

**In the
SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 112 MAP 2007

MICHAEL MARCAVAGE, MARK DIENER, LINDA BECKMAN, RANDALL BECKMAN,
SUSAN STARTZELL, ARLENE ELSHINNAWY and NANCY MAJOR,

v.

EDWARD G. RENDELL, Governor of the Commonwealth of Pennsylvania,
JOHN M. PERZEL, Speaker of the Pennsylvania House of Representatives,
ROBERT C. JUBELIRER, President *Pro Tempore* of the Pennsylvania Senate, HONORABLE
PEDRO A. CORTES, Secretary of the Commonwealth of Pennsylvania, All in their Official
Capacities and not in Their Private Capacities, and
the COMMONWEALTH OF PENNSYLVANIA,

BRIEF FOR APPELLEES MICHAEL MARCAVAGE *et al.*

On Appeal from the Order of the Commonwealth Court of Pennsylvania
No. 195 MD 2005

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COUNTER-STATEMENT OF THE QUESTION INVOLVED

Whether the enactment of Act 143 of 2002 (HB 1493) violated Article III, § 1 of the Pennsylvania Constitution because the bill was so altered or amended in the legislative process as to change its original purpose in violation of Section 1.

Answer of Commonwealth Court: YES

Suggested Answer: YES

COUNTER-STATEMENT OF THE CASE

Appellees are generally satisfied with the Statements of the Case as presented, respectively, in the original brief of Appellants the Commonwealth of Pennsylvania, Governor Edward G. Rendell, and Secretary of the Commonwealth Pedro A. Cortes, and in the original brief of Appellee Robert C. Jubelirer, President *Pro Tempore* of the Pennsylvania Senate. *See* Br. of Appellants Com., Gov. Rendell et al. at 5-12; Br. of Pres. Pro Tem Jubelirer at 5-9. Appellees, however, would make one addition: Following the Pennsylvania Senate's complete replacement of the original text of HB 1493 with language purporting to expand the scope of the offense of "ethnic intimidation," two new versions of the Bill, Printer's Number 3723 and 4156, were printed as putative "corrective reprints." Such reprints were necessary because, of the forty-one (41) original sponsors of the Bill, twenty-nine (29) (or approximately seventy percent (70%)) withdrew their sponsorship thereof (including the prime sponsor, the Honorable Raymond Bunt). *See* (RR 36); Br. of Jubelirer at 13 n.10.

Appellees are mostly satisfied with the Statement of the Case presented in the original brief of Appellee Speaker of the Pennsylvania House of Representatives John M. Perzel, but would challenge as entirely irrelevant and improper the final sentence of the penultimate paragraph in the Statement of the Case in said brief, baldly speculating as it does that Appellees' constitutional arguments are a "camouflage[]" designed to hide their "real motivation," which according to Speaker Perzel is that Appellees "do not like" the "*substantive* changes" enacted in the legislation at issue. *See* Br. of Appellee Speaker Perzel at p. 10 (emphasis in original). Appellees would also challenge the final paragraph of Speaker Perzel's Statement of the Case as argument, which ought to be excluded from the Statement of the Case, according to Pa. R. App. P. 2117(b) ("The statement of the case shall not contain any argument."). *See* Br. of Appellee

Speaker Perzel at 10-11. Therefore, Appellees object to these two portions of Speaker Perzel's Statement of the Case—irrelevant speculation as to motives for this litigation and improper argument—as they do not represent a “balanced presentation of the history of the proceedings and the respective contentions of the parties.” Pa. R. App. 2117(b).

SUMMARY OF ARGUMENT

House Bill 1493 of 2001 was enacted as Act 143 of 2002 in a manner that violated Article III, § 1 of the Pennsylvania Constitution and its mandatory provision that a bill not be altered or amended so as to change its “original purpose.” House Bill 1493 was introduced in the Pennsylvania House of Representatives as a bill criminalizing agricultural crop destruction, but was then deleted and re-written *in toto* in the Senate so as to change its original purpose and instead become a bill to include “ancestry, mental or physical disability, sexual orientation, gender or gender identity” as protected classes under the Ethnic Intimidation Law.

Under this Court’s two-part inquiry in *Pennsylvanians Against Gambling Extension Fund, Inc. v. Commonwealth* [“PAGE”], 583 Pa. 275, 293, 877 A.2d 383, 394 (2005), courts ought to compare the original and final versions of a bill to determine whether a reasonably broad original purpose can be discerned. In this case, attempting to justify the drastic change from first to final product, Appellants assert that HB 1493 has an unreasonably broad purpose of “amending the Crimes Code.” The original purpose of the bill, agricultural crop destruction, was changed when it became a bill expanding the Ethnic Intimidation Act, a violation of section 1.

Moreover, under the second PAGE inquiry, a bill’s final form is consulted to see whether the title and contents put legislators and other reasonable persons interested on notice of the bill’s contents. Appellees argue that the final version of HB 1493 purporting to amend the “ethnic intimidation” law is deceptive because the amendment includes protection for non-ethnic classifications of persons—mental or physical disability, sexual orientation, gender or gender identity. Neither a reasonable person nor a legislator would be put on notice of the bill’s final contents if printed under the deceptive title of “ethnic intimidation.” The order of the Commonwealth Court should therefore be affirmed.

ARGUMENT

The requirements of Article III of the Pennsylvania Constitution were adopted “to correct the evil of unwise, improvident and corrupt legislation which had become rampant at the time of its passage.” *Consumer Party v. Commonwealth*, 510 Pa. 158, 178, 507 A.2d 323, 333 (1986). “It was drafted in an atmosphere of extreme distrust of the legislative body,” *id.* (quoting R. Branning, *Pennsylvania Constitutional Development* (1960)), the product of a convention (1872-73) “convened to reform corrupt legislative behavior,” *Pennsylvanians Against Gambling Extension Fund, Inc. v. Commonwealth* [“PAGE”], 583 Pa. 275, 293, 877 A.2d 383, 394 (2005). Article III’s general purpose, therefore, is to “place restraints on the legislative process and encourage an open, deliberative, and accountable government.” *Id.*, 877 A.2d at 395 (quoting *City of Philadelphia v. Commonwealth*, 575 Pa. 542, 573, 838 A.2d 566, 585 (2003)). Although the strictures of Article III “originated during a unique time” in Pennsylvania’s political history, “these mandates retain their value today by placing certain constitutional limitations on the legislative process.” *Id.* at 394.

I. THE ENACTMENT OF ACT 143 OF 2002 (HOUSE BILL 1493) VIOLATED ARTICLE III, SECTION 1 OF THE PENNSYLVANIA CONSTITUTION BECAUSE THE BILL WAS SO ALTERED AND AMENDED THROUGH THE LEGISLATIVE PROCESS THAT IT WAS CHANGED FROM ITS ORIGINAL PURPOSE

Article III, Section 1 of the Pennsylvania Constitution provides:

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. This Court has spoken plainly about the mandatory nature of section 1:

It was not the intention of this provision to merely establish general guidelines but rather it was intended to articulate a mandatory directive relating to the manner in which the General Assembly would be required to pass legislation.

Consumer Party, 507 A.2d at 334. Although courts ought not inquire into every allegation of legislative irregularity, “where the facts are agreed upon and the question presented is whether or not a violation of a mandatory constitutional provision has occurred, it is not only appropriate to provide judicial intervention, and if warranted a judicial remedy, [courts are] mandated to do no less.” *Id.* The courts “cannot ignore a clear violation because of a false sense of deference to the prerogatives of a sister branch of government.” *Id.*

A. Article III, § 1 and the Two-Part *PAGE* Inquiry

The text of section 1 “suggests a comparative analysis” to determine whether the “original purpose of the bill” has been changed, as well as a “desire for some degree of continuity in object or intention.” *PAGE*, 877 A.2d at 408. Therefore, to determine whether legislation has run afoul of section 1, this Court in the *PAGE* case formulated a two-part inquiry:

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.

Id. at 408-09. *See also City of Philadelphia v. Rendell*, 888 A.2d 922, 933 (Pa. Cmwlth. 2005).

Only if the legislation passes both inquiries will it pass constitutional muster. *PAGE*, 877 A.2d at 409.

Under the first *PAGE* inquiry, a bill’s original purpose “must be viewed in reasonably broad terms,” giving the General Assembly “full opportunity to amend and even expand a bill” without violating section 1. *Id.* A court is permitted to hypothesize, “based upon the text of the statute, as to a reasonably broad original purpose.” *Id.* (citing *City of Philadelphia*, 838 A.2d at 588).

“Reasonably broad,” however, does not mean limitless: a bill’s original purpose cannot be so expansive that any alterations or amendments to the bill disregard all “limits on germaneness, for otherwise virtually all legislation—no matter how diverse in substance—would meet” the Article III requirements, rendering the constitutional safeguards “nugatory” and “inert.” *PAGE*, 877 A.2d at 395; *see also id.* at 409 (overlapping Court’s finding of “single unifying subject” under Article III, § 3 as “akin to” the original purpose analysis of section 1). A bill from its original draft to its final form, and throughout its interim alterations and amendments, must maintain a consistent “logical or legislative nexus” to avoid stretching the bounds of section 1 “beyond the breaking point.” *See id.* at 396 (describing limits to single-subject requirement of section 3). *See also Stilp v. Commonwealth*, 588 Pa. 539, 602, 905 A.2d 918, 955 (2006) (stating there must be “limits on how broadly a main objective is defined as well as on germaneness”).

Under the second *PAGE* inquiry, a court must determine whether the title and contents of the bill in final form are deceptive. *PAGE*, 877 A.2d at 409. A bill’s title must not actually deceive “the legislators and the public” as to the act’s contents, and must put a “reasonable person on notice of the general subject matter of the act.” *Id.* at 406; *see also id.* at 409 (finding that final title was not deceptive “consistent with” prior analysis regarding sufficiency of title under Article III, § 3).

In *PAGE*, this Court held that the bill as introduced—a one-page bill providing State Police the power to run a background check and fingerprinting of applicants for horse and harness racing licenses—and the bill as enacted—a 145-page bill providing for, *inter alia*, the creation of the Pennsylvania Gaming Control Board, gambling licenses for slot machine casinos, and license revenue distribution—had consistently maintained a single legislative purpose: “to

regulate gaming.” *PAGE*, 877 A.2d at 409. “[A]lthough significantly amended and expanded,” this Court held that “the bill was not altered or amended to change its original purpose” under section 1. *Id.* Under the second inquiry, the *PAGE* Court likewise held that, while amendments to the bill “were substantive and came at the end of the consideration cycle,” neither the contents nor the title of the final form were deceptive. *Id.*

B. The Original Purpose of House Bill 1493 Was Changed In Its Final, Enacted Form

Turning to House Bill 1493, the Commonwealth Court below held that under *PAGE*'s comparative construct, the bill's original purpose, “viewed in reasonably broad terms,” was “to criminalize crop destruction”; whereas the bill in its final form “expanded the classification of persons protected under the offense of ethnic intimidation.” *Marcavage v. Rendell*, 936 A.2d 188, 193 (Pa. Cmwlth. 2007). “Unlike the legislation in *PAGE*,” that (to differing degrees) regulated gaming in the Commonwealth, “both the initial and final versions of HB 1493 do not regulate the same discrete activity.” *Id.*

The original title of House Bill 1493 was as follows:

Amending Title 18 (Crimes and Offense) of the Pennsylvania Consolidated Statutes, providing for the criminal offense of agricultural crop destruction.

See H.B. 1493, P.N. 1812 (R.R. 182); *Marcavage*, 936 A.2d at 191. The substance of the original bill provided as follows:

§ 3310. Agricultural crop destruction.

(a) Offenses defined – A person commits a felony of the second degree if he intentionally and knowingly damages any field crop that is grown for personal or commercial purposes, or for testing or research purposes for a product development program in conjunction with a public or private research facility or a university or any Federal, State or local government agency.

(b) Restitution; costs and fees – Any person convicted under subsection (a) may also be sentenced to make restitution and be ordered to pay attorney fees and court costs.

Id. The title of the bill was subsequently amended in the Senate to read as follows:

Amending Title 18 (Crimes and Offenses of the Pennsylvania Consolidated Statutes, further providing for ETHNIC INTIMIDATION.

See H.B. 1493, P.N. 2382 (R.R. 189-94); *Marcavage*, 936 A.2d at 189, n.3. The final bill, Act

143, added the following italicized language to Section 2710 of the Crimes Code:

§ 2710 Ethnic intimidation

(a) Offense defined.-A person commits the offense of ethnic intimidation if, with malicious intention toward the *actual or perceived* race, color, religion, national origin, *ancestry, mental or physical disability, sexual orientation, gender or gender identity* of another individual or group of individuals, he commits an offense under any other provision of this article or under Chapter 33 (relating to arson, criminal mischief and other property destruction) exclusive of section 3307 (relating to institutional vandalism) or under section 3503 (relating to criminal trespass) with respect to such individual or his or her property or with respect to one or more members of such group or to their property.

* * *

(c) Definition.-As used in this section “malicious intention” means the intention to commit any act, the commission of which is a necessary element of any offense referred to in subsection (a) motivated by hatred toward the *actual or perceived* race, color, religion or national origin, *ancestry, mental or physical disability, sexual orientation, gender or gender identity* of another individual or group of individuals.

Id.

The text of the original agricultural crop destruction provision was ultimately replaced *in toto* with the text of the final version purportedly amending the ethnic intimidation law. The two divergent versions of HB 1493 reveal no singular legislative purpose, no “degree of continuity in object or intention” required by Article III, § 1 and by this Court in *PAGE*. The Commonwealth Court below, following the leading of *PAGE*, hypothesized “based on the *text* of the initial bill”

that the original purpose of HB 1493 was the criminalization of agricultural crop destruction,¹ *see PAGE*, 877 A.2d at 409, and rejected Appellants’ sweeping generalization of HB 1493’s original purpose as an amendment to “the Crimes Code”:

[T]o conclude that the General Assembly could initiate a piece [of] legislation in the context of the Crimes Code and rely upon that concept as a unifying justification for amendments to bills under the Crimes Code that contain no nexus to the conduct to which the original legislation was directed would stretch the Supreme Court’s meaning of “reasonably broad terms.”

Marcavage, 936 A.2d at 193; *see PAGE*, 877 A.2d at 409.

Underscoring just how radical a transformation HB 1493 underwent in the legislature, twenty-nine (29) of the forty-one (41) bill sponsors (or approximately seventy percent (70%)), withdrew their sponsorship of the bill after the original language was stripped in the Senate and replaced with a purported amendment to the ethnic intimidation law. This legislative abandonment even included the bill’s prime sponsor and resulted in a subsequent printing of two new versions of the Bill, Printer’s Numbers 3723 and 4156 (printed as putative “corrective reprints”). *See P.N. 3723* (stating “PRIME SPONSOR WITHDRAWN”) (RR 189).

On appeal, Appellants offer expansive purposes designed to encompass all the manifestations of HB 1493: Speaker Perzel suggests the purpose was “to define, expand and punish criminal conduct regarding the crimes of property destruction and other felonies under

¹ Even if the Commonwealth Court had looked beyond the text of the two bill versions to determine the original purpose, the agreed legislative history and initial amendments to HB 1493 reveal an original purpose of, at its broadest, protection of agriculture. The original version of HB 1493 contained in Printer’s Number 1812 pertained to “agricultural crop destruction” and provided penalties therefor. (RR 182-83). After an amendment in the House of Representatives, the proscription was expanded to include “agricultural vandalism,” “livestock” destruction, and “the damaging of any research records, data or data-gathering equipment or device” used in connection with farming. *See HB 1493*, Printer’s Number 2087 (RR 184-85). Such amendments and alterations clearly fall within the scope of the bill’s original purpose, *i.e.*, the criminalization of action that would endanger the Commonwealth’s food supply or agricultural activities related thereto. The purpose and content of the final version of HB 1493 bear no resemblance to agricultural purposes.

Title 18,” Br. of Speaker Perzel at 15-16; Governor Rendell suggests the purpose was “to amend the Crimes Code to provide for definitions of crimes,” Br. of Governor Rendell at 15; and President Pro *Tempore* Jubelirer suggests the broadest purpose by far: “to regulate the conduct of individuals as it pertains to criminal activity,” Br. of *Pres. Pro Tem* Jubelirer at 17. Despite Speaker Perzel’s disingenuous attempt to claim that the ethnic intimidation amendment version of HB 1493 subsumed the original purpose of criminalizing crop destruction,² Appellants essentially agree that, regardless of its radical substantive and title transformation, HB 1493 does not run afoul of Article III, § 1 because its amendments never ventured outside of Title 18 of the Pennsylvania Consolidated Statutes.

A bill’s proposed *location* in the Consolidated Statutes does not answer the question of whether it has retained its original purpose throughout the hurly-burly of legislative procedure. Under Article III, the fact that “all of the statute’s provisions are ultimately codified within [one code title] . . . is of little constitutional importance.” *City of Philadelphia*, 838 A.2d at 590. Appellants’ “same code title” rule would not only do violence to this Court’s precedents but would essentially amend Article III, § 1 to require that “no bill shall be so altered or amended, on its passage through either House, as to change its original *title in the Pennsylvania Consolidated*

² Speaker Perzel admits that the original HB 1493 “sought to expand the conduct and penalties for agricultural property destruction,” but then posits that the bill, “in its final form, also sought to expand conduct and penalties for crimes (*including agricultural property destruction*), but directed its focus at crimes conducted with malicious intent toward certain classifications of people.” Br. of Speaker Perzel at 16. He claims that like a creek flowing into a wider river, “*the final version of the statute actually incorporates the other*,” pointing to the Ethnic Intimidation Act’s inclusion, before the passage of HB 1493, of offenses “under Chapter 33 (*relating to arson, criminal mischief and other property destruction*).” *Id.* (emphasis in original). Speaker Perzel’s river metaphor holds no water, however, since no part of the original crop destruction language flowed into the final version of HB 1493: it was instead fished out and enacted as a new bill with a new number. See Act of June 21, 2002, P.L. 386, 18 Pa. C.S. § 3310 (HB 1492) (RR 195-99). The presence of the pre-HB-1493 reference to Chapter 33 in the Ethnic Intimidation Act is related to the original bill more by coincidence than because of any derivative or subsuming legislative process or nexus.

Statutes.” (It should be noted that the manner of division of the various titles within the Consolidated Statutes is not constitutionally prescribed, but is itself the product of sub-constitutional discretion.) Such a shallow analysis would subject the section 1 analysis to, on the one hand, a bare, mechanical inquiry into which code title(s) the bill would amend, and on the other hand, to an unreasonable broadening of the original purpose requirement to *any* purpose a legislator could find in the code title at issue.³ After all, “no two subjects are so wide apart that they may not be brought back into a common focus, if the point of view be carried back far enough.” *PAGE*, 877 A.2d at 395 (quoting *Payne v. School Dist. of Coudersport Borough*, 168 Pa. 386, 31 A. 1072, 1074 (1895)).

In interpreting Article III, § 1, it is important to remember the “fundamental rule that the words of a constitution, where plain, must be given their common or popular meaning, for it is in that sense the voters are assumed to have understood them when they adopted the constitution.” *Cavanaugh v. Davis*, 497 Pa. 351, 363, 440 A.2d 1380, 1386-87 (1982) (citing *Breslow v. Baldwin Township Sch. Dist.*, 408 Pa. 121, 182 A.2d 501 (1962)). By straining the common meaning of “original purpose,” Appellants’ interpretation would stretch the limits of section 1 beyond its plain meaning: “the presumption is that each and every clause in a written constitution has been inserted for some useful purpose and courts should avoid a construction which would render any portion of the constitution meaningless.” *Id.* at 1387.

³ Conceivably, under Appellants’ construct of section 1, a bill could be introduced as an amendment to the “short title of title” provision of section 101 of Title 18; then travel the length, breadth, and depth of the Crimes Code, suffering amendment after amendment and rewriting after rewriting as it is applied to each provision in turn; and come to rest as an amendment to the expiration provision of the Independent Counsel Authorization Act, 18 Pa. C.S. § 9352, when it is finally enacted into law. That such a circuitous and tedious procedure would probably never be pursued by even the most determined legislator is beside the point: this legislative odyssey would be entirely permissible under Appellants’ “same code title” rule.

House Bill 1493 bears striking similarities to the “municipalities” bill rejected by this Court in *City of Philadelphia v. Commonwealth*. In *City of Philadelphia*, this Court struck down a multi-subject bill pertaining to the general subject of “municipalities”—the “subject of an entire Title of the Pennsylvania Consolidated Statutes”—because it was “overly broad” for constitutional purposes.⁴ 838 A.2d at 580; *see also PAGE*, 877 A.2d at 394-96. This Court noted that there was “no single unifying subject to which all of the provisions of the act are germane.” 838 A.2d at 579. The fact that the bill’s provisions were ultimately contained within the same code title was “of little constitutional importance.” *Id.* at 581 (citing *DeWeese v. Weaver*, 824 A.2d 364, 370 (Pa. Cmwlth. 2003)). Likewise, Appellants seek to artificially unite the two incompatible purposes—the criminalization of agricultural crop destruction and the addition of classes to the ethnic intimidation law—under the banner of “the Crimes Code,” Title 18, Pennsylvania Consolidated Statutes. Notwithstanding the shared Title number, the one is not germane to the other. There is a substantial difference, for example, between the act of maliciously trampling down a field of un-harvested sweet corn and a physical assault motivated by the assailant’s thoughts toward homosexuals or the disabled.

This Court’s recent cases confirm that, though broadly construed, a bill’s original purpose must survive the legislative gauntlet to comply with Article III, § 1. In *PAGE* this Court upheld an act that started as a bill pertaining to license applicants for horse and harness racing but ended as a bill providing for, *inter alia*, the creation of the Pennsylvania Gaming Control Board, gambling licenses for slot machine casinos, and license revenue distribution because the bill never wavered from its original purpose: “to regulate gaming.” 877 A.2d at 409.

⁴ Although this Court analyzed the *City of Philadelphia* bill under the single subject rule of section 3 of Article III rather than under section 1, this Court in *PAGE* found the analysis of the one “akin to” the analysis of the other. *See PAGE*, 877 A.2d at 409.

In the wake of *PAGE*, this Court in *Stilp v. Commonwealth*, 588 Pa. 539, 905 A.2d 918 (2006), rejected the argument that a bill introduced to make the Governor the highest paid Executive officer had an “original purpose” under section 3 that was essentially no broader than its initial language. This Court held that the challenged bill, which in its final form raised compensation for officials in all three branches of government, maintained throughout the legislative process its “principal object” of “regulating compensation for government officials.” *Id.* at 604-05, 956-57. The *Stilp* Court also found that the compensation bill’s final title and contents were not deceptive. *Id.* at 605, 957. In *PAGE* and *Stilp*, respectively, this Court elicited a reasonably broad purpose, with some degree of continuity in object or intention, between the original bills and the amended and expanded final bills.⁵

House Bill 1493’s first and final versions enjoyed none of the similarity of kind or continuity of purpose as the bills in *PAGE* or *Stilp*. Not one word of the original language of HB 1493 survived in the final version. Nor did the original purpose of criminalizing crop destruction grow or expand via the legislative process *into* the Senate’s replacement amendment that added “ancestry, mental or physical disability, sexual orientation, gender or gender identity” as protected classes in the hate-crimes law. There being no logical or legislative nexus between the two versions, the original language of HB 1493 was eventually enacted via a different bill. *See*

⁵ While President *Pro Tempore* Jubelirer’s reliance upon two unreported Commonwealth Court opinions currently subject to appellate review in this Court is less than persuasive, *see* Br. of Speaker Jubelirer at 15 n.12 and 15-16, the table on p. 18 of his brief showing a selection of Crimes Code bills with differing original and final forms—none apparently ever the subject of an Article III challenge—demonstrates nothing more than that the General Assembly has a habit of flaunting Article III, § 1 with impunity. But a legislative preference or practice as such is not excused from the requirements of the Constitution: “When the Constitution clearly sets forth the manner in which something shall be done, that procedure must be followed to the exclusion of all others, *including a procedure which the legislature may prefer . . .*” *Consumer Party*, 510 Pa. at 179, 507 A.2d at 333 (quoting *School Districts of Deer Lakes and Allegheny v. Kane*, 463 Pa. 554, 564, 345 A.2d 658, 663 (1975) (footnote omitted)) (italics added).

Act of June 21, 2002, P.L. 386, 18 Pa. C.S. § 3310 (HB 1492) (RR 195-99). Appellants can offer no continuity of purpose any narrower than a general purpose to “regulate conduct of individuals” or to “amend the Crimes Code.”

In short, HB 1493’s initial printing and its final printing were two separate bills with two separate and incompatible purposes. According to Article III, § 1, they should have been initially filed as two separate bills. Only the unreasonably broad “same code title” rule proffered by Appellants could encompass both. Commonwealth Court below properly held that the General Assembly’s clumsy attempt to supplant an agricultural crop destruction bill with a purported amendment to the ethnic intimidation law violated the plain meaning of Article III, § 1 and the first *PAGE* inquiry.

II. IN ITS ENACTED FORM, HOUSE BILL 1493’S TITLE WAS DECEPTIVE IN PURPORTING TO AMEND PENNSYLVANIA’S “ETHNIC INTIMIDATION” LAW BY ADDING NON-ETHNIC CLASSES OF PERSONS

Although not reached by Commonwealth Court below,⁶ the second inquiry under *PAGE* requires a court to “consider whether, in its final form, the title and contents of the bill are deceptive.” 877 A.2d at 409, 583 Pa. at 317. “[T]he purpose sought to be achieved by Article III, section 1 was to put the members of the General Assembly *and others interested* on notice so that they may act with circumspection.” *Consumer Party*, 510 Pa. at 181, 570 A.2d at 335 (citing *Scudder v. Smith*, 331 Pa. 165, 200 A. 601 (1938)) (emphasis added). A title is constitutional if it “puts a reasonable person on notice of the general subject matter of the act.” *PAGE*, 877 A.2d at 406, 583 Pa. at 313.

⁶ Upon determining that the enactment of HB 1493 violated Article III, section 1, the court below declined to apply the second *PAGE* inquiry, as well as Appellees’ arguments that HB 1493 violated sections 2, 3, and 4 of Article III of the Pennsylvania Constitution. Should this Court reverse Commonwealth Court’s order on this appeal, Appellees request that this case be remanded for consideration of these remaining challenges to HB 1493.

President *Pro Tempore* Jubelirer's protestations notwithstanding, this section's purpose of placing "others interested on notice" clearly demonstrates that Article III is not solely for the benefit of members of the General Assembly. *See* Br. of Jubelirer at 21. Appellees, as those individuals who were charged, and might be again, with the offenses criminalized by the enactment of House Bill 1493, are indisputably such interested persons. Their standing in this case has never been challenged. *See, e.g.*, Br. of Governor Rendell at 5-6 n.1. House Bill 1493 was amended on the Senate Floor on June 21, 2001, to change the bill from one criminalizing agricultural crop destruction to one heightening the punishment for so-called "hate crimes" committed against homosexuals, transvestites, transgender, mentally disabled individuals and others. Because it was printed under the rubric of "ethnic intimidation," however, the title was deceitful in that it did not accurately reflect the contents of the rewritten bill.

House Bill 1493 as amended on the floor of the Senate on third consideration in Printer's Number 2382 bore a title stating, "Amending Title 18 (Crimes and Offense) of the Pennsylvania Consolidated Statutes, further providing for ETHNIC INTIMIDATION." (RR 186). The actual contents of HB 1493, however, reach beyond things commonly thought to relate to *ethnic* intimidation, extending special protection under the Crimes Code to persons victimized by crime based upon actual or perceived "ancestry, mental or physical disability, sexual orientation, gender or gender identity." (RR 187). A reasonable person would not be put on notice of the contents of the bill by virtue of such a title.

Ethnicity is something which is commonly thought of in terms of cultural background. References to "ethnic" food, for instance, can be thought of in terms of, *e.g.*, Italian, Greek, Polish or Chinese. To suggest that ethnicity has anything to do with "physical or mental disability" or "gender identity" is stretching a definition beyond its common meaning. If

ethnicity already covered such things, there would be no need for Act 143 in the first place. As it was, the original (*i.e.*, pre-HB-1934) offense of ethnic intimidation covered only “race, color, religion or national origin.”

These original categories make sense in an ethnic intimidation law. An attack motivated by anti-Semitism is clearly ethnic intimidation. An attack against someone on the basis of the victim’s skin color is clearly ethnic intimidation. An attack against an immigrant to this country on the basis of the immigrant’s natural origin is clearly ethnic intimidation. But a physical attack against someone motivated by hatred for cross-dressing, however abhorrent, is not *ethnic* intimidation. No reasonable person would think it to be so.

The concept of “ethnicity” simply does not extend to such things as “sexual orientation,” “gender” and “gender identity.” *Merriam Webster’s Online Dictionary* fails to provide any definition that suggests that sexual orientation,” “gender” or “gender identity” can come within the definition of the word “ethnic”:

1: HEATHEN

2 **a:** of or relating to large groups of people classed according to common racial, national, tribal, religious, linguistic, or cultural origin or background <*ethnic* minorities> <*ethnic* enclaves> **b:** being a member of a specified ethnic group <an *ethnic* German> **c:** of, relating to, or characteristic of ethnics <*ethnic* neighborhoods> <*ethnic* foods>

Merriam Webster’s Online Dictionary, at <http://www.merriam-webster.com/dictionary/ethnic> (last accessed 3/14/08).

Speaker Perzel defends HB 1493’s amended title by claiming that the “reference was to alert legislators that the bill proposed amendments to the *Ethnic Intimidation* Act.” Br. of Speaker Perzel at 25. Speaker Perzel offers no support for such an assertion, and in any case the amended title of HB 1493 did not mention an “Act,” but simply announced the *topic* of “ethnic intimidation.” (RR 186). Moreover, the relevant inquiry is not as narrow as “whether a

reasonable *legislator* should have know [sic] that he or she was voting on amendments to the Ethnic Intimidation Act.” Br. of Speaker Perzel at 25-26. Rather, the inquiry is whether HB 1493’s amended title referring to “ethnic intimidation” operates to place “a reasonable *person* on notice of the general subject matter of the act.” *PAGE*, 877 A.2d at 406 (emphasis added). A “reasonable *legislator*” may be familiar with the Ethnic Intimidation Act itself, and he or she may also be familiar with the broader use of the term “ethnic intimidation” by some in the legal and lawmaking community, *see* Br. of Speaker Perzel at 26, and *still* be deceived by HB 1493’s amended but misleading title. All the more, a non-legislator, a reasonable person who lacks the insider knowledge commensurate with working in the General Assembly, would not be put on sufficient notice to know that a bill amending Pennsylvania’s “ethnic intimidation” statute might include such *non-ethnic* characteristics and classifications as “mental or physical disability, sexual orientation, gender or gender identity.” (RR 187.) The history of HB 1493 reveals clear violations of the constitutional prohibition against including “provisions into legislation without allowing for ‘fair notice to the public and to legislators of the existence of the same.’” *PAGE*, 877 A.2d at 395 (quoting *City of Philadelphia*, 838 A.2d at 587).

Therefore, the enactment of Act 143 of 2002 violated Article III, Section § 1 of the Pennsylvania Constitution and was properly struck down in its entirety by the Commonwealth Court.

CONCLUSION

For these reasons, this Court should affirm the judgment of the Commonwealth Court.

Respectfully submitted,

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