

IN THE SUPREME COURT OF PENNSYLVANIA

No. 22 EAP 2021

**JASMINE WEEKS, ARNELL HOWARD, PATRICIA SHALLICK,
individually and on behalf of all others similarly situated,**

Appellants,

v.

**DEPARTMENT OF HUMAN SERVICES
OF THE COMMONWEALTH OF PENNSYLVANIA,**

Appellee.

INITIAL BRIEF OF APPELLANTS

Appeal from the Order of the Commonwealth Court, *Weeks v. Department of Human Services*, 409 M.D. 2019 (May 13, 2021).

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this direct appeal from Commonwealth Court. 42 Pa.C.S.A. § 723(a). The order is appealable as of right pursuant to Pa.R.A.P. 1101, because the matter was originally commenced in the Commonwealth Court.

ORDER IN QUESTION

A copy of the opinion and order of the Commonwealth Court sustaining the preliminary objections and dismissing the amended petition is attached as Exhibit A. *Weeks v. Department of Human Services*, 409 M.D. 2019, Opinion and Order (May 13, 2021). It will be referred to herein as *Opinion*, followed by a page number.

SCOPE AND STANDARD OF REVIEW

This Court's standard of review of the Commonwealth Court's order is de novo, and the scope of review is plenary. *Raynor v. D'Annunzio*, 243 A.3d 41, 52 (Pa. 2020). "We recognize a demurrer is a preliminary objection to the legal sufficiency of a pleading and raises questions of law; we must therefore 'accept as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts.' A preliminary objection in the nature of a demurrer 'should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted.'" *Id.* (internal citations omitted).

STATEMENT OF THE QUESTIONS INVOLVED

- I. Does the Amended Petition state a claim that Act 12 was enacted in violation of Article III, Section 1 of the Pennsylvania Constitution because its original purpose changed and its title was deceptive?
- II. Does the Amended Petition state a claim that Act 12 was enacted in violation of Article III, Section 3 of the Pennsylvania Constitution because its provisions covered more than a single subject?

STATEMENT OF THE CASE

B. Procedural History

On June 28, 2019, House Bill 33, Printer's Number 2182, was signed into law as Act 12. The bill eliminated the General Assistance cash benefit program and amended statutes related to revenue-raising for separate health care and related programs. On July 22, 2019, Petitioners, individual recipients of General Assistance cash benefits, filed a Class Action Petition for Review in the Commonwealth Court's original jurisdiction on behalf of themselves and all others similarly situated against Respondent, the Pennsylvania Department of Human Services. Petitioners and the Class asserted challenges under Sections 1 and 3 of Article III of the Pennsylvania Constitution. On the same day, Petitioners filed an Application for Special Relief in the Nature of a Preliminary Injunction to enjoin the Department's enforcement of Act 12.

On August 1, 2019, the Commonwealth Court issued a per curiam Memorandum and Order denying the Petitioners' Application for Special Relief, reasoning that Petitioners failed to show either a clear right to relief or immediate

and irreparable harm. *Weeks v. Department of Human Services* (Pa. Cmwlth., No. 409 M.D. 2019, August 1, 2019). Petitioners appealed, and this Court affirmed the Commonwealth Court's denial of a preliminary injunction. *Weeks v. Department of Human Services*, 222 A.3d 722 (Pa. 2019).

Petitioners filed an Amended Petition for Review on March 9, 2020, and Respondent filed preliminary objections on May 11, 2020. Briefing followed, and the Commonwealth Court held oral argument on February 8, 2021. On March 24, 2021, the Commonwealth Court issued a Memorandum and Order sustaining the preliminary objections and dismissing the petition. Petitioners filed an application for reconsideration on April 7, 2021, which was granted. The March 24 opinion was vacated. On May 13, 2021, the Commonwealth Court issued a new Memorandum and Order sustaining the preliminary objections and dismissing the petition.

On June 14, 2021, Appellants submitted a Notice of Appeal and filed a Jurisdictional Statement in this Court. Respondent did not oppose jurisdiction.

C. Statement of the Facts

2. General Assistance Cash Benefits

General Assistance cash benefits was a program that provided a small cash stipend for people who have no income, less than \$250 in resources, and who meet one of the categorical eligibility requirements. Categories include people with a permanent or temporary disability who cannot work and who do not yet receive

federal disability benefits; 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. In July 2019, 12,025 people across Pennsylvania received General Assistance. Amended Petition, Mar. 9, 2020, R. 465a.

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 \$215 per month, disbursed in two semi-monthly payments. The grant amount varied by county; the maximum grant amount in 30 counties, including Philadelphia, is \$205 per month, disbursed in two payments of \$102.50. Family Size Allowances, 55 Pa.Code ch. 183, R. 253a; DHS Five-Year Case Characteristics for General Assistance, R. 257a. The majority of General Assistance recipients received cash assistance for less than one year. *Id.*

Pennsylvania also administers the General Assistance medical assistance program, a separate program that provided state-funded health insurance cards to a small number of people in certain categories who do not otherwise qualify for the much larger, joint federal-state Medical Assistance program. General Assistance medical assistance will be discussed *infra* at pp. 31-33. Act 12 did not eliminate or substantively change General Assistance medical assistance in any way.

3. The Legislature’s Prior Elimination of General Assistance Cash Benefits and this Court’s Ruling that it was Unconstitutional.

In 2012 the General Assembly passed, and then-Governor Corbett signed, Act 80, a bill that eliminated General Assistance cash benefits. During the legislative process, the bill was amended to include multiple provisions affecting programs overseen by the Department of Public Welfare (now called the Department of Human Services), including kinship care programs, work requirements for TANF (Temporary Assistance for Needy Families) recipients, and nursing facility assessments. Act 2012-80, P.L. 668, R. 543a. As a result of Act 80, the General Assistance cash benefits program ceased operating in the summer of 2012.

General Assistance cash benefits recipients and advocacy groups petitioned the Commonwealth Court for review, asserting, among other things, that the bill was unconstitutional under Pennsylvania law for reasons including that: (1) each chamber had not considered the amended bill three times; and (2) the amended bill, which contained unrelated provisions and affected human services programs entirely separate from General Assistance, violated the single subject rule.

Washington v. Dep't Pub. Welfare, 188 A.3d 1135 (Pa. 2018).

On July 18, 2018, this Court held that Act 80 violated Article III, Section 4 of the Pennsylvania Constitution because the bill, after being amended in the Senate, was not considered on three different days in the House of Representatives. *Washington*, 188 A.3d at 1154. This Court held that the bill's previous three days of consideration in the House did not satisfy the constitutional requirement,

because the Senate’s subsequent amendments to the bill were not germane to the bill’s original purpose and subject. *Id.* at 1153.

After the *Washington* decision, the Department of Human Services began accepting applications for General Assistance cash benefits at the end of August 2018, and individuals whom the Department determined eligible began receiving General Assistance cash benefits in late November 2018. R. 504a.

4. House Bill 33 was introduced to eliminate General Assistance Cash Benefits again.

On December 21, 2018, Rep. George Dunbar posted a co-sponsorship memorandum with the subject “Re-enacting the elimination of the general assistance cash benefit program.” The memo read in part:

The general assistance cash benefit program ended on August 1, 2012 under the provisions of Act 80 of 2012. This state-only funded program paid a cash benefit to individuals who did not qualify for Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI). This reenactment is necessary because Act 80 was recently overturned by the courts on procedural grounds. Following that court decision, the Department of Human Services has begun operating the program, despite the fact that the program was not funded in the current fiscal year’s budget.

Memorandum, Dec. 21, 2018, R. 529a.¹

¹ This memorandum and other parts of the legislative history of House Bill 33 are also available on the Pennsylvania Legislature’s website at: <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=0033> (last accessed Nov. 5, 2021).

On January 4, 2019, House Bill 33 was introduced in the General Assembly.

The bill was three pages long. Its title was:

Amending the act of June 13, 1967, entitled “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 and for the medically needy and determination of eligibility.

H.B. 33, P.N. 47, R. 530a. Although the title refers to medical assistance, the bill as originally introduced made no substantive changes to medical assistance.

Rather, the bill’s references to medical assistance served only to ensure that the changes to the statutory language required to eliminate General Assistance cash benefits did not inadvertently change General Assistance medical assistance.

Although the purpose of the bill as described by the prime sponsor was to eliminate the General Assistance cash benefits program, the title makes no mention of cash benefits. Conversely, although the title mentions the General Assistance medical assistance program, the bill itself did not alter the medical assistance program in any respect, as the Department of Human Services has conceded.

“General Assistance medical assistance is not affected by Act 12.” Declaration of Cathy Buhrig ¶ 4 (July 29, 2019), R. 383a.

House Bill 33 moved unchanged through the House Health Committee on first and second consideration on March 25 and 27, 2019. House Bill 33, Bill Information – History, R. 511a.

On June 18, 2019, with the new fiscal year soon to begin on July 1 and budget negotiations for Fiscal Year 2019-20 drawing to a close, Rep. Dunbar of the House Appropriations Committee proposed amendments adding three new provisions to the bill:

- One amendment related to Nursing Facility Incentive Payments and extended the Medicaid day-one incentive payments to qualified non-public nursing facilities serving Medicaid patients, which were due to expire on June 30, 2019, until June 30, 2020, and increased these payments from \$8M to \$16M.
- Other amendments related to the Philadelphia Hospital Assessment. The amendments extended assessments on “high volume Medicaid hospitals, which were due to expire on June 30, 2019, through June 2024.² This revenue-raising measure draws down matching federal Medicaid dollars through a levy on hospitals and is estimated to generate \$165M in revenue annually, and thus \$825M in the five-year authorization period.³ The amendments also expanded permissible uses of the Philadelphia Hospital Assessment, allowing municipalities

² Because the only “high volume Medicaid hospitals” meeting the statutory definition are located in Philadelphia, this provision is commonly referred to as the “Philadelphia Hospital Assessment.”

³ The \$165 million revenue from the assessments is stated in the Senate Appropriations Fiscal Note, H.B. 33, P.N. 2182 (June 20, 2019), R. 527a.

to retain a portion of the revenue from those assessments and use it for “public health programs” benefitting the general public.⁴

- The last amendment involved revisions to Statewide Quality Care Assessments for hospitals.

H.B. 33, P.N. 47, A02102 (June 17, 2019), R. 534a. The “assessments” included in Rep. Dunbar’s amendments are taxes levied on hospitals and were needed to fund the state budget for Fiscal Year 2019-20.

The Appropriations Committee adopted the amendments. The following language was added to the title:

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, P.N. 2182, R. 512a.

The next day, June 19, 2019, the amended bill passed the House on third and final consideration by a vote of 106 to 95. Bill Information – History H.B. 33, R. 511a.

Until the amendments that added the Nursing Facility Incentive Payments, Philadelphia Hospital Assessment, and Statewide Hospital Quality Care

⁴ See Co-Sponsorship Memorandum, Sen. Michele Brooks, May 15, 2019 (stating that free-standing bill SB 695, which reauthorized the hospital assessments, was “necessary to complete our budgetary obligations for Fiscal Year 2019-20.”). R. 230a.

Assessments (relating to taxes needed to fund the state budget) to House Bill 33, “Governor Wolf consistently advocated for fully funding General Assistance [Cash Benefits], including in his February [budget] proposal and various counter-proposals during the budget negotiations.” Mark Scolforo, Associated Press, “Divided Pa. House votes to end \$54M cash welfare program” (June 19, 2019) (<https://www.pennlive.com/news/2019/06/divided-pa-house-votes-to-end-54m-cash-welfare-program.html>) (last accessed Nov. 5, 2021).

After the amendments to the bill, the press reported that the amendments to expand the Philadelphia Hospital Assessment complicated Governor Wolf’s position on House Bill 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 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), R. 332a.

On June 26, 2019, the Senate passed House Bill 33 on third and final consideration by a vote of 26-24. Bill Information – History H.B. 33, R. 511a.

On June 28, 2019, Governor Wolf signed House Bill 33 into law as Act 12 of 2019. *Id.* Governor Wolf spoke to the press about the choice he made to sign the bill eliminating General Assistance cash benefits:

Wolf told reporters he was sorry he had to do it but the bill that the General Assembly sent him contained language that provided “tens of millions of dollars for hospitals in areas that really need that money.” He added, “In a perfect world I would not have to make this Hobson’s choice.”

Jan Murphy, “Dems: Revive Cash Assistance,” *Sunday Patriot-News*, July 7, 2019 (available at: <https://www.pennlive.com/news/2019/07/pa-democratic-lawmakers-want-to-revive-cash-assistance-for-states-poorest-residents-hoping-moral-compass-emerges-in-those-who-voted-to-shut-it-down.html>) (last accessed Nov. 5, 2021).

The Pennsylvania Bulletin recorded Act 12 as “Human Services Code-omnibus amendments.” 49 Pa.B. 3595 (July 13, 2019), R. 581a.

5. Concurrent with H.B. 33, another bill, S.B. 695, was pending with the stated purpose of enacting the Nursing Home Incentive Payments and Philadelphia Hospital Assessment.

The Philadelphia Hospital Assessment and the Nursing Facility Incentive Payments were scheduled to expire on June 30, 2019, the close of the state fiscal

year. For budgeting purposes, it was essential that those revenue and spending measures continue into the new fiscal year. A Senate bill, S.B. 695, was also under consideration in the spring of 2019 and provided an appropriate vehicle to address those matters. The co-sponsorship memo for Senate Bill 695 read:

I will soon be introducing legislation **necessary to complete our budgetary obligations for Fiscal Year 2019-2020 and beyond**. Specifically, the following provisions of the Human Services Code **require reauthorization** from the General Assembly **before they sunset on June 30, 2019**:

- Nursing Facility Assessment
- Nursing Facility Budget Adjustment Factor
- Intermediate Care Facilities for Persons with an Intellectual Disability Assessment
- Philadelphia Hospital Assessment

This legislation will reauthorize these provisions through June 30, 2022. Please join me in co-sponsoring this important legislation.

Co-Sponsorship Memorandum, Sen. Michele Brooks, May 15, 2019, R. 556a (emphasis added).⁵

On May 31, 2019, Senate Bill 695 was introduced, with the following title:

Amending the act of June 13, 1967 (P.L.31, No.21), entitled ‘An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth,’ in public assistance, further providing for medical assistance payments for institutional care; in nursing facility assessments, further providing for time periods; in intermediate care facilities for persons with an intellectual

⁵ This memorandum and other parts of the legislative history for S.B. 695 are also available on the Pennsylvania Legislature’s website at: <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0695> (last accessed Nov. 5, 2021).

disability assessments, further providing for time periods; and, in hospital assessments, further providing for time period.

S.B. 695, P.N. 833, R. 557a. Although the title of this bill referenced the Nursing Facility Incentive Payments (“medical assistance payments for institutional care”)⁶ and Philadelphia Hospital Assessment, those provisions were not included in the bill’s text. *Id.*

On June 10, 2019, Senate Bill 695 passed the Senate by a vote of 50-0. Bill Information – History S.B. 695 (available at:

https://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2019&ind=0&body=S&type=B&bn=695).

When Senate Bill 695 moved to the House, Rep. Bradford offered amendments: the Nursing Facility Incentive Payments, the Philadelphia Hospital Assessment, and the Statewide Hospital Quality Care Assessments. The amendments included the topics in the bill’s caption that had not been included in the original bill text and matched verbatim the amendments added to House Bill 33 in the House Appropriations committee. *Compare* S.B. 695, P.N. 833, A02322, R. 560a, and H.B. 33, P.N. 47, A02102, R. 534a. In an Appropriations Committee meeting on June 25, 2019, Rep. Bradford’s amendments did not pass.

⁶ This is the same phrase used in H.B. 33, P.N. 2182, to describe the nursing facility payments. R. 512a.

Senate Bill 695 passed the House by a vote of 198-1, returned to the Senate and passed by a final vote of 49-1 on June 27. The Governor signed the bill on June 28 as Act 19 of 2019. Bill Information – History S.B. 695, available at: https://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2019&ind=0&body=S&type=B&bn=695.

6. Termination of General Assistance Cash Benefits and Resulting Harm

On July 1, 2019, the Department of Human Services sent notice to all General Assistance cash benefits recipients that the program would end on August 1, 2019, and that no General Assistance cash benefits would be disbursed after July 31, 2019. R. 251a. Named petitioners Jasmine Weeks, Arnell Howard and Patricia Shallick were notified that their General Assistance cash benefits would end on July 31. R. 501a, R. 506a, R. 509a.

In their Petition for Review and in their Application for Special Relief, Petitioners submitted declarations from the named Petitioners, six other individuals who relied upon General Assistance cash benefits, and multiple social service and government agencies, which were familiar with the harms that followed the termination of General Assistance cash benefits after enactment of Act 80 in 2012. The declarations demonstrated that the termination of General Assistance cash benefits – the only financial payments available for people with no other source of income and virtually no resources – would cause significant and irreparable harm,

including: increasing homelessness; loss of utilities, causing people to live without running water, electricity, or other utilities; unnecessarily delaying the reunification of parents with children currently in the child welfare system; compelling people to discontinue substance use disorder recovery programs; and causing people to go without the bare necessities of daily life, including toilet paper, laundry, soap, toothpaste, and feminine hygiene products. *See* Declarations, R. 500a-510a, R. 79a-133a.

7. Interlocutory Appeal

The Commonwealth Court denied the Application for Special Relief in a *per curiam* order dated August 1, 2019. Petitioners lodged an interlocutory appeal. After expedited briefing and oral argument, this Court affirmed the Commonwealth Court’s denial of Petitioners’ Application for Special Relief. *Weeks v. Dep’t of Human Services*, 222 A.3d 722 (Pa. 2019).

An interlocutory appeal at the preliminary injunction stage faces a standard of review “highly deferential” to the lower court. The majority opinion in *Weeks*, joined by six justices, opens with a comprehensive discussion of the standard of review:

This Court exercises a highly deferential standard of review when considering a trial court’s ruling on a request for a preliminary injunction. Under that standard, we review for an abuse of discretion, and will affirm the denial of preliminary relief if the trial court had any apparently reasonable grounds for its action. Such grounds exist when the court properly found that any one of the prerequisites was not satisfied. “Only if it is plain that

no grounds exist to support the decree or that the rule of law relied upon was palpably erroneous or misapplied will we interfere with the decree.”

Weeks, 222 A.3d at 727 (internal citations omitted). The opinion concludes: “In light of the above, we find that the Commonwealth Court did not abuse its discretion in determining that Appellants failed to carry their burden with regard to the likelihood-of-success-on-the-merits aspect of the standard for preliminary injunctive relief.” *Weeks*, 222 A.3d at 731.

The concurring opinion, joined by three justices who also joined the majority opinion, emphasized that the litigation was in a preliminary posture, during which this Court was asked to determine only whether the Commonwealth Court had “any apparently reasonable grounds” to deny preliminary injunctive relief. *Weeks*, 222 A.3d at 731-32. The opinion described the underlying constitutional issues as “a close question.” *Id.* The concurring opinion noted that in *Washington*, the Supreme Court affirmed the Commonwealth Court’s denial of preliminary injunctive relief, but subsequently reversed the Commonwealth Court’s ruling dismissing the petitioners’ constitutional challenges to Act 12 and held the legislation was enacted in violation of the Pennsylvania Constitution. *Id.* at 732.

8. Amended Petition and Preliminary Objections

Petitioners filed an Amended Petition on March 9, 2020. R. 465a. The Amended Petition challenged Act 12 on the basis of Article III, Section 1 and 3,

and it included a deceptive title argument as part of the Article III, Section 1 issue. The Amended Petition also specified the ways in which Act 12 expanded municipalities' use of the revenue from the Philadelphia Hospital Assessment, permitting use for a wide range of public health programs that benefit the general public, not only low-income people.

On May 11, 2020, the Department of Human Services submitted Preliminary Objections in the nature of a demurrer. After briefing and hearing oral argument, the Commonwealth Court issued an opinion and order sustaining the preliminary objections and dismissing the petition on March 24, 2021. Petitioners applied for reargument and reconsideration, because the opinion stated, “[Act 12] also enacted several amendments related to the funding of the General Assistance medical assistance program.” This was in error, because no provision of Act 12 funds the General Assistance medical assistance program. In the application for reconsideration, Petitioners explained:

The statement that the amendments relate to the funding of General Assistance medical assistance is wrong. The amendment reauthorizing the Philadelphia hospital assessments raises revenue by drawing down \$165 million annually in federal Medicaid dollars. However, those funds do not support General Assistance medical assistance. As pled in the Amended Petition and not disputed by Respondent, General Assistance medical assistance is a small, state-funded medical assistance program for certain individuals who are ineligible for federally-funded medical assistance.

Application for Reargument and Reconsideration, 3. R. 685a. The fact that the amendments do not fund General Assistance medical assistance called into question the panel’s conclusion that the amendments to Act 12 are all germane to the General Assistance medical assistance program.

The Commonwealth Court granted the application for reconsideration. On May 13, 2021, the Commonwealth Court issued a new opinion and order “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.” Opinion, 2 (emphasis added). The new opinion and order sustained the preliminary objections and dismissed the amended petition.

The Commonwealth Court held that the bill does not violate Article III, Section 1, reasoning, “the original purpose of House Bill 33 was to amend the Human Service Code’s provisions on medical assistance to low-income individuals. . . . Each amendment, even the elimination of the General Assistance cash benefit program, pertained to the provision of medical assistance to certain low-income persons.” Opinion, 17-18. The Commonwealth Court also held that the title of the bill was not deceptive, because the title of the bill “put legislators on notice that the bill pertained to the provision of medical services to categorically needy individuals The title of House Bill 33 did not have to identify the language that would be stricken from the Human Services Code in order to satisfy Article III, Section 1.” Opinion, 19.

The Commonwealth Court held that the bill does not violate Article III, Section 3 (the single subject rule), because “the final version of House Bill 33 retained the original text with additions relating to the single unifying subject, *i.e.*, the provision of General Assistance to low-income individuals.” Opinion, 14. The opinion also relied upon this Court’s 2019 decision in *Weeks* that the provisions of Act 12 “as a whole pertain to the provision of basic necessities of life to certain low-income individuals.” Opinion, 15 (citing *Weeks*, 222 A.3d at 730).

D. Order Under Review

This appeal arises from an order stating: “And now, this 13th day of May, 2021, the preliminary objections of Respondent are SUSTAINED, and Petitioners’ amended petition for review is DISMISSED.” *Order* (May 13, 2021), R. 730a.

E. Statement of Raising and Preserving Issues

Petitioners raised all of the issues presented in this appeal in their Amended Petition and the Brief in Opposition to Respondent’s Preliminary Objections. R. 731. The Commonwealth Court ruled upon those issues in its Opinion and Order.

SUMMARY OF ARGUMENT

Although the standard of review when this Court heard this case on interlocutory appeal was highly deferential, the Court reviews this appeal *de novo*. The Commonwealth Court erred in sustaining the preliminary objections, which is appropriate only when “the law states with certainty that no recovery is possible.” *Commonwealth by Shapiro v. UPMC*, 208 A.3d 898, 909 (Pa. 2019) (internal

citations omitted). That is not the case here. The Amended Petition is legally sufficient.

The enactment of Act 12 violated the original purpose and single subject provisions of Article III. The bill was introduced in January 2019 as House Bill 33 with the sole stated purpose of re-enacting the elimination of General Assistance cash benefits. When introduced and at all times thereafter, the bill effected no substantive changes to the General Assistance medical assistance program, but merely removed cross-references, ensuring that the elimination of General Assistance cash benefits did not inadvertently alter the General Assistance medical assistance program.

House Bill 33 was amended in late June 2019, just before the budget deadline, to include unrelated provisions, including a revenue-raising tax, the Philadelphia Hospital Assessments, which had separately been announced in the Senate as a freestanding bill, Senate Bill 695. Reauthorizing these provisions was essential to the state budget, and they enjoyed near-unanimous support in the legislature. Inserting these provisions into the controversial bill to eliminate General Assistance cash benefits for low-income individuals, and thus tying the bill's passage to essential budget revenue, is the type of logrolling that Article III was designed to prevent.

The original purpose of House Bill 33 was the elimination of General Assistance cash benefits. At its passage, the purpose of the final bill had morphed

from the narrow target of the state-funded General Assistance cash benefits program to the far broader targets of raising massive revenues related to the federal-state Medicaid program and allowing some of those revenues to be used to fund broad local public health programs unrelated to poverty or income status. Such a change cannot be countenanced by Section 1 of Article III. In addition, the bill's title, which does not refer at all to the elimination of General Assistance cash benefits, is deceptive.

The bill's passage also violated Article III, section 3, the single subject rule. Whether the purported unifying subject of Act 12 is "the provision of General Assistance to low-income individuals," Opinion, 14, "the provision of basic necessities of life to certain low-income individuals," Opinion, 15, or "providing health care services to certain low-income persons," Opinion, 17, the subject fails to unify the disparate provisions of the bill as required to comply with Section 3 of Article III. "General Assistance" is not a unifying subject; it is the name of two separate specific, state-funded programs – one for cash benefits and one for medical assistance. The amendments, including the Philadelphia Hospital Assessment and Nursing Facility Incentive Payments and the Statewide Quality Care Assessments for hospitals, do not relate in any way to either of those General Assistance programs. Nor can the bill's unifying purpose be deemed "providing health care to low-income individuals," since the General Assistance cash benefits program is simply not a health care program. Finally, the "provision of basic

necessities of life to certain low-income persons” is overbroad. Even if it were not, it cannot unify the subjects since, as set forth in the Amended Petition, the Philadelphia Hospital Assessment amendment allows municipalities to use funding raised by the Assessment for “public health programs” that are not targeted to either basic necessities or low-income people.

ARGUMENT

The Commonwealth Court erred in sustaining the preliminary objections and dismissing the amended petition; the amended petition states a claim that Act 12 violates Article III, Sections 1 and 3 of the Pennsylvania Constitution.

The scope and standard of review for preliminary objections in the nature of a demurrer favor the non-moving party:

A demurrer tests the legal sufficiency of the complaint. For the purpose of evaluating the legal sufficiency of the challenged pleading, 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. The question presented by the demurrer is whether, on the facts alleged, the law states with certainty that no recovery is possible. . . . When a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling [the objections].

Commonwealth by Shapiro v. UPMC, 208 A.3d at 909 (internal citations omitted).

The Commonwealth Court erred in concluding that the law states with certainty that no recovery is possible in this case. On the interlocutory appeal, three concurring justices of this Court stated that the constitutional issues are “a

close question,” and the dissenting justice concluded that Appellants had “met their burden of demonstrating their likelihood of success on the merits in light of the substantial legal questions that exist regarding the constitutionality of Act 12 under Article III, §§ 1 and 3.” *Weeks*, 222 A.3d at 731, 745. Because four justices of this Court disagree that “the law states with certainty that no recovery is possible,” the Commonwealth Court erred in sustaining the preliminary objections.

A. The procedures that led to the enactment of Act 12 violated Article III’s legislative procedure provisions.

1. Article III was adopted to make the legislative process open and accountable to the people.

At the time of the Civil War, public perceptions of “abuses and inadequacies in the lawmaking process” in Pennsylvania were so great that “the people lost confidence in the legislature’s ability to fulfill its most paramount constitutional duty of representing their interests.” *Washington*, 188 A.3d at 1145 (citing Mahlon Hellerich, *The Pennsylvania Constitution of 1873* (1956) (Ph.D. dissertation, University of Pennsylvania)).

In 1873 the people convened a constitutional convention to reform the legislative process. ““Last-minute consideration of important measures, logrolling, mixing substantive provisions in omnibus bills, . . . and the attachment of unrelated provisions to bills in the amendment process—to name a few of these abuses—led to the adoption of constitutional provisions restricting the legislative process.”” *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 588-89 (Pa. 2003) (quoting

Robert F. Williams, *State Constitutional Limits on Legislative Procedure*, 48 U. Pitt. L.Rev. 797, 800 (1987)).

The 1873 convention adopted Article III, which constrains legislative power. “Each of Article III’s provisions was specifically designed to eliminate one of the myriad objectionable legislative practices the Commonwealth’s citizenry viewed with intense disfavor.” *Washington*, 188 A.3d at 1146.

Article III, Section 1, the original purpose rule, provides: “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.” Pa. Const. art. III, § 1. It was “intended to abolish the practice of attaching ‘riders’ to bills at various points in the legislative process by barring the addition of proposed legislation on a subject matter unrelated to that of the bill as originally introduced.” *Washington*, 188 A.3d at 1146 (relying upon Thomas Raeburn White, *Commentaries on the Constitution of Pennsylvania* (1907)). The Article III, Section 1 inquiry also requires the court to consider whether the title and the contents of the bill are deceptive. A bill is not deceptive if the “title place[s] reasonable persons on notice of the subject of the bill.” *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 409 (Pa. 2005) (“PAGE”).

Article III, Section 3, the single subject rule, provides: “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.” Pa. Const. art. III, § 3. It was “crafted to prevent the use of ‘omnibus bills’ which combined multiple pieces of legislation, each pertaining to a different subject, into one bill.” *Washington*, 188 A.3d at 1146 (relying upon White). “The single subject requirement seeks to prevent grouping of incompatible measures, as well as pushing through unpopular legislation by attaching it to popular or necessary legislation. It prevents ‘logrolling,’ combining several proposals in a single bill so that legislators, by combining their votes, obtain a majority for a measure which would not have been approved if divided into separate bills.” 73 Am. Jur. 2d Statutes § 53, Applicable Constitutional Provisions and Requirements. A bill with multiple subjects may pass constitutional muster, but only if each part is germane to every other part. Each must have a “nexus to a common purpose” or be “part of a unifying scheme to accomplish a single purpose.” *Leach v. Commonwealth*, 141 A.3d 426, 430 (Pa. 2016) (citing *City of Philadelphia*, 838 A.2d at 589).

2. House Bill 33 was amended to include provisions not germane to the sole original purpose – elimination of General Assistance cash benefits.

The legal inquiry into whether amendments to a bill are “germane to and do not change the general subject of the bill” is part of the analysis for the single subject and original purpose rules, as well as for the Section 4 three-time consideration. “[W]here the provisions added during the legislative process assist in carrying out a bill’s main objective, or are otherwise ‘germane’ to the bill’s

subject as reflected in the title, the requirements of Article III, Section 3 are met.” *PAGE*, 877 A.2d at 395. “[O]nly when amendments are germane to the bill’s original subject will consideration of the original bill by each House on a particular day count towards the requirements of Article III, Section 4.” *Washington*, 188 A.3d at 1151. The inquiries overlap so much that finding a violation of Section 1 or Section 3 is a prerequisite to finding a Section 4 violation. *PAGE*, 877 A.2d at 410 (petitioners “must necessarily establish that Article III, Section 1 or 3 had been violated” to demonstrate a violation of Section 4).

In *Washington*, the bill in question, Act 80, eliminated General Assistance cash benefits and made changes to several other human services programs. The Department argued that the amendments were all germane to “the broad purpose and subject of [the] bill – the interrelated human services programs administered by DPW.” *Washington*, 188 A.3d at 1153.

This Court rejected that argument. Instead of accepting “human services programs” as a unifying subject, which would have meant that Act 80’s initial three-time consideration in the House satisfied Section 4, this Court compared the original and final texts of the bill to determine the purpose and subject. The purpose of the original bill, H.B. 1261, P.N. 1385, was to set eligibility criteria for public assistance. The original provisions were removed from the bill and enacted in another piece of legislation. *Washington*, 188 A.3d at 1139-40, 1153. The final

bill, made up entirely of amendments, was therefore “not germane [to the original purpose] as a matter of law.” *Id.*

In a footnote, this Court clarified that the germaneness analysis was not limited to the unusual legislative history of Act 80. The amended bill was too far removed from the subject and purpose of the original bill. “[W]e simply don’t regard the subjects of the multifarious provisions of Act 80 inserted by the Senate to be germane to the subject of setting eligibility criteria . . . the sole focus of [the original bill].” *Washington*, 188 A.3d at 153 n.36. The Court also made clear that a nursing facility assessment that solely raises revenue “is unlike other provisions of Act 80 . . .” *Id.*

Although there were fewer amendments to House Bill 33, that became Act 12, than there were to Act 80, Act 12’s provisions are just as unconstitutionally disparate as Act 80. The bill that became Act 12, House Bill 33, was filed on January 4, 2019. It was simple. The original bill solely addressed elimination of General Assistance cash benefits. H.B. 33, P.N. 47 (Jan. 28, 2019), R. 530a.

More than five months later, on June 18, 2019, the House Appropriations committee approved amendments adding three provisions related to revenues for institutional providers – the Nursing Facility Incentive Payments, Philadelphia Hospital Assessment and Statewide Quality Care Assessments. None of those amendments related to subsistence cash benefits for low-income Pennsylvanians. H. B. 33, P.N. 47, A02102 (June 17, 2019), Amendments to H.B. 33, R. 534a. The

amendments to the bill were not germane to the bill's original purpose, which was to eliminate General Assistance cash benefits, nor do the final bill's provisions share an acceptable unifying subject.

House Bill 33 passed the House and the Senate as amended by narrow margins, and the Governor signed it into law as Act 12 of 2019. Bill Information – History H.B. 33, R. 511a. Governor Wolf was candid that he assented to the elimination of General Assistance cash benefits because of the inclusion in the bill of the assessment provisions that provided “tens of millions of dollars for hospitals” and called his decision to sign the bill a “Hobson’s choice.” Jan Murphy, “Dems: Revive Cash Assistance,” Sunday Patriot-News, *supra*.

B. Act 12 violates Article III, Section 1.

Article III, Section 1 provides: “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.” Pa. Const. art. III, § 1. Courts review legislation challenged under Article III, section 1 using a two-prong test; failure to satisfy either prong renders the legislation unconstitutional. “First, the court will consider the original purpose of the legislation and compare it to the final purpose and determine whether there has been an alteration or amendment so as to change the original purpose. Second, a court will consider, whether in its final form, the title and contents of the bill are deceptive.” PAGE, 877 A.2d at 408-09.

Here, Act 12 fails both prongs. The bill on final passage had a different purpose than the original bill, and both the original and the final title were deceptive as to its contents.

1. The original purpose of House Bill 33 was solely to eliminate General Assistance cash benefits.

The original purpose of House Bill 33 was narrow: to eliminate the General Assistance cash benefits program. The original purpose of the bill is stated in the legislative history. The subject of the bill’s co-sponsorship memorandum was “Re-enacting the elimination of the general assistance cash benefit program.” The memo read, in part: “Please join me as a co-sponsor of legislation to re-enact the elimination of the general assistance cash benefit program. . . . This state-only funded program paid a cash benefit to individuals who did not qualify for Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI). This reenactment is necessary because Act 80 was recently overturned by the courts on procedural grounds.” H.B. 33 Cosponsor Memo (Dec. 21, 2018), R. 529a.

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. House Bill 33 eliminates the general assistance (GA) case [sic] assistance program on July 1, 2019. This bill also

provides for the continuation of the GA-related categorically needy Medical Assistance program and the GA-related Medical Assistance program for the Medically Needy Only.” H.B. 33, P.N. 47 (March 20, 2019) House Health Committee Bill Summary (W. Metzler, Esq.), R. 533a.

The Commonwealth Court erroneously held that the purpose of the original bill was “to amend the Human Services Code’s provisions on *medical assistance to low-income individuals*.” Opinion, 17 (emphasis added), R. 726a. The purpose of the original bill, as plainly stated in the legislative history, was to re-enact the elimination of the General Assistance cash benefit program without eliminating or changing the General Assistance medical assistance program.

General Assistance cash benefits are wholly separate and quite different from “medical assistance” – whether the Commonwealth Court meant the state-funded General Assistance medical assistance program or the federal-state Medicaid program. Cash benefits are just what its name says: the provision of money that can be used on whatever the recipient needs to spend it on. General Assistance cash benefits recipients used their cash benefits to pay for rent, food, toothpaste, toilet paper, laundry detergent, soap, bus fare and other items. R. 175a-184a. In contrast, “medical assistance,” whether the small state-funded program or the much larger joint state-federal funded Medicaid program, entitles the recipient to only one thing: health care. Medical assistance cannot be used for shelter, toiletries, transportation, or food, and is not fungible.

Nor can the purely technical amendments to the General Assistance medical assistance program included in House Bill 33 be relied upon to establish that the bill's original purpose related to "medical assistance."

House Bill 33 had to include some technical revisions to the statutory provisions relating to the General Assistance medical assistance program simply to maintain the program exactly as it was. If the Legislature had eliminated the statutory provisions relating to General Assistance cash benefits, it would have inadvertently changed the General Assistance medical assistance program because of the way the statutory provisions were written. So, in order to eliminate General Assistance cash benefits without affecting or inadvertently eliminating the General Assistance medical assistance program, the bill made several purely technical changes. First, it replaced the definition for "General Assistance" in the Human Services Code; the definition previously referred to both the cash benefits and the medical assistance programs. *See* H.B. 33, P.N. 2182, R. 514a (at 62 P.S. § 402, replacing definition of "General assistance" with definition for "General assistance-related categorically needy medical assistance", thus removing reference to the eliminated cash benefits program). Second, House Bill 33 amended the Human Services Code's categorical eligibility criteria for both General Assistance cash benefits and General Assistance medical assistance, by specifying that the criteria would apply only to the General Assistance medical assistance program, since General Assistance cash benefits would be eliminated. *See* R. 514a-515a.

Finally, the bill removed 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. *See* R. 515a (removing 62 P.S. § 442.1(3)(i), “Receives general assistance in the form of cash.”). None of these changes affected eligibility for the General Assistance medical assistance program or changed the medical benefits available under that program; the changes simply continued that program unchanged. In sum, the revisions to General Assistance medical assistance simply reflect the elimination of General Assistance cash benefits.

Furthermore, those purely technical references only related to the state-funded General Assistance medical assistance program, not to the much larger federally funded Medicaid program. In January 2019, as House Bill 33 was introduced, there were 3,016,249 Pennsylvanians receiving health care benefits from either the joint state-federal funded Medicaid program or the state-funded General Assistance medical assistance program for certain individuals ineligible for federally-funded Medicaid. Of those three million plus people, only 11,952 people received state-funded General Assistance medical assistance. Brief for Amici Curiae on behalf of Community Justice Project, et al., Nov. 10, 2021, at 19 (citing Department of Human Services Cross Program Data, Jan. 2019). Over 99.5% of Pennsylvanians who receive medical assistance receive it through Medicaid, the joint state-federal funded program. Compared to the total number of

people receiving Medical Assistance, the number of people in the state-funded General Assistance medical assistance program is 0.39%. The state-funded General Assistance medical assistance program is a tiny fraction, not even one half of one percent, of Pennsylvania's overall Medical Assistance program. The amendments concerning the Hospital Assessments and Nursing Facility payments had no connection whatsoever to the General Assistance medical assistance program and related only to the federally funded Medicaid program.

The bill synopses in both the House and Senate fiscal notes support the conclusion that the provisions of the bill related to General Assistance were intended only to eliminate General Assistance cash benefits and not to change in any way the General Assistance medical assistance program. The fiscal notes only mention General Assistance cash benefits and the provisions in the amendments.

They do not mention General Assistance medical assistance:

Synopsis: House Bill 33, Printer's Number 2182, amends the Human Services Code to: **eliminate the general assistance cash benefit program**; continue the medical assistance (MA) day-one incentive payment for nonpublic nursing homes; extend the Philadelphia Hospital assessment; and make definition changes in the Statewide Quality Care Assessment.

House Committee on Appropriations, Fiscal Note, H.B. 33, P.N. 2182 (June 18, 2019) (emphasis added),⁷ *see also* Senate Fiscal Note, H.B. 33, P.N. 2182, R. 527a (nearly verbatim synopsis of bill).⁸

As the Department of Human Services has conceded, neither the original bill nor the final bill made any changes to General Assistance medical assistance. With the Answer to Petitioners’ Class Action Petition for Review, Respondent submitted a declaration by Cathy Buhrig, the Director of the Bureau of Policy in the Office of Income Maintenance at the Pennsylvania Department of Human Services. She explained, “General Assistance medical assistance is not affected by Act 12.” Buhrig Decl., ¶ 4 (July 29, 2019), R. 383a.

2. The amendments changed the bill’s original purpose.

The amendments to House Bill 33 were designed to achieve wholly new and different purposes than elimination of General Assistance cash benefits, the sole original purpose of the bill. It is undisputed that as amended, the final bill: (1) reauthorized the Nursing Facility Incentive Payments, doubling the funds for those payments from \$8 million to \$16 million; (2) revised definitions for the Statewide Quality Care Assessment, a tax on all hospitals statewide that permits

⁷ The House Fiscal Note is available at: <https://www.legis.state.pa.us/WU01/LI/BI/FN/2019/0/HB0033P2182.pdf> (last accessed Nov. 5, 2021).

⁸ The Senate Fiscal Note is in the Reproduced Record at R. 527a, and also available at: <https://www.legis.state.pa.us/WU01/LI/BI/SFN/2019/0/HB0033P2182.pdf> (last accessed Nov. 5, 2021).

Pennsylvania to draw down supplemental Medicaid payments from the federal government; (3) reauthorized the Philadelphia Hospital Assessment, a tax on hospitals, extending it through 2024 and permitting Pennsylvania to draw down annually \$165 million in revenue from the federal government, a total of \$825 million over the five-year authorization period; and (4) changed the Philadelphia Hospital Assessment to permit municipalities to use some of the raised revenues for municipal “public health programs” that benefit the general public. These amendments radically changed the original purpose of the bill.

Contrary to the Commonwealth Court’s conclusion, the original purpose of House Bill 33 was not “to amend the Human Services Code’s provisions on medical assistance to low-income individuals.” Opinion, 17. As this Court explained, “The original subject of the bill was limited to the cash assistance provision . . . H.B. 33 originally had only three provisions, all relating in some way to Cash Assistance.” *Weeks*, 222 A.3d at 730-31. The only substantive provisions in the original bill related to elimination of General Assistance cash benefits; the minor, technical provisions related to the General Assistance medical assistance program were included solely to avoid the unintended changes to that program that would have resulted from the elimination of General Assistance cash benefits. *See supra*, 31-33. Accordingly, even assuming that the Court could properly view the amendments to House Bill 33 as related to “medical assistance to low-income individuals,” those amendments reflected a change from the original purpose since

cash benefits are not health care benefits. Moreover, it is erroneous to conclude that the amendments relate to “medical assistance to low-income individuals.”

First, the amendments were revenue assessments critical to the budget and affected institutional providers rather than substantive eligibility criteria for individual public benefits. Second, the Philadelphia Hospital Assessment amendment included a change that allows municipalities to use their part of the raised revenues for broad “public health” programs that are unrelated to income, as detailed in Paragraph 48 of the Amended Petition—including, for example, restaurant and retail food inspection, air and water quality, animal control, inspection of barber and beauty establishments, and promoting childhood literacy. *See* Amended Petition, R. 482a-485a. That change does not relate to medical care for low-income individuals.

If the original purpose of the bill is viewed as “provision of benefits pertaining to the basic necessities of life to certain low-income individuals,” *Weeks*, 222 A.3d at 730, although that is not a constitutionally narrow purpose, the amendments to the bill changed its purpose. Again, as detailed in the Amended Petition, the Philadelphia Hospital Assessment impacts far more than the basic needs of low-income individuals. Am. Pet. ¶¶ 48, R. 482a-485a. It thus lacks the germaneness necessary under Article III, Section 1.

Even under a “reasonably broad” view of the original purpose of House Bill 33, *City of Philadelphia*, 838 A.2d at 588, its original purpose cannot encompass

the multiple and wide-ranging disparate purposes of the final, amended bill. In *Washington*, this Court expressly rejected the Department’s argument that amendments about multiple different human services programs, including, significantly, a revenue-raising nursing home assessment, were sufficiently germane to the original purpose of a bill simply because the amendments related to human services programs. *Washington*, 1138 A.3d at 1153 & n.36. Similarly, in *Leach v. Commonwealth*, 141 A.2d 426 (Pa. 2016), this Court held that a bill violated the original purpose clause where the bill’s original purpose was to penalize scrap metal theft and the amended, final bill included “topics pertaining to state police reporting requirements and the creation of a new right of action against municipalities by individuals and organizations affected by local gun-control laws.” *Leach*, 141 A.3d at 429.

Even this Court’s decision in *PAGE* supports the conclusion that the amendment to Act 12 changed its original purpose in violation of Article III, Section 1. In *PAGE*, the original bill regulated licensing for horse racing, and the final bill included multiple provisions all related to the regulation of gambling. The Pennsylvania Supreme Court held that the final bill, “although significantly amended and expanded,” was consistent with the bill’s original purpose of regulating gambling. *PAGE*, 877 A.2d at 409-410. Although the Court upheld most of the bill in *PAGE* against a constitutional challenge, it was compelled to sever two disbursement provisions in that bill that it determined were not germane

to the unifying subject of gaming, explaining that the disbursements had a “source-only relation” to gaming. In other words, gaming regulation raised the revenue, but it was disbursed to fund unrelated matters, including volunteer fire companies and forest reserves. *Id.* at 403-04. Likewise, in Act 12 the amendments were primarily intended to raise revenues – not regulate health care or other public benefits for low-income individuals – and the Philadelphia Hospital Assessment allows the use of those revenues to fund provisions that impact individuals at all income levels.

The Commonwealth Court’s reliance on *Christ the King Manor v. Dep’t of Public Welfare*, 911 A.2d 624 (Pa.Cmwlt. 2006), is misplaced. In that case, the Commonwealth Court rejected an Article 3, Section 1 challenge to a bill that “initially pertained to the inspection of nursing facilities” and was amended to include other provisions relating to nursing facility care, including Medicaid payments to nursing facilities. The Court in that case held that the provisions of the original and final bill all related to nursing facility care and, thus, the amendments did not change the original purpose of the bill. *Id.* at 636. Nursing facility care is, of course, the subject of one of the amendments to Act 12, but unlike the bill at issue in *Christ the King*, Act 12 also addresses other subjects far broader than nursing home care.

- 3. The bill’s title deceptively omitted that the bill eliminates General Assistance cash benefits, and inaccurately stated that the bill alters “medical assistance.”**

The second, independent prong of the Article III, Section 1 inquiry is whether the title of the bill is deceptive as to its contents. The Court must consider “whether the title and the content of the bill in final form [a]re deceptive.” *PAGE*, 877 A.3d at 409. A bill is not deceptive if the “title place[s] reasonable persons on notice of the subject of the bill.” *Id.* Here, the title of the final bill is deceptive.

The bill’s amended and final title was:

Amending the act of June 13, 1967 (P.L. 31, No. 21), entitled ‘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 program and 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, P.N. 2182, R. 186a. While the title indicates that the bill is amending the General Assistance medical assistance program, in fact as set forth *supra*, at 31-33, the bill makes no changes to the General Assistance medical assistance program other than those technical changes needed to prevent inadvertent changes to the program caused by the bill’s elimination of General Assistance cash benefits. And, yet, while the bill completely eliminates General Assistance cash benefits, the bill’s title does not state that it ends General Assistance cash benefits or even reference General Assistance cash benefits in any way. In contrast, the title of Act

80 of 2012, the subject of the *Washington* litigation, included the following language: “Providing for cessation of the general assistance cash program and the continuation of the general assistance-related medical assistance programs.”

Washington, 188 A.3d at 1141, n.18 (setting out the title of the final bill).

“Cessation of the general assistance cash program” stated in plain language that the bill ends the cash assistance program.

Unlike the bill at issue in *Washington*, neither the original nor the final title of Act 12 refers to the elimination of General Assistance cash benefits. It does not place a reasonable person on notice that one of the subjects affected by the bill is General Assistance cash benefits. *Cf. In re City of Harrisburg, PA*, 465 B.R. 744, 758–59 (Bankr. M.D. Pa. 2011) (“The title of the bill states that among various other purposes, Senate Bill 907 is ‘providing for financially distressed municipalities.’ . . . Although the phrase in the title suggests a benevolent rather than a prohibitory provision, reasonable persons were put on notice that financially distressed municipalities would be effected [sic] by the bill.”). Here, unlike that example, the title of the bill does not refer to General Assistance cash benefits at all, much less state that the bill eliminates those benefits. The title is deceptive. Further, the title of the bill inaccurately and misleadingly suggests that the bill alters medical assistance eligibility, which it did not change.

The Commonwealth Court, in concluding that the bill title is not deceptive, wrote: “The original title of House Bill 33 put legislators on notice that the bill

pertained to the provision of medical services to ‘categorically needy individuals.’” Opinion, 19. The Commonwealth Court’s conclusion that the title put legislators on notice that the bill was about medical services illustrates just how misleading the bill’s title is. As set forth in detail above, the bill made no changes to General Assistance medical assistance benefits.

The Commonwealth Court also took issue with the lack of authority in Appellants’ brief for the position that deletions from a statute must be recited in the title of the bill, presumably referring to the bill’s deletion of General Assistance cash benefits. Opinion, 19. This misses the point. The deceptive title inquiry is not whether the title reflects the type of changes in the bill (additions, deletions, or modifications), but, rather, whether the title reflects the subjects that are implicated by the bill. It is not merely that the bill deleted General Assistance cash benefits, but rather that the title did not indicate that the bill made any changes to General Assistance cash benefits.

Moreover, although Pennsylvania has little authority on deceptive title, forty states have similar or identical constitutional provisions prohibiting deceptive titles or requiring clear titles. Martha Dragich, *State Constitutional Restrictions on Legislative Procedure*, 38 Harv. J. on Legis. 103, App. 1 (2001). The leading case in Montana, for instance, speaks to this question. The bill in question was titled as an appropriation of funds. The title of the bill included the phrase “and providing the method of disbursement [of the funds].” The text of the bill, however, included

only prohibitions and restrictions on disbursement. It did not include any method of disbursement. The Montana Supreme Court explained that this was a deceptive title violation, and invalidated the relevant section of the bill:

In addition the title of House Bill No. 557 contains the concluding phrase ‘and Providing the Method of Disbursement’. Nowhere in the body of the act is any mention made of any ‘Method of Disbursement’, unless the prohibitions and restrictions on any disbursements to nonqualifying cities falls within the ambit of that term. We conclude that such interpretation requires an active and fertile imagination, and decline to so construe it.

For the foregoing reasons, House Bill No. 557 contains a false and deceptive title. [. . .]

Where, as here, the title to the appropriation bill expresses an appropriation to carry out the provisions of a specific statutory law and then proceeds to nullify and defeat the mandatory and all-inclusive character of that specific statutory law without reference thereto in the title of the appropriation bill, we hold the latter to be deceptive and misleading in violation of the constitutional proscription.

City of Helena v. Omholt, 468 P.2d 764, 767–69 (Mont. 1970). Following this reasoning, the title of Act 12 is deceptive, because it references the General Assistance medical assistance program, but then proceeds instead to nullify and eliminate the General Assistance cash benefits program.

The Tennessee Supreme Court has addressed a similar case involving a constitutionally defective title. In that case, the bill was captioned:

An Act to provide for a County Board of Education in certain counties, to prescribe the manner of the election of the members thereof, distribution, the filling of vacancies, the qualifications, position and duties, to terminate the term of office of members of

the present Boards of Education and to repeal Chapter 648 of the Private Acts of 1927 and all other Acts and parts of Acts in conflict with this Act.

Warren v. Walker, 71 S.W.2d 1057, 1059 (Tenn. 1934). The repeal of Chapter 648 mentioned in the title affected only one county, Perry County. Relying on authority from both Wisconsin and New Jersey, the Tennessee Supreme Court held that the title of this bill was deceptive, because it did not give notice that one county was the subject of the legislation:

[I]t is inescapable that a caption carrying no character of indication that a given county, and that county only, is the subject of the legislation, is, in practical effect, uninforming, if not misleading. It fails “to give notice to the legislator (or to the people affected) of the subject of the legislation.” As recently said by this court, this requirement of the Constitution “was intended to prevent the evil practice of enacting laws under titles that convey no real information of their purpose.”

Id. (internal citations omitted). Similarly, the title of Act 12, which does not state that General Assistance cash benefits are the subject of the legislations, fails to give notice of the subject of the legislation.

The New Jersey case cited, *Warren, Coutieri v. City of New Brunswick*, 44 N.J.L. 58, 59 (N.J. 1882), addressed a bill titled “An act to fix and regulate the salaries of city officers in cities in this state,” although the bill applied only to the city of New Brunswick. The New Jersey Supreme Court held this title was deceptive: “because no one, on reading such title, could reasonably understand that the body of the act was to have so limited an effect.” Likewise, the Wisconsin case

cited in *Warren* also involved a bill with a title that did not mention that the bill applied only to one city, Janesville. “No one reading this title would for a moment suppose that the sole purpose of the law was to legalize the proceedings of the common council of the city of Janesville in making these special assessments.” *Durkee v. City of Janesville*, 29 Wis. 697 (1870). Similarly, with House Bill 33, no one reading the title “would for a moment suppose that the sole purpose of the law” was to end General Assistance cash benefits, since cash benefits are not mentioned in the title.

The leading case in Maryland is about a bill title that appropriates funds for roads, but fails to mention that another part of the bill imposes a liability upon taxpayers. The Maryland Supreme Court explained that the state constitution does not require a bill’s title to “give an abstract of the act,” or “give the provisions in detail,” but “it must not be such as to divert attention from the matters contained in the body of the act.” The court invalidated the bill for its “glaringly false, deceptive, and misleading title.” *Painter v. Mattfeldt*, 87 A. 413, 416-17 (Md. 1913). The title of House Bill 33 also diverts attention from the fact that the bill’s contents eliminate General Assistance cash benefits.

As in *Warren*, *Coutieri*, *Durkee*, and *Painter*, the title of House Bill 33 at all times omitted critical information: that the bill completely eliminates or even relates to General Assistance cash benefits. No one reading the title of the bill “could reasonably understand” or would “for a moment suppose” that the bill ends

or otherwise impacts General Assistance cash benefits. The title of the bill diverts attention from the provision in the bill ending General Assistance cash benefits. Just as failing to include the sole county affected by a bill makes an otherwise accurate title deceptive by omission, omitting reference to ending the General Assistance cash benefits program makes the title of House Bill 33 unconstitutionally deceptive.

Because the original purpose of the bill changed, and because the bill's title is deceptive, Act 12 violates Article III, Section 1 of the Pennsylvania Constitution. At minimum, the Amended Petition states a claim upon which relief can be granted.

C. Act 12 violates Article III, Section 3.

Act 12 violates Article III, Section 3 because it contains more than one subject. At minimum, there is a substantial legal issue as to whether Act 12 violates Section 3. The amended bill contains four disparate subjects: the elimination of General Assistance cash benefits; the extension of Nursing Facility Incentive Payments for another year and increasing state funds for those payments; amendments to reauthorize and increase a revenue-raising tax, the Philadelphia Hospital Assessment and to allow municipalities to use their portion of revenues raised by that Assessment for broad "public health programs"; and changes to another revenue-raising tax, Statewide Hospital Quality Care Assessments, affecting which revenues are subject to that tax.

The single subject rule does not prohibit amendments to bills. Rather, the single subject rule limits amendments that do not “assist in carrying out a bill’s main objective” or are not “otherwise ‘germane’ to the bill’s subject as reflected in its title.” *City of Philadelphia*, 838 A.2d at 587. Although the germaneness test is “reasonably broad,” it must not “credit a topic so broad as to drain the germaneness test of meaning.” *Weeks*, 222 A.3d at 730. The single subject rule targets “omnibus bills.” *Washington*, 188 A.3d at 1146. For example, courts have struck down legislation for violating the single subject rule for overly broad subjects such as “regulation of firearms”; “judicial remedies”; “powers of county commissioners”; “business of the courts”; “municipalities”; and “the economic well-being of the Commonwealth.” *See Leach v. Commonwealth*, 141 A.3d 426, 433-434 (Pa. 2016) (“regulation of firearms” overly broad); *Commonwealth v. Neiman*, 84 A.3d 603, 612 (Pa. 2013) (“refining civil remedies” or “judicial remedies” overly broad, because “virtually boundless”); *Pa. State Ass’n of Jury Comm’rs*, 64 A.3d 611, 619 (Pa. 2013) (“powers of county commissioners” overly broad); *DeWeese v. Weaver*, 824 A.2d 364, 370 (Pa.Cmwlt. 2003) (“business of the courts” overly broad); *City of Philadelphia*, 838 A.2d at 589 (“‘Municipalities’ is the subject of an entire Title of the Pennsylvania Consolidated Statutes. By purporting to make general and diverse changes to this topic, with no other qualifications, SB 1100 is in substance an omnibus bill, whether or not it is called that in name.”); *Ass’n of Rental Dealers v. Commonwealth*, 554 A.2d 998, 1002

(Pa.Cmwlt. 1989) (“economic well being of the Commonwealth” is overly broad).

The deceptive title of the bill has led the Commonwealth Court to conclude that the original bill, which had the sole purpose of ending General Assistance cash benefits, was about the provision of medical assistance. *See* Opinion, 17-18 (“The original purpose of House Bill 33 was to amend the Human Service Code’s provision on medical assistance to low-income individuals. . . . Each amendment, even the elimination of the General Assistance cash benefit program, pertained to the provision of medical assistance to certain low-income persons.”); 19 (the title “put legislators on notice that the bill pertained to the provision of medical services”). This is understandable from the title of the bill:

Amending the act of June 13, 1967, entitled “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 and for the medically needy and determination of eligibility.

H.B. 33, P.N. 47, R. 530a. Indeed, the bill’s title deceptively does not reference General Assistance cash benefits at all, and any reasonable person reading the title would assume that the bill is about medical assistance programs.

A misleading title cannot insulate a bill from scrutiny under the single-subject rule. As set forth above, the original bill did not make any changes to General Assistance medical assistance programs. It simply removed references to

cash benefits from the medical assistance program. The bill was not about the provision of or eligibility for medical assistance. It does not change who is eligible for medical assistance or which medical benefits are provided to eligible individuals. It does not change the rules or requirements for medical assistance in any respect.

Act 12 is an omnibus bill in both name and substance. When recorded in the Pennsylvania Bulletin on July 13, 2019, Act 12 was correctly listed as “Human Services Code—omnibus amendments.” 49 Pa.B. 3595, R. 581a. In substance, the bill makes “general and diverse changes” to the human services code that lack the connective tissue necessary to establish germaneness. *City of Philadelphia*, 838 A.2d at 589. The provisions covered by Act 12 make changes to two Articles and various parts of the Human Services code:

- Act 12 eliminates General Assistance cash benefits, impacting Article IV, Sections 402, 403, and 442.1.
- Act 12 amends the Nursing Facility Incentive Payments provisions, impacting Article IV Section 443.1. The Nursing Facility Incentive Payment amendments extend state funds for incentive payments, which were due to sunset on June 30, 2019, through June 30, 2020 and double the funding from the previous fiscal year.

- Act 12 amends the Philadelphia Hospital Assessment, impacting Article VIII Section 801-E. The amendment to the Philadelphia Hospital Assessment is a revenue-raising measure imposing a tax on hospitals that permits federal Medicaid dollars to be drawn down to Pennsylvania, resulting in \$165 million in annual revenue (\$825 million over the five-year reauthorization period). The amendment to the Philadelphia Hospital Assessment significantly also expands the purposes for which municipalities may use the portion of the funds they retain from that tax, enabling them to use it for non-means-tested municipal “public health programs.”
- Act 12 amends the Statewide Quality Care Hospital assessments, impacting Article VIII Section 802-E.

Because Act 12 makes omnibus changes to the Human Services code, any assertion that the “single subject” of the bill is programs overseen by the Department of Human Services is overbroad. *City of Philadelphia*, 838 A.3d at 589 (omnibus changes to the municipalities title are overbroad for single-subject purposes); *Washington*, 188 A.3d at 153 n.36 (“[W]e reject the proposed unifying subject for Act 80 offered by the Commonwealth Court, and endorsed by DPW: ‘the regulation and funding of human services programs regulated by [DPW].’ This proposed subject is entirely too expansive. . . . we deem such a capacious

proposed unifying subject to be manifestly inadequate to meet the germaneness requirement.”).

1. None of the proposed “unifying subjects” for Act 12 tie together the disparate provisions so as to survive scrutiny under Section 3 of Article III.

To survive scrutiny under Article III, Section 3 the original subject and the subsequent amendments must share a “unifying scheme to accomplish a single purpose.” *Neiman*, 84 A.3d at 612 (Pa. 2013) (quoting *City of Philadelphia*, 838 A.3d at 589). Through the course of this litigation, the Courts and Department of Human Services have proposed “unifying subjects” that can bring together the disparate parts of Act 12 and render them germane to survive scrutiny under Article III, Section 3’s single subject rule. The Commonwealth Court suggested that the unifying subjects for Act 12 could be “the provision of health care assistance to certain low-income persons and the eligibility criteria therefor” or “the provision of General Assistance to low-income individuals.” *Opinion*, 14. While it is possible that either of those, in the right context, could be a constitutionally narrow unifying subject, an examination of the actual provisions of Act 12 demonstrates that neither of the proposed subjects can actually unify all of the provisions of Act 12. This Court suggested that “the provision of benefits pertaining to the basic necessities of life to certain low-income individuals” could serve as a unifying subject for Act 12. *Weeks*, 222 A.3d at 730. This subject is patently overbroad.

i) Provision of Medical Assistance to Low-Income Individuals: This proposed unifying subject, relied upon by the Commonwealth Court,⁹ cannot work to reconcile each of the disparate provisions of Act 12 into a germane whole for the simple reason that the elimination of General Assistance cash benefits, the centerpiece of the bill, has nothing to do with the provision of medical assistance. General Assistance cash benefits are cash; nothing more and nothing less. Those benefits were not linked to nor limited to medical assistance.

Beyond that basic problem, the subject also fails to unify Act 12's subjects because the amendments to the bill are not about health care for low-income individuals. They are about taxes, funding and revenue for institutional healthcare providers, both nursing facilities and hospitals. The amendments do not mandate that care be provided to low-income individuals in those facilities; they are revenue-raising taxes designed to meet the Commonwealth's budgetary needs. *Washington*, 188 A.3d at 1153 n.36 (the nursing home assessment added "at the last minute" to Act 80 was "unlike the other provisions" because it was "solely a revenue raising tax"); *cf. Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1224 (Pa.Cmwlth. 2018) (the unifying subject was "revenue generat[ion]

⁹ See Opinion, 2 ("This Court granted reconsideration to clarify that Act 12 pertains to the provision of medical care to certain low-income persons"); 14 ("Act 12 pertains to the provision of health care assistance to certain low-income individuals and the eligibility criteria therefor."); 17-18 ("The original purpose of House Bill 33 was to amend the Human Services Code's provisions on medical assistance to low-income individuals. . . . Each amendment, even the elimination of General Assistance cash benefits, pertained to the provision of medical assistance to certain low-income persons.").

from an expanded and modernized fireworks market,” and where bill’s multiple provisions all relate to “taxation and revenue generation,” the bill satisfies the single subject rule). The amendments were necessary to preserve or increase funding for institutional health care providers in the new fiscal year; they had no relationship to the elimination of General Assistance, the sole subject of the original bill.

Moreover, the amendments do not “incentivize” the delivery of health care or benefits to low-income individuals; the amendments relate to institutional care providers (hospitals and nursing homes) and municipal public health programs that serve Pennsylvanians of all income levels, not just low-income individuals. The Nursing Facility Incentive Payments are paid directly to institutions, not low-income individuals. While the nursing facilities may provide care for low-income patients, they also provide care for patients who are not low income. The Philadelphia Hospital Assessment is a tax that draws down \$825 million in federal funds over the course of five years. While the funds are used partly to reimburse hospitals that serve low-income patients, hospitals’ use of the remitted funds is unrestricted.

Finally, Act 12’s amendments to the Philadelphia Hospital Assessment expanded the purposes for which municipalities may use their portion of the raised funds. It enables them to use funds for “public health programs.” In other words, municipalities may now use that revenue for many types of public programs that

are not means-tested and limited to low-income individuals. Permitted uses include community education campaigns about tobacco use, obesity, and infectious disease transmission; monitoring air pollution; restaurant and retail food inspection; lead remediation; infectious disease testing; testing water quality in swimming pools; promoting childhood literacy; oversight of water supplies; investigating causes of death; promoting breastfeeding; and many more. See Am. Pet., ¶ 48, R. 484a-485a. The many laudable public projects enumerated are not income-restricted; to the contrary, municipal public health departments protect and assess drinking water, restaurant food safety, air quality, and childhood well-being for the benefit of all residents regardless of income. Given the breadth of permitted uses for the federal funds drawn down through the hospital assessment, it is not accurate to state that the hospital assessment amendment falls under the subject of providing benefits to low-income individuals.

The Commonwealth Court's reliance on *Christ the King Manor v. Dep't of Pub. Welfare*, 911 A.2d 624 (Pa.Cmwlt. 2006), Opinion, 14-15, to support its assertion that the provisions of Act 12 fall within the unifying subject of "health care assistance for low-income individuals" is unpersuasive. In that case, the court held that the subject of "regulation of publicly funded healthcare services" is sufficiently narrow for purposes of Article III, Section 3's single subject analysis. In fact, that statement appears to be *dicta*. All provisions of both the original bill and the final version in that case addressed the Department's oversight of nursing

homes, a subject that is far narrower in fact than “publicly funded healthcare services” suggests. The original version permitted the Department to inspect nursing homes annually; the final bill included “three specific provisions addressing nursing home compensation.” *Christ the King Manor*, 911 A.2d at 631. The scope of the provisions in that bill were significantly narrow because they all related to nursing homes. Yet, even if “health care assistance for low income individuals” or “publicly funded health care” is a sufficiently narrow subject, the provisions of Act 12 still do not all fall within it. General Assistance cash benefits are not health care. Revenue-raising taxes are not health care. Childhood literacy is not healthcare. Yet, all of these subjects are covered, directly or indirectly, by Act 12.

ii) General Assistance to Low-Income Individuals: The Commonwealth Court relied on this subject,¹⁰ but it also fails to unify Act 12’s provisions. “General Assistance” is a term of art that referred to two programs – General Assistance cash benefits and the General Assistance medical assistance program. None of the amendments to Act 12 had any bearing on either of those programs. Moreover, as discussed above, the amendments relating to expanded use of the Philadelphia Hospital Assessments allow using of funding for programs

¹⁰ “[T]he final version of House Bill 33 retained the original text with additions relating to the single unifying subject, i.e., the provision of General Assistance to low-income individuals.” Opinion, 14.

that are not limited to low-income individuals at all and, in fact, all of the revenue-raising provisions are not focused on assistance to low-income individuals, but, rather, on raising money for the Commonwealth and municipalities.

iii) Provision of Benefits Pertaining to the Basic Necessities of Life for Low-Income Individuals: This subject, relied upon by the Commonwealth Court and this Court,¹¹ is so broad that it cannot serve as a constitutional unifying subject. In addition, despite its breadth, not all of the pieces of Act 12 can be constitutionally tied together.

The provision of benefits pertaining to the basic necessities of life for low-income individuals encompasses numerous programs and provisions in Pennsylvania statute and code administered by many different departments; a brief review of such programs shows that this is overbroad as a single subject. Such programs include, but are not limited to: the Pharmaceutical Assistance Contract for the Elderly (PACE) program, administered by the Department of Aging (6 Pa. Code § 22.21); the Supplemental Nutrition Program for Women, Infants, and Children (WIC), administered by the Department of Health (28 Pa. Code § 1101 *et seq.*); Customer Assistance Programs for low-income customers of regulated utilities, administered by the Public Utility Commission (52. Pa. Code § 69.261 *et seq.*); Residential Low-Income Usage Reduction Programs administered by the

¹¹ “[T]he diverse provisions in Act 12 as a whole pertain to the provision of basic necessities of life to certain low-income individuals.” Opinion, 15 (quoting *Weeks*, 222 A.3d at 730).

Public Utility Commission (52 Pa. Code § 58.1 *et seq.*); child care subsidies, administered by the Department of Human Services (55 Pa. Code § 3041.1 *et seq.*); Medical Assistance, administered by the Department of Human Services (55 Pa. Code § 1101 *et seq.*); the Supplemental Nutrition Assistance Program (SNAP), administered by the Department of Human Services (55 Pa. Code § 501 *et seq.*); Temporary Assistance to Needy Families, administered by the Department of Human Services (55 Pa. Code § 171 *et seq.*); the Senior Citizens Property Tax or Rent Rebate program, administered by the Department of Revenue (61 Pa. Code § 401 *et seq.*); the state Personal Income Tax Forgiveness program, administered by the Department of Revenue (61 Pa. Code § 123.3); and the State Grant Program for low-income college students, administered by the Pennsylvania Higher Education Assistance Agency (PHEAA) (22 Pa. Code § 121.41 *et seq.*). These programs all pertain to the necessities of low-income individuals, yet they are widely disparate and could not all be constitutionally covered in the same legislation.

Even if “basic necessities of life for certain low-income individuals” could be a constitutionally narrow subject, which it is not, it simply does not encompass the subjects in the final bill to pass constitutional muster. The Philadelphia Hospital Assessment provision significantly broadens the purposes for which municipalities can use their portion of the revenue raised under the Assessment. As detailed above and in the Amended Petition, municipalities can now use the funds that they can keep under that Assessment for public health programs. These

programs are not limited to low-income individuals and, indeed, impact all citizens regardless of income level, including food inspections at restaurants and retail stores, improving air quality, testing swimming pool water, and promoting breastfeeding. Swimming pools are not basic necessities. Restaurants are not basic necessities. Investigating causes of death is not a basic necessity.

2. Act 12 constitutes unconstitutional logrolling both in the legislature and between the legislature and executive.

Act 12 is a classic example of the logrolling tactics that the single subject rule is intended to curtail. General Assistance cash benefits elimination was a contentious issue. The Philadelphia Hospital Assessment and Nursing Facility Incentive Payments were widely supported, essential to the budget, and otherwise set to expire.¹² Another bill, S.B. 695, had been introduced with the purpose of reauthorizing those measures before they would expire. Adding the provisions instead to Act 12 was logrolling, designed to secure support among those who might otherwise have opposed the elimination of General Assistance had that issue stood on its own.

Bills with multiple subjects present an additional constitutional problem related to the governor's veto power. "Just as the single subject limitation seeks to

¹² When the General Assembly reauthorized the assessments in 2016, the bill passed the Senate by a vote of 49-0 and the House by a vote of 195-2. *See* Act 2016-76, H.B. 1062, legislative history available at: https://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2015&sind=0&body=H&ty=pe=B&bn=1062. In comparison, Act 12 passed the House by a vote of 106-95 and the Senate by a vote of 26-24. *See* discussion, *supra*, at 10-11.

ensure separate and independent legislative consideration of proposals, it is intended to guarantee the same freedom from ‘logrolling’ during executive review of legislative enactments. Thus. . . if the governor desires to veto any of the sections in the legislation, he would have been required to veto the entire act. To do so requires him to sacrifice desirable legislation in order to veto what he considers undesirable legislation.” Robert F. Williams, *The Law of American State Constitutions* 261-262 (2009).

“[T]he single subject rule protects the governor’s veto prerogative by ‘prevent[ing] the legislature from forcing the governor into a take-it-or-leave-it choice when a bill addresses one subject in an odious manner and another subject in a way the governor finds meritorious.’ . . . In a word, the single subject rule protects the decision of the legislators and governor on each individual legislative proposal.” Martha Dragich, *State Constitutional Restrictions on Legislative Procedure*, 38 Harv. J. on Legis. 103, 115 (2001) (quoting *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. 1994) (*en banc*)).

Such an unconstitutional infringement on the governor’s veto power is precisely what happened here. Because the amended bill contained essential revenue-generating provisions, Governor Wolf was not able to exercise his veto power to preserve General Assistance. The Governor himself spoke publicly about signing the bill as a “Hobson’s choice” due to the inclusion of funds for hospitals.

Because the amendments made the bill contain more than one subject, and because the multiple disparate subjects limited the legislature's ability to independently consider each of those disparate subjects and limited the governor's ability to exercise his veto prerogative, Act 12 violates Article III, Section 3. At minimum, there is a substantial legal question.

CONCLUSION

For the reasons set forth above, Appellants respectfully request that this Court reverse the lower court's order sustaining the preliminary objections and dismissing the amended petition. In addition or in the alternative, Appellants request that this Court address the merits and find that Act 12 violates the Pennsylvania Constitution, Article III §§ 1 & 3. Appellants also request oral argument.

Respectfully submitted,

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November 12, 2021

Exhibit A

Weeks v. Department of Human Services, 409 MD 2019, Opinion and Order (May 13, 2021)

nature of a demurrer requesting the dismissal of Petitioners' amended petition for review. On March 24, 2021, this Court granted the Department's preliminary objections and dismissed the petition. Thereafter, Petitioners filed an application for reargument/reconsideration asserting that the Court misapprehended the nature of Act 12. The Court granted reconsideration⁴ 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. We grant the Department's preliminary objections and dismiss the petition after reconsideration.

Background

On June 28, 2019, House Bill 33, Printer's Number 2182, was signed into law as Act 12. Petition for Review (Petition) ¶62. Promptly thereafter, the Department notified all persons enrolled in General Assistance that their last monthly cash benefit would be disbursed on July 31, 2019. Petition ¶70. The affected persons had received between \$174 and \$215 per month, depending on their county of residence. Petition ¶35.

On July 22, 2019, Petitioners filed a petition for review in this Court's original jurisdiction on behalf of themselves and the 11,844 Pennsylvanians receiving General Assistance cash benefits as of July 31, 2019. Petition ¶9. The petition for review sought (1) a declaratory judgment that Act 12 violated Article III, Sections 1 and 3 of the Pennsylvania Constitution and (2) a permanent injunction against the enforcement of those provisions of Act 12 that eliminated the General Assistance cash benefit program. Simultaneously, Petitioners filed an application for a preliminary injunction to enjoin the Department's enforcement of Sections 1, 2, and 3 of Act 12, pending disposition of the merits of the petition for review.

⁴ The March 24, 2021, opinion and order were withdrawn.

On August 1, 2019, this Court denied Petitioners' application for a preliminary injunction for the stated reason that Petitioners failed to show either a clear right to relief or immediate and irreparable harm. *Weeks v. Department of Human Services* (Pa. Cmwlth., No. 409 M.D. 2019, filed August 1, 2019) (*Weeks I*). Petitioners appealed, and the Supreme Court affirmed this Court's denial of a preliminary injunction. *Weeks v. Department of Human Services*, 222 A.3d 722 (Pa. 2019) (*Weeks II*).⁵ On the single-subject requirement, the Supreme Court explained:

[Act 12] as a whole relates to the provision of benefits pertaining to the basic necessities of life to certain low-income individuals.... [S]uch a topic is, in our view, both unifying and sufficiently narrow to fit within the single-subject rubric as that concept has been spelled out in the reported decisions of Pennsylvania appellate courts.

Id. at 730 (emphasis added). With regard to the original purpose requirement, the Supreme Court stated as follows:

[House Bill] 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 the unifying topic mentioned in the above discussion pertaining to the single-subject rule.

Id. at 731.

Following the Supreme Court's decision, Petitioners filed an amended petition for review. This pleading repeated the same constitutional challenges presented in the original petition for review, but it updated and expanded the factual

⁵ Then-Chief Justice Saylor wrote the majority opinion, in which Justices Baer, Todd, Donohue, Dougherty, and Mundy joined. Justice Todd filed a concurring opinion in which Justices Donohue and Dougherty joined. The concurring opinion found that Petitioners failed to establish a likelihood of success on the merits but withheld final judgment on the merits of Petitioners' constitutional claims. Justice Wecht filed a dissenting opinion.

allegations.⁶ The amended petition avers that House Bill 33 was introduced on January 4, 2019, under the title that follows:

Amending the act of June 13, 1967 (P.L. 31, No. 21), entitled “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 and for the medically needy and determination of eligibility.

Amended Petition for Review (Amended Petition), Exhibit I at 1. House Bill 33 revised the definition of “General Assistance” in the Human Services Code,⁷ which referred to the cash benefit and the medical assistance programs. Amended Petition ¶42. House Bill 33 specified that the eligibility criteria for General Assistance would apply only to the General Assistance-related medical assistance program. It removed the receipt of General Assistance cash benefits from the list of ways a person can be determined to be “medically needy.” *Id.*

Following House consideration of House Bill 33, the legislation was amended. The amendments expanded the Medicaid nursing facility incentive payments for fiscal year 2019-2020; revised definitions for the Statewide Quality Care Assessment to effect a statewide tax on hospitals; and reauthorized the municipal hospital assessment for cities of the first class. Amended Petition ¶¶46-48. Additionally, the Bill’s title was changed to state as follows:

⁶ The amended petition: (1) eliminated a named petitioner, Vanessa Williams; (2) replaced allegations of specific harms with allegations of general harm caused by the elimination of General Assistance cash benefits; (3) expanded the description of the amendments to Act 12; (4) deleted the statements of state representatives; (5) alleged that certain revenue-raising amendments to Act 12 benefit the general public; (6) alleged that the title of the final bill is deceptive; and (7) amended the request for relief to request, more generally, declaratory and injunctive relief “to remedy the unconstitutional enactment of Act 12.” Department’s Brief at 11 n.3 (citing Amended Petition).

⁷ Act of June 13, 1967, P.L. 31, *as amended*, 62 P.S. §§101-1503.

An Act amending the Act of June 13, 1967 (P.L. 31, No. 21), entitled “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 needed 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.

Amended Petition, Exhibit F at 2.

On May 11, 2020, the Department filed new preliminary objections in the nature of a demurrer to the amended petition, contending that it does not state a claim under Article III, Sections 1 or 3 of the Pennsylvania Constitution. The preliminary objections raise three issues: (1) Act 12 did not violate the “single-subject” requirement in Article III, Section 3 of the Pennsylvania Constitution; (2) Act 12 did not violate the “original purpose” requirement in Article III, Section 1 of the Pennsylvania Constitution; and (3) the amended petition, if granted, would impermissibly intrude upon the legislative function.⁸ The Department asks this Court to sustain its preliminary objections and dismiss the amended petition in its entirety.

For this Court to sustain preliminary objections, “it must appear with certainty that the law will permit no recovery[.]” *McCord v. Pennsylvania Gaming Control Board*, 9 A.3d 1216, 1219 (Pa. Cmwlth. 2010) (quotation omitted). Statutes are “strongly presumed to be constitutional, including the manner in which they were

⁸ We have reordered the constitutional issues raised by the Department to conform with the order in which the Supreme Court addressed them in *Weeks II*.

passed.” *Commonwealth v. Neiman*, 84 A.3d 603, 611 (Pa. 2013) (quotation omitted). Stated otherwise, a statute will be held constitutional “unless it clearly, palpably, and plainly violates the Constitution.” *Id.* (quotation omitted). All doubts are resolved in favor of the statute’s constitutionality. *Id.* In reviewing preliminary objections, this Court assumes that all facts pled and all reasonable inferences therefrom are true. This assumption does not extend to legal conclusions asserted in the pleading. *Mazur v. Cuthbert*, 186 A.3d 490, 502 (Pa. Cmwlth. 2018).

We address the Department’s preliminary objections seriatim.

Article III, Section 3 – Single-subject Rule

Petitioners assert that Act 12 covers “disparate subjects” that lack a “unifying scheme.” Amended Petition at 30, ¶76. The Department demurs. It contends that Petitioners offer a myopic construction of Act 12 and an overly restrictive reading of the Constitution.

Article III, Section 3 of the Pennsylvania Constitution states as follows:

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.

PA. CONST. art. III, §3. “Known as the ‘single-subject rule,’ this constitutional mandate stands in the way of the omnibus bill that addresses so many subjects that the real purpose of the legislation is disguised in a misleading title.” *DeWeese v. Weaver*, 824 A.2d 364, 369 (Pa. Cmwlth. 2003). Article III, Section 3 prevents “logrolling,” which is “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.” *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 586

(Pa. 2003) (quotation omitted). The single-subject rule also prevents the attachment of riders “which could not become law on their own to popular bills that are certain to pass.” *Id.*

On the other hand, the single-subject rule is not to be applied so strictly as to constrain normal legislative function. Our Court has recognized that bills evolve as they proceed through the legislative process, and not every amendment violates the single-subject rule. *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1223 (Pa. Cmwlth. 2018).

The central inquiry is whether the amendments are germane to the bill’s subject as reflected in its title. *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 395 (Pa. 2005) (*PAGE*). Stated otherwise, a bill must relate generally to a “single unifying subject.” *Id.* at 396. For purposes of Article III, Section 3, the Pennsylvania Supreme Court has defined “subject” as follows:

[t]hose things which have a “proper relation to each other,” which fairly constitute parts of a scheme to accomplish a single general purpose, “relate to the same subject” or “object.” And provisions which have no proper legislative relation to each other, and are not part of the same legislative scheme, may not be joined in the same act.

DeWeese, 824 A.2d at 369-70 (quoting *Payne v. School District of Borough of Coudersport*, 31 A. 1072 (Pa. 1895)).

The Department contends that the Pennsylvania Supreme Court’s majority decision in *Weeks II* effectively disposes of Petitioners’ claim that Act 12 violated the single-subject rule in the Pennsylvania Constitution. It urges this Court to adopt the Supreme Court’s analysis and on that basis sustain the Department’s demurrer.

A preliminary injunction places the parties in the position they occupied before the “conduct of the defendant commenced.” *Appeal of Little Britain Township from Decision of Zoning Hearing Board of Little Britain Township, Lancaster County, Pennsylvania*, 651 A.2d 606, 610-11 (Pa. Cmwlth. 1994). A preliminary injunction maintains the *status quo* “until the merits of the controversy can be fully heard and determined,” but it does not “decide the case as though on a final hearing.” *Id.* at 611. Nevertheless, a critical factor in granting a preliminary injunction is a showing by the petitioner of a “reasonable likelihood of success on the merits.” *Lewis v. City of Harrisburg*, 631 A.2d 807, 810 (Pa. Cmwlth. 1993).

The Supreme Court’s decision in *Weeks II*, affirming our denial of Petitioners’ application for a preliminary injunction, was not a decision on the merits of their request for a permanent injunction. Nevertheless, the Supreme Court’s analysis is compelling and must be considered in reviewing the Department’s demurrer. The question is whether the amendments to the petition have presented Petitioners’ constitutional challenge to Act 12 in a way that requires a different analysis and conclusion than that reached by the Supreme Court in *Weeks II*.

The Department focuses on the Supreme Court’s statement that Act 12 “as a whole *relates* to the provision of benefits pertaining to the basic necessities of life to certain low-income individuals” to support its argument that Act 12 satisfies the single-subject rule. *Weeks II*, 222 A.3d at 730 (emphasis added). Petitioners respond that Act 12 made multiple and disparate changes to the Human Services Code. Specifically, Petitioners contend that the revenue-raising amendment to Act 12 cannot possibly be germane to the other provisions in Act 12 that ended the General Assistance cash benefit program.

The reported decisions of Pennsylvania appellate courts have explicated the meaning and application of the single-subject rule. That body of law includes single-subject challenges that succeeded and others that failed.

City of Philadelphia, 838 A.2d 566, concerned an amendment to Title 53 of the Pennsylvania Consolidated Statutes, entitled “Municipalities Generally.” The bill imposed a citizenship requirement for board members of a business improvement district; authorized municipalities to hold gifts in trust; repealed a provision of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class⁹ that required arbitrators in collective bargaining disputes to give substantial weight to Philadelphia’s financial plan; changed the governance of the Pennsylvania Convention Center Authority; transferred authority over Philadelphia’s taxis and limousines from the Public Utility Commission to the Philadelphia Parking Authority; and restricted the political activities of police officers. *Id.* at 571-73. All amendments were made to a single title of the Pennsylvania Consolidated Statutes, *i.e.*, “Municipalities Generally.” In holding that the statute violated the single-subject rule, the Supreme Court reasoned that the government of the Philadelphia Convention Center was not germane to the rest of the bill because the Convention Center is an instrumentality of the Commonwealth, not a municipal body. Thus, there was “no single unifying subject to which all of the provisions of the act [were] germane,” and the enactment was held to violate Article III, Section 3. *Id.* at 589.

Pennsylvania State Association of Jury Commissioners v. Commonwealth, 64 A.3d 611 (Pa. 2013), concerned a challenge to legislation that abolished the office of jury commissioner and provided for the auction and sale of

⁹ Act of June 5, 1991, P.L. 9, *as amended*, 53 P.S. §§12720.101-12720.709.

surplus farm equipment. The Commonwealth argued that the unifying subject was the “powers of county commissioners.” *Id.* at 615. The Supreme Court rejected this argument, holding that the auction of farm supplies and the abolition of an elected public official are matters “so far apart that there is no common focus.” *Id.* at 618. It further reasoned that “powers of county commissioners” is a topic so broad that it could encompass a “limitless number of subjects.” *Id.*

Neiman, 84 A.3d 603, concerned a challenge to legislation that established a two-year statute of limitations for asbestos claims; amended deficiency judgment procedures after the sale of real property; established the jurisdiction of county park police in counties of the third class; and amended Megan’s Law.¹⁰ The Commonwealth argued that these seemingly diverse topics all related to “civil and judicial remedies and sanctions.” *Id.* at 610. The Supreme Court rejected this argument noting, again, that such a topic would be “virtually boundless” and not unifying. *Id.* at 613. It held that the legislation violated Article III, Section 3 of the Pennsylvania Constitution.

By contrast, in *PAGE*, 877 A.2d 383, the Race Horse Development and Gaming Act¹¹ survived an Article III challenge. That legislation included provisions that: regulated the horse-racing industry; authorized the creation of a slot-machine industry in Pennsylvania; created the Gaming Control Board and a regulatory regime therefor; provided for the distribution of licensing fees and tax revenue from casinos; created a general gaming fund for tourism development, property tax relief, and treatment for compulsive gambling; and placed exclusive jurisdiction in the Pennsylvania Supreme Court over gambling license disputes and constitutional

¹⁰ Act of November 4, 2004, P.L. 1243, *formerly* 42 Pa. C.S. §§9791-9799.75.

¹¹ 4 Pa. C.S. §§1101-1904.

challenges to the statute. The Supreme Court held that all of these provisions had a nexus to the single unifying subject of gaming and its regulation and, thus, the Gaming Act did not violate Article III, Section 3.

Spahn v. Zoning Board of Adjustment, 977 A.2d 1132 (Pa. 2009), concerned two amendments to the First Class City Home Rule Act.¹² The first increased the penalties for violations of the city’s ordinances and the second eliminated taxpayer standing for appealing decisions of the city’s zoning board of adjustment. The Pennsylvania Supreme Court acknowledged that at first glance the two amendments appeared to have little in common but concluded that there was a “single unifying subject to which all provisions to the act [were] germane,” namely, Philadelphia home rule government. *Id.* at 1148 (quoting *PAGE*, 877 A.2d at 397). Further, the bill amended a single statute, *i.e.*, the Home Rule Act.

Phantom Fireworks, 198 A.3d 1205, concerned a challenge to the constitutionality of the Act of October 30, 2017, P.L. 672, No. 43 (Act 43), which included provisions relating to taxation, fireworks, and tobacco settlement revenue. This Court held that all of these provisions “[fell] within the single unifying subject of revenue generation.” *Phantom Fireworks*, 198 A.3d at 1224. We explained that the addition of the provisions on fireworks did not destroy the overarching purpose of taxation and generating revenue, stating:

Where the provisions added during the legislative process assist in carrying out a bill’s main objective, or are otherwise “germane” to the bill’s subject as reflected in the title, the requirements of Article III, Section 3 are met.

Phantom Fireworks, 198 A.3d at 1224 (quoting *PAGE*, 877 A.2d at 395). While the provisions regulating fireworks did not directly relate to taxation, those provisions

¹² Act of April 21, 1949, P.L. 665, *as amended*, 53 P.S. §§13101-13157.

“assist[ed] in carrying out” Act 43’s “main objective,” which was to generate revenue from an expanded and modernized fireworks market. *Phantom Fireworks*, 198 A.3d at 1224.

With this precedent in mind, we turn to Act 12, which amended Article IV and Article VIII-E of the Human Services Code. The Article IV amendment ended the General Assistance cash benefit program but continued the medical assistance program in a revised form. The Article VIII-E amendments will generate “additional revenues for the purpose of assuring that medical assistance recipients have access to hospital and other health care services[.]” Section 802-E of the Human Services Code, added by the Act of July 4, 2008, P.L. 557, No. 44, 62 P.S. §802-E. Petitioners argue that this hospital assessment, a revenue raising provision, is completely different from the elimination of the General Assistance cash benefit program. In support, they point to *Washington v. Department of Public Welfare*, 188 A.3d 1135 (Pa. 2018).

Washington concerned Act 12’s legislative predecessor, Act 80 of 2012, which was enacted to eliminate the General Assistance cash benefit program and to reauthorize a levy on nursing homes. The petitioners asserted that Act 80 violated Article III, Section 4 of the Pennsylvania Constitution,¹³ which requires a

¹³ It states:

Every bill shall be considered on three different days in each House. All amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill and before the final vote is taken, upon written request addressed to the presiding officer of either House by at least twenty-five per cent of the members elected to that House, any bill shall be read at length in that House. No bill shall become a law, unless on its final passage the vote is taken by yeas and nays, the names of the persons voting for and against it are entered on the journal, and a majority of the members elected to each House is recorded thereon as voting in its favor.

PA. CONST. art. III, §4.

bill to be considered on three separate days in each House, as well as Article III, Sections 1 and 3. Our Supreme Court held that Act 80 violated Article III, Section 4 and, thus, did not address whether the Act also violated other Article III provisions of the Pennsylvania Constitution. *Washington*, 188 A.3d at 1139 n.5. The Supreme Court, nevertheless, observed as follows:

the nursing home assessment program ... is solely a revenue raising tax to provide medical assistance benefits for individuals in nursing homes, and, consequently, is unlike the other provisions of Act 80 which, instead, are focused on such disparate topics as: establishing criteria for custodianship of dependent children; authorizing and setting eligibility requirements for the disbursement of money for financial assistance to adoptive parents and custodians of dependent children, specifying, for the first time, a procedure in which money appropriated annually for six human service programs – each of which addresses a different human service need – must be accounted for, aggregated and spent by counties; terminating further spending on cash general assistance; and imposing new work requirements and penalty provisions for recipients of medical assistance.

Id. at 1154 n.36.

This discussion does not inform our analysis in the case *sub judice* for three reasons. First, the topics in Act 12 are related, not “disparate.” Second, the above language from *Washington* is *obiter dictum*. Third, there is no principle, as Petitioners presume, that all revenue raising statutes must be enacted in a bill that relates exclusively to revenue.¹⁴ This is an overbroad understanding of the above-quoted discussion from *Washington*, 188 A.3d 1135.

¹⁴ At argument, counsel for the Department argued that bills containing both revenue generating and non-revenue generating provisions have withstood Article III, Section 3 challenges. Specifically, *Commonwealth ex rel. Bell v. Powell*, 94 A. 746 (Pa. 1915) (disposition of license fees collected was germane to the purpose of the entire act), and *Phantom Fireworks*, 198 A.3d 1205.

Act 12 amends a single title of the consolidated statutes, a fact which does not automatically fulfill the requirements of Article III, Section 3. *Neiman*, 84 A.3d at 612. As explained in *City of Philadelphia*, 838 A.2d at 589, Title 53 of the Pennsylvania Consolidated Statutes, “Municipalities Generally,” did not provide the “unifying” theme required by the single-subject rule. However, the Department does not contend that Act 12 satisfies the single-subject rule because it amends a single title, *i.e.*, the Human Services Code. Rather, Act 12 pertains to the provision of health care assistance to certain low-income persons and the eligibility criteria therefor. This subject is not “limitless,” as was the problem in *Neiman*, 84 A.3d at 612. As in *Spahn*, 977 A.2d 1132, the topics in Act 12 are all germane to the provision of benefits pertaining to the basic necessities of life to certain low-income individuals. As in *PAGE*, 877 A.2d 383, Act 12 grew in length from its original text, but it did not deviate from the unifying subject, *i.e.*, providing services to certain low-income individuals.

The Department argues that *Christ the King Manor v. Department of Public Welfare*, 911 A.2d 624 (Pa. Cmwlth. 2006), *aff’d*, 951 A.2d 255 (Pa. 2008), is dispositive. We agree.

In *Christ the King Manor*, the original bill was 23 lines in length and pertained to nursing home inspections. The final bill included the original text and added 24 other provisions, growing to 1,000 lines of text. This Court held that the statute did not violate the single-subject rule, given its single unifying subject, *i.e.*, the regulation of publicly funded health care services. Likewise, here, the final version of House Bill 33 retained the original text with additions relating to the single unifying subject, *i.e.*, the provision of General Assistance to low-income individuals.

As the Supreme Court has stated, the diverse provisions in Act 12 “as a whole” pertain to the provision of “basic necessities of life to certain low-income individuals.” *Weeks II*, 222 A.3d at 730. The form and nature of the assistance varies, but the topic is “sufficiently narrow to fit within the single-subject rubric” *Id.* We reject Petitioners’ contention that because some of the provisions raise revenue for this assistance, Act 12 violates Article III, Section 3 of the Pennsylvania Constitution. We sustain the Department’s preliminary objection to Count I of the amended petition.

Article III, Section 1 – Original Purpose

Count II of Petitioners’ amended petition asserts a claim under Article III, Section 1 of the Pennsylvania Constitution, which states as follows:

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

PA. CONST. art. III, §1. The Department demurs to Count II, explaining that the original purpose of House Bill 33 was broad enough to encompass the bill’s amendments.

Article III, Section 1 halted the “practice of adding, at various stages of the legislative process, provisions unrelated to a bill’s original purpose.” *Phantom Fireworks*, 198 A.3d at 1221 (quotation omitted). The Pennsylvania Supreme Court has established a two-prong inquiry for determining whether legislation violates this rule. First, the court compares the final purpose of the legislation to its original purpose to determine whether there has been an alteration. Second, the court must consider whether, in its final form, the title and contents of the bill are deceptive. *PAGE*, 877 A.2d at 408-09. The Supreme Court has explained as follows:

Regarding the determination of the original purpose of the legislation, we recognize the realities of the legislative process which can involve significant changes to legislation in the hopes of consensus, and the “expectation” that legislation will be transformed during the enactment process. Furthermore, our Court is loathe to substitute our judgment for that of the legislative branch under the pretense of determining whether an unconstitutional change in purpose of a piece of legislation has occurred during the course of its enactment. For these reasons, we believe that *the original purpose must be viewed in reasonably broad terms*.

... Given this approach of considering a reasonably broad original purpose, the General Assembly is given full opportunity to amend and even expand a bill, and not run afoul of the constitutional prohibition on an alteration or amendment that changes its original purpose. The original purpose is then compared to the final purpose and a determination is made as to whether an unconstitutional alteration or amendment, on its passage through either house, has taken place so as to change its original purpose.

Id. at 409 (emphasis added) (internal quotations omitted).

Petitioners argue that by final passage, Act 12 had acquired a purpose different from the original bill, which made the final title deceptive. The original purpose of House Bill 33 was the elimination of the General Assistance cash benefit program. By final passage, the bill had been amended to address revenue. The final bill reauthorized the Philadelphia hospital assessment; revised the definition of taxable net revenue; changed the permissible use of remitted federal funds; reauthorized and increased the funding for nursing facility day-one incentives; and revised the definition of taxable net revenue for the statewide quality care hospital assessment. Petitioners’ Brief at 21. Petitioners argue that the bill’s title is deceptive because it “does not state that it ends General Assistance cash benefits.” Petitioners’ Brief at 28.

The Department counters that the original purpose of House Bill 33 remained the same from inception to final passage. The bill was amended and expanded, but all amendments related to the original purpose of providing health care services to certain low-income persons.

In *PAGE*, 877 A.2d 383, the original bill authorized criminal background checks and fingerprinting of persons employed in the horse-racing industry. The final bill, *inter alia*, legalized a variety of gambling activities, including slot machines and the establishment of casinos. The Pennsylvania Supreme Court determined that both the original and final version of the bill related to the regulation of gambling. A similar conclusion was reached in *City of Philadelphia v. Rendell*, 888 A.2d 922 (Pa. Cmwlth. 2005). There, the original bill revised residency requirements for parking authority members; clarified police officers' voting rights; and authorized municipalities to remove fluoride from their drinking water. The final bill required the Philadelphia Parking Authority to continue to enforce on-street parking regulations and directed parking revenues to the Philadelphia School District. It deleted the provisions about police officers' voting rights and the removal of fluoride from municipal water supplies. This Court concluded that the original and final versions of the bill served the reasonably broad purpose of regulating the Philadelphia Parking Authority.

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. Notably, "neither the volume of the additions to the original bill nor the expansions of the subject matter's parameters will give rise to a violation of Article III, Section 1, provided the original and final versions fall under the same broad, general subject area." *Phantom Fireworks*, 198 A.3d at 1223. Each

amendment, even the elimination of the General Assistance cash benefit program, pertained to the provision of medical assistance to certain low-income persons.

This leaves Petitioners' claim that the final title of the bill was deceptive because it did not put "reasonable persons on notice of the subject of the bill." *PAGE*, 877 A.2d at 409. The final title for Act 12, House Bill 33, Printer's Number 2182, states:

An Act amending the Act of June 13, 1967 (P.L. 31, No. 21), entitled "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 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, 2019 Leg., Reg. Sess. (Pa. 2019) (emphasis added). Petitioners argue that this title is deceptive because it did not explicitly state that "providing for definitions for general assistance" meant the elimination of the cash benefit program. The Department contends that the language in the title is sufficient to put reasonable persons on notice of the topics addressed by House Bill 33 and is in no way deceptive.

In support, the Department contrasts Act 12 from the act invalidated in *Washington*, 188 A.3d 1135. In *Washington*, the original bill was "gutted" and its "hollow shell" filled with new and varied provisions that could not be related to the bill's original purpose. *Id.* at 1150. Further, the elimination of the General Assistance cash benefit program was "hidden" in a slew of amendments to the

original bill. By contrast, in Act 12, the elimination of this program was present in the original bill. We agree.

The original title of House Bill 33 put legislators on notice that the bill pertained to the provision of medical services to “categorically needy individuals.” Importantly, “[t]he title serves as a signal not a précis of the bill’s contents.” *DeWeese*, 824 A.2d at 372. As we have explained,

Article III, Section 1 was not intended to tyrannize legislators with pedantic and picayune standards for drafting a bill’s title. *Commonwealth v. Stofchek*, ... 185 A. 840 ([Pa.] 1936).... The constitutional mandate is intended only to prevent fraudulent efforts to sneak legislation past unknowing legislators or the Governor. *Id.* In short, as difficult as it may be to have a statute declared unconstitutional for failing to clear the low fence of germaneness, it is that much harder to set aside a statute for the reason that it moved through the legislative process under a deceptive title.

DeWeese, 824 A.2d at 372 n.15. The title of House Bill 33 did not have to identify the language that would be stricken from the Human Services Code in order to satisfy Article III, Section 1. Petitioners have cited no authority for their view that deletions from a statute must be recited in the title of the bill. The fact that the legislature could have chosen more precise language or used meaningful punctuation in the language in the title of House Bill 33 does not demonstrate deception.

The amendments to House Bill 33 did not change the original purpose of the bill, and its title did not deceive. The amended petition for review does not state a claim under Article III, Section 1 of the Pennsylvania Constitution, and the Department’s preliminary objection to Count II is sustained.¹⁵

¹⁵ Due to this disposition, we need not address the Department’s third argument related to whether Act 12’s invalidation would stifle the legislative function.

Conclusion

Accordingly, after reconsideration, we conclude that the amended petition for review does not state a claim under Article III, Sections 1 or 3 of the Pennsylvania Constitution. Therefore, we sustain the Department's preliminary objections and dismiss the amended petition for review.

s/Mary Hannah Leavitt
Mary Hannah Leavitt, President Judge Emerita

Judge Crompton did not participate in the decision in this case.

CERTIFICATE OF COMPLIANCE

I certify that, according to the word processing system used to prepare this brief, the brief, excluding supplementary materials, is approximately 13,990 words.

/s/ Maria Pulzetti
Maria Pulzetti

Dated: November 12, 2021

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 Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Maria Pulzetti
Maria Pulzetti

Dated: November 12, 2021

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

JASMINE WEEKS, ARNELL HOWARD,
PATRICIA SHALLICK,
individually and on behalf of all others
similarly situated,

Appellants,

v.

No. 22 EAP 2021

DEPARTMENT OF HUMAN SERVICES
OF THE COMMONWEALTH OF
PENNSYLVANIA,

Appellee.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 2021, true and correct copies of the foregoing Appellants' Brief were served upon the following persons in the manner indicated, satisfying the requirements of Pa.R.A.P. 121:

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November 12, 2021