

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Billie Washington, Tina Smith, Opal Gibson,
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,
Success Against All Odds,
Petitioners

No. 602 M.D. 2012

v.

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

**BRIEF OF AMICI CURIAE THE PENNSYLVANIA IMMIGRATION
AND CITIZENSHIP COALITION; EDUCATION LAW CENTER OF
PENNSYLVANIA; PENNSYLVANIA COALITION AGAINST
DOMESTIC VIOLENCE; PENNSYLVANIA ALLIANCE FOR
RETIRED AMERICANS; RESOURCES FOR HUMAN
DEVELOPMENT, INC.; SEIU LOCAL 668 (THE PENNSYLVANIA
SOCIAL SERVICES UNION); COALITION AGAINST HUNGER;
AIDS LAW PROJECT OF PENNSYLVANIA; HIV POLICY
COLLABORATIVE OF PENNSYLVANIA; COMHAR, INC;
HOUSING ALLIANCE OF PENNSYLVANIA; WOMEN'S LAW
PROJECT; PHILADELPHIA COALITION; ETHICAL HUMANIST
SOCIETY OF PHILADELPHIA; COMMON CAUSE OF
PENNSYLVANIA**

**IN SUPPORT OF THE PETITIONERS' BRIEF IN OPPOSITION TO
RESPONDENT'S PRELIMINARY OBJECTIONS**

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INTEREST OF AMICI CURIAE

Amici Curiae are 15 organizations and their members who have a direct and substantial interest in a transparent and deliberative legislative process. Amici represent diverse constituencies within the Commonwealth of Pennsylvania that are harmed when the Pennsylvania General Assembly enacts legislation in violation of constitutional legislative due process requirements.

The Pennsylvania Immigration and Citizenship Coalition (PICC) is a diverse coalition of over 50 member organizations and hundreds of individual members. Its membership is interfaith, interethnic, and interdisciplinary and includes community groups, service providers, mutual assistance associations, unions, faith communities, and concerned individuals. Its mission is to represent the needs of immigrants, migrants, refugees and other New Americans living in Pennsylvania to policy makers, public officials and the general public. PICC seeks to advance immigrants' rights and promote their full integration into society by advocating for fair policies that welcome and sustain immigrants.

PICC's interest in this litigation is to support the importance of full and fair deliberation in the legislative process in Pennsylvania. While all Pennsylvanians are impacted by legislation passed in Harrisburg, immigrant advocacy groups, like PICC, rely on due process of lawmaking as a means of advocating for immigrants and ensuring that their voices are heard in the process. The constitutional requirement for a bill to be considered on three different days before it is passed into law provides time for not only thoughtful debate on issues

that impact the lives and livelihoods of all Pennsylvanians, but time for constituents to express support or opposition to their representatives. Immigrants are uniquely impacted in that many New Americans rely on community groups and service organizations to provide them with information on legislation. This is particularly true for immigrants with limited English proficiency and immigrants living in poverty, two groups most often underrepresented in vote share but impacted by legislation targeted at social welfare and other vital programs. Fair deliberation in the legislative process affords PICC and other organizations the time necessary to learn about legislation and pass on the necessary information to keep immigrant groups in Pennsylvania apprised of what their representatives are advocating for. These procedural requirements for lawmaking ensure that there is an appropriate opportunity to weigh in on proposed legislation, which is invaluable when advocating for the rights of traditionally underrepresented groups in the PA legislature, such as immigrants.

The Education Law Center of Pennsylvania (ELC) is a 35-year-old, non-profit legal advocacy organization dedicated to ensuring that all of Pennsylvania's children have access to a quality public education. ELC seeks to educate legislators and policy makers about the effects that laws have on the Commonwealth's children.

The Pennsylvania Coalition Against Domestic Violence (PCADV) is a private non-profit organization that provides services and advocacy on behalf of victims of domestic violence and their minor children. PCADV was established in 1976, and in its 30 years of operation, PCADV has grown to a membership of 60

organizations across Pennsylvania that, collectively, have provided safety and refuge to nearly two million victims and children from every corner of the Commonwealth. Our member programs provide a range of life-saving services, including emergency shelters, hotlines, counseling programs, safe home networks, legal and medical advocacy projects, and transitional housing projects for victims of abuse and their children. A key component of our work is to ensure that victims of domestic violence have access to essential services that enable them to live in an environment that is free from violence.

PCADV has a longstanding relationship with the legislature and, over the years, has significantly contributed to the development of many key legislative protections for victims of domestic violence and their children. As an active participant in the legislative process, PCADV has a vested interest in ensuring that the legislature complies with constitutionally mandated procedure, as it enables PCADV to speak with legislators and law makers about the unintended consequences of their legislative initiatives.

The Pennsylvania Alliance for Retired Americans (PARA) is a statewide organization of 300,000 members and 145 local affiliates founded in May of 2004 with the purpose of bringing together seniors and retirees across the Commonwealth to unite their voices and have them heard regarding legislation, policies and politics that affect their lives. PARA represents retired union members, senior community activists, and their families, in order to educate and inform our membership, the public, and elected officials, about issues that affect

the well-being of senior citizens, so that they may all work toward the creation of a just and equitable standard of living within our state and our nation. PARA has a keen interest in ensuring that the legislative process is open and transparent so that it and its members may be able to communicate with elected officials about pending legislation.

Resources for Human Development, Inc. (RHD) is a Pennsylvania non-profit corporation, which operates more than 160 different social service and support programs in Pennsylvania and thirteen other states. RHD's mission is to empower the most vulnerable and marginalized members of society as they build the highest level of independence possible, building better lives for themselves, their families and their communities. From providing residential services for individuals with mental illness, developmental disabilities, chemical addiction and those who are homeless, to job training, assisted transportation, and crisis intervention, RHD provides individualized, quality assistance wherever the need exists. RHD is interested in the outcome of this litigation because RHD provides assistance to many people in need throughout the Commonwealth of Pennsylvania whose interests are affected by legislation. RHD supports fair and deliberate due process in the issuance of laws in the Commonwealth that allows the people that RHD serves to communicate with their elected representatives.

SEIU Local 668, the Pennsylvania Social Services Union, is an affiliate of the Service Employees International Union. SEIU Local 668 represents approximately 20,000 dedicated public service workers across Pennsylvania in state, local, county and private entities who provide care and treatment to those

with mental, physical and developmental issues. SEIU Local 668 represents vocational rehabilitation service workers, children services workers, drug and alcohol and other counselors, social workers, psychologists, caseworkers, disability adjudicators, personal care home and adult care licensing representatives, blind and visually impaired counselors, unemployment workers and counselors, occupational therapists, speech and hearing specialists, recreation and activities workers, veterans representatives and youth development counselors. The clients to whom SEIU Local 668 provides services -- the elderly, the infirm, persons with disabilities, the poor, children, etc. -- often have no collective voice of their own. On behalf of the employees it represents and the clients it serves, SEIU Local 668 often speaks out on legislation which impacts them.

The Coalition Against Hunger is a non-profit organization that connects low-income families and seniors with food assistance programs and nutrition education; provides resources to a network of food pantries; and educates the public and elected officials about responsible policy solutions that meet the real needs in our communities. Each year, the Coalition helps 5,000 families put food on the table by connecting them with food assistance programs; raises \$250,000 to support the work of local food pantries and soup kitchens; and mobilizes thousands of citizens to speak out about state and federal policies that affect struggling families.

The Coalition represents thousands of families and seniors who rely on human service programs to meet their most basic needs as well as hundreds of

other concerned citizens who are committed to making their voices heard in the political process. The Coalition's interest in this litigation is in guaranteeing fair and deliberative legislative processes that allow citizens the opportunity to share their views with their elected officials and have them considered in the legislature's deliberations. When legislative procedure requirements are disregarded, the Coalition's constituents are stripped of their rights to have their voices heard in critical decisions that directly affect their health, well-being and livelihoods. Thus, the Coalition's interest in this matter stems from its desire to preserve the legislative due process requirements that enable its constituents to meaningfully participate in deliberations about legislation that may impact their ability to meet their basic needs and provide for their families.

The AIDS Law Project of Pennsylvania (ALPP) is an independent, nonprofit, public-interest law firm that provides statewide free legal services to Pennsylvanians affected by the HIV/AIDS epidemic. Since its inception in 1988, ALPP has been fighting for the rights of Pennsylvanians living with HIV/AIDS and provides legal assistance to approximately 2,000 individuals each year. **The HIV Policy Collaborative of Pennsylvania** is a coalition, convened by the AIDS Law Project of Pennsylvania, of more than 30 community-based HIV/AIDS providers and institutions across the Commonwealth concerned about HIV/AIDS policy issues. The AIDS Law Project of Pennsylvania and the HIV Policy Collaborative of Pennsylvania have an interest in ensuring that the legislative due process provisions enshrined in the Pennsylvania Constitution are upheld so that they and their members have an opportunity to communicate concerns to legislators

about pending legislation.

COMHAR, Inc., is a Pennsylvania nonprofit corporation founded in 1975 that provides an array of diversified services to children, adults and seniors with behavioral health challenges, intellectual disabilities, and in-home health care needs. COMHAR carries out its mission through residential, outpatient, social and school-based programs that offer individuals the opportunity to control the direction of their lives, contribute to their communities, transform barriers into opportunities, achieve their goals, build self-esteem, and improve the overall quality of their lives. In COMHAR's adult services programs, individuals are encouraged to participate in their communities as part of their journey to recovery and wellness. Community participation means, among other things, becoming a full citizen of the community by voting, volunteering, participating in leisure and recreation activities, belonging to a civic or religious organization, and, if possible, owning or renting a home. Voting, having a voice in the community, one that will be heard, is an important component of citizenship. When elected officials fail to discharge their constitutional duty to provide an open legislative process, all of Pennsylvania suffers. Individuals are disempowered and deprived of the opportunity to express their opinions to their elected representatives. COMHAR is particularly concerned that the individuals it serves are provided a voice and are heard. It is only through an open, fair and deliberative process that the promise of citizenship is fulfilled.

The Housing Alliance of Pennsylvania is a nonprofit membership organization providing statewide leadership and a common voice for policies,

practices and resources to ensure that all Pennsylvanians, especially those with low incomes, have access to safe, decent, accessible and affordable homes. Members of the Housing Alliance are professionals working to expand the availability of affordable homes and revitalize communities, as well as people seeking homes within their reach.

To achieve its mission, the Housing Alliance works on legislation regarding resources and policies to expand housing options and promote community development. The Housing Alliance's membership is actively involved in the legislative process, frequently meeting with their senators and representatives. The Housing Alliance knows that the integrity of the legislative process is essential in achieving good public policy. The Housing Alliance has an interest in a fair and open legislative process, without which its members would be unable to inform their legislators about the needs in their communities.

The Housing Alliance has an interest in this litigation because when due process of lawmaking is violated, its membership is prevented from participating in a vital aspect of citizenship. For a democracy to thrive, its citizens must be encouraged, not discouraged, to participate in public debate and lawmaking.

The Women's Law Project (WLP) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. To this end, the WLP engages in high-impact litigation, policy advocacy, and public education. The Women's Law Project has a strong interest in the adoption of legislation consistent with the dictates of the

Pennsylvania Constitution. The laws of this Commonwealth affect its citizenry. Only through a lawmaking process that is deliberative, transparent, and accountable will the interests of Pennsylvania's citizens be protected.

The Philadelphia Coalition represents non-profit multiservice provider organizations that collectively serve over 70,000 children, adults and families each year, who have serious mental illness, substance use disorders, autism and intellectual disabilities. The Philadelphia Coalition takes an active interest in all legislation that affects its agencies, its programs and the people that it serves. The Philadelphia Coalition's interests are frustrated when there is no opportunity for input or comment on a final bill before it is passed and signed. The Philadelphia Coalition believes that to make Pennsylvania government work for the people, there is a need for openness, inclusion of affected stakeholders, deliberation and transparency around the whole process.

The Ethical Humanist Society of Philadelphia (EHSOP) is a humanist, religious, and educational organization in Philadelphia. Since 1885, the EHSOP has been a congregational home for its members and a voice for social justice in the Philadelphia region. The EHSOP is engaged in numerous ethical action projects that defend ethical, democratic processes that serve all citizens, particularly the marginalized and dispossessed. The EHSOP is particularly interested in maintaining the deliberative legislative process on behalf of itself and its members. The EHSOP believes that this Court will benefit from this brief because it provides the perspective of a longstanding force for ethics in our legal and civic life of Pennsylvania.

Common Cause of Pennsylvania is the statewide chapter of Common Cause, a nonpartisan, nonprofit advocacy organization founded in 1970 as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. Today, Common Cause is one of the most active, effective, and respected nonprofit organizations working for accountability and reform in America. With nearly 400,000 members and supporters and 36 state organizations, Common Cause fights for honest, open and accountable government at all levels, working to restore ethics in government and curb the influence of special interest money in politics. Common Cause's primary goal is governmental accountability, openness and effectiveness, which it promotes through lobbying, oversight, education, outreach, and litigation programs.

Common Cause of Pennsylvania is a leader in Pennsylvania on reform of state elections and is actively involved in promoting open records, open public meetings, campaign finance reform, lobbyist disclosure, reform of the state budgeting process, reform of judicial selection and discipline, public officials' ethics, and improvements to the Commonwealth's election policies and procedures. Common Cause of Pennsylvania has over 4,000 members and affiliates in Pennsylvania.

STATEMENT OF THE CASE

This brief is being submitted on behalf of the Pennsylvania Immigration and Citizenship Coalition; Education Law Center of Pennsylvania; the Pennsylvania Coalition Against Domestic Violence; Pennsylvania Alliance for Retired Americans; Resources for Human Development, Inc.; SEIU Local 668 (the Pennsylvania Social Services Union); Coalition Against Hunger; AIDS Law Project of Pennsylvania, HIV Policy Collaborative of Pennsylvania; COMHAR, Inc.; Housing Alliance of Pennsylvania; Women’s Law Project; Philadelphia Coalition; Ethical Humanist Society of Philadelphia; and Common Cause of Pennsylvania.

These 15 organizations and their members have a direct and substantial interest in a transparent and deliberative legislative process. They represent diverse constituencies within the Commonwealth of Pennsylvania that are harmed when the Pennsylvania General Assembly enacts legislation in violation of constitutional legislative due process requirements. This brief challenges not the substance of Act 2012-80 but rather the procedure by which it was adopted.

“The constitutional right of the people to have the Legislature act in accordance with the constitution is the issue in this case.”¹ Article III of the Pennsylvania Constitution—entitled “Legislation”—requires the General Assembly to follow certain procedures when passing laws. These constitutional steps in enacting legislation have been called a “due process of lawmaking”² that

¹ *Anderson v. Oakland County Clerk*, 353 N.W. 2d 448, 449 (Mich. 1984).

² Hans Linde, *Due Process of Lawmaking*, 55 NEBRASKA L. REV 197 (1976). 11

is meant to guarantee that the method of enacting legislation is deliberative rather than hasty, open to the public and legislators rather than secretive, and orderly rather than haphazard and unpredictable.³ The manner in which HB 1261 was passed, becoming Act 2012-80, violated all of these mandatory, fundamental constitutional principles.

The facts showing how Act 2012-80 became law are undisputed. They appear in the legislative history of the law at issue, Act 2012-80, as set out on the General Assembly's website⁴ and the legislative journals.⁵ They are matters of public record and proper subjects of judicial notice. *Pennsylvania School Boards Assn. v. Commonwealth Assn. of School Administrators*, 805 A.2d 476, 484, 569 Pa. 436, 449-450 (Pa. 2002).

Amici will set out the specific relevant facts in the various parts of their arguments in this brief. They rely also on Petitioners' Petition for Review filed with this Court on October 1, 2012, and Petitioners' Brief in Support of Petitioners' Application for Special Relief in the Nature of a Preliminary Injunction

³ Robert F. Williams, *State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement*, 48 U. PITT. L. REV. 797, 798 (1987) [hereinafter *Williams, Legislative Procedure*].

⁴ See, <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2011&sind=0&body=H&type=B&BN=1261>

⁵ The House Journal can be accessed at <http://www.house.state.pa.us/index.cfm> (link for House Legislative Journals – Transcripts of Floor Action). The Senate Journal can be accessed at <http://www.pasen.gov/index.cfm> (at the link for Senate Legislative Journals – Transcripts of Floor Action.).

filed with this Court on October 1, 2012, incorporated here by reference. These undisputed facts show that:

- The original purpose of HB 1261, PN 1385—a brief, uncontroversial three-page bill requiring a person to apply for public assistance in the person’s county of permanent residence—was substantially changed in its passage through the General Assembly.
- The final bill which became Act 2012-80 had multiple, unrelated subjects which involved six different major Articles of the Public Welfare Code and three different Titles of the Pennsylvania Statutes.
- The final bill was not considered by either chamber of the General Assembly on three different days.
- The final bill resulted in historic, far-reaching, fundamental changes in a wide variety of programs within the Pennsylvania Department of Public Welfare (DPW), a department which accounts for 40% of the entire state budget.
- The final bill was not available and had never been seen by any member of the general public or by most legislators until the day before the Governor signed it, on the very last day and in the waning minutes of the legislative session.
- The original purpose of HB 1261, PN 1385 was accomplished in separate legislation enacted a full year before the final bill that was enacted as Act 2012-80.

ARGUMENT

I. **LONG-ESTABLISHED CONSTITUTIONAL PROVISIONS MANDATE A DUE PROCESS OF LAW-MAKING, WHICH REQUIRES OPENNESS, DELIBERATION, REGULARITY, AND ACCOUNTABILITY IN THE ENACTMENT OF LAWS.**

Ever since there have been representative governments, there have been concerns about whether and in what manner the representatives are doing the people's business.⁶ Some of these concerns go back as far as the time of the Romans, where the single-subject rule apparently originated, to prevent "crafty lawmakers" from the "nefarious practice" of "harnessing up" an unpopular provision with one which was more favored.⁷

These same concerns about a fair, rational, open, and coherent legislative process were in evidence in colonial Pennsylvania and are relevant to the questions at hand.⁸ The "Fundamental Constitutions," one of William Penn's

⁶ "The question which disturbs all thoughtful men is how the . . . government of the people is to be regulated and controlled." Samuel Dickson, *The Development in Pennsylvania of Constitutional Restraints upon the Power and Procedure of the Legislature*, 2 PA. BAR REPORT at 4 (1896) (also published at 4 AM. LAW. 297 (1896)). Dickson was president of the Pennsylvania Bar Association at the time.

⁷ Michael D. Gilbert, *Single Subject Rules and the Legislative Process*, 67 U. PITT. L. REV. 803, 811 (2006). See also, Millard H. Rudd, *No Law Shall Embrace More Than One Subject*, 421 MINN. L. REV. 389 (1958); M. Albert Figinski, *Maryland's Constitutional One-Subject Rule: Neither a Dead Letter Nor An Undue Restriction*, 27 U. BALT. L. REV. 363 (1998).

⁸ ROSALIND BRANNING, PENNSYLVANIA CONSTITUTIONAL DEVELOPMENT at 1 (1960) (hereinafter BRANNING). ("Certainly the experience of Pennsylvania under its colonial frames of government. . . contributed markedly to subsequent constitutional developments during Pennsylvania's statehood. . . particularly the political and social ideas of the Great Proprietor," William Penn). See also, THOMAS R. WHITE, COMMENTARIES ON THE CONSTITUTION OF PENNSYLVANIA at xvii-14

earliest plans for governing Pennsylvania, included provisions that required the representative Assembly to consult and debate in the enacting or abolishing of laws, so that matters would be “fully considered” and given “due consideration” before being adopted.⁹ In that and later constitutions, Penn included other provisions that mandated notice and time for consideration and deliberation.¹⁰

Similar provisions in the first constitution of the Commonwealth dealt with safeguarding the legislative process against corruption and underhanded legislation. The Constitution of 1776 contained several provisions meant to ensure an open, accountable, and deliberative legislative process: 1) a two-thirds quorum requirement; 2) a requirement of open sessions; 3) a weekly publication of the proceedings with a tally of the final vote; and 4) a formal enacting clause

xxvii (historical introduction) [hereinafter WHITE]. *See generally*, John L. Gedid, *History of the Pennsylvania Constitution* in THE PENNSYLVANIA CONSTITUTION: A TREATISE ON RIGHTS AND LIBERTIES § 3.1 et seq. (Gormley, et al., editors, 2003) [hereinafter *Gedid*].

⁹ WILLIAM PENN AND THE FOUNDING OF PENNSYLVANIA, 1680-1684, A DOCUMENTARY HISTORY at 99,101 (Jean R. Soderlund, ed., 1983) [hereinafter *Soderlund*].

¹⁰ Penn inserted measures that were intended to make the legislative process open, deliberative and regularized. One required time between introduction of bills and voting: “[U]nless it be in a case of such imminent and immediate danger as will not give a day to consider, no business of state in Assembly or Council shall be resolved the day it is proposed; to the end, time may be given to learn all that may be known about the matter in hand, in order to a clear and safe determination. Soderlund, *supra* n. 9, at 103; 127. Another required general publication in advance of the legislative meeting: “[A]ll bills shall be published and affixed to the most noted places in the inhabited parts [of the province] thirty days before the meeting of the General Assembly, in order to the passing of them into laws, or rejecting of them as the General Assembly shall see meet.” *Id.* at 124, 268. Another provided for at least a nine-day delay between the reading of a bill and voting on it. *Id.* at 126, 269.

for all laws.¹¹ To ensure that legislators had time to consider the bill before voting, the 1776 Constitution provided for delay of final passage of a bill until the next session, except in an emergency.¹² Additionally, all bills were required to be printed for consideration by the people themselves before their third and final reading. *Id.* For a time, at least, people were satisfied with the legislative branch, which “was seen as the people’s servant and salvation” from abuses of power by the executive branch.¹³

This dalliance did not last long. “Things turned full circle in the ensuing decades and [p]eople became disillusioned with legislative supremacy because of improprieties and abuses,” including the “legislature overstepping its bounds and taking actions which were improper under the Constitution.” Marritz, *Open Courts*, *supra* n. 13, at 472. By the mid-1800s, people found that existing constitutional safeguards were not enough to ensure a democratically accountable government. There were a number of amendments in the 1850s, the character of which showed “the power of the legislature was again becoming dangerous.” WHITE, *supra* n. 8, at xxvi. In 1864, a “further limitation was placed upon its power by an amendment providing that no bill should be passed

¹¹ See Michael E. Libonati, *State Constitutions and Legislative Process: The Road Not Taken*, 89 B.U. L. REV. 864, 865 (2009) (outlining early procedural safeguards); BRANNING, *supra* n. 8, at 14

¹² BRANNING, *supra* n. 8, at 14; Williams, *Legislative Procedure*, *supra* n. 3, at 801 n. 18. Dickson, *supra* n. 6, at 7-8.

¹³ Donald Marritz, *Courts to be Open; Suits Against the Commonwealth* in *THE PENNSYLVANIA CONSTITUTION: A TREATISE ON RIGHTS AND LIBERTIES* at 471 (2004) [hereinafter *Marritz, Open Courts*].

containing more than one subject, which should be clearly expressed in its title.”

*Id.*¹⁴

These constitutional amendments proved insufficient to address the complaints about the legislature, which “became more insistent than ever before.” WHITE, *supra* n.8, at xxvi. As a result, a constitutional convention was convened in 1872-73, “to reform corrupt legislative behavior”¹⁵ which had taken the form of 1) special laws, favoring particular people, entities, and localities, as opposed to general laws, and 2) “evil practices in enactment of legislation that were the order of the day”¹⁶—including “incorporating into one bill a variety of distinct and independent subjects. . .and intentionally disguising the real purpose of the bill by a misleading title.” *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 586, 575 Pa. 542, 574 (Pa. 2003) (citations omitted).¹⁷ Importantly, the addition of what is now Article III, Section 1’s ban on alteration of bills so as to

¹⁴ See also, BRANNING, *supra* n. 8, at 32; CHARLES R. BUCKALEW, AN EXAMINATION OF THE CONSTITUTION OF PENNSYLVANIA (1883) at 67-69; Rosalind Branning, *A History of Pennsylvania Constitutions*, REFERENCE MANUAL NO. 3, THE PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968 at 9; *Provident Life & Trust Co. v. Hammond*, 79 A. 628, 631-32, 230 Pa. 407, 418 (Pa. 1911).

¹⁵ *Pennsylvanians Against Gambling Expansion Fund v. Commonwealth*, 877 A.2d 383, 394, 583 Pa. 275, 293 (Pa. 2005) [hereinafter *PAGE*].

¹⁶ Donald Marritz, *Making Equality Matter (Again): The Prohibition Against Special Laws in the Pennsylvania Constitution*, 3 Widener J. Pub. L. 161, 192 n. 145 (1993) (citations omitted) [hereinafter *Marritz, Special Laws*]. See also, Gedid, *supra* n. 8 at 61-69; BRANNING, *supra* n. 8, at 37, *et seq.* (Pennsylvania’s Reform Constitution of 1874).

¹⁷ Although Pennsylvania was at the epicenter of this phenomenon, these corrupt legislative practices were a problem in many states. Marritz, *Special Laws*, *supra* n. 16, at 187 n. 122, n. 125; G. ALAN TARR, UNDERSTANDING STATE CONSTITUTIONS 119 (1998).

change their original purpose reflected the view of the Convention and the people that the 1864 single-subject limitation needed to be bolstered. It was aimed at a different, legislative process, problem.

The question on people's minds was what could be done "for the protection of the people and their property against their representatives in whom is vested the legislative power of the Commonwealth." Dickson, *supra* n. 6, at 6. The result was the reform of the *process* of legislation by the 1873 Constitutional Convention, by the enactment of provisions that were "designed to ensure open and honest government" and implement a "broad vision of deliberative democracy applicable to each phase of the lawmaking process from drafting legislation to final passage." Libonati, *supra* n. 11, at 866. The provisions in Article III "seek generally to require a more open and deliberative state legislative process, one that addresses the merits of legislative proposals in an orderly and rational manner." Williams, *Legislative Procedure*, *supra* n. 3, at 798

The presence of these legislative due-process provisions in Article III "exhibits a profound distrust of the Legislature." WHITE, *supra* n. 8, at 2. The provisions were

animated with a spirit of bitter hostility to the Legislature. . . .[and reflect] the dominant thought of the Convention. . . that its energies should be given to the task of guarding the people of Pennsylvania against their own Legislature. . . .Whatever wisdom, learning, ingenuity and experience could suggest to prevent the abuse of the discretion, necessarily confided to the Legislature of the Commonwealth, was adopted. No power was given that could safely be withheld, and no reasonable regulation of its use was omitted.

Dickson, *supra* n. 6, 2 PA. BAR REPORT at 28, 31, 35 (1896)

There is no question that Article III “was framed at a time when there was a great distrust of state legislatures and the general tenor of the Legislation Article is one of restriction of legislative power.”¹⁸

It is against this historical background that the Commonwealth Court should consider the case at bar and with the intent of the voters who approved Article III foremost in its mind. It is “the duty of the courts to . . . interpret the constitution as to carry out the intention of the people who adopted it. . . .” WHITE, *supra* n. 8, at 13. The “fundamental rule of construction which guides [the Supreme Court] is that the Constitution’s language controls and must be interpreted in its popular sense, as understood by the people when they voted on its adoption.” *Ieropoli v. AC&S Corp.*, 842 A.2d 919, 925, 577 Pa. 138, 148 (Pa. 2004).¹⁹

All of the sources, including scholarly articles and the decisions of the Supreme Court, are clear that it is the intent of *the people*, the citizens who adopted the legislative due process provisions of Article III, that matters most in seeking the meaning of the provisions and how to enforce them. Indeed, under

¹⁸ William F. Schulz, Jr., and David Stahl, *The Enactment and Construction of Statutes in Pennsylvania*, preceding 46 P.S. § 1 (1952 ed.) at 6.

¹⁹ “Constitutional provisions. . . must be given the ordinary, natural interpretation the ratifying voter would have given them.” *Commonwealth ex rel. Paulinski v. Isaac*, 397 A.2d 760, 765, 483 Pa. 467, 475 (Pa. 1979). A “constitutional provision is to be interpreted insofar as possible in terms of its spirit and intention [and] in its popular sense as understood by the people who adopted it” pursuant to Article IX of the instrument itself. *Stilp v. Commonwealth*, 974 A.2d 491, 495, 601 Pa. 429, 436 (Pa. 2009). See also, Marritz, Special Laws, *supra* n. 16, at 204 n. 196.

our state constitution “[a]ll power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness.”²⁰

Under our representative government, one of the “high powers which [the people] have delegated is the legislative power²¹—the power to make laws—pursuant to Article II, section 1. But the legislative due process provisions of Article III make it clear that the legislative power so delegated is a “binding code of [procedural] particulars and details” by which “the people voluntarily tied their own hands, in the persons of their legislative agents. . . .” *Commonwealth ex rel. Elkins v. Moir*, 49 A. 351, 357, 199 Pa. 534, 553 (Pa. 1901).

“Assuming, what was the settled law, that the general assembly had all legislative power not expressly withheld from it in the organic law, [the people] set about embodying in that law prohibitions which should in the future effectually prevent the evils the people complained of. . . .That constitution [of 1874] with [Article III] the most prominent feature of it, was adopted by an unprecedented majority on a direct vote. . . .” *Perkins v. Philadelphia*, 27 A. 356, 360, 156 Pa. 554, 565 (Pa. 1893). This “binding code of particulars” in Article III guaranteed a rational, open, and deliberative legislative process, one that was called a “new departure in the history of American law.” *Id.*

²⁰ Pennsylvania Constitution, Article I, section 2.

²¹ Pennsylvania Constitution, Article I, section 25.

II. THE LAW-MAKING PROVISIONS SET OUT IN ARTICLE III REFLECT THE FACT THAT “AMERICAN FREEDOM IS IN NO SMALL MEASURE, THE HISTORY OF PROCEDURE.”²²

There is sometimes a tendency to denigrate procedure, to call it a mere technicality, a needless barrier to getting things done more quickly and efficiently.²³ Our citizens and courts see Article III of our state constitution differently, noting the “these mandates [have] survived the more recent constitutional revisions, [and] they continue to reflect important policies relating to the nature of the deliberative process.” *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 586, 575 Pa. 542, 574 (Pa. 2003); *Sernovitz v. Dershaw*, 2012 Pa. Super 248, ___, 2012 Pa. Super. LEXIS 3487 –pg 11-12 (Pa. Super. 2012).²⁴ “While to some the requirement[s] of Article III] will seem to be cumbersome in nature,

²² *Malinski v. New York*, 324 U.S. 401, 414 (1945) (Frankfurter, J., concurring).

²³ See, e.g., William A. Schnader, *Dead Wood in the Pennsylvania Constitution*, 4 TEMPLE LAW QTRLY. 399, 400 (1952) (“restrictions on the power of the legislature. . . could and should be omitted if the Constitution were to be drafted today.”); Williams, *Legislative Procedure*, *supra* n. 3 at 799 (the “continued inclusion of procedural restrictions in modern state constitutions has been widely criticized”).

²⁴ “[B]ecause these limits have in effect been re-adopted in contemporary state constitutions and continue to reflect important policies relating to the nature of the deliberative process in state legislatures, they should be respected and complied with by the legislative, executive, and judicial branches of government.” Williams, *Legislative Procedure*, *supra* n. 3 at 800. Accord, Martha J. Dragich, *State Constitutional Restrictions on Legislature, Rethinking the Analysis of Original Purpose, Single Subject, and Clear Title Challenges*, 38 HARV. J. LEGIS. 103, 104 (2001) [hereinafter *Dragich*]. (“Constitutional restrictions on legislative procedure have survived and have been re-adopted in modern constitutions despite criticism that they allow the invalidation of legislation on ‘technical’ grounds.”)

[they] not need be when handled routinely. More importantly, the constitutional provision[s are] there to be observed and obeyed—not ignored.”²⁵

The constitutional rules of legislative procedure are a “blueprint for the due process of deliberative, democratically accountable government’.... [They] implement the democratic value of impartiality, accountability, transparency, and deliberation” and enhance informed participation in the legislative process by elected officials and the public alike.²⁶ The fact that these are constitutional rules is especially significant: “Constitutions do not usually undertake to prescribe mere rules of proceeding, except when such rules are looked upon as essential to the thing to be done; and they must then be regarded in light of the limitations upon the power to be exercised.”²⁷ The “language of Article III . . . as well as the circumstances surrounding its adoption clearly reflects its mandatory quality. It was not the intention . . . to merely establish general guidelines but rather it was intended to articulate a mandatory directive relating to the manner in which the General Assembly would be required to pass legislation.” *Consumer Party*, 507 A.2d at 334, 510 Pa. at 179. This is in harmony with a fundamental aspect of a legal system—“the notion of a rule defining what must be done to legislate; for it is only in conforming with such a rule that legislators have an official capacity and

²⁵ *Hoover v. Board of Commissioners*, 482 N.E. 2d 575, 582 (Ohio 1985) (Holmes, J., concurring).

²⁶ *Libonati*, *supra* n. 11, at 865, 868.

²⁷ THOMAS M. COOLEY, TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION at 93 (1868), cited in *Consumer Party v. Commonwealth*, 507 A.2d 323, 333, 510 Pa. 158, 179 (Pa. 1986).

a separate personality to be contrasted with themselves as private individuals . . . [These rules] specify the way in which the primary rules may be conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined. . . . [They form part of] the heart of a legal system . . . ”²⁸

As Judge Cooley said almost 150 years ago,

not only is it essential that the will of the law-makers be expressed, but it is also essential that it be expressed in due form of law; since nothing is law simply and solely because the legislators will that it shall be, unless they have expressed their determination to that effect, in the mode pointed out by the instrument which invests them with the power, and under all the forms which that instrument has rendered essential.

Cooley, *supra* at 27, at 130.

All of this evidences the belief—enshrined in our present state constitution—that “[l]awmakers must themselves be governed by law, else they would in confusion worse confounded quickly come to grief.”²⁹ History has given us many striking examples of “what befalls lawless lawmakers and of the harm they may do.” *Id.* To counter such problems, we have adopted a “law and

²⁸ H.L.A. HART, *THE CONCEPT OF LAW* at 78, 92, 95 (1961). *See also*, George Kateb, *Remarks on the Procedures of Constitutional Democracy*, in *NOMOS, CONSTITUTIONALISM* at 215, 217 (Pennock and Chapman, eds.) (1979) (legal procedures which prescribe regularity have “intrinsic moral value” and are the “soul of constitutional democracy.”); David Resnick, *Due Process and Procedural Justice*, in *NOMOS, DUE PROCESS* at 221, 207 (Pennock and Chapman, eds.) (1977) (justice requires the right to have something determined according to a prescribed method); T.M. Scanlon, *Due Process*, *NOMOS, DUE PROCESS* at 95, 96, 97 (public officials are only empowered to act “*provided* certain specified conditions are met” including making decisions according to “publicly known and reasonable specific rules” that result in “decisions reasonably in accord with the rights and wishes of those governed.” (*emphasis in original*)).

²⁹ ROBERT LUCE, *LEGISLATIVE PROCEDURE: PARLIAMENTARY PRACTICES AND THE COURT OF BUSINESS IN THE FRAMING OF STATUTES 1* (1922).

practice of legislative assemblies” which “make it possible under a representative form of government for the will of the people to be ascertained” through rules of procedure.

Accurate expression of the majority will is only to be secured by adequate debate, conducted with freedom enough to permit every useful consideration of ideas and opinions, and with deliberations enough to exclude as far as practicable the untoward influences of precipitancy and passion. To this end there must be different stages of consideration and the opportunity for reconsideration. There must be protection against surprise and against fraud. . . . [such] that order, decency, and regularity. . . should be preserved....”

Id. at 2, 3.

Rules of legislative procedure also help protect minority rights. “It is the duty of the minority to insist upon discussion, consideration, publicity, openness, to bring out and keep in full sunlight of public knowledge the conduct of public business....” *Id.* at 7.

All of these values and concerns are evident in the instant case. These important, long-standing principles were violated in this case by the way in which HB 1261 became Act 80. During the course of its passage through the General Assembly:

- The original purpose of HB 1261 was radically changed, at the very last minute.
- It passed the House as a bill with a narrowly-focused single subject and ended up having multiple, unrelated subjects with broad and historic effects.
- The final version of the bill was not made public until one day before it

became law.

- The final bill passed both houses and was signed by the Governor, without ever having been referred to a committee or considered by either house on three days.
- The period from introduction to enrollment of the final bill was less than 48 hours.

Article III requires an “open and deliberative state legislative process, one that addresses the merits of legislative proposals in an orderly and rational manner.” Williams, *Legislative Procedure*, *supra* n. 3, at 798. It implements a “broad vision of deliberative democracy applicable to each phase of the lawmaking process from drafting legislation to final passage” through a procedure that mandate, “define[s] and implement[s] the democratic values of impartiality, accountability, transparency, and deliberation. . . .” Libonati, *supra* n. 11, at 868. The procedure by which HB 1261 became Act 80 violated every one of these constitutional provisions created by Article III—a “constellation of constitutional requirements that govern various aspects of the legislative enactment procedure. . . . [T]hese mandates retain their value even today by placing certain constitutional limitations on the legislative process.” *PAGE*, 877 A.2d at 394, 583 Pa. at 293.

III. THE ARTICLE III LEGISLATIVE PROCEDURE REQUIREMENTS ARE NOT ONLY ROOTED IN THE PAST REALITIES OF PENNSYLVANIA CONSTITUTIONAL HISTORY; THEY ALSO REMAIN INDISPENSIBLE TO THE PROPER AND CONSTITUTIONAL FUNCTIONING OF THE MODERN PENNSYLVANIA LEGISLATURE.

As the Supreme Court pointed out in *PAGE*, 877 A.2d at 394, 583 Pa. at 293, the legislative due process requirements of Article III “retain their value even today.” This case and others which have come before Pennsylvania courts in recent years testify to the continuing need to monitor and sometimes rein in the General Assembly, which is a valuable part of our constitutional representative democracy—but not the only part and not the most important one.

Article I, section 2, of the Pennsylvania Constitution makes clear that it is the people of the state who retain ultimate power to define our state government “in such manner as they may think proper.” Although the people “have delegated” certain “high powers” to other persons and institutions,³⁰ including the legislative power to the General Assembly³¹—that delegation of power was made subject to the restrictions in Article III at issue in this case. Closely related to these provisions in our Declaration of Rights is another of those “general, great and essential principles of liberty and free government” which our Constitution “recognized and unalterably established”³² in our first constitution of 1776 and which continues in existence today: that:

³⁰ Pennsylvania Constitution, Article I, section 25.

³¹ Pennsylvania Constitution, Article II, section 1.

³² Pennsylvania Constitution, Preamble.

[t]he citizens have a right . . . to apply to those invested with the powers of government for redress of grievances and for other proper purposes, by petition, address or remonstrance.³³

In a very real sense, the Article III legislative procedure requirements can be seen as *facilitating* and *implementing* this constitutional right of citizens to be heard by their elected agents, their representatives, “by petition, address or remonstrance”—including the right to comment on pending legislation.

Given all this, the Article III constitutionally-required and judicially-enforceable set of mandatory legislative procedures for the enactment of a valid law in the Commonwealth of Pennsylvania remains indispensable in modern times, when government affects so many aspects of our lives and has become so much bigger, more expensive, and more complicated. Pennsylvania’s Legislature is the largest full-time state legislature in the United States. In addition, state legislatures like Pennsylvania’s have become substantially more professional in recent years. Neil Malhotra, *Government Growth and Professionalism in U.S. State Legislatures*, 31 LEG. STUD. Q. 563 (2006). It is also very active. During the 2009-2010 session of the General Assembly, over 2,700 bills were introduced in the House³⁴ and over 1,600 bills were introduced in

³³ Pennsylvania Constitution, Article I, section 20.

³⁴ See, <http://www.legis.state.pa.us/cfdocs/legis/bi/BillIndx.cfm?sYear=2009&sIndex=0&bod=H#bill>

the Senate.³⁵ Many of these went through an extensive process of amendment, with many printer's numbers. It is a daunting job even for legislators to keep track of all this, even with their professional staffs. How much more difficult a job it is for everyone else.³⁶

The matters considered in state legislatures are much more relevant and important to people than the more-publicized issues in Washington D.C. This is because most issues affecting people's daily lives are reserved for state law under our federal system. So, not only has the scope of governmental activity expanded, but much of this has taken place in the *states*, and *state* legislatures such as Pennsylvania's.

The task of keeping informed about such a wide range of matters being considered by the Pennsylvania legislature, and, in turn, providing information to legislators, during its year-round sessions is formidable. For the public, dealing with a more professionalized state legislature requires more sophistication and information availability than is required to deal with a non-professionalized state legislature. The challenges facing groups like Amici, who do not have the financial means of having a cadre of full-time representatives in Harrisburg are even greater. Under these circumstances, a legislative "process" such as that

³⁵ See, <http://www.legis.state.pa.us/cfdocs/legis/bi/BillIndx.cfm?sYear=2011&sIndex=0&bod=S#bill>

³⁶ "Political processes can be opaque, and citizens lack the time and attention for careful oversight. Any method of making monitoring easier should lead legislators to act in the public interest and pass better laws." Gilbert, *supra* n. 7, at 845.

utilized to “enact” Act 2012-80, essentially in a 48-hour period, is completely unacceptable as a constitutional matter in the Commonwealth of Pennsylvania.

Over the years since the adoption, in 1864 and 1874, of the relevant legislative procedure requirements in Article III of the Pennsylvania Constitution the scope of state governmental activities has expanded exponentially. There is simply much more activity in the Legislature than there used to be. At the same time, the number of organizations interested in the actions of state legislatures in Pennsylvania and across the country has also grown exponentially. Virginia Gray and David Lowery, *Trends in Lobbying in the States*, THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 2003 257, 257-260 (2004). Furthermore:

Most interests lobbying at the state level are indigenous to the state. Constituents are exercising their right to petition their representatives, even if through an institutional lobbyist. And, our research shows, as the number of registered interests increases, there are relatively more local interests represented. Lobbying techniques may be diffusing across state lines and multistate firms may be expanding, but an extensive multistate lobbying presence is rare. Most of the registered interest organizations in a state are unique to that state. Interest politics is still local.

Id. at 261. See also RONALD J. HREBENAR AND BRYSON B. MORGAN, LOBBYING IN AMERICA 13-15 (2009) (the number of interest groups increased during the twentieth century); ALAN ROSENTHAL, THE THIRD HOUSE: LOBBYISTS AND LOBBYING IN THE STATES 3-4 (2d. Ed. 2001).

State government is larger, more complex, and more professional, and professional lobbying is a substantial industry in its own right. Along with these developments, there has also been a dramatic increase in the practice of grassroots lobbying, which represents a substantial portion of the activities of the

Amici. This form of lobbying involves contacts by many ordinary citizens with their legislators through letters, phone calls, and, increasingly, email. Daniel E. Bergan, *Does Grass Roots Lobbying Work?: A Field Experiment Measuring the Effects of an e-Mail Lobbying Campaign on Legislative Behavior*, 37 AMERICAN POLITICS RESEARCH 327 (2009); ROSENTHAL, *supra*, at 153-71. A recent study has indicated that this form of lobbying does, in fact, have a measurable effect on state legislatures. *Id.*

Obviously, for this sort of interaction between citizens and their legislators—the very sort guaranteed by the Right of Petition in Article I, sec. 20—it is imperative that there be significant transparency, exchange of information, and time for deliberation and consideration—none of which were available during the process of enactment of Act 2012-80.

The undisputed facts showing the history of the enactment of Act 2012-80 speak for themselves.³⁷ Act 2012-80 was basically 48-hour legislation about which the public knew absolutely nothing until the very last moment, giving them insufficient time to inform themselves about the contents of the bill or tell their representative, or even the Governor, their opinions about it. There is a strong inference that the “process” followed for Act 2012-80 was adopted intentionally to eliminate Pennsylvania citizens’ right to petition and to due process of

³⁷ The legislative history of Act 2012-80 is set out on the General Assembly’s website at http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2011&sind=0&body=H&type=B&bn=1261.

lawmaking.³⁸ Whether the constitutional wrongs were intentional or not, however, is irrelevant. As explained in more detail below, these constitutional violations clearly existed. The Commonwealth Court is one of the few protectors of those fundamental rights.

As it turned out, the bill passed by the slimmest majority permissible under the Constitution. One more “nay” vote or abstention would have meant that the bill would not have passed.³⁹ It does not require a stretch of imagination to think that the outcome may well have been different if the legislators’ questions had been answered and if they had had a reasonable time to learn more about and deliberate on the bill.

In light of these modern-day realities, which add to the historical reasons for the legislative procedure requirements of Article III, what should Pennsylvania citizens expect from their Legislature? In the words of the leading expert on state legislatures, Dr. Alan Rosenthal:

One of the major roles of a legislature is representation—representing various constituencies, mainly people in each lawmaker’s electoral district, but also organized groups and individuals elsewhere in the state. The question is, how well does the legislature perform its representational tasks?

³⁸ There is a continuing “problem of legislative misbehavior, which consists of actual or perceived self-serving legislative conduct, coupled with legislative action that keeps legislative behavior invisible to public scrutiny.” John Martinez, *Rational Legislating*, 34 STETSON L. REV. 547, 549 (2005). Legislative “chicanery” remains alive and well. Figinski, *supra* n. 7, at 364-65.

³⁹ According to Article III, Section 4, “[n]o bill shall become a law, unless on its final passage. . . a majority of the members elected to each House is recorded thereon as voting in its favor.” There were 203 members of the House at the time the bill was considered. Passage therefore required at least 102 votes, the precise number that it garnered.

* * * *

Fourth, the legislature has to ensure that citizens, as well as groups, have access—access to members, to committees, and to the general process. The legislature must be open and provide information on agendas and proceedings. Legislatures' outreach efforts, including C-span, help.

* * * *

Sixth, while deliberation involves the exchange of ideas, building consensus involves a more material exchange. It depends on the willingness of opposing sides to sit down at a table together and negotiate their differences. Generally, that means dealing, trading and compromise, so that as many participants as possible buy into a settlement. The overwhelming majority of laws enacted by a legislature are settled by some process of consensus building.

Alan Rosenthal, *The Good Legislature*, STATE LEGISLATURES 48, 48, 49, 50 (July/August 1999). (NATIONAL CONFERENCE OF STATE LEGISLATURES MAGAZINE).

Obviously, none of these democratically-desirable conditions were remotely possible under the process followed with Act 2012-80.

IV. THE PROCEDURE BY WHICH ACT 2012-80 WAS ENACTED VIOLATED THE DUE PROCESS OF LAW-MAKING REQUIREMENTS OF ARTICLE III OF THE PENNSYLVANIA CONSTITUTION.

This case concerns how a bill making sweeping and historic amendments to the state welfare code (Title 62) and mental health code (Title 50) became law in a manner which violated several sections of the Pennsylvania Constitution, Article III, sections 1 through 4, which establish a due process of lawmaking that guarantees legislators and citizens the right to a process which is open and deliberative.

Section 1 – Passage of law.

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 – Form of bills.

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

Section 4 – Consideration of bills.

Every bill shall be considered on three different days in each House. . . .

These keystones of Article III define the concept of due process: a deliberative procedure in which all parties have advance notice of important matters and a reasonable opportunity to be heard, prior to the passage of a law. They are a “constellation of constitutional requirements”⁴⁰ that establish a “blue print for due process of deliberative, democratically account government”, that were also designed to enhance public participation. Libonati, *supra* n. 11, at 865, 866. They address distinct but related concerns⁴¹ and “Article III’s general purpose is ‘to place restraints on the legislative process and encourage an open, deliberative and accountable government.’” *City of Philadelphia v. Commonwealth*, 838 A.2d at 585, 575 Pa. at 573 (Pa. 2003).

Those core values were violated in this case during the passage of Act 2012-80. Legislators did not have adequate notice or sufficient opportunity to

⁴⁰ PAGE, 877 A.2d at 394, 583 Pa. at 293.

⁴¹ Dragich, *supra* n. 24, at 117. “Each provision has a purpose ‘designed to engender a responsible legislative process worthy of the public trust.’” *State v. ALIVE Voluntary*, 606 P.2d 769, 772 (Alaska 1980).

deliberate about the bill. Citizens affected by and interested in the law—including Amici—did not have adequate notice of its contents or any opportunity to be heard, either in support of or opposition to a law whose many and varied effects included the termination of the General Assistance program which provides minimal but vital cash assistance to over 60,000 Pennsylvanians who are unable to work.

There was virtually no notice to any citizens—including Amici—about this completely new and unexpected version of HB 1261—made public for the very first time one day before it was signed by the Governor. There was a patently inadequate opportunity for anyone—whether legislators, the general public, or entities like Amici—to see, study, deliberate about, and then let their opinions be known about the substance of this law. Act 80 was passed in a truncated procedure that took place over a period of less than 48 hours, at the very end of a legislative session. The version of the HB 1261 that became Act 2012-80 (1) radically altered the original purpose of the bill that had passed the House; (2) had a multiplicity of diverse, unconnected subjects, unlike the single, limited subject of the original bill; and (3) was considered on only one day by both the Senate and House.

Amici contend that the germaneness test under the Article III, Section 1 alteration-of-original purpose limitation must be significantly different than that applied under the Article III, Section 3 single-subject limitation. The Supreme Court recognized the distinction in *PAGE*, 877 A.2d at 408, 583 Pa. at 317, but it did not fully apply the distinct tests or articulate the rationale for separate

analysis. If the differing concerns reflected in these two limits on the Legislature are not fully recognized by the Commonwealth Court, together with the fact that what is now Section 1 was added a decade later to bolster Section 3, it will improperly conflate their separate limits and render one of them superfluous. In other words, it is arguable (although definitely not conceded) that a bill like Act 2012-80 *drafted in the first instance* to contain the variety of subjects included in the final version of HB 1261, referred to committees in both houses, read three days in each house, and fully debated on the floor of both houses *might* meet the test of germaneness under the Section 3 single-subject limit. The argument would be that all of the subjects were germane to the subject of public welfare. *But see, PAGE*, 877 A.2d at 395-96, 583 Pa. at 295-96. The focus of this test is on the *content* of the final, enacted bill.

Under this scenario (which decidedly did not take place), Amici and their members would have had opportunities to express their views about the wide range of topics (“petition” their representatives), suggest amendments, contact the press, testify in committee hearings, push for a conference committee, and seek to influence the votes of legislators. Still, the problem of considering only distantly-related provisions in one bill would have been present, and so Amici contend that even this scenario would have violated the Section 3 single-subject limit.

Of course, the opposite of this scenario took place in the legislative “process” leading to Act 2012-80. The focus of the Section 1 alteration limit, added in 1874 to bolster the 1864, Section 3 single-subject limit, is on *process*,

not final content. All of the unrelated provisions were added at the last minute to a long-dormant and forgotten bill, resulting intentionally or unintentionally in the denial of all of the opportunity noted above for Amici and their members to utilize their *rights* to the due process of lawmaking.

Therefore, the germaneness test applied to alteration, process challenges should be different from that applied to single-subject, content challenges. In single-subject challenges, the varied provisions of the final bill are compared to each other for the determination of germaneness. In alteration challenges, by contrast, the original purpose (not subject) of the bill is compared with the altered, final purpose (not subject) of the bill.

The Supreme Court, prior to its 2005 decision in *PAGE*, did conflate the germaneness tests for Article III sections 1 and 3. In *PAGE*, however, the Supreme Court began to recognize this oversight:

Upon closer inspection of our now close to twenty-year-old decision, we find that the analysis offered in *Consumer Party* resembles the analysis set forth for reviewing challenges under *Article III, Section 3* and fails to give full significance to the language employed in the constitutional provision itself - "change its original purpose." This verbiage certainly suggests a comparative analysis, that is, some form of comparison between an "original" purpose and a final purpose to determine whether an unconstitutional alteration or amendment has occurred so as to change the original purpose of the bill. It also suggests an aim broader than just ensuring that the title and contents of the final bill are not deceptive, but also includes a desire for some degree of continuity in object or intention. Accordingly, we believe that the language adopted by the conventioners, as well as their purpose in adopting *Article III, Section 1* counsel towards, and are best served by, an analytical construct that involves 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, 877 A.2d at 408, 583 Pa. at 317. See also Dragich, *supra* n. 24 at 130.

The Court went on to state, based on the “realities of the legislative process which can involve significant changes in legislation in the hopes of consensus” that “the original purpose must be viewed in reasonably broad terms.” There is simply no way, even under a “reasonably broad” view of the original purpose of HB 1261 (requiring people to apply for benefits in their home county) to encompass the wide-ranging unrelated purposes (not subjects) included in the final version of HB 1261. There is absolutely no evidence of “hopes of consensus” in the “process” leading to Act 2012-80.

Most astonishing of all, the original, limited, and uncontroversial purpose of the original HB 1261 (PN 1385) had already been fully accomplished one full year before this final version of HB 1261 (PN 3884) was introduced and enacted, by a provision in Act 2012-22. Act 2011-22 (H.B. 960), P.L. 89, § 3, approved June 30, 2011, eff. July 1, 2011. Certain members of the General Assembly were literally playing a shell game, using an empty, discarded version of HB 1261 to pass a completely new bill with an entirely different purpose from the original bill.

HB 1261, PN 3884, was a new bill, radically different from every prior version of HB 1261. The new version was required to have been considered specifically by both the House and Senate on three different days, under Article III, Section 4. The law on this point is clear. “An amended bill need not be referred to committee and considered on [three] separate days if the amendments are germane to, and do not wholly change, the general subject of

the bill.” *PAGE*, 877 A.2d at 410, 583 Pa. at 320. Stated differently, an amended bill *must be* considered on three different days where, as here, the Appellants have established a violation of Article III, Section 1 or 3. *Accord, Stilp v. Commonwealth*, 905 A.2d 918, 958-9, 588 Pa 539, 607; *Christ the King Manor v. Dep’t of Pub. Welfare*, 911 A.2d 624, 637, 2006 Pa. Commw. LEXIS 623 (Pa. Cmwlth. 2006), *aff’d*, 951 A.2d 255, 597 Pa. 217 (2008). Again, Amici contend that the standard of germaneness must be significantly stricter for Section 1 (alteration) than for Section 3 (single subject) for the reasons stated above.

This is no way to make law under any circumstances, but especially given the mandatory constitutional provisions in Article III.

CONCLUSION

The procedure by which Act 2012-80 was enacted violated important mandatory provisions of the Pennsylvania Constitution concerning how laws must be made. Act 80 was passed in a manner which involved haste, deception, lack of deliberation, and the lack of public notice and an adequate opportunity for citizens like Amici to be heard about the bill. The constitutional violations are patent and appear on the General Assembly's own website. Amici pray that the Commonwealth Court deny Respondent's preliminary objections and declare the act void.

Respectfully submitted,

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