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IN THE SUPREME COURT OF PENNSYLVANIA

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22 EAP 2021

JASMINE WEEKS, VANESSA WILLIAMS, ARNELL HOWARD, PATRICIA SHALLICK, individually and on behalf of all others similarly situated
Petitioners-Appellants

v.

DEPARTMENT of HUMAN SERVICES of the COMMONWEALTH OF PENNSYLVANIA,
Respondent-Appellee

BRIEF FOR *AMICI CURIAE*, AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVNIA, GARY S. GILDIN, SETH KREIMER, DONALD MARRITZ, AND ROBERT F. WILLIAMS

Appeal from the Order entered on May 13, 2021 in the Commonwealth Court at 409 MD 2019

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I. STATEMENT OF INTEREST OF AMICI CURIAE

Amici Curiae are the American Civil Liberties Union of Pennsylvania ("ACLU of Pennsylvania") and four individuals, all of whom have an interest in the proper interpretation and application of the Pennsylvania Constitution. Aside from the *amici* identified below, and undersigned counsel, no one paid in whole or part for the preparation of this brief or authored it in whole or in part.

ACLU of Pennsylvania, one of the ACLU's state affiliates, has appeared many times, directly representing parties and as *amicus curiae*, in federal and state courts at all levels in cases that implicate federal or Pennsylvania statutory or constitutional rights. Given the issues raised by Appellants, the ACLU of Pennsylvania has a deep interest in ensuring strict adherence to the system of government set forth in our Constitution.

Gary S. Gildin is the Emeritus Dean, Hon. G. Thomas and Anne G. Miller Chair in Advocacy; and Director of the Center for Public Interest Law and Advocacy at Penn State Dickinson School of Law and regularly engages in pro bono litigation on behalf of people alleging infringement of their constitutional rights.

Seth Kreimer is the Kenneth W. Gemmill Professor of Law at the University of Pennsylvania. He has taught and written on constitutional law for four decades and has written and lectured regularly on the independent development and jurisprudence of the Pennsylvania Constitution.

Donald Marritz is a career legal aid attorney, most recently of counsel to the Community Justice Project, which is a part of the Pennsylvania Legal Aid Network. He has published an article on Article III, § 32, the special laws provision of the Pennsylvania Constitution, and a book chapter on Article I, sec. 11, concerning open courts and the right to a remedy.

Robert F. Williams is an expert in state constitutional law and is the Director of the Center for State Constitutional Studies at Rutgers Law School. He has authored numerous articles and books, participated in a wide range of litigation and lectured to state judges and lawyers on subjects involving state constitutional law.

II. SUMMARY OF THE ARGUMENT

The General Assistance program distributed cash stipends to nearly 12,000 Pennsylvanians—many of them disabled, homeless, or victims of abuse—to fund their ability to pay for food or utilities or personal care items. The program was important to Governor Wolf, who gladly reinstated General Assistance after a bill abolishing it was previously found unconstitutional. The General Assembly responded by abolishing it again, but surrounded that provision with others the Governor supported, leaving him no choice but to accept the amalgam presented to him. While there was much that benefitted the Commonwealth in the final bill, the cost to the General Assistance recipients was unacceptably high.

Article III of the Constitution does not require the General Assembly to care about the most destitute of its constituents. What it does require, however, is the passage of legislation limited to one subject and one clearly-stated purpose, which did not happen here. Act 12 began as a bill designed to abolish the General Assistance cash program, but it ballooned into a bill that was not even primarily concerned with General Assistance, but instead was dominated by provisions to fund nursing facilities and hospitals. Its final iteration presented Governor Wolf with an all-or-nothing choice: accept the bill and eliminate General Assistance, or veto the bill and forego funding of hospitals and nursing facilities. That is the exact Hobson's choice that Article III is intended to curtail.

The Commonwealth Court's analysis did not do justice to the separate requirements of Sections 1 and 3 of Article III; indeed, it collapsed the original-purpose test into the single-subject one and then neglected to analyze whether the various provisions in Act 12 share a common nexus. And it did all of that under the guise that an earlier decision on a preliminary injunction was "compelling." At the preliminary objection stage, however, the Commonwealth Court was required to look at the case differently; accordingly, we support the Petitioners' request for reversal.

III. ARGUMENT

A. The Purpose of Article III is to Protect an Open, Deliberative, and Accountable Government.

An essential element of a well-functioning government is the enactment of and adherence to an understood and understandable procedure for the passage of legislation. Article III of the Pennsylvania Constitution does just that; it mandates certain procedural requirements that the General Assembly must abide by in its lawmaking. Summarized concisely, Article III requires an "open and deliberative state legislative process, one that addresses the merits of legislative proposals in an orderly and rational manner."[1] In that regard, Article III was and remains a necessary constitutional protection for Pennsylvania's citizens who had previously been "dissatisfied with the manner in which the General Assembly was functioning" and the inadequacies in the law-making process. *Washington v. Dep't of Pub. Welfare of Commonwealth*, 188 A.3d 1135, 1145 (Pa. 2018).

Around the time of the Civil War, large corporations and special interest groups experienced rapid economic growth and gained power over the General Assembly, which led to corrupt legislation that failed to serve the public good. *Id.* The corruption took the form of special laws to confer benefits to particular

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

individuals or corporations; logrolling;[2] holding quick votes on legislation that was changed at the last minute; and deceptive titling of legislation.[3] *Nextel Commc'ns of Mid-Atl. Inc. v. Commonwealth, Dep't of Revenue*, 171 A.3d 682, 694 n.14 (Pa. 2017). Fundamentally, the General Assembly had "failed to respect the rules of procedure in acting upon various bills," and the citizens of this Commonwealth demanded reform. *Washington*, 188 A.3d at 1145-46. Thus, a provision was added to the Pennsylvania Constitution in 1864 providing that "no bill should be passed containing more than one subject, which should be clearly expressed in its title."[4]

But even that was not enough. Complaints "became more insistent than ever before"[5] and the Constitutional Convention of 1872-73 was convened to further curtail abuses and implement a unified procedure for the passage of all legislation. *Id.* at 1146; *PAGE*, 877 A.2d at 394. The result was the adoption of Article III, which aimed to "place restraints on the legislative process and encourage an open, deliberative and accountable government." *Pa. AFL-CIO ex rel. George v. Commonwealth*, 757 A.2d 917, 923 (Pa. 2000); *PAGE*, 877 A.2d at 394.

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[2] "Logrolling is the practice of embracing in one bill several distinct matters, none of which could singly obtain the assent of the legislature, and procuring its passage by combining the minorities who favored the individual matters to form a majority that would adopt them all." *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 394 n.7 (Pa. 2005) (internal quotations omitted) ("PAGE").

[3] Donald Marritz, *Making Equality Matter (Again): The Prohibition Against Special Laws in the Pennsylvania Constitution,*" 3 WIDENER J. PUB. L. 161 (1993).

[4] Thomas R. White, *Commentaries on the Constitution of Pennsylvania*, at xxvi.

[5] *Id.*

Article III effected those aims through two sections of relevance here. Section 3 readopted the 1864 amendment known as the single-subject rule, which restricts the use of combining "multiple pieces of legislation, each pertaining to a different subject, into one bill." *Washington*, 188 A.3d at 1146. And Section 1 was added to bar amending a bill in a manner that changes its original purpose as it moves through the legislative chambers. Both procedures are mandatory and set out the process the General Assembly is required to follow in order to pass laws. *Consumer Party of Pa. v. Commonwealth*, 507 A.2d 323, 334 (Pa. 1986), *abrogated on other grounds* by *PAGE*, 877 A.2d at 408.

These provisions are not unique to Pennsylvania. Indeed, in the mid-nineteenth century, a number of States began enacting procedural requirements to ensure that each bill remained faithful to its original purpose and limited its scope to a single subject. *See* Williams, *Legislative Procedure*, at 798-99. Given growing popular discontent with state legislative abuses, it is no surprise then that these provisions spread rapidly. Today, forty-three States include some version of the single-subject rule.[6]

In practice, Article III's dual, constitutionally-mandated requirements are interrelated. Together, they curtail logrolling, but they also forbid inserting

[6] *See* Michael W. Catalano, *The Single Subject Rule: A Check on Anti-Majoritarian Logrolling*, 3 Emerging Issues in State Constitutional Law 77, 80 (1990).

measures into bills without providing fair notice to the voters and their elected representatives of same. *Rogers v. Mfrs.' Imp. Co.*, 1 A. 344, 346 (Pa. 1885) (striking down an act whose title appeared designed to prevent popular opposition to the bill by concealing its true effects); *Pennsylvania State Lodge v. Commonwealth*, 692 A.2d 609, 615 (Pa. Cmwlth. 1997) (relating that the purpose of Section 3 is to provide public notice of all proposed legislative enactments and to prevent the passage of "sneak" legislation). And both ensure that the Governor retains his veto power as an executive check "against the encroachments of the legislative branch" by mandating that he be presented with legislation to review and sign (or not) limited to one subject, and one clearly-stated purpose. *Commonwealth ex rel. Attorney Gen., to Use of Sch. Dist. of Patton v. Barnett*, 48 A. 976, 977 (Pa. 1901). Stated differently, Article III protects the Governor from an all-or-nothing choice that would render the veto a dead letter.

1. Article III's Single-Subject Rule Remains an Indispensable Mandate for Proper and Transparent Governance.

Article III, § 3 specifies that "[n]o bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof." This provision operates to prevent special interests from undercutting the legislative process by burdening a bill with either irresistible provisions or unpalatable ones

that would drive the adoption process at the expense of the merits or demerits of the actual proposed legislation.

The single-subject rule also gives both legislators and the public improved notice about the enactment of laws, as it prevents legislators from slipping measures into a bill believed to focus on a different issue. *City of Phila. v. Commonwealth*, 838 A.2d 566, 585-86 (Pa. 2003) (the single-subject rule promotes "open, deliberative, and accountable government" by giving 'fair notice to the public and to legislators' of the substance of bills").

Drawing on that rationale, other States' courts have resisted efforts to denigrate the importance of the single-subject rule or dilute its potency, even when the disparate topics of legislation seemed superficially related.[7] In *Burns v. Cline*, for example, the Oklahoma Supreme Court held unanimously that a bill's provisions relating to (i) parental consent for a minor to obtain an abortion, (ii) licensing and inspection procedures for abortion clinics, and (iii) heightened penalties for violations of existing abortion laws were not sufficiently "germane, relative and cognate" to constitute a single subject. 387 P.3d 348, 356 (Okla. 2016). Although each sub-part of the bill broadly touched on abortion, the bill violated the single-subject rule because those sub-parts were "so unrelated and misleading that a

[7] *Jubelirer v. Rendell*, 953 A.2d 514, 525 n.12 (Pa. 2008) ("[T]o the extent other states have identical or similar provisions, extrajurisdictional caselaw may be helpful and persuasive.").

legislator voting on this matter would have been left with an unpalatable all-or-nothing choice." *Id.* In so holding, the court observed that "the heart of [the single-subject] rule is to [e]nsure that each piece of legislation enacted is worthy of the approval of the voter…." *Id.* (internal quotations omitted).

Often the question of germaneness turns not so much on whether various aspects could be described with the same broad label but rather on whether the different topics are sufficiently connected so that they can be treated as one. As one example, the Colorado Supreme Court struck down an initiative just this summer that proposed to amend Colorado's criminal animal cruelty statutes by ending exemptions for livestock; creating a safe harbor for the slaughter of livestock with various conditions; and expanding the definition of "sexual act with an animal." *In re Title, Ballot Title and Submission Clause for 2021-2022 #16*, 489 P.3d 1217, 1222 (Colo. 2021). Although its proponents claimed the initiative singularly covered animal cruelty, the Colorado Supreme Court observed that the proposed unifying label "is the type of overly broad theme that we've rejected." *Id.* Although "[m]ultiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction," the court reasoned that "[i]mplementation details that are 'directly tied' to the initiative's 'central focus' do not constitute a separate subject." *Id.* at 1223. But a bill containing subjects that are "not necessarily and properly connected," it further noted, creates "the potential for

the very kind of voter surprise against which the single-subject requirement seeks to guard." *Id.* at 1219.

Finally, the single-subject rule preserves the integrity of the gubernatorial veto, the last defense against legislative overreach. This Court has explicitly tied the single-subject rule to the veto power, explaining that the legislature historically sought to circumvent the Governor's veto power: "by joining a number of different subjects in one bill the governor was put under compulsion to accept some enactments that he could not approve, or to defeat the whole, including others that he thought desirable or even necessary." *Barnett*, 48 A. at 977. Section 3, when faithfully applied, curtails those abuses by effectively giving the Governor the power of a line-item veto.[8] Each bill should only have one subject, and if the Governor does not approve of how that subject is treated, he can veto it.

Commingling subjects, however, unconstitutionally restricts the veto. As happened here, the General Assembly gave Governor Wolf a hodgepodge Act 12, which addressed a myriad of disparate subjects, unconstitutionally preventing him from using his veto power as a clear expression of his public policy choices. *See* Mark Levy & Mark Scolforo, *Governor signs $34 billion 'divided government'*

[8] The Pennsylvania Constitution only provides a line-item veto for appropriations bills—the only legislation that Section 3 does not constrict. As part of a comprehensive constitutional scheme, the single-subject rule therefore serves as a line-item veto for all other legislation, ensuring that the Governor retains a valuable check over the General Assembly.

budget, Associated Press (June 28, 2019), https://www.usnews.com/news/best-states/pennsylvania/articles/2019-06-27/budget-brinksmanship-leaves-last-minute-bills-in-doubt ("Wolf said he had no choice but to sign the bill eliminating general assistance"). Indeed, he was forced to either accept the entire bill, including legislation that he did not approve (*e.g.*, the elimination of General Assistance), or veto the bill, including measures he deemed desirable (*e.g.*, healthcare funding). This result was unfair to his constituents and plainly unconstitutional.

The importance of such procedural protections today cannot be understated. The National Conference of State Legislatures has identified 48 States with a single party in control of both legislative chambers.[9] Complete legislative control by one party heightens the risk that logrolling will occur; groups with sufficient political capital can—absent enforcement of legislative procedures—bury measures into must-pass bills that leave the governor with an all-or-nothing choice: accept an entire bill, including legislation he opposes, or veto the bill, including legislation he deems desirable.

2. The Original-Purpose Provision Is Vital to Protecting Representative Democracy.

Article III, § 1 is aimed at deterring confusion, misconduct, and deception. It directs that "no bill shall be so altered or amended, on its passage through either

[9] National Conference of State Legislatures, *State Partisan Composition* (Sept. 14, 2021), https://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx.

House, as to change its original purpose." The addition of the prohibition against the change of a bill's original purpose in 1874 Constitution reflected the general view that the 1864 single-subject amendment, standing alone, was insufficient to foster an open and accountable government. The members of the Constitutional Convention's decision to list the provision first among its rules governing legislative process highlights its recognition of necessity of a procedure separate and apart from the single-subject rule.

For many years following its enactment, Article III, § 1 was hardly litigated; indeed, Pennsylvania followed a strict interpretation of the "enrolled bill rule," which prevented courts from looking beyond the final version of the bill certified by the General Assembly and therefore effectively rendered the original-purpose rule non-justiciable. *See* Williams, *Legislative Procedure*, at 811-12. In 2005, however, the Pennsylvania Supreme Court revivified the constitutional requirement that the final iteration of a bill retain its original purpose. *PAGE*, 877 A.2d at 408. In doing so, it announced a comparative analysis test that it considers the original purpose of the legislation and compares it to its final purpose. *Id.* at 408-09. If the initial and final versions of the bill "do not regulate the same discrete activity" or lack a "nexus to the conduct to which the original legislation was directed," then the bill violates Section 1.

Over the past fifteen years, a small number of Pennsylvania decisions have struck down procedurally infirm legislation under this test. In *Marcavage v. Rendell*, for instance, the original bill's purpose was to criminalize crop destruction. 936 A.2d 188, 193 (Pa. Cmwlth. 2007). The final bill deleted the language regarding crop destruction and replaced it with a provision regarding ethnic intimidation. *Id.* Although both the original and final iterations of the bill shared a unifying justification "under the broad heading of crime," the Commonwealth Court found that the legislation violated Section 1 because the original bill and the final bill regulated different activities. *Id.*

Likewise, in *Leach v. Commonwealth*, the final bill kept the original legislation (the criminalization of theft of secondary materials), but added riders requiring record disclosure responsibilities and a creating a private civil right of action related to firearms legislation. 118 A.3d 1271, 1288 (Pa. Cmwlth. 2015). There, the court held that unifying both versions of the legislation under the broad category of crime was insufficient because the versions did not regulate the same discrete activity. *Id*. In its analysis, the court observed that the General Assembly cannot avoid a Section 1 violation by passing a final bill that retains its original purpose but through amendments includes measures that seek to accomplish or require different conduct. *Id.*

It is against this historical background, and in view of Article III's mandate of an "open and deliberative state legislative process, one that addresses the merits of legislative proposals in an orderly and rational manner," Williams, *Legislative Procedure*, at 798, that the Court should consider the case at bar.

B. The Commonwealth Court Failed to Apply Article III of the Pennsylvania Constitution Faithfully.

Act 12 became law by a procedure that violated the legislative process provisions of Article III, which mandate that the Governor be presented with a bill limited to one subject and one clearly-stated purpose. The Commonwealth Court recited but then ignored or misconstrued these core constitutional requirements in at last two ways. *First*, it conflated the original-purpose and single-subject tests by upholding Act 12 under Article III § 1 on the basis that the original and final versions of the legislation fall under the same broad topic. *Second*, it neglected to analyze whether the various provisions of Act 12 are sufficiently related to each other and the legislation's purported unifying topic so as to pass constitutional muster.

1. The Original-Purpose Rule Requires Analysis Separate from the Single-Subject Rule.

Though the original-purpose and single-subject rules certainly work in tandem to curtail legislative abuses, the tests to determine whether the passage of legislation violates those provisions are not the same. The single-subject rule requires that various measures of a bill not deviate from a singular, unifying ***subject*** and the

original-purpose rule mandates that there be no difference between what the original and final versions of a bill seek to ***accomplish***. The last time this case was before the Court, however, the majority did not analyze the tests separately, given the deferential review the Court was applying to a preliminary injunction denial. Instead, the Court found it reasonable for the Commonwealth Court to conclude that Act 12 likely passed muster under Article III and explored why that Court found that both versions of the bill covered the same subject. But it did not expressly analyze whether what the final version sought to accomplish was out of step with the purpose of the original bill. *Weeks v. Dep't of Hum. Servs.*, 222 A.3d 722, 731 (Pa. 2019) ("Here, as discussed, H.B. 33 originally had only three provisions, all relating in some way to Cash Assistance. The additional sections which were included in the final version of the bill all fit within th[at] unifying topic…."). On remand, the Commonwealth Court presumed that its merits analysis could collapse in the same way. *Weeks v. Dep't of Hum. Servs.*, 255 A.3d 660 (Pa. Cmwlth. 2021) (reasoning that the passage of H.B. 33 did not give rise to a Section 1 violation because "[e]ach amendment…pertained to the provisions of medical assistance to certain low-income persons.").

To be sure, an amendment unrelated to the subject unifying the measures in the original version of a bill may very well alter that legislation's purpose, thus giving rise to violations of both Section 1 and Section 3. But the other side of that

coin is not necessarily true—*i.e.*, simply because the final iteration of a bill regulates the same ***subject*** as its original version does ***not*** mean that the bill's purpose has also remained the same. If that were the case, the drafters of the 1874 Constitution would not have felt compelled to adopt the original-purpose rule—and position it at the forefront of Article III—almost a decade after the single-subject rule was enacted.

The Commonwealth Court's analysis likewise flies directly in the face of the few Pennsylvania decisions addressing this issue. Indeed, as noted above, the court in *Marcavage* expressly rejected the respondent's argument that legislation complied with Section 1 simply because the original and final version of the bill shared a unifying topic. 936 A.2d at 193. The same was true in *Leach*, where the original and final versions of the bill, though related under the broad topic of "crime," regulated different activities and thus served different purposes. 118 A.3d at 1288.

Given the sparse Pennsylvania case law interpreting the original-purpose rule, it is instructive to look at decisions from the high courts of other states, which set forth that broad characterizations of a "purpose" are insufficient to meet the constitutional standard. The Alabama Supreme Court, for example, has used its original-purpose provision to find legislation unconstitutional, and it has only upheld legislation in which it is evident that the amendment to a bill had the same purpose as the specific purpose of the original bill. For instance, in *Advisory Opinion No.*

331, 582 So.2d 1115 (Ala. 1991), the Alabama Supreme Court found legislation unconstitutional that originally ***provided*** funding, but as amended also included provisions limiting how the funds could be ***used***. The court reasoned that the limitations on spending changed the original purpose from a mere funding bill. *Id.* at 1117-18.

The Arkansas Supreme Court employed a similar analysis to strike down a law that was altered by amendment and last-minute changes in *Barklay v. Melton,* 5 S.W.3d 457, 459-60 (Ark. 1999). The original bill dealt with tax credits, but it was later amended to strike out the original language, including the title, and thereafter provided for a tax surcharge. *Id.* Instead of determining that both versions of the bill dealt with taxes, the Court determined that what the original bill sought to do, as established by the original title of the bill, was changed:

> [T]his provision in our constitution prevents amendments to a bill which would not be germane to the subject of the legislation expressed in the original title of the Act which it purports to amend.

Id. at 460. *See also Smith v. Hansen*, 386 P.2d 98 (Wyo. 1963) (although both versions of the bill broadly addressed liquor regulation, the final version was impermissible because it imposed an excise tax and required identification—purposes not included in the original bill).

The result should be no different here. Regardless of whether the original and final versions of Act 12 fall under a "unifying topic" (as explained below, they do

not) and are sufficiently connected to that topic (they are not), this legislation does not pass muster ***under Section 1*** because the original and final versions of the bill do not regulate the same discrete activity. Rather, the final version incorporates the original ***abolishing*** of a single program as just one element of a bill ***raising revenue*** by taxing hospitals and ***authorizing payments*** for other programs. Act 12 began as a limited bill with a single purpose—eliminating General Assistance. But the version presented to Governor Wolf for his signature (or not) included various disparate provisions broadly related to healthcare, on the one hand, ***and*** the elimination of General Assistance, on the other.

The original-purpose rule is not a mere technicality. Rather, it embraces the General Assembly's view, which is consonant with that of other states, that simply considering whether a bill is limited to a single subject is insufficient to protect a transparent legislative process. Fidelity to that view forbids a test that collapses the original purpose rule into the single-subject requirement, thus rendering Section 1 surplusage. *See* 1 Pa.C.S. § 1921 (construction should give effect to all provisions); *see also League of Women Voters v. Commonwealth,* 178 A.3d 737, 802 (Pa. 2018).

2. Section 3 Requires That the Court Analyze Whether Various Measures in a Bill Share a Common Nexus.

The single-subject requirement was treated by the Commonwealth Court as though it were no more than an inquiry into whether there was one topic that unified the diverse provisions in a bill. *Weeks*, 255 A.3d at 665-70. Instead, the single-

subject analysis has two prongs: (1) is there "a proposed unifying subject…sufficiently narrow so as to pass muster under Article III, Section 3," and (2) do the challenged Act's various provisions relate to that unifying subject closely or directly enough to satisfy the Constitution? *Commonwealth v. Neiman*, 84 A.3d 603, 612 (Pa. 2013). Neither can be conducted without the other. This case illustrates why.

"[N]o two subjects are so wide apart that they may not be brought into a common focus, if the point of view be carried back far enough." *Id.* Thus, "[t]here must be limits" on how broad a subject will satisfy the first requirement of Section 3, "as otherwise virtually all legislation, no matter how diverse in substance, would meet the single-subject requirement." *Weeks*, 222 A.3d at 727. This Court has accordingly held that topics as general "as the business of the courts, municipalities, or the economic wellbeing of the Commonwealth" cannot satisfy the single-subject requirement. *Id*. at 729 (discussing previous cases where the requirement was satisfied). Similarly, the Court has found "the regulation and funding of human services programs" too "capacious" a subject to pass constitutional muster. *Washington*, 188 A.3d at 1154 n.36. And the Court has likewise rejected a proposed single subject of "refining civil remedies or relief." *Neiman*, 84 A.3d at 613. In this case, the Commonwealth Court said that the definition was narrow enough—"the provision of health care assistance to certain low-income persons and the eligibility

criteria therefor." 255 A.3d at 669. That was a *non sequitur* in itself, as General Assistance is neither "health care assistance" nor tied to health care eligibility.

Regardless, as other States' experience confirms, defining the permissible level of generality of a single subject is only half the battle. Once that is done, courts must also place limits on *how closely or directly* the various provisions of an Act are related to that common subject. The problem here is similar: from a distant enough point of view, "everything is related to everything else." *California Div. of Lab. Standards Enf't v. Dillingham Const., N.A.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring). If the single-subject rule is to have any vitality, therefore, this Court should not merely correct the Commonwealth Court's erroneous misconception as to what umbrella covers the disparate subjects, but also correct the Commonwealth Court's reliance on a single prong and define the interrelation nexus required by Section 1.

Although the first prong is discussed more frequently, because many cases founder at that initial step, this Court has consistently required a reasonable fit between the legislation and the proffered purpose. For instance, the Court has clarified that an act's sections must "have a nexus to a *common purpose*," and "must constitute a *unifying scheme* to accomplish" that purpose. *Washington*, 188 A.3d at 1151-52 (emphasis added). The Court has not hesitated to apply this requirement. In *Leach*, for instance, the Court held that a prohibition on stealing scrap metal did

not address the same subject as the creation of a cause of action for persons affected by local regulations on guns. 141 A.3d at 434. The government noted that both measures related to the regulation of firearms because, by law, persons convicted of scrap-metal offenses would be barred from owning guns. *Id.* But this Court held that such a "connection…is simply too indirect and attenuated to" satisfy the single-subject rule. *Id.*

The Court applied a similar "fit" analysis in *Robinson Township v. Commonwealth* but came out the other way. 147 A.3d 536, 569 (Pa. 2016). That case involved a statute that regulated mining methods used in Pennsylvania. One provision of the statute addressed healthcare professionals who treat those affected by mining operations, and it limited the professionals' ability to disclose "chemicals used in the fracking process." *Id.* at 568. The plaintiffs argued that the act ran afoul of the single-subject rule because it regulated both mining and the medical professions. But this Court rejected that challenge. It noted that, although the regulations "unquestionably impact…health professionals," the General Assembly's "primary purpose" was not "the regulation of the health care professions" but rather was "the maintenance of trade secret protections for the chemicals used in the fracking process." *Id.* at 569. And that, said the Court, applied to the provisions directed to healthcare professionals as well, because they were not "regulat[ing] the

health care professions" but limiting disclosure pursuant to regulation of the oil and gas industry. *Id*.

This case illustrates the importance of this second prong—that is, the importance of determining whether the disparate parts of an act all relate to a single subject closely enough to satisfy Section 3. ***First***, there is no factual indication that all the different parts of Act 12 apply to any single group of "certain low-income individuals." One part of Act 12 pertains to General Assistance, while other parts pertain to Medicaid. These are different programs with materially different eligibility criteria. To receive General Assistance, a person had to fall within one of several specific categories related to childrearing, disabilities, or domestic violence—but the person also had to meet income criteria, and yet ***not*** be eligible for federal Temporary Assistance for Needy Families.[10] These both inclusionary and exclusionary eligibility requirements meant that, in its most recent 12 months of operation, General Assistance was provided to just over 10,000 Pennsylvanians.[11]

In contrast, Medicaid has eligibility criteria tied to income and assets, which vary according to a person's age, disability, or childrearing status.[12] As a result,

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[10] General Assistance Enrollments, Pennsylvania Department of Human Services, https://www.dhs.pa.gov/about/DHS-Information/Pages/Enrollment-General-Assistance.aspx.

[11] *Id*.

[12] Medical Assistance General Eligibility Requirements, Pennsylvania Department of Human Services, https://www.dhs.pa.gov/Services/Assistance/Pages/MA-General-Eligibility.aspx.

literally millions of Pennsylvanians currently receive Medicaid benefits.[13] Although one could reach to a high level of generality to characterize the original version of the bill that became Act 12 as about benefits for "certain low-income individuals," the amendments to the bill related to different benefits for a group that was dramatically different and larger.

Second, some portions of Act 12 "pertain to" benefits for low-income people in only a quite attenuated way. The hospital assessment in this case will be used in part to fund medical benefits to the needy—but as the Petition ably states, other parts can be used for completely unrelated purposes, such as air-pollution monitoring, restaurant and barbershop inspections, swimming-pool testing, childhood literacy programs, bioterrorism readiness, and others. R.482a-R.485a. These do not pertain to "the provision of health care assistance" or eligibility for health care assistance. Moreover, few (if any) of these programs offer means-tested benefits or are otherwise restricted to low-income individuals.

The original version of the bill that became Act 12—the only function of which was to terminate General Assistance—did pertain directly and exclusively to one class of government benefits for a discrete, clearly-defined group of low-income individuals who were receiving funds that could not come from any other source and

[13] May 2021 Medicaid & CHIP Enrollment Data Highlights, Medicaid.gov, https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html.

that they relied on to sustain them in day-to-day living. The amendments did not. They addressed funding for a wide array of government purposes. And though some of those purposes included healthcare for lower-income individuals, those specifically-targeted dollars could not be used to buy food or diapers or pay for utilities, which was the purpose and, as the declarations explained, the use of the General Assistance funding.

Framed in terms of a nexus, it is possible to say that some elements of each portion of Act 12 had ***some*** relationship to ***some*** form of benefit for ***some*** "low-income individuals," but when the Court instead asks whether the parts of the Act had ***close enough*** of a relationship to that subject to satisfy Section 3, the nexus fails. Indeed, Act 12's tax and revenue provisions, on the one hand, and General Assistance, on the other, cannot all be part of a "unified scheme" to accomplish a "common purpose" where only a small part of the funds raised through the tax and revenue provisions actually go towards means-tested benefits. And at that, only a small portion of those means-tested benefits would help the same class of people eligible for General Assistance and would help the ones it does only with ***healthcare***; General Assistance, in contrast, was a cash payment that—according to the declarations—was used to pay for utilities and transportation. In that respect, this is a case like *Leach*, where the new scrap-metal crime had too small of an effect on gun ownership to satisfy the single-subject rule rather than like *Robinson Township*,

where the law's effects on the practice of medicine were incidental to its overarching regulation of the oil and gas industry.

The Commonwealth Court's decision reflects a misunderstanding that this Court's opinion at the preliminary injunction stage was "compelling," 255 A.3d at 666, even though one justice would have concluded the opposite, and three expressly withheld judgment as to the merits of the claim. *Weeks*, 222 A.3d at 731-732 and 736. Instead of the high bar a ***petitioner*** faces in establishing a right to a preliminary injunction, the law puts the high bar ***on the respondent*** at the preliminary objection stage. *Ladd v. Real Est. Comm'n*, 230 A.3d 1096, 1103 (Pa. 2020) (recognizing that the Court must "accept as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts" and should sustain a demurrer "only in cases that clearly and without a doubt fail to state a claim for which relief may be granted."). Instead, the Commonwealth Court failed to dig into the details of the Declarations and well-pleaded facts and accepted the broad (and inaccurate) characterization that everything in the bill was aimed at "the provision of health care assistance to certain low-income persons and the eligibility therefor." *Weeks*, 255 A.3d at 669; *see also id.* at 671 ("The bill was amended and expanded but all amendments related to the original purpose of providing health care services to certain low-income persons"); *id.* ("Viewed in reasonably broad terms, the original purpose of House Bill 33 was to amend the Human Services Code's

provisions on medical assistance to low-income individuals."); *id*. ("Each amendment, even the elimination of the General Assistance cash benefit program, pertained to the provision of medical assistance to certain low-income persons.").[14]

The fact that the General Assistance cash payments were ***not*** a part of or targeted to medical assistance illustrates the very reason for the challenge: someone just looking at the bill—whether a legislator, a governor, or a Commonwealth Court judge—could readily misunderstand what the elimination of General Assistance meant, both legally and personally. Indeed, because the challenge was not to the health care provisions—or implications of the bill—and, indeed, those portions appear to be severable based on this Court's analysis in *PAGE,* 877 A.2d at 403-04 (provisions that are not germane are not "essentially and inseparably connected" or incapable of being executed in accordance with legislative intent) and the recent observation from the United States Supreme Court that if there is a constitutional flaw in the statute, courts give "full effect" both to the Constitution and to "whatever portions of the statute are 'not repugnant'" to it. *United States v. Arthrex, Inc.*, 141

[14] Attached to the Amended Petition for Review are three declarations. The first is of Jasmine Weeks, a domestic violence victim with two young daughters with whom she and is trying to be reunified. She explains that she used the $205 per month that she received in General Assistance to pay for public transportation, personal care items, and food or small items for her daughters. 12R.175a-R.176a. Also attached is the Declaration of Arnell Howard, who used the $205 per month she received to pay for electricity, gas, and water, as well as personal care items and sometimes for transportation. R.181a. The third declarant, Patricia Shallick, testified that she also used her $205 to pay for utilities, personal care items, SEPTA travel and prescription co-pays. R.184a.

S.Ct. 1970, 1986 (2021). The Commonwealth Court should instead have paid attention to the well-pleaded facts and the four justices who wanted to examine the merits at the merits stage.

This Court could have avoided the position the Petitioners are in now—which, unfortunately, is the same position that the petitioners in *Washington*—if it had accepted Justice Wecht's invitation to clarify "likelihood of success," at least for cases such as this. As Justice Wecht observed in his dissent, "likely to prevail on the merits" has a meaning that is "less than clear in our case law." *Weeks*, 222 A.3d at 732. He also explained that the proper articulation of that prong is the "establish[ment of] a *substantial legal question*…whether the enactment of Act 12 was infected by fatal constitutional deficiencies." *Id*. at 736. That standard has been applied by both this Court and the Commonwealth Court. *See Marcellus Shale Coal. v. Dep't of Env't Prot*., 185 A.3d 985 (Pa. 2018) (referencing the Commonwealth Court's use of the "substantial legal question" standard when it ***granted*** a preliminary injunction). It was first articulated in *Fischer v. Department of Public Welfare*, 439 A.2d 1172 (Pa. 1982), and derived from *Valley Forge Historical Society v. Washington Memorial Chapel*, 426 A.2d 1123, 1129 (Pa. 1981). It is far more suited to a constitutional question such as this than the standard that is recited in *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc*., 828 A.2d 995, 1001 (Pa. 2003), a case that did not turn on the likelihood of success prong, but had

merely recited as one of the six prongs that "the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits." *Id.*

The Commonwealth Court's use of whichever "likelihood of success" suits its purposes—and then using that same standard for the very different procedural assessment at the preliminary objection stage—does a disservice to the four justices in the concurrence and dissent in this case. Worse, it has turned on its head the profound compassion that led Community Legal Services to file not just the challenge on behalf of the General Assistance recipients it serves (and those in the other counties) but also a preliminary injunction, so that 12,000 people would have uninterrupted access to the $205 per month on which they relied. If the Commonwealth Court had applied *Fischer*—or if this Court had insisted on it—there would have be affirmation for persons advocating for the good of the community to seek injunctive relief. *Cf., New Castle Orthopedic Assoc. v. Burns*, 392 A.2d 1383, 1387-88 (Pa. 1978) ("Paramount to the respective rights of the parties to the covenant must be its effect upon the consumer who is in need of the service. This is of particular significance where equitable relief is being sought and the result of such an order or decree would deprive the community involved of a desperately needed service."). As it is, the Commonwealth Court has generated a perverse incentive to

forego seeking to avoid the harm that the Petitioners have suffered, in order to have preliminary objections viewed in the proper frame. This Court is a policy-setting Court, with supervisory authority over the other courts in the Commonwealth; and it alone can set the proper standards in place to avoid what happened in Washington and what happened here.

Article III of the Constitution does not require the General Assembly or the Governor to care about Ms. Weeks, Ms. Howard, or Ms. Shallick, or to prioritize continuing to fund their ability to pay for their utilities or personal care items over setting aside $300 million in a "Rainy Day Fund."[15] But Article III does require them to look General Assistance recipients in the eye and tell them that that is the choice they are making.

IV. CONCLUSION

Accordingly, the judgement below should be reversed.

[15] Jan Murphy, *Pa. Senate sends $34 billion budget bill to Gov. Tom Wolf, but last-minute glitch delays signing*, Pennsylvania Real-Time News (June 28, 2019), https://www.pennlive.com/news/2019/06/pa-senate-sends-34-billion-budget-bill-to-gov-tom-wolf-for-enactment.html.

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Certificate of Compliance

I hereby certify that the foregoing brief complies with the word limit of the Pa.R.A.P. 531(b)(3). Specifically, it contains 6,986 words based on the word count of Microsoft Word 2016, the word processing used to prepare the brief exempted by Pa.R.A.P. 2135(b).

Dated: November 12, 2021

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Certificate of Compliance

I certify that this filing complies with the provisions of the public *Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trials Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: November 12, 2021

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