

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Billie Washington, Opal Gibson, Tina Smith  
Pennsylvania Mental Health Consumers'  
Association, Mental Health Association  
in Pennsylvania, Mental Health Association  
of Southeastern Pennsylvania,  
The Philadelphia Alliance,  
Drug and Alcohol Service Providers  
Organization of Pennsylvania, Pennsylvania  
Community Providers Association, and  
Success Against All Odds,  
Petitioners

No.

602 MD 2012

v.

The Department of Public Welfare of the  
Commonwealth of Pennsylvania,  
Respondent

**NOTICE TO PLEAD**

You are hereby notified to file a written response to the enclosed Petition for Review (in the Nature of an Action for Declaratory and Injunctive Relief) within thirty (30) days, or within such other time as established by Order of the Court, of service hereof or a judgment may be entered against you.

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**PETITION FOR REVIEW  
(In the Nature of an Action for Declaratory and Injunctive Relief)**

In support of their Petition for Review, Petitioners state as follows.

**I. SUMMARY OF THIS LAWSUIT**

1. In this action, Petitioners seek to enjoin enforcement and implementation of Act 2012-80, which was signed into law on June 30, 2012. Act 2012-80, P.L. 668, approved June 30, 2012, eff. July 1, 2012 (hereinafter "Act 80"; a copy of Act 80 is attached hereto as Exhibit "A").

2. Act 80 violates the Pennsylvania Constitution, and was passed in a fashion that both disregarded and violated longstanding rules that govern how legislation is to be considered and acted upon.

3. Article III, Section 3 of the Pennsylvania Constitution requires that legislation cover a single subject.

4. Act 80 covers seven subjects. First, Act 80 eliminated the General Assistance cash assistance program, a program that enabled about 68,000 vulnerable Pennsylvanians to subsist. Second, Act 80 dramatically reworked the way human services are provided in Pennsylvania, establishing a Pilot Block Grant Program that will apply to 20 Pennsylvania Counties and imposing new planning and reporting requirements on all counties. Third, it imposed new work requirements on applicants for Temporary Assistance for Needy Families ("TANF"). Fourth, it established a completely new sanctions process for non-compliance with TANF work requirements. Fifth, it expanded work requirements for one group of Medical Assistance recipients. Sixth, it extended certain subsidies available to adoptive parents and legal custodians of youth ages 18-21. And seventh, it extended a \$477 million assessment on nursing facilities. See Act 80; House Fiscal Note to H.B. 1261, P.N. 3884. (A copy of this fiscal note is attached hereto as Exhibit "B".)

5. Article III, Section 1 of the Pennsylvania Constitution requires that a bill's original purpose not change during its course through the legislative process. The purpose of the bill that became Act 80, H.B. 1261, was to effect a change in residency requirements for certain forms of assistance. That original purpose was abandoned and is found nowhere in Act 80 – and in fact H.B. 1261's original purpose was accomplished through an entirely different bill, which enacted verbatim the original language and the original purpose of H.B. 1261. Act 2011-22 (H.B. 960).

6. Article III, Section 4 of the Pennsylvania Constitution requires that a bill be considered on three days in the House and three days in the Senate. Seven of the bill's seven subjects were considered on only one day in the House, and the situation was only marginally better in the Senate, where six of the bill's seven subjects/purposes were considered on only one day.

7. The Pilot Block Grant Program established in Act 80 violates fundamental Constitutional rules that require the executive branch to abide by appropriation decisions made by the General Assembly, and that bar the executive branch from spending more on a program than the amount appropriated. Pa. Const. art. III, § 24.

8. The Pilot Block Grant Program also constitutes an unconstitutional delegation of authority to the executive branch, because Act 80 does not provide adequate guidelines for the Department of Public Welfare ("DPW") to use when deciding which counties will participate in the Pilot Block Grant Program, and when it decides whether or not to waive important requirements of the Pilot Block Grant Program. This violates Article II, Section 1 of the Pennsylvania Constitution.

9. In addition, on its face Act 80 itself requires DPW to establish criteria for admission into the Pilot Block Grant Program, Act 80 § 12 (codified at 62 Pa.C.S. § 1402-B), and any such criteria would need to be issued in compliance with the Commonwealth Documents Law, 45 Pa.C.S. §§ 1102-1208. No criteria have been issued and DPW has not complied with the Commonwealth Documents Law. For that reason alone, DPW is not permitted to move forward with the Pilot Block Grant Program.

## **II. JURISDICTION**

10. This Court has original jurisdiction in this matter pursuant to 42 Pa. Cons. Stat. § 761(a).

11. There is no administrative remedy available to Petitioners. Any actions by Petitioners at the administrative level would be futile as DPW's

Bureau of Hearing and Appeals (“BHA”) is prohibited from making an independent determination on the validity of state law.

### III. PARTIES

12. Petitioner Billie Washington is a 52-year-old Philadelphia resident. Affidavit of Billie Washington ¶ 2. (A copy of Ms. Washington's affidavit is attached hereto as Exhibit “C”.) She has chronic rheumatoid arthritis, fibromyositis, an immune system disorder, and joint disease, requiring her to take nine daily medications. Id. ¶ 7. Ms. Washington was forced to stop working as a home care attendant in October 2011 because of her health issues. Id. ¶ 6. In January 2012, she applied for Supplemental Security Income (SSI) disability benefits. Id. ¶ 10. She is still waiting for a decision on her application. Id. In February 2012, she began receiving General Assistance. Id. ¶ 7. She used her General Assistance to pay for rent, co-payments for her medicines, and personal hygiene items. Id. ¶ 9. Since Ms. Washington stopped receiving General Assistance on July 31, 2012, she has been unable to secure her needed prescription medications because she cannot pay her required co-payments. Id. ¶ 11. Ms. Washington also is at risk of homelessness because without General Assistance, she has been unable to pay rent. Id. ¶ 13.

13. Petitioner Tina Smith is a 36-year-old Philadelphia resident. Affidavit of Tina Smith ¶ 2. (A copy of Ms. Smith's Affidavit is attached hereto as Exhibit "D"). Ms. Smith has legal custody of 13-year-old Shyann A. Id. ¶ 5. Until July 31, 2012, Ms. Smith received General Assistance for Shyann. Id. ¶ 8. Ms. Smith is ineligible to receive Temporary Assistance for Needy Families ("TANF") cash assistance for Shyann because Ms. Smith is not related to Shyann. Id.; see also 55 Pa. Code § 151.41. Ms. Smith has bipolar disorder and depression and receives SSI benefits. Id. ¶ 6. Ms. Smith's SSI when combined with Shyann's General Assistance was sufficient to pay for rent and utilities. Id. ¶ 6. Ms. Smith and Shyann are at imminent risk of homelessness. Without Shyann's General Assistance, Ms. Smith can no longer afford her rent, and she fears that she will be soon be evicted. Id. ¶ 10.

14. Petitioner Opal Gibson is a 58-year-old Philadelphia resident. Affidavit of Opal Gibson ¶ 1. (A copy of Ms. Gibson's Affidavit is attached hereto as Exhibit "E"). Ms. Gibson is a trained phelobotomist who was laid off in October 2010. Id. ¶ 3. She received Unemployment Compensation for 18 months while unsuccessfully looking for work. Id. ¶ 4. After her Unemployment Compensation ran out, she applied for Social Security disability benefits because the symptoms from her Hepatitis C, arthritis, and

severe depression prevented her from working. Id. ¶¶ 5, 7. She also applied for and began receiving General Assistance while she was waiting for her disability claim to be heard. Id. ¶ 5. She received General Assistance for approximately two months before it ended abruptly on July 31, 2012. Id. ¶ 6. Without General Assistance, she does not know how she will continue to pay the rent on her studio apartment and fears that she will be homeless imminently. Id. ¶¶ 8, 9.

15. The individual Petitioners have all been harmed, and will be continue to be harmed, by Act 80's termination of the General Assistance program.

16. Ms. Washington, Ms. Smith and Ms. Gibson are hardly alone. Elimination of General Assistance will force many former recipients into homelessness. Affidavit of Carol E. Thomas, Director of Philadelphia's Outreach Coordination Center (OCC) at Project H.O.M.E ¶ 5. (A copy of Ms. Thomas' Affidavit is attached hereto as Exhibit "F".) Former General Assistance recipients will be unable to pay for the co-payments for their prescription medications. Id. ¶ 6. They will be unable to pay for transportation to critical appointments, including outpatient mental health programs that help support their stability. Id. ¶ 7. The existing health and



social service safety net is unable to keep up with the increase in demand from those losing their General Assistance. Id. ¶¶ 9-10.

17. Petitioner Mental Health Association in Pennsylvania (MHA-PA) is a Pennsylvania non-profit corporation with offices at 1414 North Cameron Street, 1st Floor, Harrisburg, PA 17103. MHA-PA, which has 16 local affiliates, works on behalf of the mental health of Pennsylvanians to facilitate full recovery and resiliency through advocacy, education, and public policy. MHA-PA and its affiliates provide information and referral services and individual advocacy assistance for individuals with mental illness and their families who need community mental health services. MHA-PA advocates systemically for the availability of, and concomitantly full and fair funding for, a system of treatment and services to allow Pennsylvanians with mental illness to live and participate to the maximum extent possible in their communities. MHA-PA and its local affiliates have a substantial, direct, and immediate interest in the subject matter of this Petition, i.e., the constitutionally flawed process through which a statute was passed that allows counties to divert funds appropriated for mental health services to other purposes.

18. Petitioner Pennsylvania Mental Health Consumers Association (PMHCA) is a statewide membership organization with offices at 4105

Derry Street, Harrisburg, PA 17111. PMHCA's membership consists primarily of Pennsylvanians with mental illness or in recovery from mental illness. PMHCA provides information, referrals, and supports to people who are receiving mental health services or in recovery from mental illness in Pennsylvania. PMHCA also provides individual advocacy services to assist its members and others secure necessary mental health and other services to enable them to live successfully in the community. Additionally, PMHCA engages in systemic advocacy to expand access to, and concomitantly funding for, community mental health services. PMHCA and its members have a substantial, direct, and immediate interest in the subject matter of this Petition, *i.e.*, the constitutionally flawed process through which a statute was passed that allows counties to divert funds appropriated for mental health services to other purposes.

19. Petitioner Mental Health Association of Southeastern Pennsylvania (MHASP) is a Pennsylvania non-profit corporation with offices at 1211 Chestnut Street, Philadelphia, PA 19107. MHASP provides direct services and information and referral support to individuals with mental illness and their families in the five southeastern Pennsylvania counties (Philadelphia, Bucks, Chester, Delaware, and Montgomery), education and training about mental illness and mental health resources,

individual advocacy to assist individuals with mental illness to access necessary benefits and services, and systemic advocacy to identify and remediate gaps in services and promote positive reforms to expand access to, and concomitantly increase funding for, community mental health services. Without adequate and appropriate community-based mental health services, many of the people MHASP serves would be homeless or unnecessarily institutionalized. MHASP has a substantial, direct, and immediate interest in the subject matter of this Petition, i.e., the constitutionally flawed process through which a statute was passed that allows counties to divert funds appropriated for mental health services to other purposes.

20. Petitioner Philadelphia Alliance is a professional society of more than fifty specialized agencies that work together to improve the quality of services for people with mental health conditions, intellectual disabilities, and addictions. All of its member organizations provide services and supports in Philadelphia County; and many of them also provide such services in Bucks, Delaware, and Montgomery Counties, as well as many other counties across the commonwealth. The impact of the Pilot Block Grant Program and the elimination of General Assistance will have a devastating, harmful impact on the people served by the member

agencies. People will not be able to access the services they need (because the services will not be there due to drastically reduced funding via the pilot block grant); and many people with such severe challenges will not be able to maintain a basic level of functioning to make themselves available for treatment without the minimal cash assistance they once received. Many member agencies of The Philadelphia Alliance will be forced to eliminate jobs, reduce services, or close programs, which will damage the various local economies.

21. Petitioner Drug and Alcohol Service Providers Organization of Pennsylvania (DASPOP) is a statewide non-profit organization of drug and alcohol addiction treatment and prevention programs and associations with program members located in over 35 counties and serving Pennsylvanians from all counties in the state. Each year, DASPOP members provide prevention and addiction treatment services and information and referral services to assist thousands of individuals and families struggling with addictions. The Pilot Block Grant and the elimination of General Assistance will have a devastating impact on people in need of addiction treatment. Reductions in access to these services will result in suffering to desperate families and addicted individuals and will assuredly result in enormous shifting of the cost of untreated addiction to the local health care

system, emergency rooms and to the county jails and criminal justice system. Members agencies of DASPOP will be forced to reduce care, eliminate jobs and close local programs. DASPOP and its members have a substantial, direct, and immediate interest in the subject matter of the Petition.

22. Petitioner Success Against All Odds is a statewide membership organization that helps low-income families achieve economic independence and family well-being. Many of its members receive Temporary Assistance to Needy Families (TANF) cash assistance and are now subject to the new pre-eligibility work search requirement and sanction policies. These changes will make it more difficult for Success Against All Odds and its members to pursue education and training that will allow them to move permanently off of TANF cash assistance into careers that support their families.

23. Petitioner Pennsylvania Community Providers Association (PCPA) is a trade association whose members are community agencies serving persons with mental illnesses, intellectual/developmental disabilities, or substance abuse disorder. Membership is also open to other organizations and individuals concerned about persons with mental disabilities and drug and alcohol disorders. PCPA and its members have a

substantial, direct, and immediate interest in the subject matter of this Petition, *i.e.*, the constitutionally flawed process through which a statute was passed that allows counties to divert funds appropriated for mental health services to other purposes.

24. Respondent Department of Public Welfare is an administrative department of the Commonwealth of Pennsylvania with the responsibility for implementing Act 80.

#### **IV. FACTUAL STATEMENT**

##### **A. General Assistance**

25. Act 80 eliminated General Assistance effective August 1, 2012. Act 80, § 3 (codified at 62 Pa.C.S. § 403.2(A)).

26. General Assistance had provided cash assistance to over 68,000 Pennsylvanians with disabilities or who were otherwise unable to work.

27. For virtually every recipient, this assistance was their sole source of financial support.

##### **B. The Human Services Pilot Block Grant Program**

28. Act 80 created the Pilot Block Grant Program. Act 80 § 12 (codified at 62 Pa.C.S. §§ 1401-B to 1408-B). This authorizes DPW to select up to 20 counties that will receive allocations beginning in the current

Fiscal Year (FY 2012-2013) in the form of a block grant from seven separate appropriations, including appropriations for mental health services, intellectual disability services, homeless services, drug and alcohol services, and certain child welfare programs. 62 Pa.C.S. §§ 1402-B, 1403-B(b)(2), 1405-B(a).

29. The selected counties will be able to utilize their pilot block grant allocations to provide “county-based human services” for people who need behavioral health, intellectual disability, or drug and alcohol services, for people who are homeless or about to become homeless, for older adults, for dependent and delinquent children, or for low-income individuals. 62 Pa.C.S. §§ 1401-B, 1402-B.

30. Counties will be permitted to make these spending decisions without regard to the program- and service-specific appropriation decisions that are reflected in, and are part of, the General Appropriations Act that governs spending for the current fiscal year.

31. Act 80 permits counties to divert up to 20 percent of funds from the appropriated category in the current fiscal year, FY 2012-2013. 62 Pa.C.S. § 1405-B(b)(1). The percentage of funding that can be diverted increases each year until FY 2016-2017 when counties are given absolute discretion to spend the funds as they see fit. 62 Pa.C.S. § 1405-B(b)(5).

32. DPW can grant a waiver of this phase-in schedule for “good cause”; such a waiver would allow a county to redirect essentially all of the appropriated funds in the current fiscal year. 62 Pa.C.S. § 1405-B(c).

33. When Act 80 was passed, the General Assembly had already decreased appropriations for all of the programs and services in the Pilot Block Grant Program by approximately 10 percent from FY 2011-2012, so that counties will be starting with less funding than they previously had received for those programs.

34. Moreover, in dollar terms the vast bulk of the appropriations that comprise the newly block-granted funds come from the line items for mental health services and for intellectual disability base services. Services for people with mental illness and intellectual disabilities were underfunded even before these significant cuts. Many are on waiting lists for critical services.

35. By allowing block grant recipients to divert any funding from appropriations for mental health and intellectual disability services, the unmet needs of these vulnerable populations will further expand. The same is true of individuals and families who depend upon the other human services that are covered in the Pilot Block Grant Program, such as the homeless and those struggling with drug or alcohol problems.



36. DPW is moving forward with plans to implement the Pilot Block Grant Program.

37. Thirty counties submitted applications to DPW.

38. On September 26, 2012, DPW announced that it had selected the 20 county participants and it is expected that DPW will begin making the quarterly block grant appropriations required by the Act. 62 Pa.C.S. § 1403-B(b)(2).

39. Once funds are distributed under the Pilot Block Grant Program, they will be spent in a manner that deviates from program-specific appropriations decision made by the General Assembly, and some program spending will inevitably exceed amounts appropriated by the General Assembly.

## V. LEGAL CLAIMS

### The Enactment of Act 80 Violated Article III, Sections 1, 3, and 4 of the Pennsylvania Constitution

40. Act 80's passage through the legislative process violated mandatory procedural rules that are set forth in the Pennsylvania Constitution, and that govern how legislation is considered and passed.

41. While Petitioners acknowledge the "strong presumption in the law that legislative enactments do not violate our Constitution," that presumption is readily overcome in this case. Act 80 was enacted in

blatant disregard of procedural protections set forth in the Pennsylvania Constitution and its provisions contravene the substantive requirements of the Constitution.

42. Article III of the Pennsylvania constitution sets forth mandatory procedural rules that *apply* to all legislation. These rules are a cornerstone of our democratic process.

43. Article III of the Pennsylvania Constitution includes the following requirements:

**Section 1**

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

.....

**Section 3**

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

**Section 4**

Every bill shall be considered on three different days in each House. All amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill and before the final vote is taken, upon written request addressed to the presiding officer of either House by at least twenty-five percent of the members elected to that House, any bill shall be read at length in that House. No bill shall become a law, unless on its final passage the vote is taken by yeas and nays, the names of the persons voting for and against it are entered on the journal, and a majority of the members elected to each House is recorded thereon as voting in its favor.

44. These discrete yet interrelated provisions are mandatory, and expressly limit the mechanisms through which the General Assembly can pass laws.

45. While these three provisions are obviously interrelated, each one has a particular focus.

a. Section 1 places express limitations on the changes that can be made to a bill as it goes through the process of legislative amendment and compromise.

b. Section 3 is more directly tied to the substantive content of legislation as ultimately passed, and excludes multiple-subject laws regardless of their path through the legislative process.

c. Section 4 directly safeguards the deliberative process, guaranteeing transparency and time for public input and reaction by requiring that both the House and the Senate consider bills on three separate days.

### **COUNT I**

#### **Article III, Section 1: Act 80 is Unconstitutional Because the Original Purpose of H.B. 1261 Changed During The Legislative Process.**

46. The allegations set forth in paragraphs 1 through 45 are incorporated herein by reference.

47. A court entertaining a challenge to legislation under Article III, Section 1 must conduct a two-part inquiry. First, the court will consider the original purpose of the legislation and compare it to the final purpose. Second, a court will consider whether in its final form, the title and contents of the bill are deceptive. The challenged legislation must survive both inquiries to pass constitutional muster. Here, Act 80 fails to satisfy the first requirement and thus violates Section 1.

48. The original purpose of H.B.1261 was narrow in scope: it simply required that DPW determine eligibility for certain benefits based on an

applicant or recipient's county of residence. H.B. 1261, P.N. 1385. The General Assembly accomplished this purpose when it enacted Act 22 in June 2011.

49. The final purposes of H.B. 1261 are manifold and have nothing to do with the bill's original purpose. What began as a bill making a minor change to how DPW viewed an individual's residency was unconstitutionally replaced with a bill directly affecting several disparate Commonwealth programs and services that touch on the lives of millions of Pennsylvanians. H.B. 1261, Printer's No. 3884.

50. It is beyond dispute that Act 80 made these sweeping changes to these seven different programs. The only question is whether these changes are sufficiently related to, and are germane to, H.B. 1261's "original purpose" of revising residency requirements – a purpose that was in fact accomplished in another bill. They are not.

## **COUNT II**

### **Article III, Section 3: Act 80 Is Unconstitutional Because It Contains More Than One Subject**

51. The allegations set forth in paragraphs 1 through 50 are incorporated herein by reference.

52. Section 3 was violated because H.B.1261 on final passage contained seven subjects that were not related to one common subject and were not germane to each other.

53. First, Act 80 created the Pilot Block Grant Program, which re-wrote the manner in which human services programs are funded in this Commonwealth, and created new planning and reporting requirements that are applicable to all counties. Act 80 §§ 1, 12.

54. Second, Act 80 eliminated the General Assistance program. Act 80 §§ 2-3.

55. Third, Act 80 imposed a new work requirement of 100 hours per month for certain types of Medical Assistance (Medicaid) recipients under the Medically Needy Only program. Act 80 § 6.

56. Fourth, Act 80 created a new work requirement for families receiving TANF that must be satisfied while the families are waiting for the DPW to make a determination on their pending application. Act 80 § 4.

57. Fifth, Act 80 eliminated the welfare-to-work sanctions process that had been in place since 1997 and replaced it with a completely new system that changed the consequences for families receiving TANF who are believed to be in non-compliance with mandatory welfare-to-work requirements. Act 80 § 6.

58. Sixth, Act 80 extends certain subsidies available to adoptive parents and legal custodians of youth ages 18-21. Act 80 § 7.

59. Seventh, Act 80 extends an assessment on approximately 720 nursing homes with close to 89,000 beds that is projected to raise \$455,077,000 in revenue in state fiscal year 2012-2013. Act 80 § 8; see also House Fiscal Note to H.B. 1261, P.N. 3884.

### **COUNT III**

#### **Article III, Section 4: Act 80 Is Unconstitutional Because It Was Not Considered On Three Different Days In Each House.**

60. The allegations set forth in paragraphs 1 through 59 are incorporated herein by reference.

61. Article III, Section 4 was violated because seven of the bill's seven subjects were considered on only one day in the House, and the situation was only marginally better in the Senate, where six of the bill's seven subjects/purposes were considered on only one day.

62. H.B. 1261 was initially filed on April 1, 2011. H.B. 1261, P.N. 1385. (A copy of P.N. 1385 is attached hereto as Exhibit "G".) The bill had one purpose and one subject: it required DPW, when awarding certain types of public benefits, to determine eligibility based on an applicant or recipient's county of residence.

63. During the House's consideration of the bill, Rep. Quigley commented that his bill was intended to "simply clos[e] an existing loophole in the application process[.]" H. 195-26, 1st Sess., at 607 (Pa. 2011). (A copy of the transcript of Rep. Quigley's Statement is attached hereto as Exhibit "H".)

64. After being considered on three separate days, the House passed Rep. Quigley's bill on April 12, 2011. See Pennsylvania General Assembly, Bill Information: Regular Session 2011-2012 House Bill 1261, [http://www.legis.state.pa.us/cfdocs/billinfo/bill\\_history.cfm?syear=2011&sinid=0&body=H&type=B&bn=1261](http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2011&sinid=0&body=H&type=B&bn=1261) (last visited Aug. 9, 2012). (Hereinafter "H.B. 1261 Bill History"; this bill history is attached hereto as Exhibit "I".) On that same day the bill was sent to the Senate.

65. On April 25, 2011, H.B. 1261, P.N. 1385 was received by the Senate and referred to the Senate Public Health and Welfare Committee.

66. While H.B. 1261 sat dormant in the Senate for over a year, the original language of H.B. 1261 was included as an amendment to a different bill, H.B. 960, which was passed by both houses and signed into law on June 30, 2011 as Act 2011-22. Act 2011-22 (H.B. 960), P.L. 89, § 3, approved June 30, 2011, eff. July 1, 2011 (hereinafter "Act 22"). The



passage of Act 22 completely accomplished the original purpose of H.B. 1261.

67. On June 5, 2012, the Senate Health and Welfare Committee gutted Rep. Quigley's original bill and replaced it with entirely new language. H.B. 1261, P.N. 3646. (A copy of P.N. 3646 is attached hereto as Exhibit "J.") This new version of the bill focused on a single subject with a single purpose – expanding adoption and guardianship subsidies for youth between the ages of 18 and 21.

68. This new bill was then sent to the full Senate which considered it twice – first on June 5 and subsequently on June 6. Later on June 6, the Senate re-referred the bill to the Senate Appropriations Committee. HB 1261 Bill History.

69. On Friday, June 29, the Senate Appropriations Committee reported out an amended version of H.B. 1261. H.B. 1261, P.N. 3884 (A copy of P.N. 3884 is attached hereto as Exhibit "K".) The bill retained the expansion of adoption and guardianship subsidies, but now also included significant and historic provisions relating to six additional subjects: it eliminated the General Assistance program; established the Pilot Block Grant Program; imposed new work requirements on applicants for TANF; changed the sanctions for non-compliance with work requirements;

expanded work requirements for one form of medical assistance; and extended a \$477 million assessment on nursing facilities.

70. With these changes, H.B. 1261 now included provisions that affect virtually every major program administered by DPW and over one million Pennsylvanians.

71. June 29, 2012 was the first time that the public and many members of legislature had the opportunity to review the language of this amendment.

72. On the evening of June 29, the Senate passed the newly-rewritten bill and returned it to the House for concurrence. See H.B. 1261 Bill History. When the Senate voted on and passed the bill, only one of the subjects in the bill (the changes to the adoption and guardianship subsidies) had been considered on three days. The Senate considered the additional subjects on only one day.

73. The House received H.B. 1261 on the evening of June 29, and referred the bill to the House Rules Committee that same evening. The Committee concurred in the Senate's changes and the bill was reported out of the House Rules Committee, also on June 29. The bill was then sent to the House floor for final passage.

74. On Saturday, June 30, the House passed the bill. This was the first – and only – day that the House considered the seven new subjects in the bill. As Representative Mike Sturla (D- Lancaster Co.), the Democratic Policy Committee Chair, lamented during debate on the House floor, “Mr. Speaker, I do not know how you can vote for something that you do not know what is in it.” (A transcript of this floor debate is attached hereto as Exhibit “L”.)

75. On the morning of Saturday, June 30, the House passed H.B. 1261.

76. At 11:45 p.m. on June 30, fifteen minutes before midnight and fifteen minutes before the end of the Commonwealth’s fiscal year, Governor Corbett signed H.B. 1261, which then became Act 80.

**COUNT IV**  
**The Pilot Block Grant Program Violates Article III, Section 24**

77. The allegations set forth in paragraphs 1 through 76 are incorporated herein by reference.

78. Article III, Section 24 of the Pennsylvania Constitution provides that “[n]o money shall be paid out of the treasury, except on appropriations made by law . . . .” Pa. Const. art. III, § 24.

79. This means that the executive branch is not allowed to spend more on a particular program than the amount appropriated by the General

Assembly. It also means that the executive branch is not allowed to take money that has been appropriated for one program and spend it on another program.

**The Pilot Block Grant Program Authorizes DPW and the Counties to Use Funds Appropriated to Specific Programs and Services on Other Programs and Services.**

80. The General Assembly passed the General Appropriations Act for the current fiscal year, FY 2012-13, as signed it into law on June 30, 2012, Act 9A of 2012, which was identified as S.B. 1466, P.N. 2335 at the time of passage (hereinafter the "GAA"), contains specific appropriations to be spent for specific services and programs, including the following:

An appropriation of \$662,311,000 for "mental health services, including grants to counties". S.B. 1466, P.N. 2335, at 286.

An appropriation of \$151,223,000 for "intellectual disabilities – community base program, exclusive of capital improvements, which shall include grants to counties for noninstitutional programs". S.B. 1466, P.N. 2335, at 295.

An appropriation of \$360,137,000 for Medical Assistance Payments – Outpatient Services, Exclusive of Outpatient Services Provided Through Capitated Plans. S.B. 1466, P.N. 2335, at 289.

An appropriation of \$43,117,000 for Behavioral Health Services. S.B. 1466, P.N. 2335, at 295.

An appropriation of \$1,040,029,000 for "payments and services to Counties for children and youth programs and for the care of delinquent and dependent children." S.B. 1466, P.N. 2335, at 297.

An appropriation of \$13,460,000 for the human services development fund. S.B. 1466, P.N. 2335, at 302.

An appropriation of \$18,496,000 for provision of services to the homeless. S.B. 1466, P.N. 2335, at 302.

77. Under Article III, Section 24, these appropriated funds must be spent only for the programs and services for which they have been appropriated, and DPW is not allowed to spend more on a program than the designated amount.

78. The Pilot Block Grant Program, however, expressly abandons the GAA's program- and service-specific designations. Act 80 requires DPW to allocate to participating counties the following funds:

- (i) Funds allocated to Counties under the Act of October 5, 1994 (P.L.531, NO.78), known as the Human Services Development Fund Act.
- (ii) Funds allocated to Counties for Mental Health and Intellectual Disability Services under the Act of October 20, 1966 (3RD Sp. Sess., P.L.96, No.6), known as the Mental Health and Intellectual Disability Act of 1966.
- (iii) Funds allocated to Counties for behavioral health services.
- (iv) Funds allocated to Counties for drug and alcohol services under Section 2334 of the Act of April 9, 1929 (P.L.177, NO.175), known as the Administrative Code of 1929.

- (v) Funds allocated to Counties for the provision of services to the homeless.
- (vi) Funds allocated to County Child Welfare Agencies as Certain Additional Grants under section 704.1(B).

62 Pa.C.S. § 1405-B(a)(1). (These funds are hereinafter referred to as the "Pilot Block Grant Funds".)

79. All of the Pilot Block Grant Funds either constitute, or are included within, specific appropriation lines contained within the GAA.

80. The entire and fundamental purpose of the Pilot Block Grant Program structure is to permit participating counties to spend a significant and increasing portion of appropriated funds on services and programs that are not the services and programs for which the General Assembly appropriated the funds.

81. The only lawful way to shift appropriated funds from the described purpose to another purpose would be through a subsequent appropriations bill. Act 80 is not an appropriations bill, and thus the Pilot Block Grant Program violates Article III, Section 24.

82. The Pilot Block Program removes the General Assembly from its constitutionally-mandated role at the center of the program-specific appropriation process.

83. The Pilot Block Grant program will inevitably create tremendous and intentional disparities among Counties in the provision of human services that were previously subject to numerous uniform State-wide rules. Families that need services will migrate to Counties that provide them, and Counties will be able to create adverse incentives keeping out families with human service needs.

**The Pilot Block Grant Makes it Inevitable that the Spending Limits Established in the General Appropriations Act Will Be Exceeded.**

84. Article III, Section 24 also prohibits an executive agency from spending more on a program than the sum appropriated by the General Assembly. Under the Pilot Block Grant Program, it is inevitable that DPW, acting through the counties, will spend more on some programs than the appropriated amount.

85. As described above, Act 80 allows DPW and the counties to use funds appropriated for one type of service to fund entirely different types of services. This built-in reallocation of funds from one program to another will result in DPW, both directly and through counties, spending more on some services/programs than the appropriated amounts. This is inevitable, because each one of the categorical appropriations referred to above is by definition the full amount appropriated. Any money that a county allocates to a program from some other source – that is, any dollars

moved pursuant to the Pilot Block Grant Program's new, discretionary authority to move funds between services and programs -- will result in that total being exceeded.

86. This applies even though any single county is only allocated a proportional share of the appropriated amount. See 62 Pa.C.S. § 1405-B(a). If a county takes funds from one appropriated program (say, for example, services for drug and alcohol treatment) and moves them to another program (say, services for children and youth), and all other spending remains the same, this would result in the appropriated amount being exceeded, both at the county level and at the State level.

87. The fact that the actual movement of funds will be carried out at the county level and not by DPW at the department level changes nothing. DPW is providing the funds to the counties with full knowledge that the reappropriations, and the expenditures of funds in excess of the appropriated amounts, will take place.

88. This unconstitutional handling of funds will happen immediately and in the current fiscal year since . The Pilot Block Grant Program permits counties to reallocate 20% of funds to be reallocated in the first year (that is, FY 2012-13) and 100% by the fifth year this year. Selected counties



may even be authorized to reallocated 100% of funds this year if DPW issues waivers to allow them to do so.

**COUNT V**  
**The Pilot Block Grant Program Constitutes an**  
**Unconstitutional Delegation of Authority**

89. The allegations set forth in paragraphs 1 through 88 are incorporated herein by reference.

90. Article II, Section 1 of the Pennsylvania Constitution places legislative power in the hands of the General Assembly, and prohibits the delegation of legislative power to other institutions of government.

91. While the General Assembly can delegate authority to execute the laws, under the Constitution “the legislative power to confer authority and discretion upon another body in connection with the execution of a law is subject to two principal limitations: (1) the basic policy choices must be made by the Legislature; and (2) the legislation must contain adequate standards which will guide and restrain the exercise of the delegated administrative functions.

92. The Pilot Block Grant Program contained in Act 80 violates this constitutional standard in two different ways. First, the Act grants DPW unlimited discretion to determine which counties will receive a block grant and which will be required to comply with the program-specific

appropriations set forth in the GAA. 62 Pa.C.S. § 1402-B. Second, the Act grants DPW unlimited discretion to waive statutory requirements. DPW can waive the five-year phase-in of the Pilot Block Grant Program, and can also waive a three percent cap on “reinvestment funds”. 62 Pa.C.S. §§ 1405-B(c), 1406-B(b). The legislation provides no guidance as to how DPW is to exercise that discretion.

**The Pilot Block Grant Unconstitutionally Delegates Authority to Select Participating Counties.**

93. Choosing among the counties that seek to participate in the program was the first and most fundamental decision DPW had to make.

94. Thirty counties applied for the Pilot Block Grant Program that only authorizes participation by twenty counties. DPW selected the twenty participating counties on September 26, 2012. There is no evidence of what, if any, criteria DPW utilized to make its selections.

95. The Act provides no guidance whatsoever as to how DPW should exercise its discretion, saying only that the program shall be limited to 20 counties and “[t]he Department, in its discretion, may approve a County’s request based on criteria determined by the Department.” 62 Pa.C.S. § 1402-B. This delegation of unfettered discretion to DPW is unconstitutional.

96. Act 80 contravenes the requirement that the General Assembly make “the basic policy choices.” Act 80 does not include any statement of policy that would guide DPW in establishing selection criteria.

97. Act 80 does not include any standards to guide and restrain DPW’s exercise of discretion. There are no standards of any kind for making the decision as to which Counties shall be chosen to participate in the pilot program.

98. While Act 80 does refer to DPW-established criteria for making this decision, it grants DPW unfettered and unguided discretion to determine the content of those criteria.

99. The delegation of authority to decide which counties will participate in the Pilot Block Grant Programs is the foundation of the entire program. If there is no constitutionally valid mechanism for selecting participant counties -- and there is not -- the Pilot Block Grant Program cannot go forward.

**The Pilot Block Grant Unconstitutionally Delegates Authority to Waive Statutory Requirements.**

100. The Act also improperly hands DPW unfettered authority to waive two key requirements.

101. First, it allows DPW to waive the five-year phase-in requirement, thereby allowing a county to shift virtually all of its Pilot Block

Grant Funds in the first year. That waiver must be based upon “good cause shown,” but Act 80 provides no guidance regarding what “good cause shown” is. 62 Pa.C.S. § 1405-B(c).

102. Second, Act 80 allows DPW to waive the statutory three percent cap on “reinvestment” funds. Id. § 1406-B(b). Removing this cap is a significant policy choice, because it would allow counties to limit or withhold a significant amount of services in order to accumulate substantial discretionary funds over which county officials would have absolute control. Again, the only standard for granting this waiver is “good cause shown by the County.” Id.

103. In granting DPW discretion to grant these waivers, the Act meets neither of the requirements of Article II, section 1. Act 80 fails to identify any basic policy decisions regarding either waiver. Act 80 also fails to provide adequate standards to guide and restrain the exercise of delegated administrative functions.

## COUNT VI

### **DPW's Failure to Promulgate Regulations to Implement the Pilot Block Grant Program Violates the Commonwealth Documents Law.**

104. The allegations set forth in paragraphs 1 through 103 are incorporated herein by reference.

105. As noted, Act 80 provides that when evaluating county applications for participation in the Pilot Block Grant Program, “[t]he Department, in its discretion, may approve a County's request based on criteria determined by the Department.” 62 Pa.C.S. § 1402-B. Even if this unfettered delegation of authority were constitutional (and it is not), Pennsylvania law requires DPW to promulgate regulations setting forth those criteria. Similarly, DPW must promulgate regulations stating what constitutes “good cause” for granting the waivers to the five-year phase-in and the cap on reinvestment funds.

106. Not only has DPW failed to promulgate such regulations, it has failed to advise the public or the counties of the criteria for admission into the program and the granting of waivers. Instead, DPW has attempted to implement the Pilot Block Grant Program in the dark. It has solicited applications by a form published on the internet but it has said nothing about the criteria it will apply in considering those applications. The

application forms give little, if any, indication of what those criteria might be. (A copy of this application is attached hereto as Exhibit "M".)

107. And there has, of course, been no opportunity for public review of and comment on whatever criteria DPW will use. Nonetheless, there can be no doubt that DPW has to adopt or "promulgate" such criteria prior to approving any county's application to participate in the program. The same is true of the standards that DPW intends to use to assess requests for waivers of the five-year phase-in and the reinvestment fund cap.

108. When a Commonwealth agency promulgates substantive rules, it must comport with the procedural requirements set forth in the Commonwealth Documents Law, 45 Pa.C.S. §§ 1102-1208 (hereinafter the "CDL"). Such requirements include providing public notice of the proposed rule, receiving comments from interested parties, and holding hearings when appropriate.

109. The CDL defines a "regulation" as "any rule or regulation, or order in the nature of a rule or regulation, promulgated by an agency under statutory authority in the administration of any statute administered by or relating to the agency . . . ."

110. The criteria that DPW used to determine who participates in the Pilot Block Grant Program and the criteria that it will use to determine "good cause" for waiver requests are subject to the requirements of the CDL.

111. DPW has not followed any of the requirements of the CDL.

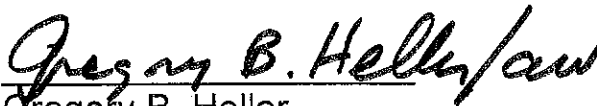
### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Department of Public Welfare and:

- a. Declare that Act 80 is unconstitutional; and
- b. Preliminarily and permanently enjoin Respondents, and their agents, servants and officers, and others acting in concert with them, from enforcing or otherwise implementing Act 80; and
- c. Award Petitioners such other and further relief as the Court deems just and appropriate.

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Dated: October 1, 2012

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