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SUPREME COURT  
EASTERN DISTRICT

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**IN THE SUPREME COURT  
OF THE COMMONWEALTH OF PENNSYLVANIA**

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No. 14 EM 2015

COMMONWEALTH OF PENNSYLVANIA, Petitioner

v.

TERRANCE WILLIAMS, TOM WOLF, GOVERNOR OF THE  
COMMONWEALTH OF PENNSYLVANIA, Respondents.

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**BRIEF FOR *AMICI CURIAE*  
THE SPEAKER OF THE PENNSYLVANIA HOUSE OF  
REPRESENTATIVES AND THE PRESIDENT PRO TEMPORE OF THE  
SENATE OF PENNSYLVANIA IN SUPPORT OF THE POSITION OF  
PETITIONER COMMONWEALTH OF PENNSYLVANIA**

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Application for Extraordinary Relief Upon Grant of King's Bench Jurisdiction.

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**TABLE OF CONTENTS**

|   | <b><u>Page</u></b> |
|---|--------------------|
| TABLE OF AUTHORITIES.....   | ii                 |
| STATEMENT OF INTEREST OF <i>AMICI CURIAE</i> .....                        | 1                  |
| ARGUMENT.....   | 2                  |
| I.    INTRODUCTION.....   | 2                  |
| II.   SUMMARY OF GOVERNOR WOLF’S MORATORIUM.....                          | 3                  |
| III.  HISTORY OF ARTICLE IV, § 9 OF THE PENNSYLVANIA<br>CONSTITUTION..... | 5                  |
| A.  Pennsylvania Constitutional Convention of 1872-1873.....              | 6                  |
| B.  Article IV, § 9 Since the Convention.....                             | 12                 |
| IV.  MORGANELLI V. CASEY.....   | 13                 |
| CONCLUSION.....   | 15                 |

## TABLE OF AUTHORITIES

**CASES:** **Page**

Ieropoli v. AC&S Corp., 842 A.2d 919 (Pa. 2004)..... 6, 11

Mesivtah Eitz Chaim of Bobov, Inc. v. Pike Cnty. Bd. of Assessment Appeals, 44 A.3d 3 (Pa. 2012)..... 5

Morganelli v. Casey, 641 A.2d 674 (Pa. Commw. Ct. 1994) ..... 13, 14

Morganelli v. Commonwealth, 646 A.2d 744 (Pa. Commw. Ct. 1994) ..... 14, 15

Robinson Twp., Washington Cnty. v. Com., 83 A.3d 901 (Pa. 2013)..... 5

**STATUTES:**

42 Pa. C.S. § 9541 et seq. ..... 4

**CONSTITUTIONAL PROVISIONS:**

Pa. Const. art. II, § 9 (1838 version)..... 6

Pa. Const. art. IV, § 9..... *passim*

Pa. Const. art. IV, § 9 (1874 version)..... 10

Pa. Const. art. IV, § 9 (1967 version)..... 12

Pa. Const. art. IV, § 9 (1975 version)..... 12

Pa. Const. art. XI, § 1..... 15

**OTHER AUTHORITIES:**

David Dekok, *Pennsylvania Governor stays execution of killer, citing shortage of lethal drugs*, Reuters, Sept. 12, 2014, <http://www.reuters.com/article/2014/09/12/us-usa-pennsylvania-execution-idUSKBN0H72F820140912> ..... 11

George Washington, Farewell Address (Sept. 19, 1796) (transcript available at <http://www.gpo.gov/fdsys/pkg/GPO-CDOC-106sdoc21/pdf/GPO-CDOC-106sdoc21.pdf>) ..... 2

*Journal of the Pa. Const. Convention of 1872-1873, Vol. I*..... 7

*Journal of the Pa. Const. Convention of 1872-1873, Vol. II*.....7, 8, 9, 10

*Journal of the Pa. Const. Convention of 1872-1873, Vol. III* ..... 10

*Journal of the Pa. Const. Convention of 1872-1873, Vol. VII*..... 8, 10

Memorandum from Governor Tom Wolf on Death Penalty Moratorium Declaration (Feb. 13, 2015) (available at <http://www.scribd.com/doc/255668788/Death-Penalty-Moratorium-Declaration>)....  
..... 3, 4, 5

Pa. Board of Pardons, *History of the Board of Pardons*, <http://www.portal.state.pa.us/portal/server.pt/community/history/19511> (last visited Apr. 8, 2015)..... 7

Press Release, Governor Tom Wolf Announces a Moratorium on the Death Penalty in Pennsylvania (Feb. 13, 2015) (available at [http://www.governor.pa.gov/Pages/Pressroom\\_details.aspx?newsid=1566#.VSVJ53D-Uk](http://www.governor.pa.gov/Pages/Pressroom_details.aspx?newsid=1566#.VSVJ53D-Uk)). ..... 3

Robert E. Woodside, *Pennsylvania Constitutional Law* (Murrelle Printing Company, Inc. 1985) ..... 6, 15

## **STATEMENT OF INTEREST OF *AMICI CURIAE***

*Amici Curiae*, the Speaker of the Pennsylvania House of Representatives and the President Pro Tempore of the Senate of Pennsylvania, file this brief in support of the position of Petitioner, Commonwealth of Pennsylvania.

This appeal involves the constitutionality of the Governor's moratorium on the imposition of the death penalty in Pennsylvania in light of the limitations on such authority contained in Article IV, § 9 of the Pennsylvania Constitution. Since the Constitutional Convention of 1872-1873, the People of Pennsylvania have limited the Governor's authority under this section.

The interest of *Amici*, the Speaker of the Pennsylvania House of Representatives and the President Pro Tempore of the Senate of Pennsylvania, in this case arises from their respective roles as the constitutional heads of the two chambers of the General Assembly. The General Assembly is the conduit through which the People of Pennsylvania amend their Constitution. *Amici* have a significant interest in ensuring that the informative legislative history of limitations on the Governor's authority under Article IV, § 9, is brought to bear in this Court's analysis.<sup>1</sup>

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<sup>1</sup> For brevity, *Amici Curiae* incorporates by reference the Statement of Jurisdiction, Order in Question, Scope and Standard of Review, Statement of the Question Presented, and Statement of the Case of Petitioners rather than setting forth those sections at length.

## ARGUMENT

### **(I) Introduction**

In the interest of conservation of the Court's time, this brief focuses only on the Governor's authority to issue the recently announced moratorium on the death penalty as a "reprieve."

The Pennsylvania Constitution, like the United States Constitution, is a product of the People. In George Washington's Farewell Address to the People of the United States, he explained:

The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the Constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government presupposes the duty of every individual to obey the established government.

George Washington, Farewell Address (Sept. 19, 1796) (transcript available at <http://www.gpo.gov/fdsys/pkg/GPO-CDOC-106sdoc21/pdf/GPO-CDOC-106sdoc21.pdf>).

The premise underlying both the Republic and the Commonwealth, that all authority ultimately resides in the People as expressed through their Constitution, stands in stark contrast to Governor Wolf's unilaterally announced moratorium on the death penalty.

## **(II) Summary of Governor Wolf's Moratorium**

On February 13, 2015, the Governor issued a moratorium on the death penalty in Pennsylvania. According to his press release, the moratorium had nothing to do with the guilt or innocence of Terrance Williams (or any other death row inmate). Rather, the Governor stated the following justification:

This decision is based on a flawed system that has been proven to be an endless cycle of court proceedings as well as ineffective, unjust, and expensive. Since the reinstatement of the death penalty, 150 people have been exonerated from death row nationwide, including six men in Pennsylvania. Recognizing the seriousness of these concerns, the Senate established the bipartisan Pennsylvania Task Force and Advisory Commission to conduct a study of the effectiveness of capital punishment in Pennsylvania. Today's moratorium will remain in effect until this commission has produced its recommendation and all concerns are addressed satisfactorily.

Press Release, Governor Tom Wolf Announces a Moratorium on the Death Penalty in Pennsylvania (Feb. 13, 2015) (available at

[http://www.governor.pa.gov/Pages/Pressroom\\_details.aspx?newsid=1566#.VSVJ53D-Uk](http://www.governor.pa.gov/Pages/Pressroom_details.aspx?newsid=1566#.VSVJ53D-Uk)).<sup>2</sup>

This action was purportedly based on the authority to grant reprieves under Article IV, § 9 of the Constitution of Pennsylvania. In his memorandum on the same subject, the Governor stated that he was exercising his power as Governor “to grant a temporary reprieve to inmate Terrence [*sic*] Williams.” Memorandum

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<sup>2</sup> The press release is attached hereto as Exhibit A.

from Governor Tom Wolf on Death Penalty Moratorium Declaration 1 (Feb. 13, 2015) (available at <http://www.scribd.com/doc/255668788/Death-Penalty-Moratorium-Declaration>).<sup>3</sup> He went on to state that he intended to “grant a reprieve in each future instance in which an execution is scheduled, until” he has reviewed the report of the Task Force and “any recommendations contained therein are satisfactorily addressed.” *Id.* The Governor’s memorandum does not, however, provide any metrics to explain how such satisfaction will be measured.

It is interesting to note that the Governor recognizes that the death penalty has rarely been imposed (only three times in nearly forty years since the death penalty was reinstated – only after the three inmates voluntarily abandoned their “right to further due process”); and that the substantial post-conviction due process protections built into the law have worked to exonerate six death row inmates in that same forty-year period.<sup>4</sup> Yet, he opines that “Pennsylvania’s system is

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<sup>3</sup> The memorandum is attached hereto as Exhibit B.

<sup>4</sup> The current post-trial process in capital cases involves exacting review, with multiple layers of courts scrutinizing each case. There are four distinct steps: (1) Sentencing; (2) Direct review; (3) State collateral review (*i.e.*, a petition under the Post-Conviction Relief Act, 42 Pa. C.S. § 9541, *et seq.*); and (4) federal *habeas corpus* review. Each case is studied individually and exhaustively by teams of state and federal judges. Following or concurrent with purely judicial review is the role played by the Board of Pardons.

It is in the context of this extensive review process – involving the judgments of two unanimous juries, one trial Judge, seven Supreme Court Justices, a federal trial Judge, a panel of at least three federal appellate Judges, and a Board of Pardons – that the Governor’s claims must be understood.



riddled with flaws, making it error prone, expensive, and anything but infallible.”

Memo. at 2.

**(III) History of Article IV, § 9 of the Pennsylvania Constitution**

Article IV, § 9 of the Pennsylvania Constitution, entitled “Pardoning Power; Board of Pardons,” provides, in relevant part:

In all criminal cases except impeachment the Governor shall have power to ... grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, and, in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons, after full hearing in open session, upon due public notice....<sup>5</sup>

While the Governor is obliged to interpret this language in order to fulfill his constitutional role, “the ultimate power and authority to interpret the Pennsylvania Constitution rests with the Judiciary, and in particular with this Court.” Mesivtah Eitz Chaim of Bobov, Inc. v. Pike Cnty. Bd. of Assessment Appeals, 44 A.3d 3, 7 (Pa. 2012) (*citations omitted*).<sup>6</sup> The court’s venerable obligation to interpret the constitution exists even in difficult or politically charged circumstances. Robinson Twp., Washington Cnty. v. Com., 83 A.3d 901, 949 (Pa. 2013) (*citations omitted*).

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<sup>5</sup> The text of the current version of Article IV, § 9 is attached hereto as Exhibit C.

<sup>6</sup> Among the citations omitted, the Mesivtah court noted the Federalist Papers, No. 78, written by Alexander Hamilton, for the proposition that “The interpretation of the laws is the proper and peculiar province of the courts.”

When construing language in the constitution, this Court has explained that “the fundamental rule of construction which guides us 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 (Pa. 2004) (*citations omitted*). Therefore, in order to understand Article IV, § 9, it is necessary to explore the meaning of the term “reprieve” when it was originally adopted as well as any relevant amendments in the decades since.

**(A) Pennsylvania Constitutional Convention of 1872-1873**

The Pennsylvania Constitution of 1838, in Article II, § 9, provided as follows:

He [*the Governor*] shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment.

In his description of the Pennsylvania Constitutional Convention which met in 1872 and 1873, Judge Woodside explained:

The only important change made in the executive authority was the creation of a board of pardons which had to recommend a pardon or commutation of sentence before the Governor could grant it. This continues to be recognized as a marked improvement over the prior provisions which gave the Governor unrestricted authority to pardon.

Robert E. Woodside, *Pennsylvania Constitutional Law* 587 (Murrelle Printing Company, Inc. 1985). The process of this transformation which occurred at the Convention, as evidenced by the delegates’ debate, demonstrates that the

Governor's power to "reprieve" does not go so far as to justify the recently announced moratorium.

As expressed at the early sessions of the Convention in the numerous resolutions offered to amend the pardoning authority, there was general dissatisfaction with unfettered gubernatorial authority to pardon or commute sentences.<sup>7</sup> Delegate Lawrence would, at the Convention, later explain that "if we do not put some provision in the fundamental law restraining this pardoning power, thousands of men in this State will vote against your Constitution, and they ought to do it." *Journal of the Pa. Const. Convention of 1872-1873, Vol. II*, p. 373 (Mar. 5, 1873).<sup>8</sup>

On March 4, 1873, the Convention began consideration of the proposed changes to the Governor's authority to issue pardons, reprieves and commutations

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<sup>7</sup> *Journal of the Pa. Const. Convention of 1872-1873, Vol. I:*

- p. 90 and 91 (Nov. 21, 1872), resolutions offered by Del. Wetherill and Del. Stewart;
- p. 112 (Nov. 25, 1872), resolution offered by Del. Barclay;
- p. 143, 144 and 146 (Nov. 27, 1872), resolutions offered by Del. Darlington, Del. Lamberton and Del. C.A. Black; and
- p. 157 (January 8, 1873), resolution offered by Del. Hemphill.

<sup>8</sup> The Pennsylvania Board of Pardons website offers this background:

Due to allegations and constant suspicion of abuse, real or imagined, by Pennsylvania Governors from 1776 to 1872, the Constitutional Convention convened in November 1872 created the Board of Pardons by adopting Article IV, §9 of the Constitution of Pennsylvania.

Pa. Board of Pardons, *History of the Board of Pardons*, <http://www.portal.state.pa.us/portal/server.pt/community/history/19511> (last visited Apr. 8, 2015).

of sentence. In the version initially crafted by the Committee on Executive Department, the power to reprieve, as well as the power to pardon and the power to commute sentences, could only be exercised upon recommendation of three of four named elected officials. Numbered as Section 10<sup>9</sup>, the full proposal read as follows:

SECTION 10. He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment, but only upon the recommendation, in writing, of the Secretary of the Commonwealth, Attorney General, Superintendent of Public Instruction, Secretary of Internal Affairs, or any three of them, and such recommendation, with the reasons therefor at length, shall be recorded and filed in the Department.

Id. at 351 (Mar. 4, 1873).

Delegate Armstrong offered this explanation of the proposal:

This section received, at the hands of the Committee on Executive Department, more careful and anxious consideration than perhaps any other, and they have reported it to the Convention after the most careful deliberation.... We believe that the power has been carefully and sufficiently guarded against abuse, and that at the same time it has not been placed so high as to be out of the reach of those for whom it ought to be properly exercised.... [T]he report, as it stands, received the unanimous approbation of the committee, and we hope it may commend itself to the favorable judgment of the House.

Id. at 354.

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<sup>9</sup> This would eventually become Section 9, as a proposed amendment concerning executive compensation was later removed from Article IV. *Journal of the Pa. Const. Convention of 1872-1873, Vol. VII*, 441 (Oct. 2, 1873).

As the proposal worked its way through the Convention process, it was subject to numerous attempts at amendment. In this endeavor, there were both successes and failures. The most important of these amendments, however, offers a clear picture into the meaning of the word “reprieve” as understood by these founding fathers and the electorate who subsequently approved these changes in 1873.

On March 5, 1873, Delegate Bailey offered an amendment to the then-existing proposal which would allow the Governor the sole power to grant reprieves. Reproduced at length, Delegate Bailey’s explanation gives context to the word “reprieve” as it appears in every version of this constitutional provision since the Convention. He explained as follows:

Before the vote is taken on this question I have one amendment to suggest which, I think, will strike every member of the committee favorably. It will be observed that since we have added the amendment suggested yesterday by the gentleman from Luzerne (Mr. H. W. Palmer) the Governor could not grant a reprieve until after due public notice and a full hearing in open session. This difficulty might arise; there might be a case where a reprieve should be granted without the delay of a single day. Pending the execution of a death sentence, for instance, it may be demonstrated in a day, even the day before execution, that the criminal be innocent, but under the operation of this section as it now stands, it would be impossible for his innocence, though demonstrated to a certainty, to save him from the execution of the sentence. For it would be impossible to give due public notice and have a hearing in open session before a reprieve could be granted, even under such circumstances. I would, therefore, move to amend this section further, as follows: By striking out the word “only,” in the third line, and adding after the word “but,” in same line, the words: “No pardon shall be granted nor sentence

commuted, except,” so that the provisions for recommendation in writing, and public notice and hearing shall only apply to the granting of pardons and commuting of sentences, and not to reprieves.

Id. at 383 (Mar. 5, 1873).

Former Governor Curtin, also a delegate and Chairman of the Committee on Executive Department, replied that an execution “cannot occur without a death warrant, and the death warrant must be signed by the Governor.” Id. at 384.

While acknowledging this explanation, Delegate Bailey continued:

I was aware of that. Still it strikes me that a warrant might be issued before the innocence of the man was shown, and the day even fixed for the execution, and the day immediately preceding the time for execution it might be demonstrated that the man was innocent. It is to meet such a case as that that I have offered this amendment.

Id. With former Governor Curtin’s endorsement, the amendment was agreed to.

Id.

After the adoption of several other amendments, including the substitution of the Lieutenant Governor for the Superintendent of Public Instruction,<sup>10</sup> the Convention agreed to the language as part of Article IV. Id., *Vol. VII*, p. 453 (Oct. 2, 1873).<sup>11</sup>

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<sup>10</sup> See *Journal of the Pa. Const. Convention of 1872-1873, Vol. III*, p. 446-447 (Oct. 2, 1873).

<sup>11</sup> Pa. Const., Article IV, Section 9 (*As approved by the electorate in 1873, effective 1874*).

He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment; but no pardon shall be granted, nor sentence commuted, except upon the recommendation in writing of the Lieutenant

As the debate makes clear, the vesting of the power to “reprieve” in the Governor is solely to address those limited circumstances where specific, enumerated evidence of innocence or other extrinsic mitigating factors concerning an identified individual arise so late in the process that a board of pardons cannot be convened. It exists as a failsafe for that last minute arrival of information based on the facts in a particular case and for a limited period of time, not as an unrestricted allowance for a Governor to impose his will for an indeterminate period.<sup>12</sup> This was the understanding of the People at the 1872-1873 Convention and the ballot box later that year. See Ieropoli, 842 A.2d 919 at 925.

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Governor, Secretary of the Commonwealth, Attorney General and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice and in open session, and such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the Secretary of the Commonwealth.

<sup>12</sup> Contrast the purported reprieve en masse in the instant case with the reprieve granted by former Governor Corbett in 2014. Hubert Michael was scheduled to be executed on September 22, 2014, for the murder of 16 year old Trista Eng. But, given the scarcity of the drugs used in lethal injections, the execution could not be carried out on the date scheduled. Governor Corbett issued a reprieve for Michael pending the Department of Corrections procuring such drugs. David Dekok, *Pennsylvania Governor stays execution of killer, citing shortage of lethal drugs*, Reuters, Sept. 12, 2014, <http://www.reuters.com/article/2014/09/12/us-usa-pennsylvania-execution-idUSKBN0H72F820140912>. While the limit on the availability of the method of execution would not have occurred to the delegates at the 1872-1873 Convention, Governor Corbett’s temporary reprieve for a specific individual based on specific facts, and divorced from the Governor’s own political position, is well within the spirit of that debate.

**(B) Article IV, § 9, Since the Convention**

The 1967 Amendment to Article IV, § 9 rewrote the section.<sup>13</sup> It changed the makeup of the Board of Pardons and required that the recommendation for pardon or commutation of sentence be made by a majority of five members rather than, as provided in the earlier version, a majority of four. It did not, however, change the meaning of the operative language concerning reprieves, commutations of sentence and pardons.

The 1975 amendment only made changes to the Senate's power to advise and consent on the appointment of the public members of the Board of Pardons and simplified the language concerning their six-year terms.<sup>14</sup>

The most recent amendment to Article IV, § 9, again altered the Senate's power to advise and consent on appointments and substituted a crime victim for an attorney as one of the public members of the board.<sup>15</sup> Most importantly, however, this amendment imposed more stringent requirements for individuals who have been sentenced to death to obtain a pardon or commutation of sentence. The 1997 change, approved at the ballot box on November 4 of that year, specifically required that "in the case of a sentence of death or life imprisonment," a pardon or

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<sup>13</sup> The text of the 1967 version of Article IV, § 9 is attached hereto as Exhibit D.

<sup>14</sup> The text of the 1975 version of the Article IV, § 9 is attached hereto as Exhibit E.

<sup>15</sup> The text of the current version of Article IV, § 9 is attached hereto as Exhibit C.



commutation was only available “on the unanimous recommendation” of the board.

When the People have spoken, they have constrained the gubernatorial authority to commute death sentences. The arc of history concerning this constitutional language bends away from the Governor’s unfounded, extra-constitutional largesse announced in the guise of a reprieve.

**(IV) Morganelli v. Casey**

As recently as 1994, the Commonwealth Court was called upon to examine a governor’s use of his reprieve power under Article IV, § 9. In Morganelli v. Casey, 641 A.2d 674 (Pa. Commw. Ct. 1994) (affirmed en banc), then-Governor Casey refused to sign execution warrants for two inmates whose sentences were upheld by the Pennsylvania Supreme Court. Governor Casey argued that his refusal to sign the warrants was permissible, stating that “gubernatorial delay with respect to the issuance of a death warrant, for whatever period, constitutes an exercise of the Governor’s power of reprieve.” Id. at 678.

The Commonwealth Court held that there can be “no reprieve with respect to *execution* of a death sentence until the *executive* branch has commenced that function, the Governor’s power to reprieve is not relevant” until after the death warrant is issued. Id. (emphasis included in original). The court went on to outline the proper use of the gubernatorial reprieve.

In accordance with the clear concept of a reprieve, it exists only to stay a death warrant with reference to a particular proceeding, whether that particular proceeding be in the nature of clemency action, such as pardon or commutation involving the Board of Pardons, or even some resumption of judicial investigation pursuant to a petition for habeas corpus.

The conclusion must be that the Governor cannot forsake his obligation to “take care that the laws be faithfully executed” by contending that the failure to do what the law says that he “shall” do, constitutes the performance of the affirmative and definitive action known to the law as a reprieve.

Id.

Although the law at the time prescribed no timeframe in which the governor must act (only that he would be entitled to conduct a “reasonable review” of the record before him), the Commonwealth Court directed that the Governor act upon both cases within a matter of days, stating that “three years or more has clearly afforded enough time for consideration of the records and determination of the schedule for executions.” Id. at 679.

In a subsequent proceeding before the Commonwealth Court, Governor Casey challenged whether the court could “legislate” a time within which the Governor must sign particular warrants in the absence of expressed language in the law. Morganelli v. Commonwealth, 646 A.2d 744 (Pa. Commw. Ct. 1994). The Commonwealth Court rejected the argument that it had legislated. Rather, the court considered the number of years of inaction and determined that, after the passage of years since the Supreme Court affirmed the two sentences, allowing

review for a month in one case and two months in another was sufficient time for the Governor to perform the duties mandated under the law. *Id.* at 746.

On those rare occasions when the court has addressed the power of “reprieve,” it has recognized the limited nature of this remedy in both scope and time.

### **CONCLUSION**

The Pennsylvania Constitution has been amended numerous times, either by the amendment process found in Article XI, Section 1 or by constitutional convention. “All amendments since 1790, whether proposed by a convention or by the legislature, were submitted to the electorate and approved by a majority of those voting on them before they became effective.” Robert E. Woodside, *Pennsylvania Constitutional Law* 9 (Murrelle Printing Company, Inc. 1985).

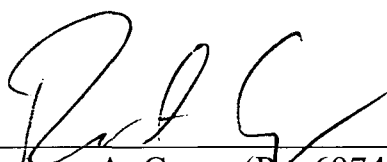
Without seeking approval of the People, Governor Wolf seeks to turn back the constitutional clock to the post-Civil War Reconstruction Era. In doing so, he would arrogate to himself the full mantle of the pardoning authority which was soundly rejected by the 1872-1873 Pennsylvania Constitutional Convention and the People of Pennsylvania who validated the Convention’s limits on gubernatorial discretion.

The Governor’s moratorium is not a “reprieve.” The Governor may certainly make a case to the People for another constitutional amendment to allow

him to authorize such a moratorium without reference to the Board of Pardons.

Until such an amendment is endorsed by the People at the ballot box, however, his constitutional reach exceeds his grasp.

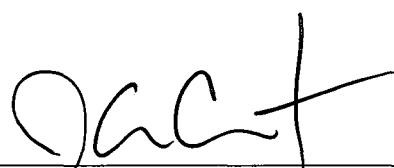
Respectfully submitted,



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*Counsel for Amicus Curiae President  
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# Exhibit A

02/13/2015

## **Governor Tom Wolf Announces a Moratorium on the Death Penalty in Pennsylvania**

**Harrisburg, PA** – Today, Governor Tom Wolf announced a moratorium on the death penalty in Pennsylvania that will remain in effect until the governor has received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Commission on Capital Punishment, established under Senate Resolution 6 of 2011, and there is an opportunity to address all concerns satisfactorily.

“Today’s action comes after significant consideration and reflection,” said Governor Wolf. “This moratorium is in no way an expression of sympathy for the guilty on death row, all of whom have been convicted of committing heinous crimes. This decision is based on a flawed system that has been proven to be an endless cycle of court proceedings as well as ineffective, unjust, and expensive. Since the reinstatement of the death penalty, 150 people have been exonerated from death row nationwide, including six men in Pennsylvania. Recognizing the seriousness of these concerns, the Senate established the bipartisan Pennsylvania Task Force and Advisory Commission to conduct a study of the effectiveness of capital punishment in Pennsylvania. Today’s moratorium will remain in effect until this commission has produced its recommendation and all concerns are addressed satisfactorily.”

This morning, Gov. Wolf took the first step in placing a moratorium on the death penalty by granting a temporary reprieve to inmate Terrance Williams, who was scheduled to be executed on March 4, 2015. Governor Wolf will grant a reprieve – not a commutation – in each future instance in which an execution for a death row inmate is scheduled, establishing an effective moratorium on the death penalty in Pennsylvania. For death row inmates, the conditions and confinement will not change.

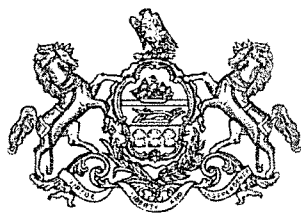
Click below to view the full memo on Gov. Wolf’s plan to place a moratorium on the death penalty:

<https://www.scribd.com/doc/255668788/Death-Penalty-Moratorium-Declaration>  
( <https://www.scribd.com/doc/255668788/Death-Penalty-Moratorium-Declaration> )

**MEDIA CONTACT:** Jeff Sheridan – 717.783.1116

**###**

# Exhibit B



**GOVERNOR TOM WOLF**

MEMORANDUM

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Pursuant to authority granted in Article IV, § 9 of the Constitution of Pennsylvania, I am today exercising my power as Governor to grant a temporary reprieve to inmate Terrence Williams. A death warrant for this case was signed on January 13, 2015 by my predecessor, acting pursuant to Section 4302 of the Pennsylvania Prisons and Parole Code. The execution was scheduled for March 4, 2015.

The reprieve announced today shall remain in effect until I have received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment (established under Senate Resolution 6 of 2011), and any recommendations contained therein are satisfactorily addressed. In addition, it is my intention to grant a reprieve in each future instance in which an execution is scheduled, until this condition is met.

I take this action only after significant consideration and reflection. There is perhaps no more weighty a responsibility assigned to the Governor than his or her role as the final check in the capital punishment process. Given the gravity of this responsibility, and the significance of the action announced herein, I believe it necessary to outline the principles that have led me to this conclusion.

To be clear at the outset, this reprieve is in no way an expression of sympathy for the guilty on death row, all of whom have been convicted of committing heinous crimes, and all of whom must be held to account. The guilty deserve no compassion, and receive none from me. I have nothing but the deepest appreciation for the work of victim advocates, and sympathize and stand with all those who have suffered at the hands of those in our society who turn to violence.

In this case, there is no question that Terrence Williams committed a grievous act of violence. Williams was sentenced to death in 1986 for a murder he committed three months after his eighteenth birthday. In the years of appeals that have followed, there has been no contention that he is innocent of the crime of which he was convicted. The reprieve announced today does not question Williams' guilt. Rather, I take this action because the capital punishment system has significant and widely recognized defects.

There are currently 186 individuals on Pennsylvania's death row. Despite having the fifth largest death row in the nation, the death penalty has rarely been imposed in modern times. In the nearly forty years since the Pennsylvania General Assembly reinstated the death penalty, the Commonwealth has executed three people, all of whom voluntarily abandoned their right to further due process.

In that same period, Governors have signed 434 death warrants. All but the three noted above have subsequently been stayed by a court. One inmate has been scheduled for execution six times, each of





## GOVERNOR TOM WOLF

which has been cancelled due to a state or federal appeal. Two inmates have remained on death row for more than three decades.

This unending cycle of death warrants and appeals diverts resources from the judicial system and forces the families and loved ones of victims to relive their tragedies each time a new round of warrants and appeals commences. The only certainty in the current system is that the process will be drawn out, expensive, and painful for all involved.

While the pace of the process frustrates some, the fail-safes of appellate review are essential in avoiding a catastrophic miscarriage of justice. Since reinstatement of the death penalty, 150 people have been exonerated from death row nationwide, including six men in Pennsylvania.<sup>1</sup> One of these men, Harold Wilson, twice had death warrants signed against him – meaning Pennsylvania came within days of executing an innocent man, and might well have done so but for judicial stays. A second man, Nicholas Yarris, was exonerated by newly available DNA evidence after serving twenty-one years on death row. Many more inmates have been resentenced to life in prison after reviewing courts found mitigating circumstances, or flaws in the penalty phases of their trials.

If the Commonwealth of Pennsylvania is going to take the irrevocable step of executing a human being, its capital sentencing system must be infallible. Pennsylvania's system is riddled with flaws, making it error prone, expensive, and anything but infallible.<sup>2</sup>

Numerous recent studies have called into question the accuracy, and fundamental fairness of Pennsylvania's capital sentencing system. These studies suggest that inherent biases affect the makeup of death row. While data is incomplete, there are strong indications that a person is more likely to be charged with a capital offense and sentenced to death if he is poor or of a minority racial group, and particularly where the victim of the crime was Caucasian.<sup>3</sup>

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<sup>1</sup> See DEATH PENALTY INFORMATION CENTER, THE INNOCENCE LIST, <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row?scid=6&did=110>.

<sup>2</sup> See PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS IN THE JUSTICE SYSTEM, FINAL REPORT, (2003)(hereinafter FINAL REPORT).

<sup>3</sup> See AMERICAN BAR ASSOCIATION, EVALUATING FAIRNESS AND ACCURACY IN STATE DEATH PENALTY SYSTEMS: THE PENNSYLVANIA DEATH PENALTY ASSESSMENT REPORT, 235 (2007) (hereinafter ABA REPORT). See also, Thomas J. Saylor, *Death-Penalty Stewardship and the Current State of Pennsylvania Capital Jurisprudence*, 23 WIDENER L.J. 1(2013) (Justice Saylor notes that anecdotal evidence “suggest[s] a serious problem in Pennsylvania” with appointed capital counsel); James M. Anderson & Paul Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes*, 122 YALE L.J. 154 (2012); (TASK FORCE AND ADVISORY COMMITTEE ON SERVICES TO INDIGENT CRIMINAL DEFENDANTS, A CONSTITUTIONAL DEFAULT: SERVICES TO INDIGENT CRIMINAL DEFENDANTS IN PENNSYLVANIA (2011) (noting that “Pennsylvania [is] the only state that does



## GOVERNOR TOM WOLF

In 2003, the Pennsylvania Supreme Court's Committee on Racial and Gender Bias in the Justice System issued an extensive Final Report, including a section examining the effects of racial and gender bias on the state's capital justice system.

The Committee reported "strong indications that Pennsylvania's capital system does not operate in an evenhanded manner."<sup>4</sup> While Pennsylvania's minority population at the time was eleven percent, over two-thirds of the inmates on death row were minorities. The Committee noted multiple factors contributing to this disparity, including the inadequacy of public defender or appointed counsel services available to indigent capital defendants, racial bias in juror selection, and the lack of uniform standards to guide prosecutors in exercising discretion about whether to seek the death penalty in capital eligible cases.

Given its outsized contribution to the composition of death row, Philadelphia was selected for intensive study. The Committee found that even after controlling for the seriousness of offenses and other non-racial factors, African American defendants were sentenced to death at a significantly higher rate than similarly situated members of other racial groups. Researchers determined that one third of the African Americans on death row from Philadelphia would not have received the death penalty were they not African American. These statistics create a moral crisis for people of good will on all sides of this issue.

The Committee recommended a number of changes to address the disparities it identified. But it also noted that its efforts to understand the full scope of the problem were hampered by the lack of systematically collected data related to capital charging and sentencing in Pennsylvania.

In 1997, the legislature repealed a law that required the courts to vacate death sentences found to be "excessive or disproportionate to the penalty imposed in similar cases, considering both the circumstances of the crime and the character and record of the defendant."<sup>5</sup> In order to facilitate its proportionality review, the Pennsylvania Supreme Court had required judges to submit forms with data about all cases resulting in first-degree murder convictions. These forms were compiled into a database by the Administrative Office of Pennsylvania Courts, and the database was used to analyze trends in sentencing.

When the provision was repealed, the tracking of the statistics ceased. Since that time Pennsylvania has had no comprehensive data collection system which would allow rigorous analysis of the effects of racial

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not appropriate or provide for so much as a penny toward assisting the counties in complying with Gideon's mandate.")

<sup>4</sup> See FINAL REPORT, at 201.

<sup>5</sup> This statutory provision, previously codified at 42 Pa. C.S. § 9711 (h)(3), was repealed by the Act of June 25, 1997 (P.L. 293, No. 28), § 1.



## GOVERNOR TOM WOLF

and gender bias on capital sentencing. While the figures from Philadelphia cited by the Supreme Court Committee cause concern, given the lack of data, we simply do not understand the scale of this problem.

More recently, in 2007, the American Bar Association (“ABA”) appointed a Pennsylvania Death Penalty Assessment Team to review the state’s compliance with ABA recommended best practices in capital charging, sentencing, and the appellate process.

Like the Supreme Court Committee, the Assessment Team found numerous areas of concern, including inadequate procedures to protect the innocent, failure to protect against poor defense lawyering, the lack of state funding for capital indigent defendants, significant capital juror confusion, a lack of statewide data to analyze proportionality in charging and sentencing, and numerous others. Ultimately, the Team concluded that “the Commonwealth of Pennsylvania fails to comply or only partially complies with the many of the ABA’s Recommendations and that many of these shortcomings are substantial.”<sup>6</sup>

Finally, administering the death penalty, with all the necessary legal appeals and safeguards as well as extra security and individual cells on death row, is extremely expensive. A recent analysis conducted by the Reading Eagle estimates that the capital justice apparatus has cost taxpayers at least \$315 million, but noted that this figure was very likely low.<sup>7</sup> Other estimates have suggested the cost to be \$600 million or more. The Commonwealth has received very little, if any, benefit from this massive expenditure.

Recognizing the seriousness of these concerns, the Senate passed Resolution 6 in 2011, which authorized the creation of a bipartisan Pennsylvania Task Force and Advisory Committee on Capital Punishment.

The Task Force is co-chaired by Senators Leach and Greenleaf and composed of representatives from law enforcement, prosecutors, defense attorneys, family of victims, clergy, and legislators. Resolution 6 directs the Task Force to conduct a comprehensive study of the effectiveness of capital punishment in the Commonwealth, and to report findings and recommendations. In September 2012, the Task Force called on Governor Corbett to suspend executions, until it had the opportunity to conclude its study and report.

If we are to continue to administer the death penalty, we must take further steps to ensure that defendants have appropriate counsel at every stage of their prosecution, that the sentence is applied fairly and proportionally, and that we eliminate the risk of executing an innocent. Anything less fails to live up to the requirements of our Constitution, and the goal of equal justice for all towards which we must continually strive.

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<sup>6</sup> See ABA REPORT, at iii.

<sup>7</sup> Nicole Brambilla, et al., *Capital Punishment in Pennsylvania: When Death Means Life*, READING EAGLE, Dec. 14, 2014, available at <http://readingeagle.com/news/article/capital-punishment-in-pennsylvania-when-death-means-life>.



## **GOVERNOR TOM WOLF**

Given these principles, both my duty as Governor and my conscience require that I proceed with great caution, and with all relevant facts at hand. I also take very seriously my responsibility to the victims of violent crime. Ensuring that justice is served for victims and the families and friends who have endured so much is my first priority. With all this in mind, I look forward to carefully reviewing the report and recommendations of the Task Force and Advisory Committee on Capital Punishment, and to working with the General Assembly and representatives of victims to address concerns which it may raise.

# Exhibit C

(This Joint Resolution No. 2 was passed for the first time at the First Special Legislative Session of 1995-96 as Joint Resolution No. 2 and for the second time at the Legislative Session of 1997 and was approved by the electorate on November 4, 1997.)

No. 1997-2

A JOINT RESOLUTION

SB 156

Proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for the composition and powers of the Board of Pardons.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of Pennsylvania is proposed in accordance with Article XI:

That section 9 of Article IV be amended to read:

§ 9. Pardoning power; Board of Pardons.

(a) In all criminal cases except impeachment the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, *and, in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons*, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose.

(b) The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor with the consent of **[two-thirds or]** a majority of the members elected to the Senate **[as is specified by law]** for terms of six years. The three members appointed by the Governor shall be residents of Pennsylvania **[and shall be recognized leaders in their fields; one]. One** shall be a **[member of the bar,] crime victim**, one a **[penologist,] corrections expert** and the third a doctor of medicine, psychiatrist or psychologist. The board shall keep records of its actions, which shall at all times be open for public inspection.

Section 2. Upon passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment. The Secretary of the Commonwealth shall submit this proposed

constitutional amendment to the qualified electors of this Commonwealth at the first general or municipal election occurring at least three months after the proposed constitutional amendment is passed by the General Assembly which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania.

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
HARRISBURG

**PROCLAMATION**

CONSTITUTIONAL AMENDMENT - ARTICLE IV

WHEREAS, Joint Resolution No. 2 of Special Session No. 1 of 1995 proposed to amend Article IV, Section 9 of the Constitution of Pennsylvania, changing provisions relating to pardons, commutations and the Board of Pardons to read as follows:

§ 9. Pardoning power; Board of Pardons.

(a) In all criminal cases except impeachment the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, and, in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose.

(b) The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor with the consent of a majority of the members elected to the Senate for terms of six years. The three members appointed by the Governor shall be residents of Pennsylvania. One shall be a crime victim, one a corrections expert and the third a doctor of medicine, psychiatrist or psychologist. The board shall keep records of its actions, which shall at all times be open for public inspection.

WHEREAS, Joint Resolution No. 2 of Special Session No. 1 of 1995 was agreed to by a majority of the members elected to each House of the General Assembly and published pursuant to Article XI, Section 1 of the Constitution of Pennsylvania; and

WHEREAS, in the General Assembly next afterwards chosen, the aforesaid amendment to Article IV, Section 9 of the Constitution of Pennsylvania was proposed in Joint Resolution No. 2 of 1997, which was agreed to by a majority of the members elected to each House of the General Assembly and published pursuant to Article XI, Section 1 of the Constitution of Pennsylvania; and

WHEREAS, the aforesaid proposed amendment to Article IV, Section 9 of the Constitution of Pennsylvania was submitted for approval to the qualified electors of the Commonwealth of Pennsylvania pursuant to Article XI, Section 1 of the



Constitution of Pennsylvania at an election held on November 4, 1997; and

WHEREAS, the Secretary of the Commonwealth, pursuant to law, has certified to me that the aforesaid proposed amendment to Article IV, Section 9 of the Constitution of Pennsylvania was approved by a majority of those voting thereon on the aforesaid day; and

WHEREAS, Section 903 of Title 1 of the Pennsylvania Consolidated Statutes requires the Governor, upon receiving the aforesaid certification of the Secretary of the Commonwealth, to issue his proclamation indicating whether or not the proposed amendment to Article IV, Section 9 of the Constitution of Pennsylvania has been adopted by a majority of the electors voting thereon.

NOW THEREFORE, I, Thomas J. Ridge, Governor of the Commonwealth of Pennsylvania, do hereby proclaim that the aforesaid amendment to Article IV, Section 9 of the Constitution of Pennsylvania was adopted by a majority of the electors voting thereon on November 4, 1997.

GIVEN under my hand and the Great Seal of the Commonwealth, at the City of Harrisburg, this second day of February in the year of our Lord one thousand nine hundred and ninety-eight, and of the Commonwealth the two hundred and twenty-second.

THOMAS J. RIDGE  
Governor

BY THE GOVERNOR:

YVETTE KANE  
Secretary of the Commonwealth

# Exhibit D

## [ARTICLE XI

## Militia]

\* \* \*

Section 4. This proposed amendment shall be submitted by the Secretary of the Commonwealth to the qualified electors of the State, at the primary election next held after the advertising requirements of article eighteen, section 1 of the Constitution of the Commonwealth of Pennsylvania have been satisfied.

(These Joint Resolutions Nos. 4, 5 and 6 were passed for the first time at the Legislative Session of 1966 and for the second time at the Legislative Session of 1967.)

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No. 4

## A JOINT RESOLUTION

SB5

Proposing that article four of the Constitution of the Commonwealth of Pennsylvania relating to the Executive be amended.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of the Commonwealth of Pennsylvania is proposed in accordance with the provisions of the eighteenth article thereof:

That article four of the Constitution of the Commonwealth of Pennsylvania be amended by repealing sections 18, 19, 20 and 21 thereof, by renumbering section 22, by adding a new section 18, and by rewording sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 13 and 14 so that sections 1, 3 to 10 inclusive, 13, 14, 18 and 19 will read:

## ARTICLE IV

## THE EXECUTIVE

Section 1. *Executive Department.* — The Executive Department of this Commonwealth shall consist of a Governor, Lieutenant Governor, [Secretary of the Commonwealth] Attorney General, Auditor General, State Treasurer, [Secretary of Internal Affairs] and [a] Superintendent of Public Instruction *and such other officers as the General Assembly may from time to time prescribe.*

\* \* \*

Section 3. *Terms of Office of Governor; Number of Terms.* — The Governor shall hold his office during four years from the third Tuesday of January next ensuing his election, [and shall not be eligible to the office for the next succeeding term]. *Except for the Governor who may be in office when this amendment is adopted, he shall be eligible to succeed himself for one additional term.*

Section 4. *Lieutenant Governor.* — A Lieutenant Governor shall be chosen [at the same time, in the same manner,] *jointly with the Governor by the casting by each voter of a single vote applicable to both offices,* for the same term, and subject to the same provisions as the Governor; he shall be President of the Senate [, but shall have no vote unless they be equally divided]. *As such, he may vote in case of a tie on any question except the final passage of a bill or joint resolution, the adoption of a conference report or the concurrence in amendments made by the House of Representatives.*

Section 5. *Qualifications of Governor and Lieutenant Governor.* — No person shall be eligible to the office of Governor or Lieutenant Governor except a citizen of the United States, who shall have attained the age of thirty years, and have been seven years next preceding his election an inhabitant of [the State] *this Commonwealth,* unless he shall have been absent on the public business of the United States or of this [State] *Commonwealth.*

Section 6. *Disqualifications for Offices of Governor and Lieutenant Governor.* — No member of Congress or person holding any office (*except of attorney-at-law or in the National Guard or in a reserve component of the armed forces of the United States*) under the United States or this [State] *Commonwealth* shall exercise the office of Governor or Lieutenant Governor.

Section 7. *Military Power.* — The Governor shall be commander-in-chief of the [army and navy] *military forces* of the Commonwealth, [and of the militia,] except when they shall be called into actual service of the United States.

Section 8. *Appointing Power.* — [He shall nominate and, by and with the advice and consent of two-thirds of all the members of the Senate, appoint a Secretary of the Commonwealth and an Attorney General during pleasure, a Superintendent of Public Instruction for four years, and such other officers of the Commonwealth as he is or may be authorized by the Constitution or by law to appoint; he shall have power to fill all vacancies that may happen, in offices to which he may appoint, during the recess of the Senate, by granting commissions which shall expire at the end of their next session; he shall have power to fill any vacancy that may happen, during the recess of the Senate, in the office of Auditor General, State Treasurer, Secretary of Internal Affairs or Superintendent of Public Instruction, in a judicial office, or in any other elective office which he is or may be authorized to fill; if the vacancy shall happen during the session of the Senate, the Governor shall nominate to the Senate, before their final adjournment, a proper person to fill said vacancy; but in any such case of vacancy, in an elective office, a person shall be chosen to said office on the next election day appropriate to such office according to the provisions of this Constitution, unless the vacancy shall happen within two calendar months immediately preceding such election day, in which case the election for said office shall be held on the second succeeding election day appropriate to such office. In acting on executive nominations the Senate shall sit with open doors, and, in confirming or rejecting the nominations of the Governor, the vote shall be taken by yeas and nays and shall be entered on the journal.]  
(a) *The Governor shall appoint an Attorney General, a Superintendent of Public Instruction and such other officers as he shall be authorized by law to appoint. The appointment of the Attorney General, the Superintendent of Public Instruction and of such other officers as may be specified by law, shall be subject to the consent of two-thirds of the members elected to the Senate.*

(b) *Except as may now or hereafter be otherwise provided in this Constitution as to appellate and other judges, he may, during the recess of the Senate, fill vacancies happening in offices to which he appoints by granting commissions expiring at the end of its session and fill vacancies happening in the office of Auditor General or State Treasurer or in any other elective office he is authorized to fill. If the vacancy happens during the session of the Senate except as otherwise provided in this Constitution, he shall nominate to the Senate, before its final adjournment, a proper person to fill the vacancy. In the case of a vacancy in an elective office, a person shall be elected to the office on the next election day appropriate to the office unless the vacancy happens within two calendar months immediately preceding the election day in which case the election shall be held on the second succeeding election day appropriate to the office.*

(c) *In acting on executive nominations, the Senate shall sit with open doors. The votes shall be taken by yeas and nays and shall be entered on the journal.*

Section 9. *Pardoning Power; Board of Pardons.* — [He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment; but no pardon shall be granted, nor sentence commuted, except upon the recommendation in writing of the Lieutenant Governor, Secretary of the Commonwealth, Attorney General and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice and in open session, and such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the Secretary of the Commonwealth.] (a) *In all criminal cases except impeachment, the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose.*

(b) *The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor with the consent of two-thirds of the members elected to the Senate, one for two years, one for four years, and one for six years, and thereafter for full terms of six years. The three members appointed by the Governor shall be residents of Pennsylvania and shall be recognized leaders in their fields; one shall be a member of the bar, one a penologist, and the third a doctor of medicine, psychiatrist or psychologist. The board shall keep records of its actions, which shall at all times be open for public inspection.*

Section 10. *Information from Department Officials.* — [He] *The Governor may require information in writing from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.*

\* \* \*

Section 13. *When Lieutenant Governor to Act as Governor.* — *In the case of the death, conviction on impeachment, failure to qualify or resignation [or other disability] of the Governor, [the powers, duties and emoluments of the office,] the Lieutenant Governor shall become Governor for the remainder of the term [, or until the disability be removed, shall devolve upon the Lieutenant Governor] and in the case of the disability of the Governor, the powers, duties and emoluments*

*of the office shall devolve upon the Lieutenant Governor until the disability is removed.*

Section 14. *Vacancy in Office of Lieutenant Governor.* — [In case of a vacancy in the office of Lieutenant Governor, or when the Lieutenant Governor shall be impeached by the House of Representatives, or shall be unable to exercise the duties of his office, the powers, duties and emoluments thereof for the remainder of the term, or until the disability be removed, shall devolve upon the President Pro Tempore of the Senate; and the President Pro Tempore of the Senate shall in like manner become Governor if a vacancy or disability shall occur in the office of Governor; his seat as senator shall become vacant whenever he shall become Governor, and shall be filled by election as any other vacancy in the Senate.] *In case of the death, conviction on impeachment, failure to qualify or resignation of the Lieutenant Governor, or in case he should become Governor under the preceding section, the President Pro Tempore of the Senate shall become Lieutenant Governor for the remainder of the term. In case of the disability of the Lieutenant Governor, the powers, duties and emoluments of the office shall devolve upon the President Pro Tempore of the Senate until the disability is removed. Should there be no Lieutenant Governor, the President Pro Tempore of the Senate shall become Governor if a vacancy shall occur in the office of Governor and in case of the disability of the Governor, the powers, duties and emoluments of the office shall devolve upon the President Pro Tempore of the Senate until the disability is removed. His seat as senator shall become vacant whenever he shall become Governor and shall be filled by election as any other vacancy in the Senate.*

\* \* \*

*Section 18 Terms of Office of Auditor General and State Treasurer; Number of Terms; Eligibility of State Treasurer to become Auditor General.* — *The terms of the Auditor General and of the State Treasurer shall each be four years from the third Tuesday of January next ensuing his election. They shall be chosen by the qualified electors of the Commonwealth at general elections but shall not be eligible to serve continuously for more than two successive terms. The State Treasurer shall not be eligible to the office of Auditor General until four years after he has been State Treasurer.*

Section [22] 19. *State Seal; Commissions.* — The present Great Seal of Pennsylvania shall be the seal of the State. All commissions shall be in the name and by authority of the Commonwealth of Pennsylvania, and be sealed with the State seal and signed by the Governor.

\* \* \*

[Section 18. The Secretary of the Commonwealth shall keep a record of all official acts and proceedings of the Governor, and when required lay the same, with all papers, minutes and vouchers relating thereto, before either branch of the General Assembly, and perform such other duties as may be enjoined upon him by law.

Section 19. The Secretary of Internal Affairs shall exercise all the powers and perform all the duties of the Surveyor General, subject to such changes as shall be made by law. His department shall embrace a Bureau of Industrial Statistics, and he shall discharge such duties relating to corporations, to the charitable institutions, the agricultural, manufacturing, mining, mineral, timber and other material or

business interests of the State as may be prescribed by law. He shall annually, and at such other times as may be required by law, make report to the General Assembly.

Section 20. The Superintendent of Public Instruction shall exercise all the powers and perform all the duties of the Superintendent of Common Schools, subject to such changes as shall be made by law.

Section 21. The terms of the Secretary of Internal Affairs, the Auditor General, and the State Treasurer, shall each be four years. The term of the Secretary of Internal Affairs shall be from the third Tuesday of January next following his election. They shall be chosen by the qualified electors of the State at general elections. No person elected to the office of Auditor General or State Treasurer shall be capable of holding the same office for two consecutive terms.]

\* \* \*

#### SCHEDULE

That no inconvenience may arise from changes in article IV of the Constitution of this Commonwealth, it is hereby declared that the State Treasurer and Auditor General first elected after this amended article becomes effective shall serve terms beginning the first Tuesday in May next following their election and expiring four years from the third Tuesday in January next ensuing their election.

Section 2. This proposed amendment shall be submitted by the Secretary of the Commonwealth to the qualified electors of the State, at the primary election next held after the advertising requirements of article eighteen, section one of the Constitution of the Commonwealth of Pennsylvania have been satisfied.

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No. 5

#### A JOINT RESOLUTION

SB6

Proposing that article eight of the Constitution of the Commonwealth of Pennsylvania relating to suffrage and elections be amended.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of the Commonwealth of Pennsylvania is proposed in accordance with the provisions of the eighteenth article thereof:

The the number and title of article eight and sections one, two, three, seven, twelve, fourteen, fifteen, seventeen and nineteen thereof be amended to read:

#### ARTICLE [VIII] [SUFFRAGE AND] ELECTIONS

# A PROCLAMATION BY THE GOVERNOR

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In the Name and by Authority of the  
COMMONWEALTH OF PENNSYLVANIA



GOVERNOR'S OFFICE

HARRISBURG, PA.

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## PROCLAMATION

### CONSTITUTIONAL AMENDMENT — ARTICLE IV

WHEREAS, Joint Resolution No. 4 of the 1967 Session of the General Assembly of Pennsylvania proposed to amend Article IV of the Constitution of Pennsylvania by removing the Secretary of Internal Affairs and the Secretary of the Commonwealth as constitutionally defined executive officers and removing all references to the said offices in the said article by amending Section 1 and repealing Sections 18, 19, 20 and 21 thereof; making the Governor eligible for election for one additional term; providing for the joint election of Governor and Lieutenant Governor; restricting the Lieutenant Governor's tie-breaking vote in the Senate; reconstituting the Board of Pardons; redefining the appointing power of the Governor and adding a new Section 18 limiting the eligibility of the State Treasurer to the Office of Auditor General; the said amended article to read as follows:

"Section 1. *Executive Department.* — The Executive Department of this Commonwealth shall consist of a Governor, Lieutenant Governor, Attorney General, Auditor General, State Treasurer, and Superintendent of Public Instruction and such other officers as the General Assembly may from time to time prescribe.



“Section 3. *Terms of Office of Governor; Number of Terms.* — The Governor shall hold his office during four years from the third Tuesday of January next ensuing his election. Except for the Governor who may be in office when this amendment is adopted, he shall be eligible to succeed himself for one additional term.

“Section 4. *Lieutenant Governor.* — A Lieutenant Governor shall be chosen jointly with the Governor by the casting by each voter of a single vote applicable to both offices, for the same term, and subject to the same provisions as the Governor; he shall be President of the Senate. As such, he may vote in case of a tie on any question except the final passage of a bill or Joint Resolution, the adoption of a Conference Report or the concurrence in amendments made by the House of Representatives.

“Section 5. *Qualifications of Governor and Lieutenant Governor.* — No person shall be eligible to the office of Governor or Lieutenant Governor except a citizen of the United States, who shall have attained the age of thirty years, and have been seven years next preceding his election an inhabitant of this Commonwealth, unless he shall have been absent on the public business of the United States or of this Commonwealth.

“Section 6. *Disqualifications for Offices of Governor and Lieutenant Governor.* — No member of Congress or person holding any office (except of attorney-at-law or in the National Guard or in a reserve component of the armed forces of the United States) under the United States or this Commonwealth shall exercise the office of Governor or Lieutenant Governor.

“Section 7. *Military Power.* — The Governor shall be commander-in-chief of the military forces of the Commonwealth, except when they shall be called into the actual service of the United States.

“Section 8. *Appointing Power.* — (a) The Governor shall appoint an Attorney General, a Superintendent of Public Instruction and such other officers as he shall be authorized by law to appoint. The appointment of the Attorney General, the Superintendent of Public Instruction and of such other officers as may be specified by law, shall be subject to the consent of two-thirds of the members elected to the Senate.

“(b) Except as may now or hereafter be otherwise provided in this Constitution as to appellate and other judges, he may, during the recess of the Senate, fill vacancies happening in offices to which he appoints by granting commissions expiring at the end of its session and fill vacancies happening in the office of Auditor General or State Treasurer or in any other elective office he is authorized to fill. If the vacancy happens during the session of the Senate except as otherwise provided in this Constitution, he shall nominate to the Senate, before its final adjournment, a proper person to fill the vacancy. In the case of a vacancy in an elective office, a person shall be elected to the office on the next election day appropriate to the office unless the vacancy happens within two calendar months immediately preceding the election day in which case the election shall be held on the second succeeding election day appropriate to the office.

“(c) In acting on executive nominations, the Senate shall sit with open doors. The votes shall be taken by yeas and nays and shall be entered on the journal.

"Section 9. *Pardoning Power; Board of Pardons.* — (a) In all criminal cases except impeachment, the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose.

"(b) The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor with the consent of two-thirds of the members elected to the Senate, one for two years, one for four years, and one for six years, and thereafter for full terms of six years. The three members appointed by the Governor shall be residents of Pennsylvania and shall be recognized leaders in their fields; one shall be a member of the bar, one a penologist, and the third a doctor of medicine, psychiatrist or psychologist. The board shall keep records of its actions, which shall at all times be open for public inspection.

"Section 10. *Information from Department Officials.* — The Governor may require information in writing from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

"Section 13. *When Lieutenant Governor to act as Governor.* — In the case of the death, conviction on impeachment, failure to qualify or resignation of the Governor, the Lieutenant Governor shall become Governor for the remainder of the term and in the case of the disability of the Governor, the powers, duties and emoluments of the office shall devolve upon the Lieutenant Governor until the disability is removed.

"Section 14. *Vacancy in office of Lieutenant Governor.* — In case of the death, conviction on impeachment, failure to qualify or resignation of the Lieutenant Governor, or in case he should become Governor under the preceding section, the President pro tempore of the Senate shall become Lieutenant Governor for the remainder of the term. In case of the disability of the Lieutenant Governor, the powers, duties and emoluments of the office shall devolve upon the President pro tempore of the Senate until the disability is removed. Should there be no Lieutenant Governor, the President pro tempore of the Senate shall become Governor if a vacancy shall occur in the office of Governor and in case of the disability of the Governor, the powers, duties and emoluments of the office shall devolve upon the President pro tempore of the Senate until the disability is removed. His seat as Senator shall become vacant whenever he shall become Governor and shall be filled by election as any other vacancy in the Senate.

"Section 18. *Terms of Office of Auditor General and State Treasurer; Number of Terms; Eligibility of State Treasurer to become Auditor General.* — The terms of the Auditor General and of the State Treasurer shall each be four years from the third Tuesday of January next ensuing his election. They shall be chosen by the qualified electors of the Commonwealth at general elections but shall not be eligible to serve continuously for more than two successive terms. The State Treasurer shall not be eligible to the office of Auditor General until four years after he has been State Treasurer.

"Section 19. *State Seal; Commissions.* — The present great seal of Pennsylvania shall be the seal of the State. All commissions shall be in the name and by authority

of the Commonwealth of Pennsylvania, and be sealed with the State seal and signed by the Governor.”; and

WHEREAS, The said Joint Resolution was passed by two successive General Assemblies of Pennsylvania; and

WHEREAS, The aforesaid proposed constitutional amendment was submitted for approval by the qualified electors of the Commonwealth at an election held on May 16, 1967; and

WHEREAS, The Secretary of the Commonwealth has certified to me that the aforesaid proposed constitutional amendment was approved by the electorate on the aforesaid day;

NOW, THEREFORE, I, Raymond P. Shafer, Governor of the Commonwealth of Pennsylvania, do proclaim and pronounce that the aforesaid constitutional amendment was adopted by a majority of the electors voting thereon on May 16, 1967.

[GREAT SEAL]

GIVEN under my hand and the Great Seal of the State, at the City of Harrisburg, this seventh day of July, in the year of our Lord one thousand nine hundred and sixty-seven, and of the Commonwealth the one hundred and ninety-second.

RAYMOND P. SHAFER

*Governor*

By the Governor:

CRAIG TRUAX

*Secretary of the Commonwealth*

# Exhibit E

(This Joint Resolution No. 1 was passed for the first time at the Legislative Session of 1974 as Joint Resolution No. 2 and for the second time at the Legislative Session of 1975 and was approved by the electorate on May 20, 1975.)

## A JOINT RESOLUTION

SB 22

Proposing amendments to the Constitution of the Commonwealth of Pennsylvania, further providing for the appointing power of the Governor relating to appointive and elective offices.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendments to the Constitution of the Commonwealth of Pennsylvania are proposed in accordance with the provisions of the eleventh article thereof.

That subsections (a) and (b) of section eight and subsection (b) of section nine, article four, and subsection (b) of section thirteen, article five of the Constitution of the Commonwealth of Pennsylvania be amended to read:

Article IV  
THE EXECUTIVE

Section 8. Appointing Power.—(a) The Governor shall appoint an Attorney General, a **[Superintendent of Public Instruction]** *Secretary of Education* and such other officers as he shall be authorized by law to appoint. The appointment of the Attorney General, the **[Superintendent of Public Instruction]** *Secretary of Education* and of such other officers as may be specified by law, shall be subject to the consent of two-thirds *or a majority* of the members elected to the Senate *as is specified by law*.

(b) **[Except as may now or hereafter be otherwise provided in this Constitution as to appellate and other judges, he may, during the recess of the Senate,] The Governor shall** fill vacancies **[happening]** in offices to which he appoints by **[granting commissions expiring at the end of its session and fill vacancies happening in the office of Auditor General or State Treasurer or in any other elective office he is authorized to fill. If the vacancy happens during the session of the Senate except as otherwise provided in this Constitution, he shall nominate to the Senate, before its final adjournment, a proper person to fill the vacancy.] nominating to the Senate a proper person to fill the vacancy within ninety days of the first day of the vacancy and not thereafter. The Senate shall act on each executive nomination within twenty-five legislative days of its submission. If the Senate has not voted upon a nomination within fifteen legislative days following such submission, any five members of the Senate may, in writing, request the presiding officer of the Senate to place the nomination before the entire Senate body**

*whereby the nomination must be voted upon prior to the expiration of five legislative days or twenty-five legislative days following submission by the Governor, whichever occurs first. If the nomination is made during a recess or after adjournment sine die, the Senate shall act upon it within twenty-five legislative days after its return or reconvening. If the Senate for any reason fails to act upon a nomination submitted to it within the required twenty-five legislative days, the nominee shall take office as if the appointment had been consented to by the Senate. The Governor shall in a similar manner fill vacancies in the offices of Auditor General, State Treasurer, justice, judge, justice of the peace and in any other elective office he is authorized to fill.* In the case of a vacancy in an elective office, a person shall be elected to the office on the next election day appropriate to the office unless the **[vacancy happens] first day of the vacancy is** within two calendar months immediately preceding the election day in which case the election shall be held on the second succeeding election day appropriate to the office.

\* \* \*

Section 9. Pardoning Power; Board of Pardons.—\* \* \*

(b) The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor with the consent of two-thirds *or a majority* of the members elected to the Senate **[, one for two years, one for four years, and one for six years and thereafter for full] as is specified by law for** terms of six years. The three members appointed by the Governor shall be residents of Pennsylvania and shall be recognized leaders in their fields; one shall be a member of the bar, one a penologist, and the third a doctor of medicine, psychiatrist or psychologist. The board shall keep records of its actions, which shall at all times be open for public inspection.

#### Article V THE JUDICIARY

Section 13. Election of Justices, Judges and Justices of the Peace; Vacancies.—\* \* \*

(b) A vacancy in the office of justice, judge or justice of the peace shall be filled by appointment by the Governor. **[If the vacancy occurs during the session of the Senate, the] The** appointment shall be with the advice and consent of two-thirds of the members elected to the Senate, except in the case of justices of the peace which shall be by a majority. **[If the vacancy occurs during sine die adjournment of the Senate such appointment shall not require the advice and consent of the Senate.]** The person so appointed shall serve for an initial term ending on the first Monday of January following the next municipal election more than ten months after the vacancy occurs.

\* \* \*

Section 2. This proposed amendment shall be submitted by the Secretary of the Commonwealth to the qualified electors of the State, at the primary or general election next held after the advertising requirements of article eleven, section one of the Constitution of the Commonwealth of Pennsylvania have been satisfied.

IN THE NAME AND BY AUTHORITY OF THE

Commonwealth of Pennsylvania



Governor's Office

HARRISBURG

PROCLAMATION

CONSTITUTIONAL AMENDMENT - ARTICLES IV and V

WHEREAS, Joint Resolution No. 1 of the 1975 Session of the General Assembly of Pennsylvania (Senate Bill No. 22, Printer's No. 22) proposed to amend Articles IV and V of the Constitution of Pennsylvania by amending Sections 8 and 9 of Article IV and Section 13 of Article V to provide for the exercise of legislative prerogative in determining the proportion of Senate approval required in the constitutional and statutory exercise of its power of consent to gubernatorial appointments, the said amended sections were to read as follows:

"ARTICLE IV  
THE EXECUTIVE

Section 8. Appointing Power.— (a) The Governor shall appoint an Attorney General, a Secretary of Education and such other officers as he shall be authorized by law to appoint. The appointment of the Attorney General, the Secretary of Education and of such other officers as may be specified by law, shall be subject to the consent of two-thirds or a majority of the members elected to the Senate as is specified by law.

(b) The Governor shall fill vacancies in offices to which he appoints by nominating to the Senate a proper person to fill the vacancy within ninety days of the first day of the vacancy and not thereafter. The Senate shall act on each executive nomination within twenty-five legislative days of its submission. If the Senate has not voted upon a nomination within fifteen legislative days following such submission, any five members of the Senate may, in writing, request the presiding officer of the Senate to place the nomination before the entire Senate body whereby the nomination must be voted upon prior to the expiration of five legislative days or twenty-five legislative days following submission by the Governor, whichever occurs first. If the nomination is made during a recess or after adjournment sine die, the Senate shall act upon it within twenty-five legislative days after its return or reconvening. If the Senate for any reason fails to act upon a nomination submitted to it



within the required twenty-five legislative days, the nominee shall take office as if the appointment had been consented to by the Senate. The Governor shall in a similar manner fill vacancies in the offices of Auditor General, State Treasurer, justice, judge, justice of the peace and in any other elective office he is authorized to fill. In the case of a vacancy in an elective office, a person shall be elected to the office on the next election day appropriate to the office unless the first day of the vacancy is within two calendar months immediately preceding the election day in which case the election shall be held on the second succeeding election day appropriate to the office.

\* \* \*

Section 9. Pardoning Power; Board of Pardons.—\* \* \*

(b) The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor with the consent of two-thirds or a majority of the members elected to the Senate, as is specified by law for terms of six years. The three members appointed by the Governor shall be residents of Pennsylvania and shall be recognized leaders in their fields; one shall be a member of the bar, one a penologist, and the third a doctor of medicine, psychiatrist or psychologist. The Board shall keep records of its actions, which shall at all times be open for public inspection.

#### ARTICLE V THE JUDICIARY

Section 13. Election of Justices, Judges and Justices of the Peace; Vacancies.—\* \* \*

(b) A vacancy in the office of justice, judge or justice of the peace shall be filled by appointment by the Governor. The appointment shall be with the advice and consent of two-thirds of the members elected to the Senate, except in the case of justices of the peace which shall be by a majority. The person so appointed shall serve for an initial term ending on the first Monday of January following the next municipal election more than ten months after the vacancy occurs."

WHEREAS, The said Joint Resolution was passed by two successive General Assemblies of Pennsylvania, and

WHEREAS, The aforesaid Constitutional Amendment was submitted for approval to the qualified electors of this Commonwealth at an election held on May 20, 1975, and

WHEREAS, The Secretary of the Commonwealth has certified to me that the aforesaid proposed Constitutional Amendment was approved by the electorate on the aforesaid day,

NOW, THEREFORE, I, Milton J. Shapp, Governor of the Commonwealth of Pennsylvania, do proclaim and pronounce that the aforesaid Constitutional Amendment was adopted, on May 20, 1975, by a majority of the electors voting thereon.

GIVEN under my hand and the Great Seal of the State, at the City of Harrisburg, this twenty-second day of September, in the year one thousand nine hundred and seventy-five, and of the Commonwealth the two hundredth.

MILTON J. SHAPP  
Governor

BY THE GOVERNOR:

C. DeLORES TUCKER  
Secretary of the Commonwealth

## **PROOF OF SERVICE**

We hereby certify that we are this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121(c):

### **UNITED STATES POSTAL SERVICE, FIRST CLASS MAIL:**

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(Commonwealth, Petitioner)

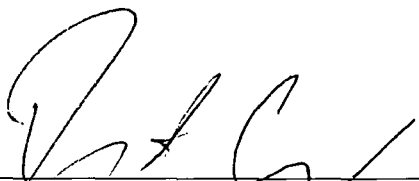
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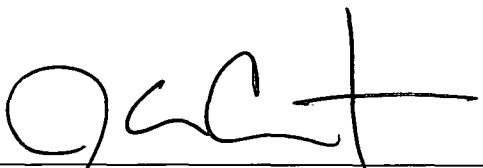
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DATED: 4/13/15

  
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\_\_\_\_\_  
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