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STATEMENT OF JURISDICTION

On October 1, 2012, Petitioners filed, in this Court's original jurisdiction, a petition for review in the nature of an action in equity, seeking declaratory and injunctive relief against the Pennsylvania Department of Public Welfare ("Department"). This Court has jurisdiction over Petitioners' claims against the Department under 42 Pa.C.S. § 761(a)(1).

ORDER OR OTHER DETERMINATION IN QUESTION

Petitioners' seek this Court's review of the constitutionality of Act 2012-80, which amended the Public Welfare Code. Petitioners also seek this Court's review of the manner in which the Department of Public Welfare is administering certain provisions of the Public Welfare Code that were added by Act 2012-80.

STATEMENT OF SCOPE OF REVIEW AND STANDARD OF REVIEW

When considering preliminary objections in the nature of a demurrer, a court must determine whether, on the facts alleged, the law states with certainty that no recovery is possible.

The court must consider the evidence in the light most favorable to the non-moving party.

Harrisburg Sch. Dist. v. Hickok, 762 A.2d 398, 404 n.4 (Pa. Commw. Ct. 2000).

STATEMENT OF QUESTIONS PRESENTED

- I. Does the enactment of Act 2012-80 (“Act 80”) and the implementation of Act 80 by the Department of Public Welfare (“Department”) violate constitutional provisions?**

(Suggested Answer: No)

- II. Does the implementation of Act 80’s Human Services Block Grant Pilot Program by the Department require regulations or constitute a “binding norm”?**

(Suggested Answer: No)

- III. Do the Petitioners have standing to challenge Act 80’s Human Services Block Grant Pilot Program?**

(Suggested Answer: No)

- IV. Do the Petitioners have standing to challenge Act 80’s nursing facility assessment?**

(Suggested Answer: No)

STATEMENT OF THE CASE

This action represents yet another in a lengthening line of constitutional challenges to the manner and form in which the General Assembly has enacted legislation involving important public policy measures for the benefit of the Commonwealth and its citizens. Here, the legislation at issue – Act 2012-80, enacted on June 30, 2012 (“Act 80”) – amends several sections of a single statute, the Public Welfare Code.¹ Act 80 revises and adds new provisions to the Public Welfare Code that affect public assistance benefits and funding as administered by the Department of Public Welfare (“Department”) for human services programs, including general assistance, medical assistance, child welfare, mental health, intellectual disabilities, physical disabilities, and long term care nursing facility services.

Petitioners include both individuals and organizational entities. The individual petitioners are three residents of Philadelphia who received “cash assistance” public benefits under the General Assistance program administered by the Department at some time prior to the elimination of this state-only funded benefit in August 2012. The organizational petitioners include various non-profit corporations that advocate for and lobby on behalf of providers funded by the Commonwealth through the Department, and on behalf of individuals who receive public assistance directly or are beneficiaries of human services programs administered by the Department. The only respondent is the Commonwealth’s Department of Public Welfare, an agency of the Commonwealth’s Executive Branch.

The Department of Public Welfare administers a broad array of public assistance benefit programs that provide support to its most vulnerable citizens, including low-income persons, children, the elderly, the homeless, persons receiving care and treatment for mental illness, drug

¹ The formal title of the Public Welfare Code (as it is popularly known, *see* 62 P.S. § 101) is the Act of June 13, 1967 (P.L. 31, No. 21), *as amended*, 62 P.S. §§ 101-1503.

and alcohol abuse, intellectual disabilities, and physical disabilities. The Public Welfare Code, which covers a range of programs from Medical Assistance, Temporary Assistance to Needy Families, child care assistance, licensure and funding for human services programs, welfare fraud and recovery, to name a few, governs this rich diversity in programs that provide a safety net to the Commonwealth's most vulnerable citizens. *See* 62 P.S. §§ 101-1503.

On June 30, 2012, with the approval of the Governor, the General Assembly enacted Act 80 to change several of the public assistance programs administered by the Department. Among other things, Act 80 eliminated the General Assistance cash assistance benefit program and authorized pilot grants to county human services programs (*i.e.*, “the Human Services Block Grant Pilot Program”). Petitioners attack Act 80 on various constitutional grounds and request this Court to enjoin its implementation.²

The Petition for Review contains five causes of action alleging violations of the Pennsylvania Constitution and one cause of action asserting that the Department is acting in violation of a Pennsylvania statute – the Commonwealth Documents Law.

- Count I alleges a violation of Article III, § 1, of the Pennsylvania Constitution because, according to the Petitioners, the original purpose of the bill (House Bill 1261) changed during the legislative process.
- Count II asserts a violation of the single subject requirement (Pa. Const. Art. III, § 3) in that the provisions added after the original introduction of House Bill (“HB”) 1261 were not germane to the bill’s subject.

² Petitioners also sought special relief in the form of a preliminary injunction. On October 25, 2012, this Honorable Court (per Quigley, S.J.), denied Petitioners’ application on the basis that Petitioners had not satisfied the requisites for a preliminary injunction. Petitioners appealed Judge Quigley’s order to the Supreme Court, where the appeal is pending at No. 93 MAP 2012.

- Count III is a claim that the legislative process violated Article III, § 4, of the Pennsylvania Constitution because the bill was not considered on three different days in each House of the General Assembly.
- Count IV alleges that the Human Services Block Grant Pilot Program violates Article III, § 24, of the Pennsylvania Constitution based on Petitioners' contention that Act 80 provides for the spending of funds in excess of the amounts appropriated by the General Assembly for specified purposes.
- Petitioners allege in Count V that the Human Services Block Grant Pilot Program violates Article II, § 1, of the Pennsylvania Constitution in that it delegates legislative power to the Department without constitutionally sufficient legislative direction.
- Finally, Petitioners assert in Count VI that the Department's implementation of the Human Services Block Grant Pilot Program violates the Commonwealth Documents Law (45 P.S. §§ 1102- 1208) in that the Department has not promulgated regulations necessary to implement the program.

The Department filed Preliminary Objections to the Petition for Review on October 31, 2012. This brief is submitted in support of those preliminary objections.³

SUMMARY OF ARGUMENT

The Petition for Review contains five causes of action which allege violations of the Pennsylvania Constitution and one cause of action asserting a violation of Pennsylvania statute

³ On November 16, 2012, this Court (per Quigley, S.J.) entered an order granting (over Petitioners' objection) the application of the Pennsylvania Health Care Association ("PHCA") to intervene as a respondent. On December 6, 2012, PHCA filed its own preliminary objections to the Petition for Review. The Department expects that PHCA will be submitting a brief in support of its preliminary objections.

as described above. These assertions, relating to the legislative enactment and Department implementation of Act 80, lack legal sufficiency to support this cause of action.

Petitioners' claim that Act 80 violates the Constitution would render the Legislature powerless to discontinue a "Depression-era" cash assistance program that has been superseded by an array of modern supports to needy individuals. Further, the constitutional theory about the single subject requirement of Article III, § 3, of the Constitution would constrain the Legislature to narrowly tailor legislation for each program administered by the Department under the Public Welfare Code. Under Petitioners' view, to enact the changes included in Act 80, the Legislature would be required to introduce and present seven different bills, and each would have to be considered separately on three different days in each chamber. Such a result is not only absurd, but would be impracticable and create a multiplicity of unnecessary complexity. Instead, consistent with law, the Legislature properly included all of its amendments to the Public Welfare Code in a single bill, which has as its unifying "single subject" public assistance programs established by the Public Welfare Code and administered by the Department.

Neither Petitioners' constitutional challenges to the enactment and content of Act 80, nor their attempt to thwart its implementation, meet the legal standards necessary to overcome the strong presumption that Act 80 is constitutional, and that the public interest is served in balancing the state's budget and developing innovative programs to provide new ways to attempt to solve local human service funding issues.

ARGUMENT

The Department demurs to all counts in the Petition for Review. A demurrer contests the legal sufficiency of a complaint. *Christ the King Manor v. Dep't of Pub. Welfare*, 911 A.2d 624 (Pa. Commw. Ct. 2006), *aff'd*, 597 Pa. 217, 951 A.2d 255 (2008). In ruling on preliminary objections, this Court should accept as true all well-pled, material facts and all inferences reasonably deductible from those facts. *Id.* However, the Court is not required to accept as true any unwarranted factual inferences, conclusions of law or expressions of opinion. *Id.* As set forth below, this action lacks legal sufficiency.

I. THE ENACTMENT OF ACT 80 AND THE DEPARTMENT'S IMPLEMENTATION THEREOF DO NOT VIOLATE ANY CONSTITUTIONAL PROVISIONS RAISED BY PETITIONERS.

Petitioners make facial constitutional challenges to Act 80. Such challenges are disfavored. *See Commonwealth v. Heinbaugh*, 467 Pa. 1, 3, 354 A.2d 244, 245 (1976) (“facial attacks on the validity of statutes are not generally permitted”). The standard to be applied by a court when a statute’s constitutionality has been attacked has been described by the Pennsylvania Supreme Court as an “extremely deferential” one. *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 583 Pa. 275, 293, 877 A.2d 383, 393 (2005) (hereinafter “PAGE”). All doubts must be resolved in favor of finding the legislation to be constitutional. *Commonwealth v. Heindrickson*, 555 Pa. 277, 281, 274 A.2d 315, 317 (1999). Only those statutes that clearly, palpably, and plainly violate the Constitution will be declared unconstitutional. *Id.* at 292, 877 A.2d at 393. The burden of persuasion is on petitioners and it is “very heavy”. *Id.* This burden of persuasion is quite substantial when, as here, the petitioners’ “challenge is not to the substance of the law but to the procedure by which it was enacted.” *DeWeese v. Weaver*, 824 A.2d 364, 369 (Pa. Commw. Ct. 2003). Moreover, as a matter of

statutory construction, Pennsylvania law presumes that “the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.” 1 Pa.C.S. § 1922(3).

A. ACT 80 WAS ENACTED IN COMPLIANCE WITH ARTICLE III, SECTION 1, OF THE PENNSYLVANIA CONSTITUTION.

Petitioners allege in Count I of their Petition for Review that Act 80 was enacted in violation of the “changed purpose” rule of Article III, § 1, of the Constitution. That provision states:

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.

Pa. Const. Art. III, § 1. To determine whether this changed purpose provision of the Constitution has been violated requires a “comparison between the original purpose and the final purpose of the bill, as well as consideration of whether the final bill and title are deceptive.” *PAGE*, at 317, 877 A.2d at 408.

For the first part of this two-part inquiry, this Court must look at the original purpose broadly. *Id.* at 317, 877 A.2d at 409. This reflects the courts’ recognition that legislation often changes significantly as it works its way through the House and Senate and, in fact, is expected to do so. *Id.* at 318, 877 A.2d at 409. The Court should hypothesize a reasonably broad original purpose in the initial bill and determine whether amendments or expansions of that bill fit within that broad purpose. *Id.* Under this principle of analysis, the first part of the test is satisfied.

In *PAGE*, the purpose of the original bill was described as providing for criminal background checks and fingerprinting in connection with Pennsylvania’s horse racing industry. The final bill was 140 times as long and the purpose had enlarged into a bill that, in a broad sense, authorized and regulated slot machine gambling in Pennsylvania. The Supreme Court

held that, both in its original context and in its final version, the primary objective of the legislation was the regulation of gaming. Thus, the first prong of the test was satisfied.

Turning to the second prong, the Supreme Court looked to whether the title and text of the bill in its final form were deceptive. The question was presented as whether the title placed reasonable people on notice about what the bill was about. The Court found that the bill did so.

Id.

Here, the purpose of HB 1261 was originally stated as follows:

Amending the act of June 13, 1967 (P.L. 31, No. 21), entitled "An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth," in public assistance, further providing for definitions and for determination of eligibility.

See Petition for Review, Exhibit A. As adopted, the bill still retained, at § 5, the language regarding public assistance and the determination of eligibility, but its purpose and text were expanded to include other provisions relating to public assistance and eligibility, including the General Assistance program, the Human Services Block Grant Pilot Program, and nursing facility assessment program. While the bill was expanded, it was not broadened any more than was the bill in *PAGE* permissibly expanded from police background inspections for the horse racing industry into the much wider scope of the numerous slot machine gambling provisions.

Here, the Court is free to hypothesize a reasonably broad original purpose, such as "the eligibility and funding of public assistance," and determine that the provisions of Act 80 fairly fall within that purpose. All provisions of the Act are a part of the legislation's central unifying focus on the Department's administration of, and funding for, public assistance programs. This purpose of the bill never changed; thus, the first prong is satisfied.

As for the second prong, Petitioners cannot (and in fact, do not) contend that the title and content of Act 80 in its final form are deceptive. The title is detailed and covers all of the major

provisions of the Act.⁴ No reasonable person reading the title of the bill could be deceived by what is contained in the content of the bill. Thus, Act 80 satisfies both prongs of the two-part test for determining compliance with Article III, § 1, of the Constitution.

B. ACT 80 COMPLIES WITH ARTICLE III, SECTION 3, OF THE PENNSYLVANIA CONSTITUTION.

In Count II of the Petition for Review, Petitioners challenge Act 80 on the theory that Article III, Section 3, of the Pennsylvania Constitution was violated because “HB 1261 on final passage contained seven subjects that were not related to one common subject and were not germane to each other.” See Petition for Review, ¶ 52. Petitioners’ cramped reading of the Constitution and myopic perception of Act 80 are unsupported by the law.

The single subject requirement of Article III, § 3 provides as follows:

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.

Pa. Const. Art. III, § 3. In *PAGE*, the Supreme Court explained the intent of Article III, § 3, and set out the proper analytical structure for considering challenges brought under the provision.

The single subject requirement has two general purposes: to “place restraints on the legislative process and to encourage an open, deliberative, and accountable government.” *PAGE*

⁴ The title to Act 80 provides: “Amending the act of June 13, 1967 (P.L.31, No.21), entitled ‘An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth,’ in general powers and duties of the department of public welfare, providing for county human services consolidated planning and reporting; in public assistance, further providing for definitions, providing for cessation of the general assistance cash program and the continuation of the general assistance-related medical assistance programs, further providing for establishment of RESET, for determination of eligibility, for failure to comply with employment and work-related activity requirements and for medically needy and determination of eligibility; in children and youth, further providing for definitions; in nursing facility assessments, further providing for time periods; in kinship care, further providing for definitions and for kinship care program, providing for subsidized permanent legal custodianship program and for permanent legal custodianship subsidy and reimbursement; providing for human services block grant pilot program; and making related repeals.”

at 295, 877 A.2d at 395 (citations omitted). The Supreme Court further dissected these purposes by saying that they are intended to: 1) prevent legislation that contains distinct and independent legislative subjects; 2) prevent the purposeful disguising of the bill's real purpose; 3) prohibit the attachment of riders that would not otherwise be enacted; and 4) allow a bill to receive considered review.

After listing the purposes of Article III, § 3, the Supreme Court in *PAGE* then recognized that in the legislative process, bills are frequently amended and if the language that was added to a bill helps carry out the bill's main objective, the bill satisfies constitutional requirements. The question, then, is how germane must the language be in order for it to withstand a challenge to "single subject" scrutiny. A review of precedent from this Court and from the Supreme Court explains why Petitioners' challenge lacks legal sufficiency.

PAGE exhibits similarities in this matter and again must be looked at for guidance. Both in *PAGE* and in this case, the bills, as originally introduced, were concise and simple. In *PAGE*, the bill related to the performance by the Pennsylvania State Police of background checks and fingerprinting for the State Harness and Horse Racing Commissions. *Id.* at 289, 877 A.2d at 391. In comparison, HB 1261 related to eligibility determinations and public assistance, and in its original form, it was slightly longer than the original bill in *PAGE*.

The act at issue in *PAGE* went through three considerations in the House and three in the Senate. During its last consideration in the Senate, amendments enlarged the bill from a single page to 145 pages, containing seven chapters and 86 sections. Here, Act 80 went through three considerations in the House and three in the Senate. During its second and third considerations in the Senate, the bill was amended from nine pages to 27 pages, resulting in 15 sections amending several sections of the Public Welfare Code and adding a new Article XIV-B.

As noted above, the content of the original bill in *PAGE* involved Pennsylvania State Police background investigations for the horse racing industry. As finally enacted, the act created the Pennsylvania Gaming Control Board, authorized the issuance of gaming licenses, addressed the distribution of revenues from gaming, created several new funds, and covered administration and enforcement. Most of the amendments were considered to be within the ambit of the subject described by the Supreme Court as “the regulation of gaming.”⁵

The Court contrasted the subject of “gaming” with the topic of “municipalities” in *City of Philadelphia v. Commonwealth*, 575 Pa. 542, 838 A.2d 566 (2003). There, the subject was considered too vast and the various topics addressed in the bill could not be logically connected to each other. In a more extreme case, this Court overruled preliminary objections in *Marcavage v. Rendell*, 888 A.2d 940, 946-47 (Pa. Commw. Ct. 2005), because it determined that a bill that started out addressing livestock destruction strayed too far afield when it was amended to delete all agricultural-related references and, instead, added a section amending the definition of ethnic intimidation.

Other legislation that has survived Article III challenges include a bill that originally concerned underage drinking and was amended to include such topics as scattering rubbish and regulating abortions (*Ritter v. Commonwealth*, 548 A.2d 1317 (Pa. Commw. Ct. 1988), *aff’d*, 521 Pa. 536, 557 A.2d 1064 (1989)); a bill that started out to create the Agricultural Product Development Commission and ended up providing benefits for seasonal workers (*Parker v. Commonwealth, Department of Labor and Industry*, 540 A.2d 313 (Pa. Commw. Ct. 1988)); and a bill that initially covered the operational life of taxicabs and evolved into electrical

⁵ As for those few provisions of the act at issue in *PAGE* that the Supreme Court found did not fall within the single unifying subject of gaming, the Court declared them unconstitutional and severed them from the act. But the Court let stand, as constitutional, the vast majority of the act relating to gaming.

deregulation (*Fumo v. Pennsylvania Public Utility Commission*, 719 A.2d 10 (Pa. Commw. Ct. 1998)). Act 80 certainly meets the test applied to these three cases, as well as to the *PAGE* case. Even if *PAGE*, *Marcavage*, and *City of Philadelphia* can be considered to reflect a somewhat more conservative approach on the part of Pennsylvania's courts, Act 80 survives scrutiny because there is a single, clear, logical unifying subject.

The "single unifying subject" in Act 80 is administration of the Commonwealth's public assistance programs, including health and human services programs. The Public Welfare Code was passed as a single statute governing a single agency. The regulation of the Commonwealth's public assistance programs involves various elements, including: (1) eligibility conditions for General Assistance, Temporary Assistance to Needy Families ("TANF"), and Medical Assistance; (2) funding for counties and providers serving eligible persons which include low-income persons, children, the elderly, the homeless, persons receiving care and treatment for mental illness, drug and alcohol abuse, intellectual disabilities, and physical disabilities; and (3) funding for these programs. These programs are addressed in each of Act 80's fifteen sections.

Sections 1 and 12 of Act 80 relate to the Human Services Block Grant Pilot Program involving covered services and funding for counties serving individuals requiring care and treatment for mental illness, drug and alcohol abuse, intellectual disabilities, and physical disabilities, needy children, and the homeless. Sections 2 and 3 concern the General Assistance program, while Sections 4, 5 and 6 relate to eligibility conditions, TANF work-related activities and sanctions. Sections 7, 9, 10 and 11 deal with kinship care and the custodianship program. Section 8 extends through June 2016 the existing nursing facility assessment program, which provides significant funding for long-term care services to the elderly and disabled. Sections 13,

14 and 15 contain standard provisions regarding general repeals of statutes, abrogation of regulations, and an effective date.

This unifying subject is not so broad that it stretches “the concept of a single topic beyond the breaking point.” See *PAGE* at 297, 877 A.2d at 396. The Supreme Court, when it picked apart the facts in *City of Philadelphia* to identify subjects not sufficiently related to each other to constitute a single, unifying subject under Article III, § 3, provided valuable guidance with the example it gave. The Court expressed its disapproval of incorporating the following subjects into one bill: restricting police officer political activities; authorizing parking authorities to pursue mixed-use development projects; imposing citizenship requirements on the governing board of business improvement districts; transferring authority over taxicabs to the Public Utility Commission; and authorizing municipalities to hold gifts in trusts. The diversity of these topics within the broad subject of municipalities was beyond what the Supreme Court was prepared to accept.

In contrast, Act 80 covers much narrower ground, and the individual provisions are reasonably and logically related to one another. See also *Spahn v. Zoning Board of Adjustment*, 922 A.2d 24 (Pa. Commw. Ct. 2007) where the Court held no violation of Article III, § 3, in a matter involving licenses and inspections to proceed with construction on vacant city lots, and stated: “We agree ... that Spahn’s argument in this regard confuses subject for content.... [T]he bill at issue did not involve two, unrelated subjects. Rather, the bill encompassed merely one subject, *i.e.*, an amendment to the Act....” *Id.* at 30-31.

**C. ACT 80 COMPLIES WITH ARTICLE III, SECTION 4,
OF THE PENNSYLVANIA CONSTITUTION.**

In Count III of their Petition for Review, Petitioners invoke Article III, § 4, of the Pennsylvania Constitution, which provides, in relevant part, that bills “shall be considered on three different days in each house.” Pa. Const. Art. III, § 4. Although Petitioners acknowledge that a version of HB 1261 was considered on three separate days in the House and Senate, Petitioners take issue with the differing content of the bill as it was considered on those separate days and claim that the seven different subject areas covered in Act 80 were only considered on one day in each chamber. *See* Petition for Review, ¶¶ 61-76.

The Pennsylvania Supreme Court and this Court have held that Article III, § 4, requires that a bill receive three readings each in the House and Senate prior to passage; however, an amended bill need not be considered on three separate days if the amendments do not change the bill’s purpose or subject matter. *PAGE; Stilp v. Commonwealth*, 588 Pa. 539, 905 A.2d 918 (2006). Therefore, Petitioners’ contention that there is a violation of Article III, § 4, because the amendments to the bill were not considered on three separate days is **dependent upon** a violation of Article III, §§ 1 or 3. *Christ the King Manor v. Commonwealth*, 911 A.2d 624 (Pa. Commw. Ct. 2006).

As set forth above, Petitioners’ challenges under Article III, §§ 1 and 3, lack legal sufficiency. In addition, the legislative history reveals that HB 1261 was considered during the legislative process on three separate days in the House (April 5, 11 and 12, 2011) and on three separate days in the Senate (June 5, 6 and 29, 2012). Specifically, HB 1261 was introduced and referred to the House Health Committee on April 1, 2011, in accordance with House Rule 18.⁶ It was titled as “Amending the act of June 13, 1967 (P.L. 31, No. 21), entitled an ‘An act to

⁶ The House Rules are found at <http://www.house.state.pa.us/rules/2011HouRules.html>.

consolidate, editorially revise and codify the public welfare laws of the Commonwealth,' in public assistance, further providing for definitions and for determination of eligibility.” At this point, the bill dealt with Sections 402 (definitions) and 432.2(b) and (c) (determinations of eligibility) of the Public Welfare Code – provisions that have broad application to programs found throughout the Public Welfare Code. The bill was three pages in length (HB 1261, Printer’s No. 1385).

HB 1261 was considered and reported favorably from the House Health Committee on April 5, 2011, in accordance with House Rule 19. It received “First Consideration” on April 5, 2011, in accordance with House Rule 22. “Second Consideration” occurred on April 11, 2011, in accordance to House Rule 23. HB 1261 was then re-referred to the House Appropriations Committee, where it was given a fiscal note and voted out of the committee on April 12, 2011, in accordance with House Rule 19(a). HB 1261 was then placed back on the House Calendar where it received “Third Consideration” on April 12, 2011, in accordance with House Rule 24, and was passed finally.

After passing the House on the vote of a constitutional majority of its members, HB 1261 was received in the Senate and considered in accordance with Chapter XII of the Senate Rules regarding passage of bills.⁷ HB 1261 was amended with revised language to Section 432.2(b) and (c) (determination of eligibility), and the definitions under section 402 were removed. The amendment was considered and reported favorably by the Senate Public Health and Welfare Committee on June 5, 2012.

HB 1261 received “First Consideration” in the Senate on June 5, 2012, and “Second Consideration” on June 6, 2012. The bill then was re-referred to the Senate Appropriations

⁷ The Senate Rules are found at <http://www.pasen.gov/rules/2011SenRules.html>.

Committee for a fiscal note and voted favorably from committee, after amendment, on June 29, 2012.

The amendments made by the Senate Appropriations Committee expanded the bill to address a broader array of public assistance programs, adding the language regarding public assistance and the determination of eligibility. The scope of the bill expanded to include other provisions of the Public Welfare Code relating to public assistance and eligibility, including the General Assistance program, Human Services Block Grant Pilot Program, and nursing facility assessment program; but the purpose and subject of the bill remained focused on the interrelated public assistance programs administered by the Department. The amendments to HB 1261 received "Third Consideration" in the Senate on June 29, 2012.

Because this House bill was amended in the Senate, it was returned to the House on June 29, 2012, for concurrence in the Senate amendments. In accordance with House Rule 30, HB 1261 was referred to the House Rules Committee on June 29, 2012; and it was voted out favorably as committed. This caused the bill to be placed on the House Calendar. Since this bill was returned to the House "on concurrence," the House Rules did not require the bill to go through the process of "three considerations," as it had already received them in that chamber before the bill was passed by the House originally. Rather, HB 1261 was moved straight to a concurrence vote by the members of the House. Accordingly, because there is no violation of Article III, § 1 or § 3, and because the bill was considered on three separate days, Petitioners' Article III, § 4, challenge lacks legal sufficiency.

This conclusion remains even if Petitioners claim, as here, that substantial amendments to the original bill took place and that the **final** version of the bill was not considered on three separate days in each chamber. In *Stilp*, the Pennsylvania Supreme Court found that the

challenger failed to establish a violation of the constitutional requirement that a bill be considered on three separate days, despite a claim that substantial amendments to the original bill required that the final version be considered on three different days. As here, the bill was considered on three separate days in each chamber during the legislative process; the amendments did not alter the original version of the bill in a manner that changed its original purpose; and the bill as finally enacted does not violate the single-subject mandate of Article III of the Constitution. *Stilp*, 588 Pa. at 597-598.

D. THE HUMAN SERVICES BLOCK GRANT PILOT PROGRAM DOES NOT VIOLATE ARTICLE III, SECTION 24, OF THE PENNSYLVANIA CONSTITUTION.

Petitioners claim in Count IV of the Petition for Review that the Human Services Block Grant Pilot Program, added by Act 80 to the Public Welfare Code as Article XIV-B, violates Article III, § 24, of the Pennsylvania Constitution in that the statute allows the executive branch (*i.e.*, the Department) to spend more on a particular substantive program that is encompassed within the Human Services Block Grant Pilot Program than the amount that the General Assembly has appropriated for specific programs encompassed within the Human Services Block Grant Pilot Program, and because the executive branch (*i.e.*, the Department) is allowed by Act 80 to take money appropriated for one program area within the Human Services Block Grant Pilot Program and spend it on another area within the same Human Services Block Grant Pilot Program. *See* Petition for Review, ¶¶ 77-88.

Article III, § 24, provides that “no money shall be paid out of the treasury, except on appropriations made by law....” Pa. Const. Art. III, § 24. “Inasmuch as Article II of the Pennsylvania Constitution gives to the General Assembly the legislative power of the Commonwealth ..., section 24 of Article III **requires legislative action before money can be**

paid out of the treasury.” *Shapp v. Sloan*, 480 Pa. 449, 463-65, 391 A.2d 595, 602-03 (1978) (emphasis added), *appeal dismissed*, 440 U.S. 942 (1979). In this case, the General Assembly has properly exercised its legislative power to appropriate money for use by an executive agency in the General Appropriation Act and enacted substantive legislation that empowers and instructs the agency in the use of those appropriated funds.

Petitioners argue that because the General Appropriation Act appropriates money to the Department for use in specific program areas over which the agency has administrative responsibilities, the Department cannot deviate from those specific purposes in the expenditure of those appropriated funds even if the Legislature through substantive statute (*i.e.*, the Public Welfare Code) has given the agency explicit authority to expend those appropriated funds in a more flexible manner.

In pertinent part, Act 80 states as follows:

Notwithstanding any other law, the [D]epartment may distribute those funds that have been appropriated to the [D]epartment for the programs set forth in section 1405-B(a)(1) [of the Public Welfare Code] as a block grant for county-based human services.

62 P.S. § 1403-B(a) (emphasis added). Thus, the General Assembly has specifically authorized and directed the Department to expend funds appropriated to it by the General Appropriation Act in the manner provided by Article XIV-B of the Public Welfare Code – notwithstanding the specific purposes specified in each separate line item of the General Appropriation Act for those program areas.

In making their constitutional claim, Petitioners rely principally on the seminal case of *Shapp v. Sloan*, 480 Pa. 449, 391 A.2d 595 (1978), which they say holds that an executive agency “is not allowed to spend more on a particular program than the amount appropriated by the General Assembly.” Petitioners also make the unremarkable point that *Shapp* 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.” Petition for Review, ¶ 79. However, in making this argument, Petitioners have chosen to ignore the Pennsylvania Supreme Court’s recognition of the important interplay between substantive legislation and the appropriations supporting that legislation:

It is fundamental within Pennsylvania’s tripartite system that **the General Assembly enacts the legislation establishing those programs** which the state provides for its citizens **and appropriates the funds necessary for their operation. The executive branch implements the legislation by administering the programs.** See, e. g., *Stander v. Kelley*, 433 Pa. 406, 250 A.2d 474 (1969). It must do so **within the requirements and restrictions of the relevant legislation**, and within the amount appropriated by the legislature.

Shapp at 469 (emphasis added).

In this case, the General Assembly, in the exercise of its constitutional discretion to establish programs and to create the requirements and restrictions for those programs, decided that for purposes of the Human Services Block Grant Pilot Program, the appropriated funding would not be restricted within these programs. Rather, the appropriated funds can be allocated by the Department through the Human Services Block Grant Pilot Program more flexibly so that funding might flow more freely based on actual needs within a county. This flexibility granted to the Department by statute does not violate Article III, § 24, as the total amount spent on these programs collectively will not exceed the total amount appropriated collectively for these programs by the General Assembly. In empowering the Department and participating counties to focus their expenditure of appropriated funds where a county’s needs exist within the various program areas covered by the Human Services Block Grant Pilot Program, the General Assembly intends more effectively to hold the Department and the participating counties accountable for the efficient allocation of program funds.

As *Shapp* makes clear, appropriations are authorizations for agencies to expend state funds for a particular purpose. *Shapp*, 391 A.2d at 603. But as this Court established in *Biles v. Commonwealth, Department of Public Welfare*, 403 A.2d 1341 (Pa. Commw. Ct. 1979), substantive law controls the expenditure of appropriated funds by setting out the particular purpose for which state funds may be expended. Thus, if a provision in an appropriations law conflicts with the controlling provision in a substantive law, then the substantive law trumps the appropriations law. Through this hierarchy of laws, substantive laws that set out and direct the expenditure of appropriated state monies always control the expenditure of appropriated state monies. Appropriations laws cannot contradict or override a substantive law that governs the authorized expenditures; therefore, state agencies always must expend appropriated monies in accordance with any substantive law that applies to those funds.

Furthermore, the premise of Petitioners' argument flies in the face of both the appropriation and the substantive laws at issue in this matter. As quoted above, the General Assembly specifically stated that the Department must apply the provisions of Act 80 regarding the distribution and expenditure of monies appropriated to the Department for the programs set out in Section 1405-B(a)(1) in accordance with Act 80, "notwithstanding any other law" to the contrary. See 62 P.S. § 1403-B. Thus, to the extent that a provision of the General Appropriation Act should conflict with an applicable provision of the Public Welfare Code, the substantive law must control the expenditure of the monies—so long as expenditures do not exceed the total amount of money appropriated.

Although *Shapp*, *Biles*, and other cases involving the interplay between substantive and appropriations laws foreclose the possibility of an appropriations law ever trumping a substantive statute, the same result would nonetheless occur by application of Pennsylvania's Statutory

Construction Act even without the express “notwithstanding” language found in Section 1403-B). Act 80 and the General Appropriation Act of 2012 are *in pari materia* on the question of the monies at issue in this lawsuit because those laws relate to the same things – namely, the ~~administration of human services programs by the Department and the participating counties.~~

See 1 Pa.C.S. § 1932. Based on this bedrock principle of statutory construction, the two laws – Article XIV-B of the Public Welfare Code added by Act 80 and the related appropriations made to the Department by the General Appropriation Act – must therefore be construed together if possible (1 Pa.C.S. § 1932); and to the extent that they conflict or cannot be reconciled with each other, the law passed later in time controls. *See* 1 Pa.C.S. § 1935 (when provisions of two or more statutes enacted by the same General Assembly conflict, the one enacted later in time controls).

Section 1403-B of the Public Welfare Code directs the Department, *inter alia* (1) to “monitor county governments” administration of the block grant to ensure compliance with applicable Federal and State requirements, 62 P.S. § 1403-B(b)(1); (2) to “[a]llocate and disburse block grant funds to counties on a quarterly basis,” *id.* § 1403-B(b)(2), thereby assuring that spending limits are considered; (3) to require reports from counties and monitor, inspect or audit the financial, operating and accounting records of any county agency or contracted receiving block grant funds, *id.* § 1403-B(b)(4), (5); and (4) to “[w]ithhold, recover or reduce any block grant funds of a county agency or contracted entity” in the event of a violation of Federal or State requirements. *Id.* § 1403-B(b)(6). In addition, the Department is obliged to make detailed reports to the General Assembly and publish those reports.⁸ *Id.* § 1403-B(b)(8)-(9).

⁸ This report must include (i) the allocation levels; (ii) the expenditure levels; (iii) the number of individuals served by the human services provided; and (iv) any other information deemed necessary by the Department, including any information that would determine the effectiveness

Petitioners may counter with an argument that this fund shifting is not permissible because Article III, § 24, prohibits the executive branch from exceeding program-specific appropriations. However, they ignore the fact that the specific programs themselves are established by the substantive law, and the General Assembly may delineate those program specifications through the substantive law. The General Assembly may change those very program specifications through the creation of the Human Services Block Grant Pilot Program, which modifies the rigid funding categories to which the associational petitioners are accustomed, and replace it with a new program under which designated funds are permitted to pass to the counties and be expended flexibly in accordance with substantive law. Petitioners can point to nothing in the Constitution that proscribes the General Assembly from enacting substantive law that effectively supplements – or even countermands – directions contained in the General Appropriation Act. Act 80 is such a law.

E. THE HUMAN SERVICES BLOCK GRANT PILOT PROGRAM DOES NOT VIOLATE ARTICLE II, SECTION 1, OF THE PENNSYLVANIA CONSTITUTION.

Petitioners allege in Count V of the Petition for Review that the Human Services Block Grant Pilot Program established by Section 12 of Act 80 (62 P.S. §§ 1401-B - 1410-B) violates Article II, § 1, of the Pennsylvania Constitution because the statute grants unlimited discretion to the Department to determine which counties will receive a block grant, and also empowers the Department to waive statutory requirements in implementing the Human Services Block Grant Pilot Program. *See* Petition for Review, ¶¶ 89-103.

Article II, § 1, states that “the legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.” Pa.

of the block grant. 62 P.S. § 1403-B(b)(8).

Const. Art. II, § 1. This provision has been interpreted to prohibit the delegation of lawmaking power. *PAGE* at 332, 877 A.2d at 417. Consistent with the Constitution, however, the Legislature may delegate authority to execute a law, using discretionary means, so long as the law contains adequate standards to guide the exercise of the delegated power. *Blackwell v. State Ethics Commission*, 523 Pa. 347, 360, 567 A.2d 630, 637 (1989), *reargument granted and aff'd in relevant part*, 527 Pa. 172, 589 A.2d 1094 (1991); *Gilligan v. Pennsylvania Horse Racing Commission*, 492 Pa. 92, 96, 422 A.2d 487, 489 (1980).

The validity of the delegation of power by the Legislature is determined by examining the standards set forth in the law to ensure that: 1) “basic policy choices” have been made by the Legislature; and 2) standards exist to adequately “guide and restrain the exercise of the delegated administrative functions.” *Id.* at 333, 877 A.2d at 418; *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 213, 346 A.2d 269, 292 (1975). In examining the sufficiency of the standards, courts look to the language of the statute, the underlying purpose of the law, and its reasonable effect. *William Penn Parking Garage*, 464 Pa. at 216, 346 A.2d at 293.

In *Tosto v. Pennsylvania Nursing Home Loan Agency*, 460 Pa. 1, 331 A.2d 198 (1975), the Supreme Court reviewed a challenge to the Nursing Home Loan Agency Law, 62 P.S. § 1521.101, *et seq.* That law created an agency that was authorized to make loans to nursing homes for repair and rehabilitation so that these facilities could meet state and federal safety standards. A taxpayer claimed that the law included an unconstitutional delegation of legislative power in that it gave the agency unguided discretion to select the recipients and set the terms and conditions for the loans.

The Pennsylvania Supreme Court upheld the law as a proper delegation of administrative power. The Court concluded that the “entire law reveals that the agency’s policy decisions must

be directed to the effectuation of the legislature's basic policy of assisting nursing homes that do not comply with the life safety code." *Tosto*, 460 Pa. at 12, 331 A.2d at 203. In addition, the Court held that the Legislature had provided adequate standards and guidelines within the law. ~~The law provided definitions of pivotal statutory terms and provided guidelines for agency~~ decisions. 62 P.S. § 1521.101, *et seq.*

Here, the Legislature has provided adequate standards and guidance within Act 80 (Article XIV-B of the Public Welfare Code) regarding the Department's administration of the Human Services Block Grant Pilot Program, including provisions relating to: county participation limits; fund disbursement in quarterly payments; strict monitoring requirements, including the auditing of county records; and county plan submission guidance requirements whereby plans cannot be approved where any human services were identified for elimination. 62 P.S. § 1402-B. Act 80 also contains standards and guidance for the counties regarding annual plan submissions and requirements for public hearings regarding annual plans. 62 P.S. § 1404-B. Act 80 provides the basic policy choices made by the Legislature, and provides standards to adequately "guide and restrain the exercise of the delegated administrative functions." Thus, Petitioners' claim of an improper delegation of lawmaking power from the General Assembly to the Department in violation of Article II, § 1, of the Pennsylvania Constitution lacks legal sufficiency.

II. THE DEPARTMENT'S IMPLEMENTATION OF THE HUMAN SERVICES BLOCK GRANT PILOT PROGRAM NEITHER REQUIRES REGULATIONS NOR CONSTITUTES A "BINDING NORM".

In Count VI of the Petition for Review, Petitioners claim that the Department is required under the Commonwealth Documents Law (45 P.S. §§ 1102-1208) to promulgate regulations setting forth: evaluation criteria for county applications; "good cause" waiver criteria, and the

establishment of a cap on reinvestment funds with respect to the Human Services Block Grant Pilot Program. *See* Petition for Review, ¶¶ 104-111.

Contrary to Petitioners' assertions, the Department's implementation of the Human Services Block Grant Pilot Program does not violate the Commonwealth Documents Law.

Under Act 80, the Department's exercise of discretion in reviewing and approving counties' requests to participate in a pilot program, and in the review of waivers relating to this program, does not constitute a "binding norm". As a result, it is not subject to the requirements of the Commonwealth Documents Law and does not need to be promulgated as a regulation. *See Brinson v. Department of Public Welfare*, 641 A.2d 1246, 1248-49 (Pa. Commw. Ct. 1994). The Department's implementation of the Human Services Block Grant Pilot Program is "simply the exercise of the authority it already possessed" under section 205 of the Public Welfare Code, 62 P.S. § 205⁹. It would be absurd to suggest that the Legislature intended otherwise.

In *Brinson*, the petitioner was a disabled Medicaid recipient who alleged that the Department's implementation of the pilot managed care program (commonly referred to as "HealthPASS") violated the Commonwealth Documents Law. Specifically, the petitioner asserted "that the Department was required to promulgate regulations that set forth parameters and guidance for the provision of care through the HealthPASS system." *Id.* at 1248. The petitioner further alleged that without the regulations, there would be no opportunity for public comment, and the Department would be without any specific direction in how the program should be implemented. *Id.*

⁹ This provision regarding grants and subsidies to local agencies states: "On the basis of formulae which include public or voluntary support, the [D]epartment shall have the power to disburse Federal and State funds, appropriated for the purpose, as grants and subsidies to programs in fields in which the [D]epartment has responsibility if they meet the [D]epartment's standards." 62 P.S. § 205.

Similar to the HealthPASS program in *Brinson*, the Department has been authorized by Act 80 to administer the Human Services Block Grant Pilot Program as a “pilot” program, beginning in Fiscal Year 2012-2012. 62 P.S. § 1402-B. In the administration of a pilot program, the Department has not bound itself to how it will review the first year’s applications, consider waivers or approve reinvestment plans. Further, to mandate that the Department must comply with the requirements of the Commonwealth Documents Law to promulgate regulations to implement a pilot program “would stifle administrative attempts to resolve problems through the application of new administrative approaches.” *Brinson*, 641 A.2d at 1249.

In addition to the absurdity in concluding that the General Assembly expected the Department to promulgate regulations before implementing a new pilot program that Act 80 obviously contemplated would be launched immediately, the case of *Chimenti v. Pennsylvania Department of Corrections*, 720 A.2d 205 (Pa. Commw. Ct. 1998), *aff’d*, 559 Pa. 379, 740 A.2d 1139 (1999), is instructive. In *Chimenti*, this Court concluded that the Department of Corrections (“DOC”) was not required to promulgate regulations to implement an automated inmate telephone system provisions that the Legislature had authorized. In reaching this conclusion, the Court stated: “We ... believe that the use of the term ‘guidelines’ by the General Assembly [as used in the law] indicates that [DOC] is not required to promulgate ‘regulations.’ The term regulation is clearly defined in the Commonwealth Documents Law and the Regulatory Review Act. If the General Assembly intended that [DOC] promulgate regulations as that term is defined in those laws, **we believe the General Assembly would have utilized the term regulations instead of guidelines.**” *Id.* at 212 (emphasis added; footnote omitted).

Similar to the statute at issue in *Chimenti*, Act 80 requires the Department to consider a county’s request to participate in the Human Services Block Grant Pilot Program “based on

criteria determined by [DPW],” and to consider waivers by counties “for good cause shown,” 62 P.S. §§ 1402-B, 1405-B, with no mention made of the need for “regulations.” To paraphrase the Court’s opinion in *Chimenti*, “if the General Assembly intended that [DPW] promulgate regulations as that term is defined in the Commonwealth Documents Law, ... the General Assembly would have utilized the term regulations instead of [criteria].”

III. PETITIONERS LACK STANDING TO CHALLENGE ACT 80’S HUMAN SERVICES BLOCK GRANT PILOT PROGRAM.

Under Act 80, the Human Services Block Grant Pilot Program was “established for the purpose of allocating block grant funds to county governments to provide locally identified county-based human services that will meet the needs of county residents.” 62 P.S. § 1402-B. A particular county government’s participation in the Human Services Block Grant Pilot Program is strictly voluntary. A county may participate in the program only if the county requests participation and the Department, in its discretion, selects the county for participation in the Human Services Block Grant Pilot Program. *See* 62 P.S. § 1402-B. Petitioners are not county governments, nor do they purport to represent the interests of any county government.

Even though Petitioners are not county governments and are not filing on behalf of county governments, they challenge the delegation of authority to the Department to select counties to participate in the Human Services Block Grant Pilot Program, as well as the delegation of authority to the Department to grant waivers to the counties regarding minimum expenditure levels that participating counties must make in human service categories. Petitioners do not have standing to make these claims.

It is a fundamental principle of constitutional law that a challenge to a statute may not be made in the abstract but must find its basis in an injury to a party seeking to have the enactment declared constitutionally infirm. *Commonwealth v. Nguyen*, 834 A.2d 1205 (Pa. Super. Ct.

2003), *app. denied*, 578 Pa. 688, 849 A.2d 1204 (2003). Further, an association lacks standing to bring action challenging the constitutionality of a statutory framework where the association cannot show that its members have suffered or have been threatened with direct, immediate and substantial injury. *Robinson Twp. v. Commonwealth*, 52 A.3d 463 (Pa. Commw. Ct. 2012) (appeals pending).

In this matter, Petitioners include three former recipients of cash assistance under the General Assistance program and numerous non-profit corporations that advocate for and lobby on behalf of providers and individuals.

In regard to the Human Services Block Grant Pilot Program, a maximum of 20 counties were allotted by the Legislature for participation in the program, and 30 counties applied to participate. The Department selected 20 counties to participate in the block grant program from the 30 counties that applied. Yet, not one county is among the Petitioners. Also, not one of the individual Petitioners resides in a county that is participating in the block grant program or in a county that applied to participate but was not selected. Accordingly, Petitioners do not stand to suffer from the county selection process employed by the Department or the delegation of authority to the Department to waive minimum expenditure levels.

The Department acknowledges that if a county felt it was harmed by either the selection process or the waiver determination, it might possess standing to assert some direct, immediate and substantial harm. But, as noted above, not one county has joined Petitioners in challenging the law.

Petitioners have not suffered, nor are they threatened with suffering, *i.e.*, direct, immediate and substantial injury, by the delegation of authority to the Department concerning

participation in the pilot program or waiver of minimum expenditure levels. Accordingly, Petitioners lack standing to assert these claims.

IV. PETITIONERS LACK STANDING TO CHALLENGE ACT 80's NURSING FACILITY ASSESSMENT.

The nursing facility assessment, initially enacted in 2003, provides assessment revenues that are used to make rate and supplemental payments to nursing facilities providing services to elderly and disabled Medical Assistance recipients. *See* 62 P.S. § 815-A. The assessments are collected from most nursing facility providers licensed in the Commonwealth of Pennsylvania. The statutory authority to effectuate this assessment was set to expire on June 30, 2012. Act 80 includes an extension of the nursing facility assessment through June 30, 2016. *See* Act 80, § 8 (amending 62 P.S. § 815-A).

Petitioners challenge the constitutionality of Act 80 in its entirety, including the extension of the nursing facility assessment. Petitioners lack standing to challenge the nursing facility assessment in Act 80 for several reasons.

As stated previously, it is a fundamental principle of constitutional law that a challenge to a statute may not be raised in the abstract but must find its basis in an injury to a party seeking to have the enactment declared constitutionally infirm. *Commonwealth v. Nguyen*, 834 A.2d 1205 (Pa. Super. Ct.), *app. denied*, 578 Pa. 688, 849 A.2d 1204 (2003). Further, an association lacks standing to bring an action challenging the constitutionality of a statutory framework where the association has not shown that its members have suffered or are threatened with direct, immediate and substantial injury. *See Robinson Twp. v. Commonwealth*, 52 A.3d 463 (Pa. Commw. Ct. 2012).

In this matter, Petitioners are three former recipients of cash assistance under the General Assistance program and numerous non-profit corporations that advocate for and lobby on behalf

of providers and individuals. None of the Petitioners is a nursing facility provider licensed in the Commonwealth of Pennsylvania. Also, none of the Petitioners have filed this lawsuit on behalf of any nursing facility provider. Petitioners, as individuals and non-profit advocacy organizations, cannot (and, in fact, do not) assert that they will suffer direct, immediate and substantial injury as a result of the extension of the nursing facility assessment.

Further evidencing Petitioners' lack of standing in this regard is the fact that the Pennsylvania Health Care Association ("PHCA"), a statewide advocacy organization for the state's elderly and disabled residents and their providers of care, along with several nursing facilities, felt compelled to petition this Court to intervene in order to oppose Petitioners' challenge to Act 80.¹⁰ Accordingly, not only do Petitioners lack standing to challenge the nursing facility assessment, but the parties that actually do have standing in regards to the assessment, *e.g.*, PHCA and nursing facilities, oppose Petitioners' challenge to Act 80.¹¹

¹⁰ By Order dated November 16, 2012, this Court permitted PHCA to intervene. The Court denied the petition for leave to intervene filed by individual nursing facilities because their interests are adequately represented by PHCA.

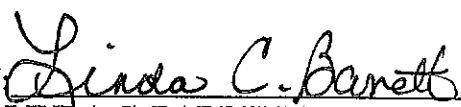
¹¹ This Court indicated in footnote 1 of its November 16, 2012 Order that "Petitioners do not seriously contest that PHCA has standing as a member association and that it possesses a legally enforceable interest in the constitutionality of ... Act 80."

CONCLUSION

For the foregoing reasons, Petitioners' action should be dismissed with prejudice.

Respectfully submitted,

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

BILLIE WASHINGTON, *et al.*,

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No. 602 M.D. 2012

Petitioners :

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:
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v.

THE DEPARTMENT OF PUBLIC
WELFARE OF THE
COMMONWEALTH OF
PENNSYLVANIA,

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:
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:

Respondent :

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing document upon the person below in the manner indicated.

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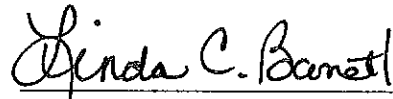
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