

IN THE SUPREME COURT OF THE UNITED STATES

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FRIENDS OF DANNY DEVITO, KATHY GREGORY, B&J  
LAUNDRY, LLC, BLUEBERRY HILL PUBLIC GOLF  
COURSE & LOUNGE, and CALEDONIA LAND COMPANY,  
Petitioners

v.

TOM WOLF, GOVERNOR AND RACHEL LEVINE,  
SECRETARY OF PA. DEPARTMENT OF HEALTH,  
Respondents

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PETITION FOR WRIT OF CERTIORARI  
TO THE PENNSYLVANIA SUPREME COURT

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SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION TO STAY  
THE ENFORCEMENT OF GOVERNOR WOLF’S EXECUTIVE  
ORDER DATED MARCH 19, 2020 PENDING THE FILING AND  
DISPOSITION BY THE UNITED STATES SUPREME COURT OF  
PETITIONERS’ PETITION FOR WRIT OF CERTIORARI

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AND NOW, come the Petitioners, by and through their attorney, Marc A. Scaringi, pursuant to Rule 15 (8) of the United States Supreme Court, who respectfully file this Supplemental Brief as follows:

1. Since the filing of the Application there have been substantial developments in this matter that are material and relevant.
2. First, on May 1, 2020, the Governor announced the “reopening” of twenty-four counties in the northwest and northcentral regions of the state, moving them from red, meaning non-life sustaining businesses remain closed, to yellow,

meaning some restrictions on work and social interaction will cease, beginning at 12:01 a.m., Friday, May 8, 2020 (hereinafter the “Announcement”).<sup>1</sup> The Announcement references the Governor’s full plan to reopen Pennsylvania (hereinafter the “Plan”).<sup>2</sup>

3. However, neither the Announcement nor the Plan reopens the entity and businesses of Petitioners Friends of Danny DeVito, Kathy Gregory or the Declarants, who are identified in paragraph 11 below; they are all still deemed to be non-life-sustaining and are located in the red zone.

4. Further, neither the Announcement nor the Plan provides a date when said Petitioners, Declarants or any business or entity on the non-life-sustaining List and located in Pennsylvania’s remaining forty-three “red” counties will be permitted to reopen.

5. The Announcement and the Plan reveal the Executive Order was not reasonably necessary to achieve its purpose, as it is required to be pursuant to *Lawton v. Steele*, 152 U.S. 133 (1894), and thus violates the constitutional rights of Petitioners, Declarants, et al.

a. In his Announcement, the Governor claims his reopening of twenty-four counties is based upon a “balancing [of] economic benefits and public health risks...” However, no such balancing test was employed in the Governor’s Executive Order.<sup>3</sup> A review of the Executive Order and the

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<sup>1</sup> <https://www.governor.pa.gov/newsroom/gov-wolf-announces-reopening-of-24-counties-beginning-may-8/>

<sup>2</sup> <https://www.governor.pa.gov/process-to-reopen-pennsylvania/>

<sup>3</sup> <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>

pleadings in this case reveals the Governor did not consider the economic effects of his Executive Order.

b. The Announcement and Plan are based upon a county-by-county or regional approach to the reopening, based upon the Governor's selected data pertaining to each respective county. However, no such county-by-county or regional approach was employed in the Governor's Executive Order.

c. In the Governor's Plan, he states, "Just as the administration took **a measured, county-by-county approach** to the Stay at Home order before expanding the order statewide, it will do the same to ease restrictions and reopen the state." (emphasis added). However, the Governor did not employ "a measured, county-by-county approach" in his Executive Order. The fact that the Governor touts his "measured, county-by-county approach" to the Stay-At-Home order, when he did not do the same with his Executive Order, is a glaring admission.

d. In his Announcement, the Governor states that, "The administration partnered with Carnegie Mellon University (CMU) to create a Risk-Based Decision Support Tool that enables decision makers **to strike a balance between maximizing the results of our economy while minimizing public health risks**." (emphasis added). However, the Executive Order did not even attempt to strike a balance between maximizing the results of our economy while minimizing public health risks.

The Governor did keep certain industries he deemed “life-sustaining” open but that was, according to the Governor, because those industries sustain life during a pandemic; it was not because that was the way to “maximize[e] the results of our economy.”

e. In his Announcement, the Governor stated, “If we see an outbreak occur ***in one of the communities*** that has been moved to yellow, we will need to take swift action, and revert to the red category until the new case count falls again.” (emphasis added). However, the Executive Order did not employ a community-based approach; it ordered the closure of all businesses in the state deemed to be non-life-sustaining.

6. On April 27, 2020, so that Pennsylvanians could “maintain positive physical and mental health,” the Governor announced the opening of certain recreational activities, including golf courses and thus Petitioner Blueberry Hill Public Golf Course & Lounge, on May 1, 2020, provided they employ COVID-19 precautions.<sup>4</sup> However, Pennsylvanians’ need to maintain positive physical and mental health existed from March 19, 2020 through May 1, 2020 as well, and Petitioner Blueberry Hill argued in its initial and subsequent filings that it was ready, willing and able to employ COVID-19 precautions if permitted to reopen. Thus, there was no reason for Petitioner to be on the non-life-sustaining List, to have its waiver not approved when it was finally permitted to reopen over a month

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<sup>4</sup> <https://www.governor.pa.gov/newsroom/governor-announces-may-1-statewide-reopening-of-limited-outdoor-recreational-activities-to-help-pennsylvanians-maintain-positive-physical-mental-health/>

and a half later with the COVID-19 precautions that it was ready, willing and able to incorporate in its business from the beginning.

7. Second, on April 30, 2020, the Auditor General of Pennsylvania announced that he will audit how the Department of Community and Economic Development (DCED) managed the waiver process set up by the Governor, stating, “Some business owners complained that the department’s waiver process was too slow and not transparent enough.”<sup>5</sup>

8. Third, actual evidence, not the projections used to form the basis of the Governor’s orders, reveals that lockdown orders like the Executive Order and Stay-At-Home order are doing more harm than good. Professor Johan Giesecke, one of the world’s most senior epidemiologists, an advisor to the Swedish government, the first Chief Scientist of the European Centre for Disease Prevention and Control, and an advisor to the director general of the World Health Organization, has opined that:

- a. lockdown policies are not evidence-based;
- b. the models used to support the lockdowns are a dubious basis for public policy;
- c. the flattening of the curve is due to the most vulnerable dying first as much as the lockdown;
- d. COVID-19 is a “mild disease” and similar to the flu;

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<sup>5</sup> <https://www.paauditor.gov/press-releases/auditor-general-depasquale-to-audit-state-s-handling-of-covid-19-business-shutdown-waivers>

e. the mortality rate will be much lower than the projected numbers because most people who get the disease will never even notice they were infected;

f. it was the novelty of the disease that scared people and made political leaders want to look strong and decisive by ordering lockdowns; and

g. the correct policy would have been to protect the elderly and the infirm and to allow the disease to have spread through the population so that herd immunity can work to build the immunity of healthy Pennsylvanians.<sup>6</sup>

9. According to Professor Michael Levitt, Professor of Structural Biology at the Stanford School of Medicine, and winner of the 2013 Nobel Prize for Chemistry for “the development of multiscale models for complex chemical systems,” the indiscriminate lockdown measures are “a huge mistake;” he advocates a “smart lockdown” policy, focused on more effective measures, focused on protecting elderly people; and he is unconvinced that the explanation for flattening the curve is the result of social distancing and lockdowns. He believes the “herd immunity” is the right approach and states, “There is no doubt in my mind, that when we come to look back on this, the damage done by lockdown will exceed any saving of lives by a huge factor.”<sup>7</sup>

10. Fourth, on April 29, 2020, the Pennsylvania Department of Health reported that over sixty-five percent of the COVID-19 deaths have occurred in

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<sup>6</sup> <https://www.aier.org/article/lockdown-free-sweden-had-it-right-says-world-health-organization-interview-with-prof-johan-giesecke/>

<sup>7</sup> <https://unherd.com/thepost/nobel-prize-winning-scientist-the-covid-19-epidemic-was-never-exponential/>

Pennsylvania's nursing homes.<sup>8</sup> This is where the risk of serious illness and death is. This is where the Respondents, who are statutorily obligated to regulate these homes, should have employed COVID-19 prevention and mitigation efforts using their statutory powers under the Disease Act, not the indiscriminate and mass closure of tens of thousands of businesses, which included Petitioners where no outbreak or even one infection or death was reported at their businesses and entities.

11. Furthermore, not just the Petitioners will suffer irreparable harm if the Executive Order is not stayed, but all Pennsylvania businesses on the non-life-sustaining List will also, including the businesses owned by Stephen Cassel, Nichole Missino, John Williams, Karen Myers, and Kraig Nace (herein the "Declarants"), whose statements are incorporated herein by reference made a part hereto, attached and marked as Exhibits A, B, C, D, and E respectively.

12. In considering a request for a stay/preliminary injunction, this Court utilizes a four-factor test:

As a matter of equitable discretion, a preliminary injunction does not follow as a matter of course from a plaintiff's showing of a likelihood of success on the merits. [citation omitted] Rather, a court must also consider whether the movant has shown that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

*Benisek v. Lamone*, 138 S. Ct. 1942, 1943, 201 L.Ed.2d 398, 399 (2018) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U. S. 7, 20, 24, 32, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008)).

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<sup>8</sup> <https://www.usnews.com/news/best-states/pennsylvania/articles/2020-04-29/pennsylvania-adds-479-covid-19-deaths-as-total-tops-2-000>

13. Petitioners are likely to succeed on the merits.

a. Respondents have grossly exceeded their police powers, which only permit isolation and quarantine of persons, not businesses or entities. For isolation persons must be infected with, susceptible to the disease or persons who may spread the disease to others, and for quarantine the person must have been exposed to the disease. In neither case have Respondents provided such evidence pertaining to Petitioners or any businesses or entities subject to the Executive Order. Further, such persons must be afforded their right to due process to challenge the state action before it occurs, if the persons will not voluntarily comply; no such rights were afforded here. The Executive Order cannot withstand the test in *Lawton v. Steele*, 152 U.S. 133 (1894), which is used by this Court to determine the constitutionality of state police powers.

b. Petitioners have had their property taken without just compensation in violation of U.S. Const. amend V as set forth in *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992), and have been deprived of their right to liberty and property without due process of law as guaranteed by the U.S. Const. amend. V, IV, as set forth in *Fuentes v. Shevin*, 407 U.S. 67 (1972), *Mathews v. Eldridge*, 424 U.S. 319 (1976), and *Hodel v. Va. Surface Mining & Reclamation Ass'n*, 452 U.S. 264 (1981); and the right to judicial review per *Lawton, supra*, and in *Chamber of Commerce of the United States v. Reich*, 74 F.3d 1322 (1996).



c. The Executive Order, List and waiver process are a case study in arbitrary and capricious state actions and thus should be struck down pursuant to *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983) and *Sterling v. Constantin*, 287 U.S. 378 (1932). The Executive Order, List and waiver process are patently arbitrary and lack rationality and thus violate Petitioners' rights to equal protection guaranteed by the U.S. Const. amend. XIV pursuant to *McGowan v. Maryland*, 366 U.S. 420 (1961), *New Orleans v. Dukes*, 427 U.S. 297 (1976), and *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). The denial of judicial review and the arbitrariness of the List and waiver process and the fact that many businesses may not survive the Executive Order is of serious concern to the three justices of the Pennsylvania Supreme Court who signed onto the Concurring and Dissenting Opinion.

d. The Executive Order, in tandem with the Governor's Stay-At-Home Order, prohibit all Pennsylvania businesses and entities on the non-life-sustaining List from exercising their speech and assembly rights at all other non-life-sustaining businesses and entities in addition to their own; and due to the Stay-At-Home Order anywhere in any county still subject to that order. Further, the Governor's Plan will move twenty-four counties on May 8, 2020 from the red to the yellow zone. In the red zone, which will pertain to forty-three counties, all assemblies will be prohibited. In the yellow zone, assemblies will be limited to no more than twenty-five persons. Thus, the

rights to speech and assembly will continue to be either completely prohibited or severely restricted in certain physical locations, which include massive swaths of the geography of Pennsylvania and as such violates the U.S. Const. amend. I pursuant to *Citizens United v. FEC*, 558 U.S. 310 and *Hague v. Comm. for Indus. Org.*, 307 U.S. 496 (1939).

14. Petitioners are likely to suffer irreparable harm in the absence of preliminary relief. Petitioners are required to forgo their rights to liberty, property, equal protection, speech and assembly guaranteed by the U.S. Const. amends. I, V and XIV:

The loss of freedoms guaranteed by U.S. Const. amend. I, for even minimal periods of time, unquestionably constitutes irreparable injury for purposes of granting a preliminary injunction.

*Elrod v. Burns*, 427 U.S. 347, 349, (1976).

15. Petitioners have also suffered severe financial harm. See, e.g., *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931-32 (1975) (respondents were entitled to preliminary relief because “a substantial loss of business and perhaps even bankruptcy” would result from waiting until they obtained a final judgment). If this Court waits until final judgment, Petitioners, Declarants and tens of thousands of other Pennsylvania businesses could be insolvent, bankrupt, or permanently closed and lost. This would result in the complete destruction of the property rights of the owners, the places of employment for their workers and the products and services they produce for their customers. Furthermore, even if the Governor ultimately reopens the counties in which Petitioners’ businesses are located, and assuming

they are still in business, the Governor can just as easily shut them down again, as he has declared. See paragraph 5 (e) *supra*.

16. The balance of the equities tip in Petitioners' favor. In an action without any historical precedent, without lawful statutory basis, and in violation of the U.S. Constitution, the Governor issued an Executive Order that has completely deprived Petitioners, Declarants and tens of thousands of businesses on the non-life-sustaining List of their right to operate their businesses and entities now for over a month and a half and continuing indefinitely for those in the red zone, using a standard for determination which businesses can remain open and which must be closed that does not exist in law and was fashioned out of whole cloth by the Governor. The Governor issued his Executive Order without identifying any communicable disease let alone an outbreak of one at the places of businesses closed by it and based upon scientific projections about the death rate of this disease that were staggeringly wrong.<sup>9</sup> The Governor set up a waiver process that has been characterized as arbitrary and capricious by the public at large, has caused concern among the Pennsylvania Supreme Court justices in their Concurring and Dissenting Opinion and is now subject to audit by the Pennsylvania Auditor General, all while the Governor and now the lower court's order denies businesses and entities the right to judicial review. Further, based upon actual evidence, COVID-19 is a mild illness like the flu for the overwhelming majority of people, but can threaten serious harm or death to the elderly and those with underlying health

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<sup>9</sup> <https://www.nationalreview.com/corner/coronavirus-pandemic-projection-models-proving-unreliable/>

conditions, including those with respiratory ailments and/or co-morbidities. Thus, according to the world renowned epidemiologist, Professor Johan Giesecke, the correct policy would have been to protect the elderly and the infirm, particularly in nursing homes which Respondents are responsible to regulate to ensure the health and safety of the residents there, and to allow the disease to have spread through the population so that herd immunity could work the way it has for millennia. The overwhelming majority of Pennsylvanians have or will have no serious health consequence as a result of this mild illness. In fact, by putting people under shutdown and lockdown, the Governor is harming their health by weakening their immune systems, which they need to ward off COVID-19 and more dangerous communicable diseases. The Executive Order and Stay-At-Home orders are delaying the work of herd immunity which is important to protect the overwhelming majority of the American people from contracting infectious diseases. Lastly, through his reopening, the Governor is admitting that a more regional response based upon the data for that region would have been more reasonable, rational and tailored; however, Petitioners do not agree the Governor's Plan is in fact reasonably necessary, in the public interest and not duly burdensome and continue to claim and argue the Executive Order should be stayed and then struck down.

17. An injunction is in the public interest. The public has been and continues to be greatly harmed by the Executive Order due to the severe economic damage it is causing the Pennsylvania economy as more fully described in the Application to Stay, in the Petition for Writ of Certiorari and in the statements by

the Declarants. Further, according to the reports cited by the lower court, the people have largely voluntarily complied with social distancing and other Centers for Disease Control and Prevention (CDC) guidelines and recommendations and will likely continue to do so if the enforcement of the Executive Order is stayed. Further, Pennsylvanians can determine for themselves if they wish to frequent a business that is open but is not employing COVID-19 precautions. Businesses that do not comply with COVID-19 precautions may suffer a loss in customers and revenues. Furthermore, Petitioners and Declarants are ready, willing and able to voluntarily employ the COVID-19 precautions recommended by the Respondents. In short, people and businesses can self-regulate, as they have done for millennia, in the face of a viral illness, without resort to massive, statewide shutdowns and lockdowns of businesses and persons done apparently at the whim of the Executive and based upon scientific projections which were staggeringly wrong. Furthermore, the death count calculated by the Secretary of Health that has been used to support the need for these sweeping, all-encompassing and unprecedented Executive Order and Stay-At-Home orders has been seriously questioned by the *inter alia* the public, the media, members of the Pennsylvania General Assembly and Pennsylvania's county coroners, so much that Secretary Levine recently reduced the death count by two hundred deaths.<sup>10</sup> Prior thereto she had added "probable" deaths-related to COVID-19 to the death count even though no COVID-19 test was administered, let alone the deceased actually having tested positive for it, in those cases. After that decision

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<sup>10</sup> <https://www.inquirer.com/health/coronavirus/spl/pennsylvania-death-count-changes-confusion-coronavirus-20200423.html>

sparked criticism, she removed those two hundred deaths from the count adding further confusion and criticism.

By not having to spend so much time and taxpayer resources on the Executive Order, the Stay-At-Home Order and now the Plan, the Respondents could have and still can use their time and taxpayer-provided resources to address the actual problem presented by COVID-19, which is the danger it poses to the elderly, particularly those living in the nursing homes, and those with pre-existing respiratory ailments and/or co-morbidities. Respondents can use the actual legal tools they have pursuant to the Disease Act to isolate and quarantine the elderly currently residing in nursing homes who have been infected or have likely been exposed. That's what will help save the lives of the small number of Pennsylvanians who are at risk of serious harm or death from this otherwise mild virus. These are examples of reasonable, tailored and rational responses to COVID-19. Instead the Respondents, including particularly Secretary Levine, have used their power to possibly exacerbate the number of deaths in Pennsylvania.

According to media reports, "On March 18, Pennsylvania Health Secretary Dr. Rachel Levine directed licensed long-term care facilities to continue admitting new patients, including those discharged from hospitals but unable to go home, and to readmit current patients after hospital stays. 'This may include stable patients who have had the COVID-19 virus,' according to a copy of the guidelines."<sup>11</sup> The Secretary of Health's guidelines to nursing homes is still posted on the Department

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<sup>11</sup> <https://www.buckscountycouriertimes.com/news/20200501/states-ordered-nursing-homes-to-take-covid-19-residents-thousands-died-how-it-happened>

of Health’s website.<sup>12</sup> This decision by the Secretary of Health may have proved deadly to many nursing home residents because the virus spread like wildfire in Pennsylvania’s nursing homes. The American Health Care Association said at the time that that directive put “frail and older adults who reside in nursing homes at risk” and would “result in more people going to the hospital and more deaths.” See FN 9. According to the article, in Pennsylvania, about 65% of coronavirus-deaths were of nursing-home residents, and in counties in the hardest hit southeastern part of the state, long-term care-residents account for as much as 80% of county deaths. The Secretary should have been using her powers under the Disease Act to isolate and quarantine those nursing home residents, who have had COVID-19, from all other residents of those homes. On March 28, 2020, the Secretary announced there were approximately 3400 intensive care beds in Pennsylvania and that 40% of them were empty.<sup>13</sup> She could at least fill up those beds with the infirm elderly who have or have had COVID 19 instead of compelling nursing homes, which are apparently incubators of the virus, to take in COVID-19 infected or recently infected residents.

Furthermore, the Secretary stopped regular inspections of Pennsylvania nursing homes during the COVID-19 pandemic.<sup>14</sup> So, how would she know if

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<sup>12</sup> <https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/COVID-19%20Interim%20Nursing%20Facility%20Guidance.pdf>

<sup>13</sup> <https://www.abc27.com/news/health/coronavirus/hospital-beds-in-pa-are-beginning-to-fill-up-as-virus-spreads/>

<sup>14</sup> <https://www.wpxi.com/news/investigates/11-investigates-still-no-answers-pa-health-secretary-about-nursing-home-concerns/CUR4SEM7QVED7D6YNAWAHM5WCM/>

nursing homes were isolating the infected or recently infected within their own facilities?

The public health concern presented by COVID-19 is focused in Pennsylvanian's nursing homes and with the infirm, elderly and those with pre-existing conditions and co-morbidities. The public's interest lies there in the Respondents' focusing their lawful efforts under the Disease Act to prevent the spread of COVID-19 to those individuals infected; not in sweeping, broad, statewide Executive Orders closing tens of thousands of Pennsylvania businesses where Respondents identified no infection or outbreak and which devastated the Pennsylvania economy or in issuing a Stay-At-Home order that locked down the healthy and all demographic groups including the majority of Pennsylvanians for whom COVID-19 is similar to a mild flu. The Executive Order and Stay-At-Home orders constituted the single, worst deprivation of the constitutional rights of the largest number of the people of Pennsylvania in the history of the Commonwealth and did so based upon staggeringly inaccurate projections of morbidity concerning a viral illness that is seriously harmful to an extremely small percentage of Pennsylvanians and has ravaged the economy in way that we have not experienced since the Great Depression.

WHEREFORE, Petitioners respectfully request that this Court stay and/or enjoin the enforcement of the Executive Order pursuant to this Court's authority as



set forth in *inter alia* the All Writs Act, 28 U.S.C. § 1651, pending review and disposition of Petitioners' Petition for Writ of Certiorari.

Respectfully submitted,  
/s/ Marc A. Scaringi  
Marc A. Scaringi, Esquire  
Pa Supreme Court ID No. 88346  
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717-657-7770 (o)  
717-657-7797 (f)

Date: May 4, 2020

**VERIFICATION**

I, Daniel DeVito, of Friends of Danny DeVito, hereby swear or affirm that the above-written statements of fact in the foregoing document are true and correct to the best of my knowledge, information and belief and that I make said statements of fact subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification of authorities.

5/3/2020

  
Daniel DeVito, Candidate  
Friends of Danny DeVito

# **EXHIBIT A**

### STATEMENT OF STEPHEN CASSEL

I am the co-owner, of Iacobucci Formal Wear in Havertown, Delaware County, PA. Our company has been in business since 1954. I have been working there for the past 25 years, and have owned it with a partner for the past 13 years. We are in the business of sales and rentals of formal wear, tuxedos and suits & accessories for proms, dances, weddings, formal events & functions.

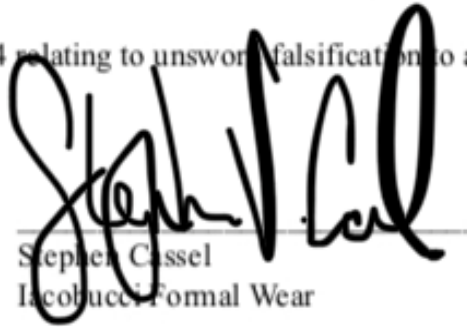
I'm afraid that because of Governor Tom Wolf's shutdown of most Pennsylvania businesses, our family business will soon be finished, and for good. I am the father of five children , one of whom is deployed in Afghanistan with the United States Marine Corps, and my wife of 27 years, is a stay at home Mom. I currently I have no income, and we haven't received a dime from the government. At this point, I'm just putting food on the table. I estimate, based on the past nine years, that our business has lost \$50,000 in revenue for March, \$95,000 for April, and we are going to lose another \$75,000 for May.

These are staggering losses for our business. As things stand, it will take us a month just to get back up and running, and there's no certainty that we could even survive this, because of the lack of funds. We are behind on our rent, though our landlord, the widow of the company's late founder, has been patient with us. Our insurance claim for business interruption has also been denied.

VERIFICATION

I hereby verify that the facts set forth in the foregoing Statement are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

May 3, 2020



Stephen Cassel  
Iacobucci Formal Wear

# **EXHIBIT B**

### STATEMENT OF NICHOLE MISSINO

I have owned and operated Giovanni's Media Barber Shop in Media, Delaware County, PA for four-and-half years. Seven of us barbers work in my shop. None of us has worked since March 16, 2020, and I have had no income since that time. In the meantime, my expenses continue: rent (although my landlord has been patient), electric, Internet, cable, security system, booking system, and insurance. None of us has received a dime in assistance from the government. I have not received any loan money or unemployment compensation (the state has made special allowance for business owners). The Unemployment Compensation Office told us to come back in a couple weeks; the problem is that we don't have a couple weeks. I am paying my bills out of savings, which are dwindling. Another month of the governor's shutdown and I'll be done; I'll lose my business.

I recently announced that I would reopen my shop on May 9, 2020. After making my announcement, the Chief of the Media Police Department contacted me and informed me that if I opened my shop, my occupancy permit would be taken away. The State Board of Barber Examiners has threatened me with the loss of my license.

We have taken steps to institute precautions in our shop to protect against the spread of the coronavirus, including installing plastic partitions, offering masks to customers, using face shields, wearing aprons, providing touchless hand sanitizer, and cleaning with alcohol. We will essentially be dressing like nurses in order to cut hair. We have installed a new floor and UV lights in drawers throughout the shop that will disinfect barber tools in two minutes. Our shop is likely cleaner than a Walmart store for this reason, and because we can control the number of patrons in the shop at one time.

### VERIFICATION

I hereby verify that the facts set forth in the foregoing Statement are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities

May 3, 2020

  
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Nichole Missino

# **EXHIBIT C**



## STATEMENT OF JOHN WILLIAMS

I am a REALTOR in the Chadds Ford / Garnet Valley / Glen Mills region of Delaware County, PA. I've been in the real estate business for approximately 14 years and hold an Associate Broker level license. We are currently in the peak Spring selling season for residential real estate transactions, during which, historically, I have earned the majority of my revenue. In 2019 I took in 68% of my gross for the year during the first half of the year through June (33% of 2019 revenue was earned in the months of April, May & June). For most people, buying a home is the most important investment they'll ever make and is not a decision most will make based on a virtual tour or photography. Although those tools are available on all of my listings, I have found the majority of home buyers are just not willing to proceed if they cannot personally tour a home. Not being permitted to show any homes to prospective buyers or to preview homes or meet with prospective home sellers for listing purposes, eliminates my ability to generate income. And I'm not alone. There are over 12,000 idle real estate agents in the Delaware Valley region of Pennsylvania. I have taken a line of credit to try to make ends meet, and am not even scraping by with bills piling up and going past due. In terms of government assistance, I have received only a \$1,000 grant from the Small Business Administration. I applied for unemployment compensation two-to-three weeks ago to support my family of six (four children, my wife who is not employed, and myself), but Pennsylvania's unemployment compensation system hasn't been terribly functional since PA Governor Tom Wolf issued his shutdown order.

Though Governor Wolf has classified realtors as "non-essential," the commodity we deal in, housing, is definitely essential. People need roofs over their heads. That reality doesn't go away because of the current circumstances. People are living in other people's basements for shelter because they're stuck between homes.

Governor Wolf's shutdown and stay-at-home orders have had an inevitable ripple effect on the economy. One person who's out of work cannot patronize another, who is therefore also out of work and cannot patronize another, and so on.

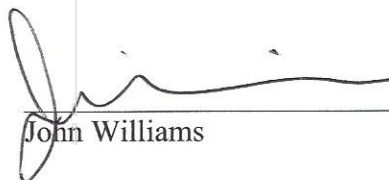
The shutdown and stay-at-home orders have also prevented me from participating in community service projects and fundraisers such as an annual 5k race to benefit an area school district where I am the presenting sponsor, an annual silent auction to benefit another area school, and more that have all been required to be cancelled.

As a responsible realtor, I am prepared to implement precautions recommended by the CDC, such as limiting the number of people inside for a showing, offering face masks and gloves, limiting handling of surfaces, or requiring that participants do so only while wearing gloves, and immediately disinfecting such surfaces.

#### VERIFICATION

I hereby verify that the facts set forth in the foregoing Statement are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

May 3, 2020

  
\_\_\_\_\_  
John Williams

# **EXHIBIT D**

## STATEMENT OF KAREN MYERS

I have owned a dance and gymnastics center, Karen Myers & Co. Dance & Gymnastics, for 28 years. Our company operates from two locations in Chester County, PA, including a 20,000-square-foot facility in Kennett Square, PA, and a second location in Jennersville, also in Chester County. We have approximately 1,100 students per year. We train high-level athletes, some of whom have been nationally prominent. Before Governor Tom Wolf's shutdown order, I had 44 employees. In 28 years I had never had to lay anyone off, and had never had an unemployment compensation claim.

My business has had no income since the beginning of March 2020. I have had to lay off half my employees. The rent on our facilities is \$25,000 per month. I pay \$4,500 per month in health insurance premiums for full-time employees. According to Governor Wolf's program to reopen Pennsylvania, I will not be able to reopen until mid-July, 2020; however, if I'm unable to resume operations in May 2020, even with government assistance, I will be forced to close my business that I've worked 28 years to establish. In that event I will be forced to liquidate business assets at fire-sale prices. I've invested as much as \$3,000 apiece for gymnastics apparatus, and \$15,000 for a floor exercise floor and mat. Loss of my business would also mean the elimination of my retirement. As is the case with many business owners, my business is my retirement.

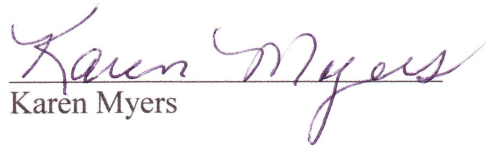
I've been approved for a business loan, but it must be used for operations, and I can't operate as long as our facilities are closed.

I have thoroughly studied the recommendations of the Centers for Disease Control, and will be prepared to implement appropriate protocols when our facilities reopen. We have a very large facility with studio areas and gym areas that can be sectioned off. The entrance will be different from the exit, with a counterclockwise directional flow pattern, so that students and

parents will not have to pass close by one another. We will space out workouts so that there will be time to sanitize apparatus between uses. We will use bleach tablets to make bleach solution that we can spray in order to clean apparatus and other surfaces. We will also have hand sanitizing stations. Students will bring their own water bottles, and our water fountains will be covered.

#### VERIFICATION

I hereby verify that the facts set forth in the foregoing Statement are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

  
Karen Myers

May 3, 2020

# **EXHIBIT E**



### STATEMENT OF KRAIG NACE

I am the President of Detailed Attention, Inc. in Duncannon, Perry County, PA. Our company has several divisions.

JF Designs, a retail and special events florist and décor company, is closed because of Governor Tom Wolf's business shutdown order. JUKE BOX HITS Entertainment Services, which provides MC, DJ, and Production Services and Event Rentals, is also closed, and for the same reason. I have already lost \$10,000 because of the closure of JUKE BOX HITS.

Duncannon Rentals is a property management and investment business. All of the commercial clients of Duncannon Rentals are closed because of the governor's order, and I am very concerned about rent revenues from those clients and from the company's residential tenants.

I'm having difficulty paying my bills. I am not eligible for a PPP loan.

I also volunteer as the Chief of our local ambulance service, and due to fundraiser shutdowns and decreased call volumes (25% in March and 50% in April), we have lost, already, close to \$20,000 in critical revenue.

Additionally, my wife and two friends run a biannual local consignment sale which has already been pushed back to May from March. They are now concerned that they may not be able to have it at all since Perry County has no definitive time to "reopen."

Perry County, incidentally, is a mostly rural county in Central Pennsylvania with a population of about 43,600.<sup>1</sup> PennLive has reported that as of May 3, 2020 there have been 34 coronavirus cases and one death in Perry County.<sup>2</sup>

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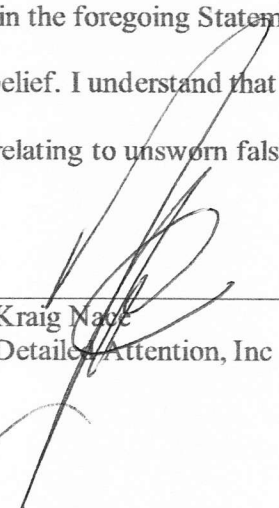
<sup>1</sup> <http://www.perryco.org/Pages/Welcome.aspx>

<sup>2</sup> <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>

VERIFICATION


I hereby verify that the facts set forth in the foregoing Statement are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

May 3, 2020



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Kraig Nace  
Detailed Attention, Inc





IN THE SUPREME COURT OF THE UNITED STATES

FRIENDS OF DANNY DEVITO,	:
KATHY GREGORY,	:
B&J LAUNDRY, LLC	: No. 19A1032
BLUEBERRY HILL PUBLIC GOLF	:
COURSE & LOUNGE, and	:
CALEDONIA LAND COMPANY,	: SUPPLEMENTAL BRIEF IN
Petitioners	: SUPPORT OF APPLICATION
	: TO STAY
	:
v.	:
	:
TOM WOLF, GOVERNOR	:
AND RACHEL LEVINE,	:
SECRETARY OF PA.	:
DEPARTMENT OF	:
HEALTH,	:
Respondents	:

**CERTIFICATE OF SERVICE**

I, Deborah A. Black, Paralegal for Scaringi Law, do hereby certify that I served a true and correct copy of a *Supplemental Brief in Support of Application to Stay* in the above-captioned action, upon the following via electronic mail to:

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Date: May 4, 2020

/s/ Deborah A. Black  
Deborah A. Black, Paralegal  
For Marc A. Scaringi, Esquire and