

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

NOS. 102 EM 2018 & 103 EM 2018

JERMONT COX
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA
Respondent

KEVIN MARINELLI,
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA
Respondent

On Petition for Extraordinary Relief Under King's Bench Jurisdiction

**BRIEF OF *AMICUS CURIAE* PENNSYLVANIA LODGE FRATERNAL
ORDER OF POLICE**

QUINTES D. TAGLIOLI, ESQUIRE
I.D. PA #30158
MARKOWITZ & RICHMAN
121 N. Cedar Crest Blvd., Second Fl.
Allentown, PA 18104
610-820-9531

Attorney for Amicus Curiae

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
I. STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i>	1
II. SUMMARY OF ARGUMENT	3
III. ARGUMENT	4
A. THE INSTANT MATTERS TO DO NOT WARRANT THE EXERCISE OF THIS HONORABLE COURT’S KING’S BENCH AUTHORITY.....	4
B. THIS COURT SHOULD NOT ALLOW THE JSGC REPORT TO BE USED BY THE PETITIONERS AND THEIR SUPPORTERS SINCE THAT IS NOT WHY THE JSGC REPORT WAS AUTHORIZED AND CREATED	6
IV. CONCLUSION	9

TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
<i>Judicial Inquiry and Review Board of the Supreme Court v. Fink</i> , 516 Pa. 208, 532 A.2d 358, 367 (1987)	6
<i>Harman ex rel. Harman v. Borah</i> , 562 Pa. 455, 756 A.2d 1116 (2000)	6-7
<i>Hileman v. Pittsburgh & Lake Erie R.R. Co.</i> , 546 Pa. 433, 685 A.2d 994, 998 (1996)	7
<i>Downey v. Weston</i> , 451 Pa. 459, 301 A.2d 635 (1973)	7
<i>Commonwealth v. Williams</i> , 634 Pa. 290, 129 A.3d 1199 (2015)	4, 5, 6

I. STATEMENT OF INTEREST OF AMICUS CURIAE

This brief is filed on behalf of The Pennsylvania Lodge of the Fraternal Order of Police (hereinafter “PAFOP”) as amicus curiae.

PAFOP was founded in 1934 and currently represents approximately 40,000 law enforcement officers throughout the Commonwealth of Pennsylvania. PAFOP represents law enforcement officers from agencies of all shapes and sizes. PAFOP strives to advocate on behalf of its members to advance legislation that enhances the safety of law enforcement officers and the general public. PAFOP also works tirelessly in its efforts to provide member support, educational programs, and public service throughout the Commonwealth of Pennsylvania.

PAFOP has a significant interest in the outcome of this case in that, every day, its members risk serious injury and death in performing their duty to the public. Serving in one of the most dangerous jobs in the Commonwealth, PAFOP members rely on respect for the rule of law by the judiciary, the General Assembly, and the Executive Branch. The rule of law in Pennsylvania is the existence of the death penalty. The PAFOP supports that penalty as a deterrent to those who decide to engage in criminal behavior of the most serious nature, behavior that members of the PAFOP, by their sworn oath to serve and protect the citizens of the Commonwealth of Pennsylvania, are faced with regularly. Elimination of that tool from law enforcement’s arsenal would have a direct and

immediate impact on the ability of law enforcement to maintain the rule of law, protect the citizens, and perform its assigned functions.

II. SUMMARY OF ARGUMENT

The instant matters do not warrant the exercise of this Court's King's Bench Authority. King's Bench Authority is invoked to review an issue of public importance that requires timely intervention by this Court to avoid deleterious effects arising from delays incident to the ordinary process of law. Petitioners herein not only seek to have their death sentences overturned because of an alleged violation of their constitutional rights, but a finding by this Court that the entire system of capital punishment is in violation of the Pennsylvania Constitution. While that is a matter of public importance, timely intervention by this Court is not required because any deleterious effect arising from delays incident to the ordinary process of law have been stayed by holdings in this Court and Governor Wolf's execution reprieves and statewide moratorium.

The use of the JSGC Report by Petitioners in support of their Petition is inconsistent with the reason for the creation and the existence of the Report. The JSGC Report was to be used as an aid to the General Assembly and the Governor in deciding the answer to the question of whether or not the death penalty in Pennsylvania should continue. Its use by Petitioners to achieve their own goals with this Court, to the exclusion of the legislative and executive branches, is contrary to the reason for the creation of the JSGC Report.

IV. ARGUMENT

A. THE INSTANT MATTERS DO NOT WARRANT THE EXERCISE OF THIS HONORABLE COURT'S KING'S BENCH AUTHORITY

The Pennsylvania General Assembly has recognized King's Bench authority in Section 502 of the Judicial Code, 42 Pa.C.S. § 502. Notably, this Honorable Court recently invoked its King's Bench jurisdiction to rule upon the important and here related question of whether Pennsylvania Governor Tom Wolf could properly issue a reprieve to death row inmate Terrance Williams that is unlimited in time and is not based on Williams' individual circumstances, but rather is imposed to further the Governor's policy of declaring a statewide moratorium on the death penalty. See *Commonwealth v. Williams*, 634 Pa. 290, 129 A.3d 1199 (2015). “The exercise of King's Bench authority is not limited by prescribed forms of procedure or to action upon writs of a particular nature; rather, the Court may employ any type of process necessary for the circumstances ... [and] may even exercise King's Bench powers over a matter where no dispute is pending in a lower court.” *Williams*, 129 A.3d at 1206. However, in contrast to *Williams*, and in part due to this Honorable Court's holding in *Williams*, the instant matters do not warrant the exercise of King's Bench authority.

“King's Bench authority is generally invoked to review an issue of public importance that requires timely intervention by the court of last resort to avoid the

deleterious effects arising from delays incident to the ordinary process of law.” *Williams*, 634 Pa at 290, 129 A.3d at 1202 (citing *In re Bruno*, 101 A.3d 635, 670 (Pa. 2014)). Here Petitioners seek not only a finding that that their death sentences violate their constitutional rights, but also a finding that the entire “system of capital punishment” is violative of the Pennsylvania Constitution, requiring relief for every convicted murderer currently sentenced to death in the Commonwealth. Commonwealth’s Answer to Petition for Extraordinary Relief at 16 n.7 (Sept. 28, 2018). Therefore, it is generally agreed that the issue here raised is of significant public importance. (Petitioners’ Brief at 4, Feb. 22, 2019).

Although the issue here presented may be of public importance, timely intervention by this Honorable Court is not here required, because any deleterious effects arising from delays incident to the ordinary process of law have been negated or at least stayed by the holding in *Williams* and by Governor Wolf’s execution reprieves and statewide moratorium examined therein. Among other issues, Petitioners ask this Honorable Court to review evidence from the comprehensive Joint State Government Commission Report (“JSGC Report”) indicating that the Commonwealth’s system of capital punishment is unreliable, arbitrary, and unjustified. However, Governor Wolf’s moratorium is premised on the examination of that JSGC Report, as well as subsequent imposition of measures to correct the same defects identified here by Petitioners as creating the

need for this Honorable Court’s immediate review. Because the *Williams* holding upheld Governor Wolf’s system of reprieve – which places an indefinite halt on all executions – as being validly within the Governor’s constitutional authority, and because the sole authority to repeal the moratorium resides in Governor Wolf – who has expressed no intention to do so – there is effectively no capital punishment regime to carry out a death penalty sentence in the Commonwealth. Therefore, Petitioners’ call for the exercise of King’s Bench jurisdiction is unwarranted in that timely intervention by this Honorable Court is not here required.

B. THIS COURT SHOULD NOT ALLOW THE JSGC REPORT TO BE USED BY THE PETITIONERS AND THEIR SUPPORTERS SINCE THAT IS NOT WHY THE JSGC REPORT WAS AUTHORIZED AND CREATED.

Granting the Petition would create the appearance of partiality and undermine public confidence in the Judicial System. Actual and perceived impartiality of the Courts is fundamental to the integrity and viability of our judicial system. *Judicial Inquiry and Review Board of the Supreme Court of Pennsylvania v. Fink*, 516 Pa. 208, 226, 532 A.2d 358, 367 (1987). “Impartiality of courts lies at the heart of our system of justice; it is what makes the system work...” *Id.* As this Court is aware, judges must avoid any conduct that gives the appearance of favoritism, prejudice, or bias for or against one party. See *Harman*

ex rel. Harman v. Borah, 562 Pa. 455, 470, 756 A.2d 1116, 1124 (2000); *Hileman v. Pittsburgh & Lake Erie R.R. Co.*, 546 Pa. 423, 440, 685 A.2d 994, 998 (1996); *Downey v. Weston*, 451 Pa. 259, 269, 301 A.2d 635, 642 (1973); see also Code of Judicial Conduct, Canon 2(A) (directing judges to conduct themselves in manner that promotes public confidence in the integrity and impartiality of the judiciary).

The PAFOP respectfully submits that this Court's grant of the Petition would create the appearance of partiality and undermine public confidence in the judicial system. More than half of all Pennsylvania supports the imposition of the death penalty for intentional murder, as does the PAFOP, and there is no realistic prospect that any convicted first-degree murderer sentenced to death will be executed in the foreseeable future in light of Governor Wolf's ongoing "moratorium". There is no need for this Court to take immediate action on the matter. To the contrary, the policy decision to maintain the death penalty in Pennsylvania is one that the General Assembly and the Governor can and should make, not this Court. While the citizens of the Commonwealth hold varying opinions on the issue, the resolution of those variances is a function practically, constitutionally, and systematically left to the General Assembly rather than this Court.

To that extent, the use of the JSGC Report by Petitioners and their supporters is misplaced and unsupported by the underlying reasons for the creation

of the JSGC Report. The JSGC was to be used as an aid to the General Assembly and the Governor in deciding the answer to the ultimate question: the maintenance of the death penalty. It was not to be used as a weapon by death penalty opponents in support of their attempt to end run the legislative and executive branches and appeal to the judiciary to achieve their desired ends.

IV. CONCLUSION

For these reasons, the Pennsylvania Lodge Fraternal Order of Police respectfully requests that this Honorable Court deny the Petition for Extraordinary Relief Pursuant to 42 Pa. C.S.A. § 502.

Respectfully submitted,

MARKOWITZ & RICHMAN

Date: 6/17/19

By: /s/Quintes D. Taglioli
QUINTES D. TAGLIOLI, ESQUIRE
I.D. PA #30158
121 N. Cedar Crest Blvd., Second Fl.
Allentown, PA 18104
610-820-9531

*Attorney for Amicus Curiae
Pennsylvania Lodge Fraternal Order
of Police*

CERTIFICATE OF COMPLIANCE

I, QUINTES D. TAGLIOLI, ESQUIRE, do hereby 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.

MARKOWITZ & RICHMAN

Date: 6/17/19

/s/ Quintes D. Taglioli
QUINTES D. TAGLIOLI, ESQUIRE

*Attorney for Amicus Curiae Pennsylvania
Lodge Fraternal Order of Police*

CERTIFICATE OF COMPLIANCE

The undersigned pursuant to Local Rules of Civil Procedure 7.8, hereby certifies that this office utilizes the word processing software Microsoft Word. That program has the ability to provide a word count. According to that word count, I hereby certify that the Brief of *Amicus Curiae* Pennsylvania Fraternal Order of Police has 1,568 words and, therefore, complies with the word count requirement.

MARKOWITZ & RICHMAN

Date: 6/17/19

By: /s/Quintes D. Taglioli,
QUINTES D. TAGLIOLI, ESQUIRE

*Attorney for Amicus Curiae Pennsylvania
Fraternal Order of Police*

CERTIFICATE OF SERVICE

I, Quintes D. Taglioli, Esquire hereby certify that on this 17th day of June 2019, I filed the foregoing *Brief of Amicus Curiae Pennsylvania Lodge Fraternal Order of Police* through the Court's PACfile electronic filing system and by First Class Mail, Postage Pre-Paid pursuant to Pa. R.A.P. 121 and served the following:

Shawn Nolan, Esquire
Helen Marino, First Assistant
Federal Community Defender Office
for the Eastern District of Pennsylvania
The Curtis Center, Suite 545 W
Independence Mall West
Philadelphia, PA 19106

Lawrence Krasner, Esquire
Paul George, Assistant Supervisor, Law Division
District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107-3499

Josh Shapiro, Esquire
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

/s/Quintes D. Taglioli
QUINTES D. TAGLIOLI, ESQUIRE
*Attorney for Amicus Curiae Pennsylvania
Lodge Fraternal Order of Police*