, approved Nov. 26, 1978, eff. immediately; Act 1996 Special Session-2 (H.B. 4), P.L. 1762, § 1, approved May 31, 1996, eff. immediately; *Act 2004-73* (S.B. 922), P.L. 689, § 1, approved July 13, 2004, eff. in 60 days; *Act 2014-203* (H.B. 2377), , § 1, approved Oct. 31, 2014, eff. in 60 days; *Act 2020-69* (H.B. 1459), § 1, approved July 23, 2020, eff. July 23, 2020.

End of Document

EXHIBIT J

***Wolf v. Scarnati*, No. 104 MM 2020,**
2020 Pa. LEXIS 3603, (Pa. July 1, 2020)

Wolf v. Scarnati

Supreme Court of Pennsylvania

July 1, 2020, Submitted; July 1, 2020, Decided

No. 104 MM 2020

Reporter
2020 Pa. LEXIS 3603 *

THE HONORABLE TOM WOLF, GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA, Petitioner v. SENATOR JOSEPH B. SCARNATI, III, SENATOR JAKE CORMAN, AND SENATE REPUBLICAN CAUCUS, Respondents

Prior History: Wolf v. Scarnati, 2020 Pa. LEXIS 3364 (Pa., June 17, 2020)

Core Terms

disaster, concurrent, Proclamation, suspend, veto, delegated, terminate, suspension, non-delegation, gubernatorial, Convention, Thereupon, Reply, canon, Framers, unilaterally, prescribed, override, adjournment, unambiguous, sentence, vested, void, counterbalance, lawmaking, renewed, far-reaching, expenditure, oversight, ceremony

Case Summary

Overview

HOLDINGS: A concurrent resolution by the General Assembly ordering the governor to terminate his proclamation of disaster emergency in response to the novel coronavirus was a legal nullity, as it had not been presented to the Governor for his approval or veto as required by 35 Pa.C.S. § 7301(c), which had to be read to require such presentment in conformity with Pa. Const. art. III, § 9; Pa. Const. art. I, § 12 did not empower the legislature to act unilaterally to suspend a law; and the Governor's purported suspension of law did not violate the non-delegation doctrine.

Outcome
The court held the concurrent resolution in question to be a legal nullity.

LexisNexis® Headnotes

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

HN1 **Appellate Jurisdiction, State Court Review**

The exercise of King's Bench authority is not limited by prescribed forms of procedure or to action upon writs of a particular nature; the Supreme Court of Pennsylvania may employ any type of process or procedure necessary for the circumstances.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

Constitutional Law > Separation of Powers

HN2 **Congressional Duties & Powers, Presentment & Veto**

The Pennsylvania Constitution is clear: all concurrent

resolutions, except in three narrow circumstances, must be presented to the Governor for his approval or veto. To allow a concurrent resolution that does not fit into one of the exceptions to take effect without presentment would be to authorize a legislative veto. The provisions of Pa. Const. art. III, § 9 are integral parts of the constitutional design for the separation of powers. Under the Pennsylvania Constitution, the legislative power, even when exercised by concurrent resolution, must be subject to gubernatorial review.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

HN3[] Congressional Duties & Powers, Presentment & Veto

The first exception to presentment of concurrent resolutions to the Governor is obvious from the plain text of Pa. Const. art. III, § 9. Any concurrent resolution on the question of adjournment need not be presented to the Governor.

Constitutional Law > Amendment Process

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

HN4[] Constitutional Law, Amendment Process

The second exception to presentment to the Governor of a concurrent resolution is a concurrent resolution proposing a constitutional amendment. The Pennsylvania Constitution itself, specifically Pa. Const. art. XI, § 1, provides the complete and detailed process for the amendment of that document. The Pennsylvania Supreme Court has characterized the process of amending the constitution as standing alone and entirely unconnected with any other subject. Nor does it contain any reference to any other provision of the constitution as being needed. It is a system entirely complete in itself; requiring no extraneous aid, either in matters of detail or of general scope, to its effectual execution. Because submission to the Governor is carefully excluded, such submission is not only not required, but cannot be permitted.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

Constitutional Law > Separation of Powers

HN5[] Congressional Duties & Powers, Presentment & Veto

The third exception to presentment of a concurrent resolution to the Governor is not explicitly delineated, but rather inheres in the structure of the Pennsylvania Charter. The presentment requirement in Pa. Const. art. III, § 9 applies only to matters governed by constitutional provisions concerning the legislative power. In other words, it is perfectly manifest that the orders, resolutions, and votes which must be so submitted to the Governor are, and can only be, such as relate to and are a part of the business of legislation. Although no provision of the constitution explicitly withdraws non-legislative resolutions from the requirement of presentment, such resolutions involve only internal affairs of the legislature. Under the principle of separation of the powers of government, no branch should exercise the functions exclusively committed to another branch. The legislature, a co-equal branch of government, has the sole authority to determine the rules of its proceedings. Pa. Const. art. II, § 11. Similarly, resolutions that are investigatory or ceremonial in nature, although not technically procedural, are solely within the purview of the legislature itself and need not be presented to the Governor, as such resolutions are not a part of the business of legislation that affects entities outside the legislative branch.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

HN6[] Congressional Duties & Powers, Presentment & Veto

When the legislature seeks to act on behalf of the state by way of a concurrent resolution, that resolution must be presented to the Governor.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

HN7[] Congressional Duties & Powers, Presentment & Veto

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. Resolutions which are passed for any other purpose, such as the appointment of a committee by the legislature to obtain information on legislative matters for its future use or to investigate conditions in order to assist in future legislation, are not required to be presented to the Governor for action thereupon.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

HN8[] Congressional Duties & Powers, Presentment & Veto

Whether a concurrent resolution requires presentment to the Governor depends upon whether the resolution comprises legislation or has the effect of legislating.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

HN9[] Congressional Duties & Powers, Presentment & Veto

When a court has to determine for purposes of presentment whether a concurrent resolution is an act of legislating, the court must look to the substance of that resolution, rather than adhering to a formulaic approach that confines the court to the title or label of the resolution.

Governments > State & Territorial Governments > Employees & Officials

Public Health & Welfare Law > Social Services > Emergency Services

HN10[] State & Territorial Governments, Employees & Officials

The Emergency Code specifically recognizes that under its auspices, the Governor has the authority to issue executive orders and proclamations which shall have the full force of law.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

HN11[] Congressional Duties & Powers, Presentment & Veto

While the expenditure of funds is a sufficient condition for requiring presentment of a concurrent resolution to the Governor, it is not a necessary one. The General Assembly can pass a bill or resolution that has legal effect even if the bill or resolution does not commit the Commonwealth to spending any money.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

HN12[] Congressional Duties & Powers, Presentment & Veto

The inclusion of *Pa. Const. art. III, § 9* in the Pennsylvania Constitution is not simply to require presentment for conventional legislation, but rather to require presentment for all bills, resolutions, votes, etc., that have the effect of legislating.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

HN13[] Congressional Duties & Powers, Presentment & Veto

Except as it relates to the power of each House to determine its own rules of proceedings, under the Pennsylvania Constitution the legislative power, even when exercised by concurrent resolution, must be subject to gubernatorial review.

Governments > Legislation > Interpretation

HN14[] Legislation, Interpretation

The best indication of legislative intent is the plain text of the statute.

Constitutional Law > Congressional Duties &

Powers > Presentment & Veto

Public Health & Welfare Law > Social Services > Emergency Services

HN15 **Congressional Duties & Powers, Presentment & Veto**

The requirement in 35 Pa.C.S. § 7301(c) that the Governor must act to end the disaster emergency is a sign that the General Assembly understood that its concurrent resolution would be presented to the Governor, in conformity and compliance with Pa. Const. art. III, § 9.

Governments > State & Territorial Governments > Employees & Officials

Public Health & Welfare Law > Social Services > Emergency Services

Governments > Legislation > Enactment

Governments > State & Territorial Governments > Legislatures

Governments > Police Powers

HN16 **State & Territorial Governments, Employees & Officials**

The broad powers granted to the Governor in the Emergency Services Management Code are firmly grounded in the Commonwealth's police power. The Commonwealth's police power is not exercised by the Governor alone, but rather is the inherent power of a body politic to enact and enforce laws for the promotion of the general welfare. The General Assembly, not just the Governor, can exercise the police power. Indeed, the General Assembly's very delegation of power to the Governor presupposed the General Assembly's inherent authority both to declare and to end disaster emergencies under its lawmaking powers. Pa. Const. art. II, § 1. The General Assembly has the power to terminate a declaration of disaster emergency without any action by the Governor, aside from presentment and an overriding vote in the event of a veto. If the legislature wishes to end a disaster emergency and satisfies presentment, followed either by gubernatorial approval or by veto override, then further action by the Governor would in any event be unnecessary. The Governor would simply be bound to follow the law.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

Public Health & Welfare Law > Social Services > Emergency Services

HN17 **Congressional Duties & Powers, Presentment & Veto**

If a statute or resolution is passed over the Governor's veto, the Governor still must abide by that law, even if the General Assembly does not specifically require that the Governor enforce that law. Pa. Const. art. IV, § 2. That the General Assembly decided to give the Governor a role in ending the emergency disaster declaration in 35 Pa.C.S. § 7301(c) is strong evidence that the General Assembly intended to abide by the Pennsylvania Constitution, which also requires gubernatorial involvement.

Constitutional Law > ... > Case or Controversy > Constitutionality of Legislation > Inferences & Presumptions

Governments > Legislation > Interpretation

Constitutional Law > ... > Case or Controversy > Constitutional Questions > Necessity of Determination

HN18 **Constitutionality of Legislation, Inferences & Presumptions**

Under the canon of constitutional avoidance, if a statute is susceptible of two reasonable constructions, one of which would raise constitutional difficulties and the other of which would not, the court adopts the latter construction. This canon of statutory interpretation is prescribed both by our General Assembly and by precedent. The legislative branch has advised the Supreme Court of Pennsylvania that, in ascertaining the intention of the General Assembly in the enactment of a statute, the court is to presume that the legislature does not intend to violate the Constitution of the Commonwealth. 1 Pa.C.S. § 1922(3). Duly incorporating this codified presumption into its case law, the supreme court repeatedly has emphasized that, if a statute is susceptible of two reasonable interpretations, the court will interpret the statute in such a manner so as to avoid a finding of unconstitutionality.

Constitutional Law > ... > Case or Controversy > Constitutional Questions > Necessity of Determination

Governments > Legislation > Interpretation

HN19 Constitutional Questions, Necessity of Determination

Although courts should interpret statutes so as to avoid constitutional questions when possible, they cannot ignore the plain meaning of a statute to do so. Courts cannot disregard the General Assembly's intent, as evinced by the plain text of the statute, and rewrite that statute in order to avoid a constitutional question.

Constitutional Law > ... > Case or Controversy > Constitutionality of Legislation > Inferences & Presumptions

Public Health & Welfare Law > Social Services > Emergency Services

Constitutional Law > ... > Case or Controversy > Constitutional Questions > Necessity of Determination

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

HN20 Constitutionality of Legislation, Inferences & Presumptions

Applying the canon of constitutional avoidance, 35 Pa.C.S. § 7301(c) must be read to require presentment to the Governor. Any resolution seeking to end a declaration of disaster emergency has the effect of legislating, necessitating presentment.

Constitutional Law > ... > Case or Controversy > Constitutionality of Legislation > Inferences & Presumptions

Constitutional Law > ... > Case or Controversy > Constitutional Questions > Necessity of Determination

HN21 Constitutionality of Legislation, Inferences & Presumptions

There is no basis in Pennsylvania jurisprudence to authorize creation of a sliding scale of constitutional avoidance based upon whether the provision at issue involves one branch's ability to control the affairs of another branch. The General Assembly has prescribed for the Supreme Court of Pennsylvania one standard for deciding constitutional avoidance questions: a presumption that the General Assembly does not intend to violate the Constitution of the Commonwealth. 1 Pa.C.S. § 1922(3).

Governments > Legislation > Interpretation

HN22 Legislation, Interpretation

Every case, and every statute, must be evaluated independently.

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

Governments > Legislation > Interpretation

HN23 Case or Controversy, Constitutionality of Legislation

If a statute is ambiguous, a court should interpret that statute in such a manner as to avoid a finding of unconstitutionality.

Public Health & Welfare Law > Social Services > Emergency Services

HN24 Social Services, Emergency Services

In the clearest language possible, 35 Pa.C.S. § 7301(c) authorizes the Governor to declare that a disaster emergency has occurred or is imminent, to continue the state of disaster emergency until such time as the Governor finds that the threat or danger has passed, and, to the extent the threat has passed or an emergency no longer exists, to terminate the state of disaster emergency by executive order or proclamation. Thus, while § 7301(c) provides that the General Assembly may terminate a state of disaster emergency at any time, the statute also provides that the state of disaster emergency ends only after the Governor so

finds.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

Public Health & Welfare Law > Social Services > Emergency Services

HN25[] Congressional Duties & Powers, Presentment & Veto

Based upon the plain text of the statute and upon the canon counseling against invalidation of statutes on constitutional grounds where possible, 35 Pa.C.S. § 7301(c)'s provision allowing the General Assembly to terminate a state of disaster emergency by concurrent resolution requires presentment of that resolution to the Governor.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

Public Health & Welfare Law > Social Services > Emergency Services

HN26[] Congressional Duties & Powers, Presentment & Veto

35 Pa.C.S. § 7301(c) does indeed contain a counterbalance to the exercise of the broad powers granted to the Governor. The legislative counterbalance complies with the presentment requirement of the Commonwealth's Constitution.

Constitutional Law > Congressional Duties & Powers > Suspension Clause

HN27[] Congressional Duties & Powers, Suspension Clause

The history of Pa. Const. art. I, § 12 indicates that the clause was intended as a negative check on executive power, rather than an affirmative grant of power to the legislature to act unilaterally.

Constitutional Law > Congressional Duties & Powers > Suspension Clause

HN28[] Congressional Duties & Powers, Suspension Clause

Pa. Const. art. I, § 12 does not empower the General Assembly to act alone, but rather distributes the power to suspend laws between the legislative and executive branches.

Constitutional Law > Bill of Rights

Constitutional Law > Congressional Duties & Powers > Suspension Clause

HN29[] Constitutional Law, Bill of Rights

The placement of Pa. Const. art. I, § 12 in the Pennsylvania Constitution's Declaration of Rights indicates that the provision is a negative check on executive power rather than an affirmative grant for the legislature to act without the Governor. Since 1790, the Framers of each of our Commonwealth's Constitutions have placed the clause involving the power to suspend laws in the section of the Constitution devoted to the protection of individual liberty. Those rights enumerated in the Declaration of Rights are deemed to be inviolate and may not be transgressed by government. The Declaration of Rights exists to protect Commonwealth citizens from government tyranny, not to delineate the powers of any branch of government.

Constitutional Law > Bill of Rights

Constitutional Law > Congressional Duties & Powers > Suspension Clause

HN30[] Constitutional Law, Bill of Rights

The Declaration of Rights, including Pa. Const. art. I, § 12, serves to protect individuals from an overbearing government in general, not to empower any department of that government. Article I, Section 12 therefore cannot, on its face, be read as a means by which to bypass presentment in acts suspending prior legislation, where presentment was required for their enactment.

Constitutional Law > Amendment Process

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

Constitutional Law > Congressional Duties & Powers > Suspension Clause

HN31 **Constitutional Law, Amendment Process**

Pa. Const. art. III, § 9 explicitly exempts resolutions pertaining to adjournment from presentment. And Pa. Const. art. XI sets forth a comprehensive scheme for amending the Constitution. Conversely, Pa. Const. art. I, § 12 neither offers explicit language exempting the suspension power from presentment nor describes a process in which the Governor has no role.

Constitutional Law > Separation of Powers

Constitutional Law > Congressional Duties & Powers > Suspension Clause

HN32 **Constitutional Law, Separation of Powers**

Pa. Const. art. I, § 12 does not limit the temporal duration for which a law can be suspended, nor does it specify which types of laws may be suspended. To grant the General Assembly such broad authority would be to rewrite the Pennsylvania Constitution and remove the Governor from the lawmaking process. Such a view is inimical to our system of checks and balances, a system in which presentment plays a critical role.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

Governments > Legislation > Expiration, Repeal & Suspension

Constitutional Law > Congressional Duties & Powers > Suspension Clause

HN33 **Congressional Duties & Powers, Presentment & Veto**

The Supreme Court of Pennsylvania has characterized the power of suspending laws as part of the process of lawmaking. For example, when a party claimed that an action taken by the executive branch violated Pa. Const. art. I, § 12 and Pa. Const. art. II, § 1, which vests legislative power in the General Assembly, the court read the two clauses together, writing that those provisions vest legislative power in the General Assembly and give it the power to amend, repeal, suspend or enact statutes. The suspension of statutes, like the amendment, repeal, or enactment of statutes, is a legislative action. And legislative actions are subject to presentment. Pa. Const. art. III, § 9; Pa. Const. art. IV, § 15.

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

Constitutional Law > Congressional Duties & Powers > Suspension Clause

HN34 **Congressional Duties & Powers, Presentment & Veto**

Based upon the original history of Pa. Const. I, § 12, the Framers' decision to place that provision in the Declaration of Rights, a comparison between § 12 and other provisions from which presentment is excluded, and the practice of other jurisdictions, § 12 does not affirmatively grant the General Assembly the power to suspend laws unilaterally. Rather, as an exercise in lawmaking, the suspension of laws must adhere to the requirement of presentment, an essential component of the Pennsylvania Constitution's system of checks and balances.

Civil Procedure > Appeals > Appellate Briefs

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN35 **Appeals, Appellate Briefs**

A claim is waived if it is raised for the first time in a reply brief.

Constitutional Law > Separation of Powers

HN36 **Constitutional Law, Separation of Powers**

The non-delegation doctrine forbids entities other than the legislative branch from exercising the legislative power, as those entities do not have the power to make law.

Administrative Law > Agency Rulemaking > Rule

Application & Interpretation > Binding Effect

HN37[] Rule Application & Interpretation, Binding Effect

Executive orders that affect individuals outside the executive branch implement existing constitutional or statutory law. But an executive order or an administrative regulation promulgated by an executive agency that implements a statute still has the force of law. Otherwise, no entity outside the executive branch could be compelled to abide by a regulation issued by an executive branch agency.

Governments > State & Territorial Governments > Employees & Officials

Public Health & Welfare Law > Social Services > Emergency Services

HN38[] State & Territorial Governments, Employees & Officials

The General Assembly decided that the Governor should be able to exercise certain powers when he or she makes a finding that a disaster has occurred or that the occurrence of the threat of a disaster is imminent. 35 Pa.C.S. § 7301(c). Additionally, the General Assembly has provided adequate standards which will guide and restrain the Governor's powers. The General Assembly gave the Governor specific guidance about what he can, and cannot, do in responding to a disaster emergency. 35 Pa.C.S. §§ 7301(d)-(f), 7302, 7303, 7308. The powers delegated to the Governor are admittedly far-reaching, but nonetheless are specific. For example, the Governor can supend the provisions of any regulatory statute if strict compliance with the provisions would in any way prevent, hinder or delay necessary action in coping with the emergency. § 7301(f)(1). Broad discretion and standardless discretion are not the same thing. Only those regulations that hinder action in response to the emergency may be suspended. It may be the case that the more expansive the emergency, the more encompassing the suspension of regulations. But this shows that it is the scope of the emergency, not the Governor's arbitrary discretion, that determines the extent of the Governor's powers under the statute.

Constitutional Law > Congressional Duties & Powers > Suspension Clause

HN39[] Congressional Duties & Powers, Suspension Clause

It is clear from the text of Pa. Const. art. I, § 12 and precedent that the General Assembly can delegate its suspension power to the executive branch. Section 12 states that the power of suspending laws can be exercised by the Legislature or by its authority. Pa. Const. art. I, § 12.

Constitutional Law > Congressional Duties & Powers > Delegation of Authority

Constitutional Law > Congressional Duties & Powers > Suspension Clause

HN40[] Congressional Duties & Powers, Delegation of Authority

The power to suspend laws is part of the general legislative power, and there is no reason to treat suspending laws differently from enacting, amending, or repealing laws for the purpose of the non-delegation doctrine. Moreover, the implication of Pa. Const. I, § 12 does not alter the restrictions on delegating legislative decision making as embodied in Pa. Const. art. II, § 1. Thus, the same restrictions on delegating power apply in all legislative contexts, including when delegating the power to suspend laws.

Governments > State & Territorial Governments > Employees & Officials

Public Health & Welfare Law > Social Services > Emergency Services

HN41[] State & Territorial Governments, Employees & Officials

The General Assembly itself decided to delegate power to the Governor under 35 Pa.C.S. 7301(c).

Constitutional Law > Congressional Duties & Powers > Presentment & Veto

Constitutional Law > Congressional Duties & Powers > Suspension Clause

HN42[] Congressional Duties & Powers,

Presentment & Veto

The General Assembly must adhere to the constitutional requirement of presentment even when attempting to overturn the Governor's delegated putative authority to suspend laws.

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

Governments > Legislation > Interpretation

Constitutional Law > Separation of Powers

HN43[] **Case or Controversy, Constitutionality of Legislation**

The protection against unwise and oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fails, the people in their sovereign capacity can correct the evil, but courts cannot assume their rights. The judiciary can only arrest the execution of a statute when it conflicts with the Constitution. It cannot run a race of opinions upon points of right, reason, and expediency with the lawmaking power. If the courts are not at liberty to declare statutes void because of their apparent injustice or impolicy, neither can they do so because they appear to the minds of the judges to violate fundamental principles of republican government, unless it should be found that these principles are placed beyond legislative encroachment by the Constitution.

Judges: [*1] SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ. Justices Baer, Todd and Donohue join the opinion. Justice Dougherty files a concurring and dissenting opinion. Chief Justice Saylor files a dissenting opinion in which Justice Mundy joins.

Opinion by: WECHT

Opinion

JUSTICE WECHT

Our government's response to the challenges presented by the COVID-19 pandemic has engendered passionate arguments that span the political spectrum. Pennsylvanians have watched with great interest as the political branches of our Commonwealth's government, represented by the Governor and the General Assembly, have debated how best to respond to this novel coronavirus. In light of the intense public interest in this issue, and because "[s]unlight is said to be the best of disinfectants,"[1] we find it necessary to make clear what this Court is, and is not, deciding in this case. We express no opinion as to whether the Governor's response to the COVID-19 pandemic constitutes wise or sound policy. Similarly, we do not opine as to whether the General Assembly, in seeking to limit or terminate the Governor's exercise of emergency authority, presents a superior approach for advancing the welfare of our Commonwealth's residents. **[*2]** Instead, we decide here only a narrow legal question: whether the Pennsylvania Constitution and the Emergency Services Management Code permit the General Assembly to terminate the Governor's Proclamation of Disaster Emergency by passing a concurrent resolution, without presenting that resolution to the Governor for his approval or veto.

I. The Governor's Proclamation of Disaster Emergency

On March 6, 2020, in response to the COVID-19 pandemic, Governor Tom Wolf issued a Proclamation of Disaster Emergency ("Proclamation")[2] pursuant to *35 Pa.C.S. § 7301(c)*, a provision of the Emergency Management Services Code, *id. §§ 7101, et seq.*[3] *Section 7301(c)* states, in full:

> **(c) Declaration of disaster emergency**.--A

[1] LOUIS D. BRANDEIS, OTHER PEOPLE'S MONEY AND HOW THE BANKERS USE IT 92 (Frederick A. Stokes Co. ed. 1914).

[2] Governor Tom Wolf, *Proclamation of Disaster Emergency*, COMMONWEALTH OF PENNSYLVANIA, OFFICE OF THE GOVERNOR (Mar. 6, 2020), https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf.

[3] *See* Act of Nov. 26, 1978, P.L. 1332, No. 323.

> disaster emergency shall be declared by executive order or proclamation of the Governor upon finding that a disaster has occurred or that the occurrence or the threat of a disaster is imminent. The state of disaster emergency shall continue until the Governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, **[*3]** but no state of disaster emergency may continue for longer than 90 days unless renewed by the Governor. *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*. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area or areas threatened and the conditions which have brought the disaster about or which make possible termination of the state of disaster emergency. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, shall be promptly filed with the Pennsylvania Emergency Management Agency and the Legislative Reference Bureau for publication under Part II of Title 45 (relating to publication and effectiveness of Commonwealth documents).

35 Pa.C.S. § 7301(c) (emphasis added). The Governor's Proclamation activated many emergency resources. To give just a few examples, it: transferred funds to the Pennsylvania Emergency Management **[*4]** Agency; suspended provisions of regulatory statutes relating to the operation of businesses, health, education, and transportation; and mobilized the Pennsylvania National Guard.

On March 19, 2020, consistent with his earlier declaration of a disaster emergency, the Governor issued an order closing businesses that were not considered life-sustaining.[4] Four Pennsylvania businesses and one individual challenged the Governor's Order, alleging that it violated the Emergency Management Services Code and various constitutional provisions. On April 13, 2020, in an exercise of our King's Bench jurisdiction, *see* *42 Pa.C.S. § 502*, we ruled that the Governor's order complied with both the statute and our Constitutions. *Friends of Danny DeVito v. Wolf, 227 A.3d 872 (Pa. 2020)*.

On June 3, 2020, the Governor renewed the Disaster Emergency Proclamation for an additional ninety days.[5] On June 9, 2020, the Pennsylvania Senate and the Pennsylvania House of Representatives adopted a concurrent resolution ordering **[*5]** the Governor to terminate the disaster emergency. The resolution provides, in relevant part:

> Whereas, pursuant to *Section 12 of Article I of the Constitution of Pennsylvania*, the power to suspend laws belongs to the legislature; and
>
> Whereas, *35 Pa.C.S. § 7301(c)* authorizes the General Assembly by concurrent resolution to terminate a state of disaster emergency at any time; and
>
> Whereas, *35 Pa.C.S. § 7301(c)* provides that upon the termination of the declaration by concurrent resolution of the General Assembly, "the Governor shall issue an executive order or proclamation ending the state of disaster emergency";
> Therefore be it
>
> Resolved (the Senate concurring) that the General Assembly, in accordance with *35 Pa.C.S. § 7301(c)* and its *Article I, Section 12* power to suspend laws, hereby terminate[s] the disaster emergency declared on March 6, 2020, as amended and renewed, in response to COVID-19; and be it further
>
> Resolved, that upon adoption of this concurrent resolution by both chambers of the General

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[4] Governor Tom Wolf, *Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses That Are Not Life Sustaining*, COMMONWEALTH OF PENNSYLVANIA, OFFICE OF THE GOVERNOR (Mar. 19, 2020), https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf.

[5] Governor Tom Wolf, *Amendment to the Proclamation of Disaster Emergency*, COMMONWEALTH OF PENNSYLVANIA, OFFICE OF THE GOVERNOR (June 3, 2020), https://www.pema.pa.gov/Governor-Proclamations/Documents/06.03.2020%20TWW%20amendment%20to%20COVID%20disaster%20emergency%20proclamation.pdf.

> Assembly, the Secretary of the Senate shall notify the Governor of the General Assembly's action with the directive that the Governor issue an executive order or proclamation ending the state of disaster emergency in accordance with this resolution and 35 Pa.C.S. § 7301(c)[.]

H.R. Con. Res. 836, 2020 Gen. Assemb., Reg. Sess. 2019-20 (Pa. 2020) **[*6]** (capitalization modified).[6] On June 10, 2020, the Secretary of the Senate informed the Governor of the concurrent resolution, writing: "I am notifying you of the General Assembly's action and the directive that you issue an executive order o[r] proclamation ending the state of disaster emergency in accordance with this resolution and 35 Pa.C.S. § 7301(c)."[7]

On June 11, 2020, Senate President Pro Tempore Joseph B. Scarnati, III, Senate Majority Leader Jake Corman, and the Senate Republican Caucus (collectively, the "Senators") filed a Petition for Review in the Nature of a Complaint in Mandamus in the Commonwealth Court, seeking to enforce H.R. 836. *See* Scarnati v. Wolf, 344 MD 2020, 2020 Pa. LEXIS 3364. One day later, the Governor filed in this Court an Application for the Court to Exercise Jurisdiction Pursuant to Its King's Bench Powers and/or Powers to Grant Extraordinary Relief. On June 17, 2020, we granted King's Bench jurisdiction and stayed the Commonwealth Court proceedings. Order, 104 MM 2020, 6/17/2020.

In his Application, the Governor argues that this Court should declare H.R. 836 null and void under the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531-41. We now address **[*7]** the merits of the Governor's Application and the Senators' Briefs.[8]

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[6] Although "H.R. Con. Res. 836" is the proper abbreviation for a concurrent resolution, we refer to the resolution as "H.R. 836" for brevity's sake and to accord with the parties' briefs.

[7] Megan Martin, Secretary of the Senate, Letter to Governor Tom Wolf, 6/10/2020.

[8] In a letter filed June 15, 2020, the Senators stated, "In terms of the merits of the [Governor's] Application, the Senators, as noted by [the Governor], *see* Appl[ication] at 13 n.14, have already filed a substantive brief in the Commonwealth Court, *see* Scarnati v. Wolf, No. 344 MD 2020, 2020 Pa. LEXIS 3364, and the Senators rely on the same to the extent the Court is looking for a response on the merits." Senators' No-Answer Letter, 104 MM, 6/15/2020, at 1. ***HN1***[⬆] "The exercise of King's Bench authority is not limited by prescribed forms of procedure or to action upon writs of a particular nature; the Court may employ any type of process or procedure necessary for the circumstances." *In re Bruno, 627 Pa. 505, 101 A.3d 635, 669 (Pa. 2014)*. Thus, we agreed to decide the issues raised in the Governor's Application based upon the filings submitted to this Court and to the Commonwealth Court in *Scarnati v. Wolf, 344 MD 2020, 2020 Pa. LEXIS 3364*. *See* Order, 104 MM 2020, 6/17/2020. We refer to the Governor's Application, which encompasses his legal arguments, as the "Governor's Application," and we refer to the Brief of Petitioners in Support of Application of Expedited Summary Relief, which the Senators submitted to the Commonwealth Court, as the "Senators' Brief."

After granting King's Bench jurisdiction, a number of motions were filed. We take this opportunity to dispose of those motions.

First, we grant the Application of Representative Bryan Cutler and House Republican Caucus for Leave to Intervene as respondents. Representative Cutler and the House Republican Caucus (collectively, the "Representatives") state that their "interests . . . are aligned with the Senate respondents." *Id.* at P 12. Additionally, the Representatives note that they "will adopt and join in the Petition for Review filed by the Senate respondents and the" Senators' Brief. *Id.* at P 14. Thus, we deem the Representatives to have joined the Senators' brief, rather than intending to file a separate brief with this Court. *See* ***Pa.R.C.P. 2328(a)*** (requiring that, in a petition to intervene, "[t]he petitioner shall attach to the petition a copy of any pleading which the petitioner will file in the action if permitted to intervene or shall state in the petition that the petitioner adopts by reference in whole or in part certain named pleadings or parts of pleadings already filed in the action"). Additionally, as the Governor is the petitioner in this Court, the decision to allow the Representatives to intervene is not to be considered a ruling as to whether the Representatives would have standing to intervene as petitioners in the Commonwealth Court.

Second, we grant the Senators' Application for Leave to File Reply Brief. Although the Senators are the respondents in this Court, we grant the application as a supplemental brief. For convenience, we refer to this document as the "Senators' Reply Brief."

Third, we grant the various applications for leave to file briefs as *amici curiae. See* Application of SEIU HealthCare Pennsylvania for Leave to Participate as *Amicus Curiae*; Application for Leave to File Brief as *Amici Curiae* by Members of the Democratic Caucuses of the Pennsylvania House of Representatives and Senate of Pennsylvania; Application of the Keystone Research Center and the Pennsylvania Budget and Policy Center for Leave to Submit *Amici Curiae* Brief *Nunc Pro Tunc* in Support of Petitioner; Application for Leave to File *Amicus* Brief by the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, et al.; Application for Leave

II. Presentment

This dispute concerns whether the concurrent resolution is subject to the presentment requirement embodied in the Pennsylvania Constitution. In common parlance, the question is whether H.R. 836 is subject to the Governor's veto power. Our Commonwealth's Constitution provides:

> 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. That text has remained virtually unchanged since 1790. *See* Pa. Const. of 1790, art. I, § 23, Pa. Const. of 1838. , art. I, § 24, Pa. Const. of 1874, art. III, § 26. **HN2**[↑] Our Constitution is clear: *all* concurrent resolutions, except in three narrow circumstances identified below, must be presented to the Governor for his approval or veto. To allow a concurrent resolution that does not fit into one of the exceptions to take effect **[*8]** without presentment would be to authorize a legislative veto. In Commonwealth v. Sessoms, 516 Pa. 365, 532 A.2d 775 (Pa. 1987), we adopted the reasoning of the Supreme Court of the United States in Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983), and found that the provisions of Article III, Section 9 "are integral parts of the constitutional design for the separation of powers." *Sessoms, 532 A.2d at 778* (quoting Chadha, 462 U.S. at 946). "[U]nder our Constitution[,] the legislative power, even when exercised by concurrent resolution, must be subject to gubernatorial review." *Id. at 782*; *see also* W. Shore Sch. Dist. v. Pa. Labor Relations Bd., 534 Pa. 164, 626 A.2d 1131, 1135-36 (Pa. 1993). Because the Senators contend that H.R. 836 fits into one of the three recognized exceptions to presentment, we examine those exceptions in turn.

A. The Exceptions to Presentment

HN3[↑] The first exception to presentment is obvious from the plain text of Article III, Section 9. Any concurrent resolution "on the question of adjournment" need not be presented to the Governor. No party avers that H.R. 836 involves adjournment.

HN4[↑] The second exception to presentment is a concurrent resolution proposing a constitutional amendment. The Constitution itself, specifically Article XI, Section 1, provides the "complete and detailed process for the amendment of that document." Kremer v. Grant, 529 Pa. 602, 606 A.2d 433, 436 (Pa. 1992). We have characterized the process of amending our Constitution as "standing alone and entirely unconnected with any other subject. **[*9]** Nor does it contain any reference to any other provision of the constitution as being needed . . . . It is a system entirely complete in itself; requiring no extraneous aid, either in matters of detail or of general scope, to its effectual execution." Commonwealth ex rel. Att'y Gen. v. Griest, 196 Pa. 396, 46 A. 505, 506 (Pa. 1900). Because "submission to the governor is carefully excluded, . . . such submission is not only not required, but cannot be permitted." *Id. at 507*; *see also* Mellow v. Pizzingrilli, 800 A.2d 350, 359 (Pa. Cmwlth. 2002) ("Article XI has vested the power to propose amendments in the General Assembly. Other than the express requirements set forth in Article XI, the procedure to be used in proposing such amendments is exclusively committed to the legislature."). No party argues that H.R. 836 is a proposed amendment to our Commonwealth's Constitution.

HN5[↑] The third exception to presentment is not explicitly delineated, but rather inheres in the structure of our Charter. The presentment requirement in Article III, Section 9 applies only to matters governed by constitutional provisions concerning the legislative power. Griest, 46 A. at 508. In other words, "it is perfectly manifest that the orders, resolutions, and votes which must be so submitted [to the Governor] are, and can only be, such as relate to and are a part of the business of legislation." **[*10]** *Id.* Although no provision of the Constitution explicitly withdraws non-legislative resolutions from the requirement of presentment, such

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to File *Amicus Curiae* Brief on Behalf of the Commonwealth Foundation for Public Policy Alternatives; Application for Leave to File *Amici Curiae* Brief on Behalf of the Commonwealth Partners Chamber of Entrepreneurs, et al.

Fourth, we deny the Senators' Application for Leave to Present Oral Argument. This case involves a discrete legal issue, and there are no factual disputes. The parties, as well as *amici*, have provided ample and thoughtful briefing, and, because the subject matter of this case implicates constitutional questions concerning separation of powers as well as the effectiveness of legislative action relative to a rapidly evolving situation, it must be decided without unnecessary delay.

resolutions involve only internal affairs of the legislature. "Under the principle of separation of the powers of government, . . . no branch should exercise the functions exclusively committed to another branch." Sweeney v. Tucker, 473 Pa. 493, 375 A.2d 698, 705 (Pa. 1977). The legislature, a co-equal branch of government, has "the sole authority to determine the rules of its proceedings." Pennsylvania AFL-CIO v. Commonwealth, 563 Pa. 108, 757 A.2d 917, 923 (Pa. 2000); *see also* Pa. Const. art. II, § 11 ("Each House shall have power to determine the rules of its proceedings . . . ."). Similarly, resolutions that are investigatory or ceremonial in nature, although not technically procedural, are solely within the purview of the legislature itself and need not be presented to the Governor, as such resolutions are not "a part of the business of legislation" that affects entities outside the legislative branch. Griest, 46 A. at 508.

As the Governor notes, "[i]n Russ v. Commonwealth, 210 Pa. 544, 60 A. 169 (Pa. 1905), this Court explained the difference between resolutions that solely involve internal matters within the General Assembly and those that reach beyond the walls of its two chambers." Governor's Application at 17. In *Russ*, the General Assembly passed a resolution that allowed members of the Senate and the **[*11]** House of Representatives to attend a ceremony dedicating a monument to President Ulysses S. Grant and provided for expenses associated with the ceremony. In distinguishing between resolutions that involved only the internal affairs of the General Assembly and those with legal effect that require presentment, we wrote:

> If both houses had simply resolved to attend the exercises in a body, and to adjourn for a day for that purpose, it would have been no concern of the Governor, and they could have gone with or without his approval; but, if more was embodied in the resolution, amounting practically to an enactment authorizing special committees of the Senate and House to act on behalf of the state in making suitable the recognition which both branches of the Legislature had agreed upon, it was for the Governor to approve or disapprove.

Russ, 60 A. at 171. **HN6**[⬆] Thus, when the legislature seeks to "act on behalf of the state" by way of a concurrent resolution, that resolution must be presented to the Governor. *Id.*

Summarizing Russ and Griest in 1915, Attorney General Francis Brown opined:

> **HN7**[⬆] [N]ot all joint or concurrent resolutions passed by the legislature must be submitted to the Governor for his approval, but only **[*12]** 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. Resolutions which are passed for any other purpose, such as the appointment of a committee by the legislature to obtain information on legislative matters for its future use or to investigate conditions in order to assist in future legislation, are not required to be presented to the Governor for action thereupon.

Joint or Concurrent Resolutions, 24 Pa. D. 721, 723 (Pa. Att'y Gen. 1915); *see also Concurrent Resolutions*, 7 Pa. D. & C. (Pa. Att'y Gen. 1926) (embracing Attorney General Brown's opinion). We find that Attorney General Brown's formulation accurately relates the requirements of our Constitution and precedent. **HN8**[⬆] Specifically, we agree that whether a concurrent resolution requires presentment depends upon whether the resolution comprises legislation or has the effect of legislating.

HN9[⬆] Attorney General Brown correctly discerned that, when a court has to determine whether a concurrent resolution is an act of legislating, the court must look to the substance of that resolution, rather than adhering to a formulaic approach **[*13]** that confines the court to the title or label of the resolution. As the Governor's *amici* note, when the federal Constitutional Convention added a provision to the federal Constitution analogous to Article III, Section 9, *see* U.S. Const. art. I, § 7, cl. 3, James Madison told the Convention that, "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.]."[9] The next day, Edmund Randolph moved to insert what is now Article I, Section 7, Clause 3 into the draft of the federal Constitution for the purpose of "putting votes, resolutions, [etc.], on a footing with bills." The Convention adopted the proposal.[10] That Pennsylvania's 1790 Convention

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[9] Brief of *Amici Curiae*, Members of the Democratic Caucuses of the Pennsylvania House of Representatives and the Senate of Pennsylvania, at 12 (quoting Statement of James Madison (Aug. 15, 1787), *in* 5 THE DEBATES IN THE SEVERAL STATE CONVENTIONS OF THE ADOPTION OF THE FEDERAL CONSTITUTION 431 (Jonathan Elliot, ed., 1827)).

[10] *See* Statement of Edmund Randolph (Aug. 16, 1787), *in* 5 THE DEBATES IN THE SEVERAL STATE CONVENTIONS OF THE

occurred just after the adoption of the federal Constitution, and that the language in the two Constitutions is nearly identical lends support to the proposition that the substance of the resolution, rather the formal title or procedure used for passage, should govern whether the resolution has "the effect of legislating" and therefore must be presented to the Governor.

The Senators do not dispute that resolutions with legal effect should be subject to presentment. *See* Senators' Brief at 23 ("In the practice of the Pennsylvania Legislature, bills and joint resolutions intended to have the effect of laws have been transmitted to the Governor for his approval.") (quoting CHARLES B. BUCKALEW, AN EXAMINATION OF THE CONSTITUTION OF PENNSYLVANIA 94 (1883)). Rather, the Senators contend that neither the Governor's Proclamation nor H.R. 836 had legal effect, and, thus, H.R. 836 should not be subject to presentment.

Looking first to the Governor's Proclamation, it is obvious that this order had legal effect. The Proclamation transferred funds, suspended certain statutory and regulatory provisions, and activated the Pennsylvania National Guard. *See* Governor's Application at 26-27 (listing actions taken by various state agencies pursuant to the Proclamation). ***HN10***[⬆] As we stated in *Friends of Danny DeVito*, "[t]he Emergency Code specifically recognizes that under its auspices, the Governor has the authority to issue executive orders and proclamations which shall have the full force of law." *Friends of Danny DeVito, 227 A.3d at 892*. The Proclamation had "the full force of law." *Id.*

The Senators claim that the Proclamation **[*15]** was merely "a declaration of fact" and "did not (and could not) prescribe the rules of civil conduct and, instead, established the factual predicate necessary for other executive agencies to use certain powers granted to them by statute." Senators' Brief at 27; *see also id.* at 28 ("[E]mergency proclamations [a]re not laws, but rather formal announcements that create[] the circumstances necessary for the exercise of certain statutory powers."). Setting aside the Proclamation's direct legal effects, to distinguish between the Governor authorizing other agencies to act and those other agencies taking actions pursuant to the Proclamation would be to elevate form over substance. But for the Proclamation authorizing other agencies to act, those other agencies could not have issued orders with the force of law, such as requiring the closure of certain businesses. If nothing else, the legal effect of the Proclamation was to allow the Governor to exercise powers granted to him by the General Assembly upon the declaration of a disaster emergency.

Turning to H.R. 836, the Senators argue that this resolution "does not provide for expenditure of public funds and does not commit the state to an affirmative **[*16]** act." *Id.* at 30. With regard to the expenditure of public funds, we have ruled that a concurrent resolution which spends public money requires presentment. For example, in *Russ*, we decided that, had the General Assembly simply adjourned to attend the ceremony in question, the resolution would not have required presentment. Yet, when the legislature committed public money to the ceremony, the Governor's approval (or a vote overriding a veto) became necessary. *Russ, 60 A. at 171*. Similarly, in *Scudder v. Smith, 331 Pa. 165, 200 A. 601 (Pa. 1938)*, we determined that a joint resolution required presentment because the resolution both created a commission and appropriated $ 5,000 for that commission. *Id. at 602-04*. ***HN11***[⬆] But while the expenditure of funds is a sufficient condition for requiring presentment, it is not a necessary one. *See Joint or Concurrent Resolutions*, 24 Pa. D. at 721 (opining that resolutions "which have the effect of committing the State to a certain action *or* which provide for the expenditure of public money" require presentment) (emphasis added). The General Assembly can pass a bill or resolution that has legal effect even if the bill or resolution does not commit the Commonwealth to spending any money. Each time the General Assembly adds a new crime to our Criminal Code, certain conduct becomes illegal. One **[*17]** could not argue that the General Assembly could amend the Criminal Code through a bill or concurrent resolution without presentment simply because that bill or resolution did not appropriate funds. *Cf. Commonwealth v. Kuphal, 347 Pa. Super. 572, 500 A.2d 1205, 1216-17 (Pa. Super. 1985)* (Spaeth, P.J., dissenting) (declaring that "[t]he conclusion is therefore inescapable that" a concurrent resolution that rejected sentencing guidelines was an "exercise of legislative power" that required presentment).

Effectively acknowledging a non-expenditure-based category of legislative resolution, the Senators aver that, because H.R. 836 "does not authorize any action on behalf of the state," Senators' Brief at 31, the resolution was not a legislative action. Although in *Russ* we noted

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ADOPTION **[*14]** OF THE FEDERAL CONSTITUTION 431-32 (Jonathan Elliot, ed., 1827).

that a resolution authorizing the General Assembly "to act on behalf of the state" would require presentment, *Russ, 60 A.at 171*,[11] the purported distinction between requiring the government affirmatively to act and prohibiting the government from taking an action is no distinction at all.

In *West Shore*, we considered whether the General Assembly could use a concurrent resolution, without presentment, to reestablish the Pennsylvania Labor Relations Board ("PLRB") after the agency was slated to be disbanded. We ruled **[*18]** that "[m]erely the passage of a resolution by both chambers . . . reestablish[ing] an agency set for termination . . . violates *Article 3, Section 9 of our State Constitution*." *West Shore, 626 A.2d at 1136*. By way of further example, imagine that an executive branch agency promulgates a new regulation that requires all businesses to purchase a fire extinguisher.

The General Assembly, disagreeing with this regulation, passes a concurrent resolution overturning the regulation. That concurrent resolution does not require the executive branch to take any affirmative steps. To the contrary, the resolution forbids the executive branch from acting to enforce the regulation. But one could not characterize the General Assembly's resolution, in this scenario, as intending no legal effect and thereby functioning differently than any other prohibitory legislation. Just as a business's legal obligations would be affected by promulgation of the regulation, those same legal obligations would be affected by its repeal.[12]

H.R. 836 acts in the same manner as the resolutions in *West Shore* and the above hypothetical. Even if the Senators are correct that H.R. 836 does not require **[*19]** any affirmative act on behalf of the Governor, the same was true in *West Shore*. There, the concurrent resolution did not require the executive branch to act; it simply mandated that the executive branch not allow the PLRB to terminate. Prohibiting the termination of the PLRB had legal effect, just as prohibiting an agency from enforcing a regulation would have legal effect.

Related to the Senators' argument, the Dissenting Opinion ("Dissent") asserts that *Section 7301(c)*'s language regarding a concurrent resolution "does not bear on the essential relationship to conventional legislation." Dissent at 3. ***HN12***[⬆] As noted above, the inclusion of *Article III, Section 9* in our Constitution is not simply to require presentment for "conventional legislation," but rather to require presentment for all bills, "resolutions, votes, [etc.]," Statement of James Madison (Aug. 15, 1787), *supra*, that have the *effect* of legislating. Any resolution passed by the General Assembly pursuant to *Section 7301(c)*, including H.R. 836, has the effect of legislating. The resolution intends to prevent the Governor from carrying out powers delegated to him under the Emergency Services Management Code, powers which are enforceable with "the force and effect of law." *35 Pa.C.S. § 7301(b)*; *see* ***[*20]*** *also Friends of Danny DeVito, 227 A.3d at 872*.

As *amici* observe, H.R. 836 "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 other aspects of everyday life for millions of Pennsylvanians."[13] Enforcement of H.R. 836, which requires the Governor to end the state of disaster emergency, would have far-reaching legal consequences beyond the Governor simply signing and publishing a new proclamation. It would prohibit the Governor from taking legal actions, and that prohibition

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[11] *Cf. Joint or Concurrent Resolutions*, 24 Pa. D. at 723 (writing that a concurrent resolution "which ha[s] the effect of committing the State to a certain action" would require presentment).

[12] The Senators also cite *Fabrizio v. Kopriver*, 73 Dauph. 345 (Dauphin Cty. C.C.P. 1959). *See* Senators' Brief, Exhibit 2. In that case, the court of common pleas stated that, "if the resolution . . . does not commit the State to any affirmative action, then such a resolution should not be within the purview of" *Article III, Section 9*. *Fabrizio*, 73 Dauph. at 348. The *Fabrizio* Court was comparing a concurrent resolution setting up a legislative investigating committee, but appropriating no funds, to the resolution in *Scudder*, where the resolution both set up a committee and appropriated funds. *Id.* at 348-49. Thus, while the action in *Scudder* involved the appropriation of funds, an affirmative act, it does not appear that the court of common pleas considered a scenario involving a resolution that forbid the executive branch from enforcing legal obligations. In any event, the decision of a court of common pleas, even if that particular court was the predecessor to the Commonwealth Court, *see* Senators' Brief at 25 n. 15, is not binding upon this Court and does not carry with it the weight of *stare decisis*.

[13] Brief of *Amici Curiae*, Members of the Democratic Caucuses of the Pennsylvania House of Representatives and the Senate of Pennsylvania, at 9-10; *see also* Governor's Application at 22 (describing the same).

itself has legal effect. To distinguish between a resolution that requires the Governor to take affirmative action and a resolution that forbids him from enforcing the law would be to elevate form over substance and allow "the negative of the" Governor to be "evaded by acts under the form of resolutions," Statement of James Madison (Aug. 15, 1787), *supra*. Article III, Section 9 protects against such a result. Thus, H.R. 836 does not fit into the third exception to presentment.

The Dissent offers a novel view of both the text of our Constitution and our precedent regarding the **[*21]** constitutionality of the legislative veto. The Dissent posits that this Court should use a functionalist approach in determining whether a legislative veto passes constitutional muster. *See* Dissent at 5-6 ("I believe that the present context presents a compelling case that legislative vetoes should not be regarded as being *per se* violative of separation-of-powers principles."). Relative to this case, the Dissent suggests that "the breadth of the essential delegation of emergency powers to the executive in light of future and unforeseen circumstances justifies an equally extraordinary veto power in the Legislature." *Id.* at 3-4 n.2 (citing Communications Workers of America v. Florio, 130 N.J. 439, 617 A.2d 223 (N.J. 1992)); *cf. id.* at 4 ("In this respect, it is my considered judgment that the emergency-powers paradigm is essentially *sui generis*.").

To support its proposed exception to the requirement of presentment, the Dissent offers two points. First, the Dissent does "not regard [*Sessoms*] as binding precedent in the present -- and very different -- context." *Id.* at 5; *cf. id.* at 4-5 n.3 (calling *Sessoms* "incompletely reasoned" because it "failed to recognize the exception to presentment requirement, deriving from the *Griest* decision, for matters that do not concern the business of legislating"). ***HN13***[⬆] While we evaluated a different **[*22]** statute in *Sessoms*, our opinion there was clear: "[E]xcept 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." *Sessoms, 532 A.2d at 782*. *Sessoms* repeatedly noted our adoption of the approach of the Supreme Court of the United States. *See id. at 779-80* ("[O]nce [the legislature] makes its choice enacting legislation, its participation ends. [It] can thereafter control the execution of its enactment only indirectly—by passing new legislation.") (quoting Bowsher v. Synar, 478 U.S. 714, 733-34, 106 S. Ct. 3181, 92 L. Ed. 2d 583 (1986)) (emphasis omitted); *id. at 780* (relying upon the reasoning of the *Chadha* Court that "the legislative branch" cannot "directly or indirectly . . . retain some power over the execution of the laws"). We reiterated this interpretation of Article III, Section 9 in *West Shore*, *see* West Shore, 626 A.2d at 1135-36, and our lower courts also have reasoned that *Sessoms* provides no exception to presentment, other than those discussed above. *See, e.g.,* MCT Transp. Inc. v. Phila. Parking Auth., 60 A.3d 899, 915 n.17 (Pa. Cmwlth. 2013)[14] ("In short, the General Assembly cannot exercise a legislative veto over an administrative agency's budget. The power of the veto belongs only to the executive."); Dep't of Envtl. Res. v. Jubelirer, 130 Pa. Commw. 124, 567 A.2d 741, 749 (Pa. Cmwlth. 1989)[15] ("Nothing less than legislation may suffice to override **[*23]** the rule-making power of the [Environmental Quality Board] or any other executive agency."). That *Sessoms* did not discuss the *Griest* exception to presentment hardly renders *Sessoms* "incompletely reasoned," Dissent at 5 n.3, especially inasmuch as we endorsed the same exception in *West Shore*, *see* West Shore, 626 A.2d at 1135 (noting that the resolution in question "had the effect of law"). The Dissent stands alone in deriving an exception to presentment from the type of legislation at issue.

Related to this first point, the Dissent cites only decisions from the New Jersey Supreme Court and Justice Powell's concurrence in *Chadha*. *See* Dissent at 4-6, 9. The New Jersey Supreme Court, of course, has free reign to interpret that state's Constitution, but New Jersey's approach, in *Florio* and Enorato v. New Jersey Building Authority, 90 N.J. 396, 448 A.2d 449 (N.J. 1982), not only does not bind this Court; it also contradicts our approach to the legislative veto prescribed by our Constitution's presentment clause (Article III, Section 9) and our precedent in *Sessoms* and *West Shore*. And while Justice Powell's concurrence in *Chadha* also endorses a functionalist model for interpreting a presentment clause, the majority in *Chadha*, which this Court relied upon in *Sessoms*, rejected that model. *See* Chadha, 462 U.S. at 946 ("The records of the **[*24]** Constitutional

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[14] We issued two *per curiam* orders affirming the Commonwealth Court's decision. *See* MCT Transp. Inc. v. Phila. Parking Auth., 622 Pa. 741, 81 A.3d 813 (Pa. 2013) (*per curiam*); MCT Transp. Inc. v. Phila. Parking Auth., 623 Pa. 417, 83 A.3d 85 (Pa. 2013) (*per curiam*)

[15] We vacated the decision of the Commonwealth Court on other grounds. Dep't of Envtl. Res. v. Jubelirer, 531 Pa. 472, 614 A.2d 204 (Pa. 1992).

Convention reveal that the requirement that *all* legislation be presented to the President before becoming law was uniformly accepted by the Framers.") (emphasis added).

In sum, "[t]here is no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays often encountered in complying with explicit Constitutional standards may be avoided" by characterizing the legislation as a delegation of emergency powers. *Id. at 959*. A legislative veto in the context of a statute delegating emergency powers might be a good idea. It might be a bad idea. But it is not a *constitutional* idea under our current Charter.

B. *Section 7301(c)* Requires Presentment

Our conclusion that a concurrent resolution seeking to force the Governor to end a state of disaster emergency has legal effect and does not fit into any of the three recognized exceptions to presentment bears upon our interpretation of *Section 7301(c)* itself. The concurrent resolution provision of *Section 7301(c)* provides: "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)*. ***HN14***[⬆] "[T]he **[*25]** best indication of legislative intent is the plain text of the statute." *Whalen v. Pa., Dep't of Transp., Bureau of Driver Licensing, 613 Pa. 64, 32 A.3d 677, 679 (Pa. 2011)*. Thus, we evaluate whether the plain text of *Section 7301(c)* expresses the General Assembly's intent that presentment not be a part of the concurrent resolution process in that provision.

The Senators, *see* Senators' Reply Brief at 8-12, and their *amicus*[16] aver that *Section 7301(c)* cannot be read to require presentment. Though providing little textual analysis, the Senators point to the words "at any time," "[t]hereupon," and "shall issue" to suggest that the General Assembly did not intend to require presentment for a concurrent resolution under the statute. *See* Senators' Reply Brief at 8. According to *amicus*, "[t]he General Assembly purposely declined to include a veto mechanism in *[S]ection 7301(c)* and thereby made manifest its intent to require ministerial gubernatorial action whenever a concurrent resolution ends a state of disaster emergency."[17] We acknowledge that the Senators' reading of *Section 7301(c)* is a reasonable one. In particular, the word "[t]hereupon" could imply that the Governor must issue an executive order as soon as the General Assembly passes the concurrent resolution, without the Governor having an opportunity to approve or veto the resolution **[*26]** first. *See Thereupon*, Black's Law Dictionary (11th ed. 2019) ("Immediately; without delay; promptly.").

However, the Senators' interpretation of *Section 7301(c)* is not the only reasonable reading of the statute. *Section 7301(c)* does not state unequivocally that the Governor's declaration of a disaster emergency is terminated the moment that the General Assembly passes a concurrent resolution purporting to do so. If the General Assembly intended to give itself the ability to terminate a state of disaster emergency unilaterally, there would have been no need to involve the Governor in the equation at all. If this had been the intent of the General Assembly, the language of *Section 7301(c)* would have been considerably more straightforward and truncated, *i.e.*, "the state of disaster emergency will be terminated by passage of a concurrent resolution so stating." Instead, the General Assembly chose to require an extra step: the Governor must terminate the declaration of disaster emergency. ***HN15***[⬆] The requirement in *Section 7301(c)* that the Governor must act to end the disaster emergency is a sign that the General Assembly understood that its concurrent resolution would be presented to the Governor, in conformity and compliance **[*27]** with *Article III, Section 9*.[18]

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[16] *See* Brief of *Amicus Curiae*, the Commonwealth Foundation for Public Policy Alternatives, in Support of Respondents, at 12-15.

[17] Brief of *Amicus Curiae*, the Commonwealth Foundation for Public Policy Alternatives, in Support of Respondents, at 15.

[18] This interpretation of *Section 7301(c)* accords with the procedures set forth in the Legislative Procedures Manual, which mirrors *Article III, Section 9*:

> Every order, resolution or vote, to which the concurrence of both houses is necessary, except on the question of adjournment and except joint resolutions proposing or ratifying constitutional amendments, is presented to the Governor and before it takes effect is approved by him or, being disapproved, may be repassed by two-thirds of both houses according to the rules and limitations prescribed in case of a bill.

101 PA. CODE § 9.245.

The Concurring and Dissenting Opinion ("CDO") disagrees. Specifically, the CDO suggests that inclusion of a role for the Governor is "easily explained: the legislature wields no executive power in this limited context and has no means to retract the chief executive's previously-issued proclamation, or to issue a new declaration or proclamation undoing the previous one." CDO at 3. But that conclusion is beside the point. The General Assembly is well-aware that the power to declare or end a disaster emergency is not an exclusively "executive power."

HN16[] As we explained in Friends of Danny DeVito, "[t]he broad powers granted to the Governor in the Emergency [Services Management] Code are firmly grounded in the Commonwealth's police power." Friends of Danny DeVito, 227 A.3d at 886. The Commonwealth's police power **[*28]** is not exercised by the Governor alone, but rather "is the inherent power of a body politic to enact and enforce laws for the promotion of the general welfare." Commonwealth v. Barnes & Tucker Co., 472 Pa. 115, 371 A.2d 461, 465 (Pa. 1977). The General Assembly, not just the Governor, can exercise the police power. *See Nat'l Wood Preservers, Inc. v. Dep't of Envtl. Res., 489 Pa. 221, 414 A.2d 37, 39 (Pa. 1980)* (adjudicating a dispute about whether a statue was "a constitutional exercise of the Legislature's police power"). Indeed, the General Assembly's very delegation of power to the Governor presupposed the General Assembly's inherent authority both to declare and to end disaster emergencies under its lawmaking powers. *See* Pa. Const. art. II, § 1 ("The legislative power . . . shall be vested in a General Assembly . . . ."). The General Assembly has the power to terminate a declaration of disaster emergency without any action by the Governor, aside from presentment and an overriding vote in the event of a veto. If the legislature wishes to end a disaster emergency and satisfies presentment, followed either by gubernatorial approval or by veto override, then further action by the Governor would in any event be unnecessary. The Governor would simply be bound to follow the law.[19]

HN17[] If a statute or resolution is passed over the Governor's veto, the Governor still must abide by **[*29]** that law, even if the General Assembly does not specifically require that the Governor enforce that law. *See* Pa. Const. art. IV, § 2 ("The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed . . . ."). That the General Assembly decided to give the Governor a role in ending the emergency disaster declaration in Section 7301(c) is strong evidence that the General Assembly intended to abide by the Constitution, which also requires gubernatorial involvement.

HN18[] "Under the canon of constitutional avoidance, if a statute is susceptible of two reasonable constructions, one of which would raise constitutional difficulties and the other of which would not, we adopt the latter construction." *Commonwealth v. Herman, 639 Pa. 466, 161 A.3d 194, 212 (Pa. 2017)*. This canon of statutory interpretation is prescribed both by our General Assembly and by our precedent. The legislative branch has advised this Court that, "[i]n ascertaining the intention of the General Assembly in the enactment of a statute," we are to presume that the legislature "does not intend to violate the Constitution . . . of this Commonwealth." 1 Pa.C.S. § 1922(3). Duly incorporating this codified presumption into our case law, we repeatedly have emphasized that, if a statute is susceptible **[*30]** of two reasonable interpretations, we will interpret the statute in such a manner so as to avoid a finding of unconstitutionality. *See, e.g.,* Commonwealth v. Veon, 637 Pa. 442, 150 A.3d 435, 443 (Pa. 2016); MCI WorldCom, Inc. v. Pa. PUC, 577 Pa. 294, 844 A.2d 1239, 1249 (Pa. 2004); Commonwealth v. Bavusa, 574 Pa. 620, 832 A.2d 1042, 1050 (Pa. 2003).[20]

HN20[] Applying the canon of constitutional avoidance, Section 7301(c) must be read to require presentment to the Governor. As discussed above, any resolution seeking to end a declaration of disaster

[19] The CDO asserts: "It would have been impossible for the legislature to have written this statute in a way that omits any mention of the Governor whatsoever while simultaneously requiring some physical, executive action on his part." CDO at 3. We disagree. The General Assembly could have written the statute to provide for the termination of a state of disaster emergency without the Governor issuing a subsequent executive order or proclamation. Enactment of such a resolution, through the process of presentment, could end the state of disaster emergency immediately.

[20] HN19[] We note that, "[a]lthough courts should interpret statutes so as to avoid constitutional questions when possible, they cannot ignore the plain meaning of a statute to do so." Robinson Twp. v. Commonwealth, 637 Pa. 239, 147 A.3d 536, 574 (Pa. 2016). Courts cannot disregard the General Assembly's intent, as evinced by the plain text of the statute, and rewrite that statute in order to avoid a constitutional question. In this instance, our close examination reveals that the statutory provision in question is susceptible to two reasonable interpretations.

emergency has the effect of legislating, necessitating presentment. Thus, although the Senators' interpretation of Section 7301(c) is reasonable, that interpretation would violate our Commonwealth's Constitution. Because there is another reasonable interpretation of Section 7301(c)—that the provision does require presentment—we must read the statute in that manner. Therefore, because H.R. 836 was not presented to the Governor and, in fact, affirmatively denied the Governor the opportunity to approve or veto that resolution,[21] H.R. 836 did not conform with the General Assembly's statutory mandate in Section 7301(c) or with the Pennsylvania Constitution.

The Dissent contends that application of the canon of constitutional avoidance should depend upon whether "the chosen construction substantially weakens the Legislature's ability to act as a check on the actions of a co-equal branch." Dissent at 8 n.5. HN21[↑] There is no basis **[*31]** in our jurisprudence to authorize creation of a sliding scale of constitutional avoidance based upon whether the provision at issue involves one branch's ability to control the affairs of another branch. The General Assembly has prescribed for this Court one standard for deciding constitutional avoidance questions: a presumption "[t]hat the General Assembly does not intend to violate the Constitution . . . of this Commonwealth." 1 Pa.C.S. § 1922(3). We apply that standard today.

Both the Governor and the Senators point to precedent from this Court where we have, and have not, applied the canon of constitutional avoidance in interpreting a statutory provision that did not explicitly require presentment of a concurrent resolution. For example, in *Sessoms*, we concluded that the General Assembly intended to require presentment in a statute providing that the General Assembly could reject sentencing guidelines adopted by the Pennsylvania Commission on Sentencing. *Sessoms, 532 A.2d at 782*; *see also* Governor's Application at 19. Conversely, in *West Shore*, we determined that we could not interpret a provision of the Sunset Act, Act of December 22, 1981, P.L. 508 No. 142, to require presentment. *West Shore, 626 A.2d at 1135-36*; *see also* Senators' Reply Brief at 10-12. That we reached differing **[*32]** conclusions in these two cases on the question of constitutional avoidance confirms what every legal practitioner knows to be true: HN22[↑] every case, and every statute, must be evaluated independently. Evaluating Section 7301(c), we find that there are two reasonable interpretations, and, thus, we must apply our canon of constitutional avoidance as we weigh them.

Indeed, the case for constitutional avoidance in this case is stronger than in *Sessoms*. The statute at issue in *Sessoms* provided that "[t]he General Assembly may by concurrent resolution reject in their entirety any initial or subsequent guidelines adopted by the [Pennsylvania Commission on Sentencing] within 90 days of their publication in the Pennsylvania Bulletin." *Sessoms, 532 A.2d at 776-77* (quoting the version of 42 Pa.C.S. § 2155(b) then in effect[22]). We interpreted Section 2155(b) to require presentment even though that provision did not mention the Governor. By contrast, the language of Section 7301(c) presents a stronger basis for reading the presentment requirement into the provision because the General Assembly explicitly provided for gubernatorial involvement.

In *Sessoms*, "we d[id] not find it fatal to" Section 2155(b) "that it d[id] not explicitly require presentment of a rejection resolution to the [G]overnor," as we could "imply such a condition to avoid finding the statute unconstitutional on its face." *Id. at 782*. Although *Sessoms* is helpful in terms of evaluating Section 7301(c), our language there expressed a truism: HN23[↑] if a statute is ambiguous, a court should interpret that statute in such a manner as to avoid a finding of unconstitutionality. The *Sessoms* truism applied the

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[21] *See* H.R. 836 (requiring the Secretary of the Senate to "notify the Governor of the General Assembly's action with the directive that the Governor issue an executive order or proclamation ending the state of disaster emergency"); *see also* Megan Martin, Secretary of the Senate, Letter to Governor Tom Wolf, 6/10/2020 ("I am notifying you of the General Assembly's action and the directive that you issue an executive order o[r] proclamation ending the state of disaster emergency in accordance with this resolution and 35 Pa.C.S. § 7301(c).").

[22] Section 2155(b) has since been amended by the General Assembly to read:

> **(b) Rejection by General Assembly.--***Subject to gubernatorial review pursuant to section 9 of Article III of the Constitution of Pennsylvania*, the General Assembly may by concurrent resolution reject in their entirety **[*33]** any guidelines, risk assessment instrument or recommitment ranges adopted by the commission within 90 days of their publication in the Pennsylvania Bulletin pursuant to subsection (a)(2).

42 Pa.C.S. § 2155(b) (emphasis added).

canon of constitutional avoidance in the context of *Article III, Section 9*. We do so again today.

While the canon of constitutional avoidance leads us to the interpretation we adopt here, a reading of *Section 7301(c)* in its entirety further militates in favor of presentment. ***HN24***[↑] In the clearest language possible, the statute authorizes the Governor to declare that a disaster emergency has occurred or is imminent, to continue the state of disaster emergency until such time as the Governor finds that the threat or danger has passed, and, to the extent the threat has **[*34]** passed or an emergency no longer exists, to terminate the state of disaster emergency by executive order or proclamation.[23] Thus, while *Section 7301(c)* provides that the General Assembly may terminate a state of disaster emergency at any time, the statute also provides that the state of disaster emergency ends only after the Governor so finds. By reading the presentment requirement into *Section 7301(c)*, we afford meaning to all of the provisions of the statute. If the Governor does not agree with the General Assembly that the emergency has ended, the Governor can exercise a veto, a veto that, with any other legislation, can be overridden by a two-thirds vote of both Houses of the General Assembly.

HN25[↑] Based upon the plain text of the statute and upon our canon counseling against invalidation of statutes on constitutional grounds where possible, we hold that *Section 7301(c)*'s provision allowing the General Assembly to terminate a state of disaster emergency by concurrent resolution requires presentment of that resolution to the Governor. Because the General Assembly did not present H.R. 836 to the Governor for his approval or veto, the General Assembly did not comply with its own statutory directive in *Section 7301(c)*.

The Senators observe that, in *Friends of Danny DeVito*, regarding the concurrent resolution provision of *Section 7301(c)*, we stated: "As a counterbalance to the exercise of the broad powers granted to the Governor, the Emergency Code provides that the General Assembly by concurrent resolution may terminate a state of disaster emergency at any time." *Friends of Danny DeVito, 227 A.3d at 886*; *see also id. at 896* ("We note that the Emergency Code temporarily limits the Executive Order to ninety days **[*36]** unless renewed and provides the General Assembly with the ability to terminate the order at any time."). Nowhere in *Friends of Danny DeVito* did we state that the Emergency Services Management Code allows the General Assembly to terminate a state of disaster emergency by way of concurrent resolution without presentment. No party in *Friends of Danny DeVito* presented to this Court the questions of interpretation of the concurrent resolution provision or the constitutional demands of presentment. Nonetheless, that language accords with our decision today. ***HN26***[↑] *Section 7301(c)* does indeed contain a "counterbalance to the exercise of the broad powers granted to the Governor." *Id. at 886*. Confronted now with the duty to interpret *Section 7301(c)* and *Article III, Section 9*, and informed by the advocacy of the parties and *amici*, we conclude that the legislative counterbalance complies with the presentment requirement of our Commonwealth's Constitution.[24]

III. The Power to Suspend Laws

As an alternative argument, the Senators posit that the General Assembly could end the state of disaster emergency through a concurrent resolution without presentment under *Article I, Section 12 of the Pennsylvania Constitution.* *See* Senators' Brief at 31-45. That clause of our Constitution provides: "No power of suspending **[*37]** laws shall be exercised unless by the Legislature or by its authority." *Pa. Const. art. I, § 12*. The Senators appear to make two distinct arguments

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[23] The Governor's role in declaring and ending a state of disaster emergency is clear:

> A disaster emergency shall be declared by executive order or proclamation *of the Governor* upon finding that a disaster has occurred or that the occurrence or the threat of a disaster is imminent. The state of disaster emergency shall continue *until the Governor* finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue **[*35]** for longer than 90 days unless renewed *by the Governor*. 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) (emphases added).

[24] Having decided that *Section 7301(c)* is not facially unconstitutional, we need not reach the issue of whether any provision must be severed from the statute. *Cf.* CDO at 5-10; Senators' Reply Brief at 12-17.

with regard to Article I, Section 12. First, they maintain that the provision gives the legislature the right to suspend laws unilaterally, essentially asking that this Court recognize a new exception to presentment. *See* Senators' Brief at 31-40. Second, the Senators contend that the Governor's powers under Section 7301(c) were a delegation of this suspension power and that this Court should permit the General Assembly to revoke its authority without presentment. *See id. at 40-45*.

A. *Article I, Section 12* Does Not Give the Legislature the Power to Act Unilaterally

HN27[↑] The history of *Article I, Section 12* indicates that the clause was intended as a negative check on executive power, rather than an affirmative grant of power to the legislature to act unilaterally. English monarchs had long asserted a royal prerogative to suspend laws. "The suspending power was much more powerful than the veto because it allowed a king to nullify not only bills that were presented for his assent but also all statutes that pre-dated his reign—indeed, every law on the statute books." Robert J. Reinstein, *The Limits of Executive Power*, 59 Am. U. L. Rev. 259, 278-79 (2009). After **[*38]** the Glorious Revolution of 1688, the English Parliament sought to limit the power of the monarch, specifically with regard to the suspension of laws. Thus, the 1689 "English *Bill of Rights* expressly barred the Crown from suspending the laws or issuing dispensations that permitted individuals to ignore certain laws." Saikrishna Bangalore Prakash, *The Imbecilic Executive*, 99 Va. L. Rev. 1361, 1365 (2013). The 1689 English *Bill of Rights* specifically faulted "the late King James the Second . . . [for] suspending of laws and the execution of laws without consent of Parliament." 1 Wm. & Mary, ch. 2 in 3 Eng. Stat. at Large 441 (1689). Accordingly, that document declared "[t]hat the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal." *Id.* § 1.

As states began enacting constitutions after our Nation declared independence, the Framers of those Constitutions, still wary of executive power, adopted provisions similar to that in the 1689 English *Bill of Rights*. *See* Steven G. Calabresi, Sarah E. Agudo & Kathryn L. Dore, *State Bills of Rights in 1787 and 1791: What Individual Rights Are Really Deeply Rooted in American History and Tradition*?, 85 S. Cal. L. Rev. 1451, 1534-35 (2012) (listing early state constitutions with similar clauses). **[*39]** For example, the Framers of early Virginia Constitutions "held [a] historic distrust [of concentrated executive power] based on the 'arbitrary practice' of English Kings before the Glorious Revolution of 1688," and endorsed a provision preventing the executive from suspending laws unilaterally. *Howell v. McAuliffe, 292 Va. 320, 788 S.E.2d 706, 721 (Va. 2016)*. The Kentucky Supreme Court, noting that the clause in the Kentucky Constitution "was modeled after a similar provision in the Pennsylvania Constitution," stated that the clause "was originally designed to reflect the will of the framers to prevent suspension of duly-enacted laws by any entity other than the constitutionally-elected legislative body, a power the British government had ruthlessly exercised over the colonies." *Baker v. Fletcher, 204 S.W.3d 589, 592 (Ky. 2006)*. Thus, *Article I, Section 12*, like the clauses in other early state constitutions, traces its roots to the 1689 English *Bill of Rights*. *See Nicolette v. Caruso, 315 F. Supp. 2d 710, 726 (W.D. Pa. 2003)*.

The 1689 English *Bill of Rights* indicates that the analogous provision was aimed at preventing English monarchs from suspending laws on their own initiative and was not intended to transfer to Parliament the power to act unilaterally. Indeed, the text of the 1689 provision confirms this reading. After promulgation of the 1689 English *Bill of Rights*, the monarch could not suspend laws **[*40]** "without the *consent* of Parliament." 1 Wm. & Mary, ch. 2, § 1 (emphasis added). It appears that, rather than shifting the power to suspend laws from one branch to another, the purpose of the provision was to ensure a shared power between King or Queen and Parliament, a form of what we commonly refer to as checks and balances.[25] Imputing this historical understanding to our own Constitution, ***HN28***[↑] *Article I, Section 12* does not empower the General Assembly to act alone, but rather distributes the power to suspend laws between the legislative and executive branches.[26]

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[25] Unlike in our system of government, in the United Kingdom presentment has evolved into a mere formality. However, even today, when Parliament passes a statute that suspends law, it appears that royal assent is still required. For example, Parliament's bill responding to the COVID-19 pandemic provided that "[a] relevant national authority may by regulations suspend the operation of any provision of this Act." Coronavirus Act of 2020, c. 7, § 88(1) (U.K.). That bill received royal assent. *See Royal Assent*, HOUSE OF LORDS HANSARD (Mar. 25, 2020), https://hansard.parliament.uk/lords/2020-03-25/debates/025CBE1A-37B3-4362-9FAC-94359D78E325/RoyalAssent.

[26] Notably, past cases involving *Article I, Section 12* have

HN29[↑] The placement of Article I, Section 12 in our Constitution's Declaration of Rights further indicates that the provision is a negative check on executive power rather than an affirmative grant for the legislature to act without the Governor. Since 1790, the Framers of each of our Commonwealth's Constitutions have placed the clause involving the power to suspend laws in the section of the Constitution devoted to the protection of individual liberty. *See* PA. CONST. of 1790, art. IX, § 12, Pa. Const. of 1838, art. IX, § 12, Pa. Const. of 1874, art. I, § 12, Pa. Const. art. I, § 12. "[T]hose rights enumerated in the Declaration of Rights are deemed to be inviolate and may not be transgressed by government." **[*41]** Gondelman v. Commonwealth, 520 Pa. 451, 554 A.2d 896, 904 (Pa. 1989). The Declaration of Rights exists to protect Commonwealth citizens from government tyranny, not to delineate the powers of any branch of government. *See* Senators' Reply Brief at 24 (opining that the placement of the clause in the Declaration of Rights is to "prevent tyranny of the Governor in capriciously ordering citizens to do something through the suspension of law"). To this end, the Declaration of Rights itself warns: "To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate." Pa. Const. art. I, § 25. HN30[↑] The Declaration of Rights, including Article I, Section 12, serves to protect individuals from an overbearing government in general, not to empower any department of that government. Article I, Section 12 therefore cannot, on its face, be read as a means by which to bypass presentment in acts suspending prior legislation, where presentment was required for their enactment.

A comparison of Article I, Section 12 with other provisions of our Constitution that are exempt from presentment further supports this reading of the suspension power. HN31[↑] As noted above, Article III, Section 9 explicitly exempts **[*42]** resolutions pertaining to adjournment from presentment. And Article XI of our Constitution sets forth a comprehensive scheme for amending the Constitution. *See* Kremer, 606 A.2d at 436 (describing Article XI as a "complete and detailed process for the amendment of that document"); Griest, 46 A. at 506 ("It is a system entirely complete in itself, requiring no extraneous aid, either in matters of detail or general scope, to its effectual execution."). Conversely, Article I, Section 12 neither offers explicit language exempting the suspension power from presentment nor describes a process in which the Governor has no role. It is unlikely that the Framers would have granted such a far-reaching power in such an obfuscated fashion. And authorizing the General Assembly to suspend laws unilaterally (*i.e.*, without presentment) is a far-reaching power indeed. To allow the legislature to suspend laws without presentment would be to excise both presentment clauses from our Constitution. HN32[↑] Article I, Section 12 does not limit the temporal duration for which a law can be suspended, nor does it specify which types of laws may be suspended. To grant the General Assembly such broad authority would be to rewrite our Constitution and remove the Governor from the lawmaking **[*43]** process. Such a view is inimical to our system of checks and balances, a system in which presentment plays a critical role.

HN33[↑] Relatedly, this Court has characterized the power of suspending laws as part of the process of lawmaking. For example, when a party claimed that an action taken by the executive branch violated Article I, Section 12 and Article II, Section 1, which vests legislative power in the General Assembly, we read the two clauses together, writing that those provisions "vest[] legislative power in the General Assembly and give[] it the power to amend, repeal, suspend or enact statutes." SEIU Healthcare Pa. v. Commonwealth, 628 Pa. 573, 104 A.3d 495, 500 n.3 (2014); *see also* McCreary v. Topper, 10 Pa. 419, 422 (1849) ("That would be arrogating legislative power, and suspending law."). The suspension of statutes, like the amendment, repeal, or enactment of statutes, is a legislative action. And legislative actions are subject to presentment. *See* Pa. Const. art. III, § 9; *id.* art. IV, § 15.

Finally, we would be remiss to "disregard the gloss which life has written upon" suspension clauses in other constitutions. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 610, 72 S. Ct. 863, 96 L. Ed. 1153, 62 Ohio Law Abs. 417 (1952) (Frankfurter, J., concurring). In Kentucky, for example, which traces its suspension clause to our Constitution, *see* Baker, 204 S.W.3d at 592, when the legislature has suspended laws, it has done so through statutes presented to the Governor for his or **[*44]** her approval. *See, e.g.,* Commonwealth ex. rel. Beshear v. Bevin, 575 S.W.3d 673, 679-80 (Ky. 2019) (adjudicating a suspension clause case involving

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focused upon whether the executive branch violated the provision. *See, e.g.,* Commonwealth v. Williams, 634 Pa. 290, 129 A.3d 1199 (Pa. 2015); SEIU Healthcare Pa. v. Commonwealth, 628 Pa. 573, 104 A.3d 495 (Pa. 2014); Hetherington v. McHale, 10 Pa. Commw. 501, 311 A.2d 162 (Pa. Cmwlth. 1973), *rev'd on other grounds*, 458 Pa. 479, 329 A.2d 250 (Pa. 1974).

Ky. Rev. Stat. § 12.028, which was enacted through bicameralism and presentment); Lovelace v. Commonwealth, 285 Ky. 326, 147 S.W.2d 1029, 1034 (Ky. 1941) ("By this act of 1936 (Section 979b-5 *et seq.*, Statutes), the General Assembly has exercised that constitutional power and has authorized the courts to suspend the implications of the law which require entry and pronouncement of judgment without unreasonable delay. This law becomes a part of the statutory procedure and processes.").

The Senators call our attention to the suspension clause in the Louisiana Constitution. *See* Senators' Brief at 39. Yet the corresponding clause in that Constitution is fundamentally different from our own. Louisiana's Constitution, which houses the suspension clause in the article related to the legislative branch, provides:

> Only the legislature may suspend a law, and then only by the same vote and, except for gubernatorial veto and time limitations for introduction, according to the same procedures and formalities required for enactment of that law. After the effective date of this constitution, every resolution suspending a law shall fix the period of suspension, which shall not extend beyond the sixtieth day after final adjournment of the next **[*45]** regular session.

La. Const. art. III, § 20. Thus, the Louisiana Constitution explicitly exempts the suspension of laws from the Governor's veto; presentment is not required. *See also* David Alexander Peterson, *Louisiana's Legislative Suspension Power: Valid Method for Override of Environmental Laws and Agency Regulations*?, 53 La. L. Rev. 247, 255-56 (1992) (detailing the original history of the clause at the 1973 Louisiana Constitutional Convention and noting that the delegates specifically voted against subjecting suspension to gubernatorial veto).[27]

HN34[↑] Based upon the original history of Article I, Section 12, the Framers' decision to place that provision in our Declaration of Rights, a comparison between Article I, Section 12 and other provisions from which presentment is excluded, and the practice of other jurisdictions, we hold that Article I, Section 12 of the Pennsylvania Constitution does not affirmatively grant the General Assembly the power to suspend laws unilaterally. Rather, as an exercise in lawmaking, the suspension of laws must adhere to the requirement of presentment, an essential component of our Constitution's system of checks and balances.[28] Even if H.R. 836 amounted to a suspension of law by the General Assembly, that does not **[*46]** save it from the constitutional presentment requirement.

B. The General Assembly Cannot Use Unconstitutional Means to Overturn a Governor's Decision to Suspend Laws After Delegating That Power to the Governor

Finally, the Senators allege a violation of the non-delegation doctrine. In their initial brief, the Senators aver that, because the Governor's Proclamation itself was a suspension of law, "the General Assembly not only retained for itself—as it must—the ultimate

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[27] Federal practice adds support to our reading of Article I, Section 12. Although the federal Constitution contains no clause concerning the suspension of laws, it does state that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. The federal clause does not mention Congress, but the Framers' decision to place the clause in Article I, dealing with legislative power, means that only Congress can suspend the writ of *habeas corpus. See* Hamdi v. Rumsfeld, 542 U.S. 507, 562, 124 S. Ct. 2633, 159 L. Ed. 2d 578 (2004) (Scalia, J., dissenting) ("Although this provision does not state that suspension must be effected by, or authorized by, a legislative act, it has been so understood, consistent with English practice and the Clause's placement in Article I."); ***Ex parte Merryman, 17 F. Cas. 144, 148, F. Cas. No. 9487 (Taney, Circuit Justice, C.C.D. Md. 1861)*** ("[F]or I had supposed it to be one of those points of constitutional law upon which there was no difference of opinion, and that it was admitted on all hands, that the privilege of the writ could not be suspended, except by act of congress."). Each time Congress has suspended the writ of *habeas corpus*, it has done so through a statute, with presentment to the President. *See* Hamdi, 542 U.S. at 562-63 (Scalia, J., dissenting) (listing statutes by which Congress has authorized suspension of the writ); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. __, 2020 U.S. LEXIS 3375, 2020 WL 34548109, at *19 (2020) (Thomas, J., concurring) (noting that, to the Framers, the clause suspending *habeas corpus* "likely meant a *statute* granting the executive the power to detain without bail or trial based on mere suspicion of a crime of dangerousness") (emphasis added). Thus, Congress has understood its power to suspend the writ of *habeas corpus* to require presentment.

[28] The Senators additionally contend that the legislature can suspend laws either through a bill or concurrent resolution. *See* Senators' Brief at 39. We do not decide whether it is a bill or a concurrent resolution that is required to suspend a law. Whichever constitutional method the General Assembly employs, presentment is required.

authority for determining when a suspension of laws is no longer appropriate, but also specified the vehicle through which it may be exercised: a simple majority concurrent resolution." Senators' Brief at 42. For purposes of discussion, we assume, without deciding, that the Proclamation amounted to a suspension of law under *Article I, Section 12*.

In their self-styled "Reply Brief," the Senators argue, for the first time, that the Emergency Management Services Code itself is unconstitutional under the non-delegation doctrine. *See* Senators' Reply Brief at 2-7. ***HN35***[↑] "A claim is waived if it is raised for the first time in a reply brief." *Commonwealth v. Collins, 598 Pa. 397, 957 A.2d 237, 259 (Pa. 2008)*. However, assuming *arguendo* that we can address the broader non-delegation claim, it is unavailing. **[*47]**

The Senators' initial argument is puzzling. They aver that the non-delegation doctrine only kicks in if the Governor is correct in believing that the Proclamation was "law." Senators' Brief at 3. The Senators confuse an order having the effect of law with one exercising legislative power. ***HN36***[↑] The non-delegation doctrine forbids entities other than the legislative branch from exercising the "legislative power," as those entities do not have "the power to make law." *Protz, 161 A.3d at 833*.

The Governor does not argue that the Proclamation is a law in and of itself, but rather that the Proclamation has "the force of law." Governor's Application at 28; *see also 35 Pa.C.S. § 7301(b)* ("[T]he Governor may issue, amend and rescind executive orders, proclamations, and regulations which shall have the force and effect of law."). This may seem like a semantic difference, but it is not. ***HN37***[↑] Executive orders that affect individuals outside the executive branch "implement existing constitutional or statutory law." *Markham v. Wolf, 647 Pa. 642, 190 A.3d 1175, 1183 (Pa. 2018)* (citing *Shapp v. Butera, 22 Pa. Commw. 229, 348 A.2d 910, 913 (Pa. Cmwlth. 1975)*). But an executive order or an administrative regulation promulgated by an executive agency that implements a statute still has the *force of law*. Otherwise, no entity outside the executive branch could be compelled to abide by a regulation issued by an executive **[*48]** branch agency. Such a result would be inconsistent with long-standing precedent. *See, e.g., Bell Tel. Co. of Pa. v. Lewis, 317 Pa. 387, 177 A. 36 (Pa. 1935)* (overruling a non-delegation challenge to a statute that permitted the Governor to determine when telephone and telegraph lines could be constructed along highways).

The Senators also cite our decision in *Protz* for the two limitations underlying the non-delegation doctrine: "First, . . . the General Assembly must make the basic policy choices, and second, the legislation must include adequate standards which will guide and restrain the exercise of the delegated administrative functions." *Protz, 161 A.3d at 834* (internal quotation marks and citation mitted). The Emergency Services Management Code adheres to both standards.

The General Assembly, in enacting the statute, "ma[de] the basic policy choices." *Id.* ***HN38***[↑] The General Assembly decided that the Governor should be able to exercise certain powers when he or she makes a "finding that a disaster has occurred or that the occurrence of the threat of a disaster is imminent." *35 Pa.C.S. § 7301(c)*. In *Friends of Danny DeVito*, we reviewed whether the COVID-19 pandemic met that statutory definition, chosen by the legislature. *See Friends of Danny DeVito, 227 A.3d at 885-92*. That this Court relied upon the statute itself to make this ruling **[*49]** shows that the General Assembly, not the Governor, made the basic policy choices about which circumstances are necessary to trigger the Governor's powers under the statute.

Additionally, the General Assembly has provided "adequate standards which will guide and restrain" the Governor's powers. *Protz, 161 A.3d at 834*. The General Assembly gave the Governor specific guidance about what he can, and cannot, do in responding to a disaster emergency. *See 35 Pa.C.S. §§ 7301(d)-(f)*, *7302*, *7303*, *7308*. The powers delegated to the Governor are admittedly far-reaching, but nonetheless are specific. For example, the Governor can "[s]upend the provisions of any regulatory statute . . . *if strict compliance with the provisions . . . would in any way prevent, hinder or delay necessary action in coping with the emergency*." *Id. § 7301(f)(1)* (emphasis added). Broad discretion and standardless discretion are not the same thing. Only those regulations that hinder action in response to the emergency may be suspended. It may be the case that the more expansive the emergency, the more encompassing the suspension of regulations. But this shows that it is the scope of the emergency, not the Governor's arbitrary discretion, that determines the extent of the Governor's powers under **[*50]** the statute. The General Assembly itself chose the words in *Section 7301(f)(1)*. The General Assembly, under its lawmaking powers, could have provided the Governor with less expansive powers under the Emergency Services Management Code. It did not do so.

HN39[↑] Returning to the Senators' argument regarding the Governor's alleged suspension of law and the non-delegation doctrine, first, it is clear from the text of Article I, Section 12 and precedent that the General Assembly can delegate its suspension power to the executive branch. Article I, Section 12 states that the power of suspending laws can be exercised "by the Legislature or *by its authority*." Pa. Const. art. I, § 12 (emphasis added). During the Constitutional Convention of 1790, one delegate moved "to strike the words 'or its authority,'" a motion which the Convention rejected, indicating that a majority of the Framers intended the power to be delegable.[29] THE PROCEEDINGS RELATIVE TO THE MINUTES OF THE CONVENTION THAT FORMED THE PRESENT CONSTITUTION OF PENNSYLVANIA 261 (1825). This Court has confirmed that the power to suspend laws can be delegated. *See* Young v. Fetterolf, 320 Pa. 289, 182 A. 676, 680 (Pa. 1936) ("The vesting in certain officials or persons by the legislative branch of government, of the power to suspend the operation of laws, has more **[*51]** than once received unequivocal judicial sanction.").[30] Even assuming that the Governor's delegated power under Section 7301(c) amounted to a power to suspend laws, this Court already has concluded that the Governor's actions do not violate the separation of powers doctrine, Friends of Danny DeVito, 227 A.3d at 892-93, and, as noted above, Section 7301(c) complies with the requirements of the non-delegation doctrine.

In their distinct non-delegation argument with regard to the suspension of laws, the Senators contend that, when the Governor suspends laws pursuant to a delegation of authority, he "acts as the legislature's agent and, thus, is subject to any restrictions the General Assembly may see fit to put into place." Senators' Brief at 41. The same, however, could be said of the Governor's power to issue regulations, via an executive branch agency, when that power is delegated from the legislative branch. In such an instance, the Governor is acting as agent of the legislature, subject to the constraints in the authorizing statute. The Senators' argument implies that this Court should create a heightened standard for non-delegation when the delegated power is to suspend law, as opposed to issuing regulations with the force **[*52]** of law. *See id.*; *but see* Senators' Reply Brief at 25. As stated above, HN40[↑] the power to suspend laws is part of the general legislative power, *see* SEIU Healthcare, 104 A.3d at 495; McCreary, 10 Pa. at 422, and we see no reason to treat suspending laws differently from enacting, amending, or repealing laws for the purpose of the non-delegation doctrine. Moreover, this Court already has declared that the "implication [of Article I, Section 12] does not alter the restrictions on delegating legislative decision making as embodied in Article II, Section 1." W. Phila. Achievement Charter Elementary Sch. v. Sch. Dist. of Phila., 635 Pa. 127, 132 A.3d 957, 968 (Pa. 2016); *see also* Senators' Reply Brief at 25 (noting that the delegation of the suspension power is "subject to the restrictions reflected in existing non-delegation principles drawn from Article II, Section 1," and citing West Philadelphia). Thus, the same restrictions on delegating power apply in all legislative contexts, including when delegating the power to suspend laws.

The Senators may be frustrated that, the General Assembly previously having delegated power to the Governor, the rescission of that power requires presentment, perhaps necessitating a two-thirds majority to override a veto. But the potential for such frustration inheres whenever the legislative branch delegates power to the executive branch in any context. **[*53]** HN41[↑] The General Assembly itself decided to delegate power to the Governor under Section 7301(c). Current members of the General Assembly may regret that decision, but they cannot use an unconstitutional means to give that regret legal effect. HN42[↑] The General Assembly must adhere to the constitutional requirement of presentment even when attempting to overturn the Governor's delegated putative authority to suspend laws.

HN43[↑] Over one hundred years ago, when confronting a similar issue of a concurrent resolution and the need for presentment, we stated:

> The protection against unwise and oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the

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[29] The language in our 1790 Constitution did not include a second instance of the word "by." *See* PA. CONST. of 1790, art. IX, § 12 ("That no power of suspending laws shall be exercised, unless by the legislature, or its authority.").

[30] *Cf.* Thuraissigiam, 2020 U.S. LEXIS 337, 2020 WL 34548109, at *19, *21-22 (Thomas, J., concurring) (relating that the Framers of the federal Constitution contemplated, and early state statutes allowed, a delegation of power to the executive to suspend the writ of *habeas corpus*); Young, 182 A. at 679 n.2 (noting that "[t]he actual suspension of [the] writ [of *habeas corpus*], however, has always been done by presidential proclamation" pursuant to a delegation from Congress).

> representatives of the people. If this fail[s], the people in their sovereign capacity can correct the evil, but courts cannot assume their rights. The judiciary can only arrest the execution of a statute when it conflicts with the Constitution. It cannot run a race of opinions upon points of right, reason, and expediency with the lawmaking power. . . . If the courts are not at liberty to declare statutes void because of their apparent injustice or impolicy, neither can they do so because they appear to the minds of the judges **[*54]** to violate fundamental principles of republican government, unless it should be found that these principles are placed beyond legislative encroachment by the Constitution.

Russ, 60 A. at 173 (quoting COOLEY ON CONSTITUTIONAL LIMITATIONS, c. 7, §§ 4, 5 (6th ed. 1890)). Members of the General Assembly and residents of our Commonwealth have differing opinions on how to respond to the COVID-19 pandemic. Some may believe that the Governor's exercise of power under *Section 7301(c)* is necessary and proper. Others may feel that *Section 7301(c)*, and the Governor's subsequent Proclamation, is "unwise and oppressive legislation." *Russ, 60 A. at 173*. As members of the judicial branch, we do not, and indeed cannot, take positions on such matters of policy, because, aside from the domain of common law, "setting public policy is properly done in the General Assembly and not in this Court." Senators' Reply Brief at 30. We "are not at liberty to declare statutes void of their apparent injustice or impolicy." *Russ, 60 A. at 173*. Our function is far more restrained. In this instance, we determine only whether the actions of our sister branches of government have complied with our Commonwealth's Constitution and statutory law.

The General Assembly's attempt, through H.R. 836, to overturn the **[*55]** Governor's Proclamation of Disaster Emergency without presentment, violated *Section 7301(c)* of the Emergency Services Management Code. As an act with legislative effect, H.R. 836, like any concurrent resolution offered under *Section 7301(c)*, required presentment, a key component of our Constitution's balance of powers among the several branches of government, a balance that prevents one branch from dominating the others. H.R. 836 did not meet the criteria allowing for any exception to presentment, and our interpretive canons compel us to read *Section 7301(c)* as requiring presentment. Additionally, *Article I, Section 12 of the Pennsylvania Constitution* does not empower the legislature to act unilaterally to suspend a law, and the Governor's purported suspension of law did not violate the non-delegation doctrine. Thus, because the General Assembly intended that H.R. 836 terminate the Governor's declaration of disaster emergency without the necessity of presenting that resolution to the Governor for his approval or veto, we hold, pursuant to our power under the *Declaratory Judgments Act, 42 Pa.C.S. § 7532*, that H.R. 836 is a legal nullity.[31]

Justices Baer, Todd and Donohue join the opinion.

Justice Dougherty files a concurring and dissenting opinion.

Chief Justice Saylor files a dissenting opinion in **[*56]** which Justice Mundy joins.

Concur by: DOUGHERTY

Dissent by: DOUGHERTY; SAYLOR

Dissent

JUSTICE DOUGHERTY

The competing opinions authored by my learned colleagues offer thoughtful, well-intentioned analyses of the issues in this case of palpable and widespread importance. All things considered, however, I respectfully conclude that the majority has the better of the constitutional arguments with regard to the precise *Article III, Section 9* claim raised by the Governor — namely, I agree "that a concurrent resolution seeking to force the Governor to end a state of disaster emergency has legal effect and does not fit into any of the three recognized exceptions to presentment[.]" Majority Op. at 18. But my alignment with the majority ends there, as I conclude the plain text of *Section 7301(c)* of the Emergency Management Services Code ("Emergency Code"), *35 Pa.C.S. §§7101-79A31*, is unambiguous and reflects the legislature's intent to avoid the constitutional

[31] Having resolved this case, we lift our order staying the proceedings of the Commonwealth Court in *Scarnati v. Wolf, 344 MD 2020, 2020 Pa. LEXIS 3364*. *See* Order, 104 MM 2020, 6/17/2020.

requirement of presentment. There being only one reasonable interpretation of the statute, I cannot join the majority's (understandable, even laudable) attempt to save Section 7301(c) from a finding of unconstitutionality by means of invoking the canon of constitutional avoidance. And, I am further compelled to conclude that, once **[*57]** Section 7301(c) is stripped of the legislature's intended safety valve, the severability doctrine instructs that — no matter how severe the consequences may be — the offending portion of the statute is non-severable.

I begin with the text. Section 7301(c) states, in relevant part: "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). To me, this unusual statutory phrasing, with no analog in other statutes of which I am aware, plainly is directed at one thing and one thing only: avoiding presentment. The first sentence of Section 7301(c) quoted above reveals the legislature's unambiguous intent to reserve for itself the ability to terminate, by concurrent resolution, a state of disaster emergency **at any time**. The second sentence, in turn, unambiguously dictates what **shall** follow **thereupon**, *i.e.*, the Governor shall issue an executive order or proclamation ending the emergency. As the majority itself admits, the term "thereupon" is particularly elucidating since, when ascribed its natural and ordinary definition and applied in context, it reasonably can be read to mean **[*58]** "the Governor must issue an executive order as soon as the General Assembly passes the concurrent resolution, without the Governor having an opportunity to approve or veto the resolution first." Majority Op. at 19, *citing* Black's Law Dictionary (11th ed. 2019) (defining "Thereupon" as "[i]mmediately; without delay; promptly"). While I certainly agree with the majority that this reading of Section 7301(c) "is a reasonable one[,]" *id.*, I would go further and declare it is the only reasonable one.

The majority obviously disagrees. In its view, the statute is susceptible to multiple interpretations because it "does not state unequivocally that the Governor's declaration of a disaster emergency is terminated the moment that the General Assembly passes a concurrent resolution purporting to do so." *Id.* The majority also finds it relevant that Section 7301(c) mentions the Governor at all, and suggests his involvement in the process envisioned by the legislature "is strong evidence that the General Assembly intended to abide by the Constitution, which also requires gubernatorial involvement." *Id.* at 21. From my point of view, however, these points are easily explained: the legislature wields no executive power in this limited context **[*59]** and has no means to retract the chief executive's previously-issued proclamation, or to issue a new declaration or proclamation undoing the previous one; instead, that power, under the terms of the Emergency Code, resides exclusively with the Governor. *See* 35 Pa.C.S. §7301(b) (explaining "**the Governor** may issue, amend, and rescind executive orders, proclamations and regulations") (emphasis added). As such, the most the legislature conceivably can do is demand a Governor retract such an order himself. That is precisely what this statute aims to do. It instructs that, if the legislature passes a concurrent resolution terminating a declaration of disaster emergency, "thereupon" the Governor shall act. It would have been impossible for the legislature to have written this statute in a way that omits any mention of the Governor whatsoever while simultaneously requiring some physical, executive action on his part.

Not only is the majority's interpretation unreasonable, it effectively rewrites the statute in an attempt to avoid the constitutional quandary altogether. Recall what the statute actually says: "The General Assembly by concurrent resolution may terminate a state of disaster emergency at any time. **[*60]** Thereupon, the Governor shall issue an executive order or proclamation ending the state of disaster emergency." 35 Pa.C.S. §7301(c). Now consider the alternative reading afforded to the majority's interpretation: "The General Assembly by concurrent resolution may terminate a state of disaster emergency at any time. **[The Governor may then approve or veto the resolution. If the resolution is approved by the Governor or his veto is overridden, t]**hereupon, the Governor shall issue an executive order or proclamation ending the state of disaster emergency." In this way, it is obvious to see that the majority has inserted words (those that are bolded) to avoid any constitutional issue. Worse yet, the majority's insertion of words only make sense some of the time. What if, instead, the Governor fails to approve the resolution **and** the legislature fails to override his veto? In that not unlikely scenario, the entire second sentence of the statute becomes meaningless; even if the legislature passes a concurrent resolution, nothing "shall" happen "thereupon." That cannot possibly be what the legislature intended. *See, e.g.*, 1 Pa.C.S. §1922(1) (presumption that the legislature "does not intend a result that is absurd, impossible of **[*61]** execution or unreasonable"). But of course, such an absurd interpretation should never come to pass, because the statute is facially unambiguous and, in any

event, our rules of statutory construction preclude us from inserting words into the statute or rendering existing words superfluous. *See, e.g.*, 1 Pa.C.S. §1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."); 1 Pa.C.S. §1922(2) (in ascertaining legislative intent, there is a presumption "[t]hat the General Assembly intends the entire statute to be effective and certain").

For much the same reason, given the explicit statutory language quoted above I respectfully disagree that this case may be resolved by reading the presentment requirement into the statute in accordance with our prior decision in Commonwealth v. Sessoms, 516 Pa. 365, 532 A.2d 775 (Pa. 1987). As the majority recites, in *Sessoms* "'we d[id] not find it fatal to'" the legislation at issue "'that it d[id] not explicitly require presentment of a rejection resolution to the [G]overnor'" since we determined we could "'imply such a condition to avoid finding the statute unconstitutional on its face.'" Majority Op. at 24, *quoting Sessoms, 532 A.2d at 782*. But the same is not possible **[*62]** here because the statute **explicitly** dictates a contrary procedure, a situation we did not face in *Sessoms*. It's one thing to read an implied constitutional requirement into an otherwise silent statutory provision to save the statute from falling; it's quite another to strike an express provision out of a statute to make room for a contradictory implication that satisfies the constitutional command, or to ignore the express and unambiguous terms of the statute altogether. *See* Seila Law LLC v. Consumer Fin. Prot. Bureau, U.S. , 2020 U.S. LEXIS 3515, 2020 WL 3492641, at *18 (June 29, 2020) ("Constitutional avoidance is not a license to rewrite [the legislature]'s work to say whatever the Constitution needs it to say in a given situation.").

In sum, I believe that Section 7301(c) is susceptible to only one reasonable interpretation — the one described by the plain terms of the statute itself. That plain language is clear, and leaves no room for the Governor to take any other action than that which is statutorily prescribed. Accordingly, while I have no doubt that it would be a far cleaner task to simply declare the statute ambiguous and apply the canon of constitutional avoidance to resolve this matter, that path is, unfortunately, unavailable to us. *See, e.g.,* Robinson Twp. v. Commonwealth, 637 Pa. 239, 147 A.3d 536, 574 (Pa. 2016) ("Although courts should interpret statutes so as **[*63]** to avoid constitutional questions when possible, they cannot ignore the plain meaning of a statute to do so.") (citations omitted). That being the case, and since the statutory mechanism crafted by the legislature is clearly at odds with Article III, Section 9 of the Pennsylvania Constitution, it must be stricken as unconstitutional.

But this does not end the matter either. Section 1925 of the Statutory Construction Act provides that whenever any provision of any statute is held invalid, we must shift our consideration to "whether the statute can survive without those invalid provisions, with principal focus on the legislature's intent." Commonwealth v. Hopkins, 632 Pa. 36, 117 A.3d 247, 259 (Pa. 2015), *citing, e.g.*, 1 Pa.C.S. §1925. The legislature did not expressly state whether relevant portions of the subject statute are non-severable, but this of course is not dispositive. *See* Stilp v. Commonwealth, 588 Pa. 539, 905 A.2d 918, 972 (Pa. 2006) (explaining we have "not treated legislative declarations that a statute is severable, or nonseverable, as 'inexorable commands,' but rather have viewed such statements as providing a rule of construction"). By its terms, moreover, Section 1925 creates a general presumption of severability for every statute, **unless** a court concludes that: (1) "the valid provisions of the statute are so essentially and inseparably connected with, and so depend upon, the void provision **[*64]** or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one;" or (2) "the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent." 1 Pa.C.S. §1925. No one here seriously disputes that this latter exception is not in issue, and the reason for this is straightforward: the Governor clearly can execute the other provisions of the statute after the language relating to the legislature's designed oversight mechanism is severed. Thus, the only arguable impediment to severing the portion of the statute that runs afoul of Article III, Section 9, lies within the first exception to the presumption of severability. I therefore turn to that exception and the principles that guide our review.

As noted, "[i]n determining the severability of a statute . . ., the legislative intent is of primary significance." Saulsbury v. Bethlehem Steel Co., 413 Pa. 316, 196 A.2d 664, 667, 55 Mun. L Rep. 231 (Pa. 1964). We have previously explained "[t]he 'touchstone' for determining legislative intent in this regard is to answer the question of whether, after severing the unconstitutional provisions of a statute, 'the legislature [would] have preferred what is left of its statute **[*65]** to no statute at all.'" Nextel Commc'ns of Mid-Atl., Inc. v. Commonwealth, 642 Pa. 729, 171 A.3d 682, 703 (Pa.

2017), *quoting* D.P. v. G.J.P, 636 Pa. 574, 146 A.3d 204, 216 (Pa. 2016). We must also presume that the legislature carefully chose to include every provision of every statute it enacts. *See* 1 Pa.C.S. §1921(a) ("Every statute shall be construed, if possible, to give effect to all its provisions."). Applying these principles, I am constrained to conclude that, absent the so-called legislative veto provision, we may not presume the legislature would have enacted the statute — at least not in its current form.

To be sure, the comprehensive authority that the General Assembly granted the Governor to respond to an emergency is far more extensive and elaborately developed than the legislative-veto provision. But this comparative brevity says nothing about the provision's potency. On this front, I share Chief Justice Saylor's view that it seems "quite unlikely that the Legislature would have conferred such a broad delegation of emergency powers upon the Governor while apprehending that the contemplated legislative oversight was subordinate to a gubernatorial veto, thus affording the executive the ability to require a supermajority vote." *Id.* at 7. Significant proofs support this position.

First, the bare fact that the legislature opted to include the language **[*66]** at all demonstrates that it must carry some significance. *See, e.g.*, 1 Pa.C.S. §1921(a); 1 Pa.C.S. §1922(2). Indeed, as we recently remarked (whether it be *dicta* or not), the purpose of the legislature's intended oversight mechanism is manifest: it serves "[a]s a counterbalance" to the broad powers granted to the Governor under the Emergency Code. Friends of Danny DeVito v. Wolf, 227 A.3d 872, 886 (Pa. 2020). And we are not alone in our view that the legislature's mechanism was intended to serve as a vital check on the otherwise far-reaching powers conferred under the Emergency Code, which give the Governor "the authority to declare one of the longest emergency declarations of any governor in the United States." Id. at 885 n.9 (citation omitted).[1]

In fact, the National Governors Association "characterizes the ability of a legislature to intervene to terminate a declaration of a state of emergency as a 'limitation on emergency powers[.]'" Patricia Sweeney, JD, MPH, RN, Ryan Joyce, JD, *Gubernatorial Emergency Management Powers: Testing the Limits in Pennsylvania, 6 PITT. J. ENVTL PUB. HEALTH L. 149, 177 (2012)*, *quoting* National Governors Association Center for Best Practices, The Governor's Guide to Homeland Security at 14 (2007), http://www.nga.org/files/live/sites/NGA/files/pdf/0703GOVGUIDEHS.PDF. If the judicial and executive branches view the legislative-veto provision as an intentional means of curtailing the powers granted under the Emergency Code, then surely the legislature, the author **[*67]** of the statute, must ascribe at least as much significance to it — and likely far more. *Accord* Reply Brief for Respondents at 15 ("[C]ommon sense and experience dictate that each branch of government seeks to protect its institutional powers to the greatest degree practicable.").

If more support for the conclusion that the legislature might prefer no statute over a stripped-down version were required, one need not look far. Turning back to the statutory language, I emphasize once more that it explicitly states the "General Assembly by concurrent resolution may terminate a state of disaster emergency **at any time**." 35 Pa.C.S. §7301(c) (emphasis added). It continues, "[**t**]**hereupon**, the Governor **shall** issue an executive order or proclamation ending the state of disaster emergency." *Id.* (emphasis added). Again, the only reasonable meaning that can be attributed to this language — the bolded passages in particular — is that it shows the General Assembly's unambiguous intention that it be able to end the declaration without presentment.

To recognize the legislature's intent in this regard is to effectively answer the question of severability: because the legislature operated under the assumption it could **[*68]** end a state of disaster emergency without presentment, and the majority of this Court now reaches

[1] There are various legislative efforts underway that seek to reduce the length of such declarations. *See, e.g.*, H.B. 2428, 204th Gen. Assemb., Reg. Sess. (Pa. 2020) (referred to Committee on State Government, Apr. 24, 2020) (proposing reduction to 45 days); S.B. 1174, 204th Gen. Assemb., Reg. Sess. (Pa. 2020) (referred to Veterans Affairs and Emergency Preparedness, June 5, 2020) (proposing reduction to 30 days); S.B. 1160, 204th Gen. Assemb., Reg. Sess. (Pa. 2020) (referred to Veterans Affairs and Emergency Preparedness, June 5, 2020) (proposing reduction to 10 days). Of course, the issue of presentment will likely prove to be a hurdle in any of these efforts. As one of the many *amicus* parties in this matter rhetorically observes, "a lower threshold . . . would be required for the impeachment of a Governor" than it would take to override a veto of H.R. 836 or any other legislation seeking to alter the Emergency Code. Brief of *Amicus Curiae*, the Commonwealth Foundation for Public Policy Alternatives, in Support of Respondents, at 20 (emphasis omitted). *Amicus* has exaggerated for dramatic effect, perhaps, but the point is well taken.

the opposite conclusion, "it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one[.]" *1 Pa.C.S. §1925*. Any notion that the device the legislature crafted to avoid presentment should be construed as some unimportant add-on, would be untenable. As I see it, not only does the relevant statutory language constitute a "prominent and central feature[ ] of the statute[,]" *Hopkins, 117 A.3d at 259*, it represents the legislature's unambiguous attempt to impose a critical (albeit unconstitutional) counterbalance to the Governor's sweeping exercise of delegated emergency powers.

As well, I note that in other cases that do not call into question the interplay between branches of our Commonwealth government, we have not hesitated to strike down statutes with non-severable, unconstitutional provisions even where "constitutional requirements can be said to have been satisfied in the abstract." *Commonwealth v. Wolfe, 636 Pa. 37, 140 A.3d 651, 662 (Pa. 2016)*. From my perspective, any effort to re-write the statute or ignore its plain language is merely a means to the same end — *i.e.*, permitting the constitutional requirement of presentment to be **[*69]** satisfied notwithstanding the fact that

[J-62-2020] [MO: Wecht, J.] - 9 the statute explicitly aims to avoid exactly that. Respectfully, the unusual and urgent circumstances this case supplies do not permit us to abandon our duty to apply the severability doctrine in a consistent fashion, or to disregard the relevant interpretive principles. *See, e.g.*, *1 Pa.C.S. §1921(a)*, *(b)*; *Commonwealth v. Kirkner, 569 Pa. 499, 805 A.2d 514, 516-17 (Pa. 2002)* ("[A] statute cannot be modified by judicial discretion, no matter how well-intentioned.") (citations omitted).

In summary and to reiterate, I would hold *Section 7301(c)* of the Emergency Code violates the Pennsylvania Constitution and the offending portion of the statute may not be severed. For the reasons outlined above, "it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one[.]" *1 Pa.C.S. §1925*. The presumption of severability having been rebutted, in my view, we are left with no choice but to declare the statute unsalvageable.[2]

[2] I recognize a finding of non-severability is strong medicine in the present matter, which involves governmental power to confront a pandemic emergency. Although it has played no role in my consideration of the purely legal issues involved, I observe that in *Friends of Danny DeVito* we noted the Governor has actually invoked **three statutory grounds** for his administration's authority to address the present pandemic: "the [Emergency Code]; *[S]ections 532(a)* and *1404(a) of the Administrative Code*, *71 P.S. §532*; *71 P.S. § 1403(a)*; and the *Disease Prevention and Control Act (the "Disease Act"), 35 P.S. §521.1-521.25*." *227 A.3d at 880*.

There is no challenge presently before us to any source of authority other than the Emergency Code, and as far as I am aware, the various powers conferred by those statutes are not tied to the fate of *Section 7301(c)*. *See, e.g.*, *71 P.S. §532(a)*, *(c)* ("The Department of Health shall have the power, and its duty shall be . . . [t]o protect the health of the people of this Commonwealth, and to determine and employ the most efficient and practical means for the prevention and suppression of disease; . . . and to enforce quarantine regulations[.]"); *71 P.S. §1403(a)* ("It shall be the duty of the Department of Health to protect the health of the people of the State, and to determine and employ the most efficient and practical means for the prevention and suppression of disease."); *35 P.S. §§521.1-521.25* (pertaining to quarantine and other control measures in response to communicable diseases).

CHIEF JUSTICE SAYLOR

In his prayer for relief, the Governor has asked this Court only to declare that *Article III, Section 9 of the Pennsylvania Constitution* renders the General Assembly's concurrent resolution requiring the termination of the renewed disaster emergency a legal **[*70]** nullity. *See, e.g.*, Application for the Court to Exercise Jurisdiction in *Wolf v. Scarnati, 104 MM 2020 (Pa.), 2020 Pa. LEXIS 3364*. In this regard, the chief executive - as the petitioner - has avoided the question of what the Legislature intended when it prescribed, in *Section 7301(c) of the Emergency Management Services Act*, that the General Assembly, by concurrent resolution, may terminate a disaster emergency at any time. *See* *35 Pa.C.S. §7301(c)*.

I have no objection to the majority's decision to consider the legislative intent underlying *Section 7301(c)*, albeit that I differ with its reasoning and conclusion. In this regard, I also find that the narrow set of issues upon which the Governor wishes to focus cannot be wholly disentangled from the wider array of statutory and doctrinal considerations in play, particularly the overarching separation of powers concerns. *Cf.* *Kelly v. Legislative Coordinating Council, 460 P.3d 832, 841 (Kan. 2020)* (Stegall, J., concurring) (alluding to the "vexing separation of powers problems created when one branch of government delegates its power to another branch as the Legislature has done (in part)" in

the Kansas Emergency Management Act, and opining that "[a]bsent a liberal interpretation of the Legislature's ability to continually oversee the Governor's exercise of delegated Legislative **[*71]** authority, the structure of [the Kansas Emergency Management Act] itself risks violating the constitutional demand of separate powers").

This dispute arises from the General Assembly's decision, consistent with that of many other state legislatures, that the chief executive is the most logical and efficacious first responder to emergencies affecting the public at large. Given both institutional constraints impacting legislative action and the Legislature's inability, as of the time of the enactment of the Emergency Management Services Code, to predict the character and timing of emergent circumstances as they might arise in the future, it delegated to the Governor the power to discern and declare an emergency. Correspondingly, it conferred upon the chief executive an extraordinary set of powers - including the authority to suspend laws and to commandeer private property if necessary - as essential countermeasures.[1] At the same time, the General Assembly quite rationally reserved to itself the ability to make its own assessment of whether the circumstances at hand rise to a disaster emergency and to override the Governor's declaration of an emergency upon the passage of a concurrent resolution. **[*72]** *See* 35 Pa.C.S. §7301(c).

As the majority relates, facially *Article III, Section 9 of the Pennsylvania Constitution* suggests that all concurrent resolutions, *i.e.*, resolutions "to which the concurrence of both Houses may be necessary," *Pa. Const. art. III, §9*, "shall be presented to the Governor" and are subject to a veto power on his part. *See id.* According to this Court's longstanding precedent, however, *Article III, Section 9* is only applicable to resolutions that "relate to and are a part of the business of legislation." *See, e.g., Commonwealth ex rel. Attorney General v. Griest, 196 Pa. 396, 409, 46 A. 505, 508 (1900)*. The parties agree, at least in some passages in their submissions, that the question in this case distills to whether the concurrent resolution at hand satisfies this criterion. *See, e.g.*, Application for the Court to Exercise Jurisdiction in *Wolf v. Scarnati, 104 MM 2020 (Pa.), 2020 Pa. LEXIS 3364, at 21* ("[O]nly resolutions that 'make legislation *or have the effect of legislating*' must be so submitted [to the Governor]" (emphasis in original)); Brief for Petitioners in Support of Application for Expedited Summary Relief in *Scarnati v. Wolf, 344 M.D. 2020 (Pa. Cmwlth.), 2020 Pa. LEXIS 3364, at 20*.

The relevant terms of *Section 7301(c)* comprise, in effect, a legislative veto relative to a sweeping delegation of legislative power, which in my view does not bear the essential relationship to conventional legislation such as would have been within the framers' contemplation. **[*73]** [2] In this regard, I simply cannot envision that the framers of the Pennsylvania Constitution contemplated that the Governor could be invested with a panoply of exceptional powers - including the delegated power to suspend laws and commandeer private property - but that the Legislature nonetheless would be powerless to implement a counterbalance that was not then subject to the chief executive's own veto power. In this respect, it is my considered judgment that the emergency-powers paradigm is essentially *sui generis*.

According to the majority, the 1987 decision in *Commonwealth v. Sessoms, 516 Pa. 365, 532 A.2d 775 (1987)*, adopted *Chadha v. INS, 462 U.S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983)*, which contained broad language disapproving legislative vetoes in the abstract based upon separation-of-powers principles. *See id. at 958-59, 103 S. Ct. at 2788*. *Sessoms*,

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[1] As the majority explains, the power to suspend laws is commended to the General Assembly in the Pennsylvania Constitution's Declaration of Rights. *See Pa. Const. art. I, §12* ("No power of suspending laws shall be exercised unless by the Legislature or by its authority.").

[2] This is not to say that a legislative veto of the Governor's emergency declaration does not raise independent separation-of-powers concerns. *See, e.g., INS v. Chadha, 462 U.S. 919, 959, 103 S. Ct. 2764, 2788, 77 L. Ed. 2d 317 (1983)* (holding that a unicameral Congressional veto power over determinations to suspend deportations of discrete individuals violated the separation-of-powers doctrine). In this instance, however, as further developed below, I am of the view that the breadth of the essential delegation of emergency powers to the executive in light of future and unforeseen circumstances justifies an equally extraordinary veto power in the Legislature. *Cf. Communications Workers of Am., AFL-CIO v. Florio, 130 N.J. 439, 617 A.2d 223, 232-33 (N.J. 1992)* ("Where legislative action is necessary to further a statutory scheme requiring cooperation between the [legislative and executive] branches, and such action offers no substantial potential to interfere with exclusive executive functions or alter the statute's purposes, legislative veto power can pass constitutional muster." (citation omitted)); Reply Brief for Respondents at 1 (positing that, under Pennsylvania's Emergency Management Services Code, the Governor is to govern "in partnership with the legislature").

however, left the Chadha-related questions "largely unresolved," since the Court ultimately applied a plain-meaning interpretation of Article III, Section 9. Sessoms, 516 Pa. at 378-79, 532 A.2d at 781-82.[3]

The majority otherwise acknowledges what this Court has stated many times, namely, that "every case, and every statute, must be evaluated independently." Majority Opinion, *slip op.* at 24; *accord, e.g.,* Oliver v. City of Pittsburgh, 608 Pa. 386, 395, 11 A.3d 960, 966 (2011) (explaining that the holding of a judicial decision is read against its facts). As related by Chief Justice **[*74]** John Marshall:

> It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

Cohens v. State of Virginia, 19 U.S. 264, 399-400, 5 L. Ed. 257 (1821).

Consistent with this principle, to the degree *Sessoms* can be read to suggest an adherence to Chadha in its broadest construction, I do not regard the case as binding precedent in the present - and very different - context. Moreover, the criticisms of Chadha's wide-ranging pronouncements disapproving legislative vetoes in the abstract are legion. *See, e.g.*, Philip P. Frickey, *The Constitutionality of Legislative Committee Suspension of Administrative Rules: The Case of Minnesota*, 70 Minn. L. Rev. 1237, 1250 n.63 (1986) (collecting articles).

I believe that the present context presents **[*75]** a compelling case that legislative vetoes should not be regarded as being *per se* violative of separation-of-powers principles. Rather, I would follow the lead of the New Jersey Supreme Court by recognizing that, "[w]here legislative action is necessary to further a statutory scheme requiring cooperation between the [legislative and executive] branches, and such action offers no substantial potential to interfere with exclusive executive functions or alter the statute's purposes, legislative veto power can pass constitutional muster." Enorato v. N.J. Bldg. Auth., 90 N.J. 396, 448 A.2d 449, 451 (N.J. 1982) (quoting General Assembly v. Byrne, 90 N.J. 376, 448 A.2d 438, 448 (N.J. 1982)). And I can think of no more appropriate setting for the contemplated inter-branch cooperation and power-sharing to be intelligently and properly exercised than in the management of a disaster emergency.

For the above reasons, I would find that Article III, Section 9 does not apply to the concurrent resolution requiring the termination of the disaster emergency as renewed by the Governor, and such concurrent resolution does not offend the separation-of-powers doctrine. And, accordingly, I cannot agree with the majority's premise that the principle of constitutional avoidance supplies a reason to impose a construction on Section 7301(c), which, in any event, is inconsistent **[*76]** with the statute's plain language and apparent purposes.

In this regard, the Legislature knows well how to prescribe for presentment to the Governor in statutes. *See, e.g.*, Brief for Petitioners in Support of Application for Expedited Summary Relief in Scarnati v. Wolf, 344 M.D. 2020 (Pa. Cmwlth.), 2020 Pa. LEXIS 3364, at 21 (citing 71 P.S. §745.7(d), 53 P.S. §42206(b)(1), 53 P.S. §28206(b), and 53 P.S. §12720.206(b)). Moreover, Section 7301(c) - which requires that the Governor *shall* issue an executive order terminating a disaster emergency *thereupon* after the issuance of a concurrent resolution - leaves no room for an intervening gubernatorial veto.[4] It also seems to me to be quite

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[3] Notably, the Sessoms Court failed to recognize the exception to the presentment requirement, deriving from the Griest decision, for matters that do not concern the business of legislating. *See* Sessoms, 516 Pa. at 379-80, 532 A.2d at 781-82. This omission seems materially problematic, since the Court otherwise announced that the Legislature's prescription for commission-created sentencing guidelines had "done no more than direct that the courts take notice of the Commission's work" and "[o]nly in this limited way" could the guidelines "be given effect beyond the confines of the General Assembly[.]" ***Id. at 377, 532 A.2d at 781***. In this regard and otherwise, Sessoms was incompletely reasoned.

[4] The majority posits that, under Section 7301(c), a state of disaster emergency ends "only after the Governor so finds." Majority Opinion, *slip op.* at 25. But under the concurrent resolution provision of the statute, the Governor's mandatory obligation to issue an executive order or proclamation ending an emergency is triggered "thereupon" after the General Assembly's issuance of such a resolution. 35 Pa.C.S.

unlikely that the Legislature would have conferred such a broad delegation of emergency powers upon the Governor while apprehending that the contemplated legislative oversight was subordinate to a gubernatorial veto, thus affording the executive the ability to require a supermajority vote. *Accord* Reply Brief for Respondents at 15 ("[C]ommon sense and experience dictate that each branch of government seeks to protect its institutional powers to the greatest degree practicable.").[5]

Additionally, given that the concurrent-resolution provision of *Section 301(c)* plainly serves as an inter-branch check on the Governor's exercise **[*77]** of delegated emergency powers, the question presents itself whether that delegation would comport with constitutional norms if the contemplated oversight is greatly weakened by affording the Governor the ability to require such a supermajority to secure implementation. *See* *Pa. Const. art. 2, §1* ("The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives."). While I find this issue to reside well beyond the scope of what needs to be, and should be, decided here, I take the opportunity to observe that Respondents present a colorable argument that such dilution renders the entire Emergency Management Services Act unconstitutional.[6]

In summary, I would respond to the Governor's petition and request for relief by holding that *Article III, Section 9*

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§7301(c). For these reasons, I also find unpersuasive the majority's position that the mere ministerial involvement of the Governor in this latter process implies presentment under *Article III, Section 9*. *See* Majority Opinion, *slip op.* at 20.

Ultimately, I believe my difference with the majority's analysis on this point stems from my understanding that the statute provides for two distinct ways a disaster emergency can end: one initiated by the Governor, *see* *35 Pa.C.S. §7301(c)* ("The state of disaster emergency shall continue until the Governor finds that the threat or danger has passed . . .."), and the other initiated by the Legislature, *see id.* ("The General Assembly by concurrent resolution may terminate a state of disaster emergency at any time.").

Thus, I respectfully disagree with the concept that, to "afford meaning to all of the provisions of the statute," the Governor's input must sought via presentment when the Legislature initiates the termination. Majority Opinion, *slip op.* at 25.

[5] I view the majority's decision to imply a presentment requirement into the statute as being in tension with the rule that courts are not at liberty to insert words into statutory provisions that the legislative body has not included. *See, e.g.,* *Burke v. Independence Blue Cross, 628 Pa. 147, 159, 103 A.3d 1267, 1274 (2014)*. As noted above, when the Legislature has chosen to require presentment, it has said so. *See, e.g.*, *71 P.S. §745.7(d)* ("If the General Assembly adopts the concurrent resolution by majority vote in both the Senate and the House of Representatives, the concurrent resolution shall be presented to the Governor . . .."). Thus, its failure to do so here does not appear to be unintentional.

Moreover, while the principle of constitutional avoidance - on which the majority relies, *see* Majority Opinion, *slip op.* at 20 - is an important judicial tool for saving statutes when reasonably possible, the underlying justification is that the construction which avoids grave constitutional difficulties is likely to be faithful to legislative intent, as the legislative body does not intend to violate the Constitution. That underlying justification is diminished where, as here, the chosen construction substantially weakens the Legislature's ability to act as a check on the actions of a co-equal branch. The reason is self-evident: the General Assembly is not likely to seek to weaken its own institutional powers, particularly vis-à-vis those of a separate and co-equal branch of government. And while the majority correctly observes that the Legislature has clarified that it does not intend to violate the Constitution, *see* Majority Opinion, *slip op.* at 23 (citing *1 Pa.C.S. §1922(3)*), that precept alone cannot justify the use of constitutional avoidance to reach an interpretation which was not intended by the General Assembly - particularly as the overarching purpose of *all* statutory construction is to give effect to legislative intent. *See* *1 Pa.C.S. §1921(a)*. *See generally* *Clark v. Martinez, 543 U.S. 371, 382, 125 S. Ct. 716, 725, 160 L. Ed. 2d 734 (2005)* (noting that constitutional avoidance is "a means of giving effect to congressional intent, not of subverting it").

[6] Respondents argue:

> Any delegation of exclusive constitutional power by the General Assembly can only be lawfully done by guiding and restraining the exercise of the delegated power. *See* *Protz [v. WCAB (Derry Area Sch. Dist.],639 Pa. 645, 161 A.3d [827,] 831 [(Pa. 2017)]*. If the General Assembly is stripped of its unilateral power to immediately end a state of disaster emergency under *Subsection 7301(c)*, then there is no restraint on the Governor, and he is able to freely and unilaterally exercise powers of the General Assembly, which unlawfully violates basic separation of powers principles. **[*78]**

Reply Brief for Respondents at 16 n.7; *see also id.* at 15-16 ("Without the concurrent resolution provision, the Governor's delegated powers under *Section 7301* are virtually limitless and unrestrained, rendering the General Assembly a mere advisory body during emergencies declared the Governor, thereby consolidating both executive and legislative power into a single branch of government.").

of the Pennsylvania Constitution does not require presentment of the concurrent resolution in issue here. In closing, I refer to a passage from Justice Powell's concurrence in *Chadha*, in which he stressed that the "boundaries between each branch should be fixed 'according to common sense and the inherent necessities of the governmental co-ordination.'" *Chadha, 462 U.S. at 962, 103 S. Ct. at 2790* (quoting *J.W. Hampton, Jr. & Co. v. U.S., 276 U.S. 394, 406, 48 S. Ct. 348, 351 (1928)*).

I agree, and hence, I respectfully dissent.

Justice Mundy joins this dissenting opinion.

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EXHIBIT K

Op. of the Atty. Gen. (Aug. 18, 1943)

implied merely from the fact that the officer tendered a resignation, the effect of which under the statute is to cause such officer to be deemed to be on leave of absence.

Very truly yours,
ROBERT T. BUSHNELL, *Attorney General.*

Governor — Emergency War Powers — Executive Orders — Public Welfare.

AUG. 18, 1943.

His Excellency LEVERETT SALTONSTALL, *Governor of the Commonwealth.*

SIR: — In a recent communication your secretary requested advice on behalf of Your Excellency as to whether the emergency powers granted to the Governor are broad enough in scope to authorize the promulgation of an executive order, the effect of which would be to permit the construction of a bridge over Webster Street, a public way, in Worcester, connecting two buildings on opposite sides of the way, which buildings are owned and occupied by the Handy Pad Supply Company. It is stated that this company makes surgical supplies and at the present time is working on contracts for the Army. I assume that these contracts are being executed at the premises referred to above. It is also stated that the construction of such a bridge has been approved by the joint standing committee on streets of the City Council of Worcester.

Attached to this communication is a copy of a letter from H. F. Currie, Lieut. Colonel, Medical Corps, United States Army, requesting, in the interest of the war effort, that authority be granted for the construction of the proposed bridge, and a letter from the City Solicitor of Worcester to the effect that the city has no authority to grant permission to a private entity to maintain structures over a public highway without the consent of the Commonwealth.

While the answer to your inquiry is not free from doubt, it is my opinion that St. 1941, c. 719, Part II, § 7, as amended, and St. 1942, c. 13, §§ 2 and 3, are broad enough in scope to permit Your Excellency to authorize the construction of the proposed bridge, provided Your Excellency determines as a matter of fact that the giving of such authority is necessary or advisable for the purpose of co-operating with the federal authorities or with the military or naval forces of the United States in a matter pertaining to the common defense or common welfare, or that the giving of such authority is necessary for the support of the national government in the prosecution of the war.

The emergency powers of the Governor are set forth in St. 1941, c. 719, Part II, as amended, and St. 1942, c. 13.

St. 1941, c. 719, Part II, § 7, provides:

"The governor shall have full power and authority to co-operate with the federal authorities and with the governors of other states in matters pertaining to the common defense or to the common welfare, and also so to co-operate with the military and naval forces of the United States and of the other states, and to take any measures which he may deem proper to carry into effect any request of the President of the United States for action looking to the national defense or to the public safety."

St. 1942, c. 13, § 2, provides:

". . . the governor, in addition to any other authority vested in him by law, shall have and may exercise any and all authority over persons and

property, necessary or expedient for meeting the supreme emergency of such a state of war, which the general court in the exercise of its constitutional authority may confer upon him as the supreme executive magistrate of the commonwealth and commander-in-chief of the military and naval forces thereof, . . ."

By section 3 of said chapter 13, the Governor may exercise any power, authority or discretion conferred on him by any provision of said chapter 13 or of chapter 719 of the Acts of 1941 by the issuance or promulgation of executive orders or general regulations.

The preamble to said chapter 13 reads in part:

"The supreme emergency of a world wide war, . . . has resulted in conditions of imminent danger, . . . calling for a state of preparedness to meet such dangers by the commonwealth . . . so that the sovereign authority of the commonwealth and of its 'supreme executive magistrate' and 'commander-in-chief', for the protection of the government and its citizens . . . may be exercised when needed for the support of the national government in the prosecution of the war . . ."

While the Supreme Judicial Court of Massachusetts has not had occasion to pass upon or define the extent or limit of the authority conferred upon the Governor by the foregoing statutes, it is clear from their express purpose and from their context that the Legislature intended to confer broad power upon the Governor to deal with matters affecting the common defense and the common welfare and arising out of the present emergency.

The rapidly changing conditions resulting from the prosecution of a total war render it practically impossible for the Legislature to prescribe a formula by which it could determine in advance whether a given matter pertains to the common defense or the common welfare, or is necessary for the support of the National Government in the prosecution of the war. The determination as to whether a particular matter does in fact so pertain or is in fact necessary to support the National Government within the scope of the statutes referred to above has been left by the Legislature to the sound discretion of the Governor.

In *Helvering* v. *Davis*, 301 U. S. 619, the Court considered the phrase "common defense and general welfare" as that phrase is used in U. S. Const., Art. I, § 8, which reads in its applicable part as follows:

"The congress shall have power to . . . provide for the common defence and general welfare of the United States; . . ."

At page 640 the Court said:

"The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penumbra in which discretion is at large. The discretion, however, is not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment. This is now familiar law. 'When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress.'"

Similarly, the discretion as to whether a particular matter pertains to the "common defense or to the common welfare" or is "needed for the

support of the national government in the prosecution of the war," as those phrases have been used by the Legislature in the foregoing statutes, appears to be lodged with the Governor so long as that discretion is an exercise of judgment and not a display of arbitrary power.

That the Legislature may in its wisdom authorize the construction of a bridge over a public way is clear. St. 1941, c. 18; St. 1939, c. 340; St. 1938, c. 53; *Cushing* v. *Boston*, 128 Mass. 330; *Opinion of the Justices*, 208 Mass. 603.

Whether similar authority may be exercised by the Governor in a given case by force of the emergency powers conferred upon him by the Legislature depends upon the Governor's determination that the exercise of such authority pertains to the "common defense or to the common welfare" or is "needed for the support of the national government in the prosecution of the war."

Emergency powers of the Governor should be exercised with great care where it appears that the effect of a particular executive order will be primarily to benefit a private individual or company rather than immediately to promote the war effort. If there is room for doubt as to whether the effect of such an order as is requested here will be primarily to promote the war effort or, rather, primarily to benefit a private individual, the decision is one to be made by Your Excellency in the light of all the facts pertaining to the relationship of the proposed bridge to the common defense and to the common welfare and the support of the national government in the prosecution of the war.

Very truly yours,
ROBERT T. BUSHNELL, *Attorney General.*

Workmen's Compensation — Employers — Number of Employees.

AUG. 31, 1943.

Mr. JOHN W. HENDERSON, *Assistant Secretary, Department of Industrial Accidents.*

DEAR SIR: — On behalf of the Department of Industrial Accidents, you have directed my attention to the second sentence of G. L. (Ter. Ed.), c. 152, § 1, par. (4), as inserted by St. 1943, c. 529, § 3, which sentence reads as follows:

"The provisions of this chapter shall remain elective as to employers of the following: — persons employing six or less, or persons employed as domestic servants and farm laborers, members of an employer's family dwelling in his household, and persons other than laborers, workmen and mechanics employed by religious, charitable or educational institutions."

You state that "the Department has knowledge that there is a group of employers which, during a portion of a given year, employs six persons or less, and which, during the remainder of the year, employs seven or more persons," and that the Department requests my opinion "as to the basis upon which determination may be made as to whether any such employer shall provide for the payment to his employees of the compensation provided by chapter 152 or whether the provisions of said chapter shall remain elective as to such employer."

In my opinion employers who employ six or less employees as defined in the statute on some occasions and more than six on other occasions are required to provide for the payment of the compensation secured by the