

In the

Supreme Court of the United States

EARL MARKEY,

Applicant,

v.

TOM WOLF,

Respondent.

**REPLY IN SUPPORT OF EMERGENCY APPLICATION TO
STAY JUDGEMENT OF THE PENNSYLVANIA SUPREME
COURT TO DENY INJUNCTIVE RELIEF AND STAY
ENFORCEMENT OF RESPONDENT'S STAY AT HOME ORDER
PENDING TIMELY FILING AND DISPOSITION OF PETITION
FOR WRIT OF CERTIORARI**

**Directed to the Honorable Samuel A. Alito,
Associate Justice of the United States Supreme Court and
Circuit Justice for the Third Circuit**

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Pro Se Applicant

TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE
UNITED STATES AND CIRCUIT JUSTICE FOR THE THIRD CIRCUIT:

A stay or injunction is necessary to maintain the jurisdictional posture of this case and to allow the Applicant to file and for the Court's dispose of his petition for writ of certiorari.¹ The Respondent is correct: The Pennsylvania Supreme Court did not exercise its discretionary extraordinary or king's bench jurisdiction under Pennsylvania Law. However, the argument this denial of discretionary review in extraordinary jurisdiction is any different from a denial in ordinary discretionary such as appellate review is without merit. Here, the Pennsylvania Supreme Court rendered a final decision. It could have chosen to remand or transfer the case to a lower state court but did not. As federal Constitutional issues were raised, this final decision of the state court of last resort rendered this case reviewable in this Court regardless of whether the case was ever heard on the merits. In this extraordinary situation, the Court should excise this jurisdiction and review the matter.

The broadest enforcement of stay-at-home orders, even during a pandemic crisis, are unconstitutional intrusions. Unlike many of the previous applications brought before the Court (*citations omitted*), the Applicant here does not merely pose a "precise question of when restrictions on particular social activities should be lifted." *South Bay United Pentecostal Church v. Newsom*, 590 U. S. ____ (2020) (Roberts, C. J., concurring). Instead, the Applicant challenges stay-at-home restrictions *so exceedingly broad* it is unclear to whether he is restricted within his

¹ Unless the Court treats the Application as a Petition for Writ of Certiorari as requested or disposes of this matter on the merits summarily. The Applicant hopes to engage an experienced member of the bar of this Court to represent him should subsequent proceedings be required as opposed to moving for leave of court to present oral argument in pro se notwithstanding Rule 28.8.

curtilage.² He challenges on grounds these restrictions are so vague, arbitrary, and untailed as to restrain travel to and from Constitutionally protected activities or simply to take scenic drives. Here, there is no “dynamic and fact-intensive matter subject to reasonable disagreement.” *Id.* Traveling by car with members of the same household along the Delaware River on Pennsylvania Route 32 to a grocery store, a protest, or for a scenic drive presents no more risk of COVID-19 transmission than staying home. To that end, travel for so-called essential or non-essential purposes is not dissimilar; it has always been and will remain the same activity in the COVID-19 context.

The right to travel is fundamental and strict scrutiny applies. See *Shapiro v. Thompson*, 394 U.S. 618 (1969). Certainly, the Respondent or other civil authorities could restrict travel as necessary for public safety and public health under other emergency circumstances (e.g. floods, civil unrest, looting, rail accidents). Even temporary curfews³ or orders to shelter-in-place temporarily—reasonably measurable in hours—might pass the test of strict scrutiny. But, the imposition of Respondent’s stay-at-home order—for 1,756 hours—clearly affronts the Applicant’s indisputably clear, fundamental, Constitutional rights under even rational basis review let alone strict scrutiny. Moreover, his vague exceptions and haphazard enforcement are inconsequential; the Respondent’s command alone is sufficient. This, as any other violation of the fundamental rights, is irreparable harm. See

² The Applicant’s dwelling is a twin home and the front porch abuts the porch of the adjoined residence.

³ Neighboring Philadelphia County has enacted nighttime curfews. It might appear an assessment of whether a curfew is necessary is being made each day. (<https://6abc.com/philadelphia-under-citywide-curfew-for-third-straight-night/6222528/>, accessed June 2, 2020)

Elrod v. Burns, 427 U.S. 347, 373 (1976), *New York Times Co. v. United States*, 403 U.S. 713 (1971).

Having met the burden for a stay or alternatively an injunction, the Applicant respectfully requests this Court exercise its authority and grant his Application forthwith.

Respectfully Submitted,

Dated: June 2, 2020

A handwritten signature in black ink, appearing to be 'Earl Markey', with a stylized, flowing script.

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