

IN THE SUPREME COURT OF PENNSYLVANIA

22 EAP 2021

**JASMINE WEEKS, 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*, COMMUNITY JUSTICE PROJECT,
PENNSYLVANIA HEALTH LAW PROJECT, HUNGER-FREE
PENNSYLVANIA, DISABLED IN ACTION OF PA, LIBERTY
RESOURCES, INC., THE HOMELESS ADVOCACY PROJECT, THE
COALITION FOR LOW INCOME PENNSYLVANIANS, THE AIDS LAW
PROJECT OF PENNSYLVANIA, THE WOMEN'S LAW PROJECT,
SUCCESS AGAINST ALL ODDS, THE HOUSING ALLIANCE OF
PENNSYLVANIA, and PHILADELPHIA FIGHT IN SUPPORT OF
PETITIONERS'-APPELLANTS' APPEAL**

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

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I. STATEMENT OF INTEREST OF AMICI CURIAE

Amici Curiae are 12 organizations that have a direct and substantial interest in the continued availability of General Assistance for the people they serve. *Amici* represent diverse organizations within the Commonwealth of Pennsylvania that will be hampered in assisting the people they serve to maintain secure living environments and conditions because the Pennsylvania General Assembly has enacted legislation in violation of the legislative due process requirements of the Pennsylvania Constitution. Aside from the *amici* identified below no one paid in whole or part for the preparation of this brief or authored it in whole or in part.

Community Justice Project: The Community Justice Project (CJP) is a statewide, non-profit public interest law firm that engages in impact advocacy on behalf of low-income families and individuals in civil legal matters. While the work of CJP involves many areas of law, CJP has, since its inception in 1996, had a deep commitment to public benefits work, including both individual case representation and policy advocacy. This has involved individual representation and advocacy on issues relating to cash assistance (General Assistance and Temporary Assistance for Needy Families), the Supplemental Nutrition Assistance Program, and Medical Assistance, both state-funded General Assistance-related medical assistance and federally-funded medical assistance programs.

Pennsylvania Health Law Project: The Pennsylvania Health Law Project (“PHLP”) is a non-profit public interest law firm that exists to help vulnerable Pennsylvanians access health coverage and services. Each year, PHLP provides legal advice and direct representation to thousands of clients - including low-income individuals, older adults, children with medical complexities, and persons with disabilities – and then stands with these clients to advocate for health policy and systems changes to improve the Medicaid landscape for everyone.

Hunger-Free Pennsylvania: Hunger-Free Pennsylvania (“HFPA”) is a non-profit organization with a membership of 17 regional food banks and charitable organizations that provide food assistance in all 67 of the Commonwealth’s counties. HFPA directly administers a federal food program designed for low-income seniors. Also, the Pennsylvania Food Security Coalition, a program of HFPA, is a statewide collaboration that brings together charitable organizations, governmental agencies, businesses that recognize a common mission with HFPA of helping people in need and agree to work to enhance food insecurity awareness in Pennsylvania. HFPA works to end hunger and food insecurity through providing tools to easily mobilize thousands of citizens and hundreds of organizations to speak out about state and local policies that affect struggling families. HFPA’s interest in this matter stems from its desire to preserve the legislative due process requirements that enable its program participants to meaningfully participate in

deliberations about legislation that may impact their ability to meet their basic needs and provide for their families.

Disabled in Action of PA: Disabled in Action of PA (“DIA”) is a grassroots cross-disability organization advocating for civil rights. Many of DIA’s members receive Social Security Disability benefits and have had many failed attempts and waited many years to finally be approved for Social Security. If not for the life-line of General Assistance, many of DIA’s members would have been homeless or in institutions, such as nursing homes. Now some of its members have lost the life-line of General Assistance and do not know where to turn to and how to afford basic necessities, such as housing and public transportation to appointments. Because DIA’s members engage in advocacy about laws and policies that affect people with disabilities, it is important to DIA that the legislature properly follows the requirements of the Constitution, so that DIA can advocate effectively.

Liberty Resources, Inc.: Liberty Resources, Inc. (“LRI”) is a not-for-profit, consumer-controlled organization that advocates and promotes independent living for all persons with disabilities. Liberty Resources advocates with people with disabilities, individually and collectively, to ensure our civil rights and equal access to all aspects of life in the community. The majority of LRI’s consumers are low-income, including those seeking to use General Assistance while applying for Social Security benefits. LRI’s commitment to ensuring access to all aspects of life

in the community is the basis for LRI's interest in this matter. When the General Assembly does not follow the Constitution's requirements for how legislation is enacted, people with disabilities are deprived of an opportunity to participate in an open, fair, and deliberative legislative process.

The Homeless Advocacy Project: The Homeless Advocacy Project ("HAP") is a nonprofit organization that provides free civil legal services to individuals and families who are experiencing homelessness, or at risk of becoming homeless, in Philadelphia. HAP provides comprehensive legal assistance in a broad range of areas, including: establishing eligibility for benefits programs such as Supplemental Security Income, Temporary Assistance for Needy Families, General Assistance, Medical Assistance, and Food Stamps (SNAP); accessing shelter, behavioral health services, and other supportive services;; preserving private and subsidized housing eligibility; and protecting consumer rights. HAP has represented and continues to represent many individuals who have become homeless due to their inability to work as a result of temporary or permanent disabilities. The risk of homelessness is magnified when these individuals are denied access to income supports. Deliberative due process allows HAP's vulnerable clients to meaningfully participate in legislation that directly impacts their stability and most basic human rights.

The Coalition for Low Income Pennsylvanians: The Coalition for Low Income Pennsylvanians (“CLIP”) is a statewide coalition whose principal goal is to fight poverty through advocacy to assist low-income families and individuals obtain public benefits and supports. CLIP has sought to do this by advocating for responsible, compassionate, and cost-effective government policies. CLIP’s twenty-four (24) member organizations include service providers, legal service advocates, faith, anti-poverty and anti-hunger groups, children’s advocacy organizations, and community action agencies.

Because its mission is focused on the most vulnerable of those who live in poverty, CLIP was extensively involved in trying to save the General Assistance program from legislative elimination in 2012; engaged in efforts to educate those qualifying for the renewal of General Assistance in late 2018; and is now working to save General Assistance from elimination once again. In this regard, CLIP is interested in ensuring a legislative process that is deliberative, fair and open, so that people can effectively participate and have their voices heard.

The AIDS Law Project of Pennsylvania: The AIDS Law Project of Pennsylvania (“ALPP”) is an independent, non-profit, public-interest law firm that provides statewide free legal services to Pennsylvanians affected by the HIV/AIDS epidemic. Since its inception in 1988, ALPP has been fighting for the rights of Pennsylvanians living with HIV/AIDS and provides legal assistance to

approximately 2,000 individuals each year. The HIV Policy Collaborative of Pennsylvania is a coalition, convened by ALPP, of more than 30 community-based HIV/AIDS providers and institutions across the Commonwealth concerned about HIV/AIDS policy issues. ALPP and the HIV Policy Collaborative of Pennsylvania have an interest in ensuring that the legislative due process provisions enshrined in the Pennsylvania Constitution are upheld so that they and their members have an opportunity to communicate concerns to legislators about pending legislation.

The Women’s Law Project: The Women’s Law Project (“WLP”) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP’s mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. To this end, the WLP engages in high-impact litigation, policy advocacy, and public education. The Women’s Law Project has a strong interest in the adoption of legislation consistent with the dictates of the Pennsylvania Constitution. Only through a lawmaking process that is deliberative, transparent, and accountable will the interests of Pennsylvania’s citizens be protected.

Success Against All Odds: Success Against All Odds (“SAO”) is an organization that helps low-income families achieve economic independence and family well-being. SAO fulfills this purpose through action and advocacy. Much of SAO’s work is focused on public assistance programs and services offered by

these programs that can help families out of poverty. SAO membership is open to current or former recipients of public assistance and others who are committed to the goal of helping low-income families achieve economic independence and family well-being. SAO members often express their concerns to legislators, and advocate for the importance of public assistance programs. SAO is interested in ensuring a legislative process that is deliberative, fair and open, so that people can effectively participate and have their voices heard.

The Housing Alliance of Pennsylvania: The Housing Alliance of Pennsylvania is a nonprofit membership organization providing statewide leadership and a common voice for policies, practices, and resources to ensure that all Pennsylvanians, especially those with low incomes, have access to safe, decent, accessible and affordable homes. To achieve its mission, the Housing Alliance works on legislation regarding resources and policies to expand housing options and promote community development. The Housing Alliance has an interest in a fair and open legislative process, without which its members would be unable to inform their legislators about the needs in their communities.

Philadelphia FIGHT: Philadelphia FIGHT has provided state-of-the-art primary medical care to low-income Philadelphians living with HIV, by practitioners experienced in such care, regardless of insurance status or ability to pay, since 1997. It also prepares and provides access to the most advanced clinical

research in HIV treatment and prevention, along with consumer education, advocacy, social services, and outreach to people living with HIV and those who are at high risk.

II. INTRODUCTION

This litigation challenges on Pennsylvania state constitutional grounds the legislative process employed by the Pennsylvania General Assembly to secure passage of Act 2019-12 (“Act 12”). Originally intended solely for the purpose of eliminating Pennsylvania’s General Assistance cash benefit program, House Bill 33 -- which became Act 12 -- was later amended to include wholly unrelated revenue raising measures critical to balancing the state budget. The addition of these revenue raising measures presented the Governor, who favored preserving the General Assistance cash benefit program, with a Hobson’s choice: either sign the bill, including a provision he disapproved of, or veto it and risk losing hundreds of millions of dollars of needed state revenue. The Governor had little choice but to sign the bill.

The elimination of the General Assistance cash assistance program ended subsistence cash payments to over 12,025 Pennsylvania residents, including people with disabilities, people fleeing domestic violence, people completing treatment for substance use disorder, and children in the care of non-relatives. General

Assistance provided approximately \$200/month to these impoverished recipients with no other income.

Petitioners argue that the process utilized by the General Assembly to transform a single purpose bill, H.B. 33, that the Governor surely would have vetoed in its original form, into an omnibus bill, including “must pass” revenue raising measures -- making it virtually veto-proof -- violates both the “Single Subject” and “Original Purpose” clauses of Article III of the Pennsylvania Constitution, procedural protections enacted long ago to prevent precisely this kind of “logrolling.”¹

Article III, Section 3 of the Pennsylvania Constitution provides, with regard to “Single Subject,” that:

“No 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.”

Article III, Section 1 of the Pennsylvania Constitution provides, with regard to “Original Purpose,” that:

“No law shall be passed except by bill, and no bill shall be altered or amended, on its passage through either House, as to change its original purpose.”

¹“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. (PAGE) v. Commonwealth*, 877 A.2d 383, 394 n.7 (Pa. 2005) (internal quotations omitted)

III. FACTS

The original bill, House Bill 33, was introduced in the General Assembly on January 4, 2019. The bill was three pages long and had only one purpose, which was to eliminate the General Assistance cash benefit program. H.B. 33, P.N. 47 (R. 204a-206a). When the bill was considered in the House Health Committee, the bill synopsis read:

“Amends the Human Services Code to **eliminate the general assistance cash benefit program**, which was recently reinstated by the PA Supreme Court due to asserted procedural violations.”

H.B. 33, P.N. 47 (March 20, 2019) House Health Committee Bill Summary (W. Metzler, Esq.) (R. 207a) (emphasis added).

But, House Bill 33 was later amended to include three provisions entirely unrelated to General Assistance cash benefits: (i) reauthorization and increased funding for Nursing Facility Incentive Payments; (ii) a revision to the Statewide Quality Care Assessment; and (iii) reauthorization of the Philadelphia Hospital Assessment. H.B. 33, P.N. 47, A02102 (June 17, 2019) (Dunbar) (R. 208a-215a).

These amendments were crucial revenue-generating measures for the Commonwealth, but have nothing to do with the General Assistance cash benefit program. As has been argued by Petitioners-Appellant, the General Assembly included essential tax and funding provisions in the same bill intended to eliminate General Assistance as a means to ensure that Governor Wolf could not exercise his

veto to maintain General Assistance without losing more than \$165 million annually in essential revenue. Even though the Legislature had the option of including the tax and funding provisions in another pending bill, it sought to tie them to the bill eliminating General Assistance to make it veto-proof and to, effectively, force legislators who did not support elimination of the General Assistance cash benefit program to nevertheless vote in favor of the bill.

On June 19, 2019, the amended H.B. 33 passed the House on third and final consideration and moved on to the Senate.

By the time H.B. 33 reached the Senate it had been fundamentally transformed to include the three crucial revenue raising amendments. The bill's final title reflected these amendments, but deceptively, failed to mention elimination of the General Assistance cash benefit program. Instead, the title references revisions to the General Assistance-related *medical assistance* programs, suggesting that the bill concerned the provision of health care benefits to low-income persons, rather than the elimination of a *cash benefit* program:

“An act to consolidate, editorially revise, and codify the public Welfare laws of the Commonwealth,” in public assistance, further providing for definitions, for general assistance- related categorically needy and medically needy only medical assistance programs, for the medically needy and determination of eligibility and for medical assistance payments for institutional care; in hospital assessments, further providing for definitions, for authorization, for administration, for no hold harmless, for tax exemption and for time period; and, in statewide quality care assessment, further providing for definitions.

H.B. 33 (R. 185a)

A close reading of amended H.B. 33, however, reveals that the changes in the General Assistance medical assistance program were mere superficial, technical adjustments needed to leave the program intact, while the principal purpose of the bill remained elimination of the General Assistance cash benefit program. None of these technical amendments affected eligibility for General Assistance medical assistance or changed any other aspect of the medical assistance benefits.

On June 26, 2019, House Bill 33 was laid out for third and final consideration in the Senate and was passed by a vote of 26-24. Bill Information – History H.B. 33 (R. 185a).

On June 28, 2019, Governor Wolf reluctantly² signed H.B. 33 into law as Act 12 of 2019. Bill Information – History H.B. 33 (R. 185a).

² The press reported that the addition of the revenue-generating amendments complicated Governor Wolf's position on H.B. 33: Wolf wants to keep the program, known as General Assistance, but he says the latest move by Republicans puts him in a tough position. In a nearly-party line vote Wednesday, the GOP-controlled 23 House passed a bill that would eliminate the program. But the same bill includes something Wolf wants: Money for Philadelphia hospitals, among other things. Republicans believe Wolf will either sign the bill, or let it become law, because he won't want to kill the medical money. "They are pursuing a pretty smart tactic," Wolf said. ". . . It's a Hobson's choice." Wolf says people who benefit from cash assistance also benefit from the tens of millions of dollars that would go to hospitals. He says he's not sure how he'll respond. "I'm not just saying this to put you off. We're literally still talking about what our options are, because . . . we are between a rock and a hard place here," Wolf said. Ed Mahon, Pa. Post, "#AskGovWolf highlights: Cash for the poor? Yes. Arming teachers? No." (June 21, 2019) (available at: <https://www.witf.org/news/2019/06/cash-for-the-poor-yes-arming-teachers-noand-4-other-highlights-from-askgovwolf.php>).

IV. SUMMARY OF ARGUMENT

The purpose of this amicus brief is to highlight two important points critical to the analysis of Petitioners' claims.

The first point has to do with the legislature's misleading characterization of H.B. 33 in the bill's title as a bill that, in addition to health-related revenue raising provisions, pertained to the provision of health care benefits to low-income persons through revisions to the General Assistance medical assistance program, effectively masking H.B. 33's original purpose of eliminating the cash assistance program. In fact, the General Assistance *cash assistance* program is separate and distinct from the General Assistance *medical assistance* program in both its purpose and the benefits it provides, the latter being a small, state-funded medical insurance program providing health care services to certain low-income individuals ineligible for federally-funded Medicaid program. The General Assembly's elimination of the General Assistance cash benefit program under the guise of providing health care services to low-income persons violates both the "single subject" and "original purpose" clause of Article III of the Pennsylvania Constitution.

Second, the three amendments to H.B. 33, which became Act 12, shared no overarching common purpose with the elimination of the General Assistance cash assistance program. Unlike the controversial elimination of the small General

Assistance cash benefit program, the amendments to H.B. 33 pertained to taxing and funding institutional health care providers. The inclusion of these universally supported and fiscally important legislative measures, which were both critical to the Commonwealth budget and wholly unrelated to General Assistance, contravened the procedural safeguards of Article III.

V. ARGUMENT

A. The General Assembly's Elimination of the General Assistance Cash Benefit Program Under the Guise of Providing Health Care Services to Certain Low-Income Persons Violates Both the Single Subject and the Original Purpose Clause of Article III of the Pennsylvania Constitution.

By characterizing H.B. 33 in its title as a bill providing for health care services to the poor through revisions to the General Assistance medical assistance program, the General Assembly effectively masked H.B. 33's original purpose of eliminating the cash assistance program. In fact, the General Assistance *cash assistance* program is separate and distinct from the General Assistance *medical assistance* program in both its purpose and the benefits it provides, the latter being a small, state-funded medical insurance program providing health care services to certain individuals ineligible for federally-funded Medicaid programs. The General Assembly's elimination of the General Assistance cash benefit program under the pretense of providing health care services to certain low-income persons

violated both the “single subject” and “original purpose” clauses of Article III of the Pennsylvania Constitution.

1. The General Assistance Cash Assistance Program is Separate and Distinct from the General Assistance Medical Assistance Program in its Purpose and the Benefits it Provides

The General Assistance Cash Benefit Program

Until its elimination, General Assistance was a cash assistance program for people with no income, less than \$250 in resources, and who met one of the categorical eligibility requirements. Eligible categories included people with a permanent or temporary disability who cannot work; people fleeing domestic violence; people completing substance use disorder treatment that precludes employment; and children living with unrelated caregivers such as neighbors or friends. 62 P.S. § 432(3)³

The maximum General Assistance cash benefit for one person with no other income—most GA recipients are in a household of one—ranged from \$174 to

³ Those categories included:

- An individual who has a temporary or permanent disability;
- An individual who is undergoing active treatment for substance abuse in a drug- or alcohol-abuse program. Eligibility for such persons is limited to nine months in a life-time;
- An individual who is a victim of domestic violence. Eligibility for DV victims is limited to nine months in a life-time.
- A two-parent household with a child under 13 who does not qualify for Temporary Assistance for Needy Families;
- An individual who (a) cares for a child under age 13 but is not a parent of that child or (b) cares for another individual in the home who is ill or disabled.

55 Pa. Code §141.61(c).

\$215 per month, disbursed in two semi-monthly payments. The grant amount varied by county; the maximum grant amount in 30 counties, including Philadelphia and Allegheny Counties was \$205. Family Size Allowances, 55 Pa.Code ch. 183 App. B Table 3 (R. 253a) and DHS Five-Year Case Characteristics for General Assistance (R 257a).

While General Assistance payments were extremely low they represented the only means for program recipients to pay rent, utilities, necessary household and personal care items – such as soap toilet paper, feminine hygiene products, cleaning supplies -- phone, clothing, transportation to medical and other appointments, and other needs that can only be met with cash.

The needs for which Petitioners in this case relied upon General Assistance cash benefits paint a poignant picture of the vital role this program played in the Commonwealth's social safety net. Consider the following facts drawn from the Amended Petition:

- Petitioner Jasmine Weeks resides at a homeless shelter, where she fled after being physically and mentally abused by the father of her two young children. The Philadelphia Department of Human Services removed her children, saying it was not safe for them to be in a home with the abuser. Her children are now in foster care, and Ms. Weeks seeks family reunification.

Declaration of Jasmine Weeks (R. 175a-177a).

Ms. Weeks began receiving General Assistance in the domestic violence category, after having obtained a Protection from Abuse Order. She used her GA to pay for transportation to the doctor appointments, therapy appointments and court dates required for her child welfare case, and to visit her children and buy them food. She also used her General Assistance cash benefits for soap, toothpaste and laundry detergent. *Id.*

- Petitioner Arnell Howard is 50 years old and has severe arthritis, a back injury, depression and heart failure. Her disabilities make it difficult for her to get dressed and get around the house, and she has the help of a home health care aide through Home and Community Based Services. Because of her disabilities she had to stop working, and she is waiting for a hearing on her SSI disability application. Declaration of Arnell Howard (R. 180a-181a).

Ms. Howard used her General Assistance to make payments on her electric, gas and water bills. She owes money on all of those bills, but she had been able to keep her utilities on while she was receiving GA. She also used her GA to buy soap, toothpaste, toilet paper, maxi pads, and pay for rides to appointments. *Id.*

- Petitioner Patricia Shallick is a 57-year-old resident of Philadelphia. She lives in a home her family has owned for decades. She is presently unable to work due to her disabilities: severe migraines, arthritis, TMJ

(temporomandibular joint pain), schizophrenia, depression and anxiety. She sees a therapist and takes medications to treat and manage her mental health challenges. Declaration of Patricia Shallick (R. 183a-184a).

With no income and no way to pay bills or support herself, Ms. Shallick applied for SSI disability but was denied. She struggled to live without any income, and resorted to selling items she found while trash-picking. She endured a gas shut-off and a water shut-off. *Id.*

Ms. Shallick applied for General Assistance and began receiving \$205 per month in General Assistance benefits, which she relied upon to use the laundromat, buy sanitizer and wipes which to clean herself, since she did not have running water, and to pay co-payments for her medications. *Id.*

The General Assistance Medical Assistance Program

General Assistance medical assistance is a small, state-funded medical assistance program limited to certain individuals who are ineligible for federally-funded Medicaid programs. Pennsylvania's General Assistance medical assistance programs are *not* funded by or otherwise part of the federal Medical Assistance ("Medicaid") program. See 55 Pa. Code §141.81(c)(3)(v)(A). **The revenue raising taxes added to H.B. 33 were connected to the federally-funded Medicaid program and thus had no connection to either the General**

Assistance cash benefit or the General Assistance medical assistance programs.

The General Assistance medical assistance program covers very few Pennsylvanians compared to the Medicaid program. After Pennsylvania expanded its federally-funded Medicaid program in 2015 to cover nearly all low-income adults, the vast majority of General Assistance medical assistance recipients were shifted to the new Medicaid expansion category. In contrast to the more than 2.8 million people enrolled in Medicaid in 2019, fewer than 12,000 individuals were enrolled in the General Assistance medical assistance programs. *See* Exh. 1, Dept. of Human Services Cross Program Data (Jan. 2019).

As mentioned above, in order to eliminate the cash benefits program without affecting or accidentally eliminating General Assistance medical assistance, H.B 33 made a number of technical changes. First, it replaced the definition for “General Assistance” in the Human Services Code, which previously referred to both the cash benefits and the medical assistance programs. *See* 62 P.S. § 402 (replacing definition of “General assistance” with definition for “General assistance-related categorically needy medical assistance”). Second, it specified that the categorical eligibility criteria for both General Assistance cash benefits and General Assistance medical assistance, *see* 62 P.S. § 432(3), would apply only to General Assistance-related categorically needy medical assistance. (R. 205a)

Finally, the bill removed receipt of General Assistance cash benefits from the list of ways a person can be determined “medically needy” to qualify for General Assistance medical assistance but made no other changes to that definition. (R.205a) (removing 62 P.S. § 442.1(3)(i), “Receives general assistance in the form of cash.”). None of these changes affected eligibility for General Assistance medical assistance or changed any other aspect of the medical assistance benefits.

There are two categories of General Assistance medical assistance: Non-money Payment (NMP) and Medically Needy Only (MNO). Each program has different qualifying criteria, none of which were affected by H.B. 33.

The General Assistance Non-Money Payment (NMP) medical assistance program utilizes the same categories of eligibility as the General Assistance Cash Benefit program, although the services provided are entirely different. 55 Pa. Code §178.11. The General Assistance Non-Money Payment medical assistance program provides no cash payment, but is rather a health insurance program covering medical, prescription, mental health, and dental expenses.

The eligibility requirements for the General Assistance Medically Needy Only (MNO) medical assistance program bear no resemblance at all to the General Assistance cash benefit eligibility categories, except that one has to be extremely poor to qualify. To qualify for General Assistance medical assistance

in the MNO category, one must have income at or below very low income limits, be age 21 or over, and be one of the following:

- A custodial parent or stepparent who is caring for and responsible for a dependent child (natural or adoptive) under 21 years of age.
- Age 59 or older.
- Between ages 21 to 58 and show that he or she is working at least 100 hours per month and earning at least a total of the minimum wage times 100.

55 Pa. Code §141.81(c)(3)(v).

General Assistance medical assistance in the Medically Needy Only category provides health insurance similar in coverage to the Non-Money Payment program. Thus, like General Assistance medical assistance in the NMP category it provides no cash payment to pay rent, utilities, and other essential, non-health care related expenses and is no substitute for a cash income.

By way of analogy, consider a scenario where a worker loses her wages, but retains employer provided health insurance. Would anyone seriously suggest that loss of the worker's cash income is no big deal because she still has her health insurance coverage? Obviously, health insurance does not pay rent, utilities, or the myriad other expenses necessary to meet essential needs and maintain a household. In the same way, the life-sustaining needs met by General Assistance cash

payments cannot be met by General Assistance medical assistance coverage. They are simply not equivalent and one is no substitute for the other.

2. The General Assembly’s Characterization of the Purpose of H.B. 33 as Health Care Related Masked its Original and True Intent, in Violation of Both the Single Subject and the Original Purpose Clause of Article III of the Pennsylvania Constitution.

The distinction between the General Assistance cash benefit program and the General Assistance medical assistance program was obscured as H.B. 33’s originally stated sole purpose of “eliminat[ing] the GA *cash assistance* program,”⁴ became conflated with the provision of *health care benefits* to low-income persons by way of codifying the public welfare code for “general assistance- related categorically needy and medically needy only *medical assistance* programs”⁵ The characterization of the bill’s purpose as relating to health care obscured the distinction between the General Assistance cash benefit program and the General Assistance medical assistance program, effectively disguising the bill’s elimination of the cash benefit program and its impact on the thousands of people, including persons with serious disabilities, domestic violence survivors, persons receiving substance abuse treatment, and other needy adults and children, who relied on this program for a bare subsistence income.

⁴ See, H.B. 33, P.N. 47 (March 20, 2019) House Health Committee Bill Summary (W. Metzler, Esq.) (emphasis added) (R.207a).

⁵ See, H.B. 33 (R. 186a) (emphasis added).

It appears that even the Commonwealth Court was misled by the General Assembly's misdirection regarding the subject and purpose of H.B. 33. In its May 13, 2021 decision dismissing Petitioner's Amended Petition for Review, the court repeatedly misstates the purpose of Act 12, not as ending the General Assistance cash benefit program, but as providing health care services to certain low-income persons:

- “The Court granted reconsideration to clarify that Act 12 ***pertains to the provision of medical care*** to certain low-income persons and correct Petitioners' misimpression of our understanding of Act 12.” *Weeks, et al. v. Pennsylvania Department of Human Services*, No. 409 M.D. 2019, *slip op.* (Pa. Cmwlth. May 13, 2021) (*Weeks III*) (p.2)
- “Rather, Act 12 pertains to the ***provision of health care assistance*** to certain low-income persons and the eligibility criteria therefor.” *Id.*, at p. 14. (Emphasis added)
- “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.*, at p. 17. (Emphasis added)

- “*Each amendment*, even the elimination of the General Assistance cash benefit program,⁶ *pertained to the provision of medical assistance to certain low-income persons.*” *Id.*, at p. 14. (Emphasis added)

Perhaps the most telling in the above quotes is the statement in which the court characterizes as the original purpose of the bill, not as the elimination of the General Assistance cash benefit program, but the provision of *health care services*. If the court was mistaken about the original purpose of H.B. 33, as it clearly was, how could it have properly evaluated Petitioner’s claims that the amendments to the bill violated the “single subject” and “original purpose” clauses of Article III of the Pennsylvania Constitution?

In short, the General Assembly blurred the important distinction between the General Assistance cash benefit program and the General Assistance medical assistance program in H.B. 33, obscuring the bill’s original and principal objective – elimination of the General Assistance cash benefit program -- while at the same time adding “must pass” revenue raising provisions to the bill, knowing that the Governor, who did not support elimination of the General Assistance cash benefit program, would have little choice but to sign H.B. 33 into law. Such machinations in the legislative process are precisely what the “single subject” and “original

⁶ The court is clearly mistaken here, as the elimination of the GA cash benefit program was not an amendment to the bill, but was originally its sole provision.

purpose” clauses of the Pennsylvania Constitution at Article III, Sections 1 and 3, were intended to prevent. Given the threat to a fair and open legislative process posed by the kind of legislative process used to secure passage of H.B. 33, Amici respectfully urge the Court to hold that the limits of these important constitutional constraints were exceeded in this case.

B. Act 12 Contains Revenue-Raising Taxes and Provider Payments that Changed its Original Purpose and Share No Commonality with the Elimination of General Assistance Cash Assistance Program

The hospital assessments and nursing facility payments added to the elimination of General Assistance cash benefits in H.B. 33 do not satisfy the germaneness test for Article III, Section 3’s single purpose mandate. They instead reflect a wholesale shift in purpose of the bill from the original goal of eliminating *cash benefits* for low-income individuals to generating revenues for institutions and the City of Philadelphia to use on a broad array of services for all of its residents. Under the modern “germaneness” inquiry to assess a single subject challenge, the components of an enacted legislation must be part of “unifying scheme to accomplish a single purpose.” *Commonwealth v. Neiman*, 84 A.3d 603, 612 (Pa. 2013). While courts can hypothesize a “reasonably broad topic” in determining whether the various parts of a law violate the single subject rule, “[t]here must be limits ... as otherwise virtually all legislation, no matter how

diverse in substance, would meet the single-subject requirement.” *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 588 (Pa. 2003)

Among its other formulations of a unifying topic, the Commonwealth Court in its Article III analysis in this case unsurprisingly adopted this Court’s rationale in reviewing Petitioners’ preliminary injunction application that Act 12, on the whole, relates to the “provision of benefits” pertaining to the “basic necessities of life to certain low-income individuals.” *Weeks III*, Slip Opinion at p. 15, No. 409 M.D. 2019, citing *Weeks II*, 222 A.3d at 730.

Assuming that “benefits for low-income individuals” is a viable single subject, the provisions of Act 12 exceed the boundaries of that subject. Despite being politically controversial, the General Assistance cash benefits program was small: it provided cash benefits to 12,000 residents when the program was eliminated. In contrast, the joint state-federal Medicaid program at that time provided health care benefits to over 2.8 million Pennsylvania residents. *See* Exh. 2, Dept. of Human Services Enrollment Data (Aug. 2019). The elimination of General Assistance cash benefits was projected to save **\$31.8 million** in state funding annually. H.B. 33, Senate Fiscal note, June 28, 2019 (R. 527a). Assessments on health care insurers and providers, such as and including the revenue-generating provisions added to Act 12, generated **\$3.6 billion** towards the Department of Human Services budget in Fiscal Year 2019-20. Governor’s

Executive Budget, FY 2020-2021 (E27.7; p.499). Provider taxes like the Statewide Quality Care Assessment and the Philadelphia Hospital Assessment serve to draw down federal Medicaid funding and defray the state’s funding obligations for the much larger and more expensive joint state-federal Medicaid program. *See* 62 P.S. § 802-G(a) (“The assessment authorized under this article ... may be collected only to the extent and for the periods that the secretary determines that revenues generated by the assessment **will qualify as the State share** of program expenditures eligible for Federal financial participation.”) (emphasis added); *see also* G.A.O. Report, *CMS Needs More Information on States’ Financing and Payment Arrangements to Improve Oversight* (Dec. 2020) (p.1) (Finding that state reliance on Medicaid provider taxes “effectively shifts responsibility for a larger portion of Medicaid payments to the federal government and away from states.”) (available at: <https://www.gao.gov/assets/gao-21-98.pdf>). The hospital assessment provisions added to Act 12 were thus part of an intricate funding apparatus that was both orders of magnitude larger than the General Assistance program and critical to the Commonwealth budget.

The hospital assessment-related amendments to H.B. 33 are wholly unrelated to the General Assistance cash benefit program, thus defeating the germaneness required to satisfy the single subject rule and demonstrating a change from the original purpose – elimination of General Assistance cash benefits – of

H.B. 33. These amendments are intended to raise revenues that benefit institutional providers – not to delineate substantive standards for programs that benefit low-income Pennsylvanians. That the additions to the original bill also fall within the purview of the Department of Human Services does not itself satisfy the single subject requirement. While the Commonwealth Court correctly notes that there is “no principle” that all revenue raising statutes must be enacted in a bill relating solely to revenue, *Weeks III*, Slip Opinion at p. 13, the tax and non-tax related provisions must still be germane to a single unified subject matter, *see, e.g., PAGE*, 877 A. 2d at 400 (“The use of a single legislative enactment as a vehicle to generate and disburse funds among a wide variety of interests untethered to an overarching subject and unchecked by any other safeguard, in our view, leaves too great a potential for abuse to withstand Article III, Section 3 scrutiny.”). This Court has explicitly stated that “the regulation and funding of human services programs” is “entirely too expansive” to serve as a unifying subject for a bill that contained multiple measures affecting unrelated human services programs. *Washington v. Department of Public Welfare*, 188 A.3d 1135, 1154 n.36 (Pa. 2018).⁷

⁷ Similarly, the amendment to H.B. 33 to extend certain nursing facility payments had no nexus to the elimination of General Assistance cash benefits. This amendment reauthorized the Nursing Facility Incentive Payments and doubled the state funds available from \$8 million to \$16 million. This provision pertained above all to the funding and operation of institutional health providers.

So, too, amendments to H.B. 33 that altered definitions for the Statewide Quality Care Assessment are not germane to General Assistance cash benefits and reflect a marked deviation from its original purpose. Unlike H.B. 33’s elimination of General Assistance cash benefits, which deprived the poorest Pennsylvanians of a subsistence cash payment, the amendments to alter definitions for the Statewide Quality Care Assessment impacted hospitals throughout the Commonwealth, in both low-income and affluent areas. Except for certain exempt facilities including psychiatric facilities, Veterans Affairs hospitals, and cancer treatment facilities, this tax is levied on *all* hospitals statewide. 62 P.S. § 801-G. Under federal regulations, it must be “broad based” and uniformly imposed on providers, 42 C.F.R. § 433.68(c)-(d), and it cannot directly correlate to Medicaid payments, 42 C.F.R. § 433.8(d)(2). The tax permits Pennsylvania to draw down supplemental Medicaid payments from the federal government and defray the state matching funds required for the joint federal-state Medicaid program. 62 P.S. § 802-G(a).

Likewise, the Philadelphia Hospital Assessment amendment was a revenue-raising measure that bore no connection to General Assistance cash benefits.

Scheduled to expire the same month it was reauthorized, the Philadelphia Hospital Assessment generated \$165 million annually and was critical to balancing the Commonwealth budget. *See* Senate Fiscal Note (R. 527a). Of this amount, the state receives \$60.5 million annually and the remainder is routed to hospitals and

the City of Philadelphia. *Id.* In addition to reauthorizing this tax on general acute care hospitals and high-volume Medicaid hospitals, Act 12 also broadened the permitted uses of the municipality's remitted revenue to include funding public health programs generally. H.B. 33, P.N. 47, A02102 (June 17, 2019) – Amendments (R. 539a).

Tax revenues generated by the Philadelphia Hospital Assessment are used by the city for both administrative costs as well as for an array of public health programs and activities that benefit the Philadelphia population as a whole, not just low-income individuals. The public health programs and activities in Philadelphia which could be funded by the Philadelphia Health Assessment include, *inter alia*: (1) monitoring of air pollution and pollution control; (2) prevention of food-borne diseases through inspection of restaurants and retail food establishments; (3) oversight of infectious waste disposal from health care facilities and sewage/waste facilities; (4) oversight of water supplies to ensure potability; and (5) investigating causes of death, including autopsies and fatality reviews (such as maternity-related deaths and sleep-induced infant deaths). City of Philadelphia, Health and Human Services, Department of Public Health 2019 Program Plan. Accordingly, the Philadelphia Hospital Assessment cannot be pigeonholed into the subject of “providing benefits” pertaining to the “basic necessities to certain low-income individuals.” The breadth of the Philadelphia Hospital Assessment shatters

germaneness with General Assistance cash benefits and demonstrates how far H.B. 33's amendments drifted from its original purpose.

It was the inclusion of these popular – and budgetarily essential – but unrelated revenue raising and institutional provider payment amendments to H.B. 33 that ensured its enactment and sealed the fate of the General Assistance cash benefits program. Those amendments guaranteed that any legislators on the fence about voting in favor of a bill to eliminate General Assistance cash benefits would be compelled to do so or risk losing essential revenues that were needed to ensure a balanced budget and depriving Philadelphia of revenue needed to administer programs that benefit its citizens at all income levels. Moreover, those amendments made H.B. 33 veto-proof. Despite Governor Wolf's vocal support for General Assistance, he was unable to veto Act 12 because it now provided funding critical to hospitals, the City of Philadelphia, and the Commonwealth budget. Not only was the inclusion of these popular amendments to House Bill 33 manifestly unfair to the vulnerable Pennsylvanians served by General Assistance, it also contravened the procedural safeguards of Article III. *Amici* respectfully ask that the Court uphold the Constitution's single-subject and original purpose protections and reverse the Commonwealth Court's order dismissing the Amended Petition.

VI. CONCLUSION

For all the reasons set forth above, and by the Petitioners, this Court should reverse the Commonwealth Court's order of May 13, 2021 dismissing Petitioner's Amended Petition for Review.

Dated: November 10, 2021

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Certification of Word Count

I hereby certify that the foregoing brief complies with the word limit of the Pa.R.A.P. 531(b)(3). Specifically, it contains 6,979 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 10, 2021

/s/ Peter Zurflieh

Peter Zurflieh

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 10, 2021

/s/ Peter Zurflieh

Peter Zurflieh

Proof of Service

I, Peter Zurflieh, certify that on this 10th day of November, 2021, true and correct copies of the foregoing Brief for *Amici Curiae* . . . In Support of Petitioners' Appeal, were served upon the following persons in the manner indicated, satisfying the requirements of Pa.R.A.P. 121.

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Exhibit 1

Dept. of Human Services Cross Program Data (January 2019)

January 2019					
MA CATEGORY	SNAP	% w/ SNAP	No SNAP	% w/o SNAP	Totals
SSI	269,950	74.1%	94,430	25.9%	364,380
A	55,057	81.8%	12,244	18.2%	67,301
J	213,922	72.3%	81,777	27.7%	295,699
M	971	70.4%	409	29.6%	1,380
TANF	99,161	95.2%	5,045	4.8%	104,206
C	96,018	95.1%	4,939	4.9%	100,957
U	3,143	96.7%	106	3.3%	3,249
SBP/GA	6,451	96.6%	224	3.4%	6,675
B	68	53.5%	59	46.5%	127
D	6,383	97.5%	165	2.5%	6,548
OTHER MA	1,255,331	54.7%	1,040,466	45.3%	2,295,797
MG	1,070,746	58.1%	771,515	41.9%	1,842,261
PA	327	52.6%	295	47.4%	622
PC	4,713	9.3%	46,123	90.7%	50,836
PD	35	3.5%	969	96.5%	1,004
PG	3,622	59.4%	2,480	40.6%	6,102
PH	106,132	46.8%	120,571	53.2%	226,703
PI	0	n/a	0	n/a	0
PJ	2,455	32.5%	5,110	67.5%	7,565
PM	14	17.5%	66	82.5%	80
PS	25	28.4%	63	71.6%	88
PSF	4,106	17.3%	19,636	82.7%	23,742
PW	6,943	22.3%	24,156	77.7%	31,099
TA	31,007	65.2%	16,563	34.8%	47,570
TC	1,509	9.5%	14,343	90.5%	15,852
TD	35	0.8%	4,355	99.2%	4,390
TJ	23,593	63.0%	13,857	37.0%	37,450
TU	69	15.9%	364	84.1%	433
LTC	928	1.8%	51,284	98.2%	52,212
PAN	412	1.1%	37,434	98.9%	37,846
PCN	0	0.0%	**	**	**
PJN	502	6.7%	7,002	93.3%	7,504
PMN	0	0.0%	**	**	**
PVN	**	**	333	97.4%	**
TAN	**	**	6,123	99.9%	**
TJN	**	**	343	99.7%	**
TVN	0	0.0%	42	100.0%	42
Waiver	33,490	53.1%	29,573	46.9%	63,063
PAW	15,645	54.1%	13,300	45.9%	28,945
PJW	17,814	52.3%	16,253	47.7%	34,067
PMW	31	60.8%	20	39.2%	51
NO MA	129,916	100.0%	0	0.0%	129,916
Grand Total	1,795,227	59.5%	1,221,022	40.5%	3,016,249

Source: EDW 3/5/2019

** Data is suppressed to ensure personally identifiable information is not indirectly revealed in instances where there are 10 or fewer records

Exhibit 1 - Amici Curiae brief in support of Appellants' Appeal

Exhibit 2

Department of Human Services MA Enrollment Data (August 2019)

TABLE 1

Number of Medical Assistance Persons*

	Total		Adults		Children	
	SFY Avg. Number	% Change Over Prev. Year	SFY Avg. Number	% Change Over Prev. Year	SFY Avg. Number	% Change Over Prev. Year
SFY 16-17 Avg.	2,830,300	4.8%	1,617,610	7.3%	1,212,690	1.5%
SFY 17-18 Avg.	2,886,196	1.9%	1,662,550	2.7%	1,223,646	0.9%
SFY 18-19 Avg.	2,869,146	-0.6%	1,651,837	-0.6%	1,217,309	-0.5%
	Monthly Number	% Change Over Prev. Month	Monthly Number	% Change Over Prev. Month	Monthly Number	% Change Over Prev. Month
July 2019	2,860,494	0.2%	1,647,812	0.2%	1,212,682	0.2%
Aug.	2,852,801	-0.3%	1,642,143	-0.3%	1,210,658	-0.2%
Sept.		-100.0%		-100.0%		-100.0%
Oct.		#DIV/0!		#DIV/0!		#DIV/0!
Nov.		#DIV/0!		#DIV/0!		#DIV/0!
Dec.		#DIV/0!		#DIV/0!		#DIV/0!
Jan. 2020		#DIV/0!		#DIV/0!		#DIV/0!
Feb.		#DIV/0!		#DIV/0!		#DIV/0!
Mar.		#DIV/0!		#DIV/0!		#DIV/0!
Apr.		#DIV/0!		#DIV/0!		#DIV/0!
May		#DIV/0!		#DIV/0!		#DIV/0!
June		#DIV/0!		#DIV/0!		#DIV/0!

Source: ARM572 Reports/DW(data warehouse) starting Oct. 2011.

NOTE: Children are those recipients under the age of 21.

MA enrollment numbers include those served in HealthChoices and Fee for Service.