

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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

PETITION FOR WRIT OF CERTIORARI
TO THE PENNSYLVANIA SUPREME COURT

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

Pursuant to Rules 22 and 23 of the United States Supreme Court, Petitioners respectfully request a stay of the enforcement of Governor Wolf's Executive Order dated March 19, 2020 pending the filing and disposition by this Honorable Court of Petitioners' Petition for Writ of Certiorari that is filed simultaneously herewith.

1. Petitioners are Friends of Danny DeVito, Kathy Gregory, B&J LAUNDRY, LLC, Blueberry Hill Public Golf Course & Lounge, and Caledonia Land Company.

2. Respondents are The Honorable Tom Wolf, Governor of the Commonwealth of Pennsylvania (hereinafter the “Governor”), and Dr. Rachel Levine, Secretary of the Department of Health of the Commonwealth of Pennsylvania.

3. On Thursday, March 19, 2020, in response to the viral illness, COVID-19, Pennsylvania Governor Thomas W. Wolf issued an order compelling the closure of the physical operations of all businesses and entities that he deemed to be non-life-sustaining (hereinafter the “Executive Order”) and threatened *inter alia* criminal prosecution for those who violate the Executive Order.

4. The Governor set up a waiver process administered by the Pennsylvania Department of Community and Economic Development (DCED) through which businesses and entities could apply for waivers from his non-life-sustaining list (hereinafter the “List”).

5. According to DCED, it received 42,380 waivers by the time the waiver process ended. So far, DCED approved 7,837 requests for a waiver, rejected 18,746, found 14,471 didn’t require one for the activity they wanted to perform. The remainder are still being processed.¹ (On Wednesday, April 1, 2020, DCED

¹ <https://www.pennlive.com/news/2020/04/gov-tom-wolf-vetoes-bill-that-could-allow-more-pa-businesses-to-reopen.html>

announced that it was ending the waiver process for new applications after Friday, April 3, 2020 at 5:00PM; thus no additional businesses or entities may apply.)²

6. On March 24, 2020, Petitioners filed an Emergency Application for Extraordinary Relief in the Pennsylvania Supreme Court (hereinafter “the lower court”) asking it to vacate the Executive Order and the grounds that the Order violated the Petitioners rights not to be deprived of their property without due process of law guaranteed by the U.S. Const. amend. V, XIV, the right not to have their property taken without just compensation guaranteed by the U.S. Const. amend. V., their right to judicial review guaranteed by the U.S. Const. amend. V, XIV, their right to equal protection of the law guaranteed by the U.S. Const. amend. XIV, and their right to free speech and assembly guaranteed by the U.S. Const. amend. I.

7. On April 13, 2020, the lower Court entered an order denying all claims brought by the Petitioners.

8. Petitioners have simultaneously herewith filed a Petition for Writ of Certiorari in this Honorable Court asking it to review and reverse the lower court’s April 13, 2020 order and to strike down the Executive Order as unconstitutional.

9. The Executive Order has and is continuing to cause irreparable harm to the Petitioners and all those businesses and entities in the same non-life-sustaining classification as Petitioners. For one example please see the attached

² <https://www.pennlive.com/coronavirus/2020/04/pa-businesses-seeking-waiver-to-stay-open-through-coronavirus-closures-have-until-friday-to-apply.html?fbclid=IwAR0-yQWs1qeuf9YNdqk6wqkbo7SdHJZIHD8WjVniBX41BRsWxFKJQUA513s>

Statement of Petitioner Blueberry Hill Public Golf Course & Lounge. (Said Statement is incorporated herein by reference, made a part hereto and marked as Exhibit A).

10. The lower court acknowledged the serious and significant harm caused by the Order, “We recognize the serious and significant economic impact of the closure of Petitioners’ businesses.” *Majority Opinion*, Page 30.

11. The Governor affirmed that his Order is devastating Pennsylvania’s economy, “It is devastating the economy, no question about it.”³

12. The Executive Order and similar orders by governors across the country is doing substantial, unprecedented damage to the economy. The Wall Street Journal reports at least one-quarter of the U.S. economy has been shutdown, which has never occurred on such a wide scale before. It also reports U.S. daily economic output has declined about thirty percent since the week just before the business closure and shut down orders were issued.⁴ Janet Yellen, the former Chairwoman of the Federal Reserve states that America is in the throes of an “absolutely shocking” downturn and will experience at least a 30% contraction of Gross Domestic Product in the second quarter. She explained, “This is a huge, unprecedented, devastating hit...”⁵ And, other, “Economists now project a record-shattering 40% annual decline in U.S. economic output for the April-June quarter.”⁶

³ <https://www.pennlive.com/news/2020/04/gov-tom-wolf-vetoes-bill-that-could-allow-more-pa-businesses-to-reopen.html>

⁴ <https://www.wsj.com/articles/state-coronavirus-shutdowns-have-taken-29-of-u-s-economy-offline-11586079001>

⁵ <https://www.msn.com/en-us/money/markets/janet-yellen-says-second-quarter-gdp-could-plunge/ar-BB12dTYE>

⁶ <https://www.pennlive.com/coronavirus/2020/04/experts-look-at-the-coronavirus-effect-on-us-economy-and-say-theyve-never-seen-anything-like-this.html>

Since March 15, 2020, over 1.3 million Pennsylvanians have filed for unemployment compensation (UC). Roughly 20 percent of all of the state’s workers have been laid off. UC claims could cost the state between \$4.5 billion and \$6 billion by the end of the next fiscal year.⁷ There was such a huge number of UC claims the system crashed.⁸ The director of Pennsylvania’s largest association of manufacturers described the Executive Order as, “overly-broad and imprecise” and will “unnecessarily inflict lasting economic damage.”⁹ Pennsylvania now faces an estimated \$2.7 to \$3.7 billion dollar budget shortfall.¹⁰ The Pennsylvania Fiscal Office stated, “Taxpayers should be prepared for a significant reduction in state resources. What we’re seeing, there’s just no precedent for it.”

13. The lower court’s decision permits the continued closure of Petitioners’ and tens of thousands of other businesses across Pennsylvania and as such constitutes severe, immediate, and ongoing deprivation of their rights under the U.S. Constitution as explained *supra*.

14. A Concurring and Dissenting Opinion written by the Chief Justice of the Supreme Court of Pennsylvania and signed by two other justices expressed concern that although the Executive Order is purported to be temporary, that may not be so for businesses unable to endure the revenue loss associated with being shut down.

⁷ <https://www.post-gazette.com/news/state/2020/04/08/Pennsylvania-facing-up-to-4-billion-budget-shortfall-as-COVID-19-shutdown-upends-state-budget/stories/202004080133>

⁸ <https://pittsburgh.cbslocal.com/2020/04/13/pa-unemployment-compensation-continued-claims-system-is-down/>

⁹ <https://www.pennlive.com/coronavirus/2020/03/pa-manufacturers-association-calls-pa-governors-coronavirus-related-closures-a-panicked-order.html>

¹⁰ <https://www.post-gazette.com/news/state/2020/04/08/Pennsylvania-facing-up-to-4-billion-budget-shortfall-as-COVID-19-shutdown-upends-state-budget/stories/202004080133>

15. Further, these justices also expressed their concern about the arbitrariness of the waiver process and, of critical importance, their concern that the Majority Opinion declared there is no judicial review for a business that suffered a waiver denial. The Pennsylvania Chief Justice wrote:

I am less confident, however, in the majority's conclusion that "summary administrative action" by the executive branch to close many businesses throughout the Commonwealth must ***evade judicial review*** as a check against arbitrariness. Majority Opinion, slip op. at 42. ***While the majority repeatedly stresses that such closure is temporary, see id., this may in fact not be so for businesses that are unable to endure the associated revenue losses. Additionally, the damage to surviving businesses may be vast.*** Significantly, moreover, the Supreme Court of the United States has admonished that the impermanent nature of a restriction "should not be given exclusive significance one way or the other" in determining whether it is a proper exercise of police power. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 337, 122 S. Ct. 1465, 1486 (2002).

Concurring and Dissenting Opinion, Page 3. (emphasis added).

16. Despite the Concurring and Dissenting Opinion, the lower court has ruled there is no judicial review for any of the over eighteen thousand Pennsylvania businesses and entities that have been denied a waiver and for the unknown number of businesses that wanted to apply but could not in the short period of time the waiver process was open.

17. The lower court's denial of judicial review is unprecedented and constitutes a serious denial of the constitutional rights of Petitioners and tens of thousands of Pennsylvania businesses that are similarly situated.

18. Further, never before in the history of Pennsylvania has a governor ordered the closure of every single business and entity that he deemed to be "non-

life-sustaining,” which itself is a term that does not appear in any statute or rule cited by the Governor.

19. The Governor has stated the closure is “indefinite.”¹¹

20. Unless this Court grants this application to stay and ultimately grants the Petition for Writ of Certiorari on its merits, Petitioners and tens of thousands of other businesses may not be able to recover from the severe financial distress caused by the Order.

21. If so, that would constitute the complete destruction of the property rights of vast numbers of businesses.

22. The Executive Order is similar to other business closure orders issued by governors in states across the U.S. The same or similar U.S. Constitutional rights are implicated in these business closures. Thus, this case not only has great significance to the people of Pennsylvania, it has great significance to business owners throughout the U.S.

23. On April 22, 2020, Petitioners filed in the Pennsylvania Supreme Court an Application to Stay the Enforcement of Governor Wolf’s Executive Order Dated March 19, 2020 pending the filing and disposition by the United States

¹¹ On April 20, 2020, the Governor announced that on May 8, 2020 online sales of automobiles are permitted, public and private residential and non-residential construction may resume in accordance with safety guidance that will be issued by the administration and construction projects already deemed life-sustaining may continue while adhering to social distancing, personnel limits and other guidance as announced by the administration. <https://www.governor.pa.gov/newsroom/gov-wolf-announces-online-vehicle-sale-process-construction-restart-date-plcb-curbside-pick-up/>

Supreme Court of Petitioners' Petition for Writ of Certiorari. (A true and correct copy of said Application is incorporated herein by reference, attached hereto and marked as Exhibit B).

24. On April 24, 2020, the Pennsylvania Supreme Court denied said Application. (A true and correct copy of said Order is incorporated herein by reference, made a part hereto and marked as Exhibit C).

WHEREFORE, Petitioners respectfully requests that this Court stay the enforcement of the Executive Order pending review and disposition of Petitioners' Petition for Writ of Certiorari.

Date: April 27, 2020

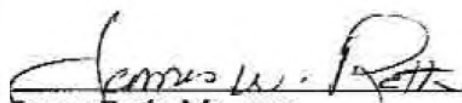
Respectfully submitted,

/s/ **Marc A. Scaringi**

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VERIFICATION

I, James Roth, Manager of Blueberry Hill Public Golf Course & Lounge, hereby swear or affirm that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink that reads "James W. Roth". The signature is written in a cursive style with a large initial "J" and "R".

**James Roth, Manager
Blueberry Hill Public Golf Course & Lounge**