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**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,
Appellant

v.

GEORGE J. TORSILIERI,
Appellee

BRIEF FOR *AMICUS CURIAE* PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION IN SUPPORT OF THE COMMONWEALTH OF PENNSYLVANIA

Appeal from the Order dated August 23, 2022, of the Court of Common Pleas, Chester County, at CP-15-CR-0001570-2016, finding Revised Subchapter H unconstitutional

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STATEMENT OF *AMICUS CURIAE*

The Pennsylvania District Attorneys Association is the only organization representing the interests of its member District Attorneys and their assistants in the various counties in the Commonwealth of Pennsylvania. This Court's review of issues involving the constitutionality of statutes that impact criminal prosecutions is of special interest to district attorneys throughout Pennsylvania.

CERTIFICATION PURSUANT TO Pa.R.A.P. 531(b)(2)

No other person or entity has authored any portion of the within brief, in whole or in part, nor have any funds been expended by any person or entity in the preparation and filing of this brief outside of the Association.

STATEMENT OF THE QUESTIONS PRESENTED

Whether the trial court erred in finding that Revised Subchapter H was facially unconstitutional and unconstitutional as applied to Appellee where the evidence of record does not refute the legislative policy findings and considerations behind the enactment of the legislation?

STATEMENT OF THE CASE

The Commonwealth has set forth the facts and relevant procedural history and *Amicus* joins in those recitations.

SUMMARY OF ARGUMENT

The trial court erred in finding that Revised Subchapter H was unconstitutional both facially and as applied to Appellee and the order of the trial court should be reversed.

The General Assembly, as duly elected representatives of the citizenry, is empowered to enact legislation and engage in public policy determinations that result from making value judgments as to the competing factors which underlie particular statutes. Courts play an equally important role in ensuring that laws are being applied as intended by the legislature and that statutes pass constitutional muster. In doing so, however, jurists are not permitted to substitute their own judgment for that of the General Assembly. Public policy should not be subject to the "particular views and idiosyncrasies" of individual jurists. The General Assembly is in the best position to weigh all of the competing factors and determine which public policy decision best serves the public good. The General Assembly makes these kinds of determinations in a wide variety of contexts, including the registration and notification requirements set forth in Revised Subchapter H.

ARGUMENT

The trial court erred in finding that Revised Subchapter H was unconstitutional both facially and as applied to Appellee. The trial court's opinion amounts to a value judgment about the public policy underlying the subchapter, invading the province of the General Assembly which enacted the constitutional legislation. In support of the Commonwealth's arguments to uphold the constitutionality of the legislation, *Amicus* offers the following argument.

I. Value judgments are in the province of the General Assembly and courts should not engage in a value judgment when assessing the constitutionality of legislation

The presumption that legislation is constitutional is strong. *Commonwealth v. Barud*, 545 Pa. 297, 304 (Pa. 1996). The burden of persuasion on a party challenging the constitutionality of a statute is heavy. *Id.* "A statute commands the presumption of constitutionality when it is lawfully enacted, unless it clearly, palpably, and plainly violates the constitution…. Any doubts are to be resolved in favor of sustaining the legislation." *Commonwealth v. Blystone*, 519 Pa. 450, 463 (Pa. 1988); *see also Glancey v. Casey*, 447 Pa. 77 (Pa. 1972)("…every presumption is in favor of the constitutionality of acts of the legislative

body and '(n)othing but a clear violation of the Constitution—a clear usurpation of powers prohibited—will justify the judicial department in pronouncing an act of the legislative department unconstitutional and void.'")(internal citations omitted). "The right of the judiciary to declare a statute void, and to arrest its execution, is one which, in the opinion of all courts, is coupled with responsibilities so grave that it is never to be exercised except in very clear cases; one department of the government is bound to presume that another has acted rightly." *Erie & North-East R.Co. v. Casey*, 26 Pa. 287, 300-301 (Pa. 1856)

The courts are empowered to review legislative acts, but when the General Assembly exercises its legislative authority, it is acting as the voice of the people. "The legislature must be respected in its attempt to exercise the State's police power and the power of judicial review must not be used as a means by which the courts might substitute its judgment as to public policy for that of the legislature." *Parker v. Children's Hospital of Pennsylvania*, 483 Pa. 106, 116 (Pa. 1978). "Time and again, [this Honorable Court has] taken the position that the judiciary does not question the Wisdom of the action of a legislative body." *Glancey*, 447 Pa. at 84. "In our judicial system the power of courts to formulate pronouncements of public policy is sharply restricted; otherwise they

would become judicial legislatures rather than instrumentalities for the interpretation of law." *Mamlin v. Genoe*, 340 Pa. 320, 324 (Pa. 1941).

> The right of a court to declare what is or is not in accord with public policy does not extend to specific economic or social problems which are controversial in nature and capable of solution only as the result of a study of various factors and conditions. It is only when a given policy is so obviously for or against the public health, safety, morals or welfare that there is a virtual unanimity of opinion in regard to it, that a court may constitute itself the voice of the community in so declaring. There must be a positive, well-defined, universal public sentiment, deeply integrated in the customs and beliefs of the people and in their conviction of what is just and right and in the interests of the public weal….If, in the domain of economic and social controversies, a court were, under the guise of the application of the doctrine of public policy, in effect to enact provisions which it might consider expedient and desirable, such action would be nothing short of judicial legislation, and each such court would be creating positive laws according to the particular views and idiosyncrasies of its members. Only in the clearest cases, therefore, may a court make an alleged public policy the basis of judicial decision.

Id. at 325.

Reviewing the precedents of this Honorable Court, the line between the role of the General Assembly and the role of the courts is clear. The General Assembly, duly elected representatives of the citizenry, are charged with enacting legislation in the interest of the public. Legislative enactments are a product of the "study of various factors and conditions." *Id.* The General Assembly is empowered to make public policy decisions in enacting legislation and the decisions

related to the enactment of statutes carry a presumption of constitutionality.

The courts serve an equally important function. While the General Assembly enacts legislation, the courts serve to ensure that the enacted laws are carried out as the General Assembly intended and that the actions of the legislature pass constitutional muster. In rare circumstances, the courts may find that a particular piece of legislation is constitutionally defective. Determinations of this magnitude, however, are to be few and far between.

Precedent makes clear that value judgments are in the purview of the General Assembly. The enactment of legislation necessitates a review of various factors: public safety and welfare among them. The General Assembly, with its various elected members, representing the varying views of its constituency, is best equipped to make these kinds of policy decisions. Fact-finding, independent research, debate, and, most importantly, public input is all considered by legislators when voting on a statute. This is what allows the General Assembly to be the voice of the people.

It is without doubt that the role of the courts in reviewing legislative enactments is of the utmost importance. This role, however,

does not include value judgment. The Pennsylvania General Assembly has 253 members, 203 in the House and 50 in the Senate. It is these duly elected legislators who are empowered to exercise the policy judgments of the people. While courts can have hearings and conduct fact-finding, the information available to a court is limited to what is brought forth by the parties and allowed by the rules of evidence. Typically, this does not include the will of the people, which is a legislative consideration. The information and considerations available to legislators when statutes are enacted varies greatly from that which is available to a reviewing court.

As this Honorable Court has set forth, if courts routinely wade into discussions of public policy, they become "judicial legislatures" with the laws becoming products of the "particular views and idiosyncrasies" of one or a few judges. *Mamlin*, supra. There are various arguments related to whether Revised Subchapter H is good public policy or not, but the place for those arguments is in the General Assembly. In enacting Revised Subchapter H, the General Assembly made the determination that registration and notification requirements for sexual offenders was an important public policy need, and the impact upon registrants was balanced against the welfare of society at large.

A review of the trial court's opinion makes plain that the court

sought an outcome aligned with its own judgment related to the registration of sexual offenders. This is contrary to the role of the courts and usurps the authority of the legislature.

Courts cannot make their own value judgments for laws they do not like or agree with. There are many laws that the General Assembly has enacted that impact people in their daily lives. If courts were permitted to make policy judgments when reviewing these laws, there would be inconsistent application of the laws; outcomes would be based upon the individual wants or wishes of a single jurist rather than an application grounded in a proper analysis of the law, contrary to the intent of legislators and society as a whole. A judge may not personally agree with every law that ends up before him or her for review, but it is not whether a judge agrees with a law that controls. That assessment of value is in the legislature's domain.

For example, the General Assembly has enacted legislation governing the safety of retail food establishments. 3 Pa.C.S. § 5701, *et seq*. Legislators have determined that many retail food establishments required a license and that specific exceptions to that requirement exist. 3 Pa.C.S. § 5703. If a retail food establishment is exempt from license requirements, it is still subject to inspection. 3 Pa.C.S. § 5703(b)(2). This

requirement ensures that the welfare of the public is protected. While certain entities may not have to pay for a license, they are still subject to the same health and safety standards as all other establishments.

There may be people who believe that establishments that are not required to be licensed should not have to uphold the same standards as licensed establishments. Perhaps they believe that there is an undue burden placed upon those entities by holding them to the same standards or there is a stigma attached to the publication of inspection findings. Legislators, however, have determined that there is a public interest in having the health and safety requirements evenly applied. If jurists who disagreed began making value judgment decisions about which establishments should have to follow health and safety standards and which should not, they would be invading the province of the legislature, which is in the best position to determine how health and safety standards should be applied.

Similarly, in the interest of protecting public welfare, the General Assembly has determined that various occupations are subject to state licensure requirements. Architects, podiatrists, dentists, engineers, midwives, nurses, estheticians, and many other professions are subject to state licensing requirements. *See in general* Title 63 of Pennsylvania

Statutes. The licensing standards that govern these various professions have been put into place by the General Assembly to ensure that the public has some level of protection when using these various services. While licensing is not a guarantee as to a level of competency in providing a service, it does establish a based-line level of proficiency in order for a person to engage in the public practice of these various professions.

To hold oneself out as a barber, a person must pass an examination. 63 P.S. § 551. A massage therapist must pass an examination and have met various educational requirements. 63 P.S. § 627.5. Podiatrists are subject to similar requirements, 63 P.S. § 42.1, *et seq.*, as are nurses. 63 P.S. § 211, *et seq*. Title 63 is replete with examination and education requirements for all of the professions requiring state licensure.

Persons who want to hold themselves out as practitioners of those professions covered under Title 63 are mandated to meet the applicable requirements, regardless of the burden the requirements may place upon an individual. This ensures that minimal levels of proficiency protect the public welfare. If, however, individual jurists were permitted to substitute their personal opinions for those of General Assembly, the public safeguards would be erased. A jurist may believe that there is no

need for barbers to be licensed, or that requirements for a state nursing license are too burdensome for a particular individual. These personal judgments have no place in judicial review. Barbers, nurses, and various other professions are required to meet certain qualifications to protect the health, safety and welfare of the public at large. Allowing individual jurists to substitute their own determinations as to the appropriate public policy considerations that should govern these professions would create varying standards and erode the public confidence that the requirements are meant to foster.

These are just two examples of many instances where the General Assembly has weighed the burdens placed upon an individual against the needs and protection of the public, and as a result, legislation was enacted to ensure a level of protection for the citizenry. This type of public policy consideration falls within the province of the duly elected legislators and while the courts can, and should, review these enactments when challenges arise, jurists cannot substitute their own value judgment for that of the General Assembly.

This includes reviewing the registration and notification requirements for Revised Subchapter H. While the trial court could certainly review the legislation, it could not substitute its judgment as to

which public policy considerations should control for that of the legislature. When the General Assembly made findings about the need for notification and registration requirements, it was able to evaluate the public policy considerations related to the protection of the public and any burdens placed upon the individual registrant. Ultimately, the General Assembly determined that public policy required certain levels of registration and notification for those convicted of certain sexual offenses. Individual jurists should not substitute their public policy determinations for the well-reasoned determination of the elected legislature.

Since a review of the trial court's opinion in the instant matter makes clear that the court substituted its own value judgment for that of the General Assembly, the opinion and order cannot stand.

CONCLUSION

WHEREFORE, the Pennsylvania District Attorneys Association, *amicus curiae*, respectfully requests that the order of the trial court be reversed and the constitutionally of Revised Subchapter H be upheld.

Respectfully submitted,

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Certification

I hereby certify pursuant to Pa.R.A.P. 531 (b)(3) that this amicus brief does not exceed the 7,000-word count limit.

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.

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Date: December 15, 2022

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I, Maureen Flannery Spang, hereby certifies that on December 15, 2022, the foregoing amicus brief was filed through this Court's PACFILE electronic filing system and thereby served the following parties:

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